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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

KASEEM STEPHENS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002331

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08-GS-10-6300
	)	
Kaseem Stephens,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial held on March 16-17, 2009, before
The Honorable R. Markley Dennis, Jr. in Courtroom 4B of the Charleston
County Courthouse, 100 Broad Street, Charleston, South Carolina; attended
by counsel, as follows:

APPEARANCES:

Peter McCoy, Assistant Solicitor
Kevin Hales, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
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Appearing for State of South Carolina

Jason King, Assistant Public Defender
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CHARLESTON PUBLIC DEFENDER'S OFFICE
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Appearing for Defendant

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1 MARCH 16, 2009 9:30 A.M.

2

3 (STATUTORY JURY QUALIFICATION)

4 (DEFENDANT PRESENT)

5 THE COURT: Good morning, Mr.

6 Stephens. I was making sure that the case
7 management process that is in place in this
8 county has been followed properly. I asked
9 him whether an offer had been extended to you
10 and he indicated that it had, that you had had
11 an opportunity to consider that offer and that
12 you have instructed him to reject that offer;
13 is that correct, sir?

14 DEFENDANT: Yes, sir.

15 THE COURT: Very well. You
16 understand that once a jury walks in that
17 offer is withdrawn forever.

18 DEFENDANT: Yes, sir.

19 THE COURT: Okay. I just wanted a
20 chance to confirm that on the record. You've
21 had a chance to talk with him about it? Thank
22 you so much. Sorry to interrupt you'all.

23 (BRIEF RECESS)

24 (STATUTORY JURY QUALIFICATION)

25 (DEFENDANT PRESENT)

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7

7

1 THE COURT: Are you'all ready to
2 go? All right, let's bring in the jury panel,
3 please.

4 (JURY PANEL IN @ 10:40 A.M.)

5 THE COURT: Good morning. Thank
6 you very much, Ladies and Gentlemen, thank you
7 for your patience. We are ready now to start
8 the process of selecting the jury in the first
9 dispute. The first dispute is captioned the
10 State of South Carolina versus Kaseem
11 Stephens.

12 Mr. Stephens is seated to the table
13 here to my left. Good morning, Mr. Stephens.
14 If you would, please stand and face the jury
15 panel for me. This is Kaseem Stephens.

16 DEFENDANT: (Complies)

17 THE COURT: Thank you, Mr.
18 Stephens, you may take your seat. Are there
19 any members of the jury panel who are related
20 blood or marriage, socially or casually
21 connected with, have any relation with Mr.
22 Stephens? If so, please stand. (No
23 response). There are none.

24 Mr. Stephens is represented by Mr.
25 King. If you would, identify yourself and

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1 anyone that will be assisting you, please.

2 MR. KING: I'm Jason King with the
3 Charleston County Public Defender's Office.
4 Assisting me is Reeve Stidham, who is with our
5 office.

6 THE COURT: Thank you, sir. Are
7 there any members of the jury panel related by
8 blood or marriage, have any business dealings
9 with, socially or casually acquainted with,
10 ever been represented by Mr. King or Mr.
11 Stidham? If so, please stand. (No response).
12 Thank you, there appear to be none.

13 Are there any members of the jury
14 panel who are related by blood or marriage,
15 have any business dealings with, socially or
16 casually acquainted with, even been
17 represented by Mr. Ashley Pennington, who is
18 the Public Defender for the Ninth Circuit?
19 If so, please stand. Your name, please?

20 JUROR NUMBER 162: Mr. Pennington
21 defended my son once.

22 THE COURT: That matter has been
23 concluded?

24 JUROR NUMBER 162: Yes, sir.

25 THE COURT: Would that in any way

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9

9

1 influence or affect you in this matter?

2 JUROR NUMBER 162: No.

3 THE COURT: Would you base your
4 decision based on the evidence and the law and
5 would it be fair to the State and be fair to
6 Mr. Stephens?

7 JUROR NUMBER 162: I will.

8 THE COURT: Your name and number,
9 please.

10 JUROR NUMBER 162: Joyce McCue, 162.

11 THE COURT: Thank you, Ms. McCue,
12 you may take your seat.

13 Are there any others? (No
14 response).

15 Are there any members of the jury
16 panel related by blood or marriage, have any
17 business dealings with, who are socially or
18 casually acquainted with anyone employed with
19 the Public Defender's Offices for the Ninth
20 Circuit? They have an office in Charleston,
21 or it has offices in Charleston and an office
22 in Berkeley County. If so, please stand. (No
23 response). Thank you, there are none.

24 Are there any members of the jury
25 panel related by blood or marriage, have any

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1 business dealings with, socially or casually
2 acquainted with, ever been represented by
3 Scarlet Wilson, who is your Solicitor for the
4 Ninth Circuit? If so, please stand. (No
5 response). Thank you, there appear to be
6 none.

7 This case is going to be handled by
8 her office. Mr. Hales will be handling it.
9 Mr. Hales, if you would identify yourself and
10 anyone that will be assisting you, please.

11 MR. HALES: My name is Kevin Hales.
12 I am an assistant solicitor with the Ninth
13 Circuit here in Charleston. This is Peter
14 McCoy, he is also an assistant solicitor in
15 the Ninth Circuit. We will be trying this
16 case.

17 THE COURT: Thank you, sir. Are
18 there any members of the jury panel related by
19 blood or marriage, have any business dealings
20 with, socially or casually acquainted with,
21 ever been represented by Mr. Hales or Mr.
22 McCoy? If so, please stand. Yes, sir.

23 JUROR NUMBER 254: I am socially
24 acquainted with Peter McCoy.

25 THE COURT: Your name and number,

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11

11

1 please?

2 JUROR NUMBER 254: David Hair,
3 254.

4 THE COURT: Would that affect or
5 influence you in this dispute, sir?

6 JUROR NUMBER 254: No, sir.

7 THE COURT: Would you base your
8 decision on the evidence and the law and would
9 that decision be fair to both sides?

10 JUROR NUMBER 254: Yes, sir.

11 THE COURT: Are there any others?
12 (No response). Thank you, there appear to be
13 none.

14 Are there any members of the jury
15 panel related by blood or marriage, have any
16 business dealings with, who are socially or
17 casually acquainted with anyone employed with
18 the Solicitor's office, and that office has
19 offices located -- one office in Charleston
20 and one office in Berkeley County. If so,
21 please stand. (No response). Thank you,
22 there appear to be none.

23 I am going to identify a number of
24 persons, Ladies and Gentlemen. If you are
25 related by blood or marriage, have any social

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1 or casual dealings with, have any business
2 dealings with any of these persons, you need
3 to stand and share that information, please,
4 with the court:

5 Kimberly Bates,

6 Jamol Greene,

7 Charles Moore,

8 Keith Elmore,

9 Al Hallman,

10 Andrew Coker,

11 Alex Teachy,

12 Ila Simmons, who works with the
13 South Carolina State Law Enforcement Division,
14 also known as SLED,

15 Cynthia Schandl with MUSC.

16 If so, please stand. Any of
17 those persons? (No response).

18 Also:

19 Dr. Lori Van Wallendael,

20 Rebecca Stephens,

21 Amber Moore.

22 Any of those persons? Please
23 stand. (No response).

24 Thank you, there appear to be none.

25 The dispute, Ladies and Gentlemen,

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1 that brings us here today is set forth or
2 framed, if you will, by this document that I
3 am holding in my hand. It is what it appear
4 to you to be. It's a piece of paper. It's
5 called an indictment and it just frames the
6 accusation(s) the State has made against Mr.
7 Stephens. This is not evidence, it won't be
8 in the jury room with you.

9 I need to share with you what's
10 alleged so that I can ask you some questions
11 about it but, again, this is not evidence.

12 It is alleged in this document that
13 Mr. Stephens did, in Charleston County, on or
14 about March 28th, 2007, with malice
15 aforethought kill and murder Sheldon Frasier
16 by means of shooting the victim, and that
17 Sheldon Frasier did die in Charleston County
18 as a proximate result of that shooting on
19 March 31, 2007. This is alleged to have been
20 in violation of a section of our Code of Laws
21 that sets forth the crime of murder.

22 I share that with you to find out,
23 first of all, if any member of the jury panel
24 has read anything, heard anything, if you have
25 any prior knowledge of this dispute. If so,

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1 please stand. (No response). Thank you,
2 there appear to be none.

3 THE COURT: Is there anything about
4 the nature of this crime, alleged crime,
5 Ladies and Gentlemen, that you because of some
6 strong feelings that you have, something that
7 may have happened to you or a close family,
8 some philosophy that you have, anything that
9 you can think of that would affect your
10 ability to be a fair and impartial juror in
11 this case or, stated another way, a fair and
12 impartial judge of the facts. If so, please
13 stand. (No response). Thank you, there
14 appear to be none.

15 Are there any members of the jury
16 panel now or formerly, or a member of your
17 immediately family now or formerly, involved
18 or connection in a law enforcement capacity?
19 If so, please stand.

20 JUROR NUMBER 307: I'm Juror
21 307. My father-in-law is a Federal warden.

22 THE COURT: Okay. Would that
23 affect or influence in this matter, sir?

24 JUROR NUMBER 307: (Negative
25 gesture), it shouldn't.

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15

1 THE COURT: Would you base your
2 decision based on the evidence and the law and
3 would your decision be fair to Mr. Stephens
4 and fair to the State of South Carolina?

5 JUROR NUMBER 307: Yes, sir.

6 THE COURT: Yes, ma'am?

7 JUROR NUMBER 164: Juror 164.

8 My father was a New York State Trooper and
9 both of my brothers are in law enforcement.

10 THE COURT: Would either of those
11 situations influence you or affect you in this
12 dispute?

13 JUROR NUMBER 164: No.

14 THE COURT: Would you base your
15 decision on the evidence and the law and would
16 that decision be fair to both sides?

17 JUROR NUMBER 164: (Affirmative
18 nod), um-humm.

19 THE COURT: Would that be a "yes"?

20 JUROR NUMBER 164: Sir?

21 THE COURT: Was that a "yes",
22 ma'am?

23 JUROR NUMBER 164: Yes. Yes,
24 sir.

25 THE COURT: Thank you. There was

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1 nothing wrong with that. As I've mentioned to
2 you, Ms. Garrison is taking it down and it
3 just helps us to make sure. Thank you so
4 much. It was no offensive. Don't worry about
5 that. I understand.

6 Yes, ma'am?

7 JUROR NUMBER 230: My husband
8 was a retired special agent with the Air Force
9 and he was also a Charleston County Sheriff's
10 deputy.

11 THE COURT: He is not now?

12 JUROR NUMBER 230: No.

13 THE COURT: Would either of those
14 situations influence or affect you in this
15 dispute?

16 JUROR NUMBER 230: No.

17 THE COURT: Would you base your
18 decision on the evidence on the law and would
19 your decision be fair to both sides?

20 JUROR NUMBER 230: Yes, sir.

21 THE COURT: Your number, again?

22 JUROR NUMBER 230: 230.

23 THE COURT: 230. Thank you. Are
24 there others? (No response). Thank you,
25 there appear to be none.

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17

17

1 Are there any members of the jury
2 panel, or member of your immediately family,
3 that has ever been involved in a criminal
4 dispute? By that, I mean this:

5 Were you ever accused of a crime,
6 were you ever support or a witness of someone
7 who was accused of a crime, either a support
8 or fact witness?

9 Were you ever the person that
10 accused someone of committing a crime, that is
11 that you were the alleged victim of a crime?

12 Or have had any connection in any
13 capacity with any criminal dispute. If so,
14 please stand. (Number of potential jurors
15 stand).

16 Okay, I will ask you to come
17 forward. The attorneys may approach, as well.

18 SIDEBAR:

19 THE COURT: I will let you
20 stand here.

21 JUROR NUMBER 54: I was the
22 victim of violence.

23 THE COURT: Was that
24 prosecuted?

25 JUROR NUMBER 54: No, it was

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1 dropped.

2 THE COURT: Did the Solicitor
3 drop the charge?

4 JUROR NUMBER 54: We went to
5 court but the police officers dropped the
6 charges.

7 THE COURT: Okay. Would that
8 affect or influence you in any way in this
9 dispute?

10 JUROR NUMBER 54: It would not.

11 THE COURT: You would based
12 your decision on the facts and the law and
13 your decision would be fair to both Mr.
14 Stephens and the State?

15 JUROR NUMBER 54: It would.

16 COURT REPORTER: Ma'am, I
17 didn't hear your name and number.

18 THE COURT: What is your name
19 and number, for the record?

20 JUROR NUMBER 54: I'm Gloria
21 Davis, Juror Number 54.

22 THE COURT: Thank you.

23 (SIDEBAR CONCLUDED)

24 BAILIFF: Juror Number 21, Your
25 Honor.

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19

1 SIDEBAR:

2 THE COURT: Good morning, sir.

3 JUROR NUMBER 21: Good morning.

4 THE COURT: How are you?

5 JUROR NUMBER 21: Okay.

6 THE COURT: Would you give me
7 your name, please?

8 JUROR NUMBER 21: James
9 Bradley. I have several houses, brought some
10 charges and had to have -- was arrested for
11 fraud.

12 THE COURT: Have all those
13 matters been resolved?

14 JUROR NUMBER 21: I believe so.

15 THE COURT: Would that affect
16 or influence you in this matter?

17 JUROR NUMBER 21: No - I mean,
18 I don't ---

19 THE COURT: And you could make
20 a commitment to the State and to Mr. Stephens
21 that you would decide this case based solely
22 on the facts and the evidence and the law and
23 not be involved by those experiences?

24 JUROR NUMBER 21: I don't think
25 so.

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1 THE COURT: Thank you.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 21 will be
4 excused from participation in this dispute.
5 If you would, call the number please after
6 6:00.

7 (JUROR NUMBER 21 EXCUSED)

8 BAILIFF: Juror Number 188, Your
9 Honor.

10 SIDEBAR:

11 THE COURT: Your name, please?

12 JUROR NUMBER 188: Benita
13 North.

14 THE COURT: Yes, ma'am?

15 JUROR NUMBER 188: My
16 husband was charged with CDV in May of 2007.
17 That's been dismissed. We will be divorced in
18 April.

19 THE COURT: Okay. Did you
20 bring the claim against him?

21 JUROR NUMBER 188: Excuse
22 me?

23 THE COURT: Did you bring the
24 charges against him?

25 JUROR NUMBER 188: Yes.

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21

21

1 Well, he was arrested. My neighbor saw the
2 abuse and called, and he was arrested.

3 THE COURT: Would having been
4 involved in that process, would that affect or
5 influence you in deciding this dispute?

6 JUROR NUMBER 188: No, sir.

7 THE COURT: Would you base
8 your decision on the evidence and the law as I
9 give it to you and would that decision be fair
10 to both parties?

11 JUROR NUMBER 188: Yes.

12 THE COURT: Thank you, you may
13 take your seat.

14 (SIDEBAR CONCLUDED)

15 BAILIFF: Juror Number 9, Your
16 Honor.

17 SIDEBAR:

18 THE COURT: Your name and
19 number?

20 JUROR NUMBER 9: David
21 Bednarczyk, Juror Number 9. My sister was
22 indicted for embezzlement in the State of Ohio
23 back in the late '80s, I'd say '88 or '89. It
24 never went to court, it was plea bargained and
25 the case was resolved in that manner.

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1 THE COURT: Would that affect
2 or influence you in considering this matter?

3 JUROR NUMBER 9: No.

4 THE COURT: Would you based
5 your decision on the evidence and the law and
6 would that decision be fair to both the State
7 and Mr. Stephens?

8 JUROR NUMBER 9: Yes, sir.

9 THE COURT: Thank you. You
10 may be seated.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Are there any others?
13 (No response). Thank you.

14 Is there any member of the jury
15 panel that has ever been involved, had a
16 dispute with law enforcement over anything?
17 (No response). Thank you. There appear to be
18 none.

19 As I mentioned to you when I
20 qualified you, this is a wonderful system.
21 You will have nothing to do with the law but
22 you will make a commitment to take the law as
23 I give it to you and apply that law fairly and
24 impartially to the facts that you ultimately
25 determine.

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23

1 One principle of law that I will you
2 that applies in this case and in every case
3 involving a criminal dispute in this country
4 as far as I know is that when a party who is
5 accused of committing a criminal offense, such
6 as Mr. Stephens here today, the law says that
7 the party who makes that claim, the State of
8 South Carolina, has the burden of proof. That
9 is the only party that has a burden of prove.

10 A person accused of a crime is never
11 required to prove anything at all. They don't
12 have to explain anything, they don't have to
13 justify anything. They certainly don't have
14 to prove their innocence. The law says that
15 the State who makes the claim has to prove it.

16 Basically you will be empaneled to
17 determine whether or not the claims made by
18 the State convinces you to a standard that I
19 will explain to you in depth called beyond a
20 reasonable doubt. That is a standard that you
21 will be expected to apply in analyzing the
22 evidence and in deciding whether or not the
23 State has convinced you of that crime. In
24 other words, I will define the elements of the
25 crime for you, you will take the evidence and

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1 decide whether or not you think that element
2 has been proven.

3 Again, the person accused has
4 nothing to prove or disprove. Your answer
5 will be -- your answer -- if your answer to
6 each element is yes, then you will be expected
7 to return a verdict of Guilty, meaning that
8 the State has met its burden of proof. On the
9 other hand, if your answer is no to one or
10 more element, then you must return a verdict
11 of Not Guilty. Why? Because the State would
12 have failed to meet its burden of proof.

13 Is there anything about this
14 dispute, anything about the law that I have
15 disputed with you, or any feelings that you
16 have that would give you any concern about
17 your ability to observe that separation, if
18 you will, that you would be the sole judges of
19 the facts and I would be the judge of the law
20 and that is that you would accept the law as I
21 give it to you, notwithstanding personal
22 feelings. Will you be able to set aside that
23 in following the law? If someone feels that
24 they would not be able to do that, please
25 stand. (No response). Thank you.

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25

1 Any additional questions from the
2 State?

3 MR. HALES: No, Your Honor.

4 THE COURT: Any additional
5 questions from Mr. Stephens?

6 MR. KING: No, sir.

7 THE COURT: The last question,
8 Ladies and Gentlemen, is this: As I
9 mentioned to you, you will become a judge.
10 In order to facilitate that, before we start
11 the clerk will administer an oath to you. You
12 will raise your hand and you will make a
13 commitment, and basically I'm paraphrasing but
14 what it says is that at the appropriate time
15 you will be expected to apply your common
16 sense, your sense of logic and reasoning in
17 analyzing the evidence and deciding what you
18 believe to be the truth. Once you decide
19 that, based on the law as I give it to you at
20 the close of this case then you will report
21 your verdict.

22 Is there anything about what you've
23 heard today thus far that would give you any
24 concern about your ability to make that
25 commitment to the State or to Mr. Stephens.

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1 If so, please stand.. (No response). Thank
2 you so much.

3 What is going to happen now is that
4 Miss Gadsden is going to call your name. When
5 she does, I would ask that you bring your
6 personal effects and come and stand where I am
7 standing here, facing the parties. Each side
8 can excuse -- in this case the State can
9 excuse five persons and Mr. Stephens can
10 excuse ten. Each side has that right to
11 excuse persons. They will either say -- they
12 may say 'seat the person' or 'swear the
13 person' and then the defense will have the
14 right to say the same thing, 'seat the person'
15 or 'excuse the person.' We will go through
16 that process until we've empaneled our jury.

17 Please understand that if you're
18 excused, that doesn't mean anything. That's
19 just the way that the process works. Just
20 return to your seat, they'll call the next
21 person and we go through the process.

22 I'll turn it over to you, Miss
23 Gadsden.

24 CLERK: Juror Number 78, Arthur
25 Felts.

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1 (JUROR COMES FORWARD)

2 CLERK: What say you for the State?

3 MR. HALES: Please excuse the
4 juror.

5 CLERK: Sir, you may have a seat
6 back in the audience. You've not be selected
7 for the trial in this case.

8 (JUROR NUMBER 78 EXCUSED)

9 CLERK: Juror Number 236, Kimberly
10 Simpson.

11 (JUROR COMES FORWARD)

12 CLERK: What say ye for the State?

13 MR. HALES: Please present the
14 juror.

15 CLERK: What say you for the
16 defendant?

17 MR. KING: Please excuse this
18 juror.

19 CLERK: Please have a seat back in
20 the audience, ma'am. You have not been
21 selected for the trial of this case.

22 (JUROR NUMBER 236 EXCUSED)

23 CLERK: Juror Number 121, Jerome
24 Isaac.

25 (JUROR COMES FORWARD)

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1 CLERK: What say you for the State?

2 MR. HALES: Please present the
3 juror.

4 CLERK: What say you for the
5 defendant?

6 MR. KING: Please present the
7 juror.

8 CLERK: Sir, please have a seat in
9 the jury box. You've been selected for the
10 trial of this case.

11 (JUROR NUMBER 121 SEATED)

12 CLERK: Juror Number 164, Eileen
13 McLaughlin.

14 (JUROR COMES FORWARD)

15 CLERK: What say ye for the State?

16 MR. HALES: Please present the
17 juror.

18 CLERK: What say you for the
19 defendant?

20 MR. KING: Please excuse the
21 juror.

22 CLERK: Please, ma'am, have a seat
23 back in the audience. You've been excused
24 from the trial of this case.

25 (JUROR NUMBER 164 EXCUSED)

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1 CLERK: Juror Number 295, Ruthie
2 Withfield.

3 (JUROR COMES FORWARD)

4 CLERK: What say you for the State?

5 MR. HALES: Please present the
6 juror.

7 CLERK: What say you for the
8 defendant?

9 MR. KING: Please seat the juror.

10 CLERK: Please, ma'am, have a seat
11 in the jury box. You've been selected for the
12 trial in this case.

13 (JUROR NUMBER 295 SEATED)

14 CLERK: Juror Number 142, Scott
15 Lambert-Gorwyn.

16 (JUROR COMES FORWARD)

17 CLERK: What say you for the State?

18 MR. HALES: Please present the
19 juror.

20 CLERK: What say you for the
21 defendant?

22 MR. KING: Please seat the juror.

23 CLERK: Please, sir, have a seat in
24 the jury box. You've been selected for the
25 trial of this case.

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1 (JUROR NUMBER 142 SEATED)

2 CLERK: Juror Number 202, Desmond
3 Powell.

4 (JUROR COMES FORWARD)

5 CLERK: What say you for the State?

6 MR. HALES: Please excuse this
7 juror.

8 CLERK: Sir, please have a seat
9 back in the audience. You've been excused
10 from the trial in this case.

11 (JUROR NUMBER 202 EXCUSED)

12 CLERK: Juror Number 162, Joyce
13 McCue.

14 (JUROR COMES FORWARD)

15 CLERK: What says the State?

16 MR. HALES: Please present the
17 juror.

18 CLERK: What say you for the
19 defendant?

20 MR. KING: Please seat the juror.

21 CLERK: Please, ma'am, have a seat
22 in the jury box. You've been selected for the
23 trial of this case.

24 (JUROR NUMBER 162 SEATED)

25 CLERK: Juror Number 129, William

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1 Jones.

2 (JUROR COMES FORWARD)

3 CLERK: What say ye for the State?

4 MR. HALES: Please present the
5 juror.

6 CLERK: What say you for the
7 defendant?

8 MR. KING: Please seat the juror.

9 CLERK: Sir, please have a seat in
10 the jury box. You've been selected for the
11 trial of this case.

12 (JUROR NUMBER 129 SEATED)

13 CLERK: Juror Number 279, Anne
14 Hunter Ward.

15 (JUROR COMES FORWARD)

16 CLERK: What says the State?

17 MR. HALES: Please present the
18 juror.

19 CLERK: What say you for the
20 defendant?

21 MR. KING: Please excuse the
22 juror.

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

1 (JUROR NUMBER 279 EXCUSED)

2 CLERK: Juror Number 274, Vanessa
3 Virden.

4 (JUROR COMES FORWARD)

5 CLERK: What say ye for the State?

6 MR. HALES: Please excuse the
7 juror.

8 CLERK: Please, ma'am, have a seat
9 back in the audience. You've been excused
10 from the trial of this case.

11 (JUROR NUMBER 274 EXCUSED)

12 CLERK: Juror Number 284, Aaron
13 Weeks.

14 (JUROR COMES FORWARD)

15 CLERK: What say ye for the State?

16 MR. HALES: Please present the
17 juror.

18 CLERK: What say you for the
19 defendant?

20 MR. KING: Please swear the juror.

21 CLERK: Sir, please have a seat in
22 the jury box. You've been selected for the
23 trial in this case.

24 (JUROR NUMBER 284 SEATED).

25 CLERK: Juror Number 251, Jason

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1 Solt.

2 (JUROR COMES FORWARD)

3 CLERK: What say ye for the State?

4 MR. HALES: Please present the
5 juror.

6 CLERK: What say you for the
7 defendant?

8 MR. KING: Please swear the
9 witness.

10 CLERK: Sir, please have a seat in
11 the jury box. You've been selected for the
12 trial of this case?

13 (JUROR NUMBER 251 SEATED)

14 CLERK: Juror Number 314, Mark
15 Trundel.

16 (JUROR COMES FORWARD)

17 CLERK: What says the State?

18 MR. HALES: Please present the
19 juror.

20 CLERK: What say you for the
21 defendant?

22 MR. KING: Please excuse this
23 juror.

24 CLERK: Please, sir, have a seat
25 back in the audience. You've been excused

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1 from the trial of this case.

2 (JUROR NUMBER 314 EXCUSED)

3 CLERK: Juror Number 147, Alfreda
4 Legare.

5 (JUROR COMES FORWARD)

6 CLERK: What say you for the State?

7 MR. HALES: Please present the
8 juror.

9 CLERK: What say for the defendant?

10 MR. KING: Please excuse this
11 juror.

12 CLERK: Please, ma'am, have a seat
13 back in the audience. You've been excused
14 from the trial in this case.

15 (JUROR NUMBER 147 EXCUSED)

16 CLERK: Juror Number 290, Henry
17 Whiteside.

18 (JUROR COMES FORWARD)

19 CLERK: What say ye for the State?

20 MR. HALES: Please excuse this
21 juror.

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

25 (JUROR NUMBER 290 EXCUSED)

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1 CLERK: Juror Number 92, Virginia
2 Goodwater.

3 (JUROR COMES FORWARD)

4 CLERK: What says the State?

5 MR. HALES: Please excuse the
6 juror.

7 CLERK: Please, ma'am, have a seat
8 back in the audience. You've been excused
9 from the trial in this case.

10 (JUROR NUMBER 92 EXCUSED)

11 THE COURT: The State has exhausted
12 its strikes.

13 CLERK: Juror Number 198, Jennifer
14 Peterson.

15 (JUROR COMES FORWARD)

16 CLERK: Any challenge from the
17 State?

18 MR. HALES: None from the State.

19 CLERK: What say ye for the
20 defendant?

21 MR. KING: Please excuse this
22 juror.

23 CLERK: Please, ma'am, has a seat
24 back in the audience. You've been excused
25 from the trial of this case.

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1 (JUROR NUMBER 198 EXCUSED)

2 CLERK: Juror Number 228, Cheryl L.

3 Scott.

4 (JUROR COMES FORWARD)

5 CLERK: Any challenge from the

6 State?

7 MR. HALES: No challenge.

8 CLERK: What says you for the

9 defendant?

10 MR. KING: Please seat this juror.

11 CLERK: Please, ma'am, have a seat
12 in the jury box. You've been -- you have been
13 accepted (sic) in the trial of this case.

14 (JUROR NUMBER 228 SEATED)

15 CLERK: Juror Number 41, Smith

16 Cooper.

17 (JUROR COMES FORWARD)

18 CLERK: Any challenge from the

19 State?

20 MR. HALES: None from the State.

21 THE COURT: What say you for the
22 defendant?

23 MR. KING: Please seat the juror.

24 CLERK: Please have a seat in the
25 jury box. You've been selected for the trial

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1 of this case.

2 (JUROR NUMBER 41 SEATED)

3 CLERK: Juror Number 303, Quinton
4 Brown.

5 (JUROR COMES FORWARD)

6 CLERK: Any challenge from the
7 State?

8 MR. HALES: Beg the court's
9 indulgence for just a moment.

10 THE COURT: Certainly.

11 MR. HALES: Your Honor, may we
12 approach?

13 THE COURT: Sure.

14 BENCH CONFERENCE:

15 MR. HALES: Your Honor, it
16 looks like Mr. Brown may have several charges
17 at this time, which in some way may give him a
18 bias against the State.

19 THE COURT: If that is the
20 basis, I won't grant the Motion for cause.
21 Motion is noted and denied on that basis.

22 (BENCH CONFERENCE CONCLUDED)

23 CLERK: What say you for the
24 defendant?

25 MR. KING: Please seat this

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1 gentleman.

2 CLERK: Please, sir, have a seat in
3 the jury box. You've been selected for the
4 trial of this case.

5 (JUROR NUMBER 303 SEATED)

6 CLERK: Juror Number 9, David
7 Bednarczyk.

8 (JUROR COMES FORWARD)

9 CLERK: Any challenge from the
10 State?

11 MR. HALES: None from the State.

12 CLERK: What say you for the
13 defendant?

14 MR. KING: Please excuse the
15 juror.

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

19 (JUROR NUMBER 9 EXCUSED)

20 CLERK: Juror Number 54, Gloria
21 Davis.

22 (JUROR COMES FORWARD)

23 CLERK: Any challenge from the
24 State?

25 MR. HALES: None from the State.

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1 CLERK: What say you for the
2 defendant?

3 MR. KING: Excuse this juror.

4 CLERK: Please, ma'am, have a seat
5 back in the audience. You've been excused
6 from the trial of this case.

7 (JUROR NUMBER 54 EXCUSED)

8 CLERK: Juror Number 77, Linda
9 Faron.

10 (JUROR COMES FORWARD)

11 THE COURT: Any challenge from the
12 State?

13 MR. HALES: Nothing from the State.

14 CLERK: What say you for the
15 defendant?

16 MR. KING: Please seat the juror.

17 CLERK: Please, ma'am, have a seat
18 in the jury box. You've been selected for the
19 trial in this case.

20 (JUROR NUMBER 77 SEATED)

21 CLERK: Juror Number 108, Laurids
22 Hedda.

23 (JUROR COMES FORWARD)

24 CLERK: Any challenge from the
25 State?

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1 MR. HALES: None from the State.

2 CLERK: What say you for the
3 Defendant?

4 MR. KING: Please excuse this
5 juror.

6 CLERK: Please, sir, have a seat
7 back in the audience. You've been excused
8 from the trial of this case.

9 (JUROR NUMBER 108 EXCUSED)

10 CLERK: Juror Number 307, Ralph
11 Malear.

12 (JUROR COMES FORWARD)

13 CLERK: Any challenge from the
14 State?

15 MR. HALES: None from the State?

16 CLERK: What say you for the
17 defendant?

18 MR. KING: Please excuse this
19 juror.

20 CLERK: Please have a seat back in
21 the audience. You've been excused from the
22 trial of this case.

23 (JUROR NUMBER 307 EXCUSED)

24 THE COURT: The Defendant has
25 exhausted its strikes.

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1 CLERK: Juror Number 188, Benita
2 North.

3 (JUROR COMES FORWARD)

4 CLERK: Any challenge from the
5 State?

6 MR. HALES: Please present the
7 juror.

8 CLERK: Any challenge from the
9 defendant?

10 MR. KING: Please seat the juror.

11 CLERK: Please, ma'am, have a seat
12 in the jury box. You've been selected for the
13 trial in this case.

14 (JUROR NUMBER 188 SEATED)

15 THE COURT: All right, let's select
16 an alternate. Strikes will be one and two.

17 CLERK: Juror Number 21, James
18 Bradley.

19 COURT REPORTER: He was excused,
20 Your Honor.

21 THE COURT: Okay.

22 CLERK: Juror Number 104, David
23 Harris.

24 (JUROR COMES FORWARD)

25 CLERK: What say ye for the State?

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1 MR. HALES: Please present the
2 juror.

3 CLERK: What say you for the
4 defendant?

5 MR. KING: Please seat this juror.

6 CLERK: Sir, please have a seat in
7 the jury box. You've been selected for the
8 trial in this case.

9 (JUROR NUMBER 104 SEATED AS ALTERNATE)

10 (JURY SEATED @ 12:24 P.M.)

11 THE COURT: Any Motions from the
12 State regarding selection?

13 MR. HALES: Nothing from the State,
14 Your Honor.

15 MR. KING: Any motions from Mr.
16 Stephens regarding the selections?

17 MR. KING: No, Your Honor.

18 THE COURT: Okay. Thank you very
19 much. Ladies and Gentlemen, those of you that
20 were not selected, thank you for your
21 assistance. I appreciate it. I am going to
22 excuse you now for the balance of today. Call
23 the number after 6:00 and follow that
24 instruction. Have a good day. Thank you.

25 Ladies and Gentlemen, those of you

1 who were selected, thank you for your patience
2 as well. I am going to excuse you now.
3 You're going to get a little bit longer for
4 lunch than normal because we have to select
5 another jury, then everybody has to have an
6 opportunity to go to lunch that's been tied up
7 in the selection process.

8 If you will, be back in your jury
9 room -- and they will show you that when you
10 exit, through this door here to your left --
11 uh -- please remember something, you know
12 nothing about this case. You know what has
13 been alleged but those are allegations. Don't
14 speculate about it. Don't permit anybody to
15 talk with you about serving on this jury or
16 talk about this case in your presence while
17 you're out. Certainly do not talk among
18 yourselves about this case. Have a good
19 lunch. I'd ask you to be back, please, by
20 2:15 in your jury room.

21 When we come back into the courtroom
22 -- let me talk about something at this point.
23 Mr. Solt is presently one seat that is a
24 designated seat. The other is being occupied
25 by Mr. Harris.

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1 Mr. Harris, you've been selected as
2 the alternate juror but that term really has
3 no significance at this point. If at the end
4 of the case the first twelve selected are able
5 to continue, then you will not participate in
6 the final deliberations. But since none of us
7 know the status of the jury at that time,
8 you're very much a part of the jury. While
9 you're the alternate, you're free to occupy
10 either of those two chairs there on the end of
11 the second row. I would ask the rest of you
12 not to sit in either of those chairs.

13 At some point, and it doesn't have
14 to be done right away, but at some point I
15 would like for you to please select your
16 presiding juror. The statute allows me to
17 select that person or for you to select that
18 person. Once you've selected that person,
19 that individual will simply occupy the first
20 seat on the first row. Until that person is
21 selected, any of you are free to occupy the
22 seat.

23 The presiding juror is the person
24 who is also called foreperson, foreman,
25 forelady. They will be responsible for

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1 signing the verdict form to report your
2 decision. If there are exhibits that are
3 introduced during the trial, it would be that
4 person's responsibility to receive those and
5 when the jury has completed its deliberations
6 returning those exhibits to the court.

7 Other than that there really are no
8 additional duties. Something to think about
9 in selecting someone, some people are better
10 facilitators than others. If that is
11 something that you feel, after talking among
12 yourself you feel one may have some qualities
13 or talent in that area then that person may be
14 a good person to select. But that's just a
15 suggestion, it is not to control your
16 judgment. If you would select it at some
17 point, I would appreciate it.

18 Have a good lunch. They will show
19 you where you need to return after lunch.
20 Thank you.

21 (JURY OUT @ 12:28 P.M.)

22 THE COURT: All right, we will be
23 at-ease in this case. We've got one Motion to
24 hear. How long is it going to take?

25 MR. HALES: We have two Motions,

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1 Your Honor.

2 THE COURT: One requires a hearing.

3 I don't think the other requires a hearing.

4 MR. HALES: Twenty, twenty-five
5 minutes.

6 THE COURT: Let's be back at ten
7 minutes of 2:00.

8 (LUNCH RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: Does the State have any
11 Motions?

12 MR. HALES: No, sir.

13 THE COURT: All right, I will be
14 happy to hear from you, Mr. King.

15 MR. KING: Yes, Your Honor. We
16 should probably handle first the shorter
17 Motion.

18 THE COURT: That would be fine.

19 MR. KING: Your Honor, the facts
20 in this case are pretty bad. As I understand,
21 the victim and his fiancée had just applied
22 for a marriage license, they were to be
23 married the next day. They're driving to a
24 friend's house to invite her to the wedding
25 and the victim, Sheldon Frasier, was shot and

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1 killed. It makes for a pretty tragic story.
2 It was in the newspaper and -- it's pretty sad
3 when you think about that she watched her
4 fiancé die the day before they were supposed
5 to get married. The argument is that those
6 facts are relevant to the case that they have
7 to prove and it would only serve to make the
8 jury emotional, feel sympathy and passion. I
9 believe that if the jury understood that at
10 the time the victim and his fiancée were going
11 to see a friend, I think that would be enough;
12 it wouldn't have any impact on the State's
13 case and I believe anything else would be
14 irrelevant.

15 THE COURT: Okay. Response, Mr.
16 Hales?

17 MR. HALES: Yes, Your Honor. As
18 Mr. King said, it doesn't have any relevance
19 but the State would continue that part of a
20 trial is to tell the story, the complete story
21 of what happened that day.

22 THE COURT: As long as it is
23 relevant.

24 MR. HALES: Yes, sir. Yes, sir.
25 Earlier in the day the victim had gotten a --

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1 had went and obtained a marriage license, they
2 had a receipt for the marriage license, they
3 paid for it. That receipt was found at the
4 crime, was part of the crime scene. Whether
5 he had it when he was shot or whether it fell
6 out of the car, somehow it got to the crime
7 scene. It was found there.

8 Also, the reason they were in that
9 neighborhood, the reason that they were there
10 were was to invite a couple of families and
11 friends to a reception or a party ---

12 THE COURT: Let me shorten this a
13 little bit. Tell me why it is probative to
14 give the reason that they were there. What is
15 the issue that is going to come up that is
16 going to require us to go into why they were
17 there in the first place? I mean, obviously
18 -- people have the right to go places unless
19 there was some reason that they shouldn't have
20 been there. What's the reason that's
21 probative?

22 MR. HALES: Your Honor, we believe
23 in the testimony that is going to come out
24 that there was some sort of prior altercation
25 between the victim and the defendant. This

1 neighborhood is the defendant's neck of the
2 woods, where he lives. In order for us to
3 show that we believe the victim had no ill
4 will, wasn't prepared to do anything wrong
5 that day when he went over to that
6 neighborhood, ---

7 THE COURT: I understand that.
8 Obviously that would be a position that
9 obviously you're not going to present, I would
10 assume, in presenting your case because it
11 really doesn't have anything to do with
12 anything. It would only -- it would be -- if
13 that is presented -- it would have to come in
14 from the defendant insofar as some concern
15 that he had about the victim being in his
16 vicinity, which opens the door and provides
17 every reason in the world to explain that.
18 It's called reply testimony. It's why -- it
19 is nice to have it but it absolutely serves no
20 useful purpose in presenting whether or not
21 this man shot this person with malice
22 aforethought.

23 Now, if there comes some issue about
24 motive -- well, you don't have to prove
25 motive, you don't have to prove anything other

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1 than the fact that he shot him and he had
2 malice aforethought. Obviously it was a gun,
3 so you've got the implication of malice.

4 At this point, unless there is some
5 compelling reason that arises during the
6 trial, and I haven't heard it, and that's a
7 concern that I've had for years with Motions
8 *in limine*. I don't mind them, I think it's
9 good to make them but there is no way for me
10 to predict how the evidence is going to
11 unfold, what comes in.

12 Obviously if something comes in that
13 may be unexpected or unknown to us, it would
14 make that very germane, very probative.

15 At this point, I am not saying that
16 it was not relevant, I am just saying -- first
17 of all, if it is probative, and I'll do it at
18 the appropriate stage if I have to. Clearly
19 the potential prejudice outweighs the
20 probative value.

21 It points out -- if you want to know
22 my philosophy, not that we need to, but it's
23 one of my concerns about the death penalty
24 approach, in allowing evidence that sets up
25 how what the impact was of somebody taking

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1 another person's life. Yeah, it would be
2 relative in that setting, but it's not
3 relevant in just a regular, ordinary murder;
4 which I don't find to make any sense, because
5 I think the effect of a murder is the effect
6 of a murder. If it is valid in one, it ought
7 to be valid in the other.

8 Frankly, I don't think that it has
9 any place in either because it simply doesn't
10 do anything but cause the potential -- and I'm
11 not saying that's why you are offering it --
12 but the potential is contrary to what the law
13 is and the law is that I instruct them that
14 they can't be motivated by any passion,
15 prejudice, anger. That's the purpose of that,
16 to get somebody upset. 'Why would you do
17 something like that?' 'How senseless was
18 that?' It just points out the senselessness
19 of murder. All murder is senseless, it really
20 is, I mean that goes without saying.

21 So at this juncture I will restrict
22 it, assuming that it unfolds as you say, Mr.
23 King, -- if your client has a strategy, I'm
24 not asking you to disclose that, you don't
25 have to do that. Just beware that as the

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1 evidence unfolds that it may well change my
2 opinion about that.

3 MR. KING: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. KING: And there was one more
6 fact that I believe I left out. One of the
7 witnesses, Kimberly Bates, was four months
8 pregnant at the time. Now, I think that goes
9 in the same argument, the fact that she was
10 pregnant wouldn't be ---

11 THE COURT: Unless it becomes
12 germane, unless it becomes something that
13 comes out that requires that -- for the State
14 to have it as an essential element, I would
15 agree with you. But I don't know. I don't
16 know how it is going to unfold. Okay?

17 MR. KING: Yes, sir.

18 THE COURT: Her state has nothing
19 to do with anything.

20 MR. KING: The next Motion, Your
21 Honor, is requesting a *Neil v. Biggers* hearing
22 on identification.

23 THE COURT: All right. Are you
24 prepared to call -- how many -- I notice that
25 there are a number of -- these people, are

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1 they -- is it just one, two, how many do you
2 have?

3 MR. HALES: Two witnesses.

4 THE COURT: I'll be happy to hear
5 from them.

6 MR. HALES: The State calls Keith
7 Elmore.

8 (WITNESS TAKES STAND)

9 KEITH ELMORE, being duly sworn to
10 tell the truth, the whole truth and nothing
11 but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. HALES:

14 Q. How are you doing, Mr. Elmore?

15 A. Good. And you?

16 Q. Pretty good. What is your occupation?

17 A. Now I am a corporeal with the North
18 Charleston Police Department.

19 Q. In 2007, what was your position?

20 A. I was lead detective in this case.

21 Q. All right. Are you still with North
22 Charleston Police Department?

23 A. Correct.

24 Q. How long have you been employed by North
25 Charleston Police Department?

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1 A. Eight years.

2 Q. What are your duties with North
3 Charleston?

4 A. I am currently assigned to patrol
5 division where I answer calls for service.

6 Q. What were your duties back in March of
7 2007?

8 A. Investigator of persons crimes, where I
9 handled robberies, murders, persons crimes.

10 Q. And you say you were the lead detective
11 on this case?

12 A. Correct.

13 Q. Did you have any opportunity to conduct
14 any photograph lineup?

15 A Yes, I did.

16 Q. Please tell us what you did.

17 A. After an investigation we came up with
18 the name "Nitty". I later identified that
19 name "Nitty" to be Kaseem Stephens. There
20 jail photo -- a general lineup was made with a
21 six-man photo lineup.

22 Q. Did you make that lineup?

23 A. No, I did not. I called it in and they
24 prepared it.

25 Q. The jail prepared the lineup?

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1 A. Right -- the lineup was made on the 28th,
2 or it was shown on the 28th. I think you have
3 it there, I know I showed it on the 28th.

4 MR. HALES: May I approach, Your
5 Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. HALES:

9 Q. I am going to show you what has been
10 marked as State's Exhibit 15, do you recognize
11 that?

12 A. (Upon review), correct.

13 Q. What is that?

14 A. That is the six-man photo lineup with
15 Kaseem Stephens as one of the suspects in the
16 lineup.

17 Q. What is the date of that lineup?

18 A. It is marked 3/28/2007.

19 Q. How long after the crime was that lineup
20 prepared?

21 A. The next day.

22 Q. Who was this lineup shown to?

23 A. This lineup was shown to Kimberly Bates.

24 Q. What did you tell her when you showed her
25 the lineup?

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1 A. I advised her that this was a photo
2 lineup, that the persons inside this
3 particular lineup may or may not have anything
4 to do with this case, 'I am just going to show
5 it to you and if you see anybody pertaining to
6 this case, whether they were the witness, had
7 anything to do with the investigation to
8 circle it, sign it and tell me what their
9 involvement was.' I showed her the lineup,
10 she looked over the pictures, she pointed to
11 Kaseem Stephens and said "that's the person
12 who shot" her fiancé.

13 A. That paper was shown to her exactly the
14 way that it is right there, other than there
15 were no markings on it before?

16 A. Correct, other than the markings she put
17 there.

18 Q. Did you in any influence her or point her
19 in the direction of any one person in that
20 lineup?

21 A No, sir. I did not.

22 Q. You said that she actually selected a
23 photograph?

24 A. (Affirmative nod).

25 Q. What did she do when she selected it?

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1 A. She circled and signed and dated it.

2 Q. Where has that lineup been since she did
3 that? Who has had control and possession of
4 that lineup?

5 A. Me.

6 Q. Is it in any way different than it was
7 that day?

8 A. It's the same, other than the red
9 markings with the date.

10 MR. HALES: beg the court's
11 indulgence.

12 THE COURT: Certainly.

13 MR. HALES: Please answer any
14 question that Mr. King has for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: You may cross-examine,
17 Mr. King.

18 CROSS EXAMINATION

19 BY MR. KING:

20 Q. Is it Corporal Elmore?

21 A. Yes, sir.

22 Q. Corporal Elmore, how was the lineup
23 prepared? How did you get the six photos
24 shown in that lineup?

25 A. I just called the county jail after we

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1 realized that the Defendant had been arrested.
2 I make a phone call, call the identification
3 department, I said I need a photo lineup of
4 made up for 'John Doe', for example. They
5 then prepare the photo lineup, then they call
6 me, tell me that the lineup is ready and I go
7 pick it up.

8 Q. Did you give them any information than
9 Mr. Stephens' name? Did you give them a
10 description or was that just it?

11 A. Name and date of birth, that's it.

12 Q. Why did you chose to do it that way, the
13 six photo lineup?

14 A. That is our standard operating procedure
15 there in North Charleston.

16 Q. Were you ever given any training or
17 classes on presenting lineups like that?

18 A. No, sir.

19 Q. You never learn from another officer --
20 how did you learn how to go through the steps
21 you took?

22 A. From working in the detective's division
23 when I worked there. That's the way the
24 department conducted their photo lineups.

25 Q. Instead of, say, six photographs could it

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1 be twelve?

2 A. It could be.

3 Q. Could you have a mug shot book, whole
4 book of mugshots?

5 A. Yes, it possibly could be.

6 Q. Couldn't do a one-person lineup, like in
7 this case I guess there were no people to put
8 in a lineup.

9 A. (No verbal response).

10 Q. So where did you meet Ms. Bates to do
11 this lineup? At her house or ---

12 A. She was at her home in downtown
13 Charleston.

14 Q. Do you remember what time that it was?

15 A. I didn't write the time there but it was
16 sometime morning to noontime, more morning
17 than noon.

18 Q This was the day after the shooting?

19 A. Correct.

20 Q. So the shooting was around 5:00 or 5:30
21 p.m. and the identification took place the
22 next morning before noon?

23 A. Correct.

24 Q. Did you call Ms. Bates first or did you
25 just show up?

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1 A. I called her.

2 Q. What did you tell her when you called
3 her?

4 A. I called and asked her where was she,
5 that I had something that I needed to show
6 her. She told me where she was, and I asked
7 if she was going to be there for the next ten
8 to fifteen minutes, that I wanted to meet with
9 her and show her some lineups.

10 Q. Let me back up just a little bit. Before
11 that, had you already met with Ms. Bates?

12 A. The day of the shooting.

13 Q. Did you say anything to her when you
14 concluded your meeting with her, like 'I'll
15 contact you when I have more information',
16 something like that?

17 A. Yes.

18 Q. Do you remember exactly what you said to
19 her?

20 A. Just in general, 'if I get anything I
21 will call and let you -- of if I need to meet
22 with you I'll call and find out where you are
23 to meet with you', things of that nature, or
24 if I need ask you any other questions or
25 things like that.

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1 Q. Are you familiar with an admonition form?

2 Have you heard of a form like that?

3 A. Yeah.

4 Q. The form where there is a little
5 paragraph that explains a suspect may or may
6 not be in the photo lineup?

7 A. Correct.

8 Q. Then there is a place for them to sign
9 and you can also put in there their reaction
10 to the photo?

11 A. Right.

12 Q. Did you use one of those?

13 A. No, I did not.

14 Q. Do you know if it your office's policy to
15 use one of those? Had you ever used one
16 before?

17 A. I've used them if I have one available or
18 if I feel the need to use one, but not in this
19 particular matter.

20 Q. But they are available in your office?

21 A. Correct.

22 Q. Before you administered the lineup, you
23 talked to her; right?

24 A. Yes.

25 Q. Can you tell us what you told her before,

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1 when you were showing her the lineup what you
2 explained to her?

