

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

NATHANIEL MCGEE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002540

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2006-GS-10-7192
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
VS.	)	
	)	
NATHANIEL MCGEE	)	
	)	
Defendant	)	

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, March 2, 2009, commencing at 4:25 p.m.

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THE COURT: If there are no further questions from the State, any objection to the Clerk drawing the jury?

MR. VOIGT: None from the State, Your Honor.

THE COURT: If there are no further questions from the defense, any objection to the Clerk drawing the jury?

MR. SMILEY: None, Your Honor.

THE COURT: Thank you.

CLERK OF COURT: Ladies and gentlemen, I know some of you have heard this before. But if I call your name, please gather your belongings, walk up to this podium, turn, and face the parties.

I'll then ask the parties questions, after which I'll either tell you to have a seat in the jury box or I'll ask you to have a seat back in the audience. Juror number 17, Kerry Bevers, 17.

[Whereupon, Ms. Bevers comes forward]

CLERK OF COURT: What say you from the State?

MR. VOIGT: Please present this juror.

1 CLERK OF COURT: What say you from the
2 defendant?

3 MR. SMILEY: Please seat Ms. Bevers.

4 CLERK OF COURT: Ms. Bevers, please have
5 a seat in the jury box. You've been selected
6 as a juror in this case.

7 [Whereupon, Ms. Bevers is seated in the
8 jury box as a juror]

9 CLERK OF COURT: Juror number 269, Rhonda
10 Walden, 269.

11 [Whereupon, Ms. Walden comes forward]

12 CLERK OF COURT: What say you from the
13 State?

14 MR. VOIGT: Please present this juror.

15 CLERK OF COURT: What say you from the
16 defendant?

17 MR. SMILEY: Please seat the juror.

18 CLERK OF COURT: Ms. Walden, please have
19 a seat in the jury box. You've been selected
20 as a juror in this case.

21 [Whereupon, Ms. Walden is seated in the
22 jury box as a juror]

23 CLERK OF COURT: Juror number 244, Geneva
24 Smith, 244.

25 [Whereupon, Ms. Smith comes forward]

1 CLERK OF COURT: What say you from the
2 State?

3 MR. VOIGT: The State would thank but
4 excuse this juror.

5 CLERK OF COURT: Ms. Smith, please have a
6 seat back in the audience. You've been
7 excused from the trial in this case.

8 [Whereupon, Ms. Smith returns to the
9 audience]

10 CLERK OF COURT: Juror number 270, Shawn
11 Wanek, 270.

12 [Whereupon, Mr. Wanek comes forward]

13 CLERK OF COURT: What say you from the
14 State?

15 MR. VOIGT: Please present this juror.

16 CLERK OF COURT: What say you from the
17 defendant?

18 MR. SMILEY: Please excuse this juror.

19 CLERK OF COURT: Mr. Wanek, please have a
20 seat back in the audience. You've been
21 excused from the trial in this case.

22 [Whereupon, Mr. Wanek returns to the
23 audience]

24 CLERK OF COURT: Juror number 268, Laura
25 Vyskocil. Excuse the pronunciation. 268.

1 [Whereupon, Ms. Vyskocil comes forward]

2 CLERK OF COURT: What say you from the
3 State?

4 MR. VOIGT: Please present this juror.

5 CLERK OF COURT: What say you from the
6 defendant?

7 MR. SMILEY: Please seat this juror.

8 CLERK OF COURT: Ma'am, please have a
9 seat in the jury box. You've been selected as
10 a juror in this case.

11 [Whereupon, Ms. Vyskocil is seated in the
12 jury box as a juror]

13 CLERK OF COURT: Juror number 317, Leigh
14 Smith, 317.

15 [Whereupon, Ms. Smith comes forward]

16 CLERK OF COURT: What say you for the
17 State?

18 MR. VOIGT: Please present this juror.

19 CLERK OF COURT: What say you for the
20 defendant?

21 MR. SMILEY: Please excuse this juror.

22 CLERK OF COURT: Ms. Smith, please have a
23 seat back in the audience. You've been
24 excused from the trial of this case.

25 [Whereupon, Ms. Smith returns to the

1 audience]

2 CLERK OF COURT: Juror number 303, Thomas
3 Bissell, 303.

4 [Whereupon, Mr. Bissell comes forward]

5 CLERK OF COURT: What say you for the
6 State?

7 MR. VOIGT: Please present this juror.

8 CLERK OF COURT: What say you for the
9 defendant?

10 MR. SMILEY: Please excuse this juror.

11 CLERK OF COURT: Mr. Bissell, please have
12 a seat back in the audience. You've been
13 excused from the trial of this case.

14 [Whereupon, Mr. Bissell returns to the
15 audience]

16 CLERK OF COURT: Juror number 287, Amanda
17 Williamson, 287.

18 [Whereupon, Ms. Williamson comes forward]

19 CLERK OF COURT: What say you for the
20 State?

21 MR. VOIGT: Please present this juror.

22 CLERK OF COURT: What say you for the
23 defendant?

24 MR. SMILEY: Please excuse this juror.

25 CLERK OF COURT: Ms. Williamson, please

1 have a seat back in the audience. You've been
2 excused from the trial of this case.

3 [Whereupon, Ms. Williamson returns to the
4 audience]

5 CLERK OF COURT: That's four strikes for
6 the defendant.

7 MR. SMILEY: I have ten, right?

8 CLERK OF COURT: Right. Juror number
9 216, Shakera Robinson, 216.

10 [Whereupon, Ms. Robinson comes forward]

11 CLERK OF COURT: What say you for the
12 State?

13 MR. VOIGT: The State would thank but
14 excuse this juror.

15 CLERK OF COURT: Ms. Robinson, please
16 have a seat back in the audience. You've been
17 excused from the trial of this case.

18 [Whereupon, Ms. Robinson returns to the
19 audience]

20 CLERK OF COURT: Juror number 63, Arthur
21 Crumbley, 63.

22 [Whereupon, Mr. Crumbley comes forward]

23 CLERK OF COURT: What say you for the
24 State?

25 MR. VOIGT: Please present this juror.

1 CLERK OF COURT: What say you for the
2 defendant?

3 MR. SMILEY: Please excuse the doctor.

4 CLERK OF COURT: Mr. Crumbley, please
5 have a seat back in the audience. You've been
6 excused from the trial of this case.

7 [Whereupon, Mr. Crumbley returns to the
8 audience]

9 CLERK OF COURT: Juror number 251,
10 Jacqueline Strozier, 251.

11 [Whereupon, Ms. Strozier comes forward]

12 CLERK OF COURT: What say you for the
13 State?

14 MR. VOIGT: Please present this juror.

15 CLERK OF COURT: What say you for the
16 defendant?

17 MR. SMILEY: Please excuse this juror.

18 CLERK OF COURT: Ms. Strozier, please
19 have a seat back in the audience. You've been
20 excused from the trial of this case.

21 [Whereupon, Ms. Strozier returns to the
22 audience]

23 CLERK OF COURT: Juror number 112,
24 Felicia Harrell, 112.

25 [Whereupon, Ms. Harrell comes forward]

1 CLERK OF COURT: What say you for the
2 State?

3 MR. VOIGT: Please present this juror.

4 CLERK OF COURT: What say you for the
5 defendant?

6 MR. SMILEY: Please seat this juror.

7 CLERK OF COURT: Ms. Harrell, please have
8 a seat in the jury box. You've been selected
9 as a juror in this case.

10 [Whereupon, Ms. Harrell is seated in the
11 jury box as a juror]

12 CLERK OF COURT: Juror number 188,
13 Maybelle Nelson, 188.

14 [Whereupon, Ms. Nelson comes forward]

15 CLERK OF COURT: What say you for the
16 State?

17 MR. VOIGT: Please present this juror.

18 CLERK OF COURT: What say you for the
19 defendant?

20 MR. SMILEY: Please seat Ms. Nelson.

21 CLERK OF COURT: Ms. Nelson, please have
22 a seat in the jury box. You've been selected
23 as a juror in this case.

24 [Whereupon, Ms. Nelson is seated in the
25 jury box as a juror]

1 CLERK OF COURT: Juror number 304, Eric
2 Bradshaw, 304.

3 [Whereupon, Mr. Bradshaw comes forward]

4 CLERK OF COURT: What say you for the
5 State?

6 MR. VOIGT: Please present this juror.

7 CLERK OF COURT: What say you for the
8 defendant?

9 MR. SMILEY: Please seat this juror.

10 CLERK OF COURT: Mr. Bradshaw, please
11 have a seat in the jury box. You've been
12 selected as a juror in this case.

13 [Whereupon, Mr. Bradshaw is seated in the
14 jury box as a juror]

15 CLERK OF COURT: Juror number 100, Cecil
16 Gooding, juror number 100.

17 [Whereupon, Mr. Gooding comes forward]

18 CLERK OF COURT: What say you for the
19 State?

20 MR. VOIGT: Please present this juror.

21 CLERK OF COURT: What say you for the
22 defendant?

23 MR. SMILEY: Please excuse this juror.

24 CLERK OF COURT: Mr. Gooding, please have
25 a seat back in the audience. You've been

1 excused from the trial of this case.

2 [Whereupon, Mr. Gooding returns to the
3 audience]

4 CLERK OF COURT: Juror number 39,
5 Patricia Lynn Cameron, 39.

6 [Whereupon, Ms. Cameron comes forward]

7 CLERK OF COURT: What say you for the
8 State?

9 MR. VOIGT: Please present this juror.

10 CLERK OF COURT: What say you for the
11 defendant?

12 MR. SMILEY: Please seat Ms. Cameron.

13 CLERK OF COURT: Ms. Cameron, please have
14 a seat in the jury box. You've been selected
15 as a juror in this case.

16 [Whereupon, Ms. Cameron is seated in the
17 jury box as a juror]

18 CLERK OF COURT: Juror number 99, Tanya
19 Gonzales, 99.

20 [Whereupon, Ms. Gonzales comes forward]

21 CLERK OF COURT: What say you for the
22 State?

23 MR. VOIGT: The State would thank but
24 excuse this juror.

25 CLERK OF COURT: Ms. Gonzales, please

1 have a seat back in the audience. You've been
2 excused from the trial of this case.

3 [Whereupon, Ms. Gonzales returns to the
4 audience]

5 CLERK OF COURT: That's three strikes for
6 the State. Juror number 204, Robert
7 Postlethwaite, 204.

8 [Whereupon, Mr. Postlethwaite comes
9 forward]

10 CLERK OF COURT: What say you for the
11 State?

12 MR. VOIGT: Please present this juror.

13 CLERK OF COURT: What say you for the
14 defendant?

15 MR. SMILEY: Please excuse this juror.

16 CLERK OF COURT: Sir, please have a seat
17 back in the audience. You've been excused
18 from the trial of this case.

19 [Whereupon, Mr. Postlethwaite returns to
20 the audience]

21 CLERK OF COURT: That's eight strikes for
22 the defendant. Juror number 93, Michelle
23 Gaeta, 93.

24 [Whereupon, Ms. Gaeta comes forward]

25 CLERK OF COURT: What say you for the

1 State?

2 MR. VOIGT: Please present this juror.

3 CLERK OF COURT: What say you for the
4 defendant?

5 MR. SMILEY: Please seat this juror.

6 CLERK OF COURT: Ms. Gaeta, please have a
7 seat in the jury box. You've been selected as
8 a juror in this case.

9 [Whereupon, Ms. Gaeta is seated in the
10 jury box as a juror]

11 CLERK OF COURT: Juror number 308,
12 Virginia Green, 308.

13 [Whereupon, Ms. Green comes forward]

14 CLERK OF COURT: What say you for the
15 State?

16 MR. VOIGT: The State would thank but
17 excuse this juror.

18 CLERK OF COURT: Ms. Green, please have a
19 seat back in the audience. You've been
20 excused from the trial of this case.

21 [Whereupon, Ms. Green returns to the
22 audience]

23 CLERK OF COURT: Four strikes for the
24 State. Juror number 280, Craig White, 280.

25 [Whereupon, Mr. White comes forward]

1 CLERK OF COURT: What say you for the
2 State?

3 MR. VOIGT: Please present this juror.

4 CLERK OF COURT: What say you for the
5 defendant?

6 MR. SMILEY: Please seat this juror.

7 CLERK OF COURT: Mr. White, please have a
8 seat in the jury box. You've been selected as
9 a juror in this case.

10 [Whereupon, Mr. White is seated in the
11 jury box as a juror]

12 CLERK OF COURT: Juror number 178,
13 Charles McManus, 178.

14 [Whereupon, Mr. McManus comes forward]

15 CLERK OF COURT: What say you for the
16 State?

17 MR. VOIGT: Please present this juror.

18 CLERK OF COURT: What say you for the
19 defendant?

20 MR. SMILEY: Please excuse this juror.

21 CLERK OF COURT: Mr. McManus, please have
22 a seat back in the audience. You've been
23 excused from the trial of this case.

24 [Whereupon, Mr. McManus returns to the
25 audience]

1 CLERK OF COURT: That's nine strikes for
2 the defendant. Juror number 301, Caroline
3 Bailey, 301.

4 [Whereupon, Ms. Bailey comes forward]

5 CLERK OF COURT: What say you for the
6 State?

7 MR. VOIGT: Please present this juror.

8 CLERK OF COURT: What say you for the
9 defendant?

10 MR. SMILEY: Please seat this juror.

11 CLERK OF COURT: Ms. Bailey, please have
12 a seat in the jury box. You've been selected
13 as a juror in this case.

14 [Whereupon, Ms. Bailey is seated in the
15 jury box as a juror]

16 CLERK OF COURT: Juror number 246, Pamela
17 Snelgrove, 246.

18 [Whereupon, Ms. Snelgrove comes forward]

19 CLERK OF COURT: What say you for the
20 State?

21 MR. VOIGT: The State would thank but
22 excuse this juror.

23 CLERK OF COURT: Ms. Snelgrove, please
24 have a seat back in the audience. You've been
25 excused from the trial of this case.

1 [Whereupon, Ms. Snelgrove returns to the
2 audience]

3 CLERK OF COURT: That's five strikes for
4 the State. Juror number 230, Michael
5 Sheaffer, 230.

6 [Whereupon, Mr. Sheaffer comes forward]

7 CLERK OF COURT: Any challenge from the
8 State?

9 MR. VOIGT: No.

10 CLERK OF COURT: What say you for the
11 defendant?

12 MR. SMILEY: Please excuse this juror.

13 CLERK OF COURT: Mr. Sheaffer, please
14 have a seat back in the audience. You've been
15 excused from the trial of this case.

16 [Whereupon, Mr. Sheaffer returns to the
17 audience]

18 CLERK OF COURT: That's ten strikes for
19 the defendant. Juror number 32, Deanne
20 Buffalari, 32.

21 [Whereupon, Ms. Buffalari comes forward]

22 CLERK OF COURT: Any challenge from the
23 State?

24 MR. VOIGT: None from the State.

25 CLERK OF COURT: Any from the defendant?

1 MR. SMILEY: No.

2 CLERK OF COURT: Ms. Buffalari, please
3 have a seat in the jury box. You've been
4 selected as a juror in this case.

5 [Whereupon, Ms. Buffalari is seated in
6 the jury box as a juror]

7 CLERK OF COURT: Juror number 310, Joesam
8 Hogan, 310.

9 [Whereupon, Mr. Hogan comes forward]

10 CLERK OF COURT: Any challenge from the
11 State?

12 MR. VOIGT: No challenge from the State.

13 CLERK OF COURT: Any challenge from the
14 defendant?

15 MR. SMILEY: [indicates negatively]

16 CLERK OF COURT: Mr. Hogan, please have a
17 seat in the jury box. You've been selected as
18 a juror in this case.

19 [Whereupon, Mr. Hogan is seated in the
20 jury box as a juror]

21 THE COURT: One alternate, Mr. Voigt.
22 Mr. Smiley, one alternate.

23 MR. SMILEY: One alternate. Yes.

24 CLERK OF COURT: I'm picking for
25 alternates. The strikes are one and two.

1 Juror number 305, Joseph Canteen, 305.

2 [Whereupon, Mr. Canteen comes forward]

3 CLERK OF COURT: What say you for the
4 State?

5 MR. VOIGT: The State would thank but
6 excuse this juror.

7 CLERK OF COURT: Mr. Canteen, please have
8 a seat back in the audience. You've been
9 excused from the trial of this case.

10 [Whereupon, Mr. Canteen returns to the
11 audience]

12 CLERK OF COURT: Juror number 298, Jose
13 Yabut, 298.

14 [Whereupon, Mr. Yabut comes forward]

15 CLERK OF COURT: Any challenge from the
16 State?

17 MR. VOIGT: No challenge from the State.

18 CLERK OF COURT: What say you for the
19 defendant?

20 MR. SMILEY: Please excuse this juror.

21 CLERK OF COURT: Mr. Yabut, please have a
22 seat back in the audience. You've been
23 excused from the trial of this case.

24 [Whereupon, Mr. Yabut returns to the
25 audience]

1 CLERK OF COURT: Juror number 269,
2 Jonathan Massi, 169.

3 [Whereupon, Mr. Massi comes forward]

4 CLERK OF COURT: Any challenge from the
5 State?

6 MR. VOIGT: No challenge from the State.

7 CLERK OF COURT: What say you for the
8 defendant?

9 MR. SMILEY: Please excuse this juror.

10 CLERK OF COURT: Mr. Massi, please have a
11 seat back in the audience. You've been
12 excused from the trial of this case.

13 [Whereupon, Mr. Massi returns to the
14 audience]

15 CLERK OF COURT: Juror number 128, Alice
16 Jefferson, 128.

17 [Whereupon, Ms. Jefferson comes forward]

18 CLERK OF COURT: Any challenge from the
19 State?

20 MR. VOIGT: No challenge from the State.

21 CLERK OF COURT: Any challenge from the
22 defendant?

23 MR. SMILEY: None.

24 CLERK OF COURT: Ms. Jefferson, please
25 have a seat in the jury box. You've been

1 selected as a juror in this case.

2 [Whereupon, Ms. Jefferson is seated in
3 the jury box as a juror]

4 CLERK OF COURT: Your Honor, the jury has
5 been selected and are seated.

6 THE COURT: Thank you. Are there any
7 matters or motions pertaining to the jury
8 selection process, with the exception of the
9 matter that we need to place on the record to
10 the selected jury? From the State?

11 MR. VOIGT: None from the State, Your
12 Honor.

13 THE COURT: From the defendant?

14 MR. SMILEY: No. None from the
15 defendant.

16 THE COURT: Ladies and gentlemen of the
17 jury, you will be escorted to your jury room
18 and I will receive you back into the courtroom
19 in just a few moments. Thank you.

20 [Whereupon, the jury exits the courtroom
21 at 5:12 p.m.]

22 THE COURT: Thank you. Please be seated.
23 Ladies and gentlemen of the remaining jury
24 pool you are excused for the remainder of the
25 day. Your instructions -- you are not

1 excused for the remainder of the week. Your
2 instructions are to call back tomorrow after 6
3 p.m. At that time you will receive further
4 instructions on when, or if, you need to
5 report. Yes, ma'am?

6 UNIDENTIFIED SPEAKER: 6 a.m.?

7 THE COURT: 6 p.m. tomorrow. 6 p.m.
8 tomorrow. So you get the -- well, we have put
9 in a very full day already and so you have
10 tomorrow off. You do not need to report
11 tomorrow.

12 At 6 p.m. there will be a message
13 and it will tell you whether or not you again
14 have Wednesday off, or you need to report at a
15 certain time. It will then -- if you do not
16 have to come in on Wednesday, it will then
17 tell you when to call back and check for the
18 remainder of the week.

19 But, you do not need to report at
20 all tomorrow, which is Tuesday. But after 6
21 p.m. you will be given further instructions
22 for the week. At this time I do not know what
23 those instructions will be, but you will be
24 given the instructions for reporting after 6
25 p.m. Again, I appreciate your patience and

1 your duty for serving this week for Charleston
2 County. Thank you so much.

3 [Whereupon, the jury panel exits the
4 courtroom at 5:15 p.m.]

5 THE COURT: All right, Mr. Smiley, I will
6 allow you to place on the record the matter
7 pertaining to juror 321.

8 MR. SMILEY: Yes, ma'am. In regards to
9 321, during open court in voir dire she
10 responded that her child's father was in
11 prison. And you asked if she could be
12 impartial and you said, by my understanding,
13 that -- well, you asked if it would affect her
14 and she said no, it wouldn't.

15 Then when she was called to the
16 bench for further voir dire it became apparent
17 that she -- that he had been prosecuted in
18 Charleston County, that it was a crime similar
19 to the crime that's being tried here. It was
20 a -- she said involuntary but I believe it was
21 probably voluntary given the length of the
22 sentence he got.

23 And in your discretion you decided
24 that that juror probably wasn't suited for
25 this case and, of course, since she had said

1 that she could be impartial I had wished that
2 she had remained. So, if you would just note
3 my exception. Thank you.

4 THE COURT: All right. And Mr. Smiley,
5 do you feel that your client has been
6 prejudiced at this time?

7 MR. SMILEY: I can't say he has, Your
8 Honor.

9 THE COURT: All right. And Mr. Voigt, do
10 you have any response to the colloquy in front
11 of the court reporter, which was taken down,
12 with respect to juror number 321?

13 MR. VOIGT: Your Honor, in respect to this
14 juror I concur with the Court's ruling in this
15 matter. I believe that the Court had the
16 opportunity to examine this juror, note her
17 demeanor, no hesitation in answering.

18 And as Mr. Smiley noted, the
19 similarities in these cases seem to be of
20 fairly great magnitude. And I believe the
21 Court made the correct call.

22 THE COURT: Thank you. And just for the
23 record, the Court has discretion in ensuring
24 that there is a panel that is fair and
25 impartial. The Court took into consideration

1 that this juror indicated that her child's
2 father had been prosecuted for some type of
3 manslaughter; be it voluntary or involuntary.
4 And that he had been prosecuted by the
5 Solicitor's office here in Charleston.

6 Based upon those considerations, the
7 Court felt out of an abundance of caution, and
8 in its discretion, that juror 321 should be
9 excused.

10 MR. SMILEY: Thank you, Your Honor.

11 THE COURT: What -- is there -- outside
12 of the presence of the jury, is there anything
13 further in regards to the selection process or
14 to the selected jury? Mr. Smiley?

15 MR. SMILEY: From the defense, no ma'am.

16 THE COURT: Mr. Voigt?

17 MR. VOIGT: Nothing from the State, Your
18 Honor.

19 THE COURT: And are there any pre-trial
20 matters or motions that we need to address?

21 MR. SMILEY: I believe we've already
22 resolved everything. The only additional
23 motion I have, is a pretty standard motion, is
24 sequestration other than the victim's family
25 and the case officer. And, of course, that

1 applies to both sides.

2 THE COURT: All right. And Mr. Voigt
3 would the State have any additional motions?

4 MR. VOIGT: No, Your Honor.

5 THE COURT: What I'm going to do as far
6 as far as -- I'm not going to swear the jury
7 at this time. What I am going to do is have
8 them called -- we will make them jury panel
9 one or Judge Harrington's jury panel. They
10 will call back after 6 p.m. tomorrow. I don't
11 anticipate that we would be -- we would need
12 them before tomorrow do you Mr. Voigt, based
13 upon...

14 MR. VOIGT: Just tell me when you'd like
15 our witnesses here, Judge and I will ---

16 THE COURT: --- all right ---

17 MR. VOIGT: --- have them ready to go.

18 THE COURT: And then that way after 6
19 p.m. tomorrow we will determine whether or not
20 we will need them to report promptly Wednesday
21 at 9 a.m. or Wednesday after lunch.

22 MR. SMILEY: Thank you, Your Honor.

23 THE COURT: All right -- and anything
24 before I bring in the jury?

25 MR. VOIGT: No, Your Honor.

1 MR. SMILEY: Nothing from the defense.

2 THE COURT: Please bring in the jury.

3 We'll address these motions, counsel, once we
4 determine when we're bringing in the jury.
5 Please rise for the jury.

6 [Whereupon, the jury enters the courtroom
7 at 5:19 p.m.]

8 THE COURT: Thank you. Thank you.
9 Please be seated. Ladies and gentlemen of the
10 jury, there is another matter before this
11 trial. So we -- in order -- we understand --
12 in trying to inconvenience you as little as
13 possible, we wanted to go ahead and select the
14 jury for this case.

15 So, you are actually -- will be
16 notified on the phone with a message when you
17 call in as Judge Harrington's panel. You will
18 need to call the number that you were given to
19 report at -- after 6 p.m. There will be a
20 message as to what time you need to report.

21 We do this because we understand
22 that you have lives outside of the court and
23 while you have so graciously shown up, albeit
24 because of the invitation to be here, we are
25 trying to minimize your time waiting and as

1 such this is the way that we have best
2 facilitated that. If you will just call in
3 after 6 p.m. tomorrow, you will be given
4 further instructions. Does each of the jury
5 -- they all have the number?

6 CLERK OF COURT: Yes, ma'am. I gave them
7 a card this morning.

8 THE COURT: All right. Yes?

9 UNIDENTIFIED SPEAKER: I'm sorry, after 6
10 p.m. tonight about tomorrow?

11 THE COURT: No, no, no. You are free
12 tomorrow. You do not need to come in tomorrow
13 at all, okay. You have tomorrow off. I am
14 not going to be calling any of your employers
15 to tell them that you do not have jury -- you
16 have been selected as a jury.

17 But we will not need your services
18 tomorrow in this particular case. You will be
19 given instructions when you call back after
20 tomorrow -- or tomorrow after 6 p.m. as to the
21 exact time and day you need to report.

22 We do this, again, so that you're
23 not sitting here all day tomorrow and then all
24 day Wednesday, so that we minimize the amount
25 of trips that you make to the courthouse.

1 Does that answer your question?

2 UNIDENTIFIED SPEAKER: Yes, ma'am.

3 THE COURT: All right. And Ms.

4 Jefferson, you are the alternate?

5 MS. JEFFERSON: Yes, ma'am.

6 THE COURT: All right. And Mr. Bradshaw,
7 you have been selected as the foreman of this
8 jury. As such you will take the location --
9 in this chair. The rest of you will be able
10 to -- there are no assigned seats.

11 It's just that Mr. Bradshaw is now
12 selected to be the spokesperson here at court
13 and he will address the Court if there are any
14 matters that need to be addressed. And Ms.
15 Jefferson, as the alternate I need to be able
16 to look right there and know that that is
17 where you are seated. Other than that there
18 are -- you are free to sit wherever you wish.

19 You will notice as you enter and
20 exit the courtroom the attorneys and members
21 of the audience will be standing. That is
22 because, just as I am the Judge and you rise
23 when I stand, you are considered the judge of
24 the facts and as such the attorneys and the
25 parties involved will stand when you enter and

1 exit the courtroom. So, please when you come
2 back and -- at that time when you are told to
3 come back when you come in take your seats and
4 please be seated because the parties will
5 remain standing until each of you are seated.
6 I look forward to having you back in the
7 courtroom. Please enjoy your tomorrow off.
8 Call back after 6 p.m. tomorrow.

9 And just out of an abundance of
10 caution if you will, as you are leaving, leave
11 a cell number with the bailiff so that if
12 there are any questions that we may contact
13 you as well. Please have a good and restful
14 evening and I look forward to seeing you later
15 in the week. Please rise for the jury.

16 [Whereupon, the jury exits the courtroom
17 at 5:24 p.m.]

18 THE COURT: Thank you. You may be
19 seated. Anything before we recess in the
20 matter, Mr. Voigt? Mr. Byrd?

21 MR. VOIGT: No, ma'am.

22 MR. SMILEY: One thing, and I think it
23 might not be with Your Honor, but my client
24 does not need to be transported tomorrow since
25 there is no way we'll be going that way I'll

1 have access to him at the jail. So whoever I
2 have to tell to make sure he doesn't come
3 tomorrow...

4 THE COURT: All right. And Mr. Smiley,
5 if you need any additional assistance in that
6 matter please notify the Court.

7 MR. SMILEY: Thank you.

8 THE COURT: And Ms. Hensley will be here

9 ---

10 MR. SMILEY: --- yes ---

11 THE COURT: --- all Wednesday to assist
12 as well?

13 MR. SMILEY: She will.

14 THE COURT: All right.

15 MR. SMILEY: We'll be ready to go. And I
16 thank you, Your Honor.

17 THE COURT: All right.

18 MR. SMILEY: It will give me a little bit
19 of organization time.

20 THE COURT: And just so we put it on the
21 record, we have had just a scheduling -- Mr.
22 Smiley did not ask for a continuance but just
23 asked not to be the first one to go. And out
24 of courtesy to Mr. Smiley, Mr. Voigt was very
25 gracious and we have a matter that we will be

1 trying before this. The Court did not feel
2 this amounted to a continuance, but just for
3 the record wanted to ---

4 MR. SMILEY: --- and I didn't want to ask
5 for a continuance, just for the record. I had
6 been in trial all five days of last week and
7 just wanted some time to clear my head and get
8 focused on the new task at hand. Thank you.

9 THE COURT: And, anything again before we
10 recess? We -- if you both will check in with
11 my clerk by about 4 o'clock tomorrow afternoon
12 so that we leave the appropriate message for
13 the jury panel.

14 MR. SMILEY: Thank you very much, Your
15 Honor.

16 MR. VOIGT: Thank you.

17 THE COURT: Thank you.

18 [Whereupon, the jury trial adjourns at
19 4:47 p.m.]

20

21

22

23

24

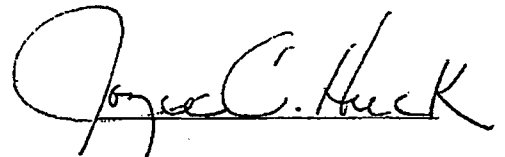
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Huck,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate, and complete Transcript of Record of
the proceedings had and evidence introduced in
the trial of the captioned case, relative to
appeal, transcribed by Joyce C. Huck, reported
by Mia Perron, Ninth Circuit Court Reporter,
in the Court of General Sessions for
Charleston County, South Carolina, on the 2nd
day of March, 2009.

I do further certify that I am
neither of kin, counsel, nor interest to any
party hereto.

December 5, 2009



Joyce C. Huck

Court Reporter

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2006-GS-10-7192
)
)
THE STATE OF SOUTH CAROLINA)
)
VS.)
)
NATHANIEL MCGEE)
)
Defendant)
_____)

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, March 4, 2009, commencing at 9:30 a.m.

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PROCEEDINGS

[Whereupon, State's Exhibit numbers 1 through 24 are marked by the court reporter prior to commencement of proceedings]

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MOTION IN LIMINE

THE COURT: Are there any matters -- we're still waiting on five jurors. Are there any matters that we need to address? Mr. Voigt, Mr. Smiley?

MR. VOIGT: Yes, Your Honor. Briefly, Your Honor, the State has a motion *in limine*. I've passed to your Clerk the case of State vs. Taylor.

In pretrial discussions with Mr. Smiley, Mr. Smiley has indicated to me that he wishes -- both in opening statement and in listening from cross-examination, or perhaps direct testimony of his own witnesses, certain facts regarding a previous incident between the decedent, Mr. Jamie Reed, and the defendant, Nathaniel McGee.

I believe that there is some factually -- there may be some contest as to what may have actually happened several weeks

1 before the fatal shooting. I would concede at
2 the outset that, 404(a)(2) and 405(b) of our
3 Rules of Evidence when self-defense is raised,
4 allow the defense to go into the existence of
5 events what would have given rise to a state
6 of mind of the defendant and would allow him,
7 well -- rather the defense can show the jury
8 -- would give rise to a defense of self-
9 defense. State vs. Taylor, which is a
10 homicide case out of Dorchester County,
11 involved just how far they can go.

12 And the trial court and then the
13 Supreme Court in 1998 limited the trial
14 testimony to the existence of such an
15 altercation but not the specific facts.

16 And my motion in limine is to be in
17 accord with the Taylor ruling so that what the
18 defense can bring out would be some existence
19 of a prior bad blood or prior incident between
20 the defendant and the decedent, but nothing
21 specifically factually about how that may have
22 occurred.

23 THE COURT: Mr. Smiley?

24 MR. SMILEY: Your Honor, I think under
25 the Rules I'm allowed to go into that and it

1 would gut my entire defense. It's one thing
2 just to say to the jury oh, there's a prior
3 incident and that's why my guy was acting the
4 way he did. I think that it's developed his
5 state of mind and the events that went on that
6 night.

7 And through direct testimony I'm
8 going to be able to establish that there was
9 an event prior to this in which my client felt
10 that his life was in danger and that carried
11 over to the night of the incident. It only
12 happened two days before.

13 The testimony that I'm going to
14 elicit is that this prior incident happened
15 two days before the incidents, so you'll
16 understand what we're talking about.

17 THE COURT: Mr. Smiley, if you can give
18 the Court some context. What exactly is the
19 prior bad blood that Mr. Voigt spoke of ---

20 MR. SMILEY: --- well, I'm going to put
21 it in a very tight nutshell. The decedent in
22 this case alleged that Mr. McGee broke into
23 his house and took a gold chain. My evidence
24 will produce -- proffered will be that two
25 days prior to this my client was walking down

1 a dirt road. That the decedent and several
2 other individuals pulled up, got out of the
3 car, bound him, dragged him into the woods,
4 held him at knifepoint, threatened him about
5 breaking into the house and about the chain,
6 threatened his life with a gun and that my
7 client escaped.

8 And as a result of that life-
9 threatening incident my client armed himself.
10 And that night when approached by -- when the
11 confrontation between -- Mr. Reed took place
12 his state of mind was that he was about to be
13 shot when he believed Mr. Reed reached for a
14 gun. That's it in a nutshell.

15 To say I can't go into that will gut
16 what my client was thinking at the time,
17 because it's very, very current. It's not as
18 if it happened six months ago or that this had
19 been going on for a year, there's this general
20 talking back and forth.

21 Through direct testimony we'll be
22 able to establish this allegation. And that
23 will establish how my client perceived the
24 event and why a reasonable person in the same
25 position would believe that he had to use

1 deadly force. Without being able to go into
2 the event the jury is not going to be able to
3 understand or comprehend my client's state of
4 mind, which is very important in the time of
5 the event. And I think the Rules of Evidence
6 allow me to go into the prior incident.

7 THE COURT: And Mr. Smiley, that happened
8 approximately two days before the ---

9 MR. SMILEY: --- well, the -- and that
10 may be -- that may be contested. But I'm
11 going to have direct testimony that it
12 happened two days before.

13 THE COURT: And Mr. Voigt, could you
14 assist the court? What is the State's
15 understanding of the prior bad blood?

16 MR. VOIGT: The State's understanding is
17 that approximately two weeks before Mr. McGee
18 shot Mr. Reed Mr. McGee was confronted coming
19 down a dirt road from Mr. Reed's residence.

20 And later the residence was found to
21 be burglarized, and Mr. Reed accused Mr. McGee
22 of stealing a gold chain. Then at some
23 point, and I believe it actually could have
24 been more than two days before the shooting,
25 other individuals, individuals with a

1 connection to Mr. Reed, but there's -- I don't
2 believe that there's any -- going to be any
3 direct testimony that Mr. Reed was involved in
4 any way. He did confront and have a physical
5 altercation with Mr. McGee concerning the
6 necklace.

7 But I believe it was farther
8 removed. I don't believe Mr. Reed was
9 personally involved in that physical
10 altercation. I believe that this is seeking
11 to impugn the character of the victim.

12 You know, essentially what Mr.
13 Smiley is describing is a kidnapping -- and I
14 have a decedent with absolutely no criminal
15 arrest history nor conviction history. And I
16 think he's trying to improperly impugn his
17 character.

18 THE COURT: And Mr. Smiley, do you agree
19 that the specifics of that incident are not
20 admissible?

21 MR. SMILEY: No ma'am. I believe they
22 are. I have to in presenting the self-defense
23 show why my client acted in the way he did. I
24 have to establish his state of mind at the
25 time of the incident. It's because this

1 incident -- I'm going to have evidence, I know
2 it's contested, but I would have evidence that
3 this offense that had happened two days before
4 is -- that Mr. Reed was involved, and that my
5 life -- my client's life was threatened.

6 Because those are integral in
7 showing the actions that Mr. McGee, and why he
8 took them that night, in showing the self-
9 defense it's going to be very pertinent to go
10 into it. I've got to. I mean if all I'm
11 allowed to say is oh, there's some bad blood
12 between them, I'm not going to be able to
13 establish what's going on in Mr. McGee's mind
14 the night of the incident.

15 The Rules allow me to get into
16 specific incidents of misconduct or bad act
17 prior to that. And -- he says I'm impugning
18 Mr. Reed's character. I guess to a certain
19 degree I am.

20 I'm trying to show what happened
21 before hand and why the actions that were
22 taken by my client that night were justified.
23 If I'm unable to get into that, I'm going to
24 be hamstrung because the jury will get an
25 incomplete picture of what was going on that

1 night.

2 THE COURT: And Mr. Smiley, have you --
3 you've read the Taylor case?

4 MR. SMILEY: I was handed the Taylor case
5 just as I walked in this morning. I'm doing --
6 my second is doing some research as we talk,
7 all right. But yes, I've read the Taylor
8 case.

9 And I've -- well let me change that,
10 I've read the head notes of the Taylor case,
11 but if I could have an opportunity to look at
12 it a little closer?

13 THE COURT: All right. Let's do this.
14 I have several motions *in limine* that you have
15 filed Mr. Smiley. Do you wish ---

16 MR. SMILEY: --- all of my motions ---

17 THE COURT: --- to address those?

18 MR. SMILEY: All of my motions have been
19 resolved with the State, Your Honor. And very
20 quickly the State does not intend to use any
21 prior conviction of my client if he were to
22 testify. That was one of my motions. A
23 motion *in limine* about any prior acts by my
24 client, I don't believe the State intends to
25 introduce any. I had a motion to sequester.

1 We've agreed upon who needs to be sequestered.
2 And I'll have a couple of witnesses I've got
3 to have removed before we start here Judge.

4 The other -- I had anticipated a
5 Biggers motion. But he doesn't intend to
6 enter the photo line-ups, so there's no reason
7 to have that. My client made no statements so
8 there's -- that he did it. So all of my
9 motions, I believe have been resolved, Your
10 Honor.

11 THE COURT: Is that correct, Mr. Voigt?

12 MR. VOIGT: That's correct, Your Honor.
13 That's my understanding.

14 THE COURT: And just so the record is
15 clear, you -- are we sequestering all the
16 witnesses?

17 MR. SMILEY: This is our agreement. The
18 case agent, of course, is allowed to stay.
19 Everybody -- it seems to be a common practice
20 that the lead agent be allowed to sit with the
21 prosecution, so I'm not objecting to him being
22 present.

23 The Victim's Rights bill allows the
24 victim's family to be present in the courtroom
25 by my understanding. Two of the witnesses

1 that I have placed on my witness list are
2 actually brothers of the decedent. But I
3 don't think that they can be excluded because
4 the constitutional right of the victim -- of
5 the victim's rights.

6 I have two lay witnesses that -- my
7 client's mother and aunt, that will be
8 sequestered and any other witnesses of the
9 State. So, I think that covers it.

10 MR. VOIGT: That does cover it. That's
11 my understanding.

12 MR. SMILEY: That was our agreement, Your
13 Honor.

14 THE COURT: All right. Mr. Voigt, and
15 you --

16 MR. VOIGT: That's our -- yes. That's
17 our agreement.

18 THE COURT: And Mr. Smiley, that is your
19 agreement, and you're comfortable proceeding
20 under that?

21 MR. SMILEY: Yes. Yes.

22 THE COURT: Then the Court does not need
23 to address your motion to exclude testimony of
24 prior bad acts or your motion in limine to
25 determine the admissibility of the defendant's

1 prior convictions.

2 MR. SMILEY: Because we have an agreement
3 that the State does not intend to -- to ---

4 MR. VOIGT: --- Your Honor, I do not
5 intend to place any further bad acts,
6 testimony, or evidence, or any evidence of the
7 defendant's convictions in my case in chief.
8 Nor do I plan to use his -- he has a CDV
9 conviction and I don't plan to use it in
10 prosecuting should he choose to testify.

11 THE COURT: And is that the only
12 convictions, Mr. Voigt?

13 MR. VOIGT: --- that is the only
14 conviction. It's a misdemeanor for CDV.

15 MR. SMILEY: And Your Honor, back to the
16 motion in limine of Mr. Voigt, I'm still
17 trying to catch up here with Taylor. And I
18 think it's real significant to point out to
19 you about Taylor.

20 Taylor is not a self-defense case
21 first of all right off the bat. If self-
22 defense is a defense -- once raised by the
23 defense, the State is going to have to engage.
24 This was entered into as provocation, not as
25 self-defense as a prior specific conduct. And

1 so I don't know that it applies in this case
2 but I'm still doing some more research as we
3 move. But I think it's significant to note at
4 the outset Taylor is not a self-defense case.
5 And I literally was handed this case at 9:15,
6 so we're scrambling.

7 THE COURT: Well, this is the purpose of
8 why we do pre-trial conferences so that we can
9 all address the issues and to avoid having the
10 jury wait. We're going to take a fifteen-
11 minute break. Mr. Smiley, I will be in
12 chambers.

13 Mr. Voigt, Mr. Smiley, if you have
14 additional case law that you wish the Court to
15 consider before I make my ruling, I will be
16 more than happy to consider it. But I'm going
17 to review Taylor as provided by Mr. Voigt and
18 I will await any case law that you have for
19 the Court ---

20 MR. SMILEY: --- we're working as fast as
21 we can, Judge. Thank you.

22 THE COURT: Thank you. Thank you, Ms.
23 Hensley. We'll be in recess.

24 [Whereupon, a recess is taken from 9:45
25 a.m. to 10:00 a.m.]

1 [Whereupon, State's Exhibit numbers 25,
2 26, and 27 are marked by the court reporter]

3 MR. SMILEY: Your Honor, I don't have the
4 ability to print cases.

5 THE COURT: Okay.

6 MR. SMILEY: But in this short period of
7 time I've found a couple of cases. One in
8 particular is a -- and I can give you the site
9 so y'all can ---

10 THE COURT: --- let my clerk see it ---

11 MR. SMILEY: --- everybody's got
12 computers. I'm the only one in here that is
13 inept with them. But the case that I quickly
14 found is State vs. Bruno. The site on it is
15 322 SC 534 or 473 SE 2d 450. It's a July 22,
16 1996 South Carolina Supreme Court case.

17 And it establishes what I've got to do
18 to show self-defense, of course, showing it's
19 no fault in bringing on all the difficulty,
20 which that prior testimony would have to go
21 to. That he knew that there was imminent
22 danger of losing his life or sustaining
23 serious bodily injuries. That incident is
24 going to establish -- it's an element of
25 self-defense that I've got to establish. If

1 you don't put in the incident that I'm going
2 to have direct testimony from two days prior,
3 Your Honor, if you are not going to -- I'm
4 going to be hamstrung in showing my client's
5 state of mind that he believed that he was in
6 imminent peril; because the incident two days
7 before is what starts this ball rolling that
8 my client feared for his life.

9 If all I can say is the prior
10 incident, I'm not able to fully present to the
11 jury the element of self-defense that the
12 State wants to negate. State -- the other --
13 State vs. Taylor I think is very important to
14 recognize that it's not a self-defense case.

15 It's not -- the prior difficulty is
16 not being offered to show the state of mind of
17 the defendant as to imminent peril. Or even
18 to show that he wasn't the person that brought
19 on the prior difficulty, even though it could
20 be argued that it was without provocation.

21 That case is being offered more of
22 involuntary kind of sense I believe, to show
23 that the decedent priorly had hit him in the
24 head with a beer bottle. In this case the
25 elements of self-defense require that I be

1 able to develop the state of mind of my client
2 at the time of the incident. And if the Rules
3 allow it, I am going to have direct testimony
4 about the incident two days prior. And I
5 believe I should be able to develop that in my
6 case in chief.

7 And to not allow me to do that would
8 deny my client the ability to have a fair
9 trial, to fully present his defense as
10 guaranteed by the Constitution of the United
11 States and of South Carolina, and supported by
12 the case law relying specifically in State vs.
13 Bruno.

14 THE COURT: Mr. Smiley, that -- well, Mr.
15 Voigt, this is your motion?

16 MR. VOIGT: This is my motion, yes.

17 THE COURT: My understanding was the --
18 this originally arose because Mr. Smiley wants
19 to articulate some of the facts in the
20 previous incident or altercation or, as Mr.
21 Voigt terms it, bad blood ---

22 MR. SMILEY: --- Judge, to do it more
23 than in a general sense, to do it more in a
24 specific sense. Because I think in order to
25 establish the element that requires that to

1 establish my client's state of mind of being
2 in imminent danger at the time of the event.

3 THE COURT: And Mr. Voigt, you filed the
4 motion so that -- what are you comfortable
5 with or what do you believe in your reading of
6 the case law that Mr. Smiley may address
7 concerning the prior incident?

8 MR. VOIGT: I think that one is that the
9 initial threshold as to whether or not Mr.
10 Smiley established whether this was Jamie Reed
11 or persons that his client associated with Mr.
12 Reed. And if it's persons that Mr. McGee
13 associated with Mr. Reed and not Mr. Reed
14 himself, then I believe none of it comes in
15 because I don't believe it's relevant material
16 in that respect.

17 If he's able to establish either
18 through cross-examination of my witnesses or
19 direct testimony that the decedent was
20 directly involved, then my -- what I would
21 feel comfortable with was if there was a prior
22 altercation, and during that altercation that
23 Mr. McGee felt fear of imminent threat of
24 bodily injury.

25 THE COURT: And you feel comfortable with

1 those being -- those two things being
2 addressed by Mr. Smiley in his opening?

3 MR. VOIGT: If you were to limit it to
4 that, then I would -- then I would feel
5 comfortable. And I believe that would comply
6 with the Rules of Evidence. Thank you.

7 MR. SMILEY: I found another case, Your
8 Honor ---

9 THE COURT: --- yes, sir ---

10 MR. SMILEY: --- directly on point. I'm
11 sorry but I'm hustling as fast as I can here.
12 State vs. Day. 341 ---

13 THE COURT: --- and Mr. Smiley I'm sorry,
14 last name again? State vs.?

15 MR. SMILEY: Day, D-A-Y. It's at 341
16 South Carolina 410, or 535 SE 2d 431. It's a
17 Supreme Court Case decided July the 6th, 2000.
18 It says, evidence of prior violence by the
19 victim, and I proffer that I'm going to have
20 direct evidence that the victim was involved
21 all right.

22 There may be a question about
23 creditability there, but I'm going to have
24 direct evidence of that, directed toward the
25 witness, the person testifying, or in this

1 case the defendant, was admissible in a murder
2 prosecution is relevant to an essential
3 evidence -- element of the defendant's self-
4 defense claim to prove the defendant had a
5 reasonable apprehension of violence from
6 victim where four months, not two days, all
7 right, four months prior to the victim's death
8 victim held a double-barrel shotgun to the
9 witnesses head for eighteen hours as he drove
10 around the county accusing her of being
11 involved with a drug trafficking scheme in his
12 residence.

13 I think that's directly on point
14 that I'm allowed to go into the specifics of
15 the prior act of violence to establish my
16 client's claim of self-defense on the element
17 of his belief of imminent peril.

18 THE COURT: Mr. Smiley, in that case did
19 the trial court allow a full disclosure of all
20 of the details of the prior bad blood?

21 MR. SMILEY: Beg the court's indulgence.

22 [Whereupon, counsel review documents]

23 THE COURT: All right. This is what the
24 Court is going to do so that -- and we will
25 address this issue fully. I am going to limit

1 you, Mr. Smiley, in your opening to the
2 general -- the general details that there had
3 been previous difficulties between your client
4 and the deceased.

5 MR. SMILEY: Yes, ma'am. Just note my
6 objection. I understand the ruling, but it's
7 for the record.

8 THE COURT: And, so Mr. Voigt with that I
9 grant your motion *in limine* only to the
10 opening -- to the general discussion of a
11 prior altercation.

12 And you do concede that Mr. Smiley
13 can then indicate in his opening that his
14 client, due to that prior altercation, felt
15 that he was in imminent danger of serious
16 bodily injury?

17 MR. VOIGT: Yes, Your Honor. We can -- I
18 think we can argue later to the jury whether
19 or not that was a reasonable belief. But I
20 believe he can go as far as that.

21 THE COURT: All right.

22 MR. SMILEY: And just -- you asked me a
23 question and I'm reading as fast through my
24 second chair as I could. In Day the court
25 didn't allow everything. And it was reversed.

1 A higher court said uh uh, you didn't go into
2 all of it. And that's the quick read, Judge,
3 and I apologize. And I will -- for opening
4 purposes I understand your -- and I will
5 adhere to it. As we develop testimony I may
6 ask you to allow me to go into more specifics.
7 And also I'll read the cases again to you.

8 THE COURT: All right. And Mr. Smiley
9 and Mr. Voigt, what that will do I'm limiting
10 -- I'm granting the motion *in limine*, granting
11 ---

12 MR. SMILEY: --- specifics ---

13 THE COURT: --- specifics of the prior
14 incident for the purpose of your opening only.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: As we all are aware as facts
17 develop and the Court, on her own motion, can
18 -- or on her own decision can renew and change
19 the ruling on the motion *in limine* ---

20 MR. SMILEY: --- yes, ma'am. I
21 understand. This is a preliminary ruling
22 until the facts are developed.

23 THE COURT: Thank you.

24 MR. SMILEY: Thank you.

25 MR. VOIGT: Thank you very much, Your

1 Honor.

2 THE COURT: All right. Anything before
3 we bring in the jury?

4 MR. VOIGT: No, Your Honor.

5 MR. SMILEY: No, Your Honor.

6 THE COURT: Please rise for the jury.

7 [Whereupon, the jury enters the courtroom
8 at 10:11 a.m.]

9 THE COURT: Thank you. Please be seated.
10 Ladies and Gentlemen, as I've reminded you,
11 out of -- since you, the jury, are the judges
12 of the facts in this case out of respect and
13 honor to you just as when y'all stand when I
14 come into the courtroom, the parties involved,
15 as well as the members of the audience, will
16 stand until all of you are seated.

17 So again, if you will please come in
18 and take your seats and, because we will --
19 the audience will all be standing until all of
20 you are seated. Please swear the jury.

21 CLERK OF COURT: Yes, Your Honor.

22 [Whereupon, the jury was duly sworn by
23 the Clerk of Court]

24 THE COURT: Good morning Mr. Foreman and
25 ladies and gentlemen of the jury. The case

1. that we are about to try is the case of the
2. State vs. Nathaniel McGee. You will be
3. allowed to take notes. But I always caution
4. jurors, just as some of us were better note
5. takers in school than others, you must --
6. these are notes for your own personal use.

7. So, one juror's notes are not any
8. better than another juror's notes, and so
9. just because you take notes doesn't mean that
10. your fellow juror's notes are incorrect or
11. more correct than yours.

12. You will also -- it's hard to take
13. notes and observe what will be happening on
14. the witness stand. So, you have notebooks,
15. you may take notes as you see fit. But I also
16. caution jurors of those things so that you may
17. be aware of those.

18. Ladies and gentlemen, before we
19. begin this trial I want to tell you that this
20. trial probably will be different from what you
21. might expect. Many people do not have the
22. chance to attend actual court sessions as you
23. are doing now. And often what you think of
24. about courtroom drama comes from just that,
25. televisions, movies, or books. Those trials

1 are always full of high drama and intense
2 action in remedying circumstances. While all
3 of these things may be true during this trial
4 at times, this trial is not for entertainment.

5 This trial is a fundamental part of
6 our democracy, a search for the truth, and an
7 effort to make sure that justice is done
8 between the parties who are before the Court.
9 Searching for the truth and making sure that
10 justice is done is often slow, deliberate, and
11 repetitive; the opposite of what you may see
12 in television or in movies or read in books.

13 This courtroom is a place of honor
14 dedicated to the protection and preservation
15 of citizen's rights through what many have
16 called the greatest justice system ever
17 created.

18 The attorneys appearing before you
19 are advocates for the parties that they
20 represent. But first and foremost they are
21 officers of this Court, sworn to uphold the
22 integrity and fairness of our judicial system.
23 You should expect the attorneys to be
24 professional, confident, and ethical in the
25 representation of their client's interest.

1 Remember, that you have just taken an oath to
2 try this case and to reach a fair and just
3 verdict. You are also expected to be
4 professional, reasonable, and ethical.

5 Thank you for accepting the most
6 important responsibility of jury service. And
7 for your contribution here today towards your
8 justice system. What I say now is intended
9 just merely as a general overview and an
10 introduction to the trial of the case.

11 These remarks are not a charge of
12 the law and I will give you an instruction on
13 the law applicable to this case at the close
14 of the trial before you retire to consider
15 your verdict. This is merely an explanation
16 in the procedure that we will follow so that
17 you may better understand what may be
18 happening.

19 The defendant is charged by an
20 indictment filed in this court for the crime
21 of murder, the elements which will be
22 explained to you later. The indictment is
23 simply the charge by which the case is brought
24 into court and is not, in any sense, evidence.
25 of the allegations that it contains. The

1 defendant has pled not guilty to this
2 indictment. The State, therefore, has the
3 burden of proving each of the elements of the
4 indictment beyond a reasonable doubt.

5 It will be your duty, ladies and
6 gentlemen, to decide whether the State has met
7 that burden. Your purpose as jurors here
8 today is to find and determine the facts. You
9 are the sole judges of the facts in this case.
10 And if any time I make any comment regarding
11 the facts, you must disregard it.

12 You are to determine the facts from
13 the testimony you hear and other evidence
14 introduced in this court. It is up to you to
15 determine the inferences, which you feel may
16 be properly drawn from the evidence.

17 It is especially important that you
18 perform your duty of determining the facts
19 diligently and conscientiously, because
20 ordinarily there is no way to correct an
21 erroneous determination of the facts by a
22 jury. On the other hand, and with equal
23 emphasis, the same law that makes you the
24 judges of the facts makes me the judge of the
25 law. The law as given by this Court is the

1 only law that you may consider. You must
2 accept and follow it, even though you may
3 disagree with it. I cannot tell you what the
4 facts are, and you cannot disagree with me
5 about what the law is or what the law should
6 be. Your job is to take the law as I give it
7 to you. Apply the facts as you find them from
8 the testimony of the witnesses, and any other
9 evidence that is introduced.

10 After doing that you will render
11 your verdict, a true and just verdict, under
12 the solemn oath that you just took as jurors.
13 Until I advise you to begin your deliberations
14 you must not discuss this case with anyone.
15 And that includes your fellow jurors. Do not
16 discuss this case with friends, family
17 members, or anyone involved in this case.

18 After the case is submitted to you,
19 you may discuss it only in the jury room, and
20 only with your fellow jurors. The attorneys
21 and the parties in this case have been advised
22 by the Court that they are not to talk to you
23 at all. So please understand that if you see
24 any of the parties at lunch or in the hallway
25 and they do not even speak to you, they are

1 not being rude, they are merely following the
2 Court's instructions. During the trial please
3 do not read, watch, or listen to any news
4 accounts about this case. This includes
5 Internet, television, and newspapers. You
6 must not consider anything that you may have
7 heard about this case outside of the
8 courtroom, whether before or during this
9 trial.

