

20428
STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC WRIGHT,

APPELLANT

APPELLATE CASE NO. 2011-202547

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
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COUNTY OF BEAUFORT)
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COURT OF GENERAL SESSIONS
2009-GS-07-1405
2009-GS-07-1406

ORIGINAL

STATE OF SOUTH CAROLINA)
)
PLAINTIFF)
)
vs.)
)
ERIC WRIGHT, AKA JOSEPH)
)
BO DERRICK WRIGHT,)
)
DEFENDANT)
)
-----)

TRANSCRIPT OF RECORD

OCTOBER 24TH -27TH, 2011
BEAUFORT, S. CAROLINA

B E F O R E:

THE HONORABLE CARMEN T. MULLEN

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

DAWN BURKE, ESQUIRE
JAMES BANNON, ESQUIRE
ASSISTANT SOLICITORS

IAN C. DEYSACH, ESQUIRE
GENE G. HOOD, ESQUIRE
ASSISTANT PUBLIC DEFENDERS

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

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P R O C E E D I N G S

(CASE NO.: 09-GS-07-1405, 09-GS-07-1406)

(OCTOBER 24, 2011 - 11:20 A.M.)

THE COURT: All right ladies and gentlemen, then we are going to, uh, call the first case. Ms. Burke?

MS. BURKE: (After pause) Thank you, Your Honor. Calling State versus Erick Wright; also known as Joseph Bo Derrick Wright. Indictment number 2009-GS-07-1406, Possession of a Weapon During the Commission of a Violent Crime; case number 2009-GS-07-1405, Assault and Battery With the Intent to Kill.

THE COURT: Okay; thank you.

BAILIFF: Your Honor, some of the jury couldn't hear her.

THE COURT: Okay, that's fine. I -- I'm gonna go ahead and announce it as well; I appreciate it.

Ladies and gentlemen, at this time if you would give me your attention? We are about to begin the trial of the case entitled *The State of South Carolina versus Erick Wright, also known as Joseph Bo Derrick Wright*, who is charged by the Bill of Indictments in Beaufort County with the offenses of Assault and Battery With Intent to Kill and Possession of a Weapon During a Violent Crime.

Ladies and gentlemen, I want to remind you that you need to respond under the oath you took to any questions that are

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1 applicable to you. Again, if you would simply stand and when
2 called upon give me your name and juror number. And again,
3 announce it for my Court Reporter and for everyone to hear.

4 Uh -- ladies and gentlemen, in this case The State is
5 being represented by Ms. Dawn Burke and Jim Bannon. If
6 you-all would stand and face the jury panel?

7 (WHEREUPON, DAWN BURKE AND JIM BANNON STOOD AND
8 PRESENTED THEMSELVES TO THE JURY PANEL.)

9 THE COURT: Thank you. Additionally, ladies and
10 gentlemen, the Defendant in this case, Mr. Wright, is being
11 represented by Ian Deysach and Matthew Walker. And,
12 Mr. Wright, if you would stand and face the jury panel as
13 well with your attorney?

14 MR. DEYSACH: I'm Ian Deysach and this is my client,
15 Erick Wright; and, Matthew Walker.

16 THE COURT: Thank you, gentlemen; you may be seated.

17 Additionally, ladies and gentlemen, when I call out my
18 list of potential witnesses in this case, if you are in the
19 Courtroom, if you would please stand so the jury can get a
20 look at you as well?

21 Ladies and gentlemen, is there any member of the jury
22 panel that is related by blood or connected by marriage with
23 the Defendant in this case, Mr. Wright; if so, please stand.

24 (NO RESPONSE FROM THE JURY PANEL.)

25 THE COURT: Is there any member of the jury panel that

1 is a close personal friend or share a special relationship
2 with the Defendant in this case, Mr. Wright? If so, please
3 stand.

4 (NO RESPONSE FROM THE JURY PANEL.)

5 THE COURT: Ladies and gentlemen, the following is a
6 list of potential witnesses in this case. And again, if you
7 are here, I ask that you stand.

8 They are, Detective Anthony Cotton; (after pause)
9 Sergeant Kelly Heany; (after pause) Officer Paul Gannon;
10 (after pause) Dawn Crawford; (after pause) Alexis Green;
11 (after pause) India Pinckney; (after pause) Troy Jinks;
12 (after pause) Octavia Scott; (after pause) Dayrain Dupont;
13 (after pause) Doctor Richard Hussong; (after pause)
14 Suzann Cromer; (after pause) Kathleen Woodward; (after pause)
15 Nikki Hughes; (after pause) Selena Kinard; (after pause) and,
16 Lisa Waananen?

17 THE COURT: Ladies and gentlemen, my questions are this:
18 Is there any member of the jury panel related by blood or
19 connected by marriage with any of these potential witnesses?
20 If so, please stand.

21 (NO RESPONSE FROM THE JURY PANEL.)

22 THE COURT: Additionally, is there any member of the
23 jury panel who has a close personal friendship or share a
24 special relationship with any of these potential witnesses?
25 If so, please stand.

1 (NO RESPONSE FROM THE JURY PANEL.)

2 THE COURT: (After pause) Ladies and gentlemen, this
3 case involved a shooting back on July 28th of 2008...

4 Where, specifically, was it Ms. Burke?

5 MS. BURKE: It was on Pinckney Hill in Bluffton.

6 THE COURT: Okay. Ladies and gentlemen, I want to make
7 sure no members of the jury panel has any individual
8 information about this case. Uh -- whether you've heard
9 something about it, seen something about it, possibly in the
10 newspaper, or have any independent knowledge whatsoever about
11 this case. If so, please stand.

12 (NO RESPONSE FROM THE JURY PANEL.)

13 THE COURT: Additionally, ladies and gentlemen, have you
14 a relative or a close personal friend, now or in the past,
15 ever been a member of a law enforcement agency? And that
16 would include federal, state, county, city, or military
17 police. If so, please stand.

18 And I'll repeat the question again. Is there any member
19 of the jury panel or a relative or a close personal friend,
20 either now or in the past, ever been a member of a law
21 enforcement agency?

22 Ma'am, your name and juror number?

23 MS. BURKE: Bonnie Burke, number thirty.

24 THE COURT: Ms. Burke, you appear to work for Palmetto
25 Dunes; is that correct?

1 **MS. BURKE:** Yes; and I am a retired law enforcement
2 officer.

3 **THE COURT:** What -- where, uh, were you a law
4 enforcement officer?

5 **MS. BURKE:** In (mumbled).

6 **THE COURT:** Okay; and when did you retire, ma'am?

7 **MS. BURKE:** Uh -- 2004.

8 **THE COURT:** And what did you retire as your rank? (Sic)

9 **MS. BURKE:** As sergeant.

10 **THE COURT:** As sergeant; all right, thank you, ma'am.
11 You may be seated.

12 Your name and juror number?

13 **MS. WALTERS:** Barbara Gilkey-Walters; number
14 eighty-eight. My father's a retired cop and my brother's a
15 city of Pittsburg police and my sister-in-law as well.

16 **THE COURT:** Okay; all right, thank you, ma'am. You may
17 be seated. Sir?

18 **MR. HAYES:** William Hayes, number one-ten. My father's
19 a police officer in Minnesota.

20 **THE COURT:** Thank you, sir. You may be seated.
21 Mr. Boretti?

22 **MR. BORETTI:** John Boretti; fifteen. I'm not sure if I
23 heard the question right, but I figured I'd mention.

24 Um -- a good friend of mine, a golfing buddy, uh, worked
25 for the South Carolina Troopers.

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1 THE COURT: Okay; thank you, sir. I appreciate that.
2 Yes, sir?

3 MR. LYNCH: Dennis Lynch; one-forty-five. Um -- one of
4 my best friends from high school and college -- we played,
5 uh, a lot of baseball and semi-pro ball together -- were
6 County policemen and, uh, now retired.

7 THE COURT: Thank you---

8 MR. LYNCH: You're welcome.

9 THE COURT: ---okay, thank you, sir.

10 MR. RABBITT: I'm John Rabbitt; number one-nine-zero. I
11 have two brothers-in-law retired New York City Police
12 Officers. One was a Lieutenant in the property clerk's
13 office. And, a close personal friend who is a detective and
14 another close personal friend who is a Chaplin for the New
15 York City Police Department.

16 THE COURT: Okay; thank you, sir.

17 MR. WEERTS: Matthew Weerts, number two-forty-three.
18 Uh -- a friend was a County Sheriff on the Island.

19 THE COURT: Okay; thank you, sir. Yes, ma'am?

20 MS. CHAPLIN: Hi; juror number thirty-seven, Amy
21 Chaplin, and I'm currently employed by the Beaufort County
22 Sheriff's Office as a Sheriff's Technician.

23 THE COURT: All right. Um -- for this case, our agency
24 is Bluffton; is that correct? And SLED?

25 MS. BURKE: Yes, sir -- yes, ma'am, Your Honor.

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1 THE COURT: Okay, okay; thank you. Um -- yes, ma'am?

2 MS. GOBLE: Barbara Goble, ninety-two. My husband was
3 an MP in the Army for a short time.

4 THE COURT: Thank you, Ms. Goble. Yes, ma'am?

5 MS. HUBER: Pamela Huber, one-eighteen. My daughter is
6 currently a police officer in Woodbridge, New Jersey.

7 THE COURT: Thank you, ma'am. Yes?

8 MS. VEST: Windy Vest, two-thirty-two. Um -- I was a
9 Deputy Sheriff for twelve years in Georgia.

10 THE COURT: Thank you, ma'am; you may be seated. Yes,
11 ma'am?

12 MS. RIVERA-OATES: Brenda Rivera-Oates, number
13 one-ninety-five. I have a friend, uh, who's a New York City
14 police officer.

15 THE COURT: Thank you, ma'am. Yes?

16 MS. MATHIAS: Georgi Mathias, zero-one-fifty-two. A
17 very close personal friend who was the, uh, first State
18 Highway Patrol Woman in the State of Ohio.

19 THE COURT: Thank you, ma'am; you may be seated. Sir?

20 MR. WOMACK: Uh -- Steven Womack, two-forty-nine. My
21 brother used to be a, uh, deputy sheriff in Beaufort County.

22 THE COURT: Okay; thank you. Sir, who is your, uh,
23 brother? What's his name?

24 MR. WOMACK: Uh -- Andrew Womack.

25 THE COURT: Womack? Okay; thank you, sir. Yes, ma'am?

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1 MS. EDWARDS: Ann Edwards, number sixty-nine.

2 THE COURT: Yes?

3 MS. EDWARDS: My brother is with I-N-S. And my sister
4 was with I-N-S.

5 THE COURT: Thank you, ma'am. Yes?

6 MS. FALLON: My name is Margaret Fallon, number seventy-
7 two. My husband is a retired New York City Police Detective
8 and my cousin -- and my nephew is current a police officer in
9 New York City.

10 THE COURT: Thank you, ma'am. Yes?

11 MS. MCKAY: Dorothy McKay, one-sixty. My father was a
12 New York City policeman. I have two brothers in the police
13 and a nephew New York City Police Department.

14 THE COURT: Thank you, Ms. McKay. Sir?

15 MR. BUCKNER: Isaac Buckner, number twenty-nine. I have
16 a friend that's a retired SLED officer.

17 THE COURT: Okay; thank you, sir.

18 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

19 THE COURT: Ladies and gentlemen, is there any member of
20 the jury panel related by blood or marriage or a close
21 personal friend with anyone that works at the Beaufort County
22 Solicitor's Office? If so, please stand.

23 (NO RESPONSE FROM THE JURY PANEL.)

24 THE COURT: Ladies and gentlemen, is there any member of
25 the jury panel that's related by blood or marriage or a close

1 personal friend of anyone employed by the Attorney General's
2 Office or any other Solicitor's Office in the State of South
3 Carolina? If so, please stand.

4 (NO RESPONSE FROM THE JURY PANEL.)

5 **THE COURT:** Ladies and gentlemen, is any member of the
6 jury panel a member of or a contributor to -- and that would
7 be a financial contributor or of your time as well -- to any
8 group that has as its primary concern the promotion of law
9 enforcement or victim's rights? And those would include such
10 groups as CAVE, Citizens Against Violent Crimes; MADD,
11 Mothers Against Drunk Driving; or SADD, Students Against
12 Drunk Driving.

13 And again the question is, is there any member of the
14 jury panel who is a member of or a contributor to any of
15 these groups, which again, has as its primary concern the
16 promotion of law enforcement or victim's rights? If so,
17 please stand.

18 And that would include, ladies and gentlemen -- go
19 ahead and stand up -- even if they call you and you donate
20 twenty-five dollars. Sir?

21 **MR. LYNCH:** Dennis Lynch, one-forty-five. Um -- I'm a
22 substance abuse counselor with a High school and I have
23 sponsored MADD and SADD.

24 **THE COURT:** Thank you, sir. Yes, ma'am?

25 **MS. VEST:** Windy Vest; I contributed in the State of

1 Georgia.

2 COURT REPORTER: I didn't catch the number, Your Honor.

3 THE COURT: Ma'am, what was your number again?

4 MS. VEST: Um -- two-thirty-two.

5 THE COURT: Thank you. Anyone else?

6 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

7 THE COURT: Is there any member of the jury panel who is
8 a supporter of, uh, any police booster organizations,
9 honorary law enforcement -- excuse me, law enforcement
10 organization, or any other similar group? And that would
11 include, uh, people or groups such as the South Carolina
12 Troopers Association, uh, the South Carolina Law Enforcement
13 Officers Association, the County Sheriff's Association, or
14 the Fraternal Order of Police. If so, please stand.

15 My retired deputy, come on. Your -- absolutely; and
16 again, you are number two-thirty-two, and what's your last
17 name?

18 MS. VEST: Vest, V-E-S-T.

19 THE COURT: Thank you; okay, anyone else? Yes, ma'am?

20 MS. JOHNSON: I'm one-twenty-six.

21 THE COURT: And your name?

22 MS. JOHNSON: Tina Johnson.

23 THE COURT: Ms. Johnson, who have you given to?

24 MS. JOHNSON: Um -- The State Troopers.

25 THE COURT: Okay; thank you. Anyone else?

1 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

2 THE COURT: Ladies and gentlemen, has any member of the
3 jury panel ever appeared as a witness for either the
4 prosecution or The State in a case or the Defense at a
5 criminal trial? If so, please stand.

6 Okay, that's all right, we're gonna start over here with
7 Mr. Buckner. Give me your number again, sir?

8 MR. BUCKNER: Uh -- twenty-nine.

9 THE COURT: And it's Buckner, is that correct?

10 MR. BUCKNER: Yes, ma'am.

11 THE COURT: Okay; sir, what -- what type of case were
12 you in and did you testify for the prosecution or for the
13 defense?

14 MR. BUCKNER: Um -- for the defense.

15 THE COURT: For the defense? And what kind of case --
16 what were the charges that were brought against the defense?

17 MR. BUCKNER: Uh -- it was a drug related offense and
18 murder.

19 THE COURT: Okay; how long ago was that?

20 MR. BUCKNER: Hum, uh, about twenty years ago.

21 THE COURT: Okay; thank you, sir, you may be seated.
22 Yes, ma'am?

23 MS. BURKE: Yes, uh, Bonnie Burke, number thirty.
24 During my career as an officer, I testified in numerous
25 cases, all varieties.

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1 THE COURT: Okay; can we say the majority for The State?

2 MS. BURKE: Yes.

3 THE COURT: Okay.

4 MS. BURKE: In my position, most definitely.

5 THE COURT: Okay; I appreciate that. Thank you. And
6 Ms. Vest, number two-thirty-two?

7 MS. VEST: Same thing.

8 THE COURT: Okay; and again for The State, correct?

9 MS. VEST: Yes, ma'am.

10 THE COURT: Okay; thank you. And yes, ma'am?

11 MS. MATHIAS: Georgi Mathias, one-fifty-two. To clarify
12 that, are you asking for a jury also?

13 THE COURT: Um -- not whether or not you've sat, um, on
14 a jury, but -- and I will get to that -- uh, but whether or
15 not you testified in a case as a witness.

16 MS. MATHIAS: No.

17 THE COURT: Okay.

18 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

19 THE COURT: That begs the next question. Ladies and
20 gentlemen, has anyone on the jury panel in the past -- has
21 any -- have you ever sat on a criminal trial? In other
22 words, been a juror in a criminal trial. If so, please
23 stand.

24 Okay; and Ms. Mathias, we're gonna start with you.

25 Um -- if you could tell me, um, what the charges were and

1 roughly how long ago it was?

2 MS. MATHIAS: Uh -- I would have to say twenty, twenty-
3 one years ago; State of Ohio. I

4 THE COURT: Okay. Ma'am, was there anything about your
5 experience sitting on that jury trial that would affect your
6 ability to be fair and impartial in the trial of this case?

7 MS. MATHIAS: I hope not.

8 THE COURT: Okay; I need you to be sure.

9 MS. MATHIAS: No, ma'am.

10 THE COURT: Okay; thank you. Yes, um, sir?

11 MR. RABBIT: John Rabbit, number one-nine-zero. About
12 twenty-four years ago on a Armed Robbery.

13 THE COURT: Okay. And again, sir, was there anything
14 about that experience that would affect your ability to be
15 fair and impartial in the trial of this case?

16 MR. RABBIT: No.

17 THE COURT: Thank you, sir; you may be seated. Yes,
18 ma'am?

19 MS. RIVERA-OATES: Yes; Brenda Rivera-Oates, number one-
20 nine-five; it was in New Jersey, twenty some odd years ago
21 and it was an assault case.

22 THE COURT: All right; and again, anything about that
23 experience that would affect your ability---

24 MS. RIVERA-OATES: No, ma'am.

25 THE COURT: Are you sure?

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1 MS. RIVERA-OATES: Yes.

2 THE COURT: Okay; thank you, ma'am. Yeah?

3 MS. GOBLE: Barbara Goble, ninety-two. Early seventies
4 armed robbery.

5 THE COURT: Okay; and again, anything about your
6 experience sitting on a jury that would affect your ability
7 to be fair and impartial in the trial of this case?

8 MS. GOBLE: No.

9 THE COURT: Thank you, ma'am; you may be seated. Yes,
10 ma'am?

11 MS. MATHIAS: One-fifty-two, Georgi Mathias. Uh -- I
12 was on a jury, uh, ten years ago in -- in, uh, Pittsburg with
13 some killings.

14 THE COURT: Okay; and anything about that experience---

15 MS. MATHIAS: No, ma'am.

16 THE COURT: Thank you, ma'am, you may be seated. Sir?

17 MR. CRUNKLETON: Paul Crunkleton, juror forty-nine.
18 Last year, Criminal Court in Charleston, uh, a felon with a,
19 uh, weapon across the state line.

20 THE COURT: Sir, anything about that experience that
21 would affect your ability to be fair and impartial in the
22 trial of this case?

23 MR. CRUNKLETON: No.

24 THE COURT: Thank you, sir. Yes?

25 MS. SMOLEK: Judy Smolek, uh, two-fourteen. I was in a

1 jury here in Beaufort eight years ago for kidnapping, rape,
2 and assault.

3 THE COURT: Ma'am, anything about that experience that
4 would affect your ability to be fair and impartial in the
5 trial of this case?

6 MS. SMOLEK: No, ma'am.

7 THE COURT: All right, thank you.

8 MS. McALLISTER: Denise McAllister, number one-fifty-
9 four. Uh -- over ten years ago in Atlanta I served on two
10 different juries; one was for drug charges.

11 THE COURT: Okay; anything about that experience -- uh,
12 those experiences that would affect your ability to be fair
13 and impartial in the trial of this case?

14 MS. McALLISTER: No, ma'am.

15 THE COURT: Thank you.

16 MS. EDWARDS: Ann Edwards, juror sixty-nine. Twenty-
17 seven years ago in California I was on a jury for Illegal
18 Possession of a Firearm.

19 THE COURT: Okay; ma'am, anything about that experience
20 that---

21 MS. EDWARDS: (Nod.)

22 THE COURT: ---that's a no for the record?

23 MS. EDWARDS: No, ma'am.

24 THE COURT: Thank you; I appreciate it, Ms. Edwards.
25 Yes?

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1 MS. McKAY: Dorothy McKay, one-sixty. Uh -- seven or
2 eight years ago, it was here in Court for a speeding trial..

3 THE COURT: Okay. And for a speeding ticket?

4 MS. McKAY: Yes, ma'am.

5 THE COURT: Okay; all right. Anything about that
6 experience that would affect your ability---

7 MS. McKAY: No.

8 THE COURT: Thank you, ma'am. Okay; Mr. Buckner?

9 MR. BUCKNER: I'm number twenty-nine.

10 THE COURT: Yes, sir?

11 MR. BUCKNER: Uh -- uh, twenty years ago I served on a
12 Grand Jury and, uh, eight years ago I served on a, um, double
13 murder trial for the police officers here in Beaufort.

14 THE COURT: Sir, anything about that experience or your
15 experiences sitting on the Grand Jury, uh, here that -- or
16 wherever you were -- that would affect your ability to be
17 fair and impartial in the trial of this case?

18 MR. BUCKNER: (Nod.)

19 THE COURT: All right; thank you, Mr. Buckner, I
20 appreciate that.

21 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

22 THE COURT: Ladies, again -- and gentlemen, again -- I
23 know you know very little about this case. Um -- but, has
24 any member of the jury panel read anything about the case in
25 the newspaper or heard anything about this case through word

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1 of mouth, television, or radio? If so, please stand.

2 (NO RESPONSE FROM THE JURY PANEL.)

3 THE COURT: Additionally, ladies and gentlemen, is there
4 any member of the jury panel or a member or your immediate
5 family or a close personal friend ever been accused of or the
6 victim of a, uh, violent crime? Which would include also
7 possibly a shooting. If so, please stand.

8 MS. BROWN: I'm Kay Brown, juror number---

9 THE COURT: What's---

10 MS. BROWN: ---juror twenty-five. My father was
11 murdered.

12 THE COURT: Okay; how long ago was that, ma'am?

13 MS. BROWN: Approximately 1992.

14 THE COURT: Okay; ma'am the fact, uh, that your father
15 was murdered, would that affect your ability to be fair and
16 impartial in the trial of a case?

17 MS. BROWN: No.

18 THE COURT: Are you sure of that?

19 MS. BROWN: Yes.

20 THE COURT: Thank you, ma'am; you may be seated. Yes,
21 ma'am, your name and juror number?

22 MS. EVE: Susan Eve, number seventy. My husband's
23 brother's son was murdered three weeks ago.

24 THE COURT: Okay; all right. Ma'am, do you feel
25 comfortable sitting on a jury this week?

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1 MS. EVE: Yes, ma'am.

2 THE COURT: Are you absolutely certain?

3 MS. EVE: Yes, ma'am.

4 THE COURT: Okay; no doubt in your mind whatsoever?

5 MS. EVE: No; we've, uh -- my husband is kind-a
6 estranged from that -- his side of the family.

7 THE COURT: Okay; all right, thank you, Ms. Eve. Yes,
8 ma'am?

9 MS. JOHNSON: Um -- my -- juror is one-twenty-six, Tina
10 Johnson and my cousin was attacked at gunpoint at his home.

11 THE COURT: Okay; how long ago was that?

12 MS. JOHNSON: About three years ago.

13 THE COURT: Would that affect your ability to be fair
14 and impartial in the trial of a criminal case?

15 MS. JOHNSON: No.

16 THE COURT: Okay; thank you, ma'am. Yes?

17 MS. SMOLEK: Judy Smolek, uh, two-fourteen. My very
18 close personal friend was a victim of assault about eight
19 years ago.

20 THE COURT: Okay; would that affect your ability to be
21 fair and impartial in the trial of this case?

22 MS. SMOLEK: No.

23 THE COURT: Okay; thank you, ma'am. Yeah?

24 MS. CHAMBERS: Judy Chambers, uh, thirty-six. About
25 fifteen years ago my daughter was raped.

1 THE COURT: Okay; ma'am, uh, is there anything about
2 that would affect your ability to be fair and impartial in a
3 criminal trial?

4 MS. CHAMBERS: No -- I don't know.

5 THE COURT: All right; I'm gonna go ahead and excuse
6 you, okay? But I appreciate so much that you were here.
7 And, uh, they'll go ahead and take your badge when you go.
8 All right, thank you, ma'am. Yes, ma'am -- yes, ma'am; yes
9 you.

10 MS. DULCIE: Juror sixty-three, Cindy Dulcie. My nephew
11 was, um, accused and sent to jail twice. Once for shooting a
12 gun, the second time for running from a police officer when
13 he'd been drinking, had a armed weapon in the car. And, he
14 served time.

15 THE COURT: Okay; uh, what -- what state is he in?

16 MS. DULCIE: Ohio.

17 THE COURT: Okay; would that affect your ability to be
18 fair and impartial to both The State and The Defense in this
19 case?

20 MS. DULCIE: No, ma'am.

21 THE COURT: Thank you, ma'am; you may be seated. We'll
22 start right up here again.

23 MS. BURKE: Uh -- permission to approach on this one,
24 Your Honor?

25 THE COURT: Absolutely; come on up.

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1 (WHEREUPON, THE FOLLOWING JUROR/JURORS APPROACHED THE
2 BENCH AND CONVERSED IN THE PRESENCE OF THE JURY PANEL BUT
3 OUTSIDE THE HEARING OF THE JURY PANEL. COUNSEL WAS ALSO
4 PRESENT AT THE BENCH.)

5 BAILIFF: This is juror number thirty, Ms. Burke,
6 Your Honor.

7 (WHEREUPON, BONNIE K. BURKE, JUROR NUMBER 30, CAME
8 FORWARD.)

9 MS. BURKE: I was involved in a Federal case as chief of
10 the case -- um, deputy chief on a case and I was raped.

11 THE COURT: Okay.

12 MS. BURKE: Thanks; it's all over with---

13 THE COURT: Okay---

14 MS. BURKE: ---we got the bad guy, and I'm fine.

15 THE COURT: ---and you're fine? And there's nothing
16 like that in this case; it's an alleged shooting and I just
17 want to make sure that you feel comfortable sitting.

18 MS. BURKE: Yes; it's under a federal seal, so that's
19 why I had to talk to you in private.

20 THE COURT: And I appreciate that.

21 MS. BURKE: Thank you very much.

22 THE COURT: Um -- okay, I just want to make sure, you're
23 good with it?

24 MS. BURKE: Oh, I'm good; thank you.

25 THE COURT: No, problem? All right.

1 MS. BURKE: Thank you very much.

2 THE COURT: I appreciate it; okay.

3 (WHEREUPON, BONNIE K. BURKE, JUROR NUMBER 30, RETURNED
4 TO HER SEAT.)

5 (WHEREUPON, AUDIO TO THE ENTIRE JURY PANEL RESUMED.)

6 THE COURT: All right, anyone else that's gonna need to
7 approach? Absolutely; come.

8 BAILIFF: Juror one-eighteen, Ms. Huber, Your Honor.

9 (WHEREUPON, PAMELA C. HUBER, JUROR NUMBER 118, CAME
10 FORWARD.)

11 MS. HUBER: (Inaudible.)

12 COURT REPORTER: Your Honor -- Your Honor...

13 THE COURT: Okay, I'll put it on there. Okay, she said
14 she had a sister who was murdered five years ago.

15 Um -- I want to make sure that you can be fair and
16 impartial in the trial of this case.

17 MS. HUBER: I might not be able to.

18 THE COURT: Okay; you're not real comfortable?

19 MS. HUBER: No, I'm not comfortable.

20 THE COURT: Okay, okay; I'm gonna go ahead and excuse
21 you then; don't worry about it.

22 MS. HUBER: I'm sorry.

23 THE COURT: Don't worry about this week; I'll let you
24 know. Okay?

25 MS. HUBER: Thank you.

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1 THE COURT: I appreciate it.

2 (WHEREUPON, PAMELA C. HUBER, JUROR NUMBER 118, RETURNED
3 TO HER SEAT.)

4 (WHEREUPON, AUDIO TO ENTIRE JURY PANEL RESUMED.)

5 THE COURT: I'm going to excuse Ms. Huber.

6 (WHEREUPON, PAMELA C. HUBER, JUROR NUMBER ONE-EIGHTEEN,
7 WAS EXCUSED FROM THE TRIAL OF THIS CASE.)

8 THE COURT: All right; does anyone else need to approach
9 or are you all comfortable? Your okay? Okay; all right.

10 THE COURT: All right, ma'am, I'll start with you then.

11 MS. DALY: Okay; um, juror fifty-six, Alicia Daly.
12 Uh -- my brother-in-law was recently convicted in
13 Pennsylvania of involuntary manslaughter by vehicle.

14 THE COURT: Okay.

15 MS. DALY: And so no, but -- no that---

16 THE COURT: That wouldn't affect your ability to be fair
17 and impartial to both The State and The Defense?

18 MS. DALY: Not for this.

19 THE COURT: Okay, thank you, ma'am. Sir?

20 MR. RABBIT: John Rabbitt, number one-nine-zero. Uh --
21 in the first ten years of my banking career -- which would
22 have gone from the early seventies to the early eighties --
23 uh, the bank branches I was in were held up at various times
24 in New York City by -- at gunpoint or knifepoint or whatever
25 probably about ten or twelve times.

1 THE COURT: Okay; would those experiences affect your
2 ability to be fair and impartial to both The State and The
3 Defense in this case?

4 MR. RABBITT: I don't think so; no, definitely not.

5 THE COURT: Thank you, sir. Sir?

6 MR. LYNCH: I'm Dennis Lynch, one-forty-five. Um --
7 while teaching and coaching in Chicago, uh, I've been
8 attacked on several occasions and have had my life threatened
9 with -- with a gun---

10 THE COURT: Uh-huh.

11 MR. LYNCH: ---and, uh---

12 THE COURT: Would that affect your ability to be fair
13 and impartial in the trial of this case, sir?

14 MR. LYNCH: Uh -- no.

15 THE COURT: Thank you; I appreciate it, Mr. Lynch.
16 Mr. Boretti?

17 MR. BORETTI: John Boretti, number fifteen. My brother
18 was, um, mugged and robbed at the -- the point of a machete
19 in the streets of Philadelphia. And I, um -- uh, was
20 employed by a bank during two occasions where there were
21 armed robberies.

22 THE COURT: Okay. Sir, would that -- either one of
23 those experiences affect your ability to be fair and
24 impartial to both sides in this case?

25 MR. BORETTI: No, ma'am.

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1 THE COURT: Thank you.

2 MS. EVE: Sue Eve, seventy. I forgot one. My husband,
3 thirty-five years ago, was robbed at gunpoint.

4 THE COURT: Okay; anything about that experience, ma'am,
5 that would affect your ability to be fair and impartial?

6 MS. EVE: No.

7 THE COURT: Thank you. All right.

8 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

9 THE COURT: Ladies and gentlemen, has any member of the
10 petit jury panel formed or expressed an opinion as to the
11 guilt or innocence of the Defendant, Mr. Wright, in this
12 case? If so, please stand.

13 (NO RESPONSE FROM THE JURY PANEL.)

14 THE COURT: Also, ladies and gentlemen, is any member of
15 the jury panel conscious of any interest, any bias or
16 prejudice for or against the Defendant, Mr. Wright, on this
17 case? If so, please stand.

18 (NO RESPONSE FROM THE JURY PANEL.)

19 THE COURT: And lastly, ladies and gentlemen, is there
20 any reason whatsoever that you cannot give both The State of
21 South Carolina and the Defendant, Mr. Wright, in this case a
22 fair and impartial trial? If so, please stand.

23 (NO RESPONSE FROM THE JURY PANEL.)

24 THE COURT: Are there any further questions requested of
25 the panel?

1 MS. BURKE: Yes, Your Honor, may we approach?

2 THE COURT: Sure.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
4 CONFERENCE, IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
5 HEARING OF THE JURY PANEL, OFF THE RECORD.)

6 (WHEREUPON, PROCEEDINGS CONTINUED.)

7 THE COURT: Ladies and gentlemen, at this time, um, what
8 we are gonna do is now generate a list, uh, a random list of
9 those of you that have been qualified to try this case.

10 What we are gonna do, ladies and gentlemen, is when, uh,
11 your name is called, the attorneys have an opportunity to
12 strike, uh, a certain number of jurors. What I'm gonna just
13 simply ask, ladies and gentlemen, is you just stand in your
14 place when your name is called and you're either going to be
15 invited to take a seat up in the jury box, uh, or you are
16 gonna just sit down and remain in the seat that you're at.
17 Okay?

18 Um -- and it usually takes us roughly---

19 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
20 CONFERENCE, IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
21 HEARING OF THE JURY PANEL, OFF THE RECORD.)

22 (WHEREUPON, PROCEEDINGS CONTINUED.)

23 THE COURT: ---Just a couple of minutes. So, you-all
24 are welcome -- if anyone really needs to go refresh themself,
25 please do so. Uh -- but, I would like to keep you-all here.

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1 Again, I am trying very hard to get you-all out of here, uh,
2 by one o'clock and I do have to pull a second jury after this
3 one. So...

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED TO PREPARE A
5 JURY SELECTION SHEET, OFF THE RECORD. ADDITIONALLY, A BENCH
6 CONFERENCE TOOK PLACE, IN THE PRESENCE OF THE JURY PANEL BUT
7 OUTSIDE THE HEARING OF THE JURY PANEL, OFF THE RECORD.)

8 (WHEREUPON, PROCEEDINGS CONTINUED.)

9 THE COURT: Okay; and again, ladies and gentlemen, when
10 your name is called, if you would please just stand, um, in
11 place. And again, you'll either be invited to take a seat or
12 asked to be, um, sat down again. (sic)

13 All right, whenever you're ready, Diane.

14 THE CLERK: Juror number one-sixty-four, Angela Miles.

15 (WHEREUPON, ANGELA P. MILES, JUROR NUMBER 164 STOOD AND
16 PRESENTED.)

17 THE CLERK: What says The State?

18 MS. BURKE: (After conference) Please seat Ms. Miles.

19 THE CLERK: What says the Defense?

20 MR. DEYSACH: (After conference.) Please excuse this
21 juror.

22 THE COURT: Okay; you may be seated, ma'am.

23 (WHEREUPON, ANGELA P. MILES, JUROR NUMBER 164 SAT DOWN.)

24 THE CLERK: Juror number thirty-seven, Amy Chaplin.

25 (WHEREUPON, AMY J. CHAPLIN, JUROR NUMBER 37 STOOD AND

1 PRESENTED.)

2 THE CLERK: What says The State?

3 MS. BURKE: (After conference) Please seat Ms. Chaplin.

4 THE CLERK: What says the Defense?

5 MR. DEYSACH: (After conference.) Please excuse this
6 juror.

7 THE COURT: You may be seated, Ms. Chaplin.

8 (WHEREUPON, AMY J. CHAPLIN, JUROR NUMBER 37 SAT DOWN.)

9 THE CLERK: Juror number sixty-nine, Ann Edwards.

10 (WHEREUPON, ANN M. EDWARDS, JUROR NUMBER 69 STOOD AND
11 PRESENTED.)

12 THE CLERK: What says The State?

13 MS. BURKE: (After conference) Please seat Ms. Edwards.

14 THE CLERK: What says the Defense?

15 MR. DEYSACH: (After conference.) Please excuse this
16 juror.

17 THE COURT: You may be seated, Ms. Edwards.

18 (WHEREUPON, ANN M. EDWARDS, JUROR NUMBER 69 SAT DOWN.)

19 THE CLERK: Juror number seventy, Susan Eve.

20 (WHEREUPON, SUSAN J. EVE, JUROR NUMBER 70 STOOD AND
21 PRESENTED.)

22 THE CLERK: What says The State?

23 MS. BURKE: (After conference) Please seat Ms. Eve.

24 THE CLERK: What says the Defense?

25 MR. DEYSACH: (After conference.) Please seat the juror.

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1 THE COURT: Come on around, Ms. Eve.

2 BAILIFF: This way, ma'am.

3 (WHEREUPON, SUSAN J. EVE, JUROR NUMBER 70 WAS SEATED IN
4 THE JURY BOX.)

5 THE CLERK: Juror number sixty-three, Cindy Dulcie.

6 (WHEREUPON, CINDY L. DULCIE, JUROR NUMBER 63 STOOD AND
7 PRESENTED.)

8 THE CLERK: What says The State?

9 MS. BURKE: (After conference) Please excuse Ms. Dulcie.

10 THE COURT: You may be seated, Ms. Dulcie.

11 (WHEREUPON, CINDY L. DULCIE, JUROR NUMBER 63 SAT DOWN.)

12 THE CLERK: Juror number one-forty-one, Michael Loconte.

13 (WHEREUPON, MICHAEL E. LOCONTE, JUROR NUMBER 141 STOOD
14 AND PRESENTED.)

15 THE CLERK: What says The State?

16 MS. BURKE: (After conference) Was that one-forty-one,
17 Madame Clerk?

18 THE CLERK: One-forty-one.

19 THE COURT: Yes.

20 MS. BURKE: (After conference) Please seat Mr. Loconte.

21 THE CLERK: What says the Defense?

22 MR. DEYSACH: Please seat the juror.

23 THE COURT: Come on up, Mr. Loconte.

24 (WHEREUPON, MICHAEL E. LOCONTE, JUROR NUMBER 141 WAS
25 SEATED IN THE JURY BOX.)

1 THE CLERK: Juror number eighty-four, Raymond
2 Geissinger.

3 (WHEREUPON, RAYMOND M. GEISSINGER, JUROR NUMBER 84 STOOD
4 AND PRESENTED.)

5 THE CLERK: What says The State?

6 MS. BURKE: (After conference) Please excuse
7 Mr. Geissinger.

8 THE COURT: You may be seated, sir.

9 (WHEREUPON, RAYMOND M. GEISSINGER, JUROR NUMBER 84 SAT
10 DOWN.)

11 THE CLERK: Juror number two-thirty-two, Windy Vest.

12 (WHEREUPON, WINDY A. VEST, JUROR NUMBER 232 STOOD AND
13 PRESENTED.)

14 THE CLERK: (After pause) What says The State?

15 MS. BURKE: Please seat Ms. Vest.

16 THE CLERK: What says the Defense?

17 MR. DEYSACH: Please excuse this juror.

18 THE COURT: You may be seated, Ms. Vest.

19 (WHEREUPON, WINDY A. VEST, JUROR NUMBER 232 SAT DOWN.)

20 THE CLERK: Juror number one-fifteen, William Horry.

21 (WHEREUPON, WILLIAM W. HORRY, JR., JUROR NUMBER 115
22 STOOD AND PRESENTED.)

23 THE CLERK: What says The State?

24 MS. BURKE: Please seat Mr. Horry.

25 THE CLERK: What says the Defense?

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1 MR. DEYSACH: (After conference.) Please seat the juror.

2 THE COURT: Come on up, Mr. Horry.

3 (WHEREUPON, WILLIAM W. HORRY, JR., JUROR NUMBER 115 WAS
4 SEATED IN THE JURY BOX.)

5 THE CLERK: Juror number two-fourteen, Judith Smolek.

6 (WHEREUPON, JUDITH J. SMOLEK, JUROR NUMBER 214 STOOD AND
7 PRESENTED.)

8 THE CLERK: What says The State?

9 MS. BURKE: Was that two-fourteen, Madame Clerk?

10 THE CLERK: Two-fourteen.

11 MS. BURKE: Please seat the -- Ms. -- the juror.

12 THE CLERK: What says the Defense?

13 MR. DEYSACH: (After conference.) Please seat this
14 juror.

15 THE COURT: Come on around, Ms. Smolek.

16 (WHEREUPON, JUDITH J. SMOLEK, JUROR NUMBER 214 WAS
17 SEATED IN THE JURY BOX.)

18 THE CLERK: Juror number eighty-eight, Barbara
19 Gilkey-Walters.

20 (WHEREUPON, BARBARA GILKEY-WALTERS, JUROR NUMBER 88
21 STOOD AND PRESENTED.)

22 THE CLERK: What says The State?

23 MS. BURKE: (After conference) Please seat Ms. Gilkey.

24 THE CLERK: What says the Defense?

25 MR. DEYSACH: (After conference.) Please seat the juror.

1 THE COURT: Come on around, Ms. Gilkey-Walters.

2 (WHEREUPON, BARBARA A. GILKEY-WALTERS, JUROR NUMBER 88
3 WAS SEATED IN THE JURY BOX.)

4 THE CLERK: Juror number twenty-five, Kay Brown.

5 (WHEREUPON, KAY M. BROWN, JUROR NUMBER 25 STOOD AND
6 PRESENTED.)

7 THE CLERK: What says The State?

8 MS. BURKE: Please seat Ms. Brown.

9 THE CLERK: What says the Defense?

10 MR. DEYSACH: (After conference.) Please excuse this
11 juror.

12 (WHEREUPON, KAY M. BROWN, JUROR NUMBER 25 SAT DOWN.)

13 THE CLERK: Juror number one-ninety-five,
14 Brenda Rivera-Oates.

15 (WHEREUPON, BRENDA RIVERA-OATES, JUROR NUMBER 195 STOOD
16 AND PRESENTED.)

17 THE CLERK: What says The State?

18 MS. BURKE: (After conference.) Please seat Ms. Rivera.

19 THE CLERK: What says the Defense?

20 MR. DEYSACH: (After conference.) Please seat the juror.

21 THE COURT: Come on around, Ms. Rivera-Oates.

22 (WHEREUPON, BRENDA RIVERA-OATES, JUROR NUMBER 195 WAS
23 SEATED IN THE JURY BOX.)

24 THE CLERK: Juror number forty-six, Harry Connolly.

25 (WHEREUPON, HARRY J. CONNOLLY, III, JUROR NUMBER 46

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1 STOOD AND PRESENTED.)

2 THE CLERK: What says The State?

3 MS. BURKE: (After conference.) Please excuse
4 Mr. Connolly.

5 THE COURT: You may be seated, sir.

6 (WHEREUPON, HARRY J. CONNOLLY, III, JUROR NUMBER 46 SAT
7 DOWN.)

8 THE CLERK: Juror number fifty-six, Alicia Daly.

9 (WHEREUPON, ALICIA D. DALY, JUROR NUMBER 56 STOOD AND
10 PRESENTED.)

11 THE CLERK: What says The State?

12 MS. BURKE: (After conference.) Please excuse Ms. Daly.

13 (WHEREUPON, ALICIA D. DALY, JUROR NUMBER 56 SAT DOWN.)

14 THE CLERK: Juror number forty-nine, Paul Crunkleton.

15 (WHEREUPON, PAUL E. CRUNKLETON, JUROR NUMBER 49 STOOD
16 AND PRESENTED.)

17 THE CLERK: What says The State?

18 MS. BURKE: (After conference.) Please seat
19 Mr. Crunkleton.

20 THE CLERK: What says the Defense?

21 MR. DEYSACH: (After conference.) Please excuse this
22 juror.

23 THE COURT: You may be seated, sir.

24 (WHEREUPON, PAUL E. CRUNKLETON, JUROR NUMBER 49 SAT
25 DOWN.)

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1 THE CLERK: Juror number twenty-one, Diane Bronzert.

2 (WHEREUPON, DIANE A. BRONZERT, JUROR NUMBER 21 STOOD AND
3 PRESENTED.)

4 THE CLERK: What says The State?

5 MS. BURKE: Please seat Ms. Bronzert.

6 THE CLERK: What says the Defense?

7 MR. DEYSACH: (After conference.) Please seat the juror.

8 THE COURT: Come on around, Ms. Bronzert.

9 (WHEREUPON, DIANE A. BRONZERT, JUROR NUMBER 21 WAS
10 SEATED IN THE JURY BOX.)

11 THE CLERK: Juror number two-forty-nine, Steven Womack.

12 (WHEREUPON, STEVEN L. WOMACK, JUROR NUMBER 249 STOOD AND
13 PRESENTED.)

14 THE CLERK: What says The State?

15 MS. BURKE: Please seat Mr. Womack.

16 THE CLERK: What says the Defense?

17 MR. DEYSACH: (After conference.) Please excuse this
18 juror.

19 (WHEREUPON, STEVEN L. WOMACK, JUROR NUMBER 249 SAT
20 DOWN.)

21 THE CLERK: Juror number one-fifty-three, Verneta Matt.

22 (WHEREUPON, VERNETA M. MATT, JUROR NUMBER 153 STOOD AND
23 PRESENTED.)

24 THE CLERK: What says The State?

25 MS. BURKE: Please seat Ms. Matt.

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1 THE CLERK: What says the Defense?

2 MR. DEYSACH: (After conference.) Please seat the juror.

3 (WHEREUPON, VERNETA M. MATT, JUROR NUMBER 153 WAS SEATED
4 IN THE JURY BOX.)

5 THE CLERK: Juror number one-ninety-eight, Maureen
6 Robinson.

7 (WHEREUPON, MAUREEN R. ROBINSON, JUROR NUMBER 198 STOOD
8 AND PRESENTED.)

9 THE CLERK: What says The State?

10 MS. BURKE: (After conference.) Please seat
11 Ms. Robinson.

12 THE CLERK: What says the Defense?

13 MR. DEYSACH: (After conference.) Please seat the juror.

14 (WHEREUPON, MAUREEN R. ROBINSON, JUROR NUMBER 198 WAS
15 SEATED IN THE JURY BOX.)

16 THE CLERK: Juror number one-twenty, Joan Isaacson.

17 (WHEREUPON, JOAN P. ISAACSON, JUROR NUMBER 120 STOOD AND
18 PRESENTED.)

19 THE CLERK: What says The State?

20 MS. BURKE: Please seat Ms. Isaacson.

21 THE CLERK: And what says the Defense?

22 MR. DEYSACH: (After conference.) Please seat the juror.

23 THE COURT: Come on around, Ms. Isaacson.

24 (WHEREUPON, JOAN P. ISAACSON, JUROR NUMBER 120 WAS
25 SEATED IN THE JURY BOX.)

1 THE CLERK: Juror number one-seventy-three, Herman Moyd.
2 (WHEREUPON, HERMAN MOYD, JUROR NUMBER 173 STOOD AND
3 PRESENTED.)

4 THE CLERK: What says The State?

5 MS. BURKE: (After conference.) Please excuse Mr. Moyd.

6 THE COURT: You may be seated, sir.

7 (WHEREUPON, HERMAN MOYD, JUROR NUMBER 173 SAT DOWN.)

8 THE CLERK: Juror number thirty-four, Brian Campanella.

9 (WHEREUPON, BRIAN M. CAMPANELLA, JUROR NUMBER 34 STOOD
10 AND PRESENTED.)

11 THE CLERK: What says The State?

12 MS. BURKE: Please seat Mr. Campanella.

13 THE CLERK: What says the Defense?

14 MR. DEYSACH: (After conference.) Please seat the juror.

15 (WHEREUPON, BRIAN M. CAMPANELLA, JUROR NUMBER 34 WAS
16 SEATED IN THE JURY BOX.)

17 THE CLERK: Juror number thirty-three, Patricia
18 Caldwell.

19 (WHEREUPON, PATRICIA P. CALDWELL, JUROR NUMBER 33 STOOD
20 AND PRESENTED.)

21 THE CLERK: What says The State?

22 MS. BURKE: Please seat Ms. Caldwell.

23 THE CLERK: What says the Defense?

24 MR. DEYSACH: (After conference.) Please seat the juror.

25 THE COURT: Come on around, Ms. Caldwell.

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1 (WHEREUPON, PATRICIA P. CALDWELL, JUROR NUMBER 33 WAS
2 SEATED IN THE JURY BOX.)

3 THE COURT: We're gonna choose two alternates; strikes
4 are one for The State, two for Defense.

5 THE CLERK: Okay; Juror number one-ten, William Hayes.

6 (WHEREUPON, WILLIAM HAYES, JUROR NUMBER 110 STOOD AND
7 PRESENTED.)

8 THE CLERK: What says The State?

9 MS. BURKE: Please seat Mr. Hayes.

10 THE CLERK: What says the Defense?

11 MR. DEYSACH: (After conference.) Please excuse this
12 juror.

13 THE COURT: You may be seated.

14 (WHEREUPON, WILLIAM W. HAYES, JUROR NUMBER 110 SAT
15 DOWN.)

16 THE CLERK: Juror number one-nineteen, Donna Humphreys.

17 (WHEREUPON, DONNA L. HUMPHREYS, JUROR NUMBER 119 STOOD
18 AND PRESENTED.)

19 THE CLERK: What says The State?

20 MS. BURKE: Please seat Ms. Humphreys.

21 THE CLERK: What says the Defense?

22 MR. DEYSACH: (After conference.) Seat the juror please.

23 (WHEREUPON, DONNA L. HUMPHREYS, JUROR NUMBER 119 WAS
24 SEATED IN THE JURY BOX.)

25 THE CLERK: Juror number forty-seven, Anne Cooler.

1 (WHEREUPON, ANNE COOLER, JUROR NUMBER 47 STOOD AND
2 PRESENTED.)

3 THE CLERK: What says The State?

4 MS. BURKE: Please seat Ms. Cooler.

5 THE CLERK: What says the Defense?

6 MR. DEYSACH: (After conference.) Please seat the juror.

7 (WHEREUPON, ANNE COOLER, JUROR NUMBER 47 WAS SEATED IN
8 THE JURY BOX.)

9 THE COURT: (After long pause.) Are there any matters of
10 law we need to take up regarding jury selection process from
11 The State?

12 MS. BURKE: None from The State, Your Honor.

13 THE COURT: From the Defense?

14 MR. DEYSACH: No, Your Honor.

15 THE COURT: All right. Well, ladies and gentlemen,
16 welcome. As I'm sure you understand, you are the jury for my
17 first case.

18 Ladies and gentlemen, we intend on beginning this trial
19 tomorrow morning at nine-thirty. But, I need to give you a
20 few brief instructions before I let you go for the day.

21 Additionally, I am going to send you back to your jury
22 room just briefly, uh, to meet with the Bailiffs. They will
23 have further instructions; they will show you where you are
24 going to report to tomorrow. You won't come through the
25 normal Courtroom doors, you'll come around the back. All

1 right?

2 Ladies and gentlemen, just again, a very few things I
3 need to tell you before, uh, you leave for the day.

4 To begin with, you are not to discuss this case with
5 anyone and that includes family, friends, husbands, wives.
6 The only thing you are permitted to do is go home and tell a
7 family or a friend that you've been chosen on a criminal
8 case. You cannot say what the charges are, the parties
9 involved, uh, the lawyers involved in the case.

10 And the reason is this. Inevitably, they are going to
11 have to tell you something about something and they know
12 nothing about this case, as do you. At this point, again, no
13 evidence has been presented. So, out of an abundance of
14 caution, so you don't get unduly influenced by something that
15 absolutely does not apply in any way to this case, I ask you
16 not to speak about it.

17 Additionally, ladies and gentlemen, you are not to
18 discuss this case with each other during the pendency of the
19 trial. You do not discuss this case, again, with each other
20 until the case has been sent to you for your deliberations
21 after you've received all the evidence, heard the arguments
22 of the lawyers, heard my charge on the law. And then, and
23 only then is it appropriate for you to discuss the case. All
24 right?

25 Additionally, ladies and gentlemen, if you were able to

1 get in today with a cell phone or computers or anything along
2 those, uh, lines, if you would, tomorrow when you come in,
3 please leave it back in the car, um, or leave it back at
4 home.

5 If you need to use a phone, just ask the Bailiffs and
6 they will bring you to a phone to get you taken care of. And
7 just the reason why is you can get so much information off of
8 a cell phone these days. And again, as a jury, you are not
9 to be in contact with anyone.

10 Uh -- but I don't want you all to feel out of touch. If
11 for some reason you think someone may need to call you
12 emergently while you're performing jury duty here, just give
13 them the phone number to the Clerk of Court's Office. I can
14 assure you that the second that phone call comes in, it will
15 be to me and I will be to you. So, we'll make sure that you
16 are covered. All right?

17 Again, ladies and gentlemen, I will tell you as well,
18 the attorneys in this case and the, uh, parties in this case
19 have been instructed not to speak to you in coming and going
20 from the Courthouse over the next three days. And the reason
21 why is, just a very innocent conversation in the parking
22 lot -- isn't it a gorgeous day -- I can assure you always
23 gets reported. And again, out of an abundance of caution, we
24 don't want, uh, those to have to be reported or there to be
25 an incident. So, if you pass them and they don't even smile

1 or say hello, they're following my orders and I just want to
2 make sure you all understand that.

3 Uh -- additionally, I don't think there's gonna be
4 anything in the newspaper or on the news about this case or
5 the radio, but again, out of an abundance of caution, if you
6 open the papers tomorrow morning or if you happen to turn on
7 the news and there is something about this case, you are to
8 turn it off and disregard it.

9 Again, you are gonna have everything you need right here
10 in this Courtroom to determine this case. And again, it
11 would be highly inappropriate for you to be influenced by any
12 outside, uh, source.

13 Lastly, ladies and gentlemen, I need to tell you this,
14 and this is just something new that we've had to start doing.
15 You are not to facebook or discuss this case in any way or
16 blog about this case. Uh -- again, the reason why is there
17 are -- inevitably, someone will try to contact you or tell
18 you something either about the case or about what you're
19 doing here. There has been incidents recently where we have
20 jurors that go home and put on their facebook page or
21 whatever, uh, what happened in Court today. And again,
22 that's not appropriate; we don't want you to do that. And
23 so, out of an abundance of caution, I need to instruct you
24 not to do that as well. All right?

25 Uh -- ladies and gentlemen, again I want to thank you

1 for your willingness to serve. I know that you all came as a
2 requirement of -- of a summons that was sent by me, but I
3 want you to know that you are gonna help us not only resolve
4 this case but many other cases that were on the roster at the
5 beginning of this week.

6 I also want to tell you that to streamline the case, the
7 reason why I'm sending you home today, is there are matters
8 of law that I need to take up with the attorneys. And,
9 rather than have you all sit back there and wait on us, I
10 will get everything down to what it needs to be so when we
11 start tomorrow morning we will get a running start at
12 nine-thirty so you won't be waiting on us. All right? Uh --
13 so I will send you home.

14 Lastly, ladies and gentlemen, I need to ask, uh, do your
15 very best to be on time. I cannot start until all fourteen
16 of you are here. So, if for some reason you run into car
17 trouble or have an emergency tomorrow morning, call the
18 Clerk's Office as we will be looking for you. All right?

19 Thank you again, ladies and gentlemen. I'm gonna excuse
20 you back to your jury room.

21 Oh, there was one more thing I would like you to do, uh,
22 when you go back there. Ladies and gentlemen, I need you to
23 elect a foreperson among the twelve of you. A foreperson
24 doesn't have any more say than anyone else. They're just
25 simply the person that communicates with me during the trial

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1 of the case and also, when it's sent to you for your
2 deliberations they just get the conversation rolling, uh, and
3 get everyone speaking.

4 I am gonna to ask that whoever you elect as your
5 foreperson take this very front seat right here. Uh --
6 during the remainder of the trial and as you come and go,
7 ladies and gentlemen, everyone is free to change seats except
8 my foreperson and my two alternates. I need you -- to keep
9 you back there. You can go down or wherever if you need to
10 look at evidence, uh, but again, I just need you two to
11 remain there and my foreperson to take this front seat. All
12 right?

13 Uh -- and lastly, I saw some of you all shivering as you
14 were standing up. I can tell you, I can control, I used to
15 think, just about everything in this courtroom. But, I can
16 tell you that the HVAC I have no control over. It is run out
17 of what I laughingly now say must be Alaska because I have no
18 idea at this point. It used to be Columbia.

19 Ladies and gentlemen, we do have blankets in the back if
20 you need them. What I always suggest to my jurors is to come
21 in layers because truthfully I know it's cold this morning
22 but we could come in and tomorrow it could be ninety degrees
23 in here. I do not know; and every day it changes.

24 All right, we are getting ready to have a major
25 renovation on thus courthouse, uh, which is going to be very

1 exciting particularly for those of us that work in it on --
2 on a regular basis. And, uh, it's going to be very nice when
3 it's done. But until then, uh, we're gonna kind-a muddle
4 through. So, bring sweaters; uh, again, layers is always
5 best.

6 I also remind you, ladies and gentlemen, tomorrow you
7 are gonna have a lunchtime and free to go about your business
8 so I want you to be able to plan for that.

9 And additionally, like I told you, we're starting at
10 nine-thirty. I anticipate that we'll be done tomorrow, as
11 far as for the day's work, uh, probably five, five-thirtyish.
12 But, if someone has an engagement either Tuesday or possibly
13 Wednesday night that you absolutely have to be home for -- a
14 soccer game, a party, or anything specific -- please just
15 tell your foreperson and they'll tell the Bailiffs. They'll
16 bring it to me and there's no reason why we can't accommodate
17 you this week. All right?

18 Again, thank you ladies and gentlemen; you are excused
19 back to your jury room and I -- we look forward to seeing you
20 all tomorrow morning at nine-thirty.

21 MR. DEYSACH: Your Honor, before you excuse the jury,
22 may I ask -- may we approach?

23 THE COURT: Sure; okay, go ahead.

24 BAILIFF: May I take them out, Your Honor?

25 THE COURT: Sure. Yeah, take 'em back to the Jury Room,

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1 just make sure you come see me before you let 'em go for the
2 day.

3 BAILIFF: All right, Your Honor.

4 THE COURT: Okay?

5 (WHEREUPON, JURY LEFT THE COURTROOM AT 12:13 P.M.)

6 BAILIFF: The jury's clear, Your Honor.

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
8 CONFERENCE IN THE PRESENCE ON THE JURY PANEL BUT OUTSIDE THE
9 HEARING OF THE JURY PANEL, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 THE COURT: All right; anything further in regards to
12 this case other than I need you-all to stick around so we can
13 put, um, our conference on the record? Um -- Mr. Deysach?

14 MS. BURKE: Nothing from The State, Your Honor.

15 THE COURT: Anything further other than to -- for
16 you-all to sit tight?

17 MR. DEYSACH: No, Your Honor.

18 THE COURT: Okay; all right. Uh -- let's do this,
19 ladies and gentlemen; there is something briefly that I need
20 to put on the record and I am going to ask you, if you all do
21 not mind, to just go ahead and excuse yourself for just a
22 brief five minutes. Uh -- if you would just step back out
23 into the hallway. If anyone, certainly, needs to use the
24 restroom, you're welcome to it. I'm gonna bring you right
25 back in, we're gonna pull this second jury, and we're gonna

1 send you all home for the day. Okay? Thank you.

2 (WHEREUPON, JURY PANEL LEFT THE COURTROOM AT 12:15 P.M.)

3 THE COURT: All right, let's very quickly just put on
4 the record, uh, Mr. Deysach---

5 BAILIFF: The jury pool is clear, Your Honor.

6 THE COURT: All right. Mr. Deysach, you made a late
7 Motion after I asked if there was anything to be taken up by
8 this jury. Uh -- you questioned, uh, Ms. Burke striking, uh,
9 number one-seventy-three, Herman Moyd, a -- a black male.
10 And, again, Ms. Burke, why don't you, for the record, put the
11 race neutral reason.

12 MS. BURKE: Your Honor, Mr. Moyd has a, uh, previous
13 arrest on his record. I believe it was from the '90's.
14 Mr. Deysach has my rap sheets.

15 Out of an abundance of caution, I decided to strike him.

16 The same was done for number eighty-four, a white male.
17 He actually, um, had a item on his record that I was not sure
18 if it was a conviction or not and out of abundance of caution
19 I decided to strike him.