3 A. I told her, 'I am going to show you a
4 series -- I am going to show you this paper
5 which has some photos on it. If the person --
6 if there is a person in here that was involved
7 in this case, doing whatever, if you see
8 anyone in there, circle it, sign it, date it
9 and tell me whatever their involvement in this
10 matter is. Persons involved in this matter
11 may be in these pictures or they may not be.
12 No one involved may be in there at all. That
13 was that.

14 Q. Then she looked over the photo lineup?

15 A. She looked at this lineup that I gave
16 her.

17 Q. Can you estimate how long she looked at
18 it?

19 A. Probably about ten seconds.

20 Q. Were you holding the lineup? Was she
21 holding it? Was it laying on the table?

22 A. I handed it to her.

23 Q. What did she say when she picked someone
24 out?

25 A. She took the paper and she went (tapping

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1 on second photo, top row of lineup).

2 Q. Did she say anything?

3 A. She said, "That's him. That's the guy
4 that shot my fiancé."

5 Q. Did you say anything in response to that?

6 A. Yes.

7 Q. What did you say?

8 A. I said, "Circle it, sign it, and date
9 it." And, "Are you a hundred percent sure?"
10 She said yeah.

11 Q. And that was it?

12 A. That was it.

13 MR. KING: That is all that I have

14 THE COURT: Redirect?

15 MR. HALES: No, Your Honor.

16 THE COURT: You may step down.

17 (WITNESS STEPS DOWN)

18 THE COURT: Call your next witness.

19 MR. HALES: The State would call
20 Kimberly Bates.

21 (WITNESS TAKES STAND)

22 KIMBERLY BATES, being duly sworn to
23 tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 DIRECT EXAMINATION

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1 BY MR. HALES:

2 Q. How are you doing, Miss Bates?

3 A. Fine.

4 Q. Kimberly or Kim?

5 A. Kim.

6 Q. Where do you live, Kim?

7 A. I live in Georgia now.

8 Q. Where did you live back in March of 2007?

9 A. I lived in Trailwood.

10 THE COURT: Hold on a second. Ms.

11 Bates, you need to pull up so that you can

12 speak into that microphone, please.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you, very much.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. HALES:

17 Q. Is that a trailer park?

18 A. Yes, sir.

19 Q. Did you witness any events on March 27,

20 2007?

21 A. Yes, sir.

22 Q. What did you see that day? You don't
23 have to go into everything.

24 A. I saw a guy come up and shoot Shel
25 several times or shoot at him several times.

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1 Q. When you say "Shel", you mean Sheldon
2 Frasier?

3 A. Sheldon Frasier, (affirmative nod). Yes,
4 sir.

5 Q. Were you given an opportunity to look at
6 a photo lineup in this case?

7 A. Yes, sir.

8 Q. When was that?

9 A. That was at the hospital that day and
10 also the next day.

11 Q. What happened at the hospital, what
12 happened with that photo lineup?

13 A. I didn't see anybody.

14 Q. And then you said the next day?

15 A. Yes, sir.

16 Q. That would have been March 28th, 2007?

17 A. Yes, sir.

18 Q. Were you able to see a lineup on that
19 day?

20 A. Yes, I was.

21 Q. I am going to show you what has been
22 marked as State's Exhibit 15, would you take a
23 look at that.

24 A. (Reviewing).

25 Q. Do you recognize that?

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1 A. Yes, sir.

2 Q. What is it?

3 A. It is the lineup that was shown to me on
4 that day.

5 Q. Would you please describe the photographs
6 for us that are in that?

7 A. There are six African American males.

8 Q. Do they all appear to be about the same
9 age and build?

10 A. Yes, sir.

11 Q. What did you do when you were shown --
12 what were you told when you were shown that
13 lineup?

14 A. He asked could I identify the person that
15 shot Sheldon Frasier.

16 Q. Did he tell you that he was in that
17 lineup?

18 A. No, sir.

19 Q. Did he tell you that he wasn't in that
20 lineup?

21 A. No, sir.

22 Q. Okay. What did you do when you saw the
23 lineup.

24 A. looked at it, glanced over and when I
25 looked at the second picture I stated that was

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1 him there.

2 Q. What did you mean when you said 'this is
3 him'?

4 A. This was the guy that shot Shel, Sheldon.

5 Q. What did you do -- did he ask you to do
6 anything once you'd pointed him out?

7 A. Yes, sir. He told me -- he asked me
8 again, "Are you sure?" I said, "Yes, sir,
9 this is the guy." He said, 'I need you to
10 circle it and put your initials down at the
11 bottom.'

12 Q. What caused you to select that photo-
13 graph?

14 A. I remembered how he looked. When I saw
15 him -- I had looked at several other pictures
16 but I'd said that when I saw him I'd know that
17 was him.

18 Q. Let's talk about when you saw him for a
19 minute, saw him on the date that the incident
20 happened. Describe to us what kind of day
21 that it was, that kind of thing.

22 A. It was in the evening, I'd say about
23 4:30.

24 Q. So afternoon?

25 A. Yes, sir, afternoon.

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1 Q. Was the sun up?

2 A. Yes, sir.

3 Q. Sun was still up?

4 A. (Affirmative nod). Yes, sir.

5 Q. How long do you think you had a chance to
6 look at him?

7 A. I'd say probably the first time about ten
8 to twenty seconds.

9 Q. The first time, that was that day?

10 A. Yes, sir.

11 Q. How lose were you to him when you were
12 able to see him?

13 A. I was in the car and he was outside of
14 the car.

15 Q. Did you have an opportunity to view him
16 any other time?

17 A. Yes, sir, when I got out of the car.

18 Q. How close were you to him?

19 A. I was like almost in front of him.

20 Q. Could you reach out and touch him?

21 A. No, I couldn't reach out and touch him.

22 Q. A little bit further than that
23 (approaching witness stand)?

24 A. About right there where you are standing
25 now; yes, sir.

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1 Q. Ten feet, eight feet?

2 A. Yes, sir.

3 Q. How did you see him?

4 A. I looked right at him, at the time I was
5 asking him why was he doing that and he
6 looking dead at me at that time.

7 Q. You'all were face to face?

8 A. Yes, sir.

9 Q. Was anything obstructing your view at the
10 time?

11 A. No, sir.

12 Q. Is that paper, State's Exhibit 15, pretty
13 much in the same condition it was when you saw
14 it, after you signed it?

15 A. Yes, sir.

16 Q. Has it been changed in any way?

17 A. (Upon review) -- no, sir.

18 Q. Did you ever pick out any other
19 photograph of any other person?

20 A. No. No, sir.

21 MR. HALES: Court's indulgence.

22 THE COURT: Certainly.

23 MR. HALES: At this time, the State
24 would move State's Exhibit 15 into evidence.

25 THE COURT: Any objection for this

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1 purpose?

2 MR. KING: No, Your Honor.

3 THE COURT: Very well. It will be
4 admitted for purposes of this hearing.

5 (SO ENTERED AS STATE'S EXHIBIT 15)

6 MR. HALES: Please answer any
7 questions that Mr. King may have.

8 THE COURT: Cross-examine?

9 MR. KING: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. KING:

12 Q. Ms. Bates, when you arrived -- you had
13 ridden up in the car and parked, how many
14 people were around; do you remember?

15 A. I'd say about three or four guys, they
16 were out front.

17 Q. Three or four?

18 A. Yes, sir.

19 Q. How many cars did you see?

20 A. One.

21 Q. And Mr. Frasier had gotten out of the
22 car?

23 A. Yes, sir.

24 Q. You stayed in the car?

25 A. Yes, sir.

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1 Q. He'd gone to talk to some people you knew
2 there?

3 A. Yes, sir.

4 Q. At hat point you were just sitting there,
5 may be listening to the radio, not really
6 paying attention to what he was dong; is that
7 right?

8 A. No, sir. No, he was standing in front of
9 the car so I could still see where he was.

10 Q. What was the first thing that alerted you
11 something was wrong, that something was
12 happening?

13 A. (No verbal response).

14 Q. Did you see him run, did you hear a shot?

15 A. I looked up at -- I was looking at him
16 and he was looking at me like he was surprised
17 and at the time I saw some guys scattering and
18 Shel started running along the side of the car
19 and at that time I heard shots being fired and
20 I could see the gun smoke coming from the
21 shots -- from the firearm.

22 Q. You could see smoke?

23 A. Yes, sir.

24 Q. So you saw something on Mr. Frasier's
25 face that alerted you first?

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1 A. Yes, sir.

2 Q. Then did he start to run immediately?

3 A. Once the guy came around he started
4 running.

5 Q. Did the shooter -- did he come in front
6 of the car?

7 A. Yes, sir.

8 Q. Did he say anything or approach Mr.
9 Frasier?

10 A. Shel was the only one running in that
11 direction and he was running in the same
12 direction as Sheldon. Everybody else ran in
13 different directions.

14 Q. You said at one point he was about ten
15 feet from you?

16 A. Yes, sir.

17 Q. Was that after the running had taken
18 place?

19 A. After -- yes, at that time Shel had done
20 fell to the ground and he was running up to
21 Shel.

22 Q. Did you run after them?

23 A. Once I saw Shel fell, I got out of the
24 car and I ran up.

25 Q. So initially you are sitting in the car,

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1 seeing this happen?

2 A. Yes, sir.

3 Q. How far away -- had you seen the shooter
4 at that point?

5 A. Yes, I saw him when he was running; when
6 I was sitting in the car and he was running on
7 the side of the car. I was able to see him
8 then.

9 Q. Then at some point they are running away
10 and ---

11 A. They ran behind the car.

12 Q. They ran behind the car?

13 A. Yes, sir.

14 Q. At that point you could see his face?

15 A. Yes, sir.

16 Q. How long did you see him -- when you're
17 in the car -- I'm talking about his face. How
18 long did you see his face there?

19 A. I would say probably like ten seconds.

20 Q. You noticed the gun, right?

21 A. Yes, sir.

22 Q. Because I think you described that in
23 your statement.

24 A. Yes, sir.

25 Q. You said it was a black gun?

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- 1 A. Yes, sir.
- 2 Q. And then you got out of the car and you
- 3 ran towards them?
- 4 A. Yes, sir.
- 5 Q Then you saw the shooter again?
- 6 A. Yes, sir.
- 7 Q. How far away were you at that point?
- 8 A. (No verbal response).
- 9 Q. About the same, ten feet?
- 10 A. Yes, sir.
- 11 Q. How long would you say that you saw his
- 12 face at that time?
- 13 A. I'd say probably about five seconds at
- 14 that time.
- 15 Q. But you also were looking at Mr. Frasier,
- 16 too; right? Were you still seeing where he is
- 17 and what was happening ---
- 18 A. I knew he was on the ground at this time.
- 19 Q. Obviously you were afraid?
- 20 A. Yes, I was.
- 21 Q. You were screaming?
- 22 A. Yes, I was.
- 23 Q. Were you crying at all?
- 24 A. Yes.
- 25 Q. You were pretty emotional at that point?

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1 A. That's correct.

2 Q. Then after the second encounter, after
3 you'd ran towards them, what happened? Where
4 did the shooter go after that? What did you
5 see?

6 A. When I looked and I started yelling,
7 "What are you doing!?", I looked at him, he
8 looked at me, at that time he began to raise
9 his hand up and I ran back to my car.

10 Q. Is that the last that you saw of him?

11 A. Yes, sir.

12 Q And then you met with -- then later on
13 that day the police came and you met with
14 Detective Elmore?

15 A. That's correct.

16 Q. That day?

17 A. That's correct.

18 Q. Do you remember meeting with him?

19 A. Yes, sir.

20 Q. You gave a description of the shooter?

21 A. Yes, sir.

22 Q. Do you remember that: 150 pounds, 5' 7",
23 dark skin male, afro, twenty-three years old?

24 A. Yes, sir.

25 Q. When you concluded your interview with

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1 Detective Elmore that day, did he give you a
2 card or what did he tell you then about the
3 next time that he might see you?

4 A. That he would be getting in contact with
5 me, basically that he would get back in
6 contact with me and someone would be coming to
7 talk to me.

8 Q. Did he say that if you found out any new
9 information to 'get in contact with me' or
10 anything like that?

11 A. He just basically said that they would
12 get in contact with me and, you know, if there
13 was any information that I knew of to let them
14 know. But I met with him -- he came to the
15 hospital that same day, later on.

16 Q. He came to the hospital later than night?

17 A. Yes, sir.

18 Q. And you met with him?

19 A. (Affirmative nod).

20 Q. Was this before you made an identifica-
21 tion?

22 A. Yes, sir.

23 Q. So you met with him two times on the day
24 of the shooting?

25 A. Yes, sir.

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- 1 Q. What did you talk about at the hospital?
- 2 A. At the hospital he showed me a lineup.
- 3 Q. You didn't pick anybody out of that
- 4 lineup?
- 5 A. No, sir.
- 6 Q. Then did he say anything to you that day
- 7 about getting back in touch with you?
- 8 A. Yes, that someone would get back in touch
- 9 with me again.
- 10 Q. And then he called you the next day?
- 11 A. That's correct.
- 12 Q. Do you remember about what time of say it
- 13 was?
- 14 A. I would say about 1:30.
- 15 Q. He came to your home?
- 16 A. Yes, at that time I was staying at one my
- 17 cousin's downtown and he came to that
- 18 location.
- 19 Q. He called first?
- 20 A. That's correct.
- 21 Q. What did he say when he called?
- 22 A. That he wanted to meet with me to show me
- 23 some more photo lineups to see if I would be
- 24 able to identify anyone in the pictures.
- 25 Q. When he met with you, did he say anything

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1 to you before he handed you the lineup for you
2 to look at it, did he said anything to you
3 then?

4 A. No, sir, he basically just stated,
5 'here's some more picture, I want you to
6 look at these pictures.'

7 Q. Did he say ay about that the person may
8 or may not be in the photos or ---

9 A. He said -- each time he said, you know,
10 'you may see the person, you may not see the
11 person, if you see them let me know.'

12 Q. Then you got the lineup that you've seen?

13 A. Yes, sir.

14 Q. At that point when you are looking at it,
15 how long would you say you looked at it before
16 you make an identification?

17 A. When I looked -- I glanced -- I mean, I
18 looked at each person individually, then I
19 looked at them again and I pointed to the
20 second person on the pictures.

21 Q. So you got the six photos, right?

22 A. Yes, sir.

23 Q. You looked at the upper left, you started
24 with the -- you looked at each picture?

25 A. Yes, sir.

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1 Q. Then you say you looked at them again?

2 A. Yes, sir.

3 Q. You looked at each picture at that point?

4 A. Um-humm.

5 Q. You mean you looked at each picture
6 again?

7 A. Yes, sir.

8 Q. How long would you say? Ten seconds?

9 A. (No verbal response).

10 Q. Is that fair? Less? More?

11 A. I'd say about ten. I mean, I looked at
12 it. I can't say exactly how long. I remember
13 I looked at the picture and my eyes always
14 focused on the second person but I wanted to
15 be sure, so I looked again at each one of the
16 other pictures. I looked at him again and I
17 said, "That's him, right there."

18 Q. Did Corporal Elmore say anything to you
19 after that? Once you had made a choice, what
20 did he say to you then?

21 A. That I needed to put a circle around the
22 photograph and initial/sign my name.

23 Q. Did he say anything else? Did he
24 indicate that they had the guy or that you had
25 picked the right person? Anything like that?

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1 A. No, sir.

2 Q. He just left at that point?

3 A. No, he didn't leave. We discussed Shel's
4 condition at the time, how he was doing in the
5 hospital and he -- he really didn't say too
6 much in regard to it. He said that they would
7 be getting back in contact with me again.

8 Q. Did you attend the bond hearing?

9 A. I attended the second bond hearing.

10 Q. So you've seen Kaseem Stephens before
11 today?

12 A. That's correct.

13 Q. At another court hearing?

14 A. Yes, sir.

15 Q. Was it a hearing here or over on Leeds
16 Avenue?

17 A. A hearing here.

18 Q. So you did not go to the initial hearing
19 when he was first arrested?

20 A. No, sir.

21 MR. KING: I believe that's all
22 the questions that I have.

23 THE COURT: Redirect?

24 MR. HALES: No, Your Honor.

25 THE COURT: Thank you. You may

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1 come down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Anything else?

4 MR. HALES: No, Your Honor.

5 THE COURT: Any testimony of
6 witnesses that you want to present? I'll be
7 happy to hear from you?

8 MR. KING: Your Honor, I move to
9 suppress the identification based on Neil v.
10 Biggers, the due process clause of the South
11 Carolina Constitution, Section 3 and the
12 Fourteenth Amendment of the United States
13 Constitution.

14 The argument here is that there were
15 six photos shown. The six photos are black-
16 and-white, nor color. They are not even --
17 they are photocopies of photographs, so the
18 qualify is bad.

19 And there's six. I am not sure why
20 they chose six. I think twelve would be less
21 suggestive. A whole book of mugshots would be
22 even less suggestive. I think just showing
23 six, it is a very small number of people to
24 pick from and there may be a tendency to pick
25 persons who look the most like the suspect

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1 that you have in your head.

2 There was a very brief chance that
3 Ms. Bates had to view this person. It was
4 during a very high stress, emotional time.

5 Based on the totality of the
6 circumstances, it's not reliable. It's a bad
7 identification. I also rely on *State v. Moore*
8 343 S.C. 282.

9 THE COURT: Okay. Response, Mr.
10 Hales?

11 MR. HALES: Yes, sir, Your Honor.
12 Taking into consideration the facts of how
13 reliable the identification was, she had an
14 ample opportunity to view the defendant at the
15 scene, they were face to face. She keyed in
16 on him. Although Mr. King is saying that she
17 was in, I guess, a state of elevated emotions,
18 you could make the argument that one would be
19 more focused in a situation like that. The
20 next day after this happened, she -- so we're
21 not dealing with a situation where it was a
22 long time between the initial viewing and the
23 lineup.

24 The lineup was six black males. It
25 wasn't five black males, one white male. They

1 were all generally about the same age, same
2 building and Ms. Bates was very certain that
3 she made a correct identification from the
4 lineup.

5 THE COURT: May I see the lineup?

6 COURT REPORTER: (Tenders State's
7 Exhibit 15 to court).

8 THE COURT: Any response to the
9 argument, Mr. King?

10 MR. KING: No.

11 THE COURT: (Upon review),
12 reviewing State's Exhibit 15, I find that
13 there is really nothing suggestive about the
14 lineup. In fact, it really -- there are
15 similar features, very similar eye structure
16 on each of them. There is nothing at all that
17 would be suggestive.

18 I find that the witness -- while I
19 agree with you that there are areas where you
20 can certainly address and I would certainly
21 instruct the jury concerning identification,
22 but those are more weight issues than they are
23 admissibility issues.

24 There is no question that this is an
25 area where I think scientifically we are going

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1 to start to see more and more -- there was a
2 very interesting program on *60 Minutes* and I
3 think -- I think two weeks -- was fascinating.
4 Quite honestly, the suggestion on that is from
5 the psychiatrist is that they ought to look at
6 them one at a time. There can be the
7 argument, suppose this person is the first
8 one, does that not open the door and say, 'Oh,
9 it's the first one that you submitted to me.'

10 I don't know the magic number either
11 but I know that obviously one of the things
12 the cases have looked at is whether there is
13 anything suggestive about the photo lineup and
14 there is nothing here to suggest that.

15 Obviously if there was a
16 description, and this is an extreme but if
17 there was a description that it was an African
18 American male and there was one African
19 American and five Caucasians, then obviously
20 that is very suggestive. I am not saying that
21 it would have to rise to that level to
22 suppress it but given State's Exhibit 15,
23 there's nothing unusual.

24 I assume -- she said that she didn't
25 pick out, and I was having difficulty hearing

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1 her but was she shown another lineup?

2 MR. HALES: Yes, sir.

3 THE COURT: I assume that the
4 Defendant was not -- that there was no --
5 there is no suggestion or argument that the
6 Defendant was present in that lineup?

7 MR. HALES: No, sir.

8 THE COURT: Which further goes to
9 the -- further is supportive of her that she
10 didn't just take a lineup and say 'I've got to
11 find somebody.' I think that's also, to me,
12 supportive that she did as she described, 'I
13 carefully looked at it.' She looked at the
14 person who'd just shot someone who was near
15 and dear to her, so I -- I gather the
16 emotional -- I agree that it is a double-edge
17 sword that may make the person more attuned to
18 certain things, although if you saw that the
19 interesting thing about that victim was that
20 she said "I intentionally looked at his
21 features, so I could identify him."
22 Interesting proposition.

23 Clearly at this point, our Court
24 hasn't gone that far. So I must respectfully
25 note your Motion but it is denied. Thank you.

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1 Are there any other matters, Mr.

2 King?

3 MR. KING: I don't believe so,
4 Your Honor.

5 THE COURT: Is the State ready to
6 proceed?

7 MR. HALES: Yes, Your Honor. If I
8 could have one moment to talk ---

9 THE COURT: Also, just make sure
10 that you tell -- I know that he was asked
11 specifically, and Mr. King, you need to be
12 careful how you couch that question in cross-
13 examination, of what did she say because I am
14 sure she said "that's the one that shot my
15 fiancé", but unless the question is asked,
16 please don't volunteer that at this stage of
17 the game. I am not suggesting that you would
18 -- because it was a very perfect answer to the
19 question, there was nothing wrong with it. We
20 just need to make sure those things don't come
21 out to the appropriate time, if it comes out.

22 MR. HALES: Your Honor, I have a
23 clarification. If Ms. Bates ---

24 THE COURT: She described him as
25 "my fiancé". If that is -- that is not

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1 getting to the part that he is alluding to, I
2 don't think.

3 MR. HALES: Right.

4 THE COURT: I am not saying that
5 she can't reference him as her fiancé. I
6 think what you were alluding to was -- the
7 reason I was going there was the celebration.
8 I understand that. That's -- it's really not
9 a problem if she does it, I just think other
10 witnesses ought not to stress that because it
11 begins to inject something subtly into the
12 record that is not necessary. She can
13 describe him however she wants to.

14 MR. HALES: In opening remarks, we
15 will just stay away from the terms "fiancé"?

16 THE COURT: I would if I were you.
17 I think it is more inflammatory than it is
18 probative at this juncture. Obviously if
19 things change during the evidentiary, then
20 you'll have an opportunity to revisit that.
21 We'll be at-ease for a few minutes.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: State ready, Mr. Hales?

25 MR. HALES: Ready, Your Honor.

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1 THE COURT: Defense ready, Mr.

2 King?

3 MR. KING: Yes, sir.

4 THE COURT: Let the record reflect
5 that the defendant is present. Let's bring in
6 our jury, Mr. Williams (bailiff), who have
7 been patiently waiting.

8 (JURY IN @ 2:50 P.M.)

9 THE COURT: Thank you, Ladies and
10 Gentlemen. Thank you so much for your
11 patience. We make projections on how long
12 things will take but sometimes they run over,
13 and we did the best we could. We were taking
14 up matters of law and it took a little longer
15 but was necessary, so I apologize for keeping
16 you waiting. I know maybe it would be better
17 to be out and about rather than sitting in
18 that room confined but I -- I apologize to you
19 for that.

20 We are ready now to continue the
21 matter which we started prior to lunch, in
22 which you were selected to help resolve this
23 case.

24 I am going to ask you now to give
25 your attention, please, to the clerk as she

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1 administers your oath.

2 (WHEREUPON JURY SWORN)

3 THE COURT: Thank you very much,
4 Ladies and Gentlemen. Now you have become
5 that judge that I mentioned to you this
6 morning when we were qualifying you, that is
7 very important in this process of dispute
8 resolution which we have entered. It is an
9 honor to serve with each one of you as a
10 judge. I know that you will, as you have
11 promised that you will do. You remember the
12 last question that I asked you when we were
13 qualifying you for this case, was there
14 anything about the case that would give you
15 any concern about your ability to make that
16 commitment and to honor that commitment as it
17 pertains to the State and Mr. Stephens and
18 each one of you by not responding indicated
19 there was nothing.

20 You've brought with you everything
21 that you are going to need to honor that.
22 You've brought with you your life's
23 experiences, your common sense, your sense of
24 logic and reasoning and everyone expects you
25 to use that at the appropriate time.

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1 You brought with you also an open
2 mind. If you remember, I asked you a number
3 of questions whether any of you knew anything
4 about this case or had heard anything and you
5 said that you did not. I asked you if there
6 was anything about it, based on what I'd
7 shared, because of something that had happened
8 in your life or some strong feelings that you
9 have that would give you any concern about
10 your ability to be fair and impartial, and
11 each of you by not responding indicated that
12 there was not.

13 What did you say by answering those
14 questions in that fashion? I think you said
15 that you had an open mind. That's what you
16 brought with you. You haven't determined
17 anything, you haven't decided anything and you
18 were ready to go forward and accept the
19 responsibility that you've just undertook.

20 I would urge you to maintain that
21 open mind at all times during this proceeding
22 and not begin the process of changing that
23 until I give you the instruction to begin your
24 deliberations. Quite honestly, it is the last
25 thing that I will say to you before you leave

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1 this courtroom to commence that process and
2 that is when you may start. Until then, part
3 of that oath was 'I promise also', 'I promise
4 both sides that I will maintain that oath'.

5 I think it is very critical to this
6 process. It is important as you go through
7 each stage of this proceeding. There are four
8 distinct stages. One -- twice the attorneys
9 speak to you. We call the first opportunity
10 opening statements, which will occur in just a
11 moment. They will outline for you some of the
12 evidence, they will discuss an overview of the
13 dispute, which will be helpful as you move
14 through the trial.

15 The second phase after the opening
16 statement is when you hear the evidence.
17 We'll talk about that more in just a moment.

18 Following the evidence, then you
19 will hear from the attorneys a second time.
20 The difference between the two is obviously
21 after the evidence, you've heard the evidence,
22 and it is at that time that they can discuss
23 with you the evidence and suggest reasonable
24 inferences that you can may draw.

25 I am confident that you will find

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1 their remarks very helpful when you begin the
2 process of resolving this case. As I
3 mentioned to you when we were qualifying you,
4 they are officers of this court and have a
5 very important responsibility in this process.
6 They have a duty to present the evidence and
7 the law in a fashion that will assist us in
8 making the decisions that we are called upon
9 to make. So please give them your attention.

10 Please remember something throughout
11 this process and I will remind you of it
12 throughout, that their remarks are not
13 evidence, that my remarks are not evidence.
14 The evidence will come through the testimony
15 of witnesses and it is that evidence, that
16 which you will analyze ultimately in deciding
17 what you will believe.

18 But the other three stages, the
19 opening statements and the closing arguments
20 of the attorneys and the last stage, when I
21 give you the law, are very important to the
22 overall process and certainly are part of the
23 process of making that decision. In other
24 words, before you change that position of
25 having an open mind, you should have heard all

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1 the evidence, you should have heard the
2 arguments of attorneys, opening and closing,
3 and you should have received the law. So
4 please do what is necessary to facilitate
5 that.

6 In the evidentiary portion, I
7 mentioned to you when we were qualifying you
8 that this is a criminal dispute. Because it
9 is a criminal dispute, the State has the
10 burden of proof, the only burden of proof.
11 There are several differences in the
12 proceedings of criminal disputes versus civil
13 disputes. Some of you may have served as
14 jurors in civil trials, and I don't know
15 whether you have or you haven't, but if you
16 have, the format is pretty much the same. You
17 have an opening statement, the evidence,
18 closing arguments, charge, the four basis
19 stages.

20 But there is one major difference --
21 there are two major differences. Number one,
22 in a civil trial a defendant may have a burden
23 of proof, very limited but occasionally that
24 may occur. Never, never in a criminal trial.
25 He has absolutely nothing to prove or

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1 disprove, he has no responsibility whatsoever.
2 If you should at any point look to this side
3 and say, 'Well, what is your response to
4 that?' you will have violated that oath
5 because they don't have a duty. That is not
6 their responsibility.

7 The second area comes in the area of
8 the burden of proof. In a civil trial, the
9 burden of proof typically -- typically the
10 term is called the preponderance of the
11 evidence or the greater weight of the
12 evidence. Really that's a long way, a larger,
13 a legal way to say a probability standard. In
14 other words, is it more probable than not?

15 The standard in a criminal dispute
16 is much greater than the probability standard.
17 It's proof beyond a reasonable doubt. As I
18 mentioned to you, I'll define that for you but
19 I would tell you now a reasonable doubt is
20 that doubt that would make an honest,
21 conscientious juror searching for the truth in
22 a case to hesitate to act. That's the
23 standard that you will ultimately apply when
24 you analyze the evidence in this case to
25 decide -- to decide, what? To decide whether

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1 to not the State has met its burden of proof.
2 In order to do that, of course you have to
3 know what are the elements of the crime. I
4 will define those for you in my charge and you
5 will simply be asked, as to each of those
6 elements, 'Am I convinced beyond a reasonable
7 doubt that the State has satisfied that
8 particular element?'

9 If you go through the process and at
10 the end of the process your answer to each has
11 been yes, to each of those elements, then
12 consistent with the law you must return a
13 verdict of Guilty.

14 On the other hand if your answer to
15 one or more of those elements is 'it might
16 be', 'it's possible', 'might be probable', but
17 if it is not beyond a reasonable doubt then
18 the State has failed to meet the burden of
19 proof on that element and you must return a
20 verdict of Not Guilty. Why? Because it is
21 their duty to establish the elements of that.

22 Now, because the State has the
23 burden of proof, the State goes first. You
24 hear all the State's evidence. While the
25 Defendant has absolutely nothing to prove, and

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1 you should never expect him to, he still has
2 the right if he choose to, to present some
3 testimony for your consideration if he wants
4 to. He doesn't have to, but if he does --
5 well, you won't hear that until you've heard
6 all the State's evidence. Another very good
7 reason why you want to keep that open mind,
8 because you should hear all the evidence
9 before you make a decision as to what you find
10 to be credible and believable.

11 We will go through each of the
12 stages. I thank you for your attention to my
13 remarks and I ask you to give that same
14 attention to the attorneys as they give their
15 opening statements on behalf of their clients.

16 Yes, sir, Mr. McCoy.

17 MR. MCCOY: Thank you, Your Honor,
18 may it please the Court.

19 THE COURT: Yes, sir.

20 MR. MCCOY: Mr. King, Mr. Stidham.

21 It's springtime in Charleston.

22 March the 27th, 2007. The grass has already
23 started to turn green, the weather is getting
24 warmer and the days are now longer.
25 Charleston is in bloom.

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1 On that day, around 3:30 to 4:00
2 o'clock in the afternoon the victim in this
3 case, Sheldon Frasier, got in his car. He was
4 accompanied by Kimberly Bates. Little did Mr.
5 Frasier know this was his last ride in a car.
6 Little did Mr. Frasier know that his life
7 would come to an end that day.

8 He gets in the car with Kimberly
9 Bates and he goes to Trailwood, a neighborhood
10 in North Charleston. He goes to the corner of
11 Lee and Ree Streets in North Charleston, in
12 Trailwood.

13 Like I told you before, it's
14 springtime, the weather is warm, the weather
15 is nice, it's a sunny day. It's nice outside.
16 People are outside, people are doing yardwork.
17 Like I said, it's 3:30, 4:00 o'clock in the
18 afternoon.

19 They are going to see some friends,
20 they are going to a friend's house. They pull
21 up to this trailer that is right there on the
22 corner of Lee and Ree Streets. There's a
23 bunch of people hanging out, there's a bunch
24 of people hanging out in the yard, there is a
25 guy doing yardwork right there in that very

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1 yard. Like I said, they are out there hanging
2 out and several other people come up, they
3 come to say 'hey', they come to say 'hello',
4 they come to talk.

5 All of a sudden, the defendant in
6 this case, Kaseem Stephens, who is also known
7 as "Nitty" on the street, pulls up. He pulls
8 up right behind the car that Mr. Frasier is
9 driving, where Ms. Bates is sitting in the
10 car.

11 Now, Mr. Frasier has already gotten
12 out of the car and he's talking to some
13 buddies that are right there at the corner of
14 Lee and Ree Streets. Ms. Bates is still
15 sitting in the car. The Defendant comes up,
16 talks to Mr. Frasier, exchanges some words
17 with Mr. Frasier and then simply, simply, in a
18 brazen act pulls a handgun from his waist, in
19 front of numerous victims -- numerous
20 witnesses -- in broad daylight, on the corner
21 of Lee and Ree Street. He pulls out a gun and
22 starts shooting towards the victim in this
23 case, Mr. Frasier.

24 As soon as a shot rings out, Mr.
25 Frasier hits the deck, he gets down. He knows

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1 that there's trouble. He gets down. At this
2 point, people scatter. They run. People are
3 running in every direction. There's been a
4 gun brought out and gunshots have been fired.

5 Ms. Bates is in the car. She gets
6 out, 'Whoa, whoa, what are you doing? What's
7 going on here? Stop what you're doing.' At
8 this point the Defendant, again in senseless
9 brazen act lifts his gun towards Ms. Bates.
10 She backs down.

11 During this confrontation, the
12 victim in this case runs off down the street,
13 he runs off down the street, down in the
14 neighborhood, tries to get out of the way --
15 tries to get away. Again shots are fired and
16 this time the victim was shot, he was shot
17 once in the neck. He makes it to a trailer to
18 try to find safety, further down; police are
19 called, an ambulance is called and they
20 arrive, they tend to him, they care for him,
21 they take him to the hospital, take him to the
22 -- to have surgery, to have surgery for his
23 one gunshot.

24 A couple of days later, March 31st,
25 2007, the victim in his case, Mr. Frasier,

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1 passes away. He died from the one gunshot,
2 complications from the one gunshot wound to
3 the neck.

4 In the meantime, the Defendant was
5 arrested in this case. He's been brought
6 forth and he's been charged today with two --
7 with one count, he's been charged with murder.

8 I want to tell you a little bit
9 about what murder is. "Murder" is the
10 killing of another person with malice
11 aforethought. Those are the elements that I
12 want you to pay attention to, those are the
13 elements that I want you to look to the
14 witness stand to prove. I ask you to pay
15 attention to each and every person that goes
16 up there.

17 The killing of another person is the
18 killing of another person.

19 Malice is ill will or hatred or
20 dislike of another person. Malice can be
21 shown through words, it can be shown through
22 actions.

23 "Aforethought", that these actions
24 take place in a certain amount of time. I
25 don't want you to be confused about this --

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1 this doesn't have to be something where the
2 defendant sits and plots and schemes murder to
3 happen. There is no time limit placed on
4 aforethought.

5 Now, I ask you again to pay
6 attention to each and every witness that comes
7 up here. They are going to get on the stand
8 right here and they're going to tell you what
9 happened. You are going to hear from the
10 police that investigated this case, you're
11 going to hear from the person who performed
12 the autopsy on Mr. Frasier in this case.
13 You're going to hear from witnesses who were
14 on the scene, you saw this very act happen.
15 They are going to sit right here in front of
16 you and tell you what happened, today.

17 I ask you to hold the Defendant
18 accountable for his actions, hold him
19 accountable for the murder, the senseless
20 murder of Sheldon Frasier.

21 Thank you.

22 THE COURT: Thank you, Mr. McCoy.
23 Mr. King?

24 MR. KING: Through a chain of
25 circumstances, the twelve of you, the thirteen

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1 of you, have found yourselves sitting in these
2 chairs. Through a chain of circumstances, Mr.
3 Stephens finds himself sitting in that chair.
4 That is not a chair you want to be sitting in,
5 because it doesn't look very good and some
6 people have a tendency that because you're
7 charged with a crime that there must be some
8 truth that you did that crime. That's not
9 true.

10 So -- there's laws for that very
11 purpose. One of the laws I want you to pay
12 close attention to is the presumption of
13 innocence. You may have heard that term
14 before. I really want you to think about what
15 these terms means. We hear them but we might
16 not think about them, but they really mean
17 something. What it means is that he sits
18 there innocent. He has to be proven guilty
19 beyond a reasonable doubt.

20 When I think of the presumption of
21 innocence, I think of it like if someone I
22 care about, a friend or loved one, was charged
23 with a crime and my first reaction would be
24 'no, you're going to have to prove that.' It
25 is that resistance to believe that someone

1 would commit a crime just because someone said
2 that they did, that resistance is the
3 presumption of innocence.

4 I am asking you to follow the law,
5 to follow your oath and maintain that
6 resistance. Right now everyone should be
7 thinking he is innocent and should maintain
8 that throughout the trial, and not be
9 influenced by anything or jump to conclusions
10 or think that someone is guilty just because
11 they are sitting in that seat, or just because
12 someone takes the stand and says that they did
13 it -- because people don't always tell the
14 truth, and people are also sometimes mistaken.

15 You are going to hear that somebody
16 was shot, Sheldon Frasier was shot that day.
17 The question is who did it, who shot him?
18 It's real important, obviously, that we get
19 the right person. Mr. Stephens is not the
20 right person.

21 You are going to hear testimony from
22 a lady who was on the scene, saw the shooting
23 and identified Mr. Stephens. She only saw
24 this person for maybe ten to twenty seconds,
25 not a very long time, under a very high stress

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1 situation of basically watching someone get
2 shot. The circumstances in the small amount
3 of time that she had to see the person, you
4 can't rely on an identification made a day
5 later under the circumstances.

6 And you're going to hear from two
7 other witnesses. The car used by the shooter
8 was registered to their address, a Jamol
9 Greene and Charles Moore. The car that was
10 driven by the shooter was registered to their
11 address and you're going to hear that Jamol
12 Greene ran from the police when they came to
13 his house and that the other witness, Charles
14 Moore, is from the same family, lives in this
15 case and was not at the scene of the shooting.

16 There is no gun that we have,
17 there's no fingerprints, there is no DNA.
18 There is no scientific evidence of anything
19 that would give you that certainty that you
20 would need to convict anyone. It's just going
21 to be those witnesses who -- they may not be
22 telling the truth, they may be mistaken.

23 As the judge instructed you, I am
24 going to ask you to keep an open mind, that
25 you maintain that presumption of innocence.

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1 I find after all the evidence is shown that
2 you will find Mr. Stephens not guilty.

3 THE COURT: Thank you, Mr. King.
4 You may call your first witness, Mr. Hales.

5 MR. HALES: The State calls Jamol
6 Greene.

7 (WITNESS TAKES STAND)

8 JAMOL GREENE, being duly sworn to
9 tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. HALES:

13 Q. How you doing, Mr. Greene?

14 A. All right.

15 Q. You go by Jamol?

16 A. Yes, sir. Jamie.

17 Q. "Jamie?"

18 A. Sometimes.

19 THE COURT: Please pull on the
20 microphone and speak into that microphone so
21 that we can hear you.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. HALES:

24

25 Q. Which one?

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- 1 A. It don't matter.
- 2 Q. How old are you, Jemol?
- 3 A. Twenty-four.
- 4 Q. Where are you living?
- 5 A. Dorchester Road.
- 6 Q. Off Dorchester Road?
- 7 A. Yes.
- 8 Q. Do you live in a neighborhood?
- 9 A. Yes, sir.
- 10 Q. What is it called?
- 11 A. Charlestown Place.
- 12 Q. Do you know where Trailwood is?
- 13 A. Yes, sir.
- 14 Q. How far is that from Trailwood?
- 15 A. Probably about five or ten minutes.
- 16 Q. Where do you work?
- 17 A. B and E Tranfser.
- 18 Q. What was that?
- 19 A. B&E Transfer.
- 20 Q. Okay. How long have you worked there?
- 21 A. Probably about six years.
- 22 Q. Six years?
- 23 A. (Affirmative nod).
- 24 Q. Do you remember the events of March 27th,
- 25 2007?

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1 A. Partially.

2 Q. Tell us what you were doing on that day,
3 or tell us sort of the layout of your day --
4 starting with when you went to work.

5 A. I got up early that morning, went to
6 work, got off about 4:00, I think 4:00. I
7 dropped off stopping home from work and took
8 a ride in the neighborhood.

9 Q. You took a ride? Does that mean that you
10 were riding with someone or ---

11 A. I was driving.

12 Q. What were you driving?

13 A. A Ford Explorer.

14 Q. Was that your vehicle?

15 A. My mother's.

16 Q. What color was the Ford?

17 A. Tan.

18 Q. Tan?

19 A. (Affirmative nod).

20 Q. When you say you were just riding in the
21 neighborhood, what does that mean?

22 A. Just driving.

23 Q. Did you stop anywhere?

24 A. Yeah, at the corner of Ree and Lee.

25 Q. Corner of Lee and Ree?

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- 1 A. (Affirmative nod).
- 2 Q. What neighborhood is that in?
- 3 A. Trailwood.
- 4 Q. Whose house is that?
- 5 A. Some guy named Verndell.
- 6 Q. Why did you stop there?
- 7 A. I was talking to a friend of mine.
- 8 Q. You were just riding around, happened to
- 9 see a friend of yours, so you just pulled over
- 10 to talk to him?
- 11 A. Yeah.
- 12 Q. Who was that?
- 13 A. Verndell (phonetic).
- 14 Q. How long were you there?
- 15 A. Probably about fifteen minutes.
- 16 Q. You need to speak up a little bit.
- 17 A. Probably about fifteen minutes.
- 18 Q. How long?
- 19 A. Probably about ten to fifteen minutes.
- 20 Q. What, if anything, happened when you were
- 21 there?
- 22 A. Huh?
- 23 Q. What, if anything, happened while you
- 24 were there?
- 25 A. What happened while I was there?

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1 A. I was talking to Verndell and the dude,
2 Sheldon, pulled up.

3 Q. Sheldon Frasier?

4 A. (Affirmative nod).

5 Q. What kind of car were they in?

6 A. A blue Pontiac.

7 Q. Did he have anybody with him?

8 A. I don't know. His girlfriend, I guess.

9 Q. What did he do?

10 A. He got out and was talking to Verndell.

11 THE COURT: Hold on a second. Mr.
12 Greene, when you spoke into the mic we could
13 hear you very well. You need to either speak
14 into that mic or raise your voice, sir.

15 DEFENDANT: He was talking to
16 Verndell.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HALES:

19 Q. Did you know Sheldon?

20 A. I knew of him somewhat.

21 Q. Where were you when they were speaking?

22 A. Still sitting in the truck.

23 Q. You were still in your truck?

24 A. Yeah.

25 Q. Where were they?

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- 1 A. On the outside of my truck, talking.
- 2 Q. When he -- when his car pulled up, where
- 3 did he park?
- 4 A. On the right side of my truck.
- 5 Q. How were you pulled in?
- 6 A. Straight.
- 7 Q. You'd pulled in straight and he pulled in
- 8 straight beside you?
- 9 A. Yeah.
- 10 Q. How long do yo think that they talked?
- 11 A. Probably about five minutes.
- 12 Q. What happened then?
- 13 A. Uh, -- my -- my mother's other car pulled
- 14 up.
- 15 Q. What was your mother's other car?
- 16 A. A burgundy Cutlass
- 17 Q. You were in one car that belonged to your
- 18 mother?
- 19 A. Yeah.
- 20 Q. And you'all had another car that was a
- 21 burgundy Cutlass?
- 22 A. Uh-huh.
- 23 Q. Where did that car pull up?
- 24 A. Behind me.
- 25 Q. Who was in that car?

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1 A. Nitty.

2 Q. Is this Nitty?

3 A. Yes, sir.

4 Q. Would you please describe what he is
5 wearing today?

6 A. A tie and a shirt, white shirt?

7 Q. How does his hair look?

8 A. I can't really tell. Looks like braids,
9 or something.

10 MR. HALES: I would ask that the
11 record reflect that Mr. Greene has identified
12 the Defendant.

13 THE COURT: He has identified him.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HALE:

16 Q. The gentleman sitting at this table?

17 A. Yes, sir.

18 Q. What did he do when he pulled up?

19 A. He asked Sheldon, 'Do you remember when
20 you pulled the gun on me?'

21 Q. That is what he said?

22 A. Yeah.

23 Q. How did he say it?

24 A. Just directly to him.

25 Q. Directly to him?

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- 1 A. Yeah.
- 2 Q. So he asked him if he remembered when he
3 pulled a gun on him?
- 4 A. Yes.
- 5 Q. What happened then?
- 6 A. They argued for a second and the guy
7 tried to run.
- 8 Q. The guy?
- 9 A. (Affirmative nod).
- 10 Q. What guy?
- 11 A. Sheldon.
- 12 Q. He tried to run?
- 13 A. Yeah.
- 14 Q. And then what happened?
- 15 A. He shot him -- and I -- his girlfriend
16 was screaming.
- 17 Q. Who shot him?
- 18 A. The defendant.
- 19 Q. Mr. Stephens?
- 20 A. (No verbal response).
- 21 Q. Nitty?
- 22 A. (Affirmative nod) -- yes, sir.
- 23 Q. When you say that he shot him, was he
24 shooting at anything?
- 25 A. Yeah -- at Sheldon, I guess.

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1 Q. Then you say that you heard the
2 girlfriend screaming?

3 A. Yeah.

4 Q. What happened then?

5 A. I tired to back out.

6 Q. You were still in the car when all of
7 this was going on?

8 A. Yes, sir.

9 Q. Had you known Nitty before?

10 A. Yes, sir.

11 Q. How long had you known him?

12 A. I don't know, probably about a year
13 before that.

14 Q. So you recognized him?

15 A. Yes, sir.

16 Q. You had seen him before?

17 A. Yes, sir.

18 Q. This wasn't the first time that you'd saw
19 him?

20 A. No, sir.

21 Q. You'd known him for about a year?

22 A. (No verbal response).

23 Q. And you said that after shots rang out,
24 you tried to leave?

25 MR. KING: Objection, leading.

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1 THE COURT: I will allow that,
2 overruled.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HALES:

5 Q. What happened next?

6 A. He left the scene and I left.

7 Q. Who left the scene?

8 A. Nitty.

9 Q. How did he leave the scene?

10 A. He sped off.

11 Q. In what vehicle did he leave?

12 A. The Cutlass.

13 Q. Why didn't you leave before?

14 A. I was blocked in.

15 Q. You were blocked in by his car?

16 A. (Affirmative nod).

17 Q. How did he get your mother's car?

18 A. He was detailing it early that morning,
19 or that afternoon.

20 Q. Is that something that he does?

21 A. Yeah. He's started doing that around
22 that time.

23 Q. Had he done it for you before?

24 A. Yeah.

25 Q. How does that work when you say that he

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1 details the car?

2 A. He cleaned it.

3 Q. How does he obtain the car?

4 A. (No verbal response).

5 Q. Did you drop it off, did he come over?

6 A. He came and got the keys -- he got the
7 car while I was still at work.

8 Q. Then he would -- he'd take it and bring
9 it back, is that what would happen?

10 A. Yeah.

11 Q. We talked about the location of Lee and
12 Ree Streets, where is that -- is that in
13 Trailwood?

14 A. Yes, sir.

15 Q. What city is that located in?

16 A. North Charleston.

17 Q. Charleston County?

18 A. Yes, sir.

19 Q. After that -- after all this happened,
20 you said that you left?

21 A. Yeah.

22 Q. Where did you go?

23 A. To a friend's on Ott Street and then I
24 left to go to James Island.

25 Q. Why did you go to James Island?

1 A. Just scared, didn't know what to do.

2 Q. Did the police come by and talk to you?

3 A. Yeah. They came by the house.

4 Q. Let's get something out right now. You
5 have been convicted of a crime?

6 A. Yes, sir.

7 Q. You pled to two marijuana charges back in
8 2006?

9 A. Yes, sir.

10 Q. What did you get on those charges?

11 A. Probation.

12 Q. Successfully completed your probation?

13 A. Yes, sir.

14 Q. When the police came to talk to you, what
15 did you do?

16 A. I ran.

17 Q. Why did you run?

18 A. I didn't know what to do.

19 Q. And what did you do after that?

20 A. I slept at a friend's house.

21 Q. Did you talk to anybody about what had
22 happened?

23 A. My attorney at the time.

24 Q. What did you'all decide to do?

25 A. He had me do a statement of what

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1 happened.

2 Q. So you voluntarily came forward?

3 A. Yes, sir.

4 Q. Where did you do that statement?

5 A. At his office.

6 Q. On that day, on march 27th, please tell us
7 about what time you were there at your
8 friend's house?

9 A. I am not sure, probably about 4:30.

10 Q. How was the weather?

11 A. Sunny.

12 Q. You'all were outside?

13 A. (No verbal response).

14 Q. Were you able to get a good look at the
15 defendant?

16 A. I mean -- partially.

17 Q. You recognized him?

18 A. Yeah.

19 MR. HALES: Beg the court's
20 indulgence.

21 THE COURT: Certainly.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. HALES:

24 Q. On that date, March 27th, 2007, if you
25 could, just give us the order of when you got

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1 there, who came after you got there, and who
2 was the last person to come.