10 It is important that you keep an
11 open mind throughout this trial and not decide
12 any issue in this case until all of the
13 evidence has been presented, the parties have
14 made their closing arguments, and I have
15 instructed you on the law.

16 It is your solemn responsibility to
17 determine the guilt or innocence of the
18 defendant. And your verdict must be based
19 solely on the evidence as it is presented to
20 you in this trial and on the law as I instruct
21 you during and at the close of this trial.

22 In just a moment the Solicitor will
23 make what is called an opening statement in
24 which the Solicitor will explain to you the
25 issues in this case, or at least what the

1 Solicitor thinks the issues are. The attorney
2 for the defendant may make an opening
3 statement, although he is not required to do
4 so.

5 What the attorneys tell you in their
6 opening statement is not evidence in this
7 case. It's only their contention as to what
8 the issues are. The evidence in this case
9 will be presented to you by testimony of a
10 sworn witness from the witness stand, by any
11 exhibits that may be introduced into evidence.

12 From time to time during the trial
13 you may hear one of the lawyers say something
14 like Your Honor, I believe we have a matter of
15 law, or may we approach the bench? Or I might
16 find it necessary myself to excuse you from
17 the courtroom. The reason for this is because
18 when --- sometimes when I have to make a ruling
19 on the law I must discuss the facts.

20 And as I indicated before, I cannot
21 -- am not supposed to tell you what I think
22 the facts are. So, I will excuse you from the
23 courtroom while these discussions take place
24 so in no way will you be influenced by
25 anything that I might say or do in connection.

1 with the facts. In determining what the true
2 facts in this case are you must decide whether
3 or not the testimony of the witness is
4 believable.

5 It will be my responsibility to rule
6 as a matter of law as to whether certain
7 witnesses, or certain testimony is admissible
8 at all. But once that testimony is admitted
9 whether or not you believe it, it's solely for
10 you to determine.

11 In deciding whether to believe a
12 witness you have the right to consider the
13 interest of any witness, the bias of any
14 witness, the prejudice of any witness. The
15 opportunity for the witness to have seen the
16 matters and things about which the witness may
17 testify, as well as the way the witness acts
18 on the witness stand.

19 You have the right to consider
20 anything that is in the record if it will help
21 you evaluate the testimony of the witnesses.
22 That means it is your duty to pay close
23 attention to these witnesses, to observe the
24 witnesses, to listen to the witnesses, and to
25 pay close attention to these attorneys and to

1 the Court. Please do not let your thoughts
2 wander, but give strict attention to the
3 testimony in this case. So, at the end of all
4 the testimony you may be better able and in a
5 position to determine what the true facts are,
6 apply the law as I give it to you, and render
7 a true and just verdict.

8 It is your added duty as foreperson,
9 Mr. Bradshaw, to preside in the jury room and
10 be the jury's spokesperson here in court. It
11 will also be your duty to write the verdict,
12 but I will give you further instructions
13 during the charge of the law. Please pay
14 close attention.

15 Mr. Voigt?

16 MR. VOIGT: Thank you, Your Honor. May
17 it please the Court?

18

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19

OPENING STATEMENT

20 MR. VOIGT: You may see a lot of moving
21 this podium from time to time. It's kind of
22 where we all put our notes of what we intend
23 to look at. What I tend to do is I walk away
24 from it and not look at it. This is a murder
25 case, all right. This is one of the most

1 serious things that we do as criminal
2 attorneys. Mr. Smiley told you during jury
3 qualifications that he's been doing this for
4 17 years, and I've got about six months on
5 him. So, I've been doing it for probably
6 about 18.

7 And so you've got 35 years of lawyer
8 experience doing -- during this criminal
9 trial. And I think you're going to benefit
10 from that, and you'll see as that plays out.
11 But, I think things will move a little bit
12 more smoothly than they might if we were at
13 loggerheads over every little bit of evidence
14 and testimony.

15 But that doesn't mean that we're not
16 going to hold a very different view of the
17 evidence that you see, and the evidence that
18 you hear. We're going to, I think, agree.
19 And I don't always know, because I get to go
20 first, what Mr. Smiley is going to say when I
21 sit down.

22 But I think we're going to agree on
23 some facts that occurred on April 17, 2006
24 approximately -- somewhere between 12:30 and
25 1:15 in the morning. We're going to agree

1 about what happened then. Not the why, but
2 the what. And I think that we're going to
3 then limit most of the arguments to the times
4 when you get sent out of the room, so that we
5 can argue and yell at each other, that there
6 is going to be more.

7 And there's going to be a context to
8 those events, and that's what the real
9 argument is going to be. This is the State of
10 South Carolina versus Nathaniel McGee. That's
11 Mr. McGee over there and that is -- this is
12 his day in court, maybe two days in court.

13 I don't -- one of the things that I
14 think we lose sight of, even in a big case
15 like this when someone loses their life, is
16 that it's not just about Nathaniel McGee.

17 And I do this just to remind myself. In my
18 file there's always the defendant, but I
19 always put what I think this case is about,
20 and who I think this case is about, on the
21 outside jacket of my file folder.

22 And that is Jamie Reed. Jamie Reed
23 would be 25 years old in two months. He
24 didn't make it to his 22nd birthday. Jamie
25 went to the Dorchester Racetrack on the night

1 of the 16th, later went to Club Fantasy, which
2 is on Peppermill Parkway in North Charleston.
3 It's kind of an industrial neighborhood and
4 it's a dead end street there off Ashley
5 Phosphate.

6 And, it's mostly businesses having -
7 - it's kind of -- the whole street kind of
8 looks the same. It's all prefab metal
9 buildings with brick facades and a lot of
10 industry, and a lot of -- a lot of businesses.
11 But clumped back in there is Club Fantasy,
12 which is a strip club, okay.

13 And Jamie went with two people. The
14 evidence is going to show that Jamie was
15 sitting in the back seat of his car -- or his
16 mother's car. And in the front seat driving
17 the car was a fellow by the name of Antonio
18 Bryant. And in the passenger seat was a
19 fellow by the name of Frederick McCoy.

20 And they pulled into the parking lot
21 of this strip club, and Jamie started talking
22 to one of the dancers who happened to be in
23 the parking lot. The dancer's name was
24 Tiffany Jenkins. And I think the evidence is
25 going to show that that was not a very long

1 conversation. Now Tiffany also had gone to
2 the racetrack out in Dorchester County. And
3 she had, while there, encountered Nathaniel
4 McGee and his friends. And he was out that
5 night with a lot of his friends and
6 associates, and he wound up at the same club,
7 at Club Fantasy.

8 And, he arrived shortly before Jamie
9 Reed and his friends. And they're all from a
10 fairly small community in Berkeley County
11 called the Strawberry area, for the most part.
12 Matter of fact Antonio, I believe, is somehow
13 related to Mr. McGee, and Fred is related to
14 Jamie. And I think in some way they're all
15 related distantly with each other.

16 Jamie Reed, shortly after arriving
17 in that parking lot the evidence is going to
18 show, that there were two people in that
19 parking lot with guns, one of whom was with
20 Mr. McGee, and had been with Mr. McGee all
21 night.

22 His name is Terrell Wright, all
23 right. And the other one was Nathaniel McGee.
24 Nathaniel McGee walks up to Jamie's car, which
25 gets a reaction from Jamie, what are you doing

1 looking at my car? Jamie gets out of his car.
2 It may be debated what is said, what is done,
3 in the very short seconds before Jamie's life
4 ended. But what happened right there was that
5 Nathaniel McGee took a firearm, placed it very
6 close to the forehead of Jamie Reed, and
7 pulled the trigger.

8 The evidence is going to show that
9 the firearm was very close to his forehead.
10 And you will hear testimony and evidence from
11 this witness stand as to how we know that.
12 You're going to hear evidence that from the
13 second the thought entered Nathaniel McGee's
14 mind to pull the trigger, it set forward a
15 series of events, mechanical in the operation
16 of the firearm, chemical on how the gunpowder
17 was ignited by the firing pin of that weapon.

18 When gunpowder ignites the gases go
19 off, and those gases travel hundreds of miles
20 an hour, and projects the bullet out of the
21 end of the gun. And that bullet, or that
22 projectile, went through two layers of bone in
23 Jamie's skull and traveled directly through
24 the center of his brain severing every
25 automatic reflex that you have. From the time

1 that gun was fired until Jamie hit the ground,
2 he was dead. You're going to hear evidence
3 that that's when Terrell Wright starts firing.
4 And then they leave.

5 But for the most part I think that's
6 what you're going to hear. You're going to
7 see -- there's going to be evidence and
8 there's going to be -- a couple kinds of
9 evidence that you're going to get to hear.

10 The most, I think, important
11 evidence in any trial is going to be
12 testimonial evidence coming from the witness
13 stand. You're going to hear witnesses who
14 were out there. You're going to hear from
15 police officers who put it together
16 afterwards.

17 You're going to hear crime scene
18 personnel who documented what that scene
19 looked like. You're going to get some
20 pictures of how it may have looked then, and
21 how it may look now. The most important
22 thing is usually testimony. It's usually
23 creditability. And at the end of all this, at
24 the end of all this, I'm going to want you to
25 concentrate on two things. I know the facts

1 are the most important thing, but you can't
2 have one without the other. Sometime at the
3 end of all the testimony, and all the
4 evidence, and all that Mr. Smiley and I do,
5 and all of the witnesses, there's going to
6 come a time when the Judge is going to
7 instruct you on the law.

8 And one of the things that every
9 judge always says is that what I say -- what
10 the attorneys say isn't fact, and shouldn't be
11 considered fact. And that's true. I'm here
12 to color the facts and spin the facts and tell
13 you what I think they mean. Mr. Smiley is
14 going to do the same thing.

15 You are the judges of those facts.
16 And I want you to pay very close attention to
17 what witnesses say and how they say it,
18 because that's really -- that's for you.
19 That's a responsibility that only you have.

20 And the second thing I'm going to
21 want you to do is pay attention. And this is
22 a little bit harder. You all -- you each took
23 an oath just now. You've taken one previously
24 downstairs, but you've taken an oath this time
25 to follow the law. And that's kind of very

1 vague and very general, and we all think we
2 can follow the law. We might go five miles an
3 hour over the speed limit, but we all think we
4 can follow the law. But sometimes the law
5 isn't exactly what you think the law is, or
6 what you think the law should be.

7 And this is where -- and it's very
8 important to listen to everything that the
9 Judge says. And she may not get to it until
10 tomorrow sometime. But it's very important
11 for you to listen to each and everything that
12 she says. The law could -- all right.

13 I have to prove each and every
14 element of the crime of murder beyond a
15 reasonable doubt. I have to do that. You
16 have to hold me to that standard, all right.
17 I feel comfortable with my evidence, so you
18 don't have to worry about that.

19 There's also going to be law though,
20 on self-defense. You're going to hear some of
21 it, all right. And as you hear some of it in
22 the next -- I don't want you just to get it
23 all here. Because you're going -- I want you
24 to look for certain things in the law. And
25 remember what I say isn't the law. I'm going

1 to -- it's going to look official when I do
2 it, but the law is really going to come from
3 the Judge at the very end. For certain, this
4 case may involve self-defense, all right.
5 Self-defense is something I also have to
6 disprove. It's not enough that I can say, nah
7 it's didn't happen that way.

8 I've got to prove to you that the
9 elements of self-defense did not exist. There
10 are four of them. And as you listen to the
11 testimony, what my witnesses say when I ask
12 them questions, what my witnesses say when Mr.
13 Smiley asks them questions, because we're
14 going to ask them in slightly different ways.
15 He gets a little bit of latitude in how he
16 asks them that I don't. But I get that
17 latitude if he calls witnesses, which he
18 doesn't have to.

19 But there are four elements to self-
20 defense, which I must disprove. I must
21 disprove that the defendant was of -- was
22 without fault in bringing on the difficulty.
23 I must also disprove -- oh, I actually only
24 have to disprove one of these. I don't have
25 to disprove all of them, just one of these

1 four. If I cross the Rubicon on any one of
2 these four, I'm home free as to self-defense.
3 There may be other things that I might have to
4 worry about, but in terms of the quality of my
5 evidence and the quality of my presentation, I
6 just have to disprove one of these four
7 because they all must exist.

8 The defendant must be without fault
9 in bringing on the difficulty. The defendant
10 must have been in actual imminent danger of
11 losing his life or sustaining bodily injury,
12 or he must have actually believed he was in
13 imminent danger of losing his life or
14 sustaining bodily injury, that his defense is
15 based on his belief of imminent danger.

16 And the defendant must show that a
17 reasonably prudent person of ordinary firmness
18 and courage would have entertained the belief
19 that he was actually in imminent danger, and
20 that the circumstances were such that it would
21 warrant a person of ordinary prudence,
22 firmness, and courage to strike the fatal blow
23 in order to save himself from serious bodily
24 injury or loss of life. I'll expand on that
25 when we get to the end because at the end I

1 get to argue. But also look for -- in the
2 fourth element is that the defendant had no
3 other probable means of avoiding the danger,
4 all right.

5 I have to -- in addition to proving
6 the elements of murder, I have to disprove one
7 of those four if he presents a self-defense
8 defense, which is kind of putting the cart
9 before the horse because he doesn't have to
10 actually present anything. And you can't hold
11 it against him.

12 But I give you that roadmap, that
13 framework so that it may help you analyze what
14 you do here should that come up. Thank you
15 for your attention. Please give Mr. Smiley
16 the same thing.

17 THE COURT: Mr. Smiley?

18 - - - - -

19 OPENING STATEMENT

20 MR. SMILEY: Protect yourself or be
21 killed. That's what this case is about.
22 This certainly is about self-defense.
23 Nathaniel McGee, on the night in question,
24 pulled out a gun and shot Jamie Reed. It's
25 not disputed. The events leading up to it are

1 going to be in dispute. And how it occurred
2 that night may be in dispute. But it's not
3 disputed that Nathaniel killed Jamie Reed.
4 Someone died.

5 The question before y'all is is it
6 self-defense, is it justified homicide? The
7 facts that are going to be developed in this
8 case are going to show that Jamie and
9 Nathaniel grew up in the same area. They
10 knew each other. That prior to this that
11 there was a dispute, that dispute escalated.
12 And as a result of that Jamie believed that he
13 was going to get killed, and went and bought a
14 gun.

15 Then we're getting to the day in
16 question. The testimony is going to show they
17 were at the Dorchester drag strip. That he
18 and a friend went to Club Fantasy. And as he
19 was walking to the door Jamie jumped out of
20 the car in front of him, reached, and at that
21 point Jamie did the only thing he could do;
22 shoot or be killed. That's not easy, but it
23 is that simple. Now real important in this
24 case, Nathaniel McGee sits over here an
25 innocent man.. He has nothing to prove. We

1 start off with this fact, Jamie Reed died. We
2 start off with the fact that Nathaniel did
3 nothing wrong until and if, if, the State
4 first can prove the elements of murder, and
5 then disprove the elements of self-defense.
6 Jamie doesn't have to prove it.

7 I know that sounds a little
8 difficult that you would think well, why
9 doesn't Nathaniel have to prove something?
10 Because there's no -- Nathaniel doesn't have
11 the burden to prove anything in this case.

12 Once the defense is raised, it is
13 upon the State to disprove each of the
14 elements, or disprove an element of self-
15 defense. So, to decide the elements of murder
16 they are going to have to show that Nathaniel
17 -- and each of these are beyond a reasonable
18 doubt, it's not fifty-fifty, all right. It's
19 not more likely than not.

20 It's beyond a reasonable doubt that
21 he didn't start the difficulties. That he
22 believed he was in imminent peril. That he
23 didn't have the ability to retreat, and
24 lastly, that a reasonable person in a similar
25 situation, would feel the same way. Now,

1 that's not exactly the way the Judge will
2 describe the law. But if you want to break it
3 down into a nutshell, that's it. The evidence
4 in this case will clearly show that Nathaniel
5 McGee did what he had to do. Not that he
6 wanted to, not that he's happy about it, but
7 he did what he had to do for his heart to be
8 beating today.

9 He's sorry that Jamie Reed died.
10 This isn't about he feels like he was some big
11 man for what he did. He was scared to death.
12 And I think the evidence will show that. But,
13 I believe the evidence will show that humans
14 react.

15 And in this case he reacted the way
16 anybody else given the same set of facts could
17 have or would have acted. When he believed
18 that Jamie was reaching for a gun he did what
19 he thought in that split second is the only
20 thing he could do.

21 Now, as we sit here and consider the
22 evidence over the next few days there will be
23 a lot of discussion about could he have
24 retreated, could he -- was he in imminent
25 peril? You've got to remember this happened

1 real quick. So, I encourage you as you listen
2 to these facts -- because y'all are, as the
3 Solicitor said, the deciders of the facts, to
4 put in context how quick these decisions were
5 made.

6 Also, it's real important just like
7 before Mr. Voigt and myself stood up and gave
8 you a preview of the law of self-defense, I
9 would guess none of you knew the elements of
10 self-defense. Remember that as you apply
11 these facts. It's not like could he, would
12 the evidence say I have to retreat? No. This
13 is a set of circumstances that led to this
14 result that Mr. McGee had to do what he had to
15 do.

16 At the end of this case I believe
17 there's only one verdict. I believe that you
18 will come back and say Nathaniel McGee acted
19 in self-defense.

20 THE COURT: Mr. Voigt, call your first
21 witness?

22 MR. VOIGT: Thank you, Your Honor. The
23 State calls Sergeant Al Hallman.

24 [Whereupon, Mr. Hallman comes forward]

25 [Whereupon, the witness is duly sworn by

1 the Clerk of Court]

2 CLERK OF COURT: If you'll state your
3 full name and spell your last name for the
4 record?

5 THE WITNESS: Al Hallman, H-A-L-L-M-A-N.

6 THE COURT: Mr. Voigt?

7 MR. VOIGT: Thank you, very much.

8 MR. SMILEY: A preliminary matter, Your
9 Honor, is we're going to stipulate so that we
10 don't have to go through the -- Al Hallman is
11 qualified as a finger print analysis expert.
12 And I just -- he was just qualified last week
13 and -- him -- quickly involved, so we will
14 stipulate to that and that he may offer
15 opinions in that regard.

16 THE COURT: Mr. Voigt, you're asking that
17 he be qualified as an expert in?

18 MR. VOIGT: Finger print analysis, Your
19 Honor.

20 THE COURT: Thank you. Ladies and
21 gentlemen of the jury, normally a person
22 cannot give opinion testimony. Normally when
23 a person testifies they must testify as to
24 what they either saw, heard, or sensed by
25 smell, or something of that nature. However,

1 there is an exception when someone is
2 qualified because of education or experience.
3 They are permitted to give their opinion in
4 certain areas if the Court qualifies them that
5 way.

6 This witness will be qualified in
7 the area of finger print analysis to give
8 opinion testimony in that area.. That does not
9 mean that you must accept the opinion. It is
10 evidence for you to use in any way that you
11 see fit.

12 MR. VOIGT: Thank you very much, Your
13 Honor.

14

15 SERGEANT AL HALLMAN,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. VOIGT:

20 Q. Sir, could you please tell the jury how
21 you are currently assigned?

22 A. Yes. I'm currently employed by the North
23 Charleston Police Department. My current position
24 is the supervisor of the Forensic Investigations
25 Division.

1 Q. And how long have you been in the
2 Forensic Investigations Division?

3 A. Approximately sixteen years.

4 Q. And as we alluded to you are also
5 qualified and have been qualified as an expert in
6 the field of finger print analysis?

7 A. Yes, sir.

8 Q. And is that something that you do
9 primarily for North Charleston?

10 A. Yes, sir.

11 Q. So you are their go-to guy for
12 fingerprints?

13 A. One of them. Yes, sir.

14 Q. Now was there an occasion, Sergeant,
15 where you were called to the scene of a homicide at
16 the -- Parkway on April 17th, 2006?

17 A. Yes, sir. I did.

18 Q. And when did you receive that call, do
19 you recall?

20 A. I responded approximately 1:15 a.m.

21 Q. And what was -- what were your
22 responsibilities upon arriving on the scene?

23 A. I was assigned as lead forensic
24 investigator upon my arrival.

25 Q. And what does the lead forensic

1 investigator do when you encounter a crime scene?

2 A. Once we arrive on a crime scene we
3 initially examine the overall scene to determine a
4 basic working knowledge of what took place. Once
5 that's done I go further into the scene to identify
6 potential items of evidence.

7 And these items, once located, are marked
8 with numbered placards so that we can photograph
9 the scene and document these items for
10 identification purposes. Any evidence that is
11 documented by photographs and identified at the
12 scene, are then later collected for a further
13 processing method, whether it be for latent
14 fingerprints or for a DNA evidence.

15 MR. VOIGT: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. [Mr. Voigt] Sergeant, I'm going to show
19 you what I have previously marked as State's
20 exhibits 1 through 24 and ask if you could review
21 those briefly?

22 [Whereupon, the witness reviews
23 documents]

24 A. Exhibits 1 through 15 are reprints of
25 photographs taken at the crime scene that night by

1 myself.

2 Q. Okay.

3 A. Item 16 ---

4 Q. --- do items 16 through 24 depict the
5 same area -- they are photographs taken at a
6 different time and on a different date?

7 A. Yes, sir. These photographs were taken
8 during the daytime at Club Fantasy and they
9 represent exactly what Club Fantasy is -- looks
10 like during the daytime.

11 MR. VOIGT: At this time, Your Honor, the
12 State would offer, file, and introduce State's
13 1 through 24.

14 MR. SMILEY: Without objection.

15 THE COURT: State's 1 through 24 into
16 evidence without objection.

17 [Whereupon, State's exhibit numbers 1
18 through 24 were admitted into evidence by the
19 Court]

20 MR. VOIGT: Your Honor, may I publish
21 these to the jury?

22 THE COURT: You may.

23 Q. [Mr. Voigt] I'm going to put up here on
24 the screen State's 1 -- forgive me for a second.
25 Sergeant Hallman, is that -- is State's 1 -- that's

1 a picture that was taken on April 17th?

2 [Whereupon, the witness reviews
3 photographs]

4 A. Yes. That photograph was taken by
5 myself.

6 Q. And what is that line of yellow across
7 the top there?

8 A. That is police crime scene tape that was
9 used to cordon off the back parking lot of the club
10 because ballistic evidence had been located back
11 there, and the initial officers responding to the
12 scene didn't want anyone back there that could
13 possibly tamper or contaminate the evidence.

14 Q. And what is that number 13 that we're
15 looking at right there? What does that represent?

16 A. That's also an item of evidence. I'd
17 have to refer to in my report to tell you exactly
18 which piece that is.

19 Q. Okay. And the 13 itself, the number,
20 where does that come from, how is that used, the
21 numbering?

22 A. It's just a numbered placard to identify
23 a particular piece of evidence. We start with
24 placard number 1 and mark items of evidence within
25 a scene and we go to whatever highest number the

1 evidence allows.

2 Q. And what are those reflections in the
3 back there?

4 A. Those are numbered placards in which I
5 had placed a reflective piece of tape on the
6 numbered placards themselves so that they would be
7 able to be identified during a nighttime
8 photograph.

9 If the reflective pieces were not on the
10 numbered placards the flash on our cameras just
11 would not be enough to photograph the entire back
12 scene. This allows you to be able to view where
13 items of evidence were located in the back parking
14 lot.

15 Q. And these pictures that I'm showing you
16 that were taken on the night of the incident, these
17 were taken with your flash?

18 A. That's correct.

19 Q. So these were not -- you required the aid
20 of a flash to take these photographs?

21 A. Absolutely.

22 Q. If you would refer to your report,
23 Sergeant and tell me what 13 represents?

24 [Whereupon, the witness reviews
25 documents]

1 A. Item 13, I believe it represents several
2 projectile fragments that were located near the
3 corner of the building, just pieces of a fired
4 bullet, pieces of the copper jacketing around the
5 bullets.

6 Q. I'm going to show you what's been
7 previously marked as State's exhibit 2. I'll see
8 if I can bring it in just a little. What does that
9 detect, Sergeant?

10 [Whereupon, the witness reviews
11 photographs]

12 A. That's just another photograph of the
13 rear parking lot area further identifying the
14 location of items of evidence within the parking
15 lot.

16 Q. Officer, do you know what 2 and 10
17 represent, those two markings that you placed
18 there?

19 A. I would have to refer to the photographs.
20 I don't have them numbered individually in my
21 report.

22 [Whereupon, the witness reviews
23 photographs]

24 Q. Okay. Do you have -- do you have a range
25 in your report that indicates what certain things

1 may have been?

2 A. Yes. Most of the items in the rear
3 parking lot were .40 caliber cartridge casings, or
4 the actual shell casings that are ejected from a
5 gun after a bullet is fired.

6 There was also -- in the rear at the very
7 back parking lot area there was a partially burned
8 cigar and a broken CD that was found on the ground.
9 They were marked as items of evidence and collected
10 by myself as well.

11 But most of the placards are marking the
12 .40 caliber shell casings. Either number 2 or
13 number 10, I can't recall, one of them was an
14 actual unfired .40 caliber round. And I believe
15 that was number 10, but I'm not sure. I'd have to
16 refer to further ---

17 Q. --- we'll get to that. But -- and just
18 so the record reflects that while you were
19 testifying I had it on the screen State's exhibit
20 3, again a photograph of the rear parking lot.

21 I show you what's been marked as State's
22 exhibit 4; which I think is...

23 [Whereupon, the witness reviews
24 photographs]

25 A. Again, that is the rear parking lot area.

1 Q. I'm going to show you what's been marked
2 as State's exhibit 5.

3 [Whereupon, the witness reviews
4 photographs]

5 Q. And I believe -- is that the casing ---

6 A. --- that is a ---

7 Q. --- one of the casings ---

8 A. --- that is one of the shell casings
9 found at the scene. Yes, sir.

10 Q. I'm showing you what's been previously
11 marked as State's Exhibit 6, which contains number
12 10. What is that?

13 [Whereupon, the witness reviews
14 photographs]

15 A. Those are actually projectile fragments.
16 The -- they are lead fragments from the
17 projectiles. I believe 13, that I previously
18 testified is going to be the unfired .40 caliber
19 round.

20 Q. I'm going to show you what's been
21 previously ---

22 A. --- no, number three ---

23 Q. --- marked as State's 7?

24 [Whereupon, the witness reviews
25 photographs]

1 A. That's an unfired .40 caliber round found
2 on the ground.

3 Q. I'm going to show you what's been
4 previously marked as State's exhibit 9. And what
5 does that depict?

6 [Whereupon, the witness reviews
7 photographs]

8 A. That is the vehicle that was parked where
9 the victim was subsequently found. And the dark
10 areas on the vehicle are latent fingerprints that
11 were -- the vehicle was dusted by myself. And they
12 were developed on the exterior of the vehicle. And
13 they were subsequently lifted and secured with me.

14 Q. And why did you take fingerprints from
15 that vehicle?

16 A. To -- in an attempt to identify anyone
17 and/or everyone that was in or around that vehicle.

18 Q. Were you later able to identify persons
19 who may have been in or around that vehicle?

20 A. Yes, sir. I was.

21 Q. And could you just tell us what their
22 names were?

23 A. I identified one Antonio Laver Bryant
24 numerous times on the vehicle. I identified one
25 Frederick Maurice McCoy on the passenger side of

1 the hood of the vehicle.

2 I identified Marion Effron Moses on the
3 exterior driver's side above the door handle. And
4 I identified Jamie Reed on the exterior driver's
5 side of the vehicle as well.

6 Q. I'm going to show you what's been
7 previously marked as State's exhibit 10 and ask you
8 to tell me what that depicts?

9 [Whereupon, the witness reviews
10 photographs]

11 A. That is the backseat compartment area of
12 the Chrysler 300.

13 Q. And State's exhibit 11?

14 [Whereupon, the witness reviews
15 photographs]

16 A. That's just another shot of the backseat
17 area. It shows a golden color watch. And I
18 believe there was a Jesus Christ necklace and
19 pendent also located there. There was a multi-
20 colored shirt and a ball cap.

21 Q. And it looks like a Waffle House meal in
22 the ---

23 A. --- yes, the Waffle House cup. Yes, sir.

24 Q. I'm going to show you what's been
25 previously marked as State's exhibit 12. What does

1 the number one placard in this photo represent?

2 [Whereupon, the witness reviews
3 photographs]

4 A. The victim.

5 Q. And that's as you found him?

6 A. That's as the scene was upon my arrival.

7 Yes, sir.

8 Q. I'm going to show you what's been
9 previously marked as State's exhibit 13.

10 [Whereupon, the witness reviews
11 photographs]

12 A. That's the same area just from a
13 different angle. It's a different view.

14 Q. State's exhibit 14?

15 [Whereupon, the witness reviews
16 photographs]

17 A. Again, that's a little bit closer
18 photograph of the victim in his correlation to the
19 red vehicle and to the silver Chrysler 300.

20 Q. And State's exhibit 15?

21 [Whereupon, the witness reviews
22 photographs]

23 A. And that's an up close shot of the
24 victim.

25 Q. Did you take, at that time, any personal

1 items or clothing or anything else from the
2 decedent?

3 A. The items that I collected, as I stated
4 again earlier was the gold watch with a black band
5 and a Jesus Christ gold bracelet. That was taken
6 for safe keeping from the back of the vehicle.

7 The victim had no wallet or I.D. on his
8 person at the time of the incident. I collected a
9 cell phone that was clipped onto his belt, as well
10 as a blue cell phone that was found on the ground
11 next to the victim.

12 I believe that was all that was collected
13 from the victim at that time, other than a set of
14 ink fingerprints for identification purposes.

15 MR. VOIGT: Court's indulgence.

16 THE COURT: Yes, sir.

17 [Off the record momentarily]

18 Q. [Mr. Voigt] Now Sergeant, I'm going to
19 show you what's been previously marked as State's
20 exhibit 17. I believe that you -- and that -- does
21 that depict the club -- the exterior of the club?

22 [Whereupon, the witness reviews
23 photographs]

24 A. Yes, sir. It does.

25 Q. And these are pictures that were taken at

1 a different time and on a different date than the
2 pictures that were taken when you arrived there?

3 A. That's correct.

4 Q. It seems to be daylight in some of them?

5 A. Yes.

6 Q. And similarly is that what State's
7 exhibit 18 depicts?

8 [Whereupon, the witness reviews
9 photographs]

10 A. That's the exterior. Yes, sir.

11 Q. Now, would that be the front as it shows
12 on Peppermill Parkway?

13 A. I can't testify to that.

14 Q. I'm going to show you what's been
15 previously marked as State's exhibit 19 and ask you
16 what that depicts?

17 [Whereupon, the witness reviews
18 photographs]

19 A. That's a photograph taken from the rear
20 parking lot. The victim, the night of the
21 incident, was located in this area [indicates].
22 And the back parking lot is back this way. This is
23 just from the back parking lot facing the building.

24 Q. And so -- that -- where would the tape
25 have been -- where -- that we saw in that ---

1 A. --- the tape ---

2 Q. --- previous photograph ---

3 A. --- would have been from around this
4 corner area running back this way [indicates]
5 cordoning off the rear parking lot area.

6 Q. And on the night of the -- or the early
7 morning hours of the 17th you would have spent a --
8 would you have spent some time in this back area
9 placing all those placards and taking the pictures
10 that we ---

11 A. --- yes, sir. We were in the back
12 parking lot, myself and another investigator, for
13 approximately an hour I believe.

14 Q. Other than the illumination, which
15 appears to be on the side of the building, was that
16 back parking lot illuminated at all?

17 A. No, it wasn't. Not upon my arrival.

18 Q. How -- could you gauge how --
19 approximately how lit or dark that back parking lot
20 may have been?

21 A. That back parking lot was dark.

22 [Whereupon, State's exhibit number 28 is
23 marked by the court reporter]

24 Q. I'm going to also show you what's been
25 previously marked as State's exhibit 28 and ask you

1 to describe what that depicts?

2 [Whereupon, the witness reviews
3 photographs]

4 A. That is a recreation by computer means of
5 the crime scene. It is not to scale, but was
6 created to indicate the location of the items of
7 evidence per photographs.

8 MR. VOIGT: I apologize to the Court,
9 Your Honor. At this time the State would
10 offer, file and introduce State's 28. I think
11 I got ahead of myself.

12 THE COURT: Any objection, Mr. Smiley?

13 MR. SMILEY: No objection.

14 THE COURT: And you have already
15 published that to the jury ---

16 MR. VOIGT: --- I have ---

17 THE COURT: --- for the record ---

18 MR. VOIGT: --- I did that all by myself.

19 THE COURT: State's 28 into evidence
20 without objection.

21 [Whereupon, State's exhibit number 28 is
22 admitted into evidence by the Court]

23 MR. VOIGT: Thank you, Your Honor.

24 Q. [Mr. Voigt] And this is not to scale, is
25 it?

1 A. No. It's not. No, sir.

2 Q. So that the approximate distances between
3 those items as listed, and I understand that that's
4 a little bit small for you to even be -- those
5 distances would be approximate? Those were not
6 measured down?

7 A. No, sir. They are definitely
8 approximates.

9 Q. Now, I'm going to show you -- may I
10 approach, Your Honor?

11 THE COURT: You may.

12 Q. [Mr. Voigt] I'm going to show you what
13 I've previously marked as State's exhibit 26.

14 [Whereupon, the witness is shown a VHS
15 tape]

16 Q. [Mr. Voigt] And Sergeant, what is
17 State's exhibit 26?

18 A. This is a VHS tape. It was obtained from
19 Club Fantasy that night from -- it was recovered by
20 a Sergeant David Laurie, who released it
21 immediately to me, on the scene.

22 Q. So you received that on the scene?

23 A. Yes, sir.

24 Q. And you placed this into evidence?

25 A. I did.

1 MR. VOIGT: At this time the State would
2 offer, file and introduce State's exhibit 26
3 into evidence.

4 MR. SMILEY: No objection.

5 THE COURT: State's 26 into evidence
6 without objection.

7 [Whereupon, State's exhibit number 26 is
8 admitted into evidence by the Court]

9 MR. VOIGT: At this time the State would
10 offer a stipulation to the defense that
11 State's exhibit 26 was transferred onto
12 digital media and the upper portions were
13 slowed down.

14 MR. SMILEY: I've reviewed it and they
15 have not been altered. They've just been
16 transferred and slowed down. And we agree
17 with the stipulation.

18 THE COURT: All right, thank you.

19 MR. VOIGT: And at this time the State
20 would offer, file and introduce State's 25,
21 that digital media.

22 MR. SMILEY: I believe it would be a
23 summary of what's on the VHS tape and it can
24 go in conjunction with that.

25 MR. VOIGT: It can go in conjunction.

1 THE COURT: So the State's 25 is a...

2 MR. SMILEY: --- is the actual evidence.

3 It's -- the digital media is just another
4 form of State's 25.

5 MR. VOIGT: State -- I actually numbered
6 them backward. So, it's going to be State's
7 26 is the VHS and State's 25 is the digital
8 media, which is ---

9 MR. SMILEY: --- right ---

10 MR. VOIGT: --- merely another ---

11 MR. SMILEY: --- it's not ---

12 MR. VOIGT: --- representation ---

13 MR. SMILEY: --- it's not additional
14 evidence. It's just a ---

15 MR. VOIGT: --- right ---

16 THE COURT: --- all right. Thank you,
17 counsel. And at this time State's 26 has
18 already been admitted into evidence, State's
19 25 without objection.

20 [Whereupon, State's exhibit number 25 is
21 admitted into evidence by the Court]

22 MR. VOIGT: At this time, Your Honor, I
23 would like to publish that to the jury.

24 THE COURT: And Mr. Smiley, any objection
25 to publishing it?

1 MR. SMILEY: I do not have any
2 objections.

3 THE COURT: You may publish.

4 MR. SMILEY: And Your Honor, just to be
5 able to see the full screen, can we move just
6 a little bit?

7 THE COURT: You may move, Mr. Smiley.

8 [Whereupon, the digital media was played
9 without sound]

10 MR. VOIGT: Your Honor, may Mr. Smiley
11 and I approach briefly?

12 THE COURT: You may.

13 [Whereupon, a brief off-the-record bench
14 conference was held]

15 Q. [Mr. Voigt] Sergeant Hallman, what
16 became of those items that you collected in the
17 back of the parking lot, all the casings and all
18 that?

19 A. They were sent to -- the ballistic
20 evidence was sent to SLED for further analysis.

21 Q. I'm going to show you what's been
22 previously marked as State's exhibit 27 and ask if
23 you could identify that as best you could.

24 [Whereupon, the witness reviews
25 documents]

1 A. I can't identify this packaging, no sir.

2 This is packaging done by SLED.

3 Q. All right. So that would have been

4 something that came back from SLED?

5 A. This is a SLED return. Yes, sir.

6 Q. All right.

7 MR. VOIGT: At this time, Your Honor, I

8 would tender the witness.

9 THE COURT: Ladies and gentlemen of the

10 jury, this is an appropriate time for us to

11 take a mid morning break. Typically we'll

12 take a break after every hour and a half.

13 And, Mr. Bradshaw as foreperson, if your

14 fellow jury members feel that they need a

15 break before the Court breaks, if you'll just

16 let the Court know as well.

17 Ladies and gentlemen, do not begin

18 discussing this case amongst yourselves. Do

19 not begin your deliberations. We will take a

20 fifteen-minute break, and I will receive you

21 back into the courtroom. Please rise for the

22 jury.

23 [Whereupon, the jury exits the courtroom

24 at 11:12 a.m.]

25 THE COURT: Thank you. Be seated.

1 Officer Hallman, you may step down. And, I
2 remind you that you are still under oath.
3 Please do not discuss your testimony with
4 either of the parties involved. And if that
5 becomes an issue, if you'll let the Court
6 know.

7 MR. HALLMAN: Thank you, Judge.

8 THE COURT: Thank you, sir.

9 THE COURT: Mr. Voigt, the Court has
10 printed out a copy of State vs. Day. During
11 your break if you'll make sure that you have a
12 copy of that so we may discuss that case as
13 well.

14 MR. SMILEY: I'm having copies brought
15 down ---

16 THE COURT: --- oh thank you, Mr. Smiley
17 ---

18 MR. SMILEY: --- my office is printing
19 them out and running them down as fast as they
20 can.

21 THE COURT: All right. Anything before
22 we have our mid morning break?

23 MR. VOIGT: No, Your Honor.

24 MR. SMILEY: No, ma'am.

25 THE COURT: Is fifteen minutes enough for

1 you, Mr. Smiley?

2 MR. SMILEY: Perfect.

3 THE COURT: All right. Thank you. We'll
4 be at ease until 11:30. Thank you.

5 MR. VOIGT: Thank you, Your Honor.

6 [Whereupon, court is in recess from 11:13
7 to 11:27]

8 THE COURT: Be seated.

9 MR. SMILEY: Defense is ready, Your
10 Honor.

11 MR. VOIGT: State is ready, Your Honor.

12 THE COURT: Thank you. Mr. Voigt, my
13 court reporter has indicated to me that
14 exhibit 8 has A through E.

15 MR. VOIGT: It's *in globo*. They are
16 repetitive pictures, Your Honor, of the shell
17 casings.

18 THE COURT: Say that one more time, Mr.
19 Voigt?

20 MR. VOIGT: I can't -- I can break them
21 out individually but they are -- they are
22 essentially -- they are repetitive pictures of
23 the shell casings. They're the same thing,
24 different numbers.

25 THE COURT: But are they marked, Mr.

1 Voigt?

2 MR. VOIGT: They are marked *in globo* as
3 that number. If you'd like me to individually
4 mark them at a break, I'll go back and do
5 that.

6 THE COURT: I don't mind if they're
7 marked 8-A through 8-E, but the record needs
8 to be clear because I have to introduce ---

9 MR. VOIGT: --- that's correct ---

10 THE COURT: --- 1 through 15 or actually 1
11 through 24 ---

12 MR. VOIGT: --- and 8 just being one of
13 those.

14 THE COURT: So are you -- so I'm clear,
15 I'm not quite familiar with what *in globo*
16 means ---

17 MR. VOIGT: --- and -- can I bring ---

18 THE COURT: --- and Mr. Voigt, so is it
19 that you are asking to introduce 8-A, B, C, D,
20 E as well?

21 MR. VOIGT: Yes, Your Honor. *In globo* --
22 and I apologize, I bring that from another
23 place, but that's normally what you would use
24 to accumulate things to put things together,
25 when to break them apart might seem cumbersome

1 and unnecessary.

2 THE COURT: Okay. Mr. Smiley, are you
3 aware of 8-A through E?

4 MR. SMILEY: I am, Your Honor. And I
5 have no objections to 8-A through E.

6 THE COURT: So just to be clear then, Mr.
7 Voigt, there's actually more than the 15
8 pictures that Officer Hallman took?

9 MR. VOIGT: That's correct, Your Honor.
10 That 8 -- and I did not -- for the record I
11 also did not show Officer -- Sergeant Hallman
12 any of those photos for the same reason that I
13 put them all together. There's only so much
14 boring pictures...

15 THE COURT: But it is your intention, Mr.
16 Voigt, to introduce 8-A through 8-E ---

17 MR. VOIGT: --- yes ---

18 THE COURT: --- into evidence?

19 MR. VOIGT: Yes, Your Honor. Thank you.

20 THE COURT: All right. I just want the
21 record to be clear so that when we are making
22 a determination of what goes back to the jury
23 that everybody is in agreement.

24 MR. SMILEY: And Judge, just for your
25 edification and mine, it's a Louisiana Civil

1 Code says *in globo* as a unit, rather than
2 separately. So, I learned something too.
3 Yes, it's in the dictionary. I've never
4 heard that word before, but now we've learned
5 something.

6 THE COURT: As long as everyone is using
7 the same vocabulary I'll think we will be
8 clear.

9 MR. SMILEY: We're good.

10 MR. VOIGT: Thank you, Your Honor.

11 THE COURT: Anything further before we
12 bring in the jury?

13 MR. VOIGT: Not from the State.

14 THE COURT: And Mr. Smiley, Sergeant
15 Hallman will be your witness.

16 MR. SMILEY: Thank you.

17 THE COURT: Please bring in the jury.

18 THE COURT: Mr. Voigt, for scheduling do
19 you have a witness that we can do before
20 lunch, I'm thinking about 12:30ish?

21 MR. VOIGT: I would anticipate calling
22 Detective Elmore next, Your Honor.

23 THE COURT: All right.

24 MR. VOIGT: I think that would work.

25 THE COURT: And then we'll take our lunch

1 break.

2 [Whereupon, the jury enters the courtroom
3 at 11:31 a.m.]

4 THE COURT: Please be seated. Thank you.
5 Mr. Smiley, your witness.

6 MR. SMILEY: Thank you, Your Honor.

7 - - - - -

8 CROSS EXAMINATION

9 BY MR. SMILEY:

10 Q. All right. Sergeant Hallman, first let's
11 talk about the lighting.

12 A. Okay.

13 Q. That back parking lot is pitch-black,
14 right?

15 A. Upon my arrival it sure was. Yes, sir.

16 Q. Right. And we've got some pictures that
17 have been put in that were taken during the
18 daylight. Let me show you one of them.

19 While you didn't take those, I know that
20 you were very familiar with the area. Let's find
21 it. Here we go. I show you what's been entered as
22 State's exhibit 19.

23 [Whereupon, the witness reviews
24 photographs]

25 Q. [Mr. Smiley) Can you -- that's the side

1 of the building before you get to the back parking
2 lot, right?

3 A. Actually this photograph was taken while
4 standing in the back parking lot back looking back
5 towards the building. Yes, sir.

6 Q. Okay. And the car, the silver car, it's
7 up by that building?

8 A. Yes. It's in the driveway right in this
9 area here [indicates].

10 Q. Okay. Now, there appears to be two
11 lights on the side of the building?

12 A. Yes, sir.

13 Q. Were they operational that night?

14 A. On the side of the building, yes, sir.
15 They were.

16 Q. All right. But it was still dark enough
17 that night that you needed to use a flash in order
18 to document the evidence?

19 A. Absolutely.

20 Q. Okay. So it would -- it -- well, leave
21 it at that. I'm going to ask you the next
22 question. When you arrived at the scene at 1:15
23 there was a silver car with a red car pulled up
24 close to it?

25 A. Correct.

1 Q. At the time of the shooting do you have
2 -- do you know whether that's the position of the
3 cars, or is that just how you found them?

4 A. That's just how they were upon my
5 arrival.

6 Q. Because I believe the trunk of the red
7 car was open. Let me show you so we know what
8 we're talking about [indicates].

9 Well, I'm wrong. I'll ask it a different
10 way. The red car -- I'm showing you State's
11 exhibit 12.

12 [Whereupon, the witness reviews
13 photographs]

14 Q. My question is there's two bags on the
15 back of State's -- of the red car in that picture,
16 right?

17 A. That's correct.

18 Q. And did -- when you arrived were those
19 bags already there or did someone place them there
20 after you arrived?

21 A. No, they were already there upon my
22 arrival.

23 Q. Okay. And the red car was there when you
24 got there, and you don't know when those red bags
25 were placed there, or when the red car got there,

1 that's just how you found it?

2 A. That's how I found it. Yes, sir.

3 Q. Now the back door to the silver car in
4 that same picture was open?

5 A. Yes, sir ---

6 Q. --- and that's how you found it?

7 A. Yes, sir.

8 Q. And you don't know whether it was open or
9 closed during the incident? That's how -- when you
10 got there at 1:15 it was, right?

11 A. That's correct.

12 Q. And when you got there at 1:15 you were
13 by no means the first responding officer?

14 A. No, sir.

15 Q. You were way down the line, right?

16 A. I was a good ways down the line. Yes,
17 sir.

18 Q. And your job in this case is two-fold.
19 The first one is to get out there and identify and
20 collect evidence, right?

21 A. Yes, sir.

22 Q. And you have help with assistance -- and
23 the other officers are trying to locate evidence
24 that may or may not be pertinent to this case,
25 right?

1 A. That's correct.

2 Q. Because truthfully when you get there
3 you're not sure what's important and what's not so
4 you try to collect anything that might have some
5 value, right?

6 A. That is correct.

7 Q. Okay. Now you collected some shell
8 casings from that back parking lot, right?

9 A. Yes, sir.

10 Q. And I believe you said they were .40
11 caliber shell casings?

12 A. I believe they were. Yes, Smith and
13 Wesson .40 caliber.

14 Q. Okay. And, shell casings are left behind
15 typically by a semi-automatic gun, right?

16 A. That is correct.

17 Q. And a semi-automatic is a gun that fires
18 and then ejects the shell as it loads the next one
19 into a chamber, correct?

20 A. That is correct.

21 Q. And the other kind of gun typically seen
22 is called a revolver, right?

23 A. Yes, sir.

24 Q. And a revolver has a cylinder that has
25 shells placed in it, correct?

1 A. Correct.

2 Q. And as they are fired the casing stays in
3 the weapon, right?

4 A. That is correct.

5 Q. All right. So I think it's safe to
6 assume that the shell casings you found were from a
7 .40 caliber semi-automatic?

8 A. That is correct.

9 Q. And that's all you know about that,
10 right?

11 A. Yes, sir.

12 Q. You don't know from your collection how
13 many weapons were out there?

14 A. No, sir.

15 Q. How many weapons were fired?

16 A. No, sir.

17 Q. And when you were collecting that
18 evidence you don't know it -- what projectile --
19 what caliber projectile, or from what weapon
20 entered or hit the decedent?

21 A. No, sir. That would be for SLED's
22 interpretation.

23 Q. Okay. You just collected stuff, right?

24 A. Yes, sir.

25 Q. All right. Now, before -- one of the

1 things you collected was an -- wrong word -- well
2 this will work, un-used bullet, right?

3 A. Unfired.

4 Q. Because a casing is one that has been
5 fired, right?

6 A. That is correct.

7 Q. And you found one casing of a .40 caliber
8 bullet?

9 A. One unfired bullet ---

10 Q. --- that's what I meant to say.

11 A. Yes, sir.

12 Q. Thank you. And if you'll review your
13 notes, which placard was placed next to that?

14 A. I would have to review the photographs.

15 Q. Will the photographs help you?

16 A. Yes, sir.

17 Q. All right. And it's probably going to be
18 one of these. See if it's in those and I'll look
19 and see if I can find them real quick?

20 [Whereupon, the witness reviews
21 photographs]

22 A. It's not in these.

23 Q. It's not in them? Let's see if I can get
24 there. Here we go. I'm going to show you what is
25 State's exhibit number 7.

1 [Whereupon, the witness reviews
2 photographs]

3 Q. And is that the unfired .40 caliber?

4 A. Yes, it is, marked by placard number 3.

5 Q. Number 3.

6 MR. SMILEY: Beg the court's indulgence.

7 THE COURT: Yes, sir.

8 [Off the record momentarily]

9 Q. [Mr. Smiley] I'm going to show you
10 what's been marked as State's exhibit number
11 28 and I'm going to ask you if you will put a,
12 with the court's permission, a small check by
13 -- you got a pen?

14 [Whereupon, the witness reviews
15 photographs]

16 A. Yes ---

17 Q. --- a small or some kind of mark beside
18 where shell casing number 3 was found?

19 A. Sure. How about a star?

20 Q. Okay. Thank you.

21 THE COURT: Sergeant Hallman -- any
22 objection to this witness altering an exhibit?

23 MR. VOIGT: No objection, Your Honor.

24 Q. [Mr. Smiley] Thank you. I'm going to
25 let you hold that because I got a question about

1 it.

2 A. All right.

3 Q. In looking at -- well, first of all while
4 you didn't make that drawing, you've reviewed it
5 and it's -- other than scale is it a fairly
6 accurate depiction of how the evidence was laid out
7 that night?

8 A. Yes, sir. It is.

9 Q. Okay. And is it fair to say that shell
10 -- the unfired shell marked by number 3 is second
11 closest to the silver car, as far as casings go?
12 Because number 2 ---

13 A. --- yes. Number 2 is a shell casing. It
14 was the closest shell casing to the car ---

15 Q. --- right ---

16 A. --- and then the unfired bullet.

17 Q. Okay. And then there was a fragment of a
18 bullet found a little bit closer to the silver car,
19 is that correct?

20 A. Two fragments, yes, sir ---

21 Q. --- two fragments ---

22 A. --- marked by number 10.

23 Q. Number 10. As you collected those were
24 you able to -- did you identify the caliber of
25 those or did you just collect them?

1 A. Of the bullet fragments?

2 Q. Right?

3 A. No, sir. They were also sent to SLED for
4 interpretation ---

5 Q. --- okay. Very good. And since you just
6 collect the evidence is -- you don't know in what
7 context or how an unspent cartridge got to the
8 ground?

9 A. Not in this particular instance. I know
10 how it can happen. Yes, sir.

11 Q. Right. But I'm asking you in this
12 particular instance?

13 A. No, sir. I do not.

14 Q. As a matter of fact you don't -- at that
15 point you don't even know if those .40 calibers are
16 connected with this case. You just find them at a
17 crime scene, correct?

18 A. Correct.

19 Q. All right. Now, one of the things you
20 testified about is that you collected some evidence
21 out of the car in front of the -- from Mr. Reed,
22 right?

23 A. Yes.

24 Q. And in looking in the car, and off of Mr.
25 Reed, you didn't find a wallet or an I.D.?

1 A. No, sir.

2 Q. That's why you had to do the ink print
3 there on the scene so you could get an
4 identification, correct?

5 A. That is correct.

6 Q. And that's one of the things you'd look
7 for right?

8 A. Yes, sir ---

9 Q. --- it's not just -- you just made a
10 mark, no I.D. You'll look to see if you can find
11 a wallet, right?

12 A. Yes, sir. We will.

13 Q. All right. And then, of course, you took
14 fingerprints, right?

15 A. Yes, sir.

16 Q. All right. And in those fingerprints it
17 put three people with the car. Mr. Bryant -- four
18 people actually, Mr. Bryant, Mr. Reed, Mr. McCoy,
19 and then a fourth individual?

20 A. Yes. A Mr. Marion Effron Moses.

21 Q. Moses. All right. So, it puts those
22 four people at the car, but you don't know when
23 those fingerprints were put on there, do you?

24 A. No, sir.

25 Q. All right. So you don't know if those

1 people were present or not when this happened?

2 A. No, sir. I can't testify to that.

3 Q. Did you take any measurements in this
4 case?

5 A. No, sir. We did not.

6 Q. Okay. So you didn't measure from the car
7 back to the shell casings and back. You just put
8 placards down and took pictures?

9 A. Correct.

10 Q. All right. If you can, all right, can
11 you give the jury a general estimation of how far
12 back, distance-wise, those casings went in the
13 parking lot? It's hard to get depth in your
14 pictures.

15 A. Yes, sir. If I recall correctly, it was
16 -- if you're standing at the back corner of the
17 building, the evidence was located from that point
18 about two-thirds back into the parking lot. Almost
19 to the rear of the parking lot but, not quite that
20 far.

21 Q. And if you had to estimate that distance,
22 and I'm not trying to pin you down, I'm just trying
23 to help this jury understand how big that parking
24 lot was?

25 A. It's a big parking lot. It's

1 approximately 40 yards, plus or minus.

2 Q. Okay. Over a hundred feet?

3 A. Yes, sir.

4 Q. Okay. In collecting evidence, did you
5 have a chance to examine the exterior of the silver
6 car?

7 A. Yes, sir. I did.

8 Q. I'm going to direct your attention to the
9 front bumper.

10 [Whereupon, the witness reviews
11 photographs]

12 Q. And on the front bumper there at the fog
13 light, did you find for lack of a better word, a
14 bullet hole?

15 A. Yes. I did.

16 Q. Okay. The -- Mr. Reed and all the other
17 evidence came from near the back of the car
18 forward?

19 A. From Mr. Reed's location forward. Yes,
20 sir.

21 Q. Okay. All right, last couple of
22 questions. So, when you got to the scene -- as you
23 collect what's there it's not to say there were
24 items there that were carried away before you got
25 there, you just don't know?

1 A. That's correct.

2 Q. I think that's it. Thank you.

3 THE COURT: Mr. Voigt?

4 MR. VOIGT: No further questions.

5 THE COURT: Sergeant, you may step down.

6 You're free to remain in the courtroom.

7 MR. HALLMAN: Thank you, Your Honor.

8 [Whereupon, the witness is excused and
9 exits the witness stand]

10 THE COURT: Call your next witness.

11 MR. VOIGT: The State calls Detective
12 Keith Elmore.

13 THE COURT: Mr. Voigt, Mr. Smiley?

14 [Whereupon, an off-the-record bench
15 conference is held]

16 [Whereupon, Mr. Elmore comes forward]

17 [Whereupon, the witness is duly sworn by
18 the Clerk of Court]

19 MR. SMILEY: Beg the court's indulgence.

20 THE COURT: Yes, sir.

21 [Off the record momentarily]

22 THE COURT: You may continue.

23 CLERK OF COURT: If you'll please state
24 your full name, and spell your last name?

25 THE WITNESS: Keith Elmore, K-E-I-T-H

1 E-L-M-O-R-E.

2 THE COURT: Mr. Voigt?

3 MR. VOIGT: Thank you. May it please the
4 Court?

5 - - - - -

6 DETECTIVE KEITH ELMORE,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. VOIGT:

11 Q. Detective, how are you currently assigned
12 with the North Charleston Police Department?

13 A. I'm on the midnight shift patrol unit.

14 Q. And in April of 2006 how were you
15 assigned?

16 A. I was the lead detective in this case
17 assigned to the Person's Crime Unit.

18 Q. Detective, if you could pull that
19 microphone a little bit closer to you.

20 [Whereupon, the witness complies]

21 Q. [Mr. Voigt] On April 17th, 2006 were you
22 called out to investigate a shooting at Club
23 Fantasy on Peppermill Parkway?