20 THE COURT: Okay. And additionally, I believe
21 Mr. Deysach asked at the bench if you would go through and
22 look at the other persons that did get sat on the jury to
23 make sure that no one had a conviction for something that
24 wouldn't have excused them. Um -- and I'm assuming it's
25 gonna take you a bit of time?

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1 MS. BURKE: I -- I went ahead and just gave Mr. Deysach
2 my---

3 THE COURT: Okay.

4 MS. BURKE: ---list and rap sheets. That way he can---

5 THE COURT: Do it himself.

6 MR. DEYSACH: Right.

7 THE COURT: Okay -- okay.

8 MR. DEYSACH: I have the rap sheets but I haven't had a
9 chance to do it.

10 THE COURT: Right. Okay; well then, I'm gonna go ahead
11 and pull this next jury so why don't you do that, uh, in the
12 back while we do that. Okay?

13 MR. DEYSACH: Thank you, judge.

14 THE COURT: Okay.

15 MS. BURKE: Your Honor, actually, I believe that's our
16 only jury list that I need to pull my jury from.

17 THE COURT: You mean the rap sheets?

18 MS. BURKE: Your Honor, right. The -- the -- the --
19 that has our notes on it.

20 THE COURT: Well, get it back from Mr. Deysach then.

21 MS. BURKE (TO MR. DEYSACH: I'm sorry; I'll give it to
22 you as soon as I can.

23 THE COURT: Okay; all right.

24 (WHEREUPON, COURT RECESSED AT 12:19 P.M.)

25 (WHEREUPON, COURT RESUMED AT 3:44 P.M.)

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1 **THE COURT:** All right. Mr. Deysach, these are
2 your motions?

3 **MR. DEYSACH:** Well, I have some motions. I know
4 that the Solicitor has some issues to talk about. I
5 propose that we -- we begin with the Batson issue that
6 we would like to start with this morning.

7 I think the appropriate place to start since we're
8 on the record now -- I think we had a bench conference
9 that wasn't on the record, would be to have the
10 Solicitor explain her race neutral reason for her
11 strikes and --

12 **THE COURT:** I thought we already -- I thought we
13 already put that on the record.

14 **MR. DEYSACH:** I think we said it up at the bench,
15 but I don't think we put it in a place where it was --

16 **THE COURT:** Okay.

17 **MR. DEYSACH:** -- part of the court's record.

18 **THE COURT:** For the strikes of the one African
19 American gentleman, is that correct?

20 **MS. BURKE:** Juror number 173, Herman Moyd,
21 M-o-y-d.

22 **MR. DEYSACH:** And I also -- number 46 also. I
23 think I'll get her to -- a man, a white male, but a
24 male of which there's only three on the jury and ask
25 her what her race neutral reason for that strike was

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1 also.

2 THE COURT: Okay. Ms. Burke.

3 MS. BURKE: As to juror number 146 --

4 MR. DEYSACH: Just 46.

5 MS. BURKE: 46 -- oh, we just put one -- okay.

6 Let me go back and look at 46 then.

7 THE COURT: Harry Connolly.

8 MS. BURKE: Mr. Connolly has a charge on his Rap
9 sheet from 1985, malicious injury to property of
10 another.

11 THE COURT: Okay.

12 MS. BURKE: Mr. -- juror 173, as mentioned at side
13 bar also, has an item on his Rap sheet. The State also
14 mentioned at side Bar that she also struck juror 84,
15 white male for the same reason.

16 THE COURT: Raymond Geissinger. Okay.

17 MS. BURKE: The State and the defense went through
18 the juror lists and Rap sheets, the State did not see
19 any juror who was selected by the State, who had an
20 item on their Rap sheet.

21 THE COURT: Okay. All right. Mr. Deysach.

22 MR. DEYSACH: It is -- from what I'm gathering
23 from what she's saying, is that what has triggered her
24 strikes are not convictions, but simply arrests that
25 result in a Rap sheet being generated by the Defendant.

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1 We're not talking about necessarily convictions -- she
2 didn't make a distinction in any one of these cases
3 whether they had been convicted or not, so I want to
4 make sure what we're talking about is just simply
5 arrests on the criminal history, not convictions; is
6 that correct?

7 THE COURT: I'm assuming it would be either/or?

8 MS. BURKE: Yeah. If -- if -- if they hit the
9 radar for a criminal record, whether they have it not,
10 that --

11 MR. DEYSACH: Okay.

12 MS. BURKE: I struck them.

13 MR. DEYSACH: All right.

14 THE COURT: Specifically as to Mr. Moyd, because
15 he was the African American.

16 MS. BURKE: That's correct, Your Honor.

17 MR. DEYSACH: That had no conviction?

18 MS. BURKE: No. The only African American.

19 MR. DEYSACH: Okay. The only African American and
20 the only one struck. Okay --

21 MS. BURKE: No. The other two were also struck,
22 84 and 46.

23 MR. DEYSACH: For that same reason?

24 THE COURT: She's just showing she served it with
25 the same spoon.

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1 **MR. DEYSACH:** Okay. All right. So, what I am --
2 what would be improper is for her to use such a -- a
3 characteristic to -- against men, for people of certain
4 race whether they're black, white or male or female, to
5 use that reason as a strike and not use it for a strike
6 on somebody who is female or -- really female or white.

7 And for the alternate number 119, a Rap sheet was
8 generated, that she was placed on the jury. The
9 Solicitor still had strikes. She is a white female.
10 I'd point out -- not just to make this about race, but
11 also about gender. There is a derth of men on the --
12 on the jury, as well as no blacks on the jury. I'm
13 going to ask you to take that into account.

14 But number 199, there was a Rap sheet. The -- the
15 read out on the Rap sheet said --

16 **THE COURT:** Let me just ask what your objection
17 would be on men on the jury -- I understand that you
18 would object to there not being African American men,
19 but when we're talking about seating a jury of your
20 peers, you would want men.

21 **MR. DEYSACH:** Correct. And there were not many.
22 There's only three men that are on the jury and there's
23 nine women. They're all white.

24 **MS. BURKE:** Yeah. The State -- the defense struck
25 two men and -- and the State struck three men. As to

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1 juror 119, the State had planned to strike her too, and
2 then I saw my notes where it says that the -- our
3 office, who generated the Rap sheet, they highlight
4 blue if they have a Rap sheet and pink if they're
5 excused for whatever reason. And this person's name
6 was highlighted.

7 And I looked at my notes, where I went to the Rap
8 sheet and verified it, I guess, over the weekend or
9 something. And my notes says no charges on the Rap
10 sheet, so she has a blank Rap sheet with no actual
11 charges. It might have been an error. It might have
12 been that it was expunged, I don't know. And I can
13 present that to the court. But there's nothing on here
14 -- on juror 119 that shows an arrest, that shows
15 anything. It just has her social and her identifying
16 information.

17 **THE COURT:** Just so I'm clear, when you run these
18 Rap sheets, you put in the social, the date of birth --
19 if they absolutely have no Rap sheet, nothing pulls up
20 at all? I mean --

21 **MS. BURKE:** Usually and I --

22 **MR. DEYSACH:** Correct. I ask that we go ahead and
23 make this a Court's exhibit, Your Honor.

24 **MS. BURKE:** Usually, Your Honor, the office does
25 not print a Rap sheet if they have no prior record.

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1 However, the -- our staff who does this -- if anything
2 is generated, out of an abundance of caution, then they
3 just go ahead and put it in the packet.

4 Whereas people that have no record or nothing, it
5 would just say -- well, I don't know what they say. I
6 don't get those. But -- so I had a note on hers -- or
7 maybe it was highlighted on this list as blue, being a
8 Rap sheet. And my note here it says "no charges on the
9 Rap sheet", so there's nothing --

10 **MR. DEYSACH:** That's not what the Rap sheet says.

11 **MS. BURKE:** No. That's what my notes say. My
12 notes say no charges on the Rap sheet. So when the
13 number was called 119, and I looked down at this, I see
14 that my notes say no charges on the Rap sheet. So
15 ordinarily I would have struck her, but I did not
16 because she's got no record.

17 **MR. DEYSACH:** Well, that is -- that's not what the
18 Rap sheet says.

19 **MS. BURKE:** No, my notes.

20 **MR. DEYSACH:** The Rap sheet says that her criminal
21 history is in the custody of California and how that
22 criminal record can be retrieved. It -- on the face of
23 it, appears as though criminal history exists -- there
24 is no way for criminal history to exist unless one is
25 actually arrested. That's exactly the reason she gave

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1 for getting rid of the man on the jury -- the man that
2 she struck and the African American male that she
3 struck. That's exactly the same reason.

4 So now we have what appears to be a pre-text where
5 the similarly situated juror of other races or genders
6 are seated, while she used that same reason to strike a
7 man and a black male -- two men and a -- one who was
8 black.

9 MS. BURKE: Juror -- it's not the same reason.
10 But I understand why Mr. Deysach might -- might say
11 that or interpret it to be so. What the State is going
12 by is its cheat sheet, if you will. It's just the
13 names of the people. And the notes that I've put on
14 there, Thursday or Wednesday, when I actually look over
15 the Rap sheet and where I pulled out the ones who were
16 disqualified.

17 And my notes for juror number 119 said no charges
18 on Rap sheet. That note was not made this morning.
19 That note was not made after I saw her and struck three
20 men and whatever it was. That note was made as I
21 prepared for trial so that I won't have to go back to
22 50 Rap sheets and see what's there.

23 As to juror 173, the black male, my note for him
24 says 2003 fraud, check, nolle prossed, question mark.
25 So that gave me an indication from looking at the Rap

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1 sheet -- rather my notes, when his name was called,
2 that uh-oh, this guy is on my radar.

3 The same is true for juror 84. On my cheat sheet
4 here, which is the list of all the people -- again all
5 the potential jurors -- it says next to his name -- I
6 can make all this the court record -- but it says next
7 to his name, and these are my notes, "D Q question
8 mark, question mark, abuse of cocaine, disposition
9 held, Florida, question mark, question mark." And I
10 believe I told the court about that at side bar. And
11 so I struck the people that in -- I pulled the Rap
12 sheet, there is actually something there that says --

13 THE COURT: Okay. Let's go ahead --

14 MS. BURKE: -- that charge.

15 THE COURT: -- let's make the Rap sheets that you
16 have and your notes another court's exhibit, just to
17 catch it all. It will be Court's 2, Vivian?

18 COURT REPORTER: Yes, ma'am.

19 THE COURT: Anything else, Mr. Deysach?

20 MR. DEYSACH: Yes, Your Honor. I do want to make
21 sure I properly call out of the State's -- the cases
22 that I'm relying on. And I want to respond to what the
23 Solicitor is saying which seems to be that, well, I
24 have these notes that I've generated myself, that I'm
25 relying on. And so if I did something that's

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1 discriminatory, it wasn't on purpose or anything like
2 that. I want to make sure clear -- I think it's under
3 State v. Tomlin, is what the desk book kind of relies
4 on, just the -- the stating of a non-discriminatory
5 motive doesn't keep it from being -- that that doesn't
6 mean it's a general -- gender erase neutral
7 explanation, simply by the Solicitor denying any
8 discriminatory motive.

9 In fact, if you are using a method that results in
10 discrimination where -- like I was saying that I can
11 show a pretext by demonstrating similarly situated
12 jurors from other races or genders being seated, that
13 kind of puts -- that means that there is a -- a --
14 that's State v. Tucker, 334 SC 1 -- I'll go through the
15 cite out there -- a 1998 case. So now that we've got a
16 pretext, now we have a race and gender non neutral
17 reason for the seating of these jurors and that's where
18 Batson gets violated.

19 And so that's what I wanted to put on the record,
20 Your Honor.

21 **THE COURT:** Respectfully, I disagree. I think
22 there is a distinction between Donna Humphreys, the
23 juror number -- the first alternate number 119, and the
24 others that were struck. I think the printing of the
25 Rap sheet showing actual specific charges is a

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1 difference. I think it's a race neutral reason and I'm
2 denying your Batson motion.

3 What's the next motion you have?

4 **COURT REPORTER:** Can I get that exhibit?

5 **THE COURT:** Yes.

6 (COURT'S EXHIBITS NOS. 1 - 3 RECEIVED INTO
7 EVIDENCE.)

8 **THE COURT:** All right. Well, Ms. Burke, did you
9 want to take up your motions first or do you want to
10 take up defenses and let's just go through?

11 **MS. BURKE:** I think, Your Honor, the Biggers
12 motion would -- we can probably get that done so that
13 Sgt. Heany can be excused, if that's okay.

14 **THE COURT:** Okay. Let's go with the Biggers
15 motion. Are you going to call Sgt. Heany to the stand?

16 **MS. BURKE:** I call Sgt. Heany, please, to the
17 stand.

18 (Witness forward.)

19 KELLY HEANY, having been first
20 duly sworn, testified as follows:

21 **THE CLERK:** Be seated. State your name and spell
22 it for the court, please.

23 **THE WITNESS:** Kelly Heany. It's K-e-l-l-y.
24 H-e-a-n-y.

25 **DIRECT EXAMINATION BY MS. BURKE:**

DET. HEANY -- CROSS BY MR. DEYSACH

1 -- that is being identified.

2 And I asked her, I mean, that was the point, is
3 this the Bo. And I think that that's proper -- you
4 know, if they want to elicit that testimony from the
5 stand, that's the Bo, while he's sitting here, that
6 would be appropriate. But I think to go through the
7 whole lineup procedure would be improper bolstering.

8 Also, I don't think that the lineup itself should
9 be shown to the jury. I'll go ahead and -- and put
10 that on the record right now. That if there are
11 pictures of mug shots with -- although the guys are
12 wearing street clothes, they've got the height thing
13 behind them, so it's obvious that it's a mug shot, so
14 the pictures themselves shouldn't be shown to the jury.

15 **THE COURT:** Okay. Well, I can address that.
16 Unless he is a well known cousin, brother, best friend
17 that he could know for a lifetime, I think they can use
18 the photo lineup. I don't think it's bolstering. I
19 think it's just his extra confirmation and I think that
20 portion of it is admissible.

21 I would agree that I don't like the height charts
22 because one of the people, obviously, is your client,
23 Mr. Wright. And it would indicate that he had been
24 arrested in some way. So, my question is what can we
25 do to fix these photos so we don't the height -- and I

DET. HEANY -- CROSS BY MR. DEYSACH

1 agree, I like it that there's no jump suits, but is
2 there any way we can white it out?

3 MS. BURKE: Yes, Your Honor, we can Sharpie it.

4 THE COURT: I'm sure -- it's -- I don't want the
5 lines at all, so I want it white or any other color.

6 MS. BURKE: Absolutely.

7 THE COURT: Just taking the numbers off isn't
8 going to do it.

9 MS. BURKE: Right. Absolutely.

10 THE COURT: Okay.

11 MS. BURKE: I suggest --

12 THE COURT: You just figure out a way to -- so
13 they can't see the lines --

14 MS. BURKE: And I'll show it to Mr. Deysach and to
15 you and we'll come to a meeting of the minds.

16 THE COURT: Fix them the best way you can. Okay.
17 I just don't want to see any lines.

18 MR. DEYSACH: And, Your Honor, we'll cross that
19 bridge, I'm a little bit skeptical that they'll be able
20 to photo shop it in such a way, but we'll see tomorrow
21 what the product is.

22 The other issue I wanted to bring up, Your Honor,
23 is that in this case along with the folks that we've
24 already talked about, Octavia, the person -- the driver
25 and Troy, there are other witnesses who want to say, I

DET. HEANY -- CROSS BY MR. DEYSACH

1 saw the shooting. Alexis -- for -- for -- one witness,
2 for instance, says I don't know the guy, but they call
3 him Bo. Another witness says something to that effect.
4 I'm not sure -- I don't know the guy, but they call him
5 Bo. And I want to make sure that my position is put on
6 the record is clear, to say I don't know who the guy
7 is, but they call him Bo is inadmissible hearsay,
8 certainly when it's told to the police or in a
9 testimonial situation such as this, to say that -- I
10 don't know the person, but I've heard that his name is
11 Bo, essentially is what the testimony might be.

12 **THE COURT:** I would agree that that's hearsay
13 other than if they actually with their own eyes saw it,
14 if they were a witness standing there, they can
15 identify him by his picture, let alone -- even though
16 by the name -- I understand what you're saying. That
17 could be two different things, I don't know him but
18 they call him Bo. I don't know if the question was
19 asked -- even though you may not personally know him,
20 have you seen him around and do you know that by his
21 reputation, that that is him and that is Bo.

22 If they can ID him at the scene, and I don't know
23 where these people were, then they can ID him through
24 his photograph, they can ID him and say this is him. I
25 would agree that if they don't know his name is Bo and

DET. HEANY -- CROSS BY MR. DEYSACH

1 they can't look at him and say, that's Bo, by their
2 acknowledgment, they can't say it.

3 MR. DEYSACH: Right. That's -- that's what I want
4 to make sure. I don't think that these are people that
5 know him by a reputation or know him by anything other
6 than somebody -- they've heard somebody call him Bo.
7 They either know the person who did that is Bo, I want
8 to make --

9 THE COURT: Okay.

10 MR. DEYSACH: There are people who are shown photo
11 lineups obviously, or else we would have had Neil v.
12 Biggers on that, but I want to make sure that we're not
13 eliciting any hearsay just to bolster that somebody may
14 have said the word "Bo" and that be it. And so I want
15 to make sure that is flagged for you.

16 THE COURT: Anything else? Anything else from
17 you, Ms. Burke?

18 MS. BURKE: I do, Your Honor. Just -- I think --
19 just going in order here, the chain of custody, there
20 was a Gun Shot Residue Kit that was taken by Deputy
21 Heany, Officer -- Sergeant Heany at the time of the
22 victim, Mr. Jinks. And there are about seven or eight
23 people involved in that chain.

24 And the State -- of course, Mr. Deysach declined
25 the request to stipulate to the chain. The State does

DET. HEANY -- CROSS BY MR. DEYSACH

1 so at the end of this case, you can accurately remember
2 and reflect on the testimony given.

3 Ladies and Gentlemen, because of the relatively
4 short length of this trial, I am not going to permit
5 you to take notes. If at some point, I believe that it
6 would aid you in some way, we will give you pens and
7 pads. But right now, Ladies and Gentlemen, I just ask
8 that you sit back, listen to the attorneys, listen to
9 the testimony and give them your full attention.

10 All right. Ladies and Gentlemen, in order to
11 preserve everyone's rights, each time I speak to you or
12 address you, I'm going to ask the attorneys if there's
13 anything else they would like me to address to you or
14 say. If not, we'll go ahead and begin the trial of
15 this case.

16 Anything further from the State?

17 MS. BURKE: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. DEYSACH: No, Your Honor.

20 THE COURT: Thank you. All right, Ladies and
21 Gentlemen, we're going to begin the trial.

22 MS. BURKE: Thank you, Your Honor, may it please
23 the court. Ladies and Gentlemen, you met me yesterday.
24 My name is Dawn Burke and I represent the State of
25 South Carolina in this case.

Opening Statements/State

1 On July 28, 2008, the defendant was armed with a
2 gun. By 4:00 p.m. that day, surrounded by several
3 people, in broad daylight, homes nearby, he decided to
4 use that gun. He fired the first shot and missed. And
5 then he fired again.

6 The evidence will show beyond a reasonable doubt,
7 the defendant, Eric Wright, also known as Eric Bo
8 Derrick Wright, fired twice and hit the second time,
9 Troy Jinks, the victim.

10 Ladies and Gentlemen, when the defendant fires
11 once, there can be some questions. But when you first
12 the second time, he's trying to kill him. He is trying
13 to kill.

14 You will hear from several witnesses today as to
15 why the defendant is guilty of assault and battery with
16 intent to kill and possession of a firearm during a
17 violent crime. You will hear from the victim. You
18 will hear from his treating doctor, who saw him at the
19 emergency room. You will hear from eye witnesses who
20 saw the shooting. You will hear from members of law
21 enforcement who analyze evidence and submitted evidence
22 for testing.

23 You'll also hear from a codefendant, Octavia
24 Scott. You see this happened in a vehicle. Octavia
25 Scott was sitting right next to the defendant at the

Opening Statements/State

1 time he got out of the car, the evidence will show, and
2 brandished the gun and fired twice.

3 Now, she's been offered a plea deal in exchange
4 for her truthful testimony you will hear. If you
5 testify truthfully, if you tell us what you told the
6 cops, the State will dismiss the charges. But she'll
7 give us the inside information as to what happened in
8 the car leading up to the shooting, during the shooting
9 and after.

10 Ladies and Gentlemen, on July 28, 2008, the
11 defendant armed himself with a gun. By 4:30 that day,
12 he decided to fire. They'll be no evidence of a gun by
13 the victim or evidence that he had any weapon. The
14 evidence will show beyond a reasonable doubt that he
15 fired not once, but twice. That is why at the end of
16 this trial, I'll come back before you and I'll ask that
17 you find the defendant guilty, guilty of assault and
18 battery with intent to kill and guilty of possession of
19 a firearm during a violent crime. Thank you.

20 **THE COURT:** Mr. Deysach.

21 **MR. DEYSACH:** Thank you, very much. When opening
22 statements start, I find myself wanting to jump out of
23 my chair and come and tell you so many different things
24 that I want to tell you, but I know that the opening
25 statement isn't the time to start arguing about what

Opening statements/Defense

1 the evidence is going to be because we're getting ready
2 to start the trial where you will find out what the
3 evidence is.

4 I want to introduce myself. I'm Ian Deysach.
5 That's my client, Eric Wright. Mr. Gene Hood, who is
6 also representing Mr. Wright in this trial. And I do
7 want to use my time to talk to you before we hear
8 evidence to highlight a couple of things. And it's not
9 going to be, well, the evidence is going to show this
10 and the evidence is going to show that, because the
11 case is a little too complicated to go through the
12 whole story and why what the Solicitor just said wasn't
13 right, and things of that nature. But there are some
14 things that she said that I do want to address.

15 In her presentation to you just now, she attempted
16 to appeal to your emotion. She tried to explain to you
17 how what happened was so horrible. And I'm not trying
18 to say it isn't, but what I'm trying to tell you is
19 that she's appealing to your emotion. And what emotion
20 is, is the enemy. Emotion can be the enemy of your job
21 in this courtroom. It's the enemy.

22 When the judge gives you instructions at the end
23 of the case, she's not going to say, I want you to use
24 your emotion to make the decision on what happened.
25 What she's going to ask you to do is use the facts and

Opening statements/Defense

1 use the law. And I want you to be ready, that when a
2 Solicitor starts to appeal to emotion, that it covers
3 up -- it covers up the gaps in the case, that it is
4 compensating for holes that exist in the case, and
5 that's what's going on here.

6 She told the story in a somewhat literary fashion.
7 We're going to get the inside scoop from the
8 codefendant. And I'm listening and I'm thinking, this
9 is-- is this the inside scoop or is this testimony
10 whose credibility you'll have to evaluate in the way
11 that the judge just told you. So I want to reinforce
12 what the judge just told you, because the witnesses
13 that they're going to use, don't have credibility. But
14 that's not for me to say right now, that's for you to
15 decide.

16 The reason I bring up those points is because I
17 want to avoid the worst thing that can happen in any
18 courtroom, anywhere, and that is a wrongful conviction.
19 I don't think anybody needs to be explained how great
20 the stakes are in a case like this.

21 I don't think anybody needs to be explained the
22 permanence that your decision will have. The judge
23 told you that errors can be corrected, but there -- if
24 you make an error, while nobody is taking down what's
25 being said by what happens in private in the jury room,

Opening statements/Defense

1 there's nobody who can go back and look at the
2 transcript. And so when we talk about the State's
3 burden of proof beyond a reasonable doubt, it's not
4 just something that we say, it is the road map for you
5 to avoid the wrongful conviction. Because what you
6 have heard from the Solicitor this morning so far is
7 fiction. What you will hear from the -- you will hear
8 fiction from the witness stand. And that's what makes
9 this case so risky for a wrongful conviction.

10 When a case is based on what people say, and isn't
11 corroborated by physical evidence that backs up what
12 they say, the danger for a wrongful conviction goes up.
13 And I know -- I mean, I don't know you, but I have the
14 feeling, and I know that everybody wants to know that
15 when they have served on a jury, when they look back on
16 that service, they want to know that they didn't
17 participate in a wrongful conviction.

18 Nobody would like the feeling of looking back on
19 their case and finding out, or even worrying that their
20 decision resulted in a wrongful conviction because like
21 -- I don't think anybody has to be explained, as I said
22 before, why that's a disaster.

23 In your jury service, one thing about jury service
24 that you'll find, is that you're going to remember
25 this. You're going to remember this case. You're

Opening statements/Defense

1 going to remember what happens in this case for a long
2 time.

3 During jury selection, people were asked if they
4 served as jurors before. I think there's even some who
5 were placed on this jury. And people were talking
6 about having served on juries from 20 years ago, a long
7 time ago. It will be remembered forever.

8 So I know that this group, like any group, but
9 this group is going to want to know that they did
10 right, that they followed their oath, that they
11 followed the road map to avoid a wrongful conviction.
12 You're not going to want to have wonder in the back of
13 your mind after this.

14 Because it's easy, if you're the Solicitor, to get
15 up and say what the accusation is and explain why it's
16 so bad. And it's easy to take that -- well, the
17 Solicitor said Mr. Wright did this wrong and broke the
18 law in this way and broke the law in that way. And
19 it's easy to assume that somebody who is accused of the
20 crime is automatically guilty. And that is -- that is
21 natural. I mean, there's many people who feel that
22 way. That once the person is arrested, that must mean
23 that they're guilty.

24 That is a feeling that must be put aside, because
25 that is the feeling that contributes to the problem of

Opening statements/Defense

1 a wrongful conviction. And so I'm asking -- and that's
2 something that the judge will talk to you about too,
3 but I'm afraid that sometimes people hear, well, the
4 State has the burden of proof and -- and they must be
5 held to their burden, and that it's -- it sounds like
6 legal mumbo jumbo, or just something that we have to
7 say. It's the road map to avoid the wrongful
8 conviction. And that's -- that's the road map that you
9 need to follow.

10 Now, the last thing that I want to say is that I'm
11 going to appeal not to your emotion, but to your common
12 sense and what you know about people, in that when the
13 story that is being told to you doesn't make sense, I
14 want you to look for the story that does.

15 Now, it's not my job to prove a story that
16 happened this way or the other, but the story that is
17 going to be pushed by the Solicitor isn't going to
18 match up with common sense. That's why I'm asking you
19 to use it, you know. That's why I'm asking you to use
20 common sense and not the emotion, which is what the
21 Solicitor seems to want to appeal to you.

22 And at the end of the case, when I ask you to find
23 Eric Wright not guilty of these charges, it will be
24 based on the facts that you -- and the testimony and
25 the evidence. It will be based on the law as the judge

Opening statements/Defense

1 gives it to you, and it will be based on your common
2 sense. Thank you.

3 **THE COURT:** You can call your first witness.

4 **MS. BURKE:** Thank you, Your Honor. The State
5 calls Anthony Cotton.

6 (Witness forward.)

7 **THE CLERK:** Would you place your left hand on the
8 Bible and raise your right hand for me, please, sir.

9 ANTHONY S. COTTON, having been
10 first duly sworn, testified as follows:

11 **THE CLERK:** You may be seated. State your name
12 and spell it for the court.

13 **THE WITNESS:** Anthony S. Cotton. A-n-t-h-o-n-y.
14 C-o-t-t-o-n.

15 **DIRECT EXAMINATION BY MS. BURKE:**

16 **Q** Thank you. I see you're in uniform, where are
17 you employed?

18 **A** Bluffton Police Department.

19 **Q** And what is your -- your rank?

20 **A** Sergeant.

21 **Q** Sgt. Cotton, how long have you been in law
22 enforcement?

23 **A** Eight years.

24 **Q** Were you on duty on July 28, 2008?

25 **A** I was.

DET. COTTON -- DIRECT BY MS. BURKE

1 Q And were you dispatched to 158 Simmonsville
2 Road on that day?

3 A Yes, I was.

4 Q Is that in Beaufort County?

5 A Yes.

6 Q What was the nature of the call?

7 A I was responding to a shooting call.

8 Q What observations did you make when you arrived
9 on the scene?

10 A When I arrived on scene, I saw Mr. Jinks in the
11 back of the white pickup truck, laying on his back. He
12 had a gun shot wound to the back of his leg, right leg.

13 Q Any other observations?

14 A Yes. There were several people around him at
15 the time. Lots of people just kind of trying to give
16 him care, and around the whole scene.

17 Q Did anything happen that got your attention?

18 A Well, while I was there and making sure that
19 Mr. Jinks was okay, someone in the crowd -- I don't
20 know --

21 MR. DEYSACH: Objection, Your Honor, to hearsay.

22 THE COURT: Okay.

23 THE WITNESS: No -- well, other than that. No.
24 He was bleeding. You know, he had a gun shot wound to
25 his -- to his right leg. And other than that, that's

DET. COTTON -- DIRECT BY MS. BURKE

1 all that --

2 BY MS. BURKE:

3 Q You said someone in the crowd, without saying
4 what you heard -- without repeating what you heard,
5 what was said that got your attention?

6 A Yes. Someone made a statement that got my
7 attention.

8 Q Okay. And based on that statement that got
9 your attention, did you do anything about that
10 information?

11 A Well, based on that information, I -- I let --
12 I let the investigators know of the name that I heard
13 as a possible suspect.

14 Q Because this was an active crime scene, is that
15 correct?

16 A Yes. I was the first officer to respond.

17 Q Was -- were there any suspects on the scene
18 when you arrived?

19 A Not when I was there, no, ma'am.

20 Q Do you remember what time you were dispatched?

21 A It was 5:27 was the dispatch time, p.m.

22 Q Now, based on your initial investigation, did
23 you have a lead as to how the suspects may have left
24 the scene or a suspect may have left the scene?

25 A Yes --

DET. COTTON -- DIRECT BY MS. BURKE

1 **MR. DEYSACH:** Your Honor, I would object to the
2 hearsay on that, too. I think "if you have a lead" is
3 what somebody would have said.

4 **MS. BURKE:** If we may approach, Your Honor, I
5 didn't say "said". I said based on your investigation,
6 do you have a lead as to where the suspects -- how they
7 left the scene.

8 **THE COURT:** Okay. You can ask that.

9 **THE WITNESS:** Yes. We had a description of a
10 vehicle. The description came out to be --

11 **MR. DEYSACH:** Objection to this hearsay of a
12 description.

13 **MS. BURKE:** Your Honor, this is a criminal
14 investigation --

15 **THE COURT:** He can testify as to what he's learned
16 in his investigation.

17 **MR. DEYSACH:** Your Honor, not if it's hearsay he
18 can't.

19 **MS. BURKE:** Has your Honor ruled?

20 **THE COURT:** Go ahead.

21 **BY MS. BURKE:**

22 **Q** Proceed please.

23 **A** It was a -- a burgundy colored vehicle, Monte
24 Carlo. The tag came out as -- South Carolina tag was
25 484 1DS. I ran the tag. And the vehicle came back to

DET. COTTON -- DIRECT BY MS. BURKE

1 a 1993 Cadillac De Ville. The owner of the vehicle was
2 Latarsha -- I hope I'm saying that correctly -- Monique
3 Johnson.

4 Q Okay. Did you talk to the victim at all?

5 A No. I couldn't talk to him because EMS was
6 taking care of his injuries.

7 Q Did EMS take him to the hospital?

8 A Yes.

9 Q While you were on the scene, did other officers
10 arrive on the scene?

11 A Yes.

12 Q And were you there when the crime scene was
13 secured?

14 A Yes. After -- after I heard that initial
15 statement, I -- I have secured the scene. I've got as
16 many people out of the crime scene as I could. And I
17 put up crime scene tape.

18 MS. BURKE: May I approach, Your Honor?

19 THE COURT: You may. Mr. Deysach has seen those.

20 (State's Exhibits Nos. 1 and 2 marked for
21 identification.)

22 BY MS. BURKE:

23 Q Sgt. Cotton, I hand to you what has been
24 previously marked as -- or will be marked at -- for
25 purposes of identification as State's Exhibits 1 and 2.

DET. COTTON -- DIRECT BY MS. BURKE

1 It has been marked. Do you recognize these photos and
2 what are they?

3 A Photographs of the crime scene.

4 Q And do you recognize the scene?

5 A Yes, I do.

6 Q Is that the -- is there a tape on the scene?

7 A Yes.

8 Q Is that the tape that you put --

9 A Yes.

10 Q -- up?

11 A Yes.

12 Q Do the photographs accurately depict the scene
13 that was -- at the time that you were there?

14 A Yes, ma'am.

15 Q Have they been altered or changed in any way?

16 A No, ma'am.

17 MS. BURKE: Your Honor, I ask that State's
18 Exhibits 1 and 2 be admitted into evidence.

19 THE COURT: Any objection?

20 MR. DEYSACH: No objection.

21 THE COURT: They're in evidence without objection.

22 (State's Exhibits Nos. 1 and 2 received into
23 evidence.)

24 MS. BURKE: Thank you. No further questions at
25 this time.

DET. COTTON -- CROSS BY MR. DEYSACH

1 THE COURT: Mr. Deysach.

2 MR. DEYSACH: The court's indulgence.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION BY MR. DEYSACH:

5 Q Just making it clear, the tag came back to
6 Latarsha Monique Johnson?

7 A Yes.

8 Q And at this time, you were -- you never did
9 interview Mr. Jinks while you were on the scene,
10 correct?

11 A That's correct.

12 MR. DEYSACH: That's all I have, Your Honor.

13 THE COURT: Anything further?

14 MS. BURKE: Not at this time, Your Honor.

15 THE COURT: All right. You may step down,
16 Sergeant. Call your next witness.

17 MS. BURKE: The State calls Alexis Green.

18 THE COURT: All right.

19 MS. BURKE: Your Honor, may this witness be
20 excused for the --

21 THE COURT: Any objection, Mr. Deysach?

22 MR. DEYSACH: No, Your Honor.

23 THE COURT: You are excused, sir.

24 (The witness stepped down.)

25 THE COURT: Ms. Green, come on up here. There's a

DET. COTTON -- CROSS BY MR. DEYSACH

1 Bible there. You're going to place your left hand on
2 the Bible and raise your right hand.

3 (Witness forward.)

4 ALEXUS GREEN, having been first
5 duly sworn, testified as follows:

6 THE CLERK: Please be seated. And state and spell
7 it for the court reporter.

8 THE COURT: Ms. Green, I'm going to ask you to
9 speak up as well. Okay?

10 THE WITNESS: Okay.

11 DIRECT EXAMINATION BY MS. BURKE:

12 Q Good morning, Ms. Green. How are you?

13 A Fine.

14 Q Good. How old are you?

15 A Eighteen.

16 Q What school do you attend?

17 A I attended Battery Creek High School.

18 Q You attended until you graduated?

19 A Yes, ma'am.

20 Q What -- what was your major?

21 A Accounting.

22 Q You are starting college?

23 A Yes, ma'am, in January.

24 Q What are you majoring in there?

25 A I want to major in nursing.

A. GREEN -- DIRECT BY MS. BURKE

1 Q Okay. Good luck to you.

2 A Thank you.

3 Q As you know, we're here to talk about an
4 incident that happened July 28, 2008 involving a
5 shooting. Did you make any statements to the police
6 that day?

7 A Yes, ma'am.

8 Q You provided more than one written statement,
9 is that correct?

10 A Yes, ma'am.

11 Q Were you interviewed by two different officers?

12 A Yes, ma'am.

13 Q And given two -- and so you wrote different
14 statements for each officer?

15 A Uh-huh.

16 THE COURT: Is that a yes for the record, ma'am?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you.

19 BY MS. BURKE:

20 Q Tell the jury what you witnessed that day.

21 A I was with my family. We was like on the
22 porch. And I saw like a burgundy car come on the hill.
23 At first I -- it wasn't nothing to us. We really
24 didn't pay attention to it. Then he went to the back
25 and came back up. And that's when we seen Troy and

A. GREEN -- DIRECT BY MS. BURKE

1 some girl arguing. They was -- I don't know what they
2 were arguing over, but then we saw Bo got out the car,
3 and pointed a gun, was like, "what you said"; you know.
4 He pointed the gun at Troy and shot twice. The first
5 one didn't hit him, but the second one hit him in the
6 -- like his thigh, his inner thigh. And everybody
7 called the police.

8 When they sped off or when they drove off, I saw
9 the license plate. And just called the police and they
10 handled it from there.

11 Q Okay. So, let's go back a little bit. You
12 said that everyone was on the hill; what's the hill?

13 A On Simmonsville Road, we call it Pinckney Hill
14 --

15 Q Why is it called Pinckney Hill?

16 A Because nothing but a family stay up there,
17 nothing but Pinckneys.

18 Q The Pinckney families?

19 A Uh-huh.

20 Q Okay. And around what time of day were you
21 outside?

22 A Like three or four, yeah, I think it was like
23 four.

24 Q Do you live there?

25 A No. My grandma lived there and we was

A. GREEN -- DIRECT BY MS. BURKE

1 visiting.

2 Q Okay. And where there other people out there?

3 A Uh-huh, yes, ma'am.

4 Q A lot of people or how many people do you
5 think?

6 A It was a good bit of people. And then, you
7 know, it was kids running around. It was like -- I was
8 with like five or six of my cousins and there was a lot
9 -- there was a good bit of people outside.

10 Q Was it sunny or --

11 A Yeah, it was sunny.

12 Q Or dark?

13 A No. It wasn't dark. It was a nice, shiny day.

14 Q Okay.

15 MS. BURKE: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MS. BURKE:

18 Q I hand you what was previously marked as
19 State's Exhibit -- or entered into evidence as State's
20 Exhibit 1 -- State's Exhibit 1, does that picture look
21 familiar?

22 A Yes, ma'am.

23 Q Can you step down --

24 MS. BURKE: Your Honor, may the witness step down?

25 THE COURT: Yes.

A. GREEN -- DIRECT BY MS. BURKE

1 BY MS. BURKE:

2 Q And why does that picture look familiar to you?

3 A Because I'm in it.

4 Q Come closer. And you say you're in it,
5 describe what we see in this photo.

6 A My cousin, Candy --

7 Q Come up closer to the microphone here so the
8 court reporter can hear what we're saying.

9 A Okay. Here's my cousin, Candy. My cousin,
10 Dominique. My sister, Takara. My cousin, Beth. Me
11 right here in the middle with my mouth open. And this
12 is my cousin, Asia.

13 Q Okay. And I see you have glasses on, is that
14 the same glasses you had on that day?

15 A Yeah.

16 Q Okay. Good, you're wearing your glasses. And
17 you said that -- so this whole area here is considered
18 Pinckney Hill?

19 A Yes, ma'am.

20 Q Okay. And what's further back that you can't
21 see in the photo, but there are trees -- what's further
22 back there?

23 A My grandma lives in the back. She lives all
24 the way -- if you keep going down, you'll see a nice
25 blue house, that's where she lives at.

A. GREEN -- DIRECT BY MS. BURKE

1 Q Okay. Is there something called a Chicken
2 Shack back there?

3 A Yes, ma'am.

4 Q What's that?

5 A It's where my uncle, he built a shack to sell
6 chicken out of, and I guess like others -- like chips
7 and snacks and stuff.

8 Q Okay. And you say you saw a car approach, and
9 the Chicken Shack is further back where the trees are?

10 A Uh-huh --

11 Q Okay. And --

12 A Actually -- the Chicken Shack is actually way
13 to the back and it's on the left side.

14 Q Okay. But we don't see it in the picture?

15 A No, you won't see it.

16 THE COURT: Please speak up a little bit for me.

17 THE WITNESS: Okay. I'm sorry.

18 BY MS. BURKE:

19 Q So you saw this car approach. And, as you say,
20 it went toward the back -- you don't know where it was
21 going, but it went toward the back?

22 A Yes, ma'am.

23 Q But the only thing back there is the Chicken
24 Shack and your grandma's house?

25 A Uh-huh.

A. GREEN -- DIRECT BY MS. BURKE

1 Q Okay. Then you said the car came back. Where
2 were you when you saw the car come back?

3 A Right here on the second step.

4 Q And so in the corner of the picture, there are
5 two steps, you said you were on the second step?

6 A Yes, ma'am.

7 Q Okay. And in this photo, we have lots of
8 police cars and so forth, they obviously weren't there
9 at the time?

10 A No.

11 Q That you -- that you were there, right?

12 A Right.

13 Q When you saw the shooting -- I see a Honda in
14 this picture, was that there?

15 A Yes, ma'am.

16 Q I see a white pickup truck on the corner, was
17 that there?

18 A No. That white -- that's my Uncle Freddie's
19 truck. He came afterwards.

20 Q All right.

21 A Yeah.

22 Q All right. And there is yellow tape in a bit
23 of circumference in the center, what do you recall
24 happening in the middle of that tape?

25 A When the -- the man got out of the car and shot

A. GREEN -- DIRECT BY MS. BURKE

1 twice at Troy.

2 Q And that's where it -- you saw it happen?

3 A Uh-huh.

4 Q And this is from you sitting on the second
5 step?

6 A Yes, ma'am.

7 Q Okay. You may sit back on the witness stand.
8 Thank you. So you said the man got out and shot Troy.
9 Did you have a chance to observe anyone else who got of
10 a vehicle, the same vehicle that had driven back to the
11 Shack?

12 A No, ma'am.

13 Q The man that got out and shot Troy?

14 A That's -- he's the only one I seen.

15 Q Right. You said he got out of what?

16 A Oh, of the car. Like he -- he stepped -- he
17 didn't get out of the car, he stepped on the railing of
18 the car. Like he put his head out. I don't know how
19 to describe it.

20 Q That's okay. We'll get you to do that in a
21 second. But the car he was in, is that the same car
22 that had driven to the back where the Shack is?

23 A Yes, ma'am.

24 Q Okay. So the car goes back and the same car
25 comes forward. And then you see the shooting. Did you

A. GREEN -- DIRECT BY MS. BURKE

1 observe how many people were in the vehicle?

2 A Yes, ma'am.

3 Q How many did you see?

4 A Four.

5 Q Do you know their names?

6 A I know two. I know Monique and Octavia.

7 Q Where was Monique?

8 A Monique was in the driver's side. And Octavia
9 was in the back.

10 Q And who else did you observe in the car?

11 A It was another young lady and -- and him, the
12 man. I -- I don't know that name exactly, I think it's
13 Tores, but I'm not really sure.

14 Q Where was she seated?

15 A In the passenger side.

16 Q Passenger front?

17 A Uh-huh.

18 Q Okay. And then you saw a man in the back?

19 A Yes, ma'am.

20 Q Okay. Now, did you see Troy do anything before
21 -- the victim, Troy, before the defendant shot him?

22 A When I seen Troy was -- he was just yelling,
23 like, "what he in the car for, pointing", but it wasn't
24 like -- it was doing hand gestures. It wasn't anything
25 serious.

A. GREEN -- DIRECT BY MS. BURKE

1 Q You heard him say "what's he in the car for"?

2 A Yeah.

3 Q Now, let me go back just a little bit. Had you
4 seen Troy that day?

5 A Yes, ma'am.

6 Q He was one of the many people that was enjoying
7 this hot summer day you described?

8 A Yes, ma'am.

9 Q Okay. Do you remember the -- any hand gestures
10 Troy did right before -- when you said he saw this man
11 in the car and said "what is he doing in the car"?

12 A He was just like, "what he doing in the car,
13 man".

14 Q Okay. And then you -- what did you see happen
15 after that?

16 A I saw the man get out the car and he was like,
17 "what you say", and he pulled out his gun and then he
18 shot twice.

19 Q Okay. Now, the first shot, did you see him
20 shoot or did you just hear?

21 A No, I seen him shoot.

22 Q And you saw him from step two at this home?

23 A Yes, ma'am.

24 Q And that was -- it occurred in the circle area
25 where the tape is?

A. GREEN -- DIRECT BY MS. BURKE

1 A Yes, ma'am.

2 Q Okay. Now, did he lean over the car to shoot?

3 A He was like at an angle because -- he was --
4 like, he didn't step off the car, but he was on the
5 railing of the car. So he had to -- he, at an angle,
6 leaning down.

7 Q Okay. I'm going to stand to the far corner,
8 that way you'll project your voice as further where I
9 am. So you can make sure that you're getting to every
10 one in the jury panel.

11 A Okay.

12 Q I know you're nervous. Thank you. So you saw
13 -- you said you saw him at an angle on the car?

14 A Yes, ma'am.

15 Q Okay. Did you see the first shot being fired?

16 A Yes, ma'am.

17 Q What did Troy do at that time?

18 A He started like hopping around.

19 Q And then you heard a second shot?

20 A Yes.

21 MR. DEYSACH: Your Honor --

22 MS. BURKE: Sorry.

23 THE COURT: Stop leading, Ms. Burke.

24 BY MS. BURKE:

25 Q Do you recall how long after the first shot you

A. GREEN -- DIRECT BY MS. BURKE

1 heard the second shot?

2 A It was right after.

3 Q Oftentimes we hear gun shots, you could hear
4 bam-bam, bam-bam -- do you remember -- can you remember
5 how the speed or anything like that?

6 A Yeah. It was like bam-bam, like quick. It was
7 quick.

8 Q What did Troy do at the second shot, when it
9 was fired?

10 A He actually ran to the side of my aunt's house.

11 Q And what did -- what did y'all do?

12 A We -- we didn't know what to do. We just ran
13 off the porch and like to the side of the house, of my
14 aunt's -- my other aunt's house.

15 Q What names did you give law enforcement of the
16 four people in the vehicle?

17 MR. DEYSACH: Objection, Your Honor. This is the
18 hearsay that we talked about yesterday. May we
19 approach?

20 THE COURT: You may.

21 (Whereupon, a bench conference was held in the
22 presence of the jury, but outside the hearing of the
23 jury.)

24 BY MS. BURKE:

25 Q Alexis, the shooter, the person who you saw

A. GREEN -- DIRECT BY MS. BURKE

1 shot Troy twice, do you know his name?

2 A I don't know his real name, but I know they
3 call him Bo.

4 MR. DEYSACH: Objection, that's the hearsay that
5 came out, Your Honor.

6 THE COURT: All right. Okay. All right. Your
7 objection is sustained. Ma'am, you can only say what
8 you do know, what you know by your own independent
9 knowledge. Ladies and Gentlemen, that last question
10 you are to strike and also her answer wasn't
11 appropriate. She can only testify as to what she
12 knows.

13 MR. DEYSACH: I'm going to object -- Your Honor,
14 may I approach?

15 THE COURT: Sure.

16 (Whereupon, a bench conference was held in the
17 presence of the jury, but outside the hearing of the
18 jury.)

19 THE COURT: Vivian, just note for the record a
20 bench motion to put on.

21 MR. DEYSACH: Your Honor, I have a motion I would
22 like to be heard on when -- at the appropriate time.

23 BY MS. BURKE:

24 Q What happened after the second shot was fired,
25 what did you see the defendant do?

A. GREEN -- DIRECT BY MS. BURKE

1 A He got back in the car and they drove off.

2 Q And you say you saw the license plate of this
3 car?

4 A Yes, ma'am.

5 Q How did you manage to get it?

6 A I ran to the front before they could turn out
7 and got it.

8 Q You did what, I'm sorry?

9 A Ran to the front before they could turn out and
10 got it.

11 Q So you ran behind the car?

12 A Yes, ma'am.

13 Q And you were 16 at the time?

14 A Yes, ma'am.

15 Q All right. Thank you.

16 MS. BURKE: No further questions at this time.

17 MR. DEYSACH: I have some questions. Would you
18 like me to --

19 THE COURT: Absolutely.

20 CROSS EXAMINATION BY MR. DEYSACH:

21 Q Ms. Green, I'm going to ask you a few more
22 questions about what you witnessed on July 28, back in
23 2008.

24 A Yes, sir.

25 Q I'm Ian Deysach by the way. I'm the attorney

A. GREEN -- CROSS BY MR. DEYSACH

1 for Derrick Wright. When the burgundy car drives on to
2 the hill, did you notice it?

3 A Yes.

4 Q So it had to drive right past you?

5 A Yes, sir.

6 Q When the car drove past you, was Troy present?

7 A I think he probably just came out of my aunt's
8 house.

9 Q Okay. When the car drives past where you are,
10 and maybe where Troy is, there is no confrontation
11 between the people in the car and Troy, is that
12 correct?

13 A Yes, sir.

14 Q You describe the confrontation that takes place
15 after the car has been towards the back of the hill and
16 is proceeding to the front of the hill?

17 A Yes, sir.

18 Q Okay. And if there had been a confrontation in
19 the first place, you would -- you would have been right
20 there, correct?

21 A Yes, sir.

22 Q Now, you took a little time to describe the
23 confrontation to the jury during your direct testimony
24 just a few minutes ago. You described a hand gesture
25 that Troy gave, correct?

A. GREEN -- CROSS BY MR. DEYSACH

1 A Yes, sir.

2 Q You went like this to the jury (indicating),
3 didn't you?

4 A Yes.

5 Q So Troy made a gun gesture?

6 A I don't think it was meant as a gun gesture.

7 Q He -- he even had it turned side ways like this
8 (indicating), that's how you described it, right?

9 A Yes, sir.

10 Q Okay. And I didn't -- he yelled something at
11 the car, Troy did?

12 A Yes.

13 Q And the car stopped at that point?

14 A It was already slowing down, sir. I think it
15 was already about to stop.

16 Q Did -- was Troy in front of the car?

17 A No. He was on the side.

18 Q Did Monique get out of the driver's seat?

19 A I don't recall.

20 Q Maybe she did, maybe she didn't?

21 A I don't really remember.

22 Q Okay. Because it was three -- over three years
23 ago?

24 A Yes, sir.

25 Q And somebody got out of the passenger seat and

A. GREEN -- CROSS BY MR. DEYSACH

1 started yelling at Troy?

2 A I think so. It was the girl who was yelling
3 and saying -- I guess they was friends at one point. I
4 don't really know. It was an argument --

5 Q My question is simply -- not what the argument
6 is about really, but just whether there is an argument
7 between Troy and the person in the passenger seat?

8 A Oh, yes, sir.

9 Q Yes, there was?

10 A Uh-huh.

11 Q And that's the person that you described as
12 Tores or maybe Patrice?

13 A I don't really know her name.

14 Q Okay. You told the police at the time, I don't
15 know the man, correct?

16 A Yes, sir.

17 Q Did you see anybody taking off their jewelry,
18 any of the girls taking off their jewelry like they
19 were going to fight?

20 A No, sir.

21 Q Did you hear Troy say "everybody can get it"?

22 A No, sir.

23 Q While he was raising his hand in the pointing
24 motion?

25 A No, sir.

A. GREEN -- CROSS BY MR. DEYSACH

1 MR. DEYSACH: The court's indulgence. I don't I
2 have anything further, Your Honor.

3 THE COURT: All right. Anything further?

4 MS. BURKE: Briefly, Your Honor. Thank you.

5 REDIRECT EXAMINATION BY MS. BURKE:

6 Q Alexis, is there any confusion in your mind as
7 to seeing --

8 MR. DEYSACH: Objection to the leading.

9 Q -- the shooting that day?

10 THE COURT: Overruled. You can answer that.

11 THE WITNESS: Since it happened three years ago, a
12 little bit.

13 BY MS. BURKE:

14 Q Did you see the man shoot Troy?

15 A Yes, ma'am.

16 Q Is there any doubt in your mind about seeing
17 the man shoot Troy?

18 A No, ma'am.

19 Q Is there any doubt in your mind about seeing
20 the man in the car with the actual gun?

21 A No, ma'am. He had the gun.

22 Q Is there any doubt in your mind about --

23 MR. DEYSACH: Objection to the leading.

24 THE COURT: Don't lead.

25 BY MS. BURKE:

A. GREEN -- REDIRECT BY MS. BURKE

1 Q How many shots did you hear fire?

2 A Two.

3 Q When you say you saw Troy pointing, did you run
4 when you saw him pointing?

5 A No, ma'am.

6 Q Why not?

7 A Because he didn't have a weapon. He was just
8 pointing to acknowledge that he seen somebody -- a man
9 in the car.

10 Q What did you hear Troy say regarding a weapon
11 when he pointed?

12 A He didn't have a weapon.

13 Q But did you hear Troy -- did you hear Troy say
14 something to the person who had a weapon?

15 MR. DEYSACH: Objection to the hearsay.

16 MS. BURKE: Well, she was -- that's fine. That is
17 correct. Thank you.

18 BY MS. BURKE:

19 Q When did everyone start to run from the scene?

20 A After the second shot was fired.

21 MS. BURKE: Thank you.

22 THE COURT: Anything further?

23 MR. DEYSACH: No, Your Honor.

24 THE COURT: Any objection to Ms. Green being
25 excused?

A. GREEN -- REDIRECT BY MS. BURKE

1 MR. DEYSACH: No, Your Honor.

2 MS. BURKE: No, Your Honor.

3 THE COURT: You're excused, ma'am.

4 (Witness stepped down.)

5 THE COURT: Call your next witness.

6 MS. BURKE: The State calls Troy Jinks, but may we
7 approach before?

8 THE COURT: Yes, ma'am.

9 (Whereupon, a bench conference was held in the
10 presence of the jury, but outside the hearing of the
11 jury.)

12 THE COURT: Ladies and Gentlemen of the Jury,
13 we're going to take a very short break. We'll be right
14 back with you. Please get some coffee or Coke or water
15 or whatever you need. We will back with you shortly.

16 Again, I caution you, do not discuss this case.
17 It wouldn't be appropriate to do so at this time.
18 Thank you.

19 (Whereupon, the jury left the courtroom at 11:11
20 a.m.)

21 THE BAILIFF: Jury's cleared, door closed, Your
22 Honor.

23 THE COURT: All right. Let's go ahead and bring
24 Mr. Jinks up. We're going to do just a very quick
25 proffer.

A. GREEN -- REDIRECT BY MS. BURKE

1 MR. DEYSACH: Would it appropriate for me to make
2 the motion that I --

3 THE COURT: Absolutely. Now is a good time.
4 Please.

5 MR. DEYSACH: The statement that I objected to
6 was, "Do you know the name of the man who was the
7 shooter", and the response was "they call him Bo".
8 This is something that I brought up yesterday to try to
9 avoid that improper hearsay from coming in. It's
10 something that I brought up today before this witness
11 testified.

12 The Solicitor pretended like -- or not pretended
13 -- I don't want to be a jerk about it to be honest --
14 but the Solicitor indicated that she didn't know what
15 the response would be. But the response that the
16 witness gave was exactly the response that she had
17 written in her written statement that was provided as
18 part of discovery. And so the bell was rung.

19 The -- "they call him Bo" statement came out even
20 though I had warned the Solicitor and even the court,
21 that that wasn't appropriate.

22 You ruled that the objection was appropriate, gave
23 a -- a curing instruction to the jury at the time, but
24 really when you ring the bell like that in such an
25 important piece, that the name of the shooter is Bo,

A. GREEN -- REDIRECT BY MS. BURKE

1 when it's the same thing we had to deal with, with
2 Officer Cotton and say, well, you heard a name. And he
3 can say he heard a name, but he couldn't say what the
4 name was.

5 She got the piece of evidence in through Alexis
6 despite the warnings from defense counsel. And you
7 can't unring the bell with the curing instruction,
8 especially the way that Officer Cotton testified. And
9 I think the only remedy is a mistrial, start again, and
10 not do it where somebody testifies to very foreseeable
11 hearsay.

12 Because as I said, I had warned the Solicitor and
13 the Court that this was probably going to happen in the
14 first place, so that Mr. Jinks can get -- or so that
15 Mr. Wright -- I'm sorry -- my client, Mr. Wright can
16 get a fair trial without the jury hearing evidence that
17 they're not supposed to hear.

18 MS. BURKE: Your Honor, certainly the indictment
19 says Eric --

20 THE COURT: Let me ask you this --

21 MS. BURKE: -- Wright, AKA --

22 THE COURT: Hold on a second. Did she identify
23 the defendant as the person that shot?

24 MR. DEYSACH: She did not, no.

25 THE COURT: Okay.

1 MS. BURKE: No, there was no on scene -- well, he
2 wasn't there -- so no, she did not. And today was the
3 first day that she had seen him. And I did ask that
4 question.

5 Certainly, just to begin, the indictment is Eric
6 Wright, also known as Bo Derrick Wright. The name Bo
7 is a foreign name. The witness' statement, which Mr.
8 Deysach certainly could have impeached her on further,
9 says "I don't know the man's name. I know that they
10 call him Bo." And that's what she said, I don't know
11 his name. Why? Because his name is probably Eric
12 Wright, also known as Bo, also known as Do Derrick
13 Wright. Another name is Joseph Bo Derrick Wright.

14 So the way I interpret that, and again, it could
15 have been flushed out on cross more, is do you -- do
16 you know Dawn Burke's name. No. She goes by -- I know
17 her as whatever. I know that name as whatever.

18 The question could have been to her -- when she
19 said they call him Bo, was it at the scene the first
20 time you heard them call him Bo; or you're saying in
21 general, on Pinckney Hill, you know that person's name
22 to be Bo. And I think that's a question of distinction
23 that could have been flushed out on cross.

24 Because I, for one, when you have people who have
25 different names they go by, I don't think that she can

1 automatically assume that the person -- when someone
2 says "they call him Bo", means that at that scene they
3 all call him Bo, or everyone calls him Bo.

4 That being said --

5 THE COURT: Okay. All right. You both can sit
6 down.

7 MS. BURKE: I don't --

8 THE COURT: Sit down both of y'all. Just sit
9 down. All right. I gave the jury its instruction. I
10 told the jury to disregard the question and the answer
11 if there was any prejudice -- I don't believe there
12 was. If there was, it was cured. Let's move on. I
13 want to see who identifies Mr. Wright in this incident.
14 And we'll go from there. Okay.

15 MS. BURKE: Mr. Troy Wright -- Troy -- Mr. Jinks.

16 THE COURT: Now you're both mixing up the
17 defendant. Come on forward Mr. Jinks.

18 (The following testimony was taken outside the
19 presence of the jury.)

20 TROY JINKS, having been first duly
21 sworn, testified as follows:

22 THE CLERK: Please be seated. State your name and
23 spell it for the court reporter.

24 THE WITNESS: Troy Jinks.

25 THE COURT: All right. Mr. Jinks, what we're

TROY JINKS -- PROFFER TESTIMONY

1 doing is a proffer. You'll notice the jury isn't
2 sitting over there. They're back in their jury room.
3 Both sides are going to ask you some questions. We
4 just want to make sure what is asked and elicited is
5 admissible in the case.

6 Based on that, then we'll decide what we are going
7 to allow or I will allow them to ask in front of this
8 jury. Okay. So, in essence, you're going to have to
9 do it twice. Okay. All right.

10 MS. BURKE: And this -- for clarification, this is
11 limited to -- his prior record, Your Honor?

12 THE COURT: It's prior -- I think Mr. Deysach also
13 was -- included any deals that he had been given for
14 any reason whatsoever, is that correct, Mr. Deysach?