3 A. Verndell was there when I got there, then
4 I came, then Sheldon, and then the Defendant.

5 Q. Did you see anybody else have a gun?

6 A. No.

7 MR. HALES: Please answer any
8 questions that Mr. King may have.

9 THE COURT: Cross-examination?

10 CROSS EXAMINATION

11 BY MR. KING:

12 Q. Mr. Greene, how do you do?

13 A. All right.

14 Q. Just a couple of questions, Mr. Greene.
15 You got home from work about 4:00 or 4:15,
16 something like that, that day?

17 A. Yeah.

18 Q. Was the Cutlass at your home then?

19 A. No, I don't think so.

20 Q. Did you know Sheldon Frasier, the man who
21 was shot; did you know him?

22 A. I mean -- I knew of him, yeah.

23 Q. Do you know whether or not he knew Mr.
24 Stephens?

25 A. From the conversation, they probably --

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1 the knew each other from work, probably. I
2 don't think ---

3 Q. Had you ever been together when they had
4 met?

5 A. Yeah, I had been together once when they
6 saw each other but -- (pause).

7 Q. When they talked?

8 A. I don't -- we wasn't really together when
9 they talked.

10 Q. So this Cutlass, the person who shot the
11 man was driving the burgundy Cutlass; right?

12 A. Yes.

13 Q. And that was registered to ---

14 A. It was my mother's.

15 Q. Is that considered your car or her car?

16 A. It is considered my car but it is
17 registered to her.

18 Q. The person who shot this man was driving
19 your car?

20 A. Yes, sir.

21 Q How many people were standing around --
22 how many people were there when the shooting
23 took place?

24 A. Probably five, six.

25 Q. That was including you?

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- 1 A. Yeah.
- 2 Q. And does that include the guy that got
3 shot?
- 4 A. Yeah.
- 5 Q. And his girlfriend?
- 6 A. Yeah.
- 7 Q. Then three other people?
- 8 A. Yeah.
- 9 Q. And the shooting takes place and you
10 leave?
- 11 A. Yeah.
- 12 Q. You are nowhere in the area when the
13 police come to do their investigation?
- 14 A. No. Right.
- 15 Q. At some point you are home when the
16 police came to your door; right?
- 17 A. I came home and a detective pulled up
18 afterwards.
- 19 Q. And you ran out the back door?
- 20 A. Yes, sir.
- 21 Q. And you saw a lawyer?
- 22 A. Yes, sir.
- 23 Q. And you don't talk to the police?
- 24 A. (Negative gesture).
- 25 Q. Did you ever talk to the detectives?

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1 A. No. Not until they came and subpoenaed
2 me and stuff.

3 Q. So in 2007, 2008, you never talked to
4 them?

5 A. No.

6 Q. You were never interviewed by the police?

7 A. No.

8 Q. So after the shooting takes place you --
9 basically you're running from the police?

10 A. (No verbal response).

11 Q. Right?

12 A. For how long? You mean -- ever since,
13 you mean until that period of time when I
14 wrote my statement?

15 Q. Right. Your statement was April 5th,
16 right?

17 A. I guess, I don't know the exact date.

18 Q. If I showed it to you, would that refresh
19 your memory?

20 A. Yeah, I got the statement right here.

21 Q. It was April 5th?

22 A. Yes.

23 Q. And the shooting took place on March 27th;
24 right?

25 A. Yes.

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1 Q That is the 27th, 28th, 29th, 30th, -- one,
2 two, three, four, five, six, seven, eight,
3 nine -- nine days later?

4 A. Yes, sir.

5 Q. Nine days after this shooting you signed
6 a statement in your lawyer's office?

7 A. Yes, sir.

8 Q. During that ten days the police were
9 looking for you, right?

10 A. I didn't know they were still wanting to
11 talk to me until I saw my name in the paper.

12 Q. They were ---

13 A. When I found out, I went to my probation
14 officer and he told me. I told him that I had
15 been home ever since like the day after, two
16 days after.

17 Q. This was a big deal, it was on the News;
18 right?

19 A. Made the paper.

20 Q. And you saw the paper?

21 A. Yeah, that's when I went to my lawyer's
22 office.

23 Q. And it also named Kaseem Stephens as a
24 suspect, right?

25 A. Yes, sir.

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1 Q. The shooting takes place, ten days pass
2 -- right?

3 A. Yes, sir.

4 Q. In those ten days, you read the paper?

5 A. I read the paper that Thursday and I
6 think I did the statement that day when I read
7 the paper.

8 Q. You read the paper and you saw in the
9 paper that Kaseem Stephens was a suspect?

10 A. And I was some sort of witness or
11 suspect, whatever. In the paper it made it
12 look like I might have been a suspect, too.

13 Q. And you went to your lawyer and with him
14 wrote a statement?

15 A. Yes, sir.

16 Q. You have been convicted of two felonies,
17 as you mentioned on direct examination?

18 A. Yeah.

19 Q. It was a possession with intent to
20 distribute marijuana?

21 A. Yes, sir, and distribution of marijuana.

22 Q. And distribution of marijuana?

23 A. Yes, sir.

24 MR. KING: Thank you.

25 THE COURT: Redirect?

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1 MR. HALES: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 MR. HALES:

4 Q. Why did you run, why did you evade the
5 police?

6 A. I have been in trouble and I try to avoid
7 confrontation with the police as much as
8 possible.

9 Q. You just witnessed something that had
10 happened?

11 A. Yes.

12 Q. Did you witness anyone else out there
13 that had a gun, at all?

14 A. I didn't see anyone that had one.

15 Q. The only person that you saw with a gun
16 was Kaseem Stephens?

17 A. Yes, sir.

18 Q. You have never been charged with anything
19 in this incident, have you?

20 A. No.

21 MR. HALES: That's all, Your Honor.

22 THE COURT: Recross?

23 MR. KING: No, Your Honor.

24 THE COURT: You may come down, Mr.
25 Greene. Thank you.

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1 (WITNESS STEPS DOWN)

2 THE COURT: Call your next witness.

3 MR. McCOY: Thank you, Your Honor.

4 The State calls Charles Moore.

5 (WITNESS TAKES STAND)

6 CHARLES MOORE, being duly sworn to
7 tell the truth, the whole truth and nothing
8 but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. McCOY:

11 Q. Good afternoon, Mr. Moore.

12 A. Good afternoon.

13 Q. Can you tell the jury how old you are?

14 A. Twenty years old.

15 Q. Can you tell the jury where you live
16 right now?

17 A. In North Charleston.

18 Q. Where in North Charleston?

19 A. Off of Dorchester Road.

20 Q. Off of Dorchester Road?

21 A. Yes, sir.

22 Q. Where did you live on March 27th, 2007?

23 A. In Trailwood.

24 Q. In the Trailwood neighborhood?

25 A. Yes, sir.

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- 1 Q. Is that in North Charleston, as well?
- 2 A. Yes, sir.
- 3 Q. What county is that?
- 4 A. Charleston County.
- 5 Q. Mr. Moore, do you work anywhere right
- 6 now?
- 7 A. No, sir. I was laid off.
- 8 Q. You were laid off?
- 9 A. Yes, sir.
- 10 Q. Who do you live with there off of
- 11 Dorchester Road?
- 12 A. My mother.
- 13 Q. Now, Mr. Moore, I am going to take you to
- 14 almost two years ago from today -- March 27th,
- 15 2007.
- 16 A. Okay.
- 17 Q. Who were you living with in Trailwood?
- 18 A. My mother.
- 19 Q. Your mother?
- 20 A. (Affirmative nod)
- 21 Q. And were you working then?
- 22 A. Yes, I was working at a tool store.
- 23 Q. Mr. Moore, can you tell me what you were
- 24 doing on March 27th, 2007?
- 25 A. I was home, off that day, and I was -- I

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1 usually when I got off of school, I go to
2 school from 7:00 to 2:00, usually come home
3 and take a nap. I was off that day. I knew I
4 was sleeping and then Nitty came ---

5 Q. Who came?

6 A. Nitty.

7 Q. Where did he come?

8 A. He came to our house.

9 Q. Okay. Why did he come to your house?

10 A. Came by to say hi or whatever, then came
11 to say he was going to wash the car and then
12 he left.

13 Q. When he came, what car did he arrive in?

14 A. In my brother's Cutlass.

15 Q. In your brother's Cutlass?

16 A. Yeah.

17 Q. How long did he stay with you that day?

18 A. Five, ten minutes and then he left.

19 Q. Why was he in your brother's Cutlass?

20 A. He was washing it.

21 Q. He was?

22 A. Yes.

23 Q. Did he leave your brother's Cutlass there
24 after -- during his visit?

25 A. No, he went back in it.

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1 Q. He did what now?

2 A. He went back in it.

3 Q. When did -- did he leave in another car?

4 A. No, he left in the Cutlass and then he
5 came back in about five or ten minutes after
6 that and said he -- he was coming to get the
7 red car, the Gram Am.

8 Q. What was he going to do with that car?

9 A. He said he was going to wash that, too.

10 Q. Was it common for Nitty to wash your
11 cars?

12 A. Yes. He washed the cars all the time,
13 any time my brother say he could come and wash
14 it.

15 MR. McCOY: Beg the court's
16 indulgence, Your Honor.

17 THE COURT: Certainly.

18 MR. HALES: Thank you. Please
19 answer any questions that Mr. King might have.

20 THE COURT: You may cross examine.

21 MR. KING: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. KING:

24 Q. Did you know Sheldon Frasier, the man who
25 got shot?

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- 1 A. No, sir.
- 2 Q. Do you know Jamol Greene?
- 3 A. Yes, sir. He is my brother.
- 4 Q. He is your brother?
- 5 A. Yes, sir.
- 6 Q. You testified about nitty coming and
- 7 borrowing the car.
- 8 A. Yes, sir.
- 9 Q. What time was that? Do you know what
- 10 timeframe we are talking about?
- 11 A. (No verbal response).
- 12 Q. Do you remember when he came the first
- 13 time?
- 14 A. Yes.
- 15 Q. What time was that?
- 16 A. I want to say like 4:00 or 5:00 in the
- 17 afternoon.
- 18 Q. Then he stayed?
- 19 A. He stayed for a few minutes and then he
- 20 left.
- 21 Q. Then he came back?
- 22 A. Yes.
- 23 Q. You said that was like five or ten
- 24 minutes later?
- 25 A. Yes, sir.

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1 Q. And then he asked to borrow the other
2 car?

3 A. He was going to wash it.

4 Q. And that was nothing unusual?

5 A. No.

6 Q. Did anything seem unusual to you?

7 A. No, sir.

8 Q. You like your brother? Right? You love
9 him?

10 A. Yes, sir.

11 Q. You don't want anything bad to happen to
12 him, do you?

13 A. No, sir.

14 MR. KING: That's all the
15 questions that I have, Your Honor.

16 THE COURT: Very well. Redirect,
17 Mr. McCoy?

18 MR. MCCOY: Nothing further, Your
19 Honor.

20 THE COURT: Okay. Thank you, sir.
21 You may come down.

22 (WITNESS STEPS DOWN)

23 THE COURT: You want Mr. Moore to
24 be excused?

25 MR. MCCOY: Yes, sir.

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1 THE COURT: Any objection, Mr.

2 King?

3 MR. KING: No, Your Honor.

4 THE COURT: You are also free to

5 leave, sir.

6 MR. MCCOY: Thank you, Your Honor.

7 THE COURT: Call your next witness,

8 please.

9 MR. MCCOY: The State calls

10 Sergeant Al Hallman with the North Charleston

11 Police Department.

12 (WITNESS TAKES STAND)

13 AL HALLMAN, being duly sworn to tell
14 the truth, the whole truth and nothing but the
15 truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. MCCOY:

18 Q. Good afternoon, Sgt. Hallman.

19 A. Good afternoon.

20 Q. Who are you employed with?

21 A. I am employed with the City of North
22 Charleston Police Department.

23 Q. How long have you been with North
24 Charleston Police Department?

25 A. Just over twenty-one years.

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1 Q. In your twenty-one years of service with
2 North Charleston, tell us a little bit about
3 your duties.

4 A. I did six years in patrol as a uniformed
5 patrol officer. I was transferred to the
6 selective enforcement team, which basically
7 did warrant services and things of that
8 nature, then I was transferred to general
9 investigations where I did one year as an auto
10 theft investigator, and shortly after that was
11 transferred to the forensics unit.

12 Q. How long have you been with the North
13 Charleston forensics unit?

14 A. Approximately sixteen years.

15 Q. What are your duties there right now? Do
16 you hold a rank there?

17 A. Yes, sir, I am currently the Forensics
18 supervisor.

19 Q. As the forensic supervisors, is it your
20 job to respond to crime scenes?

21 A. Yes, sir, it is.

22 Q. In your time as a supervisor,
23 approximately how many crimes have you
24 responded to that have been violent crimes?

25 A. I couldn't give you a number. Thousand?

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1 Q. Let's take it a step further. How many
2 homicides scene have you responded to?

3 A. In sixteen years, probably over five
4 hundred, give or take.

5 Q. Plenty of homicide scenes?

6 A. I have been to many, many homicide
7 scenes; yes, sir.

8 Q. I am going to take you now to almost two
9 years ago, 3/27/07. Did you happen to respond
10 to a crime scene at [REDACTED]

11 A. Yes, sir, I did.

12 Q. Why did you respond to this area?

13 A. It was in reference to a shooting.

14 Q. How do you know to respond to a certain
15 area?

16 A. The dispatcher notify us at the request
17 of uniformed patrol officers on scene.

18 Q. You are dispatched and then you arrive?

19 A. Correct.

20 Q. Once you arrive to a crime scene, what is
21 the first thing that you look to do?

22 A. The first thing that I do is I want to
23 make sure that the actual crime scene itself
24 is secured with crime scene tape as a barrier
25 to keep nonessential people out of the scene,

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1. to avoid contamination and all.

2. Then the first person that I look to is
3. the officer that is maintaining the crime
4. scene log. The crime scene log is basically a
5. piece of paper that has each and every
6. individual's name and/or rank and place of
7. employment that has entered that crime scene
8. for any particular reason whatsoever. I will
9. get with that office and I will go over the
10. list to, you know, to familiarize myself with
11. who entered the crime scene and then I will
12. advise him that at this point no one else
13. enters the crime scene without first
14. confronting myself.

15. Q. You just told the jury that you went to

16. [REDACTED]

17. A. (Affirmative nod).

18. Q. What neighborhood is that?

19. A. That is the Trailwood Mobile Home Park.

20. Q. What county is that in?

21. A. Charleston.

22. Q. Can you tell the jury a little bit about
23. the layout of Trailwood?

24. A. Trailwood is a generally large mobile
25. home park. I don't know how many trailers are

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1 in this mobile home park but it is made up of
2 twenty or thirty different streets with, I
3 would venture a guess of, maybe twenty to
4 twenty-five trailers on each street. It is
5 really a large mobile home park.

6 Q. When you arrived there, was the crime
7 scene already secured?

8 A. Yes, sir, it was.

9 Q. When you say secured, was it roped off?

10 A. It had yellow crime scene tape around the
11 scene, yes.

12 Q. About how big an area did this crime
13 scene cover?

14 A. It started at an intersection of two
15 roads within the mobile home park and it
16 proceeded down one road to approximately -- I
17 guess you would call it three lots, there were
18 three different trailers, I believe, so it
19 would have covered three lots.

20 MR. McCOY: Your Honor, may I
21 approach the witness?

22 THE COURT: You may.

23 MR. McCOY: Thank you.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. McCOY:

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1 Q. Sgt. Hallman, I am showing you what has
2 been marked for ID purposes as State's Exhibit
3 1, 2, 3, 4 and 5. Would you take a look at
4 those for me and tell me what those are?

5 A. State's Exhibit 1 is a photograph of a
6 yard, I believe at [REDACTED] where I've
7 got two placards in the grass identifying
8 items of evidence.

9 State's Exhibit 2 is a photograph of
10 the roadway directly in front of this
11 residence, but again another placard, a yellow
12 placard, in the roadway making an item of
13 evidence.

14 State's Exhibit 3 is a photograph of
15 -- similar to Exhibit 1 but of a different
16 angle, again displaying two items that I've
17 got marked as evidence. Actually three items.
18 Excuse me.

19 State's Exhibit 4 again is a
20 photograph of the same, Exhibit 3, just of a
21 wider version.

22 State's Exhibit 5 is again the same
23 photograph, from a different angle.

24 Q. Sgt. Hallman, are State's Exhibit 1
25 through 5, are they a fair and accurate

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1 depiction of the crime scene on 3/27/07 on Ree
2 Street?

3 A. Yes, they are.

4 MR. McCOY: Your Honor, at this
5 point I would move one through five into
6 evidence.

7 THE COURT: Any objection?

8 MR. KING: No, Your Honor.

9 THE COURT: Without objection, they
10 are admitted.

11 (SO ENTERED AS STATE'S EXHIBIT 1)

12 (SO ENTERED AS STATE'S EXHIBIT 2)

13 (SO ENTERED AS STATE'S EXHIBIT 3)

14 (SO ENTERED AS STATE'S EXHIBIT 4)

15 (SO ENTERED AS STATE'S EXHIBIT 5)

16 MR. McCOY: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. McCOY:

19 Q. You just took a look at this pictures,
20 one through five?

21 A. Yes, sir.

22 Q. Of the crime scene on [REDACTED] Street?

23 A. Yes, sir.

24 Q. You talked about marking pieces of
25 evidence with placards.

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1 A. Yes, sir.

2 Q. Can you tell the jury -- what are
3 placards, what do you use them for?

4 A. A placard that we use, generally it's a
5 piece of plastic in a triangular shape that
6 has either letters or number identifiers on
7 both sides of the triangle.

8 We use these placards to place next to
9 items of evidence that are located at a crime
10 scene so that we can document the crime scene
11 with photography, as well as documenting the
12 locations and the types of evidence that these
13 placards are representing.

14 MR. McCOY: Your Honor, may I
15 approach the witness again?

16 THE COURT: You may.

17 MR. McCOY: Thank you.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. McCOY:

20 Q. Sgt. Hallman, I want to show you now what
21 has been marked for ID purposes as State's
22 Exhibit 6, 7 and 8. Can you take a look at
23 those and tell me what those are?

24 A. State's Exhibit 6 is a closeup photograph
25 of a shell casing marked with a yellow

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1 placard, lettered "A". That was in the
2 roadway.

3 State's Exhibit 7 is a yellow placard
4 lettered "B", marking another shell casing in
5 the yard of [REDACTED]

6 State's Exhibit 8 is a yellow placard
7 lettered "C" that is marking a projectile that
8 is located in the grass at [REDACTED]

9 Q. Sgt. Hallman, are those placards for
10 pieces of evidence that you placed down to
11 mark pieces of evidence on [REDACTED] that
12 day?

13 A. Yes, sir.

14 MR. MCCOY: Your Honor, I would
15 also move six, seven and eight be placed in
16 evidence.

17 MR. KING: No objection.

18 THE COURT: Without objection,
19 State's Exhibit 6, 7 and 8 are admitted.

20 (SO ENTERED AS STATE'S EXHIBIT 6)

21 (SO ENTERED AS STATE'S EXHIBIT 7)

22 (SO ENTERED AS STATE'S EXHIBIT 8)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MCCOY:

25 Q. Sgt. Hallman, on this crime scene, did

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1 you find any blood anywhere?

2 A. Not in front of [REDACTED] The
3 blood we located as two trailers down across
4 the street where the victim was finally
5 located.

6 Q. So you weren't able to collect any DNA
7 evidence?

8 A. No, sir, not at the actual scene itself.

9 Q. Sgt. Hallman, did you also have a chance
10 to view a trailer that also had a number of
11 projectiles that were in the side of the
12 trailer?

13 A. Yes, sir. That was directly across the
14 street from [REDACTED] at a slight
15 angle, and a projectile was located just to
16 the left of the front door of that trailer.

17 MR. McCOY: Your Honor, may I
18 approach the witness again?

19 THE COURT: Yes, you may.

20 MR. McCOY: Thank you.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. McCOY:

23 Q. Sgt. Hallman, I want to show you what has
24 been marked for ID purposes as 10, 11, 12 and
25 13. Would you take a look at those photos for

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1 me and then tell me what those are?

2 A. State's Exhibit 10 is a photograph of me
3 holding a trajectory rod, a metallic rod that
4 I inserted into the bullet hole at that
5 trailer to display the angle at which that
6 bullet traveled and struck the trailer.

7 State's Exhibit 11 is a closer photograph
8 of that trajectory road.

9 State's Exhibit 12 is a photograph of the
10 bullet hole without the trajectory rod
11 present.

12 State's Exhibit 13 is a photograph that I
13 took, I believe standing on a ladder, showing
14 the trajectory rod in place in the bullet hole,
15 taking the photo back towards from where the
16 shooting had occurred to show the angle at
17 which the bullet struck that trailer.

18 Q. These are photos, Sgt. Hallman, that you
19 took on 3/27 of 2007?

20 A. Two of the photos are the ones that I
21 took, 13 and 13. Naturally I didn't take 10
22 and 11 because I'm in them.

23 Q. Do those photos appear to be a fair and
24 accurate representation of the crime scene
25 that day?

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1 A. Yes, sir.

2 MR. McCOY: Your Honor, I move 10
3 through 13 into evidence.

4 THE COURT: Any objection?

5 MR. KING: No, Your Honor.

6 THE COURT: Without objection, they
7 are admitted.

8 (SO ENTERED AS STATE'S EXHIBIT 10)

9 (SO ENTERED AS STATE'S EXHIBIT 11)

10 (SO ENTERED AS STATE'S EXHIBIT 12)

11 (SO ENTERED AS STATE'S EXHIBIT 13)

12 MR. McCOY: Your Honor, may I have
13 the witness step down.

14 THE COURT: You may.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. McCOY:

17 Q. Sgt. Hallman, if you could step down.

18 A. (Complies).

19 MR. McCOY: May I publish some
20 pictures to the jury, Your Honor?

21 THE COURT: You may.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. McCOY:

24 Q. Sgt. Hallman, I would ask you to hold
25 these photos up and again -- show the jury

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1 these photos and then describe to the jury the
2 layout of the crime scene and where the
3 projectiles were found.

4 A. In this photograph this trailer here is

5

6 The two items that I marked with placards
7 "D" and "C" are in this yard right here.

8 Placard "A" is in the road on the other
9 side of this cruiser, so you can see it in
10 this photograph.

11 This residence that was struck by the
12 projectile was at an angle, a slight angle,
13 across the street from where the shooting
14 occurred.

15 This photograph is a photograph that I
16 took which shows the trajectory rod in place,
17 that I'd inserted into the bullet hole, and
18 going back towards where the shooting had
19 occurred.

20 Q. Before we move on, Sgt. Hallman, tell the
21 jury -- what is a trajectory rod and what do
22 you use that for?

23 A. A trajectory is simply a metal dowel or a
24 metal rod that we use to insert into bullet
25 homes, whether they be in a car, a house,

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1 whatever, to determine the angle of the
2 impact, the angle that projectile traveled
3 with fired, striking whatever object that it
4 struck. Once the rod is inserted you can
5 actually go back, with a laser or in this case
6 photograph, and determine the angle and
7 basically determine the location of where it
8 had originated from.

9 Q. Okay. Sgt. Hallman, I am going to ask
10 you look at one more photo. Stay down here
11 for me.

12 If you would, show this picture to the
13 jury and also tell them what it is.

14 A. This residence is 5410 -- I believe that
15 I was mistaken in saying [REDACTED] 1. This is 5410
16 here. This is the yard where Placards "D" and
17 "C" are located. I placed Placard "D" to
18 label a shell casing. Placard "C" right here
19 is labeled to identify a projectile found in
20 the grass.

21 Q. Where is the road in relation to this
22 house?

23 A. If you're looking at it in this form the
24 road is right here?

25 Q. The intersection of Lee and Ree.

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1 A. Right back here; yes, sir.

2 Q. And the other projectile, "A", where was
3 that found in relation to this photo?

4 A. "A" was in the roadway, it's behind the
5 cruiser in that other photograph but it was
6 just about centered in the roadway.

7 Q. Thank you, Sgt. Hallman. You may resume
8 your seat.

9 A. (Complies).

10 Q. Sgt. Hallman, not only did you have a
11 chance to respond to the scene at Lee and Ree,
12 but did you happen to go anywhere else on that
13 day?

14 A. Yes, sir. After I finished processing
15 the initial scene, I proceeded to the location
16 -- the trailer where the victim had been
17 located. The victim had already been
18 transported once I had gotten there but there
19 were two shirts, I believe, on the landing of
20 the stairs going to the front door of that
21 residence that were blood-soaked and that
22 appeared to have a hole, possibly a bullet
23 hole, right in the collar of the shirt.

24 Those two shirts were located by me as
25 evidence and the scene was photographed as it

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1 was upon my arrival.

2 Once I had finished with that location, I
3 responded over to Orr Street where we'd
4 received word that the suspect vehicle had
5 been located. Once I arrived at that
6 location, some of our detectives were on scene
7 and were awaiting securing a search warrant
8 for the resident. Once the search warrant was
9 obtained, they contacted a search of the
10 residence and I believe that they located a
11 box of .40 caliber ammunition and a box of .45
12 caliber ammunition. Nothing else was located,
13 to the best of my knowledge, inside the
14 residence.

15 Myself and Corporal Coker processed the
16 vehicle for latent fingerprints and we, I
17 believe, lifted four or five lifts from that
18 vehicle.

19 Q. Sgt. Hallman, you just spoke to the jury
20 a little bit about collecting evidence,
21 securing evidence. Tell the jury how you
22 secure evidence when you take it into your
23 custody.

24 A. With regard to the two shirts, as I
25 stated, before anything was moved I documented

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1 it with photographs. Once the photographs
2 were taken, I collected the shirts and
3 individually bagged them in plastic bags; had
4 to use plastic bags because they were soaked
5 with blood. They were then transported, or
6 later transported, excuse me, back to the
7 police station, where I placed them into
8 separate drying cabinets to allow the blood
9 that soaked into the shirt to dry, to render
10 them safe for packing and securing into the
11 property room.

12 Q. Once you have collected evidence
13 yourself, is it then in your custody?

14 A. It is my custody until it is sent to
15 another lab for analysis or it if placed into
16 the property room.

17 MR. McCOY: Thank you, Sgt.
18 Hallman. Beg the court's indulgence -- please
19 answer any questions that Mr. King will have.

20 THE COURT: Mr. King, how long do
21 you expect take?

22 MR. KING: Ten minutes at the
23 most.

24 THE COURT: Let's take a break at
25 this point -- Ladies and Gentlemen, I will let

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1 you go to the jury room, but do not begin your
2 deliberations, don't discuss the case, we will
3 be with you in about ten to fifteen minutes.
4 You may retire to your jury room. Thank you.

5 (JURY OUT @ 3:57 P.M.)

6 THE COURT: Anything from State
7 before we recess?

8 MR. MCCOY: No, Your Honor.

9 THE COURT: From the defendant?

10 MR. KING: No, sir.

11 THE COURT: We'll be in recess for
12 about ten minutes. Sgt. Hallman, during this
13 recess you may step down but please don't have
14 any conversation with any of the attorneys.

15 THE WITNESS: Understood, sir.

16 (RECESS 3:57 to 4:10 P.M.)

17 (DEFENDANT PRESENT)

18 THE COURT: Mr. Jones, I notice
19 that you've occupied that seat now twice. I
20 assume you've been selected as the presiding
21 juror; is that correct?

22 JUROR NUMBER 129: Yes.

23 THE COURT: Thank you very much.
24 Your number for the record, sir?

25 JUROR NUMBER 129: 129.

1 THE COURT: All right, we are ready
2 to continue. Mr. King, I appreciate that, you
3 may begin your cross-examination.

4 CROSS EXAMINATION

5 BY MR. KING:

6 Q. Sgt. Hallman, you are a crime scene
7 investigator; right?

8 A. Yes, sir.

9 Q. It is your job to go to the scene of a
10 crime and collect evidence?

11 A. That's correct.

12 Q. And that's what you did on this day?

13 A. Yes, sir.

14 Q. You collected a beer can, ---

15 A. Yes.

16 Q. --- shell casing, ---

17 A. Two shell casings.

18 Q. --- two shell casings, (affirmative nod).
19 That's like the part of the bullet, the long
20 part of the bullet?

21 A. That's right. That's the part that
22 contains the gunpowder and the primer.

23 Q. And you collect that because whoever
24 loaded the gun may have left their
25 fingerprints on that?

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1 A. Sometimes. Yes, sir.

2 Q. And you collected a projectile, which is
3 the actual bullet itself?

4 A. Correct.

5 Q. And there was a car there that was used
6 in the shooting?

7 A. That was located several streets over.

8 Q. Was that the Cutlass, a burgundy Cutlass?

9 A. I believe so. Yes, sir.

10 Q. And you checked that car?

11 A. (Affirmative nod), after the search
12 warrants were obtained by the detectives, yes.

13 Q. That's because you were looking for
14 evidence, right?

15 A. Correct.

16 Q. You were looking for fingerprints, ---

17 A. Correct.

18 Q. --- DNA, ---

19 A. Yes, sir.

20 Q. Any kind of physical evidence that might
21 solve the crime?

22 A. That's correct.

23 Q. You measured the trajectory of the bullet
24 and -- and out of all these things you don't
25 have any evidence that ties Kaseem Stephens to

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1 this crime. Right?

2 A. No, sir.

3 MR. KING: Thank you.

4 THE COURT: Redirect?

5 MR. MCCOY: No, sir, Your Honor.

6 (WITNESS STEPS DOWN)

7 THE COURT: You may call your next
8 witness, please.

9 MR. MCCOY: The State calls Andrew
10 with the North Charleston Police Department.

11 THE COURT: Do you wish for Sgt.
12 Hallman to be excused?

13 MR. MCCOY: Yes, sir.

14 THE COURT: Any objection, Mr.
15 King?

16 MR. KING: No, Your Honor.

17 THE COURT: Thank you. Sgt.
18 Hallman, you are free to leave, sir.

19 (WITNESS TAKES STAND)

20 ANDREW COKER, being duly sworn to
21 tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY MR. MCCOY:

25 Q. Good afternoon, Officer Coker.

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1 A. Good afternoon.

2 Q. Could you tell the jury how long you've
3 been with North Charleston?

4 A. I've been with North Charleston Police
5 Department eighteen years.

6 Q. What have been your duties during those
7 eighteen years with North Charleston?

8 A. Ten of the years that I've been with
9 North Charleston I was a patrol officer,
10 assigned to the Patrol Division -- working
11 various areas of the city, responding to calls
12 for service.

13 I've also spent five years as a traffic
14 collision investigator.

15 For the past three years I've been a
16 crime scene investigator and latent finger-
17 print examiner.

18 Q. Let's back up to March 27, 2007. Did you
19 have a chance to investigate or to assist in
20 the investigation of a murder that happened on
21 Ree Street that day?

22 A. Yes, I did.

23 Q. What were your duties in that
24 investigation?

25 A. I responded to assist Sgt. Hallman with

1 the investigation of a shooting incident which
2 had occurred on Ree Street.

3 Q. During that investigation did you have an
4 opportunity to examine some lifts, fingerprint
5 lifts?

6 A. Yes, I did.

7 Q. Can you tell the jury a little bit about
8 lifting a fingerprint or finding a finger-
9 print?

10 A. When processing for fingerprints we tend
11 to look for surfaces that are conducive to
12 holding a fingerprints, such as a smooth
13 mirror that when touched the whorls, dirt,
14 oils on the finger will leave an impression
15 behind. We process that by using black powder
16 primarily and we -- we dust the black powder
17 onto the object using a fine brush. We then
18 lift any items that appear to be fingerprints
19 and use those for comparison.

20 Q. Are certain things easier to obtain
21 fingerprints from?

22 A. Yes. Glass is especially good because
23 of it's smooth surface, but also metals and
24 plastics that have a smooth surface as well.

25 Q. In your years of service with the

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1 forensics unit in North Charleston,
2 approximately how many crime scenes have you
3 observed?

4 A. Several hundred, quite a number.

5 Q. How often do you use fingerprint analysis
6 or your training in fingerprint analysis?

7 A. I work with fingerprints every day that I
8 come into work.

9 Q. Is it possible to be on a scene, be
10 somewhere and to not leave a fingerprint?

11 A. Yes.

12 Q. Explain that to me.

13 A. It all depends on the type of surfaces
14 involved. If you find a surface that is rough
15 or extremely porous, a lot of times they won't
16 hold a fingerprint.

17 Additionally if you do have a smooth
18 surface, not all the time will you leave a
19 fingerprint, due to either the hands being
20 clean enough to where they don't leave any
21 print on an item or the item may have been
22 wiped across and smudged, there may be no
23 readable or detectible print on the item(s).

24 Q. So it is possible for somebody to be
25 somewhere and not leave a print while they are

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1 there?

2 A. Oh, yes. Absolutely.

3 Q. Officer Coker, I am going to take you now
4 to -- you performed some analyses of lifts
5 that Sgt. Hallman took from the crime scene,
6 from one of the car.

7 A. (Affirmative nod).

8 Q. What were the results of the lifts he had
9 taken?

10 A. On two of the lifts I identified -- on
11 one of the lifts in particular I identified
12 fingerprints belonging to one Kashawn
13 (phonetic) Stephens and one to Kamela
14 Barnhart.

15 Q. Officer Coker, did you also have an
16 opportunity to observe an autopsy from this
17 murder?

18 A. Yes, I did.

19 Q. Explain to the jury why it is important
20 for somebody from North Charleston to attend
21 an autopsy?

22 A. The reason we attend an autopsy is
23 specifically for photographs of any injuries
24 the victims may have and to collect any items
25 of evidentiary value. In this case it would

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1 have specifically been the projectile or
2 bullet that was collected from this autopsy.

3 Q. Officer Coker, when you went to the
4 autopsy, did you collect any evidence?

5 A. Yes, I did. Collected a projectile, the
6 bullet.

7 Q. Did you also photograph the victim in
8 this case?

9 A. Yes.

10 Q. Officer Coker, did you also have an
11 opportunity to perform a GSR kit on the victim
12 in this case?

13 A. Yes, sir. The gunshot residue collection
14 was conducted the day of the shooting. By
15 State Law Enforcement Division protocol, we
16 have to do that within six hours of the
17 incident. The incident occurring in the
18 afternoon, it had to be done within six hours.
19 The collection of this gunshot residue was
20 done approximately 8:30 in the evening at the
21 Medical University of South Carolina.

22 Q. I just mentioned a GSR kit or a gunshot
23 residue kit.

24 A. Yeah.

25 Q. Tell the jury -- what is GSR?

1 A. GSR, gunshot residue is the metal in the
2 powder left behind after a weapon discharges.
3 Usually there is a cloud or a spray of the
4 powder after it is discharged which contacts
5 or settles on items around it.

6 Q. So if a gun is fired it leaves behind
7 particles?

8 A. That's correct.

9 Q. And this particles can come onto your
10 hand or onto your arms?

11 A. Or on clothing. Yes, sir.

12 Q. Why is it important for you to perform a
13 GSR kit so soon after an event has occurred?

14 A. In natural occurrence, your skin will
15 eventually slough off and you may lose the
16 particles of evidence after a time period.
17 Or the items may be wiped away, washed away.
18 We try to get it done within that time period
19 so that there is still fresh evidence there.

20 Q. Explain to the jury how you perform a GSR
21 kit.

22 A. A GSR kit is completed by using a
23 prepackaged kit which we receive from SLED.
24 In the field when we open it, we remove
25 several items out of it. One in particular is

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1 a small cannister, you pull the lid off of it
2 and inside that cannister it has a piece of
3 sticky surface which we use to touch the back
4 of the hand, the edge of the index finger and
5 the thumb. We save that. We do four
6 locations on the hands: back of the hand on
7 the left, back of the hand on the right and
8 the palm of each hand.

9 After we have conducted that first
10 portion, then we do the second portion of the
11 residue collection, which is taking two
12 sterile swabs, which are included in the kit,
13 applying a nitric acid solution, which is very
14 watered down, included also in the kit,
15 moisten the swabs and we swab those locations
16 as well. We then place each of those swabs --
17 or the swab together, each, the two of them,
18 in individual vials labeled with the
19 appropriate location that we collected the
20 item from

21 After that is done, we repackage all the
22 collected item into the kit, seal it and
23 submit it to SLED for testing.

24 Q. The procedure that you just described,
25 did you perform that procedure, as far as the

1 tests and the securing of the evidence, on
2 March 27th, 2007, on a victim named Sheldon
3 Frasier?

4 A. Yes.

5 MR. McCOY: Beg the court's
6 indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 MR. McCOY: Officer Coker, thank
9 you. Please answer any questions that Mr.
10 King may have for you.

11 MR. KING: Beg the court's
12 indulgence for one moment.

13 THE COURT: Certainly.

14 CROSS EXAMINATION

15 BY MR. KING:

16 Q. Officer Coker, you assisted Sgt. Hallman
17 in the crime scene?

18 A. Yes, I did.

19 Q. That is normally what you do, is crime
20 scene?

21 A. Of the two folks responding to a scene,
22 one of them assumes the primary investigation
23 responsibility and the other assists that
24 investigator.

25 Q. And you took some prints off the evidence

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1 that was found?

2 A. Some of the items processed had prints on
3 them and lift were made from those items.

4 Q. And you found fingerprint in the car?

5 A. I did not find fingerprints in the car.

6 I did not make any of the latent lifts.

7 Q. But you examined the lifts that came from
8 the car, right?

9 A. I believe so. I don't have the lifts
10 actually in front of me right here. I just
11 have my report.

12 Q. Did you find Kaseem Stephens's
13 fingerprints on those items?

14 A. I did not identify Kaseem Stephens's
15 prints.

16 Q. You don't have any evidence that showed
17 that Kaseem Stephens had anything to do with
18 the shooting?

19 A. No fingerprints evidence that I had; no,
20 sir.

21 Q. You testified about gunshot residue and
22 that just means that the guy that got shot,
23 Sheldon Frasier, he didn't shoot a gun?

24 A. If that -- that was the result of that
25 test, yes, sir. The reason for that test was

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1 to determine if the person that was shot had
2 discharged a firearm.

3 MR. KING: No other questions.

4 THE COURT: Redirect?

5 MR. McCOY: No redirect, Your
6 Honor.

7 THE COURT: May you, you may come
8 down, sir.

9 (WITNESS STEPS DOWN)

10 MR. McCOY: Your Honor, I would ask
11 that he also be excused.

12 THE COURT: Any objection?

13 MR. KING: No, Your Honor.

14 THE COURT: You are also free to
15 leave. Thank you, Officer Coker. State, call
16 your next witness.

17 MR. HALES: The State calls Keith
18 Elmore to the stand.

19 (WITNESS TAKES STAND)

20 KEITH ELMORE, being duly sworn to
21 tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY MR. HALES:

25 Q. Good afternoon.

1 A. Hi.

2

3 Q. Where do you work for?

4 A. I work for the North Charleston Police
5 Department.

6 Q. How long have you worked there?

7 A. Eight years.

8 Q. What are your duties today?

9 A. Today?

10 Q. At this point in time?

11 A. I am assigned to the uniformed patrol
12 division where I answer calls for service.

13 Q. Were you employed with North Charleston
14 back on March 27th, 2007?

15 A. Yes, sir. I was the lead investigator in
16 this case, working in the persons crimes unit.

17 Q. You were still with North Charleston?

18 A. North Charleston City. Correct.

19 Q. Did you receive a call on March 27th,
20 2007?

21 A. Yes, I did.

22 Q. Okay. Where were you dispatched?

23 A. I was sent to Trailwood Trailer Park.

24 Q. Where is that?

25 A. In the city of North Charleston, off of

1 Dorchester Road.

2 Q. Okay. Do you recall what time it was?

3 A. Approximately 4:00, 4:30.

4 Q. Do you remember about what time you
5 arrived?

6 A. I don't know exactly the time I arrived.
7 I was pretty much one of the first five
8 officers on the scene, I can say that.

9 Q. Did you have to prepare a report?

10 A. I did a supplement to my investigation.

11 Q. Describe to us what happened when you
12 arrived on the scene?

13 A. When I arrived on the scene that
14 afternoon there was -- the scene had already
15 started being mapped off by the officers
16 already on scene. Like I said, I was pretty
17 much one of the first five officers there. It
18 was across from the Police Department where
19 this location is.

20 I met with Sheldon, who was a friend's
21 house or trailer where he was sitting on the
22 steps; the victim, Sheldon.

23 Q. Describe how it looked when you
24 approached him.

25 A. He was covered in blood, holding a rag or

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1 towel to gunshot wound to his neck, just
2 sitting there. He was still sitting upright
3 and conscious but he was bleeding profusely.

4 Q. When you say you're the lead detective
5 assigned to a case, what does that mean?

6 A. I handled pretty much the whole case; I
7 collected evidence, made sure all the
8 paperwork is in order, everybody is doing what
9 they are supposed to do, and see that the
10 investigation is going smoothly.

11 Q. But you don't help crime scene. That
12 would be ---

13 A. No, that would be Sgt. Hallman who spoke
14 earlier.

15 Q. So you went up and you saw the victim
16 holding a towel to his neck?

17 A. (Affirmative nod).

18 Q. What did you do?

19 A. I went up to him and I -- I knew Sheldon.
20 I walked up to him and I was like, "Sheldon,
21 who shot you?" He said he didn't know. I
22 said, "You need to really think. Give me
23 something", you know. He just said that he
24 didn't know. I tried to get as much
25 information as I possibly could from him. He

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1 really didn't give me much.

2 At that time EMS arrived and I went ahead
3 and let EMS do what they needed to do. That
4 was more important at that time.

5 Then I went to the girlfriend and I spoke
6 with her.

7 Q. You said when you saw him, at this time
8 he had already been shot and he was holding a
9 towel to his neck; right?

10 A. Correct. He was holding a towel to his
11 neck and then somebody else was kind of
12 helping him.

13 (LADY IN AUDIENCE EMOTIONAL/CRYING LOUDLY)

14 THE COURT: Hold on second. We
15 need for that person to be removed from the
16 courtroom, please.

17 (LADY ESCORTED OUT OF COURTROOM)

18 THE COURT: You may continue.

19 MR. HALES: Thank you, Your Honor.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. HALES:

22 Q. Was there a lot of blood?

23 A. Yes, lots.

24 Q. Lots of blood?

25 A. Yes

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1 Q. Was he outside or inside the trailer?

2 A. He was outside the trailer, sitting on
3 the steps. I am sure the person that owned
4 the house didn't want to get all that blood
5 inside their residence and the did the best
6 that they could by helping him, sitting him on
7 the steps.

8 Q. There was that much blood?

9 A. Yeah, it was a lot of blood. It was a
10 red towel -- it was a towel that was white but
11 you would assume it was red if you'd just
12 looked at it. It was completely soaked in
13 blood.

14 Q. How long after you got there did EMS
15 arrive?

16 A. EMS got there probably within five
17 minutes of my arrival?

18 Q. What did they do? Transferred him to
19 hospital?

20 A. Correct. He was immediately transported.

21 Q. Do you know what hospital that he went
22 to?

23 A. He went to -- I would say Roper St.
24 Francis.

25 Q. If you don't remember, that's all right.

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1 A. I remember because I went down there. He
2 was in the E.R.

3 Q. Okay. After they took the victim,
4 Sheldon Frasier, I assume in an ambulance,
5 what did you do?

6 A. I spoke with the girlfriend, got a
7 written statement from her and got an
8 understanding of what was going on, started
9 investigating, spoke with some other officers,
10 and then at that time we got word that there
11 was a possible vehicle down the street that
12 matched the description that the girlfriend
13 gave of the suspect's vehicle, that the
14 suspect had arrived at the scene in.

15 Q. What did you do when you got that
16 information?

17 A. I drove down the street, which was pretty
18 much just like down the street and kind of
19 like around the corner. She was in the
20 vehicle with me. I stopped at that point
21 taking her statement from her. Uh, that area
22 where the vehicle was at was sealed off, there
23 was other officers there obtaining (sic) the
24 crime scene around it. When I pulled up, she
25 saw the car and she said 'yeah, that's the

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1 vehicle that I remember seeing him, the
2 suspect driving off and pulling up in.'

3 Q. Do you remember what address that was?

4 A I don't know off of the top of my head
5 but I can look in my file if you'll give me a
6 second.

7 Q. Did you prepare a supplemental report?

8 A. Correct.

9 Q. If you looked at that, would that help to
10 refresh your memory?

11 A. If I jotted down the exact address, I
12 could tell you, but I'd have to look to see.
13 (Upon review), -- [REDACTED] Orr Street.

14 Q. Okay. After you located that vehicle,
15 what did you do?

16 A. After we located that vehicle, I
17 continued to talk with the girlfriend,
18 finished her statement and, of course, crime
19 scene processed it and we obtained a search
20 warrant for that residence, conducted a search
21 of that residence and came up with --
22 developed some more possible people to
23 interview.

24 Q. Okay. During the course of your
25 investigation, you developed a suspect?

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1 A. Yes, I did.

2 Q. Who was that?

3 A. Nickname, "Nitty".

4 Q. Okay. How were you able to obtain that?

5 A. The name "Nitty" came from -- there was a
6 business card left behind in the vehicle that
7 had "Nitty" on it as a car detailer business
8 ran by Kaseem Stephens. It was his business.
9 The only identification was "Nitty" and where
10 he cleaned vehicles at.

11 Speaking with other witnesses and people
12 who were there they knew him by the name of
13 Nitty but didn't know his real name.

14 One of the -- I would have to find his
15 name -- excuse me just a second, please,
16 (reviewing report).

17 MR. KING: Objection. Hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: Bobby Moses gave
20 me the name of ---

21 MR. KING: Objection.

22 THE COURT: Sustained. You found
23 out the name. Move on.

24 DIRECT EXAMINATION CONTINUED

25 MR. HALES:

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1 Q. After you developed the suspect's name,
2 Nitty, what did you do?

3 A. After finding out his name, we obtained a
4 photo lineup.

5 Q. And what did you do with photo lineup?

6 A. Some time had passed by the time that I
7 got the lineup, it was processed and made, I
8 notified the victim's girlfriend to arrange to
9 show her the photo lineup.

10 Q. When did you show her the photo lineup?

11 A. I showed her the photo lineup the next
12 afternoon.

13 Q. When you said the next afternoon, are you
14 talking about the day after the shooting?

15 A. That's correct, on the 28th. The shooting
16 was on the 27th.

17 Q. Okay. Did you prepare the lineup?

18 A. No, I did not.

19 Q. It was prepared for you?

20 A. Correct.

21 Q. What did you tell Ms. Bates when you
22 showed her the lineup?

23 A. When I met with her, I advised her that I
24 had a series of pictures that I wanted her to
25 take a look at, to look at each picture/photo,

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1 and that if she saw any person in there that
2 was involved in the shooting of Sheldon, had
3 anything to do with it, to let me know; circle
4 it, sign it, date it, and then later tell me
5 what their involvement was.

6 I also advised her that there may not be
7 anyone at all in these pictures. We didn't
8 know for sure.

9 Q. What happened when you showed her the
10 lineup?

11 A. She observed the photo lineup and she
12 identified Kaseem Stephens as the person who
13 shot ---

14 MR. KING: Objection, based on our
15 previous Motion.

16 THE COURT: Objection overruled.
17 The rulings made previously on the record are
18 preserved and your objection is preserved.
19 Thank you. You may continue.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. HALES:

22 Q. Was that the first lineup that she had
23 been shown?

24 A. No, it was not.

25 Q. What happened with the earlier lineup?

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1 A. Like I stated before, we were trying to
2 find out who Nitty was. We got some names and
3 other things came up, uh, -- there was another
4 person with a nickname close to what we were
5 looking for, so we did a photo lineup of that
6 person and showed it to her while she was at
7 the hospital, which she didn't identify that
8 person or anyone in that lineup as having
9 anything to do with this case.

10 Q. Did you give her that same admonition
11 that you gave her in the second lineup?

12 A. Correct.

13 Q. Where you told her that there may or may
14 not be anyone in it?

15 A. Correct.

16 MR. HALES: May I approach, Your
17 Honor?

18 THE COURT: Yes, you may.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. HALES:

21 Q. I am going to show you what has been
22 marked as State's Exhibit 15. Can you take
23 a look at that?

24 A. Yes.

25 Q. Do you recognize that?

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1 A. Yes, I do.

2 Q. What is that?

3 A. This is the photo lineup that I showed
4 Kimberly Bates on the 28th, the next day.

5 Q. Okay. Can you please describe it for us.

6 A. It has six black males in the photo
7 lineup. Kaseem Stephens is one of the black
8 males in the lineup. They all are similar in
9 features, his particular picture is circled,
10 dated and signed by Kimberly Bates, and I have
11 written on there "as shown by Detective
12 Elmore."

13 Q. When you show that lineup, explain to us
14 what happened after you showed the lineup?

15 A. Once I advised her that there may be
16 someone who was possibly involved in this
17 case, if there is, 'circle it, sign and date
18 it' or that there may not be, I then handed it
19 to her, asked her to take a look at it. She
20 looked over the photos, she pointed to this
21 picture (second on top row) and pointed,
22 "That's him."

23 Q. After you showed her the lineup and after
24 she signed it, what happened to that lineup,
25 that piece of paper?

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1 A. I then stuck it up in my case file.