24 A. Yes. I was.

25 Q. And were you -- and when -- approximately

1 when did you arrive at Club Fantasy on Peppermill
2 Parkway?

3 A. Approximately 2:30 a.m.

4 Q. And were there already officers there
5 when you arrived?

6 A. Yes. They were.

7 Q. You weren't the first one there?

8 A. No, sir.

9 Q. What were your duties when you got to
10 Club Fantasy? What were your assigned duties, what
11 were you to do?

12 A. When I arrived on the scene I assessed
13 the scene. I spoke with other detectives. I was
14 briefed on what information that we had currently.
15 And I also observed the victim's body.

16 Q. So the victim was still in the same place
17 at 2:30 as he would have been -- I'm going to show
18 you what's been previously marked as State's
19 exhibit 12.

20 [Whereupon, the witness reviews
21 photographs]

22 Q. [Mr. Voigt] Was the victim's body still
23 in the same location when you observed it at 2:30?

24 MR. SMILEY: Objection, Your Honor. It's
25 going to call for speculation.

1 THE COURT: It's sustained. Rephrase.

2 Q. [Mr. Voigt] I'd ask you to take a look
3 at State's exhibit 12.

4 [Whereupon, the witness reviews
5 photographs]

6 Q. When you arrived on the scene did the --
7 what is depicted in the State's exhibit 12? Had it
8 -- had it been altered or rearranged in any way?

9 A. No. It was not.

10 Q. What was the first task as the lead
11 detective -- what was the first task that you
12 started when you arrived on the scene?

13 A. Like I stated, when I arrived on scene I
14 observed the scene. I spoke with my superiors who
15 were on the scene before me and got an idea of what
16 was going on.

17 Then, kind of looked around to see if
18 there were any witnesses that were available that
19 were not -- that anyone hadn't made contact with.

20 After being there a short period of time
21 I got word from one of my superiors that I needed
22 to go to the station and speak with some females
23 who may have had some information as to anyone that
24 would have been involved in this case.

25 Q. Okay. How many detectives were on the

1 scene ultimately while you were out there
2 investigating, how many people from the Person's
3 Division?

4 A. Several of us were there. I would have
5 to look at the call -- the assigning log to tell
6 you exactly, as far as detectives and street
7 officers.

8 MR. VOIGT: May I approach the court
9 reporter, Your Honor?

10 THE COURT: Yes, sir.

11 [Whereupon, State's Exhibit number 30 is
12 marked for identification, by the court
13 reporter]

14 Q. [Mr. Voigt] I'm going to show you,
15 Detective, what's been labeled as State's exhibit
16 30 for identification purposes and ask you to take
17 a look at that document?

18 [Whereupon, the witness reviews
19 documents]

20 Q. [Mr. Voigt] Do you recognize that
21 document, Detective?

22 A. Yes. I do.

23 Q. And what is that document?

24 A. This is a North Charleston Police
25 Department crime scene log.

1 Q. And what is the purpose of that document
2 -- does your name appear on that document?

3 A. Yes. It does.

4 Q. And why does your name appear on that
5 document?

6 A. Because I arrived on the -- at the time I
7 arrived on the scene and entered the crime scene my
8 name was listed on this sheet.

9 Q. Does that log list all the North
10 Charleston police officers who arrived on that
11 scene, that you know of?

12 A. Yes.

13 Q. Is that the purpose of the log, to keep
14 track of who's out there?

15 A. Correct.

16 Q. Approximately how many officers were out
17 there, if you recall?

18 A. Approximately 20.

19 Q. Did each of those officers have a
20 specific duty or assignment that night relative to
21 their area of expertise and specialization?

22 A. Correct.

23 Q. When you went back to the station, do you
24 recall who you spoke with?

25 A. I spoke with two females. I don't know

1 the names exactly. I would have to look in my
2 notes as far as the exact names of those females.

3 Q. Did you bring with you today your case
4 file?

5 A. Yes. I did.

6 Q. Would it recollect -- would it refresh
7 your recollection to look at your case file?

8 A. Yes. It would.

9 MR. VOIGT: May I approach the witness?

10 THE COURT: You may.

11 Q. [Mr. Voigt] I'm handing you what appears
12 to be your case file. Would you take a look?

13 [Whereupon, the witness reviews
14 documents]

15 A. It is.

16 MR. VOIGT: May I approach on something
17 unrelated Your Honor, that I just want to ---

18 THE COURT: --- approach the bench?

19 MR. VOIGT: Yes.

20 [Whereupon, an off-the-record bench
21 conference is held]

22 MR. VOIGT: Thank you.

23 Q. [Mr. Voigt] Detective, have you been
24 able to refresh your recollection as to the names
25 of the individuals you spoke with when you returned

1 to the station? If you require more time, please -

2 --

3 A. --- just a second, please?

4 [Whereupon, the witness continues
5 reviewing documents]

6 A. One female's name was Nina James and the
7 other female was Contrella Harper.

8 Q. After speaking with those individuals
9 what did you do next in the furtherance of your
10 investigation?

11 A. I showed them a video of the Sunoco gas
12 station that we had obtained from the Sunoco gas
13 station in Goose Creek.

14 Q. Did you ever have occasion to speak with
15 anybody associated with Club Fantasy?

16 A. I think I may have spoken to one of the
17 managers there in particular. Obviously, I did
18 talk to the manager that was there.

19 Q. Detective, what was the next thing that
20 you did in the furtherance of your investigation?

21 A. After reviewing the video?

22 Q. Yes.

23 A. After reviewing the video we had two
24 females -- two more females that came to the
25 station that we interviewed.

1 Q. Do you recall their names?

2 A. One was a Tiffany Jenkins and one was a
3 Sierra Smith.

4 Q. Do you recall what time you spoke to
5 those individuals?

6 A. I don't have those times down exactly.

7 Q. As a result of your conversations with
8 those individuals, did you develop a suspect in the
9 shooting at Parkway?

10 A. At that particular moment we did not
11 develop a suspect. We got some word back from the
12 crime scene that we had fingerprints which -- and
13 the name of Antonio Bryant came up.

14 Q. Can you recall in what context those --
15 his name came up?

16 A. He was the driver of the victim's
17 vehicle.

18 Q. Were you able -- ever able to speak with
19 or interview Mr. Bryant?

20 A. No. We were unable to locate Mr. Bryant.

21 Q. Were you ever able to speak with a
22 Frederick McCoy about the events of April 17, 2006?

23 A. Yes. I did.

24 Q. As a result of your conversation with Mr.
25 McCoy, did you develop anyone as a suspect or

1 suspects in the shooting?

2 A. After speaking with Frederick McCoy I did
3 develop a suspect.

4 Q. And who was that suspect?

5 A. The suspect was Mr. McGee.

6 Q. I'm going to show you what I've labeled
7 as State's exhibit 29 and ask you to identify that
8 if you could?

9 [Whereupon, the witness reviews
10 photograph]

11 A. This is Mr. McGee. Nathaniel McGee.

12 Q. And is that a picture that you used to
13 develop a wanted poster?

14 A. I did.

15 Q. And did you make it known that, through
16 normal channels, that Mr. McGee was wanted in this
17 matter?

18 A. Yes.

19 Q. Did there come a time when Mr. McGee
20 turned himself in?

21 A. Yes. He did.

22 Q. Did you ever develop anyone else as a
23 potential suspect, or someone who may have been
24 involved in the shooting?

25 A. Yes, sir.

1 Q. And what is that person's name?

2 A. His name is Terrell Wright.

3 Q. And did you have the occasion to speak
4 with Mr. Wright?

5 A. I did.

6 Q. And upon speaking with Mr. Wright did --
7 upon speaking with Mr. Wright were you -- did you
8 embark on any search for any evidence that may have
9 been relevant to this case?

10 A. Yes. After I spoke with Terrell Wright
11 he advised me of a weapon that ---

12 MR. SMILEY: --- objection. Hearsay.

13 THE COURT: Sustained.

14 Q. [Mr. Voigt] Without saying what Mr.
15 Wright may have told you, do you recall where you
16 may have gone armed with the information that you
17 learned from Mr. Wright?

18 A. We went to the bridge area of Hanahan,
19 between Hanahan and Goose Creek off of North Rhett
20 bridge, myself and Detective Patrick.

21 Q. And why did you go there? What were you
22 looking for?

23 A. We were looking for a weapon that was
24 supposedly thrown there.

25 Q. Did you find one?

1 A. No. We did not.

2 Q. Did you place Mr. Wright under arrest?

3 A. Yes. I did.

4 Q. Do you recall what you charged him with?

5 A. I charged him with assault and battery --
6 excuse me AWIK, assault with intent to kill, and I
7 think also discharging a firearm into a vehicle.

8 Q. Did you place Mr. McGee under arrest?

9 A. I personally did not. He turned himself
10 in and other officers that were there, I was not at
11 the station at the time. Sergeant Singletary took
12 care of that.

13 Q. Okay. And was that arrest predicated on
14 the arrest warrant that you had prepared?

15 A. Yes.

16 Q. And that arrest warrant was predicated on
17 information that you had learned investigating this
18 matter?

19 A. Correct.

20 MR. VOIGT: At this time I would offer,
21 file and introduce, in case I haven't, State's
22 exhibit 29. I believe it's the picture.

23 MR. SMILEY: The picture? I don't have
24 any objection.

25 THE COURT: State's 29 into evidence

1 without objection.

2 [Whereupon, State's exhibit number 29 is
3 admitted into evidence by the Court]

4 MR. VOIGT: I beg the Court's
5 indulgence.

6 THE COURT: Yes, sir.

7 [Off the record momentarily]

8 MR. VOIGT: The State would tender this
9 witness, Your Honor.

10 THE COURT: Mr. Smiley?

11

- - - - -

12

CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. All right. Detective Elmore, you were
15 the lead investigator, right? This was your case?

16 A. Correct.

17 Q. Okay. So everything that is gathered in
18 this case, put together, you're directing it?
19 You're in charge, right?

20 A. Not necessarily.

21 Q. So who's in charge?

22 A. My sergeant is.

23 Q. Who's that?

24 A. At the time Sergeant Scott Deckart.

25 Q. So, Sergeant Deckart is directing this

1 investigation?

2 A. Somewhat.

3 Q. Well, let's start with little pieces.

4 Y'all use a designation for a case of lead
5 detective, correct?

6 A. That's the name of it. That's what it's
7 called.

8 Q. All right. And you were the lead
9 detective in this case?

10 A. Correct.

11 Q. Okay. Would it be fair to say that the
12 lead detective's job in the case is to coordinate
13 the efforts of the North Charleston Police and
14 other agencies in gathering evidence?

15 A. In helping gather that evidence. Yes, I
16 would say that.

17 Q. Okay. When -- well, I'll ask it this
18 way. I didn't think it was such a difficult
19 question, but you're ---

20 MR. VOIGT: --- objection.

21 THE COURT: Sustained.

22 Q. [Mr. Smiley] Okay. Withdrawn. Is --
23 you're more than just an ordinary detective in the
24 case, right?

25 A. Correct.

1 Q. All right. So, when witnesses are found
2 it's brought to your attention, correct, as the
3 lead detective?

4 A. Yes, some of the time.

5 Q. Well, if a witness is found in this case
6 it might not be brought to your attention?

7 A. Not -- sometimes not immediately. No.

8 Q. Okay. So, do you know of any witnesses
9 in the case that weren't brought to your attention
10 that you later found out about?

11 A. Based on my case file and in my
12 investigation I feel that all the witnesses that we
13 have in this case has been brought forward. Yes.

14 Q. Okay. Now Mr. Antonio Bryant, you were
15 able to determine that he was the driver of the
16 silver Chrysler, correct?

17 A. Correct.

18 Q. And your agency made an attempt to locate
19 Mr. Bryant, correct?

20 A. Correct.

21 Q. And you were unable to do so?

22 A. Correct.

23 Q. You made it known that you would like to
24 talk to him throughout the community, correct?

25 A. Correct.

1 Q. And the reason you wanted to talk to him
2 is since he was there at the scene you would like
3 to see what information he could add into
4 developing your case, correct?

5 A. Correct.

6 Q. And it also appeared from your
7 investigation that Mr. Bryant had some kind of
8 close relationship with Mr. Jamie Reed, correct?

9 A. Correct.

10 Q. And it's fair to say he just didn't want
11 to talk to you, right?

12 A. Correct.

13 Q. In developing your evidence that night,
14 did you gather evidence that Mr. Bryant fired a
15 weapon?

16 A. No. I did not.

17 Q. There is no indication that he may or may
18 not have fired a weapon?

19 A. No.

20 Q. You had the opportunity to talk to
21 Terrell Wright, correct?

22 A. Correct.

23 Q. Now through your investigation you were
24 able to identify that he was present?

25 A. Correct.

1 Q. And it was your belief that he fired a
2 weapon that night?

3 A. Correct.

4 Q. In your investigation you were able to
5 identify that weapon as a .40 caliber semi-
6 automatic?

7 A. No.

8 Q. You weren't able to identify the weapon
9 he allegedly had?

10 A. No. I was not.

11 MR. SMILEY: I beg the Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 [Off the record momentarily]

15 Q. [Mr. Smiley] Were you able to develop
16 that it was an automatic?

17 A. One second, please?

18 [Whereupon, the witness reviews
19 documents]

20 A. Unknown, on the type of gun.

21 Q. Okay. So it's your testimony that you
22 never developed what kind of weapon it was?

23 A. Correct.

24 Q. All right. Were you present when Mr. --
25 you spoke with Terrell Wright, correct? You spoke

1 to Terrell Wright ---

2 A. --- correct. I did.

3 Q. Okay. And as the lead detective it's
4 your job to be thoroughly familiar with every part
5 of your file, right?

6 A. Correct.

7 Q. Okay. And Mr. Wright gave you a written
8 statement -- gave you a written statement, correct?

9 A. Correct.

10 Q. All right. It's undisputed that Terrell
11 Wright fired a weapon that night. Undisputed,
12 right?

13 A. Correct.

14 Q. Okay. Now in the course of your
15 investigation you became aware of prior
16 difficulties between Mr. McGee and Mr. Reed,
17 correct?

18 A. That's correct.

19 Q. And that these difficulties arose from an
20 incident that Mr. -- well, withdrawn.

21 MR. SMILEY: May we approach, Your Honor?

22 THE COURT: Counsel, you may approach.

23 [Whereupon, an off-the-record bench
24 conference is held]

25 THE COURT: Ladies and gentlemen of the

1 jury, what is going to happen now is what I
2 like to commonly refer to as what happens on
3 the commercial breaks during Law and Order.

4 I have another jury out and they
5 have reached a verdict, which also gives us an
6 appropriate time for you to take your lunch
7 break. So, we will take our lunch break and
8 when you return we will resume and the
9 Detective will be back on the stand.

10 Again, as I have indicated before,
11 please do not discuss this case amongst
12 yourselves or with anyone else that is
13 involved in this case. Friends, family
14 members are not -- please do not call them
15 over the lunch hour and discuss this -- the
16 case with them.

17 You are, will be free and I will
18 give you further instructions at the
19 conclusion of the case that you may discuss
20 with whom and when. Please be back in your
21 jury room at 1:45 and we will begin promptly
22 at that time. Please rise for the jury.

23 [Whereupon, the jury exits the courtroom
24 at 12:12 p.m.]

25 THE COURT: Thank you. Be seated.

1 Detective, we are going to take a break until
2 1:45. I remind you that, of course, you are
3 under oath and the rule of sequestration has
4 been evoked. That means you may not discuss
5 your testimony with any of the parties
6 involved. Do you understand, sir?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right. You may step
9 down.

10 [Whereupon, the witness exits the witness
11 stand]

12 MR. SMILEY: Your Honor, I would ask that
13 it's not just the parties involved, he can't
14 discuss his testimony with anyone, is my
15 understanding, during the break, like other
16 policemen or anybody else. Do you agree?

17 MR. VOIGT: Clearly no witnesses in --

18 MR. SMILEY: Okay. Thank you. Just out
19 of an abundance of caution.

20 THE COURT: Do you need further -- me to
21 further ---

22 MR. SMILEY: --- no, I think we're ---

23 THE COURT: --- instruct the Detective?
24 All right. Anything before we recess in this
25 matter of receiving the verdict?

1 MR. VOIGT: No, Your Honor.

2 MR. SMILEY: I'm going to get for the
3 record, because I just got that case, State
4 vs. Day. I will provide the State with a copy
5 over the break.

6 THE COURT: All right. Counsel if you
7 will be back at 1:30 that will give us fifteen
8 minutes, which should be sufficient time to
9 argue the matters. The Court has reviewed and
10 read the Day case and I'll be happy to hear --

11 Mr. Voigt, if there is some other
12 case law based upon your review of Day that
13 you wish the Court to consider, please email
14 it to my clerk.

15 MR. VOIGT: I will.

16 THE COURT: All right. We'll be at ease
17 in this matter until 1:30.

18 [Whereupon, a recess is taken from 12:13
19 p.m. to 1:40 p.m.]

20 THE COURT: Counsel, I apologize for
21 being late. I did not factor into the
22 equation the jury coming back. So I
23 apologize again for being late. Mr. Smiley,
24 I'll be happy to -- now that your client is
25 present, do you have any further argument as

1 to -- with respect to the Day case?

2 MR. SMILEY: I think the Day case is
3 directly on point and should allow me to
4 develop the facts in this case. And the Rules
5 allow, and the law allows -- to let me develop
6 the facts of the prior difficulty in order to
7 show the state-of-mind of my client as to the
8 element of his belief that he was in imminent
9 peril. I think that Day is pretty square on
10 point in that regard.

11 THE COURT: And Mr. Voigt?

12 MR. VOIGT: Thank you, Your Honor. I
13 have had the opportunity to review that. I
14 think Day is in the family of cases that Mr.
15 Smiley would like to rely on for the
16 proposition that he puts before the Court.

17 As a procedural matter, the trial
18 Court in Day seemed to have blocked all --
19 seemed to have blocked any instruction as to
20 self-defense from the jury and didn't give any
21 of that instruction to the jury. This is
22 really a case of -- there seemed to have been
23 two fatal errors in Day. One is the Assistant
24 Solicitor -- the Solicitor's argument
25 concerning the defendant's outlaw nickname,

1 which was referred to I think something like
2 63 times in closing, which denied the
3 defendant his due process rights.

4 Independent of that are the
5 allegations of previous violence in the self-
6 defense claim that is in a way similar to what
7 Mr. Smiley is proposing to allow to go before
8 the jury.

9 The judge in Day did not instruct
10 the jury at all in self-defense. And only
11 when the jury came back and asked a very
12 specific question about the law of self-
13 defense the judge in mid-stream corrected
14 himself, and belatedly and imperfectly
15 instructed the jury on the elements of self-
16 defense.

17 Let me see if I can say what I --
18 let me see if I can try to see -- let me see
19 if I can encapsulate what I believe the law to
20 be. And then also let me lead off by saying
21 that we took this break in the middle of the
22 cross-examination of Detective Elmore and not
23 for the major -- not for the big picture of
24 Day, but for a minor detail. I believe that
25 if you were to allow Mr. Smiley to get into

1 the specific incidences giving rise to his
2 client's apprehension of immediate bodily
3 harm, I don't believe that you will get --
4 that Mr. Smiley should be allowed to get that
5 in through Detective Elmore. I believe if
6 there's a proper hearsay objection that would
7 block him there.

8 I believe, and I believe this is how
9 the testimony in Day does come out, I believe
10 that it is positive evidence. In other words
11 his -- his testimony, and I believe it's from
12 Day himself although it's not required that it
13 would be from the defendant, but I believe
14 that there is a witness who must actually
15 speak to personal knowledge of these things.

16 And so my first objection to
17 allowing it here would be that this is not the
18 proper witness to allow it through. And that
19 if the Court is inclined I think that Day, as
20 we have discussed it, which -- I believe that
21 Day and it's progeny -- and as I cited at the
22 beginning in 405(b) and 404(a)(2), I think
23 they do allow Mr. Smiley some latitude.
24 However, I think that he has to lay that
25 direct knowledge of such facts and events

1 through the proper witnesses, and that this
2 would not be the witness.

3 THE COURT: This was, just so the record
4 is clear, this was just the time that we
5 broke. I don't believe that there's anything
6 up to this point, in the Court's recollection
7 of where we stopped just so that the record is
8 clear, that Mr. Smiley was attempting to
9 introduce this evidence through this witness.
10 Is that correct, Mr. Smiley?

11 MR. SMILEY: That's correct to this
12 point. However ---

13 THE COURT: -- all right. I just want
14 the record to be clear. We broke at this time
15 because it was close to lunch -- the lunch
16 hour and we had a verdict and that is why we
17 broke.

18 MR. VOIGT: I say that only though
19 because I believe that. I believe Mr. Smiley
20 would agree with me the next question was
21 going there.

22 THE COURT: Now I do not know because I
23 do not read Mr. Smiley's mind -- what his next
24 question was going to be, however, we will
25 address that whenever that becomes

1 appropriate.

2 MR. SMILEY: I will -- I can tell you
3 what my next question is because I think you
4 might want to address it if you'd like, Your
5 Honor?

6 THE COURT: Well, I think that we are
7 again -- we're putting the cart before the
8 horse. We're only -- we're now arguing
9 whether or not that the Court -- because you
10 would agree, Mr. Smiley, whether or not this
11 information comes in and this evidence comes
12 in is within the Court's discretion. And so
13 we are now arguing whether or not it comes in.

14 MR. SMILEY: Beg the court's indulgence
15 for a second.

16 [Off the record momentarily]

17 THE COURT: Mr. Voigt, do you have any
18 additional argument concerning the specific
19 instance of conduct, the prior bad blood as
20 you put it that occurred two days --
21 approximately two days before this incident?

22 MR. VOIGT: If the foundation is laid
23 that such an event happened two days or four
24 months or sometime so recent as to leave an
25 impression upon the defendant, then I believe

1 that Mr. Smiley would be allowed to get into
2 some of the specifics.

3 In other words, I believe it
4 actually is a fact basing -- Day, for example
5 cites Brown. Brown says an incident 23 years
6 earlier is not good enough. In other words
7 that somebody may have been violent to you 23
8 years ago does not allow the defendant to
9 claim self-defense.

10 But, Day specifically says that an
11 incident four months previous -- and even if
12 we -- in the facts as I understand them, as I
13 relay them to the Court, we're talking about
14 weeks rather than months.

15 If Mr. Smiley can lay the foundation
16 for such an event through a -- through
17 competent testimony of a witness with actual
18 direct knowledge, then I believe he would be
19 able to explore those certain specifics, as
20 the Court allows, relevant to the --
21 relevance.

22 THE COURT: All right. Mr. Smiley?

23 MR. SMILEY: Yes, ma'am?

24 THE COURT: Anything -- anything further?

25 MR. SMILEY: Yes, ma'am. But the only

1 thing further is, that reading Day I don't see
2 where -- that it says that the determination
3 is in the Court's discretion. I think it says
4 that it shall be; it should be.

5 It talked about it did not abuse its
6 discretion in refusing to admit a prior bad
7 act. But then it goes on to say -- further
8 indicates that it shall be admissible to use
9 the specific bad acts through Rule 405(a) and
10 (b) in the theory of self-defense. I'm
11 looking down to head note 11, Your Honor. On
12 the case -- in this case, the prior bad act of
13 violence, further evidence is relevant to the
14 theory of self-defense, etcetera.

15 And I think it very much parallels
16 what we have in this case. And that's all I
17 have, Your Honor.

18 THE COURT: I am reading Day that cites
19 State vs. Peak that says whether a specific
20 instance of conduct by the deceased closely
21 connected at a point of time or occasion to
22 the homicide so as to be admissible is in the
23 trial judge's discretion.

24 MR. SMILEY: Then take my apologies for
25 that. I didn't catch that.

1 THE COURT: Based upon -- and assuming,
2 Mr. Smiley, that you do lay the appropriate
3 foundation and the Court does determine that
4 the specific instance of conduct is
5 admissible, it -- you will be allowed to
6 discuss the specific instance of conduct.

7 Do we need -- are you requesting a
8 proffer of that testimony at this time, Mr.
9 Voigt? Or do you need more parameters other
10 than what Mr. Smiley has already indicated?
11 There was a dispute I believe over a gold
12 chain approximately two days before?

13 MR. VOIGT: I'm not requesting a proffer.

14 THE COURT: Thank you.

15 MR. SMILEY: But Your Honor, the -- this
16 is -- now that you've made that ruling, my
17 next question, or one of my next set of
18 questions I am going to ask Detective Elmore
19 is did he -- I've already asked him if he was
20 aware of the prior difficulty. I'm going to
21 ask him if he was aware that Jamie Reed
22 believed that my client had broken into his
23 house. And Mr. Voigt is going to object that
24 it's hearsay. I'm not offering it for the
25 truth of the matter asserted. I'm offering

1 it to show that during the course of the
2 investigation he collected information about
3 the prior incident. As a matter of fact, I
4 would argue that it didn't happen. My client
5 didn't break into the house.

6 However, I want to establish through
7 the course of Detective Elmore's investigation
8 that he came across information of the prior
9 difficulty. That it began with an alleged
10 burglary, and ended up a kidnapping.

11 And that would be -- I'm not
12 offering it to say it's true. I'm offering it
13 to show that during the course of his
14 investigation that's information he collected.

15 THE COURT: Mr. Voigt?

16 MR. VOIGT: I'm wondering how that could
17 not be subject to a hearsay objection, Your
18 Honor.

19 MR. SMILEY: I'm arguing it's not
20 hearsay.

21 MR. VOIGT: It's an out-of-court
22 statement that seeks to establish the basis of
23 a self-defense claim, which -- it is in a --
24 that is a -- that is -- this alleged burglary
25 is the genesis of the difficulties allegedly

1 between these two parties. And I think it
2 allows -- if you allow Detective Elmore to
3 relay third or fourth hand information about
4 this, I think that would not serve the jury.

5 MR. SMILEY: I'm asking him if he's aware
6 of it. I'm not asking him for the details.
7 Were you aware that the prior difficulties
8 began with an alleged burglary of Mr. McGee
9 against Mr. Reed?

10 And then my next question would be
11 are you aware, in the course of your
12 investigation, that those difficulties
13 continued with an alleged kidnapping of Mr.
14 McGee by Mr. Reed and his compadres? Was he
15 aware of the allegation? But, not get into
16 whether it's true or not.

17 THE COURT: If the Detective based upon
18 his investigation can testify as such, I do
19 think that it is relevant.

20 MR. SMILEY: That's all he could -- that
21 will clear that up for me. And -- ready to go
22 from the defense, Your Honor.

23 THE COURT: Anything further from the
24 State?

25 MR. VOIGT: No, Your Honor.

1 THE COURT: Anything further from the
2 defendant?

3 MR. SMILEY: No, Your Honor, we're ready
4 to go.

5 THE COURT: All right. Detective, if
6 you'll go ahead and have a seat up on the
7 stand?

8 [Whereupon, the witness re-takes the
9 witness stand]

10 THE COURT: If you'll please bring in the
11 jury. Please rise for the jury.

12 [Whereupon, the jury enters the courtroom
13 at 1:53 p.m.]

14 THE COURT: Thank you. Please be seated.
15 Mr. Smiley, you may continue.

16 - - - - -

17 DETECTIVE KEITH ELMORE,
18 having been previously sworn,
19 was examined and testified as follows:

20 CONTINUED CROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q. Detective Elmore, in the course of your
23 investigation you had an opportunity to come in
24 contact with Mr. Fred McCoy?

25 A. Yes. I did.

1 Q. Okay. And in speaking with Fred were you
2 able to establish his movements at the crime scene?

3 A. Yes.

4 Q. Now, after his friend that -- Jamie Reed
5 was shot Fred left the scene, didn't he?

6 A. Correct.

7 Q. And when he left the scene Mr. Reed was
8 still there on the ground, right?

9 A. That's correct.

10 Q. And then Fred came back, right?

11 A. Correct.

12 Q. All right. So you talked to Fred, you
13 talked to Tiffany Jenkins and Sierra Smith,
14 correct?

15 A. That's correct.

16 Q. And so the jury will understand, Tiffany
17 Jenkins and Sierra Smith were two dancers -- or two
18 girls that were at the scene?

19 A. Correct.

20 Q. All right. And Tiffany allegedly was
21 speaking with Mr. Reed, correct?

22 A. That's correct.

23 Q. And that's the guy who's the decedent,
24 Mr. Reed, right?

25 A. That's correct.

1 Q. Okay. During the course of your
2 investigation did you become aware of prior
3 difficulties between Nathaniel and Jamie?

4 A. Correct.

5 Q. All right. And at the start of those --
6 did you become aware that the start of those prior
7 difficulties was an allegation made by Jamie that
8 Nathaniel had broken into his home and taken a gold
9 chain?

10 A. That's correct.

11 Q. And then as you further investigated your
12 case, did you become aware that there's an
13 allegation that Jamie and some friends, or
14 acquaintances of his, accosted and kidnapped
15 Nathaniel McGee?

16 A. Correct.

17 Q. And the reason you try to talk to
18 everybody is you're trying to make -- to get as
19 much information and have as good of an
20 understanding of what's going on in this case as
21 possible, right?

22 A. That's correct.

23 Q. Now what Sierra Smith and Tiffany Jenkins
24 observed at the parking lot wasn't totally
25 consistent was it?

1 A. No.

2 Q. Now you got to the scene about 2 o'clock
3 or so -- give or take ---

4 A. --- 2:30.

5 Q. 2:30, somewhere in there. And when you
6 got there was Jamie still there on the ground?

7 A. Yes. He was.

8 Q. Okay. And the car, the silver car, was
9 parked there?

10 A. Yes.

11 Q. And the red car was still parked there?

12 A. Correct.

13 Q. The crime scene -- was already gathering
14 evidence, right?

15 A. Correct.

16 Q. And one of the first things you want to
17 do is gather as many witnesses as you can find to
18 the event, or close in time, right?

19 A. Correct.

20 Q. And, of course, working with your other
21 detectives and other officers you were able to
22 identify Fred who had left and come back, right?

23 A. That's correct.

24 Q. Antonio, who was the alleged driver who
25 had left, you couldn't find him, right?

1 A. Correct.

2 Q. Tiffany Jenkins, right?

3 A. Correct.

4 Q. Sierra Smith who was out there?

5 A. Correct.

6 Q. I believe y'all talked to the doorman or
7 bouncer of the club, right?

8 A. That's correct.

9 Q. And even though I don't know that her
10 name was ever recorded, an attempt was made to talk
11 to the manager of the club, right?

12 A. Right.

13 Q. And that's our seven witnesses from out
14 there, right?

15 A. Correct.

16 Q. Oh excuse me, Terrell Wright was also
17 spoken to at one point, correct?

18 A. Correct.

19 Q. You didn't really call him a witness
20 because he was, in fact, charged for firing a gun,
21 right?

22 A. That's correct.

23 Q. All right. Now, under your theory of
24 this case it is your allegation that Terrell fired
25 from that back parking lot, right?

1 A. In the vicinity. Somewhere in between

2 ---

3 Q. --- he wasn't up at the car?

4 A. Correct.

5 Q. All right. And establishing things as
6 best you can because -- of course you weren't there
7 when this happened. You've got to gather it just
8 like everybody else in the past tense. And it's a
9 hard thing to do, right?

10 A. That's correct.

11 Q. And were you able to determine whether
12 Terrell fired first or last? Were you able to
13 determine the sequence -- we know that -- well, let
14 me back up. Withdrawn.

15 I'll ask it -- sometimes I get ahead of
16 myself. It appears there was more than one weapon
17 fired out there that night, is that correct?

18 A. That is correct.

19 Q. Okay. Were you able to determine whether
20 Mr. Wright fired first, last, or in between? Were
21 you able to determine the order of fire?

22 A. My determination came in he fired second.

23 Q. Okay. And that the first shot was
24 allegedly made by Mr. McGee?

25 A. Correct.

1 Q. And that as Mr. McGee was leaving the
2 scene Mr. McCoy fired in the direction of the
3 silver car?

4 A. That's correct.

5 Q. Now I asked you this question before and
6 you told me that it didn't appear that -- and I
7 just want to make sure I'm clear, you have the
8 incident at the car, Nathaniel appears, fires at
9 close range, and hits Jamie?

10 A. Correct.

11 Q. Is leaving the scene; Antonio and Fred
12 are in that silver car, right?

13 A. That's correct.

14 Q. Okay. Now obviously he must have exited,
15 at what point we aren't sure. And as he's running
16 away Terrell just starts firing?

17 A. Correct.

18 Q. You told me that you don't believe that
19 Antonio Bryant fired a weapon, right?

20 A. Correct.

21 Q. Did Fred McCoy fire a weapon?

22 A. To my knowledge, no.

23 Q. Okay. So, Terrell just started firing
24 because one shot had gone off, right?

25 A. Correct.

1 Q. Okay. Was it -- would it be fair to say
2 that in the course of your investigation that
3 things got pretty chaotic out there after that
4 first shot was fired?

5 A. Sure. Yes.

6 Q. People were going everywhere?

7 A. Right. Correct.

8 Q. All right. Now we saw a video that was
9 put in through the first witness, the four-panel
10 video. Did you have a chance to review that in
11 this case?

12 A. No. I haven't.

13 Q. And that was the first time you had seen
14 it?

15 A. I was not in the room during the time
16 y'all ---

17 Q. --- you weren't ---

18 A. --- were showing the thing. No.

19 Q. Oh, I'm sorry. Okay, I was just trying
20 not to play it. Well, let me ask you this, have
21 you ever seen that video, the four-panel video that
22 came from the Club Fantasy?

23 A. No, sir.

24 Q. You never saw it?

25 A. No.

1 Q. Well, then I can't ask you about it. If
2 you haven't seen it, you haven't seen it. All
3 right, the silver Chrysler. That belonged to
4 Jamie's mother. Did your investigation indicate
5 that the silver ---

6 A. --- I never got into who owned it ---

7 Q. --- okay ---

8 A. --- who exactly had it. But, it was said
9 that it had been Jamie's. I don't know for sure
10 who it was actually registered to.

11 Q. All right. Okay, fair enough. Your
12 investigation revealed Antonio was driving,
13 correct?

14 A. That's correct.

15 Q. And that Fred was the front passenger?

16 A. Correct.

17 Q. And that Jamie was sitting in the back
18 seat of the car that was his or his families,
19 correct?

20 A. Correct.

21 Q. And in talking to your witnesses and
22 developing facts and putting this together, it
23 appeared -- does it appear that as Nate approached
24 the car, that Jamie Reed jumped out of the car --
25 got out of the car?

1 A. No.

2 Q. No? It's your testimony he was already
3 out of the car from what you could put together?

4 A. My testimony would be that when Nate
5 approached the vehicle, he was looking inside of
6 the vehicle ---

7 Q. --- right ---

8 A. --- came around to Jamie's side, which
9 was directly behind the driver ---

10 Q. --- right ---

11 A. --- in the back seat. He opens the door
12 and then Jamie gets out and they have words there.

13 Q. Okay. All right. So your testimony
14 would be that Nathaniel came around and took his
15 hand and opened up that back door, and that Jamie
16 came out?

17 A. Based on my investigation.

18 Q. Okay. All right. And did your
19 investigation show that Jamie had any gloves on?
20 Oh, excuse me, not Jamie. That Nathaniel had any
21 gloves on?

22 A. No. He did not.

23 Q. All right. Now when you got to the scene
24 they'd already -- that the officers and crime scene
25 was gathering all the evidence, right?

1 A. Correct ---

2 Q. --- as best they could?

3 A. Correct.

4 Q. There was no weapon found on Jamie Reed,
5 was there?

6 A. No.

7 Q. And there wasn't any weapons found in the
8 car, was it?

9 A. No, sir.

10 Q. Okay. There wasn't any I.D. found on
11 Jamie either, right? No wallet ---

12 A. --- no ---

13 Q. --- not in the car, or on him either?

14 A. No. There wasn't.

15 Q. All right. There's nothing illegal found
16 in any connection with that car, right?

17 A. Correct.

18 Q. Okay. In the course of your
19 investigation though, is there -- you developed
20 that some witnesses saw Jamie reach for his belt?

21 A. That -- that I don't remember.

22 Q. If you would review your case file, and
23 specifically your investigation, in regards to the
24 witness Sierra Smith?

25 [Whereupon, the witness reviews

1 documents]

2 Q. Were you able to find out?

3 A. You're saying in my supplemental?

4 Q. In your investigation -- investigation
5 you did in regards to Ms. Sierra Smith?

6 A. Okay.

7 Q. Is there an indication he might have gone
8 for his waistband? And that would be Jamie.

9 MR. SMILEY: Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 [Whereupon, Mr. Smiley and Mr. Voigt
12 confer]

13 Q. [Mr. Smiley] You know what Detective
14 Elmore? I'm going to withdraw that question, all
15 right?

16 MR. SMILEY: Beg -- I apologize, Your
17 Honor. I think that gets me in an area that
18 would be improper, so I'll withdraw the
19 question.

20 Q. [Mr. Smiley] Just a couple more
21 questions, all right?

22 A. Okay.

23 Q. Now, you were able to develop Nathaniel
24 as involved in the incident fairly quickly, right?

25 A. Correct.

1 Q. All right. And you put out I think you
2 said, a be-on-the-lookout for, or a wanted poster,
3 right?

4 A. That's correct.

5 Q. And he turned himself in to the police
6 station, correct?

7 A. Yes. He did.

8 Q. All right. And -- but not to you, to
9 Sergeant Singletary, right?

10 A. Correct.

11 Q. Okay.

12 MR. SMILEY: Beg the court's indulgence.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. Smiley confers with his
15 client]

16 MR. SMILEY: Sorry.

17 [Whereupon, Mr. Smiley confers with
18 his client]

19 Q. [Mr. Smiley] I've got one last
20 question. In speaking with Fred McCoy, did he give
21 more than one version about where he was located in
22 the car? Did he at one point say he was a
23 passenger, and at one point say he was the driver?

24 A. Yes. He did.

25 Q. All right. Nothing further.

1 THE COURT: Mr. Voigt?

2 - - - - -

3 REDIRECT EXAMINATION

4 BY MR. VOIGT:

5 Q. Detective just briefly, when you talked
6 to Fred eventually you cleared up where he was in
7 the car, right?

8 A. Correct.

9 Q. And he did that right there while you
10 were taking his statement?

11 A. Yes. He did.

12 Q. So that wasn't something that you had to
13 wait days or weeks or hours for?

14 A. No.

15 Q. Mr. Smiley asked you a couple of
16 questions about whether or not during the course of
17 your investigation you had learned about a previous
18 allegation that Nathaniel McGee had burglarized
19 Jamie's Reed's house.

20 In your investigation did you find any
21 reports from Berkeley County, from Moncks Corner,
22 from anywhere where that would have been reported?

23 A. None of it was found to be true. No
24 police reports were made. No..

25 Q. And the same is true -- I believe Mr.

1 Smiley characterized it as accosting and
2 kidnapping, which you found no reports that would
3 have -- that no law enforcement investigation or
4 involvement in that allegation?

5 A. None. Correct.

6 Q. As a matter of act, in your investigation
7 you -- did you find any previous law enforcement
8 contact with Jamie Reed whatsoever?

9 A. None.

10 Q. Thank you. I have no further questions.

11 THE COURT: Thank you.

12 MR. SMILEY: Nothing.

13 THE COURT: Then may the Detective step
14 down?

15 MR. VOIGT: Yes. He can. Thank you.

16 THE COURT: And he will remain at your
17 table, Mr. Voigt?

18 MR. VOIGT: Yes. Thank you.

19 THE COURT: Detective, you may step down.

20 THE WITNESS: Thank you.

21 [Whereupon, the witness is excused and
22 exits the witness stand]

23 THE COURT: Mr. Voigt, call your next
24 witness.

25 MR. VOIGT: Thank you very much, Your

1 Honor. Tiffany Jenkins.

2 THE COURT: I'm sorry. Who?

3 MR. VOIGT: Tiffany Jenkins, Your Honor.

4 THE COURT: Okay.

5 [Whereupon, Ms. Jenkins comes forward]

6 [Whereupon, the witness is duly sworn by
7 the Clerk of Court]

8 CLERK OF COURT: Speak into this
9 microphone and state your full name, and then
10 spell your last name?

11 THE WITNESS: My name is Tiffany
12 Jenkins, J-E-N-K-I-N-S.

13 THE COURT: Mr. Voigt?

14 MR. VOIGT: Thank you very much, Your
15 Honor.

16 - - - - -

17 TIFFANY JENKINS,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. VOIGT:

22 Q. Ms. Jenkins?

23 A. Yes, sir?

24 MR. VOIGT: I beg the court's indulgence
25 for just a second.

1 THE COURT: Yes, sir.

2 [Off the record momentarily]

3 Q. [Mr. Voigt] Ms. Jenkins, what do
4 you do for a living?

5 A. I'm a full-time parent. And I also go to
6 school for cosmetology.

7 THE COURT: Ms. Jenkins, I'm going to ask
8 you to speak up. I am having a hard time
9 hearing you, okay. So, if you'll please speak
10 up so that everyone can hear you. Thank you.
11 Mr. Voigt, I apologize for interrupting you.

12 MR. VOIGT: --- and I was just -- I was
13 heading in that same direction.

14 Q. [Mr. Voigt] If you could, pull that
15 chair in, pull that microphone as close to your
16 mouth as you can.

17 And what I'm going to do, Ms. Jenkins is
18 I'm going to try to position myself around the
19 courtroom. I have to hear you all the way back
20 here. Let's pretend that they've got to hear you
21 back here as well, all right?

22 A. Okay.

23 Q. Kind of let it fly. You can't be quiet.
24 This room is dead in the center. Now, just let's
25 start all over again. What do you do for a living

1 now? What are you doing today?

2 A. I'm a full-time student at Melamont
3 Cosmetology School.

4 Q. Okay. In April of 2006 did you, from
5 time to time, dance at Club Fantasy in North
6 Charleston?

7 A. Yes, sir.

8 Q. Okay. And can you tell the jury -- can
9 you tell the jury, were you -- did you go to Club
10 Fantasy on the 17th of April 2006 to dance?

11 A. Yes, sir.

12 Q. Do you recall about what time you went to
13 Club Fantasy?

14 A. It was late in the evening.

15 Q. Where had you been prior to going to Club
16 Fantasy?

17 A. To the Dorchester drag way.

18 Q. Who did you go to the Dorchester drag way
19 with?

20 A. With my past roommate, Sierra.

21 Q. Okay. And what time did y'all get to the
22 drag way?

23 A. Like 6, 7 o'clock.

24 Q. And why did you go to the drag way?

25 A. We went out there to recruit guys to the

1 strip club.

2 Q. Is that so that later in the evening you
3 could make more money from the guys when they came?

4 A. Yes, sir.

5 Q. Did you meet up with any guys at the drag
6 race?

7 A. Yes, sir.

8 Q. Do you remember what any of their names
9 are?

10 A. No, sir.

11 Q. Okay. Did you tell them where to meet
12 you?

13 A. Yes, sir.

14 Q. Okay. And did you travel with any of
15 them?

16 A. No, sir.

17 Q. Okay. Who did you travel with to get
18 back to Club Fantasy?

19 A. Sierra.

20 Q. Did you stop anywhere between the time
21 you left Dorchester drag way to the time you got to
22 Club Fantasy?

23 A. Yes, sir.

24 Q. Where did you stop?

25 A. We stopped at a gas station.

1 Q. Okay. And what was the purpose of
2 stopping at the gas station?

3 A. Everybody filling up, I guess, their gas
4 tanks, and getting drinks and snacks or whatever.

5 Q. And how many cars were traveling in this
6 group with you?

7 A. Probably about six or seven. It was a
8 lot of cars.

9 Q. Okay. What did you do when you got to
10 Club Fantasy?

11 A. I walked into the club. The manager told
12 me that I couldn't currently come in there during
13 that time because I had owed a fee. So, I walked
14 back out to my friend's car.

15 Q. And what color car is your friend's car?

16 A. She had a burgundy Corsica during that
17 time.

18 Q. Okay. And it's your testimony -- or
19 rather just so I can be clear, did you have to pay
20 the club money to dance?

21 A. Yes, sir.

22 Q. How much money did you owe the club?

23 A. I think it was like 125 dollars.

24 Q. And did you have that money with you?

25 A. Yes, sir. I had 600 dollars.

1 Q. Was Sierra allowed to dance at the club?

2 A. I think so.

3 Q. Was she somebody who also danced at the
4 club from time to time?

5 A. Yes, sir.

6 Q. Did she go into the club with you when
7 you went in?

8 A. I don't recall. I think she was still
9 outside in the back of the club.

10 Q. When you say the back of the club, do you
11 mean the back parking lot?

12 A. Yes, sir.

13 Q. I'm going to show you what's been
14 previously marked as State's exhibit 1. Could you
15 look back at that picture for a second?

16 [Whereupon, the witness reviews
17 photographs]

18 A. Yes, sir.

19 Q. Is that a picture of the back parking lot
20 back there?

21 A. Yes, sir.

22 Q. And that's Club Fantasy?

23 A. Yes, sir.

24 Q. I'm going to show you what's been
25 previously marked as State's exhibit 24.

1 [Whereupon, the witness reviews
2 photographs]

3 Q. Is that also that back parking lot?

4 A. Yes, sir.

5 Q. And how far back does that go, do you
6 know?

7 A. Well, the trees -- where the lining of
8 the trees are. That's as far as it goes.

9 Q. Okay. Is the only way out of that back
10 parking lot right there through that driveway?

11 A. It's only one way, in and out. Yes, sir.

12 Q. After you got to Club Fantasy you went
13 inside. Did you see anybody when you went outside
14 to go get your money?

15 A. Yes, sir.

16 Q. And who did you see, if you recall?

17 A. There was a lot of guys coming in. And
18 during that time the guy had pull up with the
19 Chrysler and he stopped and he was talking to me.

20 And I was telling him -- he was asking what
21 was going on that night. I said nobody was in the
22 club. You come check me out, come on in the club.
23 And that was it.

24 Q. Were you talking to somebody inside the
25 Chrysler?

1 A. Yes, sir. The driver.

2 Q. You were talking to the driver?

3 A. Yes, sir.

4 Q. Did you ever see the person in the back
5 seat of the Chrysler?

6 A. No, sir.

7 Q. At any time did you see anybody approach
8 the Chrysler? Anybody walk up to it?

9 A. Like three minutes after.

10 Q. Okay. Did you see -- who did you see
11 walk up to the Chrysler?

12 A. To my understanding the guy who had shot
13 him.

14 Q. Okay. And he was?

15 A. I just don't know his name.

16 Q. Okay. The person -- the first person who
17 walked up to the Chrysler, had you ever seen that
18 person before?

19 A. I have seen him at the Dorchester drag
20 way and before we left the gas station.

21 Q. Okay. So the person who approached the
22 Chrysler had he been to the Dorchester drag way at
23 the same time that you and Sierra were there
24 earlier that day?

25 A. Yes, sir.

1 Q. And had he been one of the people at the
2 gas station where you went between the Dorchester
3 drag way and Club Fantasy?

4 A. Yes, sir.

5 Q. Had you talked to him during that time?

6 A. I probably said a few words to him, but
7 I'm kind of not sure because it's been a while ago.

8 Q. Okay. Did you remember anything
9 distinctive about the way he looked or any
10 characteristic of his? Did he strike you in any
11 way? When I say strike you, did he impress you in
12 any way?

13 A. Yes, sir.

14 Q. In what way?

15 A. I thought he was fine.

16 Q. Okay.

17 A. That he looked good and sexy.

18 Q. Okay. I'm going to show you what's been
19 previously marked as State's exhibit 29.

20 [Whereupon, the witness reviews
21 photographs]

22 Q. Is that the person that you thought was
23 sexy?

24 A. Is that him now?

25 Q. No. Is that him -- was that -- did he

1 look approximately like that then?

2 A. No.

3 Q. Okay. What did he look like then?

4 A. He was nice, had a low -- or a cap.

5 Q. Okay. The person who approached the car,
6 do you see him in the courtroom here today,
7 anywhere in the courtroom today?

8 MR. SMILEY: Objection. Come on.

9 THE COURT: Counsel, approach.

10 [Whereupon, an off-the-record bench
11 conference is held]

12 THE COURT: All right. Mr. Voigt, are
13 you withdrawing the question.

14 MR. VOIGT: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Q. [Mr. Voigt] Now, after you were talking
17 to the person you were talking to --

18 -- is that a drill? Is that what they're
19 doing?

20 THE COURT: Mr. Voigt, I'm not sure what
21 they're doing.

22 Q. [Mr. Voigt] After you talked to the
23 person that you talked to, what happened then?

24 A. Well, I was speaking to ---

25 Q. --- speak up, please.

1 A. When I was speaking to the driver, like
2 five minutes later when I turned around and started
3 counting my money, I turned around and the gun was
4 pulled out.

5 And when the gun was pulled out I heard
6 shots. And I ran into -- to the front of Sierra's
7 car.

8 Q. Who pulled the gun out?

9 A. The guy who had the cap on -- the nice
10 looking guy.

11 Q. Did any of the people in the Chrysler
12 pull a gun out?

13 A. I do not know.

14 Q. Did you see anybody shot?

15 A. The driver was shot. Because when I
16 turned back around -- right after I turned around
17 all his blood and stuff was on me.

18 Q. Okay. Did you see anybody shoot anybody
19 else?

20 A. No, sir.

21 Q. Did you see the person who was shot on
22 the ground?

23 A. Yes, sir.

24 Q. Did you get that person's blood on you?

25 A. Yes, sir.

1 Q. Did that upset you?

2 A. I was scared. I didn't know what to do.

3 Q. Did you hear the person, who shot the
4 person whose blood got on you, say anything?

5 MR. SMILEY: Objection.

6 THE COURT: The basis?

7 MR. SMILEY: Hearsay.

8 THE COURT: I'll overrule it as to that
9 question. You may answer, Ms. Jenkins.

10 A. Could you repeat that?

11 Q. [Mr. Voigt] Let me see if I can get that
12 magic formula back. Did you hear the person, who
13 shot the person whose blood ultimately got on you,
14 did you hear the person who shot -- the shooter,
15 say anything before he shot -- before he fired a
16 shot?

17 A. I believe he said he was ---

18 MR. SMILEY: --- objection.

19 THE COURT: Basis?

20 MR. SMILEY: Hearsay and leading --

21 THE COURT: Sustained, as to hearsay.

22 Q. [Mr. Voigt] Did you hear the person who
23 was shot, and whose blood ultimately got over you,
24 say anything in the moments just prior to him being
25 shot?

1 A. That he was --

2 MR. SMILEY: Objection, Your Honor.

3 THE COURT: Basis.

4 MR. SMILEY: It's hearsay. Move to
5 strike.

6 THE COURT: Counsel, approach.

7 [Whereupon, an off-the-record bench
8 conference is held]

9 THE COURT: Sustained, Mr. Smiley.

10 MR. SMILEY: Thank you.

11 Q. [Mr. Voigt] At any time from the time
12 the person approached the car to the time of the
13 shooting, did you hear heated words or an argument
14 of any sort?

15 A. Yes, sir. I guess they had an
16 altercation. They was arguing.

17 Q. Did they argue in your presence? Were
18 you there?

19 A. Yes, sir. I was right by the car.

20 Q. Were you right by the person who got
21 shot?

22 A. Yes, sir.

23 Q. Did he seem agitated to you? Was he --
24 did he look upset?

25 A. No, sir.

1 Q. Okay. Did the person who shot him did he
2 look upset?

3 A. Before he shot him?

4 Q. Before?

5 A. No.

6 Q. Before the person was shot, the person
7 that you were standing right next to, did that
8 person make any threats or threatening gestures to
9 the person who ultimately shot him?

10 A. No, sir.

11 Q. Was the person that you were standing
12 next to, the person who got shot, did he have --
13 did he have a gun, or did he appear to have a gun
14 or any weapon?

15 A. I do not know.

16 Q. Did you see any gun ---

17 A. --- I never seen him pull -- when I was
18 talking to him I didn't see it in his car.

19 Q. And you didn't see it in his hand -- did
20 you see it in his hand ---

21 MR. SMILEY: --- Your Honor, I'm going to
22 object to the leading. It's been a series of
23 leading.

24 THE COURT: Sustained as to leading. And
25 Ms. Jenkins, if you'll speak up. I am

1 evidently right under a vent and I'm having a
2 hard time hearing you, so if you'll speak up
3 again. Thank you.

4 Q. [Mr. Voigt] Did you see the person who
5 was killed have a gun in his hand?

6 A. Yes, sir.

7 Q. The person who was killed?

8 A. No. No, sir.

9 Q. Did you see the person who did the
10 shooting have a gun in his hand?

11 A. Yes, sir.

12 Q. Did you see what kind of gun it was?

13 A. No, sir ---

14 MR. SMILEY: --- objection, Your Honor.

15 It's leading.

16 THE COURT: Overruled.

17 Q. [Mr. Voigt] When you saw the gun, what
18 was the first thing that you did?

19 THE COURT: Mr. Voigt, she did not
20 respond to your last question.

21 MR. VOIGT: I'm sorry. I thought she
22 had.

23 Q. [Mr. Voigt] And your last question was
24 -- the last question was when -- did you -- okay,
25 maybe this was the last question. Did you see what

1 kind of gun they had -- that the person had that
2 you said was the shooter?

3 A. No, sir.

4 Q. When you saw -- when he -- when that
5 person first approached the car did he have the gun
6 out?

7 A. No, sir.

8 Q. Did that person say anything prior to
9 taking the gun out, not what he said, but did he,
10 in fact, say something?

11 A. Yes, sir.

12 Q. When that person first approached the car
13 and said something, was the person that you were
14 talking to that ultimately got killed, was he still
15 inside the car or was he outside the car?

16 A. He was sitting down in the car.

17 Q. Can you tell the jury how that person who
18 was sitting in the car came to get out of the car?
19 Just kind of describe how he got out of the car.

20 A. I believe he probably opened the door.
21 Because by the time he already got out the car, I
22 was already in the front of Sierra's car. I didn't
23 want to get hit either.