15 MS. BURKE: We're not going into the facts of the
16 actual incident, we're just taking about the peripheral
17 stuff.

18 MR. DEYSACH: I can tell you, Your Honor, what I
19 intend to ask him about, and then ask him about prior
20 convictions, prior arrests, which were for charges that
21 were dismissed by the State --

22 THE COURT: You don't need to tell me. You're
23 going to ask him anyway. That's fine. If you ask a
24 question that isn't appropriate, I'll stop you. But I
25 think this line will be fine. So you can go ahead and

TROY JINKS -- PROFFER TESTIMONY

1 ask him.

2 DIRECT EXAMINATION BY MS. BURKE:

3 Q Troy -- Mr. Jinks, this case, you were -- this
4 case happened or incident happened in 2008, is that
5 correct?

6 A Yes, ma'am.

7 Q When you were first interviewed by the
8 Solicitor's Office or law enforcement about this case,
9 did you also have pending charges with the Solicitor's
10 Office?

11 A Yes, ma'am.

12 Q Were those pending charges discussed in terms
13 of a plea deal for your testimony today?

14 A No, ma'am.

15 Q Did law enforcement or the Solicitor's Office,
16 anyone in the Solicitor's Office encourage you to plead
17 guilty in 2010 to a gun charge, reduced from
18 trafficking, to better --

19 A Could you repeat that?

20 Q Did you plea in 2010 to gun charges -- I mean,
21 to drug charges?

22 A Yes, ma'am.

23 Q You pled to possession of marijuana, was it?

24 A Yes, ma'am.

25 Q Okay. Do you remember who the Solicitor was

TROY JINKS -- PROFFER TESTIMONY

1 who handled that plea?

2 A No, ma'am.

3 Q Does the name Bill Shipley ring a bell?

4 A (No response.)

5 Q Who was your lawyer at the time?

6 A Don Colongeli.

7 Q Did you ever have any one-on-one with the
8 Solicitor, that you said you don't remember -- but
9 prior to that plea, did you have any one-on-one
10 discussion with the Solicitor without your lawyer being
11 present regarding that plea?

12 A No, ma'am.

13 Q When you made that plea in November of 2010, do
14 you remember coming to court for a trial in this case
15 in January of 2010, for this trial, or for what would
16 have been the trial in 2010?

17 A Yes, ma'am.

18 Q And the trial did not go forward, correct?

19 A No, ma'am.

20 Q At the time that the trial was scheduled, you
21 hadn't pled to any drug charges, is that correct?

22 A For --

23 Q For the possession of marijuana?

24 A Yes.

25 Q Yes, you hadn't pled?

TROY JINKS -- PROFFER TESTIMONY

1 A I had pled. I think it was like in December.

2 Q Of 2010, that you pled?

3 A Yes.

4 Q Okay. So that would be after January of 2010
5 when the actual trial was scheduled?

6 A Yes.

7 Q Okay. Excuse me. Troy, do you think pleading
8 guilty in November (sic) of 2010, to an incident that
9 happened in 2008, in your mind -- even though you did
10 not talk to the Solicitor, in your mind did you think
11 doing that would help any pending charges that you had
12 with -- on your record?

13 A No, ma'am.

14 Q Are you participating in this trial of your own
15 free will?

16 A Yes, ma'am.

17 Q You have pending charges right now of failure
18 to stop for a blue light and habitual traffic offenses?

19 A Yes, ma'am.

20 Q Do you know the Solicitor on that case -- or
21 Assistant Solicitor?

22 A No, ma'am.

23 Q Although you don't know that person, have you
24 had any one-on-one discussions with anyone in the
25 Solicitor's Office or law enforcement about that

TROY JINKS -- PROFFER TESTIMONY

1 pending charge, and any testimony you would give in
2 this trial?

3 A No, ma'am.

4 Q Has your lawyer -- well -- you've got the right
5 to maintain your attorney/client privilege, but has
6 your lawyer influenced you in any way regarding the
7 pending charges and this trial?

8 A No, ma'am.

9 Q He didn't communicate to you any deal that the
10 state has struck with him regarding your pending
11 charges and this trial?

12 A No, ma'am.

13 Q Have you had the same lawyer, Mr. Don
14 Colongeli, who is in the courtroom today, for the past
15 several years since you've had pending charges?

16 A Yes, ma'am.

17 Q Okay. Sitting here beside me is Detective
18 Kelly Heany. She met with you right after this
19 incident in 2008, in July of 2008; did she discuss
20 anything with you about your pending charges and that
21 you should cooperate with the State to testify
22 regarding your pending charges or they may help your
23 pending charges?

24 A No, ma'am.

25 MS. BURKE: Okay. No further questions at this

TROY JINKS -- PROFFER TESTIMONY

1 time, Your Honor.

2 THE COURT: Mr. Deysach.

3 MR. DEYSACH: Thank you.

4 CROSS EXAMINATION BY MR. DEYSACH:

5 Q Good morning, Mr. Jinks. My name is Ian
6 Deysach.

7 A Good morning.

8 Q All right. I'm going to ask you a few
9 questions about your -- basically your criminal
10 history. You were convicted of auto breaking in 2003?

11 A Yes, sir.

12 Q Did you get active YOA or suspended YOA for
13 that?

14 A Yes.

15 Q Which one, YOA suspended?

16 A Yeah.

17 Q In 2005, you were arrested for trafficking
18 crack, and PWID crack in a school zone, is that
19 correct?

20 A Yes.

21 Q In 2007, you were charged with assault of a
22 high and aggravated nature and possession of a stolen
23 pistol?

24 A I was charged with the -- the high and
25 aggravated assault, but not no stolen pistol.

TROY JINKS -- PROFFER TESTIMONY

1 Q I'm just asking about what you're charged with,
2 not what you're convicted of.

3 A I was charged --

4 Q You weren't even arrested for it?

5 A No.

6 Q In -- later in 2007, you were charged with PWID
7 marijuana?

8 A (Nodded affirmatively.)

9 Q That's correct. Make sure you speak verbally
10 because --

11 A Yes.

12 Q And then at a different time in 2007, you're
13 charged with failure to stop for a blue light?

14 A Yes.

15 Q Okay. So on July 28th of 2008, the
16 trafficking, PWID, crack in a school zone, the assault
17 of a high and aggravated nature, and the PWID
18 marijuana, the failure to stop for a blue light are all
19 pending, correct? You're coming to court for those?

20 A Um --

21 Q At the time of the shootings?

22 A Yeah.

23 Q Okay. All right. In fact, that assault of a
24 high and aggravated nature, you're accused of shooting
25 at somebody, correct?

TROY JINKS -- PROFFER TESTIMONY

1 A No.

2 Q All right. It is November of 2010 when you
3 finally go to court for all of those cases, correct?

4 A Yes.

5 Q And you were convicted of PWID marijuana and
6 failure to stop for a blue light?

7 A Yes.

8 Q Did you violate probation by pleading guilty to
9 that or were you off probation?

10 A I was off.

11 Q The Solicitor dropped, in return for your plea,
12 trafficking and PWID in a school zone, correct?

13 A Yes.

14 Q You know the trafficking carries a penalty of a
15 minimum three years and a maximum ten years, correct?

16 A Uh-huh, yes, sir.

17 Q You know that it's a violent offense, correct?

18 A Yes.

19 Q You know that PWID crack in a school zone, at
20 that time period, a minimum of ten years and a maximum
21 of 15, are you aware of that?

22 A Yes.

23 Q The assault of a high and aggravated nature was
24 also dropped, correct?

25 A Yes.

TROY JINKS -- PROFFER TESTIMONY.

1 Q And you're saying you never had a stolen weapon
2 charge?

3 A Nope.

4 Q Okay. On that very day of court, later that
5 day after going to court, you get -- you get arrested
6 for resisting arrest, correct?

7 A It was a warrant, yes.

8 Q There was a warrant for a resisting arrest that
9 occurred when?

10 A I'm not too sure. A couple months prior,
11 before.

12 Q All right. You were -- okay. Let me see, your
13 -- your sentence that you got for those charges that I
14 named, the PWID marijuana and failure to stop for a
15 blue light, was two years suspended to 18 months of
16 probation, correct?

17 A Yes, sir.

18 Q And you're serving that probation right now?

19 A Yes, sir.

20 Q Okay. You got served with a warrant for
21 resisting arrest after that, and that's a pending
22 charge right now, correct?

23 A The resisting arrest?

24 Q Yes.

25 A No.

TROY JINKS -- PROFFER TESTIMONY

1 Q How was that disposed of?

2 A You might want to speak with him. I'm not too
3 sure.

4 Q Okay. So it is -- are you still coming to
5 court?

6 A It was a Bluffton -- oh, here, General
7 Sessions?

8 Q Yes.

9 A Yeah.

10 Q Are you coming to court for a habitual traffic
11 offender?

12 A Uh-huh.

13 Q For getting caught driving when you weren't
14 supposed to be driving basically?

15 A Right.

16 Q And you were charged with that in June of 2011,
17 correct?

18 A Uh-huh.

19 Q And you know that if you get convicted of that
20 charge while you're on probation, that could be a
21 violation of your probation, correct?

22 A Uh-huh.

23 COURT REPORTER: Is that a yes or no, please, for
24 the record.

25 THE WITNESS: Yes.

TROY JINKS -- PROFFER TESTIMONY

1 BY MR. DEYSACH:

2 Q She's just making sure because she's taking
3 down a record. And if your -- if your probation -- now
4 the habitual traffic offender carries a possible
5 penalty of up to five years, correct?

6 A Yes, sir.

7 Q And on probation, you have two years suspended,
8 correct?

9 A Yes.

10 Q And that means that you could -- if you get
11 convicted of habitual traffic offender, that you could
12 get five years for that and another two years for
13 violating probation, correct?

14 A Yes.

15 Q And it's the Beaufort County Solicitor's Office
16 that's prosecuting you under the habitual traffic
17 offender case?

18 A Uh-huh, yes.

19 MR. DEYSACH: That's all the questions I have on
20 this issue, Your Honor.

21 THE COURT: Okay. Anything else?

22 MS. BURKE: No, Your Honor. Thank you.

23 THE COURT: You can step back down again and take
24 a seat.

25 MS. BURKE: Your Honor, certainly, I talked with

1 Mr. Colongeli this morning and discussed his
2 understanding of the plea arrangement that was made in
3 November. I certainly don't want to make him a
4 witness, but to the extent the court needs further
5 clarity on this issue, he certainly is available.

6 THE COURT: All right. Mr. Deysach, what do you
7 want to use?

8 MR. DEYSACH: I want to use all that I can, and
9 I'll tell you -- I'll tell you why I think each one is
10 appropriate. The auto breaking is a felony within the
11 last ten years, a crime of stealing --

12 THE COURT: That is fair game. You can bring it
13 in.

14 MR. DEYSACH: Fair game. He has a trafficking
15 charge that is pending when the -- when the event
16 occurs, and it's dismissed after the -- after the --
17 last year, November of last year. That -- the
18 Solicitor's office has dismissed. I think that the
19 same Solicitor's Office dismissing the charge that
20 carries a max -- a mandatory minimum of three, possible
21 penalty of ten --

22 THE COURT: I agree. I'm going to let you go
23 ahead and ask that.

24 MR. DEYSACH: And that's the same --

25 THE COURT: You can object all you want, but quite

1 frankly, it would not be good for your witness to be
2 testifying and have a trafficking conviction on his
3 record.

4 MS. BURKE: Your Honor, he had that trafficking
5 conviction in January of 2010, when this case was
6 scheduled for trial.

7 MR. DEYSACH: Not -- not -- the Rap sheet said
8 that it was 11/18/2010 --

9 MS. BURKE: Is when he pled.

10 MR. DEYSACH: Correct.

11 MS. BURKE: This case was scheduled for trial on
12 January 10, or whatever the term of court was, in 2010.
13 That was still pending, that charge. So he was
14 certainly --

15 THE COURT: It didn't go forward, so what does it
16 matter?

17 MS. BURKE: Pardon?

18 THE COURT: It didn't go forward, so why does it
19 matter?

20 MS. BURKE: The point is, Your Honor, if the State
21 had intended or had any ideation of trying to give him
22 the benefit of the deal, that would have been done at
23 that time. The reason the case did not go forward and
24 the jury was selected, I believe, is because the
25 defendant did not appear. The case -- his charge was

1 still pending at that time. I think the analysis here
2 -- and this is an important issue. I think -- and I
3 know Your Honor recognizes that.

4 The analysis here, in looking at the circumstances
5 and how the events unfolded, is to say if there is any
6 foul play, or if there is any ideation in the
7 defendant's mind -- at the time in the defendant's
8 mind, and he is getting the benefit of the deal; and if
9 we look at the Sims case, for example, and even the
10 Mizell case, that -- the defendant in the Sims case was
11 a testifying codefendant -- or the jailhouse snitch --
12 excuse me -- had pending charges at the time of the
13 trial where he could have received a life sentence.
14 There was never any communication with Sims, the Sims
15 witness, with law enforcement that -- the information
16 he was offering to the court came long after the Sims
17 defendant was even arrested.

18 In this case, if we're going to assume that Troy,
19 all of a sudden, has some bias to testify -- well, he
20 already told law enforcement in 2008 who shot him. He
21 already told law enforcement in 2008 it was Bo Derrick
22 Wright.

23 **THE COURT:** Well, you just asked him that. I
24 mean, I don't think there's anything that prohibits him
25 from asking if he had pending charges.

1 **MS. BURKE:** Well, Your Honor, I think Mr. -- you
2 know, that -- everyone can see what the true intention
3 here is to dirty up Mr. Jinks as much as possible. We
4 already have convictions on his records. Actual
5 convictions, not conjecture, not -- you know, we're
6 here talking about innocent until proven guilty, or
7 heard the opening argument about -- you know, pleading
8 to your emotions and reasonable doubt, and yet we want
9 to impeach someone with a trafficking charge, that he
10 did not plead to. You want to impeach him with that
11 information. That is not the purpose, I don't think --

12 **THE COURT:** We're not here protecting Mr. Jinks'
13 liberty, though, we're here protecting Mr. Wright's.

14 **MS. BURKE:** And to protect --

15 **THE COURT:** And that's why it is important.

16 **MS. BURKE:** We can protect Mr. Wright rightfully
17 so under the confines of 609 -- and I'll even concede
18 that if we were to use 608 under the Sims case loosely,
19 the pending charges are admissible, on failure to stop
20 for a blue light and habitual offender. Because that
21 -- that parallels what happened in Sims. That witness
22 had pending charges, that if he testified in trial, the
23 court said, well, maybe he felt that if he said what
24 the State wanted, those pending charges might be
25 reduced or something would happen with them. So he had

1 a more motive, a bias that the court highlights. A
2 bias.

3 And this is not just any bias. The Court in Sims
4 said, it's a substantial possibility that the witness
5 would be biased. Now, how is it a substantial
6 possibility in -- in the Solicitor's Office, we don't
7 make deals with people, dismiss your case, then you
8 testify.

9 I think the example of that is Octavia Scott. Mr.
10 Wright and Mr. Deysach, you know, said yesterday she's
11 got charges from disturbing schools that are very old.
12 And that, I think, is the example of how we handle
13 people with pending charges who might testify, if we
14 offer them a deal. We don't dismiss the case before
15 the deal is even -- if we wanted something before they
16 even gave us that testimony.

17 And so we have to look at is there a substantial
18 possibility the witness would give bias information
19 because they had pending charges, as in Sims, and want
20 to somehow influence or -- or would hope that the
21 Solicitor would highlight the next court, that hey,
22 this witness actually was good for us. That's not what
23 we have here.

24 We have a case that was already pled to. It was
25 not pled to in January of 2010 when this case was

1 tried. It was not pled right after. It was pled in
2 the due course when the Solicitor -- whoever it was --
3 I think it was Mr. Shipley -- had arranged a plea deal
4 with Mr. Colongeli. And so I -- I -- I think this is
5 going too far and sets a -- a person that cannot be
6 rolled back, as to how this circuit is going to treat
7 witnesses with pending charges.

8 I think what should be admissible is his breaking
9 into motor vehicles. He has a malicious injury to
10 property that goes to honesty, and he has two pending
11 charges.

12 **MR. DEYSACH:** First of all --

13 **THE COURT:** Yes.

14 **MR. DEYSACH:** -- I think that -- I do want to
15 point out what I feel like are errors in the analysis,
16 I guess for Your Honor not to think -- I know she
17 argued vociferously for her position, but I hope that
18 you don't mistake that for correctness because I want
19 to point out the rules to which I'm relying on.

20 First of all, the convictions fall under 609,
21 impeachment on conviction of a prior crime. The
22 pending charges go to Rule 608. And even the dismissed
23 charges go to Rule 608 (c) -- no -- yeah, 608 (c),
24 evidence of bias. "Bias, prejudice or any motive to
25 misrepresent may be shown to impeach the witness either

1 by examination of the witness or by evidence otherwise
2 adduced."

3 What I'm showing is that the -- one of the
4 parties in this case dismissed trafficking, PWID crack,
5 AHAM, all these heavy charges. The guy gets arrested a
6 bunch of times and ends up getting probation. If -- if
7 the Solicitor's Office had done that for me, I would be
8 -- I would be graveling. I would be forever in their
9 debt. I mean, that's the point. That it's amazing
10 that this guy gets arrested three or four different
11 times while out on bond, and the only thing that
12 happens to him is he gets probation and all these cases
13 dismissed. So that's the motive of bias.

14 The Solicitor can do her best to rehabilitate --

15 **THE COURT:** Just so -- just so I'm clear, he had
16 the trafficking charge and the greater charges, and he
17 eventually did plea to the lesser included PWID,
18 correct?

19 **MR. DEYSACH:** No. He pled to a different incident
20 of PWID.

21 **THE COURT:** A different incident of PWID.

22 **MR. DEYSACH:** Yes. So he -- he gets arrested --

23 **THE COURT:** You know, my problem is this, is that
24 the charges could have been dismissed for the simple
25 fact that he wasn't guilty of them and so they dumped

1 them.

2 **MR. DEYSACH:** Well, that's -- that's what he can
3 say. You know, I think --

4 **THE COURT:** My problem is that I would agree with
5 you on that argument if he eventually pled to something
6 and pled down to it, but he's not obviously guilty to
7 something. He didn't plead to any of that.

8 **MR. DEYSACH:** He pled to the PWID marijuana and
9 the failure to stop for a blue light.

10 **THE COURT:** But you said it was a totally
11 different incident.

12 **MR. DEYSACH:** It was. If you look at the -- if
13 you look at the -- the paper work in the Clerk's
14 Office, or if you look at it on the public index, it
15 says case dismissed, pled to other charges on the -- on
16 the other cases, something to that effect. That the
17 cases were dismissed as part of the plea bargain in
18 which he's pleading to the failure to stop for blue
19 light and the PWID marijuana.

20 **MS. BURKE:** I know Your Honor already has it, but
21 I'll hand up the Sims case because I think it's very
22 instructive of what we're discussing. And I really
23 want to highlight the test of substantial --
24 substantial likelihood. While -- while this -- when
25 this plea occurred, Mr. Wright was still FTA. There

1 was no telling if this case would have ever went to
2 trial. We've got hundreds of FTA people on our docket.
3 So the argument is being made that in the Defendant's
4 mind, he might be thinking, oh, I might get a deal
5 somewhere, somehow.

6 **MR. DEYSACH:** Did the defendant find that this
7 office already cut me the sweet deal and so I owe them
8 a debt of gratitude. That is something that the jury
9 is allowed to hear. If he -- if the Solicitor wants to
10 ask him, do you feel like you owe us a debt of
11 gratitude for that, he can say no. And that's the way
12 you deal with it.

13 **MS. BURKE:** No, the toothpaste is already out the
14 jar--

15 **MR. DEYSACH:** Well, the toothpaste is allowed to
16 be out of the jar. That's how we brush our teeth.

17 **MS. BURKE:** No, the intention here is not let's
18 get it in and then roll it back later --

19 **MR. DEYSACH:** Now, I wish that were true when we
20 were dealing with the hearsay issue that I brought up
21 before.

22 **MS. BURKE:** And you had a chance to cross examine
23 that further. The -- the -- the case that the -- the
24 precedence that I think we should adhere to, under 608,
25 which is very tricky in and of itself, is how do we

1 show bias. How do we show bias. Well, Sims says
2 substantial likelihood. And they use in the analogy of
3 Sims, that person who is charged -- or the jailhouse
4 snitch had pending charges. He had never even
5 communicated to the law enforcement the information he
6 received. This was last minute information that was
7 being used.

8 Mr. Jinks has already said from the very beginning
9 who shot him. He picked him out in a photo lineup. He
10 was ready to go to trial on January of 2010. He
11 appeared for court.

12 **THE COURT:** Okay. I have a question for you. I'm
13 reading this Sims case, and they did say that the judge
14 was wrong in not allowing that, but it was harmless
15 error.

16 **MS. BURKE:** What -- it was harmless error on -- on
17 appeal. But what the courts says is that -- the -- the
18 -- in analyzing why it should have been allowed is
19 because this person had pending charges that -- where
20 he could have received a life sentence, a plea deal had
21 not been negotiated with the State, and so he would
22 have, you know, been inclined to hope that the
23 Solicitor's office would have told a future judge, oh,
24 this person did this for -- for our case.

25 And that is why I'm okay with allowing the pending

1 charges, even though I take issue with, you know, 608
2 in general, that's why I'm okay with allowing the
3 pending charges of -- of habitual offender and failure
4 to stop for blue light.

5 And likely so in 2010, had we had this trial, I
6 would have said, well, you've got me in the corner with
7 this trafficking because it is a pending charge. He --
8 we are now trying to admit a case that he -- that was
9 nolle prossed or dismissed, that he did not plead
10 guilty to.

11 MR. DEYSACH: The State can't clean up their
12 witnesses just by dropping cases against them.

13 MS. BURKE: Your Honor, I think it would be
14 instructive for you to know that Mr. Wright was not
15 picked up until, I believe, April or May of this year.
16 So this is not a situation where, for example, he was
17 picked up in October of 2010 or November of 2010 and
18 that the State jumped on it and said, well, let's --
19 let's get Troy on board. Troy's already been on board.
20 He came here to court in January to testify.

21 Mr. Wright was picked up this year, just a few
22 months ago, after Mr. --

23 THE COURT: Okay. I'm going to go ahead -- I'm
24 going to let him ask him about it. You can certainly
25 say back that it was dismissed, so -- but I'm going to

1 allow it. All right.

2 MR. DEYSACH: Thank you, Your Honor.

3 THE COURT: Any other issue? No?

4 MR. DEYSACH: No.

5 MS. BURKE: I think Mr. Jinks said he did not have
6 a gun, so he disputed the allegation of -- of pleading
7 to a drug charge or having a gun related charge to an
8 ABHAN. I don't think that should be allowed. There
9 was no --

10 MR. DEYSACH: Now, can the Solicitor tell me that
11 that is in fact true, that he was never charged with a
12 gun charge? I mean, I'm stuck with his answer. But I
13 looked it up on the public index. I'm trying to find
14 it in the -- in his criminal history that they provided
15 me. But I know that they are sometimes wrong. Let me
16 see. I don't -- I don't see it in the criminal
17 history. I don't believe I saw it on the public index
18 researching the case.

19 Now, if the Solicitor can tell me that -- that it
20 hasn't been -- he's never been arrested for that, I'm
21 not going to -- I don't want to ask him if he has been
22 arrested for a stolen pistol and I don't have any
23 reason to believe that he has -- I believe I do. The
24 Solicitor is correcting me. If she turns out to be
25 wrong, then we'll have a problem. And so I think the

1 easy thing to do --

2 MS. BURKE: I didn't correct you. I just said the
3 defendant said that he did not have that.

4 MR. DEYSACH: Okay. Well, if she can't tell me
5 that he doesn't, then I'm going to ask it. I should be
6 allowed to ask it.

7 MS. BURKE: I mean, we can certainly -- I'll have
8 Your Honor decide that.

9 THE COURT: Okay.

10 MS. BURKE: I will say, Your Honor, that if Mr.
11 Jinks is being questioned about the plea in 2010, the
12 State should be allowed to ask him if he appeared in
13 court in January of 2010 for this trial. And at that
14 time, if he had pending charges and if he -- if -- all
15 of that information, that the case had not gone forward
16 at that time.

17 MR. DEYSACH: Your Honor, I see unlawful weapon,
18 not stolen pistol. Unlawful carrying of a weapon is
19 what the charge was, not -- not -- assault and battery
20 of a high and aggravated nature, as opposed to ABHAN.
21 I said ABHAN, no battery. The Rap sheet indicates
22 unlawful carrying of a weapon and ABHAN. So I can --
23 he does have -- he does the unlawful carrying --

24 MS. BURKE: This is why this is all problematic.

25 MR. DEYSACH: Why?

1 **MS. BURKE:** Many times we have plea deals and the
2 State gives the Rap sheet to -- or reads it aloud and
3 the defendant says, oh, that's -- that's not true. And
4 the court usually says, well, I'm not going to consider
5 that because that's an issue. And I understand it's
6 because the defendant is there.

7 But, you know, this is why when we have a
8 conviction or impeaching the defendant on his prior
9 record, we get certified copies of his conviction
10 because sometimes things are in error. And so the
11 defense has sufficient information to, you know, go at
12 Troy Jinks, to create a situation where we're
13 speculating where he's already said no.

14 We're speculating as to well, your Rap sheet says
15 this, your Rap sheet says that, I said AHAN during the
16 plea, it's really ABHAN, you know. I think it creates
17 an unnecessary distraction. I think it creates too
18 much speculation. And I don't think it's necessary
19 when we've got a felony conviction. We've got pending
20 charges. I mean, how far are we going to go with this.

21 **MR. DEYSACH:** I believe on those charges, I can
22 get into it under 404 also. So I mean, I can -- I can
23 ask him about the bias of it. I can ask him about a
24 pertinent trait or character -- character in the victim
25 of the crime offered by the accused, which possessing--

1 you know, aggressiveness, which is the ABHAN and the
2 possession of a pistol. So there's more than one
3 reason why I can ask him about this.

4 And I certainly wouldn't -- wouldn't -- we're not
5 speculating about what's on the Rap sheet. What's on
6 the Rap sheet is what we're looking at. That's not
7 speculation. So these are -- it really is an easy
8 issue. That these are questions that I get to ask.
9 They're not going to win the case and they're not going
10 to lose the case, but they are things that the jury
11 should hear about.

12 **THE COURT:** I really think where it comes in under
13 -- because he is the victim in this case -- is under
14 404. 608 is for other witnesses. 404 -- Rule 404 is
15 for the defendant and the victim. Okay. I think he
16 can ask whether or not he had charges pending that have
17 subsequently been dismissed.

18 I think he's taking the stand. I mean, he can
19 cross examine him. I mean, it's that simple. It puts
20 everything at issue.

21 **MS. BURKE:** Your Honor, my final plea -- and I do
22 thank you for your indulgence, is that if the court is
23 inclined to do that, which obviously the State -- the
24 court -- the State believes that he should be limited
25 to just asking if he had pending charges, not what

1 those charges were. And that is from, I believe, Sims
2 and Mizell. That if all you're trying to say is that
3 there is bias --

4 **THE COURT:** Okay. I'm going to let him ask if he
5 had serious pending charges.

6 **MR. DEYSACH:** I think I need to ask if he knows
7 how much the charges carry, because that spells out
8 what the benefit is. That's why I have to let him know
9 -- we have -- we have to carry -- figure out what the
10 possible penalties were so that he knows how grateful
11 to be to the Solicitor's Office. That's where the bias
12 comes in. Because we're talking about mandatory
13 minimums, as well as if you added up the time, you
14 know, it's dozens of years.

15 **THE COURT:** Well, what about just him and if he
16 doesn't know, then you can't offer it. Because if he
17 doesn't know how much time he was facing, how could he
18 be biased in his testimony.

19 **MR. DEYSACH:** He already answered that he did
20 know. Three to ten, ten to 15. I didn't ask him about
21 his -- the ABHAN, but he knew about the HTO. He knew
22 about how much time he had hanging over his head on the
23 auto breaking. He knew about all those things. So I
24 didn't ask him about the ABHAN, but I -- you know, he's
25 got Mr. Colongeli as an attorney, so I'm sure he knows.

1 **MS. BURKE:** I would -- I would think, again,
2 that's going too far. The issue here is the bias. The
3 argument before was that he had pending charges that --
4 that the suggestion that I've made is that suggestion
5 that was discussed in the Sims case, and I believe
6 Mizell, that -- in trying to figure out a balance with
7 this delicate issue, it's proper to just say, did you
8 have pending charges at the time -- whenever this
9 timeframe we're talking about -- and he said, yes, he
10 had pending charges. That's all we need to know.

11 **THE COURT:** Then you can ask him, I'm going to let
12 him go a bit further and say, and you understand that
13 they are serious to the extent that you would have
14 spent a substantial time, more than 10 or 15 years,
15 whatever it is, in prison. Yes, that's it.

16 **MR. DEYSACH:** You're limiting me from what I'm
17 allowed to ask --

18 **MS. BURKE:** He could have also got probation. He
19 could have pled down --

20 **THE COURT:** Well, you can cross examine him and
21 ask him that.

22 **MS. BURKE:** Okay. So we've got an agreement.
23 He'll just ask about pending charges and not what the
24 charges were.

25 **MR. DEYSACH:** We have no agreement. And I need to

1 say -- I guess, the defense's position -- hopefully
2 without getting interrupted -- but that I'm allowed to
3 ask the charges that he was facing at the time of the
4 incident that -- what the possible penalties were, that
5 the trafficking is serious and violent. That he gets
6 --

7 THE COURT: The problem is the terms "serious and
8 violent" doesn't mean anything to a jury. They don't
9 understand that.

10 MR. DEYSACH: They understand what "violent"
11 means.

12 THE COURT: But it's not the significance of it
13 being called violent, though, as you and I both know.

14 MR. DEYSACH: I think there's a reason the State
15 Legislature calls it violent, is because violence
16 follows the charge. You know, that's why people are
17 convicted of possession of a pistol --

18 THE COURT: Okay. We're not going to -- y'all,
19 we've beat this one to death.

20 MR. DEYSACH: Well, I don't feel that -- I know
21 that the Solicitor has had ample chance to address,
22 Your Honor --

23 THE COURT: Mr. Deysach, you have had ample chance
24 and I have ruled with you. So sometimes --

25 MR. DEYSACH: I don't --

1 **THE COURT:** -- when you know I'm with you, you
2 need to sit down and be quiet.

3 **MR. DEYSACH:** So I will be allowed to talk about
4 trafficking crack, PWID crack, because that's what I'm
5 asking for. I will be able to ask about ABHAN and
6 unlawful possession under Rule 404. Those are the--
7 that's how much each charge carries and what his deal
8 was with the Solicitor's Office, what he's got pending.
9 How much he's got hanging over his head and how much
10 the HTO and resisting arrest carries. That's -- that's
11 -- that's what I'm allowed to do for a person who is
12 pointing my guy out as a shooter of him. And to -- not
13 to be limited on my ability to impeach --

14 **THE COURT:** Which I didn't, and that's why I'm not
15 sure what you're arguing against --

16 **MR. DEYSACH:** Okay.

17 **THE COURT:** -- more --

18 **MR. DEYSACH:** All right.

19 **THE COURT:** -- unless you want to just really talk
20 me out of ruling with you.

21 **MR. DEYSACH:** No. Then I misunderstood what your
22 ruling was and I apologize.

23 **THE COURT:** Okay. I'm going to let you ask -- to
24 the point, though, that when you do start beating a
25 dead horse, I am going to stop you and tell you to move

1 on.

2 MR. DEYSACH: Okay.

3 THE COURT: When you've made your point. Okay.

4 MS. BURKE: And just to be clear, Your Honor, the
5 State will get into the fact that this case was
6 scheduled for trial in January.

7 THE COURT: Absolutely.

8 MR. DEYSACH: Your Honor, but they cannot get into
9 the fact that it would have been for failure to appear
10 by Mr. Wright. That's what -- that's what she's going
11 for.

12 THE COURT: Exactly.

13 MS. BURKE: What are you going for?

14 THE COURT: If you're going to open that door, --

15 MR. DEYSACH: I'm going for impeachment under the
16 rules. I'm going to impeachment under the rules. She
17 is trying --

18 MS. BURKE: Rehabilitate the witness.

19 MR. DEYSACH: By saying --

20 MS. BURKE: -- to impeachment --

21 MR. DEYSACH: I --

22 THE COURT: I think if you open up that door, I
23 think she's going through it.

24 MR. DEYSACH: Well, then I will have to testify to
25 the jury --

1 MS. BURKE: He --

2 COURT REPORTER: I can't take more than one at a
3 time.

4 THE COURT: I understand.

5 MS. BURKE: I apologize, Your Honor.

6 MR. DEYSACH: I would become a witness then to
7 testify to the jury about the circumstances surrounding
8 that case. I will have to tell them that I was unable
9 to reach Mr. Wright. And that he never did get notice
10 --

11 THE COURT: Was there a bench warrant on him?

12 MR. DEYSACH: There was a bench warrant.

13 MS. BURKE: For a year and a half.

14 MR. DEYSACH: There is no nexus between the issue
15 of a person's right not to appear at their trial
16 because they have that right to be tried in their
17 absence. It is a right, not a punishment.

18 To dirty -- to dirty the really evidence of
19 flight, an attempt at that for my client -- and what
20 Mr. Jinks' relationship is with the Solicitor's Office,
21 and so to mix those two issues -- I mean, you can say
22 the case didn't go at that time. It was scheduled for
23 trial and didn't go, but she couldn't say the reason.
24 Because if she does, then I've got to tell the jury
25 what the reason was, and I'm the only one who really

1 knows.

2 MS. BURKE: So you mean you had the chance to
3 bring him here a year and a half ago?

4 MR. DEYSACH: Well, did I say that.

5 MS. BURKE: Well, you said you --

6 THE COURT: Okay. Okay.

7 MR. DEYSACH: Address the judge.

8 MS. BURKE: You said you would testify --

9 MR. DEYSACH: Address the judge.

10 MS. BURKE: -- I mean, your mistake. I don't know
11 why you would want to do that.

12 MR. DEYSACH: Well, I make mistakes, you know.

13 And if I -- the jury needs to know about --

14 THE COURT: Lawyers fall on their swords all the
15 time for the jury, to hopefully blame the lawyer --

16 MR. DEYSACH: I wish I was perfect.

17 MS. BURKE: That's fine with me.

18 MR. DEYSACH: Well, then I must no longer be the
19 lawyer on this case if I am the witness.

20 THE COURT: Okay. The only thing we're going to
21 say is that the case did not go forward. And quite
22 frankly, it's by my determination or whoever the
23 sitting judge was because, yes, we could have tried it
24 in his absence and the judge chose not to and instead
25 bench warranted, probably to save the Solicitor

1 Office's rear end because they're the ones that
2 actually, in fact, get prejudiced when the defendant is
3 not here. I believe that. And it can happen both
4 ways. And I recognize that as well. There are a lot
5 of convictions that do not happen because there's an
6 empty chair. Then again, I don't see very many defense
7 attorneys jump up and down and say, try my guy in his
8 absence either. So I think, again, it can cut both
9 ways. It didn't go forward is what we're going to say.
10 Okay. Let's just take five minutes and come back out.
11 We're going to put Mr. Jinks up. Who do you have after
12 Mr. Jinks?

13 MS. BURKE: Your Honor, I will probably call Dr.
14 Hussong --

15 THE COURT: Okay. I just want to make sure you've
16 got someone here that wants to go. If Dr. Hussong is
17 here, I'd like to get him out of here.

18 MS. BURKE: He's not here right now.

19 THE COURT: Okay. But if he shows up, just let me
20 know to make sure we can get through him.

21 MS. BURKE: Okay. If not, I'm comfortable to take
22 someone -- I know you have a matter at 1:00.

23 THE COURT: Right. I just don't want to keep Dr.
24 Hussong out there waiting.

25 MS. BURKE: He's coming at 1:15 or 1:30.

1 **THE COURT:** Okay. Well then he probably won't go
2 before lunch break. That's okay. All right. Just go
3 ahead and take five minutes everybody and we'll be
4 back.

5 (After a recess, court reconvened.)

6 **THE COURT:** Y'all are bringing them in right?

7 **THE BAILIFF:** Yes, ma'am.

8 (Whereupon, the jury entered the courtroom at
9 12:11 p.m.)

10 **THE BAILIFF:** The jurors are present, Your Honor.

11 **THE COURT:** Thank you. Welcome back, Ladies and
12 Gentlemen. All right. If the State will call their
13 next witness.

14 **MS. BURKE:** The State calls Troy Jinks to the
15 stand.

16 (Witness forward.)

17 **THE COURT:** Sir, we're going to swear you in. Put
18 your left hand on the Bible and raise your right hand.

19 TROY JINKS, having been first
20 duly sworn, testified.

21 **THE CLERK:** Please be seated. State your name and
22 spell it for the court reporter.

23 **THE WITNESS:** Troy Jinks, T-r-o-y J-i-n-k-s.

24 **DIRECT EXAMINATION BY MS. BURKE:**

25 **Q** How old are you, Troy?

1 A Twenty eight.

2 Q I'm going to get straight to why we're here
3 today. Are you comfortable on --

4 A Uh-huh.

5 Q Okay. As you know, we're here to talk about a
6 shooting that happened to you in July of 2008.. You
7 were around 23 or 22 at that time?

8 A (Nodded affirmatively.)

9 Q And the court reporter is here to take down
10 verbal answers. And so just be mindful to say yes and
11 no --

12 A Yes.

13 Q And speak loudly so that the court reporter can
14 hear and all our jurors on the far side can hear you as
15 well. Were you in an area called Pinckney Hill on that
16 day?

17 A Yes, ma'am.

18 Q Is that some place that you go to or do you
19 live in that area?

20 A My cousin and them stays up there.

21 Q Okay. And how long were you there that day?

22 A I was there all day until that incident
23 happened.

24 Q Okay. Go ahead, Troy, and explain to the jury
25 and talk to the jury as to what happened that day.

T. JINKS -- DIRECT BY MS. BURKE

1 A I was up there just chilling, hanging out. A
2 car pulls up with four people inside. The driver got
3 out of the car and started arguing with me, talking
4 about how she can get me touched and she wanted to
5 fight and all that. And I tell her I didn't want to
6 fight her. And she is like how she is going to get me
7 touched. And she got back in the car and drove back in
8 the back. And she came up, a guy got out of the car
9 with the gun, and he started shooting.

10 Q What does getting "touched" mean?

11 A Get you shot.

12 Q And you say that a girl got out of the car, do
13 you know who that girl is?

14 A Monique.

15 Q What's her last name?

16 A I don't know her last name.

17 Q Does Johnson ring a bell?

18 A I think so.

19 Q And how many people were in the car?

20 A Four.

21 Q Who were the other people in the car that you
22 recall?

23 A Eric, Octavia, Monique and another girl sitting
24 in the passenger seat, which is supposed to be his
25 sister.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Whose sister?

2 A Eric's.

3 Q So let's -- let's go in slow motion. You say
4 that you are at Pinckney Hill and a car drove up, and
5 somebody got out -- may I approach, Your Honor?

6 THE COURT: You may.

7 BY MS. BURKE:

8 Q I hand to you State's Exhibits 1 and 2. Is
9 this the area you were in -- at on that day?

10 A Yes, ma'am.

11 Q Okay. And this car drove up and you said the
12 car stopped?

13 A Yes, ma'am.

14 Q Did it stop in front of you or stop to talk to
15 someone else?

16 A It stopped like -- it was going straight back,
17 and it just stopped across from where I was standing at
18 -- where everybody was standing at. And it just
19 stopped in the road.

20 Q Now, what's back there? You said they were
21 going back?

22 A The Chicken Shack where they sell food and
23 stuff at.

24 Q Okay. And when the car stopped, what
25 immediately happen?

T. JINKS -- DIRECT BY MS. BURKE

1 A Monique got out the car, started arguing with
2 me, putting her hands in my face and stuff.

3 Q Did anyone else get out the car?

4 A No, not at that time.

5 Q Okay. And did you do anything to Monique at
6 that time?

7 A No, ma'am.

8 Q Did she physically touch you?

9 A No, ma'am.

10 Q Step down and show me how close she was to you
11 and what she was doing.

12 (Witness complied.)

13 A She got in my face, real close to my face, and
14 just started swinging her hands.

15 Q Okay. And is that when she said she can get
16 you touched?

17 A Yeah. I'll get you touched.

18 Q "I'll get you touched"?

19 A Yeah.

20 Q When she gets back in the car, the car
21 continues to drive to the back?

22 A Yes, ma'am.

23 Q At that point, what did you do?

24 A I just -- just kept doing what I was doing.
25 Just hanging out. I thought it was over. I really

T. JINKS -- DIRECT BY MS. BURKE

1 didn't pay any more attention.

2 Q Okay.

3 A I thought the altercation was over. I thought
4 it was just going to be just an argument.

5 Q And then the car comes back?

6 A Yes, ma'am.

7 Q What is it, a two door -- you said four people
8 were in it, it was a four door car?

9 A Yes, ma'am.

10 Q Let me just -- I have a bit of a demonstrative
11 exhibit here of what you saw in that car -- sorry,
12 Madam Court Reporter. So let's say this is the car.
13 You can step down from the witness box. And talk to
14 the jury about how things unfolded. Let's say this is
15 the driver's side and obviously the front passenger and
16 back passenger and so forth. Where was Monique seated?

17 A Octavia was sitting behind Monique, the driver.
18 Eric was sitting behind the passenger and his sister
19 was sitting in the passenger seat.

20 Q Okay. So now we're at the point where the car
21 is coming back from wherever they went to?

22 A Uh-huh.

23 Q Show the jury what happened.

24 A When the car was coming back, the back
25 passenger door opened up and he jumped out -- Eric

T. JINKS -- DIRECT BY MS. BURKE

1 jumped out with the gun, pointing it at me.

2 Q Where you were -- if the car is right here,
3 where were you standing at the time the car comes back
4 down?

5 A The left to -- off in the cut like to -- to the
6 right.

7 Q So would it be -- if the driver was here, were
8 you on this side of the car or on the other side?

9 A When they was leaving out?

10 Q Yeah. The second time, as they came back from
11 -- let's say the Chicken Shack?

12 A I was on the other side of the car.

13 Q Okay --

14 A No, I was still on the same side as -- this
15 side when they came out, I was still on this side.

16 Q Okay. So just to be clear, this is the
17 driver's side?

18 A Uh-huh.

19 Q And so you're saying that you were still on
20 this side, not next to the car because it's driving,
21 but you were on this side of the vehicle?

22 A Yes, ma'am.

23 Q Okay. Now, I know it's been a couple of years
24 now, do you think you were -- how far away from the
25 vehicle, if we were to use this seam, when the car came

T. JINKS -- DIRECT BY MS. BURKE

1 back?

2 A Maybe to like that table right there.

3 Q Okay. So you're closer to over here and the
4 car obviously -- the car is now going in that
5 direction. And what did you do -- what did you tell
6 law enforcement that day you did?

7 A What, when the car came back up?

8 Q Yes.

9 A I pointed at the car.

10 Q And why did you point at the car?

11 A Just to let them know I seen them.

12 Q What does that mean?

13 A That I saw him sitting in the car. Because
14 somebody told me --

15 MR. DEYSACH: Objection to the hearsay.

16 THE COURT: Again, sir, you cannot say something
17 someone else told you. Okay.

18 BY MS. BURKE:

19 Q You had some concerns?

20 A Yeah.

21 Q So position yourself, if I'm going to where the
22 defense table is -- let's not create any issues -- and
23 I'll stand in between. Position yourself over here, if
24 you will, at the time you said you pointed at the car.
25 And show the jury what you did?

T. JINKS -- DIRECT BY MS. BURKE

1 A I pointed.

2 Q Who were you pointing at?

3 A Eric.

4 Q And so you're there, and you just said that
5 he's here?

6 A Uh-huh.

7 Q And someone else is seated right here?

8 A Uh-huh.

9 Q Okay. And so he's in this seat and you point
10 at him, did you say anything?

11 A Nope.

12 Q Do you know if the windows were up or down?

13 A I can't remember if they were up or down.

14 Q Okay. Did you yell anything?

15 A Nope.

16 Q Do you remember what kind of -- what time of
17 the day it was when this happened?

18 A I don't remember the time of day it was.

19 Q Was it night?

20 A No. It was daytime.

21 Q Okay. Was it morning?

22 A Probably afternoon.

23 Q Okay. Do you remember telling the police it
24 was around 4:30 or 5:00?

25 A Oh, I can't remember what time it was to be

T. JINKS -- DIRECT BY MS. BURKE

1 honest --

2 Q Okay. You got -- bigger things happened?

3 A Yes, and it was a couple of years ago.

4 Q It wasn't raining or anything?

5 A No.

6 Q You point, then what happens?

7 A He jumped out the car and pointed the gun at
8 me. I was, stop pointing the gun. And he was like,
9 f-u-c-k- n-i-g-g-a, what now.

10 Q And then what do you do?

11 A I turn my back and start walking off.

12 Q And then what?

13 A He shot one round, it went by my foot. Then
14 the second round hit me in my side and went through
15 both of my legs.

16 Q Okay. You said he fired one round, is that one
17 shot?

18 A Yeah.

19 Q Okay. Do you remember seeing how he was when
20 he got out the car? Did he get out the car and -- and
21 -- do you remember how his position was when he got out
22 the car?

23 A He got out the car and stuck his hand over the
24 car, and stood in the back passenger area, but had his
25 hand over the car.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Okay. Did you feel the first bullet go by you?

2 A I felt the vibration on the ground, that's how
3 close it was to my foot.

4 Q And you said -- so the first bullet hit almost
5 your feet?

6 A Real close. I felt the vibration from the
7 bullet going into the ground, which made me turn this
8 way, sideways.

9 Q And so you turned sideways, were you trying to
10 run?

11 A Trying to get -- trying to turn away from it
12 because I felt it right there. It made me lift my foot
13 up. I already know what it was, trying to avoid
14 getting hit.

15 Q Okay. So now your body is turned.

16 A Uh-huh.

17 Q Show the jury how you turned.

18 A Like this.

19 Q And then you feel the next bullet?

20 A Uh-huh.

21 Q And where does it hit you?

22 A Right here.

23 Q At this point, are you doing anything? Are you
24 pointing, are you --

25 A No.

T.. JINKS -- DIRECT BY MS. BURKE

1 Q So now you're -- your back is somewhat to the
2 shooter?

3 A Uh-huh.

4 COURT REPORTER: Is that a yes or a no?

5 THE WITNESS: Yes..

6 BY MS. BURKE:

7 Q This all -- let's freeze that for a second.
8 What -- what are the other people in the car doing?
9 For example, what did you observe, if anything, the
10 person seated here, who you say is Octavia, did you see
11 her do anything, when the defendant -- when the person
12 -- well, let's go back. Let me go back a second.
13 Excuse me. Strike that. Do you see the person who
14 shot you in the courtroom today?

15 A Yes, ma'am.

16 Q Point him out for the jury.

17 A (Indicating.)

18 Q What is he wearing?

19 A A tie and a white collared shirt.

20 Q What is his name?

21 A Eric Wright.

22 Q What else do you know him as?

23 A Bo.

24 THE COURT: Okay. Ms. Burke, does he need to take
25 the stand again, do you need him anymore?

T. JINKS -- DIRECT BY MS. BURKE

1 MS. BURKE: Just a few more seconds, Your Honor.

2 Thank you.

3 BY MS. BURKE:

4 Q So you see him getting out the car, do you see
5 anything with the passengers, that you observed them
6 doing anything?

7 A The only person that was doing something, the
8 back passenger, she was -- Octavia, she was trying --
9 trying to hold him. When the door opened, she was
10 holding him, trying to hold him back in the car. She
11 couldn't hold him -- hold him down too long. He got
12 out the car.

13 Q Okay. What about the front passenger, did you
14 see her doing anything?

15 A She was just sitting there looking -- just
16 looking. She didn't say anything.

17 Q Now, at any time when this car -- you can go
18 back to the stand -- thank you. When that car comes
19 back the second time before you were shot, you said you
20 pointed. Did anyone else get out of the car at the
21 time you pointed?

22 A No, ma'am.

23 Q What -- what did you see happen after you were
24 shot -- twice?

25 A They left.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Who all left?

2 A Octavia, Eric, Monique and the passenger.

3 Q Did anybody come out and check on you?

4 A Yeah. The people who lived around the area.

5 Q Did anybody from that car come out and check on
6 you?

7 A No, ma'am.

8 Q How do you know Octavia Scott -- Octavia Scott?

9 A Since middle school.

10 Q Since middle school?

11 A Yes, ma'am.

12 Q And how do you know Monique Johnson -- or do
13 you know Monique Johnson?

14 A I don't really know her, just know of her.

15 Q You know of her through someone?

16 A Through people in my area where I live at.

17 Q Okay. And let's talk about that person in the
18 front seat, what do you know about her?

19 A It's supposed --

20 MR. DEYSACH: Objection to the hearsay. I can
21 already tell by the response, "supposed to be".

22 THE COURT: Okay. Just rephrase your question.

23 BY MS. BURKE:

24 Q Do you know the person in the front seat, the
25 passenger?

T. JINKS -- DIRECT BY MS. BURKE

1 A Yes.

2 Q How do you know her?

3 A I met her through a friend of mine.

4 Q Tell the jury how you met her. What do you
5 mean, you met her?

6 A It was like a blind date somebody hooked me up
7 on.

8 Q Okay. Y'all went out on a date?

9 A Yeah.

10 Q Explain to the jury y'all's relationship.

11 A We didn't have a relationship, we just --

12 Q Or lack thereof. Whatever it was, tell the
13 jury what it was.

14 A Sex.

15 Q Okay. She was a one night stand?

16 A Yes.

17 Q Okay. Thank you. Is she a friend of Ms.
18 Johnson's?

19 A Monique, yes.

20 Q Okay. This sexual relationship with the front
21 seat -- what's her name?

22 A She told me her name was Kim.

23 Q Do you know her -- do you have another name
24 that you know of?

25 A No, ma'am.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Okay. Did this relationship end badly?

2 MR. DEYSACH: Objection to the leading.

3 THE COURT: Overruled. You can ask it.

4 BY MS. BURKE:

5 A Did it end badly?

6 Q Yes.

7 A No.

8 Q Did you have an argument with her?

9 A No --

10 MR. DEYSACH: Objection to the leading.

11 THE COURT: Overruled.

12 BY MS. BURKE:

13 Q What's her relationship with the defendant?

14 MR. DEYSACH: I think we've already covered that
15 in the hearsay objection, Your Honor. I think it's
16 clear that his knowledge of that is based on hearsay.

17 THE COURT: Okay. You can ask him if he has any
18 independent knowledge of her relationship with the
19 defendant.

20 BY MS. BURKE:

21 Q Outside of hearsay, do you have any independent
22 knowledge of the relationship between this Kim person
23 and the defendant?

24 A No, ma'am.

25 Q Have you been accused of leaving this Kim

T. JINKS -- DIRECT BY MS. BURKE

1 person --

2 MR. DEYSACH: Objection to that hearsay.

3 THE COURT: Okay. What was the question again.

4 MS. BURKE: Has he been accused of leaving Kim on
5 the side of the road -- I didn't get the full question
6 out, but that would have been --

7 THE COURT: If it's something that he knows of his
8 own independent knowledge, he can testify to it. If
9 it's something he just heard, then he cannot.

10 BY MS. BURKE:

11 Q Did you have a relationship with this Kim
12 person and leave her without a way of getting home?

13 MR. DEYSACH: That, Your Honor, is a leading
14 question.

15 THE COURT: Overruled. She can ask it.

16 THE WITNESS: No, ma'am.

17 BY MS. BURKE:

18 Q How old is this woman when you were dating her?

19 A I don't remember. I have no idea.

20 Q Was she a teenager?

21 A No.

22 Q Were you surprised to see her in the car that
23 day?

24 A Not really because I see her with Monique all
25 the time.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Okay. What was your emotional condition, --
2 you said you were shot at twice -- what was your
3 emotional condition after you were shot? What were you
4 -- what thoughts were you thinking regarding your
5 injuries?

6 A Just getting better, getting -- healing up
7 soon. That's about it.

8 Q And you went to the hospital to be treated?

9 A Yes, ma'am.

10 Q While you were at the hospital, did you talk to
11 -- did law enforcement come and see you?

12 A Yes, ma'am.

13 Q And talk to you about the shooting?

14 A Yes, ma'am.

15 Q Did you tell them who shot you?

16 A Yes, ma'am.

17 Q What name did you say?

18 A Bo.

19 Q After -- after you got out of the hospital, did
20 Detective Heany come to visit you? The lady seated
21 right here.

22 A Yes.

23 Q Did you all do a photo lineup?

24 A Yeah.

25 Q During that photo lineup, did you -- did she

T. JINKS -- DIRECT BY MS. BURKE

1 talk to you about the procedure for a photo lineup?

2 A Yes.

3 Q Did she show you some pictures of potential
4 suspects during that lineup?

5 A Yes.

6 Q Did you pick out the person who shot you that
7 day from that photo lineup?

8 A Yes.

9 Q Who did you pick out?

10 A Eric.

11 Q After the shooting, have you -- did you ever
12 see the defendant after the shooting?

13 A Yes, ma'am.

14 Q Where did you see him?

15 A At a gas station.

16 MR. DEYSACH: I would object, Your Honor. This is
17 information that hasn't been disclosed as part of the
18 discovery.

19 THE COURT: Okay. Do y'all need to approach?

20 MR. DEYSACH: Sure.

21 (Whereupon, a bench conference was held in the
22 presence of the jury, but outside the hearing of the
23 jury.)

24 BY MS. BURKE:

25 Q Troy, I know that you aren't on trial today and

T. JINKS -- DIRECT BY MS. BURKE

1 that you've obviously already told the jury that you
2 were a victim of a shooting, but any witness who
3 testifies, the jury is allowed to know any prior of --
4 of their prior criminal history or any history that is
5 relevant to the witness' past. Have you been arrested
6 previously?

7 A (No response.)

8 Q You've had several run-ins with the law?

9 A Yes.

10 Q I don't want you to tell me how many times, I
11 was just asking if you've been arrested before?

12 A Yes.

13 Q Okay. You weren't hesitating to say yes or no,
14 you were just --

15 A Thinking.

16 Q Okay. And you've been convicted of charges as
17 well, is that correct?

18 A Yes, ma'am.

19 Q So you're not -- I mean, you don't have an
20 enduring relationship with law enforcement?

21 A No, ma'am.

22 Q Okay. You pled guilty to some things in the
23 past and accepted responsibility?

24 A Yes, ma'am --

25 MR. DEYSACH: Objection, leading.

T. JINKS -- DIRECT BY MS. BURKE

1 THE COURT: Okay.

2 BY MS. BURKE:

3 Q One of those was in 2002, malicious injury to
4 property?

5 A Yes, ma'am.

6 Q And breaking into a motor vehicle?

7 A Yes, ma'am.

8 Q That's a charge that carries with it a felony
9 versus a misdemeanor status, is that correct?

10 A Yes.

11 Q You've also been charged with various things
12 that you have pled guilty to or that were dismissed, is
13 that correct?

14 A Yes, ma'am.

15 Q You're currently on probation, is that correct?

16 A Yes, ma'am.

17 Q For a charge you pled to in two thousand and --
18 November of 2010?

19 A Yes, ma'am.

20 Q Do you remember what that charge was?

21 A I think it had something to do with some
22 marijuana.

23 Q Possession with intent to distribute marijuana.
24 sounds --

25 A Yes, ma'am.

T. JINKS -- DIRECT BY MS. BURKE

1 Q And for that, you were placed on probation?

2 A Uh-huh.

3 Q Correct -- so you're currently still on
4 probation?

5 A Yes, ma'am.

6 Q And, in fact, you also have a pending charge
7 since you pled in November to -- when I say pending,
8 you have not -- the case has not been disposed of yet
9 of what's called a Habitual Traffic Offender?

10 A Yes, ma'am.

11 Q Which is when you have more than one traffic
12 offense?

13 MR. DEYSACH: Objection to that --

14 Q Is that your understanding of that?

15 MR. DEYSACH: That's not accurate and the leading
16 nature of the question.

17 MS. BURKE: Your Honor, at some point --

18 THE COURT: Okay. You can ask him if he knows or
19 doesn't know.

20 MS. BURKE: -- for the trial, has to move things
21 along through simple leading questions.

22 BY MS. BURKE:

23 Q So you've got two pending charges that has not
24 been resolved yet, is that correct?

25 A Yes, ma'am.

T. JINKS -- DIRECT BY MS. BURKE

1 Q Okay. At the time that this incident happened
2 in 2008, you also had pending drug charges and other
3 charges that had not been resolved?

4 A Yes, ma'am.

5 Q Okay. When this incident happen, did law
6 enforcement promise you anything regarding wanting you
7 to testify and what would happen with those charges?

8 A No, ma'am.

9 Q Did anyone -- did the Solicitor's Office talk
10 to you directly or through your lawyer, Mr. Colongeli,
11 who was here earlier and stepped out for a brief
12 moment, promise you anything or the Solicitor's Office
13 promise you -- or through your lawyer promise you
14 anything regarding those pending charges?

15 A No, ma'am.

16 Q Are you here today because you want to be here?

17 A Yes, ma'am--

18 MR. DEYSACH: Objection to the leading.

19 THE COURT: Overruled.

20 BY MS. BURKE:

21 Q Were you influenced by the State or forced to
22 be here today?

23 MR. DEYSACH: Objection to the leading.

24 A No, ma'am.

25 THE COURT: Overruled. A yes or no question is

T. JINKS -- DIRECT BY MS. BURKE

1 not a leading question. She can ask it.

2 BY MS. BURKE:

3 Q Why are you here today?

4 A Just trying to get it over with.

5 Q Back in 2010, before you pled to the possession
6 with intent to distribute marijuana, and there were
7 other charges that were -- that you pled -- that were
8 dismissed as part of that plea that you did not plead
9 guilty to, was that around November of 2010?

10 A Yes, ma'am.

11 Q In January of 2010, did you appear in court for
12 a trial in this case?

13 A Yes, ma'am.

14 Q For the same case, involving the defendant and
15 you and the victim, being shot by the defendant, is
16 that correct?

17 A Yes, ma'am.

18 Q And that case did not go, is that correct?

19 A No, ma'am.

20 Q But you were present?

21 A Yes, ma'am.

22 Q At the time you were here in January of 2010,
23 you had pending charges, is that correct?

24 A Yes, ma'am.

25 Q In November of 2010, you pled guilty to some of

T. JINKS -- DIRECT BY MS. BURKE

1 those charges, is that correct?

2 A Yes, ma'am.

3 Q And then you got picked up for the habitual
4 traffic offender and the other item. In September,
5 just two months ago, did you appear or were notified to
6 come to court for this trial?

7 A Yes, ma'am.

8 Q And it didn't go again?

9 A No, ma'am.

10 Q But you were here?

11 A Yep.

12 Q When you came in this past September for the
13 trial, you still had pending charges, right?

14 A Yeah.

15 Q The two that we just talked about, the habitual
16 traffic offender?

17 A Uh-huh.

18 Q And you had already pled guilty on the drug
19 charge, is that correct?

20 A Yes, ma'am.

21 Q In September when you appeared, were you
22 influenced to come by law enforcement or the State or
23 anyone else?

24 A No, ma'am.

25 Q Did you have hopes that if you showed up, maybe

T. JINKS -- DIRECT BY MS. BURKE

1 your pending charges would disappear?