2

3 Q. You have been in control of that the
4 whole time?

5 A. Correct.

6 Q. Has that piece of paper been altered in
7 any way from the time when you showed it to
8 her until we have it here in court today?

9 A. Other than it's been marked as State's
10 Exhibit 15. That's the only thing, and that
11 was done today in court. Everything else is
12 original how I had it.

13 MR. HALES: At this time we would
14 move that State's Exhibit 15 be admitted into
15 evidence.

16 MR. KING: May we approach, Your
17 Honor?

18 THE COURT: Yes, you may.

19 (OFF RECORD BENCH CONFERENCE)

20 THE COURT: We've had a bench
21 conference. There was a previous objection
22 and, again, the ruling was overruled. There
23 have been some additional grounds given and we
24 will place them on the record during the first
25 break. Subject to the objection of counsel,

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1 it is admitted. State's Exhibit 15 is
2 admitted.

3 (SO ENTERED AS STATE'S EXHIBIT 15)

4 THE COURT: You may continue.

5 MR. HALES: Thank you, Your Honor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. HALES:

8 Q. After that, what did you do? After Ms.
9 Bates was able to identify the Defendant?

10 A. After she was able to identify him, that
11 gave me enough probable cause to swear out a
12 warrant for the arrest of Kaseem Stephens for
13 assault and battery with intent to kill.

14 Q. At that time, tell us why you swore out a
15 warrant for assault and battery with intent to
16 kill.

17 A. Sheldon Frasier was still alive at this
18 time.

19 Q. What date was that, that you swore out
20 that warrant?

21 A. The 28th, the same day that the photo
22 lineup was shown.

23 Q. What happened with that warrant?

24 A. That warrant was voided, because it was
25 no longer good after two to three day expired

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1 because Sheldon Frasier died of complication
2 from due to the gun wound to the neck.

3 Q. What did you do at that time?

4 A. After that the warrant was bumped up to
5 murder. I voided the warrant. I did -- I did
6 several attempts to locate Kaseem Stephens.
7 We did two News, live news with Channel 5, in
8 an attempt to locate Mr. Stephens.

9 Q. Was he eventually located?

10 A. Yes, he was located.

11 Q. Was he served with that warrant?

12 A. He was served with the murder warrant.

13 MR. HALES: Beg the court's
14 indulgence.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HALES:

18 Q. Corporal Elmore, going back to March the
19 28th, 2007, describe to us what Kimberly
20 Bates' reaction was when she reviewed the
21 lineup.

22 A. Her reaction when I showed her this
23 lineup was, without hesitation, "That's him,
24 that's him, that's the person that shot my..."
25 -- that shot Sheldon.

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1 MR. HALES: Please answer any
2 questions that Mr. King may have. Thank you.

3 THE COURT: Mr. King, you may
4 cross-examine.

5 MR. KING: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. KING:

8 Q. Corporal Elmore, ---

9 A. Yes, sir?

10 Q. --- you arrived a little after 5:00 --
11 the shooting took place close to 5:00 o'clock?

12 A. Around about between 4:00 and 5:00
13 approximately.

14 Q. And you arrived shortly afterwards,
15 within probably ten to fifteen minutes?

16 A. Shortly after. Sometime, ballpark
17 figure.

18 Q. Shortly after that Ms. Kimberly Bates
19 identified a maroon Cutlass, correct?

20 A. That's correct.

21 Q. And that was Jamol Greene's car?

22 A. Yes.

23 Q. Then you went to Jamol Greene's residence
24 at some point later to talk to him?

25 A. Yes, I did.

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1 Q. And he ran out the back door?

2 A. That's correct.

3 Q. And you said initially you had another
4 suspect, right? In the beginning?

5 A. We had another person matching a similar
6 nickname, that we wanted to show her just to
7 see if possibly that could in fact be the
8 "Nitty" that we were looking for.

9 Q. And Ms. Bates didn't pick anyone out of
10 that lineup?

11 A. Correct.

12 Q. Then you met with Ms. Bates the next day?

13 A. Correct.

14 Q. And you have a lineup with Kaseem
15 Stephens in it?

16 A. Correct.

17 Q. When you showed Ms. Bates that lineup,
18 you knew who the suspect was; right?

19 A. Yes, I did.

20 Q. And you showed her six photos, the
21 standard -- a six-photo lineup?

22 A. Correct.

23 Q. That's the standard procedure for your
24 office?

25 A. Correct.

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1 Q. She didn't look at twelve or twenty-four
2 photos; right?

3 A. No, she did not.

4 Q. She didn't look through a big book of
5 mugshots?

6 A. No, she did not.

7 Q. And all the pictures were shown all at
8 once, simultaneously?

9 A. Correct.

10 Q. Not one at a time, where you show her
11 first one person, then another? Right?

12 A. Right, it was not done that way.

13 Q. All the pictures were shown at once,
14 simultaneously?

15 A. Correct.

16 Q. And they have a form, right? An
17 admonition form. Are you familiar with that?

18 A. Correct.

19 Q. That is a form that has a paragraph
20 explaining the ID process to the person making
21 the identification?

22 A. Correct.

23 Q. And a spot for them to sign?

24 A. Correct.

25 Q. And to note their reaction at the time?

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1 A. Correct.

2 Q. You did not use one of those forms,
3 correct?

4 A. No, I did not.

5 Q. Now, you mentioned a business card with
6 "Nitty" on it. Do you have that card?

7 A. Correct.

8 Q. You were looking for Jamol Greene?

9 A. Yes.

10 Q. And after the shooting the name "Nitty",
11 Kaseem Stephens, was released to the public
12 and the newspaper, right?

13 A. Correct.

14 Q. As early as March 29th?

15 A. Correct.

16 Q. Then there were other articles as well in
17 the following days, is that right?

18 A. I don't know. I am pretty sure that
19 there probably was.

20 Q. And after all that -- so you had
21 completed the investigation though you'd
22 hadn't talked to Jamol Greene; right?

23 A. Had I completed the investigation?

24 Q. You had an arrest?

25 A. Correct.

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- 1 Q. Kaseem Stephens?
- 2 A. Correct.
- 3 Q. And you had not talked to Jamol Greene?
- 4 A. I needed to talk to Jerome (sic) Greene.
- 5 Q. Jamol Greene?
- 6 A. Yeah.
- 7 Q. You did not talk to him?
- 8 A. No, I did not.
- 9 Q. You didn't talk to him at all until you
- 10 received a letter from his lawyer, right?
- 11 A. That's correct.
- 12 Q. Containing his statement?
- 13 A. That's correct.
- 14 Q. On April 5th?
- 15 A. That's correct.
- 16 Q. You were the lead detective on this case,
- 17 right?
- 18 A. Yes, sir.
- 19 Q. And there was no gun found?
- 20 A. No, there was no gun.
- 21 Q. No murder weapon?
- 22 A. (No verbal response).
- 23 Q. No fingerprints?
- 24 A. No fingerprints of who?
- 25 Q. Of Kaseem Stephens?

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1 A. No.

2 Q. No other sort of scientific evidence of
3 Kaseem Stephens?

4 A. No.

5 MR. KING: No further questions.

6 THE COURT: Redirect?

7 MR. HALES: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. HALES:

10 Q. Mr. King asked you about admonition
11 forms.

12 A. Right.

13 Q. Why didn't you use it?

14 A. It was not necessary. It's just
15 something on paper stating that there may be a
16 person among these pictures that may have had
17 something to do with this case, or there may
18 not. I can say what I'd read off the paper.

19 Q. Basically what you said is what is in the
20 form?

21 A. Exactly. I probably said more.

22 Q. Was Jamol Greene ever charged within
23 anything in this incident?

24 A. No, he was not.

25 Q. Why were you looking for him?

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1 A. He was out there, he witnessed the
2 shooting, he knew the shooter, he needed to be
3 spoken to and he needed to tell his side of
4 what he saw.

5 Q. When was the warrant served on Kaseem
6 Stephens?

7 A. Approximately a year later.

8 Q. A year after ---

9 A. (Affirmative nod), after the shooting.
10 Right.

11 Q. I think you answered, but when was the
12 warrant sworn out for murder?

13 A. The warrant for murder was sworn out on
14 -- the incident was on the 27th, and I'd say
15 it was after the 30th when -- of course after
16 Sheldon Frasier deceased.

17 Q. During that time period, were there any
18 other suspects?

19 A. No, there were no other suspects.

20 Q. You were only looking for him?

21 A. For the -- for the charge of murder, I
22 was only looking for Kaseem Stephens.

23 MR. HALES: Thank you.

24 THE COURT: Recross?

25 MR. KING: No, thank you, Your

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1 Honor.

2 THE COURT: Thank you very much,
3 you may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: At this point, Ladies
6 and Gentlemen, given the hour, I think before
7 we start another witness that we will go ahead
8 and recess for the evening. The next witness,
9 I understand, will take some length, so we
10 will break for the evening. We would not
11 finish this case today anyway.

12 Please remember that you are not at
13 liberty to discuss this case outside the
14 courtroom, among yourself or with anyone else.
15 You also are not at liberty to talk with
16 anyone about this case, including anyone that
17 may be at home. When you go home tonight, if
18 they should ask you, please do not discuss the
19 case. If you do, you will have violated the
20 oath that you took this afternoon.

21 I would ask that you please be in
22 your jury room -- I have a matter not related
23 to this case scheduled for 9:15. I should be
24 finished hopefully by 9:45. If you will be in
25 your jury room by 9:45, we will return you to

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1 the courtroom as quickly as we can.

2 Have a good evening. See you
3 tomorrow.

4 (JURY OUT @ 4:50 P.M.)

5 THE COURT: Anything from the
6 State?

7 MR. HALES: No, Your Honor.

8 THE COURT: How many additional
9 witnesses do you have?

10 MR. HALES: I believe the State is
11 going to call three more witnesses, Your
12 Honor.

13 THE COURT: They are?

14 MR. HALES: They are Kimberly
15 Bates, Ila Simmons and Cynthia Schandl.

16 THE COURT: At this point do you
17 anticipate calling witnesses?

18 MR. KING: I plan to call at least
19 one, Your Honor, Dr. Van Wallendael, who is an
20 eyewitness expert. She's a doctor of
21 psychology ---

22 THE COURT: I'd have her available.
23 I'd have her here. You know, I would say -- I
24 would love to think we could get to her before
25 lunch. She needs to be available because I

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1 don't want to have to break, to have to wait
2 around for her to come. I'd say if she comes
3 by 10:30 or 11:00 o'clock, that would probably
4 be safe.

5 What I will do is I will delay going
6 to lunch to accommodate her schedule, assuming
7 we finish before 12:00. How long do you
8 anticipate her examination to be?

9 MR. KING: We are going to go
10 through things on the scene and maybe the ID
11 process, maybe thirty minutes.

12 THE COURT: Okay. Do you have a
13 lengthy cross-examination?

14 MR. HALES: I wouldn't anticipate a
15 lengthy cross-examination.

16 THE COURT: I wouldn't either
17 unless you have something you can nail them on
18 because they are what they are, they're
19 experts, it's an expert opinion. Okay.

20 Let's plan on her being here and we
21 will just see where we are. See you'all in
22 the morning, then. We will start back at 9:45
23 in this case.

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 MARCH 17, 2009 9:30 A.M.

2

3

(DEFENDANT PRESENT)

4

(OFF RECORD BENCH CONFERENCE RE:

5

EXPERT WITNESS QUALIFICATIONS)

6

7

THE COURT: Let the record reflect
that the Defendant is present. Good morning,
Mr. Stephens.

9

DEFENDANT: Good morning.

10

THE COURT: Bring in our jury.

11

(JURY IN @ 9:57 A.M.)

12

13

14

15

16

17

THE COURT: Good morning, Ladies
and Gentlemen. I hope that you had a good
evening. With all the hindrances of travel
this morning, and there were many, I
appreciate you being here and assisting us.
We are now ready to call the next witness.

18

MR. McCOY: Thank you, Your Honor.

19

20

The State would now call Ila Simmons with the
State Law Enforcement Division.

21

(WITNESS TAKES STAND)

22

23

24

ILA SIMMONS, being duly sworn to
tell the truth, the whole truth and nothing
but the truth, testified, as follows:

25

DIRECT EXAMINATION

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1 BY MR. MCCOY:

2 Q. Good morning, Ms. Simmons.

3 A. Good morning.

4 Q. Would you please tell the jury where you
5 work?

6 A. I am employed with the State Law
7 Enforcement Division, also known as SLED, in
8 the forensics laboratory of the Trace Evidence
9 department.

10 Q. Where is SLED located in the State?

11 A. In Columbia.

12 Q. How long have you been with SLED?

13 A. Almost nine years.

14 Q. Could you tell the jury a little bit about
15 your educational background?

16 A. I have a bachelor of science degree in
17 chemistry. After completing my bachelor of
18 science degree, I went to work at SLED as my
19 first place of employment.

20 During my first two years with SLED I
21 worked with a trace evidence examiner that is
22 SLED-certified and court qualified, who taught
23 me how to collect trace evidence, analyze
24 trace evidence and report on the evidence that
25 I examined.

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1 Q. Any other classes or training experience
2 that has helped you with your job at SLED?

3 A. Yes, sir. Throughout the nine years I've
4 attended at least one training class every
5 year in all the disciplines of trace. I'm a
6 member of the FBI's gunshot residue symposium,
7 which is where they invite people who analyze
8 gunshot residue all around the world to come
9 together to determine standards and practices.

10 Q. In your nine years with SLED, how many
11 times have you had the opportunity to test
12 gunshot residue kits?

13 A. I've probably analyzed over five thousand
14 gunshot residue kits.

15 Q. Now, Ms. Simmons, I want to take you to an
16 event that happened on 3-27-07. Did you have
17 an occasion or the opportunity to examine a
18 gunshot residue kit from that day, a homicide
19 case?

20 A. I did receive a GSR kit in this case.

21 Q. Who was the listed victim in that case?

22 A. It was Sheldon Ricco Frasier.

23 Q. Before we get going on the bulk of this
24 test and how you tested this material, explain
25 to the jury how you receive evidence that

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1 comes from South Carolina -- from Charleston.

2 A. From Charleston or any other agency that
3 submits something into our laboratory, we'll
4 bring their evidence into our central log-in
5 division. This is where all the evidence
6 comes through when it comes in. It is signed
7 a laboratory case number identifying each
8 piece of evidence with an item number. After
9 it is logged into our central log-in area, it
10 is stored in a secure room until we go down
11 and retrieve the evidence. When we retrieve
12 the evidence, we bring it back to our
13 laboratory and analyze the evidence.

14 Q. So evidence is secure once you receive it?

15 A. Yes, sir. When the agency brings it in,
16 it is placed into an envelope or box,
17 depending on the type of evidence, sealed and
18 initialed with a piece of evidence tape and
19 the information of the submitting agency.

20 Q. This is how you receive all GSR kits?

21 A. Yes, sir.

22 Q. Ms. Simmons, once you receive a kit, be it
23 any kit, for Mr. Frasier or anybody else, what
24 is the method that you use to test this GSR
25 kit?

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1 A. We begin by preparing the samples with a
2 bit of diluted acid. We then place them on an
3 instrument that tells us how much of three
4 specific metals is present that we're looking
5 for. We look for lead, barium and antimony.
6 The reason that we look for these metals is
7 because they are contained in the primer of a
8 cartridge that is placed into a gun and fired.

9 Q. So basically what do the results of a GSR
10 kit -- basically once you perform this, what
11 do the results show?

12 A. They can help us determine whether
13 someone hands were near a weapon when a weapon
14 was fired; either by firing the weapon or
15 either were just in the proximity of the
16 weapon when a weapon was discharged.

17 Q. Does a handgun that is fired leave these
18 three trace elements that you just described?

19 A. Yes, it will. However, they can be very
20 easily removed. Gunshot residue is like
21 flour, so if you get it on your hands, as soon
22 as you start making contact with other objects
23 it begins to be removed. If you wash your
24 hands, wipe them or just the natural absorbent
25 of your skin will all remove gunshot residue.

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1 Q. So is it your testimony that time is of
2 the essence once a crime has been committed, a
3 GSR test kit needs to be prepared by a police
4 officer?

5 A. Yes, it is. On a living person we will
6 not accept a GSR kit that is collected beyond
7 six hours from the shooting incident. That's
8 because, as I mentioned before, your skin is
9 absorbing these materials, you're sweating,
10 you're making contact with other objects and
11 all of these things remove gunshot residue.

12 Q. So what is SLED practice, that you won't
13 even accept a gunshot residue kit from any
14 agency if it is after six hours?

15 A. Yes, sir, on a living person.

16 Q. To use the test that you just described
17 to test a GSR kit once you've received it,
18 what were the results of your gunshot residue
19 on Mr. Frasier?

20 A. The quantities of the metals, that I
21 mentioned, that we found did not indicate
22 gunshot residue.

23 Q. Now, are examining both his hands?

24 A. Yes.

25 Q. Are you examining the outsides as well as

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1 the insides of his hands?

2 A. Yes, sir. In a gunshot residue kit,
3 samples are collected from the right palm,
4 another sample is collected from the back of
5 the right hand, a sample is collected from the
6 left palm and a sample from the back of the
7 left hand. All of these areas are sampled.

8 Q. So it would be your results of your tests
9 on the victim in this case, Mr. Frasier, that
10 none of the elements of any type gunshot
11 residue was left on either the outside of his
12 hands or the inside of his hands?

13 A. Correct. The quantities of these metals
14 that we found did not reach our threshold
15 levels, per se, for gunshot residue.

16 MR. McCOY: Beg the court's
17 indulgence.

18 THE COURT: Certainly.

19 MR. McCOY: Ms. Simmons, thank you
20 for your testimony. Please answer any
21 questions that Mr. King may have for you.

22 THE COURT: You may cross-examine.

23 MR. KING: Your Honor, I don't
24 have any questions for this witness.

25 THE COURT: Thank you, you may step

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1 down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Do you wish for the
4 witness to be excused?

5 MR. HALE: Yes, sir.

6 THE COURT: Any objection?

7 MR. KING: No, sir.

8 THE COURT: You are also free to
9 leave. Thank you, Ms. Simmons.

10 MR. HALE: The State would call
11 Dr. Cynthia Schandl.

12 (WITNESS TAKES STAND)

13 CYNTHIA SCHANDL, M.D., being
14 duly sworn to tell the truth, the whole truth
15 and nothing but the truth, testified, as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. HALE:

19 Q. Dr. Schandl, where do you work?

20 A. I work at the Medical University of South
21 Carolina here in Charleston.

22 Q. What is your title, your duties?

23 A. I am an assistant professor and a
24 forensic pathologist.

25 Q. What type of education have you received

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1 that allows you to be a pathologist?

2 A. Well, in order to become a forensic
3 pathologist, one must first have a bachelor's
4 degree. I have a bachelor's degree from
5 California State University in San Bernadino.

6 One must then go to medical school. I
7 came here to the Medical University of South
8 Carolina for my medical school training.
9 During that time I also completed a doctoral
10 degree in Pathology. So I completed medical
11 school and graduate school.

12 Following that, one must take board
13 examinations to become a medical doctor;
14 which I've done, so I am a medical doctor.

15 Then one must have training in the field
16 of pathology, which includes four years of
17 anatomic and clinical pathology, which they
18 call residency training. After that, one must
19 complete a one-year fellowship in the
20 specialty of forensic pathology. I've
21 completed all of that training of pathology,
22 the forensic pathology training at the Medical
23 University of South Carolina.

24 After the training, then one can choose
25 to become board-certified by the American

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1 Board of Pathology. I am board-certified in
2 Anatomic Pathology, Clinical Pathology and
3 Forensic Pathology.

4 Directly following my training I was
5 hired as staff at the Medical University of
6 South Carolina.

7 Q. How long have been there?

8 A. I have been at the Medical University
9 since 1991 and as staff since 2004.

10 Q. What are your duties at the Medical
11 University?

12 A. Well, they are many. They include my
13 position as a forensic pathologist, which
14 essentially is the performance of autopsies in
15 order to determine the manner and cause of
16 death. I have quite a number of other duties
17 that I also perform.

18 Q. I know in South Carolina that we have
19 pathologist and coroners. What is the
20 difference?

21 A. What we have in South Carolina, it is
22 known as a coroner state so the entire state
23 -- the state is divided into counties, as you
24 know, and each of the county elect an official
25 which is the coroner. That coroner is the

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1 individual who sends the forensic pathologist,
2 the doctor, the cases for examination. The
3 coroner, him or herself, the minimum
4 requirements for that position are a high
5 school diploma and, clearly, to be elected by
6 their populace; as opposed to the forensic
7 pathologist, who is a medical doctor with a
8 background in pathology and forensic
9 pathology.

10 Q. We've talked about the pathology and
11 you've mentioned forensic pathology. What is
12 forensic pathology?

13 A. Forensic pathology is -- well, first it
14 starts with pathology, which is the study of
15 disease, and when you put "forensic" in front
16 of it, it is the study of the cause and manner
17 of death and how those diseases are related to
18 the cause and manner of death.

19 Forensic pathology often concentrates on
20 areas of accidental death, homicidal death,
21 suicidal death or undetermined manner of death
22 that are considered, whereas other forms of
23 pathology might concentrate on natural
24 diseases, natural forms of death such as heart
25 disease or something like that. The forensic

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1 pathologist concentrates on those other kinds
2 of accidental, homicidal, suicidal.

3 Q. Do you have an estimate of how many
4 autopsies you have performed?

5 A. I've performed over a thousand autopsies.

6 Q. And have you had the opportunity to
7 perform autopsies where the victims have been
8 shot?

9 A. Yes.

10 Q. Do you have approximately how many of
11 those?

12 A. Oh, probably about two hundred or more.

13 Q. Okay. Have you testified in court
14 before?

15 A. Yes.

16 Q. Have you testified in State courts, South
17 Carolina State?

18 A. Yes.

19 Q. How many times?

20 A. About fifty.

21 Q. Have you been qualified as an expert
22 before?

23 A. Yes, sir.

24 Q. In all fifty?

25 A. Yes, sir.

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1 MR. McCOY: At this time the State
2 would move to have Dr. Schandl admitted as an
3 expert in the area of forensic pathology.

4 THE COURT: Do you care to examine
5 her as to qualifications?

6 MR. KING: No, Your Honor.

7 THE COURT: Very well, she will be
8 permitted to render opinions in that area.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. McCOY:

11 Q. Dr. Schandl, did you ever receive the
12 body of Sheldon Frasier?

13 A. May I refer to my report, please?

14 Q. Sure.

15 A. (Upon review), yes, sir, we did.

16 Q. What did you do when you received that?

17 A. We received the body to the morgue, which
18 is basically a refrigerator unit. Then when
19 we're ready to perform the autopsy, we bring
20 the body up from morgue into the autopsy
21 suite.

22 The body is laid upon the examination
23 table. At that point we begin our external
24 examination, which includes both photographic
25 documentation as well as written documentation

1 of what we see just by looking at the body.
2 We define features such as tattoos, hair,
3 length, eye color, that sort of thing, as well
4 as anything that we can see that is related to
5 therapy, surgery, those sorts of things that
6 you can see on the skin -- scars, also any
7 injuries that we might see. So we document
8 all of those things first.

9 When we've completed the external
10 examination, we then move to the internal
11 examination which is what is commonly thought
12 of as the autopsy, where a Y-incision is
13 formed and we actually open the body cavities
14 and look at the organs, then look both for
15 natural diseases as well as anything that may
16 have been caused by injuries.

17 All of these are performed during an
18 autopsy.

19 Q. Tell us about your findings of the actual
20 exam.

21 A. Yes. I find an entrance gunshot wound to
22 the back of Sheldon Frasier's neck, the back
23 left side of his neck. Upon dissection we did
24 find the bullet that was associated with that
25 injury.

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1 On the front of the neck there had been -
2 - he had gone to surgery. So he had gotten
3 shot and then he'd been taken to the hospital,
4 gone into surgery and in surgery they found
5 that his left internal carotid artery, the
6 very large artery that goes up to the brain,
7 had been transected; basically, it was
8 completely separated from itself, so about an
9 inch between the top portion of the artery and
10 the bottom portion of the artery when he got
11 to surgery. The surgeons were able to
12 reconnect that artery surgically and then
13 after that he -- he didn't fare well.

14 What we found was evidence of the
15 surgical interaction, so that artery had been
16 ligated or sutured closed; that surgery was
17 intact, that looked fine.

18 Then when we looked further in that
19 artery, what we found in it was a thrombosis;
20 so basically there was a blood clot in that
21 vessel that had been transected by the gunshot
22 wound, and that thrombosis/blood clot had
23 complete occluded that carotid artery that
24 formed that -- that basically extended up into
25 the brain. That blood clot then caused the

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1 brain not to get new blood to that side of the
2 brain, so we saw evidence of that.

3 As well, the left side of the brain
4 was very soft. There were lesions, so
5 basically a hole, a softening, a hole in the
6 left side of the brain.

7 The whole brain was swollen, from
8 not receiving blood over a period of time;
9 what they call anoxic, not getting any oxygen
10 due to (lack) of blood. The brain stem and
11 other structures had begun to what they call
12 herniate, so -- push down out of the skull
13 through the hole in the base of the skull.
14 The skull is a box. So if the brain expands,
15 it has nowhere to go but down; so it was
16 herniated.

17 We saw all of those effects at the
18 time of autopsy. Of course, we did recover
19 the bullet from the front of the neck. Other
20 things that we found at autopsy other than
21 those things that were related to injury were
22 evidence that he had donated organs for
23 transplant.

24 Q. So, if I may, the bullet caused the clot
25 in the blood flow to the brain; is that

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1 basically what happened?

2 A. The bullet ripped the carotid artery so
3 that it was torn in two. The tear, which was
4 caused by the bullet, led to the blood clot
5 which led to his death.

6 Q. Were you able to determine a cause of
7 death in this case?

8 A. Yes.

9 Q. What was that?

10 A. Cerebral infraction due to left carotid
11 artery and left middle cerebral artery
12 thrombosis due to left internal carotid artery
13 transection due to a single penetrating
14 gunshot wound to the neck.

15 Q. So basically that's what you just
16 testified to before, that the bullet caused a
17 tear, caused a clot, which prevented blood
18 flow?

19 A. That's correct.

20 Q. Were you able to determine manner of
21 death?

22 A. Yes, the manner of death was homicide.
23 We only have five manners: homicide, suicide,
24 natural, accident and undetermined. Of those
25 five, homicide was the most appropriate.

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1 Q. When did you perform this autopsy on Mr.
2 Frasier?

3 A. We performed the autopsy on April 1st,
4 2007, at noontime.

5 Q. What was the date of death?

6 A. His date of death was March 31st, 2007,
7 so -- at 4:00 o'clock in the morning.

8 Q. What was the date of injury?

9 A. The date of injury was March 22nd at
10 approximately 4:00 p.m.; also the same year,
11 2007.

12 Q. So he was shot on the 27th and died on the
13 31st?

14 A. That's correct.

15 Q. Is that something that happens sometimes,
16 where a gunshot wounds causes death later on?

17 A. Yes, it happens.

18 Q. You've seen it happen before?

19 A. Yes.

20 Q. Okay.

21 MR. McCOY: Beg the court's
22 indulgence one minute.

23 THE COURT: Certainly.

24 MR. McCOY: Thank you.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. McCOY:

2 Q. In your autopsy, do you do toxicology
3 reports?

4 A. We attempted to send emissions, blood
5 products, so as we've just described Mr.
6 Frasier was shot on the 27th but we didn't get
7 autopsy results until the 1st, so there was a
8 time lapse. To send blood that we had from
9 autopsy wouldn't have told us the toxicology
10 or what was in his blood at the time that he
11 was shot; which is what is of interest, what
12 we'd want to know, what was in his blood at
13 the time of the incident, in this case the
14 shooting. We did try to send those but the
15 quantity was very, very limited in the testing
16 that was able to be performed. Although we
17 attempted them, there were no results.

18 MR. McCOY: Thank you, Doctor.
19 Please answer any questions that Mr. King has.

20 THE COURT: You may cross-examine.

21 MR. KING: Your Honor, I have no
22 questions of Dr. Schandl.

23 THE COURT: Doctor, you may step
24 down.

25 (WITNESS STEPS DOWN)

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1 THE COURT: Do you wish for the
2 doctor to be excused?

3 MR. McCOY: Yes, sir.

4 THE COURT: Any objection?

5 MR. KING: No, sir.

6 THE COURT: Thank you. You are
7 free to leave, Doctor. You may call your next
8 witness, solicitor.

9 MR. HALE: The State would call
10 Kimberly Bates.

11 (WITNESS TAKES STAND)

12 KIMBERLY BATES, being duly sworn to
13 tell the truth, the whole truth and nothing
14 but the truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY MR. HALE:

17 Q. Good morning, Ms. Bates.

18 A. Hi.

19 Q. Can I call you "Kimberly"?

20 A. Yes, sir.

21 Q. How old are you, Kimberly?

22 A. I'm twenty-seven.

23 Q. Where do you live?

24 A. I live in Georgia.

25 Q. How many children do you have?

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- 1 A. I have four.
- 2 Q. Back in March of 2007 where did you live?
- 3 A. I lived in Trailwood.
- 4 Q. Do you remember that day?
- 5 A. Yes, sir.
- 6 Q. Okay. Tell us about that day?
- 7 A. It was the day that Sheldon got shot.
- 8 Q. Where did that happen?
- 9 A. In Trailwood Mobile Homes.
- 10 Q. Where in Trailwood Mobile Homes were you?
- 11 A. We were at Miss Sharon's house.
- 12 Q. That is a friend of yours?
- 13 A. Yes, sir.
- 14 Q. What happened?
- 15 A. He knew Miss Sharon as well as Mr.
- 16 Stanley, and I knew Miss Sharon and his
- 17 daughter.
- 18 Q. Who'all was there?
- 19 A. Well, there were -- there was a truck
- 20 outside with, I'd say, about three guys.
- 21 Q. What kind of truck was it?
- 22 A. It was like a tan Explorer.
- 23 Q. Did you know those guys?
- 24 A. No, sir.
- 25 Q. How did you'all get there?

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- 1 A. We drove up to speak with Miss Sharon.
- 2 Q. What happened when you got there?
- 3 A. Sheldon got out of the car and he went
- 4 over to talk to the guys that was outside.
- 5 There was also another guy out cutting the
- 6 grass.
- 7 Q. What did you do?
- 8 A. I was sitting in the car.
- 9 Q. Why did you stay in the car?
- 10 A. Because my girl was in the car with me.
- 11 Q. Tell us what if anything you perceived
- 12 while you were sitting in the car?
- 13 A. I saw Sheldon, he was standing out in
- 14 front of the car. All of a sudden I seen him
- 15 coming past the car with another following
- 16 behind him, shooting a gun at him.
- 17 Q. Let's talk about for a moment how you
- 18 were positioned in the car. How did you'all
- 19 pull up?
- 20 A. We pulled up on the right-hand side of
- 21 the Explorer, facing the trailer.
- 22 Q. So you're side-by-side with the Explorer?
- 23 A. Yes, sir.
- 24 Q. Facing the trailer?
- 25 A. Yes, sir.

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1 Q. So you are inbetween the trailer and the
2 road?

3 A. Yes, sir.

4 Q. Was there a space in between you and the
5 Explorer?

6 A. Yes, sir.

7 Q. Now, you say that you saw this man
8 chasing Sheldon. Explain that -- go --
9 explain that to us.

10 A. I was sitting in the car, looking at
11 Sheldon. I saw him coming by the side of the
12 car and that's when I looked and I saw another
13 guy, with a gun, and he was shooting a gun at
14 Sheldon. As Sheldon was running past the car,
15 I was looking at the guy with the gun and he
16 was running past the car, as well.

17 Q. How did he run past the car?

18 A. I mean, it wasn't like a fast-speed run.
19 He was just running and shooting the gun at
20 the same time.

21 Q. Were you able to get a look at the guy?

22 A. Yes, I was.

23 Q. Who was the guy?

24 A. The guy that is sitting over there.

25 MR. KING: Objection based on our

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1 pretrial Motion, *Neil v. Biggers*.

2 THE COURT: Objection noted and
3 overruled. Rulings previously given in this
4 proceeding still apply. Thank you.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. HALE:

7 Q. Could you describe him for us?

8 A. Well, he has on a black tuxedo (sic) with
9 braids in his hair.

10 Q. What table is he sitting at?

11 A. He's sitting over there (indicating), the
12 defense table.

13 MR. HALE: I would like the record
14 to reflect that the witness has identified Mr.
15 Kaseem Stephens.

16 THE COURT: It so reflects.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HALE:

19 Q. What happened after you saw Sheldon and
20 the defendant run by?

21 A. After that Sheldon ran behind the car and
22 then he fell to the ground, on the other side.

23 I got out of the car and I started
24 yelling, "What are you doing!? What are you
25 doing!?" I looked and I ran around and he was

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1 right there. As I saw him pulling the gun up,
2 I ran back to my car.

3 That was it.

4 Q. Take a moment and compose yourself.

5 A. (Pause).

6 Q. When you got out of the car were you able
7 to get a look at the guy again?

8 A. (Affirmative nod).

9 Q. How did all that happen?

10 A. Excuse me?

11 Q. How were you able to get a look at him?

12 A. I was so close. I was in front of -- he
13 was looking at me and I was looking at him.

14 Q. Okay. Explain to us the circumstances of
15 that, if you could.

16 A. I jumped out and I run up because I knew
17 that Sheldon had fell to the ground at that
18 time, and I was trying -- I was yelling,
19 asking him, "What are you doing? Why are you
20 doing this?" At that time, he's looking at me
21 and I'm looking at him. He started raising
22 his hand up and I said, "Oh no, no, no, no,
23 no." I ran back to my car and I jumped in the
24 car.

25 Q. So you'all were face to face?

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- 1 A. Yes, sir.
- 2 Q. About how long were you face to face?
- 3 A. I'd say about five seconds.
- 4 Q. How close were you to him -- you want me
- 5 to come closer? Tell me when to stop.
- 6 A. Right there.
- 7 Q. Right here?
- 8 A. Yes, sir.
- 9 Q. And you say that he raised his hand up?
- 10 A. Yes, sir.
- 11 Q. Okay. So you saw him twice during that
- 12 timeframe?
- 13 A. Yes, sir.
- 14 Q. Why did you jump back in your car?
- 15 A. Because when I seen him raise his gun up,
- 16 I thought that he might try to shoot at me.
- 17 Q. After you jumped in the car what
- 18 happened?
- 19 A. That's when I started seeing that every
- 20 body was driving off. I got in the car and I
- 21 looked back and Shel had run back across the
- 22 street. And I was getting in the car to go
- 23 figure out where he went to at the time.
- 24 Q. Did you see the Defendant, Mr. Kaseem
- 25 Stephens, leave?

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1 A. I seen the car when it -- that's when I
2 seen that there was a car that had back out
3 and at that time the car backed out that's
4 when I seen that it was the car that he'd got
5 into.

6 Q. What kind of car was it?

7 A. It was a burgundy Cutlass.

8 Q. Did you see that car drive off?

9 A. Yes, sir.

10 Q. You say that you went to find Sheldon?

11 A. (Affirmative nod).

12 Q. What did you do?

13 A. Once I saw that he was coming around -- I
14 drove probably about two trailers down and I
15 saw him coming from behind a trailer. I
16 parked the car, I got out, I grabbed him and
17 I walked him to the next trailer.

18 Q. Okay. What was his condition?

19 A. At this time he was bleeding from the
20 back of his head. He was able to walk to the
21 porch. I sat him down on the porch and he
22 just kept saying, "my head, my head, my head."

23 At this time a lady, Ms. Candy, she came
24 out and she said, "What happened?" I said
25 "someone shot him."

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1 She started calling 9-1-1. She called
2 9-1-1 and gave me the hone and I spoke with
3 the 9-1-1 dispatcher.

4 Q. Did he bleed a lot?

5 A. Yes, sir.

6 Q. Did 9-1-1 come?

7 A. Yes, sir.

8 Q. What happened when they came?

9 A. They took him away.

10 Q. Then what did you do?

11 A. I had to stay and talk with the
12 detective.

13 Q. Did you want to stay and talk with the
14 detective?

15 A. No.

16 Q. What did you want to do?

17 A. I wanted to go in the ambulance with him.

18 Q. Did you talk to the Charleston
19 detectives?

20 A. Yes, sir.

21 Q. What were you able to tell them? Were
22 you able to give a description?

23 A. They wanted me to describe the guy that I
24 saw. I told them that it was a burgundy
25 Cutlass, he had -- that he'd left in the

1 burgundy Cutlass. They'd found a burgundy
2 Cutlass and they wanted me to go and see if it
3 was the right car.

4 Q. Do you remember the description that you
5 gave?

6 A. I remember saying a burgundy Cutlass.

7 Q. Do you remember the description of the
8 guy that you saw shooting?

9 A. Yes, sir.

10 Q. What did you say?

11 A. I said he was a black male, he had like a
12 little afro, I said that he was probably about
13 twenty-three years old, a hundred fifty
14 pounds, skinny guy.

15 Q. A small, skinny guy?

16 A. (Affirmative nod).

17 Q. Do you remember about what height that
18 you said that he was?

19 A. I said that he was probably about 5'7".

20 Q. 5'7"

21 A. (Affirmative nod).

22 Q. When you say a little afro, you don't
23 mean like a big, huge ---

24 A. (Negative gesture) -- no, sir.

25 Q. Just like a little ---

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1 THE COURT: Was that a "No"?

2 Was your answer "no"?

3 THE WITNESS: No, it wasn't a
4 big afro.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. McCOY:

7 Q. Short haircut, cut short?

8 A. Yes, sir.

9 Q. And you say that you remember that the
10 officers wanted you to go look at the Cutlass?

11 A. (Affirmative nod).

12 Q. What were you able to tell the officer
13 about that?

14 A. They said to describe the color of the
15 Cutlass and I told them that it was a burgundy
16 Cutlass.

17 Q. Were you able to identify that car?

18 A. Yes, sir.

19 Q. Okay. Did the police show you any kind
20 of lineups or anything in this case?

21 A. Yes, they did.

22 Q. Let's talk about that. When did they do
23 that?

24 A. At the hospital.

25 Q. They showed up a lineup at the hospital?

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- 1 A. Yes, sir.
- 2 Q. What did you say about that lineup?
- 3 A. Nothing, I didn't see it.
- 4 Q. You didn't see ---
- 5 A. No, sir.
- 6 Q. --- in the lineup that they showed you in
- 7 the hospital you did not see the man who shot
- 8 him?
- 9 A. That's correct.
- 10 Q. What kind of lineup was it?
- 11 A. It showed pictures of African black guys,
- 12 lineup. Two or three.
- 13 Q. They were lined up?
- 14 A. They were sheets of paper.
- 15 Q. But you didn't recognize the guy that
- 16 shot him?
- 17 A. No, sir.
- 18 Q. Did you have an opportunity to look at
- 19 any other lineups?
- 20 A. Yes, sir.
- 21 Q. When was that?
- 22 A. The following day, the next day.
- 23 Q. The day after the shooting?
- 24 A. Yes, sir.
- 25 Q. What were you able to see in that lineup?

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1 A. I was able to recognize the guy that I
2 saw.

3 Q. Okay.

4 MR. McCOY: May I approach, Your
5 Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. McCOY:

9 Q. I am showing you what has been marked as
10 State's Exhibit 15, which is already in
11 evidence, (tendering to witness).

12 MR. KING: Objection, Your Honor.

13 THE COURT: Your objection is
14 noted.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. McCOY:

17 Q. Do you recognize that?

18 A. Yes, sir.

19 Q. What is that?

20 A. This is the lineup that they showed me
21 the following day.

22 Q. Do you remember who showed you that
23 lineup?

24 A. Yes, sir.

25 Q. Who was that?

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1 A. Detective Elmore.

2 Q. Describe what happened when you saw that
3 lineup?

4 A. I looked at the picture and I told him --
5 I pointed to the second person and I told him,
6 "This is him right here."

7 Q. Were you confident?

8 A. Yes, sir.

9 Q. You were sure that was him?

10 A. Yes, sir.

11 Q. If you could, describe that lineup.

12 A. It has six pictures of six black guys on
13 it.

14 Q. I know it's just faces but they look like
15 they are about the same age, same size?

16 A. They basically have or some of them have
17 the small little afro that I described.

18 Q. All right. Did Detective Elmore -- what
19 did he say when he showed you that lineup,
20 what did he tell you?

21 A. He told me that 'You may see the person,
22 you may not see the persons. If you do, let
23 us know.'

24 Q. So he didn't give you any indication as
25 to whether the guy was in the pictures or not

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- 1 in those pictures?
- 2 A. No, sir.
- 3 Q. Okay. Did you look at all the photo-
- 4 graphs on that page before you chose?
- 5 A. Yes, sir.
- 6 Q. Who is the man that you circled?
- 7 A. The man that I circled is the Defendant.
- 8 Q. That's the Defendant?
- 9 A. Yes, sir.
- 10 Q. Did you sign where you circled?
- 11 A. Yes, I did.
- 12 Q. Is that your signature?
- 13 A. Yes, sir.
- 14 Q. Now, Ms. Bates, are you positive today
- 15 that the man depicted in that picture is the
- 16 man seated at this table?
- 17 A. (Affirmative nod), yes, sir.
- 18 Q. Are you also positive that he is the man
- 19 that shot Sheldon Frasier?
- 20 A. Yes, sir -- (emotional).
- 21 MR. MCCOY: Thank you. Please
- 22 answer any questions that Mr. King has.
- 23 THE COURT: Ms. Bates, do you need
- 24 a break?
- 25 THE WITNESS: No, sir. I'm

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1 fine.

2 THE COURT: All right, you may
3 proceed, Mr. King.

4 CROSS EXAMINATION

5 BY MR. KING:

6 Q. Ms. Bates, first time that you saw the
7 shooter you were sitting in the car; right?

8 A. Yes, sir.

9 Q. And you see Mr. Sheldon Frasier running
10 past and also the shooter running past?

11 A. Yes, sir.

12 Q. So essentially the first time you see the
13 shooter you are in the car and he runs in
14 front of the car?

15 A. Runs along the side of the car.

16 Q. Runs down the side of the car?

17 A. Yes, sir.

18 Q. So you get a brief view of him at that
19 point?

20 A. Yes, sir.

21 Q. That would have been pretty brief, right;
22 maybe a few seconds?

23 A. Yes, sir.

24 Q. Then you got out of the car and you ran
25 towards him?

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- 1 A. Yes, I did.
- 2 Q. But you are also looking at Sheldon
- 3 Frasier as well?
- 4 A. Only know that he's on the ground at that
- 5 time.
- 6 Q. And you also saw the gun, right?
- 7 A. Yes, sir.
- 8 Q. And you described the gun in your
- 9 statement?
- 10 A. That's correct.
- 11 Q. And you said that at some point you'all
- 12 were facing each other?
- 13 A. Yes, sir, we were lined up facing each
- 14 other.
- 15 Q. Obviously you were afraid?
- 16 A. Yes, sir.
- 17 Q. And that was basically a few seconds as
- 18 well?
- 19 A. About five seconds.
- 20 Q. And during this time, obviously you're
- 21 upset?
- 22 A. (Affirmative nod).
- 23 Q. Were you crying at this point?
- 24 A. Yelling.
- 25 Q. Screaming?

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1 A. (Affirmative nod).

2 Q. How many shots did you hear?

3 A. Several shots.

4 Q. Did you hear eight or nine shots?

5 A. Yes, sir.

6 Q. And that's what you put in your
7 statement?

8 A. Yes, sir.

9 Q. Then the next day you met with Detective
10 Elmore and he showed you this lineup that
11 you're talking about?

12 A. I met with him at the hospital that same
13 night and also the following day.

14 Q. Well, we'll talk about the following day
15 when you saw this lineup that the solicitor
16 was showing you.

17 A. Okay.

18 Q. You looked at that photo lineup, right?

19 A. Yes, sir.

20 Q. And you looked at each of the pictures?

21 A. Yes, sir.

22 Q. There -- you also went back and looked at
23 them again?

24 A. Yes, sir.

25 Q. Is that right?

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1 A. I looked at a picture, I looked at number
2 two and knew it was him in number two. I
3 finished looking at the rest of the pictures
4 and I pointed back at number two.

5 Q. But you also went back and looked at all
6 the pictures again, right?

7 A. I looked at it one time.

8 Q. You looked at all the pictures, went back
9 and looked at all the pictures again, then
10 told the detective who you thought it was?

11 A. Yes, sir.

12 Q. So you looked at it maybe -- ten seconds,
13 is that fair, how long you looked at the
14 lineup?

15 A. I looked at it for probably a minute.

16 Q. A minute?

17 A. I looked at it, I looked at his picture,
18 I looked at the pictures, then I looked back
19 at all the pictures and I went back to that
20 picture.

21 Q. Would you say about a minute then as
22 being about the timeframe?

23 A. Well, I can't tell you. It was probably
24 about twenty seconds.

25 MR. KING: That's all the

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1 questions that I have.

2 THE COURT: Redirect?

3 MR. MCCOY: Just briefly, Your
4 Honor.

5 REDIRECT EXAMINATION

6 BY MR. MCCOY:

7 Q. Did you see anyone else there with a gun?

8 A. No, sir.

9 Q. Did Sheldon have that kind of weapon?

10 A. No, sir.

11 Q. That's all.

12 THE COURT: Recross?

13 MR. KING: No, sir.

14 THE COURT: Thank you. You may
15 come down, Ms. Bates.

16 (WITNESS STEPS DOWN)

17 THE COURT: Call your next witness.

18 MR. HALE: That's the State's
19 case, Your Honor.

20 THE COURT: All right. Ladies and
21 Gentlemen, at this point there are some
22 matters of law that I have to take up now out
23 of your presence. I need for you to go to
24 your jury room. Don't discuss the case. We
25 will be with you as quickly as we can. Thank

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1 you.

2 (JURY OUT @ 10:38 A.M.)

3 THE COURT: Any Motions from the
4 State at this point?

5 MR. HALE: No, Your Honor.

6 THE COURT: Mr. King?

7 MR. KING: Your Honor, at this
8 time the defense moves for a directed verdict,
9 I renew my pretrial *Biggers* Motion.

10 THE COURT: Right.

11 MR. KING: The identification by
12 Kimberly Bates is not reliable and the only
13 other eyewitness is Jamol Greene, who didn't
14 name Mr. Stephens as a suspect until ten days
15 had passed. Mr. Stephens name was already in
16 the media, it was already obvious that he had
17 already written a statement saying that it was
18 the same person the newspaper had as the
19 suspect. Based on that, under the evidence
20 submitted to the jury we would request a
21 directed verdict.

22 THE COURT: Of course, what you've
23 stated concerning Mr. Greene is very germane
24 and pertinent to the analysis of credibility
25 and believability. Mr. Greene -- obviously

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1 the jury will have to conform the testimony.
2 But in the light most favorable to the State,
3 it corroborates significantly the testimony
4 notwithstanding the challenge that you
5 certainly place on the record concerning
6 her, the accuracy of her identification.
7 But clearly that supports it, as well as the
8 testimony of Mr. Moore, who puts the Defendant
9 there at or about the time that this is
10 happening and in a vehicle that everybody
11 identifies as well, which is also another
12 corroborative, circumstantial fact that
13 supports the State's case.

14 Based on all the testimony, in the
15 light most favorable to the State, I must
16 respectfully deny your Motion.

17 Any other matters of law at this
18 point, Mr. King?

19 MR. KING: No, Your Honor.

20 THE COURT: Have you discussed with
21 Mr. Stevens his right to testify or not to
22 testify?

23 MR. KING: Yes, Your Honor.

24 THE COURT: And has he indicated to
25 you a decision on that issue?

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1 MR. KING: I believe that he does
2 not wish to testify.

3 THE COURT: Very well. Mr.
4 Stephens, good morning again, sir.

5 DEFENDANT: Good morning.

6 THE COURT: You may remain seated,
7 sir. Your lawyer, Mr. King, has discussed
8 with you -- and Mr. Stidham -- have discussed
9 with you your right to testify or not to
10 testify; is that correct?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: And you've had enough
13 time to reflect on that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Upon reflection and
16 conversation with your lawyers, Mr. King
17 indicates that you've decided not to testify.
18 Is that correct, sir?

19 DEFENDANT: Right.

20 THE COURT: Now, you realize and
21 understand that you have the right to testify
22 in this matter if you should chose to?

23 DEFENDANT: Yes, sir.

24 THE COURT: But it is also your
25 right, as I've already instructed the jury

1 generally, and certainly will renew that
2 instruction in my charge, that you have
3 nothing to prove and don't have to say
4 anything at all and you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: And it is your
7 Constitutional right not to not testify and if
8 you chose that, I would instruct the jury of
9 course that they cannot use that against you.
10 Is that your understanding?

11 DEFENDANT: Yes, sir.

12 THE COURT: Understanding fully
13 then your rights in this matter it is your
14 decision not to testify, is that correct?