24 Q. Okay. Did you go to the front of -- why
25 did you go to the front of Sierra's car?

1 A. That was the closest thing for me to hide
2 under.

3 Q. And why did you want to hide?

4 A. Because I heard gunfire.

5 Q. Did -- how many shots did you hear?

6 A. I just heard the gun go off.

7 Q. What did you do when you first saw the
8 gun? What was the first thing that you did?

9 A. I ran.

10 Q. And where did you run to?

11 A. The front of her car.

12 Q. I'm going to show you what's been
13 previously marked as State's 12.

14 [Whereupon, the witness reviews
15 photographs]

16 Q. Is that red car Sierra's car?

17 A. Yes, sir.

18 Q. Are any of those bags, or whatever may be
19 on that back trunk do any of those belong to you?

20 A. The black bag.

21 Q. The person lying there, is that the
22 person you were talking to in the silver car?

23 A. Yes, sir.

24 Q. Did you ever see that person with a gun?

25 A. No, sir.

1 Q. Did you ever see that person threaten
2 anybody while you were talking to him ---

3 MR. SMILEY: --- objection, Your Honor.

4 THE COURT: Overruled.

5 A. No, sir.

6 MR. VOIGT: I have no further questions
7 at this time, Your Honor.

8 THE COURT: Mr. Smiley?

9 - - -

10 CROSS-EXAMINATION

11 BY MR. SMILEY:

12 Q. All right. So, you were standing at the
13 silver car, right?

14 A. Yes, sir.

15 MR. SMILEY: Beg the court's indulgence.

16 THE COURT: Yes, sir.

17 MR. SMILEY: I'm having a little problem
18 keeping track of things.

19 [Off the record momentarily]

20 Q. [Mr. Smiley] All right. Let me just --
21 I'll ask it to you this way. You are standing at
22 the silver car?

23 A. Yes, sir.

24 Q. Talking to the fellow that you keep
25 calling the driver?

1 A. Yes, sir.

2 Q. All right. And you saw the fellow you
3 had seen at the track walking up, right?

4 A. Yes, sir.

5 Q. Okay. And then as -- at that point you
6 turned your back and started counting your money?

7 A. Yes, sir.

8 Q. So you had your back turned to him at
9 that point?

10 A. Yes, sir.

11 Q. Okay. Next thing you know there's a
12 shot, right?

13 A. Yes, sir ---

14 Q. --- you had your back turned when the
15 shot happened, right?

16 A. Yes, sir. Before I -- before I heard the
17 shots fire I already saw him pull -- he went into
18 his pocket.

19 Q. Okay ---

20 A. --- and when he did like that [indicates]
21 I ran to the front of the car ---

22 Q. --- okay. So you caught it out of the
23 corner of your eye -- that gun coming out, right?

24 A. Yes, sir.

25 Q. Okay. So you actually saw him drawing

1 the gun?

2 A. Yes, sir.

3 Q. All right. And you took off running?

4 A. Yes, sir.

5 Q. Okay. There is a shot fired?

6 A. Yes, sir.

7 Q. And then there's some more shots?

8 A. Yes, sir.

9 Q. Multiple shots. Chaos broke out at that
10 point, right?

11 A. Yes, sir.

12 Q. You stayed there though right, you didn't
13 go -- you didn't leave ---

14 A. --- oh, no. I stayed in front of her
15 car.

16 Q. Yes. You stayed there. You didn't have
17 any reason to leave. And you were possibly a
18 witness right, so you stayed, right?

19 A. Yes, sir.

20 Q. Now the guy you're talking to, the
21 driver?

22 A. Yes, sir.

23 Q. He's not a friend of yours. It's
24 somebody you'd just met up with, right?

25 A. Yes, sir.

1 Q. Okay. Now the fellow with the ball cap,
2 the light skinned fellow, the one that is
3 attractive, you had seen him at the raceway that
4 night?

5 A. Yes, sir.

6 Q. All right. And y'all talked some, right?

7 A. Yes, sir.

8 Q. Okay. And you had basically told him
9 that you and your friend would be at Club Fantasy
10 and to come by, right?

11 A. Yes, sir.

12 Q. Okay. He had another fellow with him?
13 Did you notice another fellow with him when he was
14 out at the track?

15 A. There was like probably four of them.

16 Q. Okay. There are several fellows together
17 there, right?

18 A. Yes, sir.

19 Q. Okay. Now, while you were with them at
20 the track and all and interacted with him, you
21 never saw him with the gun, did you?

22 A. No, sir.

23 Q. And Mr. Voigt just asked you did you ever
24 see the fellow that got shot with a gun and you
25 said, no.

1 But you also testified you don't know.

2 You had your back turned, right? You don't know
3 whether he had a gun or not, do you?

4 A. Yes, sir.

5 Q. Okay. Yes sir, you don't know whether he
6 had a gun, correct?

7 A. Yes.

8 Q. Okay. All right, sometimes I get...
9 Now, when the fellow is walking up to the car,
10 right?

11 A. Yes, sir ---

12 Q. --- the light skinned fellow, the fellow
13 that got shot, he was sitting in the car, right?

14 A. Yes, sir.

15 Q. And then he got out, right? He got out
16 of the car?

17 A. Yes, sir.

18 Q. Okay. And that's when you turned your
19 back, right? I'm just trying to get the events
20 sort of -- about in that order?

21 A. He was still in the car when I turned my
22 back.

23 Q. Okay. And the other fellow was walking
24 up, right?

25 A. Yes, sir.

1 Q. And he got out and you don't know exactly
2 what happened when he got out?

3 A. No, sir.

4 Q. Okay. There's the -- the two of them
5 confronted each other, right ---

6 A. --- yes, sir ---

7 Q. --- you don't -- actually you don't know
8 because you had your back to him ---

9 A. --- I didn't say -- they was -- I don't
10 know.

11 Q. Now you don't know -- you couldn't even
12 really hear what words were exchanged, right?

13 A. No, sir.

14 Q. And then you heard a shot. Well,
15 actually you saw the gun come out and you heard a
16 shot, correct?

17 A. Yes, sir.

18 Q. So, you don't know when you said you
19 didn't see that -- when asked if the guy that got
20 shot tried to pull a gun out, you don't know. You
21 had your back turned?

22 A. Yes, sir.

23 Q. All right.

24 MR. SMILEY: Beg the court's indulgence.

25 THE COURT: Yes, sir.

1 [Whereupon, Mr. Smiley confers with his
2 client]

3 MR. SMILEY: Nothing further.

4 THE COURT: Mr. Voigt?

5 - - - - -

6 REDIRECT EXAMINATION

7 BY MR. VOIGT:

8 Q. Mr. Smiley just asked you, you don't know
9 what was said between them when they were arguing?

10 A. No, sir.

11 Q. Do you recall hearing anything exchange
12 between them, any words said?

13 A. When I saw the gun pulled, I hauled ass.

14 Q. Okay. All right. Thank you.

15 THE COURT: Mr. Smiley?

16 MR. SMILEY: Nothing.

17 THE COURT: May this witness step down
18 and be excused from the courthouse?

19 MR. VOIGT: Yes, Your Honor.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: No objection.

22 THE COURT: Any objection to her
23 remaining in the courtroom?

24 MR. SMILEY: No objection.

25 THE COURT: Ms. Jenkins, you may step

1 down. You're free to remain in the courtroom,
2 but you're also free to leave. Thank you.

3 MS. JENKINS: Thank you.

4 [Whereupon, the witness is excused and
5 exits the witness stand]

6 THE COURT: Ladies and gentlemen of the
7 jury, this is an appropriate time for us to
8 take our mid afternoon break. I anticipate --
9 while we are taking our break I anticipate
10 that we will break as close to 5:30 this
11 evening as possible.

12 So, if you need to make any
13 arrangements for pick-up or child-care, we
14 will break as close to 5:30 this evening as
15 possible. Again, please do not begin
16 deliberating. Do not discuss this case
17 amongst yourselves. Please rise for the jury.

18 [Whereupon, the jury exits the courtroom
19 at 2:44 p.m.]

20 THE COURT: Thank you. Be seated.
21 Anything before we take our afternoon break?

22 MR. SMILEY: No. Thank you, Your Honor.

23 THE COURT: All right. We'll be at
24 recess until 3.

25 MR. VOIGT: Thank you, Your Honor.

1 MR. SMILEY: Thank you, Your Honor.

2 [Whereupon, court is in recess from 2:44
3 p.m. to 2:58 p.m.]

4 THE COURT: Thank you. Be seated.
5 Counsel, in the future if there are scheduling
6 -- please ask to approach the bench and I'll
7 address the scheduling.

8 MR. SMILEY: Yes ma'am. I apologize.

9 THE COURT: And, both counsel, I just
10 want to remind you that there is no dialog
11 with the witnesses. That if you need to ask
12 questions, please -- I do not wish to admonish
13 you, either one of you again, for the
14 commentaries. Anything before we bring in
15 the jury?

16 MR. VOIGT: No, Your Honor.

17 MR. SMILEY: Nothing from the defense.

18 THE COURT: Your next witness, Mr. Voigt?

19 MR. VOIGT: Would be Detective Shawn
20 Patrick.

21 THE COURT: I'm sorry?

22 MR. VOIGT: Detective Shawn Patrick.

23 THE COURT: And -- just for scheduling I
24 plan to go to 5:30, are all your witnesses
25 present, Mr. Voigt?

1 MR. VOIGT: All my witnesses are present.

2 THE COURT: And how many witnesses do you
3 anticipate we can -- we will have -- I mean,
4 after -- that we can get through?

5 MR. VOIGT: Between now and 5:30 ---

6 THE COURT: --- Detective Patrick, if
7 you'll wait just a second?

8 MR. VOIGT: Of course, depending on Mr.
9 Smiley I think we can go through four
10 witnesses.

11 THE COURT: All right. And just for
12 scheduling again do you -- how many witnesses
13 do you anticipate then tomorrow?

14 MR. VOIGT: If I get through four that
15 may be all my witnesses.

16 THE COURT: All right. We will see how
17 far we get today then.

18 MR. VOIGT: Okay.

19 THE COURT: So you anticipate that
20 perhaps the State can rest today?

21 MR. VOIGT: Perhaps.

22 THE COURT: All right then. And I'll
23 allow you to call Detective Patrick. So he
24 can just remain in that seat and then you can
25 call him from there. All right?

1 MR. VOIGT: Okay.

2 THE COURT: Anything before we bring in
3 the jury?

4 MR. SMILEY: Your Honor, I'm missing --
5 when the verdict came back in the other case I
6 think that accidentally I left my stuff out.
7 And some of my file walked out of the room.

8 THE COURT: Do you ---

9 MR. SMILEY: -- I've been chasing it down
10 but I may have to ask Mr. Voigt for a copy of
11 a couple of things. I want to keep moving.
12 I've been searching everywhere but I...

13 THE COURT: My law clerk Mr. Smiley -- do
14 you think that Mr. Grimes picked up some of
15 your folders by mistake?

16 MR. SMILEY: That's the only thing I can
17 figure because they were right on top.

18 MS. HENSLEY: And I've tried to send a
19 message up there, I'm just not sure that ---

20 THE COURT: --- I'll have my law clerk --

21 MR. SMILEY: --- and in the meantime we
22 can keep going because I know them by heart.
23 It's just I need them and I can ask Mr. Voigt.
24 I'm sure he'll be ---

25 MR. VOIGT: --- I'll be happy to

1 accommodate Mr. Smiley.

2 THE COURT: Thank you for being so
3 accommodating Mr. Voigt. I appreciate that.
4 Mr. Smiley, are you prepared to ---

5 MR. SMILEY: --- absolutely, I'm ready to
6 go. Yes ma'am, we're ready.

7 THE COURT: All right. Please bring in
8 the jury? Please rise for the jury.

9 [Whereupon, the jury enters the courtroom
10 at 3:02 p.m.]

11 THE COURT: Thank you. Thank you. Please
12 be seated. Mr. Voigt, call your next witness?

13 MR. VOIGT: At this time the State calls
14 Detective Shawn Patrick.

15 [Whereupon, Mr. Patrick comes forward]

16 [Whereupon, the witness is duly sworn by
17 the Clerk of Court]

18 CLERK OF COURT: If you'll state your
19 full name, and spell your last name for the
20 record?

21 THE WITNESS: Shawn Timothy Patrick,
22 P-A-T-R-I-C-K.

23 MR. VOIGT: May it please the court, Your
24 Honor?

25 - - - - -

1 SHAWN PATRICK,
2 having been first duly sworn,
3 was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. VOIGT:

7 Q. Detective Patrick, how are you currently
8 assigned at the North Charleston Police Department?

9 A. I'm assigned as a detective with the
10 Person's Crimes Unit.

11 Q. And how were you assigned on April 17th,
12 2006?

13 A. The same, as a detective with the
14 Person's Crimes Unit.

15 Q. On that date did you have the occasion to
16 assist in the investigation of a homicide that
17 occurred at Parkway in North
18 Charleston?

19 A. Yes. I did.

20 Q. Is that in Charleston County?

21 A. Yes.

22 Q. What was your role, what was your
23 assigned task in the investigation of this
24 homicide?

25 A. I was directed to take a statement from

1 the witness. To interview a witness that was
2 there.

3 Q. And which witness was that?

4 A. Ms. Jenkins.

5 Q. Did you have occasion to also look for
6 weapons in this matter?

7 A. No ---

8 Q. --- any weapon -- did -- did you ever
9 have occasion to come into contact with Terrell
10 Wright?

11 A. Yes. I did on the 18th, the following
12 day.

13 Q. On the following day?

14 A. Yes, sir.

15 Q. And as a result of your investigation did
16 you assist Detective Elmore in looking for any
17 weapons that may have been used the previous day?

18 A. Yes. I did.

19 Q. Did you find anything?

20 A. No.

21 Q. Please answer any questions Mr. Smiley
22 may have.

23 THE COURT: Mr. Smiley?

24 - - - - -

25 CROSS EXAMINATION

1 BY MR. SMILEY:

2 Q. I'm just a little confused. You went to
3 look for a weapon that Terrell Wright said he had,
4 right?

5 A. Yes. I do not know if he said he had it
6 or -- we went to look for a weapon that was used in
7 this homicide. I'm not sure exactly if he said
8 that he had a weapon or not.

9 Q. Okay. But the information you obtained
10 was from Terrell Wright?

11 A. Yes.

12 Q. As a result of that he said he threw a
13 gun out the window and you went to look for it?

14 A. That's correct.

15 Q. All right. You don't know whose gun it
16 was because you weren't involved with that part?

17 A. Correct.

18 Q. That's all I got. Thanks.

19 THE COURT: Mr. Voigt?

20 MR. VOIGT: No further questions of this
21 witness, Your Honor.

22 THE COURT: May this witness be excused
23 from the courthouse?

24 MR. VOIGT: Yes.

25 THE COURT: And any objection to him.

1 remaining?

2 MR. SMILEY: None.

3 THE COURT: Detective Patrick, you may
4 step down. You may be excused from the
5 courthouse, but you are free to remain.

6 [Whereupon, the witness is excused and
7 exits the witness stand]

8 THE COURT: Mr. Voigt, call your next
9 witness?

10 MR. VOIGT: Your Honor, the State would
11 call Doctor Erin Presnell.

12 THE COURT: Mr. Byrd, is this your
13 witness?

14 MR. BYRD: Yes, Your Honor. It is.

15 MR. SMILEY: Your Honor, I would agree to
16 a stipulation with the State. The State will
17 enter a stipulation that Erin Presnell is an
18 expert in the area of forensic science and
19 pathology. We have no problem with her
20 offering expert testimony in the area of cause
21 of death and the autopsy that was performed

22 ---

23 THE COURT: --- all right. Doctor
24 Presnell, please come forward.

25 [Whereupon, Doctor Presnell comes

1 forward]

2 [Whereupon, Doctor Presnell is duly sworn
3 by the Clerk of Court]

4 CLERK OF COURT: If you could just
5 state your full name and spell your last name
6 for the record?

7 THE WITNESS: My name is Susan Erin
8 Presnell. It's P-R-E-S-N-E-L-L.

9 THE COURT: Mr. Byrd, your witness.

10 MR. BYRD: Thank you, Your Honor. May it
11 please the Court?

12 - - - - -

13 DOCTOR ERIN PRESNELL,
14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BYRD:

18 Q. Doctor Presnell, would you please state
19 your occupation for us?

20 A. I'm a forensic pathologist. I work down
21 the street at the Medical University of South
22 Carolina.

23 Q. Thank you, Doctor Presnell. And what are
24 your duties as a forensic pathologist there?

25 A. Well, most everyone has gotten familiar

1 with what a forensic pathologist does, you know
2 watching TV shows that are on now like CSI and
3 everything.

4 But just to kind of explain and narrow it
5 down, forensic pathology is actually a subspecialty
6 of pathology. Pathology is the study of disease.
7 And most of your pathologists are what they call
8 surgical pathologists.

9 So anything -- you go to your doctor or
10 your family physician and they take tissue, like
11 maybe for a skin biopsy or a surgeon would do a
12 breast biopsy that tissue would go to the
13 pathologist.

14 They look at it then they look at it in a
15 microscope and they come up with a diagnosis to see
16 if there is some kind of disease process, or lack
17 thereof. Forensic pathology you go through that
18 same training, but you do additional subspecialty
19 training where instead of just looking at a single
20 piece of tissue, something removed by the
21 physician, we're looking at a whole entire person
22 and what -- and the process that we're doing is
23 called the autopsy.

24 And, of course, the ultimate purpose is to
25 determine the cause and manner of death as well as

1 interpret traumatic injuries and also diagnose
2 disease as well. And so all this culminates with
3 that examination through the autopsy with the final
4 determination of the person's diseases, any trauma,
5 and the cause of death.

6 Q. Thank you, Doctor Presnell. And in your
7 past as a forensic pathologist did you have the
8 occasion to do an autopsy on the victim in this
9 case, Jamie Reed, on April the 17th, 2006?

10 A. Yes.

11 Q. And as a result of that autopsy did you
12 notice any significant wounds?

13 A. Okay. Well, yes he had one major
14 significant injury. It was a gunshot wound. And
15 I'll kind of describe what we put on the cause of
16 death of the death certificate. We called it a
17 single penetrating near contact gunshot wound to
18 the face. And I'll explain what each of those
19 terminologies mean. First of all it's single,
20 meaning that there is only one gunshot. Second of
21 all it was a penetrating gunshot wound, meaning
22 that the bullet entered the head and did not
23 actually leave the head. And the other thing about
24 it is the near contact.

25 A near contact gunshot wound meaning that

1 the range of fire -- meaning -- or how far away the
2 gun was from the skin was very, very close. What
3 we would consider near contact is usually about an
4 inch.

5 The bullet actually went in through the
6 left portion of the nose over the nasal bridge
7 here, [indicates] into the cranial wall here in the
8 skull, kind of right along the face of the brain
9 through the brain stem, which is the portion of the
10 brain that connects your brain -- or connects a
11 person's brain to the spinal cord and to the rest
12 of the body.

13 And also through what we call the
14 cerebellum, which is the back part of the brain.
15 And the back -- the right side of the head is where
16 we recovered the bullet. So, in summary again we
17 have a single penetrating near contact gunshot
18 wound that went into the head and through the brain
19 stem and into the back of the right side of the
20 head.

21 Q. Now you mentioned this is a near contact
22 wound. What makes you able to determine the
23 distance of the gun at that time?

24 A. When we're interpreting injuries -- and
25 excuse me for my cough, it seems to have all of a

1 sudden come up.

2 But when we're interpreting injuries one
3 of the things that we do with gunshot wounds is to
4 try to determine whether it's a contact gunshot
5 wound meaning the muzzle of the gun is up against
6 the skin.

7 Whether it's a close range gunshot wound
8 meaning that the barrel was away from the skin but
9 still in close vicinity. Or whether it's a
10 distant gunshot wound, meaning that the gunshot is
11 beyond a certain distance. And the way we do that
12 is to look at the appearance of the gunshot wound.

13 When a bullet comes out of the gun at the
14 end of the barrel, that's not the only thing that
15 comes out the end of the barrel. You also have
16 some soot from the ignition process. You also have
17 some gunpowder particles which are used to -- when
18 they ignite to propel the bullet down the length of
19 the barrel. If the barrel is up against the skin,
20 then you get that soot -- sooty deposits right
21 around the edge of the gunshot wound. You see a
22 bunch of dark like sooty substance there.

23 As you start to pull the gun away from
24 the skin the soot will still travel towards the
25 skin, but what you really start to see is the

1 little gunpowder particles that are coming off the
2 end of the barrel will strike the skin and actually
3 cause little scratches. We call that stippling.

4 Soot you can wipe away frequently. The
5 stippling or the little scratches you cannot wipe
6 away. They're actually little injuries that if the
7 person had lived they would heal up. Once the gun
8 gets far enough away neither that soot is going to
9 reach the skin, nor are any of those gunpowder
10 particles are going to reach the skin.

11 And all we would see is just an entry
12 wound. We wouldn't see any soot or stippling
13 around it. And those are just the three general
14 categories. There's contact, which is right up
15 against the skin, the close range, which can go
16 anywhere back to a yard to a yard and a half.
17 And then beyond that is all the distant range
18 gunshot wounds. In this case the decedent, Mr.
19 Reed, had the entry wound on the side of his nose,
20 and it was surrounded by a big rim of soot. And
21 embedded in that soot were some little areas of
22 stippling, or little areas where gunpowder
23 particles had struck.

24 So, in essence actually it's kind of a
25 transition gunshot wound. It's not hard contact,

1 not pressed up tightly against the skin, and it's
2 not pulled far enough back where all you see is the
3 stippling. It's close enough to have done both,
4 and we call that a near contact. Again usually
5 within about an inch or so.

6 THE COURT: All right. Mr. Byrd, now
7 that your witness is on the stand, what is the
8 stipulation that you and Mr. Smiley have
9 entered into regarding the qualifications as
10 an expert of Doctor Presnell?

11 MR. BYRD: The stipulation, Your Honor,
12 was that Doctor Presnell was qualified as an
13 expert in the field of forensic pathology.

14 MR. SMILEY: And, therefore, can offer
15 opinions in that area, Your Honor. And, we
16 certainly stipulate to that.

17 THE COURT: Ladies and gentlemen, as I
18 indicated previously a person normally cannot
19 give opinion testimony. When a person
20 testifies they must testify as to what they
21 saw or heard, or sensed by smell or something
22 of that nature.

23 Doctor Presnell -- the attorneys in
24 this case have stipulated, or agreed that
25 Doctor Presnell is qualified in the area of

1 forensic pathology and thus will be permitted
2 to give her opinion in certain areas as the
3 court has qualified her as an expert in the
4 area of forensic pathology.

5 As I indicated to you previously
6 just because an expert is qualified in that
7 area does not mean that you must accept the
8 opinion. The evidence is here for you to use
9 in any way that you see fit. Mr. Byrd?

10 MR. BYRD: Thank you, Your Honor.

11 Q. [Mr. Byrd] Doctor Presnell, you
12 mentioned several parts of the brain were damaged
13 or destroyed by the bullet in question.

14 What would be the defendant -- I mean the
15 victim's chances of survival given those types of
16 wounds?

17 MR. SMILEY: Objection, Your Honor?

18 THE COURT: Basis?

19 MR. SMILEY: Irrelevant.

20 THE COURT: Counsel, approach.

21 [Whereupon, an off-the-record bench
22 conference is held]

23 THE COURT: Sustained. Rephrase.

24 Q. [Mr. Byrd] In your opinion as a forensic
25 pathologist and expert in the field, how severe

1 would you consider the damage to the brain to be
2 from this gunshot?

3 A. I don't mean to sound flippant or
4 anything but he's in my autopsy room so it's pretty
5 significant. In particular I was pointing out
6 which parts of the brain the bullet went through
7 and one of them was the brain stem.

8 That's probably the most significant --
9 or that is the most significant. The brain stem
10 connects the brain, which tells your, you know
11 keeps your body alive, tells you body what to do
12 and how to breathe.

13 It connects the brain to the rest of your
14 body. So with having a big hole through it, that
15 would eliminate function and your system would shut
16 down immediately.

17 Q. And did you recover the projectile?

18 A. Yes. We did.

19 Q. And what did you do with that projectile
20 once you removed it?

21 A. We transfer that as evidence to the law
22 enforcement that attend the autopsy.

23 Q. Nothing further, Your Honor.

24 THE COURT: Mr. Smiley?

25

- - -

1 CROSS EXAMINATION

2 BY MR. SMILEY:

3 Q. Just a couple. Doctor Presnell, so we
4 know that the gun when the trigger was pulled was
5 about eighteen inches or less. Would that be fair
6 to say?

7 A. Actually to narrow down a particular
8 range of fire for a gun you would need to test fire
9 that weapon with the correct ammunition to see the
10 powder that it would actually make at certain
11 distances.

12 Eighteen inches is probably a little bit
13 far away for this estimate. It was probably -- we
14 classified it as a near contact, meaning that it
15 was very close to the face. Probably much less
16 than eighteen inches, probably more like an inch or
17 two.

18 Q. Sure. Okay. But while that was the
19 cause of death you in your examination deem it a
20 homicide, correct?

21 A. Yes.

22 Q. However, you make no opinion about
23 whether it was a justified homicide or not,
24 correct?

25 A. Right. We -- homicide just means for us

1 and the medical examiner in the forensic pathology
2 world -- means that it was the death of a person at
3 the hands of another.

4 Q. But the circumstances leading up to that
5 death whether it was self-defense or not, you make
6 no comment on?

7 A. Correct.

8 Q. That's all I got. Thanks.

9 THE COURT: Mr. Byrd?

10 MR. BYRD: Nothing further, Your Honor.

11 THE COURT: Any objection to this witness
12 stepping down and being excused from the
13 courthouse?

14 MR. SMILEY: No, ma'am.

15 THE COURT: Doctor Presnell, you may be
16 excused from the courthouse or you are free to
17 remain.

18 [Whereupon, the witness is excused and
19 exits the witness stand]

20 THE COURT: Mr. Voigt, call your next
21 witness?

22 MR. VOIGT: The State calls Ira Parnell.

23 [Whereupon, Mr. Parnell comes forward]

24 [Whereupon, the witness is duly sworn by
25 the Clerk of Court]

1 CLERK OF COURT: If you'll please state
2 your full name, and spell your last name?

3 THE WITNESS: My name is Ira Byrd
4 Parnell, Junior, P-A-R-N-E-L-L.

5 THE COURT: Mr. Voigt?

6 MR. VOIGT: Thank you, Your Honor. May
7 it please the Court?

8 - - - - -

9 IRA PARNELL,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. VOIGT:

14 Q. Mr. Parnell, where are you employed?

15 A. I'm employed with the South Carolina Law
16 Enforcement Division, also known as SLED.

17 Q. And how long have you been employed with
18 SLED?

19 A. Almost 37 years.

20 Q. And what are your principal duties and
21 responsibilities at SLED?

22 A. I'm assigned to the firearm and tool mark
23 identification laboratory at SLED headquarters in
24 Columbia. And my duties consist of examining
25 firearms, firing components, tools, and objects

1 that tools may have marked during the commission of
2 a crime.

3 Q. And how long have you worked in that
4 field at SLED? Has that always been your
5 assignment at SLED?

6 A. Thirty-six years, plus.

7 Q. And what rather -- what education do you
8 have in the identification of ballistics and tools
9 that may have been used in crimes?

10 A. I got my undergraduate degree from the
11 University of South Carolina in the area of
12 Criminal Justice, which was actually prior to the
13 Criminal Justice program they have now.

14 The training that I received to be a
15 firearm and tool mark examiner was actually on the
16 job type of thing, an apprenticeship. There was no
17 college degree program or no school that I could
18 have attended at that time to receive the training
19 that I needed to have.

20 So, I worked at the side of three tool
21 and firearm examiners for approximately two and a
22 half years. Then I started doing my own
23 examinations under their close supervision and
24 gradually began to testify on my own.

25 Q. And what year, if you can recall, were

1 you first qualified as an expert in a court of
2 South Carolina?

3 A. I can tell you precisely when it was. It
4 was 1975, and it was in Charleston.

5 Q. Approximately how many times have you
6 been qualified as a firearm and tool expert in the
7 courts of South Carolina?

8 A. South Carolina, probably 585 times.

9 Q. Have you ever been qualified in any other
10 states as an expert?

11 A. State of North Carolina as well as the
12 Federal District Court in Virginia.

13 Q. Have you ever failed to be qualified as
14 an expert?

15 A. No, sir.

16 MR. VOIGT: At this time, Your Honor, I
17 would offer the stipulation that Mr. Parnell
18 is an expert in the field of firearm and tool
19 mark examination analysis.

20 MR. SMILEY: I don't have any objection
21 to him being so qualified, Your Honor.

22 THE COURT: Is it a stipulation, Mr.
23 Voigt?

24 MR. VOIGT: Oh, I would offer it -- I'm
25 sorry, I laid the foundation, the old fashion

1 way.

2 THE COURT: And no objection?

3 MR. SMILEY: No objection. I believe
4 he's well qualified.

5 THE COURT: All right. Ladies and
6 gentlemen of the jury, Ira Parnell will be
7 qualified as an expert in the area of firearm
8 and tool mark examination. He will be
9 permitted to give his opinion in that area.

10 I have qualified him as an expert.
11 The opinion testimony does not mean that you
12 must accept the opinion. It is evidence for
13 you to use in any way that you see fit.

14 Mr. Voigt?

15 Q. [Mr. Voigt] Mr. Parnell, did you
16 receive -- rather are you the author of a report
17 dated July 27, 2006 regarding projectiles taken
18 from the autopsy of Mr. Jamie Reed?

19 A. Yes, sir. I am.

20 Q. And were you able to observe and examine
21 the projectiles that were taken from Mr. Reed?

22 A. I was.

23 Q. Were you also able to examine casings and
24 cartridges that were also included in the material
25 sent to you by the North Charleston Police

1 Department?

2 A. Yes, sir. I was.

3 Q. And the cartridges and casings that were
4 sent to you by the North Charleston Police
5 Department, did you determine what caliber weapon
6 that those belonged to? That those may be
7 associated with?

8 A. Yes, sir. They were marked as being a
9 .40 S & W caliber, which is about .40 inches in
10 diameter.

11 Q. Would that have been an automatic or a
12 semi-automatic weapon that would use that
13 ammunition?

14 A. Generally a semi-automatic. Yes, sir.

15 Q. Now the fragments that were taken from
16 the autopsy that were removed from Jamie Reed, are
17 those consistent with the .40 caliber cartridges
18 that you found -- or that you examined?

19 A. No, sir. The face of the projectile
20 removed from the victim was more consistent with a
21 .357-inch projectile, which is most commonly known
22 as a .38 or a .357.

23 Q. Those items that were sent to you by
24 North Charleston, both from the autopsy and from
25 elsewhere, did they appear to have been fired from

1 different weapons?

2 A. Yes, sir.

3 Q. And is a .38 or a .357 magnum, is that a
4 revolver type weapon or is that a semi-automatic or
5 automatic type weapon?

6 A. When referring to a .38 special or a .357
7 magnum, it's most commonly associated with a
8 revolver.

9 Q. And does a revolver expel or discharge
10 its cartridges upon firing?

11 A. No, sir.

12 MR. VOIGT: I would tender the witness,
13 Your Honor.

14 THE COURT: Thank you. Mr. Smiley?

15 MR. SMILEY: Beg the Court's indulgence.

16 [Off the record momentarily]

17 - - - - -

18 CROSS EXAMINATION

19 BY MR. SMILEY:

20 Q. Just a couple of questions. So you take
21 the piece of lead, the projectile, right?

22 A. Yes, sir.

23 Q. And look at it under a microscope or do
24 some tests on it to determine what kind of bullet
25 it was. Make measurements on it, right?

1 A. That's correct. Yes, sir.

2 Q. Okay. And in this case it is your best
3 -- in your expert opinion it's a .357 by doing
4 those tests on it, right?

5 A. Yes, sir. By measurement it's -- and
6 actual physical appearance is most commonly
7 associated with those. Yes.

8 Q. Okay. But, how that projectile ended up
9 wherever it ended up, that's not your area. You're
10 just there to identify what the projectile is,
11 correct, in this case?

12 A. Circumstances I don't know about. No,
13 sir. But it was fired out of a firearm; that I can
14 tell you.

15 Q. Yes, sir. Thank you. Nothing further.

16 THE COURT: Mr. Voigt?

17 MR. VOIGT: No further questions of this
18 witness.

19 THE COURT: Any objection?

20 MR. SMILEY: None.

21 THE COURT: Any objection to him being
22 excused from the courthouse?

23 MR. SMILEY: No objection.

24 THE COURT: Any objection to him
25 remaining?

1 MR. SMILEY: No objection.

2 THE COURT: Agent Parnell, you may step
3 down. You are free to remain in the
4 courtroom, but you are also free to leave
5 the courthouse. Thank you.

6 THE WITNESS: Thank you, Your Honor.

7 [Whereupon, the witness is excused and
8 exits the witness stand]

9 THE COURT: Call your next witness?

10 MR. VOIGT: The State calls Frederick
11 McCoy.

12 CLERK OF COURT: This way, Mr. McCoy.

13 [Whereupon, Mr. McCoy comes forward]

14 [Whereupon, the witness is duly sworn by
15 the Clerk of Court]

16 CLERK OF COURT: Speak into this
17 microphone and say your full name and then
18 spell your last name?

19 THE WITNESS: Frederick McCoy, M-c-C-o-y.

20 THE COURT: Mr. Voigt?

21 MR. VOIGT: Thank you, Your Honor. May
22 it please the Court?

23 - - -

24 - - -

25 - - -

1 FREDERICK McCOY,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VOIGT:

6 Q. Mr. McCoy, just at the beginning if you
7 could try to move up to that microphone and speak
8 as loudly as you could so that everybody here in
9 the jury can hear you.

10 Mr. McCoy, at the outset, are you
11 currently incarcerated?

12 A. Yeah.

13 Q. Now, if you could kind of speak up for
14 us?

15 A. Yeah.

16 Q. Is that in Berkeley County? Is that in
17 the facility there?

18 A. Yeah. Berkeley County.

19 Q. And you're awaiting -- are you awaiting
20 disposition of your charges? In other words, you
21 haven't pled guilty or been found guilty or
22 anything like that yet, have you?

23 A. No.

24 Q. You and I -- have you and I talked
25 before?

1 A. Not -- I can't recall.

2 Q. Okay. Have I ever promised you anything
3 in exchange for your testimony here today? Have I
4 promised you anything on the charges you're
5 currently facing to get you to come here and
6 testify?

7 A. No.

8 Q. Do we have any sort of agreement, any
9 sort of deals, anything like that?

10 A. No.

11 THE COURT: Mr. McCoy, my court reporter
12 needs to take down everything that you say.
13 So it's very important to answer in either yes
14 or no out loud. Okay, Mr. McCoy?

15 THE WITNESS: Okay.

16 THE COURT: I'm going to need you to
17 speak up.

18 THE WITNESS: Yes. All right.

19 THE COURT: Very good. Thank you.

20 Q. [Mr. Voigt] Mr. McCoy, did you know
21 Jamie Reed?

22 A. Yes.

23 Q. Are you related to Jamie Reed?

24 A. Yes.

25 Q. How were you related to him?

1 A. We're second cousins.

2 Q. Do you know Nathaniel McGee?

3 A. Yes.

4 Q. Do you see him here in the courtroom

5 today?

6 A. Yeah.

7 Q. Can you point him out and describe what

8 he's wearing to everybody?

9 A. He's sitting over there [indicates] with,

10 I guess, a grey suit and black shoes.

11 Q. And how long have you known Nathaniel

12 McGee?

13 A. For some years.

14 Q. How old are you, Mr. McCoy?

15 A. 28.

16 Q. Were you with Jamie Reed the night he

17 died?

18 A. Yes.

19 Q. Was anybody else with you that night?

20 A. Yes.

21 Q. Who was that?

22 A. Antonio Bryant.

23 Q. Whose car did y'all go out in?

24 A. It's his mother's car. But it's his car.

25 Q. Okay. When you say his car, his mother,

1 who is the he you are talking about?

2 A. Jamie Reed.

3 Q. Okay. Where was the first place that you
4 went with Jamie that night?

5 A. We went to the track, but prior before we
6 went to the club we went to the Waffle House.

7 Q. Okay. On the night that Jamie was
8 killed, did y'all go to Club Fantasy?

9 A. Yes. Yes.

10 Q. Who was driving Jamie's car?

11 A. Antonio Bryant.

12 Q. And where were you located?

13 A. In the passenger seat.

14 Q. Where was Jamie located?

15 A. Behind the driver's seat.

16 Q. What happened when you got to Club
17 Fantasy?

18 A. Well, we pulled up in front of the club
19 and we stopped right in front of the club and we
20 was talking to some females.

21 Q. Okay. Did you have your window up or
22 down?

23 A. The window was cracked.

24 Q. At any time did you see Nathaniel McGee?

25 A. Yes.

1 Q. Was anybody with Nathaniel McGee?

2 A. Yes.

3 Q. Do you know who that person is?

4 A. Yes.

5 Q. What's his name?

6 A. Terrell Wright, Darryl Reed. And I can't
7 remember the other person's name.

8 Q. When you and Jamie and Antonio went to
9 the racetrack did you see Nathaniel McGee there at
10 all?

11 A. No. We never went into the track. We
12 was on the outside, the outside gates.

13 Q. When was the first time that you saw
14 Nathaniel McGee that night?

15 A. When we came inside Fantasy's parking
16 lot.

17 Q. Describe how you first came into contact
18 with Nathaniel. What happened?

19 A. He walked up to the -- he walked up to
20 the passenger door and he looked, and then he
21 walked up to my door and he tried -- he looked in
22 through the crack of the door. And my little
23 cousin told him to get away from the car.

24 Q. That's Jamie who told him that?

25 A. Yeah. He told him to get away from the

1 car.

2 Q. What did Nathaniel do next?

3 A. He walked around to the back of the car.

4 Q. Where had he come from, do you know?

5 What part of the...

6 A. He came from the front of the club --
7 well, right on the side of the club where the two
8 vehicles were parked.

9 Q. Okay. And what happened when Nathaniel
10 went around to the back of the car?

11 A. My little cousin jumped outside of the
12 car. And he started -- they started exchanging
13 words. Well, I heard him exchange words with
14 Nathaniel.

15 Q. Okay. Did you hear Nathaniel say
16 anything?

17 A. Well, I'm about to -- I think he said,
18 I'm about to when he told him who do you think --
19 my little cousin told him, you think I'm supposed
20 to be scared because you got a gun. He said, you
21 better use that gun. And then all I heard was, I'm
22 about to.

23 Q. Did Jamie get out of the car?

24 A. Yeah.

25 Q. Did you get out of the car?

1 A. Yeah.

2 Q. Did Antonio get out of the car?

3 A. No.

4 Q. After you heard Nathaniel say, I'm about
5 to, what is the next thing that you observed? What
6 was the next thing that happened?

7 A. Someone -- Terrell Wright came from the
8 side of his car and then he pointed his gun at me.

9 Q. And what did you do?

10 A. He told me to get down but I just stand
11 there. I didn't get down. I didn't move.

12 Q. Were you frightened?

13 A. Yeah. I mean, yeah with a gun pointed at
14 you.

15 Q. What happened next?

16 A. The gun fired, they started shooting.

17 Q. Do you know which one of them fired the
18 gun first? Do you recall?

19 A. Not really. I would think Terrell fired
20 first.

21 Q. Did you have a gun?

22 A. No.

23 Q. Did you fire a gun at anybody?

24 A. No.

25 Q. Did Antonio have a gun?

1 A. No.

2 Q. Did Antonio ---

3 MR. SMILEY: --- objection, Your Honor.

4 These are all leading questions.

5 THE COURT: Sustained.

6 Q. [Mr. Voigt] On April 17th, 2006 were you
7 aware of any firearms in Jamie's -- or Jamie's
8 mother's car when you went to Club Fantasy?

9 A. No. We were not traveling with any
10 firearms.

11 Q. Did you personally brandish or show or
12 take out a gun on that day?

13 A. No.

14 Q. Were you aware, and only if you know, did
15 Jamie carry a gun with him to Club Fantasy on April
16 the 19th, 2006?

17 A. No.

18 Q. If you know, did Antonio Bryant take a
19 gun with him to Club Fantasy on April 17th, 2006?

20 A. No.

21 Q. How long have you known Antonio?

22 A. For a long time, for some years. We went
23 to school together, graduated together.

24 Q. And how long did you say you had known
25 Nathaniel McGee, if you can recall?

1 A. For some years, but not as long as
2 Antonio.

3 Q. Do you know if Antonio and Nathaniel are
4 related in any way?

5 A. Yeah. They is related.

6 Q. Do you know what kind of relation they
7 have?

8 A. No.

9 Q. They're just kin is some way?

10 A. Yeah.

11 Q. Okay. Did you hear on April 17th, 2006 --
12 did you hear your cousin threaten Nathaniel McGee
13 in any way with violence?

14 MR. SMILEY: Again, objection?

15 THE COURT: Overruled.

16 Q. [Mr. Voigt] I'm sorry, but your answer
17 was?

18 A. No.

19 Q. Did -- on April 17th, 2006 at Club Fantasy
20 did you see your cousin Jamie Reed with any sort of
21 weapon?

22 A. No.

23 Q. I'm going to show you what's been marked
24 as State's exhibit 1. Could you look there behind
25 you?

1 [Whereupon, witness reviews photograph]

2 Q. [Mr. Voigt] Can you stand up and point
3 and show the jury where you first saw Nathaniel
4 McGee, if it's depicted in that picture?

5 [Whereupon, the witness complies]

6 A. He came from the side of the club from
7 this way [indicates] and --

8 Q. Can you speak up? I'm sorry, I've kind
9 of set you up for failure there. You can kind of
10 turn when you do that so that the jury can hear
11 you. I've got you talking to the wall, I'm sorry.

12 A. He came from the side of the club
13 [indicates] where their vehicle was parked at and
14 he walked up to the passenger door first then he
15 went around to the back.

16 Q. And were you located there where the
17 passenger door is?

18 A. Right there [indicates].

19 Q. You can go ahead and have a seat.

20 [Whereupon, the witness complies]

21 Q. Did you see your cousin get shot? Did
22 you see Jamie get shot?

23 A. No. No.

24 Q. After the gunshots started, what did you
25 do next?

1 A. I got down. I got down on the ground.

2 Q. What did you do after that?

3 A. I ran. I ran.

4 Q. And which way did you run?

5 A. I ran behind the vehicle.

6 Q. Where did you run to?

7 A. I ran to the end of -- I ran to the end
8 of the club parking lot and I seen Antonio running
9 too, you know. And that's when I asked, where's
10 Jamie? And he told me Jamie got hit. So that's
11 why I turned around.

12 Q. Did you stay there at the club until the
13 police arrived?

14 A. No.

15 Q. Did there come a time when you came back
16 and spoke with a police officer?

17 A. At the club? No.

18 Q. Did you go and -- did there come a time
19 when you ultimately gave a statement to Detective
20 Elmore?

21 A. Yeah.

22 Q. In your original version of the statement
23 that you gave to Detective Elmore did you tell
24 Detective Elmore that Antonio was there at all?

25 A. Not in the original statement. But then

1 when I seen that he already know that he was
2 present, that's when I told him the whole thing.

3 Q. And why didn't you tell him about
4 Antonio?

5 A. Because I figured that he didn't want to
6 be involved in the situation at the time.

7 MR. VOIGT: I tender the witness, Your
8 Honor.

9 CROSS EXAMINATION

10 - - - - -

11 BY MR. SMILEY:

12 Q. So Mr. McCoy, you admit you lied to
13 Detective Elmore and only told the truth when he
14 pointed out he already knew Antonio was there,
15 right?

16 A. Yeah.

17 Q. Okay. And you say you didn't have a gun
18 that night but you've carried a gun before, haven't
19 you?

20 A. Yeah.

21 Q. Okay. You've been convicted of it,
22 haven't you?

23 A. Yeah.

24 Q. Now that night you said Jamie jumped out
25 of the car, right?

1 A. Yeah.

2 Q. And he and Nathaniel were on the driver's
3 side of the car, right?

4 A. Yeah.

5 Q. Okay. And you were on the other side of
6 the car?

7 A. Yeah.

8 Q. And, I think, if I understand correctly,
9 your testimony is while that is going on at the
10 back of the car, on the other side Terrell comes up
11 with the gun, right?

12 A. He walked on the side. He didn't come
13 up.

14 Q. He didn't get up close, but he had a gun
15 out?

16 A. Uh huh.

17 THE COURT: Sir, I need you ---

18 A. Yes. Yes ---

19 THE COURT: --- thank you.

20 Q. [Mr. Smiley] Now the girls, the
21 strippers that y'all were talking to, they were
22 still hanging around right there, right? When all
23 this is going on, right?

24 A. I don't ---

25 Q. --- the girl out of the red car. The two

1 girls from the red car ---

2 A. --- I didn't -- I wasn't paying no
3 attention to them after.

4 Q. Okay. So, your attention was drawn over
5 to Terrell, right?

6 A. Yeah, when I got out the vehicle.

7 Q. Okay. And Jamie and Terrell were at the
8 car in between them, right, from where you were?

9 A. Say that one more time?

10 Q. Okay. I'm going to back up a little bit
11 so we'll get it straight. You're right. I said the
12 wrong thing. Terrell -- Jamie and Nate were on the
13 other side of the car, right?

14 A. Yes.

15 Q. Okay. So between you and Jamie and Nate
16 was the car? I'm just making sure we're clear,
17 right?

18 A. Yeah.

19 Q. Okay. And you testified you didn't see
20 Jamie get shot, right?

21 A. No.

22 Q. But you weren't looking in that direction
23 when it happened, right?

24 A. No. Not with that gun pointed to us --
25 both of us.

1 Q. You were -- your attention was directed
2 otherwise so you didn't see what was happening
3 there. You didn't see him get shot, right?

4 A. No.

5 Q. Okay. So shots go off, right? You start
6 running, right, got down out of the line of all
7 this going on?

8 A. Uh huh. Yes. Yes.

9 Q. Thank you. I'm sorry. Antonio, he jumped
10 out of the car and ran in the same direction you
11 did?

12 A. Yeah.

13 Q. Okay. You came back and that's when you
14 noticed Jamie had been shot, right?

15 A. Yeah.

16 Q. Okay. So, there's lots of shots going on
17 out there, right?

18 A. Yeah. It was a couple of shots.

19 Q. Okay. And Antonio -- it's your testimony
20 he didn't fire a weapon?

21 A. No.

22 Q. You didn't see him fire one, or you know
23 he didn't fire one?

24 A. I know he didn't fire one.

25 Q. Okay. Now Antonio and Jamie, they're

1 friends too, right?

2 A. Yeah.

3 Q. Okay. And you pretty good friends with
4 Jamie also, right?

5 A. Yeah.

6 Q. Okay. And after the shooting you went
7 inside and made a phone call, right?

8 A. [indicates affirmatively]

9 Q. And you called one of Jamie's brothers?

10 A. Yeah.

11 Q. To come get you, right?

12 A. Yeah.

13 Q. Okay. And so you left before the police
14 got there, right?

15 A. Yeah.

16 Q. Okay. And Antonio left too, right?

17 A. Yeah.

18 Q. Did he leave with you?

19 A. No.

20 Q. He got out of there -- do you know how he
21 left?

22 A. No.

23 Q. Okay. Now, you talked to the police the
24 next afternoon, right?

25 A. Yes.

1 Q. Okay. So when you left, Jamie is still
2 back there at the car, right?

3 A. Yes.

4 Q. Okay. And it was y'all's plan to go in
5 the club that night, right?

6 A. Yes, to go to the club.

7 Q. Okay. Now, you knew that Jamie and Nate
8 had a prior beef with each other, right?

9 A. No.

10 Q. Do you remember giving a statement to
11 Detective Elmore? Do you remember giving that
12 statement the next afternoon; a written statement?

13 A. Yes.

14 Q. Okay. Didn't he ask you why the shooting
15 happened?

16 A. Yes. He did.

17 MR. SMILEY: Oh, excuse me. May I
18 approach the witness?

19 THE COURT: You may.

20 MR. SMILEY: I apologize.

21 Q. [Mr. Smiley] And didn't you tell him --
22 and I'm going to point to page three at the bottom.

23 [Whereupon, witness reviews document]

24 Q. Didn't you tell him when he asked you why
25 did the shooting happen and you said, because of

1 the prior beef between Jamie and Nate? Didn't you
2 say that?

3 A. Yes.

4 Q. So what you said today is a mistake,
5 right? Because when you told me that they didn't
6 have a prior beef you told the Detective they did,
7 right?

8 So, which way is it? Did they have a
9 prior beef or are you telling us you lied to
10 Detective Elmore here?

11 A. No. I did not know that they had a prior
12 beef at the time when that event happened. But,
13 after the event happened when I starting asking
14 questions that's when I found out that they had a
15 beef.

16 Q. Okay. So if I asked you did you know
17 that they had a prior beef, right, you would say
18 yes, right?

19 A. Yes.

20 Q. Okay. Did you have any knowledge about
21 what the beef was about?

22 MR. VOIGT: May I object -- may I ask to
23 approach?

24 THE COURT: You may approach.

25 [Whereupon, an off-the-record bench

1 conference is held]

2 THE COURT: Mr. Voigt, I sustain your
3 objection as to the form of the question. Mr.
4 Smiley, please rephrase?

5 Q. [Mr. Smiley] Mr. McCoy, do you have any
6 personal knowledge about what that beef was about?

7 A. It was some house -- house event that
8 went on.

9 Q. About?

10 A. His house getting breaking into ---

11 Q. --- when you said his you're talking
12 about Jamie's?

13 A. Yes.

14 Q. Okay. And he had a beef with Nate over
15 that, right? About the -- about Jamie's house
16 getting broken into?

17 A. They had some words over it. I don't
18 know.

19 Q. Okay. I think it's your testimony that
20 when Jamie [sic] came walking by the car he told
21 him to get away from the car, right?

22 A. Yeah.

23 Q. And then he jumped out and confronted
24 Nate, right?

25 A. Yeah.

1 Q. Okay. From where Nate was walking from,
2 right, walking up towards the car, you would go
3 past the silver car to get to the entrance of the
4 club, right?

5 A. Yeah.

6 Q. Yeah, you got to go past the car to get
7 to the club?

8 A. Uh huh.

9 Q. Okay. And when he was walking up to the
10 car you did not see a gun, did you?

11 A. No.

12 Q. Okay. Now, is it your -- it's your
13 testimony that you're coming in here to testify
14 because you want to, right?

15 A. Yeah.

16 Q. That even though you're sitting in the
17 Berkeley County jail on charges being prosecuted by
18 the same prosecutor's office, the Ninth Circuit
19 Charleston and Berkeley County, you aren't looking
20 for any kind of deals on your drug charges, are
21 you?

22 A. [Indicates negatively]

23 Q. Now you said that Nate and Antonio were
24 some kind of relatives, right?

25 A. Yeah.

1 Q. Speak up ---

2 A. --- yes. Yes.

3 Q. But you really don't know what they were,
4 do you?

5 A. No.

6 Q. And you wouldn't consider Antonio and
7 Nate good friends, would you?

8 A. Yeah. They cousins.

9 Q. They're cousins, but they're distant,
10 right?

11 A. Yeah, they distant.

12 MR. SMILEY: Beg the court's indulgence.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. Smiley confers with his
15 client]

16 Q. [Mr. Smiley] Now Fred, you don't -- your
17 testimony isn't that Jamie [sic] touched the car in
18 any way or opened the door or anything?

19 Jamie got out, not -- excuse me, I keep
20 getting the names mixed up. Nate, he didn't grab
21 the door handle or anything, Jamie got out of the
22 car, right?

23 A. Yeah.

24 Q. Okay. And after Jamie was shot you went
25 back to the car area, saw what was going on, and

1 then got out of there, right?

2 A. Yeah.

3 Q. Yeah. You didn't want to hang around
4 there. You needed to get out of there, right?

5 A. Yeah.

6 Q. Yeah. Now this happened pretty quickly,
7 didn't it? I mean this wasn't five minutes long.
8 He came up to the car, Jamie got out, next thing
9 you know there was a shot, right? It's not like
10 everybody is standing around, is it?

11 A. No. It wasn't -- yeah, it went down
12 pretty fast.

13 Q. Yeah. It was quick. It wasn't like it
14 was drawn out over a long period of time, right?

15 A. No.

16 Q. And it was pretty obvious when Jamie got
17 out of the car, he wasn't really happy with Nate,
18 right?

19 A. No.

20 Q. Okay. Nothing further.

21 THE COURT: Mr. Voigt?

22 REDIRECT EXAMINATION

23 - - - - -

24 BY MR. VOIGT:

25 Q. How tall is Jamie?

1 A. He was about 5'10, 5'11.

2 Q. You know how ---

3 MR. SMILEY: --- objection, Your Honor.

4 Beyond the scope of cross.

5 THE COURT: Counsel, approach.

6 [Whereupon, an off-the-record bench
7 conference is held]

8 THE COURT: Sustained.

9 Q. [Mr. Voigt] Let me see if I can remember
10 this correctly. Nathaniel McGee approached Jamie's
11 car. Is that what you testified to?

12 A. Yes.

13 Q. Did Jamie ever approach Nathaniel or
14 whatever car he may have been driving in while you
15 were standing out there or sitting out there?

16 A. No.

17 Q. Thank you. I have nothing further.

18 THE COURT: Mr. Smiley?

19 MR. SMILEY: Nothing further. Thank you.

20 THE COURT: Mr. McCoy, you may step down.

21 [Whereupon, the witness is excused and
22 exits the witness stand]

23 THE COURT: Mr. Voigt, call your next
24 witness.

25 MR. VOIGT: The State has no further

1 witnesses, Your Honor. At this time, the
2 State would rest.

3 THE COURT: Ladies and gentlemen of the
4 jury, that signifies to the Court that is a
5 matter of law that I must take up outside of
6 your presence.

7 Do not begin discussing this case.
8 Do not begin your deliberations. I will
9 receive you back into the courtroom
10 momentarily. Please stand for the jury.

11 [Whereupon, the jury exits the courtroom
12 at 4:01 p.m.]

13 THE COURT: Counsel, please be seated. I
14 know there are some matters -- that there is
15 an urgent matter that I must take up outside
16 unrelated to this case.

17 So I will be back in just a moment
18 and I will -- we'll go ahead and take our
19 mid afternoon break. I'll be back in
20 probably about ten minutes.

21 MR. SMILEY: Thank you, Your Honor.

22 MR. VOIGT: Thank you, Your Honor.

23 [Whereupon, a recess is taken from 4:01
24 p.m. to 4:12 p.m.]

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MOTION FOR A DIRECTED VERDICT

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THE COURT: Thank you. Be seated. All right. Are we -- you need your client, Mr. Smiley?

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MR. SMILEY: Yes. Your Honor, at this time I would make a motion for a direct -- make a motion for a directed verdict on the charge of murder.

10

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In viewing the evidence in a light most favorable to the State, and including the evidence that has been presented, the State has failed to show through any competent, or any evidence that Mr. McGee fired a weapon that evening.

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All we have is a confrontation and no one to attest to the fact that a weapon was -- that Mr. McGee discharged one. There was no weapon recovered. There were casings found at the scene that do not match the fatal injuries to Mr. Reed. Therefore, I make a motion to -- a directed verdict motion.

23

24

25

THE COURT: Mr. Voigt, I'll be happy to hear from you. And if you could begin by articulating all of the elements of murder,

1 please?

2 MR. VOIGT: I have to prove that with
3 malice aforethought, which can be proven
4 through circumstantial evidence, that Mr.
5 McGee caused the injury that proved to be
6 fatal to Jamie Reed. Malice aforethought is a
7 mens rea element that can be shown a number of
8 different ways.

9 And it's always frankly -- frankly
10 always done through circumstantial evidence.
11 In this case we have testimony of two people
12 in the parking lot, both of which saw
13 Nathaniel McGee brandish the weapon. Both of
14 which deny that Jamie Reed had a gun, both of
15 which say that Jamie Reed and Nathaniel McGee
16 were in close proximity to each other behind
17 the car.

18 We have -- because both of them
19 truthfully said that when the firing started
20 that they ducked and hid, neither one of them
21 truthfully say that they saw Nathaniel McGee
22 fire the weapon that he was brandishing.