2 A No, ma'am.

3 MS. BURKE: I beg the court's indulgence.

4 BY MS. BURKE:

5 Q Despite your history with law enforcement you
6 just explained, on July 28, 2008, were you shot?

7 A Was I shot?

8 Q Yes.

9 A Yes, ma'am.

10 Q How many times?

11 A Once.

12 Q How many times did you hear a shot?

13 A Twice.

14 Q Who was the person who shot you?

15 A Eric.

16 Q Did you have a weapon?

17 A No, ma'am.

18 Q Did you pretend to have a weapon?

19 A No, ma'am.

20 Q Raise your hands for me. Did you have anything
21 in your hands that day?

22 A No, ma'am.

23 Q Did you make any signs or symbols to show or to
24 make it look as if you had a weapon?

25 A No, ma'am.

T. JINKS -- DIRECT BY MS. BURKE

1 Q And that car, you said you were on the side by
2 the driver and passenger's section, who would have been
3 in your direct sight from where you were standing?

4 A As the car was coming in?

5 Q The second time, when it was coming out?

6 A When it was coming out, Octavia.

7 Q Octavia was the one in your direct sight?

8 A Uh-huh.

9 Q You were pointing towards, you testified, the
10 defendant however?

11 A Yes.

12 Q But Octavia was the one in your direct path?

13 A Uh-huh.

14 COURT REPORTER: Is that a yes or a no please?

15 A Yes.

16 BY MS. BURKE:

17 Q And Octavia is the person you've known since?

18 A Middle school.

19 Q Did you have any animosity with her?

20 A No, ma'am.

21 Q Did you have any reason to put her in fear or
22 danger by pointing your finger?

23 A No, ma'am.

24 Q Did you put her -- did you try, was it your
25 intent to put her in fear or in danger by pointing your

T. JINKS -- DIRECT BY MS. BURKE

1 finger?

2 A No, ma'am.

3 MS. BURKE: Thank you, Troy. No further
4 questions, Your Honor. Please answer the questions Mr.
5 Deysach has.

6 CROSS EXAMINATION BY MR. DEYSACH:

7 Q Good afternoon, Mr. Jinks.

8 A Good afternoon.

9 Q A couple of things I want to clear up, a lot to
10 talk about -- I guess the first thing I want to say is
11 you testified -- the Solicitor, I guess, elicited
12 testimony from you about how willing you are to be
13 here, you were served with a subpoena to be here,
14 correct?

15 A Yes.

16 Q And that's an order from the court for you to
17 be here, correct?

18 A Yes. But I also told them that I was going to
19 come before they even sent the subpoena.

20 Q And they sent you a subpoena any way?

21 A Yeah.

22 Q All right. I want to deal with your criminal
23 history first because there was a lot of charges called
24 out, and a history called out, and I want to make sure
25 that the jury hears it in a more organized fashion.

T. JINKS -- CROSS BY MR. DEYSACH

1 Back in 2003, you were convicted of auto breaking,
2 correct?

3 A Yes.

4 Q In 2005, you were charged with trafficking in
5 crack and possession with intent to distribute crack in
6 a school zone, correct?

7 A Yes.

8 Q Those charges carry a possible penalty for the
9 trafficking of a mandatory minimum of three years and a
10 maximum of ten years, correct?

11 A If you say so.

12 Q And the trafficking is considered a violent
13 offense, correct?

14 A Uh-huh.

15 Q Answer verbally.

16 A Yes.

17 Q The possession with intent to distribute crack
18 in a school zone carries a possible penalty of ten to
19 15 years, correct?

20 A Yes, sir.

21 Q In -- in 2007, you were arrested for assault &
22 battery of a high and aggravated nature, correct?

23 A Yes.

24 Q You were also arrested for unlawful carrying of
25 a weapon at that same time?

T. JINKS -- CROSS BY MR. DEYSACH

1 A No.

2 Q Have you seen a copy of your criminal history?

3 A It's been a while ago.

4 Q I'm going to --

5 MR. DEYSACH: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 BY MR. DEYSACH:

9 Q I'm showing you a copy of your criminal
10 history. Can you show me the charge that has been
11 circled at the bottom?

12 A Yeah. What's the charge for, unlawful carrying
13 of a weapon?

14 Q Correct.

15 A Sentence date January 4, 2007.

16 Q Correct. Thank you. That's the same offense
17 date as the assault & battery of a high and aggravated
18 nature, correct?

19 A I think so.

20 Q All right. In the same year, 2007, you're
21 charged with possession with intent to distribute
22 marijuana, correct?

23 A Yes.

24 Q Okay. In that same year, you were charged with
25 a failure to stop for a blue light, correct?

T. JINKS -- CROSS BY MR. DEYSACH

1 A Yeah.

2 Q I want to go back -- you know that that assault
3 & battery of a high and aggravated nature carried a
4 possible penalty of ten years, correct, up to ten
5 years?

6 A Yes.

7 Q And the PWID marijuana, possible penalty of up
8 to five years, correct?

9 A Uh-huh.

10 Q Later you're charged with failure to stop for a
11 blue light in 2007, correct?

12 A Yes.

13 Q That carries a possible penalty of 90 days to
14 three years, correct?

15 A Yes.

16 Q All of those charges are charges that you're
17 going back and forth -- that you have pending on July
18 28th of 2008, correct?

19 A Yes.

20 Q On November 18th of 2010, you go to court for
21 your pending charges, correct?

22 A Yeah.

23 Q And the charges that you pled guilty to are
24 possession with intent to distribute marijuana and
25 failure to stop for blue light, correct?

T. JINKS -- CROSS BY MR. DEYSACH

1 A Yes.

2 Q And all the other charges that you had pending
3 were dismissed by the Solicitor's Office, correct?

4 A I suppose.

5 Q They're not pending any more, are they?

6 A Nope.

7 Q The Solicitor's Office was prosecuting you in
8 the case, weren't they?

9 A Yeah.

10 Q Okay. So that -- between the trafficking, the
11 PWID school zone of crack and ABHAN, that is 35 years
12 of possible punishment attached to charges that are
13 dismissed, correct?

14 A Yeah.

15 Q Your penalty for what you were found guilty of
16 was two years, but that was suspended, correct?

17 A Yes.

18 Q That means you don't have to do the two years,
19 correct?

20 A Yes.

21 Q And 18 months of probation, is that correct?

22 A Yes.

23 Q Even after that day in November, you get
24 arrested for resisting arrest, correct?

25 A Uh-huh.

T. JINKS -- CROSS BY MR. DEYSACH

1 Q In fact, you get arrested for resisting arrest
2 on the very day that you went to court, correct?

3 A Maybe so.

4 Q So if you went to court one day and got
5 arrested that same day, you wouldn't remember that?
6 You wouldn't remember that day?

7 A I went to court and the officer was there with
8 the warrant and that's how I got picked back up.

9 Q So it was the same day?

10 A I think so.

11 Q That case is still pending, correct?

12 A Which one is that?

13 Q The resisting arrest.

14 A Um --

15 Q Have you been to court for that yet?

16 A Yeah.

17 Q What did you get?

18 A A fine.

19 Q Okay. You have another arrest for habitual
20 driving offender, correct -- habitual traffic offender,
21 correct? You've got to speak up.

22 A Yes.

23 Q That carries a possible penalty of up to five
24 years, correct?

25 A Yes.

T. JINKS -- CROSS BY MR. DEYSACH

1 Q That if you're found guilty of a criminal
2 charge while you're on probation, that could mean that
3 you have to do that two years that the judge suspended
4 back in November of 2010, correct?

5 A Yes, sir.

6 Q And the Solicitor's Office is prosecuting you
7 for that failure to stop for blue light?

8 A I guess.

9 Q You don't know who's prosecuting you for that?

10 A No. Who?

11 Q Did you have to come to this courthouse for it?

12 A Yes.

13 Q Okay. Now, I want to talk a little bit about
14 July 28th. When -- you said you had been on Pinckney
15 Hill all day, correct?

16 A Uh-huh.

17 Q That you have a cousin that stays there,
18 correct? Speak up --

19 A Yes.

20 Q I'm not trying to be difficult. That cousin's
21 name is what?

22 A Ismel Fraiser.

23 Q Ismel Fraiser. Now, aren't the people that
24 live on Pinckney Hill, aren't they all family?

25 A Somewhere down the line.

T. JINKS -- CROSS BY MR. DEYSACH

1 Q When you're on Pinckney Hill, the car that
2 Monique is driving, pulls on to the hill, correct?

3 A Yes.

4 Q And you know Monique? You said you know of
5 her, but you know who she is, correct?

6 A Yeah.

7 Q And this isn't the first time you met Monique,
8 is it?

9 A No.

10 Q And you know that Monique's boyfriend is
11 somebody named Little Dickie, correct?

12 A Yeah.

13 Q And that's -- he wasn't -- Little Dickie wasn't
14 in the car, correct?

15 A No.

16 Q You see the car pull up and Monique gets out
17 and there's a confrontation, correct?

18 A Uh-huh.

19 Q You said a verbal confrontation, not a physical
20 confrontation?

21 A Yes.

22 Q The car proceeds to the back of the hill,
23 correct?

24 A Yes.

25 Q The car pulls back up, correct?

T. JINKS -- CROSS BY MR. DEYSACH

1 A Yeah.

2 Q And that's when you do the pointing, correct?

3 A Uh-huh.

4 Q You're saying -- will you point -- will you
5 show the jury how you pointed again?

6 A I pointed like that (indicating).

7 Q Like this (indicating).

8 A Yeah.

9 Q You're saying not like this (indicating) --

10 A No.

11 Q Like this (indicating).

12 A Like this (indicating).

13 Q And you're saying at the same time, "everybody
14 can get some"?

15 A Is that what I said?

16 Q Correct.

17 A No.

18 Q At that point, the car stops after you do the
19 pointing?

20 A Yes.

21 Q Monique gets out?

22 A No.

23 Q The person you're calling Kim gets out?

24 A No.

25 Q Octavia gets out?

T. JINKS -- CROSS BY MR. DEYSACH

1 A No.

2 Q Nobody gets out except for the person who shot
3 you?

4 A Yep.

5 Q You're saying the first shot was -- hit you
6 right near the feet, correct?

7 A Hit the ground.

8 Q Hit the ground near your feet?

9 A Yes.

10 Q All right. You spent a lot of time -- after
11 you get hit, you go to the hospital, correct?

12 A Yes.

13 Q Did you call 911?

14 A Yes.

15 Q You called them?

16 A Yes.

17 Q The ambulance comes, correct?

18 A Yes.

19 Q You don't talk to the police about the shooting
20 while you're still on Pinckney Hill, do you?

21 A A little bit, yeah.

22 Q Do you know which policeman you talked to?

23 A I'm not too sure.

24 Q You go to the hospital after that, correct?

25 A Yes.

T. JINKS -- CROSS BY MR. DEYSACH

1 Q And how long were you in the hospital?

2 A A couple of hours.

3 Q A couple of hours, and then they let you go?

4 A Yes.

5 Q Had you been smoking marijuana that day?

6 A Yeah.

7 Q Any other drugs?

8 A No.

9 Q No cocaine or crack?

10 A (Nodded negatively.)

11 Q Answer verbally.

12 A No.

13 Q Alcohol?

14 A No.

15 Q Just marijuana?

16 A Yep.

17 Q Are you a daily smoker of marijuana?

18 A No.

19 Q Have you smoked marijuana before you came here
20 today?

21 A No.

22 Q Do you sometimes brag about how much marijuana
23 you smoke on your Facebook page?

24 A No.

25 Q You've never written down on your Facebook page

T. JINKS -- CROSS BY MR. DEYSACH

1 that you've burned down three blunts this morning?

2 A I quote songs on the Facebook page.

3 Q Okay. So if the song happens to say that, then
4 maybe?

5 A I might have put it there if the song said
6 that.

7 Q Okay. Okay.. When you were at the hospital,
8 you told the doctor you do not know who shot you,
9 correct?

10 A No.

11 Q I --

12 A I couldn't have told the doctor I don't know
13 who shot me.

14 Q Okay. I'm going to show you the medical
15 reports from Hilton Head Hospital.

16 MS. BURKE: Objection, Your Honor.

17 MR. DEYSACH: The basis of the objection?

18 THE COURT: Do you want to look at it?

19 MS. BURKE: I mean it's a statement written by
20 somebody else in a report, that's hearsay.

21 (Whereupon, there was a bench conference held in
22 the presence of the jury, but outside the hearing of
23 the jury.)

24 BY MR. DEYSACH:

25 Q I'm going to ask you to read the highlighted

T. JINKS -- CROSS BY MR. DEYSACH

1 portion of the medical report.

2 A "The patient says he does not know who shot
3 him."

4 Q Can you look at the top of the report and say
5 who the patient is?

6 A Me.

7 Q Troy Jinks, right?

8 A Yeah, but I didn't say that.

9 Q Okay. And the date of service was 7/28/2008,
10 correct?

11 A Yep.

12 Q All right. Now, when Ms. Heany comes to the
13 hospital, you talked to her for a little bit?

14 A Yes.

15 Q You told her that -- first of all, who was
16 there when you spoke with Det. Heany, was it just you
17 or was it you and Shirley, your girlfriend?

18 A I can't remember.

19 Q Is it possible that Shirley went to the
20 hospital with you?

21 A Yeah.. It's possible that she could have been
22 there or met me up there.

23 Q You told her that you did not have any previous
24 trouble with Bo, correct?

25 A Who did I tell that to?

T. JINKS -- CROSS BY MR. DEYSACH

1 Q Det. Heany at the hospital. Your statement to
2 her was -- or you did not provide any information as
3 having trouble with Bo to Det. Heany at the hospital?

4 A I don't think I did.

5 Q You don't think you told her that?

6 A Uh-uh.

7 Q All right. You told Det. Heany that there is a
8 black female in the front passenger seat, correct? You
9 told her -- okay -- you told this jury here that that
10 person was Kim, correct?

11 A Yes.

12 Q Kim that you had sex with --

13 A Yeah.

14 Q -- correct -- you told Det. Heany that there
15 was a black female in the front passenger seat that you
16 did not know, correct?

17 A At the time I didn't know her name.

18 Q Okay. But you --

19 A I still don't know her --

20 Q -- told Det. Heany you didn't know her?

21 A I still don't know her name.

22 Q Okay. But you told this jury that her name was
23 Kim?

24 A That's what she told me.

25 Q Okay.

T. JINKS -- CROSS BY MR. DEYSACH

1 A But evidently that's not her name.

2 Q Okay. So -- but you told Det. Heany that you
3 didn't even know her, correct?

4 A I can't recall.

5 Q Okay. You and Monique did have a physical
6 confrontation, correct?

7 A I --

8 Q Did you ever get physical with Monique?

9 A No.

10 Q You told her not to put her hands on you,
11 correct?

12 A Uh-huh.

13 Q Okay. She had --

14 COURT REPORTER: Is that a yes or a no please?

15 Q Answer verbally yes or no to that last
16 question, that she did not put her hands on you.

17 A Yeah. I told her not to put her hands on me.

18 Q Okay. You're saying you told her that even
19 though she hadn't put her hands on you?

20 A Uh-huh, yes.

21 Q That when the car drove back from the back,
22 there was still trash talking going on?

23 A Yes.

24 Q All right. You told this jury that you pointed
25 and the person jumped out of the car, and that you

T. JINKS -- CROSS BY MR. DEYSACH

1 weren't sure if the windows were up or down, correct?

2 A Correct.

3 MR. DEYSACH: Begging the court's indulgence.

4 BY MR. DEYSACH:

5 Q You're saying that this one night stand that
6 you had was -- ended like all one night stands do,
7 correct?

8 A Yes.

9 Q All right. It was --

10 MR. DEYSACH: Beg the court's indulgence.

11 (Pause.) No further questions, Your Honor.

12 THE COURT: Ms. Burke.

13 MS. BURKE: Briefly, Your Honor. Thank you.

14 REDIRECT EXAMINATION BY MS. BURKE:

15 Q Troy, you've told the jury a lot about your
16 past today. You're the victim here, is that correct?

17 A Yes, ma'am.

18 Q Were you shot that day?

19 A Yes, I was.

20 Q Did you shoot the defendant that day?

21 A No, ma'am --

22 MR. DEYSACH: Objection, Your Honor. I don't
23 think this is something that is proper for this
24 redirect. I don't --

25 THE COURT: Overruled.

T. JINKS -- REDIRECT BY MS. BURKE

1 BY MS. BURKE:

2 Q You've admitted to -- told the jury about
3 having sex -- one night stands with people, is that
4 correct?

5 A Yes, ma'am.

6 Q That you smoked marijuana in the past, is that
7 correct?

8 A Yes, ma'am.

9 Q That you pled guilty to charges that you pled
10 guilty to in the past?

11 A Yes, ma'am.

12 Q That on your Facebook page you might have
13 recorded a rap song about smoking blunts?

14 A Yes, ma'am.

15 Q Are you being truthful about who shot you?

16 A Yes, ma'am.

17 MR. DEYSACH: Objection, bolstering, Your Honor.

18 THE COURT: Overruled.

19 BY MS. BURKE:

20 Q What is the defendant's relationship to Octavia
21 Scott?

22 MR. DEYSACH: Objection to the hearsay.

23 THE COURT: Rephrase it by saying "do you know".

24 BY MS. BURKE:

25 Q Do you know the relationship between Octavia

T. JINKS -- REDIRECT BY MS. BURKE

1 Scott and the defendant?

2 A They were boyfriend and girlfriend.

3 Q Is that how you know of the defendant?

4 A Yes, ma'am.

5 Q When you arrived at the hospital, did you talk
6 to Det. Heany the day you were shot?

7 A Yeah.

8 Q Were you in the emergency room at the time or
9 were you in a recovery room?

10 A I was -- I can't remember whether I was in the
11 emergency or recovery room, probably the emergency room
12 because right after they let me out, I went home.

13 Q Okay. And at the emergency room, what did you
14 tell -- who did you tell Det. Heany shot you?

15 A Bo.

16 Q The next day Det. Heany or shortly thereafter,
17 the day after or so, Det. Heany came to your house or
18 came to meet with you at some location?

19 A Yes.

20 Q To talk about the crime again?

21 A Yes.

22 Q On that day, who did you tell her shot you?

23 A Bo.

24 Q Did you write a written statement to her that
25 day as to who shot you?

T. JINKS -- REDIRECT BY MS. BURKE

1 A I can't remember, I think -- I think I did.

2 Q Did you do a photo lineup with her on that day?

3 A Yes, ma'am.

4 MR. DEYSACH: I would object to this as asked and
5 answered. This is all ground we've covered.

6 BY MS. BURKE:

7 Q Who did you pick out of the photo lineup?

8 A Eric.

9 Q Is there any doubt in your mind as to who shot
10 you?

11 A No.

12 Q Have you always told law enforcement as to who
13 shot you?

14 A Yes.

15 MS. BURKE: Thank you.

16 THE COURT: Mr. Deysach, anything further?

17 MR. DEYSACH: No, Your Honor.

18 THE COURT: All right, you may step down, sir. I
19 think now is a very good time for a lunch break, Ladies
20 and Gentlemen. It is a little after 1:10. Ladies and
21 Gentlemen, I'm going to ask that you all be back in
22 your jury room at 2:30 where we're going to go ahead
23 and continue the trial. It gives you a little over an
24 hour to get something to eat.

25 I also do foresee and notice that a couple of you

1 do have plans. You will be out of here at 5:30 at the
2 latest, that is not a problem at all. We will
3 accommodate you today and tomorrow, no worries.

4 Have a wonderful lunch, Ladies and Gentlemen. I
5 have to remind you, do not discuss this case with each
6 other or anyone else over the lunch hour. Do not do
7 any independent research. Have a good lunch and we'll
8 see you back at 2:30.

9 (Whereupon, the jury left the courtroom at 1:13
10 p.m.)

11 **THE BAILIFF:** The jury's clear, doors closed, Your
12 Honor.

13 **THE COURT:** Thank you. All right. Anything else
14 we need to put on the record in this case?

15 **MS. BURKE:** No.

16 **THE COURT:** We'll be at ease in this case. I do
17 have a motion with Mr. Houston and Ms. Henderson. I
18 see her back there...

19 (After a lunch recess, court reconvened at 2:50
20 p.m.)

21 **THE COURT:** Anything else we need to put on the
22 record?

23 **MR. DEYSACH:** Just briefly, Your Honor. I did
24 want to -- you know, it occurred to me over lunch, I
25 wanted to make sure after -- you know, some of the

1 discovery, I think differences of -- there's been a
2 lack of being on the same page with the Solicitor as
3 far what's discoverable and what's not.

4 I want to make sure that with Ms. Green that -- I
5 noticed that she didn't pick the defendant out or did
6 not identify the defendant in court, I wanted to make
7 sure that she hadn't been shown a photo lineup and been
8 -- been unable --

9 THE COURT: Got you.

10 MR. DEYSACH: -- to pick the defendant out. I
11 just wanted to make sure that that hadn't been done,
12 and I'm not informed about it.

13 The other thing I wanted to --

14 THE COURT: Well, let's ask her then. Let's just
15 do it -- is there any? No?

16 MS. BURKE: No, Your Honor. The only photo lineup
17 I have in evidence that was submitted to me --

18 THE COURT: The one we all know about.

19 MS. BURKE: The one we all know about.

20 THE COURT: All you've got to do is say no. No is
21 the answer, say no. All right. What is your next one,
22 Mr. Deysach.

23 MR. DEYSACH: I know that the -- really the talk
24 of Kim by Mr. Jinks, that's the first time I've heard
25 any mention of the person in the front being Kim or

1 somebody with whom he had a relationship. I want to
2 make sure that if Octavia Scott is going to talk about
3 Kim, that I'm told about that; or that if she told the
4 Solicitor about this Kim, that that is something that
5 is discoverable under Brady because it would be
6 impeachment evidence since all she's ever said to the
7 police is that there was three people in the car, not
8 four.

9 I think the Solicitor sent me an email at about
10 eight last night, is when it was received, it says,
11 well, Octavia is saying that there are four people in
12 the car. I want to know did Octavia tell the Solicitor
13 that Kim was in the car and the relationship between
14 Kim and the defendant -- if she plans to elicit that --
15 that is definitely discoverable material because it's
16 impeachment and it's completely different from what she
17 said to the police; do you see what I'm saying?

18 **THE COURT:** Well, if she changes her story on the
19 stand, then you can cross examine her on it, I assume.

20 **MR. DEYSACH:** I understand that, but I want --

21 **THE COURT:** So enter a statement -- did she say
22 that there was only three people originally and now we
23 believe she's going to say there's four, is that --

24 **MS. BURKE:** Yeah, I told -- I told Mr. Deysach
25 that back in -- when this case was originally

1 scheduled, I -- I emailed him again last night because
2 after we left yesterday, I was thinking well, let me
3 make sure. I called Ms. Rankin because she -- I had
4 gotten an email to her because she and Mr. Deysach had
5 talked about it. I asked Ms. Rankin to call me. She
6 didn't call me until 7:30.

7 Per that discussion, I said did you have any
8 conversations with Mr. Deysach. And she said, oh, I
9 was -- I was referring to another witness telling me a
10 fourth person was in the car, being Ms. Green. I said,
11 okay, you and Mr. Deysach never said that and had that
12 conversation -- she said no, I know I told him before,
13 but I'll send him another email and remind him of that.
14 So --

15 **MR. DEYSACH:** What my -- what my --

16 **MS. BURKE:** She -- she testified she told law
17 enforcement there were three people in the car. The
18 victim testified there were four. Ms. Green testifies
19 there were four. When she met with me and her lawyer
20 in 2009, she said there were four.

21 I told Mr. Deysach and I told him again --

22 **MR. DEYSACH:** That's not -- that's -- what I'm
23 asking is if Ms. Scott has told the Solicitor or
24 anybody with the State that the fourth person was Kim,
25 and whether that is the Defendant's sister or whatever

1 they're going at. That's what it is. Not the number
2 of people in the car, but who she is. Is that -- I
3 mean, I think we can agree whether it was last night or
4 sometime in January, it's never been disclosed to me if
5 she did say such a thing and it is discoverable.

6 MS. BURKE: Your Honor, my recollection is also
7 telling Mr. Deysach because -- and I'll -- I'll --
8 after the trial, this was the conversation he had after
9 the -- not the trial, but after the case was continued
10 because he failed to appear. Mr. Deysach and I were
11 talking about the case, and just kind of casual talking
12 about what we could have been -- and he mentioned, you
13 know, Octavia, on her Facebook page talks about, you
14 know, rapping and how she's a bad person and all that.

15 And I remember specifically saying, yeah, I know
16 that, but she also saw what she saw. And she also
17 talked about, you know, this being over sex with the --
18 with Troy -- with the Defendant's alleged sister, who
19 at the time they called Patrice. That's the name that
20 she gave and he and I discussed.

21 And he acknowledged at that time, yeah, it was
22 some girl that he was supposed to have had a
23 relationship with and things went wrong. That was
24 during that particular trial or the trial didn't go way
25 back when and we had that discussion.

1 Again last night, I emailed him and said, after I
2 talked to Casey Wright -- because I know Casey had met
3 with Octavia -- she said, she does say there's a fourth
4 person in the car. Everyone else says there's a fourth
5 person in the car. I think as I said before, Octavia's
6 statement, the two hour statement to law enforcement is
7 a base line. Anything else that says --

8 **THE COURT:** My question is -- I believe your
9 question is, who does she say now is the fourth person
10 in the car? Isn't that what you want to know?

11 **MS. BURKE:** She's always said that she -- she
12 didn't -- the name that was given to her was Patrice.

13 **THE COURT:** And that's what she knew her as, not
14 Kim.

15 **MS. BURKE:** And that she got this from -- yeah,
16 that's the name that she was told.

17 **MR. DEYSACH:** This is new. This conversation,
18 this is --

19 **MS. BURKE:** No. No. Because you -- you -- you
20 said the word "Patrice" to me before. You said
21 Patrice.

22 **MR. DEYSACH:** There is -- there is --

23 **THE COURT:** Y'all -- y'all, -- is Dr. Hussong out
24 there? I'm ready to go.

25 **MS. BURKE:** Yes, Your Honor.

1 **THE COURT:** Is that who your next witness is?

2 **MS. BURKE:** Yes, Your Honor.

3 **THE COURT:** Sit down. Sit down, Mr. Deysach. All
4 right. We're going to go ahead and bring the jury in.
5 We can argue about this after Dr. Hussong, which I
6 can't imagine he knew anything about who the fourth
7 person was in the car. So -- so thank you.

8 (Whereupon, the jury entered the courtroom at 2:57
9 p.m.)

10 **THE BAILIFF:** The jurors are entering, Your Honor.

11 **THE COURT:** Thank you.

12 **THE BAILIFF:** The jury is seated.

13 **THE COURT:** Thank you. Welcome back, Ladies and
14 Gentlemen. I trust you have had a nice lunch. At this
15 time, the State will call their next witness.

16 **MS. BURKE:** The State calls Dr. Hussong.

17 **THE COURT:** Come on forward, Dr. Hussong.

18 (Witness forward.)

19 RICHARD HUSSONG, having been
20 first duly sworn, testified as follows:

21 **THE COURT:** Dr. Hussong, when you get on the
22 stand, will you just spell your last name for my court
23 reporter.

24 **THE WITNESS:** It's H-u-s-s-o-n-g.

25 **DIRECT EXAMINATION BY MS. BURKE:**

DR. HUSSONG -- DIRECT BY MS. BURKE

1 Q Good afternoon, Dr. Hussong. Thank you.
2 Doctor, were you subpoenaed to be here today?

3 A Yes, ma'am.

4 Q Were you subpoenaed in the past to be at this
5 trial?

6 A Yes, ma'am.

7 MR. DEYSACH: Objection to the relevance.

8 MS. BURKE: Shall I respond, Your Honor.

9 THE COURT: No. Let's just get going.

10 MS. BURKE: Thank you.

11 BY MS. BURKE:

12 Q Where do you work, Dr. Hussong?

13 A I'm a general surgeon on Hilton Head Island.
14 I'm self employed in a group of three. My primary
15 practice is out of Hilton Head Hospital.

16 Q What is your affiliation with Hilton Head
17 Regional Hospital?

18 A I'm a general surgeon on staff at Hilton Head
19 Hospital as an active staff member. And I'm also part
20 of the medical executive committee at that facility.

21 Q Are you licensed in this state?

22 A Yes, ma'am.

23 Q Are you board certified?

24 A Yes, ma'am.

25 Q How long have you been a doctor of medicine?

DR. HUSSONG -- DIRECT BY MS. BURKE

1 A I started medical school in 1989, completed
2 that in 1993. Got licensed in the State of Tennessee
3 upon completion of Medical School and started my
4 residency in Tennessee.

5 Q What are some of your medical memberships?

6 A I'm a member of the American Medical
7 Association and American Society of Breast Surgeons. I
8 don't know that I'm any longer a member of the South
9 Carolina Medical Association.

10 Q Okay. What is your area of practice
11 specifically?

12 A General surgery.

13 Q Okay. What does that include?

14 A The common things we take care of in a hospital
15 like Hilton Head are hernias, gall bladders, colons,
16 breast surgery, thyroid surgery, wound care.

17 Q Have you practiced in any other areas or have
18 you always been a general surgeon?

19 A I've always been a general surgeon.

20 Q As part of your education and training, do you
21 have knowledge about the human anatomy and functions of
22 organs, arteries and other major components of the
23 body?

24 A Yes, ma'am.

25 MS. BURKE: Your Honor, at this time, I would like

DR. HUSSONG -- DIRECT BY MS. BURKE

1 to offer Dr. Hussong as a general medical expert.

2 THE COURT: I have no problem in the area of
3 general surgery and laparoscopic surgery. Do you need
4 to cross examine him at all?

5 MR. DEYSACH: No, Your Honor.

6 THE COURT: Okay. Ladies and Gentlemen, typically
7 a witness cannot give opinion testimony. Typically
8 witnesses have to testify to something they see or
9 heard specifically. We allowed exceptions to that for
10 people we qualify as expert witnesses.

11 In this case, Dr. Hussong is being qualified in
12 the area of general surgery and laparoscopic surgery.
13 Again, Ladies and Gentlemen, that is for you, as you
14 see fit, and as compared to the other evidence in the
15 case.

16 MS. BURKE: Thank you.

17 BY MS. BURKE:

18 Q Dr. Hussong, on or about July 28th, did you see
19 a patient named Troy Jinks at the hospital emergency
20 room?

21 A Yes, ma'am.

22 Q How is it that you were involved in that case?

23 A I was asked to come see him by the ER
24 physician, Dr. Wilkinson.

25 Q Is that standard?

DR. HUSSONG -- DIRECT BY MS. BURKE

1 A Yes. I assume that I was the general surgeon
2 on call that day for general surgery problems in the
3 emergency room. That's how I would have been involved.

4 Q Okay. Describe to the jury the condition that
5 you observed of the -- the patient, Troy Jinks?

6 A Can I refer to my consultation?

7 Q Yes.

8 A I was asked to see him, I think it was around
9 6:00 p.m. that day. And by my description, he appeared
10 to be in no distress -- and my -- the emergency room
11 descriptions and I'm sure -- does that answer your
12 question.

13 Q Thank you. Yes. And you saw him for what
14 reason?

15 A The gun shot wounds to the legs.

16 Q And did you observe the injuries, did you
17 examine him?

18 A Yes, ma'am.

19 Q And what observations did you -- did you make
20 of his condition of the gun shot wound?

21 A I noted that he had four bullet wounds, one
22 within what we call the medial part of the upper right
23 thigh, which is the inner part of the thigh, up towards
24 the groin region. There was another one slightly more
25 posterior, meaning towards the back side.

DR. HUSSONG -- DIRECT BY MS. BURKE

1 Again, on the inner part of the thigh, on the
2 right side there was an abrasion across the base of the
3 scrotum. And then on the left leg, again, kind of
4 posterior on the back side of the thigh, on the inner
5 part, was another wound. And then a fourth wound, kind
6 of between where the buttock and the leg begins on the
7 left side.

8 Q So you observed four holes, if you will, and an
9 abrasion of the scrotum?

10 A Exactly.

11 Q Did you observe a bullet in his body?

12 A No, ma'am. I could not feel one and we had
13 x-rays performed later that did not demonstrate a
14 bullet.

15 Q What conclusion did you come to as a result of
16 seeing four holes and not finding a bullet?

17 A My conclusion would be that either there were
18 two separate gun shot wounds through in through; or in
19 his case, with the abrasion on the scrotum and how the
20 two wounds on the inside of the thighs lined up,
21 probably one bullet went through creating all four
22 holes and the abrasion on the scrotum.

23 Q So one bullet, four impacts?

24 A Correct.

25 Q Plus the abrasion on the scrotum?

P. Gannon -- Direct by Ms. Burke

1 Q Is the kit in substantially the same condition
2 it was when you took it to SLED?

3 A Pretty much, yes. It looks like it.

4 Q Do you need to look at it further?

5 A Yes, yes, it does.

6 Q Do you remember when you took it to SLED?

7 A It was on August 15th of 2008.

8 Q You also brought it back from SLED, didn't you?

9 A I did.

10 Q So you did a round trip?

11 A A round trip.

12 MS. BURKE: Thank you. No further questions.

13 THE COURT: Anything further, Mr. Deysach?

14 MR. DEYSACH: No, Your Honor.

15 THE COURT: You may step down, sir, and you are
16 excused.

17 MS. BURKE: Your Honor, the State calls -- the
18 court's indulgence. The State calls Kathleen Woodward.

19 (Witness forward.)

20 THE COURT: Ms. Woodward, please come forward
21 right here to be sworn. There's a Bible right here.
22 Place your left hand on the Bible and raise your right
23 hand.

24 KATHLEEN WOODWARD, having been
25 first duly sworn, testified as follows:

P. Gannon -- Direct by Ms. Burke

1 **THE COURT:** Ms. Woodward, when you come around,
2 will you give my court reporter your full name and
3 spell your last name for her.

4 **THE WITNESS:** Sure. My name is Kathleen Woodward.
5 W-o-o-d-w-a-r-d.

6 **THE COURT:** Thank you.

7 **DIRECT EXAMINATION BY MS. BURKE:**

8 **Q** You were subpoenaed to be here today, ma'am?

9 **A** Yes, ma'am.

10 **Q** Did you also at one point have the last name
11 Amick.

12 **A** Amick, yes, ma'am.

13 **Q** In 2008, that was your last name?

14 **A** Yes, ma'am.

15 **Q** Okay. What is your occupation?

16 **A** I'm employed by the South Carolina Law
17 Enforcement Division, commonly known as SLED.

18 **Q** How long have you worked there?

19 **A** Just a little over five years.

20 **Q** What is your job responsibility there?

21 **A** I'm currently in the Toxicology Department,
22 where I'm being trained to be a toxicologist. But
23 prior to that, I worked in the Trace Laboratory.

24 **Q** Are you a forensic scientist?

25 **A** Yes, ma'am.

K. WOODWARD -- DIRECT BY MS. BURKE

1 Q And what is your field -- what was the field at
2 the time in 2008?

3 A I worked in the Trace Department. In that
4 department, we analyze evidence involving gun shot
5 residue, paint, fibers, glass, fire debris from
6 suspicious fires; duct tape and various other things.

7 Q How would you describe trace evidence?

8 A Trace evidence is evidence that -- it's very
9 small and most of the time it has to be analyzed using
10 a microscope, chemically analyzed with various
11 instrumentation. But over all, I guess the best way I
12 would describe the evidence as small and has to be
13 handled very carefully.

14 Q So things you can't see with the naked eye?

15 A That's right.

16 Q And that includes gun shot residue you said?

17 A Yes, ma'am.

18 Q Is that also called GSR?

19 A Yes, ma'am.

20 Q What education and training do you have in
21 trace evidence?

22 A Well, I received a Bachelor's of Science in
23 Chemistry from Converse College in Spartanburg, South
24 Carolina. And when I came to work at SLED, I completed
25 an extensive in-house training involving six months or

K. WOODWARD -- DIRECT BY MS. BURKE

1 more of training time. And then six months or more of
2 taking cases in each discipline.

3 Q Are you certified as a GSR Examiner?

4 A I am.

5 Q You said you worked in SLED for a long time,
6 how many GSR tests do you think you have performed?

7 A I've probably performed around 750 to 1,000 GSR
8 tests.

9 Q Have you been qualified as an expert before in
10 the -- as a GSR expert?

11 A Yes, ma'am. I've been qualified as a GSR
12 expert probably around 21 times I think. I think this
13 makes 22.

14 MS. BURKE: Your Honor, I offer Kathleen Woodward
15 as a GSR expert, gun shot residue expert.

16 THE COURT: Mr. Deysach?

17 MR. DEYSACH: No voir dire, Your Honor, and no
18 objection.

19 THE COURT: Okay. Ladies and Gentlemen, in this
20 case, Agent Woodward is being qualified in the area of
21 gun shot residue. As an expert, again, her opinion is
22 to be used as you see appropriate and as applied to the
23 other evidence in the case.

24 BY MS. BURKE:

25 Q Okay. Like I told Dr. -- Dr. Hussong, who

K. WOODWARD -- DIRECT BY MS. BURKE

1 testified before -- before you did, talk to me like a
2 two year old. What's gun shot residue, just the
3 basics?

4 A Gun shot residue is -- the morphology of it or
5 the shape, it's round and it's composed of three
6 different components, lead, barium and antimony. Gun
7 shot residue is produced from the primer cap of a
8 cartridge or bullet. When the hammer strikes the
9 primer cap, there's a small explosion that takes place
10 from the spark that that creates. And the pressure
11 that -- that little chemical explosion, so-to-speak,
12 creates what propels the bullet out of the barrel of
13 the gun.

14 And behind that bullet, of course, is the smoke
15 that you see after the weapon is fired. And that smoke
16 is essentially the GSR. It's the little particles of
17 lead, barium and antimony that are coming out of the
18 gun when it's fired. And those little particles can
19 come to rest on anything in the vicinity of the weapon
20 after it's fired. So it can come to rest on your
21 hands. It can come to rest on your clothes. If
22 there's a chair sitting nearby, it can come to rest on
23 that chair. You know, just anything that it comes in
24 contact with.

25 Q And this is by the person who fired the gun --

K. WOODWARD -- DIRECT BY MS. BURKE.

1 a gun or --

2 A Well, GSR can be on the hands from firing the
3 weapon. It can also -- it can also come to rest on the
4 weapon itself. So if someone handles the weapon that's
5 previously been fired, they could potentially get GSR
6 on their hands. Or if they are in -- in close
7 proximity or in the vicinity of a weapon when its
8 fired, they could get gun shot residue on their hands
9 as that plume of smoke expels from it.

10 Q Or it can be on the other parts of their body?

11 A That's right.

12 Q Would it depend on where their hand is toward
13 -- approximately to where the gun may have been fired?

14 A That's right.

15 Q How long does gun shot residue remain
16 approximately on these -- on the places where it falls
17 or on a human body?

18 A On -- on a living person, we will not analyze a
19 kit that was taken more than six hours after the time
20 of the incident. Because after six hours, we would
21 expect for the gun shot residue to most likely be gone
22 from the hand. Gun shot residue is very delicate
23 evidence, so you can remove it from your hands just by
24 like putting them in and out of your pocket. If your
25 hands are sweating, it's -- and over time, it's also

K. WOODWARD -- DIRECT BY MS. BURKE

1 absorbed by the skin. We would also possibly -- you've
2 gone to the restroom during the six hour time and maybe
3 washed your hands. Hand washing will definitely get
4 rid of the gun shot residue on your hands.

5 So, on a living person, about a six hour time
6 frame is what we look at. On a deceased person or an
7 inanimate object, the gun shot residue will remain
8 there indefinitely until it is removed by an outside
9 force of some kind.

10 Q So this six hour window is the best time for
11 you, as a scientist, to make a better -- a good
12 examination as to if a person came in contact with the
13 gun or fired the gun?

14 A That's correct.

15 Q Or held the gun?

16 A That's correct. The kit needs to be taken
17 within a six hour time frame.

18 Q Okay. And how are the samples collected?

19 A Well, the officer at the incident site or
20 whenever -- whenever they deem it appropriate or they
21 arrive on the scene, they take the GSR kit. And then
22 they turn it into SLED for us to analyze the kit.

23 But a GSR kit is taken on four areas of the
24 hand. The right palm and right back, and the left palm
25 and the left back. And first the particles lifts are

K. WOODWARD -- DIRECT BY MS. BURKE

1 taken, which are essentially like little sticky tabs.
2 And they dab those sticky tabs all over the outside,
3 like the palm and the back of the hand.

4 And then once they've completed that part, they
5 take swabs off of all four of those same areas of the
6 hands. Two swabs in each area. And they also take a
7 control swab.

8 Q And did you receive a -- a kit in this case?

9 A Yes, ma'am.

10 Q Do you know who submitted it?

11 A Can I look at my notes?

12 Q Yes.

13 A On the service request, it says that it's
14 Detective Kelly Heany.

15 Q Okay.

16 A And --

17 Q Who did you directly get it from?

18 A I got it from Lisa Waananen.

19 Q Okay. Who is she?

20 A She's the technician in the Trace Evidence
21 Laboratory.

22 Q Okay. I hand to you State's Exhibit 3, do you
23 recognize it?

24 A Yes, ma'am.

25 Q How is it that you recognize it?

K. WOODWARD -- DIRECT BY MS. BURKE

1 A It has the -- it has our label, our bar code
2 label here, saying lab number, and what item it is.
3 These are my initials here. And my initials here on
4 the evidence tape that -- where I sealed it when I was
5 finished with it.

6 Q What's that lab number?

7 A L08-12585.

8 Q So this is what you received from Lisa?

9 A Yes, ma'am.

10 Q Was it tampered with in any way when you
11 received it?

12 A No, ma'am.

13 Q I presume you opened it?

14 A Yes, ma'am.

15 Q Do you recognize this?

16 A I do.

17 Q What is it?

18 A This is a Gun Shot Residue Evidence Collection
19 Kit. And on the back of it, it has the bar code lab
20 number again, item 1, and my initials.

21 Q Has that been tampered with?

22 A No, ma'am.

23 Q And is this the kit you analyzed in this case?

24 A Yes, ma'am.

25 Q And what testing was performed?

K. WOODWARD -- DIRECT BY MS. BURKE

1 A The Gun Shot Residue Kit was analyzed for the
2 metals we -- I previously mentioned, lead, barium and
3 antimony.

4 Q And what were you looking for?

5 A I was looking for the presence of lead, barium
6 and antimony to see if there was an indication that
7 there was gun shot residue on the swabs. And based on
8 my findings, the quantities that I found did not
9 indicate the presence of gun shot residue on any area
10 of the hand.

11 Q So as to the -- let me go back -- what's inside
12 here?

13 A The particle lists are in here.

14 Q Will you take those out? Okay. As to left
15 palm, what was your -- the conclusion based on your
16 examination?

17 A Well, this particle lift was not analyzed, but
18 the swabs from the left palm were analyzed, and that
19 did not indicate the gun -- the presence of gun shot
20 residue.

21 Q And as to this container?

22 A The right back, again, a particle lift was not
23 analyzed, but the swabs were analyzed and the metals
24 did not indicate the presence of gun shot residue.

25 Q And the -- what is the result of the swabs from

K. WOODWARD -- DIRECT BY MS. BURKE

1 the left back?

2 A The swabs from the left back, again, were --
3 there was no indication of gun shot residue on those
4 swabs.

5 Q And the swabs from the right back -- I mean,
6 the right --

7 A Palm.

8 Q Right palm?

9 A On the right palm, again, the swabs were
10 analyzed, not this particle lift, but this -- there
11 were -- there was not quantities of metal that would
12 indicate gun shot residue.

13 Q When you say the swabs were analyzed, but not
14 the kit, clarify again what that means?

15 A When you're taking a GSR Kit, the hands are
16 swabbed, two swabs each on -- when I say each, on each
17 area of the hands. And also a control swab is taken
18 from an area that is believed to have not been exposed
19 at the time of the incident. So, possibly like the
20 back of the knee or, you know, maybe the stomach or
21 something like that. And based on the quantity of the
22 metals that were found on those swabs, it did not
23 indicate the presence of gun shot residue. So it was
24 -- it was not necessary to analyze the particle list by
25 our protocol.

K. WOODWARD -- DIRECT BY MS. BURKE

1 Q Which -- what is the name of the person who
2 these swabs were taken of?

3 A The GSR Kit was taken from Troy Jinks.

4 Q Do you know that person?

5 A No.

6 Q Okay. So as to Troy Jinks and the particles,
7 the samples that were submitted to you, your analysis,
8 again, is that the -- the result of your examination as
9 to Troy Jinks and gun shot residue is? That's not
10 clear.

11 A Oh, that the -- the quantities of metals that I
12 found did not indicate the presence of gun shot
13 residue.

14 MS. BURKE: Thank you. No further questions at
15 this time.

16 THE COURT: Mr. Deysach?

17 MR. DEYSACH: No, Your Honor.

18 THE COURT: You are excused. Thank you.

19 THE WITNESS: Thank you.

20 MS. BURKE: Your Honor, the State does move
21 State's Exhibit 3 into evidence subject to the complete
22 chain with Detective Heany.

23 THE COURT: Subject to the complete chain. Ladies
24 and Gentlemen, we're going to take a very quick break.
25 I'm going to send you back to your jury room again. Do

S. Cromer -- Cross by Mr. Deysach

1 Q All right. And you only do the type of testing
2 that you're asked to do, correct?

3 A That is correct.

4 Q And if this was the type of testing they were
5 looking for, it probably would have gone to somebody
6 different, correct?

7 A It would have gone to the fingerprint
8 department before it comes to me.

9 Q And so this did not come to you from the
10 fingerprint department at all, correct?

11 A That is correct.

12 Q So they must not have been asked to do any
13 fingerprint analysis on that?

14 A That's what I would assume, that it wasn't
15 asked for.

16 MR. DEYSACH: That's it, Your Honor.

17 THE COURT: Okay. Anything further?

18 MS. BURKE: Thank you for your time. No, Your
19 Honor.

20 THE COURT: All right. You are excused, ma'am.
21 Thank you. Call your next witness.

22 MS. BURKE: The State calls Octavia Scott.

23 (Witness forward.)

24 THE COURT: Ms. Scott, come on forward to be
25 sworn, Ms. Scott.

O. SCOTT -- DIRECT BY MS. BURKE

1 OCTAVIA SCOTT, having been
2 first duly sworn, testified as follows:

3 THE COURT: Ma'am, if you would give us your full
4 name for the record and spell your last name please.

5 THE WITNESS: Octavia Janeese Scott. S-c-o-t-t.

6 THE COURT: Thank you, ma'am.

7 DIRECT EXAMINATION BY MS. BURKE:

8 Q Good afternoon, Ms. Scott.

9 A Hi.

10 Q As you know we're here to talk about a shooting
11 that happened on July 28, 2008; how old were you at
12 that time?

13 A I think like 22 or 23.

14 Q Okay. So you're about...?

15 A Twenty-five.

16 Q Were you arrested as a result of that shooting?

17 A Yes.

18 Q Did the Solicitor's Office make an offer to you
19 to dismiss all of your pending charges if you testified
20 truthfully at this trial?

21 A Yes.

22 Q What is your understanding if your testimony is
23 not truthful?

24 A That I could be charged with it.

25 Q Currently you're still charged, is that

O. SCOTT -- DIRECT BY MS. BURKE

1 correct?

2 A Yes.

3 Q Prior to talking to the Solicitor's Office, did
4 you also talk to the police about the details of the
5 shooting?

6 A Yes.

7 Q And just for clarity, you're under subpoena
8 today, aren't you?

9 A Yes.

10 Q Okay. And your conversation with law
11 enforcement, when did that occur?

12 A I think like four days after the shooting.

13 Q In 2008?

14 A Yes.

15 Q So you talked to the police about what happened
16 in 2008?

17 A Uh-huh.

18 Q At that time, was the Solicitor's Office
19 involved?

20 A No.

21 Q Were you offered a deal in exchange for your
22 testimony in 2008?

23 A No.

24 Q You were represented by the Public Defender's
25 Office with this charge in 2008?

O. SCOTT -- DIRECT BY MS. BURKE

1 A Yes.

2 Q You had the occasion to go to the Public
3 Defender's Office and speak with your lawyer during
4 that time?

5 A Well, the first time, the Public Defender came
6 to me when I was in jail.

7 Q Okay. So you told law enforcement about what
8 happened in the shooting in 2008 before the Solicitor's
9 Office offered you a deal or before any involvement
10 from the Solicitor's Office, is that correct?

11 A Yes.

12 Q You mentioned about four days later after the
13 incident, you turned yourself in?

14 A Yes, ma'am.

15 Q Do you remember about how long your interview
16 was with law enforcement? This was a Bluffton Police
17 Department, is that correct?

18 A Yes. I want to say maybe like an hour and a
19 half, two.

20 Q And during the first part of the interview, did
21 you lie to law enforcement about the details of what
22 happened?

23 A Yes.

24 Q And half way through your interview, did you
25 tell them another story as to certain aspects of what

O. SCOTT -- DIRECT BY MS. BURKE

1 happened?

2 A Well, I said one story and then afterwards, I
3 said the truth.

4 Q You answered the questions that were asked of
5 you during that time?

6 A Yes.

7 Q Okay. So before your interview with law
8 enforcement was over that day, this hour to two hour
9 interview, you told them the details of the actual
10 shooting?

11 A Yes.

12 Q Okay. Ms. Scott, as a witness here, you're not
13 on trial. But as a witness, the jury is entitled to
14 hear any record that you might have. Do you have a
15 breach of trust conviction?

16 A Yes.

17 Q In the past?

18 A Yes.

19 Q That was in Magistrate's Court?

20 A Yes.

21 Q Okay. And that was -- do you remember what
22 year that was?

23 A Um --

24 Q 2008?

25 A Yeah, because I went to jail for this charge,

O. SCOTT -- DIRECT BY MS. BURKE

1 and then they served me when I got to jail for the
2 breach of trust.

3 Q So you said you've been to jail before on other
4 matters?

5 A Yes, ma'am.

6 Q Did you see someone shoot Troy Jinks on July
7 28, 2008?

8 A Yes, ma'am.

9 Q Who shot him?

10 A Bo. Bo Wright.

11 Q Who is he?

12 A Right there.

13 Q What is he wearing?

14 A White -- and a tie.

15 Q Have you ever lied to law enforcement about
16 that?

17 A Have I ever lied?

18 Q About that.

19 A At first -- at first I did.

20 Q About who shot Troy Jinks?

21 A No. No. That was always the truth.

22 Q So let me repeat that, when you met with law
23 enforcement four days after you turned yourself in, who
24 did you tell them shot Troy Jinks?

25 A Bo Wright.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q During the first half of your interview with
2 law enforcement, where you said you -- admittedly you
3 said you lied, did you lie at that point when they
4 asked you who shot Troy Jinks?

5 A No. That was always the same thing.

6 Q Now, what was your relationship with -- did you
7 say -- I'm sorry, what was the other name you gave?

8 A Bo.

9 Q What names do you know him by?

10 A Bo Wright.

11 Q Anything else?

12 A Eric right now.

13 Q Anything else?

14 A Joseph Bo Derrick.

15 Q And what is -- what was your relationship with
16 Joseph Wright, Joseph Bo Derrick Wright, Bo Wright in
17 2008 at the time of the shooting?

18 A We was sex partners.

19 Q Okay. And how long had y'all been in a sexual
20 relationship at that time?

21 A On and off since I was 18.

22 Q At the time in July of '08, you said you were
23 about 23?

24 A Uh-huh.

25 Q Okay. So over three years or so?

O. SCOTT -- DIRECT BY MS. BURKE

1 A Well, I was 22 because I graduated in '04, I
2 was 18. I met after graduating.

3 Q Okay. So this was a sexual relationship. Do
4 you all -- where did he live?

5 A Savannah.

6 Q Is that where you met him?

7 A Uh-huh.

8 Q If you don't mind, just remember that the court
9 reporter is taking everything you say and everything I
10 say and sometimes I slip up. You can -- yes or no is
11 fine.

12 A Okay.

13 Q His connections to South Carolina, was it just
14 you or --

15 A Yes.

16 Q That you know of?

17 A Yes.

18 Q And so you would go to Savannah to see him and
19 he would come to South Carolina to see you?

20 A Uh-huh.

21 THE COURT: Is that a yes for the record?

22 THE WITNESS: Yes.

23 BY MS. BURKE:

24 Q Take your time. And before I ask this, since
25 2008 when you met with the Solicitor's Office, have you

O. SCOTT -- DIRECT BY MS. BURKE

1 also told our office different things about -- or
2 things you never remembered about the incident that you
3 did not tell law enforcement?

4 A Yes.

5 Q Were some of these questions asked to you by
6 law enforcement?

7 A Repeat that? I don't --

8 Q That's okay. Strike that for now. We'll get
9 back to that. Let's get back to it, what happened on
10 that day, July 28, 2008?

11 A Okay.

12 Q Talk to the jury about that.

13 A Well, Bo Derrick was with me that morning. I
14 spent the night with him that night. We came back to
15 Carolina. And at first we was at Ma's house, in the
16 lane. We was chilling. And they have a Chicken Shack
17 on the hill. So at that time, I was friends with
18 Monique Johnson. And she came in and met me in the
19 lane, and we was going on the hill to get -- to go to
20 the Chicken Shack.

21 We all jumped in her car. When we get up on the
22 Chicken Shack -- when we get up on the hill, we go in.
23 We go to the back. The Chicken Shack is closed. I get
24 -- I get out. I go to the Chicken Shack. It's closed,
25 so I get back in. And that's how we proceeded to leave

O. SCOTT -- DIRECT BY MS. BURKE

1 off.

2 And Monique and Troy gets into it. She gets
3 out. They get into it. Troy comes to the car on my
4 side, because we was facing this way. So I'm on this
5 side. And Bo's on the left side of me. And Troy is on
6 my side, in my window, he's talking. Doing his hands
7 like this (indicating) or whatever. So when he's doing
8 like this (indicating), that's when Bo jumps out. He
9 didn't get all the way out the car. One leg was on the
10 railing and one foot was on the ground. And he shoots
11 over the hood. Troy starts running and we leave off
12 the hill.

13 Q Okay. You got out?

14 A Yes, ma'am.

15 Q We're going to have to slow it down a little
16 bit.

17 A Okay.

18 Q Was Monique with you and Troy that entire --
19 and the Defendant earlier on that day or?

20 A Well, she came and met me at my aunt's house.

21 Q Okay.

22 A Yeah.

23 Q And that is your aunt in Savannah or South
24 Carolina?

25 A South Carolina.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q Okay. And was the defendant with you?

2 A Yes. He was with me.

3 Q Okay.

4 A Yes.

5 Q Was anyone with Monique when she came to get
6 you?

7 A Yes. A female. They say her name is Trish.
8 That's what I know her name was that day.

9 Q Had you seen her before that day?

10 A No. I met her that day.

11 Q So you all get into the car to go to the hill?

12 A Uh-huh.

13 Q This is also known as the Pinckney Hill?

14 A Yes, ma'am.

15 Q Do you have family on the hill?

16 A No, ma'am. Just associates, friends.

17 Q But there is a Chicken Shack there?

18 A Well, I think it's closed down now, but it used
19 to be like a little -- like a little building, they
20 sold chicken and little wings, stuff like that.

21 Q And that's what you all were going to get,
22 chicken?

23 A Uh-huh.

24 MS. BURKE: May I approach, Your Honor.

25 THE COURT: You may.

O. SCOTT -- DIRECT BY MS. BURKE

1 BY MS. BURKE:

2 Q I show you what's already been entered into
3 evidence as State's 2, is this the area -- a close view
4 of the hill, Pinckney Hill?

5 A Yes, ma'am.

6 Q There's lot of bushes over here.

7 A Yes, ma'am.

8 Q Further back, is that where the Chicken Shack
9 is?

10 A Yes, ma'am. And there's other trailers back
11 there as well.

12 Q Okay. Before y'all got to the back of -- to go
13 to the Shack, was there any -- do you remember if there
14 was any confrontation between Troy and the driver?

15 A Yes, there was. That started like as soon as
16 we pulled on the hill --

17 Q And take your time.

18 A Okay. As soon as we pulled on the hill,
19 Monique saw Troy. She jumped out. They started
20 arguing. I thought they were arguing over money. I
21 didn't know anything about another situation. That's
22 what I thought they were arguing over. So Troy, you
23 know, he's talking --

24 Q Did you -- did you -- what you're about to say
25 is information that you personally heard or that you

O. SCOTT -- DIRECT BY MS. BURKE

1 were later told?

2 A Later told.

3 Q Okay.

4 A That they was arguing over --

5 MR. DEYSACH: Objection --

6 THE COURT: Okay. Okay. We're not going to go
7 there.

8 MS. BURKE: I was trying to take it slow.

9 THE COURT: Okay.

10 BY MS. BURKE:

11 Q So if you can -- you were in this car?

12 A Yes, ma'am.

13 Q And who gets out?

14 A Monique.

15 Q Okay. Did you hear what they were arguing
16 about?

17 A No. All --

18 Q Okay. What did you observe, though, in terms
19 of between Troy and Monique -- you said they were
20 arguing?

21 A Yeah. They was just arguing --

22 Q Did they hit each other?

23 A Well, I mean, Mon -- I mean, they -- you know,
24 when people get mad, they all up in each other's face,
25 arguing. Monique, she starts taking off stuff and then

O. SCOTT -- DIRECT BY MS. BURKE

1 she turns around and comes back and get in the car.

2 Q "She takes off stuff", what do you mean by
3 that?

4 A I think she took off her earrings. I think a
5 bracelet, I think.

6 Q Okay.

7 A And then she comes back and gets in the car.

8 Q Okay. Did you see Troy do anything to her?

9 A No.

10 Q Okay. Touch her?

11 A No.

12 Q Did he take off stuff?

13 A No.

14 Q So she gets back in the car?

15 A Uh-huh.

16 Q And you all proceed to --

17 A To go to the back.

18 Q To the back. The Chicken Shack is closed?

19 A Uh-huh. We proceed --

20 Q What then?

21 A -- turn around and go back out.

22 Q Okay. So now you're coming back. Can you step
23 down from the witness stand?

24 MS. BURKE: Your Honor, may the witness --

25 THE COURT: Okay.

O. SCOTT -- DIRECT BY MS. BURKE

1 MS. BURKE: Thank you.

2 BY MS. BURKE:

3 Q Tell us who's in the car.

4 A I'm sitting here. Now this is facing this way,
5 but we was facing that way.

6 Q I understand.

7 A Let's turn these things. I don't want to --

8 Q That's fine. We've got State's Exhibit 2, if
9 you can walk over to the jury for me. State's Exhibit,
10 entered into evidence, 2, you've got cars facing -- I'm
11 really bad with a compass, but let's just assume that
12 grass -- that the foliage back here is north. And
13 anything forward would be south. So the car now is
14 facing back that way or south?