15 DEFENDANT: Yes, sir.

16 THE COURT: Are you under the
17 influence of any alcohol or any medication
18 here today, or anything that you can think of
19 that would affect your ability to make a
20 decision of this nature?

21 DEFENDANT: No, sir.

22 THE COURT: And you are comfortable
23 with your decision?

24 DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with

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1 the manner in which your attorneys have
2 advised you concerning this matter and
3 represented you?

4 DEFENDANT: Yes, sir.

5 THE COURT: Thank you so much, Mr.
6 Stephens. Let me just state before I make a
7 specific finding that if at any point between
8 now and when Mr. King tells me that the
9 defense resets you change your mind, if you
10 will make that known to your attorneys they
11 can ask me to excuse the jury and we can have
12 further conversation about your right to
13 testify or to not testify. Of course if you
14 elect to stay with your decision and I hear
15 nothing from you to the contrary, I am assume
16 that you are still comfortable with your
17 decision and that it is your decision not to
18 testify. Is that fair?

19 DEFENDANT: Yes, sir.

20 THE COURT: Good enough. Thank you
21 very much. Do you (Mr. King) wish to present
22 any witnesses? I understand from our earlier
23 conversations that there may be one?

24 MR. KING: Yes, Your Honor. If I
25 could have maybe five or ten minutes. There

1 may be two witnesses. I've got to locate them
2 and ---

3 THE COURT: Let's be at-ease for
4 about ten minutes.

5 (BRIEF RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Are we ready? Mr.
8 King, is the Defendant ready to proceed?

9 MR. KING: Yes, sir.

10 THE COURT: Please let the record
11 reflect that the defendant is present.

12 MR. KING: Yes, sir.

13 (JURY IN @ 11:00 A.M.)

14 THE COURT: Thank you very much.
15 Thank you, Ladies and Gentlemen, we are ready
16 to continue. Mr. King, when we took our
17 recess the State had rested. Does Mr.
18 Stephens wish to present any testimony or any
19 witnesses for the jury's consideration?

20 MR. KING: Yes, Your Honor.

21 THE COURT: Call your witness.

22 MR. KING: The defense calls Dr.
23 Lori Van Wallendael.

24 (WITNESS TAKES STAND)

25 LORI VAN WALLENDÆL, being duly

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1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. KING:

5 Q. Dr. Wallendael, before we get started,
6 let's talk about the qualifications that you
7 have to testify about eyewitness identifica-
8 tion. Can you tell us about your educational
9 background?

10 A. I received my bachelor's degree in
11 Psychology from Murray College in 1982;
12 went on to do graduate work at Northwestern
13 University; received my master's and a Ph.D.
14 in 1986.

15 I have been teaching at the University
16 of North Carolina at Charlotte, where I am an
17 associate professor. As part of our duties
18 as tenured faculty duties we are expected to
19 stay active in research, publishing in peer-
20 reviewed journals, a research program, as well
21 as keeping educated about what is happening in
22 our field.

23 Q. Can you tell us about additional
24 education, what experience that you have in
25 doing research? What research have done and

1 how that relates to eyewitness testimony?

2 A. I have physically doing research in
3 eyewitness memory, the composition of lineups,
4 also voice recognition memory, basically
5 facets of how memory applies to the courtroom
6 procedures, helping jurors to understand
7 issues of memory.

8 Q. During the course of your research, have
9 you written any referee journal articles?

10 A. Yes, I have.

11 Q. Can you explain about that, what referee
12 journals are?

13 A. Yes. When you publish in a scholarly
14 area like Psychology, there is where you are
15 most encouraged what we call referee journals
16 where each article is carefully reviewed by
17 experts in your field. Typically you will
18 have two or three experts plus the journal
19 editor reviewing your work to make sure that
20 it is scientifically sound before it actually
21 gets published. Usually that means at least a
22 couple of rounds of revision before it
23 satisfies the reviewing editor and all the
24 reviewing editors. It's very carefully
25 controlled in terms of the quality research

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1 that gets out there.

2 Q. Have you written any journal articles in
3 this field?

4 A. Yes, I have.

5 Q. Can you explain -- how many articles have
6 you written?

7 A. I've probably published twenty, twenty-
8 five articles, total, in the area of memory
9 and thinking and I'd say ten of those have
10 specifically referred to eyewitness memory.

11 Q. And these were peer-reviewed journals?

12 A. Yes, these were peer-reviewed journals
13 and also chapters in books that were edited by
14 some of the top people in the field.

15 Q. Do you belong to any professional
16 organizations?

17 A. Yes, I do. I belong to an organization
18 called the American College of Law Society.

19 Q. Where do you work right now?

20 A. University of North Carolina at
21 Charlotte.

22 Q. Are you still, are you doing research
23 currently in this field?

24 A. Yes, I am.

25 Q. Have you testified previously as an

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1 expert in this field?

2 A. Yes, I have.

3 Q. How many times?

4 A. Probably between twelve and fifteen
5 times?

6 Q. Now, before we get into any opinions or
7 anything, can you tell us about the methods
8 used in this research. Is this new science
9 that we're talking about?

10 A. No, actually research in eyewitness
11 memory goes back a hundred years or more.
12 It tends to surprise my students. Most of the
13 research has come through, uh, since about the
14 1980s. There are a variety of methods used in
15 the research. We got from laboratory-
16 controlled experiments to tell the most about
17 cause-and-effect, but there's also what we
18 call field studies where we go out and test
19 the memory of people like bank clerks,
20 convenience store clerks. You know, people
21 who might actually encounter a crime some day.
22 We also do research with police departments in
23 looking at data from actual lineups.
24 Q. So this research and lab tests,
25 scientific methods that you use, are these

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1 typical methods used in psychology.

2 A. Yes.

3 Q. So these are the same types of tests that
4 could be done in any sort of psychological
5 research?

6 A. Right. Exactly.

7 MR. KING: Your Honor, at this
8 time I would move to admit Dr. Van Wallendael
9 as an expert in psychology, specifically human
10 memory as it relates to eyewitness
11 identification.

12 THE COURT: Do you wish to examine
13 her as to qualifications?

14 BY MR. HALE: Just briefly, Your
15 Honor.

16 THE COURT: Sure.

17 MR. HALE: You said that you
18 conduct field studies and lab studies?

19 THE WITNESS: Yes.

20 MR. HALE: With our lab studies,
21 what is your sample size -- when you conducted
22 your lab study?

23 THE WITNESS: In lab studies the
24 sample size is typically about a hundred
25 people.

1 MR. HALE: and your field studies,
2 what would be your sample size?

3 THE WITNESS: Typically smaller.
4 We recently have been looking at some data
5 from the Charlotte Mecklenburg Police
6 Department where we had about thirty or
7 thirty-two actual cases.

8 MR. HALE: And how many studies,
9 total, do you think that you have done?

10 THE WITNESS: Probably about a
11 dozen. Specifically I don't remember.

12 MR. HALE: That's all, Your Honor.

13 THE COURT: Do you ---

14 MR. HALE: No objection.

15 THE COURT: Very well. There is
16 no objection to her rendering opinions in the
17 area of eyewitness identification?

18 MR. HALE: No, Your Honor.

19 THE COURT: Very well. She will be
20 permitted to render opinions in that area of
21 psychology.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. KING:

24 Q. To follow up on what the solicitor was
25 asking you, in addition to conducting your own

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1 tests, have you read articles ---

2 A. Oh, yes.

3 Q. --- about studies, as well?

4 A. Yes. Some of my published papers are
5 what we call review of other people's
6 research, where we try to consolidate what has
7 been going on and bring out the main points of
8 what researchers have found; in other labs as
9 well as our own.

10 Q. Now, why would science -- why would you
11 as a scientist be interested in eyewitness
12 identification? What is the reason for that?

13 A. A lot of researchers are interested in
14 theoretical issues and are getting more and
15 more fascinated with the real-world
16 application of studies.

17 In case of eyewitness memory, there's
18 been increases interest over the last ten or
19 fifteen years because we know that when people
20 are erroneously convicted that identification,
21 or misidentification, turns out to be the most
22 common factor involved in someone who is
23 innocent who winds up being convicted. So
24 it's an area where there is obviously a lot
25 of potential for impact on the part of law

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1 enforcement to come up with ways to prevent
2 such misidentification or erroneous
3 convictions occurring.

4 Q. And you are familiar with the Innocence
5 Project?

6 A. Yes, I am.

7 Q. Can you explain a little bit about that
8 to the jurors?

9 A. The Innocence Project started when we
10 began to have DNS testing, entered into the
11 courtrooms, and there began to be a body of
12 evidence about cases where people who were
13 convicted and imprisoned were later exonerated
14 or proven innocent by DNA.

15 In fact, ne of the most egregious cases
16 was in my home state of North Carolina,
17 unfortunately.

18 That Innocence Project basically started
19 out with lawyers who were interested in
20 working with cases of possible erroneous
21 conviction. A number of research psychologist
22 got involved in things that are research to
23 try to explain why this misidentification
24 could occur and why someone who was very
25 certain could turn out to be honestly wrong.

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1 Q. So these studies, people like you,
2 scientists, were able to use DNA to exonerate
3 people who had been convicted in the past?

4 A. Right.

5 Q. Before they had DNA evidence?

6 A. Before we had known areas of
7 identification.

8 Q. And you said that of those people who we
9 know were wrongfully convicted the majority of
10 those were wrongfully convicted because they
11 were misidentified?

12 A. Right. Seventy-five to eighty percent of
13 those cases had involved eyewitness
14 identification.

15 Q. Let's talk about the eyewitness research.
16 Can you explain to us what eyewitness has
17 shown about the accuracy of eyewitness
18 identification and the likelihood of false
19 identification.

20 A. Sure. The first thing that you probably
21 need to realize is that memory doesn't work
22 like a tape recorder or a video camera or a
23 still photograph. Memory is a constantly
24 changing kind of thing.

25 From the moment that you experience

1 an event and try to encode it into your memory
2 throughout the time that passes between the
3 event and talking about it talking, being
4 tested about it later, right down to the
5 moment that you answer a question about the
6 event, whether it's talking to a police
7 officer or whether it is appearing in the
8 courtroom, your memory is susceptible to
9 change. We sometimes call it a reconstructive
10 process, because every time that you call that
11 memory back up you probably change something
12 about it in your mind.

13 So what we try to do via research is,
14 knowing that memory is flawed, and knowing
15 that no one is ever going to have a perfect
16 memory of a situation, what can you do to try
17 to predict situations where people are most
18 likely to make errors. We've learned a lot of
19 things about how memories get wrongfully
20 encoded or how they get changed over the
21 process of recalling and testing. It is those
22 factors that we tend to focus on in research,
23 to try to -- you know, forget -- in general
24 know when people are better or worse in
25 remembering.

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1 Q. Well, you mentioned encoding.

2 A. Uh-huh.

3 Q. Can you explain that a little bit for us?

4 A. Yes.

5 Q. To the extent that it's a scientific
6 word.

7 A. Yes, it is. Encoding is taking the
8 memory for the first time. We know that there
9 is a tremendous amount of information around
10 us every day that we don't even pay attention
11 to. So there's a lot of things that never
12 even really enter our minds.

13 For example, if I were to ask you, for
14 instance, to draw a picture of an ordinary
15 U.S. penny, even though you see them everyday
16 you'd probably have some problems trying to
17 remember which direction Lincoln's head is
18 facing, where the date is and what other words
19 are on the penny that we just don't pay
20 attention to.

21 There is a good reason for that. We
22 can't store everything in our minds. It would
23 be very inefficient. We need to try to out
24 the most important facts in our life to
25 remember.

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1 So whenever you have an event from
2 your life that you're trying to recall, the
3 first question we ask is how much of it was
4 really paid attention to, how much of it got
5 past our senses and into our memory for any
6 kind of permanent storage, and which details
7 were just lost or never attended to in the
8 first place.

9 Q. So when you have an eyewitness
10 identification there is always going to be
11 some crime committed that led to that?

12 A. Correct.

13 Q. All right. So -- I want to talk about
14 some things that might affect a person's
15 memory when they witness a crime.

16 Tell us about the relation between how
17 long an eyewitness has to view the perpetrator
18 at the time of a crime and their ability to
19 make an identification later. The time period
20 that they are able to view that person, what
21 have studies shown about that?

22 A. Sure. Basically commonsense would tell
23 you correctly that the more time that you have
24 to study something then the more likely you
25 are to remember it.

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1 When you were in school, teachers always
2 told you to study more, spend more time
3 reading, spend more time studying. It's the
4 same thing with your memory of events. The
5 more time you have to look at it the more
6 likely you are to be able to recognize it
7 later.

8 Of course, the problem with a crime
9 situation is that most criminals want to get
10 away as quickly as possible, so typically
11 there will be small amounts of time available
12 for an eyewitness to really view a person's
13 face before they get -- before they are able
14 to get a view and then running away.

15 Q. So if you had a witness, hypothetically,
16 if you had a witness sitting in a car and they
17 saw a perpetrator for a few seconds, running
18 past the car, and then later saw that same
19 perpetrator from maybe ten feet or so distance
20 for about five seconds. Now -- that's a
21 pretty short amount of time.

22 A. Yes.

23 Q. Has the research shown that makes a later
24 identification by that person less reliable?

25 A. Yes, it does.

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1 Q. All right. Are there any studies -- if a
2 witness says, 'I saw the perpetrator for five
3 seconds', are there any studies that show how
4 correct their estimation of time is? What do
5 the studies show about that?

6 A. The estimation of time tends not to be
7 one of our strong suits, because we are human
8 being. Particularly in a stressful situation,
9 we tend to overestimate the time that it took
10 to happen. For instance, if I simulate time
11 in a lab report and the actual simulation
12 takes ten seconds, when I ask people later how
13 long the event took and they may tell me
14 thirty seconds, a minute, two minutes. They
15 grossly overestimate the time that they
16 actually had to witness the event.

17 Q. And you'd mentioned stress.

18 A. Yes.

19 Q. I want to talk about that. How do
20 extreme levels of stress and anxiety affect
21 eyewitness identification?

22 A. Extreme levels of stress tend to make an
23 eyewitness account much less reliable. I
24 think we have kind of a myth in our society
25 that if something really stressful happened to

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1 you that it would be burned into your memory
2 and you'd never be able to forget it.
3 Research very consistently shows the opposite.
4 The more stress that you were under, the less
5 likely you are to be able to remember
6 something.

7 Basically what happens is that when
8 you're under stress your whole body's
9 resources are getting ready to either fight or
10 flee. Everything is focused on survival.
11 Your heart rate increases, your breathing rate
12 gets shallow, your body has to do something.

13 When that happens, your resources that
14 your body had get focused away from things
15 like your memory, particularly your ability to
16 pay attention.

17 We know that as people get under stress
18 that they are less able to pay attention to
19 details, they are more likely to miss details
20 because, you know, their mind is very
21 reasonably occupied elsewhere. They are
22 thinking about survival issues, they are not
23 thinking about memorizing details of someone's
24 face, build or clothing.

25 Q. So, for example, if you had a witness who

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1 was seeing their boyfriend get shot at, and
2 shot, would you consider that a high stress
3 moment?

4 A. I would think that would probably be one
5 of the most stressful moments of a person's
6 life.

7 Q. Extreme stress?

8 A. Yes.

9 Q. So the studies have shown that a person
10 is less able to remember during those times of
11 stress?

12 A. Yes.

13 Q. Now, does the presence of a weapon and
14 witnesses viewing the perpetrator with a
15 weapon, does that have an effect on eyewitness
16 identification?

17 A. Yes, it does. Above and beyond the fact
18 that weapons typically are present in
19 stressful situations, a weapon is also very
20 distracting. You see a gun, your attention is
21 drawn to it.

22 In fact, the research in this area got
23 started when police officers would tell
24 psychologists about times when they would be
25 interviewing a witness and somebody would give

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1 detailed descriptions of the gun and nothing
2 about the perpetrator's face. Because
3 people's attention gets drawn to that weapon.
4 That is the thing that is most immediately
5 threatening you and the lives of people around
6 you. The more attention you focus on the
7 weapon, the less attention you can focus on
8 anything else.

9 These studies where we compare the same
10 kind of situations with a weapon and without a
11 weapon, what we find is that not only are your
12 eyes drawn to a weapon but really your whole
13 mental focus is drawn. I mean, when there is
14 a weapon involved, people are less likely to
15 recognize the perpetrator later. They are
16 also less likely to remember what was said,
17 what went on, the perpetrator's voice, because
18 all aspects of your senses are being wrapped
19 up in paying attention to the gun.

20 Q. So if a witness saw a crime committed
21 with a gun and they wrote a statement
22 including a description of the gun, that is
23 not unusual at all?

24 A. No, not at all.

25 Q. Let's talk about the actual identifi-

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1 cation process itself, specifically photo
2 arrays, photograph lineups.

3 A. Okay.

4 Q. Are there standards or practices that
5 you've studies about how those should be
6 presented ---

7 A. Yes.

8 Q. --- to witnesses? Can you explain some
9 of that?

10 A. There are -- we begin with a set of
11 guidelines that began a few years ago by the
12 National Institute of Justice on how lineups
13 should be put together, administered, what
14 kind of instructions should be given. Most of
15 that has been based on psychological research,
16 as well as consulting with police about what
17 procedures are practical and what are not. A
18 lot of those guidelines are being instituted
19 by various states, that are making them laws.
20 So we do know a great deal about how to put a
21 lineup together and how to instruct a witness
22 so that we can decrease the chances of
23 mistaken identification.

24 Q. So if a witness is presented with a six-
25 photo lineup to make an identification, would

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1 it make it less reliable if that was not
2 actual photos but black-and-white photocopies
3 of photos? Does the quality of the photos
4 have any effect on the ability to make an
5 identification?

6 A. Yes, quality does have an impact. We
7 like to have a very clear, preferably color
8 photo that would show as much detail as
9 possible of the person's appearance, coloring
10 and so forth.

11 Q. And are there studies that show whether
12 or not presenting photos, six, simultaneously
13 is the best way to do it or not?

14 A. Most researches agree now, and a lot of
15 police departments are following suit, that
16 when you present six photos simultaneously,
17 lined up in front of a person, what it kind of
18 does to a witness is it encourages them to
19 compare the photos side by side and to pick
20 the one that looks most like the person that
21 they remember.

22 If in fact the perpetrator in the lineup,
23 that is very often the -- it leads to picking
24 the correct person. But if for some reason
25 the perpetrator is not in the lineup, the

1 police have the wrong suspect, let's say, very
2 often what a witness will do is zero in on
3 someone who stands out for some reason,
4 someone who looks familiar, someone who looks
5 more like the perpetrator but maybe not
6 exactly like them.

7 So what we've been trying to do lately is
8 to experiment with different ways of putting
9 lineups together and putting them in front of
10 witnesses. The research tends to show these
11 days that a better way is to actually present
12 the photos sequentially (sic) one at a time,
13 where the witness sees the photo; takes a look
14 at one photo, says 'yes' or 'no', what that
15 him or was it not. If they say 'no', then
16 they look at the second photo, the next photo,
17 the next photo.

18 One of the keys is not to know how many
19 photos they're going to shown. If you don't
20 want to put them under pressure, you know, of
21 'oh, my gosh, I've looked at eight photos and'
22 -- so it has to be number eight. So if they
23 don't know how many photos that they are going
24 to be shown, then basically what we hope is
25 that they're going to look at each photo

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1 individually and concentrate on the image in
2 their memory and say 'does this match my
3 memory or not'. So the one at a time viewing
4 is preferable, actually, to being able to
5 compare photos side by side.

6 Q. And would it make a difference if the
7 person who is presenting a lineup to a
8 witness, if that person knows who the suspect
9 is; does that make a difference?

10 A. Yes. One of the most important
11 guidelines that have been promoted by the
12 National Institute of Justice and by other
13 areas is what we call a blind lineup
14 presentation. Basically all that means is
15 that the person who actually presents the
16 lineup to the witness doesn't know who the
17 suspect is.

18 The reason is, for fifty or sixty years
19 in research we've known that researchers can
20 bias their own experiments just simply by
21 knowing what they're trying to prove.

22 So you can get participants in
23 experiments to behave pretty much the way that
24 you want them to just by subtle cues, your
25 body language or posture, you facial

1 expression. If you think about a lineup,
2 that's kind of a miniature scientific
3 experiment. A lineup administrator can do the
4 same kind of thing just by shifting of
5 posture, by the way that they look at you, by
6 the inflection in their voice when they say,
7 you know, 'Are you sure?' You know, it's a
8 kind of -- it kind of gives the witness hints
9 about whether they are supposed to pick anyone
10 or not, as to which person they are supposed
11 to pick. All of it is perfectly unconscious,
12 it's just basic human nature that we give off
13 cues to each other nonverbally.

14 If you get a person who doesn't know who
15 the suspect is to present the lineup to the
16 witness, they can't give any cues. They don't
17 know what the right answer is. They're just
18 objective. Some police departments are
19 actually using laptop computers to present
20 lineups now, which just completely wipes out
21 the human element so that there is no chance
22 of any communication going on.

23 Q. So what you're saying is that if I were a
24 police officer and I was presenting a lineup
25 to a witness, and I know who the suspect is, I

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1 could somehow communicate to that person who
2 to pick without even meaning to?

3 A. Yes.

4 Q. Just subconsciously?

5 A. Yes.

6 Q. I want to ask you about the confident of
7 a witness. Now, are there studies that show
8 that if a witness takes a stand, make an
9 identification and they are very confident in
10 that, are there any studies that show the
11 relationship between confidence and how
12 accurate their identification is?

13 A. Yeah. Many eyewitness studies will ask
14 the witness will indicate confidence. One of
15 the things that they respond to consistently
16 is that there is almost a nonexistent
17 relationship between confidence and accuracy.

18 Confidence tends to be affected by a lot
19 of things that don't really have anything to
20 do with being accurate or not. In some cases
21 it is kind of a personality variable, some
22 people are confident in their positions and
23 some people aren't. In some cases it has to
24 do with the situation that you're in, the
25 feedback that you're getting around your

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1 identification; you know, whether an officer
2 might say "thank you, good job". Or even if
3 the officer is neutral and the case ultimately
4 goes to court, you've got feedback there that
5 you picked the person that they expected you
6 to pick in the lineup and you're confidence is
7 going to increase there.

8 Unfortunately, what we see in the
9 laboratory is that sometimes people who are
10 accurate are not at all confident and
11 sometimes people who say that they are a
12 hundred percent accurate are a hundred percent
13 wrong.

14 Q. So the fact that a witness says "I am a
15 hundred percent sure that is the person", that
16 is not reliable?

17 A. That's -- no, not reliable.

18 MR. KING: I think that is all the
19 questions that I have.

20 THE COURT: Cross-examine.

21 CROSS EXAMINATION

22 BY MR. HALE:

23 Q. Good morning, Doctor.

24 A. Good morning.

25 Q. You've done some work in cross-racial

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1 identification, as well?

2 A. I have.

3 Q. Cross-racial identification, that is a
4 lot of times weaker than it would be if it was
5 the same race?

6 A. Yes, people are absolutely better at
7 recognizing people within their own race than
8 they are across races.

9 Q. Okay. Some of the points that you
10 touched on, just really quickly, you said that
11 seventy-five to eighty-five percent of cases
12 that are overturned by DNA. That doesn't mean
13 that seventy-five to eighty percent of the
14 cases are overturned. It means that seventy-
15 five ---

16 A. No, of the cases that we know.

17 Q. All right.

18 A. The majority involved.

19 Q. How many cases were confirmed by DNA
20 analyses, where the eyewitness identification
21 was confirmed by DNA? Do you know that?

22 A. No, I don't believe that we do.

23 Q. Okay. But suffice it to say that many
24 times cases for identification and the issue
25 of DNA later comes up are confirmed by DNA?

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1 A. Certainly.

2 Q. Now, let's talk about the time period of
3 viewing a suspect. You said the more time
4 that somebody has to view a suspect, the more
5 accurate they generally are.

6 A. Generally, yeah.

7 Q. Okay. Well, then would the same thing
8 hold true that if you're able to view somebody
9 more than one time that your accuracy would
10 also go up?

11 A. Yes.

12 Q. So if somebody saw somebody else at a
13 scene two times, at the same scene, would
14 their accuracy be at a higher rate than
15 normal?

16 A. Generally, yes.

17 Q. Okay. And all of these things that we're
18 talking about, less reliable, more reliable,
19 that in no way means that the identification
20 of any one person is right or wrong, it's just
21 factors that you're using to say that it is
22 more likely or less likely?

23 A. Exactly. It's relative. We're talking
24 on the average.

25 Q. Okay. You touched on the fact that many

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1 times when someone is shown a variety or six-
2 pack photo lineup, meaning that you've got six
3 pictures, they are generally -- they generally
4 feel a need to pick somebody?

5 A. Yes.

6 Q. They start comparing pictures on the page
7 and I guess they determine that 'this guy
8 looks the most like the suspect', so they pick
9 that?

10 A. (Affirmative nod).

11 COURT REPORTER: Is that a "yes"?

12 THE WITNESS: Yes.

13 COURT REPORTER: Thank you.

14 CROSS EXAMINATION CONTINUED

15 BY MR. HALE:

16 Q. So then if someone views a lineup, a six-
17 pack lineup, looks at it and did not pick
18 anyone but later was shown another lineup and
19 picked out someone, that would make that
20 identification more reliable; would it not?

21 A. It would at least rule out the fact that
22 this person was really, you know, jumping to
23 identify someone.

24 Q. Right. They weren't in a rush to
25 identify someone?

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1 A. Right.

2 Q. Okay. You touched a little bit on the
3 confidence of the witnesses and said that
4 sometimes people who are confident are wrong.
5 The inverse of that has to also be true, that
6 sometimes people who are confident are right?

7 A. Absolutely, otherwise you'd have a
8 perfect negative relationship.

9 Q. Right. Anytime that you ---

10 A. And we don't have that.

11 Q. Anytime that you've got a known, you've
12 got the inverse that is also -- true.

13 A. (Affirmative nod).

14 MR. HALE: Thank you, Doctor.

15 THE COURT: Redirect?

16 MR. KING: No, Your Honor.

17 THE COURT: Thank you. You may
18 step down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Do you wish the witness
21 to be excused?

22 MR. KING: Yes, sir.

23 THE COURT: Any objection from the
24 State?

25 MR. HALE: No, Your Honor.

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1 THE COURT: You are also free to
2 leave. Thank you. Do you wish to present any
3 additional witnesses?

4 MR. KING: Beg the court's
5 indulgence one moment, Your Honor.

6 THE COURT: Certainly.

7 MR. KING: The defense would call
8 Amber Moore.

9 (WITNESS TAKES STAND)

10 AMBER MOORE, being duly sworn to
11 tell the truth, the whole truth and nothing
12 but the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY MR. KING:

15 Q. Ms. Moore, where do you live now?

16 A. Dorchester Road.

17 Q. Who do you live with?

18 A. My mother.

19 Q. Do you live with anybody else?

20 THE COURT: Hold on just a second.
21 Ms. Moore, you're going to need to pull
22 forward so that you can speak directly into
23 that microphone. Pull it down so that you can
24 speak comfortably into it. Thank you.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. KING:

2 Q. Does anyone else live there?

3 A. Um-humm, my brother.

4 Q. What is his name?

5 A. Jamol.

6 Q. What is his last name?

7 A. Greene.

8 Q. You live with Jamol Greene?

9 A. Um-humm.

10 COURT REPORTER: Was that a yes?

11 DIRECT EXAMINATION CONTINUED

12 BY MR. KING:

13 Q. What about Charles Moore?

14 A. (No verbal response).

15 Q. Does you know him?

16 A. He lives with my aunt while he is there.

17 Most of the time, yeah.

18 Q. Is he your brother?

19 A. Um-humm.

20 THE COURT: Ma'am, you need to get
21 closer to the microphone and you need to
22 response 'yes' or 'no', verbal, please. The
23 lady is taking down what you're saying and you
24 need to say 'yes' or 'no' and not 'um-humm',
25 'uh-huh' or sounds. I do the same thing but

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1 for this record you need to say 'yes' or 'no'.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. KING:

4 Q. So you're the sister of Jamol Greene and
5 Charles Moore?

6 A. Yes, sir.

7 Q. Now, do you remember a shooting that took
8 place in your neighborhood on March 27th,
9 2007?

10 A. That's what I was told by officers.

11 Q. Do you remember that incident when the
12 police were there?

13 A. Um-humm.

14 Q. Where were living at that time?

15 A. Trailwood.

16 Q. In Trailwood?

17 A. George Street.

18 Q. Trailwood Mobile Home ---

19 A. Um-humm.

20 Q. Who did you live with then?

21 A. My brother Jamol and my other brother,
22 Charles.

23 Q. Do you remember what you did that day?

24 A. Yeah.

25 Q. Specifically I am talking about later in

1 the afternoon. Do you remember what happened
2 that afternoon?

3 A. I can remember pieces.

4 Q. Well, tell us what you did that day.
5 Tell us what happened.

6 A. I came home from school around 3:00, went
7 straight to sleep. I was woke by the
8 commotion of the police and everything
9 outside. We were escorted out of the house.

10 Q. Did you ever see Nitty or Kaseem Stephens
11 that afternoon?

12 A. No, sir.

13 Q. Did you -- you said you came home from
14 work?

15 A. School.

16 Q. At 3:30?

17 A. (Affirmative nod), around 3:30.

18 Q. That was it?

19 A. (No verbal response).

20 Q. Did you go anywhere else?

21 A. Uh-uh.

22 THE COURT: Was that a "no"?

23 THE WITNESS: (Affirmative nod).

24 No, sir.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. KING:

2 Q. Do you remember giving a statement to the
3 police?

4 A. Uh-huh.

5 Q. Do you remember signing a statement?

6 A. Yes, sir.

7 Q. It was given to Officer Fizon, Fazon
8 (phonetic)?

9 A. I don't remember his name.

10 Q. But it was that day, March the 27th, 2007?

11 A. Uh-huh.

12 Q. About 6:20 p.m.?

13 A. I don't remember the time.

14 Q. If you saw your statement, would that
15 refresh your memory?

16 A. Um-humm.

17 COURT REPORTER: Was that a "yes"?

18 THE COURT: Ma'am, you need to say
19 'yes' or 'no' for me, please.

20 THE WITNESS: (No verbal
21 response).

22 MR. KING: If I may approach
23 (witness), Your Honor?

24 THE COURT: You may

25 COURT REPORTER: Defense Exhibit 1

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1 for identification.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. KING:

4 Q. I am going to show you what's been marked
5 as Defendant's Exhibit 1 for identification.

6 Do you remember signing that statement?

7 A. (Upon review), yes, sir.

8 Q. That was given March 27th, 2007, about
9 6:20 p.m.; right?

10 A. (Upon review), yes, sir.

11 Q. In that statement you said something
12 different, didn't you? You said that you got
13 home from school at 3:30 and then you left the
14 house to go pick up Jamol Greene. Right?

15 A. It says that.

16 Q. Then you said that you returned with your
17 brother Jamie about 4:15 p.m.; right?

18 A. Yes.

19 Q. And -- well, let me ask you this, is that
20 true? Is that what happened?

21 A. I don't remember 'cause Jamol worked at
22 the same place that he's working today. He
23 gets off at 2:00.

24 Q. But you say -- you say that you don't
25 really remember, right?

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1 A. (No verbal response).

2 Q. You gave this statement ---

3 A. I can remember pieces.

4 Q. You gave this statement two years ago,
5 almost. Right?

6 A. Yes.

7 Q. So you agree that that statement is
8 probably a better record of your memory than
9 what you remember now?

10 A. Yes.

11 Q. So you did go pick up your brother like
12 it says in the statement, right?

13 A. I had to if I wrote it there, what's
14 written there.

15 Q. What I am concerned about is the burgundy
16 Cutlass, the car. When you got home from
17 school at 3:30, was the Cutlass there?

18 A. I don't believe the Cutlass was there.

19 Q. But you said in your statement back then
20 that it was there; right?

21 A. (No verbal response).

22 Q. You said (reading): "The Cutlass also
23 was parked in my driveway at 3:30 p.m. when I
24 got home from school." Right?

25 A. (Upon review), um-humm.

1 THE COURT: Was that a "yes"?

2 THE WITNESS: (Affirmative nod).

3 DIRECT EXAMINATION CONTINUED

4 BY MR. KING:

5 Q. And when you went to pick up your
6 brother, was the Cutlass there?

7 A. (No verbal response).

8 Q. When you went to pick him up at 4:00
9 o'clock, was the Cutlass there?

10 A. I don't really remember going to pick him
11 up.

12 THE COURT: Mr. King, approach,
13 please.

14 (OFF RECORD SIDEBAR)

15 THE COURT: You may continue.
16 Rephrase your question.

17 MR. KING: At this time, Your
18 Honor, I would move to admit her statement
19 into evidence.

20 THE COURT: Any objection to her
21 statement being admitted?

22 MR. HALE: No, Your Honor.

23 THE COURT: Very well, it is
24 admitted as Defendant's Exhibit 1 without
25 objection.

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1 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

2 THE COURT: You may proceed, Mr.

3 King.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. KING:

6 Q. You said in your statement back then, and
7 I understand that you say that you don't
8 remember today, that -- you wrote in your
9 statement then that at 4:00 p.m. that the
10 Cutlass was parked in the driveway. Right?

11 A. Ummmm, (affirmative nod).

12 THE COURT: Is that a "yes"?

13 THE WITNESS: Yes.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. KING:

16 Q. And that is your statement, right?

17 A. (No verbal response).

18 Q. You signed it?

19 A. (No verbal response).

20 THE COURT: Please answer the
21 question.

22 THE WITNESS: Sir?

23 DIRECT EXAMINATION CONTINUED

24 BY MR. KING:

25 Q. That is your statement. You signed it?

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1 A. (No verbal response).

2 Q. You signed it, right?

3 A. Uh-huh.

4 MR. KING: That's all the
5 questions that I have.

6 THE COURT: Cross-examine,
7 Solicitor?

8 MR. HALE: Just briefly, Your
9 Honor.

10 CROSS EXAMINATION

11 BY MR. HALE:

12 Q. Miss Moore, what you remember about that
13 day is that you came home and went to sleep?

14 A. Yes.

15 Q. Okay. That you didn't wake up until the
16 police came over to your house?

17 A. Yes.

18 Q. You didn't wake up at any time inbetween
19 that?

20 A. Not at all.

21 Q. So you got up at 4:15 or whenever you got
22 up, you went to sleep after you got home?

23 A. I mean, I guess.

24 Q. And you didn't wake up until the police
25 got there?

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1 A. Yes.

2 MR. HALE: That's all, Your Honor.

3 THE COURT: Redirect?

4 MR. KING: No, Your Honor.

5 THE COURT: Thank you. Miss Moore,
6 you may step down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Any additional
9 witnesses?

10 MR. KING: At this time the
11 defense rests.

12 THE COURT: Very well. Does the
13 State have any reply testimony to offer?

14 MR. McCOY: No, Your Honor.

15 THE COURT: Very well, thank you.
16 Ladies and Gentlemen, that would conclude the
17 evidentiary portion of this proceeding.

18 There are some matters that I have
19 to take up now out of your presence. I need
20 for you to go to your jury room. Do not begin
21 your deliberations, of course do not discuss
22 the case. We will be with you very shortly.
23 Thank you.

24 (JURY OUT @ 11:44 A.M.)

25 THE COURT: Any matters from the

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1 State at this point?

2 MR. McCOY: No, Your Honor.

3 THE COURT: Mr. King?

4 MR. KING: Your Honor, at this
5 point I would renew my previous *Neil v.*
6 *Biggers* Motion and renew my directed verdict
7 Motion.

8 THE COURT: Thank you, sir. The
9 previous rulings given on those Motions will
10 -- I would reaffirm those rulings, and the
11 record reflects the basis for the denial as
12 well as the basis to support it.

13 Along those lines, we did have a
14 bench conference concerning testimony
15 yesterday when you raised an issue -- I don't
16 think we ever put that on the record, the
17 witness ---

18 MR. KING: I objected to the photo
19 array being admitted into evidence on the
20 grounds that it was -- that the probative
21 value was outweighed by its prejudicial effect
22 because the jury could see that ---

23 THE COURT: The mugshot,
24 (affirmative nod).

25 MR. KING: I didn't want them to

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1 have that mugshot and assume or wonder,
2 'well, where did the police get this picture
3 of Kaseem Stephens.'

4 THE COURT: Correct, and the court
5 agreed that it was probably a shot taken when
6 he was arrested. There was nothing about the
7 photograph that was suggestive, that tied it
8 to any kind of mugshot other than the
9 conclusion that it was taken when he was
10 arrested. That is not unduly prejudicial.
11 Thank you, Mr. King.

12 Rulings previously given on all
13 other issues remain.

14 I normally have tried to -- we're
15 almost to the lunch hour. My concern is,
16 given today (St. Patrick's Day), I don't know
17 whether they can eat in an hour in Charleston.
18 That being said, I would like to move forward
19 with this case. Can we get lunch today for
20 them?

21 CLERK: Yes, sir.

22 THE COURT: I hate to do that but
23 I think it would be easier and much more
24 convenient today and afford them an
25 opportunity to get out of here before too late

1 this evening. We will push forward and they
2 will be given lunch. We'll take a break for
3 lunch after we've argued and charged. You
4 won't have to miss your lunch either.

5 Why don't you (clerk) go ahead and
6 take their (lunch) order, so that we can get
7 those.

8 Any requests to charge from the
9 State? I intend to charge murder.

10 MR. HALES: I agree, Your Honor.

11 MR. KING: Let me -- one moment.

12 THE COURT: Absolutely.

13 MR. KING: Your Honor, I would
14 request voluntary manslaughter.

15 THE COURT: Based on what?

16 MR. KING: I believe that when
17 Jamol Greene testified that he testified that
18 the shooter and Mr. Sheldon Frasier got into
19 an argument before the shooting.

20 THE COURT: We don't know what the
21 basis of that argument was. We don't know
22 anything about it. Just every argument, I
23 don't think -- and, more importantly, it's
24 been your position and I guess that's the
25 whole purpose of the testimony, that he wasn't

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1 the shooter.

2 MR. KING: I understand. That's
3 my understanding. But I think that it is
4 possible that the jury could determine that
5 there was an argument which could have been
6 sufficient provocation; that if they believe
7 Mr. Stephens was the shooter, that he really
8 came up on the scene pretty quickly, that it
9 couldn't have been something that was planned
10 because they were just going to visit friends.
11 It happened on the spur of the moment, an
12 argument occurred ---

13 THE COURT: Except for one thing.
14 This is where it runs amuck and that's why I
15 don't think that -- I don't think that it's
16 there. I remember that, and there was some
17 testimony -- and I think that it was objected
18 to -- concerning pulling a gun on him the week
19 before or something to that effect. I think
20 that there was an objection made and I
21 sustained the objection. The jury may have
22 heard that. Of course, we didn't tell them,
23 I didn't give a curative instruction. In the
24 light most favorable to the defendant, yeah,
25 there was some discussion. We don't know

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1 about what, and that's the problem because Mr.
2 -- I don't remember Mr. Greene testifying to
3 the substance of it other than that there was
4 an argument.

5 So whether or not there was
6 sufficient legal provocation, I don't have any
7 bias to rule on that. There is no evidence to
8 support it other than an argument, and we know
9 that every argument doesn't warrant voluntary
10 manslaughter.

11 Taking what you're said to be the
12 case, if the shot -- if there was some
13 testimony that says that the first shot is the
14 one, that's maybe more supported. The problem
15 is that there is testimony there was shooting,
16 then there is testimony that the victim ran,
17 then there was another shot, which clearly at
18 that point there can't be an legal provocation
19 for that.

20 There's nothing there. I mean, I've
21 got to fabricate some basis that there is a
22 reason to shoot somebody when they are running
23 away. I don't think that exists.

24 So I -- I've thought about it. The
25 State opposes that, I assume. You know,

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1 sometimes I just -- after the ruling in
2 *Cottrell*, I almost want to just charge them
3 all the time, because I didn't think that was
4 legal provocation either. Still don't. The
5 Court said otherwise.

6 What is your position?

7 MR. HALES: The State would oppose
8 a charge of manslaughter based on the evidence
9 present at trial.

10 THE COURT: I just don't -- I guess
11 I will become the judge that makes the
12 greatest law on voluntary manslaughter but I
13 just don't believe that it is there in this
14 case.

15 I don't quarrel with you that there
16 are factors that may form the basis for a
17 voluntary manslaughter charge. The problem
18 that I have, from the State's perspective, I
19 don't have any because the position that the
20 Defendant has taken is 'I am not the shooter.
21 I didn't have any discussion, I didn't have
22 any argument.'

23 As I understand it, you've attacked
24 Mr. Greene that he's misidentified your
25 defendant and certainly attacked Ms. Bates

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1 that she misidentified the Mr. Stephens.

2 I don't have a basis for any kind of
3 -- for any other person to be having an
4 argument. If he is not the person who was
5 having the argument, then -- I mean, there's
6 no question that he was the person who shot
7 him, they know that. But your argument is
8 that he never had an argument, that he wasn't
9 him.

10 I realize the jury could believe
11 parts of a witness' testimony and maybe they
12 believe some but not all, but -- I just don't
13 think that there is a basis for it, but your
14 request is noted.

15 MR. KING: Thank you.

16 THE COURT: Thank you. Anything
17 else? Any other requests to charge?

18 I am going to charge about
19 identification, the typical language that we
20 typically charge. I think that is consistent
21 with that, that that has to be satisfied
22 beyond a reasonable doubt that he is the
23 person that was the shooter, basically. I use
24 it as 'these are factors that you may consider
25 in determining the accuracy of the

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1 identification', the length of time, the
2 lighting and all the standard conditions for
3 that charge.

4 I believe that's the only
5 exceptions. The only other one, unusual one
6 are the ones added -- I am going to charge
7 expert testimony since we had two experts
8 testifying. I will charge that, that they
9 aren't bound by the expert's opinion(s), that
10 they have to treat the experts the same as any
11 witness.

12 Other than that, anything else?

13 MR. HALES: No, Your Honor.

14 MR. KING: No, sir.

15 THE COURT: Let's take about ten
16 minutes. Well, about 12:00. She is taking
17 their lunch orders and they should be through
18 by then.

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 THE COURT: Let the record reflect
22 that the Defendant is present. Anything from
23 the State before we bring the jury in?

24 MR. MCCOY: Nothing from the State,
25 Your Honor.

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1 THE COURT: From the Defendant?

2 MR. KING: No, Your Honor.

3 THE COURT: Bring in our jury,
4 please.

5 (JURY IN @ 12:05 NOON)

6 THE COURT: Thank you very much,
7 Ladies and Gentlemen. Given the hour -- I'm
8 sure if you had to pick that it would be
9 probably to go ahead and leave and come back.
10 I'm sorry for having to eat in here but,
11 hopefully, it will get you moving towards
12 conclusion. None of us know, and you
13 certainly don't know, anything about how long
14 our deliberations will take. I wanted to get
15 the case to you as quickly as possible so you
16 would have as much time as possible, without
17 pressures, so that's why we are ordering
18 lunch. Hopefully you will find it
19 accommodating.

20 Also, I'm familiar with the juror
21 that has -- I understand that there is a juror
22 that has seafood allergies. I have a son that
23 is allergic to shrimp, so I understand about
24 those problems and dealt with them over the
25 years. I don't think he has reacted to the

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1 smell but I know that they can be that
2 dramatic. So what we're going to do is make
3 sure that no seafood goes in the jury room.
4 So anybody that is getting a seafood dinner,
5 we will have another room for you. Make sure
6 -- the instruction is that that will be eaten
7 someplace else so that the jury room has no
8 contamination whatsoever. Thank you very much
9 for calling that to our attention, as well.

10 Thank you for your attention thus
11 far. We've completed the evidentiary portion
12 of this proceeding. There still remains the
13 closing arguments and, of course, the charge
14 on the law. Both are very important to the
15 ultimate decision that you will make in this
16 case and that is what you find to be the true
17 facts and what your decision is based on the
18 law.

19 While you won't hear any more
20 evidence, it is still -- the attention you've
21 given thus far is requested again. Please
22 give the attorneys your attention because
23 their remarks, I'm confident, will be
24 beneficial to you when you do start the
25 process of analyzing this case.

1 After their closing arguments, I
2 will then give you the instruction on the law.

3 You may proceed, solicitor.

4 MR. HALES: May it please the
5 Court?

6 THE COURT: Yes, sir.

7 MR. HALES: Ladies and Gentlemen of
8 the jury, I am just going to briefly open -- I
9 am just going to sort of give you the law that
10 is involved in the case, then Mr. King will
11 get up and give his closing remarks and then I
12 will get to address you again to give you my
13 closing remarks. This is just an outline of
14 the law that you are going to use in the case.

15 This is the South Carolina Code of
16 Laws, Title 16, the criminal code. In the
17 criminal code, we have a defendant of murder.
18 "Murder" is the killing of another with malice
19 aforethought, express or implied.

20 What does that mean?

21 The killing of a another person,
22 that's pretty simple. Basically one person
23 kills another. It's not a person by accident,
24 not a suicide.

25 Now, the other part of that sentence

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1 ends with "malice aforethought". What does
2 that mean? Well, malice means ill will,
3 hatred, wanting to do something bad.

4 Aforethought means that you had to have
5 that malice before you committed that act.
6 That doesn't mean that you had to sit at home
7 planning it for weeks or days, hours or even
8 minutes. You can have that malice right
9 before you strike the fatal blow. That is
10 malice aforethought. That's what is required
11 for murder in the state of South Carolina.

12 The meaning of express of implied,
13 that just means that you can imply malice from
14 the actions and evidence in a crime or that it
15 can be express. It can be something like, "I
16 am going to kill you." Or it can be something
17 implied.

18 In a criminal trial the State has
19 the burden of proof. The State of South
20 Carolina has the burden of proof. The burden
21 of proof in a criminal trial is beyond a
22 reasonable doubt. That does not mean all
23 doubt, that does not mean every doubt out
24 there has to be erased. What it means is that
25 -- a reasonable doubt is a doubt that would

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1 make a conscientious person hesitate to act.
2 There is nothing in this world that we know
3 with a hundred percent certainty. You can
4 almost sure that the sun will come up tomorrow
5 but you can't be positive until it actually
6 happens. Reasonable doubt, as I stated, is
7 just any doubt that would cause a reasonable
8 person to hesitate to act.

9 Thank you. I'll address you again
10 in a few moments.

11 THE COURT: Thank you, Mr. Hales.
12 Mr. King.

13 MR. KING: It's pretty bad to see
14 the News and see that another person has been
15 shot in Charleston, another murder. We see a
16 lot of them these days, it's a bad thing, a
17 tragedy.

18 Another terrible thing that could
19 happen here today is that an innocent person
20 could be convicted of murder. We don't want
21 two tragedies.

22 I talked to you in my opening
23 statement about the presumption of innocence.
24 I explained to you how the law requires you to
25 have this resistance to believe that someone

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1 committed a crime simply because they are
2 charged with it. The prosecutor has to
3 present evidence that convinces you beyond a
4 reasonable doubt. As the solicitor explained,
5 a reasonable doubt is a doubt that would cause
6 a reasonable person to hesitate to act.

7 The State hasn't proven that in this
8 case. It is not reliable testimony. We've
9 got Jamol Greene. Why would you believe what
10 Jamol Greene has to say? He's a convicted
11 felon, he ran from the police, they couldn't
12 find him for days. He saw it on the news and
13 as he said on the stand, he said that he read
14 an article in the paper about it and that it
15 sounded like he was a suspect.

16 Now, nine or so days have passed
17 since the shooting and he hadn't been in
18 contact with the police. He finds out that he
19 could be a suspect, so what does he do? He
20 immediately goes to his lawyer and writes a
21 statement that Kaseem Stephens did it, the
22 same person that the paper and the media is
23 already saying is the suspect. That's an easy
24 choice for him. Did he think he was a
25 suspect? That's a no-brainer. They already

1 had a suspect who did it. Nine days after the
2 shooting.

3 Then his brother, Charles Moore,
4 come in to help him out. Charles Moore comes
5 in yesterday and he said that Nitty was
6 driving the Cutlass, that he stopped by for a
7 little bit, he left, came back about five or
8 ten minutes later and got the Grand Am.

9 That's Jamol Greene's brother. I
10 asked him on the stand if he cares about his
11 brother. He knew that he had probation he had
12 to do, already a convicted felon.

13 He also said that there was nothing
14 unusual about that. He didn't say that Kaseem
15 Stephens came in sweating, breathing heavy.
16 He said there was nothing unusual about him
17 coming in, getting the Cutlass, getting the
18 Grand Am, nothing unusual at all.

19 So we're supposed to believe that
20 Kaseem Stephens had just shot someone, ran --
21 shot someone, raced back to his car, then
22 calmly walked in to ask for the keys to the
23 other car.

24 I didn't believe that the was
25 telling the truth and that's why I called

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1 Amber Moore, who is their sister, and I don't
2 think what she's saying matches up with what
3 they're saying.

4 I don't know if Jemol Greene was the
5 shooter, if he was involved in the shooting,
6 but there's something wrong with what he said.
7 The solicitor is asking you to convict a man
8 of murder and you can't do it on that kind of
9 evidence, because you've got to be sure.
10 That's what the law requires.