23 We had the testimony of Doctor
24 Presnell. Doctor Presnell said that it was a
25 close contact wound and that based on the soot

1 that was present on Jamie Reed's forehead that
2 the fatal gunshot had to have occurred
3 probably within an inch or two of Mr. Reed's
4 forehead. The only person in that parking
5 lot, according to the testimony of Tiffany
6 Jenkins and the testimony of Frederick McCoy,
7 was Nathaniel McGee.

8 And Nathaniel McGee had a weapon.
9 And that was testified to by both of them.
10 The other person in the rear parking lot with
11 a weapon, where the .40 caliber casings were
12 found, was Terrell Wright.

13 Ira Parnell testified that the
14 bullet fragments that were taken at the
15 autopsy, that were removed from Mr. Reed, were
16 not consistent with Mr. Wright's weapon; the
17 weapon that Mr. Wright was believed to have
18 fired.

19 So based on the forensic evidence
20 the State has put forward, it does not appear
21 that Terrell Wright got a lucky shot and
22 killed Jamie Reed. The circumstantial
23 evidence is such that it leads to a conclusion
24 that the person with the gun who directly
25 confronted, and was in close proximity to

1 Jamie Reed, that person being Nathaniel McGee,
2 fired the fatal shot that took Jamie Reed's
3 life. I believe that that is sufficient
4 evidence. There's also sufficient evidence
5 of mens rea, the circumstances surrounding how
6 he approached the vehicle.

7 And what Frederick McCoy said, which
8 neither one of us highlighted because it kind
9 of was just something that Mr. McCoy said and
10 we probably each had different reasons for not
11 treading over the same territory on Mr. McCoy,
12 but he indicated that when Jamie Reed got out
13 of the car he said something to the effect
14 that, am I supposed to be afraid of you
15 because you have a gun. You better use it.

16 That Mr. McGee said you know I am,
17 and then the shot was fired. I think based on
18 all of that in a light most favorable to the
19 State, I've met my burden.

20 MR. SMILEY: Your Honor, I don't have any
21 rebuttal. I don't quite remember the evidence
22 that way but taking it in the light most
23 favorable to the State, I don't -- I don't
24 remember Fred, and I've looked over what --
25 the notes I'd taken with Fred referring to

1 seeing Nathaniel pulling out a gun. I'm
2 looking at it pretty quick, but pretty good.
3 Tiffany says that she saw what she thought to
4 be a weapon being pulled by Nathaniel. She
5 didn't say it was being ---

6 THE COURT: --- could you repeat that one
7 more time so that I ---

8 MR. SMILEY: --- that Tiffany -- Tiffany,
9 and I'm reviewing -- one thing that Ms.
10 Hensley is good at, she can type faster than
11 anybody I know. So I've relied on her ---

12 THE COURT: --- I guarantee she doesn't
13 type faster than my court reporter.

14 MR. SMILEY: Well, they're real close.
15 But, anyway looking at her notes, and I know
16 it's not official but it helps, is Tiffany
17 says that she saw something that she thought
18 was a gun being pulled out. Not pointed, but
19 being pulled out. And that she -- to use her
20 vernacular, hauled ass.

21 Fred had the car between him and he
22 said he didn't see a gun, if I'm correct.
23 When you are walking -- when he was walking up
24 to the car you did not see a gun, did you?
25 No. And I don't think he testifies he saw him

1 pull out a gun. I will concede that he also
2 said that he heard Jamie say something about a
3 gun, and I don't know in what context about
4 the gun, but he said something about the gun.
5 But they have to show that Nathaniel was the
6 actor. And they have to show a little more
7 when -- if I understand the definition, that
8 it's the intentional killing of another with
9 malice.

10 And so I just don't think they've
11 met that burden, Your Honor, based on the
12 evidence placed in front of you. That's all I
13 have.

14 THE COURT: Mr. Voigt, do you have any --
15 anything in response?

16 MR. VOIGT: I believe that the evidence
17 that has been introduced from the witness is
18 clear that Nathaniel McGee brandished a
19 weapon. And that Nathaniel McGee was the only
20 person who could have shot Jamie Reed based on
21 the facts and circumstances in this particular
22 case.

23 And I believe, in a light most
24 favorable to the State, that would be our
25 threshold, Your Honor.

1 THE COURT: All right. I'm going to take
2 just a few moments to review my notes and I
3 will have my decision. Assuming I deny your
4 motion, Mr. Smiley, just for scheduling
5 purposes, what do -- will you have any
6 witnesses that we can call this afternoon?

7 MR. SMILEY: No, Your Honor. Because I
8 have one witness that I intend to call, unless
9 he tells me otherwise, my client. I have a
10 second witness that just got here from SCDC
11 that I need to -- I'm awaiting a response from
12 Mr. Bishop.

13 That's only two, and I don't believe
14 at this point I am going to call Terrell
15 Wright. But I've got to -- but if push came
16 to shove, I could put Nathaniel up this
17 afternoon. I just don't know that he'd get
18 done in an hour.

19 THE COURT: We'll see ---

20 MR. SMILEY: --- I have some other
21 witnesses that I don't intend -- that were on
22 my witness list, but I do not intend to call.
23 I do not intend to call either of the McGee's
24 or either of the Reed's.

25 THE COURT: All right. Do you need any

1 assistance? Are you trying to get in touch
2 with George Bishop?

3 MR. SMILEY: Truthfully I've been in the
4 courtroom and ---

5 THE COURT: --- all right. Why don't --
6 I'm going to take a break to review the
7 Court's transcript and why don't you take this
8 time to call Mr. Bishop. And if you need
9 assistance with that, please let me know.

10 MR. SMILEY: All right.

11 THE COURT: We'll be in recess.

12 [Whereupon, a recess is taken]

13 MR. SMILEY: Your Honor, two things with
14 regard to Terrell Wright, while he was on the
15 transport list for today to be downstairs, he,
16 in fact, did not arrive from SCDC.

17 THE COURT: All right. Thank you, Mr.
18 Smiley. With respect to your client ---

19 MR. SMILEY: --- oh, I'm sorry ---

20 THE COURT: --- Mr. Smiley, and let me
21 address my motion for a directed verdict -- or
22 actually your motion for a directed verdict,
23 but let the Court address it.

24 MR. SMILEY: Yes, ma'am. And I said
25 intentional killing and that is not a word in

1 the statute. I was wrong.

2 THE COURT: All right.

3 MR. SMILEY: It just says killing.

4 THE COURT: Under Rule 19 of the Rules of
5 Criminal Procedure, the trial judge shall
6 consider only the existence or non-existence
7 of the evidence, and it's not the weight of
8 the evidence. If there is a failure of
9 competent evidence intending to prove the
10 charge in the indictment, the Court must grant
11 the motion for directed verdict.

12 In reviewing the notes that the
13 Court has, what was significant to the Court
14 was the dialog as testified to by Frederick
15 McCoy, in which the victim states, you think
16 I'm scared because you have a gun. You're
17 going to have to use it. In which the
18 defendant states, I'm about to.

19 Based upon that, as well as the
20 other testimony as presented in the case, the
21 Court feels there is existence of the evidence
22 intending to prove the charge in the
23 indictment. And at this time I deny your
24 motion for a directed verdict.

25 MR. SMILEY: Thank you, Your Honor.

1 THE COURT: All right, I'm going to go
2 ahead and advise your client of his right to
3 testify at this time. Mr. Smiley, do you
4 have witnesses we can go ahead? I indicated
5 to the jury that we would go until 5:30? Do
6 you have witnesses other than your client?

7 MR. SMILEY: I have one other one,
8 possibly. He's not arrived from SCDC. I
9 thought he was downstairs because he's on the
10 list but when we checked he has not gotten
11 here. I'm sure he'll arrive tonight.

12 I also called his attorney again,
13 Mr. Bishop. He was out of the office. His
14 paralegal promised to diligently track him
15 down and have him call me on the cell phone.
16 But neither here nor there, his client has not
17 arrived yet. They expect him tonight.

18 So that would be my other witness.
19 I had four other possible witnesses listed
20 that I do not intend to call.

21 THE COURT: All right. And Mr. Smiley,
22 any objections to proceeding with your client
23 today, breaking at 5:30?

24 MR. SMILEY: I don't believe we can get
25 my client in by 5:30, number one. And

1 secondly, I would request -- the State has
2 moved extremely fast today, Your Honor, and I
3 would request that I be able to put him up in
4 the morning.

5 I told you that -- before this case
6 started that we'd get it in very quickly and
7 it's a two-day case. And I can assure you
8 that if we start at regular time in the
9 morning, we would be done -- my case would be
10 done in about an hour and a half to two hours
11 tops.

12 I would ask you kindly to let us
13 begin the presentation of my case in the
14 morning?

15 THE COURT: All right.

16

17 DEFENDANT'S RIGHTS

18 THE COURT: Please swear the defendant.

19 [Whereupon, the defendant is duly sworn
20 by the Clerk of Court]

21 THE COURT: Mr. McGee, at this time I am
22 going to explain to you certain rights -- of
23 your rights. If you do not understand
24 anything that I say, please let me know. And
25 if you need me to explain anything in further

1 detail, please let me know. Do you
2 understand?

3 THE WITNESS: Yes.

4 THE COURT: And, Mr. McGee I'm going to
5 need you for the record to make sure you speak
6 up as well.

7 We have now reached the stage of
8 your trial where you may present your defense.
9 You have the right to claim the protections
10 given to you by the Fifth Amendment to the
11 Constitution of the United States. This
12 Amendment states in part, no person shall be
13 compelled in any criminal case to be a witness
14 against himself.

15 This means that you cannot be
16 required to testify in this case. You have
17 the right to testify on your own behalf.
18 However, no one can make you testify. This is
19 a personal right and no one can waive this
20 right except for you.

21 If you decide to testify, you will
22 be subject to the same rules that govern other
23 witnesses. And you may be examined and cross-
24 examined on any relevant issue in this case.
25 In addition, if you have any convictions

1 involving dishonesty or false statements, or
2 for a crime punishable by imprisonment for
3 more than one year and I determine that the
4 probative value of admitting this evidence
5 outweighs the prejudicial effects, the
6 Solicitor will be able to introduce your
7 record to attack your creditability.

8 Mr. Voigt, I understand that he has
9 a previous conviction that you are not going
10 to seek to introduce, is that correct?

11 MR. VOIGT: That is correct, Your Honor.
12 I don't believe it fits into the law that you
13 just read.

14 THE COURT: All right, thank you, Mr.
15 Voigt. If you do decide to testify, this
16 decision on your part must be freely,
17 voluntarily, knowingly, intelligently made,
18 with the knowledge of the protections given to
19 you by the Fifth Amendment and the
20 consequences of your decision to testify.

21 Mr. McGee, if you decide not to
22 testify I will instruct the jury that they
23 cannot give the fact that you did not testify
24 any consideration whatsoever. And, that
25 there's to be absolutely no prejudice to you

1 because you did not testify. It is left
2 entirely up to you whether or not to testify.
3 You may talk with your friends, your family,
4 your attorneys, or anyone else. But the
5 final decision is yours and yours alone, Mr.
6 McGee. Do you understand that?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Do you understand all of the
9 rights that I have explained to you?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Do you have any questions
12 about what I have just explained to you?

13 THE WITNESS: About the -- you said
14 about the year. You said something about the
15 year?

16 THE COURT: Right. That was involving if
17 you have previous convictions that subjected
18 you to penalties over one year. The Solicitor
19 has informed the Court that it does not intend
20 to introduce any of your previous convictions.

21 THE WITNESS: I understand.

22 THE COURT: Do you have any other
23 questions about what I just explained to you,
24 Mr. McGee?

25 THE WITNESS: No, ma'am.

1 THE COURT: Have you discussed with your
2 lawyer whether or not you should testify?

3 THE WITNESS: Yes.

4 THE COURT: Do you wish to talk to your
5 lawyer any more at this time?

6 THE WITNESS: Yes.

7 THE COURT: You need additional time to
8 meet with Mr. Smiley and Ms. Hensley?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Based upon that, Mr. Smiley,
11 and that we're getting close to 5 p.m., we
12 will go ahead and break for the evening. And
13 Mr. Voigt, do you -- can you be of assistance
14 in getting the one that is here from SCDC?

15 MR. VOIGT: Oh, yes. I'll do everything
16 I can, Your Honor. Absolutely.

17 THE COURT: All right. We will break for
18 the evening hour. Mr. McGee, do you need --
19 I'm going to allow you to meet with Mr. Smiley
20 over the evening hour.

21 When we return in the morning the
22 first question I am going to ask of you is do
23 you wish to testify? At that time you will
24 give me your answer. Do you understand that,
25 sir?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Thank you. You may be
3 seated. I'm going to bring in the jury. You
4 have rested?

5 MR. VOIGT: I have, Your Honor.

6 THE COURT: So I wish to indicate to the
7 jury that the defense will be presenting its
8 case. Is that correct, Mr. Smiley?

9 MR. SMILEY: Yes ma'am. We do intend to
10 present a case.

11 THE COURT: All right. And at that time
12 -- so we will -- 9 a.m. Is that okay to
13 start in the morning, Mr. Voigt?

14 MR. VOIGT: Yes, Your Honor.

15 THE COURT: Mr. Smiley?

16 MR. SMILEY: Of course I'd like later,
17 but I will be here at 9:00, Judge.

18 THE COURT: That way Mr. Smiley, I ensure
19 that we are done tomorrow.

20 MR. SMILEY: We will be done tomorrow.
21 Yes, ma'am.

22 THE COURT: All right, thank you. Please
23 bring in the jury?

24 [Whereupon, the jury enters the courtroom
25 at 4:42 p.m.]

1 THE BAILIFF: All seated, Your Honor.

2 THE COURT: Thank you. Thank you.

3 Please be seated. Ladies and gentlemen of the
4 jury, before we broke the State has rested.
5 We have now reached the stage in the trial
6 where the defendant may present his defense.

7 Due to the lateness of the hour, I
8 told you we were going to go to 5:30, I would
9 anticipate that we would perhaps be in the
10 middle of a witness. So, what we are going to
11 do is we are going to break for the evening.
12 And we will return in the morning.

13 Please be in your jury room at 9:15
14 and we will begin promptly at that time.
15 Ladies and gentlemen, you have not received
16 the instruction of the law. Please do not
17 begin your deliberations. Do not discuss this
18 case amongst yourselves or with friends or
19 family members.

20 Please do not read, watch, listen to
21 any news account of any reporting of this
22 case. That includes anything on the Internet,
23 newspaper, television. And we will receive
24 you back in the courtroom tomorrow morning.
25 Have a wonderful and restful evening. Please

1 rise for the jury.

2 [Whereupon, the jury exits the courtroom
3 at 4:44 p.m.]

4 THE COURT: Thank you. Be seated.
5 Counsel, I need you back at 9 a.m.

6 MR. SMILEY: I gathered that, Your Honor.

7 THE COURT: I'd like y'all back at 9 a.m.
8 The charge is completed and depending -- we
9 will have to tweak it, depending on if
10 anything arises differently in the defendant's
11 case in chief, but if both counsel will be
12 present, we'll review the charges at that
13 time.

14 But that will give us a few minutes
15 to tweak them before the jury arrives. Any
16 proposed instructions other than the standard
17 charges, Mr. Voigt?

18 MR. VOIGT: I obviously -- depending on
19 what we've seen here today, there's going to
20 be a self-defense charge, which would be an
21 addition. I would also ask that the Court
22 give a duty to retreat charge, which is
23 usually part of the general self-defense
24 package.

25 THE COURT: All right. Mr. Smiley,

1 anything other than standard charges that you
2 request from the Court?

3 MR. SMILEY: Other than the standard
4 charges, the only thing that's come up, and I
5 think this might get developed a little bit
6 more tomorrow, is whether we request a
7 voluntary or an involuntary based on the
8 testimony tomorrow.

9 And I don't know that we will. But
10 just right now we would not, based on what's
11 been proposed and put forward. I don't know
12 that we would be entitled to one nor would we
13 ask for one, but that's possible to change --
14 just possible to change from the testimony
15 presented tomorrow.

16 THE COURT: The Court will prepare both
17 voluntary and involuntary if you are
18 requesting that testimony is presented that --
19 for either, then that way you will have an
20 opportunity to review the proposed charge on
21 either one. And then you will make the
22 determination at that time?

23 MR. SMILEY: Yes, ma'am. And right now,
24 I don't -- quite frankly I don't think I'm
25 entitled to one based on the evidence as it's

1 been presented. But I may request one after
2 my case is presented, Your Honor. I certainly
3 will request self-defense --

4 THE COURT: All right. Anything before
5 we break for the evening hour from the State?

6 MR. VOIGT: No, Your Honor.

7 THE COURT: From the defendant?

8 MR. SMILEY: No, Your Honor. Thank you
9 very much.

10 THE COURT: All right. Y'all have a
11 wonderful evening and I will see you -- we'll
12 be at recess in this matter until 9:15. If
13 counsel will be present at 9?

14 MR. SMILEY: Yes, ma'am.

15 THE COURT: Thank you.

16 MR. VOIGT: Thank you, Your Honor.

17 [Whereupon, the jury trial adjourns at
18 4:47 p.m.]

19

20

21

22

23

24

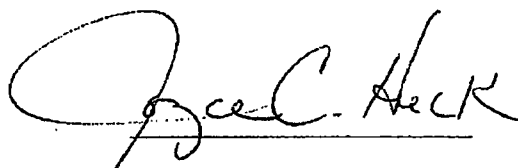
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Huck,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate, and complete Transcript of Record of
the proceedings had and evidence introduced in
the trial of the captioned case, relative to
appeal, transcribed by Joyce C. Huck, reported
by Mia Perron, Ninth Circuit Court Reporter,
in the Court of General Sessions for
Charleston County, South Carolina, on the 4th
day of March, 2009.

I do further certify that I am
neither of kin, counsel, nor interest to any
party hereto.

December 5, 2009

A handwritten signature in cursive script, reading "Joyce C. Huck", written over a horizontal line.

Joyce C. Huck

Court Reporter

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO.: 2006-GS-10-7192
THE STATE OF SOUTH CAROLINA)
VS.)
NATHANIEL MCGEE)
Defendant)

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Thursday, March 5, 2009, commencing at 9:30 a.m.

Transcribed by:
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1 PROCEEDINGS

2 THE COURT: Mr. Smiley, anything before
3 we bring in the jury?

4 MR. SMILEY: No, ma'am.

5 THE COURT: Mr. Voigt, anything ---

6 MR. VOIGT: --- nothing before we bring
7 in the jury.

8 THE COURT: Thank you. Please bring in
9 the jury.

10 [Whereupon, the jury enters the courtroom
11 at 9:32 a.m.]

12 THE BAILIFF: The jurors are present.

13 THE COURT: Thank you. Please be seated.
14 Mr. Smiley, call your first witness.

15 MR. SMILEY: Yes, ma'am. At this time I
16 would like to call Mr. Nathaniel McGee.

17 [Whereupon, Mr. McGee comes forward]

18 [Whereupon, the witness is duly sworn by
19 the Clerk of Court]

20 CLERK OF COURT: If you'll speak into the
21 microphone, and state your full name and spell
22 your last name.

23 THE WITNESS: Nathaniel McGee.

24 MR. SMILEY: You'll have to speak up.
25 Try it again.

1 THE WITNESS: Nathaniel McGee, M-c-G-E-E.

2 THE COURT: Mr. Smiley, your witness.

3 MR. SMILEY: Yes, ma'am.

4 - - - - -

5 NATHANIEL MCGEE,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SMILEY:

10 Q. I need you to speak clearly, okay. All
11 right Nathaniel, how old are you?

12 A. Twenty-five.

13 Q. Okay. At the time of this shooting how
14 old were you?

15 A. Twenty-three.

16 Q. Twenty-three. All right. Where ---

17 A. --- well, I was twenty-two.

18 Q. Twenty-two. All right. This happened
19 what -- how long ago?

20 A. Three years.

21 Q. Okay. How many children do you have?

22 A. Three.

23 Q. What's -- how old is the oldest?

24 A. Nine.

25 Q. And the youngest?

1 A. Six.

2 Q. Okay. Where do you live?

3 A. In Goose Creek.

4 Q. -- I didn't hear the last part?

5 A. Rahway.

6 Q. Okay. Who do you live with?

7 A. My mother.

8 Q. Okay. Where do you work, or where at the

9 time of this incident? I know you haven't ---

10 A. --- Barry's Painting.

11 Q. Okay. And how long had you been working

12 there?

13 A. Three years.

14 Q. Okay. Now Mr. Jamie Reed, how did you

15 know him?

16 A. We went to school together.

17 Q. About how long had you known him?

18 A. For a couple of years.

19 Q. Okay. For the jury, describe your

20 relationship with him?

21 A. We had a decent relationship. I mean we

22 had no run-ins or anything. Everything was really

23 good between the two of us.

24 Q. Okay. Did y'all hang out together?

25 A. No. Not really. Sometimes I went to his

1 house -- his mother's house often, but not really
2 that much.

3 Q. Okay. So -- oh, question. Antonio
4 Bryant, do you know who he is?

5 A. I do know who he is.

6 Q. Is he related to you?

7 A. No, sir.

8 Q. In any form or fashion?

9 A. No, sir.

10 Q. Okay. Let's get down to it. Will you
11 tell this jury what happened prior to the shooting
12 with your relationship with Jamie? What started
13 your problems?

14 A. Jamie thought I had broken into his
15 house.

16 Q. And when you broke into his house, what
17 did he say you did?

18 A. He said that I had stolen gold -- a chain
19 -- a necklace.

20 Q. Okay. And how did -- what -- how did he
21 feel about that?

22 A. He didn't -- I guess he didn't like it.
23 He was upset about it.

24 Q. Okay. Something else happened before
25 this -- before the shooting, correct?

1 A. Correct.

2 Q. About how many days or weeks or months
3 was it before the shooting that you had an
4 incident?

5 A. It was about two or three days.

6 Q. Okay. Now where were you when this
7 incident happened?

8 A. I was walking down Green Lawn ---

9 Q. --- okay. Tell the jury about Green
10 Lawn. That's a road I would assume?

11 A. It's a dirt road.

12 Q. Okay. And where is it in relation to
13 your house?

14 A. It's walking distance.

15 Q. Okay. And you were walking down this
16 road. Was it day or night?

17 A. It was at night.

18 Q. Okay. You're walking down the road at
19 night, then what happened?

20 A. As I'm walking there's a white car, I
21 think it was a Grand Marquis, came past me. And
22 then a truck came like ten seconds later.

23 Q. Okay. Slow down. Is -- when the first
24 car had passed, the Grand Marquis, did you notice
25 anything about the car?

1 A. No.

2 Q. Okay. Now you said a second car came up
3 on you. When that came up on you what happened?

4 A. The car, as it came up on me, it was kind
5 of close to me. So I had to move over almost in a
6 ditch.

7 Q. Okay. And then was happened?

8 A. The -- it was a Jamaican guy and he
9 jumped out -- out of the SUV ---

10 Q. --- wait a second. How many people were
11 in the car?

12 A. There was, I believe it was three.

13 Q. Three of them. All right. So, the
14 Jamaican guy jumped out. What happened?

15 A. He grabbed me by the collar by the shirt
16 and he had me at gunpoint and said for me not to
17 move.

18 Q. Okay. So he pulled a gun on you?

19 A. Yes, sir.

20 Q. Okay. And then what happened?

21 A. The other Jamaican on the passenger side
22 he jumped out and he started tying a rope around
23 me.

24 Q. And when you say tying a rope around you,
25 around what part of your body?

1 A. Around -- he was tying the rope around my
2 arms so that I couldn't move.

3 Q. Okay. And this happened right there on
4 the road?

5 A. Yes, sir.

6 Q. Okay. And that's a dirt road, at night.
7 And was there anybody else around, like at homes or
8 anything like that?

9 A. No, sir.

10 Q. After that happened, what went on next?

11 A. They started -- the one who had the rope
12 around me started trying to pull me into the woods.
13 But I was fighting back trying not to go into the
14 woods.

15 But the one who had the gun said for me
16 to just go into the woods. And as I'm going into
17 the woods I see the SUV driving down the road.

18 Q. Okay. So, the two Jamaicans are pulling
19 you into the woods at gunpoint?

20 A. Yes, sir ---

21 Q. --- is that fair? Okay. So you're in
22 the woods. Then what happens?

23 A. As I'm in the woods Jamie Reed, McCormick
24 Reed, his brother, came into the woods.

25 Q. Okay. And then -- describe to the jury

1 at that point when the four of them are in the
2 woods and you're -- are you standing up or you on
3 your knees? How are ---

4 MR. VOIGT: --- objection to the form of
5 the question.

6 THE COURT: Sustained.

7 Q. [Mr. Smiley] Okay. What was your body
8 position at that point?

9 A. I was standing up.

10 Q. Okay. And the four of them are in the
11 woods. What happened next?

12 A. Ricco Reed came into the woods.

13 Q. Okay. Who's Ricco?

14 A. I guess he was Jamie's cousin -- older
15 cousin.

16 Q. Okay. And then -- so now there's five
17 people in the woods. What happened?

18 A. Joseph Reed, Jamie's little brother came
19 into the woods.

20 Q. That's another person; six people. All
21 right. Then what happened?

22 A. There was a -- after that a fellow named,
23 he's known as Slice ---

24 Q. --- okay. That's a seventh person?

25 A. Yes, sir.

1 Q. What happened next?

2 A. When Jamie Reed -- when Joseph Reed came
3 into the woods he punched me in the face. And as
4 he punched me I was hit from the back with
5 something -- with something in my back. And I was
6 pulled to the ground with the Jamaican who had the
7 rope tied around me.

8 Q. All right. Keep going.

9 A. And as they were pulling me into the
10 woods and everything they were asking me where was
11 the chain and why did I break into the apartment.

12 The whole time I'm telling them that I
13 did not have any chain and I did not have anything
14 to do with the apartment being break -- break into.

15 Q. Okay. Who's telling you that?

16 A. Jamie.

17 Q. Okay. So -- and what happened next?

18 A. They just started asking me about the
19 chain. I'm scared. I'm real scared. I don't --
20 I'm just answering the questions as fast as I can
21 and trying not to -- trying not to say anything
22 wrong so that they would harm me.

23 Q. Okay. What, if any, weapons are out at
24 this point?

25 A. At that point the Jamaicans had a gun.

1 The two -- one Jamaican had a gun and the other one
2 had a knife. Ricco had a gun. And Courtney Reed
3 he had -- he didn't have a gun but he had a metal
4 object that was chrome -- there was a chrome cover,
5 so I believe it was a metal object that he had in
6 his hand.

7 Q. What about Jamie?

8 A. He had a gun.

9 Q. Okay. So you said you were scared?

10 A. Yes, sir.

11 Q. Okay. And what happened -- what did --
12 what happened next?

13 A. They kept asking me about the break in of
14 the house. And I just kept telling them I didn't
15 have anything to do with it, or I didn't have a
16 chain.

17 Ricco Reed kept insisting that -- I'm
18 saying that I don't have a chain but he kept
19 implying that you're not saying you don't have
20 anything. You didn't have anything to do with it.

21 Q. Okay. And then finally, when that's
22 going on, what occurred next?

23 A. Jamie Reed was like -- Jamie Reed kept
24 saying, no you had something to do with it. And as
25 I'm on the ground he told the Jamaicans to just go

1 ahead and kill me. And he walked out of the woods.

2 Q. Okay. These two Jamaicans, had you seen
3 them before?

4 A. I'd seen them a couple of times but I
5 didn't know their names or anything.

6 Q. Okay. And how do you know they're
7 Jamaican?

8 A. Because they was speaking Jamaican.

9 Q. Okay. Okay, and so Jamie is walking out
10 of the woods and he's giving his order and then
11 what happened?

12 A. I'm crying. I'm crying for Jamie to come
13 back so that he wouldn't kill me. And Jamie came
14 back into the woods and he kept -- he kept asking
15 me about the chain, about a chain. I said I didn't
16 have anything to do with it.

17 Q. Okay. Obviously they didn't kill you.
18 What happened next?

19 A. When I was on the ground Jamie fired a
20 shot at me.

21 Q. After that shot was fired what -- how did
22 you get out of there?

23 A. Well, as I was telling them that I didn't
24 have anything to do with anything going on about
25 the break in or the chain being stolen, I told

1 Jamie that everything that goes on in Goose Creek
2 my name is never inside anything.

3 Q. Right.

4 A. And when I said that -- Courtney Reed,
5 his brother, he said something to Jamie. I didn't
6 know what it was but he said something to Jamie.

7 Q. And then what happened?

8 A. And then they -- I mean they started
9 easing out. And somehow they just let me go.

10 Q. All right. After they let you go they
11 left you standing in the woods?

12 A. They just -- they just walked off and I
13 got out of there.

14 Q. Okay. When you got out of there, where
15 did you go?

16 A. I went home.

17 Q. Did you call the police?

18 A. No, sir.

19 Q. Why not?

20 A. Before I left the woods Jamie made it
21 clear that before I left the woods that if I went
22 to the police that he was going to kill me.

23 Jamie Reed knows where my mother stays.
24 My sister was staying with me, and my kids was
25 staying with me.

1 Q. Okay. What was your emotional state as
2 you were coming out of the woods?

3 A. I was scared. I didn't know what to do.
4 I mean while I'm in the woods my life flashed
5 before my eyes and I was just scared and crying and
6 everything.

7 Q. Okay. And where did you go?

8 A. I went home.

9 Q. All right. When you got home did you
10 tell anybody about this event?

11 A. No, sir.

12 Q. Did you have any physical marks on you?

13 A. I had markings on my back. And where
14 they had the rope around I had a little -- a little
15 burn mark from the rope around my neck.

16 Q. All right. Okay. And this was two to
17 three days beforehand, right?

18 A. Yes, sir.

19 Q. What action did you take in response to
20 your life being threatened?

21 A. From the prior -- from the prior
22 difficulty I went out and I bought a gun to arm
23 myself.

24 Q. How did you get a gun?

25 A. I bought a gun from -- there was a fellow

1 that was known for selling guns so I bought a gun
2 from him.

3 Q. Okay. What did you buy and how much did
4 you pay for it?

5 A. I bought a -- I believe it was a snub
6 nose .357 and I paid 100 dollars for it.

7 Q. Okay. And why did you get that gun?

8 A. Because of the prior difficulty that --
9 that I was tied up and kidnapped.

10 Q. Okay. Now had you ever used a gun
11 before?

12 A. I -- I -- not a handgun but I used to go
13 hunting. I used to use a shotgun.

14 Q. Okay. So, you get a gun, right?

15 A. Yes, sir.

16 Q. And now I'm going to turn your attention
17 to the day of the shooting, okay?

18 A. Okay.

19 Q. And that afternoon and evening where did
20 you go?

21 A. I went to the Dorchester drag way.

22 Q. Who did you go with?

23 A. I went with Terrell Wright.

24 Q. Okay. Had you had an opportunity to
25 speak with Terrell about what had happened in the

1 woods?

2 A. Yes, sir.

3 Q. Okay. So he was aware of it?

4 A. Yes, sir.

5 Q. Did anybody else go with you to the drag
6 strip?

7 A. No, sir.

8 Q. Did you meet any friends or anything out
9 there at the drag strip?

10 A. Yes, sir.

11 Q. About what time did you get out there?

12 A. It was probably about 10 or 11 or 12.

13 Q. Okay. When you got to the drag strip,
14 where was the gun at that point?

15 A. In the car.

16 Q. Why didn't you have it on you then?

17 A. Because there was a lot of people out
18 there and the police are heavily out there. So I
19 know anything wouldn't happen.

20 Q. So you weren't worried at the drag strip?

21 A. No, sir.

22 Q. Okay. All right. So how long did you
23 stay out at the drag strip?

24 A. Probably for about an hour or so.

25 Q. Who -- I'll ask it this way. Did you

1 meet any females out there?

2 A. Yes, sir.

3 Q. And who -- do you know their names?

4 A. Yes, sir.

5 Q. What were their names?

6 A. It was Tiffany Jenkins and Sierra Smith.

7 Q. Okay. As a result of meeting them what
8 did you do?

9 A. We had exchanged words a little bit but
10 it really wasn't too much conversation.

11 Q. Okay. You're at the drag strip with
12 Terrell and some other friends and you meet up with
13 the girls.

14 When you left the drag strip after being
15 there for an hour or so, was there a plan to go
16 anywhere?

17 A. Yes, sir.

18 Q. What was that plan?

19 A. To go to the strip club.

20 Q. Okay. Why were you going to the strip
21 club?

22 A. Just to have fun.

23 Q. Okay. And who all was going?

24 A. Terrell Wright, Tiffany Jenkins, and
25 Sierra Smith.

1 Q. Okay. And what were you driving?

2 A. A brown LTD, a Crown Vic.

3 Q. Okay. What was Terrell driving?

4 A. A silver Lincoln.

5 Q. Okay. Were the girls with you?

6 A. No, sir.

7 Q. Were they with Terrell?

8 A. No, sir.

9 Q. Okay. Then what were they driving? Do
10 you know?

11 A. I don't even know.

12 Q. Okay. So, did you go straight from the
13 drag strip to the club?

14 A. Yes, sir.

15 Q. Okay. When -- all right, let's slow down
16 here. So, you're getting to the club. Where did
17 you park?

18 A. At the back of the club.

19 Q. Okay. And you've been here when they
20 showed pictures. When you say the back of the club
21 are you referring to the dark area back there
22 [indicates on photo]?

23 A. Yes, sir.

24 Q. Okay. And Terrell, where did he park?

25 A. He parked somewhere close to me.

1 Q. Okay. So, you park. Do you have any
2 idea about what time it was when you got there?

3 A. A later hour -- it was late at night I
4 know.

5 Q. Okay. So you -- when you got there did
6 you get out of the car?

7 A. Yes, sir.

8 Q. Okay. When you got out of the car what
9 were you doing?

10 A. I was walking up to the club to see how
11 much it cost to get in.

12 Q. To see what the cover was?

13 A. Yes, sir.

14 Q. Did you see where Terrell was or what he
15 was doing?

16 A. No, sir.

17 Q. Okay. Now, you're walking up to the
18 club. Let me -- beg the court's indulgence. Let
19 me get the picture here.

20 Let me ask you this question while I'm
21 looking for this picture. When you got out of the
22 car, where was the gun?

23 A. I had put it in my pocket, my back
24 pocket.

25 Q. Back pocket?

1 A. Yes, sir.

2 Q. Okay. I'm going to show you State's
3 exhibit number 1.

4 [Whereupon, the witness reviews
5 photographs]

6 Q. There's a silver car in there. Did you
7 recognize that silver car that night?

8 A. No, sir.

9 Q. Okay. So, you didn't know that car?

10 A. No, sir.

11 Q. When you got out of your car and you're
12 walking up to get the cover charge explain to the
13 jury the path you took walking up to the club?

14 A. I had to walk almost like at an angle to
15 get to the front door.

16 Q. Okay. Well, let's do it this way. You
17 got to the building?

18 MR. SMILEY: Your Honor, if I could
19 before I ask the next question, could I
20 publish this picture to the jury?

21 THE COURT: Do you want to hand it or do
22 you want to put it up on the screen?

23 MR. SMILEY: I'm not very good with this,
24 but let's try it.

25 THE COURT: Mike, could you be of

1 assistance to Mr. Smiley?

2 Q. [Mr. Smiley] Thank you. All right.

3 This is State's exhibit number 1.

4 [Whereupon, the witness reviews
5 photograph]

6 Q. And you see this car and then that
7 building -- you can turn around and look at it.

8 [Whereupon, the witness complies]

9 Q. That building, what is that?

10 A. I believe that's the strip club. Club
11 Fantasy.

12 Q. Okay. And, if you'll stand up and point
13 to approximately where you were parked, if you can
14 see it in that picture?

15 [Whereupon, the witness complies]

16 A. I was way back -- way back up over here
17 [indicates] in this area.

18 Q. Okay. Why did you park back there?

19 A. I mean, I just parked back -- that was
20 just an open area of this part back here
21 [indicates].

22 Q. All right. And you were walking?

23 A. I had to walk to this building
24 [indicates].

25 Q. Okay. So you walked between the car and

1 the building?

2 A. Yes, sir.

3 Q. Okay, sit back down.

4 [Whereupon, the witness complies]

5 Q. When you got up to the car -- walking
6 past the car, what happened?

7 A. As I was walking somebody called me --
8 not called me by name.

9 Q. Who -- do you know who it was?

10 A. No, sir.

11 Q. Okay. Did you hear what they said?

12 A. Excuse my language but they said -- they
13 said, hey my nigga, could you look here?

14 Q. All right. And as a result of that what
15 did you do?

16 A. I said -- I said, yo.

17 Q. Okay. You responded. And after you
18 responded did you continue walking to the front
19 door or did you do something different?

20 A. I kept walking.

21 Q. Okay. What happened next?

22 A. As I kept walking -- you know, like they
23 called me so I didn't think anything was wrong. I
24 came around, the door opened so I figured it ---

25 Q. --- stop for me. Get up and just use

1 your finger in that picture to sort of show your
2 path, all right?

3 [Whereupon, the witness complies]

4 A. As I'm walking [indicates] they called me
5 ---

6 Q. --- right ---

7 A. --- and I said, yo ---

8 Q. --- yes ---

9 A. --- and the back doors -- the windows was
10 up on this side [indicates]. The back door came
11 open so I figured that ---

12 Q. --- which back door? I know you -- can
13 you see it ---

14 A. --- the back passenger [indicates].

15 Q. Okay, the back passenger. So you walked
16 where?

17 A. I figured that was the person who called
18 me or wanted to ask me a question.

19 Q. All right.

20 A. So I went around [indicates].

21 Q. Around to the back?

22 A. Yes, sir.

23 Q. Okay. Those windows, are they tinted?

24 A. Yes, sir.

25 Q. And were they up or down?

1 A. They were up.

2 Q. Okay, sit back down for me.

3 [Whereupon, the witness complies]

4 Q. So, the back door opens and you're
5 walking around the back of the car. What happened
6 next?

7 A. Jamie Reed jumped out of the car.

8 Q. Okay. When he jumped out what happened?

9 A. He said, what's happening?

10 Q. Okay. Where were you standing when he
11 jumped out?

12 A. I was fairly -- I was fairly close.

13 Q. Okay. And when he got out and said what
14 happened, what did it make you feel like?

15 A. When I saw him, prior to answering that,
16 I jumped back a little bit. I was -- I was real
17 scared.

18 Q. Okay. What happened next?

19 A. Jamie Reed -- he implied that -- he asked
20 me -- he said, I know you got my chain and I know
21 you broke into my apartment.

22 Q. And what happened next?

23 A. I told him that, I already told you I
24 didn't have anything to do with that. And that's
25 when Jamie Reed said that, don't worry I got

1 something for you.

2 Q. Okay. Then what happened?

3 A. Jamie Reed, he reached into the front of
4 his pants to grab a gun.

5 Q. Okay. I'm going to change pictures real
6 quick. What was Jamie wearing?

7 A. A yellow shirt.

8 Q. Okay. Was it tucked in or un-tucked?

9 A. It was un-tucked.

10 Q. I'm going to put up State's exhibit --

11 MR. SMILEY: Excuse me, Your Honor.

12 Q. [Mr. Smiley] Okay. State's exhibit
13 number 12, that's the yellow shirt you're talking
14 about?

15 [Whereupon, the witness reviews
16 photograph]

17 A. Yes, sir.

18 Q. Okay. And you said it was hanging down?

19 A. Yes, sir.

20 Q. All right. Now, he says I got something
21 for you, and he starts reaching to the front of his
22 pants?

23 A. Yes, sir.

24 MR. VOIGT: Objection to the form of -- I
25 think that was a question ---

1 MR. SMILEY: --- I'm just getting to the

2 ---

3 THE COURT: --- sustained.

4 MR. SMILEY: Okay. Sure.

5 Q. [Mr. Smiley] Okay. Could you get up
6 and demonstrate to the jury -- I know your shirt is
7 not un-tucked, but if you could show the jury what
8 you mean, all right?

9 [Whereupon, the witness complies]

10 A. He went to grab the gun [indicates]. And
11 I saw the gun.

12 Q. Okay. He used his left hand to reach
13 down? Was it his left or his right? Do you
14 remember?

15 A. I don't remember.

16 Q. Okay. That's fine. All right. Now,
17 when he did that, what did you see?

18 A. I seen the gun.

19 Q. Okay. And you saw the gun and he was
20 reaching for it. What did you do?

21 A. I was -- I was very scared. I was scared
22 for my life from the prior incident. I had my gun
23 on me and I just reached into my back pocket and I
24 pulled the gun out and I swung it. I don't
25 remember pulling the trigger or anything. I just

1 knew the gun went off.

2 Q. It went off?

3 A. Yes, sir.

4 Q. All right. Why didn't you turn around
5 and go the other direction?

6 A. I had no time. I knew that from the
7 prior incident I had no time. And I knew that -- I
8 knew that he was going to kill me or do something.
9 I knew that he was going to shoot me.

10 Q. Okay. When you reacted and then pulled
11 out the gun and swung at him, what did you do next?

12 A. The gun ---

13 Q. --- the gun goes off. Then what
14 happened?

15 A. I ran back to my vehicle.

16 Q. Okay. As you're running what happened?

17 A. Shots started coming from the grey car.

18 Q. That's where you thought they were coming
19 from?

20 A. That's where they were coming from.

21 Q. Okay. All right. Did you hear any other
22 shots?

23 A. As I was running -- as the shots came
24 from the grey car, Terrell Wright started firing
25 shots.

1 Q. Okay. So -- chaos is breaking out ---

2 A. --- yes, sir ---

3 Q. --- is that fair to say?

4 A. Yes, sir.

5 Q. All right. So, you're running back to
6 your car. What happened next?

7 A. I left.

8 Q. Okay. You jumped in your car, is that
9 fair?

10 A. [Indicates affirmatively]

11 Q. All right. And you left?

12 A. Yes, sir.

13 Q. Why didn't you stay?

14 A. Because I was -- I was very scared. I
15 was afraid of what had just took place. I never
16 shot anyone before or anything.

17 Q. Okay. Where did you go?

18 A. I went home.

19 Q. Okay. When you got home -- well, before
20 we get to that let's back up to the scene for a
21 minute. When you're walking up to the car did you
22 see any females around the car?

23 A. No, sir.

24 Q. There is -- is that -- you didn't see
25 anyone, right?

1 A. No, sir.

2 Q. Okay. I'll leave at that. All right.

3 During this incident did you ever touch the car?

4 A. No, sir.

5 Q. Okay. When you got home, all right --
6 you went straight home?

7 A. Yes, sir.

8 Q. Where's the gun?

9 A. As I was coming home I got rid of the
10 gun.

11 Q. Why did you do that?

12 A. I was scared. I didn't know what to do.
13 I was terrified.

14 Q. All right. You threw the gun away
15 because you were scared?

16 A. Yes, sir.

17 Q. Were you scared -- who and what were you
18 scared of?

19 A. I was scared of what had just took place.

20 Q. Okay. When you got home what happened
21 next?

22 A. When I got home I told my mother that ---

23 Q. --- what did you tell your mother?

24 A. I told my mother that I thought that I
25 had killed someone.

1 Q. All right. And as a -- you had that
2 conversation with your mother as soon as you got
3 home. What happened next?

4 A. The next day I turned myself in.

5 Q. Okay, a couple more questions. This
6 whole incident at the car, how long did it take,
7 you think?

8 A. It happened very fast. Real fast.

9 Q. Okay, one last question. Why did you
10 shoot Jamie Reed?

11 A. I was scared. I was scared for my life.
12 I knew that he was going to kill me.

13 MR. SMILEY: Beg the court's indulgence.

14 THE COURT: Yes, sir.

15 [Whereupon, Mr. Smiley and Ms. Hensley
16 confer]

17 Q. Nothing further. Answer any questions
18 Mr. Voigt may have for you, all right?

19 A. Yes, sir.

20 THE COURT: Mr. Voigt?

21 MR. VOIGT: Thank you, Your Honor.

22 MR. SMILEY: And Your Honor, with your
23 permission -- I can't see my witness, I'm just
24 going to move over there.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. Mr. McGee, how are you?

4 A. Sir?

5 Q. How are you?

6 A. Fine.

7 Q. Let me see if I can -- there's a lot of
8 things you testified to. Let me see if I can go
9 through some of them with you, all right?

10 A. Yes, sir.

11 Q. Now, you said that you had gone to school
12 with Jamie Reed. What school was that?

13 A. That was Goose Creek High.

14 Q. And did you attend all four years at
15 Goose Creek High?

16 A. No, sir.

17 Q. Okay. How many years were you in school
18 with Jamie?

19 A. About three or two.

20 Q. Did you know him well when you were in
21 high school?

22 A. Not very well.

23 Q. Where did Jamie live?

24 A. Jamie lived with his mother.

25 Q. Okay. And you had gone over to Jamie's

1 house before?

2 A. His mother's house.

3 Q. His mother's house. And that was to see
4 Jamie?

5 A. Or to see his brother. They had -- they
6 used to sell dogs. Sometimes I went over there to
7 see the dogs, to see what kind of dogs that they
8 had.

9 Q. So you knew Jamie but you also knew his
10 brothers, right?

11 A. Yes, sir.

12 Q. And you knew what they looked like?

13 A. Yes, sir.

14 Q. And if you saw them on the street, any of
15 the Reed's, you would know them. You'd say hi to
16 them if you saw them, wouldn't you, prior to all of
17 this?

18 A. Yes, sir.

19 Q. And from the time -- when do you think
20 you first -- how old do you think you were when you
21 first met Jamie?

22 A. I can't -- I can't ---

23 Q. --- were you 16, 17 years old? Sometime
24 around that?

25 A. Probably about -- yes sir, probably 16 or

1 17.

2 Q. Okay. So from the time you're 16 until
3 the time you're 22, about six years, you knew Jamie
4 Reed, you knew Quinton Reed, you knew Joseph Reed,
5 you knew all the Reeds?

6 A. Yes -- not all of them, but most -- I had
7 seen them mostly every day.

8 Q. Okay. Did you know what kind of car
9 Jamie drove?

10 A. Yes, sir.

11 Q. What kind of car was that?

12 A. He drove a blue -- I think it was a
13 custom made -- custom paint blue LTD with rims on
14 it.

15 Q. Okay. Did you ever know Jamie to drive
16 around in a silver Chrysler?

17 A. No, sir.

18 Q. Had you ever seen the silver Chrysler
19 before?

20 A. No, sir.

21 Q. Did you know what kind of car Jamie's
22 mother drove?

23 A. No, sir.

24 Q. Now, where were you when Jamie first
25 confronted you about stealing the necklace from

1 him?

2 A. The first time Jamie confronted me was
3 the night I was in the woods.

4 Q. Okay. So, at no other time had he ever
5 confronted you about that?

6 A. No, sir.

7 Q. Before the night in the woods did you
8 know that Jamie thought you had stolen the
9 necklace?

10 A. Yes, sir.

11 Q. And how did you know that?

12 A. Someone called me and said that Jamie was
13 stating that I broke into his house.

14 Q. Did you ever attempt to contact Jamie to
15 tell him that that wasn't true?

16 A. No, sir.

17 Q. Did you ever attempt to contact Jamie to
18 tell him that it was true, but that you would make
19 it right?

20 A. No, sir.

21 Q. And how long between the time that you
22 knew that Jamie was upset about you stealing the
23 necklace, before this night -- about how much time
24 from the time you found out Jamie was mad at you to
25 the time in the woods?

1 A. It was -- it was real close.

2 Q. Are we talking about weeks close?

3 A. No, sir.

4 Q. Are we talking about days close?

5 A. Yes, sir.

6 Q. More than three days or less than three
7 days?

8 A. I believe it was less than three days.
9 I'm not sure.

10 Q. You didn't document that in anyway, you
11 didn't write it down, memorialize it, leave a
12 message on somebody's phone machine or do anything
13 with that knowledge, did you? You just kept that
14 to yourself?

15 A. Yes, sir.

16 Q. Didn't confide that with any family
17 member, any friend, it was just something that you
18 knew?

19 A. Yes, sir.

20 Q. Were you scared then?

21 A. No sir, because I didn't have anything to
22 do with the situation.

23 Q. So -- and also in the six years or so
24 that you had known Jamie to that point, Jamie had
25 never given you any indication that he meant you

1 any ill will at all, had he?

2 A. Could you repeat that?

3 Q. From the time you first started going to
4 high school with Jamie when you were teenagers to
5 the time before this incident in the woods ---

6 A. --- right.

7 Q. You had known Jamie roughly five or six
8 years, right?

9 A. Yes, sir.

10 Q. And in that five or six years Jamie had
11 never done anything, had he?

12 A. No, sir.

13 Q. He had never given you any indication
14 that he meant anything towards you -- any violence
15 or ill will or anything towards you, had he?

16 A. No, sir.

17 Q. Let's go to that night in the woods for a
18 second. You stated that you were walking on Green
19 Lawn. And that was by your mother's house, is that
20 right?

21 A. It was walking distance from her house.

22 Q. It was walking -- is that a road -- is
23 that a dead end road or is that -- is it -- it's a
24 dirt road, but is it a thru street?

25 A. No. It's on a dead end.

1 Q. Okay. And were you walking towards the
2 dead end or away from the dead end?

3 A. Towards the dead end.

4 Q. And why were you walking towards the dead
5 end?

6 A. I was going to see someone.

7 Q. Okay. Who were you going to see?

8 A. A friend of mine.

9 Q. And who -- what's that friend's name?

10 A. His name is Darryl.

11 Q. Darryl? What's Darryl's last name?

12 A. Joshua.

13 Q. Okay. So you were going to see Darryl
14 Joshua who lived at the end of the street?

15 A. Yes, sir.

16 Q. And where did you start out from?

17 A. Who -- what do you mean?

18 Q. When you started to walk to Darryl
19 Joshua's house, where did you start from?

20 A. The head of the road.

21 Q. Okay. And before you got to the head of
22 the road where had you been walking from?

23 A. From another road.

24 Q. Okay. I guess my point is did you start
25 from your mother's house?

1 A. Yes, sir.

2 Q. Okay. So you're walking from your
3 mother's house to Darryl Joshua's house. And do
4 you know what time of night this was?

5 A. It was nighttime. I don't know the exact
6 time.

7 Q. Okay. Do you carry a watch or a
8 timepiece of any sort, a cell phone that would let
9 you know what time it was?

10 A. A cell phone.

11 Q. Did you have your cell phone on that
12 night?

13 A. Yes, sir.

14 Q. But you don't recall looking at the cell
15 phone to know what time it was?

16 A. No, sir.

17 Q. Okay. Did you call Darryl to tell him
18 you were coming over or were you going to surprise
19 him?

20 A. I was going to surprise him.

21 Q. And why did you think Darryl was home?

22 A. I usually go there -- I go there often.

23 Q. Okay. And why were you going over there?

24 A. Just to see him.

25 Q. Are there any other houses at the end of

1 this dirt road besides Darryl's?

2 A. It's -- it's a -- as you walk down the
3 dirt road there's another dirt road that leads off,
4 but the houses are way in the back. And on the
5 dirt road there's Ricco Reed and Joseph Reed's
6 house.

7 Q. Okay. So, just off of Green Lawn is
8 another dirt road and some of the Reed's, Ricco and
9 Joseph, live down that dirt road?

10 A. They live on Green Lawn.

11 Q. Oh, they live -- they actually live on
12 Green Lawn?

13 A. Yes, sir.

14 Q. Okay. What kind of car does Ricco Reed
15 drive? Do you know?

16 A. No, sir.

17 Q. How long have you known Ricco Reed?

18 A. I know him for a while, probably like a
19 year or two. Not that long.

20 Q. Okay. And how did you get to know him?

21 A. Just seeing him as I went back there, to
22 talk to him. They was -- I think -- I believe it
23 was Darryl Joshua's cousin also.

24 Q. Okay ---

25 A. --- everyone's family is back there.

1 Q. Okay. What does he look like?

2 A. He's tall, kind of built, baldhead.

3 Q. Okay. How old is he?

4 A. I don't -- well he's older than me,
5 probably in his 30's.

6 Q. Okay. And how old is Joseph Reed?

7 A. He's -- he is probably about 18 or 19
8 years old.

9 Q. And he lived down there too?

10 A. Yes, sir.

11 Q. And how long have you known Joseph Reed?

12 A. Not that long.

13 Q. And how did you get to know Joseph?

14 A. I had seen him and Ricco going back and
15 forth, seeing them.

16 Q. Mostly just by walking down to Green
17 Lawn, is that what you're saying?

18 A. Yes, sir.

19 Q. And then stopping to talk to people as
20 you walked down Green Lawn?

21 A. As I'm -- Darryl Joshua, he introduced
22 me.

23 Q. And you'd been walking down Green Lawn it
24 sounds like, for some time. How long had that been
25 a regular occurrence in your life?

1 A. It was often.

2 Q. Are we talking -- how many times a week
3 did you do that?

4 A. It was probably three -- like three
5 times, three or four times a week.

6 Q. And had you been doing that for months
7 before this incident?

8 A. No, sir.

9 Q. Weeks before this incident? How often --
10 I mean, I'm trying to get a picture of how long
11 before this alleged incident in the woods you'd
12 been a regular walking down Green Lawn to go to
13 Darryl Joshua's house?

14 A. It was on a regular.

15 Q. Okay. Did you own a car?

16 A. No, sir.

17 Q. So, the brown Crown Vic that you were
18 driving, whose car is that?

19 A. It was Terrell Wright's.

20 Q. So you were driving Terrell Wright's car?

21 A. Yes, sir.

22 Q. Whose car was he driving?

23 A. His.

24 Q. So he has more than one car?

25 A. Yes, sir.

1 Q. But the night when you were going down
2 Green Lawn you weren't driving a car?

3 A. No, sir.

4 Q. And a white car, a Grand Marquis, drove
5 past you?

6 A. Yes, sir.

7 Q. And was it driving past you as though it
8 were going toward Darryl's house?

9 A. Yes, sir.

10 Q. Okay. Whose car is the white Grand
11 Marquis?

12 A. It was -- I believe it was Quinton
13 Reed's.

14 Q. And did you know that before it drove it
15 past you? Did you recognize it as Quinton Reed's
16 car?

17 A. No, sir.

18 Q. Have you subsequently or after this
19 happened have you speculated or guessed that it was
20 Quinton Reed's car?

21 MR. SMILEY: Objection, Your Honor. The
22 very question calls for speculation.

23 THE COURT: Sustained.

24 Q. [Mr. Voigt] How do you know it was
25 Quinton Reed's car?

1 A. After the fact that they -- the white car
2 came down after the incident and it was -- I knew
3 that -- I knew that that was his car.

4 Q. Did you see Quinton Reed driving that
5 car?

6 A. No, sir.

7 Q. Did you see Quinton Reed as a passenger
8 in that car?

9 A. No, sir.

10 Q. At any time did you see Quinton Reed in
11 that car?

12 A. No, sir.

13 Q. Okay. The first time Mr. Smiley asked
14 you, you said a truck also drove by you?

15 A. Yes, sir.

16 Q. And then later on you said there was an
17 SUV. Was it an SUV or a truck?

18 A. It was an SUV.

19 Q. Okay. So what you had called a truck was
20 actually an SUV. Do you know what kind of SUV it
21 was?

22 A. I believe it was -- I found out after the
23 fact it was a silver Lincoln, I believe. I'm not
24 sure.

25 Q. Okay. When you -- when it drove past

1 you, you didn't know what kind of car it was?