15 A South.

16 Q Okay. So if we were looking at this photo, --

17 A It would be facing this way.

18 Q We're this way. So you correctly turned the
19 chairs this way?

20 A Uh-huh.

21 Q And we're facing this way, where's the driver's
22 seat?

23 A Right here (indicating.)

24 Q Okay. Who's sitting there?

25 A Monique.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q And who's Monique? What's her last name?

2 A Johnson.

3 Q Okay. And who's sitting here?

4 A Trish.

5 Q The person who you --

6 A Met that day. I don't even know her last name.

7 Q Okay. How do you know her name is Trish?

8 A Because that's what they said.

9 Q Okay. Who's back there?

10 A Bo.

11 Q And that's your partner at the time?

12 A Yeah.

13 Q All right. And who's back there?

14 A Me.

15 Q All right. So you're sitting right here?

16 A Uh-huh.

17 Q The defendant's sitting right there?

18 A Uh-huh.

19 Q You're coming down from the hill. Then what
20 happens?

21 A The car stops. Troy comes like -- Troy comes
22 running to the car. He's saying a bunch of stuff. And
23 at this time he's looking at me because he's standing
24 right -- right here by my window. So he's doing his
25 hand like this (indicating) now, but I'm not exactly

O. SCOTT -- DIRECT BY MS. BURKE

1 sure what he's doing, but he's doing like this
2 (indicating) at the car, saying a lot of stuff. So --

3 Q Could you hear what he was saying?

4 A Not really because the window was up. He was
5 saying a lot of stuff and doing a lot of hand gestures
6 like this (indicating).

7 Q Okay.

8 A So Monique proceeds to get out again, she gets
9 out. She go, walks to him, start talking stuff again.
10 She gets back in -- or she's on her way back to the car
11 to get back in. Before she could get back in, Bo stood
12 up, one foot on the railing, one foot on the ground,
13 and shoots. Troy runs and we leave off the hill.

14 Q Okay. And I'll slow you down one more time.

15 A Okay.

16 Q Did you see Troy with the gun -- the Defendant,
17 rather -- Eric Wright with the gun?

18 A Did I see Eric Wright with a gun?

19 Q Yes.

20 A When he was getting out.

21 Q Okay. And as you see him with the gun, getting
22 out -- and if you can sit here, pretending to be him.
23 And I'm you. Tell me what did you do?

24 A He -- he's looking -- Troy's looking at me and
25 looking in the car. He's looking at Troy. So he pulls

O. SCOTT -- DIRECT BY MS. BURKE

1 the gun out. When he proceeds to get out, I grab his
2 arm.

3 Q How? Grab me.

4 A Like this (indicating). I said, "Bo, no."
5 Just like that.

6 Q He said he -- I'm kind of in the way between
7 the court reporter and so forth. What did you say when
8 you grabbed his arm?

9 A I said, "Bo, no."

10 Q And then what happened?

11 A He yanked from me, got out, shot.

12 Q How many shots did you hear?

13 A Two.

14 Q Now, in 2008 when you met with law enforcement,
15 during that first hour or so of the interview--

16 A Uh-huh.

17 Q -- did you tell them that you grabbed his hand,
18 the Defendant's hand? Do you recall telling them that?

19 A Yeah. I always said that.

20 Q And the second part, you -- you still said you
21 grabbed his hand, right?

22 A Uh-huh.

23 Q Evidently he didn't stop?

24 A No.

25 Q Were you kind of about the same size back then?

O. SCOTT -- DIRECT BY MS. BURKE

1 A Yeah.

2 Q So you -- did -- in your opinion, did you grab
3 -- did you grab him lightly or forcefully?

4 A I mean enough to let him know that he shouldn't
5 do it.

6 Q Did he hesitate?

7 A No, because he yanked from me..

8 Q He yanked from you?

9 A Uh-huh.

10 Q Do you remember hearing the bullets as they
11 were fired?

12 A I heard the shots.

13 Q The shots rather?

14 A Yeah.

15 Q Did it sound like it was back to back or any
16 space in between or?

17 A It was like pow pow. Just like that.

18 Q Pow pow? It's not a specific question, I'm
19 just trying to understand.

20 A Yeah, I guess it was pow pow.

21 Q Okay.

22 A I mean, it wasn't a big gap, but you know right
23 after --

24 Q Okay. You distinctly hearing two shots though?

25 A Yes.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q Okay. Thank you. You may get back on the
2 stand. Okay. You said he got back into the car?

3 A Yes, ma'am.

4 Q Did you all -- had you always said that to law
5 enforcement?

6 A Yes.

7 Q When you first interviewed, during that first
8 hour of the interview, did you tell him that the
9 Defendant got back into the car?

10 A Yes.

11 Q Did you all stick around to see if Troy was
12 okay?

13 A No, ma'am.

14 Q How long have you known Troy?

15 A Since like 8th grade, 7th grade. A long time.

16 Q Not a good way to treat a friend?

17 A Tell me about it.

18 Q You tell me. So why didn't you stick around?

19 A Because me, personally, I had other warrants
20 and stuff I was running from like that breach of trust
21 charge.

22 Q This Magistrate's Court charge?

23 A And I was scared. I was shocked. I was
24 blowed. Blowed, meaning upset, because it wasn't
25 supposed to go down like that. I had no idea, none of

O. SCOTT -- DIRECT BY MS. BURKE

1 that. I just -- it was moving fast and I didn't stay.

2 Q What happened after y'all got back in the car?
3 What did y'all do after that?

4 A We just -- we went to Savannah.

5 Q Where in Savannah?

6 A I went -- I went with Bo to his aunt's house.

7 Q Did the Defendant say anything to you when he
8 got back into the car?

9 A He just was like in a -- he -- he was in a
10 state of shock too. He was like -- he was just -- he
11 still had the gun in his hand. He was just -- he
12 looked at me. He was like, man, I messed up. Just
13 like that. And I looked at him and I was like, Bo, why
14 did you do that. Why did you do that. And he couldn't
15 say. He just kept saying he messed up.

16 Q So y'all are going to the Chicken Shack, four
17 people, and he's got a gun in the car?

18 A Uh-huh.

19 Q On your way to get chicken?

20 A Uh-huh.

21 COURT REPORTER: Is that a yes or a no please.

22 THE WITNESS: Yes, ma'am. Sorry.

23 BY MS. BURKE:

24 Q Did he have the gun with him when he got back
25 in the car?

O. SCOTT -- DIRECT BY MS. BURKE

1 A Yes.

2 Q Did he have the gun with him as y'all drove to
3 Savannah?

4 A Yes.

5 Q Did you see what he did with the gun?

6 A No.

7 Q What was going through your head during --
8 after the shooting?

9 A A whole lot of stuff, like, Octavia, what are
10 you doing? What's my mama going to think. What about
11 Troy. I didn't even know Troy was shot until like we
12 got like half way to Savannah. And his baby's mother
13 was just -- was -- she was my best friend, too, Shirley
14 Stokes. She called me and was like, Octavia, y'all
15 just shot Troy. I was like what. She was like, yeah,
16 y'all just shot Troy. And she hung up.

17 Q Well, you say you didn't know he got shot, what
18 did you think happened when two shots were fired?

19 A See, he ran. See, he ran. The shots was
20 fired, but he still was running. Like I never saw him
21 drop or anything like that yet.

22 Q You saw him running after the first shot or the
23 second?

24 A As soon as the gun was fired, he started
25 running.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q So his back started being turned to you?

2 A Yeah, and he ran.

3 Q By the time you heard a second shot go off, was
4 his back turned already?

5 A By that time, I think -- I don't even remember
6 seeing him because everything went fast. And we just
7 left.

8 Q Did you have a gun?

9 A No.

10 Q Did Monique have a gun?

11 A No.

12 Q Did this person in the front seat that you met
13 that day, did she have a weapon of any kind?

14 A No, not that I saw.

15 Q The only person in the car with a gun was the
16 Defendant?

17 A Yes.

18 Q Did you see him load the gun?

19 A No.

20 Q You said that Troy was at your side of the car?

21 A Yes.

22 Q Did you feel threatened in any way when he was
23 on your side of the car, while he was pointing?

24 A No.

25 Q Did he have anything in his hand?

O. SCOTT -- DIRECT BY MS. BURKE

1 A No.

2 Q Could you have confused anything in his hand?

3 A No. Because he was like right in front of my
4 window.

5 Q All he had was fingers?

6 A Yeah. That's it.

7 Q Did you tell the Defendant to shoot Troy?

8 A No.

9 Q After y'all got back to Savannah, did the
10 Defendant make any statements to you?

11 A No.

12 Q As to why he shot Troy?

13 A No.

14 Q Did he make any statements about the girl in
15 the front seat, and the Defendant?

16 A Like the next day. That's when they started
17 telling me that.

18 MR. DEYSACH: Objection to the hearsay.

19 THE COURT: Okay.

20 BY MS. BURKE:

21 Q What did the Defendant tell you the next day
22 about the person in the front seat?

23 A Well, he didn't tell me anything. Monique --

24 MR. DEYSACH: Objection to the hearsay.

25 THE COURT: Okay. Again, you can't say what

O. SCOTT -- DIRECT BY MS. BURKE

1 someone else told you.

2 THE WITNESS: Okay.

3 BY MS. BURKE:

4 Q Did the Defendant at any time, whether the day
5 of the incident or the day after, give you any
6 explanation as to why he had a gun that day and why he
7 fired at Troy Jinks?

8 A No.

9 Q Were you present when the Defendant called --
10 did the Defendant make a phone call when he was with
11 you after the incident?

12 A Yes.

13 Q Who did he call?

14 A Hotline.

15 Q What hotline?

16 A The crime hotline because we were on the news.
17 And after he saw that, he called the hotline. He was
18 like, it wasn't him. He wasn't there.

19 Q You were present with him when he made that
20 call?

21 A Yes.

22 Q Did y'all cook that up?

23 A No.

24 Q Or agree to do that?

25 A No.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q And do you know how many days after?

2 A I think maybe it was the day after.

3 Q Pardon?

4 A The day after or maybe that night, later on
5 that night.

6 Q Okay.

7 A I can't remember.

8 Q But he called the hotline and he -- you heard
9 him say what?

10 A That it wasn't him and he didn't do it. He
11 wasn't there.

12 Q That he was not there?

13 A Yes.

14 Q Was he there?

15 A Yes.

16 Q So why did you turn yourself in?

17 A Because it's the right thing to do. And my
18 mama, I just kept thinking about my mama. And I know
19 that's what she would want me to do and that's what I
20 needed to do. Because what happened was not right and
21 it was not supposed to happen like that.

22 Q Did you talk to Monique about turning herself
23 in?

24 A No. She actually -- like, well, she told me
25 she was going to turn herself in. That's what she told

O. SCOTT -- DIRECT BY MS. BURKE

1 me.

2 Q Did she turn herself in as well?

3 A Yeah. I think she turned herself in, I think,
4 before me.

5 Q Did the Defendant know you turned yourself in?

6 A Yeah.

7 Q Did you talk to him about turning himself in?

8 A I told him that I was going to. And I left him
9 and I came back to Carolina and turned myself in.

10 Q So your partner -- you tell your partner that
11 you're turning yourself in?

12 A Uh-huh.

13 Q The driver turns herself in. Did the Defendant
14 follow suit after you turned yourself in?

15 A You mean, like, did he turn himself in?

16 Q Yes.

17 A Oh, I'm not sure.

18 Q He didn't come with you, though?

19 A No.

20 Q He didn't come with Monique as far as you know?

21 A No, ma'am.

22 Q All right. Going back to the beginning,
23 explain to the jury, you turned yourself in four days
24 after the incident?

25 A Yes, ma'am.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q Four days after the incident, you said your
2 face was on the news. You were worried about your mom,
3 what she's thinking about. You stepped up to the plate
4 and you turned yourself in?

5 A Yes, ma'am.

6 Q Explain to the jury, then, why did you lie in a
7 portion of your interview with law enforcement? And
8 tell us what you lied about.

9 A Repeat that again.

10 Q Sure. I've been wordy all day. Why did you
11 lie to law enforcement?

12 A At first?

13 Q Yes, ma'am.

14 A I lied to law enforcement at first because I
15 just didn't want to be involved. I just wanted to not
16 be involved. Because the only thing that I feel like
17 I'm guilty for, that I should not have been, is -- is
18 leaving the scene. That's it.

19 Q Your understanding is that you were charged,
20 kind of like -- as parents would say, you were
21 responsible for your friends' actions?

22 A Yeah. I've heard that before.

23 Q The hand of one is the hand of all?

24 A Yes.

25 Q And so you were charged because you were in the

O. SCOTT -- DIRECT BY MS. BURKE

1 car?

2 A Yes.

3 Q But by the second part of the interview, you
4 say that you told law enforcement everything that
5 happened?

6 A Yeah. The truth.

7 Q What happened between the first hour and the
8 second hour?

9 A Nothing, I just thought about it to myself.
10 And I'm like, Octavia, just do the right thing. Just
11 tell the truth because you -- I know that I did not
12 shoot Troy. So I told the truth.

13 Q And this was also -- Pinckney Hill, you've been
14 up there before?

15 A Yes. Plenty of times.

16 Q That July 28th day, a lot of people were
17 outside?

18 A Yes.

19 Q Did you see other people at the time of the
20 shooting?

21 A Yes.

22 Q So there -- there were -- a lot of people were
23 already there?

24 A Yes.

25 Q That saw this, right?

O. SCOTT -- DIRECT BY MS. BURKE

1 A Yes, ma'am.

2 Q Do some of those folks know you?

3 A Yes. Everybody knows me.

4 Q So you lied about some things to law
5 enforcement, everyone already knew what happened?

6 A Uh-huh.

7 Q Okay.

8 COURT REPORTER: Is that a yes or no please?

9 THE WITNESS: Yes.

10 MS. BURKE: I beg the court's indulgence.

11 BY MS. BURKE:

12 Q Now, when you met with law enforcement that
13 first -- during the entire interview, did you tell them
14 that a fourth person was in the car, in the front seat?

15 A At first, no, because I didn't know her, so I
16 figured it was -- she was never mentioned, so I never
17 brought her name up because I don't know her.

18 Q Is that -- is that kind of like a -- a street
19 code of honor, or if you're being questioned by law
20 enforcement about what happened, and there were four
21 people in the car and you know there were four people,
22 why not just tell them there were four people in the
23 car?

24 A Because I don't know her, so I just never
25 brought her name up.

O. SCOTT -- DIRECT BY MS. BURKE

1 Q Okay. And you said that you just met her that
2 day?

3 A Yes, ma'am.

4 MS. BURKE: No further questions at this time.

5 MR. DEYSACH: May it please the court, Your Honor?

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION BY MR. DEYSACH:

8 Q Ms. Scott, I'm Ian Deysach.

9 A How you doing.

10 Q So the first thing I wanted to say, when --
11 when you turned yourself in and go to jail, one of the
12 first things that happens is that you get served with a
13 warrant for breach of trust?

14 A Uh-huh. Yes.

15 Q And you're convicted of that breach of trust?

16 A Yes.

17 Q And breach of trust is -- is taking something
18 through lying, isn't it?

19 A Yes.

20 Q Okay. And lying is something you and the
21 Solicitor spent a lot of time just now talking about,
22 correct?

23 A Yes.

24 Q Because you know you did lie?

25 A Uh-huh, at first, yes.

O. Scott -- Cross by Mr. Deysach

1 Q At first. And then you continued to lie,
2 correct?

3 A At first, yes.

4 Q You're telling the jury that there's some point
5 at which your lying stops?

6 A Yes.

7 Q That at some point you deserve to be trusted
8 because I was lying then, but I'm telling the truth
9 now, is that what you're saying?

10 A No. What I'm saying is, is I deserve to be
11 trusted because I know I didn't shoot Troy, so
12 therefore I told the truth.

13 Q Okay.

14 A And -- and my breach of trust charge does not
15 have anything to do with this case. And on that charge
16 as well, you can look at your notes, I turned myself in
17 at first on that charge, but they let me go. And then
18 when I went to jail on this charge, they served me the
19 papers.

20 Q Okay. I mean, and then you -- you went to
21 court and you plead guilty to breach of trust?

22 A Uh-huh.

23 Q Where you admitted to being a liar in court?

24 A I plead --

25 Q Correct.

O. Scott -- Cross by Mr. Deysach

1 A I plead guilty the first day they came to my
2 sister's house to get -- arrest me. But they did not
3 arrest me because they didn't have no really -- no
4 evidence. They just had hearsay.

5 Q I mean, you plead guilty because you did the
6 breach of trust, right.

7 A Yes.

8 Q Okay. That's all I'm saying. In order to
9 commit a breach of trust, you've got to be a liar,
10 right?

11 A No, not necessarily.

12 Q Okay. You committed a breach of trust without
13 lying, is that what you're telling the jury today
14 because you're not lying anymore?

15 A I committed a breach of trust. It was a lying
16 charge, yes, but that doesn't make me a liar.

17 Q Okay. Okay. Let me ask you this --

18 A It just -- it just -- I just made a mistake
19 that one time.

20 Q Okay. Did you -- does lying to the police
21 about a shooting make you a liar?

22 A No.

23 Q Okay. Does -- now and -- I want to -- you can
24 agree with me that there are a lot of things that you
25 lied to the police about when you met with them when

O. Scott -- Cross by Mr. Deysach

1 you turned yourself in, correct?

2 A At first, yes.

3 Q At first. And even at the end, when you left
4 that meeting room, you never did tell them about Trish,
5 correct?

6 A No. Because just like you say, that was
7 hearsay. I don't really know her, so I had no reason
8 to bring her up.

9 Q So when you're walking out of the police
10 station, you're leaving the police officer who just
11 talked to you for a couple of hours that there's only
12 three people in the car, not four, correct?

13 A Yes.

14 Q Okay. And you want the jury to believe that
15 that is telling the truth?

16 A No. I want the jury to believe that there were
17 four people in the car.

18 Q Okay.

19 A Which I'm saying right now.

20 Q At the time when you were talking to the police
21 officer, you did not want him to believe that, correct?

22 A Okay.

23 Q Okay. So you agree with me on that?

24 A Yeah, at the time.

25 Q Right. So you mislead him?

O. Scott -- Cross by Mr. Deysach

1 A I guess.

2 Q You guess? I mean, you can say -- I mean, I
3 think -- well, all right. You guess. All right. You
4 -- you told the police in the first place that the
5 person who was the passenger in the car, who did the
6 shooting, that you picked them up on the side of the
7 road, correct?

8 A No. I never said he was a passenger. I always
9 said he was sitting in the back with me.

10 Q Okay. I'm not asking about where he was
11 sitting --

12 A You just said passenger.

13 Q -- I'm asking you about -- you told the police
14 that he was picked up on the side of the road after he
15 flagged the car down, right?

16 A Yeah, at first, yes.

17 Q You told them that you happened to recognize
18 him from, I guess, your job, correct?

19 A Yes.

20 Q Which is wrapping (phonetic).

21 A Yes.

22 Q You tell the police -- well, let me ask you a
23 little bit about what you told the jury today. And I
24 hate to jump around, but it's -- it's tough to go --
25 that when the car drives on the hill, what you're

O. Scott -- Cross by Mr. Deysach

1 saying today --

2 A Uh-huh.

3 Q -- is that Monique and Troy have an argument?

4 A Yes.

5 Q That argument includes Monique stopping the
6 car?

7 A Uh-huh.

8 Q Putting it in park or whatever?

9 A Yes.

10 Q Jumping out of the car?

11 A Yes.

12 Q Yelling at Troy?

13 A Yes.

14 Q Taking off jewelry?

15 A Yes.

16 Q That's the point of where she takes off her
17 jewelry, correct?

18 A No.

19 Q Okay. When did she -- she takes off her
20 jewelry on the ride back?

21 A On the way back.

22 Q Okay. And so when we're talking about taking
23 off jewelry, we're talking about preparing for a
24 physical fight, right?

25 A Yeah.

O. Scott -- Cross by Mr. Deysach

1 Q It's -- you don't want your earrings to get
2 snagged or bracelet or whatever?

3 A Uh-huh.

4 Q All right. You're telling the jury today that
5 there is somebody named Trish in the front seat?

6 A Yes.

7 Q That that person, Trish, was in the car when
8 Monique picks you up?

9 A Yes.

10 Q That you had never seen that person before?

11 A Yes.

12 Q Correct -- that you didn't even really know her
13 name, correct?

14 A Yes.

15 Q All right. You told the jury that you -- you'd
16 known -- you told them that you knew my client since
17 you were 18?

18 A Uh-huh, yes.

19 Q And you've never seen either of them together
20 ever before?

21 A No.

22 Q That when the argument starts, it's just
23 Monique participating in the argument with Troy?

24 A Yes.

25 Q Is the person, Trish, participating in the

O. Scott -- Cross by Mr. Deysach

1 argument with Troy?

2 A Not, no, not that I can recall.

3 Q You guys go back -- because you're going to buy
4 chicken, right?

5 A Yes.

6 Q You turn back around and when you're coming
7 out, Troy's still there, correct?

8 A Yes.

9 Q And he's waving his finger?

10 A Yes.

11 Q Show the jury how he's waving his finger.

12 A Like this (indicating).

13 Q Like that (indicating)?

14 A Yeah, at the gun -- I mean, at the car.

15 Q Yes.

16 A My side.

17 Q As if he's miming a gun? Like he's got his
18 finger -- like this would be the trigger?

19 A Yeah.

20 Q Okay. But no gun?

21 A No gun.

22 Q And he's yelling everybody can get some,
23 everybody can get it or something like that?

24 A Yes.

25 Q Okay. And that's when Monique stopped the car?

O. Scott -- Cross by Mr. Deysach

1 A. Yes.

2 Q. If that hadn't been happening, the car probably
3 would have just left off the hill?

4 A. Correct. But, I mean, he was really no threat.
5 I mean, anybody can say words.

6 Q. Right.

7 A. Sticks and stones.

8 Q. Right. So she's stomps on the brakes, puts the
9 car in park?

10 A. Uh-huh.

11 Q. Hops out the car, Monique does?

12 A. Yeah, to go back after Troy.

13 Q. Takes off the jewelry?

14 A. Uh-huh.

15 Q. And starts going up to Troy?

16 A. Uh-huh.

17 Q. All right. She is -- well, all right. The
18 person, Trish, stays in the car?

19 A. Yes.

20 Q. All right. She's sitting in the front
21 passenger seat, correct?

22 A. Yes.

23 Q. When you first talked to the police, you told
24 them that you were sitting in the front passenger seat,
25 correct?

O. Scott -- Cross by Mr. Deysach

1 A No.

2 Q Okay. So you told the police that there were
3 only three people in the car and that you and my client
4 were sitting in the back seat together?

5 A Yes.

6 Q Right. Even after -- okay. So what you told
7 the police is that you're driving with Monique?

8 A Uh-huh.

9 Q You see my client on the side of the road --

10 A Uh-huh.

11 Q Picked him up, get him in the car?

12 A Yes.

13 Q And that you must have already been sitting in
14 the back seat?

15 A Just like I told you, the first story I told
16 was a lie, so --

17 Q Okay. And one of the lies you told is where
18 you were sitting in the car, that's all I'm saying,
19 right?

20 A I always said that me and Bo was sitting in the
21 back. Bo was sitting by me.

22 Q And after the shooting occurs, you told the
23 police that Monique did not let him get back -- back in
24 her car?

25 A That was the first time. That was the lie.

O. Scott -- Cross by Mr. Deysach

1 The first story.

2 Q Right. This is story number one, that you
3 leave off the hill and the shooter is not allowed back
4 in the car?

5 A Yes.

6 Q All right. Now, did you indicate to the jury
7 just now that you had never told the police that the
8 shooter was not allowed to get back in the car? Is it
9 different than what you said to Ms. Burke?

10 A Repeat that.

11 Q All right. You're telling the jury -- well,
12 you're telling the jury now that the first story, the
13 shooter was not allowed to get back in the car?

14 A Uh-huh, yes.

15 Q That you drive off with Monique, correct?

16 A Yes.

17 Q Just you and her?

18 A Yes.

19 Q And she puts you out of the car?

20 A Yes.

21 Q This is all part of the first lie?

22 A Yes.

23 Q All right. That -- at that point, you walk to
24 your Aunt Mary's house in the lane?

25 A Yes.

O. Scott -- Cross by Mr. Deysach

1 Q This is a complete lie that you're telling the
2 police at this point?

3 A Yes.

4 Q You told them, I made my way to my Aunt Mary's
5 house. When I got there, nobody was there, correct?

6 A Yes.

7 Q You said, in her yard, she has a little sitting
8 area, so I just sat there, correct?

9 A Yes.

10 Q I didn't call my mom, I didn't call nobody,
11 because I ain't -- I didn't know what to do, that's
12 what you told the police?

13 A Yes.

14 Q All right. And that I sat there at least two
15 hours just by myself?

16 A Yes.

17 Q At that time, you tell the police that you
18 caught a ride to Georgia?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q You said that you caught a ride, I don't even
23 know the person?

24 A Yes.

25 Q Complete lie?

O. Scott -- Cross by Mr. Deysach

1 A Yes.

2 Q You said, there was a white girl. I was like,
3 is this your car. You said that, right?

4 A Yes.

5 Q She was like, yeah. I was, you know, -- I need
6 the biggest favor in the world, but I'll give you \$20
7 if you give me a ride to Georgia?

8 A Yes.

9 Q You told the police this while you're being
10 video taped and everything?

11 A Yes.

12 Q Okay. You told them it was a light four door,
13 the fictitious car that you rode to Georgia in, was a
14 light four door?

15 A Yes.

16 Q Correct -- you told the -- you told the police
17 that the fictitious person who gave you a ride had
18 blond hair like a bob?

19 A Yes.

20 Q Complete lie?

21 A Yes. It's the same story.

22 Q Right.

23 A The same first story.

24 Q Right. She had a little white tank top, with
25 little spaghetti straps and some khaki capris, this is

O. Scott -- Cross by Mr. Deysach

1 the same fictitious girl that you're describing?

2 A The same first story, yes.

3 Q Okay. She didn't have any jewelry on or
4 anything, you told the police --

5 A Yes.

6 Q Correct -- she talked about staying with her
7 aunt, Lily Ann, and that her cousin brought her back
8 today; you include this detail in your complete lie?

9 A Yes.

10 Q Correct?

11 A Yes.

12 Q And you are including all these details in your
13 complete lie because to add those details, is an
14 attempt to make the story sound more believable,
15 correct?

16 A No.

17 Q The details that you're adding are part of your
18 attempt to deceive the police?

19 A At first, yes.

20 Q Okay. At some point, the details just become
21 what, a run away lie?

22 A No. I just thought to myself that I need to
23 tell the truth.

24 Q Okay. Well, the police asked you after that,
25 the whole truth. And after you tell this big lie, you

O. Scott -- Cross by Mr. Deysach

1 say, the whole truth, correct?

2 A Yes.

3 Q But that was not the whole truth?

4 A No.

5 Q Then you tell the police what you're saying is
6 a -- at least the truer story, maybe it's not exactly
7 the same as what you just told today, but it's the
8 truer story, and you let them know about the time that
9 you spent with Monique before you turned yourself in,
10 is that correct?

11 A Uh-huh.

12 Q That -- make sure you say yes or --

13 A Yes. Yes. Yes.

14 Q That the night before Monique turns herself in,
15 you two stay at a hotel together in Hardeeville,
16 correct?

17 A Yes.

18 Q And that the room was paid for by her
19 boyfriend?

20 A Yes.

21 Q You told the police that when you turned
22 yourself in, correct?

23 A Yes.

24 Q And you told them that because it was true?

25 A Yes.

O. Scott -- Cross by Mr. Deysach

1 Q Okay. That you and Monique did spend that time
2 together. And when you were doing it, you were putting
3 your stories together, correct?

4 A No, we was not -- we were not putting our
5 stories together.

6 Q Okay. So the first lie that you told to the
7 police, did not -- was not the same as what Monique
8 told the police -- okay. So what you're telling us is
9 that you stayed at the Hardeeville Hotel the night
10 before you guys were talking about turning yourself
11 into the police, and you don't talk about what you're
12 going to say?

13 A No.

14 Q You had no conversation about what you're going
15 to say?

16 A No.

17 Q Okay. Did you tell the police during the true
18 version of your story, last night me and Monique did
19 stay in Hardeeville; they did pick me up -- hold on --
20 they asked you, did you guys work out the story a
21 little bit. And your response is, at the beginning we
22 did, what I told you at first because we already know
23 how that made us look when we jumped back in the car --
24 so you told the police during the true version that you
25 did put your story together with Monique, correct?

O. Scott -- Cross by Mr. Deysach

1 A At the beginning, which is the first story I
2 tried to tell.

3 Q Okay. The first story that you tried to tell,
4 you put that story together with Monique?

5 A Yes. At first.

6 Q And so the understanding that you had was that
7 when you guys turned yourselves in, you're going to
8 tell the same story, correct?

9 A Yes.

10 Q So you guys agreed together to lie to the
11 police?

12 A Yes.

13 Q Okay. And when you made that agreement, you
14 were in a hotel room that was paid for by Monique's
15 boyfriend?

16 A No.

17 Q Who paid for the hotel?

18 A No, he paid for the hotel.

19 Q Okay. You weren't in the hotel room when you
20 made the agreement?

21 A No.

22 Q Okay. No, you weren't in the hotel room?

23 A Yes, we were in the hotel room.

24 Q Okay.

25 A But we were not in the hotel room when we made

O. Scott -- Cross by Mr. Deysach

1 the agreement.

2 Q Okay. You made the agreement somewhere else?

3 A Yes.

4 Q All right. Even during, like you said, the
5 true version of the story, you never come clean about
6 the fourth person in the car?

7 A No.

8 Q And you're saying that when the -- when you're
9 leaving in the car, that you get a call from Troy's
10 girlfriend, correct?

11 A Yes.

12 Q How soon after the -- you leaving the hill did
13 you get that call?

14 A Like, we were -- we were like in Pritchardville
15 on our way to Savannah.

16 Q Can we do this, how -- how long would it have
17 been?

18 A I'd say like 30 or 45 minutes, 30 or 40
19 minutes.

20 Q And so you had a conversation with her at that
21 time?

22 A The girlfriend?

23 Q Yes.

24 A Yes.

25 Q Do you know where she was when you had that

O. Scott -- Cross by Mr. Deysach

1 conversation?

2 A The girlfriend?

3 Q Correct.

4 A Yeah. She was with Troy.

5 Q Did you know what location they were at?

6 A I assume they were on the hill.

7 Q Okay.

8 MR. DEYSACH: I beg the court's indulgence.

9 THE COURT: Yes, sir.

10 BY MR. DEYSACH:

11 Q Okay. So you were telling the jury that you
12 were present when Eric makes the -- the call to the tip
13 line that says I wasn't there, correct?

14 A Yes.

15 Q That that -- that phone call took place in
16 Savannah, correct?

17 A Yes.

18 Q Now, let me ask you this, have you heard of
19 that phone call?

20 A No.

21 Q That -- that the reason -- that that phone call
22 was placed after a news report about the case had
23 aired, correct?

24 A Yes.

25 Q And that news report included pictures of all

O. Scott -- Cross by Mr. Deysach

1 three of y'all?

2 A Yes.

3 Q And that that phone call was made the same day,
4 possibly the next day?

5 A Yes.

6 Q And it's after that, that you go to the hotel
7 up in Hardeeville with Monique, correct?

8 A Yes.

9 Q Didn't you -- didn't you tell the police that
10 you went up to Pinckney Hill to buy marijuana, not to
11 buy chicken?

12 A Yes.

13 MR. DEYSACH: That's all I have, Your Honor.

14 THE COURT: All right. Anything further?

15 MS. BURKE: Yes, Your Honor.

16 REDIRECT EXAMINATION BY MS. BURKE:

17 Q Is that why the Defendant had a gun, he was
18 going to buy marijuana with you?

19 A No. I don't know why he had a gun, but he had
20 one.

21 Q There was a lot of talk about this first
22 conversation with law enforcement?

23 A Yes.

24 Q Bluffton Police Department, that's the first --
25 first story and the second story, the first lie. Let's

O. SCOTT -- REDIRECT BY MS. BURKE

1 call it what it is. What were you trying to do, what
2 was your plan by telling that story, knowing that
3 everyone already saw you on the hill?

4 A I really don't know. To be honest, I really
5 don't know.

6 Q Did you try to make yourself look good?

7 A No. If -- if you look at it, trying to make
8 everybody look good.

9 Q Now, the second story with law enforcement,
10 that happened the same day?

11 A Yes. Like right after. Like all in the same
12 room, same day, like same hour.

13 Q You didn't leave the interview and go talk to
14 anybody?

15 A No.

16 Q Or call someone on the phone or call Monique on
17 the phone or call the defendant on the phone or --

18 A No, ma'am. The only person I talked to was the
19 detective or investigator that was in there. I went
20 over the first story. And he closed his books and he
21 looked at me and he said, you seem like a nice girl.
22 He's like, I know that you're lying. And he's like,
23 and you know that you're lying. And he was right
24 because that's the truth.

25 Q Did you start crying?

O. SCOTT -- REDIRECT BY MS. BURKE

1 A Yeah.

2 Q Why were you crying?

3 A Because I was hurt.

4 Q Hurt about what?

5 A Everything.

6 Q Tell the jury.

7 A I was hurt because Bo was somebody that I
8 thought I loved. And it turned out not to be -- I
9 mean, on my behalf it's true, but on his behalf, it's
10 not. Because if you felt somewhere like -- if you say
11 you feel about somebody like you feel like that, I
12 shouldn't even be going through this, first of all.
13 Because he should be able to man-up and take
14 responsibility for what he did.

15 Q So you tried to make everybody look good in
16 this first story?

17 A Basically.

18 Q This person in the front seat you didn't know,
19 you didn't mention her?

20 A Yes.

21 Q You may have said that the defendant didn't get
22 back in the car -- but even the first story, Octavia,
23 did you tell the police that the defendant was the
24 shooter?

25 A Yes.

O. SCOTT -- REDIRECT BY MS. BURKE

1 Q Even the first story, if you were trying to be
2 the whatever you think in your mind you were trying to
3 do, did you tell the police you heard two shots?

4 A Yes.

5 Q Even the first story, did you tell the police
6 that Troy did not have anything in his hands?

7 A Yes, ma'am.

8 MS. BURKE: Thank you.

9 MR. DEYSACH: Just briefly, Your Honor.

10 THE COURT: Okay.

11 RECROSS EXAMINATION BY MR. DEYSACH:

12 Q The reason that you told lies to Officer
13 Norberg was to minimize your involvement, wasn't it?

14 A No.

15 Q The reason that you lied to them was to try to
16 manipulate the law enforcement process, wasn't it?

17 A No. Because if did, I could have just said I
18 wasn't there at all. I could have said I didn't leave.
19 I never said that.

20 Q If -- what you're telling the jury is that if
21 you really wanted to -- to minimize your involvement,
22 you would have told a different lie, correct?

23 A No. I would have just said I had no
24 involvement with it if I was trying to manipulate me or
25 -- like he's trying to say, help me out, no.

O. Scott -- RECROSS BY MS. DEYSACH

1 Q Well, what do you think it does when you lie to
2 the police, it manipulates the law enforcement process,
3 doesn't it?

4 A Yes.

5 Q When you try and make them believe something
6 that didn't happen, that's manipulating the law
7 enforcement process, isn't it?

8 A Yes.

9 MR. DEYSACH: Okay. Thank you.

10 THE COURT: Anything further?

11 MS. BURKE: Briefly, Your Honor.

12 REDIRECT EXAMINATION BY MS BURKE:

13 Q Did you voluntarily speak to law enforcement
14 that day, when you turned yourself in?

15 A Yes.

16 Q Were you given your Miranda warning, that you
17 had the right to speak or not speak?

18 A Yes.

19 Q Did you speak with a lawyer or without a
20 lawyer?

21 A Without.

22 Q Did you have a lawyer at that time?

23 A Just my mama.

24 Q So you spoke to law enforcement voluntarily and
25 told them the story that day?

O. SCOTT -- REDIRECT BY MS. BURKE

1 A Yes.

2 MS. BURKE: Thank you. No further questions.

3 THE COURT: Anything further, Mr. Deysach?

4 MR. DEYSACH: Just briefly.

5 RECROSS EXAMINATION BY MR. DEYSACH:

6 Q The -- you know how much time you're looking at
7 with your charge, don't you?

8 A No.

9 Q You don't know that assault --

10 MS. BURKE: She said no, Your Honor.

11 THE COURT: This is outside the scope of your
12 recross.

13 MS. BURKE: It certainly is. That was --

14 THE COURT: Outside the scope of your redirect.

15 MR. DEYSACH: All right. I'll try another
16 question.

17 BY MR. DEYSACH:

18 Q At the time you talked with Det. Norberg,
19 didn't you --

20 MS. BURKE: Your Honor, can we approach?

21 THE COURT: Come on.

22 (Whereupon a bench conference was held in the
23 presence of the jury, but outside the hearing of the
24 jury.)
25

O. SCOTT -- RECROSS BY MR. DEYSACH

1 BY MR. DEYSACH:

2 Q At the end of your conversation with Det.
3 Norberg, didn't he get -- didn't you get a
4 recommendation from him --

5 MS. BURKE: Objection, Your Honor. This is beyond
6 the scope of my redirect.

7 THE COURT: It is beyond the scope.

8 MR. DEYSACH: That's all, Your Honor.

9 THE COURT: Okay. Anything further?

10 MS. BURKE: Nothing from this witness, Your Honor.
11 Thank you.

12 THE COURT: All right. Any objection to her being
13 excused, or do you want me to keep her under subpoena?

14 MR. DEYSACH: I would ask that you keep her under
15 subpoena. I doubt I'd call her, but just out of an
16 abundance of caution.

17 THE COURT: Okay. All right. Ma'am, I am going
18 to release you for the day. You may step down. Okay.

19 All right. Ladies and gentlemen, I'm trying
20 really hard to get you out of here. We are going to
21 send you down the back stairs, which should be able to
22 get you to your cars more quickly.

23 I have to again tell you, Ladies and Gentlemen,
24 not to discuss this case, not to do any independent
25 research. I know you've heard some evidence in this

1 case, but again, it would be inappropriate for you to
2 do that.

3 So, again, Ladies and Gentlemen, the only thing I
4 ask, go home and have a good night's sleep and dinner.
5 Tomorrow morning, I actually have a conflict, so we're
6 not going to start back up with this case until 1:00.

7 I will tell you, though, that there is an outside
8 chance, and as soon as I say that it'll never happen,
9 but there is an outside chance that possibly we could
10 conclude this trial tomorrow. I just want you all to
11 know that as far as scheduling is concerned.

12 Again, I understood we had some people that had
13 conflicts, that they needed to leave Wednesday night,
14 tomorrow night, by 5:30. And Mr. Foreperson, I need to
15 know that.

16 I -- we can finish up if you all wish to or not,
17 and come back and finish up on Thursday morning. And,
18 again, I don't know how it's going to unfold tomorrow.
19 I just know the total number of witnesses and see that
20 there is a possibility.

21 Okay. So I just wanted to let you all know that.
22 I look forward to seeing you all in your jury room 1:00
23 tomorrow and we will go ahead and continue the trial of
24 this case. Thank you.

25 (Whereupon, the jury left the courtroom at 5:37

1 p.m.)

2 **THE BAILIFF:** The jury is clear and the door is
3 closed, Your Honor.

4 **THE COURT:** All right, y'all. Mr. Galvin, your
5 client has someone else to be, I presume, or --

6 **MR. GALVIN:** Well, I was just going to say, if
7 you're going to recall her, if you would just give me
8 some notice.

9 **THE COURT:** That's what I would do. And for her,
10 too, as well. She doesn't need to be sitting around
11 here. If you have an idea that we're going to call
12 her, she can get here in how much time, as can you --

13 **MR. GALVIN:** I know -- I know there's been a
14 problem for her, but I think I can work with Dawn --

15 **THE COURT:** So as long as we get an hour's notice,
16 then you're fine.

17 **MR. GALVIN:** Yeah, maybe an hour and a half.

18 **THE COURT:** Okay.

19 **MS. BURKE:** She works on the far side of the
20 island, Your Honor, at Fudruckers.

21 **THE COURT:** Okay. Okay. Well, Mr. Deysach, if
22 you can just think about it overnight, and then
23 certainly maybe if tomorrow, he does think he needs her
24 based on where we're at, he can certainly let me know.

25 **MR. GALVIN:** And the Solicitor's Office has her

1 under subpoena, but I'm going to treat that as the
2 court having her under subpoena.

3 **THE COURT:** Okay. That's fine. I appreciate your
4 being here.

5 **MR. GALVIN:** Thank you, Your Honor.

6 **THE COURT:** Okay. Anything else?

7 **MS. BURKE:** Your Honor, I just have one witness
8 left on our witness list.

9 **THE COURT:** Okay. Okay. All right. And, of
10 course, Mr. Deysach, I'm just going to remind you over
11 the evening hours to speak with Mr. Wright about his
12 right to testify or not testify. But, again, I just
13 want to remind you one more time. And, of course, when
14 the appropriate time comes, I'll ask him if he has any
15 questions.

16 **MR. DEYSACH:** The time for tomorrow?

17 **THE COURT:** 1:00.

18 (Whereupon, the hearing adjourned at 5:45.)
19
20
21
22
23
24
25

1 * * * P R O C E E D I N G S * * *

2 * * * DAY 3 OF TRIAL 10/26/11 * * *

3
4 **THE COURT:** Please be seated. All right. Good
5 afternoon everyone.

6 **MS. BURKE:** Good afternoon.

7 **THE COURT:** Apparently our foreperson came of the
8 hallway just a few moments ago, and was complaining
9 about us running late. And -- with words to the effect
10 of "this is BS", "I've got a business to run", acting
11 so badly that my Deputy Tutton had to get head of
12 security here to have a discussion with him.

13 I wanted to put that out there for y'all. I'm not
14 sure that's what either side wants sitting on their
15 jury. And particularly, I'm even more concerned
16 because he's the foreperson.

17 We have extra people obviously. I don't know if
18 we're going to have a chance of arguing a charge today,
19 but I'm worried about not having enough people.

20 So do you want me to just give y'all -- while I
21 pull up my computer, why don't you all talk and see
22 what you think, what maybe you want to do. I'd like
23 for us all to agree on something. So...

24 (Pause.)

25 What's y'all's position from the State?

1 **MS. BURKE:** Your Honor, it's never a good thing
2 when someone is itching to get out of here, especially
3 when they're the foreperson and the language that you
4 just described, certainly it's a little unsettling. It
5 sounds like we will probably go into tomorrow. So I do
6 not oppose us putting in an alternate.

7 I would ask that the alternate be randomly
8 selected though. Maybe I can explain -- the next
9 alternate I had was 119. I know Mr. Deysach had some
10 issues with 119 under the Batson challenge. So I have
11 no problem with it being randomly done.

12 **THE COURT:** Okay.

13 **MR. DEYSACH:** I don't have -- I don't have -- I'm
14 not asking that the foreperson be excused, Your Honor.
15 I know that he's unhappy being here, but I still don't
16 think that he's given you cause to excuse him basically
17 because he doesn't want to be here.

18 **THE COURT:** I do think cursing in the hall is a
19 problem. I do have jurors that aren't appreciative of
20 being here before, but it doesn't rise to the level of
21 him cursing in the middle of my hallway to the point
22 where we have to bring the head of security out here.
23 So, respectfully, I would disagree with that.

24 Again, I've had people who maybe don't appreciate
25 being here. And I don't think someone who is cursing

1 -- and again, I'm more concerned about his effect on
2 the other jurors as well, being the foreperson. That
3 worries me as well.

4 **MR. DEYSACH:** Well, I think that that concerns me,
5 whether or not that effect has already occurred,
6 whether or not that they were a party of any of that by
7 hearing him. I think you could question if they were,
8 and you could call all of their service into question.

9 **THE COURT:** Well, I can certainly speak with them.
10 You -- let's talk about the issue of -- apparently you
11 had a concern with Donna Humphries, number 119.

12 **MR. DEYSACH:** I -- I did not have a concern with
13 Donna Humphries. I had a concern with the process by
14 which the state was striking -- using its strikes.
15 That's what that was. It wasn't that I thought that
16 she shouldn't -- you know, that I could have stricken
17 Donna Humphries. I had strikes to strike Donna
18 Humphries --

19 **THE COURT:** So you're okay with her?

20 **MR. DEYSACH:** Yes. I'm fine with Donna Humphries.

21 **MS. BURKE:** It's fine by me, Your Honor.

22 **THE COURT:** Okay. That's fine. She's the next
23 alternate. I think she's the appropriate person to
24 sit. Well, that's what we'll go ahead and do. Why
25 don't you go ahead and bring Mr. Loconte out. Okay.

1 (Whereupon, the following took place outside the
2 presence of the jury panel.)

3 **THE COURT:** Mr. Loconte, good afternoon.

4 **MR. LOCONTE (JUROR):** Good afternoon.

5 **THE COURT:** To begin with, I want to apologize.
6 It was me who was a bit late. And I can tell you I
7 have been on the bench for five years, and I have taken
8 a day off three times now. One was for the birth of my
9 child. The other one was when my child was sick. And
10 today it was to take my husband to the doctor. So it
11 was my fault.

12 It's my understanding, though, that you were in
13 the hallway cursing about us being late, and that you
14 run a business and that you were frustrated.

15 **MR. LOCONTE (JUROR):** I was frustrated.

16 **THE COURT:** I appreciate and understand that, but
17 I want to know if you were doing that in the jury room
18 in front of all the other jurors?

19 **MR. LOCONTE (JUROR):** Absolutely not.

20 **THE COURT:** Are you sure about that?

21 **MR. LOCONTE (JUROR):** Yes.

22 **THE COURT:** Okay. Sir, well, what I'm going to do
23 is go ahead and relieve you from your jury service just
24 because of your frustration. What I want you to
25 understand and appreciate this, this is a very serious

1 business --

2 MR. LOCONTE (JUROR): I know it is --

3 THE COURT: And I hope you know --

4 MR. LOCONTE (JUROR): I don't want to be released.
5 I want to do this.

6 THE COURT: Well, sir, I want to go ahead and
7 release you just because I understand that you want to
8 be somewhere else. And I appreciate it and I think
9 most people do, but if it got to the level that --

10 MR. LOCONTE (JUROR): It was blown out of
11 proportion, Judge.

12 THE COURT: Okay. My only problem is this, Mr.
13 Loconte -- and please, I don't want you to be upset by
14 it -- I had to have two deputies come tell me about it.
15 And if it rises to that level -- and I wasn't there to
16 personally see it, so I don't know. But the simple
17 fact is that I am fearful if in any way that your
18 frustration could not only effect your decision making
19 in this process, but also because you're my foreperson,
20 it's that much more important. I want to make sure
21 that, as well, it doesn't effect any of the other
22 jurors that are sitting on this case.

23 So don't be upset. Just out of an abundance of
24 caution -- and I can tell you, I have to for due
25 process reasons, go ahead and release you. And that's

1 why I'm going to do it.

2 And I appreciate you saying you want to stay.

3 But, again, I have to make sure that this is an
4 absolutely perfect, clean trial. That's my job. So,
5 again, I just wanted to let you know that.

6 But I am going to go ahead and relieve you for the
7 week. And I don't want you to worry about it. Okay.
8 Thank you, sir. I appreciate it.

9 **MR. DEYSACH:** I do want to put a few things on the
10 record. I do want to object to his being relieved.
11 That is one of three men who was sitting on the panel,
12 including the alternate that when I made the Batson
13 motion, it was both as to gender and race that she be
14 -- the strikes for men, who had criminal histories,
15 arrests, not convictions, but not for the woman, the
16 one who's being -- who's being sat.

17 And it wasn't that I'm upset with her for sitting
18 that woman, I was -- the violation was using her
19 strikes on the men that she used it on. And now with
20 -- not really understanding, you know, nobody from the
21 Sheriff's Department, who was part of the encounter,
22 could tell us what happened. Or really any knowledge
23 -- he said that it didn't happen in front of the
24 jurors, but I don't even know if he went back into the
25 jury room afterwards, to tell them about what happened.

1 That, I think, at this point, we probably need to go
2 ahead and declare a mistrial and that's what I'm asking
3 for.

4 **THE COURT:** Well, respectively, your motion is
5 denied. He stated he didn't say anything in front of
6 the jurors. I believe his discussions and his venting
7 was done out in the hall. And I have relieved him.
8 And, respectfully, I'm denying your motion. Let's go
9 ahead and bring the jury out.

10 **THE BAILIFF:** Ms. Humphreys is the foreman?

11 **THE COURT:** Sir, no, no. She is not the foreman.
12 No. No. They're going to elect a new foreman.

13 **THE BAILIFF:** You want them to elect a new
14 foreman?

15 **THE COURT:** Yeah, but I'll tell them that. So you
16 don't need to worry about that. So I'm going to go
17 ahead and make Ms. Humphreys a part of this jury.
18 Okay.

19 **THE BAILIFF:** I'll bring them out.

20 **THE COURT:** Thank you, Norman.

21 (Whereupon, the jury entered the courtroom at
22 1:55 p.m.)

23 **THE COURT:** Good afternoon, Ladies and Gentlemen.
24 I want to go ahead and apologize at the onset. It is
25 my fault that we are running late. And, again, I

1 apologize.

2 As I was telling someone before, it's been rare
3 that I've actually had to take any time off from work.
4 But, in fact, I did have to this morning. So I do
5 appreciate it and I want you to know, it's my fault and
6 not anyone else's.

7 I will tell you that we're going to work hard
8 until 5:30 today. I can tell you all that it's
9 probably not likely that we're going to finish this
10 case today. It will probably be tomorrow morning.
11 But, again, I just want you all to know that.

12 Additionally, I want to welcome Ms. Humphreys.
13 You are now a formal part of our jury. So thank you
14 for being here and thank you for sitting in. I
15 appreciate it.

16 I also am going to ask you that because the person
17 that -- I had to let go was our foreperson, I am going
18 to have to ask you all to elect another foreperson if
19 you would. You don't have to do that obviously right
20 now, just the next time you all retire to your jury
21 room. If you would do that, I would appreciate it.
22 And if you've already done it, wonderful. Either way.
23 So, again, thank you.

24 At this time, we are going to continue the trial
25 of this case. If the State would call their next

1 witness.

2 MS. BURKE: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, ma'am.

5 MS. BURKE: The State calls Detective Kelly Heany.

6 KELLY HEANY, having been first
7 duly sworn, testified as follows:

8 THE CLERK: Please be seated. State your name for
9 the court reporter.

10 THE COURT: Sgt. Heany, if you'd just give us your
11 name for the record and spell your last name for my
12 court reporter.

13 THE WITNESS: It's Kelly Heany, H-e-a-n-y.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION BY MS. BURKE:

16 Q What law enforcement agency do you work for?

17 A I work for Bluffton Police Department.

18 Q And how long have you been in law enforcement?

19 A Approximately 12 years now.

20 Q What is your current rank?

21 A Sergeant.

22 Q All right. You were -- how did you get
23 involved in this case that we're here about, that we've
24 talked about most of the week?

25 A On July 28th of 2008, I was assigned to the

SGT. HEANY -- DIRECT BY MS. BURKE

1 Investigative Division for Bluffton Police Department,
2 so I was on duty the day that the call was received in
3 reference to the shooting.

4 Q And you were dispatched to what address?

5 A 158 Simmonsville Road.

6 Q Now, that address was the dispatch location,
7 but the actual shooting occurred in a common area, is
8 that correct?

9 A It was in a dirt drive.

10 Q Okay. And this is in Beaufort County?

11 A Yes.

12 Q What observations did you make when you were
13 out on the scene?

14 A When I arrived on scene, the initials officers
15 had already put up crime scene tape around the dirt
16 drive area. And there were still several people in the
17 area. I noted in the center of the dirt drive, there
18 was a white pickup truck. And one of the officers was
19 speaking with the owner of that pickup truck.

20 Q Did you observe the victim?

21 A No. The victim had already been transported to
22 the hospital.

23 Q Were any of his belongings left behind?

24 A Yes.

25 Q What was that?

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1 A There was a pair of gray -- I want to say like
2 blue jean shorts on the back of the white pickup truck.

3 Q Did you look in those shorts?

4 A I did.

5 Q What did you find?

6 A I found -- it was approximately \$86 in cash. A
7 piece of notebook paper. A prepaid telephone card,
8 lighter and a -- I believe it was a pen.

9 Q That was it?

10 A And that was it.

11 Q How did you know that these shorts belonged to
12 the victim?

13 A When I arrived on scene and I made contact with
14 that officer that was speaking to the gentlemen of the
15 white pickup truck, I noted the blood on the shorts.
16 And I had learned from that officer, that those were
17 the victim's shorts.

18 Q Okay. It's your understanding that EMS removed
19 the shorts before taking him to the hospital?

20 A Yes.

21 Q What action did you take after your
22 observations?

23 A I began to process the scene by taking
24 photographs. I took photographs of the area where I
25 had learned that the incident occurred, along with

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1 several vehicles that were parked still in the -- in
2 the area. I requested the initial officers to begin to
3 locate anyone who had witnessed the incident.

4 Q State's Exhibit --

5 MS. BURKE: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MS. BURKE:

8 Q Items 1 and 2, that's in evidence, are these
9 the photos that you also -- that you took?

10 A Yes.

11 Q Okay. I hand to you Item 2 that's been -- has
12 already been entered into evidence, what are the yellow
13 markings, numbered markings in that photo?

14 A Those are two evidence markers that were placed
15 by, I believe, Officer Baker, on shell casings that
16 were located in the dirt drive.

17 Q And you -- did you observe the shell casings?

18 A I did.

19 Q Did you collect the shell casings?

20 A Yes, I did.

21 Q Those are the ones we talked about yesterday,
22 is that correct?

23 A Yes.

24 Q Are these the shell casings that you collected?

25 A Yes.

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1 Q What did you do with them after they were
2 collected?

3 A After they were collected, I submitted them
4 into the evidence division in our office. And
5 eventually completed the SLED paperwork to have them
6 analyzed by SLED.

7 Q These are your initials here, KH?

8 A Yes.

9 Q What else did you do?

10 A After processing what we had there as far as
11 evidence, I began interviewing the witnesses.

12 Q As you were continuing to process, do you
13 recall how close to the -- the shooting the casings
14 were found?

15 A The casings were found in the dirt drive, which
16 is where I learned the shooting had occurred.

17 Q Okay. So, again, on State's Exhibits 1 and 2,
18 it's the area that's enclosed by the yellow tape?

19 A Yes.

20 Q Where the casings were found and where the
21 shooting occurred?

22 A Yes. One of the shell casings was actually
23 under the white pickup truck.

24 Q If you don't mind speaking up a little bit for
25 me. I want to make sure that I can -- and everyone

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1 else can hear you correctly.

2 A One of the shell casings was actually located
3 under the white pickup truck.

4 Q Okay. Now, did you interview all of the
5 witnesses at the scene?

6 A I interviewed the witnesses that I was directed
7 to by the officers who had actually witnessed what had
8 occurred.

9 Q So some -- some officers interviewed other
10 witnesses that you may not have spoken to?

11 A Yes.

12 Q At some point, did you talk to the victim?

13 A I did.

14 Q When was that?

15 A After I left the scene, I responded to the
16 hospital, where he had been transported to at the
17 hospital.

18 Q Approximately how long after the -- how long
19 after the -- you arrived on scene, did you talk to the
20 victim?

21 A I believe it was right around 8:00 in the
22 evening when I arrived at the hospital --

23 Q How many --

24 A Right around 8:00.

25 Q How many hours from the time -- from the scene

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1 to the time you arrived at the hospital?

2 A The shooting was just -- somewhere around 5:30,
3 so what, two and a half hours.

4 Q Okay. What was Troy's condition as he was
5 being treated that you observed?

6 A He was -- he was in the ER. And he was in
7 pain.

8 Q How do you know he was in pain?

9 A Just by his movements and his -- what he was
10 saying. He was also still being treated by medical
11 personnel.

12 Q Okay. So while being treated by medical
13 personnel in the emergency room, did he provide any
14 information to you about who shot him?

15 A He did.

16 Q What did he provide?

17 A He provided me the name Bo.

18 Q Did he tell you anything about the people in
19 the car?

20 A He did.

21 Q What did he say?

22 A He was able to give me the name of the driver
23 as Monique. And of the rear passenger as Octavia
24 Scott, who he told me that he had went to school with.

25 Q How people did he say was in the car?

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1 A Four.

2 Q Okay. Is -- the information that he gave you,
3 was that consistent with your investigation from the
4 witnesses you had already interviewed at the scene?

5 A Yes --

6 MR. DEYSACH: I'm going to object. That's
7 hearsay.

8 THE COURT: Rephrase the question.

9 BY MS. BURKE:

10 Q Was law enforcement provided with any
11 information about the description of the vehicle?

12 A Yes.

13 Q That the suspects fled in?

14 A Yes.

15 Q Okay. Did you or did law enforcement determine
16 the registered owner of the vehicle?

17 A We did.

18 Q And who was that?

19 A Latarsha Monique Johnson.

20 Q Okay. Do you remember how long you stayed at
21 the hospital with Troy?

22 A Maybe an hour.

23 Q And after you left there, what did you do?

24 A After I left there, I contacted my lieutenant
25 at the time and provided him with information that I

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1 received in order to do a news release.

2 Q Did you have an occasion to speak with Troy
3 again?

4 A I did.

5 Q When was that?

6 A That was the following day.

7 Q What did you talk to him about?

8 A I had tried to meet up with him the day after I
9 had met with him at the hospital. And I couldn't -- I
10 couldn't get in touch with him. So I received a call
11 -- a phone call from him that evening on the 29th.

12 Q About what?

13 A He had just knew that I was trying to get in
14 touch with him. I had left messages for him at
15 residences, and he had found out that I was trying to
16 get in touch with him.

17 Q Okay.

18 A And I just let him know that I wanted to meet
19 with him.

20 Q Okay.

21 A And he said that he would be able to meet with
22 me the next day.

23 Q Okay. And that next day was what, two days
24 after the shooting?

25 A It was the 30th.

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1 Q Approximately -- okay. What did you meet with
2 him for?

3 A I had a group of photographs that I wanted to
4 show him. And I also wanted to collect a written
5 statement from him.

6 Q Okay. What is a Gunshot Residue Kit?

7 A It is -- it is a -- it's what we use to
8 determine whether or not an individual has fired a
9 weapon.

10 Q And did you collect one from Troy in this case?

11 A I did.

12 Q Did he volunteer to give you a sample or was he
13 forced to?

14 A He volunteered.

15 Q And why did you decide to collect a Gunshot
16 Residue Kit from Troy, from the victim?

17 A It's just standard to request the -- anybody
18 involved in a shooting to submit to a Gunshot Residue
19 Kit. I had explained to Troy at the hospital that it
20 was important to do the Gunshot Residue Kit so that at
21 a later date somebody could not say that he had fired a
22 weapon.

23 Q Okay. And I may have confused things a little
24 bit with my questioning, you -- the Gunshot Residue Kit
25 was done at Troy's house when you met him two days

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1 later or at the hospital?

2 A No. It was done at the hospital.

3 Q Okay. So let me -- let me correct my
4 chronology of the events. You went to the hospital and
5 spoke with Troy, the victim, and that is where you
6 collected the Gunshot Residue Kit?

7 A Yes.

8 Q And just also correct my timing, how long after
9 you left the scene or how long after the incident, the
10 shooting, did you arrive at the hospital?

11 A About two and a half hours later.

12 Q Okay. I show you what's been previously marked
13 as State's Exhibit 3; do you recognize the item?

14 A Yes.

15 Q What is it?

16 A This is the Gunshot Residue Kit that I
17 performed on Mr. Jinks.

18 Q Is that your name on there that says received
19 from?

20 A Yes.

21 Q And this is what you administered, or I guess
22 collected from Troy at the hospital approximately two
23 and a half hours after the shooting?