11 I am sure that it would make all
12 twelve of you feel better, and also Mr.
13 Stephens, as well.

14 So after those two witnesses, they
15 call the crime scene. All right. That's what
16 we are looking for, let's back up what these
17 witnesses are saying.

18 Crime scene doesn't have a single
19 piece of evidence to help us make that
20 determination. They show us some photographs
21 of a shell on the ground, a bullet shot into a
22 trailer, but those photographs don't help you
23 at all in deciding whether or not Kaseem
24 Stephens was the shooter. So you've got no
25 help from them.

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1 Then the officer testifies. He
2 couldn't explain when he got to the scene how
3 the shooting took place, he never interviewed
4 Jemol Greene, he never interviewed him face to
5 face. He got a letter in the mail from his
6 lawyer, nine days after this happened. He'd
7 jumped to the conclusion that they had the
8 right guy, then he gets a letter from Jamol
9 Greene saying that it's the same guy, so case
10 closed.

11 That is not what we want in a murder
12 charge.

13 He mentioned the business card,
14 about a business card being found. Where is
15 that business card?

16 You've got this evidence here
17 (indicating exhibits), all admitted. This
18 isn't going to help you in deciding who did
19 this. If there was a card, why don't we have
20 it? I don't believe that there is one. There
21 is no card.

22 Now, Kimberly Bates. She obviously
23 suffered a terrible loss. But you've really
24 got to think about whether or what she said
25 was reliable. That's why I called Dr.

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1 Wallendael, because -- basically what she said
2 is that they have done tests that have shown
3 where people convicted of crimes where they
4 were really innocent, the majority of those
5 people were convicted because they were mis-
6 identified by someone. It happens.

7 What can we look at to see whether
8 her identification would be reliable?
9 Obviously she wants to find out who shot her
10 boyfriend, so -- but that doesn't mean that
11 she couldn't be wrong, that she couldn't be
12 mistaken, that she couldn't pick the wrong
13 person. She sees the shooter only for
14 seconds, really. Seconds. The first time she
15 was in a car and the shooter was running by
16 the car; pretty brief, that quick. Yet she
17 saw him, she made -- she may have seen him two
18 times but two very brief times. Once, she
19 sees the shooter running by the car. Then she
20 see him later and she chases after him and
21 sees him, I think she said five seconds. She
22 could be overestimating the time, it could
23 have been less than that. We're talking just
24 seconds that she had to view someone who is
25 shooting her boyfriend. Talking about extreme

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1 stress.

2 She says that based on studies that
3 she has read about and conducted herself that
4 when someone is under extreme stress like that
5 that their memory is less reliable. Not only
6 is there a tiny amount of time to view this
7 shooter but she is under -- and I can't
8 imagine that situation, watching someone that
9 you care about being shot at. So she said
10 that makes it less reliable, that she is going
11 to be less able to remember the person she has
12 seen because she is screaming and obviously
13 terrified and upset.

14 She does notice the gun. I'm
15 bringing that up because there's a phenomenon
16 out there about focusing on a weapon. If
17 there is a weapon present during a crime, then
18 the witness tends to look at the gun. That's
19 what she said.

20 Kimberly Bates, as I pointed out in
21 her statement, she notes about the gun, she
22 described it. So during that very brief time
23 she is looking at the gun, she is also -- she
24 also has to be looking at the Sheldon Frasier,
25 the person she cares about, who is getting

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1 shot at. So her attention is being focus on
2 different things. So there are some problems,
3 some factors during this shooting incident
4 that make her memory not reliable.

5 Does that mean that she is lying?
6 It just means that she is wrong.

7 Dr. Wallendael says that studies
8 have shown why: stress, a very short amount
9 of time to witness someone, and the presence
10 of a weapon.

11 She also said after this, she said
12 eight or nine shots. She is talking about
13 eight or nine shots but if you look at the
14 photographs there doesn't seem to be evidence
15 that there were that many shots. I think that
16 is wrong about the number of shots that she
17 heard, because she was under extreme stress
18 and she got that thing wrong, she got that
19 fact wrong. So if she got that wrong, can you
20 trust the identification that she made in that
21 setting?

22 In addition to that, in addition to
23 her memory being affected by the incident, it
24 matters how she was presented with
25 identification. That makes a difference,

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1 according to Dr. Wallendael.

2 State's Exhibit 15. First of all,
3 they are not really photographs. It's a
4 black-and-white photocopy of photographs. Dr.
5 Wallendael says that makes a difference. When
6 you have people standing in a lineup, you can
7 see their full body, you can see their height,
8 weight, and that would be better. Even having
9 color photographs would be better. Having
10 more detailed photographs would be better.
11 That makes a difference.

12 It also makes a difference that
13 these photographs were presented all at one
14 time. She says that there is a tendency to
15 pick a person that looks most like what she
16 had in her head, even if it is the wrong
17 person. So she says a better way to do it
18 would be to show one photograph at a time and
19 to not tell the witness how many photographs
20 that you're going to show them. All these
21 factors influence who they pick. So it would
22 be better if they are shown picture number
23 one, then picture two, 'is this the person?'
24 It wasn't done like that.

25 It's been my experience that the

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1 person who does the lineup, who shows the
2 lineup to the witness, shouldn't know who the
3 suspect is because -- obviously there could be
4 the situation where a police officer could --
5 she says that the officer could communicate,
6 without even realizing it, who to pick, by his
7 body language. She says that there are
8 studies which have shown that, that if I am
9 showing a lineup to a witness and I know who
10 it is, then without realizing it you could
11 influence who the person picks.

12 So can you trust that, can you trust
13 that identification? Because if she got this
14 wrong, then the rest of it falls into place
15 pretty easily:

16 Jamol Greene, he's afraid that he is
17 a suspect, so he just names the person who is
18 already a suspect. Then he has his brother
19 come in and give testimony about the car.

20 It can all fall into place after
21 that. If this is where the error took place,
22 if this is what led to the arrest, can you
23 rely it?

24 I brought in Amber Moore because
25 Charles Moore said around 4:00 or 5:00 that

1 Nitty came in and stayed for a little bit,
2 left, then came back. Amber Moore says that
3 the night this happened that she got home from
4 school at 3:30 and the Cutlass was there.
5 Then she said in her statement that she went
6 to pick up her brother at 4:00 and the Cutlass
7 was there. So it's not adding up. If
8 Charles Moore is saying that Nitty already had
9 the Cutlass, it's not matching up.

10 But you notice that she came in
11 today and she's saying something different
12 than she said in her written statement. She
13 said that she wasn't -- and it was hard to get
14 answers out of her. Obviously she wants to
15 help her brothers out, too. But is she
16 telling the truth? I don't think by what she
17 says that you can believe Jemol Greene and
18 Charles Moore. They're all part of the same
19 family.

20 So I've argued about the law.
21 That's important, because people don't know
22 this and I want you jurors to be educated
23 about what the science is, what the real world
24 is like. You might think, like Dr. Wallendael
25 said, if you see someone shooting a person

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1 that would be burned in your mind, 'I'll never
2 forget that person.' She said that's just not
3 the way that it is. People think that but
4 that is not the way that it is. She said
5 memory is not like a tape-recorder, you just
6 don't just record something and then play it
7 back in your head. That's not the way it
8 works. It changes over time. Your memory can
9 be influenced by different things.

10 I've already talked about the short
11 period of time that she had to view the
12 shooter. She could be over-estimating how
13 long she had to view the shooter.

14 She was under extreme stress and she
15 was focusing on the gun and not the person's
16 face.

17 The quality of the photos have an
18 effect and how the lineup was presented.

19 She told us all of this. She also
20 said that just because a witness is confident
21 that they've picked out the right person
22 doesn't mean that they are accurate. You
23 can't rely on that. Someone can say, 'I am a
24 hundred percent sure I've picked the right
25 person' but they're wrong because different

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1 factors can affect their confidence.

2 Also things that later can affect
3 her memory and confidence. The fact that
4 Kaseem Stephens was arrested, that supports
5 her belief that she picked the right person.
6 The fact that he is sitting over there at the
7 defense table during a jury trial, that can
8 influence the fact that she picked the right
9 person. So of course she is confident that
10 she has the right person. But, according to
11 Dr. Wallendael, that doesn't mean that she is
12 right.

13 This is an extremely important
14 decision for Kaseem Stephens and for you to
15 follow the law, you have a duty to follow the
16 law, the duty that we have as citizens. It is
17 what of the few things required of us, unless
18 you're drafted into the Army. It is so
19 important, because we don't want innocent
20 people to be convicted. Our legal system
21 places a lot of importance on that. That is
22 why a defendant doesn't have to prove
23 anything, the prosecutor has to prove a
24 defendant's guilt. They don't have to sound
25 that he may have done it, they don't have to

1 show that he probably did it. They have to
2 show that he did it beyond a reasonable doubt
3 and they have to convict you guys that there's
4 no reasonable doubt in your head that Kaseem
5 Stephens did it. I think that there is
6 reasonable doubt in this case because you
7 can't trust the evidence that you've been
8 shown.

9 I left something out. The car. I
10 was thinking about, well, what evidence do I
11 have that would help convince you because if
12 the identification isn't reliable and if you
13 can't trust Jamol Greene and Charles Moore,
14 well, what else do we have?

15 They found the car, they searched it
16 for prints and they found the fingerprints of
17 two other people. They did not find Kaseem
18 Stephens' fingerprints. There is nothing to
19 back up what they're saying. That is the
20 assurance that we need, because people lie,
21 people are mistaken.

22 Like I said when I first came up
23 here, it would be a second tragic thing for
24 the wrong person to be convicted of this
25 crime. So I am asking you to follow the law

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1 as the judge gives it to you. Think about
2 what you're saying when it says beyond a
3 reasonable doubt, a reasonable doubt is a
4 doubt that would make a conscientious person
5 hesitate to act. See how high that burden
6 is? How much they have to prove to convict
7 somebody? Because our legal system wants to
8 be sure that we don't convict innocent people.

9 So I'm asking you to follow your
10 oath and follow the law as the judge gives it
11 to you, and find Kaseem Stephens not guilty.

12 THE COURT: Mr. Hales.

13 MR. HALES: May it please the
14 court?

15 THE COURT: Yes, sir.

16 MR. HALES: Good afternoon.

17 Sheldon Frasier was twenty-five years old when
18 his life was taken. He was gunned down in
19 broad daylight, shot in the back of the neck
20 by that man, Kaseem Stephens.

21 How do we know this? We know it
22 from testimony, we know it from the people
23 that sat in that seat, the witness chair.
24 We know it from what they said, how they
25 acted, what they told us.

1 Jemol Greene, the first witness that
2 we put up, he told you that he was over in
3 Trailwood visiting with a friend of his. He's
4 just got off of work, he was in his mother's
5 tan Explorer. That he's pulled up in the yard
6 of his friend's house in Trailwood, sat in the
7 car talking to the friend.

8 Not too long after he got there that
9 Sheldon Frasier pulled up. He knew Sheldon,
10 he recognized him, he knew that he was there
11 with Ms. Bates, who Sheldon was involved with.
12 That he got out of the car, was talking to
13 some guys.

14 Then another car pulls up and Jamol
15 takes notice because it's his mother's car.
16 Who gets out? Kaseem Stephens. And what does
17 he do? He walked up to Sheldon Frasier and
18 pulled out a gun and start shooting.

19 What did Jemol do? I mean, he just
20 saw someone get gunned down in broad daylight
21 for what appeared to be no reason. He ain't
22 sticking around. He got out. When the police
23 come to talk to him, was he in custody at that
24 time or was he still out? Detective Elmore
25 told you that there was a warrant outstanding

1 for Mr. Stephens for over a year, so maybe Mr.
2 Greene was a little hesitant to talk to the
3 police after witnessing what he did and
4 knowing the guy who did it knew who he was and
5 where he lived.

6 You also heard from Charles Moore,
7 who is Jemol Greene's brother. Mr. Moore
8 didn't see what happened out there at the
9 scene. As he told you, he was taking a nap.
10 But he was woken up by Mr. Stevens. Kaseem
11 Stephens comes over in his mom's Cutlass and
12 then leaves.

13 Why did that happen? He was going
14 to wash the car. Mr. Greene told you that, as
15 well. He had a detailing business and he
16 washes cars. He comes over, picks up the car,
17 details it and then he brings it back. He was
18 going to service the car.

19 That's all Jemol Greene said. All
20 he does it put Kaseem Stephens in that car,
21 that's a very pointed fact, because not only
22 did Jemol Greene see that car pull up and Mr.
23 Stevens get out but also Kimberly Bates saw
24 that.

25 You heard from Ms. Bates. She got

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1 rather emotional but she testified. What did
2 she tell you? She told you that they go to a
3 friend's house in Trailwood, they pull up
4 beside the tan Explorer, which is what Jemol
5 Greene told us. That Sheldon gets out, was
6 talking with some guys and she sits in the
7 car. She said that she was in there with her
8 daughter.

9 Then she hears something, gunshots.
10 She see Sheldon run by and then she see that
11 man (indicating Defendant) run by, Kaseem
12 Stephens. She saw him run by, with her eyes.
13 Then she gets out of the car, 'Whoa, whoa,
14 whoa, what are you doing? Stop, stop.' Face
15 to face, the gun comes up. That's the second
16 time that she's seen him. What did do? She
17 jumped in the car, she takes cover. She (sic)
18 goes down the road and see the burgundy
19 Cutlass pulling off.

20 When she talked to the police that
21 night she gave them a description: 5'7",
22 close-cropped afro style haircut. Take a look
23 at that lineup. Take a look at Mr. Stephens,
24 look at his size.

25 Then she is shown a lineup that day,

1 the day of the shooting. She looks at it, a
2 six-photo lineup, a lineup that contain a
3 suspect with the approximate street name of
4 Nitty, but it was Kaseem Stephens. But they
5 have a suspect, an initial suspect. She
6 looked at it and said 'he's not in here.'

7 This was not someone rushing to
8 judgment, this was no someone 'I gotta find
9 somebody who did this, I gotta find quick.'
10 No. This was someone who remembered exactly
11 what happened, remembered exactly who did it,
12 and when she saw his photograph she identified
13 him.

14 You are going to have this back
15 there with you, and I want you to take a look
16 at it, and I want you to look at the
17 individuals in these photographs. They are
18 all different people but it's not just Mr.
19 Stephens beside a white guy. It's not Mr.
20 Stephens besides a sixty-five year old guy.
21 It's Mr. Stephens and five guys of the same
22 approximately age, approximate height, same
23 race. There is nothing about that influential
24 at all.

25 You heard Corporal Elmore and you

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1 also heard exactly what he told her, 'He may
2 or may not be in that photo lineup.' He'd
3 told he that the first time and she didn't
4 pick anybody out because the guy wasn't in
5 there. But he's in that one. She also
6 identified Mr. Stephens in court and he looks
7 very different now. It's been two years.

8 Identification has been around for
9 thousands of years. As long as there has been
10 crime there's been identification. We have
11 DNA evidence, we have fingerprints evidence,
12 people are able to be identified.

13 We didn't have DNA in this case.
14 Sergeant Hallman told you that we looked,
15 there was none. Now, the victim lost a ton of
16 blood out there, there is no doubt that he was
17 the victim, but there is no evidence of any
18 struggle, any fighting, of Mr. Stephens being
19 shot, cut, punched, anything like that. The
20 testimony that we've got is that he got out of
21 that car, got out and started shooting.

22 There are no fingerprints, but if
23 you remember -- when Officer Coker was on the
24 stand, he was talking about how people leave
25 fingerprints, that some substances carry

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1 fingerprints easier than others. He also said
2 that if you have a clean hand that you much
3 less likely to leave fingerprints. Mr.
4 Stephens washes cars, that's what he does, he
5 details cars.

6 Mr. King stated to you in closing
7 argument a lot about Dr. Wallendaal. She came
8 to testify today but, you know, I think she
9 made some really difficult decisions for the
10 State. I asked her about cross-racial
11 identification. What that is, is if you have
12 a white suspect and a black witness or vice-
13 versa, the identification rate is lower.
14 That's not the case here. The case here is
15 that both the victim and the defendant are
16 both African American.

17 Also, another thing that would
18 increase the reliability of an ID is if a
19 witness is shown a six-pack, with a suspect in
20 it, and does not pick anyone out; then
21 subsequently is shown another six-pack picks
22 out the guy who did it. That's exactly what
23 happened here. She was shown that initial
24 six-pack lineup, she wasn't in a rush to pick
25 out anybody. When she was shown a lineup that

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1 did contain the defendant, she did. That
2 makes the identification more reliable.

3 Also she saw him twice at the scene.
4 Granted, there was not a big timeframe
5 different there between when she saw them but
6 -- she saw him run by the car, then she got
7 out of the car and came face to face with him.
8 Two separate times that she saw him. The
9 doctor also said that increases the likelihood
10 of a correct identification.

11 The confidence of the witness, she
12 said, sometimes if they are really confident
13 they are wrong, sometimes if they really
14 confident they are right.

15 We can't climb in someone's head and
16 know what they're thinking, but when we add
17 everything up -- when we add up the fact that
18 this is not a cross-racial identification,
19 when we add the fact that she was shown more
20 than one lineup and only picked out one
21 person, when we add in the fact that she saw
22 the man twice at the scene -- she saw the man
23 twice at the scene -- and when we add in her
24 confidence, then top that off with the fact
25 that Jamol Greene knew Kaseem Stephens, that's

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1 a whole different kind of identification
2 there; that's not picking somebody out, that's
3 recognizing someone. That's a completely
4 different scenario when you recognize someone.

5 This photo lineup, 'I know Kaseem
6 Stephens and Kaseem Stephens is the one that
7 did it.'

8 Add those two together and then
9 remember that Charles Moore puts the defendant
10 in the burgundy Cutlass, who both witnesses
11 say was at the scene and both witnesses say
12 Mr. Stephens got out of.

13 Now, what reason -- Mr. Kings wants
14 you to believe that Mr. Stevens was
15 misidentified by Ms. Bates, that he was
16 misidentified by Jamol Greene, that he was
17 misidentified by Charles Moore, that -- I
18 guess someone who looks really close to him
19 lived in that same neighborhood where this
20 happened, that Jamol Greene and Charles Moore
21 knew, and that he got arrested. Or is it more
22 reasonable to believe that he murdered Sheldon
23 Frasier and Kimberly Bates and Jamol Greene
24 saw it? That Charles Moore saw him come to
25 the house and borrow that car?

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1 Also, one last thing. Who traded
2 out that car, that Cutlass for that Grand Prix
3 (sic)? You daggum right, he did. That was
4 the first -- what was the first car that they
5 looked for when Corporal Elmore was on the
6 stand? They were looking for that Cutlass.
7 He switched it out, got in that Grand Prix
8 (sic) and left. That warrant was outstanding
9 for over a year.

10 Finally, Ladies and Gentlemen,
11 remember we are searching for the truth, the
12 truth is that Kaseem Stephens shot and killed
13 Sheldon Frasier and we ask that you return a
14 verdict for the State. Guilty.

15 Thank you.

16 THE COURT: If I could have your
17 attention, now it becomes my responsibility,
18 of course, to give you the law which you have
19 -- that's fine, Mr. Robinson, I can see
20 everyone, but thank you so much, sir.

21 It now becomes my responsibility to
22 give you instruction on the law which you have
23 promised, of course, to accept and apply
24 fairly and impartially to those facts that you
25 will determine when you evaluate and consider

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1 all the evidence in this case, and decide what
2 you believe to be the truth.

3 When you've done that, when you've
4 performed that assessment and evaluation and
5 applied the law, reported your decision, then
6 you will have honored the commitment that you
7 made to the State and to Mr. Stephens when we
8 started this process.

9 During this instruction, you may
10 hear me use the word "defendant" from time to
11 time. That word is used in this process to
12 designate the part against whom a claim is
13 made. That is the sole significance of it.
14 In other words, it is just synonymous with Mr.
15 Stephens. He is a defendant because the State
16 has made a claim against him. It doesn't mean
17 any more than that, you're not to put any more
18 emphasis or weight on it than that, for that
19 purpose, just knowing that it is another way
20 to refer to him.

21 As I stated when we started, when I
22 was qualifying you initially, Mr. Stephens has
23 been accused by this document that I am
24 holding. It is an indictment. It merely
25 contains the accusations against him. As I

1 indicated at that time, it's not evidence, it
2 will not accompany to your jury room.

3 To this indictment, Mr. Stephens has
4 rendered a plea of not guilty, which places
5 upon the State the burden of proving his guilt
6 beyond a reasonable doubt.

7 For, you see, as I stated earlier,
8 persons such as Mr. Stephens who are accused
9 of committing criminal offenses in this state
10 and in his country are never required to come
11 in and prove anything at all. Nothing. They
12 don't have to explain anything, they don't
13 have to -- they certainly don't have to prove
14 their innocence. Rather, the law states that
15 they are presumed innocent.

16 This presumption is one that you are
17 required to follow and apply, by virtue or
18 your oath, and that means to actively presume
19 that he is not guilty of this offense. The
20 presumption of innocence is maintained at all
21 times throughout the trial of this case and
22 may be only removed when and if the State
23 presents enough evidence that persuades you
24 beyond a reasonable doubt that he is in fact
25 guilty of this charge.

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1 Obviously, Ladies and Gentlemen,
2 the fact that a person who is accused of
3 committing a criminal offense does not testify
4 in his or her own behalf must never be
5 considered against that defendant for -- under
6 any circumstances, because a person accused of
7 committing a criminal offense has a
8 Constitution right to remain silent and the
9 assertion of that right cannot and must not be
10 used against that person. Therefore, under
11 your oath, you are to reach no inference and
12 to draw no conclusion whatsoever from the fact
13 that the defendant in this case did not
14 testify.

15 The failure of his testifying should
16 not even be discussed by you in your jury
17 room. If you do, you will have violated the
18 oath that you've took. As I have stated
19 throughout and I continue to assert to you and
20 to suggest to you, the State has the burden of
21 prove and the State alone has to prove its
22 case beyond a reasonable doubt.

23 What is a reasonable doubt? A
24 reasonable doubt is a doubt that would make a
25 honest, sincere, conscientious person hesitate

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1 to act. Proof beyond a reasonable doubt is
2 proof that leaves you firmly convinced of the
3 defendant's guilt.

4 Now, I would instruct you that there
5 are very few things in this life or this world
6 that we know with absolute certainty. In
7 criminal disputes such as this, the law does
8 not require proof that overcomes every
9 possible doubt.

10 If based on your consideration of
11 the evidence you're firmly convinced that Mr.
12 Stephens is guilty of this charge, this crime,
13 then you must return a verdict of guilty.

14 If on the other hand you think that
15 there is real possibility that he is not
16 guilty, then you must give him the benefit of
17 that doubt and return a verdict of not guilty.

18 Reasonable doubt, Ladies and
19 Gentlemen, may arise from the evidence which
20 is in a case or from the lack or absence of
21 evidence in a case. It's up to you to
22 determine whether or not a reasonable doubt
23 exists as to the guilt of this defendant.

24 I charge that he is entitled for you
25 to consider the whole case. He is entitled to

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1 every reasonable doubt that may arise in
2 considering the whole case. That simply means
3 this: if upon any issue of fact which is
4 essential to your finding him guilty, that is
5 returning a verdict of guilty, convicting him
6 of his charge, if you should have a reasonable
7 doubt as to how that issue is to be resolved,
8 I would instruct you that it is your duty to
9 resolve that in his favor.

10 Now, Ladies and Gentlemen, these
11 types of cases -- the evidence is presented by
12 using really, quote often, both types of
13 evidence, either may be used but it is not
14 infrequent to have both types. One is direct
15 evidence and the other is indirect, but the
16 more common and familiar name is
17 circumstantial evidence.

18 Direct evidence, as the name would
19 imply, generally deals with one's sensory
20 perceptions; that is, 'I saw something, I
21 heard something, I felt something' or the
22 like. If you are firmly convinced as to the
23 truthfulness of that and the credibility of
24 that testimony, then it establishes that
25 particular fact or circumstance.

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1 Circumstantial evidence is when one
2 testifies to a number of facts or to a number
3 of factors and if you're firmly convinced as
4 to each of those factors and you link them
5 then they lead you to a logical and ultimate
6 conclusion; sometimes it's even the commission
7 of a crime. Again, if you are firmly
8 convinced of that conclusion, then it also
9 would establish that particular fact.

10 I would instruct you that the law
11 makes absolutely no distinction between the
12 weight or the value to be given to direct
13 evidence or circumstantial evidence, nor is
14 there any greater degree of certainty required
15 of circumstantial evidence than there is of
16 direct evidence. You are instructed to weigh
17 all of the evidence in this case and decide
18 what you find to be credible and believable.

19 I would instruct you, however, that
20 when you consider this, if your conclusion
21 'well, there is a strong suspicion of guilt'
22 or that the guilt is probable, remember I told
23 you when we started that is not sufficient.
24 It has to be more than that somebody is
25 strongly suspicious of guilt or probably

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1 guilty, it has to be proof that convinces you
2 beyond a reasonable doubt.

3 Now, the evidence which you are to
4 consider consists of the testimony of the
5 witnesses and the exhibits that were
6 introduced through their testimony, and
7 nothing else.

8 Remember, none of my remarks are to
9 be considered by you as evidence. Likewise,
10 nothing that I have done during this trial
11 should be considered by you as a suggestion of
12 how you are to resolve a factual issue,
13 because that's your sole prerogative. My
14 rulings on matter of law that may have risen
15 from time to time, when you've heard attorneys
16 say 'objection, Your Honor', that is very
17 appropriate, they are calling those to my
18 attention, placing those on the record as they
19 are required to do, and my ruling was
20 pertinent as to that particular objection. It
21 should not be considered by you.

22 Quite honestly, that's my respon-
23 sibility and not yours. Probably the best
24 example that I can give a jury of how we work
25 together as judges and our responsibilities do

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1 not overlap comes in the area of where
2 sometimes you've heard them say 'objection'
3 and I sustained the objection.

4 Well, when I sustained the
5 objection, I meant as a matter of law that you
6 weren't going to hear that evidence. You
7 shouldn't consider that, because if you do in
8 any way then you've stepped over into my area
9 of responsibility.

10 If I overrule the objection, I said
11 as a matter of law that I am going to permit
12 that question and answer to be considered by
13 you. But that's as far as it goes. If you
14 say, 'well, the judge allowed it and therefore
15 it must be true', then you've kind of let me
16 slip into your area of responsibility.

17 Quite honesty, the moment that I
18 said that I was going to allow it, it shifted
19 to you and then you have to make a
20 determination of whether or not you believe it
21 or not.

22 That's how we've worked and we will
23 continue working that way, because when you
24 retire you will take the law as I give it to
25 you and apply it fairly and impartially,

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1 notwithstanding your personal opinions about
2 what the law is or should be. Again, that's
3 that separation.

4 But nothing that I said during the
5 trial, nor nothing that I say during this
6 charge should be considered by you as a
7 statement of how you are to resolve a factual
8 issue.

9 Likewise, as I have reminded you
10 throughout the trial, the attorneys' remarks
11 are important, they are officers of this
12 court, they will be extremely helpful. You
13 certainly have listened to them and you
14 certainly may utilize them as you analyze the
15 evidence, but remember while extremely
16 important and very beneficial, their remarks
17 also are not evidence.

18 The evidence, we know, came through
19 the testimony of the witnesses.

20 If during your discussion your
21 recollection of what a witness says differs
22 from what an attorney said, then you should go
23 with your recollection. Please remember
24 something also, if you have a question about
25 what a witness said or didn't say the person

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1 in charge of keeping the record of this case
2 is Ms. Garrison. She has that and if in your
3 discussions there is a disagreement about what
4 a person said or didn't say, we have the
5 ability of replaying that should that become
6 necessary. Again, that is how you as a fact-
7 finder will resolve that; not taking what
8 somebody else says it may have been or might
9 be.

10 Now, generally in this types of
11 cases witnesses ordinarily are not permitted
12 to render opinions except in very limited
13 areas. That's the rules of evidence that
14 apply to these proceedings. There are
15 exceptions to that and generally when a
16 witness who because of their education,
17 experience, background, training, has
18 developed some expertise in some art, science
19 or profession or calling, they are allowed to
20 render opinions when those opinions may be of
21 benefit to you in determining or resolving a
22 factual issue in case. You should consider
23 therefore any expert opinion received in this
24 case the same as you do any other evidence.
25 That means, give it the weight that you

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1 believe it is entitled.

2 If in considering the expert's
3 testimony or the opinion of the expert you
4 believe it is not based on sufficient
5 education, experience or if you conclude that
6 the reason(s) given in support of the
7 opinion(s) are not sound or that an opinion is
8 outweighed by other evidence, you're entitled
9 to disregard the opinion in its entirety.
10 An expert's opinion is not given to control
11 your thinking but merely to assist you in
12 resolving the factual issues.

13 You're entitled to disregard an
14 expert's opinion even though it is not
15 contradicted directly, because that is your
16 right with any witness, as we will talk about
17 in just a moment. You are the sole judges of
18 the facts and you must evaluate all the
19 evidence and decide what you find to be
20 credible and believable.

21 An issue in this case, quite
22 honestly an issue in every case where a person
23 is accused of committing a criminal offense,
24 is the identification of Mr. Stephens as the
25 person who committed this crime. The State

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1 has the burden of proving the identity of Mr.
2 Stephens beyond a reasonable doubt. You must
3 be satisfied beyond a reasonable doubt as the
4 accuracy of the identification before you may
5 convict the Defendant.

6 Identification testimony is an
7 expression of belief or impression by a
8 witness. You must determine the accuracy of
9 the identification. You may consider and must
10 consider the believability of each identification
11 witness in the same way that you evaluate the
12 credibility and believability of any witness.
13 You may consider whether the witness had an
14 adequate opportunity to observe the defendant
15 at the time of the offense. This will be
16 affected by things such as how long or short a
17 period of time was available, what was the
18 distance between the witness and the person
19 the witness was identifying, the lighting
20 conditions, and whether the witness had a
21 chance to see or know the person in the past.
22 Once again I instruct you that the burden of
23 proof rests upon the State and that extends to
24 every element of this charge, including the
25 identify of the Defendant as the person who

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1 allegedly committed this offense.

2 If you have a reasonable doubt as to
3 the identity of Defendant, then I would
4 instruct you that you must resolve that in his
5 favor and return a verdict of Not Guilty.

6 If, on the other hand, you are
7 firmly convinced that the identification is
8 accurate, assuming all other elements have
9 been established that the State is required to
10 prove, then you must return a verdict of
11 Guilty.

12 How do you decide the facts of this
13 case? You decide them by applying your common
14 sense, your sense of logic and reason. You've
15 performed this function many, many times in
16 your life. As I stated when I qualified you
17 generally, you're very qualified to do this
18 because we do it every day. We hear
19 something, we read something and we decide
20 whether we believe it or not. That is
21 precisely what you are going to do when you
22 evaluate the testimony in this case.

23 In doing so you will consider a
24 number of factors. I want to discuss some of
25 the factors that you may want to consider.

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1 I will tell you, though, that this list that I
2 share with you is not all-inclusive. If I
3 don't mention a factor or a method that you
4 have used in your life, that you've found
5 reliable in assisting you in making this type
6 of decision, please use it when you begin your
7 deliberations.

8 Some of the factors that you may
9 want to consider would be the appearance of
10 the witness, how did they appear to you --
11 straightforward or hesitant in answering the
12 questions?

13 Was the testimony of a witness
14 consistent or was it inconsistent?

15 Was it strengthened or weakened by
16 other evidence in the case?

17 How did the witness know the facts
18 that he or she testified to and what was the
19 ability of that witness to know those
20 particular facts or circumstances?

21 Was there a reason for a witness to
22 give testimony which may be beneficial or
23 detrimental to one side or the other? In
24 other words, was the witness biased or
25 prejudiced in any fashion.

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1 There has also been testimony given
2 during the trial of this case of a witness
3 having a prior conviction. That testimony is
4 offered for one limited purpose, and that is
5 in evaluating the credibility and
6 believability of that witness. It doesn't
7 mean that you have to disregard that witness'
8 testimony simple because he has a conviction.
9 It just means that you may consider that will
10 all other factors that you will consider to
11 evaluate the credibility and believability of
12 that particular witness.

13 In making the determinations of
14 credibility and believability, you're given
15 very broad discretions. You have the right to
16 believe one witness against many; many
17 witnesses against one; you have a right to
18 believe all of a witness' testimony, parts of
19 a witness' testimony or none of a witness'
20 testimony.

21 Now, you don't make these decisions
22 of what you find to be credible and believable
23 arbitrarily and capriciously but if there is a
24 reason in the evidence of this case for taking
25 that position, you have that prerogative

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1 because your objective has been, is and will
2 be until you resolve this case to determine
3 the truth regardless of the source of the
4 evidence.

5 Now, while you enjoy broad latitude
6 when it comes to determining the facts of the
7 case, you don't enjoy the same with the law.
8 Remember that. I've said it several times.
9 You've promised to accept the law as I give it
10 to you and to apply it fairly and impartially.
11 I am confident that you will do that.

12 Let's talk for a moment now about
13 the charge in this case. The charge is
14 murder. Section 16-3-10 of our Code of Laws
15 defines "Murder" as the killing of any person
16 with malice aforethought, either express or
17 implied.

18 In order to obtain a conviction for
19 the offense of murder, the State must prove
20 beyond a reasonable doubt that Mr. Stephens
21 killed another person with malice
22 aforethought.

23 Malice is hatred, ill will, or
24 hostility towards another person. It is the
25 intentional doing of a wrongful act without

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1 just cause or excuse and with the intent to
2 inflict an injury or under circumstances that
3 the law will infer evil intent. Malice
4 indicates a former purpose and a design to do
5 a wrongful act under circumstances that
6 exclude any legal right to do it.

7 In that regard, I instruct you that
8 the malice must be malice aforethought. That
9 means that the malice must have been conceived
10 in the mind of the defendant prior to the act
11 producing the fatal result.

12 The word "aforethought" is usually
13 understood to refer to the time when the evil
14 is conceived. The law does not require that
15 the malice must exist for any appreciable time
16 before the commission of the act. It may even
17 be conceived at the very moment that the
18 action is taken which results in the death of
19 another. Therefore, there must be a
20 combination of a previous evil intent and the
21 act.

22 Malice aforethought may be expressed
23 or inferred. Now, these terms "expressed" or
24 "inferred" do not mean different kinds of
25 malice but merely the manner in which malice

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1 may be shown to have existed. It may be shown
2 either by direct evidence or from inference
3 from facts or circumstances which are proved
4 to your satisfaction which points to that.
5 Express malice is shown when a person speaks
6 words which express hatred or ill will for
7 another or when a person is prepared
8 beforehand to do an act which is later
9 accomplished.

10 Malice may be inferred from conduct
11 showing a total disregard for human life.

12 Inferred malice may also arise when
13 a deed is done with a deadly weapon. A deadly
14 weapon, Ladies and Gentlemen, is any article,
15 instrument or substance which is likely to
16 cause death or great bodily harm. Whether an
17 instrument has been used as a deadly weapon
18 depends, of course, on the facts and
19 circumstances of each case. I would instruct
20 you that a gun is considered a deadly weapon.

21 If the facts are proved beyond a
22 reasonable doubt sufficient to raise an
23 inference of malice, to your satisfaction,
24 this inference, Ladies and Gentlemen, would
25 simply be an evidentiary fact to be taken and

1 considered by you together with all other
2 evidence in this case. You may give it such
3 weight as you find that it should receive.
4 You as jurors and as judges of the facts are
5 free to accept or reject a permissive
6 inference, depending on your view of the facts
7 and circumstances in this case.

8 As previously indicated when
9 discussing malice, criminal intent is a
10 necessary element of the crime of murder and
11 that has to be established beyond a reasonable
12 doubt. Criminal intent or intent of a person
13 is generally that which is determined by
14 considering the circumstances surrounding the
15 situation that occurs. The law states that
16 criminal intent may be inferred from the
17 circumstances that were shown to have existed.
18 That's how you make that determination as to
19 whether or not that element is present.

20 The State in this regard is not
21 required to prove motive, although the
22 presence or absence of evidence of motive may
23 be considered by you in making your
24 determination.

25 Criminal intent is a state of mind

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1 that operates jointly with an act in the
2 commission of a crime. Intent would include
3 those consequences which represent the very
4 purpose for which an act is done, or known to
5 be substantially certain to result regardless
6 of one's desire.

7 Criminal intent is the mental state
8 of conscious wrongdoing and it's up to you,
9 Ladies and Gentlemen, when considering all of
10 the facts and circumstances in this case to
11 decide and determine whether or not the State
12 has established beyond a reasonable doubt
13 criminal intent with respect to this alleged
14 crime.

15 You, Ladies and Gentlemen, were
16 selected in this case not to be partisans or
17 advocates for anyone. You certainly don't
18 have any friends to reward nor do you have any
19 enemies to punish.

20 In fact, something that I am about
21 to say is something that you have to
22 consciously do, because we are human, but we
23 accept the responsibility of being a judge we
24 promise to do something else and that is to
25 set aside our human emotions. Sometimes that

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1 is difficult to do. But no matter how
2 difficult it may be, you have to do that
3 because your decision can't be influenced by
4 human emotion.

5 Your decision has to be based on
6 conscious, clear, methodical thinking in
7 analyzing the evidence, deciding what you find
8 to be true and then taking the law as I have
9 given it to you and reaching a decision.
10 That decision needs to speak the truth. Once
11 you've done that and reported that decision,
12 then you will have honored the commitment that
13 you made when we started this case.

14 Mr. Presiding Juror, to assist you,
15 sir, in reporting that decision, I have
16 prepared a verdict form which I will send back
17 to you with the exhibits. I would like to
18 discuss it now with you and the other jurors.

19 You will note, Ladies and Gentlemen,
20 that it is captioned. That is simply to
21 facilitate the filing of the document, it
22 means nothing more than that.

23 The body of it sets forth, as
24 follows: "We, the jury, by unanimous
25 consent..." -- now, what does that mean? That

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1 means that all twelve of your agree. Twelve
2 to zero, that's what is required. Eleven to
3 one, that won't work. Ten to ten, not enough.
4 Twelve to zero must be the decision. (Reading
5 continued): "...find the Defendant..." -- and
6 the choices are two, the order in which they
7 appear means nothing, I had to put them in
8 some order. One, guilty of murder. The
9 other, not guilty.

10 You will note that there is a line
11 that precedes your choice. Whichever your
12 choice, I would ask you to place a check or an
13 "x" in that. If you will, circle it as well
14 and that why we make sure that is your
15 response.

16 Once you're completed it, you will
17 sign it, then you can knock on the door and we
18 will return you to receive your verdict.

19 Let's talk about the two choices
20 just for a moment. What will you be saying if
21 "not guilty" is your choice? You will be
22 saying that you've analyzed the evidence and
23 that you unanimously are not in agreement --
24 that you feel that the State has failed on one
25 or more of the elements required. Therefore,

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1 consistent with my instructions, you are
2 returning a verdict of Not Guilty.

3 What will you be saying if "Guilty"
4 is your verdict? You will be saying that
5 after analyzing the evidence you are firmly
6 convinced that the State has established each
7 of those elements required of it and
8 therefore, consistent with my instructions,
9 you are returning a verdict of Guilty.

10 I thank you for your attention
11 throughout this trial. I thank you for your
12 attention to my remarks. You are almost to
13 the point to begin your deliberation. As I
14 told you, the last thing that I would instruct
15 you before departing -- before my final
16 instruction, let me ask of the first twelve of
17 you, do any of you feel that you will be
18 unable to continue? If so, raise your hand.
19 (No verbal response).

20 Mr. Harris, at this point it appears
21 that the first twelve will be able to
22 continue. In just a moment I will be excusing
23 you and the other jurors to retire to their
24 jury room for a few moments. I would ask,
25 sir, that you not rejoin the jury at this

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1 point. They will -- the bailiffs will take
2 you to another location and I will be in
3 shortly to discuss with you how much longer
4 you need to remain with us.

5 I need to excuse you as I have done
6 throughout this trial because there are
7 matters of law concerning my instructions that
8 I need to take up. If there are any additions
9 or corrections that need to be given, then I
10 will return you to the courtroom -- all of
11 you, Mr. Harris included -- and give you that
12 additional instruction. But if there aren't
13 additional instructions, then we will gather
14 the exhibits and the verdict form and deliver
15 them to you. When you receive your exhibits,
16 then you may commence your deliberation.

17 Now, the only restriction on the
18 deliberations that I place is this, if at any
19 time any juror has to leave the table for any
20 reason you must stop deliberation until all
21 twelve of you are together. Other than that,
22 Ladies and Gentlemen, you can proceed as you
23 deem fit and proper.

24 Thank you so much. Please retire to
25 your jury room and waiting your exhibits

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1 before commencing your deliberations.

2 (JURY OUT @ 1:15 P.M.)

3 THE COURT: Any exceptions or
4 additions from the State?

5 MR. HALES: None, Your Honor.

6 THE COURT: Any exceptions or
7 additions from the Defendant ---

8 MR. KING: No, Your Honor.

9 THE COURT: --- other than the
10 failure to include voluntary manslaughter?

11 MR. KING: No, sir.

12 (RECESS)

13 (OFF RECORD CONFERENCE)

14 (DEFENDANT PRESENT)

15 THE COURT: Before we start, this
16 matter has been brought to the court's
17 attention, appropriately so, by Mr. King, who
18 has indicated that during the break this
19 witness observed some interaction of a juror
20 with someone who was in this -- with someone
21 in this case, who testified in this case or
22 was associated with someone that testified in
23 the case. The purpose of this is to ascertain
24 what was seen. You may proceed, sir. If the
25 lady would come forward now. State your name

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1 for the record, please, ma'am.

2 / TAMIKA STEPHENS: Tamika Stephens.

3 (MS. STEPHENS TAKES WITNESS STAND)

4 DIRECT EXAMINATION

5 BY MR. KING:

6 Q. Tamika, can you explain to us what you
7 saw downstairs? You were downstairs?

8 A. Yes, sir.

9 Q. What time was this?

10 A. Right after they let out for lunch.

11 Q. So around 1:00 or 1:30?

12 A. Yes, sir.

13 Q. What did you see?

14 A. I saw at the elevator and I seen Ms.

15 Bates' mother talking to one of the jurors.

16 Q. How do you know it was Ms. Bates' mother?

17 A. Because she is sitting with her.

18 Q. This is a person who you saw sitting with

19 Ms. Bates?

20 A. Yes, sir.

21 Q. And you believe that she spoke with one
22 the jurors?

23 A. Yes, sir.

24 Q. Are you sure?

25 A. Yes, sir, because I asked one of the

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1 security guards that was checking, you know
2 checking when you first come in, is that
3 appropriate and is that supposed to happen and
4 they said 'no.' I said, 'Well, she is there,
5 talking to the juror.' They were standing
6 right there as soon as you come off of the
7 elevator and -- a couple of different people,
8 I don't know the people but I know some other
9 people were standing there together. She was
10 talking to them and she hugged them and kissed
11 them. Because I was like, 'What are you
12 doing?', me and one of my other friends. They
13 just started walking when I said, 'Oh, this is
14 not right. No.'

15 Q. Did you hear anything that they were
16 talking about?

17 A. No, sir.

18 Q. You just saw them talking?

19 A. Yes, sir.

20 Q. Then hugging and kissing?

21 A. Yes, sir, like a little pat and a kiss on
22 the cheek.

23 Q. Did you see a juror sticker, you know the
24 little sticker that they have to wear that
25 says JUROR on it; did you see one of those on

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1 the ---

2 Q. I didn't see a sticker but I seen like
3 the pin thing, you know, like a clip-on.

4 THE COURT: Clip-on?

5 TAMIKA STEPHENS: Like an
6 identification card.

7 THE COURT: Like this (displaying
8 Charleston County security badge).

9 TAMIKA STEPHENS: Yes, sir.

10 THE COURT: Okay.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. KING:

13 Q. Who had that identification card?

14 A. The person that she was talking to.

15 THE COURT: Okay.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. KING:

18 Q. The person who you think is a juror?

19 A. Yes, sir. I can't -- I don't know if he
20 was a juror but I know that he was sitting up
21 there with them, with the jury.

22 THE COURT: Where did you see all
23 this happen?

24 TAMIKA STEPHENS: Downstairs.

25 THE COURT: Were there ---

1 TAMIKA STEPHENS: By the elevator.

2 THE COURT: Were there other jurors
3 present?

4 TAMIKA STEPHENS: Yes, sir.

5 THE COURT: How many?

6 TAMIKA STEPHENS: Every single one
7 of them, they were smoking.

8 THE COURT: They were smoking?

9 TAMIKA STEPHENS: Yes, sir.

10 THE COURT: But the person that
11 hugged the person had an identification card?

12 TAMIKA STEPHENS: Excuse me?

13 THE COURT: The person that you saw
14 hugging Ms. Bates' mother had a card like I am
15 holding her, which is ---

16 TAMIKA STEPHENS: Yes.

17 THE COURT: --- an ID card issued
18 to persons who work in this building?

19 TAMIKA STEPHENS: Yes, sir.

20 THE COURT: Okay. Thank you.

21 MR. KING: That's all that I have.

22 THE COURT: All right. Anything
23 from the State?

24 MR. HALES: Nothing Your Honor.

25 THE COURT: All right, I need to

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1 find out who took the jury down for the smoke
2 -- who was the bailiff who accompanied the
3 jury down there. I need for that person to
4 come take the stand.

5 BAILIFF: I know who it is.

6 THE COURT: Okay.

7 BAILIFF: Your Honor, that one
8 went out to lunch. He'll be back in about
9 thirty minutes. The one that take them down
10 to lunch, he went out to lunch.

11 THE COURT: All right. First of
12 all, the person described is not a -- that's
13 not a juror.

14 MR. KING: Sounds like a juror.

15 THE COURT: If the description is
16 this (displaying County ID badge), it is not a
17 person on the jury, it's a person who is
18 working. We apparently have an idea who, but
19 I want to find out from the bailiff what
20 contact if any, how close this was to the
21 jury. That's my concern. What is the State's
22 position? Well, first of all, what is the
23 Defendant's -- what is your desire?

24 MR. KING: Well, I guess I would
25 want to know exactly what happened first. If

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1 this is a bailiff hugging Ms. Bates' mother
2 and the jury is seeing it, uh, -- I guess I'd
3 want to know exactly what happened first.

4 THE COURT: All right. I don't
5 want to wait for the bailiff to come back from
6 lunch, and the bailiff is entitled to go to
7 lunch. I don't have any problem with that.

8 THE COURT: I am going to bring in
9 the jury panel. They've requested to hear
10 some of the testimony and we're going to start
11 listening to testimony and then I will deal
12 with it after -- because the alternate is
13 still here, I understand. Bring them all in
14 and we'll go the testimony. Thank you.

15 BAILIFF: Bring the alternate in,
16 too?

17 THE COURT: Yes, bring the
18 alternate in, too.

19 THE COURT: Don, do we need to
20 chat?

21 DON MICHELE: I will walk around
22 and talk to Mr. Brown now.

23 THE COURT: Thank you.

24 (JURY IN @ 3:13 P.M.)

25 THE COURT: Thank you. Just one

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1 second, please. Sorry to keep you waiting but
2 there's a couple of matters that I am talking
3 up.

4 (SIDEBAR WITH CLERK)

5 THE COURT: Mr. Jones, thank you
6 very much, sir. I have what is now Court's
7 Exhibit 1 and it says that you would like to
8 see the testimony of the following -- and
9 that's a very legitimate request. The day may
10 come, and I hope that it comes before I
11 retire, when we will be able to get it to you
12 and let you read it because I think visual
13 people have a very difficult time in this
14 setting of listening. I understand.

15 We don't have that capability today,
16 but what we will do is we will replay that
17 testimony for you. I will replay the entire
18 testimony of each of these witnesses that you
19 have listed. I would only ask this. I don't
20 want to know what you're looking for and it
21 may be that you want to listen to all of it,
22 and that's fine. Testimony, as you know,
23 consists sometimes of direct, cross, redirect
24 and recross examination depending on the
25 witness. I think most of these early ones

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1 were direct and cross. I think that there
2 were just a very few times that there was
3 redirect. I mention that to you as you're
4 listening to it, it may even be in direct but
5 there be something that is said later than may
6 be further information that you want to see,
7 so please understand that.

8 The reason I say that is this, if
9 the jury or juror has heard all they need to
10 hear from that particular witness, if they
11 will make that known to you, if you will raise
12 your hand, we will stop the playing of that
13 witness and move to the next one. But unless
14 I see your hand go up, we are going to play
15 that entire -- the witness' entire testimony,
16 and that may be what you want anyway. I'm
17 just telling you that in advance, so --
18 however they want to make that known to you,
19 that's fine. But that's the way we will
20 approach it.

21 Ms. Garrison is prepared to start.
22 Do you have Mr. Greene's first, Ms. Garrison?

23 COURT REPORTER: Yes, sir.

24 THE COURT: Are you reading or
5 replaying?

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1 COURT REPORTER: I will read it
2 verbatim. The acoustics in this courtroom are
3 not the best.