2 A. Which car?

3 Q. The SUV?

4 A. No. I just knew it was -- I knew it was
5 silver.

6 Q. At the time it drove past you, did you
7 know whose car it was?

8 A. No, sir.

9 Q. And you said now a couple of times in
10 response to my question that you subsequently
11 learned or you learned later whose car it was.

12 Did you do some sort of investigation to
13 find out whose car it was?

14 A. In my paperwork it has that.

15 Q. In your paperwork it has that?

16 A. No. It doesn't have it in my paperwork.

17 Q. Okay. Did you see Ricco Reed, Jamie Reed
18 -- did you see any of the Reed's in that SUV?

19 A. No, sir.

20 Q. Did you see -- and I don't know who Slice
21 is, but did you see Slice in that SUV?

22 A. No, sir.

23 Q. Did you see anybody get out of either one
24 of those vehicles?

25 A. The Jamaicans.

1 Q. Okay. The Jamaicans. Now, had you ever
2 encountered the Jamaicans before?

3 A. I seen them a couple of times but never
4 really encountered or talked to them or anything.

5 Q. Okay. So you saw -- other than just
6 calling them the Jamaicans, was there anything
7 distinguishable about one or the other that could
8 distinguish them between each other? Was one
9 taller or shorter?

10 A. The one who had that gun pointed he was
11 tall and heavy-set. And the other one he was
12 light skin, brown skin, short.

13 Q. Okay. So the taller Jamaican had the gun
14 and the shorter Jamaican had the rope, is that what
15 you're saying?

16 A. Yes, sir.

17 Q. Okay. Which car did the taller Jamaican
18 get out of?

19 A. The silver truck, the SUV.

20 Q. Could you tell if he was the driver or a
21 passenger?

22 A. The driver.

23 Q. Did you see anybody else get out of that
24 vehicle?

25 A. No, sir.

1 Q. The white Grand Marquis, did you see
2 anybody get out of that vehicle?

3 A. No, sir.

4 Q. So the only person you saw get out of the
5 vehicle -- well, strike that. Did you see the
6 shorter of the two Jamaicans get out of any of the
7 vehicles?

8 A. There was only two Jamaicans. I didn't
9 see them get out of the vehicle, but I heard him
10 when he closed the door from the other side of the
11 vehicle.

12 Q. So you heard a door close?

13 A. Yes, sir.

14 Q. When you were walking on Green Lawn did
15 you have a flashlight with you or any sort of
16 illumination?

17 A. No, sir.

18 Q. When the cars stopped did they stop
19 behind you illuminating you with their headlights,
20 or did they stop in front of you?

21 A. On the side of me.

22 Q. So they stopped on the other side of the
23 road, the opposite side of the road?

24 A. No, it's a dirt road. When two cars come
25 in they have to squeeze -- squeeze by. The

1 driver's side -- he stopped at almost directly
2 beside of me.

3 Q. Were you scared when he stopped?

4 A. I didn't -- no, not at the time.

5 Q. When the Jamaican -- which Jamaican
6 approached you first?

7 A. The tall one, the heavy-set one.

8 Q. Did he greet you in any way? Did he say
9 anything to you?

10 A. No. No, sir.

11 Q. When did you first see the gun?

12 A. When he jumped out of the vehicle.

13 Q. Were you scared then?

14 A. Yes, sir.

15 Q. Did you know what it was about then? Did
16 you know why he had done that?

17 A. No, sir. Not at the time.

18 Q. How far away from Darryl Joshua's house
19 were you?

20 A. It was probably -- I'm not really good
21 with the distance, estimating the distance, but it
22 was a good ways.

23 Q. Okay. How far away from Joseph or Ricco
24 Reed's house -- houses were you?

25 A. Their house was right there, probably

1 like -- their house was -- from where I'm sitting
2 at it was probably almost to the black box
3 [indicates].

4 Q. So, you were nearly in their yard where
5 you were? I mean, it wasn't too far away, was it?

6 A. No. I was on the road. I was on the
7 road.

8 Q. Were the lights on in that house?

9 A. I wasn't paying any attention.

10 Q. Did you ever see Jamie Reed's car, the
11 blue one that you described, was it -- did you ever
12 see it that night on Green Lawn?

13 A. No, sir.

14 Q. Did you ever see the silver Chrysler 300
15 that you saw in the picture? Did you ever see that
16 that night on Green Lawn?

17 A. No, sir.

18 Q. You said that the shorter of the
19 Jamaicans he put a rope around you?

20 A. Yes, sir.

21 Q. Did he tie your hands?

22 A. He -- may I stand up?

23 Q. Please?

24 [Whereupon, the witness stands]

25 A. When he bound me with the ropes he had

1 the ropes tied -- the waist -- around the waist
2 [indicates].

3 Q. Like that?

4 A. Yes, sir.

5 Q. Your ankles or legs weren't bound?

6 A. No, sir.

7 Q. There was no gag or nothing -- nothing
8 put around your mouth?

9 A. No, sir.

10 Q. And your hands weren't tied specifically
11 -- your arms were just tied to the sides of your
12 body?

13 A. Yes. They had the -- he had the rope
14 coming around -- coming around me.

15 Q. What kind of rope was it? Was it a nylon
16 rope or was it more like an old-fashioned hemp
17 rope?

18 A. I can't remember. I know it was a rope.

19 Q. Did it have a specific color to it or
20 could you tell?

21 A. It was dark. I couldn't tell.

22 Q. How long did it take him to tie you up?

23 A. It didn't take that long because they
24 were -- one Jamaican had a gun to me. It didn't
25 take very -- very long.

1 Q. Okay. Now you said to Mr. Smiley in
2 response to a question that you struggled so that
3 he couldn't tie you up?

4 A. No. I said -- what I said was that I
5 struggled when he was trying to pull me into the
6 woods. I was -- as he's pulling, I was pulling
7 back so that I wouldn't go into the woods.

8 Q. Okay. So, he's tied you around like this
9 [indicates]. And how does the rope -- how did the
10 -- was there a length of rope that then extended
11 from your body that you would use to pull you?

12 A. No, sir. I don't believe so.

13 Q. Okay. Was he just pulled -- was he just
14 reaching -- when the rope was around you like this
15 [indicates], was he just reaching the rope to pull
16 -- using that to pull you?

17 A. No. I believe there was a little bit of
18 extension. The rope wasn't exactly real secured
19 tight -- tightly. But he was -- when he was
20 pulling, I was pulling back.

21 Q. Did you know the Jamaicans to be
22 longshoremen or sailors or anything like that,
23 anything about them that would have given them some
24 sort of knowledge about how to tie ropes?

25 A. No, sir.

1 Q. You said that they took you back into the
2 woods?

3 A. Yes, sir.

4 Q. Okay. And -- what month of the year in
5 2006, if it was 2006, would it have been on the
6 date that they took you back to the woods?

7 A. I believe it was April.

8 Q. Okay. Do you recall what day at all?

9 A. No, sir.

10 Q. Do you recall if it was a cloudy night or
11 a clear night?

12 A. I can't recall.

13 Q. Are there any streetlights on Green Lawn,
14 on that dirt road?

15 A. No, sir.

16 Q. Was the moon out?

17 A. I can't recall.

18 Q. Were there leaves on the trees?

19 A. Yes, sir. I believe -- there was some
20 leaves but not fully, like full -- full of leaves.

21 Q. Okay. So there were some leaves on the
22 trees above you?

23 A. Yes, sir.

24 Q. Was the part of the woods that you got
25 led to was it -- was it a thick woods or could you

1 walk through it without...

2 A. I mean it wasn't really thick. You could
3 have -- you could walk through it, but it wasn't
4 real thick.

5 Q. Okay. About how long did it take you
6 from the time you left Green Lawn to the time they
7 stopped walking you to wherever they walked you?
8 How much time elapsed?

9 A. It didn't take that long.

10 Q. From where you were, could you see Green
11 Lawn Road?

12 A. I could see the road because whenever I
13 went in it was like kind of -- it wasn't that much,
14 there wasn't trees blocking.

15 Q. So you were just set off the road just a
16 little bit?

17 A. No, sir.

18 Q. Okay. So you were back in the woods a
19 good distance then?

20 A. Yes, sir.

21 Q. Were there any lights from houses or
22 buildings or anything like that?

23 A. I wasn't -- at the time I wasn't paying
24 attention. I was paying -- I wasn't paying
25 attention looking at houses. I was -- my attention

1 was directed to the two Jamaicans.

2 Q. Okay. And at that time there were just
3 two Jamaicans there? Those were the only people
4 there?

5 A. Yes, as we went into the woods.

6 Q. Okay. And the two Jamaicans -- strike
7 that. How long after they got you into the woods
8 did other people show up?

9 A. It seemed like -- basically as soon as I
10 got into the woods Jamie and Quinton Reed came into
11 the woods.

12 Q. Okay. Was this a clearing in the woods,
13 or was this just woods?

14 A. It was woods.

15 Q. Was there any specific marker or was
16 there anything like a big rock in the woods or a
17 fallen down tree or -- was there anything special
18 about this place that would distinguish it from the
19 woods immediately surrounding you?

20 A. No, sir.

21 Q. Ultimately you said that Jamie Reed,
22 Quinton Reed, Ricco Reed, Joseph Reed, and Slice
23 all came back into the woods with the two
24 Jamaicans. So, we had a total of seven people with
25 you in the woods, right?

1 A. Yes, sir.

2 Q. Of those seven people you said that Jamie
3 had a gun?

4 A. Yes, sir.

5 Q. What color was the gun?

6 A. I couldn't distinguish. It was
7 nighttime.

8 Q. How could you see that it was Jamie if it
9 was nighttime?

10 A. Because he was close to me and I knew it
11 was him.

12 Q. Okay. Did Quinton get close to you, too?

13 A. Quinton was fairly close but he wasn't as
14 close as Jamie.

15 Q. When you say Jamie was close to you, I'm
16 going to walk to you [indicates] and just tell me
17 where to stop as to where Jamie may have been in
18 proximity to you. Closer than this?

19 A. He was about that close.

20 Q. About this close? Quinton -- I'm going
21 to walk backwards [indicates], tell me where
22 Quinton was as close as he got to you?

23 A. Quinton, he was to the side.

24 Q. Okay. So Quinton's off on this side
25 [indicates]?

1 A. He was probably -- in some.

2 Q. Come in some? A little bit [indicates]?

3 A. He was probably about right there.

4 Q. Okay. So this is where Quinton was
5 [indicates]. Where was Joseph?

6 A. Joseph after he had hit me he actually
7 walked out of the woods.

8 Q. Okay. So Joseph hits you, and then walks
9 out of the woods. Did you see which direction he
10 walked?

11 A. No, sir. He was walking -- I mean, I
12 wasn't really paying attention on which direction
13 that he walked.

14 Q. Okay. And how did he hit you?

15 A. He hit me with his fist on the left side
16 of my cheek.

17 Q. Okay. Did it leave a mark?

18 A. No, sir.

19 Q. When Joseph left -- let me ask it this
20 way. Show me how Jamie brandished the gun in the
21 woods. Show the jury, if you could, how he did it?

22 A. At the time when he was walking to the
23 woods his hands were down by his side [indicates]
24 and I -- when he came up to me I saw the gun in his
25 hand.

1 Q. Okay. Did he point the gun at you?

2 A. Yes sir, because he fired a shot at me.

3 Q. Okay. How far away from you was he when
4 he fired a shot at you?

5 A. The same distance as you were standing.

6 Q. Okay. So right about, say here
7 [indicates]?

8 A. Yes, sir.

9 Q. Okay. And he fired -- show me just while
10 you're sitting here, the motion he used with his
11 arm to fire the gun at you?

12 A. At that time, I was -- after -- like I
13 said when Joseph hit me in the face I was hit from
14 the back and the Jamaican pulled me to the ground.
15 And when Jamie fired the shot he just [indicates].

16 Q. Okay. And you were on the ground at that
17 point?

18 A. Yes, sir.

19 Q. Okay. Were you on your knees, or were
20 you sitting down?

21 A. I was just sitting down.

22 Q. And Ricco had a gun?

23 A. Yes, sir.

24 Q. And where was Ricco located?

25 A. He was on the side.

1 Q. Okay. What color gun did he have?

2 A. It was dark.

3 Q. Okay ---

4 A. --- I mean all the guns were dark. I
5 can't distinguish any color.

6 Q. Did Slice have a gun?

7 A. I believe so.

8 Q. Did Quinton have a gun?

9 A. Quinton had a metal object. It was
10 chrome colored, that's how I could see what he had.

11 Q. Okay. So the object in Quinton's hands
12 you could clearly tell it was chrome colored?

13 A. Yes, sir.

14 Q. Okay. And he was actually farther away
15 from you than Jamie was?

16 A. Yes. He was -- like where you were
17 standing.

18 Q. So, how long were you in the woods before
19 you were allowed to leave the woods?

20 A. It was -- to me I was in there for a very
21 long time, but I can't determine the time. But to
22 me it was lasting for a long time.

23 Q. Okay. Did Joseph Reed leave the woods
24 first? Of all the people you say were in the woods
25 that night, was Joseph Reed the first one to leave?

1 A. Yes, sir.

2 Q. When Joseph Reed left did you hear a car
3 start?

4 A. No, sir.

5 Q. When the cars pulled up to you did they
6 keep the ignition on or did they turn the ignition
7 off, do you recall?

8 A. Which car?

9 Q. The white Grand Marquis and the silver
10 SUV?

11 A. The Grand Marquis turned, I believe into
12 Ricco's driveway.

13 Q. Okay. So it didn't stay on Green Lawn?

14 A. No. It didn't stay on Green -- when I
15 was in the woods no cars came in or out or off of
16 that road.

17 Q. Okay. I guess what I'm asking you is
18 when those two -- and I'm going to back up just a
19 little bit before they take you into the woods.

20 But when they pulled up to you, along
21 side with you, did they leave the ignitions on or
22 did they turn those vehicles off when they hopped
23 out?

24 A. When the Jamaicans hopped out the car was
25 still running.

1 Q. Okay. Could you hear the car running
2 from where you were in the woods when you were
3 confronted, as you say, by all these people?

4 A. No. As I had stated earlier I believe
5 there were three people in the vehicle because when
6 the Jamaican with the gun came out and the second
7 one tied me up, the car drove on as if there was --
8 there had to be three people inside the vehicle.

9 Q. So, at least in terms of the silver SUV
10 you think that somebody else was driving the silver
11 SUV?

12 A. No, someone else may have been in the
13 vehicle on the passenger -- I don't know if the
14 short Jamaican got out of the front passenger or
15 the back passenger.

16 But the Jamaican with the gun got out of
17 the driver's seat, because he was on my side. I
18 knew that.

19 Q. But that vehicle drove off? The silver
20 SUV did?

21 A. Yes.

22 Q. Who was the next person to leave the
23 woods after Joseph Reed?

24 A. I believe it was -- as they let me go the
25 Jamaicans left, then everyone seemed to just follow

1 behind them.

2 Q. Okay. Did they take the rope with them?

3 A. Yes, sir.

4 Q. Okay, so they -- who untied you?

5 A. The Jamaican who had me -- who tied me up
6 in the first place.

7 Q. So the Jamaicans who had tied you up
8 untied you?

9 A. Yes. Like I said the rope wasn't really
10 secured around them but it was secured. I mean, I
11 was held at gunpoint so it ain't like I'm trying to
12 get up and run or anything.

13 Q. And did they leave the woods ahead of you
14 and leave you there or did you go leave the woods
15 with them?

16 A. As they were walking out I went out a
17 totally different direction.

18 Q. Okay. You knew where you were in the
19 woods so you could get back to the road, right?

20 A. I mean, I knew that I -- on the dirt road
21 -- on the dirt road I just went straight ahead. So
22 I knew if I went back out I was going to be on the
23 road.

24 Q. Okay.

25 A. On a paved -- on a paved road.

1 Q. And how far ahead of -- I mean, did they
2 just kind of turn around and left you there and
3 walked wherever they were walking?

4 A. I mean, after I told Jamie that
5 everything that went on in Goose Creek my name is
6 never beside anything. His brother Quinton Reed
7 said something to him and they just sort of let me
8 go.

9 Q. They just let you go and you just walked
10 out of the woods?

11 A. No. I ran -- I ran out of the woods.

12 Q. Okay, you ran out of the woods. Did you
13 hurt yourself, trip, stumble, scratch yourself,
14 anything like that leaving the woods?

15 A. I probably fell but I didn't fall all the
16 way completely down.

17 Q. Just on your hands and you were able to
18 get away that way?

19 A. Yes, sir.

20 Q. Okay. And did you run all the way back
21 to your mother's house?

22 A. No, sir.

23 Q. So, did you walk back down Green Lawn to
24 get to the other road that takes you to your
25 mother's house?

1 A. As I got out of the woods I ran -- I ran
2 a good ways. But the road -- as you go in Green
3 Lawn there's -- you can -- as you go in the name of
4 the road is Rut Lane. As you go in you can go
5 around a curve and that's a dead end too.

6 But you can also go straight down Green
7 Lawn, which is a dead end. And before you get to
8 the dead end there's a road that veers off to the
9 left.

10 Q. And you made it back to your mother's
11 house?

12 A. Yes, sir.

13 Q. And you didn't tell anybody what
14 happened?

15 A. No, sir.

16 Q. And you didn't tell the police what
17 happened, right?

18 A. At the time before I left the woods Jamie
19 made it clear that if I went to the police that he
20 was going to kill me.

21 At the time my family, my kids, my little
22 sister was living with me and my mother. And Jamie
23 knew where my mother stays at. So, that's why I
24 was scared to death.

25 Q. You didn't think that the police would

1 believe the story about him kidnapping you, taking
2 you into the woods and firing a shot at you?

3 A. I mean, I don't ---

4 Q. --- you didn't think -- I'm sorry. You
5 didn't think that they'd believe that story?

6 A. I mean I wasn't really -- no. I didn't
7 want to take that chance because if he -- how easy
8 they tied me up and how everything took place, that
9 looked real easy for them to do. So I didn't want
10 to die.

11 Q. And you didn't think the police would
12 arrest any of them or do anything for you so you
13 didn't call them?

14 A. I mean it's -- I don't know. I was just
15 -- I was just frightened. I was scared to death.

16 Q. It never occurred to you to call the
17 police did it?

18 A. It did but I was scared thinking of what
19 he -- what he said to me before I left -- before I
20 left the woods. I was just scared. I didn't want
21 to take that chance.

22 Q. Okay. So, you didn't tell anybody, you
23 didn't tell Darryl Joshua?

24 A. No. Actually when I -- when I left I
25 said -- when I left I didn't go to his house I went

1 home.

2 Q. When you left you still had your cell
3 phone on you?

4 A. No. Actually when I was coming down the
5 Jamaican -- he tied me down he took my -- he took
6 everything out of my pockets.

7 Q. Okay. So the Jamaican actually committed
8 an armed robbery against you too, didn't he?

9 A. Yes, sir.

10 Q. Okay. But you didn't remember to tell
11 Mr. Smiley about it just a few minutes ago?

12 A. I mean I really didn't think about it
13 that they took anything out of my pockets.

14 Q. I mean if someone is holding a gun to you
15 and takes stuff out of your pockets does that seem
16 illegal to you in any way?

17 A. It's illegal.

18 Q. All right. So they committed an armed --
19 the Jamaicans, maybe everybody, committed an armed
20 robbery of you and took your cell phone and took
21 your -- took all your money?

22 A. Yes, sir.

23 Q. How much money are we talking about?

24 A. Probably about -- almost close to a
25 hundred dollars.

1 Q. And did you report -- who was your cell
2 phone provider?

3 A. Excuse me?

4 Q. Who is your cell phone provider?

5 A. I believe it was SunCom.

6 Q. Okay. Did you go to SunCom the next day
7 and tell them you had lost your phone?

8 A. No, sir.

9 Q. Did you go to them and tell them that
10 your phone had been stolen from you?

11 A. No, sir.

12 Q. You didn't replace the phone?

13 A. At the time of the incident I really
14 didn't have time to.

15 Q. Okay. So when you went to the strip club
16 a few nights later you didn't have a cell phone at
17 all?

18 A. No, sir.

19 Q. And you never replaced it?

20 A. I -- I mean I didn't have time to.

21 Q. But you did have time to go buy a gun,
22 right?

23 A. Yes, sir.

24 Q. And did you go to a gun shop to buy the
25 gun?

1 A. No, sir.

2 Q. Why not?

3 A. I don't know. I guess I didn't really
4 know that I needed to arm myself from the previous
5 incident. I was just scared.

6 Q. Were you afraid of a background check?

7 A. No, sir.

8 MR. SMILEY: Your Honor, may we approach?

9 THE COURT: You may.

10 [Whereupon, an off-the-record bench
11 conference is held]

12 THE COURT: Sustained.

13 Q. [Mr. Voigt] So you went to a guy who you
14 knew sold guns?

15 A. Yes, sir.

16 Q. Okay. And how did you know that this guy
17 sold guns?

18 A. I heard about where -- that you can buy a
19 gun from him.

20 Q. Okay. Does this guy have a name?

21 A. I don't know his name.

22 Q. And you bought a snub nose .357?

23 A. Yes, sir.

24 Q. Was there any particular reason why you
25 bought a snub nose .357?

1 A. No, sir.

2 Q. Did you buy a snub nose weapon because it
3 was easier to conceal?

4 A. I mean there was no particular reason.

5 Q. Now, after this alleged incident in the
6 woods, did you carry that gun with you everywhere
7 you went?

8 A. I carried it most of the time.

9 Q. Okay. When did you buy the gun? How
10 many days after this alleged incident in the woods
11 did you buy the gun?

12 A. I think it was the next day.

13 Q. So, your first order of business after
14 this incident in the woods that you've told us
15 about is not to tell the police or anybody else,
16 not to replace your cell phone, or do anything like
17 that, but to immediately go buy a gun just from
18 some guy?

19 A. Right. Correct.

20 Q. The next day after this incident did you
21 go to work?

22 A. No, sir.

23 Q. Did you go anywhere?

24 A. No, sir. I came -- I don't know if it
25 was a weekend or not. I can't remember.

1 Q. The day after that did you go anywhere?

2 A. I believe I went to -- I went to the
3 Dorchester drag way racetrack.

4 Q. So, your first trip out of the house was
5 to go to the Dorchester drag way?

6 A. Yes, sir.

7 Q. Okay. And whose idea was it to go to the
8 Dorchester drag way?

9 A. Terrell Wright I think.

10 Q. And how long have you been knowing
11 Terrell?

12 A. He's a -- I guess you could say all my
13 life.

14 Q. Did you know Terrell to carry a weapon?

15 A. No, sir.

16 Q. Have you ever driven any of Terrell's
17 cars before the night that you went to the drag
18 way?

19 A. Yes, sir.

20 Q. So driving one of Terrell's cars was not
21 something that was unusual to you?

22 A. No, sir.

23 Q. But you didn't own a car yourself?

24 A. I owned a car but it wasn't working. So
25 you can say that I don't own any because it's not

1 on the road.

2 Q. Okay. You told Mr. Smiley that you made
3 it to the Dorchester drag way about 10 or 11 at
4 night?

5 A. Around that time. I can't remember the
6 exact time.

7 Q. Had you gone anywhere before going there?

8 A. No, sir.

9 Q. Okay. And you told Mr. Smiley that the
10 only two people who went out there with you were
11 just you and Terrell?

12 A. Right.

13 Q. Was there any particular reason why you
14 took two separate cars?

15 A. I guess, I mean in case one of us got a
16 girl or something.

17 Q. Okay. So, in case you got a girl you
18 wanted to have a car so that you could have some
19 sort of privacy?

20 A. Yes. We could go our different ways or
21 something like that.

22 Q. Now when you got out there did you go
23 inside the race track -- the drag way?

24 A. Yes, sir.

25 Q. And that's where you met up with Tiffany

1 and Sierra, right?

2 A. Right.

3 Q. Had you ever seen either one of those
4 ladies before?

5 A. I had seen her but I can't really
6 remember -- at the time I didn't remember where I
7 had seen them.

8 Q. You knew that they were dancers? That
9 they were strippers?

10 A. No, sir. Not at the time.

11 Q. So at the time you had never seen either
12 one of them dance before?

13 A. No, sir.

14 Q. When you were out there with them did it
15 become apparent that they were dancers though?

16 A. No, sir.

17 Q. Before April 17th or April 16th, whenever
18 you got there, had you ever been to Club Fantasy in
19 North Charleston before?

20 A. I don't think so. No, sir.

21 Q. So, whose idea was it to go to Club
22 Fantasy?

23 A. I really -- I mean there was a bunch of
24 people that knows we were leaving and I was just
25 following.

1 Q. There was a bunch of people out there?

2 A. [Indicates affirmatively]

3 Q. Were these people that you knew?

4 A. I mean a couple of people -- I mean
5 everybody goes there. It's a big crowd of people
6 so you're going to bump into people that you know?

7 Q. Did you bump into Jamie Reed out there?

8 A. No, sir.

9 Q. Did you bump into Fred McCoy out there?

10 A. No, sir.

11 Q. You do know Fred McCoy, don't you?

12 A. Yes, sir.

13 Q. And you know Antonio Bryant?

14 A. Yes, sir.

15 Q. Okay. But you didn't see any of those
16 people out at the racetrack?

17 A. No, sir.

18 Q. Between the time you left the Dorchester
19 race way and the time that you went to Club
20 Fantasy, did you stop anywhere else?

21 A. I think we went to -- we went to a hotel
22 room, but we didn't get out of the car. It was
23 just like we turned around.

24 Q. Okay. Was anybody in your car with you?

25 A. No, sir.

1 Q. Was anybody in Terrell's car with him?

2 A. No, sir.

3 Q. After you left that hotel did you then go
4 right to Club Fantasy?

5 A. Yes, sir.

6 Q. Whose car was the lead car to go to Club
7 Fantasy?

8 A. I believe it was Terrell's.

9 Q. Were Sierra and Tiffany in a car in your
10 group of cars going there?

11 A. I don't know. At the time as we were
12 going I guess so. But, I don't know.

13 Q. Okay. Was Darryl Joshua going there with
14 you?

15 A. No, sir.

16 Q. Did you know what kind of car Tiffany and
17 Sierra were in that night?

18 A. No, sir.

19 Q. Did you ever see their car that you
20 recall?

21 A. No, sir.

22 Q. From the time that you left the
23 Dorchester drag way to the time you made it to Club
24 Fantasy, did you ever see them or talk to them at
25 all?

1 A. No, sir.

2 Q. When you got to Club Fantasy did you see
3 Sierra or Tiffany at all?

4 A. I seen -- I mean, I believe I saw Sierra.

5 Q. Okay.

6 A. I really wasn't paying no attention.

7 Q. Okay. You weren't paying attention to
8 who you saw at Club Fantasy. Is that what you're
9 saying?

10 A. I wasn't paying any attention because
11 when I got out the car I was headed to the door.

12 Q. Okay. How long before you got out of
13 your car was it after you arrived -- well let me
14 see if I can actually word that correctly. Do you
15 recall what time you got to Club Fantasy?

16 A. No, sir. Probably about -- I can't
17 really remember.

18 Q. About how long a drive from where you
19 were at the Dorchester drag way to Club Fantasy is
20 it?

21 A. About -- maybe about 20, 25, or 30
22 minutes drive.

23 Q. After you pulled into the parking lot of
24 the Club Fantasy how long was it before you got out
25 of your car?

1 A. A couple of seconds, probably 30 seconds
2 or so.

3 Q. Okay. Was there any reason why you
4 stayed in the car for 30 seconds?

5 A. No, sir.

6 Q. Now when you were at the drag way, the
7 gun, the snub nose .357, that was in your car,
8 right?

9 A. Yes, sir.

10 Q. And you told Mr. Smiley that you took it
11 out of your car and put it in your back pocket. Is
12 that what you said?

13 A. As I got into the car I put the gun in my
14 back pocket.

15 Q. Was it your intention to take that gun
16 into the strip club?

17 A. No, sir.

18 Q. You were walking -- when you got out of
19 your car you were walking to the strip club door,
20 correct?

21 A. Yes, sir.

22 Q. And you had the gun in your pocket?

23 A. Yes, sir.

24 Q. And if you got to the door, was it your
25 intention to go in?

1 A. No, sir. I was going to ask what the
2 charge was to get into the club.

3 Q. Okay. And why did you bring a gun to ask
4 how much it was to get into the club?

5 A. At the time, like I said when I left the
6 Dorchester drag way I put the gun in my back pocket
7 and I really didn't -- I forgot about it.

8 Q. You forgot about the gun? I thought you
9 told Mr. Smiley that it was in your car at the
10 Dorchester drag way?

11 A. Yes. I said just now when I was leaving
12 I put the gun -- when I was leaving the Dorchester
13 drag way I put the gun in my pocket.

14 Q. Okay. So while you're driving your car
15 you've got a snub nose .357 in your back pocket?

16 A. Yes, sir.

17 Q. And you're sitting on the snub nose .357?

18 A. Yes, sir.

19 Q. That's what -- all right, that's your
20 testimony. And then you forgot all about it until
21 you got to Club Fantasy?

22 A. Yes, sir.

23 Q. And your intention was not to go into the
24 club but really just to find out how much it cost
25 to go into the club?

1 A. Yes sir, at the time.

2 Q. From the time you arrived at Club Fantasy
3 to the time you started to walk up, did you talk to
4 Terrell Wright at all?

5 A. No, sir.

6 Q. Did you see Terrell Wright at all?

7 A. I seen him.

8 Q. And where was he?

9 A. I believe he was either by his car or he
10 was by -- he was talking to Sierra. I'm not really
11 sure.

12 Q. Okay. So, he was talking to Sierra. Did
13 you know if he had a gun or not?

14 A. No, sir.

15 Q. Did you think you were going to see Jamie
16 Reed?

17 A. No, sir.

18 Q. Did you think you were going to see
19 Quinton Reed?

20 A. No, sir.

21 Q. Did you think you were going to see the
22 Jamaicans?

23 A. No, sir.

24 Q. Did you think you were going to see Ricco
25 Reed?

1 A. No, sir.

2 Q. Slice?

3 A. No, sir.

4 Q. When you were in your car in the back
5 parking lot, did you see anybody -- any other cars
6 pull into Club Fantasy?

7 A. Not while I was in the car. No.

8 Q. Okay. When you got out of your car and
9 you began to walk to Club Fantasy, was Terrell
10 walking with you, was he behind you, was he ahead
11 of you, where would you have been?

12 A. Either he was at his car or he was still
13 talking to Tiffany. I was the only one walking up
14 towards the club.

15 Q. All right. So, you walked up to the club
16 by yourself?

17 A. Yes, sir.

18 Q. And in that back parking lot other than
19 Terrell and maybe Sierra, there was nobody else
20 that you knew back there?

21 A. Not that I know of. No one that I knew.

22 Q. And no one that you were talking to?

23 A. No, sir.

24 Q. Did you see the Chrysler 300 pull into
25 the parking lot?

1 A. Yes, sir.

2 Q. Did you see it pull off Peppermill
3 Parkway into the parking lot or did you just
4 see it in front of the strip club?

5 A. As I was walking up it was pulling in.

6 Q. Okay. And you told Mr. Smiley that you
7 didn't see Tiffany or Sierra or any other girls
8 around that car?

9 A. No, sir. I did not see Tiffany Jenkins
10 by the car.

11 Q. When you were walking up towards Club
12 Fantasy in that parking lot, were you scared?

13 A. No, sir.

14 MR. VOIGT: I beg the court's indulgence
15 for just a moment, Your Honor.

16 THE COURT: Yes, sir.

17 [Off the record momentarily]

18 Q. [Mr. Voigt] I'm going to show you what's
19 been previously marked as State's exhibit number
20 19. Could you look back behind there?

21 [Whereupon, the witness complies]

22 Q. If you can, can you stand up and show me,
23 if you can to the best of your ability, the path
24 that you used to walk up? Can you show me where
25 the front door is there of the club?

1 A. I believe it's [indicates] ---
2 Q. --- right there?
3 A. That's what it looks like in the picture.
4 Q. Okay.
5 A. I believe that's where it is at.
6 Q. And that's where you were headed to?
7 A. Yes, sir.
8 Q. Okay. And can you show the jury the path
9 that you took?
10 A. Where the car [indicates] -- you can't
11 even see the area ---
12 THE COURT: --- Mr. McGee, you're going
13 to have to speak up. You're away from the
14 microphone.
15 A. The cars are parked back in this area
16 [indicates]. You can't really see the whole
17 picture. They were parked over here [indicates].
18 Q. Okay, and just kind of trace on that
19 picture, if you can, the line that you took?
20 A. Up this way [indicates].
21 Q. Okay. And where was the -- where was the
22 silver car located when you got up there? I mean,
23 if you can recall?
24 A. I believe it was right in this area
25 [indicates].

1 Q. Okay. And it's your testimony that you
2 had never seen that car before?

3 A. No, sir.

4 Q. How long -- do you know from where in the
5 yellow car somebody initially said something to
6 you?

7 A. No, sir.

8 Q. Did you walk up to the passenger side
9 window of that car?

10 A. No, sir.

11 Q. From where you just said the grey car was
12 did you actually wind up walking past the grey car?

13 A. No, sir.

14 Q. Did you walk up along side of the grey
15 car?

16 A. Yes, sir.

17 Q. From where the grey car was, where you
18 just pointed it out, about how far away from the
19 front door was it?

20 A. It wasn't really that far from the front
21 door.

22 Q. Is it about as far from me to you?

23 MR. SMILEY: Your Honor, it's been asked
24 and answered several times.

25 THE COURT: Overruled.

1 Q. [Mr. Voigt] Is the front -- was the
2 front door from where you are along side the car
3 about as far away as I am from you right now?

4 A. It was in that distance. I can't -- it
5 was in that distance.

6 Q. Okay. So it -- close?

7 A. Yes, sir.

8 Q. Okay. Was there somebody at the front
9 door, an employee of the club, or security or
10 anybody at that front door when you were walking up
11 there?

12 A. No, sir.

13 Q. Was it -- so that area by the front door
14 there was nobody there?

15 A. No, sir.

16 Q. Had you ever been to this club before?

17 A. No, sir.

18 Q. You've been to other strip clubs before
19 but not this one?

20 A. I haven't been -- I haven't been to that
21 strip club before.

22 Q. But your testimony was that Jamie jumped
23 out, is that what you said?

24 A. Yes, sir.

25 Q. He didn't jump out though on the side of

1 the car where you were, did he?

2 A. No, sir.

3 Q. He jumped out on the other side?

4 A. Yes, sir.

5 Q. And when he jumped out of the car -- well
6 let's see, I'm going to show you -- I'm going to
7 put up here on the board what's been previously
8 marked as State's 13.

9 [[Whereupon, witness reviews photograph]

10 Q. When he jumped out of the car that's the
11 door right there [indicates] where he jumped out,
12 isn't it?

13 A. Yes, sir.

14 Q. Okay. And when he jumped out were you
15 still on this side of the car [indicates], on the
16 other side?

17 A. No, sir.

18 Q. So you had already at that point walked
19 back around behind the car?

20 A. Yes, sir.

21 Q. Okay. So, were you standing next to that
22 door when it opened?

23 A. No, sir. I was not next to the door.

24 Q. Just show me on that picture, if you can,
25 where you were standing?

1 A. I came around and I got about right here
2 [indicates] and Jamie jumped out -- Jamie jumped
3 out of the car.

4 Q. Okay. So where your hand is, just for
5 record purposes, is right back by the rear driver's
6 wheel well. That was approximately where you were?

7 A. Yeah. As I was coming around he jumped
8 out of the car.

9 Q. Okay. He jumped out the car. Did he
10 have a gun in his hand when he jumped out of the
11 car?

12 A. No, sir.

13 Q. Okay. But you had a gun in your back
14 pocket?

15 A. Yes, sir.

16 Q. Okay. Did you reach for your gun?

17 A. Not at the time.

18 Q. Okay. Were you immediately scared by
19 Jamie?

20 A. Yes, sir.

21 Q. Did Jamie say to you, if you've got a gun
22 you better use it?

23 A. No, sir.

24 Q. Did Jamie say to you, am I supposed to be
25 afraid of you because you got a gun?

1 A. No, sir.

2 Q. Did you say to Jamie, I'm about to?

3 A. No, sir.

4 Q. How long did this conversation or this
5 argument or this confrontation that you had with
6 Jamie last?

7 A. It didn't last -- it didn't last that
8 long.

9 Q. Okay. And your testimony was that you
10 saw Jamie reach into his waistband?

11 A. Yes, sir.

12 Q. And you saw him -- you saw a gun in the
13 waistband?

14 A. Yes, sir.

15 Q. And what color gun was it?

16 A. It was a -- I believe it was like a
17 brownish tan like one of these colors [indicates]
18 -- it was a dark gun.

19 Q. Was it the same gun that you saw in the
20 woods?

21 A. I don't know.

22 Q. And which hand did Jamie use to reach for
23 the gun?

24 A. As he was -- I believe he used his left
25 hand.

1 Q. Okay. So was the gun on the right side
2 of his waist or on the left side of his waist?

3 A. It was like -- it was in the front where
4 the belt buckled.

5 Q. And in the time that Jamie reached for
6 the gun is that when you decided to reach for your
7 gun?

8 A. Yes sir, because I knew that he was -- I
9 knew that he was going to kill me.

10 Q. Okay. And you knew that he was going to
11 kill you because -- now he had had the opportunity
12 to kill you before, hadn't he?

13 A. Yes, sir.

14 Q. And he didn't kill you, did he?

15 A. No, sir. But he shot at me.

16 Q. And he shot at you, as you testified,
17 from about three feet away, right?

18 A. About three feet where ---

19 Q. --- closer? At arms length? He shot at
20 you from arms length?

21 A. Yes, sir.

22 Q. Okay. And he didn't hit you?

23 A. He didn't hit me.

24 Q. Okay. But you thought that this time the
25 shot was going to be better?

1 A. Yes, sir.

2 Q. You thought that this time he would --
3 when he shot his weapon he intended to kill you?

4 A. Yes, sir.

5 Q. So in the time that you saw him reach for
6 the brown weapon in his waistband, with what you
7 believe to be his left hand, you reached into your
8 rear pocket and retrieved your snub nose .357?

9 A. Yes, sir.

10 Q. Are you right handed or left handed?

11 A. I'm left handed.

12 Q. Okay. And which pocket did you have the
13 gun?

14 A. It was in my right.

15 Q. So with your left hand you ---

16 A. --- no.

17 Q. Okay. Tell me how you did it?

18 A. It was -- I reached in with my right
19 hand.

20 Q. Okay. So with your right hand although
21 you're left handed ---

22 A. --- yes, sir ---

23 Q. --- you reached into your right rear
24 pocket and pulled out the gun?

25 A. Yes, sir.

1 Q. Did you switch it to your left hand?

2 A. No, sir.

3 Q. So you shot this gun with your right
4 hand?

5 A. Yes, sir.

6 Q. Okay. So if you would please, stand and
7 show the jury the motion that you made when you
8 shot Jamie Reed?

9 [Whereupon, the witness complies]

10 A. I went to my back pocket and I swung the
11 gun [indicates].

12 Q. Okay. How far was Jamie Reed's forehead
13 when you pulled the trigger? How far from the
14 weapon was it?

15 A. Well he was -- we were fairly close. It
16 was real close.

17 Q. Immediately after shooting Jamie Reed in
18 the forehead which way, on this picture if you can
19 show me, did you run to get back to your car?

20 A. I went back the way I came [indicates].
21 I went back around.

22 Q. Okay. And when you ran back around did
23 you see Terrell Wright firing a weapon?

24 A. As I was running back shots were coming
25 from the car, and that's when Terrell started

1 firing his gun.

2 Q. Just so that we're real clear though, the
3 very first shot fired was the shot that ended
4 Jamie's life. Is that correct?

5 A. I believe so.

6 Q. Did you ever see anybody else in that car
7 at all?

8 A. No, sir. The windows were up.

9 Q. Okay. So you didn't know who may have
10 been in the driver's side, you didn't know who may
11 have been in the passenger side?

12 A. No, sir.

13 Q. And at no time did you ever see any of
14 those individuals with weapons?

15 A. No, sir.

16 Q. But you heard gunshots?

17 A. Yes, sir.

18 Q. And you assumed that they had come from
19 this [indicates] area around this car?

20 A. Yes, sir. Because almost immediately
21 after I got to the front of the car shots was
22 coming from behind me.

23 Q. And you knew that Terrell Wright was
24 firing his weapon, correct?

25 A. Yes, sir.

1 Q. Okay. When you got back to your car,
2 where were your keys?

3 A. I left them in the car.

4 Q. You had left your keys in the car and
5 you'd left your car unlocked?

6 A. Terrell Wright was right there, so it
7 really didn't matter. I knew I was going to go see
8 what the price was and come right back.

9 Q. Okay. Did you leave the keys in the
10 ignition?

11 A. I believe so.

12 Q. Okay. Was the car running?

13 A. No, sir.

14 Q. Okay. So the car was off and the keys
15 were in the ignition. Is that what your testimony
16 was?

17 A. Yes, sir.

18 Q. Okay. Were you parked with the front of
19 the car -- you were parked -- were you parked on
20 the right or left hand side of that parking lot as
21 you're looking back?

22 A. In this picture I was parked [indicates]
23 I was parked in the dark area.

24 Q. Okay. Was the front of your car facing
25 [indicates] -- in this picture facing to the left?

1 A. Yes. I believe it was facing to the
2 left.

3 Q. Okay. So you got back into your car and
4 you drove out of that parking lot?

5 A. Yes, sir.

6 Q. And there was nothing obstructing you
7 from driving out of that parking lot was there?

8 A. What do you mean by that?

9 Q. I mean you had no problem getting out
10 from back there did you?

11 A. No, sir.

12 Q. Okay. And you headed down Peppermill
13 Parkway to Ashley Phosphate, is that right?

14 A. Yes, sir.

15 Q. And you got rid of the gun?

16 A. Yes, sir.

17 Q. Now did you get rid of the gun the same
18 day that you killed Jamie Reed?

19 A. Yes, sir.

20 Q. And that would have been on the 17th of
21 April, 2006?

22 A. It happened that same night.

23 Q. Okay. Was it still nighttime when you
24 got rid of the gun?

25 A. Yes, sir.

1 Q. Were you by yourself when you got rid of
2 the gun?

3 A. Yes, sir.

4 Q. After you killed Jamie Reed did you ever
5 call Terrell Wright or talk to Terrell Wright?

6 A. No, sir.

7 Q. Okay. Once you got to Ashley Phosphate
8 where did you drive? How did you go?

9 A. I went home.

10 Q. Okay. And what's the quickest way home
11 from there?

12 A. Through -- down Rivers, turn by Super K-
13 Mart, over the railroad tracks and straight down --
14 Road, through the lights.

15 Q. Where did you get rid of the gun?

16 A. I threw the gun out as I was crossing the
17 railroad tracks.

18 Q. So, you threw the gun out onto the
19 railroad tracks?

20 A. No. As I was crossing -- there's water
21 on the sides of the bridge.

22 Q. And you did that because you were scared?

23 A. Yes, sir.

24 Q. Okay. Were you still scared about the
25 Jamaicans?

1 A. I was scared about the whole --
2 everything that occurred in those couple of days I
3 was afraid of. I was scared of everything that
4 occurred.

5 Q. Now, the Jamaicans had a gun?

6 A. Yes, sir.

7 Q. But after you threw the gun away you
8 didn't have a gun, right?

9 A. Yes, sir.

10 Q. All right. And Ricco Reed had a gun,
11 right?

12 A. Yes, sir.

13 Q. After you threw the gun away you didn't
14 have a gun, right?

15 A. No. I did have a gun but I threw it
16 away.

17 Q. Right. And after -- did Slice have a gun
18 too?

19 A. I believe so.

20 Q. And after you threw away your gun you
21 didn't have a gun?

22 A. No, sir.

23 Q. But you weren't scared of any of them?

24 A. I was scared. But the incident that just
25 occurred I was very frightened, I was scared to

1 death. And I knew that I was going straight home.

2 Q. Okay. You were scared, but you were calm
3 enough to destroy evidence in this case?

4 A. Yes, sir. I never shot anyone. I was
5 very afraid.

6 Q. You were afraid of getting caught, right?

7 A. No, sir.

8 Q. When you got home did you wash your
9 hands?

10 A. No, sir.

11 Q. Did you take a shower?

12 A. No, sir.

13 Q. Other than your mother, did you tell
14 anybody else what happened?

15 A. No sir. Not that night.

16 Q. Did you panic out there?

17 A. Yes, sir.

18 MR. VOIGT: One moment, Your Honor.

19 [Whereupon, Mr. Voigt and Mr. Byrd
20 confer]

21 MR. VOIGT: Thank you, Your Honor. I
22 tender the witness.

23 THE COURT: Ladies and gentlemen of the
24 jury, this is a perfect time for us to take our
25 mid morning break. Please do not begin your

1 deliberations. Do not discuss this case
2 amongst yourselves. Please rise for the jury.

3 [Whereupon, the jury exits the courtroom
4 at 11:10 a.m.]

5 THE COURT: Thank you. Be seated. Mr.
6 McGee, we're going to take our break. Please
7 do not discuss this case with any of the
8 parties involved; that includes your attorney.
9 Thank you. Is there anything before we take
10 our morning break?

11 MR. VOIGT: No, Your Honor.

12 MR. SMILEY: No, Your Honor.

13 THE COURT: All right. We'll get started
14 back at 11:27. We'll get started at 11:30.
15 Thank you.

16 [Whereupon, the witness exits the witness
17 stand]

18 [Whereupon, a recess is taken from 11:11
19 a.m. until 11:29 a.m.]

20 THE COURT: Thank you. Be seated.
21 Anything before we bring in the jury?

22 MR. VOIGT: No, Your Honor.

23 MR. SMILEY: No, Your Honor.

24 [Whereupon, the jury enters the courtroom
25 at 11:30 a.m.]

1 THE COURT: Mr. McGee?

2 [Whereupon, the witness retakes the
3 witness stand]

4 THE BAILIFF: All seated, Your Honor.

5 THE COURT: Thank you. Please be seated.

6 MR. SMILEY: Your Honor, I have no further
7 questions of the witness.

8 THE COURT: All right. Mr. McGee, you
9 may step down.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness is excused and
12 exits the witness stand]

13 MR. SMILEY: And Your Honor, the defense
14 rests.

15 THE COURT: Mr. Voigt?

16 MR. VOIGT: The State does not have a
17 rebuttal.

18 THE COURT: All right. Ladies and
19 gentlemen, you have now heard all of the
20 evidence that will be presented in this case.

21 It also signifies to the Court that
22 there is a matter of law that I must take up
23 outside of your presence. Again, you have not
24 been instructed on the law in this case. Do
25 not begin discussing this case amongst

1 yourselves or begin your deliberations. I will
2 receive you back into the courtroom
3 momentarily. Please rise for the jury.

4 [Whereupon, the jury exits the courtroom
5 at 11:31 a.m.]

6 - - - - -

7 MOTION FOR A DIRECTED VERDICT

8 THE COURT: Thank you. Be seated.

9 MR. SMILEY: Your Honor, I have a motion,
10 a directed verdict motion. Not only must the
11 State in this case prove the elements of
12 murder, and I addressed that in the directed
13 motion at the close of the State's case, but
14 they also must negate each of -- well, one of
15 the elements of self-defense.

16 And I don't believe that they've
17 presented any evidence at all of that to negate
18 any of the elements. First, there is no
19 evidence that my client was the initiator of
20 the difficulties.

21 There's been no evidence that my
22 client had the ability to retreat and did not.
23 There has been no evidence presented and
24 propounded by the State that my client should
25 not or would not have been in fear of imminent

1 bodily injury, or that it would be unreasonable
2 to believe that. Therefore, I think that Mr.
3 McGee is entitled to a verdict of not guilty by
4 reason of self-defense. It's a matter of law
5 in this case.

6 THE COURT: Mr. Voigt, I'll be happy to
7 hear from you.

8 MR. VOIGT: Thank you, Your Honor. I
9 think the easy answer to that is that self-
10 defense is something that's more proper before
11 the jury. A more detailed answer though
12 would be that this is really going to be a
13 credibility call.

14 Fred McCoy and Tiffany Jenkins
15 seemed to indicate that -- not seemed to
16 indicate but they say it, Fred and Tiffany both
17 said that Nathaniel McGee initiates this
18 contact by walking up to the car.

19 Fred says that he looks into the car
20 window and then goes -- and when Jamie says get
21 away from my car he comes back around and they
22 have words. That's initiating this. The
23 other part that Mr. -- and I think I've negated
24 the very first element -- or my evidence
25 negated the very first element. But, I also

1 believe I negated the fourth element of self-
2 defense, and that I did through the testimony
3 of Nathaniel McGee.

4 He clearly had another way of dealing
5 with this situation. He is six to eight feet
6 away from the door of the club. He can
7 retreat. He has a place to retreat to. And
8 the fact that his egress from the parking lot
9 was not impeded in any way, he easily got away
10 from this conflict.

11 There's further evidence that there
12 was some other way he could have resolved this
13 conflict other than ending Jamie Reed's life.
14 I believe I've negated two of the four. And I
15 think in closing I'll probably convince the
16 jury that I've negated all four.

17 But just for the purposes of this
18 hearing I think that the evidence is very
19 clear that the State's evidence has negated
20 two of the four elements of self-defense.

21 THE COURT: Mr. Smiley?

22 MR. SMILEY: Of course, I completely
23 disagree. I don't think he was the initiator.
24 The evidence is he's walking by the car; he's
25 called to the car. The evidence through his

1 witnesses is that Jamie got out of the car.
2 As far as retreating, the testimony of Mr.
3 McGee that hasn't been negated by anybody
4 about retreating is that he believed and saw a
5 gun being pulled.

6 If he had turned to go into the
7 club, he would have gotten shot in the back of
8 the head is his belief, Your Honor. There is
9 no ability to retreat. This is a reaction
10 event. I don't believe it even arises to the
11 level to submit it to the jury based on the
12 evidence that has been presented. And it's
13 the burden of the State to present.

14 And even looking at it in a light
15 most favorable to the State, there's nothing
16 to show that Nathaniel that night did anything
17 to start it. But there's been plenty of
18 evidence to show the prior difficulty. And
19 then to say he could retreat he would have
20 been a dead man by his testimony. So, I think
21 it's very clear. Thank you, Your Honor.

22 THE COURT: Mr. Smiley, at this time I
23 deny your motion for a directed verdict based
24 upon the factors that the Court articulated at
25 the close of the State's case. Based upon the

1 testimony as presented by Mr. McGee, the Court
2 is going to instruct on self-defense based
3 upon the evidence as presented.

4 The Court feels that there was
5 sufficient evidence of the four factors; Mr.
6 McGee was without fault, there was imminent
7 danger of a serious bodily injury a reasonably
8 prudent person would believe, and there was no
9 probable means of avoiding the danger.

10 With that I'll note your exception.
11 Mr. Voigt -- Mr. Smiley, Mr. Voigt, are you
12 requesting lesser included at this time?

13 MR. SMILEY: The defense is not.

14 MR. VOIGT: The State is not, Your Honor.

15 THE COURT: All right. And with -- the
16 Court has reviewed, Mr. Voigt, your proposed
17 duty to retreat. The Court is comfortable
18 with the duty to retreat instructions that was
19 provided to you and deny your request to
20 change or to include those factors in the
21 Court's charge.

22 MR. VOIGT: Just for clarification, when
23 your clerk showed us the last -- the last
24 version of the jury charge because there was
25 included a sentence, which was similar to the

1 one I proposed are you saying that you are
2 striking ---

3 THE COURT: --- no. I am not changing my
4 charge. You had submitted what we determined
5 -- what I assumed you were requesting in place
6 of.

7 MR. VOIGT: Oh. But I believe that the
8 charge that your clerk showed me, I agreed
9 with that particular charge, the last one ---

10 THE COURT: --- I'm sorry, Mr. Voigt.
11 That was not what I was -- what I heard. So
12 I apologize if the Court misunderstood your
13 position ---

14 MR. VOIGT: --- no. I ---

15 THE COURT: --- we are going forward with
16 the duty to retreat as the original charge.
17 The charge that I -- that you were represented
18 this morning, those are the charges that I'm
19 going forward ---

20 MR. VOIGT: --- okay. So the second
21 version that we were shown just before the
22 break is not going to be the version that we
23 are going to use?

24 THE COURT: All right. We're going to
25 need just a moment. All right. Mr. Smiley, do

1 you take any position as to duty to retreat?

2 MR. SMILEY: As I stated at the
3 conference I was fine with the instruction as
4 it was and didn't believe it needed any
5 additional things. The addition that was
6 submitted by Mr. Voigt, I don't think it's
7 necessary. But I don't think it's wrong.

8 THE COURT: All right. So the new ---

9 MR. SMILEY: --- sentence that was ---

10 THE COURT: --- addition -- and you have
11 no objection to it at this time, Mr. Smiley?

12 MR. SMILEY: No. I don't object to it.
13 It will just make it simple.

14 THE COURT: All right. And Mr. Voigt,
15 the corrected charge that you received during
16 the break you are comfortable with it ---

17 MR. VOIGT: --- I'm very comfortable with
18 that, Your Honor.

19 THE COURT: All right.

20 MR. SMILEY: And I don't object to it. I
21 don't think it's improper. I don't think it's
22 necessary, but I'm not objecting to it.

23 THE COURT: And with that Mr. Smiley, are
24 you comfortable with the charges as presented?

25 MR. SMILEY: I am. I am.

1 THE COURT: Any additions, corrections?
2 MR. SMILEY: No, ma'am.
3 THE COURT: All right, and Mr. Voigt ---
4 MR. VOIGT: --- not from the State, Your
5 Honor.
6 THE COURT: All right.
7 MR. VOIGT: And there's no exception,
8 just to be clear.
9 THE COURT: Okay. The -- are we prepared
10 now to go forward with the closings?
11 MR. VOIGT: The State is prepared. The
12 State does not intend to offer a close on the
13 law.
14 THE COURT: All right. And Mr. Smiley?
15 MR. SMILEY: I'm ready to go.
16 THE COURT: All right. Do you need a few
17 minutes to gather your thoughts?
18 MR. SMILEY: It would be helpful, yes
19 ma'am. If you asked me if I'd like them, yes
20 ma'am, I do. Is it necessary to gather my
21 thoughts? I could go right now. But, if you
22 would be kind enough to give me five minutes I
23 would take it.
24 THE COURT: All right. Mr. Voigt, are
25 you requesting a few minutes to collect your

1 thoughts or are you ready to go?

2 MR. VOIGT: Your Honor, I would join in
3 Mr. Smiley's five-minute request.

4 THE COURT: All right. Well...

5 MR. SMILEY: Or ten. Whatever you
6 decide.

7 THE COURT: I'll give you ten minutes,
8 counsel.

9 MR. SMILEY: Okay.

10 THE COURT: Then I'll bring the jury in
11 and we'll close. During the ten minutes I'm
12 going to go ahead and make arrangements to
13 have lunch ready for the jury so that they can
14 just continue deliberating. That won't be an
15 issue as to whether or not we send them out
16 they'll just remain with us. Thank you.