24 A Yes. It was -- there should be a piece of
25 paper inside that states exactly what time the Gunshot

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1 Residue Kit was taken.

2 Q But it was approximately two and a half hours
3 after --

4 A Yes.

5 Q Okay. It wasn't six hours?

6 A No.

7 Q It wasn't seven hours?

8 A No.

9 Q What did you do after you collected this kit
10 from Troy?

11 A After I collected the kit from Troy, the kit
12 would have been submitted into evidence at the -- our
13 department.

14 Q And how would you have submitted it?

15 A I would have completed an evidence submittal
16 form and placed it in a locked container.

17 Q There's a red tape on the box -- the back of
18 the envelope, it says KH, is that your initials?

19 A Yes. That would be a piece of evidence tape
20 that's contained inside the Gunshot Residue Kit that
21 was placed on the outside of the kit in order to seal
22 it. And I always initial it prior to -- after
23 completing the kit.

24 Q Okay. So this was your doing?

25 A Yes.

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1 Q The tape and the initials?

2 A Yes.

3 Q Did you tamper with the kit in any way?

4 A After it's sealed, absolutely not.

5 Q When you -- when you collected the actual
6 sample, did you manipulate the sample in any way, that
7 you got from Troy?

8 A No. There was a very descriptive instruction
9 sheet on the inside of the kit, that you go by when you
10 complete one.

11 Q Okay.

12 MS. BURKE: Your Honor, I would like to move
13 State's Exhibit 3 into evidence.

14 MR. DEYSACH: No objection.

15 THE COURT: Without objection.

16 (State's Exhibit No. 3 received into evidence.)

17 BY MS. BURKE:

18 Q Okay. So let's get back to the chronology. So
19 you've done the GSR Kit at the hospital, you've talked
20 to the victim, two days later you say that you met with
21 him to discuss further the details of the incident, is
22 that where we are?

23 A Yes.

24 Q Okay. And at this home or wherever you met
25 with him, did he indeed provide you the written

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1 statement?

2 A Yes, he did.

3 Q Okay. And you said you also showed him a photo
4 lineup?

5 A I did.

6 Q And did he pick out the person who shot him?

7 A He did.

8 Q Did he tell you a level of certainty?

9 A Yes, he did.

10 Q What was that?

11 A He stated that --

12 MR. DEYSACH: I would object to the hearsay. I
13 think Mr. Jinks should have testified to this
14 yesterday.

15 THE COURT: Ask a different question.

16 MS. BURKE: Thank you.

17 BY MS. BURKE:

18 Q Did you provide him the same information from
19 -- that he said at the hospital regarding who shot him?

20 A Yes.

21 Q Okay. And what happened after the meeting with
22 Troy?

23 A I'm sorry?

24 Q What action did you take after you met with
25 Troy and completed a photo lineup and received his

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1 written statement?

2 A After I met with Troy and he identified the
3 shooter, I met with the rest of my team members in
4 investigations and warrants were obtained for the
5 individual, Mr. Wright, that Mr. Jinks had identified.
6 And the two -- the driver and the passenger -- one of
7 the passengers.

8 Q What -- what was the name that was on the
9 warrant for the Defendant?

10 A The warrant read Eric Wright, A/K/A Joseph Bo
11 Derrick --

12 MR. DEYSACH: I object to the relevance, Your
13 Honor.

14 THE COURT: Okay. Do y'all need to approach?

15 MS. BURKE: We should approach, Your Honor?

16 THE COURT: Please.

17 (Whereupon, a conference was held in the presence
18 of the jury, but outside the hearing of the jury.)

19 BY MS. BURKE:

20 Q Okay. That's a lot of names on a warrant. Why
21 is it you all put so many?

22 A Because the -- Mr. Wright was known as or had
23 used those other names --

24 MR. DEYSACH: Objection to the hearsay, that he
25 was known --

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1 THE COURT: Overruled. You can ask that.

2 BY MS. BURKE:

3 Q You can answer the question.

4 A Mr. Wright had went by those names previously.

5 Q Okay. Is it the case that the witnesses also
6 told you, Bo, as well?

7 MR. DEYSACH: Objection to the hearsay.

8 MS. BURKE: It's --

9 THE COURT: Just rephrase it.

10 BY MS. BURKE:

11 Q Well, as part of your investigation, did you
12 receive the name Bo was a suspect?

13 A Yes.

14 Q Did that match the same person as Eric Wright,
15 also known as Joseph Bo Derrick Wright?

16 A Yes, it did.

17 Q So you didn't get the wrong Bo, right?

18 A I hope not.

19 Q Let me rephrase that -- did you get the wrong
20 Bo?

21 A No.

22 Q Thank you. And what crime did you charge the
23 Defendant with?

24 A Assault with intent to kill.

25 Q Anything else?

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1 A Possession of a firearm in the commission of a
2 violent crime.

3 Q Okay. And state to the jury why he was charged
4 with those things?

5 A He was charged with assault with intent to kill
6 --

7 MR. DEYSACH: Objection, Your Honor. I think this
8 is a -- your comments, the law, that she's about to
9 attempt to explain to the jury, that you would be
10 explaining to the jury shouldn't --

11 THE COURT: I think she can explain why -- she's
12 the one who brought the charge -- why she brought that
13 charge specifically, but she can't explain what the law
14 of it is.

15 BY MS. BURKE:

16 Q Right. Please answer the question, keeping in
17 mind -- keeping in mind what the judge just said.

18 A He was charged with assault with intent to kill
19 because he had assaulted the victim by shooting him.
20 And that the shooting did -- the victim did sustain
21 injury from that shooting.

22 Q And then the other charge?

23 A The other charge was pretty self explanatory.

24 Q He had the gun?

25 A He possessed a weapon.

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1 Q Okay. So you obtained the warrants, what did
2 you do then?

3 A Once the warrants were obtained, then again,
4 the information was given to my lieutenant at the time,
5 to do a news media release. And then we contacted
6 agencies in Savannah because we knew that the defendant
7 did frequent Savannah or was from Savannah. And try to
8 locate him and the -- and the others.

9 Q Did y'all set up a tip line?

10 A We did.

11 Q What's a tip line?

12 A A tip line is a -- a phone number that is put
13 in the newspaper or over some type of news media so
14 that people can call that number and give any
15 information on what they may have seen during the
16 incident.

17 Q Any one call the tip line?

18 A We had -- received two phone calls from the tip
19 line.

20 Q Any one called claiming to be an Eric Wright?

21 A Yes.

22 Q What did that person say?

23 A I don't recall exactly what he said, but it was
24 just basically it wasn't me.

25 Q Had you listened to that-- when did that call

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1 come in?

2 A July 31st.

3 Q You listened to that call on that day -- or did
4 you listen to that call at some point in 2008?

5 A I did.

6 Q And you've listened to it since this trial?

7 A I have.

8 Q I hand to you State's Exhibit 5. Do you
9 recognize this?

10 A Yes.

11 Q Did you listen to the CD this week to confirm
12 its contents?

13 A I did.

14 Q Does it accurately reflect what you heard in
15 2008 off that tip line?

16 A It is.

17 Q Does it sound like it's been changed or altered
18 in any way?

19 A No.

20 Q How many calls are on here?

21 A Two.

22 Q And how many calls did you receive in 2008 on
23 the tip line?

24 A Two.

25 MS. BURKE: Your Honor, I offer State's 5 into

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1 evidence.

2 MR. DEYSACH: No objection, Your Honor.

3 THE COURT: In evidence without objection.

4 (State's Exhibit No. 5 received into evidence.)

5 MS. BURKE: And I ask that it be published to the
6 jury.

7 MR. DEYSACH: Your Honor, I want to clarify if
8 that CD contains the -- all the calls on the tip line
9 or just the portion that they're alleging is from my
10 client?

11 MS. BURKE: Yes.

12 MR. DEYSACH: All of them, the whole tip line?

13 MS. BURKE: The CD that you have.

14 MR. DEYSACH: That is whole -- the whole -- every
15 call --

16 MS. BURKE: The two that she said came in.

17 MR. DEYSACH: Okay.

18 MS. BURKE: I beg the court's indulgence.

19 (Whereupon, the CD was played in open court.)

20 BY MS. BURKE:

21 Q So the person called, claiming to be Eric
22 Wright, from what you heard?

23 A Yes.

24 Q Said they didn't know anything about a shooting
25 in South Carolina?

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1 A Yes.

2 Q That they just saw their face on the news?

3 A Yes.

4 Q Why would he have seen the person -- why would
5 he have seen his face on the news?

6 A Because that previous night is when it was
7 released, his name, along with the driver and one of
8 the passenger's names were released.

9 Q Released to the media?

10 A Yes.

11 Q Okay. Going back to the photo lineup, you said
12 that the victim picked out a shooter, picked out the
13 shooter?

14 MR. DEYSACH: Objection to the hearsay, Your
15 Honor.

16 THE COURT: Go ahead and rephrase it.

17 BY MS. BURKE:

18 Q Just to take you back in time to the testimony
19 as to what you said, you met with the victim
20 approximately two days or so after meeting him in a
21 hospital, correct?

22 A Yes.

23 Q And you presented him with a photo lineup?

24 A I did.

25 Q How many photos were in that lineup?

SGT. HEANY -- DIRECT BY MS. BURKE

1 A Five.

2 Q Okay. What was the procedure by which he
3 picked out -- did he pick out someone as the shooter,
4 as the person who shot him?

5 A Yes.

6 Q And what procedure or conversation did you have
7 with him before he picked the person out?

8 A Anytime you show somebody a photo lineup, you
9 explain to them that it's just as important or -- that
10 you're going to show them a group of photographs. And
11 the fact that they're -- that you're showing them a
12 group of photographs doesn't mean that the photographs
13 contain -- letting them know that the photographs may
14 or may not contain the person who committed the crime.
15 You let them know that just because you're showing them
16 a group of pictures, that they shouldn't let that
17 influence their judgment.

18 And also let them know that it's just as
19 important to free innocent people from suspicion, as it
20 is to identify a guilty party.

21 Q What do these photographs look like?

22 A They're just five photographs. One of the
23 photographs contains a known photograph of Mr. Wright.

24 Q And who are the other four?

25 A I don't know.

SGT. HEANY -- DIRECT BY MS. BURKE

1 Q What do they look like?

2 A They were all black males.

3 Q How -- what -- what's the idea behind picking
4 out these pictures?

5 A The idea of picking out the -- a photo lineup
6 is to make sure that each of the photographs are
7 similar, or each of the individuals in the photographs
8 are similar.

9 Q Okay.

10 A Being the same race, being the same age range,
11 maybe, you know, similar hair styles.

12 Q Okay. Is it so that it will not be anything
13 that sticks out about the person who might be the
14 suspect, that distinguishes them from others?

15 A Yes.

16 Q Okay. Is that to avoid suggestibility and to
17 avoid a tainting of the process?

18 A Yes.

19 Q Okay. When you presented these photos to -- to
20 the victim, Troy, did you suggest anything to him or
21 any inkling to him who might -- the suspect might be in
22 the group of photos?

23 A No, I did not.

24 Q Did you pressure him in any way as to which
25 photo to lean toward or not lean toward or whether to

SGT. HEANY -- DIRECT BY MS. BURKE

1 pick anyone out at all?

2 A No. Actually when I present a photo lineup, a
3 group of photographs, I don't even hand the folder to
4 the victim. I lay it down on the coffee table, the
5 folder is closed. The possible suspect's photograph is
6 never the top one in the stack.

7 Q Okay.

8 A Inside the folder.

9 Q And when -- when -- after you discuss the --
10 you just mentioned the conversation about, you know,
11 it's good to not pick -- not pick someone if you're not
12 sure, the conversation you said you had with the
13 victim, after that was done, then he was presented with
14 the photos?

15 A Yes. He was asked to pick up the folder and
16 look at the photographs.

17 Q Did he pick out --

18 MR. DEYSACH: Objection. It's been asked and
19 answered.

20 BY MS. BURKE:

21 Q Did he write anything on the photo?

22 A Yes.

23 Q That he picked out?

24 A He initialed or wrote his name on the
25 photograph.

SGT. HEANY -- DIRECT BY MS. BURKE

1 Q Okay. Whose photo did he pick out?

2 A Mr. Wright's.

3 Q Okay. Thank you. At some point, did the
4 co-defendants turn themselves in?

5 A Yes.

6 Q Do you remember -- do you remember how long
7 after the shooting?

8 A It may have been about four days.

9 Q At some point did law enforcement locate the
10 Defendant?

11 A Yes.

12 Q Do you remember how long after the shooting?

13 A I think we were notified by --

14 MR. DEYSACH: Objection to this, Your Honor. I
15 think it might go into 403.

16 THE COURT: Go ahead and ask it.

17 BY MS. BURKE:

18 Q Answer the question please.

19 A We were notified by authorities in Georgia on
20 -- in March of 2009 --

21 THE COURT: Okay. Hold on a second. Come on up
22 here y'all.

23 (Whereupon, a bench conference was held in the
24 presence of the jury, but outside the hearing of the
25 jury.)

SGT. HEANY -- DIRECT BY MS. BURKE

1 BY MS. BURKE:

2 Q But the point is that you all -- you all were
3 looking for the defendant, is that correct?

4 A Yes. He had been entered into NCIC as a wanted
5 person.

6 Q Okay. And at some point, you received a call
7 that he was found?

8 A I did not, but our --

9 Q Well, your agency?

10 A Yes.

11 Q Okay. Approximately how long after the
12 incident on July 28, 2008 did you receive a call that
13 he was found?

14 A It was a little less than a year.

15 Q Okay. You said it was about April or March, so
16 --

17 A March.

18 Q About ten -- nine months?

19 A Yes.

20 Q So it's safe to say he didn't turn himself in?

21 A No, he did not.

22 Q Okay.

23 MS. BURKE: Thank you. No further questions at
24 this time.

25 MR. DEYSACH: May it please the court, Your Honor.

SGT. HEANY -- DIRECT BY MS. BURKE

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. DEYSACH:

3 Q Good afternoon, Detective Heany.

4 A Good afternoon.

5 Q You're the lead detective on this case?

6 A I was one of the investigators.

7 Q So there was no -- a lead detective on this
8 case?

9 A We have a small department, so everybody works
10 together. I did probably the majority of the paperwork
11 on the case.

12 Q The majority of the paperwork, what about the
13 investigation?

14 A The investigation is a group effort.

15 Q You didn't do the majority of it?

16 A I wouldn't say so.

17 Q Okay. When you say it's a group effort, what
18 you're saying is y'all worked together?

19 A Yes.

20 Q All right. So you each know what the other
21 member of the team is doing, correct?

22 A We definitely try to.

23 Q Try to coordinate?

24 A Yes.

25 Q Because -- I mean, the situation you're

SGT. HEANY -- CROSS BY MR. DEYSACH

1 describing is more than one detective on a case,
2 correct?

3 A Yes.

4 Q And the reason that you would do that is to
5 help develop more evidence, correct? Collect more
6 evidence, correct?

7 A Yes.

8 Q Three is better than one?

9 A Absolutely.

10 Q Now, were you the only detective who went to
11 Pinckney Hill that -- that evening?

12 A No.

13 Q What other detectives were there?

14 A I believe Detective Jackson.

15 Q Anybody else? Any other detectives?

16 A I don't recall.

17 Q Detective Norberg was another detective who
18 worked on the case?

19 A He was not a detective. He was the lieutenant
20 in charge of the investigations.

21 Q What other detectives besides you and Jackson
22 worked on the case?

23 A I -- I don't recall who else was in
24 investigations during that time.

25 Q Okay. When you get to Pinckney Hill, Troy

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Jinks is no longer there?

2 A That's correct.

3 Q He is -- he is gone to the hospital, correct?

4 A Yes.

5 Q To receive treatment, correct?

6 A Yes.

7 Q So what you're doing on Pinckney Hill is trying
8 to figure out who has useful information for your
9 investigation, correct?

10 A Yes.

11 Q And you and other officers are collecting
12 statements from those witnesses, correct?

13 A Yes.

14 Q Oral and written?

15 A Both, yes.

16 Q Correct. And you're going to take those
17 statements and probably take them back to the office
18 and look and see what information is in those
19 statements? I know I'm being maybe remedial, but isn't
20 that what you do?

21 A That's the idea, yeah.

22 Q So that you can decide as a team, what you want
23 to do next, right?

24 A Correct.

25 Q I mean, it's pretty obvious that one of the

SGT. HEANY -- CROSS BY MR. DEYSACH

1 main people you want to speak to is not just the people
2 at the scene, correct, you want to speak to the victim?

3 A Yes.

4 Q All right. And let me ask you, how many people
5 were there on the scene? How many possible witnesses
6 were there on the scene? A lot, a little, 20, 30,
7 dozens?

8 A Probably somewhere around a dozen.

9 Q A dozen people.

10 A That had information.

11 Q Other people there who didn't see anything?

12 A Yes. On Pinckney Hill, the majority of the
13 time, people do not like law enforcement to be there.

14 Q Okay.

15 A So you had people who did not want to talk to
16 law enforcement and you had people that did.

17 Q Okay. And so you're really only able to talk
18 to the people that do want to talk to you, correct?

19 A Correct.

20 Q And Alexis Green, you saw her testify earlier?

21 A Yes.

22 Q She was one of those people?

23 A Yes.

24 Q She was there?

25 A Yes.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Q And when you're there, this is a -- this is a
2 daytime event, correct?

3 A Correct.

4 Q And it's not dark or cloudy or anything like
5 that, is it?

6 A No.

7 Q And from Ms. Green, you were able to get a
8 license plate number, correct?

9 A I believe it was a Lexus, yes.

10 Q And the license plate number went back to
11 Latarsha Johnson, correct?

12 A Yes.

13 Q But it didn't go back to the car that she was
14 driving, correct?

15 A No. I believe it came back on a Cadillac.

16 Q Do you know who owned the car that was being
17 driven?

18 A I believe it is in my notes, but I -- I don't
19 recall who it ended up belonging to.

20 Q Do you know if it belonged to Monique's
21 boyfriend?

22 A I don't recall.

23 Q All right. You go to the hospital and you meet
24 with Troy, correct?

25 A Yes.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Q And you're meeting with him in a hospital room,
2 of course, correct?

3 A In the emergency room.

4 Q And present with him -- him and who?

5 A His girlfriend at the time.

6 Q What's her name?

7 A Shirley Stokes.

8 Q So it's just them two and you in the area where
9 you're having the conversation?

10 A No. The hospital staff were still trying to
11 treat him.

12 Q The hospital staff rendering treatment. Did
13 you see Dr. Hussong?

14 A I may have, but it -- I don't recall.

15 Q When -- now, when you met Troy, you said it was
16 -- you got to the hospital at 8:30?

17 A No. I think it's before 8:30.

18 Q When did you speak with Troy?

19 A I may have had to wait after I arrived at the
20 hospital; you know, for a few moments while, you know
21 --

22 Q If you're waiting for something, it's for his
23 treatment, correct?

24 A Right.

25 Q Okay. All right. When you talked to Troy, you

SGT. HEANY -- CROSS BY MR. DEYSACH

1 had no idea that he had already told the doctor that he
2 didn't know who shot him or why, correct?

3 A No. I had no idea.

4 Q Then you probably wouldn't have known that
5 until you got his medical reports after that, right?

6 A Correct.

7 Q And you retrieved those?

8 A I did.

9 Q When you're having this conversation with Troy,
10 Shirley is participating in the conversation, isn't
11 she?

12 A She is in the room and she did give further
13 information.

14 Q Okay. Did she tell you about the phone call
15 she had with Octavia Scott?

16 A I don't recall.

17 Q Do you think that if you knew about such a
18 phone call, that you might have put it in your report?

19 A Most probably.

20 Q Most probably. Do you have your report?

21 A I don't have it up here with me right now.

22 Q Okay. I'll give you a copy of your report if
23 you'd like. I'm going to take the liberty of already
24 turning it to page 2, which is where I think the
25 pertinent information is.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 A Thank you.

2 Q And I guess what the question will be is, no
3 where in your -- in the section entitled Interview of
4 Troy Jinks, is there any mention of the phone call that
5 Shirley Stokes had with Octavia Scott?

6 A No, there's not.

7 Q Okay. And -- because -- you have no
8 recollection of Shirley ever telling you about such a
9 phone call, do you?

10 A No, not on that day.

11 Q And any investigator worth their salt, if they
12 were told of such a phone call, would have included it
13 in their report, correct?

14 A Yes.

15 Q Okay. So when you look at your report, you're
16 pretty sure Shirley never told you about the phone
17 call?

18 A Yes.

19 Q If you were never told about the phone call, of
20 course, then you would never know what the -- what the
21 contents of the phone call were?

22 MS. BURKE: Your Honor, I think she said --

23 THE COURT: Okay. I'm going to allow him. Go
24 ahead.

25 MR. DEYSACH: It's just -- and it is an obvious

SGT. HEANY -- CROSS BY MR. DEYSACH

1 question. I don't want to spend too much time on it.

2 BY MR. DEYSACH:

3 Q But if you don't know the phone call exist, you
4 certainly don't know what it said, correct?

5 A Correct.

6 Q When you're talking with Troy, you're trying to
7 find a reason behind this whole thing, aren't you?

8 A Yes.

9 Q And after speaking with Troy, all he told you
10 was that -- that -- he provided you no information as
11 to having any previous trouble with Bo, did he -- I'm
12 going to read that again. Mr. Jinks did not provide
13 you with any information that he had any previous
14 trouble with Bo, did he?

15 A No, he did not.

16 Q And you noted that in your report?

17 A I did.

18 Q Because you were trying to find out if there
19 had been such a previous problem?

20 A Yes.

21 Q This wasn't just an omission?

22 A No.

23 Q He told you that there was the black female in
24 the front passenger seat, correct?

25 A Yes.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Q He told you he didn't know that person?

2 A I believe he gave me one of the names. I'd
3 have to look at my report.

4 Q Does your report say that *Jinks* advised there
5 was a black female in the front passenger seat that he
6 did not know?

7 A Yes. That's what it says.

8 Q Okay. He certainly didn't tell you that it was
9 somebody that he had had a sexual relationship with?

10 A No, he did not.

11 Q Okay. Now, you said his girlfriend was there
12 at the time, right?

13 A She was.

14 Q But you went back to meet with him again,
15 correct?

16 A I did.

17 Q And you're saying that that meeting occurred
18 July 30th, correct?

19 A Yes.

20 Q Didn't you, in a pretrial hearing about this
21 case, indicate that that meeting took place on the
22 29th?

23 A In that hearing, I did state that I believe it
24 was on the 29th. But after reviewing my notes, and
25 also the calls for service through dispatch, it was on

SGT. HEANY -- CROSS BY MR. DEYSACH

1 the 30th.

2 Q Right. There was some confusion?

3 A Yes.

4 Q All right. When -- when you go and meet him
5 the second time, where is he -- after you're finally
6 able to get in touch with him, where does that meeting
7 take place?

8 A At the residence of Shirley Stokes.

9 Q Is she participating in this conversation as
10 well?

11 A No.

12 Q Where is she?

13 A She's at the house.

14 Q He never told you the name of that front seat
15 passenger in that meeting, did he?

16 A I don't recall.

17 Q If he had, wouldn't you have noted it?

18 A Yes.

19 Q Do you have it anywhere in your notes?

20 A No, I do not. Not in --

21 Q You collected a written statement from him on
22 the same day, correct?

23 A Correct.

24 Q And --

25 A I -- I delivered -- I gave him a written

SGT. HEANY -- CROSS BY MR. DEYSACH

1 statement. I'm not sure if I actually took it at that
2 time.

3 Q Okay.

4 A Or received it later on that afternoon.

5 Q Okay. Nowhere in that written statement does
6 he say the name of the person? There's nothing in your
7 report that you filed that indicates the name of that
8 -- that front seat passenger, correct?

9 A There's several names in the report that --

10 Q From Troy Jinks?

11 A No. You didn't -- you didn't state that.

12 Q Okay. So you had familiarized yourself with
13 the case file as the investigator, case officer, who's
14 representing Bluffton PD on this trial, correct?

15 A Correct.

16 Q And so you would have known of any lead that
17 would have been run down by your department or anyone
18 else, correct?

19 A Not all the leads, no.

20 Q Okay. So there's some things -- even today, as
21 you sit here in front of this jury, that might have
22 happened on this case that you have no idea about?

23 A That's correct.

24 Q All right. And, in fact, it was Detective
25 Jackson who Monique requested to speak to when she

SGT. HEANY -- CROSS BY MR. DEYSACH

1 turned herself in, correct?

2 MS. BURKE: Objection, Your Honor.

3 THE COURT: Basis?

4 MS. BURKE: Well, I don't know how he's asking
5 this witness, who another witness, who hasn't
6 testified, called an officer who isn't here.

7 MR. DEYSACH: She was -- she was present when it
8 happened. And it's not --

9 THE COURT: Well, let's ask her. If she knows,
10 she knows.

11 MR. DEYSACH: Okay. All right.

12 BY MR. DEYSACH:

13 Q On August 1, Monique Johnson turned herself in,
14 correct?

15 A Yes.

16 Q And she comes to the police department,
17 correct?

18 A Yes.

19 Q You were there. That conversation is reflected
20 in your report, correct?

21 A It is.

22 Q And you were present when it took place,
23 correct?

24 A I was present at the office, yes.

25 Q You write in the report that L. Johnson agreed

SGT. HEANY -- CROSS BY MR. DEYSACH

1 to speak with Detective Jackson, correct?

2 A Yes.

3 Q So that's who she agreed to speak with?

4 A Yes.

5 Q And Detective Jackson has left the force

6 because he was --

7 MS. BURKE: Objection, Your Honor.

8 THE COURT: Come up here.

9 (Whereupon, a bench conference was held in the
10 presence of the jury, but outside the hearing of the
11 jury.)

12 MR. DEYSACH: Okay.

13 BY MR. DEYSACH:

14 Q You -- I'll move on to the tip line recordings,
15 correct -- you -- you heard not only the recording that
16 was played for the jury just now, there was other phone
17 calls placed to the tip line, correct?

18 A I believe there was only one other phone call.

19 Q That phone call was about someone who was --
20 was seeing or had just seen Monique and Octavia
21 together in the area of 278, correct?

22 A No.

23 Q What was that phone call?

24 A I believe it was a gentleman that called in
25 saying that he had seen Monique Johnson or Latarsha

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Johnson and Octavia Scott in the area of Nabors (ph) on
2 Bluffton Parkway.

3 Q Okay. So I have the wrong road?

4 A Yes, sir.

5 Q And he said that they were walking around like
6 they own the world?

7 A That's what he said.

8 Q And there's no mention of my client on that
9 phone call, correct?

10 A No, sir.

11 Q Did anybody connected with the case ever
12 investigate what happened at Club 204 the night before?

13 A Not that I'm aware of.

14 Q Were you aware that both Octavia Scott and --

15 MS. BURKE: Objection, Your Honor.

16 MR. DEYSACH: What's the basis of the objection?

17 THE COURT: What's the basis of the objection?

18 MS. BURKE: Can we approach?

19 THE COURT: Yes.

20 (Whereupon, a bench conference was held in the
21 presence of the jury, but outside the hearing of the
22 jury.)

23 BY MR. DEYSACH:

24 Q Did you ever investigate the fight at Club 204
25 the night before the incident where Octavia Scott's

SGT. HEANY -- CROSS BY MR. DEYSACH

1 nephew --

2 MS. BURKE: Objection, Your Honor. He can ask the
3 question -- did she investigate the incident the night
4 before at Club 204. And that's --

5 THE COURT: You can ask -- you ask the question.

6 MR. DEYSACH: That's the question I was asking,
7 Your Honor.

8 BY MR. DEYSACH:

9 Q Did you investigate an incident the night
10 before the shooting at Club 204 where Octavia Scott's
11 nephew had been jumped by some boys that lived on the
12 hill?

13 A No, I did not.

14 Q Did anybody in the Bluffton Police Department
15 investigate that incident?

16 A Not that I'm aware of.

17 Q Were you even aware that Octavia Scott and
18 another witness had mentioned that to the police?

19 A I was not aware of anything occurring at Club
20 204.

21 Q Did you interview Dominic Webb?

22 A I --

23 Q Dominic West -- West?

24 A West? I spoke with Dominic West.

25 Q Okay. Did you -- did you write in your report

SGT. HEANY -- CROSS BY MR. DEYSACH

1 that West describes Octavia as being Richardo's aunt?

2 A Yes.

3 Q Okay. Isn't it true that you put that
4 statement in your report because Richardo was the one
5 who was jumped at Club 204?

6 A I don't have anything about Club 204 in my
7 incident report. And I don't recall Club 204 being
8 mentioned.

9 Q Do you remember Dominic West calling it the
10 club --

11 MS. BURKE: Your Honor, I think Mr. Deysach is
12 getting a lot of leeway on this Club 204 incident --

13 THE COURT: She stated she doesn't know, so.

14 BY MR. DEYSACH:

15 Q Did you -- did you review Dominic West's
16 written statement?

17 MS. BURKE: Again --

18 THE COURT: She -- just, she can answer it.

19 THE WITNESS: Not recently.

20 BY MR. DEYSACH:

21 Q Did you ever as part of the investigation?

22 A Yes.

23 MR. DEYSACH: Well, then, Your Honor, I believe I
24 can ask her to read after that -- I can ask her to read
25 the section of the written statement where it explains

SGT. HEANY -- CROSS BY MR. DEYSACH

1 what happened at -- you know, I don't want to start
2 talking testimony in front of the jury, but I believe
3 she can read the pertinent section from the statement
4 after saying -- telling the jury that she has reviewed
5 the statement as part of her investigation, but was
6 unaware of what had happened.

7 THE COURT: Okay. Yes, he can ask her.

8 MS. BURKE: Your Honor, can we approach?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury, but outside the hearing of the
12 jury.)

13 BY MR. DEYSACH:

14 Q I'm going to hand you a copy of Mr. West's
15 statement, written statement. I have marked part of
16 it. Can you read the part that I've marked?

17 A Yes -- well, some of the words you can.

18 Q All right. But I'm going to read it and you
19 can agree if it says what it says I say.

20 A Okay.

21 Q "Everything started as a party at Club 204 on
22 the Parkway. My cousin, Alex, and another boy" -- I
23 think parenthetically -- "Richardo or Richard", "were
24 fighting. And my other cousin jumped in to break it
25 up"; is that what it says?

SGT. HEANY -- CROSS BY MR. DEYSACH

1 A Yes. That's what it says.

2 Q Okay.

3 A I just didn't recall Club -- an actual club
4 name.

5 Q Okay.

6 A I do recall a dispute.

7 Q All right. So you're aware that that had
8 happened the night before?

9 A I'm aware that there was a dispute, yes,
10 between --

11 Q But you're not aware of any investigation that
12 took place to follow up on that, correct?

13 A Correct.

14 Q Now, I'm going to go back a little bit in time.
15 The -- the shell casings that you found, you're the one
16 who takes those into custody at the scene, correct?

17 A Yes.

18 Q And you were here -- all right. What you did
19 is you submitted those to SLED for testing against a
20 possible firearm, correct?

21 A Yes.

22 Q You did not do any testing for any fingerprints
23 on those shell casings -- excuse me -- shell casings,
24 correct?

25 A I did not.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Q You -- did anybody?

2 A Not that I'm aware of.

3 Q Did anybody ask anybody to do any analysis on
4 -- on fingerprints on the shell casings, correct?

5 A I don't have it indicated in my report.

6 Q You are a police officer and have been for some
7 period of time, correct?

8 A Yes.

9 Q You're familiar with how guns work, correct?

10 A I am.

11 Q You're familiar with how they're loaded?

12 A Uh-huh.

13 Q And you would agree with what the expert from
14 SLED said as far as how to load a gun, correct?

15 A Yes.

16 Q I'm getting a little lost -- oh, backing back
17 up to the incident, where is -- do you know where Club
18 204 is?

19 A No, I don't.

20 Q Did -- you read that -- you read that it was on
21 the Parkway, correct?

22 A Yes. That's what it says.

23 Q Do you know what the parkway is?

24 A There's a -- several parkways.

25 Q Okay. Is Bluffton Parkway one of them?

SGT. HEANY -- CROSS BY MR. DEYSACH

1 A It could be.

2 Q Is that the biggest parkway in Bluffton?

3 A I think Buck Walter Parkway is large.

4 Q Okay. And when you're taking this statement,
5 you're taking it in Bluffton, correct?

6 A Yes.

7 Q All right. Pardon me for that detour. Nobody
8 every retrieves the 911 call that was placed by Troy?

9 A Not that I'm aware of.

10 Q You didn't?

11 A I don't believe so.

12 Q Detective Jackson didn't, correct?

13 A I don't know what he did.

14 Q If somebody had, they would place it in
15 evidence in the Bluffton Police Department, correct?

16 A Yes.

17 Q It's not like he would have to tell you if he
18 did it, you would just find the item there, correct?

19 A In evidence, yes.

20 Q And if you don't request that in a certain
21 amount of time, it gets erased, correct?

22 A No. I think it just gets harder to retrieve.

23 Q Okay. So it is still retrievable today you
24 think?

25 A I -- I don't know.

SGT. HEANY -- CROSS BY MR. DEYSACH

1 Q And in preparation for this case, you didn't
2 even try to retrieve it?

3 A I had no reason to.

4 Q Okay. No reason to retrieve the 911 tape from
5 the incident that we're at -- that we're doing the
6 trial about?

7 A That's correct.

8 MS. BURKE: Your Honor, may we approach?

9 THE COURT: You may.

10 (Whereupon, a bench conference was held in the
11 presence of the jury, but outside the hearing of the
12 jury.)

13 BY MR. DEYSACH:

14 Q So no 911 tape?

15 A No.

16 Q Let me ask you this, was the car ever located
17 -- was the car that the shooter was in, was that ever
18 located?

19 A No, not by me.

20 Q Okay. Located by anyone?

21 A Again, I have what's in my incident report and
22 what I recall.

23 Q All right. Do you have any recollection of
24 anybody processing -- first of all, you're saying you
25 have no recollection of anybody ever finding that car,

SGT. HEANY -- CROSS BY MR. DEYSACH

1 correct?

2 A Correct.

3 Q And so that would mean you -- there's no
4 recollection of anybody processing that car for any
5 physical evidence, correct?

6 A Correct.

7 Q What about shoe prints or anything like that at
8 the scene? Was that something that y'all looked for?

9 A Yes.

10 Q Did you find any?

11 A No.

12 Q No. Were there too many maybe?

13 A Oh, it's just a lot of shoe prints in the area,
14 absolutely. And I believe that drive was a soft sand.

15 Q Which was -- okay -- bad for shoe prints, I
16 guess?

17 A Yes.

18 Q All right. You're saying that getting a GSR
19 report from Troy Jinks, didn't have anything to do with
20 what you knew about his past, it was something that was
21 simply standard in all -- in all shootings?

22 A It's what I prefer to do, yes.

23 Q And you're not trying to tell the jury that
24 that was some sort of a reflection of you not believing
25 what he was telling you in the first place, correct?

SGT. HEANY -- CROSS BY MR. DEYSACH

1 A That's correct.

2 MR. DEYSACH: I beg the court's indulgence.

3 (Pause.) Nothing further, Your Honor.

4 THE COURT: Okay.

5 REDIRECT EXAMINATION BY MS. BURKE:

6 Q Detective, let's talk about the shell casings.
7 Explain to the jury your decision to have the GSR
8 submitted and not have a fingerprint analysis performed
9 or requested on the shell casings.

10 A I have attempted to get fingerprints from shell
11 casings several times before, and I personally didn't
12 -- did not attempt to get fingerprints from these shell
13 casings.

14 Q When you say you "personally attempted before",
15 you submitted it for analysis or you mean -- what did
16 you mean by that?

17 A I mean that on other shooting incidents, I
18 attempted to get fingerprints from shell casings
19 previously. And I never have been able to get
20 fingerprints from a shell casing.

21 Q To lift the fingerprint?

22 A Correct.

23 Q Okay. And in this case, is there any
24 allegation or was the Defendant charged with possession
25 of a shell casing?

SGT. HEANY -- REDIRECT BY MS. BURKE

1 A No.

2 Q Was there any evidence that someone saw him
3 loading the gun at the scene?

4 A No.

5 Q Based on your investigation from the evidence
6 that will be based on your investigation, isn't it the
7 case that he fired a gun?

8 A Yes. He didn't load -- we don't know who
9 loaded the weapon, we know he fired it.

10 Q So the issue here isn't whether or not the
11 shooter loaded the gun with bullets; what is the issue?

12 A The issue is -- is that he shot the victim.

13 Q Based on your investigation, do you -- was it
14 known when the Defendant obtained the gun that day?

15 A No.

16 Q Do we know who he obtained it from?

17 MR. DEYSACH: I'm going to -- that question
18 presumes a -- a -- based on a premise that is not a
19 part of the evidence --

20 THE COURT: Overruled. You just need to get on
21 with it.

22 THE WITNESS: I'm sorry. Can you repeat the
23 question.

24 BY MS. BURKE:

25 Q Do we know if he got the gun from anyone else

SGT. HEANY --REDIRECT BY MS. BURKE

1 or if it was his own gun?

2 A No.

3 Q Does that matter?

4 A No.

5 Q Why does that not matter?

6 A Because it doesn't matter where he got the gun.

7 It matters that he shot the gun.

8 Q And these shell casings that were found, where
9 were they found?

10 A They were found in the dirt drive.

11 Q And what's the significance of the dirt drive?

12 A It's where the shooting occurred.

13 Q Now, there's this talk about this 911 tape,
14 when did this incident occur?

15 A In July of 2008.

16 Q Based on your recollection, how long does
17 dispatch normally store 911 tapes?

18 A Gosh, I really -- I don't know.

19 Q Do you recall working with me -- working with
20 the Solicitor's Office back in 2010, trying to find the
21 911 tape?

22 MR. DEYSACH: I'd object, Your Honor. I think the
23 Solicitor is ejecting herself in the case. But, also,
24 the question has been asked and she doesn't know.

25 MS. BURKE: She doesn't know how long they --

SGT. HEANY --REDIRECT BY MS. BURKE

1 THE COURT: Okay. Don't -- just ask the question.

2 THE WITNESS: I do recall you asking in reference
3 to the 911 tapes.

4 BY MS. BURKE:

5 Q Was it they would be found at that time?

6 A I don't believe so.

7 Q Now, somehow law enforcement arrived at the
8 scene, is that correct?

9 A Yes.

10 Q And law enforcement arrives at the scene when
11 someone calls 911, is that correct?

12 A That's correct.

13 Q Is it also true that sometimes more than one
14 person calls 911 regarding an incident?

15 A Yes. Sometimes several people call.

16 Q Mr. Deysach went into this questioning about
17 some club, 204, whether or not you investigated it.
18 Based on your investigation for the shooting occurring
19 on July 28, 2008, who was the named suspect as the
20 shooter?

21 A Eric.

22 MR. DEYSACH: Objection, Your Honor. That is --
23 that is -- that's an opinion as to a conclusion that
24 she's drawing --

25 THE COURT: Overruled. Let's go.

SGT. HEANY --REDIRECT BY MS. BURKE

1 THE WITNESS: I'm sorry. Ask the question again.

2 BY MS. BURKE:

3 Q Sure. You said that you were one of two
4 detectives at the scene, that you all interviewed
5 various witnesses and oversaw witness statements being
6 written?

7 A Yes.

8 Q That you reviewed these statements, one of
9 which was just presented to you. You also reviewed
10 other statements, is that correct?

11 A Yes.

12 Q And you talked with other witnesses and
13 gathered evidence at the scene?

14 A Yes.

15 Q Based on your investigation, and based on
16 reviewing witnesses' statements, and talking with the
17 other law enforcement officers at the scene, who was
18 the main suspect as the shooter?

19 A Bo Derrick from Savannah.

20 Q Was there any other witness who made any
21 extraneous statements about a Club 204?

22 A No.

23 MS. BURKE: That's all. Thank you, Your Honor.

24 THE COURT: Mr. Deysach.

25 MR. DEYSACH: Real quickly.

SGT. HEANY -- RECROSS BY MR. DEYSACH

1 **RECROSS EXAMINATION BY MR. DEYSACH:**

2 **Q** You never -- you never found a gun, correct?

3 **A** Correct.

4 **Q** And so you're saying that there was possibly
5 multiple 911 calls in this incident that you didn't
6 retrieve, correct?

7 **A** I don't know how many calls were made.

8 **MR. DEYSACH:** Thank you.

9 **THE COURT:** Anything further?

10 **MS. BURKE:** No, Your Honor. Thank you.

11 **THE COURT:** Sgt., you can step down. Ms. Burke.

12 **MS. BURKE:** Just as a formality, the State, if it
13 has not already done so, certainly moves items 1, 2, 3
14 and 4 and 5 into evidence.

15 **THE COURT:** Vivian, are they all in?

16 **COURT REPORTER:** They are, Your Honor.

17 **THE COURT:** They are already in evidence. So with
18 that said, are you resting?

19 **MS. BURKE:** With that said, the State rests.

20 **THE COURT:** Ladies and Gentlemen, at this time,
21 the State has rested their case. There is a matter of
22 law I need to take up with the attorneys. I'm going to
23 send you back to your jury room very briefly. And we
24 will go ahead and discuss where we're going to go from
25 here.

1 Again, Ladies and Gentlemen, I tell you, you can
2 not discuss this case. Again, it would not be
3 appropriate to do so. We'll be back with you shortly.
4 Thank you.

5 **MR. DEYSACH:** Thank you, Your Honor.

6 **THE COURT:** Thank you.

7 (Whereupon, the jury left the courtroom at 3:19
8 p.m.)

9 **THE BAILIFF:** The jury is clear, Your Honor.

10 **THE COURT:** Thank you. All right. Are there any
11 motions?

12 **MR. DEYSACH:** Yes, Your Honor. First, I would
13 like to renew all of my motions pre and post trial --
14 and I guess during trial. I think the Batson issue,
15 the -- the one that we argued first, I'd like to renew
16 that motion for Batson violation, as well as a mistrial
17 on that basis.

18 I believe, in a way, it reared its ugly head since
19 one of the men has been excused from the jury, and has
20 been replaced by a woman, so now our jury is made up of
21 ten men and -- I mean, two men, ten women. And it was
22 two men who were excused for having the criminal
23 history and the woman who was sat, who was similarly
24 situated, showing that -- that reason for an excuse was
25 simply a -- a pretext as to one of the -- one of the

1 male jurors was a black male. There are no blacks on
2 the jury.

3 **THE COURT:** Let me just go ahead clear up, I
4 disagree with you that the woman that was seated was
5 similarly situated. She actually has printed out a rap
6 sheet, that there was absolutely nothing on the rap
7 sheet. No charge, which was different than the other
8 two men that were, in fact, seated. So I disagree with
9 you on that just as a point, just for clarification.

10 **MR. DEYSACH:** And I'll move on -- I will say that
11 it's my understanding that no -- no rap sheet would be
12 generated if no arrest had occurred. And the sheet did
13 say that her criminal history was in the custody of
14 California and could be retrieved and was not.

15 We move on to the -- the hearsay issue, I think,
16 was the first thing that I asked for a mistrial on,
17 where I had warned the court and the Solicitor that
18 Alexis Green was likely to say, I don't know the
19 person -- I don't know the man who shot, but they call
20 him Bo. That was elicited by the Solicitor even after
21 I had warned her that that would be inappropriate.

22 Your Honor ruled with me on the objection, gave
23 the jurors the instruction, my position is that that
24 instruction wasn't sufficient. And that once -- once
25 the jury hears that, that a jury instruction fails to

1 cure the problem, and a mistrial is the only possible
2 remedy at that point.

3 **THE COURT:** And, again, I disagree with you, as I
4 stated, and I denied your mistrial motion. I did give
5 a curative instruction.

6 **MR. DEYSACH:** The discovery issues that came up
7 were -- there were a couple that the issue with Troy
8 alleging that he meets up with my client at the -- at
9 the gas station was something that I -- you know, the
10 Solicitor and I were arguing whether she said this or I
11 didn't, every discovery issue that we ran into, there
12 was never a document or a note in my file that was ever
13 shown to the court to demonstrate that the information
14 the Solicitor says was passed to me was.

15 And you were here and -- so you know that we
16 disagreed on whether information was submitted to the
17 defense on that. And that that -- that disagreement
18 has not yet been resolved. I think that -- at this
19 time, and I think that we've got the gas station
20 incident with Troy, which includes a statement from the
21 Defendant. I would submit that that's Rule 5
22 materials. I don't know what the statement is, but it
23 was never mentioned in court.

24 It was the -- the evidence was suppressed, but
25 it's evidence that I need to have in order to represent

1 my client, and I was never given it. And until right
2 now, I don't know what happened at that gas station and
3 so I think a mistrial would be the appropriate ruling
4 in that case -- in that situation.

5 **THE COURT:** Correct me if I'm wrong, wasn't the
6 statement from the Defendant saying *you're not going to*
7 *testify against me, are you*, isn't that what the
8 statement was --

9 **MS. BURKE:** Yes.

10 **THE COURT:** And I didn't allow that because it's
11 not appropriate --

12 **MS. BURKE:** That's correct.

13 **THE COURT:** So, yes, we did tell you what it was.
14 She did say that that's what the statement was.

15 **MS. BURKE:** I think Mr. Deysach and I -- I think
16 we can agree or disagree about what he knows and what I
17 say he knows, but certainly the witnesses were all
18 subpoenaed and were here Tuesday, all day. And we
19 heard 12 witnesses yesterday. The Public Defender has
20 an active investigator and they certainly were not
21 hidden from inquiry or further questions if need be.

22 And the import of that, though, is that the State
23 never knows what's going to come out on the stand.
24 Some things were said yesterday I never heard before.
25 And --

1 **THE COURT:** We all have that --

2 **MR. DEYSACH:** And we're -- I know -- I don't
3 really expect a response on each one of these, but that
4 there were certain -- the -- the passenger in the car,
5 her name. What Troy said about her, never turned over.
6 And that is stuff -- that wasn't a surprise, I don't
7 believe, for the Solicitor. I think that that was --
8 that was testimony that she elicited knowing what it
9 was going to be and not turned over --

10 **THE COURT:** How could you speculate as to that? I
11 mean, how could you have any idea?

12 **MR. DEYSACH:** How could -- how could I know --

13 **THE COURT:** How could you speculate that? I mean,
14 you and I both know and we've done this all plenty, but
15 goodness knows what a witness will say, particularly a
16 lay witness.

17 **MR. DEYSACH:** Well, then we could ask the
18 Solicitor if she knew what she was going to say. I
19 mean, we don't have to speculate. You know, she can
20 either say, yes, she knew that Troy was going to say
21 the girl is Kim, who I had sex with, or she doesn't --

22 **THE COURT:** Okay.

23 **MR. DEYSACH:** -- didn't know that.

24 **MS. BURKE:** That was even the first time I've
25 heard the name Kim.

1 **THE COURT:** Just move on. Just move on.

2 **MS. BURKE:** That's the point of it.

3 **THE COURT:** Just let him make his argument and
4 let's move on. Mr. Deysach.

5 **MR. DEYSACH:** That is -- that is the discovery
6 issue. Any and all other mistrials that I asked for,
7 objections that I made during trial, it may not jump
8 out at me right now, I'd like to renew those -- those
9 objections and motions right now.

10 Beg the court's indulgence. I also objected and
11 ask for a mistrial on the removal of the foreman. I'm
12 concerned that his behavior was either not serious
13 enough to remove him or so serious that it may have
14 tainted the rest of the jury. And that was the basis
15 of my request on that score.

16 **THE COURT:** It's a hard one to argue, isn't it?
17 You don't know which side you're going to take?

18 **MR. DEYSACH:** Right. Right. Well, it's not
19 clear, you know. I mean, Your Honor said, well, boy,
20 it may -- you know, two deputies and the -- the
21 foreperson says it was blown out of proportion. And so
22 there is danger for tainting the jury on both sides of
23 the spectrum. So, I mean, I think the danger is double
24 what it might be in another case. But at any rate, I
25 would like to renew that motion.

1 **MS. BURKE:** Your Honor, I --

2 **THE COURT:** No. You don't need to respond to
3 that.

4 **MS. BURKE:** I just want to say, my observation of
5 that juror, even during Your Honor's questioning, was
6 -- his demeanor was also very aggressive in nature.
7 And so I know that's on the record. But if I can
8 verbalize it, I thought his demeanor alone was rather
9 aggressive.

10 **THE COURT:** All right. Mr. Deysach.

11 **MR. DEYSACH:** Okay. So that's a denial on those
12 motions?

13 **THE COURT:** Oh, yeah.

14 **MR. DEYSACH:** All right. Motion for a Directed
15 Verdict, the State has failed to put up evidence
16 sufficient to go to the jury on assault and battery
17 with intent to kill. Certainly if they fail to do
18 that, assault and battery with intent to kill, then
19 that automatically means that the possession of a
20 pistol during a violent crime would fail. But let me
21 tell you why they fail --

22 **THE COURT:** Okay. Well, I heard both Octavia and
23 the victim in this case, Mr. Jinks, testify that it was
24 your client that shot him. And I heard Dr. Hussong
25 testify that it was a life threatening injury. I think

1 it's a jury issue.

2 Now this, of course, begs the question when we go
3 on to the question of ABHAN, I understand that y'all
4 have discussed that a bit. And you're going to be
5 requesting a charge on ABHAN.

6 **MR. DEYSACH:** Well, we'll -- we'll discuss that at
7 the charging time. But honestly, my client and I have
8 not had a meeting of the minds on that and so that's
9 something that we'll deal with then. I do want --

10 **THE COURT:** Well, I can go ahead and tell you
11 ahead of time that I believe it's the correct law,
12 regardless if you make a motion or not for it, I can
13 charge it.

14 **MR. DEYSACH:** Okay.

15 **THE COURT:** So -- and I can tell you that I am
16 considering it. I have not completely made up my mind,
17 but I am considering charging it.

18 **MR. DEYSACH:** I do -- I do want to continue on the
19 ABWIK argument, certainly causing a life threatening
20 injury is not -- as I know -- is not the end-all,
21 be-all of assault and battery with intent to kill.
22 Certainly great serious bodily injury is one of the
23 aggravators that causes an assault and battery of a
24 high and aggravated --

25 **THE COURT:** Aggravated nature.

1 **MR. DEYSACH:** Yeah. That's part of that. For
2 assault and battery with intent to kill, you need the
3 malice aforethought. There has not been any testimony
4 of a plan of -- of a -- I think if you look at the --
5 the shot of the bullet is too low to qualify as an
6 intent to kill. I think that use of a deadly weapon is
7 no longer an appropriate inference on which to base
8 malice on after the Belcher case.

9 Certainly in this case, where there is evidence of
10 mitigation of the case in that there is the threatened
11 use of a -- of a gun, even in mime -- mime form by the
12 -- the alleged victim in the case.

13 **THE COURT:** You can still have implied malice if
14 the circumstances demonstrate a wanton or reckless
15 disregard for human life, or a reasonably prudent
16 person would have known that according to common
17 experience there was a plain and strong likelihood that
18 death would follow.

19 **MR. DEYSACH:** Certainly, that's something that the
20 doctor, as an expert, was able to testify to. But I
21 don't think -- I don't know that an ordinary person
22 knows that a shot to the leg is going to cause death.
23 Most of the time it doesn't. Most of the time the
24 intent of the shot in the leg is not to kill.

25 **THE COURT:** I think the doctor testified that he

1 just treated someone in the past, and he expired
2 because he was shot in the legs so --

3 MR. DEYSACH: He --

4 THE COURT: Stabbed in the leg.

5 MR. DEYSACH: Stabbing -- I think that is what he
6 said. But certainly a stabbing, shooting do not
7 automatically mean -- or just because somebody could
8 die -- somebody can die from getting punched in the
9 face to be honest with you, so -- or falling down for
10 that matter.

11 THE COURT: I can tell you that there is plenty of
12 evidence in this case from which this jury could
13 determine that there was malice. I -- I think it's a
14 jury issue. Because you and I both know, it just has
15 to occur just right before and at the time of the
16 shooting. It doesn't have to be a plan. That's not
17 required.

18 MR. DEYSACH: The element that they fail on is the
19 malice aforethought, Your Honor. And it's just my
20 position that there is no evidence in the record to
21 prove malice aforethought.

22 THE COURT: Okay.

23 MR. DEYSACH: So that's it for the motion.

24 THE COURT: Okay. All right. Well, respectfully,
25 I'm denying your motion. Again, I think this is a jury

1 issue. I think there is plenty of eye witness and
2 circumstantial evidence in this case from which this
3 jury could determine that your client was guilty of
4 assault and battery with intent to kill, or possibly
5 assault and battery of a high and aggravated nature.

6 Possession of a weapon during a violent crime as
7 well. There was a gun. There was a shooting. If they
8 believe he was the shooter, then they can convict him
9 of possession of a weapon during a violent crime.

10 Mr. Deysach, have you had time to speak with your
11 client about whether or not he wishes to testify today?

12 MR. DEYSACH: I have, Your Honor. Let me make
13 sure that he -- he concurs with that. I know we just
14 had the end of testimony --

15 THE COURT: Let's do this. Let's go ahead and
16 take, y'all, about ten minutes or so. That will give
17 you an opportunity to speak with him -- and make sure
18 he stays here -- and then I'll come back and we'll go
19 through that.

20 How many witnesses do you expect to put up, if
21 any?

22 MR. DEYSACH: I mean, I'll talk to my client. I
23 don't expect, to be honest with you, any --

24 THE COURT: Okay.

25 MR. DEYSACH: -- but --

1 **THE COURT:** It could change after your
2 conversation. Got it. Okay. Let's just take ten
3 minutes, y'all.

4 (After a recess, court reconvened.)

5 **THE COURT:** All right. We're going to go back on
6 the record, Mr. Deysach, are you comfortable at this
7 time going through your client's 5th amendment rights?

8 **MR. DEYSACH:** I am, Your Honor.

9 **THE COURT:** All right. Mr. Wright, if you would
10 please stand, sir. And I'm going to get you to raise
11 your right hand.

12 ERIC WRIGHT, having been first
13 duly sworn, testified as follows:

14 **THE COURT:** Thank you, sir. At this time, what
15 I'm going to do is explain certain rights that you
16 have, sir. If at any time, you don't understand what
17 I'm saying, please just ask me to either repeat it or
18 rephrase it or you're welcome to ask me a question as
19 well. Okay, sir?

20 **MR. WRIGHT:** Yes, ma'am.

21 **THE COURT:** Thank you. Sir, we've reached the
22 stage in this trial where you may present your defense.
23 You have the right, sir, to claim protections that are
24 given to you by the 5th amendment of the constitution,
25 which states in just a part, that no person is

1 compelled in any criminal case to be a witness against
2 himself.

3 What this means is that you cannot be required to
4 testify. However, I do want you to also understand
5 that you do have the right to testify if you would like
6 to. But, again, I just want to let you know that no
7 one can make you testify.

8 And I want you to also understand this is a
9 personal right. And it's a right that no one can waive
10 except you. Of course, I expect you to talk to your
11 counsel in determining whether or not you wish to
12 testify. But, again, sir, I just want to make sure you
13 understand that this is a right that you, and only you,
14 can invoke.

15 Sir, if you decide to testify though, you are
16 going to be subject to the same rules that govern the
17 other witnesses in this case and you may be examined or
18 cross examined on any relevant issue in the case.

19 Additionally, sir, if you have any prior
20 convictions for dishonesty or false statements, or for
21 crimes that are punishable by imprisonment for more
22 than one year, and I determine that the probative value
23 of those convictions outweighs any prejudice, sir, then
24 the Solicitor would be able to introduce those prior
25 convictions and use it to attack your credibility.

1 Sir, if you decide to testify, again, that
2 decision must be made freely, voluntarily and
3 intelligently with the knowledge of your 5th amendment
4 rights, sir.

5 And I also want you to know that if you decide not
6 to testify in this case, I'm going to instruct the jury
7 in my closing charge, that they can't even discuss the
8 fact that you did not testify. There is a jury charge
9 that basically says that no person is ever required to
10 testify and that it would be inappropriate for them to
11 discuss in the jury room your not taking the stand.
12 All right, sir.

13 **MR. WRIGHT:** Yes, ma'am.

14 **THE COURT:** Now, have you understood what I've
15 explained to you, Mr. Wright?

16 **MR. WRIGHT:** Yes, ma'am.

17 **THE COURT:** And do you have any questions for me
18 about your 5th amendment rights?

19 **MR. WRIGHT:** No, ma'am.

20 **THE COURT:** Sir, have you had a long enough
21 opportunity to speak with your lawyers, Mr. Deysach and
22 Mr. Hood as to whether or not you should testify?

23 **MR. WRIGHT:** Yes, ma'am.

24 **THE COURT:** Sir, do you wish to testify in this
25 case?

1 **MR. WRIGHT:** No.

2 **THE COURT:** All right, sir. That is your choice,
3 is that correct, sir?

4 **MR. WRIGHT:** Yes, ma'am.

5 **THE COURT:** All right, sir. I appreciate it. You
6 may be seated. Okay. All right.

7 Mr. Deysach, do you have any other witnesses to
8 put forth?

9 **MR. DEYSACH:** I do not, Your Honor.

10 **THE COURT:** Okay. What I suggest we do -- because
11 it is quarter to 4:00 -- is we bring the jury out, go
12 ahead and have you rest formally for them. I will send
13 them home for the day.

14 Tomorrow morning, do we have any scheduling issues
15 with anyone getting here?

16 **MS. BURKE:** No, Your Honor.

17 **THE COURT:** I don't want to keep them waiting.
18 How about we do this, y'all, I'm going to ask that they
19 be back at 10:00 tomorrow morning, just out of an
20 abundance of caution, that everyone's here, ready to
21 go. And then at 10:00, we will go ahead and close.
22 Okay.

23 **MS. BURKE:** Sounds good.

24 **THE COURT:** And be done. Okay. All right. Let's
25 go ahead and bring the jury out.

1 (Whereupon, the jury entered the courtroom at 3:48
2 p.m.)

3 **THE COURT:** Thank you. Welcome back, Ladies and
4 Gentlemen.

5 **MR. DEYSACH:** Thank you very much, Your Honor.
6 May it please the court. At this time, the defense
7 rests.

8 **THE COURT:** Ladies and Gentlemen, at this time,
9 both the State and the defense have rested their case.
10 So what we have left is I have a -- some matters of law
11 I need to take up with the attorneys. You are going to
12 hear the closing arguments from the attorneys as well
13 as my charge on the law.

14 Based on the late hour, Ladies and Gentlemen, I am
15 going to go ahead and send you home for the day. And
16 ask that you come back tomorrow morning at 10:00 a.m.
17 where we will be ready to hear the arguments as well
18 from the attorneys and you will receive the charge on
19 the law. And we will send the case to you for your
20 deliberations.

21 Ladies and Gentlemen, even though you have heard
22 all the evidence in this case, you haven't heard the
23 closing arguments from the attorneys, nor my charge on
24 the law. And, again, it would be highly inappropriate
25 for you to discuss this case, to do any of your own

1 independent research.