4 THE COURT: Ms. Garrison will be
5 reading the witnesses testimony. One of the
6 things about this wonderful courtroom, and you
7 may have heard me tell these people -- I am
8 getting older and my hearing is getting worse,
9 but it's almost as though there's a wind
10 tunnel where I am sitting and it blocks the
11 sound. When I step on this side, I don't have
12 any problem hearing you in this courtroom. If
13 any of you have had a problem hearing me, I
14 apologize to you because it just destroys the
15 sound. She will read it to you. Again, we
16 will start with the beginning and proceed,
17 starting with Mr. Greene.

18 COURT REPORTER: If you cannot hear
19 me, please raise your hand and I speak louder.
20 First is the testimony of Jamol Greene, direct
21 examination by Mr. Hales, (reading):

22 *JAMOL GREENE, being duly sworn to*
23 *tell the truth, the whole truth and nothing*
24 *but the truth, testified, as follows:*

25 *DIRECT EXAMINATION*

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1 BY MR. HALES:

2 Q. How you doing, Mr. Greene?

3 A. All right.

4 Q. You go by Jamol?

5 A. Yes, sir. Jamie.

6 Q. "Jamie?"

7 A. Sometimes.

8 THE COURT: Please pull on the
9 microphone and speak into that microphone so
10 that we can hear you.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. HALES:

13 Q. Which one?

14 A. It don't matter.

15 Q. How old are you, Jemol?

16 A. Twenty-four.

17 Q. Where are you living?

18 A. Dorchester Road.

19 Q. Off Dorchester Road?

20 A. Yes.

21 Q. Do you live in a neighborhood?

22 A. Yes, sir.

23 Q. What is it called?

24 A. Charlestown Place.

25 Q. Do you know where Trailwood is?

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- 1 A. Yes, sir.
- 2 Q. How far is that from Trailwood?
- 3 A. Probably about five or ten minutes.
- 4 Q. Where do you work?
- 5 A. B and E Tranfser.
- 6 Q. What was that?
- 7 A. B&E Transfer.
- 8 Q. Okay. How long have you worked there?
- 9 A. Probably about six years.
- 10 Q. Six years?
- 11 A. (Affirmative nod).
- 12 Q. Do you remember the events of March 27th,
- 13 2007?
- 14 A. Partially.
- 15 Q. Tell us what you were doing on that day,
- 16 or tell us sort of the layout of your day --
- 17 starting with when you went to work.
- 18 A. I got up early that morning, went to
- 19 work, got off about 4:00, I think it was about
- 20 4:00. I dropped off stopping home from work
- 21 and took a ride in the neighborhood.
- 22 Q. You took a ride? Does that mean that you
- 23 were riding with someone or ---
- 24 A. I was driving.
- 25 Q. What were you driving?

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- 1 A. A Ford Explorer.
- 2 Q. Was that your vehicle?
- 3 A. My mother's.
- 4 Q. What color was the Ford?
- 5 A. Tan.
- 6 Q. Tan?
- 7 A. (Affirmative nod).
- 8 Q. When you say you were just riding in the
- 9 neighborhood, where did you go?
- 10 A. Just driving.
- 11 Q. Did you stop anywhere?
- 12 A. Yeah, at the corner of Ree and Lee.
- 13 Q. Corner of Lee and Ree?
- 14 A. (Affirmative nod).
- 15 Q. What neighborhood is that in?
- 16 A. Trailwood.
- 17 Q. Whose house?
- 18 A. Some guy named Verndell.
- 19 Q. Why did you stop there?
- 20 A. I was talking to a friend of mine.
- 21 Q. You were just riding around, happened to
- 22 see a friend of yours, so you just pulled over
- 23 to talk to him?
- 24 A. Yeah.
- 25 Q. Who was that?

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1 A. Verndell (phonetic).

2 Q. How long were you there?

3 A. Probably about fifteen minutes.

4 Q. You need to speak up a little bit.

5 A. Probably about fifteen minutes.

6 Q. How long?

7 A. Probably about ten to fifteen minutes.

8 Q. What, if anything, happened when you were
9 there?

10 A. Huh?

11 Q. What, if anything, happened while you
12 were there?

13 A. What happened while I was there?

14 A. I was talking to Verndell and the dude,
15 Sheldon, pulled up.

16 Q. Sheldon Frasier?

17 A. (Affirmative nod).

18 Q. What kind of car were they in?

19 A. A blue Pontiac.

20 Q. Did he have anybody with him?

21 A. I don't know. His girlfriend, I guess.

22 Q. What did he do?

23 A. He got out and was talking to Verndell.

24 THE COURT: Hold on a second. Mr.
25 Greene, when you spoke into the mic we could

1 *hear you very well. You need to either speak*
2 *into that mic or raise your voice, sir.*

3 *DEFENDANT: He was talking to*
4 *Verndell.*

5 *DIRECT EXAMINATION CONTINUED*

6 *BY MR. HALES:*

7 *Q. Did you know Sheldon?*

8 *A. I knew of him somewhat.*

9 *Q. Where were you when they were speaking?*

10 *A. Still sitting in the truck.*

11 *Q. You were still in your truck?*

12 *A. Yeah.*

13 *Q. Where were they?*

14 *A. On the outside of my truck, talking.*

15 *Q. When he -- when his car pulled up, where*
16 *did he park?*

17 *A. On the right side of my truck.*

18 *Q. How were you pulled in?*

19 *A. Straight.*

20 *Q. You'd pulled in straight and he pulled in*
21 *straight beside you?*

22 *A. Yeah.*

23 *Q. How long do yo think that they talked?*

24 *A. Probably about five minutes.*

25 *Q. What happened then?*

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1 A. Uh, -- my -- my mother's other car pulled
2 up.

3 Q. What was your mother's other car?

4 A. A burgundy Cutlass

5 Q. You were in one car that belonged to your
6 mother?

7 A. Yeah.

8 Q. And you'all had another car that was a
9 burgundy Cutlass?

10 A. Uh-huh.

11 Q. Where did that car pull up?

12 A. Behind me.

13 Q. Who was in that car?

14 A. Nitty.

15 Q. Is this Nitty?

16 A. Yes, sir.

17 Q. Would you please describe what he is
18 wearing today?

19 A. A tie and a shirt, white shirt?

20 Q. How does his hair look?

21 A. I can't really tell. Looks like braids,
22 or something.

23 MR. HALES: I would ask that the
24 record reflect that Mr. Greene has identified
25 the Defendant.

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1 THE COURT: He has identified him.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. HALE:

4 Q. The gentleman sitting at this table?

5 A. Yes, sir.

6 Q. What did he do when he pulled up?

7 A. He asked Sheldon, 'Do you remember when
8 you pulled the gun on me?'

9 Q. That is what he said?

10 A. Yeah.

11 Q. How did he say it?

12 A. Just directly to him.

13 Q. Directly to him?

14 A. Yeah.

15 Q. So he asked him if he remembered when he
16 pulled a gun on him?

17 A. Yes.

18 Q. What happened then?

19 A. They argued for a second and the guy
20 tried to run.

21 Q. The guy?

22 A. (Affirmative nod).

23 Q. What guy?

24 A. Sheldon.

25 Q. He tried to run?

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1 A. Yeah.

2 Q. And then what happened?

3 A. He shot him -- and I -- his girlfriend
4 was screaming.

5 Q. Who shot him?

6 A. The defendant.

7 Q. Mr. Stephens?

8 A. (No verbal response).

9 Q. Nitty?

10 A. (Affirmative nod) -- yes, sir.

11 Q. When you say that he shot him, was he
12 shooting at anything?

13 A. Yeah -- at Sheldon, I guess.

14 Q. Then you say that you heard the
15 girlfriend screaming?

16 A. Yeah.

17 Q. What happened then?

18 A. I tired to back out.

19 Q. You were still in the car when all of
20 this was going on?

21 A. Yes, sir.

22 Q. Had you known Nitty before?

23 A. Yes, sir.

24 Q. How long had you known him?

25 A. I don't know, probably about a year

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1 *before that.*

2 *Q. So you recognized him?*

3 *A. Yes, sir.*

4 *Q. You had seen him before?*

5 *A. Yes, sir.*

6 *Q. This wasn't the first time that you'd saw*
7 *him?*

8 *A. No, sir.*

9 *Q. You'd known him for about a year?*

10 *A. (No verbal response).*

11 *Q. And you said that after shots rang out,*
12 *you tried to leave?*

13 *MR. KING: Objection, leading.*

14 *THE COURT: I will allow that,*
15 *overruled.*

16 *DIRECT EXAMINATION CONTINUED*

17 *BY MR. HALES:*

18 *Q. What happened next?*

19 *A. He left the scene and I left.*

20 *Q. Who left the scene?*

21 *A. Nitty.*

22 *Q. How did he leave the scene?*

23 *A. He sped off.*

24 *Q. In what vehicle did he leave?*

25 *A. The Cutlass.*

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1 Q. Why didn't you leave before?

2 A. I was blocked in.

3 Q. You were blocked in by his car?

4 A. (Affirmative nod).

5 Q. How did he get your mother's car?

6 A. He was detailing it early that morning,
7 or that afternoon.

8 Q. Is that something that he does?

9 A. Yeah. He's started doing that around
10 that time.

11 Q. Had he done it for you before?

12 A. Yeah.

13 Q. How does that work when you say that he
14 details the car?

15 A. He cleaned it.

16 Q. How does he obtain the car?

17 A. (No verbal response).

18 Q. Did you drop it off, did he come over?

19 A. He came and got the keys -- he got the
20 car while I was still at work.

21 Q. Then he would -- he'd take it and bring
22 it back, is that what would happen?

23 A. Yeah.

24 Q. We talked about the location of Lee and
25 Ree Streets, where is that -- is that in

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1 Trailwood?

2 A. Yes, sir.

3 Q. What city is that located in?

4 A. North Charleston.

5 Q. Charleston County?

6 A. Yes, sir.

7 Q. After that -- after all this happened,
8 you said that you left?

9 FOREMAN: (Raises hand).

10 THE COURT: Thank you, Ms.

11 Garrison. All right, the next witness that
12 you've requested is Kimberly Bates.

13 FOREMAN: Your Honor?

14 THE COURT: Yes, sir?

15 FOREMAN: Would it be possible to
16 hear it in a different order?

17 THE COURT: Sure. Which order
18 would you prefer? Charles Moore?

19 FOREMAN: Charles Moore, please.

20 THE COURT: All right, Charles
21 Moore first.

22 COURT REPORTER: Testimony of
23 Charles Moore, direct examination by Mr.
24 McCoy, (reading):

25 CHARLES MOORE, being duly sworn to

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1 *tell the truth, the whole truth and nothing*
2 *but the truth, testified, as follows:*

3 *DIRECT EXAMINATION*

4 *BY MR. McCOY:*

5 *Q. Good afternoon, Mr. Moore.*

6 *A. Good afternoon.*

7 *Q. Can you tell the jury how old you are?*

8 *A. Twenty years old.*

9 *Q. Can you tell the jury where you live*
10 *right now?*

11 *A. In North Charleston.*

12 *Q. Where in North Charleston?*

13 *A. Off of Dorchester Road.*

14 *Q. Off of Dorchester Road?*

15 *A. Yes, sir.*

16 *Q. Where did you live on March 27th, 2007?*

17 *A. In Trailwood.*

18 *Q. In the Trailwood neighborhood?*

19 *A. Yes, sir.*

20 *Q. Is that in North Charleston, as well?*

21 *A. Yes, sir.*

22 *Q. What county is that?*

23 *A. Charleston County.*

24 *Q. Mr. Moore, do you work anywhere right*
25 *now?*

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1 A. No, sir. I was laid off.

2 Q. You were laid off?

3 A. Yes, sir.

4 Q. Who do you live with there off of
5 Dorchester Road?

6 A. My mother.

7 Q. Now, Mr. Moore, I am going to take you to
8 almost two years ago from today -- March 27th,
9 2007.

10 A. Okay.

11 Q. Who were you living with in Trailwood?

12 A. My mother.

13 Q. Your mother?

14 A. (Affirmative nod)

15 Q. And were you working then?

16 A. Yes, I was working at a tool store.

17 Q. Mr. Moore, can you tell me what you were
18 doing on March 27th, 2007?

19 A. I was home, off that day, and I was --
20 I usually when I got off of school, I go to
21 school from 7:00 to 2:00, usually come home
22 and take a nap. I was off that day. I knew
23 I was sleeping and then Nitty came ---

24 Q. Who came?

25 A. Nitty.

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- 1 Q. Where did he come?
- 2 A. He came to our house.
- 3 Q. Okay. Why did he come to your house?
- 4 A. Came by to say hi or whatever, then came
- 5 to say he was going to wash the car and then
- 6 he left.
- 7 Q. When he came, what car did he arrive in?
- 8 A. In my brother's Cutlass.
- 9 Q. In your brother's Cutlass?
- 10 A. Yeah.
- 11 Q. How long did he stay with you that day?
- 12 A. Five, ten minutes and then he left.
- 13 Q. Why was he in your brother's Cutlass?
- 14 A. He was washing it.
- 15 Q. He was?
- 16 A. Yes.
- 17 Q. Did he leave your brother's Cutlass there
- 18 after -- during his visit?
- 19 A. No, he went back in it.
- 20 Q. He did what now?
- 21 A. He went back in it.
- 22 Q. When did -- did he leave in another car?
- 23 A. No, he left in the Cutlass and then he
- 24 came back in about five or ten minutes after
- 25 that and said he -- he was coming to get the

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1 red car, the Gram Am.

2 Q. What was he going to do with that car?

3 A. He said he was going to wash that, too.

4 Q. Was it common for Nitty to wash your
5 cars?

6 A. Yes. He washed the cars all the time,
7 any time my brother say he could come and wash
8 it.

9 MR. McCOY: Beg the court's
10 indulgence, Your Honor.

11 THE COURT: Certainly.

12 MR. HALES: Thank you. Please
13 answer any questions that Mr. King might have.

14 THE COURT: You may cross examine.

15 MR. KING: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. KING:

18 Q. Did you know Sheldon Frasier, the man who
19 got shot?

20 A. No, sir.

21 Q. Do you know Jamol Greene?

22 A. Yes, sir. He is my brother.

23 FOREMAN: (Raises hand).

24 THE COURT: Stop. Thank you, Mr.
25 Jones. The next one who you wish to hear is

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1 Kimberly Bates?

2 FOREMAN: Yes, sir.

3 COURT REPORTER: Testimony of
4 Kimberly Bates, direct examination by Mr.
5 Hales, (reading):

6 KIMBERLY BATES, being duly sworn to
7 tell the truth, the whole truth and nothing
8 but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. HALE:

11 Q. Good morning, Ms. Bates.

12 A. Hi.

13 Q. Can I call you "Kimberly"?

14 A. Yes, sir.

15 Q. How old are you, Kimberly?

16 A. I'm twenty-seven.

17 Q. Where do you live?

18 A. I live in Georgia.

19 Q. How many children do you have?

20 A. I have four.

21 Q. Back in March of 2007 where did you live?

22 A. I lived in Trailwood.

23 Q. Do you remember that day?

24 A. Yes, sir.

25 Q. Okay. Tell us about that day?

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1 A. That was the day that Sheldon got shot.

2 Q. Where did that happen?

3 A. In Trailwood Mobile Homes.

4 Q. Where in Trailwood Mobile Homes were you?

5 A. We were at Miss Sharon's house.

6 Q. That is a friend of yours?

7 A. (Affirmative nod).

8 Q. What happened?

9 A. He knew Miss Sharon as well as Mr.
10 Stanley, and I knew Miss Sharon and his
11 daughter.

12 Q. Who'all was there?

13 A. Well, there were -- there was a truck
14 outside with, I'd say about three guys already
15 out there.

16 Q. What kind of truck was it?

17 A. It was like a tan Explorer.

18 Q. Did you know those guys?

19 A. No, sir.

20 Q. How did you'all get there?

21 A. We drove up to speak with Miss Sharon.

22 Q. What happened when you got there?

23 A. Sheldon got out of the car and he went
24 over to talk to the guys that was outside.
25 There was also another guy out cutting the

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1 *grass.*

2 *Q. What did you do?*

3 *A. I was sitting in the car.*

4 *Q. Why did you stay in the car?*

5 *A. Because my girl was in the car with me.*

6 *Q. Tell us what if anything you perceived*
7 *while you were sitting in the car?*

8 *A. I saw Sheldon, he was standing out in*
9 *front of the car. All of a sudden I seen him*
10 *coming past the car with another following*
11 *behind him, shooting a gun at him.*

12 *Q. Let's talk about for a moment how you*
13 *were positioned in the car. How did you'all*
14 *pull up?*

15 *A. We pulled up on the right-hand side of*
16 *the Explorer, facing the trailer.*

17 *Q. So you're side-by-side with the Explorer?*

18 *A. Yes, sir.*

19 *Q. Facing the trailer?*

20 *A. Yes, sir.*

21 *Q. So you are inbetween the trailer and the*
22 *road?*

23 *A. Yes, sir.*

24 *Q. Was there a space in between you and the*
25 *Explorer?*

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1 A. Yes, sir.

2 Q. Now, you say that you saw this man
3 chasing Sheldon. Explain that -- go --
4 explain that to us.

5 A. I was sitting in the car, looking at
6 Sheldon. I saw him coming by the side of the
7 car and that's when I looked and I saw another
8 guy, with a gun, and he was shooting a gun at
9 Sheldon. As Sheldon was running past the car,
10 I was looking at the guy with the gun and he
11 was running past the car, as well.

12 Q. How did he run past the car?

13 A. I mean, it wasn't like a fast-speed run.
14 He was just running and shooting the gun at
15 the same time.

16 Q. Were you able to get a look at the guy?

17 A. Yes, I was.

18 Q. Who was the guy?

19 A. The guy that is sitting over there.

20 MR. KING: Objection based on our
21 pretrial Motion, Neil v. Biggers.

22 THE COURT: Objection noted and
23 overruled. Rulings previously given in this
24 proceeding still apply. Thank you.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. HALE:

2 Q. Could you describe him for us?

3 A. Well, he has on a black tuxedo (sic) with
4 braids in his hair.

5 Q. What table is he sitting at?

6 A. He's sitting over there (indicating), the
7 defense table.

8 MR. HALE: I would like the record
9 to reflect that the witness has identified Mr.
10 Kaseem Stephens.

11 THE COURT: It so reflects.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HALE:

14 Q. What happened after you saw Sheldon and
15 the defendant run by?

16 A. After that Sheldon ran behind the car and
17 then he fell to the ground, on the other side.

18 I got out of the car and I started
19 yelling, "What are you doing!? What are you
20 doing!?" I looked and I ran around and he was
21 right there. As I saw him pulling the gun up,
22 I ran back to my car.

23 That was it.

24 Q. Take a moment and compose yourself.

25 A. (Pause).

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1 Q. When you got out of the car were you able
2 to get a look at the guy again?

3 A. (Affirmative nod).

4 Q. How did all that happen?

5 A. Excuse me?

6 Q. How were you able to get a look at him?

7 A. I was so close. I was in front of -- he
8 was looking at me and I was looking at him.

9 Q. Okay. Explain to us the circumstances of
10 that, if you could.

11 A. I jumped out and I run up because I knew
12 that Sheldon had fell to the ground at that
13 time, and I was trying -- I was yelling,
14 asking him, "What are you doing? Why are you
15 doing this?" At that time, he's looking at me
16 and I'm looking at him. He started raising
17 his hand up and I said, "Oh no, no, no, no,
18 no." I ran back to my car and I jumped in the
19 car.

20 Q. So you'all were face to face?

21 A. Yes, sir.

22 Q. About how long were you face to face?

23 A. I'd say about five seconds.

24 Q. How close were you to him -- you want me
25 to come closer? Tell me when to stop.

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1 A. *Right there.*

2 Q. *Right here?*

3 A. *Yes, sir.*

4 Q. *And you say that he raised his hand up?*

5 A. *Yes, sir.*

6 Q. *Okay. So you saw him twice during that*
7 *timeframe?*

8 A. *Yes, sir.*

9 Q. *Why did you jump back in your car?*

10 A. *Because I thought when I seen him raise*
11 *his gun up, I thought that he might try to*
12 *shoot at me.*

13 Q. *After you jumped in the car what*
14 *happened?*

15 A. *After that's is when I started seeing*
16 *that every body was driving off. I got in the*
17 *car and I looked back and seen Shel had run*
18 *back across the street. And I was getting in*
19 *the car to go figure out where he went to at*
20 *the time.*

21 Q. *Did you see the Defendant, Mr. Kaseem*
22 *Stephens, leave?*

23 A. *I seen the car when it -- that's when I*
24 *seen that there was a car that had back out*
25 *and at that time the car backed out that's*

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1 *when I seen that it was the car that he'd got*
2 *into.*

3 *Q. What kind of car was it?*

4 *A. It was a burgundy Cutlass.*

5 *Q. Did you see that car drive off?*

6 *A. Yes, sir.*

7 *Q. You say that you then went to find*
8 *Sheldon?*

9 *A. (Affirmative nod).*

10 *Q. What did you do?*

11 *A. Once I saw that he was coming around --*
12 *well, I drove probably like about two trailers*
13 *down and I saw him coming from behind a*
14 *trailer. I parked the car, I got out, I*
15 *grabbed him and I walked him ---*

16 THE COURT: Mr. Jones?

17 FOREMAN: Yes, sir.

18 THE COURT: I understand the jury
19 has heard all that they need to hear of the
20 testimony.

21 FOREMAN: Yes, sir.

22 THE COURT: Thank you so much,
23 Ladies and Gentlemen. I would ask you to
24 retire and resume your deliberations. If
25 further information is needed, please just let

1 me know. Mr. Harris, thank you very much for
2 remaining. I am going to ask that you remain,
3 as well, if you could, for a few more moments,
4 please, sir.

5 ALTERNATE JUROR: Yes, sir.

6 (JURY OUT @ 3:34 P.M.)

7 THE COURT: Any exceptions or
8 additions from the State regarding the
9 conversation of the court with the jury and
10 what they've listened to?

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

13 THE COURT: Any exceptions or
14 additions from the Defendant?

15 MR. KING: No, Your Honor.

16 THE COURT: Thank you very much.
17 Do we have this person identified as to which
18 juror that it was?

19 MR. KING: Your Honor, she says
20 that she doesn't recognize any of the twelve
21 jurors. It sounds to me like she is
22 identifying a bailiff who is sitting up there
23 with the jury.

24 THE COURT: Yeah, I ---

25 MR. KING: I don't want to move

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1 for a mistrial. It's a good jury, I don't
2 think that I could get a better ---

3 THE COURT: I don't think that
4 there was anything that was -- the only
5 concern that I have is that there needs to be
6 cautioned to the bailiffs that -- they need to
7 make sure when they take them downstairs that
8 there is no one -- how do you know who is in a
9 trial, but the best thing is just keep them
10 away from all people. Certainly not to allow
11 any type of interaction to take place.

12 I don't believe that there is
13 anything that has happened. I think she was
14 very candid and straightforward and I
15 appreciate her doing that. But the give-away
16 to me is the card, absolutely that is not a
17 juror. The interaction as I understood was
18 between that individual and -- unless the jury
19 knew these people and they've said -- they've
20 already said that they didn't know any of the
21 family members, because we have identified
22 those persons to them, who was involved.

23 I don't know that it would have any
24 influence unless there was interaction between
25 an employee and a juror. I don't think that

1 there was. So the fact that she observed that
2 there was some interaction, it may or may not
3 have meant anything at all to the jurors. So
4 for those reasons -- does the State have any
5 objection to the jury continuing?

6 MR. McCOY: No, Your Honor.

7 THE COURT: As I understand, you
8 have no objection to this jury continuing?

9 MR. KING: Right. I was trying to
10 explain it to Mr. Stephens.

11 THE COURT: If you want a few
12 moments to confirm that with Mr. Stephens,
13 please take whatever time you need.

14 MR. KING: Whenever I've had to
15 retry a case, twice before, it ---

16 THE COURT: It doesn't work.

17 MR. KING: The State's case always
18 seems to get better.

19 THE COURT: I ---

20 MR. KING: I just wanted to tell
21 him what my reasoning is. I think we've got a
22 decent jury, I don't know that my defense can
23 get any better, I think the State's case would
24 only get stronger the next time. I don't want
25 -- I'm not asking for a mistrial.

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1 THE COURT: I want to also
2 supplement that I understand, that's why I
3 called the lady up to look at the jurors.
4 She's had an opportunity to view them and if
5 she doesn't recognize any of those persons,
6 as I understand. That's fine, the court is
7 comfortable with that. Thank you much.

8 Thank you, again, for calling that
9 to the court's attention.

10 Who was the bailiff, who took them
11 down?

12 CLERK: Mr. Robinson.

13 THE COURT: Thank you. He doesn't
14 need to come in. If there are ever people
15 around, we just need to make sure when you
16 take them to smoke that you keep them away
17 from those people.

18 MR. BROWN, CHIEF BAILIFF: Yes, sir.

19 THE COURT: Thank you, Mr. Brown.
20 You do a good job.

21 (IN RECESS, JURY IN DELIBERATION)

22 (NOTIFIED OF VERDICT @ 4:15 P.M.)

23 (DEFENDANT PRESENT)

24 THE COURT: All right, everybody is
25 present. Let the record reflect that Mr.

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1 Stephens is present.

2 I want to thank everybody who has
3 been here observing this proceeding in the
4 audience. I know that these are emotional
5 proceedings; understandably so, from both
6 sides.

7 As I told the jury in my charge,
8 we're called upon to be almost superhuman
9 sometimes in these proceedings because we're
10 called upon to suppress our normal human
11 emotions. It is very normal to have a
12 reaction to this verdict, whichever way it
13 goes. One thing that I want to try to do,
14 though, is preserve and protect the dignity of
15 this proceeding. These good folks that have
16 made the sacrifice to help resolve this, we
17 need to make sure that we do that for them, as
18 well. So I am not going to tolerate or permit
19 any type of response to the verdict when it is
20 published.

21 If you feel that you may have
22 difficulty holding your emotions, I would
23 suggest that you go ahead and leave now
24 because if there are any outbursts, I will
25 deal with that. I would ask the bailiffs and

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1 security to secure you, you will not be
2 permitted to leave, and we will have a hearing
3 on the contempt of court that will be
4 administered thereafter because it will be
5 violative of this instruction. Please
6 understanding that. Please don't think I'm
7 some hard-hearted person, because I really am
8 not. My heart goes out to both sides in this
9 matter. Thank you.

10 Is the State ready to proceed with
11 receiving the verdict?

12 MR. HALES: Yes, Your Honor.

13 THE COURT: Is the Defendant ready?

14 MR. KING: Yes, Your Honor.

15 THE COURT: Let's bring in our
16 jury, please.

17 (JURY IN @ 4:20 P.M.)

18 THE COURT: Thank you, Ladies and
19 Gentlemen. Mr Jones, thank you, sir. I
20 understand from the bailiff that the jury has
21 reached a verdict, sir. Is that correct?

22 FOREMAN: Yes, it is, Your Honor.

23 THE COURT: If you would pass the
24 verdict form please to Mr. Williams (bailiff).

25 FOREMAN: (Tenders to bailiff).

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1 BAILIFF WILLIAMS: (Tenders to
2 Judge).

3 THE COURT: (Upon review), the
4 verdict form has been properly completed. If
5 you would, publish the verdict, please. I ask
6 the Defendant to please rise.

7 DEFENDANT: (Complies)

8 CLERK: State of South Carolina,
9 County of Charleston, versus Kaseem Stephens,
10 Defendant, in the Court of General Sessions of
11 the Ninth Judicial Circuit on Indictment 08-
12 GS-10-06300. As to Indictment 08-GS-10-06300,
13 (reading): "We, the jury, by unanimous
14 consent find the Defendant guilty of murder."
15 Signed by the presiding juror, William Jones.

16 Ladies and Gentlemen of the jury, if
17 this is your verdict, please raise your right
18 hand -- (unanimous response by jurors).

19 THE COURT: Thank you. Let the
20 record reflect that each juror has in response
21 to the clerk's inquiry raised their right
22 hand. Anything further from the jury, from
23 the State, Mr. Hales?

24 MR. HALES: No, Your Honor.

25 THE COURT: Anything further of the

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1 jury from Mr. Stephens, Mr. King?

2 MR. KING: Your Honor, I would
3 request that we poll the jury.

4 THE COURT: Very well. Thank you,
5 you may be seated. Ladies and Gentlemen, the
6 clerk is going to call your name now in just a
7 moment. Basically this is going to ask you
8 whether or not -- she has published your
9 verdict -- that is your verdict and is it
10 still your verdict. If you would, just simply
11 respond to the clerk's questions.

12 CLERK: Juror 129, William Jones,
13 is this your verdict?

14 JUROR NUMBER 129: Yes.

15 CLERK: Is it still your verdict?

16 JUROR NUMBER 129: Yes.

17 CLERK: Juror 41, Smith Cooper, is
18 this your verdict?

19 JUROR NUMBER 41: Yes.

20 CLERK: Is it still your verdict?

21 JUROR NUMBER 41: Yes.

22 CLERK: Juror Number 77, Linda
23 Faron, is this your verdict?

24 JUROR NUMBER 77: Yes.

25 CLERK: Is it still your verdict?

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1 JUROR NUMBER 77: Yes.

2 CLERK: Juror Number 121, Jerome
3 Isaac, is this your verdict?

4 JUROR NUMBER 121: Yes.

5 CLERK: Is it still your verdict?

6 JUROR NUMBER 121: Yes.

7 CLERK: Juror Number 142, Scott
8 Lambert-Gorwyn, is this your verdict?

9 JUROR NUMBER 142: Yes.

10 CLERK: Is it still your verdict?

11 JUROR NUMBER 142: Yes.

12 CLERK: Juror Number 162, Joyce
13 McCue, is this your verdict?

14 JUROR NUMBER 162: Yes.

15 CLERK: Is it still your verdict?

16 JUROR NUMBER 162: Yes.

17 CLERK: Juror Number 188, Bonita
18 North, is this your verdict?

19 JUROR NUMBER 188: Yes.

20 CLERK: Is it still your verdict?

21 JUROR NUMBER 186: Yes.

22 CLERK: Juror Number 228, Cheryl
23 Scott, is this your verdict?

24 JUROR NUMBER 228: Yes.

25 CLERK: Is it still your verdict?

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1 JUROR NUMBER 228: Yes.

2 CLERK: Juror Number 251, Jason

3 Solt, is this your verdict?

4 JUROR NUMBER 251: Yes.

5 CLERK: Is it still your verdict?

6 JUROR NUMBER 251: Yes.

7 CLERK: Juror Number 284, Aaron

8 Weeks, is this your verdict?

9 JUROR NUMBER 284: Yes.

10 CLERK: Is it still your verdict?

11 JUROR NUMBER 284: Yes.

12 CLERK: Juror Number 295, Ruthie

13 Withfield, is this your verdict?

14 JUROR NUMBER 295: Yes.

15 CLERK: Is it still your verdict?

16 JUROR NUMBER 295: Yes.

17 CLERK: Juror Number 303, Quinton

18 Brown, is this your verdict?

19 JUROR NUMBER 303: Yes.

20 CLERK: Is it still your verdict?

21 JUROR NUMBER 303: Yes.

22 CLERK: Your Honor, the jury has

23 been polled. The verdict stands.

24 THE COURT: Thank you, Ms. Gadsden.

25 The jury has been polled and the verdict does

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1 stand. Anything further from the panel from
2 the Defendant?

3 MR. KING: No, sir.

4 THE COURT: Thank you very much.

5 Ladies and Gentlemen, thank you very much for
6 your attention throughout this matter. It's
7 an honor to serve with persons like you.

8 Please understand something. We're not
9 talking about your verdict. I told you that
10 you had a job and you undertook the job. I
11 thank you for the manner in which you
12 approached your responsibilities, you
13 deliberative fashion, serving in the capacity
14 that you did to help resolve this dispute.
15 It is not something that we choose to do but I
16 appreciate what you've rendered, the service
17 that you've rendered to your state and county.

18 The jury -- we are going to pick
19 another case tomorrow. I have given the
20 option to Mr. Harris and I give you the same.
21 Because you have served and because we have a
22 number of jurors, if you wish to have this
23 conclude your services this week, you do not
24 have to return. If you wish to continue to
25 participate, then we will look forward to

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1 seeing you tomorrow and the jury is going to
2 be instructed to return at 10:00. I would
3 simply ask that you leave here -- if you do
4 plan to come back tomorrow, just let the clerk
5 know. If you don't, then she will -- we have
6 your numbers and names and we will happily
7 take care of that.

8 Mr. Jones, you have a Thursday
9 meeting, as I recall, and that case tomorrow
10 will run into Thursday, so you are excused,
11 sir, as you requested. Thank you very much,
12 sir.

13 Ladies and Gentlemen, you are free
14 to leave. The restriction on talking about
15 this case is -- no longer exists. But if you
16 choose not to talk about case and somebody
17 should persist in asking you questions, if
18 you will make that known, please, to Mrs.
19 Armstrong, she can make that known to me and
20 we will attempt to resolve that problem for
21 you. Good luck to each one of you. You're
22 free to leave.

23 (JURY EXCUSED)

24 THE COURT: Do you have a
25 sentencing sheet?

1 MR. HALES: Yes, sir.

2 THE COURT: Are you prepared to
3 sentence today?

4 MR. KING: Yes, Your Honor.

5 THE COURT: Pass that up, please,
6 sir.

7 MR. HALES: Yes, sir, (tenders).

8 THE COURT: Anything further from
9 the State, Mr. Hales?

10 MR. HALES: Your Honor, I believe
11 that the family, at the appropriate time,
12 would like to speak.

13 THE COURT: I would be happy to
14 hear from them. Now is the appropriate time,
15 because I want to have the concluding remarks
16 from Mr. Stephens' side.

17 MR. HALES: I believe that Ms.
18 Kimberly Bates, who is the young lady that
19 testified, who was the fiancée of Sheldon
20 Frasier, and also his mother, Oregon Coward,
21 would like to speak.

22 THE COURT: I will be happy to hear
23 from them. I am going to ask if each person
24 -- if you would just have them -- would it
25 help us -- I know you'all like to keep them

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1 outside the rail, but is it possible to bring
2 them inside, because the sound here is
3 atrocious and it will help us tremendously.

4 DEPUTY: Yes, sir.

5 THE COURT: Appreciate that. Ms.
6 Bates, for the record, give me your name
7 again.

8 KIMBERLY BATES: Kimberly Bates.

9 THE COURT: Thank you, Ms. Bates.
10 I'll be delighted to hear from you, ma'am.

11 KIMBERLY BATES: I just want to say
12 that March 27th was the most horrible day of
13 my life. I will never forget it, that day.

14 I was four months pregnant at the
15 time, me and Sheldon already had a son that
16 was five months old. My son is now two years
17 old and my daughter, who I gave birth to five
18 months later after that date, will never, ever
19 get to see their father, they will never get
20 to know who he is, what type of person that he
21 was, they will never get to enjoy that
22 experience because his life was taken.

23 On the 28th of March, me and Sheldon
24 Frasier were to be married. We had just left
25 the courthouse, getting our marriage

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1 certificate. This is something that I will
2 never get to experience with him because his
3 life was taken.

4 My life has changed dramatically
5 because of these events. I had to move away,
6 I have to relocate me and my children, start a
7 whole other life somewhere else because I was
8 afraid. This is something that I will never
9 get back.

10 There is nothing that no one can do
11 to bring Sheldon back. That can't be done. I
12 would say that would be justice.

13 I ask that he never see daylight
14 again. Thank you.

15 THE COURT: Thank you, ma'am.
16 Good afternoon, ma'am.

17 OREGON COWARD: Good afternoon,
18 Your Honor, everybody in here. Today, ---

19 THE COURT: Ma'am, you're going to
20 need to keep -- direct your voice this way if
21 you want us to -- because -- you don't have a
22 mic, so you're going to have to raise your
23 voice.

24 OREGON COWARD: Okay, sir. This
25 is a very hard day. It's been two hard years

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1 for me.

2 THE COURT: Yes, ma'am.

3 OREGON COWARD: I miss my child so
4 much. I love my son. He was a donor, he
5 donated to an officer of the law, one was a
6 school teacher that was on kidney dialysis for
7 four years and she is praying to God that she
8 have a child now that she has a kidney.

9 I just want to say to Kaseem
10 Stephens that I don't hate you. I ask God to
11 forgive you and I ask you to ask God to
12 forgive you, because you are going to see God
13 one day.

14 You can never give me back what you
15 took, you took a part of my soul from me, left
16 a hole in my heart.

17 But I don't hate you and I don't
18 wish you no harm but I do want justice.
19 Okay?

20 Thank you, Your Honor.

21 THE COURT: Thank you, ma'am.

22 OREGON COWARD: And I want to
23 thank the whole North Charleston Police
24 Department, Detective Elmore, Laree Smith,
25 Tracy Smith, they all stood and they never

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1 gave up, and I think everybody -- Terry,
2 Kevin, the solicitors.

3 THE COURT: For the record, your
4 name?

5 OREGON COWART: My name is Oregon
6 Frasier.

7 THE COURT: Thank you, Ms. Frasier.
8 Thank you very much for your remarks.
9 Anything else, Solicitor?

10 MR. HALES: Your Honor, if you
11 would like to hear the Defendant's prior
12 record?

13 THE COURT: I would. Yes, sir.

14 MR. HALES: Your Honor, I have a
15 1996 New York conviction for attempted robbery
16 and a 1999 New York conviction for conspiracy
17 in the second degree.

18 THE COURT: Mr. King?

19 MR. KING: Thank you, Your Honor.
20 The conspiracy, I believe is a drug-related
21 conspiracy. I checked with New York because I
22 was curious as to what was behind that, it was
23 a conspiracy involving drugs, nonviolent.

24 THE COURT: Okay.

25 MR. KING: Mr. Stephens has always

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1 maintained his innocence to me and in this
2 situation I also advise them to remain silent
3 because I will be filing an appeal.

4 THE COURT: I understand.

5 MR. KING: By way of mitigation,
6 Your Honor, I would point out that Mr.
7 Stephens' mother passed away actually two
8 years ago today, March 17th, 2007. That ended
9 up not being an issue in the trial but I was
10 prepared if that came up to go into that. His
11 mother passed away March 17th, 2007, ten days
12 before this incident happened. I would offer
13 that, Your Honor.

14 I would ask if maybe his family, if
15 anybody wants to speak on his behalf.

16 I know that he was living in New
17 York, Your Honor. His girlfriend, Esther
18 Barnes, is here. They had started a life
19 there, obviously he's got family support, they
20 came in and they've been here the whole time.

21 I would ask Your Honor to consider
22 the minimum sentence in this case. I know
23 that he has a record but it is pretty old,
24 it's about ten years old and I would ask Your
25 Honor to consider the minimum.

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1 Your Honor, a couple of ---

2 THE COURT: Certainly, I would be
3 happy for them is they want to come forward
4 and speak as well.

5 TAMIKA STEPHENS: Kaseem Stephens is
6 my first cousin, one of my youngest cousins.
7 He hasn't been in that much trouble. I know
8 that he is still mourning his mother. I am
9 the one who found his mama, and he mourns her
10 to this day.

11 I would ask that you be lenient on
12 my cousin because I know that he did not do
13 this, that he was framed.

14 He was a good student in school. I
15 know he was going to school right before his
16 mom passed away.

17 He is not going to have children and
18 that is what his mom was wishing.

19 I am sorry for this family's loss, I
20 am sorry that she had to lose her son but it
21 wasn't by the hands of my cousin.

22 Thank you.

23 THE COURT: Thank you, ma'am.

24 SHAWN STEPHENS: Good afternoon,
25 sir. My name is Shawn. Kaseem Stephens is my

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1 first cousin. He is a very honorable young
2 man, who I've known all my life. We lived in
3 the same household since age five.
4 I love him. He knows that. I want to say
5 that he is a very knowledgeable and smart
6 person that did not do this.

7 I am sorry for what happened to her
8 son, you know, but my cousin was in New York
9 where he was found, and he didn't know what
10 happened.

11 There are a lot of things about
12 Kaseem that you'll never know, you know, his
13 mechanical skills, his detailing skills, his
14 driving, academics, he was a straight-A
15 student in school.

16 I have to say that this young man --
17 everyone has a checkered past, you learn from
18 your mistakes and move on.

19 Sheldon is a great person. He is.

20 THE COURT: Thank you, Mr.
21 Stephens. Thank you very much, sir.

22 KENNETH WILSON: Good afternoon, my
23 name is Kenneth Wilson and this is my wife,
24 Pamela Wilson.

25 THE COURT: Thank you, Mr. Wilson.

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1 KENNETH WILSON: We had the honor
2 of knowing Mr. Stephens and we have -- my wife
3 has been working with him quite a bit. We
4 express our sorrow for the loss of the family
5 members and for what the media has put them
6 through, what they have been through.

7 PAMELA WILSON: We have known him
8 since 2006. We have found him to be a very
9 respectable young man. As a result of meeting
10 him, we decided to make him a part of our
11 family. So we decided that we wanted to be
12 his godparents.

13 Since that time we've introduced him
14 to Bible studies. At first he didn't seem
15 like he was that interested and it was
16 understandable, especially knowing his
17 background, and not having the understanding
18 of scripture and things like that, but as he
19 and I began to correspond through the mail and
20 talk over the phone, he's came a long way.

21 No matter what anyone thinks of him,
22 he is nothing like what he was when he was
23 first incarcerated. He is a very changed
24 young man and I give thanks to the Lord for
25 that. I know for a fact that when someone's

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1 heart has been touched by God himself, there
2 is a big difference. There is a difference in
3 him today compared to what it was when I first
4 began to communicate with him. That is why I
5 am here to support him and we were looking so
6 forward to taking him back home with us,
7 because we know that since his mom, his
8 biological mom, passed away that we will be
9 the next role models for him to follow. We
10 still looks forward to that, we still believe
11 that is going to happen -- no matter what has
12 been done here today, we believe that.

13 My heart and sympathy goes out to
14 the family. I am very sorry for their loss,
15 but from the depth of my heart regardless of
16 what verdict was brought out, I do not believe
17 he committed this crime.

18 Thank you very much.

19 THE COURT: Thank you.

20 KENNETH WILSON: And although it
21 has come to this point here, we are still
22 going to work with him and ---

23 PAMELA WILSON: Yes, we are.

24 KENNETH WILSON: So that someday
25 what Ms. Frasier talked about will come about.

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1 THE COURT: Thank you, Mr. Wilson.
2 Thank you both for being here. Anything else,
3 Mr. King?

4 MR. KING: Your Honor, I need to
5 put on the record that I request you
6 reconsider my previous Motion, make a Motion
7 for a new trial, a directed verdict Motion,
8 and our *Neil v. Biggers* Motion.

9 THE COURT: Thank you, sir. Your
10 Motion is timely made and properly submitted,
11 properly preserving the issues, the court
12 recognizes that. Considering the evidence,
13 the evidence clearly supports the decision of
14 the jury notwithstanding the -- and I respect
15 the opinion of persons who have spoken in this
16 courtroom. I admire them for coming forward
17 and sharing that, I thank them for that. I
18 believe in this system and if there -- I agree
19 with the statement made that if something
20 needs to be corrected, then it will be
21 corrected should it be necessary. But the
22 jury spoke and the basis of the jury's
23 decision, to me, is clearly supported by the
24 evidence in the case. I would respectfully
25 deny your Motions.

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1 Anything else? I understand your
2 instruction to Mr. Stephens. Mr. Stephens, I
3 understand that it is your desire not to speak
4 at this time; is that correct?

5 DEFENDANT: That's right.

6 THE COURT: Thank you, sir.

7 MR. KING: He has been in jail for
8 three hundred fifty-six (356) days, Your
9 Honor. Since March 26th -- 356 days.

10 THE COURT: Thank you, sir.

11 I can understand the other victim in
12 this case, the mother of the children of the
13 deceased and I can understand his mother.
14 Being a father and having a had a child -- not
15 as long as you had yours -- but having had a
16 child who died, there is no way to replace
17 that child, ever. My child didn't die in the
18 fashion that your child died. I had a grand-
19 father who died in that fashion and I saw my
20 father suffer with it until he died at eighty-
21 one years of age. It doesn't ever go away. I
22 hope the Lord will bring you peace.

23 And I hope that the Lord brings Mr.
24 Stephens' family peace and his loved ones.
25 They care about you and that's good.

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1 Your background unfortunately leads
2 me away from the minimum sentence, because --
3 not so much the conspiracy but the robbery.
4 That is something that speaks a little bit
5 about what's going on.

6 I don't question that people can
7 change and I don't disbelieve what has been
8 shared, the changes that have occurred to you.
9 I believe in that book, too, that you have
10 been studying and it's a -- it's a great
11 blueprint for life, we would all do well to
12 follow it.

13 I also know what that blueprint says
14 to me about what happens when we don't follow
15 what we should do, it says that there are
16 consequences for our actions and those
17 consequences, when they happen, we just have
18 to deal with that.

19 There are consequences of this,
20 life; the jury said so. I don't think I
21 should impose a life sentence but-- and you
22 may think this is the same thing as a life
23 sentence. I think about these things, it is
24 not something that I derive any great pleasure
25 from.

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1 I hope that in ten years from now, I
2 hope that I will be alive because I know a lot
3 of people who are seventy-one who enjoy life.
4 You'll be given an opportunity to do that. So
5 you are not going to spend the rest of your
6 life there. If that is grace, so be it. If
7 that is an injustice, I respect your feeling
8 about that. I don't know what justice is
9 sometimes. It's a tough -- that's a moving
10 target. I just try to do the best I can and
11 be as fair as I know how to be, but I know --
12 I know that I can't please everyone. I
13 respect what you asked of me and respect what
14 you said.

15 The sentence of the court is forty
16 (40) years. I give you credit for the 356
17 days. Good luck, sir. Good luck, sir.

18 (TRIAL CONCLUDED)

19

20

21

22

23

24

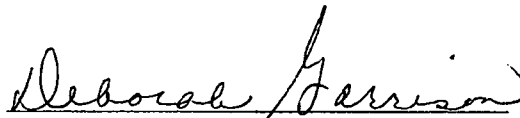
25

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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable R. Markley
Dennis, Jr., on March 16-17, 2009;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

August 19, 2009

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONHASEEM STEPHENS
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2012-CP-10-7073
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McKormick Corr. Inst. 386 Redemption Way. McKormick, S.C. 29899
2. Name and location of Court which imposed sentence Charleston County Court of Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MURDER 08-GS-10-6300
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 17th 2009 sentence to 40 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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 29TH 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion NO. 4996 STATE VS STEPHENS
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Applicant was denied the rights to effective assistance of counsel, guaranteed
 (b) by the Sixth and Fourteenth Amendment to United States Constitution
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to request mitigation called the murder
 (b) with mitigating evidence.
 (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? Directly South Carolina ^{Court of Appeals}
 (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. _____
 ii. N/A
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. N/A
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. N/A
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) Cannot Raise ineffective assistance on Direct appeal

(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? YES _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? DAVNE Phillips South Carolina indigent defense
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. At trial: Jason King Charleston County public Defenders office
- ii. Peerce Stidham Charleston County public Defenders office
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. AT TRIAL
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Conviction Vacated / SELF DEFENSE CLAIM.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, _____, 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.

✓ *R. Stedman*

SWORN to and subscribed before me this 23
day of Oct, 2012

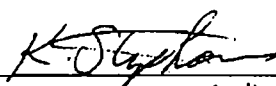
Joyce L. Young (L.S.)
Notary Public

My Commission Expires: 10/11/2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

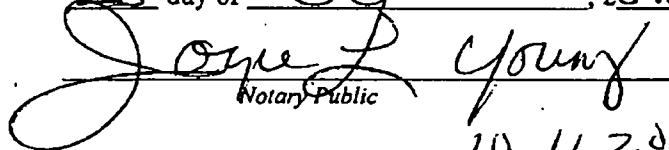
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

23 day of Oct, 2012



Notary Public

My Commission Expires:

20 11 2021

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Kasseem Stephens,)
S.C.D.C. No. 333714,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-10-7073

RETURN

FILED
2013 APR 18 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY *sub*

In response to the post-conviction relief application filed October 30, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted at the August 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-6300). Jason King, Esquire, and Reece Stidham, Esquire, represented the Applicant.

On March 17, 2009, the Applicant proceeded to trial and was found guilty. The Honorable R. Markley Dennis, Jr., sentenced the Applicant to forty (40) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Kasseem Stephens, 398 S.C. 314 (S.C. Ct. App. filed June 27, 2012). The remittitur was sent on July 13, 2012.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Counsel failed to request a jury charge on manslaughter.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

April 15, 2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Kaseem Stephens,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 12-CP-10-7073
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 22, 2013, before The Honorable Deadre Jefferson in the Court of Common Pleas, 9th Judicial Circuit, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

William H. Runyon, Jr., Esq.
.... Appearing for Applicant

Ashleigh Wilson, Esq.
OFFICE OF THE ATTORNEY GENERAL
...Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

Kaseem Stephens v State of South Carolina

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Case No. 12-CP-10-7073

Hearing of May 22, 2013

Before The Honorable Deadre Jefferson

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(None Entered)

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Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073
May 22, 2013 - Motion for Continuance

3

1

2

(APPLICANT PRESENT)

3

THE COURT: Okay, Mr. Stephens.