17 MR. SMILEY: Thank you, very much.

18 [Whereupon, a recess is taken from 11:41
19 a.m. until 12:00 noon]

20 THE COURT: Be seated. Any matters
21 before we bring in the jury?

22 MR. VOIGT: None from the State, Your
23 Honor.

24 MR. SMILEY: None from the defense, Your
25 Honor.

1 THE COURT: All right. Ladies and
2 gentlemen of the audience, we have reached the
3 portion of this trial where we are going to
4 hear closing argument.

5 You are free to remain, but I
6 caution you, please do not move while anyone
7 is speaking. It is disruptive to the parties
8 speaking, be it Mr. Smiley, or Mr. Voigt, or
9 the Court. I will allow you a break in
10 between --

11 [Off the record momentarily]

12 THE COURT: For those of you who have not
13 checked your cell phone, this is an
14 appropriate time for you to check your cell
15 phone. As I was saying it is disruptive to
16 the process at hand.

17 We would all agree that this is a
18 very serious matter and every person involved
19 here today deserves the right to present their
20 arguments without being interrupted.

21 Mr. Smiley will give his opening --
22 excuse me, his closing first. There will be a
23 pause. If you need to leave at that time,
24 that is the time to do it. Mr. Voigt will
25 then give his close. I will give you another

1 pause if you need to leave at that time.
2 There will be -- then the Court will give its
3 closing on the law. There is to be absolutely
4 no movement while anyone is speaking. Thank
5 you. Anything...

6 MR. SMILEY: Nothing further, Your Honor.

7 MR. VOIGT: Nothing further, Your Honor.

8 THE COURT: Please rise for the jury.

9 [Whereupon, the jury enters the courtroom
10 at 12:02 p.m.]

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you. Please be seated.
13 Ladies and gentlemen of the jury, we have now
14 as I indicated, heard all of the evidence in
15 this case. We have reached the part of the
16 trial, which will include closing arguments on
17 the behalf of both sides.

18 As I indicated to you in my opening,
19 the arguments by counsel are simply that, they
20 are arguments. They are not to be considered
21 as evidence by you in any way. After the
22 attorney for the defendant, as well as the
23 attorney for the State, have given their
24 closing argument I will instruct you on the
25 law applicable to this case.

1 THE COURT: Mr. Smiley?

2 - - - - -

3 CLOSING ARGUMENT

4 MR. SMILEY: Protect yourself or get
5 killed. I think those are the first words I
6 told you this was about. And that's exactly,
7 exactly what this case is about.

8 That night at Club Fantasy,
9 Nathaniel is walking to the front door to see
10 what the cover was. He was called to the car,
11 Jamie Reed jumped out, stepped back, words
12 were exchanged. Nate told you he reached --
13 the fellow reached for -- lifted his shirt,
14 reached for his gun. And he did the only
15 thing he could do. He reacted.

16 Now, in hindsight retrospect after
17 three hours on the stand looking at other
18 possible ways to handle it, I think he'd come
19 to the same conclusion because you have to
20 remember this wasn't a long decision process.
21 He was accosted, confronted by a man who had
22 done him harm two days before.

23 The detectives told you -- Detective
24 Elmore told you that in the course of his
25 investigation that he had established and had

1 found that was what it was about. He told you
2 he knew about -- had gotten information about
3 the kidnapping. It's not like ---

4 MR. VOIGT: --- objection, Your Honor.

5 THE COURT: Basis?

6 MR. VOIGT: I believe that's a
7 mischaracterization of the testimony.

8 THE COURT: Overruled.

9 MR. VOIGT: Thank you, Your Honor.

10 MR. SMILEY: It's not like after
11 Nathaniel was incarcerated he came up with
12 some tale. He was out there. Now, you may
13 say why didn't he call the police? He told
14 you he was scared and he had been threatened.

15 By the same token if there was a
16 burglary and that chain was taken, why didn't
17 he call the police? Because, he was going to
18 take matters into his own hands. . You got to
19 watch the witnesses on the stand. You got to
20 watch the case agent.

21 I don't think he's here, but
22 Detective Elmore, it was his case, and how he
23 testified and what he did. You got to hear
24 from the other -- Sergeant Hallman, who
25 collected the evidence. Patrick --

1 Investigator Patrick's little bit of
2 involvement. But mostly it comes down to two
3 witnesses for them. It comes down to Tiffany
4 Jenkins and Fred McCoy. And Tiffany told you
5 her back was turned when the two of them were
6 facing up.

7 She was counting her money and that
8 she caught out of the corner of her eye the
9 swing of a pistol, which actually is very
10 consistent with what Nate told you. And that
11 she ran. She ran.

12 Fred, the man known to carry a gun,
13 he's been convicted of carrying a gun, the
14 fellow that -- you got to see his demeanor on
15 the stand. He got put in jail. He told you
16 his version that night. And he -- an added
17 fact that we haven't heard from anybody else
18 is that Terrell had a gun on him first, he
19 thought Terrell fired first.

20 He made it sound a lot different.
21 And I suggest to you that he's a liar.
22 Sometimes you can say somebody is mistaken,
23 but I'd suggest to you that Fred McCoy is a
24 liar. He admitted to lying, so he has no
25 compunction about lying. When confronted with

1 information that Detective Elmore knew that
2 Antonio Bryant was there, he admitted, I lied,
3 I didn't tell you about Antonio. And his
4 reason for that was, you know, Antonio he just
5 wouldn't want to be involved because he's got
6 some relation with Nate. He has no relation
7 with Nate. And that's just a flat lie.

8 And then later when I asked him
9 again at the end of his testimony was there a
10 beef? Did you know about a beef between Nate
11 and Jamie? He said, no. Then, of course, we
12 know that was a lie under oath because when I
13 put his statement in front of him he said, oh
14 yeah, I knew about.

15 And then he tried to add that he
16 learned about it after the event. But that
17 wasn't my question. I said, did you know
18 about the beef? He said, no, which was just a
19 flat lie. So, I suggest to you the
20 creditability of Fred McCoy is pretty low.

21 The State has to prove not just
22 murder, which is the killing of another with
23 malice, then they have to negate beyond a
24 reasonable doubt one of the elements of self-
25 defense. And I'm going to submit to you

1 they've offered little or no evidence to
2 negate any, much less one, of the elements of
3 beyond a reasonable doubt. Malice -- the
4 Judge is going to read you the law, but I'm
5 going to read you what I believe the Judge
6 will instruct you on.

7 Malice is hatred, ill will, or
8 hostility towards another person. It is the
9 intentional doing of a wrongful act, without
10 just cause or excuse, with the intent to
11 inflict an injury under circumstances that the
12 law will infer an evil intent. He's got to
13 show malice on top of negating self-defense.

14 You got to hear from Tiffany.
15 Tiffany tells you about a fellow, a light
16 skinned fellow, with a hat. She was shown a
17 picture that they used of Nathaniel when he
18 had longer hair and a beard and she didn't
19 recognize that guy. So now this guy was hot.
20 And then she never picked out Nathaniel in the
21 courtroom.

22 So I'm going to submit to you she
23 wasn't paying a whole lot of attention to what
24 was going on. She wasn't paying a lot of
25 attention. She didn't see a gun until that

1 last moment as she had turned her back when it
2 happened. But she does say Jamie jumped out
3 of the car, very clear. Another thing that
4 doesn't make sense is Detective Elmore said
5 something about he had some information that
6 Nate came around and opened the door. Did you
7 hear any testimony about that?

8 The fingerprint guy said he got tons
9 of fingerprints, but none of them were anybody
10 but the four, Antonio, Fred, Jamie, and
11 another fellow, Effron Moss I think, something
12 to that effect. Somebody not related to the
13 case.

14 The prior difficulties in this case,
15 and it happened right before that, had to be
16 truly a terrifying experience. To be pulled
17 in the woods at gunpoint. You have to plead
18 and cry for your life. You have a gun fired
19 right at you and you're told if you tell
20 anybody, I know where you family lives. It's
21 got to be terrifying.

22 Should he have called the police?
23 Sure he should have. But when you're under
24 the stress of that event you don't know what
25 to do. It would be nice if the police got

1 involved in this from the very beginning, when
2 the alleged burglary took place that they
3 believed that Nate had something to do with
4 it, instead of going out for vigilante
5 justice. Now, Tiffany testified that after
6 the shooting chaos broke out. Shots were
7 fired. And that she stayed at the scene.

8 I think it's real significant, real
9 significant in this case, Fred testified that
10 he had a cousin relationship I believe -- and
11 y'all, if I misstate some evidence, y'all
12 heard it and y'all's collective memory
13 certainly will be better than mine, but had
14 some relationship with Jamie. And that
15 Antonio was their friend.

16 And they left. They took off. They
17 weren't there to help the police. But that's
18 not the thing that is significant. Fred goes
19 in the club and who does he call? He calls
20 one of Jamie's brothers to come get him and
21 get him out of there, all right.

22 Now, I'm going to submit to you
23 something had to get taken away from the
24 scene. Through circumstantial evidence I
25 think you can infer that. Because if you're a

1 brother and you come to the scene, aren't you
2 going to go see what's wrong with your
3 brother? Aren't you going to stay? No, he
4 carried away Fred McCoy and whatever Fred had
5 with him. You know, you're going to a club,
6 you're 21, 22, and you don't have your I.D.?
7 You don't have a wallet?

8 I submit to you he probably did
9 before. It was taken afterwards with whatever
10 else. I'm going to submit to you that that
11 was done. It was taken away from the scene.
12 Another thing, I asked Detective Hallman what
13 he found in the car.

14 And he said, in the backseat where
15 Mr. Reed was believed to be, he found his
16 watch, which is State's exhibit number 11, his
17 watch laying right there, by his -- cup, and a
18 chain, but you can't see it in the picture.
19 But he said he found his watch and his chain.

20 Why is that significant? I submit
21 to you if you're sitting in the back and you
22 see Nate walking up, you take the chain off,
23 take your watch off, get out of the car,
24 because you are going to confront Nate.
25 Now, nobody else saw a gun but Nate. I

1 submit to you that there's evidence to believe
2 that there was a gun there. But even if there
3 wasn't a gun, if Nate believed that, that
4 action accompanied with his words is enough to
5 establish that imminent danger. He had just
6 two days before been accosted severely by
7 Jamie. He was scared.

8 You got to watch Nate testify all
9 this morning. And you got to watch how he
10 handled himself. Did you hear him lie about
11 or be mistaken about anything? Because he
12 told it from his heart like he remembers. He
13 didn't get caught up. You can't trip somebody
14 up on the truth.

15 If people tell a story twice, it's
16 never going to be exactly the same. If you
17 tell it three, or four times, it's never going
18 to be exactly the same. And this one wasn't
19 exactly the same as he was questioned over and
20 over. But it was pretty close.

21 Why? He told what he remembered and
22 felt and saw from his heart. And what he told
23 you was, I had to. He was going to kill me.
24 That's what he believed when Jamie reached and
25 lifted his shirt. Now, one of the elements of

1 self-defense is that you couldn't -- if you
2 start it, you can't claim self-defense. And I
3 guess the State's going to say, and I'm not
4 trying to put words in their mouths but this
5 is the last time I get to talk to you, I guess
6 they're going to say that Nate coming up to
7 the car was the provocation.

8 Well come on. He's walking back --
9 walking by the car. He gets called out. He
10 walks up. Jamie is taking off his watch and
11 chain and jumps out and confronts him. What
12 did he do to start it? He's going to check
13 the cover, all right.

14 It's important to note Nate's there
15 first, okay. Now, the State is going through
16 their questions, and obviously are going to
17 say, that Nate was laying in wait in the back
18 parking lot. And he backed in and he left his
19 keys in, and he was walking up to get that
20 silver car. But it wasn't there yet. He
21 wasn't there yet. He got there first.

22 It doesn't make a bit of sense. He
23 knew where they were going and when they would
24 arrive? There's no evidence to that. That's
25 pure conjecture. That's imagination,

1 imagination that doesn't make sense. Now, the
2 other part of self-defense that the State is
3 going to try to negate is duty to retreat.
4 Now, you have to remember this happened
5 quickly. The State is going to say well, he
6 was right there at the club, why didn't he run
7 in the club when Jamie went for a gun?

8 He didn't run in the club when Jamie
9 went for a gun because he didn't want to get a
10 bullet in the back of his head. He reacted.
11 He didn't think. He reacted. He was scared
12 to death.

13 You know I laid these pictures out
14 before we started but I'll be darned if I
15 didn't get them mixed up again.

16 Now, in crossing -- in crossing Mr.
17 McGee as they were trying to push that car
18 close up by the door -- you know six to eight
19 feet was being asked in cross. You see where
20 the car is [indicates].

21 There's no testimony that car was
22 moved from the time the incident began until
23 that picture was taken. It's pretty close to
24 the end, certainly before that pad starts.
25 Now, here's a picture of the building. It

1 shows the door way up there [indicates]. You
2 can see there is a set of doors in that
3 picture and the car is certainly further back
4 towards the back of the building than those
5 doors.

6 There's a pretty good space between
7 the back of that car and the front of the
8 club. Not that Nate had time to evaluate,
9 hmmm, how do I get out of here? The man was
10 pulling a gun and he protected himself.

11 The other elements that a reasonable
12 person -- and she's going -- the Judge is
13 going to tell you exactly what the law reads,
14 I'm just -- to make a summary of it, is that a
15 reasonable person in a similar situation would
16 react the same way.

17 And I suggest to you that if you've
18 ever been in that situation, I certainly
19 haven't, but put in that situation, I would do
20 what I had to do to protect myself. And I
21 think that's what Nate, the evidence shows,
22 Nate did.

23 Imminent -- he certainly -- would --
24 fear. Where's Antonio? Why did he hide from
25 the police? Why didn't he come forward?

1 Maybe because he was firing a gun out there.
2 Nate testified that he heard shots coming from
3 behind him as he ran away. It makes perfect
4 sense why you wouldn't want to get involved
5 with the police, even though your good friend
6 had been killed.

7 Where's Sierra Smith? Why isn't she
8 here to testify? Why isn't the doorman here?
9 Why isn't the manager here? Why isn't --
10 other people from the parking lot here?

11 We got two people. One who tells
12 you she wasn't paying a whole lot of attention
13 and had her back turned. And one, showing
14 that he ain't nothing but a liar. And has a
15 reason to lie. Now, pretty clear case. But
16 it doesn't make it any less serious.

17 Nathaniel McGee acted in self-
18 defense. The State hasn't done anything to
19 remove that. The State hasn't overcome any of
20 those elements beyond a reasonable doubt
21 required by law. I'm sure Nate didn't want
22 him dead. But he had no choice. He hadn't had
23 a reputation in the community, nor was
24 anything presented to show otherwise, that he
25 was a bad person. He was put in a bad spot.

1 Now, the last couple of things, and I think
2 those are already clear I'm sure. And I'm
3 sure there are questions that y'all have to
4 ask and answer amongst yourselves.

5 But you know, throwing the gun out
6 the window, he just shot somebody. You think
7 Nate knew what the law was? I'm sure he was
8 scared. Scared of what happened. Scared that
9 he may have done something wrong. He didn't
10 know. He was scared to death.

11 I think that the evidence shows
12 throwing that gun out the window was a
13 response to giving it away. He killed
14 somebody. It was just cause, but he killed
15 somebody. It was traumatic. It's not a fun
16 thing.

17 He went home and immediately told
18 his mom what he had done. And he turned
19 himself in the next day. He didn't run like
20 Antonio and keep hiding. He turned himself
21 in. Now, Nathaniel McGee got on the stand and
22 told you from his heart that. And I would
23 submit to you that he acted with just cause in
24 this situation. And that he is entitled to --
25 a verdict of self-defense, not guilty. That's

1 the verdict, to speak the truth. I appreciate
2 your attentiveness. Thank you.

3 THE COURT: Mr. Voigt?

4 MR. VOIGT: May it please the Court?

5 - - - - -

6 CLOSING ARGUMENT

7 MR. VOIGT: Ladies and gentlemen, thank
8 you for staying very attentive through what is
9 now two days of a very serious case.

10 Mr. Smiley and I apparently have
11 been watching different cases. We've heard
12 perhaps different testimony. We've heard
13 different lies about what happened. This is
14 Club Fantasy [indicates]. It's State's 16.
15 It's apt because most, if not everything, that
16 you've heard today was Nathaniel McGee's
17 fantasy about how this happened.

18 He's had time for his mind to
19 construct this fantasy. He might believe it.
20 I don't know. I don't think he's -- I don't
21 care. Here's State's 17 [indicates]. It's
22 the door of Club Fantasy. You'll get to see
23 it when you take it back. No hats, security
24 cameras in use. No firearms or weapons
25 permitted. Of course not, because he wasn't

1 taking the gun to go into the club with it.
2 He was taking the gun because he knew what
3 kind of car Jamie had. Of course, he did.

4 Each one of us must make decisions
5 everyday. Mr. Smiley and I made a similar
6 decision this morning while dressing, all
7 right. These are choices that we make.
8 They're not -- we're not bound to these
9 choices. We're not determined.

10 Our law, the law of murder, the law
11 of self-defense, recognizes that men of
12 free-will make choices. And, that there are
13 consequences for these choices. Mr. McGee and
14 Mr. Smiley would have you believe that for the
15 choices that Nathaniel McGee made, there
16 should be no consequences whatsoever.

17 And I don't believe that's what the
18 law is. And I don't believe that's justice.
19 Not justice with a little j, or justice with a
20 big j. This is as close to an actual visual
21 presentation as I normally do.

22 [Whereupon, the C.D. is played]

23 Here we are at Club Fantasy. Here's
24 the person that Nathaniel McGee says isn't
25 there. That's at the front entrance, the

1 picture that I kind of waved around. I put it
2 on the screen, but I couldn't get it clear.
3 Here's the time, okay. We're going by seconds
4 now --

5 Can you stop that for me?

6 This is the silver Chrysler --

7 You want to stop it there.

8 MR. SMILEY: Your Honor, I object.
9 There's been no evidence that that's the
10 silver Chrysler. He's arguing about facts not
11 in evidence.

12 THE COURT: Counsel, approach.

13 [Whereupon, an off-the-record bench
14 conference is held]

15 THE COURT: Sustained, Mr. Smiley.

16 MR. VOIGT: All right ---

17 THE COURT: --- Mr. Smiley, one moment,
18 Mr. Voigt. As I instructed you in my opening
19 right before counsel began their arguments,
20 these are arguments. They are not to be
21 considered as evidence in this case. Thank
22 you. You may continue, Mr. Voigt.

23 MR. VOIGT: Now, let's just take a look
24 right here. This video is in evidence. It's
25 something that you can consider. You can

1 consider what that car looks like. You can
2 consider its shape. You can consider where
3 the headlights and taillights are. And you
4 can consider all those things.

5 And you can consider State's 15.
6 And you can determine if these are similar
7 cars. You can determine if they are, in fact,
8 the same cars. I have a limitation trying to
9 -- that to this but, here we are in State's 1.
10 It looks like the same car.

11 The security guard is waving that
12 car to the back. And here's a camera angle of
13 the back parking lot. And we've got time
14 signature here --

15 Can you move it up one frame for me?
16 You got to hit the big button to play.
17 Obviously, Mr. Byrd was not the A.V. guy in
18 high school.

19 All right. So, let's start over
20 again. Hour 24 and 25; this goes by seconds.
21 And you can take notice of that even though
22 nobody testified to it. You can test -- you
23 can -- so here we are at 32 and here's the car
24 that may or may not be a Chrysler 300. Here
25 we are at 38, and we started at 32. Here is

1 what looks like a girl. This is a terrible
2 video, folks. And I'll admit that. Here we
3 are at 50 --

4 Can you stop that Bryan?

5 I'm going to speculate as to what
6 that is, all right. This is a very poor
7 quality video. This is the best we got, okay.
8 So, when you go to Club Fantasy and you park
9 your car in the back lot, don't feel
10 comfortable that your car is safe from all the
11 burglars that would be later identified based
12 on the quality of this; because this isn't
13 going to be good enough.

14 But, I'm going to speculate now that
15 that's a human being, all right. I'm going to
16 further speculate that that human being is
17 most likely Nathaniel McGee. But that's just
18 me speculating.

19 When you get to look at it you can
20 determine if this matches the testimony that
21 you heard both from Nathaniel and Frederick
22 McCoy. Because you heard both of them say
23 that the person who first came out of the back
24 parking lot was Nathaniel McGee. He goes to
25 the club with Terrell, but they do not

1 approach the club at the same time. I think
2 they have different purposes in approaching
3 the club. Mr. Smiley would have you believe
4 that the only purpose that his client had in
5 approaching the club was to determine the
6 cover.

7 I would postulate that the evidence
8 shows something completely different. Matter
9 of fact, we're starting here with evidence of
10 malice --

11 Go on ---

12 MR. SMILEY: --- I absolutely object.
13 May we approach?

14 THE COURT: You may.

15 [Whereupon, an off-the-record bench
16 conference is held]

17 MR. SMILEY: If you'll note my objection,
18 Your Honor?

19 THE COURT: I'll note your objection, Mr.
20 Smiley. Mr. Voigt?

21 MR. VOIGT: Thank you very much, Your
22 Honor. I tend to talk louder if I'm farther
23 away, and with a laser pointer I can be very
24 far. Here's a person walking up to an area
25 that gets out of the screen, ok. There's one

1 person --

2 Now, stop it again.

3 05, all right. We are still at less
4 than a minute from the time a car, which may
5 or may not be, the Chrysler, you can weight it
6 as much as you like, pulls in. All right,
7 almost immediately a person walking up from
8 the back here [indicates]. Oh wait, there's
9 somebody else --

10 Can you stop that for me?

11 We are less than a minute into the
12 total here, all right. And here's another
13 person. And what did -- where did Fred McCoy
14 say that Terrell Wright was? This is
15 evidence.

16 And where did Nathaniel say that
17 Terrell was? He's in that back parking lot.
18 And remember this camera? And it's really
19 hard to see, but its -- its kind of --
20 actually I have no idea where that camera is
21 to be honest with you.

22 But it's on the building somewhere.
23 But it's pointing away from the building. And
24 Terrell Wright is in that back parking lot.
25 But he's to the right, away. That's where he

1 starts firing his gun. Something happened.
2 The security guard decides to go inside. This
3 gets hard to see --

4 Could you stop it? Stop it here.

5 Right up here you have people. I
6 believe they're people. Mr. Smiley might
7 argue to you that we can't tell if they are
8 people. You know, you'll get to look at it
9 and say for yourselves.

10 It looks to me like people running
11 away from the front of the building. Somebody
12 else. Wait. Here we go. What was that?

13 Keep going.

14 And what was that? A car. Another
15 car.

16 All right. Thank you.

17 [Whereupon, the C.D. concludes]

18 MR. VOIGT: It's 28 from the time a car,
19 which may or may not be the Chrysler, drives
20 into the lot until the time two cars leave.

21 And Mr. McGee told you that he was
22 driving a car and Mr. Wright was driving a
23 car. Two minutes, okay. Let me switch gears.
24 Why is that -- why is that important? Because
25 that's what Fred said happened. This looks --

1 and I would say that the evidence that you've
2 heard, and the testimony about where everybody
3 was, and the stories that you've heard, that
4 Jamie Reed had a chance here. A chance?

5 Could Nathaniel McGee get away?

6 Well, he just did. He had to shoot somebody
7 first, but he got away. Look at Jamie Reed's
8 feet. He's under the car. How far away from
9 his car did he get? Nobody saw him with a
10 gun.

11 Tiffany. Poor confused Tiffany.

12 All right. My witnesses are who I've got. No
13 one else is out there. I don't -- I can't
14 make them any better than they are. I can't
15 polish them up for you and make it all
16 perfect. But Tiffany didn't see Jamie Reed
17 with a gun.

18 Nathaniel McGee, the guy who shot Jamie
19 Reed, he had the gun. Free from fault?
20 There's no gun there. There's no evidence.
21 There's speculation, but there's no evidence
22 that a gun was ever removed. You heard that
23 when the shooting started -- remember Terrell
24 Wright is back here now, just like he was in
25 that video, all right. And even Nathaniel

1 McGee, as precarious a relationship with the
2 truth as Mr. McGee might have, he cannot say
3 that anybody else was firing a gun besides
4 him. In other words, he fired first, nobody
5 else.

6 This isn't I heard gunfire, and oh
7 my God, I panicked and I fired my gun. This
8 is not one of those, okay. The only two
9 people that he can say, or that he did say,
10 were firing weapons were Terrell McCoy (sic)
11 back here [indicates] giving him cover so he
12 can get away. That's what he's doing. And it
13 works.

14 Fred McCoy hits the dirt and takes
15 off. Antonio Bryant takes off. It worked.
16 If they -- if there was going to be any help
17 for poor Jamie Reed, Terrell Wright made sure
18 that didn't happen. He's giving him cover as
19 Nathaniel gets out.

20 Nathaniel stalks him. He walks up
21 to him, he opens the car door, he barely gets
22 out of the car. Bang. Nobody moved that
23 body. There's been no evidence, no testimony
24 that anybody moved that body. Jamie Reed, if
25 he's going to bow up to somebody, do you think

1 he's going to do it right in the doorway of
2 the car? He gets out to see what Nathaniel
3 McGee wants. Nathaniel McGee, who has come
4 from all the way back here in the parking lot,
5 where he has left the keys in the ignition so
6 that can get out of there; quickly.

7 These gentlemen aren't here for the
8 gentleman club action. Maybe that's where --
9 how they started out wanting to be there.
10 But now is it a coincidence that they all
11 started out at the Dorchester drag way? No,
12 maybe not.

13 He's stalked by a man with a gun who
14 comes from the back parking lot, comes around
15 where he is. He gets out of his car he's dead
16 where he stands. There's no gun. What hand
17 did he pull a gun out with? Do you really
18 think, do you really think -- this isn't the
19 wild, wild, west.

20 This isn't people pulling guns on
21 each other to see who's the quickest draw. We
22 don't get cases like, okay. But think about
23 Nathaniel McGee's story, all right. He wants
24 you to believe this is a wild, wild, west gun
25 shootout and this is the bad guy. And he just

1 happened to get the drop on the bad guy
2 because he sees the bad guy go into his
3 waistband where he's got this gun. So alleged
4 bad guy, he's going first, right?

5 And poor innocent Nathaniel McGee
6 reaches in to his back right pocket with his
7 right hand, and he's left handed, and he pulls
8 out his gun and just swings it wildly. He
9 doesn't know how it goes off, poor Nathaniel
10 McGee, and his precarious relationship to the
11 truth.

12 He has had three years to come to
13 grips with the fact that he killed this human
14 being and he cannot sit there and admit it to
15 you. He can't admit it to himself, he can't
16 admit to anybody.

17 That's not how it happened.
18 Nathaniel McGee's story is a lie. Is he lying
19 to himself? I don't care. He's lying to you.
20 He's lying to me. And, that's not justice.
21 That's not the truth.

22 Jamie Reed did not have a gun. He
23 didn't draw down on anybody. And a left-
24 handed Nathaniel McGee didn't fumble around
25 with his right hand and swing a gun wildly and

1 place a bullet hole smack dab in the center of
2 Jamie Reed's forehead. That's not how it
3 happened. A close contact wound. Not a lucky
4 shot. That's not how it happened.

5 No, he stalked him from the back
6 parking lot. He knew whose car it was. He
7 looked in the front window, just like Fred
8 said he did, determined that that wasn't where
9 Jamie was. The beef he had was with Jamie.
10 He's going around.

11 Jamie gets out, what's up? What
12 does Jamie say? Jamie makes a mistake. He
13 doesn't think that Nathaniel McGee is a
14 killer. I should be afraid of you because
15 you've got a gun? Well, you better use it.
16 That's what he said. That's what Jamie said.
17 The only words that we have come out of
18 Jamie's mouth were what Fred told us. I'm
19 about to. Oh yeah. Yeah he was. He was
20 about to.

21 And you know what he did? He calmly
22 squeezed the trigger an inch away from Jamie's
23 forehead. That bullet traveled through
24 Jamie's brain and ended his life. He was dead
25 before he hit the ground. Look at his feet.

1 He gets out of the car. This happens so fast
2 he doesn't realize what hit him. Lies, this
3 prior difficulty. Imagine if you will if
4 that really happened.

5 Six guys, seven guys, with guns take
6 poor Nathaniel McGee in the back for a
7 necklace -- oh, let me before we get away from
8 this, sometimes when you do -- you're going to
9 get out of your car, shoot somebody, and
10 you're going to take your watch and your chain
11 off? It makes no sense. No, it doesn't. You
12 don't do that.

13 To shoot somebody; how is the chain
14 going to slow you down? How is your watch
15 going to slow you down? They just happened to
16 be there. The shirt happened to be there,
17 too. It may have been cooler. It may have
18 gotten -- it may have warmed up and he took
19 the outer shirt off and left the t-shirt on.

20 These are artifacts of a human
21 being's life. He was hungry. He went to the
22 Waffle House. He got some coffee because it
23 was late at night. He had caffeine in him
24 because he's drinking coffee. There are
25 innocent explanations for everything in that

1 car. He wanted to have -- he wanted nutrition
2 so that he would have the energy to kill
3 Nathaniel McGee? He wanted caffeine so that
4 he would be a faster draw? No. It's a
5 preposterous story.

6 Nathaniel McGee's story is
7 preposterous. Two mystery Jamaicans take him
8 out in the woods. For what? Who are these
9 guys? And they bind him, and then everybody
10 says, well that's it, had enough of that.
11 We'll walk out and we'll just let him go.
12 Really?

13 Oh, and the best part. Because he
14 needs this, because he's been thinking about
15 this for a little while, it's been almost
16 three years. He's been thinking Jamie needs a
17 gun. Jamie needs to really threaten me with
18 it. But if he doesn't, then maybe this isn't
19 going to be self-defense. Maybe you won't buy
20 it.

21 Jamie is standing -- is arm's length
22 away from him with some mystery gun, which
23 doesn't happen to look like the gun two days
24 later. It was all made up. He squeezes off a
25 round and misses him? Really? Do you believe

1 that? No, you don't. No, because it was made
2 up. It's made up, gang. It's false,
3 absolutely false. This is going to look
4 similar to what you're going to hear from the
5 Judge. I took it from a case and I hope --
6 no. No. I'm okay ---

7 MR. SMILEY: --- objection, Your Honor.

8 THE COURT: Basis? Counsel approach.

9 [Whereupon, an off-the-record bench
10 conference is held]

11 THE COURT: Sustained, Mr. Smiley.

12 MR. SMILEY: Thank you.

13 MR. VOIGT: Instead of this let's just
14 look at the consequences of Nathaniel McGee's
15 action, self-defense, this fantasy, this
16 charade that we have.

17 The defendant must be without fault
18 in bringing on the difficulty. I have to
19 disprove that. Well, I have to disprove one
20 of the four elements. I'll just start with
21 this one because I can pick any one at random.

22 I think I can pick this one.

23 Let's see, went out and bought a gun off the
24 street, carried it around, carried it in his
25 back pocket, and walked around here

1 [indicates] and confronted somebody with whom
2 he had had a previous beef. He must be
3 without fault. Nathaniel McGee must be
4 without fault.

5 Nathaniel McGee watched from where
6 he is anonymous and safe in the back of that
7 parking lot where no one can see him. He
8 walks up to a car that he recognizes, walks
9 around, and determines who's in the car and
10 where they are located. Finds Jamie Reed.

11 Jamie Reed gets out of the car by
12 himself. Nathaniel doesn't -- Jamie gets out.
13 I don't know what Jamie thinks of Nathaniel.
14 I don't think he's got a terribly high opinion
15 of him. He certainly doesn't think he's going
16 to use the gun that Nathaniel is holding. But
17 he's wrong.

18 But that's Nathaniel McGee provoking
19 something. That's the evidence that you've
20 heard. That's what Fred McCoy said, that's
21 what -- you can put together what Tiffany
22 Jenkins said. Tiffany was a little disjointed
23 but you can -- what she said was not
24 discounted at all by what Nathaniel said.
25 Nathaniel didn't pretend that she wasn't out

1 there at all. There's her bag. But no, she
2 wasn't out there. She's not standing right
3 there? And then she runs around to the front
4 of the car and she sees this. That's what she
5 said. She was out there.

6 In Nathaniel's fantasy it's just
7 these two gunslingers out there, poor
8 Nathaniel defending himself, and Jamie. Jamie
9 is no gunslinger, poor dead 22-year old. He
10 went out with some friends and there was
11 somebody with a beef. Somebody with the beef
12 happened to be in the very same place twice on
13 the same night that he happened to be.

14 And then the second time, Nathaniel
15 McGee had a chance. This is my chance. I'm
16 parking in the back, leaving the keys in the
17 ignition. I'm going to walk up to the front.
18 Terrell, you cover me.

19 Does Terrell even -- does he even
20 walk like he's going to the club? No. He
21 never comes close to these cars. Just close
22 enough to start -- to keep Fred down and keep
23 whoever else is in the car at bay so that
24 Nathaniel can do what he needs to do. Not
25 what he -- no, that's really not what he needs

1 to do now, is it? Remember, I kind of
2 started with our free will, and the decisions
3 that we make. Decision to buy the gun,
4 decision to keep the gun with you, decision to
5 take the gun to the race track, decision to go
6 from the race track to Club Fantasy; two
7 places where Jamie Reed wound up at the end of
8 his life.

9 Decision to walk up to Jamie Reed's
10 car with that gun in your back pocket.
11 Decision to call Jamie Reed out of the car.
12 Decision to put that gun within an inch of
13 Jamie Reed's forehead, and the decision to
14 fire it.

15 To squeeze the trigger knowing that
16 when you were that close it's not going to be
17 a -- let's remember, if you believe any of
18 that story about the mystery Jamaican
19 encounter in the woods, Jamie is that close
20 and somehow misses Nathaniel.

21 That didn't happen. Nathaniel got
22 that close and Nathaniel made the decision to
23 end Jamie's life. It was a conscious
24 decision. It was not as though he had no
25 other choice. He clearly had -- he's not

1 blocked into this parking lot, he clearly
2 could have left. If he saw Jamie he'd say,
3 whoa, I don't want to be in here near Jamie. I
4 got to get out of here, Jamie's trouble.

5 He could have left. He could have
6 left. When he made the decision back there
7 he could have left. He clearly drives out
8 right away. It's not like he has a hard time
9 getting out of there. And when he's back here
10 by the car -- Mr. Smiley made it seem like I
11 was trying to make the cars closer to the door
12 than it was.

13 I just asked Nathaniel where the
14 cars were. He put the car there. He made a
15 mark. It doesn't really matter to me. It
16 doesn't matter because I don't believe much of
17 what he said. You'll look at all of those
18 photographs and you'll see that there is a
19 spot, and it's roughly -- that looks a little
20 different than I thought. Suffice it to say
21 we're out of focus.

22 Right about there is where the
23 gravel -- this part is gravel [indicates].
24 This part is concrete. Tiffany is going to be
25 over here. The Chrysler is going to be in

1 here. There wasn't anybody else back here.
2 Nathaniel makes the decision that he's going
3 to go over here [indicates], all right. And
4 when he's back here --

5 I swear the picture was clearer the
6 last time I put it up. Now, that looks a
7 little bit better. There we go -- the
8 security guard that wasn't there, well he
9 actually was.

10 But Nathaniel would like the parking
11 lot to be empty just because he doesn't think
12 there really are any witnesses to it. The
13 security guard is there. That's that little
14 desk, you see it in the video and you see it
15 in the other pictures.

16 This is a very small area. Whether
17 it's fifteen feet or eight feet, you can --
18 he's not going to get a bullet in the back of
19 the head, because he doesn't have a gun. Fred
20 doesn't have a gun. Antonio doesn't have a
21 gun. There's no gun over there. There's no
22 gun found.

23 Who is the one that Mr. Smiley
24 speculates is taking the gun and everything
25 away? Fred leaves. And then Mr. Smiley wants

1 to use that against Fred. And Antonio leaves.
2 And then Mr. Smiley would like to use that
3 against Antonio. Well, who's in here messing
4 around? There's nobody in here messing
5 around. There's no gun there. There never
6 was a gun there.

7 So, Nathaniel McGee comes around the
8 back of this car, confronts somebody
9 unnecessarily. He's got a duty to retreat.
10 He doesn't retreat. Bam; ends somebody's life
11 right there. And he could have gone there
12 [indicates]. He could have gone right back to
13 where he was.

14 But no, he's going to end somebody's
15 life right there because it's his evil intent.
16 It's his criminal intent. These are his
17 actions. There are -- there is in this case a
18 brutal logic to everything that Nathaniel
19 McGee did.

20 It was calculated at the end, to end
21 Jamie Reed's life. Jamie Reed, who he had
22 known since high school. Jamie Reed, who he
23 had known for six or seven years, who had
24 never done anything to him, who he had gotten
25 along with. Now, Mr. Smiley says, we didn't

1 hear any evidence of my client's bad
2 character. The only evidence of bad character
3 that you've heard is coming out of the self-
4 serving testimony of Nathaniel McGee. He
5 can't come to grips with the fact that he got
6 angry, he wasn't in his right frame of mind,
7 and he killed somebody.

8 So, in his mind he's got to make
9 that person the bad guy. He's got to make
10 Jamie Reed the bad guy. A guy who he'd known
11 since he was sixteen or seventeen years old,
12 who he had gotten along with, to whose
13 mother's house he had gone. He's got to, in
14 his mind, make Jamie a bad guy.

15 And he invents this story about an
16 encounter in the woods. He invents gunshots.
17 He invents everybody has a gun. Seriously,
18 you've got one guy tied up and everybody's got
19 a gun? Is this the gang that couldn't shoot
20 straight? You really think that happened?
21 Really? No, it didn't.

22 Oh wait, he had to have had a gun.
23 Or, he had a shiny object. In the dark, in
24 the woods, at night with no lights, he knows
25 who everybody is and he puts -- magically puts

1 guns in everybody's hands, except the mystery
2 Jamaicans. I think I have proven the
3 elements of murder, the intentional killing
4 with malice aforethought.

5 Malice aforethought, it sounds
6 trickier than it is. It's a concept in our
7 law. It doesn't exactly mean what malice
8 means. And it doesn't exactly mean what
9 aforethought means when you put them together.
10 From the Latin you know that malice is mal and
11 it's bad. And aforethought, under old
12 English that you had to -- it had to occur
13 prior to the actions. And, the law says it
14 can be an incident.

15 I don't know when he formed the
16 criminal intent to kill Jamie Reed. Could it
17 be a confrontation that went wrong? Was there
18 going to be some sort of argument and he was
19 going to be a big man in the town because he
20 had a gun? I don't know. It may have been
21 just in that brief instant before he pulled
22 the trigger.

23 But I think that you can derive that
24 from this evidence. You can see that from the
25 evidence of what happened, the brutal logic of

1 the facts. Self-defense, I believe that the
2 evidence that you've heard from the witnesses,
3 the credible witness, and even the witnesses
4 who are not credible, such as Mr. McGee
5 himself. I believe that I have -- I only have
6 to disprove one of those four elements. But,
7 I believe I've disproved two of those
8 elements.

9 I think if you don't believe that
10 fabulous story, and by fabulous I mean that
11 fantastic, larger-than-life confrontation with
12 the two Jamaicans and everybody else in the
13 Reed family in the woods, then I've negated
14 the other elements as well. Because there is
15 no -- no reasonable person could ever feel
16 that they were in danger.

17 There's one verdict. One verdict.
18 The logic of this case, the facts, there's
19 only one place, one place only. Nathaniel
20 McGee, on April the 17th, 2006 murdered Jamie
21 Reed. He's guilty. Thank you very much for
22 your time.

23 THE COURT: Ladies and gentlemen of the
24 jury, I am going to give you just a little
25 stretch break before I instruct you on the

1 law. You can stand up just a moment then you
2 will receive the instruction of the law.

3 [Off the record momentarily]

4 - - - - -

5 CHARGE OF THE COURT

6 THE COURT: Ladies and gentlemen, I
7 remind you that during this trial you and I
8 have had certain duties to perform. As the
9 trial Judge it is my responsibility to preside
10 over the trial of this case. And I have the
11 duty to rule on the admissibility of the
12 evidence offered during this trial.

13 You are to consider only the
14 competent evidence before you. If there was
15 any testimony ordered stricken from the
16 record, you must disregard that testimony.
17 You are to consider only the testimony, which
18 has been presented by the witness from the
19 witness stand, any exhibits, which have been
20 made part of the record in this case, as well
21 as the stipulations of counsel.

22 I have the additional duty to charge
23 you on the law applicable to this case. As
24 the presiding Judge I am the sole judge of the
25 law of this case. It is your duty to accept

1 it and apply the law as I state it to you now.
2 As I indicated earlier if you have any idea of
3 what the law is or what the law should be and
4 it does not agree with what I now tell you,
5 you must abandon your own idea and accept the
6 law as I now state it, because you are sworn
7 to accept the law as I now state it to you.

8 In every case tried in this Court
9 before a jury, the jury becomes the sole and
10 exclusive judge of the facts of this case.
11 The trial judge cannot state, comment on, or
12 make any statement regarding the facts in this
13 case to the trial jury.

14 Since you, the jury, are the sole
15 judge of the facts in this case you are not to
16 infer anything that I have said or done during
17 the progress of this trial, or in ruling upon
18 the admissibility of evidence, that I have
19 anything -- or any opinion about the facts of
20 this case.

21 The law does not allow me to have an
22 opinion regarding the facts in this case.
23 This is a matter solely for you, the jury, to
24 determine. As jurors it is your duty to
25 determine the effect, value and weight, and

1 truth of the evidence presented in this trial.
2 The indictment charged the defendant with the
3 charge of murder. I remind you that the fact
4 that the defendant was arrested, charged, and
5 indicted, cannot be considered by you as
6 evidence of his -- of the guilt in this case.
7 Nor does it create any presumption or
8 inference of guilt.

9 This document is simply the formal
10 written instrument, which contains the charge
11 made against the defendant. It is the formal
12 document by which this case is brought into
13 this Court.

14 The defendant has pled not guilty to
15 this indictment. And that plea puts the
16 burden on the State to prove the defendant
17 guilty. A person charged with committing a
18 criminal offense in South Carolina is never
19 required to prove himself innocent.

20 I charge you that it is a rule of
21 law that the defendant in a criminal trial, no
22 matter what the seriousness of the charge may
23 be, will always be presumed to be innocent of
24 the crime for which the indictment was issued,
25 unless guilt has been proven by evidence

1 satisfying you of that guilt beyond a
2 reasonable doubt. This presumption of
3 innocence does not end when you begin your
4 deliberations, but it accompanies the
5 defendant throughout the trial until you reach
6 a verdict of guilt based upon the evidence,
7 satisfying you of that guilt beyond a
8 reasonable doubt.

9 The presumption of innocence is like
10 a robe of righteous placed about the shoulders
11 of the defendant, which remains with the
12 defendant until it has been stripped from the
13 defendant by evidence satisfying you of the
14 defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not
16 merely a legal theory. It is not just a legal
17 phrase. It is a substantial right to which
18 every defendant is entitled unless you, the
19 jury, are satisfied from the evidence of the
20 defendant's guilt beyond a reasonable doubt.

21 The State has the burden of proving
22 the defendant guilty beyond a reasonable
23 doubt. Some of you may have served as jurors
24 in civil cases before where you were told it
25 was only necessary to prove that a fact is

1 more likely true, or not true, such as by
2 greater weight or preponderance of the
3 evidence. In criminal cases the State's
4 proof must be more powerful than that. It
5 must be beyond a reasonable doubt. Proof
6 beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the defendant's guilt.

8 There are very few things in this
9 world that we know with absolutely certainty.
10 And in criminal cases the law does not require
11 proof that overcomes every possible doubt.
12 If, based upon your consideration of the
13 evidence you are firmly convinced that the
14 defendant is guilty of the crime charged, you
15 must find the defendant guilty.

16 If, on the other hand, you think
17 there is a real possibility that the defendant
18 is not guilty, you must give the defendant the
19 benefit of the doubt and find him not guilty.

20 There are two types of evidence,
21 which are generally presented during a trial,
22 direct evidence and circumstantial evidence.
23 Direct evidence is the testimony of the person
24 who claims to have actual knowledge of a fact,
25 such as an eyewitness. It is evidence, which

1 immediately establishes the main fact to be
2 proved. Circumstantial evidence is the proof
3 of a chain of facts and circumstances
4 indicating the existence of a fact. It is
5 evidence, which immediately establishes
6 collateral facts from which the main fact may
7 be inferred.

8 Circumstantial evidence is based
9 upon inference and not on first-hand knowledge
10 or observation. The law makes absolutely no
11 distinction between the weight or value to be
12 given on either direct or circumstantial
13 evidence. Nor is a greater degree of
14 certainty required of circumstantial evidence
15 than of direct evidence.

16 After all the evidence has been
17 weighed by you if you are not convinced of the
18 guilt of the defendant, beyond a reasonable
19 doubt, you must find the defendant not guilty.
20 Necessarily you must determine the
21 creditability of witnesses who have testified
22 in this case.

23 Creditability simply means
24 believability. It becomes your duty as jurors
25 to analyze and to evaluate the evidence, and

1 determine which evidence convinces you of its
2 truth. In determining the believability of
3 witnesses who have testified in this case, you
4 may believe one witness over several witnesses
5 or several witnesses over one witness. You
6 may believe a part of the testimony of a
7 witness and reject the remaining part of the
8 testimony of that same witness.

9 You may believe the testimony of a
10 witness in its entirety or reject the
11 testimony of a witness in its entirety. You
12 may consider whether any witness has exhibited
13 to you bias, interest, prejudice, or other
14 motive in this case. You may also consider
15 the appearance and the manner of a witness
16 while on the witness stand.

17 The rules of evidence ordinarily do
18 not permit witnesses to testify to opinions or
19 to conclusions. An exception to this rule
20 exists for witnesses we call expert witnesses.
21 A witness, who by education or experience, has
22 become an expert in some art, science, or
23 professional calling may state an opinion as
24 to relevant and material matter in which the
25 witness claims to be an expert, and may also

1 state the reasons for that opinion. You
2 should consider any expert opinion received in
3 evidence in this case. And like any other
4 evidence, give it the weight you think it
5 deserves.

6 If you decide that the opinion of an
7 expert witness is not based upon sufficient
8 education and experience, or, if you conclude
9 that the reasons given in support of the
10 opinion are not sound, or, that the opinion is
11 outweighed by other evidence, you may
12 disregard the opinion entirely.

13 An expert witness's testimony is to
14 be given no greater weight than that of other
15 witnesses simply because the witness is an
16 expert. Further, you are not required to
17 accept an expert's opinion, even though it is
18 not contradicted.

19 In order to establish criminal
20 liability criminal intent is required. For
21 example, the mental state, required to be
22 proven by the State for a particular crime,
23 might be purpose, intent, knowledge,
24 recklessness, or criminal negligence.
25 Criminal intent must be proven by the State

1 beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by the
3 jury from the circumstances surrounding the
4 situation. There is no way to prove intent to
5 a mathematical certainty. There is no way
6 that medical science can dissect a person's
7 brain and determine what the person had in
8 mind.

9 So, the law says that criminal
10 intent may be inferred from the circumstances
11 shown to have existed. This is how you make a
12 determination of whether or not the element
13 required intent was present.

14 It is not necessary to establish
15 intent by the direct and positive evidence.
16 But intent may be established by inference in
17 the same way as any other fact by taking into
18 consideration the acts of the party and all
19 the facts and circumstances of the case.

20 Criminal intent is a mental state
21 and conscience wrongdoing. It is up to you to
22 determine what the defendant intended to do
23 based on the circumstances shown to have
24 existed. Criminal intent can arise from
25 action or a failure to act. It may arise from

1 negligence, recklessness, or indifference to
2 duty, or to consequences that is considered by
3 the law to be the equivalent of criminal
4 intent. The defendant is charged with murder.
5 The State must prove beyond a reasonable doubt
6 that the defendant killed another person with
7 malice aforethought.

8 Malice is hatred, ill will, or
9 hostility towards another person. It is the
10 intentional doing of a wrongful act without
11 just cause or excuse, and with the intent to
12 inflict an injury, or under circumstances that
13 the law will infer an evil intent.

14 Malice aforethought does not require
15 that malice exists for any particular time
16 before the act is committed, but malice must
17 exist in the mind of the defendant just
18 before, and at the time that the act is
19 committed. Therefore, there must be a
20 combination of the previous evil intent in the
21 act.

22 Malice aforethought may be expressed
23 or inferred. These terms expressed and
24 inferred do not mean different kinds of
25 malice, but merely the manner in which malice

1 may be shown to exist. That is either by
2 direct evidence, or by inference from the
3 facts and circumstances, which are proved.
4 Express malice is shown when a person speaks
5 words, which express hatred or ill will for
6 another, or when the person prepared
7 beforehand to do the act which was later
8 accomplished. For example, lying in wait for
9 a person or any other acts of preparation
10 going to show that the deed was within the
11 defendant's mind, would be express malice.

12 Malice may be inferred from conduct
13 showing a total disregard for human life.
14 Inferred malice may also arise when the deed
15 is done with a deadly weapon. A deadly weapon
16 is any article, instrument, or substance,
17 which is likely to cause death or great bodily
18 harm.

19 Whether an instrument has been used
20 as a deadly weapon depends on the facts and
21 circumstances in each case. The following are
22 examples of instruments, which may be deadly
23 weapons: a pistol, shotgun, rifle, dirk
24 dagger, knives, slingshot, metal knuckles,
25 razor, gasoline, or Molotov cocktail. A gun

1 may be a deadly weapon even if it is not
2 operating. The defendant has raised the
3 defense of self-defense. Self-defense is a
4 complete defense. And if it is established,
5 you must find the defendant not guilty.

6 The State has the burden of
7 disproving self-defense by proof beyond a
8 reasonable doubt. If you have a reasonable
9 doubt of the defendant's guilt after
10 considering all the evidence including the
11 evidence of self-defense, then you must find
12 the defendant not guilty.

13 On the other hand if you have no
14 reasonable doubt of the defendant's guilt
15 after considering all of the evidence
16 including the evidence of self-defense, then
17 you must find the defendant guilty.

18 The following elements are required
19 to establish self-defense: first, the
20 defendant must be without fault in bringing on
21 the difficulty. If the defendant's conduct
22 was the type, which was reasonably calculated
23 to and did provoke a deadly assault, the
24 defendant would be at fault in bringing on the
25 difficulty and would not be entitled to an

1 acquittal based on self-defense. The second
2 element of self-defense is that the defendant
3 was actually in imminent danger of death or
4 serious bodily injury, or that the defendant
5 actually believed he was in imminent danger of
6 death or serious bodily injury.

7 If the defendant was actually in
8 imminent danger, it must be shown that the
9 circumstances would have warranted a person of
10 ordinary firmness and courage to strike the
11 fatal blow to prevent death or serious bodily
12 injury.

13 If the defendant believed he was in
14 imminent danger of death or serious bodily
15 injury, it must be shown that a reasonably
16 prudent person of ordinary firmness and
17 courage would have had the same belief.

18 In deciding whether the defendant
19 actually was, or believed he was, in imminent
20 danger of death or serious bodily injury, you
21 should consider all the facts and
22 circumstances surrounding the crime, including
23 the physical condition and characteristics of
24 the defendant and the victim. The defendant
25 does not have to show that he was actually in

1 danger. It is enough if the defendant
2 believed he was in imminent danger and a
3 reasonably prudent person of ordinary firmness
4 and courage would have had the same belief.

5 The defendant has the right to act
6 on appearances, even though the defendant's
7 beliefs may have been mistaken. It is for you
8 to decide whether the defendant's fear of
9 immediate danger of death or serious bodily
10 injury was reasonable and would have been felt
11 by an ordinary person in the same situation.

12 Evidence of prior difficulties
13 between the defendant and the victim may be
14 considered in deciding whether a threat
15 existed, whether the defendant had a reason to
16 believe a threat existed, and how serious that
17 threat was.

18 The reputation of the victim as a
19 violent person may be considered in deciding
20 whether there was a need for force, whether
21 the defendant had reason to believe there was
22 a need for force, and whether deadly force was
23 reasonably necessary. Prior instances of
24 violence by the victim may be considered in
25 deciding whether the defendant actually

1 believed he was in imminent danger of death or
2 serious bodily injury, or was actually in
3 imminent danger. Threats made by the victim
4 may be considered in determining whether the
5 defendant actually was, or believed he was, in
6 imminent danger.

7 The final element of self-defense is
8 that the defendant had no other probable way
9 to avoid the danger of death or serious bodily
10 injury than to act as the defendant did in
11 this particular instance. If both parties are
12 where they have a right to be, there is a duty
13 to retreat.

14 The defendant had no duty to retreat
15 if by doing so the danger of being killed or
16 suffering serious bodily injury would
17 increase. A person cannot be required to make
18 an exact calculation as to the degree or
19 amount of force, which may be needed to avoid
20 death or serious bodily harm.

21 Therefore, in self-defense the
22 defendant has the right to use the force
23 needed to avoid death or serious bodily harm.
24 The force used in self-defense does not have
25 to be limited to the degree or amount of force

1 used by the victim. The defendant has the
2 right to use so much force as appeared to be
3 necessary for complete self protection in
4 which a person of ordinary reason and firmness
5 would have believed to be needed to prevent
6 death or serious bodily harm.

7 Ladies and gentlemen, there are two
8 possible verdicts that you may find in this
9 case. Mr. Foreman, it is your duty to preside
10 in the jury room and you will be responsible
11 for signing the verdict. Ladies and
12 gentlemen, there is no significance to the way
13 that I read out the possible verdicts, it's
14 simply one must go on the form first.

15 The State of South Carolina versus
16 Nathaniel McGee, in the Court of General
17 Sessions, 2006-GS-10-7192, verdict form number
18 one. We, the jury, find the defendant not
19 guilty. Or we, the jury, find the defendant
20 guilty of murder.

21 The decision must be unanimous and
22 Mr. Bradshaw once you have -- the jury has
23 reached a unanimous decision, you will sign
24 and date the verdict form. Ladies and
25 gentlemen, as I stated there was absolutely no

1 significance in the way that I read the
2 verdict form. The decision must be unanimous.
3 Once you have signed the jury form Mr.
4 Foreman, if you will sign on -- knock on the
5 door indicating that you have reached a
6 verdict.

7 At that time the bailiff will inform
8 the Court and we will receive you back into
9 the courtroom. I have now -- as you return to
10 your jury room I understand that lunch has
11 arrived. Please feel free to begin eating
12 lunch.

13 There are a few matters that I must
14 take up outside of your presence. We must
15 gather the exhibits that have been admitted
16 and those will go back. So again, do not
17 begin discussing this case until you are told
18 to do so. Do not begin your deliberations
19 until you are told to do so by the bailiff.

20 Ms. Jefferson, your service to the
21 jury is completed as an alternate and I
22 understand your lunch is here as well. So,
23 that will be in my chambers and the bailiffs
24 will escort you so that you may have your
25 lunch as well. I ask that you wait until I

1 personally release you. Thank you. Please
2 rise for the jury.

3 [Whereupon, the jury exits the courtroom
4 at 1:21 p.m.]

5 THE COURT: Thank you. Be seated. Any
6 objections to the charges read from the State?

7 MR. VOIGT: Not from the State, Your
8 Honor.

9 THE COURT: From the defendant?

10 MR. SMILEY: None from the defense, Your
11 Honor.

12 THE COURT: All right. And, counsel if
13 you will approach to review the verdict form.
14 And, Mr. Smiley I don't show that there were
15 any defense exhibits admitted.