2 Additionally, Ladies and Gentlemen, there hasn't
3 been anything in the paper, but again, out of an
4 abundance of caution, were you to open it tomorrow or
5 turn on the tv and see something about this case, you
6 must disregard it, not read it, turn it off, turn the
7 channel.

8 All right. Again, you're not to do any
9 independent research. Again, the only thing I want you
10 to do tonight is go home, you have a little bit earlier
11 evening. Get a good night's rest. Come in tomorrow
12 where we look forward to seeing you back in the jury
13 room at 10:00 a.m. Thank you. You are excused.

14 (Whereupon, the jury left the courtroom at 3:51
15 p.m.)

16 **THE COURT:** Thank you. I wanted to go ahead and
17 discuss with you all the charge. Are there any
18 specific requests to charge from the State?

19 **MS. BURKE:** No, Your Honor.

20 **THE COURT:** From the defense?

21 **MR. DEYSACH:** I would like to discuss the ABWIK
22 charge. I think I have identified as a charge, the
23 ABWIK charge -- I know that you have many charges that
24 are fairly -- that have already been triggered by what
25 you've heard. And I don't know exactly what they are,

1 but I'm sure --

2 **THE COURT:** Do you want me to go through what I
3 intend on charging right now and then we'll just double
4 check to make sure it is, in fact, -- there is any
5 additional --

6 **MR. DEYSACH:** Real quick, I'm just going to renew
7 -- not reargue, just renew my directed verdict --

8 **THE COURT:** Thank you.

9 **MR. DEYSACH:** And motions that I made during the
10 trial and the jury selection and the objections, and
11 those objections that -- motions and objections that I
12 made at the end of the State's case, I'd like to renew
13 all of those right now.

14 **THE COURT:** Thank you. And it is for the record.
15 All right. Y'all, I'm going to right now charge --

16 **MR. DEYSACH:** You didn't -- I think you -- deny
17 the --

18 **THE COURT:** I do deny those motions.

19 **MR. DEYSACH:** Okay.

20 **THE COURT:** Based on the same grounds as I stated
21 before. I talk about the idea that a charge and arrest
22 and indictment was made, it's not evidence in this
23 case. That there is a presumption of innocence.

24 I charge reasonable doubt. Duties of the jury and
25 the trial judge, they're the judge of the facts, I'm

1 the judge of the law.

2 I'm charging direct and circumstantial evidence.
3 The credibility of witnesses. Expert witness. Also a
4 prior record of a witness. If the Defendant did not
5 testify, it is not to be discussed back in the jury
6 room.

7 As far as the actual charges are involved, the
8 first thing I'm going to charge is assault and battery
9 with intent to kill. Additionally, unless you both can
10 agree and don't want it, I do think it's appropriate in
11 this case to charge assault and battery of a high and
12 aggravated nature as a lesser included offense of
13 assault and battery with intent to kill.

14 Then I will charge possession of a weapon during
15 the commission of a crime. Mr. Deysach, you requested
16 an identification charge and I am going to charge an
17 identification charge. I think it is appropriate in
18 this case.

19 And just my typical be a fair and impartial jury.
20 Again, -- support or sympathy to anyone. And, of
21 course, the verdict must be unanimous. And Robin has
22 done a verdict form for y'all to look at as well. So
23 --

24 **MS. BURKE:** Your Honor --

25 **THE COURT:** Hold on one second. One of the things

1 that Robin and I just discussed just very quickly, is
2 whether or not you want a criminal intent charge.

3 MR. DEYSACH: What would it say? Is it the same
4 one in the --

5 THE COURT: It's not Anderson, it's the one in the
6 bench book. Is it -- or is it Anderson? It's in the
7 bench book. Hang on. Go ahead and read it to him.

8 LAW CLERK: "In order to establish criminal
9 liability, criminal intent is required. For example,
10 the mental state required to be proven by the State for
11 a particular crime, might be purpose, intent,
12 knowledge, recklessness or criminal negligence."

13 "Criminal intent must be proven by the State
14 beyond a reasonable doubt. Criminal intent is always a
15 matter that must be determined by the jury from the
16 circumstances surrounding the situation. There is no
17 way to prove intent to a mathematical certainty. There
18 is no way medical science can dissect a person's brain
19 and determine what the person had in mind. So the law
20 says that criminal intent may be inferred from the
21 circumstances shown to have existed. This is how you
22 make a determination of whether or not the element
23 requiring intent was present."

24 "It is not necessary to establish intent by direct
25 and positive evidence. But intent may be established

1 by inference in the same way as any other fact, by
2 taking into consideration the acts of the parties and
3 all the facts and circumstances of the case."

4 "Criminal intent is a mental state, a conscious
5 wrong doing. It is up to you to determine what the
6 Defendant intended to do based on the circumstances
7 shown to have existed."

8 "Criminal intent can arise from action or failure
9 to act. It may arise from negligence, recklessness or
10 an indifference to duty or to consequences that is
11 considered by the law to be the equivalent of criminal
12 intent."

13 **THE COURT:** You know, just in thinking about it,
14 and certainly I don't want to put words in your mouth,
15 but when I'm looking at the assault and battery with
16 intent to kill charge, you know, obviously there must
17 be an assault and battery and there must be malice. I
18 can tell you that there is somewhat already defined, I
19 think enough -- I'm not going to tell you what you
20 would want, but that sounds a little more generalized,
21 in my opinion, than the actual assault and battery with
22 intent to kill charge.

23 **MR. DEYSACH:** My --

24 **THE COURT:** What's your feeling on it?

25 **MR. DEYSACH:** I like the charge. I feel as though

1 it tells the jury every -- every crime requires a
2 certain level of intent. And then the assault and
3 battery with intent to kill charge tells them, in this
4 case, it's this. That's why -- that's why I like it.

5 **THE COURT:** Okay.

6 **MS. BURKE:** In the beginning I thought it was
7 appropriate, but with Your Honor's statements about the
8 assault and battery with intent to kill charge, because
9 the assault and battery says you don't have to have the
10 intent to kill, but to commit serious -- serious bodily
11 intent, I don't want the intent charge to confuse the
12 situation --

13 **THE COURT:** I think it -- actually, I think it
14 fortifies it quite frankly. You know, everyone looks
15 at it differently. You know, whether or not putting it
16 in there confuses everything more, and that helps the
17 defense, I -- I think it makes it sound like it's a
18 little more loose, quite frankly. But if Mr. Deysach
19 is happy with it, then --

20 **MS. BURKE:** Just for clarity on another point,
21 though, if I may. On the -- on your ABWIK charge, Your
22 Honor, the ones that were given to us by Robin has the
23 malice charge in it.

24 **THE COURT:** I took it out. She already took out
25 the part with the deadly weapon -- is that what you

1 gave them?

2 **LAW CLERK:** I gave them the old one and the new
3 one.

4 **MS. BURKE:** I was just making sure, you said your
5 charge on ABWIK, it does include that.

6 **THE COURT:** I can tell you I took it out. If you
7 want me to read it -- basically what I charge now for
8 inferred conduct, it says "malice may be inferred from
9 conduct showing a total disregard for human life". I
10 don't go on to say "inferred malice may also rise when
11 the deed is done with a deadly weapon".

12 I mean, obviously the Belcher case says that if
13 there is any kind of self defense or any type of
14 whatsoever aggression by the other side, then of course
15 it would be inappropriate to charge. When the deed is
16 done with a deadly weapon, you can infer. But with
17 that said in this case -- and I think we come close to
18 the line.

19 In this case, there is the signaling with the hand
20 of what I know to be gun gestures, and that seems to be
21 what is testified to. I, just out of an absolute
22 abundance of caution, with a clean trial in this case,
23 I have struck the portion out saying "inferred malice
24 may arise when the deed is done with a deadly weapon".
25 I -- I just think it makes for a cleaner trial, just

1 because of the inference that there was a gun type of
2 issue.

3 You know, also, there was a little bit of
4 testimony about that there possibly had been a conflict
5 between them before -- well, not really them, but
6 someone else. I just want to make absolutely sure, I
7 guess, even just between Monique and Troy, that I don't
8 want to get scooped under the bus with it. So that's
9 my thought.

10 **MS. BURKE:** I appreciate that. I mean, I
11 obviously would object, Your Honor. I do believe that
12 Belcher has caused a lot of discussion around this, you
13 know, --

14 **THE COURT:** Well, they changed the law. The
15 change to the law for a lot of years.

16 **MS. BURKE:** To say it lightly, but you know, the
17 emphasis there certainly was, as Your Honor said, self
18 defense issues and whether or not when the -- there's
19 an allegation that the alleged victim or the defendant
20 might be acting in self defense, and if there is
21 sufficient evidence for that. And I believe there was
22 a weapon of some sort in Belcher, then that inference
23 is taken out. I don't think that the -- the -- the
24 proper reading of Belcher extrapolates that to say if
25 there is even hearsay or even hand gestures. I think

1 the overwhelming evidence here, whether it be the GSR
2 kit, whether it be all of the witness' testimony, is
3 that there was no weapon present. The GSR kit
4 confirming, you know, no presence of gun shot residue.

5 I do think it's a stretch for us to interpret a
6 hand gesture --

7 **THE COURT:** That would just that no shot had been
8 fired --

9 **MS. BURKE:** Well, Your Honor, in this case --

10 **THE COURT:** I agree. Ms. Burke, I agree it's a
11 bit of a leap, but I'm going to tell you right now, I
12 feel comfortable in the total circumstances of this
13 trial, testifying -- I'm sorry -- charging this way.
14 And I am going to do it. Just from the simple fact of
15 the hand gestures alone.

16 **MS. BURKE:** Okay.

17 **THE COURT:** So --

18 **MS. BURKE:** I just want to note my objection --

19 **THE COURT:** You got it.

20 **MS. BURKE:** -- that he wasn't even at the scene,
21 so he wouldn't have seen any hand gestures. I do want
22 to take note with the ABHAN charge for that same reason
23 as well, Your Honor. In that if the Defendant is
24 claiming that he is not there, then the issue really, I
25 don't think, is the degree of injury whether it's ABWIK

1 or not, or ABHAN. He's claiming that he's not there.
2 And so I do think it's one or the other, you either get
3 a ABHAN charge because you're --

4 **THE COURT:** The jury can either believe that he
5 was there and there was -- the jury could believe that
6 he was there, but there was no malice involved. And
7 that he did do the shooting. And, obviously, there is
8 aggravating circumstances, so the jury could find that.
9 And, Mr. Deysach, unless you don't want me to charge
10 ABHAN --

11 **MR. DEYSACH:** No. I -- I think we've -- we do
12 want that charge.

13 **THE COURT:** Okay. I mean, I do think this jury
14 can find that he, in fact, did it, was the shooter, but
15 he didn't have any malice, so.

16 **MR. DEYSACH:** Thank you.

17 **THE COURT:** Anything else, y'all?

18 **MR. DEYSACH:** Just the identification charge
19 sometimes includes language about a photo lineup --

20 **THE COURT:** She just read the identification --
21 oh, wait a minute, no, you read -- I'm sorry. You read
22 the other one. Let me tell you what I'm going to
23 charge then as to it. No, mine doesn't say anything
24 about the photo lineup. I'll read it to you if you
25 want to hear it. "An issue in this case is the

1 identification of the Defendant as a person who
2 committed the crime charged. The State has the burden
3 of proving identity beyond a reasonable doubt. You
4 must be satisfied beyond a reasonable doubt of the
5 accuracy of the identification of the Defendant before
6 you may convict the Defendant. Identification
7 testimony is an expression of belief or impression by a
8 witness. You must determine the accuracy of the
9 identification of the Defendant. You must consider the
10 believability of each identification witness in the
11 same way as any other witness."

12 "You may consider whether the witness had an
13 adequate opportunity to observe the offender at the
14 time of the offense. This will be affected by things
15 like how long or short of time was available, how far
16 or close the witness was, lighting conditions, and
17 whether the witness had the chance to see or know the
18 person in the past."

19 "Once again, I instruct you the burden of proof on
20 the State extends to every element of the crime charged
21 and does specifically include the burden of proving
22 beyond a reasonable doubt the identity of the victim"
23 -- or excuse me -- "the defendant as the person who
24 committed the crime."

25 **MR. DEYSACH:** Thank you, Your Honor.

1 **THE COURT:** Okay. Any other concerns, anything
2 else?

3 **MR. DEYSACH:** No, Your Honor.

4 **THE COURT:** Any other requests to charge? And if
5 for some reason you think of something overnight, I'm
6 just going to ask that you email, both myself and
7 Robin. And -- she's going to show you the verdict form
8 right now as well.

9 **MR. DEYSACH:** I know that you talked about it in
10 the ADWIK scenario that -- well, I think the testimony
11 was by Octavia was that Troy does the gun signs,
12 because everybody can get it, or something along those
13 lines. I think that that may be enough for a self
14 defense charge if Your Honor would agree. I don't
15 think -- he's in the car. I don't think you have to
16 wait until the guy actually pulls the gun out and
17 shoots him. We know that Troy, the ABHAN arrest and
18 the unlawful weapon arrest are properly used for
19 character of the victim under Rule -- I think it's 404.

20 **THE COURT:** I can tell you that I would not charge
21 a self-defense charge, but now you're talking me out of
22 not charging the inferred intent by using a gun. So --

23 **MR. DEYSACH:** Well, let's just get back to where
24 you had it then.

25 **THE COURT:** Okay. All right. I'll think about

1. it, but I could tell you no.

2. **MR. DEYSACH:** Well, that's all you can do, Your
3. Honor, is say no. You know, so I hope you don't --
4. aren't upset that I even asked or anything like that,
5. but.

6. **THE COURT:** Okay. Do you want to show them the
7. verdict forms?

8. **MR. DEYSACH:** I do have an issue.

9. (Pause.)

10. **THE COURT:** Okay.

11. **MR. DEYSACH:** I want to make sure that it's clear
12. that so that we -- I can see a potential problem, that
13. if the jury were to convict on assault and battery,
14. high and aggravated nature, then possibly convict on
15. possession of a weapon during the commission of a
16. violent crime, that would be an illegal verdict because
17. ABHAN -- assault and battery of a high and aggravated
18. nature is not a violent crime. It's -- this is the old
19. ABHAN. It's not the new ABHAN. So unless it is listed
20. --

21. **THE COURT:** I understand and actually I need to
22. know that. So is it --

23. **MS. BURKE:** I --

24. **THE COURT:** I thought ABHAN was, but --

25. **MR. DEYSACH:** Well, it is now.

1 **THE COURT:** It is now, but it wasn't then.

2 **MS. BURKE:** The new one is -- and I don't know --
3 I'm just putting this out there just to --

4 **THE COURT:** How about someone just research it so
5 we're right.

6 **MS. BURKE:** I think, though, that even the old
7 ABHAN was considered a crime of violence if a weapon
8 was used.

9 **MR. DEYSACH:** I know where the confusion is, is
10 because you have a violent crime, --

11 **THE COURT:** Right.

12 **MR. DEYSACH:** -- which is where we checked --

13 **THE COURT:** Right.

14 **MR. DEYSACH:** Then there is that -- that --
15 possession of a pistol having been convicted of a crime
16 of violence --

17 **THE COURT:** Right.

18 **MR. DEYSACH:** Which is a different set of crimes
19 -- so you've got violent crimes and crimes of violence.
20 This statute requires a violent crime -- not -- well,
21 because we're talking about during the commission of,
22 not with a conviction for.

23 **THE COURT:** Okay.

24 **MR. DEYSACH:** So this one -- if you look at the
25 list of violent crimes --

1 **THE COURT:** Yeah. We'll go look at it.

2 **MR. DEYSACH:** But I feel very confident that if
3 ABHAN wouldn't qualify as a triggering offense for
4 possession of a weapon --

5 **THE COURT:** So, Robin, you -- you can figure that
6 out. I'm pretty sure he is right. We just need to
7 work on the verdict form to make sure it says, you
8 know, if -- you know, stop, if you find that he is
9 guilty of ABHAN. Stop your deliberations. It is over.
10 Okay. You don't answer anything further. Okay. And
11 I'll get it out of the charge, too. Okay.

12 **MR. DEYSACH:** And that's something that I think
13 would be appropriate for you to tell the jury during
14 your charge.

15 **THE COURT:** Okay.

16 **MS. BURKE:** Your Honor, I believe it's your
17 standard practice to do this, but just to make sure,
18 obviously, the fact that the verdict form says not
19 guilty vs. guilty second is not an inclination one way
20 or the other.

21 **THE COURT:** I say it all the time.

22 **MS. BURKE:** I believe you always say that. You
23 switch it all the time.

24 **THE COURT:** Okay. All right. Anything else,
25 y'all?

1 **MR. DEYSACH:** Nothing from me, Your Honor.

2 **THE COURT:** Anything else?

3 **MS. BURKE:** No, Your Honor.

4 **THE COURT:** All right. I'll see you guys -- we'll
5 all be here early, but be here about quarter 'til.

6 **MS. BURKE:** 10:00?

7 **THE COURT:** Quarter 'til.

8 (Whereupon, the hearing adjourned.)
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1 * * * P R O C E E D I N G S * * *

2 * * DAY 4 OF TRIAL * OCTOBER 27, 2011 * *

3
4 **THE COURT:** Okay.

5 (Whereupon, the jury entered the courtroom at
6 10:05 a.m.)

7 **THE BAILIFF:** The jury is seated, Your Honor.

8 **THE COURT:** Good morning, Ladies and Gentlemen of
9 the jury. At this time, what you're going to hear are
10 the closing statements from the attorneys. I am then
11 going to charge you on the law and we will send the
12 case to you this morning.

13 So at this time, if you would give Ms. Burke your
14 attention please.

15 **MS. BURKE:** Thank you, Your Honor. Ladies and
16 Gentlemen, you'll probably hear my voice cracking here
17 and there, so excuse me if I occasionally go and sip on
18 that water over there.

19 Normally, I don't refer to notes, but as you can
20 tell, we've been here for a couple of days and a lot of
21 things were said, so periodically I might jot -- jot
22 over here and look at some notes.

23 Ladies and Gentlemen, on July 28, 2008, the
24 Defendant armed himself with a gun. And by or around
25 four or 4:30 that day, Alexis Green, a 16 year old,

Closing Arguments by State

1 told you surrounded by many witnesses, even children
2 she said had been running around, broad daylight, a
3 public vicinity, homes close by, in this dirt road
4 area, which you'll get to see in evidence once you are
5 done -- once we're done, he decided to fire. Not once,
6 but twice, hitting the victim in the leg.

7 Troy told you that he felt the first bullet go
8 past his leg. And he was turning for the second, it
9 hit him here. Four holes, Dr. Hussong told you, four.
10 And it grazed his scrotum as well.

11 On Tuesday, I think it was, when we had opening
12 arguments, Mr. Deysach told you that the State's
13 appealing to your emotions. And then I continued to
14 listen to his opening argument, it sounded like he was
15 trying to appeal to your fears.

16 Your decision will live with you for the rest of
17 your life. You can't undo this, he went on. Ladies
18 and Gentlemen, I'm not here to appeal to your emotions
19 or your fears, I'm here as the State to present to you
20 the facts and the evidence that supports a verdict that
21 you can hang your decision on. No fears. No emotions.

22 Let's talk about what we heard and saw during this
23 several days of trial. Let's first talk about this
24 concept called believability and credibility of a
25 witness. I know Judge Mullen will be talking to you

Closing Arguments by State

1 about that for the jury charge.

2 That means that when someone takes the stand, you
3 are allowed to gauge their believability and
4 credibility because you don't know them. Their body
5 language, their posture, how do they stand up in that
6 rather confined box, being examined and direct examined
7 and cross examined.

8 Troy Jinks, our victim, he told you -- I don't
9 know what he didn't tell you about him -- he was asked
10 a question, he laid it all out. He said, yes, I'm on
11 probation. Yes, I've had problems with the law. Yes,
12 some charges against me were dismissed. I pled to
13 others.

14 Yes, I've smoked marijuana occasionally in the
15 past. Yes, I've had a one night stand with a woman,
16 who I thought her name was Kim and maybe it wasn't.
17 Yes, I don't always like the law enforcement.

18 What else did he say? The Defendant, Bo, I also
19 know him as Eric, he said, shot me. He fired at me
20 twice. The second time my back was half turned to him,
21 in the leg. I know him through Octavia Scott, who I've
22 known during my trial hood -- childhood, excuse me.
23 I've seen him before.

24 I picked him out of a photo lineup two days after
25 the incident, after I came out from the hospital. When

Closing Arguments by State

1 Detective Heany came to the hospital, Detective Heany
2 told me -- Detective Heany told you she came to the
3 emergency room where he was still being treated by the
4 physicians. She wasn't sure if Dr. Hussong was there,
5 but he was being treated in the ER. She said he was
6 visibly in pain. Well, how do you know? He sounded
7 like it.

8 And you talked to him at that time? Yes, I did,
9 she said. What name did he give you? Bo. This is in
10 the ER, not recovery. She said she got to the hospital
11 about two hours after the incident. He told you, yes,
12 I volunteered to take a Gunshot Residue Test.
13 Detective Heany told you that as well. He's got
14 nothing to hide.

15 He was a straight talker. You know, part of the
16 jury instruction also is about using maybe your common
17 experience and life experience. You may or may not
18 know someone like Troy Jinks, but you got a chance to
19 hear him tell you about what he did and what was done
20 to him. No matter how he might be sized up, he's not
21 the Defendant. Troy Jinks isn't charged with shooting
22 anyone..

23 Let's think about that when we think about common
24 sense. And if someone were to tell you the story,
25 walking down the street, and you didn't have

Closing Arguments by State

1 distractions. Someone said the victim pointed out the
2 defendant in court, the photo lineup, in the ER room.

3 I -- I would first think why would a victim lie
4 about who shot him. Troy Jinks doesn't strike me as
5 the kind of person who is going to be comfortable
6 knowing that he's in here three and a half years later
7 for a trial lying about who shot him. Well, what does
8 that mean? That means the shooter is still out there?
9 That means he's walking around, knowing in his head he
10 lied about one person and watched over his other
11 shoulder because someone else is going to shoot him?
12 Why would he do that? What sense does that make? No.
13 The shooter is right there. The shooter is right
14 there.

15 Let's talk about Octavia Scott. Another person
16 who admitted to you that she's had a criminal record.
17 That she pled guilty to a Magistrate's Court offense
18 for breach of trust. I think she said she paid a fine
19 or something.

20 She told you that she lied when she met with law
21 enforcement. That she turned herself in four days
22 after the incident. It was about a two hour interview
23 approximately. And in the beginning part, she lied.
24 It sounds to me like she was trying to minimize her
25 involvement. Whatever the reason, she said she lied.

Closing Arguments by State

1 She also told me she went in by herself. That she
2 was around 23 years old at the time. She didn't have
3 any friends with her. She said she didn't have a
4 lawyer with her. She said she was asked -- that she
5 was told her Miranda rights during my redirect of her.

6 Were you told you had the right to remain silent I
7 asked her. She said yes. Were you told you had the
8 right to have an attorney. She said yes. And you
9 talked to the cops anyway. And she said, yeah, I told
10 them initially that we met this guy on the road and we
11 picked him up, Monique and I, and went to the hill to
12 get chicken. And that after the shooting, he didn't
13 get in the car.

14 But both stories she said the same thing about who
15 the shooter is, with tears in her eyes, after knowing
16 him since she was 18 years old, whatever relationship
17 they had. Since she was 18 years old, she said I was
18 not going to take the rap for him because I didn't do
19 anything wrong in her mind. She said I left the scene,
20 but I didn't shoot him. I didn't do anything wrong in
21 that respect.

22 She felt that he should have manned up. That's
23 her thoughts and take responsibility, she said, for
24 what he did.

25 We talked about how long this discussion was with

Closing Arguments by State

1 law enforcement, did you leave the room and call
2 someone before you changed your mind. Did you have a
3 lawyer come and talk to you, anybody come and talk to
4 you. She said, no, the officer looked at me. I looked
5 at the officer and I knew there was no reason to lie
6 about when he got in the car and when he didn't get in
7 the car.

8 The interesting thing about Troy Jinks' testimony
9 and about Octavia Scott on cross examination, is the
10 question that they were not asked, that left me
11 curious. The questions they were not challenged on.

12 See, it's not easy during direct examination, but
13 it's a lot easier on cross because you're the State's
14 witness. I kind of roughed her over a little bit, but
15 she's still the State's witness.

16 But on cross, she's not a friend of the defense
17 so-to-speak. What didn't you hear? I didn't hear the
18 question, are you lying about the shooter? Questions
19 about, do you smoke marijuana; yes. Do you do this;
20 yes. You just pointed out my client, did you lie about
21 that. I didn't hear that question. Why not challenge
22 those two people on the very issue we are here today to
23 decide. Let's see how they hold up on that stand when
24 they're challenged with that question.

25 Of course, I asked and you heard what they said,

Closing Arguments by State

1 they pointed him out. They gave the different names
2 they have known him by. But it was curious to me why
3 not challenge, why not -- why not -- and the defense,
4 of course, does not have a right to -- they don't have
5 to put up a trial or a case or call witnesses and so
6 forth. Let's get that clear.

7 But they are participating in a trial to the
8 extent of asking questions to the witnesses. And so
9 you heard them ask several questions. If I've got
10 somebody in the hot seat, I want to get to the point --

11 **MR. DEYSACH:** Your Honor, I would object to the
12 improper argument --

13 **THE COURT:** Okay.

14 **MR. DEYSACH:** -- the defense as being --

15 **THE COURT:** Okay. Sustained. You need to move
16 on, Ms. Burke.

17 **MS. BURKE:** Octavia and Troy looked you in the eye
18 and told you what happened. They told you about their
19 lifestyle. They told you the bad things they've done.
20 And they told you who shot Troy that day.

21 Let's talk a little bit about the law. The
22 defendant is charged with assault and battery with
23 intent to kill. The judge will explain to you exactly
24 what the law is about that. There are five elements of
25 assault and battery with intent to kill that the State

Closing Arguments by State

1 has to prove.

2 The judge would tell you that the State has to
3 prove every element beyond a reasonable doubt. Just
4 the five. Nothing more.

5 They are, unlawful attempt to commit a violent
6 injury on the person of another with malice
7 aforethought and with the present ability to complete
8 the act. That's the five. That's it for this charge.

9 What's unlawful attempt. Well, it's illegal to
10 fire a gun at someone. That one is pretty straight
11 forward. I think the witnesses all said that the guy
12 in the car fired the gun at Troy. That was confirmed,
13 the ID was confirmed by Octavia and Troy.

14 To commit a violent injury. Well, you fired
15 exactly -- directly at Troy. He didn't fire into the
16 air, or to the side. The evidence is undisputed that
17 he fired at Troy and Troy was hit. He fired twice.

18 Octavia testified that although things happened
19 fast, she heard bam bam. That's consistent with Troy's
20 testimony. Because he said he felt the first bullet go
21 past his lower leg area. And he had time to turn to
22 run. So there is some delay or some hesitation between
23 those shots. I'll argue that maybe he -- the defendant
24 was addressing his aim.

25 Now, Dr. Hussong testified that there were four

Closing Arguments by State

1 holes left in Troy's upper thigh area when that bullet
2 went through this area, grazed the scrotum. He
3 testified it could have been a life ending injury. He
4 told you examples of people who died from similar
5 injuries. He told you it could have also been a
6 serious bodily injury, and of examples of veins and
7 different arteries in that area of the leg that could
8 have resulted in something more fatal. He told you
9 that Troy was lucky. An inch here or an inch there.

10 But Ladies and Gentlemen, the law does not say and
11 the judge will instruct you, that the defendant has to
12 be -- or rather the victim has to be paralyzed or that
13 he has to suffer a life sustaining injury to meet that
14 second prong, that second element.

15 The issue is, was there an intent to commit a
16 violent injury. And so when you shoot a gun at someone
17 twice, and there is some pause, I think it can be
18 inferred what the intent is.

19 **MR. DEYSACH:** Objection, Your Honor. I don't
20 think that's an accurate statement of the law.

21 **THE COURT:** Overruled. You can go ahead.

22 **MS. BURKE:** What does Suzann Cromer from SLED say,
23 she was a veteran. She said all guns are dangerous.
24 He didn't do a -- a rock or spit ball or something, he
25 chose to arm himself with a gun and he chose to fire

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1 that gun twice. I think that prong is also met. That
2 element.

3 Let's move on to element three, the person of
4 another. Well, he shot Troy on his body. That's the
5 person -- that's his person. I think that element is
6 also met.

7 Let's talk about element four, malice. The judge
8 will tell you the full definition of malice. But
9 basically it's the intentional doing of an unlawful act
10 with intent to injure. The evidence that there was no
11 stopping the defendant from firing that gun.

12 The testimony is that the car comes in to Pinckney
13 Hill. The driver gets out and argues with Troy. She
14 gets in his face. Troy doesn't do anything to her.
15 They're having a verbal discussion. Sticks and stones
16 can break my bones, words can never hurt me.

17 They get back in the car. They drive to the back,
18 to the Chicken Shack or wherever they were going. Come
19 back around, and Monique demonstrated, she said that --
20 I don't want to confuse things -- I'm going to have the
21 chairs go this way.

22 She said, the defendant was here. She was there.
23 The victim, he told you too, further over here. This
24 car is coming back. Troy tells you that he comes to
25 the car and points his finger. Points his finger.

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1 Maybe he's mouthing off something. Sticks and stones.
2 Monique tells you that --

3 **MR. DEYSACH:** Objection. I know that she's saying
4 Monique -- Monique isn't somebody who testified. I
5 want to make sure that she --

6 **THE COURT:** Thank you.

7 **MS. BURKE:** Ladies and Gentlemen, we know we've
8 had a several day trial. And I know you weren't
9 allowed to take notes, but I'll rely on your memory.
10 So if you hear me speak about something, and Mr.
11 Deysach has corrected me, we all know there was no
12 Monique that actually testified, but I'll certainly
13 refer to your memory if you hear me say something that
14 you don't recall.

15 But in any event, let's get back to it. Octavia
16 testified that when Troy pointed to the car, and
17 whatever he was mouthing off, she told the defendant,
18 as she sat here -- I'm sorry -- as she sat there, don't
19 do it.

20 She said she grabbed his hand. I said, were you
21 about the same size back then? She said yeah. She
22 said she grabbed his hand and he yanked it away. He
23 yanked it away, stepped out of the car, bam bam. Two
24 shots. A brief pause in between.

25 There was no stopping him. Alexis Green, the 16

Closing Arguments by State

1 year old, who ran behind him to get the license plate
2 told you there had been kids playing. Sunny day.
3 Everyone enjoying it on Pinckney Hill. There was
4 nothing stopping him. A reckless disregard for the
5 value of human life. Malice, broad daylight.

6 He gets back in the car and he flees -- and they
7 fled the scene. Octavia says that when he gets back in
8 the car, he says, *I did wrong* or something to that
9 effect. I'll rely on your memory.

10 Did he stay behind to explain to law enforcement
11 what happened, to give his side of the story, whatever
12 that might be. No, they fled.

13 **MR. DEYSACH:** Objection, Your Honor, the comment
14 of -- improper comment.

15 **THE COURT:** Overruled. You can go ahead.

16 **MS. BURKE:** Octavia told you they fled in the car.
17 Troy told you they fled in the car. Alexis Green told
18 you the car left the scene. Kelly Heany told you he
19 was picked up about a year later. So he didn't stay
20 behind. But what does he do.

21 Well, let's see, Kelly Heany tells us that there
22 was information given out on press release, or about
23 the 30th or so of July. That same two days after the
24 shooting. And then the 31st, on the tip line, the
25 defendant called -- you heard the tape -- and you heard

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1 what he said.

2 This is Eric Wright. I'm in Savannah. I stay in
3 Savannah or I stay in Georgia. I see myself on the
4 news. I don't got nothing to do with that, expletive,
5 expletive. Well, thanks. Thanks for letting us know.
6 Savannah is about 30 minutes away, how about you come
7 on over to South Carolina.

8 What's a man who roams around for about a year,
9 knowing that there are warrants on him, his face on the
10 news. It's a 30 minute drive from Savannah to Bluffton
11 Police Department. Clear your name. Don't wait for
12 the cops to come get you.

13 There was another call to that tip line, that Mr.
14 Ben Sinure (phonetic) I think his name is. He said
15 that he wasn't sure. I think I saw the ladies
16 yesterday scurrying across the parkway. Yesterday,
17 Tuesday. He's kind of off on that because the
18 yesterday would have been a Wednesday. So I'm not sure
19 if he saw what he thought he saw or not.

20 Monique -- or rather Octavia did testify that they
21 were in Savannah or in Hardeeville, who knows. They
22 may have been going back and forth.

23 But I asked Octavia about that call, were you
24 present when he made that call. I didn't play the tape
25 for her. The questions that Mr. Deysach asked her on

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1 direct (sic) examination, he did ask her -- or cross
2 examination. He didn't say did the police talk to you
3 about a 911 call. She was never asked that by the
4 police or anyone. But I knew the tape existed. She
5 said, yeah, I was there when he called. It's
6 consistent.

7 I played the tape for Ms. Heany because she's in
8 law enforcement. She recognized her tip line
9 information. She can confirm that that's the tape.

10 So when you think about malice, think about the
11 totality of the circumstances that we -- that the
12 defendant finds himself, where he committed the act.
13 And when you think about those things, I believe that
14 we've met that element of assault and battery with
15 intent to kill.

16 The final element is that the person had the
17 present ability -- the defendant had the present
18 ability to complete the act. I think that was easy,
19 too. He had a gun. Shell casings were found at the
20 scene. Dr. Hussong said that Troy's wounds were
21 consistent with a bullet wound. That's not disputed.

22 That's all the State has to prove, for assault and
23 battery with intent to kill. Those five things.
24 That's all your service commands in terms of
25 deliberations regarding those elements. Nothing

Closing Arguments by State

1 outside of that.

2 Let's briefly talk about reasonable doubt and then
3 I'll wrap up. The judge will also instruct you about
4 reasonable doubt. The State has to prove its case
5 beyond a reasonable doubt. And I'll ask you to
6 remember one word, reasonable. Reasonable doubt. Not
7 fairy tale. Not could have, would have, should have.
8 Reasonable doubt. Not alternative theories not
9 submitted by the facts of the element. Reasonable
10 doubt.

11 There was some talk about this Club 204. I wasn't
12 sure where that was going. But the discussion came out
13 with Detective Heany, asking her about whether or not
14 Octavia may have told law enforcement about something
15 having to do with a cousin of hers, and about some
16 witness who may have written a statement about that and
17 if she got a chance to see the statement.

18 And I kept thinking the entire time, Octavia was
19 on that stand. You couldn't use it as an alternative
20 theory. You think she's got some motive. Something
21 else is going on. She is subject to the scrutiny of
22 cross examination on everything else about her life.
23 That's the witness we need to hear that from.

24 We think Troy has got something else with some
25 Club -- I have no idea what was going -- what that

Closing Arguments by State

1 testimony was about. That's the witness we need to
2 flush that out with, to figure out what's there and
3 what's not there.

4 The defense, you know, they -- it's kind of like
5 an easy ah-ha, law enforcement didn't run down that
6 trail, did they. That creates doubt. Alternative
7 theories not supported by the evidence or the facts.
8 Not reasonable to believe.

9 Shell casings, you didn't get fingerprints off
10 that shell casings, did you. Because my guy says he
11 wasn't there when he called the tip line, he didn't
12 bother to come in to tell law enforcement, but he said
13 he wasn't there. So if my guy said he wasn't there, if
14 you had fingerprinted the shell casings, then maybe the
15 fingerprint would have been of -- I don't know -- the
16 real shooter. And that would have cleared my guy.
17 That little step that you forgot to do and in your
18 judgment you failed to do. No, disregard the eye
19 witnesses who said my guy was there.

20 Suzann Cromer talked about the projectile of the
21 bullet, the explosion, if you will, when that bullet
22 leaves that casing. We saw photos of where the shell
23 casings were found. One here in the dirt road. The
24 other under the white pickup truck.

25 Alexis Green told you that that white pickup truck

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1 was not there at the time of the shooting, that it came
2 right after, and that's what Troy eventually laid on
3 while EMS was attending to him. His shorts were found
4 on there, Alexis -- Detective Heany tells us.

5 So we've got these shell casings in this dirt road
6 in the hot July sun, one under a truck -- old looking
7 truck -- well, maybe not too old. One in the middle of
8 the area there. And the alternative theory is, if you
9 had fingerprinted that, we wouldn't be here.

10 Kelly Heany talked to you about in her years of
11 experience in law enforcement, they've never been able
12 to get a fingerprint off a shell casing, ever. But if
13 you just did that.

14 Ladies and Gentlemen, I'll tell you, I've heard a
15 lot of arguments by the defense. And again, the
16 defense, let me make clear, has -- does not have a
17 burden to prove anything. But in terms of things that
18 come out during trial, there's always if you had done
19 this, that's their job. The State says this. The
20 defense has a counter. There will always be a if you
21 had.

22 I submit to you that those are unsupported
23 alternative theories, not based in the facts of this
24 case or the evidence. Because the evidence you have,
25 beyond a reasonable doubt, says he's the shooter.

Closing Arguments by State

1 So, ladies and gentlemen, let's get back to what's
2 been consistent. On July 28th, 2008, the Defendant
3 armed himself with a gun. Around 4:30 or so that day,
4 surrounded by people, broad day light, kids perhaps
5 running around, on Pinckney Hill -- was he trying to
6 prove he was big and bad on Pinckney Hill.

7 Detective Heany tells you that they don't always
8 like law enforcement on Pinckney Hill. Is he trying to
9 prove himself in that car with his four female friends.
10 When Troy came to the car, mouthing off, whatever Troy
11 said, sticks and stones. Was he fed up.

12 He had already seen Troy and Monique fussing at
13 each other. Did he feel disrespected. Did he feel
14 challenged that Troy's doing this, Troy Jinks is doing
15 this, while he's in the car. I don't have to prove
16 motive. That wasn't one of the elements.

17 But whatever it was, whatever was in his mind, he
18 decided to fire that gun. And he fired twice. And he
19 shot Troy Jinks. And for that reason, I ask that you
20 find him guilty as charged of assault and battery with
21 the intent to kill, and possession of a weapon during
22 the commission of a violent crime. Thank you.

23 **MR. DEYSACH:** Thank you, very much, Your Honor.
24 May it please the court.

25 **THE COURT:** Yes, sir.

Closing Arguments by Defense

1 **MR. DEYSACH:** Good morning jury. One of the
2 things about going second is that you've already sat
3 and listened to one lawyer talk for half an hour. And
4 I know that one of the challenges I have is to hold
5 attention in the human attention span.

6 But I'm going to have to ask you -- I'm going to
7 do my best to be as brief as possible. And it probably
8 won't be as brief as you would like, but I'm going to
9 have to ask you to work a little extra hard because
10 this is the final push, the last things that you'll
11 have to hear about this trial, before you go back and
12 you do that duty in the jury room, that is really what
13 this case is all about.

14 I am afraid of the appeals to emotions. That's
15 why I tried to bring that up in the first place. The
16 Solicitor, I think when she finishes with, there were
17 children around and things like that, that she's
18 appealing to emotion. She's definitely doing that.

19 That she -- she minimizes what the proof beyond a
20 reasonable doubt is. Oh, you know, there's always
21 reasonable doubt in the case. There's always going to
22 be reasonable doubt. That's what I felt the point that
23 she was trying to make was.

24 And when you mix emotion with the lack of respect
25 for the burden of proving a person guilty beyond a

Closing Arguments by Defense

1 reasonable doubt, that creates the conditions for the
2 wrongful conviction that I started talking about.
3 Where a decision is based not on the law and the facts,
4 but emotion and you're not applying the actual standard
5 that the judge is going to give you, when she tells you
6 what you're supposed to do.

7 The other two ingredients of this case that make
8 it such a candidate for a wrongful conviction are the
9 lack of any physical evidence to corroborate witnesses.
10 And that those witnesses themselves have compromised
11 themselves. Those witnesses have compromised
12 themselves by statements they've made about the case
13 and things that they've -- other baggage that they
14 bring with them to court.

15 So what we've got is emotion and respect for proof
16 beyond a reasonable doubt. That's something that I
17 have to rely on you guys to be aware of and to not let
18 that have any -- creep into your decision.

19 The lack of physical evidence to corroborate what
20 these witnesses say and these witnesses' credibility,
21 that's -- that's what you have to be thinking about
22 when you go back there. Because that's really where
23 this case -- this case lies.

24 I did have a number of, you know, disagreements
25 about what the state of the law is, the way that the

Closing Arguments by Defense

1 Solicitor described it to you. So just like most
2 disagreements between lawyers on one side or the other,
3 they're resolved by the judge. And that's how I want
4 any misunderstandings between what the -- what the law
5 of the case is to be resolved.

6 Her Honor is going to tell you what the law is and
7 that's what I want you to pay attention to, not what
8 was told to you during argument. Because that's what
9 it is. And she's going to tell you what reasonable
10 doubt is so you'll be able to hear from her what a
11 difficult standard it is.

12 What I want to tell you is not how difficult it is
13 -- how high the standard is, I want to tell you how
14 important the standard is. Because I know -- know why
15 it exists this way. It exists this way to avoid
16 wrongful convictions.

17 Because, you know, we're talking about a situation
18 where the Solicitor's Office, the Bluffton Police
19 Department and SLED, are all participating in the
20 prosecution of this case. So in that way, the
21 courtroom becomes somewhat uneven.

22 And so if you don't counter balance that with a
23 presumption of innocence, a burden of proof beyond a
24 reasonable doubt, we're going -- there is a danger of a
25 wrongful conviction. I said "danger of wrongful

Closing Arguments by Defense

1 conviction" a number of times. I don't know how else
2 to -- to say it.

3 An issue of law that I want to bring up, first,
4 you heard the Solicitor talk about assault and battery
5 with intent to kill. What she didn't tell you, I
6 guess, was that the judge is going to give you an
7 instruction about an offense called assault and battery
8 of a high and aggravated nature. And the judge is
9 going to explain the differences between those two.

10 Listening to the Solicitor, it may it sound as if
11 any time somebody is shot, that that must be assault
12 and battery with intent to kill. That is not the --
13 the state of the law. That's -- that's not the case.

14 If that were the case, you wouldn't be given the
15 choice of assault of a high and aggravated nature. And
16 I know that the -- the difference has to do with that
17 malice aforethought. That's where the difference lies.

18 Not with how bad is the injury, whether or not a
19 gun is used, that's not the difference between the two.
20 The differences between the malice aforethought, the
21 planning and the intent is really what the difference
22 is.

23 But I think in this case what -- even if you
24 believe what everybody said, or whatever everybody
25 said, the last thing everybody said, I'll say -- you

Closing Arguments by Defense

1 know, what -- the story that they finally stuck with --
2 they've described the classic ABHAN, a fight that --
3 that escalates into a higher level of violence, a shot,
4 first towards the feet, then the leg. A response to
5 provocation. Those are the things that you look at
6 when you're trying to decide whether or not an assault
7 and battery of a high and aggravated nature occurred,
8 or an assault and battery with intent to kill occurred.

9 And I know that my client is over there probably
10 saying get on with it, because you heard the tip line
11 call. And he was telling anybody who would want to
12 hear, that he wasn't there. He wasn't calling and
13 saying, I was there, but you know, that's not how it
14 happened. That's not what he's saying.

15 When he calls the tip line, you hear a person who
16 says -- my client who says, I just saw myself on the
17 news. I don't know anything about this. I wish he
18 hadn't cussed. I'll say that. I don't think his
19 language reflected too well on him.

20 But what I'm asking you to think about is somebody
21 who sees themselves on the news for a reason they don't
22 know and calls the tip line. And I'm arguing -- I'm
23 telling you that who would do that if they really were
24 there. Who would call just to say I'm not there. Why
25 would you bother calling the tip line in the first

Closing Arguments by Defense

1 place. So that's -- that's out there.

2 And what I'm saying when I talk about assault and
3 battery of a high and aggravated nature, is the State
4 proved that an assault and battery of a high and
5 aggravated nature occurred. They just didn't prove who
6 did it. They didn't prove who did it.

7 And I'm not -- when I talk about lack of physical
8 evidence to corroborate people's stories, I'm not -- I
9 mean, it cuts both ways. If that fingerprint is found
10 and it turned out to be my client, what -- what can I
11 stand up here and tell you.

12 If the -- if the 911 call comes, and it's Troy
13 right away saying he knows his shooter, that would --
14 that would change the whole dynamics of this. And I'm
15 saying all you've got to do as an investigator is to do
16 that due diligence. To not get a 911 call seems like
17 investigation 101. I'm not talking about asking
18 somebody to be CSI, I'm talking about getting a
19 recording that is in existence about a case where
20 somebody is shot, and they're accusing somebody of
21 assault and battery with intent to kill.

22 So I don't think asking to get a 911 tape is -- is
23 too much to ask. And the reason I wish that you had
24 it, is because we could see does Troy say, I don't know
25 who shot me or why, like he told the doctor, or does he

Closing Arguments by Defense

1 say it was both, like he says a few hours later. Okay.

2 I was surprised when -- well, not surprised -- I'm
3 not saying that -- Alexis Green comes and tells us a
4 shooting occurred. I think of any of the lay
5 witnesses, she was certainly credible. She seemed like
6 she was independent. That she wasn't going to tell you
7 something that she didn't know. And when -- never
8 identifies my client as the man in the car. Never
9 identifies him as the man in the car. And if she
10 could, she would have. If she could, she would have.

11 So all that leaves us with -- okay. I'll get back
12 to her. Broad daylight. She is paying close enough
13 attention to see that the car pulled forward first, and
14 then back. Paying close enough attention to get the
15 license plate number.

16 So what that tells you is she is already in the
17 let me see what facts I can remember to -- to tell
18 somebody about this, to help the police. So she is
19 paying attention is my point. And she is not able to
20 identify my client. And if she could have, she would
21 have.

22 So that just leaves us with Octavia and Troy. And
23 what -- when I'm sitting over there and listening to
24 argument, I -- I really struggled when I hear the
25 Solicitor telling you reasons why you should believe

Closing Arguments by Defense

1 Octavia Scott. Reasons why you should believe her.

2 And the idea that the Solicitor's office entered
3 into an agreement with her, to tell the truth, is one
4 of the worst deals I've ever heard of. If anybody --
5 you would have to be -- if anybody lent her \$5, I
6 wouldn't expect it back, but you're going to -- you're
7 going to expect her to tell the truth, her convicted of
8 breach of trust right around the same time. Lying to
9 get money. Okay.

10 Lying to the police when she comes in. And when I
11 asked her about those lies she told the police, she was
12 giggling. Ha ha ha ha. That's funny. That silly ole
13 lie I told the police. She tells you, oh, I'm lying to
14 the police just so other people will look good. She is
15 lying to the police to help herself. That's what a
16 pathological liar does. They lie to benefit
17 themselves. If they can tell a lie to benefit
18 themselves, that's what they do.

19 And that's the kind of liar she is because the
20 window into the kind of liar she is, is those crazy
21 details she gives about a fictitious car ride that she
22 gets after the shooting, given to her by a white girl,
23 with a bob, a spaghetti strap tank top, capri pants,
24 and a white four door colored car, that she -- that
25 gives her a ride -- a stranger that gives her a ride to

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1 Savannah. Each one of those details being absolute
2 fiction. Okay.

3 So that let's you know that she is a bold liar.
4 That she knows that by giving details to a liar, that
5 she can add credibility to it. She knows by making an
6 agreement with another person who is in the car to tell
7 the same lie, that she can make her lie seem more
8 credible.

9 She will lie to the police to affect the outcome
10 of a -- a case. That's what she's doing. She's not
11 just manipulating the Solicitor -- the police. She's
12 manipulating everybody who plays a role in this
13 process.

14 And for Octavia, the truth is just the lie she is
15 sticking with. She didn't change her story because,
16 oh, there's no point. She changed her story because
17 they knew I was lying. Okay.

18 As soon -- and she'll tell -- I mean, she went
19 through the whole thing with the car ride. She would
20 have stopped telling that story once she finds out we
21 know she's lying, that's when the story changes. Okay.
22 Until she doesn't know that we know she's lying or the
23 police don't let her know that -- that we know that
24 she's lying, the story stays the same.

25 And even still, you know, she had to changed, oh,

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1 everything I told the police the second time around was
2 the truth except for the extra person in the car.
3 Well, you know, I didn't really know their name, so I
4 just led the police to believe that there was no person
5 in the car in the first place, that -- when somebody
6 can rationalize away a lie like that, that can make
7 lying okay like that, they have compromised their
8 credibility so bad that you cannot trust a word they
9 say.

10 There is -- I just don't -- this is a -- this is a
11 case where the stakes are incredibly high. And I don't
12 think anybody would trust -- like I said, Octavia with
13 \$5. I wouldn't -- I don't know if anybody would trust
14 her to let her in her -- in the house.

15 I don't think you would trust her to park your
16 car. I don't think you would trust her for anything.
17 But yet the Solicitor's office is going to say for
18 truthful testimony, we'll drop your case.

19 Well, I think everybody who's in the game knows
20 that if -- what that's a code word for. And that is if
21 we get a conviction, then we'll drop the case against
22 you.

23 And so when she cries about, oh, my sex partner
24 let me down. Because that's what it was. Oh, we're
25 sex partners. But oh, you know, I'm just -- he

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1 disappointed me so bad over this that it broke my
2 heart.

3 Well, who -- how do you go from sex partners to a
4 broken heart and you start crying. Well, first of all,
5 I'll ask you if you saw any real tears. I mean, you
6 can cry, but do you see any real tears. (Attorney
7 making crying sounds), you know, no -- no Kleenex used
8 or anything. She didn't have any real tears. That's
9 how you can tell she was lying.

10 And lying is just -- crying is just another one of
11 those ways, like adding the extraneous details that you
12 can make somebody believe your lies, to pretend like
13 you're crying. I mean, everybody who probably has had
14 a child lie to them may even know that trick.

15 I want to talk about Troy. He may not have -- he
16 may not lie in the same pathological manner, but he's
17 still an auto breaker, a possessor with intent to
18 distribute marijuana. We talked about his criminal
19 history. We heard it. It is arrest, arrest, arrest.

20 You know, when he -- when this all happened, he --
21 I mean, he gets arrested for drug offense. And then
22 another drug offense, all before the first one can get
23 resolved, gets the case resolved. And then he's still
24 back with resisting arrest and driving when he's not
25 supposed to drive.

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1 And the Solicitor says, oh, for -- for traffic
2 offense, habitual traffic offenses, yeah. Traffic
3 offenses like failure to stop for a blue light, not
4 speeding, not stopping for a police car when it's
5 trying to pull you over. That's what we're talking
6 about.

7 Okay. So this case, without any physical evidence
8 to corroborate what Troy says and what Octavia says, is
9 based simply on their credibility. And independently,
10 if you look at Troy, he has no credibility. I mean,
11 who is this guy. Again, let him in your house, no. I
12 mean, let him in your -- I mean, you wouldn't trust him
13 to be a friend.

14 The State of South Carolina won't trust him to be
15 a good citizen without making him visit his probation
16 officer. He's on probation. So we can't even trust
17 him to -- to walk the streets without breaking the law,
18 how are we supposed to trust him when we have a
19 decision of such great weight, such great weight.

20 Okay. So what is it about these two people that
21 makes them at all credible. And I know what it is.
22 It's that Troy points out my client and Octavia points
23 out my client. And one is in the car, the co-defendant
24 in the group, and one is the victim.

25 So you've got these two people saying the same

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1 thing, but you don't really see what the connection is
2 between the two. And, again, like I -- like the
3 Solicitor said, why would somebody lie about who shot
4 them. That -- I think that's -- that's a fair point.
5 Why would you say well -- why would you want to get
6 somebody in trouble for shooting you and be --
7 intentionally lying, but I found something out during
8 this case that I didn't know before. I'll be honest
9 with that.

10 That while the car is leaving the hill, there's
11 cell phone contact between Octavia and a person who
12 lurks in the shadows in this case, and her name is
13 Shirley Stokes. She's the same Shirley Stokes who's on
14 the hill, who has contact with Octavia. She's the
15 Shirley Stokes who is, at least at that time, the
16 girlfriend of Troy Jinks.

17 The Shirley Stokes who presumably would not be
18 with Troy while he is talking to the doctors saying I
19 don't know who shot me or why, but the Shirley Stokes
20 who is by his side when Troy talks to Detective Heany.
21 And so that's why the 911 tape is so important.

22 If Troy calls 911 and says, Bo shot me. I need an
23 ambulance. Because anybody who has heard a 911 tape
24 knows that the 911 operator, who shot you, are they
25 still in the area, those types of thing. Because

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1 they're worried about the person being in the
2 community. So those questions occur.

3 If we knew that -- that Troy said Bo shot me or my
4 client shot me, at that time, then we would know that
5 it wasn't the cell phone call from Octavia to Shirley.
6 That Shirley, going to Troy's side and saying, Octavia
7 says Bo shot me, we would know that that wasn't the way
8 that they both came up with that name. That's how it
9 happened. That's why -- that's why there's not any
10 independent witnesses that can say Bo shot me.

11 That's why -- that's why physical evidence that
12 doesn't lie to corroborate this, that's why -- that's
13 why that's so important.

14 And so what I'm saying is not that Troy wants you
15 to think -- I -- this is it, Troy may believe that my
16 client shot him, but Troy doesn't know that my -- my
17 client shot him. Troy is not going to let his
18 inability to actually view the shooter or be able to
19 identify the shooter get in the way of the prosecution
20 of this case, and I'll tell you how we know.

21 That he's not trying -- that he's not telling a
22 lie that he doesn't believe, what he's lying about is
23 how he knows. And if Troy believes what Octavia says,
24 I'm not sure I would blame him. Because while we know
25 all this stuff about Octavia, what she says to the

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1 police, Troy doesn't know all that background about
2 her, about breach of trust this, and -- and all of
3 that.

4 And Octavia is a great liar. I mean, only a great
5 liar would be able to tell the spaghetti strap, tank
6 top, capri pants story of the trip to Savannah. She's
7 a great liar. And so if Troy believes that she's
8 telling the truth, he's not going to let his inability
9 to identify the shooter stand in the way.

10 How do we know that Troy has this capacity. And
11 I'll tell you how we know. Because Troy -- why else
12 would Troy lie about the identity of the mysterious Kim
13 slash Trish. I need water. Pardon me.

14 (Pause.)

15 All right. He tells Detective Heany, I don't know
16 who that is. And then it turns out that not only does
17 he know the person, he's had sex with her. You can't
18 know anybody better than that. I mean, there's -- it's
19 one thing to say well, I know the person sort of, or
20 whatever, or I don't know them. But to go from I don't
21 know the person to I had sex with this person is a
22 complete one-eighty.

23 So why would he tell that lie. I think it was
24 clear that the Solicitor was hunting and pecking for a
25 motive. A motive that didn't come together because

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1 nobody could really testify to it because it fell apart
2 like -- like a house of cards, I guess, but it fell
3 apart.

4 And so what about your relationship with -- she's
5 digging -- did it end badly, the Solicitor asks. And
6 she's trying to kind of make things up about a girl.
7 And so, hey, Troy knows. I mean, this is -- this is
8 not a case where -- I mean, you can -- your common
9 sense tells you that -- that in preparation for a court
10 case, that the Solicitor's Office and the witnesses
11 have meetings, to talk about the case. I mean, that's
12 not -- there's nothing funny -- there's nothing weird
13 about that. That's normal. That's how it happens.

14 But he's not just coming up with this idea on his
15 own, he knows that it's going to serve the prosecution
16 -- or thinks it will serve the prosecution in their
17 case. And so if he's willing to change his story about
18 that to get a conviction, we know that he will -- he
19 will tell these little lies. He doesn't have the
20 morales or the ethics to say -- for the process.

21 And what's so important is the process. So if he
22 believes Octavia and he thinks that by lying about the
23 person in the front, either being somebody I don't know
24 or somebody I had sex with, will somehow help the case,
25 he'll do it. And he did it. And he did it. And he

Closing Arguments by Defense

1 did it.

2 And so I -- I'm going to say a few words about the
3 investigation in this case. I -- I -- I don't think
4 that the investigation was done well enough in
5 proportion to what the -- what the case is about.

6 And I'm not -- I'm not sitting here trying to --
7 to -- to criticize, over criticize. I know I'm not
8 perfect. I know that I've done some things during this
9 trial or asked questions or not asked questions that I
10 maybe wished I had asked. But -- and I understand why
11 the investigation may be a little bit -- it wouldn't be
12 the same as if it happened in maybe a different
13 neighborhood in Beaufort County.

14 Because when you go to Pinckney Hill, you heard
15 Detective Heany say it, they're hostile to police.
16 They're hostile to police. It's hard to do an
17 investigation on Pinckney Hill. They don't talk to the
18 police. And it is that bubble that they build around a
19 place like Pinckney Hill that leaves the opportunity
20 for people like Octavia to -- to pull the strings.

21 You know, and I talked about this -- this thing at
22 Club 204, a lead that wasn't run down. Something that
23 revolved around Octavia also that was the night before.
24 Did you run down that lead -- you know about it -- do
25 you run it down?

Closing Arguments by Defense

1 I can see how, you know, I'm going to work on this
2 Pinckney Hill case, you know, the place where nobody
3 wants to talk to us. The case where the victim is
4 Troy Jinks. And so I see how you would not run down
5 that lead. I mean, I don't see how you wouldn't get the
6 911 tape. I still can't see that. But you don't run
7 down that lead, but it's that bubble of not talking to
8 the police that gives somebody like Octavia the
9 opportunity to pull the strings.

10 And I can just see her, at the end of this case,
11 when -- and this is a dread, fear dream -- that the
12 worst happens. You make the decision that I'm begging
13 that you won't -- that my client is begging that you
14 won't, and Octavia learns of it. And she giggles in
15 the exact same way that she was giggling about the lie
16 she told to the police in the first place. And she
17 knows that her lies worked. Her lies worked.

18 That luckily, the police didn't run down an
19 incident at Club 204 that dealt with Ricardo or
20 Richard, her nephew. Luckily, they -- they didn't get
21 the -- you know, they didn't fingerprint the -- the
22 shell casings, which I -- I mean, I understand it would
23 have been a long shot. But I -- how much longer of a
24 shot than gunshot residue on a person's hands, who
25 nobody says shot. Or trying to match shell casings up

Closing Arguments by Defense

1 to a gun that you don't have. All those are long
2 shots. All of them are long shots.

3 So that's -- that's -- that's what goes into my
4 mind's eye is that -- those giggles. Those giggles.
5 And that's why -- that's why the danger of the wrongful
6 -- the wrongful conviction really exists in this case.

7 I wish -- I got the facts out that I needed to be
8 able to argue. I wish I was more artful about it. I
9 wish that -- that when I was getting a point out that I
10 wanted, that it would have been an ah-ha Perry Mason
11 moment. You know, the Solicitor thinks I should have
12 asked the defendant, are they lying. I think that's
13 the fundamental difference between what I'm saying to
14 you and what the Solicitor is saying to you.

15 She's saying trust the liars. I'm not going to go
16 and try and elicit information from a person that I
17 know is lying. Why would I do that. Why do I want
18 more misinformation to come your way. And so that's
19 why -- that's why it's -- I think -- what I think this
20 case teaches is how easy it would be to manipulate law
21 enforcement. And how easy they have made it at
22 Pinckney Hill to manipulate law enforcement by not
23 talking.