4

5

6

MR. RUNYON: Judge, as relates to Mr. Stephens, we're going to have to ask for a continuance as to one term.

7

THE COURT: Okay.

8

9

MR. RUNYON: Because we are looking for somebody.

10

THE COURT: Who are you looking for?

11

12

MR. RUNYON: Trying to look for a witness, Judge.

13

14

THE COURT: You think that you're going to find them?

15

16

17

MR. RUNYON: Uh, to be candid with the court, I don't know if I can find them but I am going to try.

18

19

20

21

THE COURT: Would the better thing to be is to go ahead and proceed with the hearing and then allow you to supplement the record, give you time to find them?

22

MR. RUNYON: Uh, ---

23

24

25

THE COURT: Because I am not inclined to have him transported twice. I don't see us wasting court time when we can go forward.

Kaseem Stephens v State of South Carolina

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Case No. 12-CP-10-7073

May 22, 2013 - Motion for Continuance

1 That witness' testimony wouldn't affect
2 your client's testimony, would it?

3 MR. RUNYON: No, I don't think that it
4 would affect my client's testimony but it
5 would impact the trial counsel's testimony.

6 THE COURT: Speaking of that, we can
7 allow him to supplement the record if that
8 becomes necessary but I don't think it's
9 necessary -- I don't -- I am not inclined to
10 grant a continuance if you can't assure me
11 that you can find the person.

12 MR. RUNYON: To be candid with the
13 court, I can't promise to find somebody.

14 THE COURT: Yeah, but I can give you
15 a window of time to try to and then we can
16 reconvene to supplement the record if it
17 becomes necessary.

18 MR. RUNYON: Well, okay. Well, on Ms.
19 Kamp, that is going to be withdrawn.

20 THE COURT: Okay. Well, why don't we
21 -- Mr. Capretti, are you here? Am I
22 pronouncing your name correctly?

23 MR. CAPRETTI: Yes, Your Honor.

24 THE COURT: Then Ms. Runey?

25 MS. RONEY: Yes, ma'am.

1 THE COURT: Okay. We will do the
2 withdrawal and then we will do Mr. Stephens
3 and then we will do Mr. Larkin.

4 (BRIEF RECESS)

5 (APPLICANT PRESENT)

6 THE COURT: Is the State ready to
7 proceed?

8 MS. WILSON: Yes, Your Honor, the State
9 is ready to proceed.

10 THE COURT: Mr. Runyon, you may call
11 your first witness.

12 MR. RUNYON: Subject to our prior Motion
13 to continue.

14 THE COURT: Yes, and I deny that
15 Motion. I see no reason to continue the case
16 when you may or may not be able to locate a
17 witness. If you are able to locate that
18 witness, we will reconvene and allow you to
19 supplement the record. And I'm going to give
20 you a time frame that I feel is reasonable in
21 which for you to locate that witness.

22 MR. RUNYON: We call at this time
23 Jason King, Your Honor.

24 THE COURT: And for the record, this is
25 Kaseem Stephens versus the State, 2012-CP-10-

Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073 - May 22, 2013
Direct Examination of Jason King

6

1 7073 that is before the court on a post-
2 conviction relief for the trial of October
3 2012. The State filed its return on April
4 18th of 2013. You may proceed.

5 (WITNESS TAKES STAND)

6 JASON KING, having been sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. RUNYON:

11 Q. Mr. King, how old are you, sir?

12 A. I am thirty-eight (38).

13 Q. And what is your occupation, job?

14 A. Public defender. Assistant public
15 defender.

16 Q. Do you have any training for that
17 job?

18 A. We -- I have training through the
19 public defender's office and also attended
20 the National Criminal Defense College in
21 Macon, Georgia.

22 Q. I am being inarticulate. Did you go
23 to law school?

24 A. I did. I did.

25 Q. Where did you go to law school, sir?

Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073 - May 22, 2013
Direct Examination of Jason King

7

1 A. I went the University of South
2 Carolina School of Law.

3 Q. And when did you graduate?

4 A. In 2000.

5 Q. And so you've been practicing law
6 for about thirteen years now?

7 A. That's right.

8 Q. You represented Mr. Kaseem Stephens
9 at the time of this trial?

10 A. Yes.

11 Q. About how long had you been
12 practicing law at the time that you
13 represented Mr. Stephens?

14 A. About eight years, eight or nine
15 years.

16 Q. Okay. How many -- roughly, and I --
17 roughly how many trials have you prepared
18 for? Obviously you don't try all the cases
19 that you prepare for. But roughly how many
20 cases have you prepared for?

21 A. Maybe a dozen, rough guess.

22 Q. And did you -- you were primary
23 trial counsel on this case?

24 A. Yes.

25 Q. What were the charges that Mr.

Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073 - May 22, 2013
Direct Examination of Jason King

8

1 Stevens faced?

2 A. He faced a murder charge.

3 Q. And, uh, -- as it relates to -- can
4 you just briefly state what was your defense
5 in that case?

6 A. He -- the witnesses who testified
7 for the State were the fiancée of the man who
8 was shot -- the man was shot when he and his
9 fiancée were supposed to be going to tell a
10 friend that they were going to get married.
11 I ended up getting that fact suppressed
12 because there was -- there was some emotional
13 aspects of that, that they were going to tell
14 someone about their wedding. There was
15 actually a wedding license that was found on
16 the ground that was obtained that day. The
17 victim was shot outside and there were
18 witnesses around. The fiancée identified Mr.
19 Stephens from a lineup.

20 Another eyewitness testified, a Jamal
21 Green who had known -- said that he had known
22 Mr. Stephens for a year, was a friend of his,
23 and identified him as the shooter.

24 The brother of Jamal Green testified, as
25 well, putting Mr. Stephens in the vehicle

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

9

1 that was described during the shooting.

2 Q. Who was the brother of Mr. Green?

3 A. I believe that that was Charles
4 Moore.

5 Q. All right.

6 A. He put him in the Cutlass, which was
7 the car which was described by the witnesses;
8 as borrowing the car before the shooting, I
9 guess; then bringing it back and asking for
10 another car.

11 What I did was -- in that situation, I
12 had one witness who did not know Mr. Stephens
13 at all but identified him out of a lineup. I
14 had another witness who had known him for a
15 year and identified him as being there.

16 So the strategy I took was to argue that
17 the fiancée, who didn't know him, was
18 mistaken in her identification. I called an
19 identification expert to testify about
20 problems with memory and the stress that she
21 would have endured during the shooting, the
22 brief amount of time that she had to view the
23 shooter.

24 Then I argued that Jamal Green was, you
25 know, just pinning it on Mr. Stephens.

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Direct Examination of Jason King

10

1 Because he had ran out the back door
2 when the police tried to find him initially.
3 He had done some things that might have
4 indicated guilt, but he ran out the back door
5 and ended up sending a letter to the police,
6 through his lawyer, ten days later.

7 So I argued that the fiancée was mistaken
8 in her identification and that the other
9 witnesses were just going along with that,
10 either covering up for themselves or for
11 someone else.

12 So I put up the identification expert and
13 I put up one other witness, who I believe was
14 the sister of Jamal Green and Charles Moore.
15 Her statement contradicted what they'd given
16 -- contradicted what they'd said.

17 Q. Now, were there any witnesses --
18 strike that. Did you in fact -- I assume you
19 made your Motion for Rule 5 and Brady
20 material, discovery?

21 A. Yes.

22 Q. And do you think that you received
23 everything that you should have received?

24 A. I believe so.

25 Q. And were any witnesses in this case

Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073 - May 22, 2013
Direct Examination of Jason King

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1 facing any kind of prosecution from the
2 9th Circuit Solicitor's Office, that you
3 recall?

4 A. I believe Jamal -- I believe Jamal
5 Green had convictions, but I'm not sure that
6 anyone had pending charges.

7 Q. Were you privy to any sort of plea
8 deals or anything of that sort that might
9 have existed between any of the witnesses and
10 the solicitor's office?

11 A. I don't believe so.

12 Q. And did you ever become aware of any
13 deals between the witnesses and -- between
14 any witness and the solicitor's office?

15 A. No.

16 Q. Just to cut to the chase, the public
17 defender's office has a staff of investiga-
18 tors?

19 A. Yes.

20 Q. And you were assisted by your
21 investigators?

22 A. Yes.

23 Q. What was your defense in this case
24 other than mistaken identity and questioning
25 the veracity of Mr. Green?

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

12

1 A. Mr. Stephens had told me that he had
2 an alibi defense, so I did investigate that.
3 He said that he was at his mother's funeral
4 in New York. I looked at that, I got a copy
5 of the funeral program. His mother did pass
6 away and there was a funeral ten days before
7 the shooting. So I investigated that alibi
8 defense but found nothing to support it. I
9 talked to several witnesses, people in New
10 York, people/witnesses that he had given me;
11 but I had no witness that would put him in
12 New York at the time of the shooting. Some
13 of the witnesses even put him here in
14 Charleston at the time of the shooting.

15 So while I was given an alibi defense, I
16 had nothing to put that up. So I didn't go
17 with that.

18 In addition to that, they had arrested
19 Mr. Stephens in New York months after the
20 shooting. The State didn't go into that.
21 There was also the possibility that if I'd
22 gone into that I might have brought out the
23 possibility that he'd left -- that he was in
24 New York after the shooting, which could have
25 been viewed negatively as him fleeing the

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13

1 scene.

2 Q. Did you discuss this with Mr.
3 Stephens?

4 A. Yes.

5 Q. Did he agree with your strategy at
6 the time?

7 A. Yes.

8 Q. All right. So you asserted the
9 defense of alibi?

10 A. I did not assert that defense, no.
11 That was what Mr. Stephens had told me to
12 investigate. But it didn't pan out. I had
13 no witnesses to support any alibi defense. I
14 didn't present it because I had no witnesses.

15 Q. Did Mr. Stephens testify?

16 A. He did not.

17 Q. Okay. And what was -- other than
18 the defense alibi that you did not assert,
19 could not assert in your estimation, uh,
20 realistically, was there any other possible
21 defense in Mr. Stephen's case?

22 A. Not that I was aware of. He
23 actually got a little bit of a break because
24 there were other witnesses who were on the
25 scene, that had given statements identifying

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

14

1 him, and they weren't able to be found
2 for trial. There was Bobby Moses, "Light", I
3 think who is the witness that you'd
4 mentioned, and a witness named "John." Both
5 of those had given statements identifying Mr.
6 Stephens as the shooter. But they didn't
7 appear for trial.

8 There were two witnesses that didn't even
9 appear. When those witnesses didn't appear,
10 that gave me a little bit of an advantage
11 because I could make the argument about Jamal
12 Green, who'd ran out the back door. So I had
13 an argument for why he would have some motive
14 to lie or to pin it on someone else. He
15 acted in a way that made him look guilty. I
16 felt that was the only defense that I really
17 had.

18 I couldn't put up the alibi.

19 So I had to deal with these two different
20 witnesses who had identified him. That was
21 the -- the best way that I could go.

22 I could find no reason for the fiancée to
23 be lying or to be anything other than
24 mistaken.

25 Q. Were there any plea bargains offered

Kaseem Stephens v State of South Carolina
Case No. 12-CP-10-7073 - May 22, 2013
Direct Examination of Jason King

15

1 in this case?

2 A. He was offered voluntary man-
3 slaughter for twenty-five years.

4 Q. Did you communicate that plea offer
5 to him?

6 A. Yes.

7 Q. And did he turn that down?

8 A. Yes. In the beginning of the trial
9 transcript, I believe that Judge Dennis went
10 over that with him as well, asked about any
11 offers.

12 Q. So the offer in the case was
13 communicated to him and there was a record
14 of that offer and his declining the offer?

15 A. I may have a note in my file of a
16 meeting where I had written down, but no
17 other record than that.

18 Q. But the transcript ---

19 A. Oh. I don't know if the actual plea
20 deal is stated on the record, but Judge
21 Dennis asked if any offers had been made. I
22 acknowledged that there was and Mr. Stephens
23 says that he doesn't want to take it. I
24 don't know that the plea offer specifically
25 is stated on the record.

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Direct Examination of Jason King

16

1 Q. Now, this question of not offering
2 any alibi defense, uh, how was that cleared
3 with Mr. Stephens?

4 A. I explained to him the witnesses
5 that I had talked to and their responses. I
6 explained to him that I had no witnesses that
7 would testify that he was in New York at the
8 time of the shooting.

9 We talked with Mr. Stephens about his
10 testimony, spent some time going over some
11 testimony with him, some practice. I didn't
12 think that it went very well. A lot of his
13 responses were -- you know, he'd spent some
14 time in prison and he said that his memory
15 was not very good because he'd smoked a lot
16 of marijuana. It was -- I mean, if I thought
17 that he had a chance of getting up there, I
18 might have advised him to take the stand.
19 But from my working with him, I didn't feel
20 that he would help the case at all. And
21 without anything to back up the alibi -- so
22 I advised him not to take the stand.

23 Q. Whose choice was it for him not to
24 testify?

25 A. Ultimately it was Mr. Stephens'

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

17

1 choice.

2 Q. You didn't make that choice for him?

3 A. No, I gave him my advice but I
4 didn't make that decision for him.

5 Q. And -- but he was in fact arrested
6 in the state of New York?

7 A. Yes.

8 Q. And do you know how he got to the
9 state of New York?

10 A. I am assuming that ---

11 Q. Did the investigation show that he
12 drove, got on a plane, train, bus or ---

13 A. No, I am not sure what -- I might
14 have asked him. I'm assuming that he drove
15 but I can't really remember.

16 Q. Okay.

17 A. And I also investigated his bank
18 account to make sure that there were no
19 transactions that occurred in New York. I
20 got that information from him, got those
21 records. There were no New York transactions
22 during the time of the shooting, in addition
23 to the witnesses that I talked to.

24 Q. What bank did he ---

25 A. It was an online bank called Account

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

18

1 Now. I got his information, talked to
2 them and there were no transactions in New
3 York. I believe the account had been closed
4 in 2006 or something. The only transactions
5 were automatic, like Rhapsody, these monthly
6 recurring automatic fees. Rhapsody is an
7 online music service, you pay ten dollars a
8 month and it's drafted out of your account.

9 Q. You're not worried about getting
10 sued by these people, who sue all these
11 people who download all this music?

12 A. Oh, it's legal. You pay the money
13 for the copyright license. It's not illegal.

14 Q. All right. Just checking. I'm just
15 interested, but it has nothing to do with
16 this case.

17 A. That's a fee that you pay for the
18 copyright, use of service. It is not illegal
19 to download, it's a service.

20 Q. All right. So you were aware of
21 Light?

22 A. Yes.

23 Q. Did you make an effort to find him
24 or did you just rely upon the fact that the
25 State couldn't find him?

Kaseem Stephens v State of South Carolina
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Direct Examination of Jason King

19

1 A. No, we tried. The State gave us the
2 information that they had on the witness
3 list. They'll sometimes give me the
4 information if I promise not to give contact
5 information to a defendant. So I did have
6 some contact information that the State had.
7 We tried, but we -- the State couldn't find
8 him and we couldn't find him either. I don't
9 know that I would have necessarily -- I
10 wanted to find, I wanted to talk to him, but
11 I wasn't able to find him to talk to him.
12 Based on the information that I had, he had
13 given a statement identifying Mr. Stephens as
14 the shooter, that he was Mr. Stephen's
15 neighbor for two months. So he said that he
16 knew him, knew what he looked like. Said
17 that he had driven that particular car often.
18 So everything in his written statement seemed
19 bad for my defense.

20 Q. So you never actually talked with
21 him?

22 A. I did not.

23 Q. All right.

24 MR. RUNYON: No further questions of
25 this witness at this time.

Kaseem Stephens v State of South Carolina
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Cross Examination of Jason King

20

1 THE COURT: Any questions of this
2 witness?

3 MS. WILSON: Thank you, Your Honor.

4 THE COURT: You may proceed.

5 CROSS EXAMINATION

6 BY MS. WILSON:

7 Q. Mr. King, do you recall how many
8 times that you met with Mr. Stephens before
9 you went to trial?

10 A. Yeah, I looked at my notes, reviewed
11 this yesterday. I met with him about eight
12 times.

13 Q. And you testified that you filed
14 Brady and Rule 5 Motions on his behalf?

15 A. Yes.

16 Q. Did you review the discovery
17 material that you received from the State
18 with Mr. Stephens?

19 A. I did.

20 Q. Did you also discuss the elements of
21 the charges he -- the murder charge, what the
22 State had to prove?

23 A. Yes, I did.

24 Q. Did he give you his version of the
25 facts for the alibi?

Kaseem Stephens v State of South Carolina
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Cross Examination of Jason King

21

1

2

A. (Affirmative nod), he said that he didn't do it, that he didn't know anything about it, and that he was in New York.

3

4

Q. And you discussed possible defenses with him?

5

6

A. Yes.

7

8

Q. Did he give you any potential witnesses or leads to investigate?

9

10

A. He did. He gave me several witnesses, that I talked to.

11

12

Q. Did you feel like you had enough time to prepare for trial?

13

14

A. Yes.

15

16

Q. You indicated earlier in your testimony that there was some plea negotiations on Mr. Stephens' behalf, with the State?

17

18

A. Yes.

19

20

Q. Was the offer that he ultimately rejected to proceed to trial, was that the only offer from the State?

21

22

A. I believe so. Voluntary manslaughter, for twenty-five years.

23

24

Q. Thank you.

25

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22

1 THE COURT: Any redirect?

2 MR. RUNYON: No redirect.

3 THE COURT: You may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: You may proceed.

6 MR. RUNYON: At this time we would ask
7 for the time to find this missing witness.
8 Mr. Stephens would like to testify after that
9 witness has been found.

10 THE COURT: He can testify today. Then
11 if the record needs to be supplemented, I
12 will grant you that. Based on what Mr. King
13 has represented, I am not sure that I am
14 going to give you any time to find this
15 witness unless you can proffer to me in good
16 faith that he is going to say something other
17 than identifying the client. Because it
18 needs to be something that is going to bear
19 on this hearing. I am not going to delay it
20 just because he wants to find somebody that
21 is not going to add anything appreciable to
22 this case.

23 MR. RUNYON: I understand, Judge.

24 THE COURT: But I will give you a
25 chance to tell me what you think that it is

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23

1 that he's going to tell us. Then, if I
2 -- if it is appropriate, I will give you time
3 to find him. But I see no need to delay
4 this. If after you're able to locate this
5 witness, which is really hypothetical and
6 speculative at this point, uh, I'll allow you
7 to supple-ment the record.

8 MR. RUNYON: Your Honor, Mr. Stephens
9 has indicated that he does not wish to avail
10 himself of the opportunity to testify.

11 THE COURT: Have you explained to him
12 that he has the burden of proving his case,
13 and that his failure to testify -- that if he
14 can't find this witness that he has waived
15 his right to testify?

16 MR. RUNYON: Yes, Your Honor.

17 THE COURT: Sir, do you understand
18 that? If you have something to say, you need
19 to say it today. You need to let your lawyer
20 examine you. If he can't locate this
21 witness, you will have fully waived your
22 right to testify. You have the burden of
23 proof in this case.

24 It's your civil case. The State doesn't
25 have any burden. You have the burden of

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24

1 proving -- to prove that your lawyer was
2 ineffective. So if you have something to
3 say, you need to say it today. I don't want
4 you to get back to the Department of
5 Corrections and say that you didn't have a
6 chance to testify, that you were denied that
7 right; because that would not be accurate.

8 APPLICANT: (Sidebar with Mr. Runyon).

9 MR. RUNYON: We call Mr. Stephens.

10 THE COURT: Sir, come to the stand and
11 be sworn.

12 (WITNESS TAKES STAND)

13 KASEEM STEPHENS, having been sworn to
14 tell the truth, and nothing but the truth,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. RUNYON:

18 Q. Mr. Stephens, you're the Applicant
19 in this case; correct?

20 A. Correct.

21 Q. And Mr. King represented you at your
22 trial?

23 A. Correct.

24 Q. Now, you did not testify at your
25 trial; did you?

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25

1 A. No.

2 Q. Why not?

3 A. (No verbal response).

4 Q. Was that your choice or his choice?

5 A. More so his choice.

6 Q. Now, you say more so his choice.

7 Did -- did you talk to the judge about not
8 testifying?

9 A. No, sir.

10 Q. You didn't?

11 A. No, sir.

12 Q. So who in fact made that decision
13 for you not to testify?

14 A. Jason King.

15 Q. You are going to have to speak up.

16 THE COURT: Sir, I need for you to
17 speak up for the record, speak directly into
18 the microphone.

19 APPLICANT: Jason King.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. RUNYON:

22 Q. Now, did you give him any witnesses
23 that you wanted to be called to bolster your
24 defense of alibi?

25 A. I don't recall.

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1 Q. Well, what kind of witness was
2 Light, who in fact had given a statement?
3 Did you in fact know Light at that time?

4 A. Yes.

5 Q. Okay. And could he have, uh, under
6 appropriate examination have confirmed that
7 you were not in Charleston at the time?

8 A. Yes.

9 Q. Okay. Now, do you know of any
10 efforts made to bring him to trial?

11 A. No.

12 Q. Okay. Now, as it relates to, uh, as
13 it relates to your defense in this case, your
14 defense was in fact alibi?

15 A. I don't understand.

16 Q. In other words, you weren't here in
17 Charleston at the time of the shooting?

18 A. No.

19 Q. Where were you?

20 A. I was in New York.

21 Q. All right. Now, what -- what were
22 the circumstances that caused you to be in
23 New York?

24 A. My mom passed away and I had to take
25 care of her estate.

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1 Q. Okay. Now, do you -- did you -- did
2 Mr. King present any witnesses for you in the
3 trial?

4 A. Some type of psychologist, some lady
5 from North Carolina somewhere.

6 Q. And she talked about witness identi-
7 fications?

8 A. Yeah.

9 Q. She didn't examine you.

10 A. (Negative gesture).

11 Q. She was talking about identify-
12 cations?

13 A. Yeah, I think she was speaking in
14 general.

15 Q. Okay. Now, uh, did you in fact want
16 to testify?

17 A. No, I didn't.

18 Q. All right. But did you have books,
19 records or documents that could have verified
20 that you were present in New York at the time
21 of the shooting?

22 A. Uh, -- books?

23 Q. Check stubs, dinner stubs from
24 restaurants, anything ---

25 A. Just cash.

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1 Q. The answer is no?

2 A. The answer is no. I dealt with
3 cash.

4 Q. Okay. You didn't have a credit card
5 at the time, did you?

6 A. No. I had prepaid debit cards.

7 Q. And that was it?

8 A. Yeah. That's the Account Now that
9 he was talking about.

10 Q. Kind of like paying in cash, isn't
11 it?

12 A. I never used the card. I don't
13 recall using the card. So, I mean, ---

14 Q. Now, when you appeared for trial,
15 had you decided whether or not -- had it been
16 decided whether or not you were going to
17 testify?

18 A. Say again.

19 Q. Had you decided that you wanted to
20 testify or did not want to testify at the
21 time that you appeared for your trial?

22 A. During the trial, did I change my
23 mind?

24 Q. Yeah.

25 A. No. He told me -- Jason King told

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1 me that I was guilty from the get-go. He
2 told me that because of my record that it
3 wouldn't be good for me to take the stand.

4 Q. Okay. But, now, let's go back again
5 now. Whose decision was it that you would
6 not take the stand?

7 A. Jason King's.

8 Q. As relates to the plea bargain that
9 has been talked about, did you ever hear
10 about a plea bargain?

11 A. Some lady named Brenda Young told me
12 to take thirty years. I don't know where she
13 came from. She came out of the blue. She
14 told me to take thirty years. She came over
15 to Leeds Avenue and told me that she didn't
16 want to see me waste my life, to take the
17 thirty years. That was the plea bargain.
18 There was nothing about twenty-five years.

19 Q. Okay. And do you recall being asked
20 about that -- being asked about that prior to
21 the trial starting?

22 A. Asked about what?

23 Q. Any possible plea bargains?

24 A. I think the judge asked it. I don't
25 know, but something.

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1 Q. The judge talked to you about it?

2 A. My lawyer, the solicitor and --
3 something like that, I think that they had
4 a bench conference or whatever and they was
5 talking about it.

6 Q. All right. Now, Light had given a
7 statement at the time of -- at the time that
8 you were questioned by the police. Is that
9 correct?

10 A. Yeah.

11 Q. And -- but his statement didn't
12 corroborate that you were in New York at the
13 time, did it?

14 A. The statement that I remember
15 reading from him, my name was Knitia
16 (phonetic) or something.

17 Q. Was your name Knitia?

18 A. Yes.

19 Q. That was your street name?

20 A. Yes.

21 Q. Did he know you well enough to know
22 whether or not you were there, here in
23 Charleston, at the time of the shooting?

24 A. Yes.

25 Q. Okay.

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1 MR. RUNYON: No further questions of
2 this witness at this time, Judge.

3 THE COURT: Any questions for the
4 witness?

5 MS. WILSON: Yes, ma'am.

6 THE COURT: Let me ask a quick question
7 before you begin. Mr. Runyon, did you cover
8 all the grounds that he had for ineffective
9 assistance?

10 MR. RUNYON: I beg your pardon?

11 THE COURT: Did you make sure that
12 you've covered all the grounds that he had
13 for ineffective assistance?

14 MR. RUNYON: Yes, Your Honor.

15 THE COURT: I just wanted to make sure.
16 You may proceed when you're ready, Ms.
17 Wilson.

18 CROSS EXAMINATION

19 BY MS. WILSON:

20 Q. Good morning, Mr. Stephens?

21 A. Good morning. How you doing?

22 Q. Good. How many times do you recall
23 meeting with Mr. King prior to going to
24 trial?

25 A. Three.

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1 Q. Did he review with him the
2 statements that the State had given you, like
3 the statements of any witnesses, any photos,
4 any ---

5 A. No.

6 Q. And do you recall discussing any
7 possible defenses with Mr. King, that he
8 might be able to argue at trial?

9 A. He spoke of identification a few
10 times but it was briefly.

11 Q. Did you give him any witnesses or
12 potential leads to investigate?

13 A. I don't really remember.

14 Q. Was it your decision to go to trial?

15 A. Yes.

16 Q. You testify about not being able to
17 recall being advised of your right to testify
18 or to not testify, so you don't remember any
19 discussion about your right to testify?

20 A. I remember him telling me that
21 because of my record -- I had a conspiracy
22 charge for drugs, but nobody knew about that,
23 hadn't been talking about that. He was
24 worried about what that was, whatever. I had
25 a record, so he was like it wouldn't be good

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1 for me to take the stand.

2 Q. Do you recall being advised by the
3 court about your right to testify, in the
4 middle of your trial?

5 A. I believe so.

6 Q. Do you recall telling the court that
7 -- do you recall the court telling you that
8 *"it is your Constitutional right not to*
9 *testify, and if you choose that then I will*
10 *instruct the jury, of course, that it cannot*
11 *be held against you."* Do you recall the
12 court telling you that?

13 A. I don't think so.

14 Q. Okay. I am showing you a transcript
15 of your jury trial of March 16-17th of, 2009.
16 If you could, just read to the court,
17 starting on Page 229, from Lines 7 to 15. If
18 you could, just read those.

19 A. The Court said, (reading):

20 Q. *It is your Constitutional right*
21 *not to testify. If you choose that, I*
22 *would instruct the jury that of course*
23 *they could not use that against you. Is*
24 *that your understanding?*

25 A. Yes.

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1 Q. Keeping going.

2 A. Keep going, (reading):

3 A. Yes, sir.

4 Q. Understanding fully your rights
5 in this matter, it is your decision not
6 to testify; is that correct?

7 A. Yes.

8 Q. Thank you so much. So does that
9 kind of jog your memory, do you recall
10 telling the court that?

11 A. (No verbal response).

12 Q. Do you also recall the testimony
13 that you told Mr. King about an alibi witness
14 on your behalf; is that correct?

15 A. I believe so, (affirmative nod).

16 Q. But you didn't have anything to show
17 that you were in New York; is that correct?

18 A. Correct.

19 MS. WILSON: Nothing further from the
20 State, Your Honor.

21 THE COURT: Any redirect?

22 MR. RUNYON: No redirect of this witness
23 at this time, Judge.

24 THE COURT: Sir, you may step down.

25 (WITNESS STEPS DOWN)

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1 THE COURT: You may take your seat,
2 sir.

3 APPLICANT: (Complies).

4 THE COURT: What is it that you feel
5 that this witness has to offer that confirms
6 or supports the ineffective assistance claim?

7 MR. RUNYON: Well, Judge, according to
8 Mr. Stephens, uh, the witness, if we can find
9 him, or course they weren't able to find him
10 before; but if found, he would have testified
11 contrary to the written statement to the
12 police. He would have confirmed that he was
13 in effect not in Charleston at the time of
14 the shooting, which would have been crucial
15 to offering an alibi defense versus just a
16 mistaken identity defense.

17 THE COURT: The question goes -- of
18 course, we are not here to retry the facts of
19 the case.

20 MR. RUNYON: I understand.

21 THE COURT: I need to know, in terms of
22 ineffective assistance, how that proves that
23 somehow Mr. King fell below his standard in
24 terms of professional norms. He testified
25 that he attempted to find the witness and

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1 could not.

2 MR. RUNYON: With all due respect to my
3 colleague, Mr. King, I think what he said was
4 that the State couldn't find him. That he
5 had the statement -- but he wasn't too
6 anxious to find him, quite frankly, Judge,
7 based on the written statement, which he
8 thought might be prejudicial to his client
9 versus actually talking to him.

10 THE COURT: He said, 'I tried to locate
11 Light.' That he had an investigator try to
12 find him.

13 MR. RUNYON: Yes, ma'am.

14 THE COURT: That he couldn't find him
15 and he didn't have -- that from his
16 estimation of the statement that Mr. Light --
17 and we are using his street name, because his
18 real name, according to Mr. King, he said his
19 name, which was, uh, -- he said his name and
20 I wrote it down. Moses, Bobby Moses.

21 MR. RUNYON: Right.

22 THE COURT: He said that in his
23 estimation that his testimony was not going
24 to be exculpatory, so he felt that -- you
25 know, he looked for him, couldn't find him.

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1 That it was prejudicial to his client. That
2 the State didn't cooperate. That he was at
3 the scene of this accident (sic), I mean this
4 incident. So I am trying to figure out what
5 is it that he would offer that could be
6 exculpatory to your client.

7 Well, it wouldn't really matter if it was
8 exculpatory, because that's not the burden.

9 MR. RUNYON: That's right.

10 THE COURT: The inquiry is, how does
11 that corroborate or add to his burden of
12 proof that Mr. King didn't do what he was
13 supposed to do. Mr. King had an affirmative
14 duty to investigate. So I need to know how
15 that proves that he didn't investigate and
16 didn't make efforts to find this witness.

17 MR. RUNYON: To be candid with the
18 Court, it doesn't prove that he didn't
19 investigate.

20 THE COURT: Because that's really the
21 Court's inquiry.

22 MR. RUNYON: I understand.

23 THE COURT: Now whether this person
24 now can -- that is more of an issue of new
25 evidence, for a Motion for a new trial. That

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1 is not the burden on post-conviction relief.

2 MR. RUNYON: I understand, Judge. I
3 can't change the root of ----

4 THE COURT: Have you read the statement
5 that he gave to the police.

6 MR. RUNYON: I reviewed his statement.
7 Quite frankly, Judge, the statement of Light
8 was as per the testimony of Mr. King.

9 THE COURT: Which is?

10 MR. RUNYON: Which was prejudicial to
11 Mr. Stephens.

12 THE COURT: So it was not exculpatory?

13 MR. RUNYON: No. It was not
14 exculpatory. It was inculpatory, the
15 statement taken by the police.

16 THE COURT: Do you have any idea where
17 he is?

18 MR. RUNYON: I haven't the foggiest
19 notion at this point in time, Judge. We've
20 run the usual checks: jails, prisons. And
21 people change their street names, so we're --
22 (pause).

23 THE COURT: This has been basically
24 since 2009, 2010, and you've not been able to
25 locate him?

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1 MR. RUNYON: Beg your pardon, Your
2 Honor?

3 THE COURT: This has been since 2009,
4 2010, that he has not been able to be
5 located?

6 MR. RUNYON: That's correct.

7 THE COURT: How long have you been
8 representing Mr. Stephens?

9 MR. RUNYON: I think that the appoint-
10 ment was approximately eight or nine months
11 ago, Judge.

12 THE COURT: So approximately how long
13 have you been trying to locate this Moses,
14 Light?

15 MR. RUNYON: When we focused on the
16 issue of Mr. Light, it's only been about
17 ninety days.

18 THE COURT: Okay. And, so, tell me
19 what reasonable expectation you have of
20 finding him if you haven't been able to find
21 him in three months.

22 MR. RUNYON: I cannot tell the court
23 that I have a reasonable expectation of
24 finding him, Judge. All I can say is that
25 there are other things that we can do and in

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1 thirty to forty-five days we ought to be able
2 to find him, or then be foreclosed from
3 looking for him; which I don't think would be
4 burdensome to the Court under the circum-
5 stances, Judge.

6 THE COURT: Okay. Does the State have
7 any opposition to Mr. Runyon's request?

8 MS. WILSON: The State doesn't have a
9 position on Mr. Runyon's request; however, we
10 would just like for the Court to specify the
11 manner in which this potential witness'
12 testimony would be taken, in a form that
13 would not be at the State's expense for a
14 deposition.

15 THE COURT: NO, no, it would be in a
16 courtroom.

17 MS. WILSON: Okay. Then the State has
18 no opposition.

19 THE COURT: Mr. King, can you tell me
20 what efforts that y'all have expended to find
21 Mr. Bobby Moses, who goes by the street name
22 of "Light."

23 JASON KING: We had a street address
24 provided to us by the State, which is the
25 only information that I would have been able

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1 to get, through the State. We checked that
2 address and ---

3 THE COURT: He had moved?

4 JASON KING: I believe so. We actually
5 drove out to, I believe, a trailer park. I
6 drove out there with my investigator. We
7 walked around, knocked on doors, talked to
8 neighbors. So using that address, we went to
9 that address, knocked on neighbors' doors,
10 tried to find ---

11 THE COURT: I assume then that y'all
12 checked and that there was no forwarding
13 address?

14 JASON KING: I can't remember, Your
15 Honor.

16 THE COURT: Did you talk to the
17 neighbors, ask them if they knew where he'd
18 gone?

19 JASON KING: I believe that we did, yes.

20 THE COURT: And did they have any
21 information that was helpful in locating him?

22 JASON KING: No, Your Honor. And it's
23 -- if the State wasn't able to find him with
24 the ---

25 THE COURT: And they have a lot more

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1 resources than -- yeah.

2 JASON KING: (Affirmative nod), than we
3 do. If they can't find them, the chances of
4 me finding them are pretty slim. And I
5 wasn't -- I wasn't that upset about not being
6 able to find him. I would have liked to just
7 talk to him, but I -- I had no reason to
8 believe that he was going to say anything
9 different than what he'd said in the
10 statement.

11 So I can't say that I didn't try. I only
12 tried so hard to find him and then I focused
13 on other things. That wasn't my priority, to
14 try to find this one witness, because I had
15 no reason to think that he was going to be
16 anything but bad for our case.

17 THE COURT: But you did go look for
18 him?

19 JASON KING: Yes. We made an effort.

20 THE COURT: And you spoke to people at
21 his last known address?

22 JASON KING: Yes.

23 MR. RUNYON: And I can tell you, Judge,
24 that I checked and there was no forwarding
25 address given to the post office.

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1 THE COURT: So he is basically
2 transient then? Or doesn't want to be found.
3 Maybe not necessarily by y'all but maybe by
4 someone else. If you don't leave a
5 forwarding address, you usually don't want
6 bills to follow ---

7 MR. RUNYON: His business is -- it is
8 not necessary for being able to reach him.

9 THE COURT: Does the State have any
10 further witnesses?

11 MS. WILSON: Nothing further from the
12 State.

13 THE COURT: Okay. What I will do then
14 is that I will take the matter under advise-
15 ment, give you forty-five days to locate
16 Bobby Moses, also known as "Light", I would
17 however -- at this point I really can't
18 discern how he would bear on the claim of
19 ineffective assistance but out of an
20 abundance of caution, I will give you the
21 time to try to find him.

22 MR. RUNYON: I have to be candid with
23 the Court, Judge, that the Court knows
24 everything that we know at this point.

25 THE COURT: If you find him, of course,

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1 let the Court know by July 5th. Let me know
2 if you've been able to locate him and I will
3 allow you to supplement the record with
4 testimony. If not, I will go ahead and rule
5 on what is before the Court. Thank you.

6 (HEARING CONCLUDED)
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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on May 22, 2013 before The Honorable Deadre Jefferson;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Charles Garrison

Deborah Garrison

Charleston, South Carolina
January 31, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Kaseem Stephens, #333714,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-7073

ORDER OF DISMISSAL

FILED
2013 OCT 22 PM 4:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable Deadra L. Jefferson
William H. Runyon, Jr., Esquire
Ashleigh R. Wilson, Esquire
Jason T. King, Esquire
May 22, 2013
Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated October 30, 2012. The Respondent made its Return on April 15, 2013. An evidentiary hearing on the matter was convened on May 22, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William H. Runyon, Jr. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Jason T. King, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the Applicant's appellate records.

1 10/12
[Signature]

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the August 2008 term of the Charleston County Grand Jury for Murder (2008-GS-10-6300). He was represented by Jason T. King, Esquire (sitting 1st Chair) and Reese M. Stidham, Esquire (sitting 2d Chair).

The Applicant proceeded to trial and was found guilty. On March 17, 2009, the Applicant was sentenced by the Honorable R. Markley Dennis Jr. to confinement for forty (40) years.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense, Commission on Indigent Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Stephens, 398 S.C. 314, 728 S.E.2d 68 (Ct. App. 2012). The Remittitur was sent July 13, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Counsel failed to request manslaughter rather than murder with mitigating evidence.

At the hearing, the Applicant proceeded on the allegation alleged in his application and amended his application to also allege counsel failed to investigate a potential alibi witness named "Light." At the conclusion of the evidentiary hearing, the Court took the matter under advisement at the Applicant's request, to allow the Applicant forty-five (45) days, a deadline of July 5, 2013, to locate this alleged alibi witness and supplement the record with testimony from

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this witness. The Applicant has not submitted any documentation or testimony to supplement the record in support of his alibi allegation. The Applicant's counsel advised the Court that after extensive efforts, the potential alibi witness "Light" could not be located.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Further, this Court has had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of the Testimony

The Applicant was present and testified at the evidentiary hearing. The Applicant testified he was represented by Jason King, Esquire, and met with him approximately three (3) times prior to trial. He testified he did not review discovery with his attorney. He testified that his attorney did discuss the defense of identity several times. He testified he briefly discussed possible defenses with his attorney. The Applicant did not recall giving his attorney any witness names prior to trial. He testified that he felt King thought he was guilty from the "giddy up." The Applicant testified it was his decision to proceed to trial.

The Applicant testified he did not testify on his behalf at trial and that it was not his choice. The Applicant testified his attorney's advice precluded him from testifying. He testified King advised him to not take the stand because of his prior record. The Applicant testified counsel presented a psychologist at trial to discuss the reliability of the witness' identification of him at the scene and the expert failed to examine him prior to trial.

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He testified further he did not recall giving his attorney any information about his alleged alibi witness. He testified King made no effort to bring "Light," the alleged alibi witness, to trial. He testified that "Light" could corroborate his street name was "Nitty." The Applicant testified that the gravamen of his alibi defense was that he was not in Charleston at the time of the shooting. He testified he was in New York to attend his mother's funeral and afterward to handle her estate. He testified counsel did not try to verify he was in New York at the time of the incident.

Jason King, Esquire, also testified at the evidentiary hearing. He testified he has been practicing law for thirteen (13) years. He testified that he had prepared for approximately twelve (12) trials prior to the Applicant's trial. Counsel testified the evidence against the Applicant included the victim's fiancé identifying the Applicant as the shooter, a second eyewitness identifying the Applicant as the shooter, and the Applicant being found in the suspected vehicle. Counsel testified his strategy at trial was to argue the victim's fiancé was mistaken and Jamal Greene was pinning the murder on the Applicant because he ran from the police. Counsel testified he also presented testimony from an identification expert to challenge the two eye witness identifications of the Applicant.

Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he received all discovery from the State. Counsel testified he met with the Applicant approximately eight (8) times prior to trial. He testified he discussed with the Applicant the discovery material, the elements of the charges and what the State was required to prove, his constitutional rights, the range of penalty, the Applicant's version of the facts, and possible defenses. He further testified that he discussed any potential witnesses and leads, which he would have followed and investigated in preparation for trial. He further testified he was

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prepared for trial. Counsel testified he was not aware of any deals between the State and the State's witnesses. Counsel also testified the Applicant was offered a plea to voluntary manslaughter with a twenty-five (25) year sentence, but the Applicant rejected the offer. (Tr. 6:5-14).

Counsel testified the Applicant told him he had an alibi. He testified the Applicant told him he was at his mother's funeral. Counsel testified he investigated the alibi but the funeral was ten (10) days prior to the shooting. He testified he spoke with several witnesses given to him by the Applicant. Counsel testified the Applicant was arrested in New York after the murder and that he did not assert the Applicant's alibi because after a full investigation, he had no witnesses to support the Applicant's alibi at trial. He further testified that witnesses placed the Applicant in South Carolina instead of New York. Counsel testified he checked the Applicant's bank statements to see if any transactions took place in New York during the time of the incident, but he did not find anything to support the alibi. Counsel testified he explained the alibi defense to the Applicant and told him that he did not have any witnesses to support his alibi.

Counsel testified further that "Light" is Bobby Moses. He testified he was aware of "Light" and that he tried to find him, but was unable to find him. Counsel testified that he did not want the State to find "Light" because his statement identified the Applicant as the shooter and said the Applicant often drove the car identified as being at the scene. He further testified that the Applicant gained an "advantage" when "Light" did not appear to testify at the trial.

Counsel testified the Applicant did not testify at trial. He testified he reviewed the Applicant's possible testimony and did not think the Applicant would be a good witness. He further testified that from his work with the Applicant, he would not make a credible witness. He further testified the only reason the Applicant would testify would be to establish an alibi

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and, since there was no testimony to corroborate an alibi, the Applicant's testimony would have served no useful purpose. Counsel testified the Applicant said his memory was not good because he smoked marijuana frequently. Counsel testified he did not think the Applicant's testimony would have helped the case and ultimately it was the Applicant's choice not to testify. He further testified he fully discussed this strategy with the Applicant and that the Applicant agreed with this strategy.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP).

For the Applicant to be granted post-conviction relief as a result of ineffective assistance of counsel, he must show both: (1) that his "counsel failed to render reasonably effective assistance under prevailing professional norms," and (2) that he was prejudiced by his counsel's ineffective performance. See Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064-65 (1984)). In order to prove prejudice, an applicant must show "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). The courts presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

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judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

This Court finds the Applicant’s testimony is not credible and finds trial counsel’s testimony is credible. This Court further finds that counsel has extensive experience in the practice of criminal law and has been practicing law since 2000. This Court finds that counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant’s case. This Court finds that counsel filed Brady and Rule 5 motions on the Applicant’s behalf and reviewed the received discovery with the Applicant. This Court finds that counsel discussed with the Applicant the elements of the charges against him, range of penalty, his constitutional rights and what the State was required to prove. This Court finds that counsel discussed the Applicant’s version of the facts and possible defenses with the Applicant.

This Court finds counsel was not ineffective for failing to request a voluntary manslaughter jury instruction. It is “well settled that jury instructions should be confined to the issues raised by the pleadings and supported by the evidence and where an issue is implicitly suggested by the pleadings and supported by the evidence, the trial judge is obligated to instruct the jury concerning it.” *Ellison v. Parts Distribs., Inc.*, 302 S.C. 299, 301, 395 S.E.2d 740, 741 (1990) (citing *Mouzon v. Moore & Stewart, Inc.*, 282 S.C. 233, 234, 317 S.E.2d 756, 757 (Ct. App. 1984)). This Court finds and the record reflects counsel requested a voluntary manslaughter instruction and, after argument from both the State and the Defense, the trial court denied his request. (Tr. 273:13–277:15). This Court finds counsel provided effective assistance of counsel by requesting a voluntarily manslaughter jury instruction during trial. This Court also finds no prejudice resulted from counsel’s performance.

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This Court finds counsel was not ineffective for failing to investigate Bobby Moses a.k.a. "Light" as a potential alibi witness prior to trial. "In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The "applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. at 499, 458 S.E.2d at 540. Trial counsel's failure to contact an alleged alibi witness does not prejudice the defendant; absent a showing the witness' testimony would have established an alibi defense. See id. Furthermore, "[t]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (citing Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 403 (2002)); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992)).

This Court finds the Applicant has failed to carry his burden of proving ineffective assistance of counsel for failing to introduce testimony from Moses to support the Applicant's alleged alibi defense. Moses was not present during the Applicant's evidentiary hearing to testify to the Applicant's alleged alibi and PCR counsel was unable to locate Moses after the hearing to supplement the record with his testimony. This Court finds the Applicant's speculation as to

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what Moses' testimony would have been at trial is not sufficient to carry his burden of proving the merits of this allegation.

This Court also finds counsel adequately investigated Bobby Moses a.k.a. "Light" as a potential witness prior to trial. Counsel provided credible testimony that he was aware of Moses' statement and that he tried to locate Moses prior to trial but was unable to. Counsel also provided credible testimony that the substance of Moses' statement was not beneficial to the defense, in fact, it was to the defense's benefit for Moses' whereabouts to be unknown. In light of counsel's testimony as to the substance of Moses' statement, this Court finds the Applicant was not prejudiced by counsel's failure to investigate or locate Moses as a potential alibi witness for the defense.

This Court further finds that counsel articulated a valid trial strategy for not pursuing an alibi defense at trial. Counsel provided credible testimony that after investigating the Applicant's alibi, he chose not to pursue the Applicant's alibi defense at trial because he had no witnesses to support the Applicant's version of events. This Court finds counsel's trial strategy was valid in light of counsel's investigation into the Applicant's alleged alibi.

This Court finds the Applicant's allegation that he did not freely and voluntarily waive his right to testify at trial is without merit. Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. U.S. Const. amend. V; S.C. Const. art. I, § 12; State v. Weaver, 361 S.C. 73, 88, 602 S.E.2d 786, 794 (Ct. App. 2004). This Court finds and the record reflects the Applicant freely and voluntarily waived his right to testify at trial. The record reflects the Applicant was advised of his right to testify (Tr. 228:202-3) and that after reflection the Applicant decided not to testify at his trial (Tr. 228:6-229:15). The Applicant was advised by the trial court it was his constitutional right

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not to testify and that the jury would be advised not to use his silence against him. (Tr. 229:6–11). The record also reflects the Applicant was advised it was his decision whether or not to testify. (Tr. 229:12–15). Furthermore, the Applicant advised the Court that he was not under the influence of alcohol or medications that would affect his decision-making as to whether to testify, and the Applicant confirmed he was both comfortable with his decision not to testify and satisfied with his attorney’s advice on such matter. (Tr. 229:16–230:4). This Court finds the Applicant’s waiver allegation is without merit.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test—that trial counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 303 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland—that he was prejudiced by trial counsel’s performance. In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” See id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson, 325 S.C. at 186, 480 S.E.2d at 735 (citing Strickland, 466 U.S. at 494, 104 S. Ct. at 2068). This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174 (citing Rule 71.1(e), SCRCP).

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all other allegations are hereby denied and dismissed.

CONCLUSION

Based on the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
and
2. That the Applicant be remanded to the custody of the Respondent.

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AND IT IS SO ORDERED this 22nd day of October, 20 13

D. L. Jefferson
The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

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WITNESSES

KEITH ELMORE

North Charleston Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

K221291

DATE OF ARREST

March 27, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 05 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GSI006300

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2008

THE STATE

vs.

KASSEEM STEPHENS

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED
2008 AUG 12 PM 3:58
JULIO A. STRONG
CLERK OF COURT
BY

(10) 1302 08

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

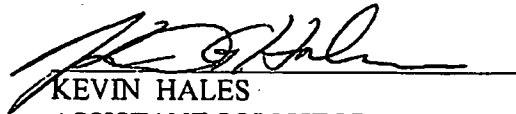
INDICTMENT

At a Court of General Sessions, convened on August 4, 2008 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about March 28, 2007, with malice aforethought, KASSEEM STEPHENS did kill and murder Sheldon Frazier by means of shooting the victim, and that Sheldon Frazier did die in Charleston County as a proximate result thereof on March 31, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KEVIN HALES
ASSISTANT SOLICITOR