16 MR. SMILEY: None..

17 THE COURT: And 1 through 30, that 8
18 having A through E inclusive *in globo*. Any
19 objection, Mr. Smiley?

20 MR. SMILEY: None. I'm just going to put
21 them in order.

22 [Off the record momentarily]

23 THE COURT: All right. No objection to
24 those exhibits going back?

25 MR. SMILEY: No, ma'am.

1 MR. VOIGT: Do they have anything that
2 they can watch the video on if they need to?

3 THE COURT: One moment, Mr. Voigt. No
4 objection ---

5 MR. VOIGT: --- oh, I'm sorry. No
6 objection whatsoever, Your Honor ---

7 THE COURT: --- to those going back?
8 And no objection to the Court's verdict form
9 going back?

10 MR. SMILEY: None. None from the
11 defense, Your Honor.

12 MR. VOIGT: None from the State, Your
13 Honor.

14 THE COURT: And what do you need -- what
15 type of player do you need?

16 MR. VOIGT: I suppose I could look -- and
17 have that laptop.

18 THE COURT: No, sir.

19 MR. VOIGT: I could -- I don't know how
20 to play it actually.

21 MR. SMILEY: Well, they'll have to come
22 back out here.

23 MR. VOIGT: If they want to do that, it
24 will be fine, Your Honor.

25 THE COURT: If they request to see it,

1 then we will make arrangements ---

2 MR. VOIGT: --- that's fine ---

3 THE COURT: --- at that time and they can
4 see the video. Anything before we send the
5 exhibits back and they begin their
6 deliberations?

7 MR. VOIGT: No.

8 MR. SMILEY: None from the defense.

9 THE COURT: All right. We'll be at ease.
10 Mr. Bailiff, you may take the exhibits, as
11 well as the verdict form.

12 And I wish to thank Mr. Voigt, Mr.
13 Byrd, Mr. Smiley, and Ms. Hensley for your
14 very professional and competent representation
15 in this matter. We'll be at ease. Thank you.

16 [Whereupon, evidence out to the jury at
17 1:25 p.m.]

18 [Whereupon, a recess is held from 1:25
19 p.m. to 2:31 p.m.]

20 THE COURT: All right. We'll get
21 started.

22 [Whereupon, Court's exhibit number 1 is
23 marked by the court reporter]

24 THE COURT: The Court has received, which
25 has now been marked as Court's number 1, a

1 note from the jury. [Reading] Can we review
2 entire video surveillance video? And since
3 the VHS has been admitted, is there any
4 portion of the tape that establishes how much
5 earlier Mr. McGee and Mr. Wright arrived?

6 The Court had an in chambers
7 conference on how to deal with -- and I
8 believe the video surveillance is State's 25,
9 and the VHS is State's 26. Is that correct?

10 MR. VOIGT: That's correct, Your Honor.

11 THE COURT: And my understanding is that
12 25 came off of 26?

13 MR. VOIGT: That's correct, Your Honor.

14 THE COURT: And so out of an abundance of
15 caution and to ensure that -- because the only
16 DVD player that we have has a combo VHS, and
17 not all portions of the VHS were intended to
18 be played for the jury, we are going to bring
19 the jury out and allow them to watch the
20 entire video surveillance video. And if
21 that does not suffice, we'll address it at
22 that time.

23 [Whereupon, Court's exhibit number 1 is
24 marked by the court reporter]

25 THE COURT: Court's 2 requesting

1 [reading] can we get the instruction on the
2 law the Judge read in court?

3 THE COURT: Is there any objection Mr.
4 Voigt, Mr. Smiley, to giving them a copy of
5 the charge?

6 MR. SMILEY: None from the defense.

7 MR. VOIGT: None from the State.

8 THE COURT: All right. Anything before
9 we bring in the jury? And we will play
10 State's 25.

11 MR. SMILEY: Nothing from the defense.

12 MR. VOIGT: Nothing from the State.

13 THE COURT: All right. Please bring in
14 the jury.

15 [Whereupon, the jury enters the courtroom
16 at 2:35 p.m.]

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you. Please be seated.

19 Mr. Foreman, I have received two notes with
20 respect to the video surveillance video.

21 We have brought you in and we will
22 play the entire video regarding that. Just
23 for clarification, the digital DVD, or DVD
24 that we will be playing, came from the VHS
25 tape. So it's merely a format -- a

1 reformatting to try to keep up with
2 technology, I'm assuming. So that -- while
3 the State's 26, the VHS tape, was admitted
4 into evidence, the 25, which is the video
5 surveillance video that we will view at this
6 time, came from that VHS tape.

7 With respect to the instructions on
8 the law, at the conclusion of viewing the
9 video surveillance video I will give you a
10 copy of the Court's charge for you to take
11 back into your jury room. All right?

12 JURY FOREMAN: Thank you, Your Honor.

13 THE COURT: And Mr. Bradshaw, at that --
14 at this time does that address the jury's two
15 notes?

16 JURY FOREMAN: Yes, Your Honor, I believe
17 so. I think our concern was, was the digital
18 transfer an entire transfer of the entire
19 tape, or was it what the prosecution believed
20 to be the relevant portion, even though he
21 felt that, you know by showing what we were
22 looking for may help us in our determination.
23 So, I didn't know if there was a complete
24 copy.

25 THE COURT: All right. And I believe the

1 Court has addressed that issue for you.

2 Anything further ---

3 MR. SMILEY: --- not from the defense ---

4 THE COURT: --- before we play the video?

5 All right. Mr. Voigt, and you are in control
6 on your laptop?

7 MR. VOIGT: I am, Your Honor.

8 THE COURT: Thank you.

9 [Whereupon, the CD is replayed from 2:37
10 p.m. to 2:45 p.m.]

11 JURY FOREMAN: Your Honor, if there is
12 nothing recorded on the digital copy prior to
13 where we started this one, I don't know if the
14 rest of this is going to help us.

15 [Whereupon, the foreman confers with
16 other jurors]

17 JURY FOREMAN: I think our interest was
18 if there was anything recorded prior to that
19 point where we started the digital copy. I
20 think we're good with the rest of this.

21 THE COURT: All right. So, Mr. Bradshaw
22 the rest of your jury members are -- have --
23 are done watching this DVD?

24 [Whereupon, the foreman confers with
25 other jurors]

1 JURY FOREMAN: Yes, Your Honor.

2 THE COURT: All right. And is there --
3 the copy of the instructions will be given to
4 you once you get back into the jury
5 deliberation room. All right?

6 JURY FOREMAN: Thank you, Your Honor.

7 THE COURT: Please rise for the jury.

8 [Whereupon, the jury exits the courtroom
9 at 2:45 p.m.]

10 THE COURT: Thank you. Be seated. And
11 Mr. Voigt, if you will place the DVD back into
12 the case and -- so that all the evidence is
13 maintained properly.

14 MR. SMILEY: Your Honor?

15 THE COURT: Yes?

16 MR. SMILEY: If I could, it appears to me
17 and -- that the jury is trying to look outside
18 the evidence, like for something else. I
19 would ask you to consider instructing them
20 that they have the evidence in this case, and
21 to consider only the evidence in this case in
22 making their decision, applying the law to the
23 facts as they were provided to them. And it
24 appears to me they're trying to go outside of
25 it. And it's what they've got.

1 MR. VOIGT: My response would be, Your
2 Honor, that there's testimony from Mr. McGee
3 concerning the events immediately prior to his
4 arrival, and immediately prior to the Reed's
5 car arrival.

6 Insofar as that video doesn't show
7 anything that the jury could use, they can
8 consider any testimony that may have -- of
9 events that may have transpired between the
10 drag way and entering the parking lot at the
11 club.

12 I don't think that would be going
13 outside the evidence. More than one witness
14 testified as to stopping at a gas station or
15 stopping at a motel, or something like that.
16 And I'm guessing that they're trying to gage
17 when the McGee car or Terrell Wright's car
18 arrived.

19 I don't think the video is going to
20 be helpful to them. I think they're going to
21 have to rely on testimonial evidence. So, I'm
22 not sure that they're actually going outside
23 of the evidence in that regard.

24 MR. SMILEY: Well, you know when that
25 video was shown, Your Honor, there wasn't any

1 testimony that accompanied it when it was
2 shown to them. And then there was argument
3 made in close where -- where it was argued
4 that certain things in that video were
5 evidence of certain people at certain places.

6 Now they're asking for -- is there
7 -- when McGee and Wright arrived. And -- so
8 they need to look at the evidence that is put
9 to them and not look outside that evidence.
10 Well, because they certainly have assigned
11 people and places in that video without any
12 testimony but just argument about it, which I
13 objected to in my close.

14 THE COURT: Mr. Smiley, I hear what
15 you're saying and I also hear what Mr. Voigt
16 is saying, but the entire charge will be going
17 back.

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: My -- what the Court heard
20 inquired of was -- was there -- they saw that
21 the -- tape played, but was there additional
22 things on the VHS that were not played for
23 them. That was what I heard that their
24 inquiry was. I think that based upon bringing
25 the jury back in and allowing them and

1 explaining what was on the VHS versus the DVD
2 answered that particular question. Their --
3 one of the very first paragraphs of the
4 Court's charge says you must consider only the
5 evidence that has been admitted.

6 If there is a further note along
7 this same line as Court's one, I will make a
8 very specific instruction at your request, Mr.
9 Smiley.

10 MR. SMILEY: Yes ma'am. Thank you.

11 THE COURT: Thank you. Anything further
12 before we send the charge back? Counsel do
13 you wish to review a copy of the charge ---.

14 MR. SMILEY: --- yes, we'll get a copy of
15 the charge ---

16 THE COURT: --- it will be marked Court's
17 3.

18 [Whereupon, Court's exhibit number 3 is
19 marked by the court reporter]

20 [Whereupon, counsel reviews the charge]

21 THE COURT: All right, thank you. Is it
22 fine with you, Mr. Voigt?

23 MR. VOIGT: It is, Your Honor.

24 MR. SMILEY: Your Honor, the defense has
25 reviewed the charge and we have no objection

1 with it going back.

2 MR. VOIGT: Nor does the State, Your
3 Honor.

4 THE COURT: All right, thank you. We'll
5 be at ease until we have a verdict.

6 [Whereupon, a recess is held from 2:51
7 p.m. until 3:30 p.m.]

8 [Whereupon, Court's exhibit number 4 is
9 marked by the court reporter]

10 [Whereupon, Court's exhibit number 5 is
11 marked by the court reporter]

12 THE COURT: Mr. Smiley, what do you
13 propose the response be to the question --

14 MR. SMILEY: I propose the response would
15 be the testimony of Detective Elmore was that
16 his investigation asked -- let me see how he
17 put it, that his investigation revealed Nate
18 did not have on gloves.

19 Is that fair enough? I'm trying to
20 see if that's a fair characterization -- or
21 when asked ---

22 MR. VOIGT: --- yes, I like when asked
23 better ---

24 MR. SMILEY: --- Detective Elmore
25 testified when asked whether Nathaniel had

1 gloves on he replied, he did not. He did not.

2 MR. VOIGT: That's correct. I agree.

3 THE COURT: One more time, Mr. Smiley.

4 MR. SMILEY: Detective Elmore was asked
5 in his testimony -- in Detective Elmore's
6 testimony he was asked, did Nathaniel have
7 gloves on?

8 MR. VOIGT: Did his investigation ---

9 MR. SMILEY: --- reveal that Nathaniel
10 had gloves on? And he revealed ---

11 MR. VOIGT: --- and his answer was ---

12 MR. SMILEY: --- was no. He did not.

13 THE COURT: And as to -- I'm assuming
14 that the -- that this indicates from the jury
15 that they are requesting a specific copy of
16 the transcripts?

17 MR. SMILEY: Well, there's not a
18 transcript available for them. So they can
19 hear what it -- I guess their -- a question
20 should be sent to them do they want to hear
21 all of Nate's testimony? Since there is not a
22 transcript available they can hear whatever
23 part, or all of Nate's, if they'd like to hear
24 it.

25 THE COURT: Mr. Voigt?

1 MR. VOIGT: And I would agree with that.

2 THE COURT: All right. We'll be at ease.

3 I'll send the note back.

4 MR. SMILEY: Yes, ma'am.

5 MR. VOIGT: Yes, ma'am.

6 [Whereupon, Court is in recess from 3:56
7 p.m. until 4:00 p.m.]

8 [Whereupon, an off-the-record bench
9 conference is held]

10 MR. SMILEY: I'll put it on the record.

11 The defense has reviewed the instruction that
12 the Judge is going to send back regarding
13 their question and we have no objection.

14 We've reviewed it -- and we have no
15 objection to it going back. We've read it and
16 reviewed it.

17 MR. VOIGT: The State has no objection.

18 THE COURT: Thank you. All right,
19 anything before we -- all right, let's not go
20 so far this time, Mr. Voigt ---

21 MR. VOIGT: --- I have -- I'm not even --
22 I'm not even going to my office. I'm just
23 going out to the hallway.

24 THE COURT: Okay. Let's see if -- they
25 may now wish to hear the testimony of the

1 defendant ---

2 MR. VOIGT: --- yes, that's why I'm
3 saying -- I'm just going out ---

4 THE COURT: --- so if you'll just stay
5 here. We'll be at ease, but remember I'm
6 still on the bench.

7 MR. SMILEY: Yes, ma'am.

8 [Whereupon, Court is in recess from 4:02
9 p.m. until 4:05 p.m.]

10 THE COURT: [Reading] Can we receive
11 further interpretation of without fault,
12 extent of provocation of deadly assault?

13 If Nate approached, interacted with,
14 and even argued with Jamie, does it mean that
15 he is with fault even though he may not have
16 known the confrontation would escalate to the
17 extent that it did? Signed, the Foreperson.

18 My proposed instructions were -- my
19 proposed response was [reading] you have been
20 given the complete charge of the law. You,
21 the jury, have received all the evidence in
22 this case and are the sole judges of the facts
23 in this case.

24 THE COURT: Any additions or corrections?

25 MR. VOIGT: None from the State, Your

1 Honor.

2 MR. SMILEY: Not unless you want to put
3 at the bottom any doubts ought to be resolved
4 in the defendant's favor. But other than
5 that, Your Honor, I think it's just fine.

6 THE COURT: All right Mr. Smiley, I am
7 declining to ---

8 MR. SMILEY: --- yes, ma'am.

9 THE COURT: --- grant that.

10 MR. SMILEY: Yes, we know.

11 THE COURT: Then that is to be Court's 7,
12 in response to Court's 6.

13 MR. SMILEY: Yes, ma'am.

14 THE COURT: I say again Mr. Voigt, please
15 don't go far.

16 [Off the record momentarily]

17 THE BAILIFF: All rise.

18 THE COURT: Thank you. Be seated.

19 THE COURT: Court's number 8 is the most
20 significant issue at this point. It's 5:30,
21 and we're not yet unanimous, may we regroup in
22 the morning?

23 THE COURT: Mr. Voigt?

24 MR. VOIGT: The State has no opinion
25 regarding this request.

1 THE COURT: Mr. Smiley?

2 MR. SMILEY: We're against it, Your
3 Honor. I think that once the jury begins
4 their deliberations that -- they've only been
5 at it now for about 4 hours. And there's
6 still plenty of time this evening. And I
7 would ask that they remain.

8 THE COURT: I'll let them go one more
9 hour, and will make the determination.
10 Question number two, [reading] per South
11 Carolina case law if A engages B in an
12 argument that escalates and ultimately results
13 in A or B attempting to use deadly force
14 against the other, would the survivor have
15 provoked a deadly assault?

16 [Whereupon, counsel confer]

17 MR. SMILEY: Your Honor, I don't believe
18 that there's -- they are now asking us, or
19 asking the Court to answer hypotheticals. I
20 don't -- don't believe that's --

21 MR. VOIGT: I've got to agree with Mr.
22 Smiley on that. I don't think there's anyway
23 to fashion the answer.

24 THE COURT: All right. All right, we'll
25 be at ease until we get a further note. Thank

1 you.

2 [Whereupon court is in recess from 5:27
3 p.m. until 6:13 p.m.]

4 - - - - -

5 VERDICT

6 THE BAILIFF: All rise.

7 THE COURT: Thank you. Be seated. I
8 understand we have a verdict. Anything before
9 we bring in the jury? From the State?

10 MR. VOIGT: Nothing from the State, Your
11 Honor.

12 THE COURT: Anything from the defendant?

13 MR. SMILEY: No, Your Honor. Can I just
14 talk to my client real quick and his family
15 just real quick?

16 [Whereupon, Mr. Smiley confers with his
17 client]

18 MR. SMILEY: Thank you, Your Honor.

19 THE COURT: Ladies and gentlemen of the
20 audience, make sure that your cell phones are
21 turned off, and when the verdict is read that
22 you contain yourself appropriately.

23 You are in a courtroom. And if you
24 do not feel that you may -- or will be able to
25 maintain your composure when the verdict is

1 read, I suggest that you leave now. Please
2 bring in the jury.

3 [Whereupon, the jury enters the courtroom
4 at 6:16 p.m.]

5 THE COURT: Thank you. Please be seated.
6 Mr. Foreman, I understand we have a verdict?

7 JURY FOREMAN: We do, Your Honor.

8 THE COURT: Hand the verdict form to the
9 Bailiff.

10 [Whereupon, the jury foreman complies]

11 CLERK OF COURT: Please have the
12 defendant stand.

13 [Whereupon, the defendant complies]

14 CLERK OF COURT: [Reading] The verdict
15 form for case number 2006-GS-10-7192 in the
16 matter of the State of South Carolina versus
17 Nathaniel McGee, defendant. We, the jury,
18 find the defendant guilty of murder. Signed
19 Frederick Bradshaw, foreperson of the jury, on
20 March 5, 2009.

21 Ladies and gentlemen of the jury, if
22 this is your verdict please raise your right
23 hand? Thank you. Please let the record
24 reflect that all twelve jurors raised their
25 right hand.

1

- - - - -

2

POLLING OF THE JURY

3

MR. SMILEY: Poll the jury please, sir?

4

CLERK OF COURT: Ladies and gentlemen,

5

what we're going to do now is called polling

6

the jury.

7

When I call your juror number please

8

raise your right hand so that I can

9

acknowledge you. I'll then ask you two

10

questions. Please respond to these questions

11

back to me verbally. Juror number 304?

12

Was that your verdict?

13

JUROR 304: It was.

14

CLERK OF COURT: Is that still your

15

verdict?

16

JUROR 304: It is.

17

CLERK OF COURT: Thank you. Juror number

18

17?

19

Was that your verdict?

20

JUROR 17: It was.

21

CLERK OF COURT: Is that still your

22

verdict?

23

JUROR 17: Yes.

24

CLERK OF COURT: Thank you. Juror 32?

25

[Whereupon, juror number 32 complies]

1 CLERK OF COURT: Was that your verdict?

2 JUROR 32: It was.

3 CLERK OF COURT: Is that still your
4 verdict?

5 JUROR 32: It is.

6 CLERK OF COURT: Thank you. Juror 39?

7 [Whereupon, juror number 39 complies]

8 CLERK OF COURT: Was that your verdict?

9 JUROR 39: It was.

10 CLERK OF COURT: Is that still your
11 verdict?

12 JUROR 39: Yes.

13 CLERK OF COURT: Thank you. Juror 93?

14 [Whereupon, juror number 93 complies]

15 CLERK OF COURT: Was that your verdict?

16 JUROR 93: Yes.

17 CLERK OF COURT: Is that still your
18 verdict?

19 JUROR 93: Yes.

20 CLERK OF COURT: Thank you. Juror number
21 12?

22 [Whereupon, juror number 12 complies]

23 CLERK OF COURT: Was that your verdict?

24 JUROR 12: Yes.

25 CLERK OF COURT: Is that still your

1 verdict?

2 JUROR 12: Yes.

3 CLERK OF COURT: Thank you. Juror 188?

4 [Whereupon, juror number 188 complies]

5 CLERK OF COURT: Was that your verdict?

6 JUROR 188: Yes.

7 CLERK OF COURT: Is that still your

8 verdict?

9 JUROR 188: Yes.

10 CLERK OF COURT: Thank you. Juror 268?

11 [Whereupon, juror number 268 complies]

12 CLERK OF COURT: Was that your verdict?

13 JUROR 268: Yes, sir.

14 CLERK OF COURT: Is that still your

15 verdict?

16 JUROR 268: Yes, sir.

17 CLERK OF COURT: Thank you. Juror 269?

18 [Whereupon, juror number 269 complies]

19 CLERK OF COURT: Was that your verdict?

20 JUROR 269: Yes.

21 CLERK OF COURT: Is that still your

22 verdict?

23 JUROR 269: Yes.

24 CLERK OF COURT: Thank you. Juror 280?

25 [Whereupon, juror number 280 complies]

1 CLERK OF COURT: Was that your verdict?

2 JUROR 280: Yes.

3 CLERK OF COURT: Is that still your
4 verdict?

5 JUROR 280: Yes.

6 CLERK OF COURT: Thank you. Juror 301?

7 [Whereupon, juror number 301 complies]

8 CLERK OF COURT: Was that your verdict?

9 JUROR 301: Yes.

10 CLERK OF COURT: Is that still your
11 verdict?

12 JUROR 301: Yes.

13 CLERK OF COURT: Thank you. Juror 310?

14 [Whereupon, juror number 310 complies]

15 CLERK OF COURT: Was that your verdict?

16 JUROR 310: Yes.

17 CLERK OF COURT: Is that still your
18 verdict?

19 JUROR 310: Yes.

20 CLERK OF COURT: Is there any juror whose
21 number I did not call, please raise your right
22 hand.

23 [No response]

24 CLERK OF COURT: Your Honor, the jury has
25 been polled and the verdict stands.

1 THE COURT: Thank you. Mr. Smiley, is
2 there anything further?

3 MR. SMILEY: No, Your Honor.

4 THE COURT: Anything further required of
5 the jury at this time, from the State?

6 MR. VOIGT: No, Your Honor.

7 THE COURT: Ladies and gentlemen of the
8 jury, this completes your jury service in the
9 matter of this case as well as for the week.
10 I would like to thank you for your service to
11 Charleston County. You are released to go.

12 I will step down. I'd like to
13 personally shake your hands, as it has been a
14 very long trial for each of you. You are free
15 to discuss this case amongst yourselves, with
16 your friends, family members, or whomever.
17 And that also means that you have the right
18 not to discuss this case.

19 If at any time anyone continues to
20 question you about your verdict and you feel
21 that it rises to the level of harassment, then
22 please contact the Court and I will handle the
23 matter personally. Again, on behalf of
24 Charleston County I thank you for your
25 service. Please rise for the jury.

1 [Whereupon, the jury exits the courtroom
2 at 6:20 p.m.]

3 THE COURT: Thank you. Please be seated.
4 Mr. Voigt, are you prepared to go forward with
5 sentencing at this time?

6 MR. VOIGT: I am, Your Honor.

7 THE COURT: Mr. Smiley, are you prepared
8 to go forward with sentencing at this time?

9 MR. SMILEY: Yes, Your Honor. Before we
10 go forward I think I need to renew the motions
11 that I made previously and will do so for the
12 record.

13 THE COURT: And?

14 MR. SMILEY: No new matters.

15 THE COURT: Are there any -- any matters
16 before I release the jury?

17 MR. SMILEY: None from the defendant.

18 THE COURT: All right. Mr. Smiley, I'm
19 going to give you a moment with your client.
20 And when I come back you can renew all of your
21 motions and articulate them for the record and
22 we will go forward on sentencing at that time.

23 MR. SMILEY: All right.

24 THE COURT: Thank you.

25 [Whereupon, the court is in recess from

1 6:21 p.m. until 6:28 p.m.]

2 - - - - -

3 SENTENCING

4 THE COURT: Mr. Voigt?

5 MR. VOIGT: Yes, Your Honor.

6 THE COURT: I have, of course, heard the
7 facts. Is there anything additional from the
8 State?

9 MR. VOIGT: Your Honor, two family
10 members of the decedent Mr. Jamie Reed, would
11 like to address the Court.

12 THE COURT: All right. I'll be happy to
13 hear from them at this time, Mr. Voigt.

14 MR. VOIGT: Thank you. Would you please
15 come?

16 MR. VOIGT: And so that the court
17 reporter can hear, could you please tell us
18 your name and your relationship with Mr. Reed?

19 MS. REESE: My name is Elisa Reese and
20 I'm Jamie Reed's sister. My name is Elisa
21 Reese and I'm Jamie Reed's sister.

22 THE COURT: Could you please spell your
23 last name for the record, ma'am?

24 MS. REESE: R-E-E-S-E.

25 THE COURT: Thank you.

1 MS. REESE: And right now it was a long,
2 long process. But all I ask is for you to
3 give him the maximum amount you can give him
4 because I don't want nobody else family to go
5 through what we've had to go through by
6 loosing somebody that's close like your
7 brother or your sister. That's all I have to
8 say.

9 THE COURT: Thank you, Ms. Reese.

10 MR. REESE: Cato Reese, R-E-E-S-E. In
11 this situation it's a tough thing to do
12 standing here and speaking because I look at
13 it from both sides of the fence.

14 And I could very well be standing
15 over there speaking for this side of the
16 family as well as this family -- this side of
17 the family because they both are my family.
18 I'd just like to say I retired from the
19 military in '91 and have been very much a part
20 of Jamie's life since he was seven years old.

21 And I taught him things about being
22 a man. And he wanted to come in the military
23 and all this. And he proved to me that he was
24 worthy of that. He got his first job at
25 WalMart. The next job was Dynacorp, where I

1 worked after the military. And I think there
2 was another job in there also. But the most
3 important thing, he grew up to be a fine young
4 man. Everybody loved him, and he had a way
5 about him that he could just make anyone
6 laugh. Then almost three years ago within
7 seconds all that was ripped away from us.

8 And I was like a father figure to my
9 niece Maxine and all of her boys, because she
10 was a sole parent for them. And I can only --
11 it takes too much time for me to explain to
12 you, Your Honor, what that did to that family.
13 All the dreams and things that I instilled in
14 them and all of that just went down the drain
15 because -- there was so much anger, hurt, and
16 pain.

17 Jamie was getting his life together.
18 He joined the New Direction church where I am
19 the pastor. He also attended Lovely Mountain
20 Missionary Baptist Church just prior to all
21 this happening.

22 All I can say is three years; we've
23 all been incarcerated to this day for three
24 long years. Three years of not sleeping.
25 Every time we look at something that was

1 similar to it on television the vivid reminder
2 came back. We had a wonderful Easter service,
3 and then on Easter -- that night we was all
4 called out to Fantasy -- first of all, we
5 didn't know what it was, called out to Fantasy
6 and when we got there we were blocked off by
7 Charleston County and we couldn't get in and
8 all that.

9 And that's where the agony started.
10 From there if it wasn't one thing it was
11 another. I was in the hospital at one time
12 and one of the brothers just about went out of
13 his mind. So I had -- I came out of the
14 hospital with back surgery and I had to deal
15 with him and pray with him and all that when I
16 could barely walk. The other brothers just
17 lost it all. They wanted revenge.

18 Maxine tried to work, and she
19 suffered from seizures all the time. And
20 there was no husband at the house and all
21 this. And I had my own family and the
22 ministry. And all this was really a
23 horrifying thing. And I'm not just saying
24 this to make the other side of the family over
25 here look bad. I'm just saying it was a

1 really horrifying thing that we went through
2 for three years. And this thing just tore our
3 family down. I watched as the enemy came into
4 our family, from on the inside like a cancer,
5 and destroyed, destroyed the Reed family,
6 which is my family.

7 I don't know the impact from the
8 other side of my family over on this side, but
9 I'm sure, I'm sure, that they are going to go
10 through something like we've already went
11 through, and what we're going through right
12 now.

13 So, I just say may God have mercy on
14 us all here. We all got to live from this
15 moment on. So, I -- if you ask me what would
16 I recommend, I got to be a follower of God.
17 What would -- what would God do in this
18 situation. Because I -- when I stand before
19 my creator I want to be right on this issue.
20 I want to be right.

21 I'm just expressing, on behalf of my
22 family here, the pain. And if you look at
23 them now, you will see what we have went
24 through day in, day out, every minute, every
25 second, every hour. And by me living next

1 door to them every time they had an uproar,
2 rage, or whatever, I felt it. I felt it, for
3 going on now for three years. And the
4 anniversary is going to be painful again.
5 But, to God be the glory. May God take us all
6 through this thing. It's not over yet.

7 MS. BOWMAN: My name is Tammy Bowman,
8 B-O-W-M-A-N. I was Jamie Reed's fiancé. I
9 just want to say the type of person he was.
10 He was the most loving, caring person you
11 could -- nobody is perfect, but he just didn't
12 deserve that. He just didn't deserve that at
13 all.

14 MR. VOIGT: Thank you, Your Honor.
15 There's nothing further from the State.

16 THE COURT: Mr. Voigt, I'm -- just so the
17 record is clear, Mr. McGee's previous criminal
18 history?

19 MR. VOIGT: Your Honor, he has a CDV
20 conviction.

21 THE COURT: And when was that, Mr. Voigt?

22 MR. VOIGT: I'm sorry, Your Honor. I
23 believed that I brought that portion of my
24 file with me.

25 MR. SMILEY: 2003, Your Honor.

1 THE COURT: 2003. And Mr. Voigt, you
2 agree that the Court's option in sentencing is
3 either 30 years or life. Is that correct?

4 MR. VOIGT: I'm of the opinion that it is
5 the -- statute, Your Honor.

6 THE COURT: Mr. Smiley, I'll be happy to
7 hear from anyone regarding sentencing of Mr.
8 McGee at this time.

9 MR. SMILEY: Thank you, Your Honor. I'm
10 going to ask you for the 30-year sentence.
11 You've heard from him on the stand, and
12 through myself, he's a young man who's been
13 incarcerated now for three years and he has
14 three children.

15 He was working as a painter for
16 three years until his incarceration. His
17 family has been here in support in the
18 courtroom, his mother, his aunts, other family
19 members, his grandmother, his pastor.

20 He comes from a good family, both
21 sides -- and it's -- I think I might have said
22 it, there are no winners here. And there's
23 certainly respect in the jury's verdict. I
24 think you got a good flavor of these tragic
25 events that occurred. Young men and guns are

1 a terrible thing. If there is one thing --
2 if you came and asked me of one thing I could
3 change in this world, it wouldn't be anything
4 but get the handguns and get rid of them. I
5 think there would be a lot more harmony in our
6 neighborhoods and families.

7 I don't know what is accomplished by
8 giving Nathaniel a life sentence. A 30-year
9 sentence is an awful long time. He had no
10 significant prior history, as you've heard.
11 For the most part he conducted himself as a
12 good citizen.

13 I wish, of course, that we could
14 turn back the clock and change the
15 circumstances that led to the untimely death
16 of Jamie Reed. He was a young man who didn't
17 have a record either. And I think that's
18 important, I mean for both sides.

19 These weren't two drug dealers
20 shooting each other in the street. They were
21 two pretty good young men who had a dispute
22 that ended tragically. I know Nathaniel has
23 always felt terrible about what happened. I
24 don't think he's reconciled with what
25 happened; that Jamie died at his hands. But

1 those are the events that happened.
2 Respecting their verdict and -- he just told
3 me, Mr. Smiley, I acted in self-defense. I
4 said, I understand that, but you have to
5 respect what the jury said.

6 But I wish you would consider that
7 mitigation also. This just wasn't some random
8 killing or robbery or a stranger or anything
9 else. This was young men who handled their
10 dispute the wrong way. And I don't know how
11 else to say it. I don't know -- but not to
12 cast dispersions on Mr. Reed, but I don't know
13 that either side handled this very well.

14 And, of course, I wasn't there. I
15 can only deal with what I'm told, what I'm
16 given, from both sides in this case. But
17 there's no way you can look at this and think
18 but both sides what a tragedy.

19 I would ask you to sincerely
20 consider the 30-year sentence in this case.
21 And credit for time served taking into account
22 the lack of any prior record, his good will in
23 the community as far as working in the past,
24 his family support, Your Honor, and the
25 mitigation about how the facts came about in

1 this case. Nathaniel, do you want to address
2 the Judge? It's up to you, you can or you
3 don't have to.

4 MR. MCGEE: I just would like to ask for
5 your mercy and for the mercy of the Court.
6 I'm sorry for what took place, about
7 everything. And that's it. That's it, ma'am.

8 MR. SMILEY: And lastly, his grandmother
9 would like to address you, Your Honor. If you
10 could come up, and give us your name?

11 MS. MCGEE: Kathleen McGee, and Nathaniel
12 is my grandson. And I helped raise him from a
13 little boy, a baby in pampers. And he was
14 very kind to everybody who he met or played
15 with.

16 And I really don't understand. They
17 blaming so much things on him and he has never
18 been a person that hurt nobody. I know that
19 for myself because I helped raise him from a
20 baby. So I really -- I really don't
21 understand why -- why this happened because I
22 know he wouldn't go and shoot nobody right in
23 the forehead because he is not that kind of
24 person. His family is not that kind of
25 person. We have never been mean or selfish

1 to nobody and he was raised the same way. So,
2 I really don't understand why you say he done
3 something. I know for myself he didn't do it.
4 I know because he's not that kind of person.

5 He is very kind and he has three
6 children. He worked to take -- help raise his
7 children. His mom helped and he worked every
8 day to raise -- help raise his children. Now,
9 what going to happen to his children? I know
10 he didn't do anything wrong.

11 MR. SMILEY: Thank you, Ms. McGee. This
12 is the last one we have. Give her your name.

13 MS. MCGEE: My name is Vickie McGee,
14 M-C-G-E-E. I am Nathaniel's first cousin.
15 And continuing with what my grandma said,
16 Nathaniel is a kind-hearted person. He's not
17 -- he's not no brutal, harsh, killer like
18 those other -- he's not that kind of person.

19 So, I ask you and my family members
20 is asking you can you please show mercy when
21 you sentence him because he's our cousin and
22 we know that this wasn't intended, this wasn't
23 premeditated, this was -- I mean, you know
24 what I mean, it was kill or be killed. I
25 would -- me personally, I would rather have

1 twelve people decide my fate than be carried
2 by six people to a gravesite. I mean he did
3 what he had to do. I mean, so please just
4 show mercy. We obviously love him and it was
5 an accident. I mean, I know he didn't mean
6 it. I know he has remorse. Please show
7 mercy on him.

8 MR. SMILEY: Thank you, Your Honor. I
9 think it underscores what a tragedy on both
10 sides this is and I would ask you to consider
11 the 30-year sentence in this case. That's all
12 we have. Thank you.

13 THE COURT: Mr. Voigt, does the State
14 take any position in the sentencing?

15 MR. VOIGT: No, Your Honor.

16 THE COURT: Let's take just a moment.

17 MR. SMILEY: Yes, ma'am.

18 THE COURT: We'll be at ease.

19 [Whereupon, Court is in recess from 6:43
20 p.m. until 6:51 p.m.]

21 THE COURT: Thank you. Be seated. Mr.
22 McGee, please rise?

23 [Whereupon, the defendant complies]

24 THE COURT: Is there anything you wish
25 you say before I impose sentence upon you?

1 MR. MCGEE: No, ma'am.

2 THE COURT: Mr. McGee, I've sat and I've
3 watched you throughout the two days of trial.
4 I watched the jurors as they -- as the verdict
5 was read.

6 I've listened to the victim's
7 family, the defendant's family, and I have
8 determined that no matter what sentence I
9 impose it is going to be a tragedy. And the
10 tragedy started, sir, when you didn't call the
11 police. And the biggest tragedy is when you
12 decided that you needed to go buy a gun.

13 And I don't agree with Mr. Smiley.
14 There's a time and a place for everything. We
15 go to school, we learn to be attorneys, and
16 doctors. We go to school to learn how to
17 shoot weapons. And you decided that you were
18 smarter than that.

19 Mr. McGee, nothing that I do is
20 going to bring back Mr. Reed. Nothing that
21 you do is going to bring back Mr. Reed. Mr.
22 McGee, this is one of the hardest sentences
23 that I've had to determine since I've been on
24 the bench. I do not understand what prompted
25 you to go get a gun and to be in an area that

1 you felt you needed to pull a weapon and end
2 somebody's life, and that you thought that you
3 deserved that right to do that.

4 Mr. McGee, it's the order of the
5 Court on indictment 2006-GS-10-7192 that you
6 be committed to the State Department of
7 Corrections for a term of 30 years. I'll give
8 you credit for the time that you've served.
9 Good luck to you, sir.

10 MR. SMILEY: Thank you, Your Honor.

11 THE COURT: Court is in recess.

12 MR. VOIGT: Thank you, Your Honor.

13 [Whereupon, Court's exhibit numbers 6, 7,
14 8, 9, and 10 are marked by the court reporter]

15 [Whereupon, the jury trial concludes at
16 6:54 p.m.]

17

18

19

20

21

22

23

24

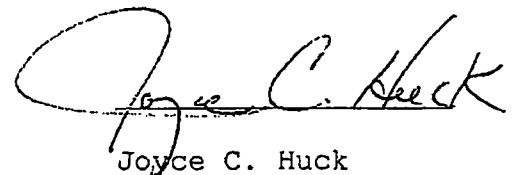
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Huck,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate, and complete Transcript of Record of
the proceedings had and evidence introduced in
the trial of the captioned case, relative to
appeal, transcribed by Joyce C. Huck, reported
by Mia Perron, Ninth Circuit Court Reporter,
in the Court of General Sessions for
Charleston County, South Carolina, on the 5th
day of March, 2009.

I do further certify that I am
neither of kin, counsel, nor interest to any
party hereto.

December 5, 2009

A handwritten signature in black ink, appearing to read "Joyce C. Huck", written over a horizontal line.

Joyce C. Huck

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Nathaniel McGee #333534 Plaintiff(s)

vs.

2012-CP-10 - 3986

State of South Carolina Defendant(s)

(Please Print)

Submitted By: Nathaniel McGee, #333534

Address: Lieber Comm. Inst Cooper Unit
P.O. Box 205
Ridgeville, S.C. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Denial Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (310)

Submitting Party Signature: /s/ Nathaniel McGee

Date:

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)Nathaniel McGee, #333534)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2012-CP-10-3986
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 JUN 19 AM 10:33
JULIE J. ARTHUR
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst. Ridgville, S.C. 29472
2. Name and location of Court which imposed sentence Charleston County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2006-GS-10-7192 / Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 9, 2009 30 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissal of Appeal / Anders Pro Se Brief
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders v. Calif.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) see : Attached Sheets
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see : Attached sheets
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? ✓
 (c) your sentencing? ✓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. James Smiley - 3842-B Leeds Ave. N. Charleston,
S.C. 29405
 ii. Laree Hensley - 3842-B Leeds Ave. N. Charleston,
S.C. 29405
 iii. Robert M. Dudek, Appellate Defense
P.O. Box 11589 Columbia, S.C. 29211
 (b) the proceedings at which each such attorney represented you:
 i. (b); (c)
 ii. (b); (c)
 iii. (d)

19. State clearly the relief you seek in filing this application:

See: Attached sheets

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Nathaniel McGee, # 333 534, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

/s/ Nathaniel McGee

SWORN to and subscribed before me this 14th
day of June, 2012.

Ludreen Bryant (U.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Nathaniel McGee, # 333534, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

1st Nathaniel McGee
Applicant

SWORN or affirmed to and subscribed before me this
14th day of June, 2012.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

2012-CP-10-398

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A No. _____

Nathaniel Mc Gee, # 333534

Applicant,

vs.

State of South Carolina,

Respondent.

ATTACHMENT TO

APPLICATION FOR

POST-CONVICTION RELIEF/

MEMORANDUM OF LAW
IN SUPPORT OF

FILED
2012 JUN 19 AM 10:33
JULIE H. HONG
CLERK OF COURT

The Applicant Herein was Arrested, Tried; and convicted upon Indictments For Murder. He was represented by Two Attorneys as Indicated, Attorneys Applicant submit / contends provided Ineffective Assistance in Controvention / degradation of Applicant's Rights; Protections; Guarantees Pursuant to the 6th Amendment to the United States Constitution; and South Carolina Constitution Art. 1; § 14; South Carolina code § 17-23-60; see: Strickland - vs - Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L.Ed. 2d 674 (1984). As their conduct so undermined the proper functioning of the Adversarial process that the Trial cannot be relied upon as having produced a Just result. Counsels Representation Fell below an Objective Standard of Reasonableness and But for Counsel's unprofessional errors a reasonable Probability exist that the result of the proceeding would have been different if not for the following errors / Issues.

1.

STATEMENT OF THE CASE

Applicant was indicted by the Charleston County grand jury for the offense of murder. Applicant's case was called to trial on March 3, 2009 before Honorable Kristi L. Harrington, and the jury. James Smiley and Laree Hensley represented appellant. Greg Voigt and Brian Byrd were the assistant Solicitors.

On March 9, 2009 the jury found appellant guilty of murder. Judge Harrington sentenced appellant to thirty years imprisonment. A timely Notice of Appeal was filed and a Direct Appeal was taken. Chief Appellate Defender Mr. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a Final Anders Brief and Applicant filed a timely 45-day Pro-se Brief and on 27 day of March, 2012 a disposition was taken by the South Carolina Court of Appeals and Applicant herein files this Application for Post-Conviction Relief.

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ARGUMENT 1

1.) Was Counsel Constitutionally Ineffective for Conceding Petitioner's Guilt during Opening Argument at Trial that impermissibly over-rode Petitioner's plea of not guilty that resulted in Structural Error and a denial of Due Process?

FACTS

see: Tr. T. page 47 lines 23 through lines 4 pg. 48

Opening Statement by Mr. Smiley:

23 Nathaniel McBee, on the night in question,
 24 pulled out a gun and shot Jamie Reed. It's
 25 not disputed. The events leading up to it are
 1 going to be in dispute. And how it occurred
 2 that night may be in dispute. But it's not
 3 disputed that Nathaniel killed Jamie Reed.
 4 someone died.

DISCUSSION

Petitioner herein submits that trial Counsel committed a Structural Error that violates Petitioner's right to due process and Effective Assistance of Counsel that was prejudicial; an Abandonment of defense was inherently prejudicial U.S.C.A. Const. Amends. 5, 6th
 see: U.S. V. Swanson, Cite as 943 F.2d 1070 (9th Cir. 1991); and

Sherman v. Smith, cite as 89 F.3d 1134 (4th Cir. 1996); and Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L.Ed. 2d 674 (1984)

Petitioner further submits that Counsel's Representation Fell below an Objective Standard of Reasonableness and But for Counsel's Unprofessional errors there's a reasonable probability that exist that the result of the proceeding would have been different.

Wherefore Applicant respectfully ask that his Conviction be Vacated / Reversed and the grant of a New Trial as a matter of Law.

ARGUMENT 2

2.) Was Counsel ineffective for failing to perform any pre-trial investigation, both factual and legal, and as a result Petitioner was Prejudiced and was denied Due Process?

FACTS

Tr. T. pg. 122 lines 7 through 10

Closing Statement by Mr. Smiley

7. Where's Sierra Smith? Why isn't she
8. here to testify? Why isn't the doorman here?
9. Why isn't the manager here? Why isn't --
10. other people from the parking lot here?

Petitioner will give testimony at PCR hearing as to this issue herein. Counsel failed to call Terrell Wright to testify and he was Available at Trial.



The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
 Disciplinary Counsel

Ericka M. Williams
 Assistant Disciplinary Counsel

Post Office Box 12159
 Columbia, South Carolina 29211

Telephone: (803) 734-2038
 Fax: (803) 734-1864

October 14, 2009

PERSONAL AND CONFIDENTIAL

Nathaniel McGee #333534
 Lieber Correctional Institution
 P.O. Box 205
 Ridgeville, SC 29472

RE: NOTICE OF FINAL DISPOSITION

Lawyer: James Watson Smiley, IV, Esquire
 Matter Number: 09-DE-L-0188

Dear Mr. McGee:

You previously filed a complaint with the Commission on Lawyer Conduct concerning James Watson Smiley, IV. On September 18, 2009, an investigative panel of the Commission concluded this matter. The panel did not dismiss your complaint, but made a disposition that remains confidential under the provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

The action taken by the Commission constitutes final disposition of the proceedings in this matter. Your cooperation with the Commission and this office is appreciated.

Sincerely,


 Ericka M. Williams

EMW/sdm

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... ..to have the assistance of counsel for his defense." U.S. Const. amend. VI. The right to the effective assistance of counsel means the right to "effective assistance of counsel." See Cuyler v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir.), cert. denied ____ U.S. ____, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the Court identified two components to any ineffective assistance of counsel claim. (1) deficient performance; and (2) prejudice. Under that decision, a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial. Strickland v. Washington, 466 U.S. at 687, see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional

errors so upset the adversarial balance between the defense and prosecution that the proceeding was rendered unfair and the conviction suspect).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th.Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues -- to which the defendant, a layman, will be oblivious. Garland v. Cox, 472 F.2d 875, 879 (4th.Cir.).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "it is the duty of the lawyer to conduct prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to

secure information in the possession of the prosecution and law enforcement authorities. See ABA for Criminal Justice 4-4.1 (2nd. ed. 1982 Supp.). The failure to investigate, research and prepare is equivalent to not representation at all. Brubaker v. Dickson, 310 F.2d 30, accord Willaims v. Beto, 354 F.2d 698, and Brooks v. Texas, 381 F.2d 619.

Petitioner further submits that Counsel's Representation Fell below an Objective Standard of Reasonableness and But for Counsel's Unprofessional errors there's a reasonable probability that exist that the result of the proceeding would have been different.

Wherefore Applicant respectfully ask that his Conviction be Vacated / Reversed and the grant of a New Trial as a matter of Law.

ARGUMENT 3

3.) Was Trial Counsel Constitutionally Ineffective for Mistating Facts calling Petitioner; the alleged victim that confused the jury and Conceded Petitioner's Guilt that impermissibly over-rode Petitioner's plea of not guilty that resulted in Structural Error and a denial of Due Process?

FACTS

Tr. T. pg. 48 lines 12-14

Opening Statement by Mr. Smiley

12 And as a result of that Jamie believed that he
13 was going to get killed, and went and bought a
14 gun.

Tr. T. pg. 48 lines 21-22

Opening Statement by Mr. Smiley

21... point Jamie did the only thing he could do;
22 shoot or be killed. That's not easy, but it

Tr. T. pg. 49 lines 6

Opening Statement by Mr. Smiley

6. Jamie doesn't have to prove it

Tr. T. pg. 208 line 20 Direct exam. By Mr. Smiley of Mr. McCoy

20. When Jamie [sic] came walking by the car he told

DISCUSSION

Petitioner herein submits that Trial Counsel committed a Structural Error that violates Petitioner's right to due Process and Effective Assistance of Counsel that was prejudicial; an Abandonment of defense and Mistating Facts calling "Petitioner" alleged [victim] [Jamie] was inherently prejudicial U.S.C.A. Const. Amendments 5, 6.

See: U.S. v. Swanson, Cite as 943 F.2d 1070 (9th Cir. 1991);
and Sherman v. Smith, Cite as 89 F.3d 1134 (4th Cir. 1996);
Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065,
80 L.Ed. 2d 674 (1984);

In Herring v. New York; 422 U.S. 853 95 S.Ct. 2550

Petitioner further submits that Counsel's Representation Fell below an Objective Standard of Reasonableness and But for Counsel's Unprofessional errors there's a reasonable probability that exist that the result of the proceeding would have been different.

Wherefore Applicant respectfully ask that his Conviction be Vacated / Reversed and the grant of a New Trial as a matter of Law.

ARGUMENT 4

4.) Was Trial Counsel Constitutionally Ineffective by failing to object when the Prosecutors repeatedly stated his personal opinions regarding the credibility of the petitioner and the defense theory of the case; and a denial of Due Process?

FACTS

T. Tr. pg. 124 lines 12 - 21

Closing Argument by Mr. Voigt

12 perhaps different testimony. We've heard
 13 different lies about what happened. This is
 14 Club Fantasy [indicates]. It's States 16.
 15 It's apt because most, if not everything, that
 16 you've heard today was Nathaniel McGee's
 17 fantasy about how this happened.
 18 He's had time for his mind to
 19 construct this fantasy. He might believe it.
 20 I don't know. I don't think he's -- I don't
 21 care. Here's States 17 [indicates]. It's

T. Tr. pg. 135 lines 17 - 21

Closing Argument by Mr. Voigt

17 That's not how it happened.

18 Nathaniel McGee's story is a lie. Is he lying
 19 to himself? I don't care. He's lying to you.
 20 He's lying to me. And, that's not justice.
 21 That's not the truth.

T. Tr. pg. 135 lines 9-11

Closing Argument by Mr. Voigt

9 doesn't know how it goes off, poor Nathaniel
 10 McGee, and his precarious relationship to the
 11 truth.

T. Tr. pg. 138 lines 6-7

Closing Argument by Mr. Voigt

6 Nathaniel McGee's story is
 7 preposterous. Two mystery Jamaicans take him

T. Tr. pg. 138 lines 13-20

Closing Argument by Mr. Voigt

13 Oh, and the best part. Because he
 14 needs this, because he's been thinking about
 15 this for a little while, it's been almost
 16 three years. He's been thinking Jamie needs a
 17 gun. Jamie needs to really threaten me with
 18 it. But if he doesn't, then maybe this isn't

19 going to be self-defense. Maybe you won't buy it
20 it.

T. Tr. pg. 138 lines 24-25 and pg. 139 lines 1-3

Closing Argument by Mr. Voigt

24 later. It was all made up. He squeezes off a
25 round and misses him? Really? Do you believe
1 that? No, you don't. No, because it was made
2 up. It's made up, gang. It's false
3 absolutely false. This is going to look

T. Tr. pg. 139 lines 13-16

Closing Argument by Mr. Voigt

13 Mr. Voigt: Instead of this let's just
14 look at the consequences of Nathaniel McGee's
15 action, self-defense, this fantasy, this
16 charade that we have

T. Tr. pg. 143 lines 15-17

Closing Argument by Mr. Voigt

15 mark. It doesn't really matter to me. It
16 doesn't matter because I don't believe much of
17 what he said...

DISCUSSION

The prosecution cannot comment on his personal views to the jury, and counsel was ineffective for failing to object to these statements; as it clearly Bolstered states case.

see: Thompson v. Aiken, 281 S.C. 239 (1984) (prosecutorial comment as to prosecutor's personal opinion in seeking death penalty warranted new trial as to sentence);

State v. Woomer, 277 S.C. 170 (1981) (solicitor's statement that he had already made the same decision that he was asking the jury to make was improper, and sentence of death was set aside). see: State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987)

see: Strickland v. Washington, 466 U.S. 668, 686 (1984)

see: U.S. v. Wilson, 135 F.3d 291 (4th Cir. 1998)

see also: U.S. v. Walker, 155 F.3d 180 (3rd Cir. 1998)

see also: State v. Kelly, 540 S.E.2d 851 (S.C. 2001) Reversed on other grounds, Kelly v. South Carolina, 534 U.S. 246, 122 S.Ct. 726 (2002)

the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the state rather than its own view of Evidence

Wherefore applicant respectfully submits that theres a reasonable probability that the outcome at trial would have been different, given the pervasiveness of the prosecutor's expressions of his personal view that the petitioner is a liar and that the defense theory was prejudicial and applicant respectfully ask for the Grant of a New Trial as a matter of law. Major v. Alverson, 183 S.C. 123, 190 S.E. 449 (1937) In this case the defendant was called a liar just like in this case.

ARGUMENT 5

5.) Was Trial Counsel Constitutionally Ineffective for failing to object when the Solicitor in Closing Argument, impermissibly used "You" or a form of "You" some ~~thirty~~ three times asking the jury to put themselves in place of victim; that was calculated to arouse the juror's passions and Prejudices; and a denial of Due Process, And a violation of the "Golden Rule"?

FACTS

T. Tr. pg. 125 lines 23 Closing Argument by Mr. Voigt.

23 [Here we] are at club Fantasy...

T. Tr. pg. 127 lines 21-22 Closing Argument by Mr. Voigt.

21 And [you] can take notice of that even though

22 nobody testified to it. [You] can test -- [you] ...

T. Tr. pg. 128 lines 8-10 Closing Argument by Mr. Voigt

8 So, when [you] go to club Fantasy and [you] park

9. [your] car in the back lot, don't feel

10 comfortable that [your] car is safe from all the ...

T. Tr. pg. 131 line 5 Closing Argument by Mr. Voigt

5 Right up here [you] have people. I ...

T. Tr. pg. 136 lines 14-15 Closing Argument by Mr. Voigt

14 Killer. I should be afraid of [you] because
15 [you've] got a gun? Well, [you] better use it.

T. Tr. pg. 136 line 21 Closing Argument by Mr. Voigt

21 And [you] know what he did? He calmly...

T. Tr. pg. 137 line 3-4 Closing Argument by Mr. Voigt

3 prior difficulty. Imagine if [you] will if
4 that really happened.

T. Tr. pg. 137 lines 8-15 Closing Argument by Mr. Voigt

8 this, sometimes when [you] do -- [you're] going to
9 get out of [your] car, shoot somebody, and
10 [you're] going to take [your] watch and [your] chain
11 off? It makes no sense. No, it doesn't. [You]
12 don't do that.

13 To shoot somebody, how is the chain
14 going to slow [you] down? How is [your] watch
15 going to slow [you] down? They just happened to

T. Tr. pg. 141 lines 18 Closing Argument by Mr. Voigt

18 ...[you] cover for me

Tr. T. pg. 141 lines 8-9 Closing Argument by Mr. Voigt

8

... Jamie

9 is no gunslinger, poor dead 22-year old.

Tr. T. pg. 142 lines 1-19 Closing Argument by Mr. Voigt

1

... Remember, I kind of

2 started with [our] free will, and the decisions

3 that [we make]. Decision to buy the gun,

4 decision to keep the gun with [you], decision to

5 take the gun to the race track, decision to go

6 from the race track to Club Fantasy; two

7 places where Jamie Reed wound up at the end of

8 his life.

9 Decision to walk up to Jamie Reed's

10 car with that gun in [your] back pocket.

11 Decision to call Jamie Reed out of the car.

12 Decision to put that gun within an inch of

13 Jamie Reed's forehead, and the decision to

14 fire it.

15 To squeeze the trigger knowing that

16 when [you] were that close it's not going to be

17 a -- let's remember, if [you] believe any of

18 that story about the mystery Jamaican

19 encounter in the woods, Jamie is that close

T. Tr. pg. 146 lines 17-19 Closing Argument by Mr. Voigt

17

... Seriously,

18 [you've] got one guy tied up and everybody's got

19 a gun? ...

DISCUSSION

It has been well settled by the South Carolina Supreme Court that a Solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury.

See: State v. Reese, 370 S.C. 31 (2006) overturned on other grounds

see: Von Dohlen v. State, 360 S.C. 598, 602 S.E. 2d 738 (2004)

cert. denied 544 U.S. 943, 125 S.Ct. 1645, 161 L.Ed. 2d 511 (2005)

Attorneys closing Argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom; Because Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially;

A Golden Rule argument by Attorney, asking the jurors to place themselves in the victim's or defendant's shoes, tends to completely destroy all sense of impartiality of the jurors, and it affects to arouse passion and prejudice; and in this instance as a whole of the violations of the "Golden Rule" so infected the trial with unfairness as to make the resulting conviction a denial of Due Process. U.S.C.A. Const. Amend 14