24 And, you know, Alexis Green, you know, a person
25 that you like, coming up and doing her duty, you know.

Closing Arguments by Defense

1 But she -- she can tell you that an assault and battery
2 of a high and aggravated nature occurred, but she can't
3 tell you who did it. And there's nothing else in this
4 case that you can trust about anything.

5 And so I've said what I need to say. I want you
6 to think about those things I said. I want you to
7 listen to the judge when she talks about really what is
8 the -- what is the --- what are the rules of the way
9 you're supposed to approach this in the jury room.
10 Understanding that if you don't follow those rules,
11 there's not the court reporter there to take it down,
12 nobody will ever know.

13 And so we're relying on you to be perfect, to be
14 honest with you -- I don't have to be perfect because
15 of the court reporter. None of us really do. But you
16 guys have to be perfect. So I'm asking you to take --
17 take that time.

18 And this is what I'll leave you with. That
19 despite what happened on Pinckney Hill, I think your
20 common sense will tell you that this is some Bluffton
21 neighborhood beef. It's Bluffton neighborhood beef.
22 My guy -- my client -- "my guy" -- my client is from
23 Savannah. He's the throw-away. He's the one you can
24 put it on.

25 It's not the people from Bluffton. They're

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1 protecting their own. This is Bluffton beef. That's
2 why they never came up with -- with an idea of well,
3 this is why it happened. They can't because it doesn't
4 make any sense.

5 What makes sense is these are people that have
6 been knowing each other for -- since 8th grade or
7 whatever. It's been a hot summer. July 28th, tempers
8 flare. You got people like Troy Jinks. You've got
9 people like Octavia. The beef explodes. And the
10 reason is, is these people that know each other and
11 stop the outsider.

12 To blame the outsider, that's the easy way to go.
13 And that's what happened in this case. And that's why
14 I'm going to ask you, you know, I don't have to tell
15 you what happened. I think the common sense will lead
16 you to -- to what -- what probably happened.

17 But they have to prove what happened. And if the
18 -- somebody gets convicted without that proof, you're
19 never going to be able to wonder -- you're never going
20 to be able to know that a wrongful conviction didn't
21 occur.

22 I don't know -- I know none of you -- nobody in
23 this jury wants to have that. Nobody's is going to
24 want to think that the service I rendered could have
25 resulted in a wrongful conviction and that's -- like I

Closing Arguments by Defense

1 said, you'll remember -- it's not -- it's not emotion.
2 You will remember it. You will remember your jury
3 service. And you'll always want to feel confident and
4 secure in your jury service.

5 It's easy in the -- right after the case, after
6 all the finger pointing and all the talk of shooting
7 and everything, to -- to let, awe, let's just get out
8 of here. It's been a long week or something like that.
9 Slow down. Think about it.

10 I would say con -- I'm not -- I'm praying that
11 you'll come to the right decision and that's -- that's
12 not guilty. Thank you.

13 **THE COURT:** Thank you, Mr. Deysach. Mr.
14 Foreperson, and members of the jury, you've followed
15 very patiently and listened very attentively to the
16 presentation of the evidence in this case. And I want
17 to thank you for that.

18 And also the able arguments made by Assistant
19 Solicitor Dawn Burke on the part of the State, and Mr.
20 Ian Deysach on behalf of the defendant.

21 It now becomes the duty of the trial judge under
22 the constitution of this State to charge and instruct
23 you on the law that is applicable to this case. And
24 it's your duty, as jurors, to accept and apply the law
25 as the court will now state it to you.

Jury Charge

1 As jurors, it is your exclusive duty to decide all
2 issues of fact in this case. You must determine the
3 effect, the value, the weight and the truth of the
4 evidence. But the State of South Carolina and the
5 defendant have the right to expect that you will
6 carefully consider and evaluate the evidence and apply
7 the law of the case to that evidence. And by doing so,
8 both the State and the Defendant will receive and
9 obtain a fair and impartial trial.

10 Now, Ladies and Gentlemen, the State of South
11 Carolina, by the bills of indictment in this case,
12 charge the defendant, Eric Wright, also known as Joseph
13 Bo Derrick Wright, with assault and battery with intent
14 to kill and possession of a weapon during the
15 commission of a violent crime.

16 The indictment for assault and battery with intent
17 to kill reads follows: "That in Beaufort County, South
18 Carolina, on or about July 28th of 2008, the defendant
19 with malice aforethought did commit an unlawful act of
20 a violent nature upon the victim, Troy Jinks, in that
21 he did shoot and injure Mr. Jinks."

22 Ladies and Gentlemen, the indictment for
23 possession of a weapon during a violent crime reads,
24 "That in Beaufort County, South Carolina, on or about
25 July 28th of 2008, the defendant Eric Wright, also

Jury Charge

1 known as Joseph Bo Derrick Wright, did possess a gun or
2 visibly display what appeared to be a gun during the
3 commission of or attempted commission of assault and
4 battery with intent to kill, a violent crime."

5 Now, Ladies and Gentlemen, I remind you that the
6 fact that the defendant was arrested, charged and
7 indicted in this case, is not evidence in this case and
8 cannot be considered by you as evidence of guilt in
9 this case, nor does it create any presumption or
10 inference of guilt. The indictment is simply the
11 formal, written instrument by which the charges are
12 made against the defendant. It's the formal document
13 which allows this case to be brought into this
14 courtroom.

15 Now, Ladies and Gentlemen, the defendant has pled
16 not guilty to these indictments. And that plea puts
17 the burden on the state to prove the defendant guilty
18 beyond a reasonable doubt.

19 A person charged with committing a criminal
20 offense in South Carolina is never required to prove
21 themselves innocent. I charge you that it's an
22 important rule of law that the defendant in a criminal
23 trial, no matter what the seriousness of the charges
24 may be, will always be presumed innocent of the crime
25 for which the indictment was issued, unless guilt has

Jury Charge

1 been proven by evidence satisfying you, the jury, of
2 that guilt beyond a reason doubt.

3 Ladies and Gentlemen, this presumption of
4 innocence does not end when you begin your
5 deliberations, but it accompanies the defendant
6 throughout the trial until again, you, the jury, reach
7 a verdict of guilt based on evidence satisfying you of
8 that guilt beyond a reasonable doubt.

9 Now, Ladies and Gentlemen, the presumption of
10 innocence is like a robe of righteousness that's placed
11 about the shoulders of the defendant, and it remains
12 with him until it's been striped from the defendant by
13 evidence satisfying you of the defendant's guilt beyond
14 a reasonable doubt.

15 Now, Ladies and Gentlemen, the presumption of
16 innocence is not a mere legal theory, it's not just a
17 legal phrase we use, it is a substantial right to which
18 every defendant is entitled, unless you, the jury, are
19 satisfied from the evidence of the defendant's guilt
20 beyond a reasonable doubt.

21 Now, Ladies and Gentlemen, the term "reasonable
22 doubt" must be given its plain and ordinary meaning.
23 However, to the extent that I may define it for you, a
24 reasonable doubt is the kind of doubt that would cause
25 a reasonable person to hesitate to act in the most

Jury Charge

1 important of their personal decisions.

2 Ladies and Gentlemen, the defendant is entitled to
3 every reasonable doubt arising in the case. If upon
4 any issue of any fact essential to conviction, you have
5 a reasonable doubt as to how that issue should be
6 decided, you must resolve that reasonable doubt in
7 favor of the defendant.

8 Now, Ladies and Gentlemen, some of you may have
9 served as jurors in civil cases where you were told it
10 was only necessary to prove that a fact is more likely
11 true than not true, such as by the greater weight of
12 what we call the preponderance of the evidence.

13 In criminal cases, the State's proof must be more
14 powerful than that. It must be beyond a reasonable
15 doubt. Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.

17 Now, Ladies and Gentlemen, there are very few
18 things in this world that we know with absolute
19 certainty. And in criminal cases, the law does not
20 require proof that overcomes every possible doubt. But
21 based on your consideration of the evidence, you are
22 firmly convinced that the defendant is guilty of the
23 crimes charged, you must find the defendant guilty.

24 If, on the other hand, you think there is a real
25 possibility that the defendant is not guilty, you must

Jury Charge

1 give the defendant the benefit of the doubt and find
2 him not guilty.

3 Now, I remind you that during this trial, you and
4 I have certain duties to perform. As the trial judge,
5 it's my responsibility to preside over the trial of
6 this case and I also have the duty to rule on the
7 admissibility of evidence that has been offered in the
8 trial.

9 You are to consider only the competent evidence
10 that is before you. You are to consider only the
11 testimony which has been presented from the witness
12 stand and any exhibits that have been entered into this
13 case, and made part of the record.

14 Ladies and Gentlemen, I have the additional duty
15 to charge you the law that is applicable to this case.
16 As the presiding judge, I am the sole judge of the law,
17 and it's your duty, as jurors, to accept and apply the
18 law as I will now state it to you.

19 If you have any idea as to how the law is or what
20 the law ought to be, and it does not agree with you
21 with what I now tell you in fact it is, you must
22 abandon this idea because you are sworn to accept the
23 law and apply the law as I state it to you.

24 In every case tried in this court before a jury,
25 the jury becomes the sole and exclusive judge of the

Jury Charge

1 facts. A trial judge cannot state, intimate, comment
2 on or make any statement to a jury trial about the
3 facts in the case. And since you, the jury, are the
4 sole judges of the facts in this case, you are not to
5 infer from what I have said during the progress of this
6 trial, in ruling upon the admissibility of evidence or
7 anything I now say during the course of this
8 instruction, that I have an opinion about the facts in
9 this case. The law does not allow me to have an
10 opinion. This is matters solely for you, the jury.

11 And, again, Ladies and Gentlemen, I remind you
12 that as jurors, it is your duty to determine the
13 effect, the value, the weight and the truth of the
14 evidence that's presented in the trial.

15 Now, there are two types of evidence which are
16 generally presented during a trial. That is direct
17 evidence and circumstantial evidence. Direct evidence
18 is the testimony of a person who claims to have actual
19 knowledge of a fact, such as an eye witness. It is
20 evidence which immediately establishes the main fact to
21 be proved.

22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of
24 another fact. It is evidence which immediately
25 establishes collateral facts from which the main fact

Jury Charge

1 may be inferred.

2 Circumstantial evidence is based on inference and
3 not on personal knowledge or observation. The law
4 makes absolutely no distinction between the weight or
5 value to be given to either direct or circumstantial
6 evidence, nor is a greater degree of certainty required
7 of circumstantial evidence than direct evidence. You
8 should weigh all the evidence in this case. And after
9 weighing all the evidence, if you are not convinced of
10 the guilt of the defendant beyond a reasonable doubt,
11 you must find the defendant not guilty.

12 Now, Ladies and Gentlemen, it's your duty to
13 determine the credibility of witnesses who have
14 testified in this case. Credibility simply means
15 believability. It becomes your duty, as jurors, to
16 analyze and to evaluate the evidence and determine
17 which evidence convinces you of its truth.

18 In determining the believability of witnesses who
19 have testified in this case, you may believe one
20 witness over several witnesses, or several witnesses
21 over one witness. You may believe a part of the
22 testimony of a witness and reject the remaining part of
23 the testimony of that same witness.

24 You may believe the testimony of a witness in its
25 entirety or you may reject the testimony of a witness

Jury Charge

1 in its entirety. Again, you may consider whether any
2 witness has exhibited to you any interest, any bias,
3 any prejudice or motive in this case. And you may also
4 consider the appearance and the manner of the witness
5 while they were on the witness stand.

6 Now, Ladies and Gentlemen, the rules of evidence
7 ordinarily do not permit witnesses to testify to
8 opinions or conclusions. An exception to this rule
9 exists for witnesses that we call expert witnesses.

10 A witness, who by some education, experience has
11 become an expert in some art, science, profession or
12 calling, a stated opinion as to the relevant and
13 material matter in which the witness claims to be an
14 expert. And they can also state the reasons for their
15 opinion.

16 You should consider an expert opinion received in
17 evidence in this case like any other evidence, give it
18 the weight you think it deserves. If you decide that
19 the opinion of an expert is not based on either
20 sufficient education, experience or if you concluded
21 the reasons given in support of the opinion are not
22 sound, or that the opinion is outweighed by other
23 evidence in the case, you may disregard the opinion
24 entirely.

25 An expert witness' testimony is to be given no

Jury Charge

1 greater weight than that of other witnesses simply
2 because that witness is an expert witness. And
3 further, you are not required to accept an expert's
4 opinion, even though it's uncontradicted.

5 Now, Ladies and Gentlemen, a person who has a past
6 criminal record is competent to testify during a trial.
7 A past record does not affect the ability of that
8 witness to testify. The past record may only be
9 considered by you, if at all, in determining the
10 witness' believability.

11 Remember, Ladies and Gentlemen, you are the sole
12 judges of all the facts in this case and of the
13 believability of any and all of the witnesses.

14 Now, Ladies and Gentlemen, I instruct you and
15 emphasize the fact that the defendant did not testify
16 in this case is not to be considered by you in any way
17 in your deliberation and in your consideration on the
18 question of guilt or innocence of the defendant. It
19 must not be considered by you in any manner whatsoever.

20 A defendant has the constitutional right to remain
21 silent. And the assertion of this right must not be
22 considered by you in your deliberations. I repeat,
23 under the oath you took, the fact that this defendant
24 did not testify should not even be discussed in the
25 jury room. Again, Ladies and Gentlemen, as I have

Jury Charge

1 stated to you, the burden of proof is on the State.
2 The defendant is not required to prove his innocence.
3 And again, the burden of proof remains on the State to
4 prove guilt beyond a reasonable doubt.

5 Now, Ladies and Gentlemen, the indictments in this
6 case allege two separate offenses. And the first is
7 assault and battery with intent to kill. In order to
8 prove assault and battery with intent to kill, the
9 State must prove beyond a reasonable doubt that the
10 defendant committed an unlawful act of a violent nature
11 to the person of another with malice aforethought.

12 Now, Ladies and Gentlemen, an assault occurs when
13 a person unlawfully attempts or offers to commit a
14 violent injury upon another person and had the present
15 ability to complete the attempted injury. An assault
16 is the intentional creation of a reasonable fear of
17 immediate bodily harm.

18 It is not necessary that the attempted injury or
19 harm actually take place. For example, if I walk up to
20 you and when we are within arms reach, I draw my hand
21 as if I am going to hit you. That is an assault.

22 Ladies and Gentlemen, it is the unlawful touching
23 of another person by a person who has completed the
24 assault. An unlawful touching can be caused by part of
25 the accused's body or by any object the accused puts in

Jury Charge

1 motion. A battery is the completion of the assault by
2 using or applying force to another person, however
3 slight, in a rude, angry or resentful manner without
4 legal justification for doing so. Ladies and
5 Gentlemen, using my earlier example, if I carry through
6 that assault and hit you, that is a battery.

7 Now, Ladies and Gentlemen, malice is hatred, ill
8 will or hostility toward another person. It is the
9 intentional doing of a wrongful act without just cause
10 or excuse and with an intent to inflict an injury on
11 another, or under circumstances the law will infer an
12 evil intent.

13 Malice aforethought does not require that malice
14 exist for any particular time before the act is
15 committed. But malice must exist in the mind of the
16 defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of
18 the previous evil intent and the act.

19 Malice aforethought may be expressed or inferred.
20 These terms, expressed and inferred, do not mean
21 different types of malice, but merely the manner in
22 which malice may be shown to exist, that is either by
23 direct evidence or by inference from the facts and
24 circumstances which are proved.

25 Ladies and Gentlemen, express malice is shown when

Jury Charge

1 a person speaks words which express hatred, ill will
2 for another, or when the person prepared beforehand to
3 do the act which was later accomplished. Malice may be
4 inferred from conduct showing a total disregard for
5 human life.

6 Now, Ladies and Gentlemen, if you find the
7 defendant has not proven the defendant is guilty of
8 assault and battery with intent to kill, you must then
9 determine whether the State has proved that the
10 defendant is guilty of assault and battery of a high
11 and aggravated nature, which is a lesser included
12 offense of assault and battery with intent to kill.

13 Assault and battery of a high and aggravated
14 nature includes all of the elements of assault and
15 battery with intent to kill except malice aforethought.
16 In addition, the State must prove beyond a reasonable
17 doubt, an aggravating circumstance.

18 Circumstances of aggravation include the use of a
19 deadly weapon, the intent to commit a felony, the
20 infliction of serious bodily injury, a great disparity
21 between the ages or physical conditions of the parties.
22 A difference in a gender of the parties. The taking of
23 indecent liberties or familiarities with a female
24 through the use of force, for the purposeful infliction
25 of shame and disgrace and the resistance of lawful

Jury Charge

1 authorities. Ladies and Gentlemen, these are just
2 examples of circumstances of aggravation.

3 Now, Ladies and Gentlemen, the defendant is also
4 charged with possession of a weapon during the
5 commission of a violent crime. Ladies and Gentlemen,
6 to prove this charge, the State must show beyond a
7 reasonable doubt the defendant was in possession of a
8 firearm during the commission of a violent crime.

9 Now, a firearm means any machine gun, automatic
10 rifle, revolver, pistol or any weapon which is designed
11 to or may be readily converted to expel a projectile.
12 Now, in order to find the defendant guilty of
13 possession of a weapon during the commission of a
14 violent crime, you must find the defendant guilty of
15 committing a violent crime.

16 Ladies and Gentlemen, I tell you that assault and
17 battery with intent to kill is a violent crime. Ladies
18 and Gentlemen, I also tell you that assault and battery
19 of a high and aggravated nature under the law in this
20 case is not a violent crime.

21 Now, Ladies and Gentlemen, an issue raised is the
22 identification of the defendant as the person who
23 committed the crime charged. Now, the State has the
24 burden of proving identity beyond a reasonable doubt.
25 You must be satisfied beyond a reasonable doubt of the

Jury Charge

1 accuracy of the identification of the defendant before
2 you may convict the defendant.

3 Now, identification testimony is an expression of
4 belief or impression by a witness. You must determine
5 the accuracy of the identification of the defendant.
6 You must consider the believability of each
7 identification witness in the same way as any other
8 witness. And you may consider whether the witness had
9 an adequate opportunity to observe the offender at the
10 time of the offense.

11 Ladies and Gentlemen, this can be affected by
12 things such as how long or short a time was available,
13 how far or close the witness was, the lighting
14 conditions, and whether the witness had the chance to
15 see or know the person in the past.

16 Once again, Ladies and Gentlemen, I instruct you
17 that the burden of proof on the State extends to every
18 element of the crime charged. And this specifically
19 includes the burden of proving beyond a reasonable
20 doubt the identity of the defendant as the person who
21 committed the crime. If after examining the testimony,
22 you have a reasonable doubt as to the accuracy of this
23 identification, you must find the defendant not guilty.

24 Now, Ladies and Gentlemen, in order to establish
25 criminal liability, criminal intent is required. For

Jury Charge

1 example, the mental state required to be proven by the
2 State for a particular crime might be purpose, intent,
3 knowledge, recklessness or criminal negligence.

4 Criminal intent must be proven by the State beyond
5 a reasonable doubt. Criminal intent is always a matter
6 that must be determined by the jury from the
7 circumstances surrounding the situation. There is no
8 way to prove intent to a mathematical certainty. There
9 is no way medical science can dissect a person's brain
10 and determine what the person had in mind.

11 So the law says that criminal intent may be
12 inferred from the circumstances shown to have existed.
13 This is how you make a determination on whether or not
14 the element requiring intent was present. It is not
15 necessary to establish intent by direct and positive
16 evidence, but intent may be established by inference in
17 the same way as any other fact by taking into
18 consideration the acts of the parties and all the facts
19 and circumstances of the case.

20 Ladies and Gentlemen, criminal intent is a mental
21 state, a conscious wrong doing. It is up to you to
22 determine what the defendant intended to do based on
23 the circumstances shown to have existed.

24 Ladies and Gentlemen, criminal intent can arise
25 from action or failure to act that may arise from

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1 negligence, recklessness, indifference to duty or to
2 consequences that is considered by the law to be the
3 equivalent of criminal intent.

4 Now, Mr. Foreperson and members of the jury, as
5 you retire to begin your deliberations in this case, I
6 wish to express the hope to each one of you that you
7 would be mindful of the importance of your
8 responsibility here today. You're not called upon very
9 often to serve as jurors. And the proper performance
10 of that duty requires each of you to reach the height
11 of freeing your mind of all improper influences. You
12 and I are acting for the community and that's why we
13 must see to it that this trial is fair and the verdict
14 is just.

15 Now, you observed the presiding officer of this
16 court is always addressed as Your Honor. The reason is
17 that the court is entrusted with the honor of this
18 community, the honor of this state, and the honor of
19 this country in seeking that every case tried here
20 receive fair and impartial justice.

21 Now, you, the jury, taken to your care and keeping
22 the honor of this state, the honor of this community
23 and the honor of this country.

24 Now, Ladies and Gentlemen, please don't get the
25 idea that I'm trying to intimate to you how you should

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1 decide this case. Again, as I have already told you
2 under our laws, you, the jury, are the sole judge of
3 all questions of fact. It would be highly improper for
4 me to influence you.

5 But, Ladies and Gentlemen, I do want you to
6 understand that as the presiding officer of this court,
7 I am vitally concerned that whatever verdict you reach,
8 will be the result of y'all going back into the jury
9 room and confining your considerations to the evidence
10 and the law that you have heard in this courtroom,
11 weighing it fairly and impartially.

12 Ladies and Gentlemen, everyone is entitled to
13 justice in this case, the state and the defendant. The
14 court is of the confirmed opinion that whatever verdict
15 you reach will represent truth and justice for all the
16 parties concerned. I remind you, Ladies and Gentlemen,
17 that you owe no support or sympathy to anyone.

18 Ladies and Gentlemen and Mr. Foreperson, to that
19 end, my law clerk has prepared a verdict form. It
20 simply has the case caption and the indictment number
21 and it reads as follows: "We, the jury, unanimously
22 find as to indictment number 2009-1405, the charge of
23 assault and battery with intent to kill, we, the jury,
24 unanimously find the defendant, Eric Wright, either not
25 guilty or guilty." Ladies and Gentlemen, please don't

Jury Charge

1 get the inference that the order I put guilty or not
2 guilty has any significance. Every trial we reverse
3 them.

4 Next, Ladies and Gentlemen, there is a note
5 underneath that that says "if you find the defendant is
6 not guilty of assault and battery with intent to kill,
7 you may consider whether he has committed a lesser
8 included offense of assault and battery of a high and
9 aggravated nature."

10 The next question is, "As to indictment number
11 2009, the charge of assault and battery of a high and
12 aggravated nature, we, the jury, unanimously find
13 either not guilty or guilty".

14 Ladies and Gentlemen, it says "if you found the
15 defendant not guilty of assault and battery with intent
16 to kill, and not guilty of assault and battery of a
17 high and aggravated nature, you are to stop your
18 deliberations and not consider the second indictment".

19 "It says you may consider the charge of possession
20 of a weapon during the commission of a violent crime,
21 only if you have found the defendant guilty of assault
22 and battery with intent to kill." Again, the second
23 charge of possession of a weapon during a violent crime
24 would not apply if you found the defendant guilty of
25 assault and battery of a high and aggravated nature."

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1 And Mr. Foreman, it's spelled out clearly for you. I
2 don't think it's going to be any problem. I just want
3 to make sure you follow the directions.

4 And there is a line on the bottom, Mr. Foreperson,
5 for you to sign. And date this verdict form. When you
6 reach a verdict, Ladies and Gentlemen, I'm going to ask
7 that you knock on your jury room door and we are going
8 to accept you back into the courtroom to read the
9 verdict.

10 Ladies and Gentlemen, for the very last time, I'm
11 going to send you back to your jury room. I'm going to
12 tell you not to begin your deliberation. I'm going to
13 ask the attorneys if there is anything further they
14 would like me to charge you on the law. If there is,
15 I'm going to bring you out here and charge you further.

16 If not, Mr. Foreperson, I'm going to send the
17 verdict form along with the evidence that has been
18 introduced in this case, back to your jury room. And
19 that's going to be your signal to begin your
20 deliberations.

21 Mr. Foreperson, I also tell you while we are a
22 court of record, there is no transcript of either the
23 testimony or my charge. If for some reason you need
24 certain testimony played back, we can do just that. We
25 can play it back and we will bring you back into the

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1 courtroom.

2 Additionally if there is any portions, or the
3 entire charge for that matter that you would like to be
4 recharged on, I can bring you back here and I can
5 re-read it, but I can't give you a hard copy.

6 All right. Ladies and Gentlemen, again, thank
7 you. I'm going to excuse you to your jury room. I
8 appreciate y'all's attention.

9 (Whereupon, the jury left the courtroom at 11:40
10 a.m.)

11 **THE COURT:** Thank you. Any exceptions or
12 additions to the charge from the State?

13 **MS. BURKE:** No, Your Honor.

14 **THE COURT:** From the defense?

15 **MR. DEYSACH:** No, Your Honor.

16 **THE COURT:** All right, y'all. Let's make sure to
17 get the alternate out and you all have both looked over
18 the verdict form and are comfortable with it, is that
19 correct?

20 **MS. BURKE:** Yes, Your Honor. I just informed Mr.
21 Deysach that the tip line has notes -- I didn't want to
22 infer or the jury to think about that, so I just want
23 to Sharpie it out.

24 **THE COURT:** Okay.

25 **MR. DEYSACH:** What it -- what it says, Your Honor,

1 is "D called into the tip line saying he is innocent".

2 --

3 **THE COURT:** Okay. Just scratch it out.

4 **MR. DEYSACH:** I don't object to that --

5 **THE COURT:** Well, is that how you entered it?

6 **MS. BURKE:** I didn't enter it into evidence saying
7 this is the tip line, says he is innocent. I just
8 entered State's Exhibit 5, tip line call, which
9 includes two phone calls from two people. It just says
10 tip line call, Your Honor. And that's the copy that
11 Mr. Deysach has. It's just the one call.

12 **THE COURT:** Okay.

13 (Case sent to the jury.)

14 (After a recess, court reconvened.)

15 **THE COURT:** They have asked for the testimony of
16 Alexis Green and the first officer on the scene. And
17 they have also asked for the definition of reasonable
18 doubt. So I have -- Vivian is going to cue up Alexis
19 Green and Officer Cotton or Sgt. Cotton. And then I
20 will charge them -- recharge them on reasonable doubt.

21 **MR. DEYSACH:** Your Honor, regarding the charge, if
22 you do reasonable doubt, do you think you might want to
23 add presumption of innocence in there also? You know,
24 it really explains how to apply the reasonable doubt.
25 You know, or the burden of proof. You know, proof

1 beyond a reasonable doubt is the standard, but I want
2 to make sure they understand it's also the State's
3 burden to get there. I mean, it's the law. And I
4 don't think -- I don't see that there would be any
5 harm.

6 **MS. BURKE:** They asked for the charge of
7 reasonable doubt.

8 **THE COURT:** We are all cued up for this case and
9 ready to go. I just want to talk to them. I've got to
10 do something with that other jury.

11 (Off-record discussion concerning another case.)

12 **MR. DEYSACH:** I was wondering if you'd given any
13 thought to the presumption of innocence?

14 **THE COURT:** I did. I took a look at it. I think
15 the reasonable doubt one is fine. I don't think that
16 the presumption -- it doesn't even talk about
17 reasonable doubt in it. So other than -- you can --
18 you can look at this here if you want to on it, but I
19 can tell you, I don't think it needs to be done.

20 **MR. DEYSACH:** The -- and the reason I ask is I
21 know that when you're -- you're charging the jury,
22 there's not really -- they don't hear the break that
23 exists in the charges. You go from one to the next.
24 They may be thinking that both are all together -- do
25 you think that you could ask the foreman, while he's

1 out there, if he would like both read or just the one?

2 **MS. BURKE:** I think, Your Honor, after you've read
3 the charge, if the jury needs to hear more, they'll let
4 us know.

5 **THE COURT:** Actually, what I'll do is this, when I
6 bring them out, I will tell them that there is a
7 portion that leads into it, called the presumption of
8 innocence. And do they need that portion as well, or
9 are they looking more for the definition of reasonable
10 doubt. Ninety-nine percent of the time, that's what
11 the jury needs, is the definition of reasonable doubt
12 again.

13 **MR. DEYSACH:** Thank you.

14 **THE COURT:** Okay. Sure.

15 (Off-record discussion on different case.)

16 (Whereupon, the jury entered the courtroom at 2:24
17 p.m.)

18 **THE COURT:** Thank you. Mr. Foreperson, I have
19 received a note from you stating that you would like
20 the testimony of Alexis Green, the first officer on the
21 scene, Officer Cotton, and also the definition of
22 reasonable doubt.

23 We have gone ahead and cued that up. What we
24 intend on doing is playing you the testimony of Alexis
25 Green and the officer, of course. And also then I will

1 recharge you on reasonable doubt. All right.

2 I will tell you, ladies and gentlemen, we are
3 going to play it back by audio, as I told you before.
4 That is our only means. What I need y'all to do, when
5 we first start it, I need to know if someone cannot
6 hear. And so we're going to be doing a little bit of
7 adjusting, so bear with us. Okay.

8 **COURT REPORTER:** Your Honor, the first witness
9 will be Mr. Cotton.

10 **THE COURT:** Okay. And, ladies and gentlemen, the
11 only reason why I did it in reverse, you asked for
12 Alexis Green first and then the officer, was because
13 that was the order they came in and it's easier to just
14 to play the two as they were presented. Okay.

15 (Whereupon, the testimony of Sgt. Cotton and
16 Alexis Green was replayed to the jury.)

17 **THE COURT:** Mr. Foreperson, you all have now heard
18 the testimony of Alexis Green and also Sgt. Cotton.
19 Now, I am going to go ahead and charge you on the
20 portion of the law regarding reasonable doubt.

21 Ladies and gentlemen, the State has the burden of
22 proving the defendant guilty beyond a reasonable doubt.
23 The term reasonable doubt must be given its plain and
24 ordinary meaning. However, to the extent I may define
25 it for you, a reasonable doubt is the kind of doubt

1 that would cause a reasonable person to hesitate to act
2 in the most important of their personal decisions.

3 The defendant is entitled to every reasonable
4 doubt arising in the whole case. If upon any issue of
5 fact essential to conviction, you have a reasonable
6 doubt as to how that issue should be resolved, you must
7 resolve that reasonable doubt in favor of the
8 defendant.

9 Now, some of you may have served as jurors in
10 civil cases where you were told that it was only
11 necessary to prove that a fact is more likely true than
12 not true, such as by the greater weight or the
13 preponderance of the evidence. In criminal cases, the
14 State's proof must be more powerful than that. It must
15 be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the defendant's guilt.
18 Now, ladies and gentlemen, there are very few things in
19 this world that we know with absolute certainty. And
20 in criminal cases, the law does not require proof that
21 overcomes every possible doubt. If based on your
22 consideration of the evidence, you are firmly convinced
23 that the defendant is guilty of the crime charge, you
24 must find the defendant guilty.

25 If, on the other hand, you think there is a real

1 possibility that the defendant is not guilty, you must
2 give the defendant the benefit of the doubt and find
3 him not guilty.

4 Mr. Foreperson, is that the charge you were
5 looking for, sir?

6 **FOREMAN:** Yes.

7 **THE COURT:** All right. Ladies and gentlemen, at
8 this time, I am going to go ahead and send you back to
9 your jury room to continue your deliberations. Please
10 let me know if there is anything further that you need,
11 sir. Of course, when you have reached a verdict, if
12 you would just knock on the jury room door. Thank you.

13 (Whereupon, the jury left the courtroom at 3:10
14 p.m.)

15 **THE COURT:** Vivian, when you're ready, I need to
16 go back on the record in this case of Mr. Wright.

17 Mr. Deysach, just again, renewing your motion,
18 which I'm going to deny. You had requested that I
19 charge in addition to the reasonable doubt charge
20 requested by the jury, the presumption of innocence
21 portion. I can tell you that in reading the whole
22 thing, both portions, I decided to only read the
23 reasonable doubt portion of it.

24 It is the exact same charge other than I did lead
25 in with the words "the State has the burden of proving

1 the defendant guilty beyond a reasonable doubt". And
2 then I went through and stated it. So I didn't think
3 it was necessary to read the presumption of innocence
4 portion of it. I think I adequately covered what they
5 asked for. Of course, afterwards I asked them if
6 that's what they wanted, and the foreperson indicated
7 that, yes, in fact, that is what they wanted, so.

8 **MR. DEYSACH:** Yes, Your Honor. I had asked
9 that -- you for the presumption of innocence charge to
10 the reasonable doubt charge. In the alternative, I had
11 asked that you ask them if they wanted to hear the
12 presumption of innocence charge. That was my request.
13 And I am objecting to not asking them if they wanted to
14 hear presumption of innocence or not, just reading both
15 of them. It's my understanding that's the objection
16 you were overruling or the motion that you're denying.

17 **THE COURT:** It is. Okay. Anything further?

18 **MS. BURKE:** No, Your Honor.

19 **THE COURT:** All right. We'll be at ease in this
20 case. I understand that I maybe have a plea that I'm
21 going to take in the next case that they're working on.

22 (After a recess, court reconvened.)

23 **THE COURT:** Is the State ready?

24 **MS. BURKE:** Yes, Your Honor.

25 **THE COURT:** Is the defense ready?

1 **MR. DEYSACH:** Yes, Your Honor.

2 **THE COURT:** All right. Let's go ahead and bring
3 the jury out.

4 (Whereupon, the jury entered the courtroom at 3:17
5 p.m.)

6 **THE COURT:** Thank you. Mr. Foreperson, I
7 understand you've reached a verdict, is that correct,
8 sir?

9 **FOREMAN:** Yes, Your Honor.

10 **THE COURT:** Would you please hand it to the
11 bailiff? All right. Ms. Fulton, I'm going to ask you
12 to publish the verdict.

13 **MS. FULTON:** Case number 2009-GS-07-1405,
14 2009-GS-07-1406, State v. Eric Wright, AKA Joseph Bo
15 Derrick Wright. We, the jury, unanimously find the
16 following: Indictment number 2009-GS-07-1405, as to
17 indictment 2009-GS-07-1405, the charge of assault and
18 battery with intent to kill, we, the jury, unanimously
19 find the defendant, Eric Wright, guilty.

20 As to the indictment number 2009-GS-07-1406, the
21 charge of possession of a weapon during the commission
22 of a violent crime, we, the jury, unanimously find the
23 defendant, Eric Wright, guilty.

24 **THE COURT:** Signed by our foreperson. Ladies and
25 gentlemen of the jury, if this is your verdict will you

1 please indicate by raising your right hand? (Jury
2 complied) For the record, all 12 jurors have raised
3 their right hand.

4 Additionally -- thank you -- ladies and gentlemen,
5 I'm going to individually poll you. I am going to ask
6 you if this is your verdict and you'd answer yes or no.
7 And is this still your verdict. All right. Susan Eve,
8 is this your verdict?

9 MS. EVE: Yes.

10 THE COURT: Is this still your verdict?

11 MS. EVE: Yes.

12 THE COURT: William Horry. Is this your verdict?

13 MR. HORRY: Yes.

14 THE COURT: Is this still your verdict?

15 MR. HORRY: Yes.

16 THE COURT: Judith Smolek, is this your verdict?

17 MS. SMOLEK: Yes.

18 THE COURT: Is this still your verdict?

19 MS. SMOLEK: Yes.

20 THE COURT: Barbara Gilkey-Walters. Is this your
21 verdict?

22 MS. GILKEY-WALTERS: Yes.

23 THE COURT: Is this still your verdict?

24 MS. GILKEY-WALTERS: Yes.

25 THE COURT: Brenda Rivera-Oates. Is this your

1 verdict?

2 MS. RIVERA-OATES: Yes.

3 THE COURT: Is this still your verdict?

4 MS. RIVERA-OATES: Yes.

5 THE COURT: Diane Bronzert, is this your verdict?

6 MS. BRONZERT: Yes.

7 THE COURT: Is this still your verdict?

8 MS. BRONZERT: Yes.

9 THE COURT: Verneta Matt. Is this your verdict?

10 MS. MATT: Yes.

11 THE COURT: Is this still your verdict?

12 MS. MATT: Yes.

13 THE COURT: Maureen Robinson. Is this your
14 verdict?

15 MS. ROBINSON: Yes.

16 THE COURT: Is this still your verdict?

17 MS. ROBINSON: Yes.

18 THE COURT: Joan Isaacson, is this your verdict?

19 MS. ISAACSON: Yes.

20 THE COURT: Is this still your verdict?

21 MS. ISAACSON: Yes.

22 THE COURT: Ryan Campanella, is this your verdict?

23 MR. CAMPANELLA: Yes.

24 THE COURT: Is this still your verdict?

25 MR. CAMPANELLA: Yes.

1 **THE COURT:** Patricia Caldwell. Is this your
2 verdict?

3 **MS. CALDWELL:** Yes.

4 **THE COURT:** Is this still your verdict?

5 **MS. CALDWELL:** Yes.

6 **THE COURT:** And Donna Humphreys, is this your
7 verdict?

8 **MS. HUMPHREYS:** Yes.

9 **THE COURT:** Is this still your verdict?

10 **MS. HUMPHREYS:** Yes.

11 **THE COURT:** Is there anything further required
12 from this jury from the State?

13 **MS. BURKE:** No, Your Honor.

14 **THE COURT:** From the defense?

15 **MR. DEYSACH:** No, Your Honor.

16 **THE COURT:** Ladies and gentlemen, I want to thank
17 you for your service here in the trial of this case. I
18 also want you to know that you helped us not only
19 resolve this case, but at the beginning of the week, I
20 had a number of cases on my docket. And the simple
21 fact that we have jurors here sitting, willing to
22 serve, allows us to dispose of those cases by other
23 means, guilty plea or some other disposition.

24 Again, there is no way that I could ever try all
25 the cases that are of -- of Beaufort County. So,

1 again, it is so important that we have jurors willing
2 to serve, which allows us to come to these plea deals
3 or bargains or guilty pleas.

4 At this time, ladies and gentlemen, I am going to
5 excuse you and you have fulfilled your jury service. I
6 want to tell you I know you all have worked very hard
7 and I appreciate that. You know, no one calls or asks
8 to be on jury service. You get assigned. And I
9 understand and appreciate that. And y'all have been so
10 patient and so wonderful.

11 I always tell juries, again, that it's very much
12 hurry up and slow down. That's what a jury is like and
13 that is what jury service is like. But I want you to
14 know that the attorneys worked very hard on this case.

15 And it is an older case and it needed to be
16 disposed of and you did that for us. So, again, we
17 send you away with our thanks.

18 I will tell you, ladies and gentlemen, I am going
19 to sentence Mr. Wright. You are welcome to stay if you
20 would like to. If you don't want to stay, you are
21 certainly welcome to leave. I'm just going to ask that
22 you go ahead and do that now and not do it during the
23 middle of sentencing.

24 So, again, if you want to stay, you are welcome to
25 keep your seats. If not, we're going to go ahead and

1 escort you out the back of the courtroom. And I
2 appreciate again your service, y'all. Thank you so
3 much.

4 (Whereupon, the jury was excused at 3:24 p.m.)

5 **THE COURT:** Mr. Deysach, I think you need to renew
6 all your previously made motions?

7 **MR. DEYSACH:** I made a number of objections and
8 motions during the -- the trial, starting with the
9 Batson issue, which was denied. The discovery issues,
10 which I brought up during the trial and post trial,
11 which were each denied, the alleged discovery violation
12 by the State.

13 The hearsay issues, which came up, we asked for a
14 mistrial on and was denied. I would like to renew that
15 motion as well.

16 What else -- the foreperson -- not calling a
17 mistrial when the foreperson was dismissed through some
18 -- some disturbance that could have cause taint to the
19 jury. And whether it did or not, I don't think we'll
20 know because nobody ever asked those jurors.

21 And any other objections that I made during the
22 trial, post trial, pretrial, I would like to renew all
23 those, as well as ask for a judgment not withstanding
24 the verdict.

25 I'd like to renew my directed verdict motion, I

1 guess, on that score. ABIK, assault and battery with
2 intent to kill should have never gone to the jury in
3 that there wasn't enough evidence of malice
4 aforethought to go to the jury.

5 I'd ask that you grant that directed verdict at
6 this time. In the alternative, I'd ask that you grant
7 a judgment notwithstanding the verdict, that there
8 wasn't enough evidence for the jury to find Mr. Wright
9 guilty of assault and battery with intent to kill, and
10 possession of a weapon during a violent crime.

11 And I'd like to ask you for a new trial based on
12 those same grounds. I'm asking for a judgment
13 notwithstanding the verdict. Granting of the directed
14 verdict motion and a new trial, Your Honor.

15 **THE COURT:** Okay. Well, I can tell you
16 respectfully, I'm relying on my previous motions, I'm
17 denying your motion for a judgment notwithstanding the
18 verdict or a new trial.

19 The jury certainly was able to weigh and hear the
20 evidence in this case and they made their decisions.
21 So, respectfully, I'm denying your previous motions as
22 well as this one.

23 Mr. Deysach, why don't you bring your client on up
24 and we'll go ahead and sentence him and have you tell
25 me about him.

1 **MR. DEYSACH:** Are you ready to hear about him?

2 **THE COURT:** I am ready to hear about him.

3 **MR. DEYSACH:** Eric is 30 years old -- 29. He has
4 a child in foster care. He is -- his mom is dead. He
5 has no family. He has no sister or anything like that.
6 I think that was something that was on the outside of
7 the trial that never came in. He has no family except
8 for the son that's in protective custody.

9 He's been disadvantaged all his life. He has --
10 -- growing up, in a way that you might have imagined
11 for somebody who -- who is so disadvantaged. And the
12 reason I hesitate is because I think a lot of times to
13 say, well, hey, he -- he grew up in a way without the
14 father and the stable home life, that that makes him
15 sound like he is a thug from the streets.

16 And I know what this case was about and all those
17 things, but when you do this job, you meet -- you meet
18 people, right. And so you can -- and especially with
19 Mr. Wright where the case is -- I think it came to me
20 in 2009, possibly. It came to me and I've known him
21 for a long time.

22 He has -- and I know he will today, still maintain
23 his evidence (sic). And I just, speaking from what I
24 know about the case, I really don't -- I disagree with
25 the jury's verdict. I respect what they do. It won't

1 be the first jury I disagree with and I'm sure it won't
2 be the last. But I -- I personally disagree with it.
3 I think there was certainly reasonable doubt in this
4 case.

5 And I'm sure Eric will tell you and he's not --
6 he's not going to come here and say that he did it. He
7 is not.

8 And I think that honestly -- I mean, I know --
9 honestly, I tend to believe him. I can say that. I
10 tend to believe him. But I don't want to get into that
11 because I don't want him to be hurt because of a
12 failure to take responsibility. I want him to be --
13 don't want him to be punished anymore than what he's
14 already going to get.

15 Because I think that that, even viewing this case
16 in the light most favorable to the State, it -- what
17 happened that day, I believe was an ABHAN. That's what
18 I told the jury. And I wasn't telling them that
19 because I didn't believe it.

20 It was at best a close call between ABHAN and
21 ABWIK, or assault and battery with intent to kill and
22 assault and battery of a high and aggravated nature.

23 If there was a short -- the motive and the malice,
24 that was what I never got, the why. You know, what's
25 going on here. That was one of the reasons why -- that

1 I never got.

2 And to be honest with you, Your Honor, before
3 hearing the witnesses, I had it in my mind that this
4 was a case about ABHAN, a high and aggravated nature,
5 and assault and battery with intent to kill, until I
6 saw how Alexis Green could not identify the person who
7 she was standing next to.

8 And then I felt like, well, -- well, Mr. Wright
9 has been telling me all along it wasn't him, that I
10 hadn't trusted him enough. So that's kind of what the
11 -- the case was about for me, is saying, okay, I've
12 been doing this too long maybe and not believing what
13 my client has said. And not telling the defense in the
14 way that he probably would have wished.

15 And that's why when the jury hears Alexis Green's
16 testimony, they can hear me focusing on the difference
17 between assault and battery with intent to kill and
18 assault and battery of a high and aggravated nature
19 more than -- than the identification that she didn't
20 make.

21 So I -- I know I'll always look back on this case
22 and think of it just like any case where I would lose
23 and think about the mistakes I made and hope that they
24 don't -- I know that they're going to cost Mr. Wright
25 the -- he's the one who's going to suffer the

1 consequences.

2 But really, when I was starting the litany, what I
3 wanted to tell you more about was that you might think
4 somebody who grew up in a rough life would be rude,
5 obnoxious, a jerk, or something like.

6 And Mr. Wright, you can tell there is a spark
7 there. That he is smart. That he cares about people.
8 That he is the product of his environment, but there is
9 something inside him where if he was planned -- if his
10 person hood was planted in a different place, things
11 could have been incredibly different for him.

12 And, so, it's a very sad day for him. I mean, you
13 can see. I don't see anybody in the courtroom here for
14 Mr. Wright. I know his mom is gone. And -- and his
15 family lives in another place, so they're not here for
16 him.

17 And I know that sometimes -- you know, you usually
18 want to say, and this person from the community wants
19 to stand up for Mr. Wright or that person from the
20 community, and he doesn't have that.

21 And what I'm telling you even without that, he is
22 -- he is a client that I'll always remember and
23 somebody who I'll remember for their -- the way that
24 they are. The person that they are. The respect. The
25 -- the demeanor.

1 So -- and I say that honestly, Your Honor. I
2 mean, I'm not just -- this is not a -- I wouldn't go on
3 this long if it wasn't something that I didn't really
4 believe from my heart.

5 And so we know that -- that things like this in
6 the community happen where -- where conflict occurs,
7 shots are fired. Somebody gets hit in the leg. You
8 know, it -- the victim himself, seems to be recovered.
9 He is -- that -- I guess, you know, he's -- he's back
10 to his old self. And I'm not trying to be snarky, I'm
11 just trying to say he's no longer feeling the effects,
12 it doesn't appear.

13 That I -- I would hope that the sentence that you
14 give could recognize the difference between a plan to
15 come and exact revenge, or an innocent bystander who's
16 not engaged in the fight, those are the things that are
17 mitigating in the facts of the case. And I'm just
18 hoping that your -- your sentence will reflect that.

19 Because when we're talking about 20 years for
20 assault and battery with intent to kill, that's 85
21 percent, five years -- the five years for the pistol,
22 that is a mandatory five years --

23 **THE COURT:** Consecutive.

24 **MR. DEYSACH:** No. Not consecutive, Your Honor.
25 It is day for day, but it may be concurrent to the

1 sentence. It is -- but you can't -- you can't suspend
2 it. It has to be five years and the Department of
3 Corrections will give it five years day for day, but it
4 can be -- the statute spells it out. It can be
5 concurrent.

6 And so I'm hoping that, you know, if you give him
7 -- I mean, I've done the math. If you count out the 85
8 percent, and the -- in which there is no guarantee that
9 he would do just 85 percent -- and five years, day for
10 day, we're talking about 22 years behind bars. That's
11 22 real years. That's after the calculation of good
12 time credits, which aren't a guarantee that have
13 already been made. And that sounds like such a long
14 time.

15 And so we know that if somebody -- when they get
16 out, they have the community supervision. It's
17 obviously a most serious offense, a violent offense,
18 something very serious. But I want you, knowing what
19 you know about this case, what I've been able to tell
20 you about Mr. Wright, I'm hoping that you will give him
21 the lightest sentence as you can.

22 **THE COURT:** Does he have any prior record?

23 **MR. DEYSACH:** He does have a prior record, Your
24 Honor.

25 **THE COURT:** What is his prior record?

1 **MS. BURKE:** Your Honor, in 2000, he pled to
2 possession of a controlled substance. The rap sheet
3 says, PWID, but I got the certified copy and it says
4 possession, so I'm going to go with that.

5 Theft by receiving stolen property. I believe
6 there was a gun that was a stolen property, going by
7 the certified copy of the conviction.

8 Fleeing, or attempting to allude a police officer
9 in 2004.

10 Theft by receiving stolen property. That was a
11 gun in 2005. Possession of a firearm by a convicted
12 felon, 2005.

13 Fleeing or attempting to allude a police officer
14 in 2009.

15 **THE COURT:** Repeat it. She couldn't understand
16 it.

17 **MS. BURKE:** Fleeing or attempting to allude a
18 police officer. That was in 2009.

19 Hit and run, a duty of a driver to stop and return
20 to the scene. That's in 2009.

21 Those are all of the convictions that I have for
22 Mr. Wright.

23 **MR. DEYSACH:** Your Honor, if you take the two
24 theft by receiving that she says is a gun, he's telling
25 me that she's -- that's the same conviction that was

1 read out twice. That's what -- that's what -- they
2 were at the same time. Something along those lines.

3 But what you didn't hear -- what I didn't hear was
4 anything at all violent. Now, the gun stuff was there,
5 but there wasn't anything about any type of hurting of
6 other people. You know, guns obviously -- I hate that
7 there's so many guns out there, but when you -- when
8 you grow up in the neighborhood that Eric has been,
9 sometimes to not have one is to put a target on your
10 back. But not to say that it's some sort of a badge of
11 honor to have a gun, but really, this is the first
12 thing that's ever happened where he's been accused of
13 -- of hurting somebody.

14 And I -- I can see that because he doesn't strike
15 me as the type of person that takes any pleasure in
16 hurting anybody. So I know what the case is -- and
17 he's not going to sit here and tell you, well, they got
18 it right, Your Honor. That's not what he's going to
19 say.

20 I will ask -- I usually tell people, don't say
21 anything during your sentencing because it might hurt
22 your -- you know, it's something that could be used
23 against you if there were an appeal. And I'm going to
24 ask Mr. Wright if he does want to speak.

25 **MR. WRIGHT:** Yes, sir.

1 **MR. DEYSACH:** Okay. And so it's not -- it's not
2 -- it's against -- it's against my advice, but I'm not
3 going to stop him.

4 **THE COURT:** Mr. Wright.

5 **MR. WRIGHT:** Yes, ma'am. All I'm saying is this,
6 ma'am, you see what I'm saying, I really wasn't there,
7 ma'am. I did not shoot this man. When he talks about
8 he seen me at a gas station, I seen this man in the
9 hall, ma'am, after I bond out, do you see what I'm
10 saying.

11 This man, he -- I stepped to him, I be like, bro,
12 what's up man, you tell these folks I shot you. Where
13 do you get this from. And he said, I don't know. And
14 all this here. Do you see what I'm saying. I don't
15 know what you talking about. You know what I'm saying.
16 I ain't never told nobody I -- you shot me. Do you see
17 what I'm saying.

18 I -- I was given six years, a deal, ma'am, when
19 this first came up. Do you see what I'm saying. I
20 know I did not shoot this man.

21 They know -- Octavia got up here and talk about I
22 shot this man. She know I didn't shoot this man. Do
23 you see what I'm saying. She's mad because I had a
24 baby -- she was pregnant for me and I had another baby
25 by another girl. Do you see what I'm saying. She had

1 me -- she -- she was mad that -- you know what I'm
2 saying, that I had a baby by another girl. Do you see
3 what I'm saying. That's why this all -- I don't know
4 how my name get called, but I made a phone call to let
5 these folks know, ma'am, that I didn't have nothing to
6 do with it.

7 I stay in Savannah, Georgia. I don't know nobody
8 in Carolina, ma'am. Do you see what I'm saying. Why
9 -- I don't even know where his man be at -- I don't
10 even know where Pinckney Hill is located, ma'am. Do
11 you see what I'm saying.

12 I don't know a Lartasha Johnson. Do you see what
13 I'm saying. I don't -- I ain't never been there to say
14 this. Do you see what I'm saying. If I had did this,
15 wouldn't I have ran with the six years, ma'am. Do you
16 see what I'm saying.

17 I could come here and sit through all of this and
18 get 25 years, and I ain't from this state. I can't
19 call nobody. Do you see what I'm saying. Why would I
20 do that. Do you see what I'm saying. I'm just being
21 real because I'm going to do mine. You know what I'm
22 saying. Either way I go, I got to do it.

23 But the thing is why would I sit here for 20 -- to
24 take 25 years, when I can take six years, ma'am.

25 **THE COURT:** Mr. Wright, let me ask you this, you

1 called into this tip line. Is there a reason why when
2 you knew they continued to be looking for you, that you
3 didn't go and talk to them? I mean, this isn't your
4 first time around. And I'm sure your lawyer or whoever
5 was representing you would instruct you not to give a
6 statement, but usually they say, go turn yourself in
7 because you knew they were looking for you. So at
8 least set the record straight and tell your side of it
9 if you could.

10 **MR. WRIGHT:** Yes, ma'am. I've been saying. Yes,
11 ma'am, I understand about turning myself in, but I
12 don't have no bond money, ma'am. Do you see what I'm
13 saying. I just got out the chain gang. Do you see
14 what I'm saying. I just did five years got, did three
15 more years. I just got out. Do you see what I'm
16 saying, that's why I feel like she put it on me because
17 she know I ain't -- I don't have no one. Do you see
18 what I'm saying, to really back me up. Do you see what
19 I'm saying.

20 Why would I turn myself in when I can't bond out,
21 I'm going to another state, do you see what I'm saying.
22 I don't know what these folks know. Do you see what
23 I'm saying. That's why I called them and told them, it
24 wasn't me. It wasn't. I wasn't over there. Do you
25 see what I'm saying.

1 Then when they got me, ain't nobody came and
2 talked to me or nothing like that. Do you see what
3 I'm saying. I told these folks it wasn't me. You
4 know. Why would I turn myself in for something I
5 didn't do, ma'am. Do you see what I'm saying. I don't
6 have no bond. It ain't like I got people coming over
7 here bringing me money. Do you see what I'm saying.
8 Going to put money on my books and stuff like that.
9 When I ride this time, I'm going to ride it alone. Do
10 you see what I'm saying.

11 My son, the reason why I missed my court date,
12 they talking about I been on the run, you know what I'm
13 saying, all this time about my court date, ma'am, I got
14 shot up. Do you see what I'm saying. My elbow is
15 steel. Do you see what I'm saying.

16 My son, the day I'm supposed to appear back to
17 court, my son was being taken from me, do you see what
18 I'm saying, by the Department -- do you see what I'm
19 saying. That's the reason why I missed a court date.
20 I told my lawyer. He can look this up. Do you see
21 what I'm saying. So -- I'm not going to be lying. But
22 I'm here, you know, you're going to do what you got to
23 do. But I'm telling you, with God as my witness, I did
24 not shoot this man. Do you see what I'm saying. And
25 it is what it is, you know.

1 **MR. DEYSACH:** And "do you feel what I'm saying",
2 it makes it sound a little bit -- it's not exactly
3 court talk, but it's kind of like when I say --

4 **THE COURT:** I understand.

5 **MR. DEYSACH:** -- "you know" --

6 **THE COURT:** No. I understand. I understand.
7 Anything else?

8 **MR. WRIGHT:** No, ma'am. That's it.

9 **THE COURT:** On indictment number 2009-1405, for
10 assault and battery with intent to kill, the sentence
11 of this court is that you be committed to the
12 Department of Corrections for a period of 18 years.

13 On indictment number 2009-1406, possession of a
14 weapon during a violent crime, the sentence of this
15 court is that you be committed to the Department of
16 Corrections for a period five years. And those are to
17 run concurrent to each other. Good luck to you, sir.

18 **MR. DEYSACH:** Thank you, Your Honor.

19 (Whereupon, the hearing adjourned.)
20

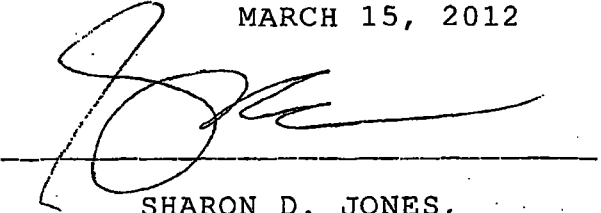
21 * * * END OF TRANSCRIPT * * *
22
23
24
25

CERTIFICATE OF REPORTER

1
2
3 I, SHARON D. JONES, OFFICIAL COURT REPORTER
4 FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
6 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
7 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
8 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL
9 SESSIONS COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON
10 OCTOBER 24, 25, 26 AND 27, 2011.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF
12 KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

13
14
15 MARCH 15, 2012

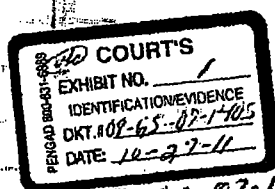
16
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18 
19 SHARON D. JONES,
20 OFFICIAL COURT REPORTER
21
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24
25

27 Oct. 2011 1:00 PM

TESTIMONY of:

- 1.) Alexis Green
- 2.) First officer on the scene
- 3.) Definition of REASONABLE
Doubt

[Signature]
FOREPERSON



08-65-07-1405


QH 0035FE3D92 from III

#119

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SC007015A

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/HUMPHREYS,DONNA SEX/F RAC/W DOB/19720308 PUR/C

NAME	FBI NO.	INQUIRY DATE
CRIBB,DONNA LUCILLE	10809EC4	2011/10/11

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
F	W	1972/03/08	506	130	BRO	BRO	N

BIRTH PLACE
PHILIPPINES

FINGERPRINT CLASS	PATTERN CLASS
RS RS RS RS RS LS LS LS LS LS	RS RS RS RS RS LS LS LS LS LS
WU	WU WU WU WU

ALIAS NAMES

SOCIAL SECURITY

IDENTIFICATION DATA UPDATED 2009/12/31

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FOLLOWING:
CALIFORNIA - STATE ID/CA24104232

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INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

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COURT'S	
EXHIBIT NO.	1
IDENTIFICATION/EVIDENCE	
DKT. #	09-45-02-1405
DATE:	10-24-11
09-25-07-1786	



ICHR 003FB275A1 from SCCH

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FROM: SCCH-11695521 20111011 08:19:13

ICHR REQUEST FOR RAP SHEET

ORI-SC007015A FBI- 10809EC4 PUR-C

ATN-BURKE9274

NO RECORD FOUND TO DISSEMINATE USING FBI/ 10809EC4
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

INQUIRY FORWARDED TO INTERSTATE IDENTIFICATION INDEX

** S C CJIS END OF RECORD **|

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 ATN/BURKE9274.
 PART 1
 THE FOLLOWING RECORD PERTAINS TO SID/OHB147269

STATE OF OHIO, OFFICE OF THE ATTORNEY GENERAL C
 BUREAU OF CRIMINAL IDENTIFICATION & INVESTIGATION (OHBCI0000)
 P.O. BOX 365, LONDON, OHIO 43140
 VALIDATED CRIMINAL HISTORY RECORD: DRE/1985APR10 DLU/2005DEC07
 MKE/CHR PUR/C ORI/OHCCH0000 REQ/BURKE9274 DATE/2011OCT05 TIME/12:08:04

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 MNU/AN-44772 M 18 U OOI 15 15 10 14 PI 15

LKA/
 HCC/001 SINGLESTATE-OFFENDER LOADED-AT-III
 CVF/ EVF/ HVF/ RSO/ FCF/ HGF/
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01/DRUG ABUSE COCAINE

DISP/HELD

2925-11

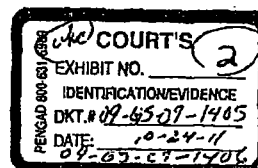
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ADD/PENDING BOND

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 OR CHARGE IS DESIRED, PLEASE CONTACT THE CHARGING AGENCY OR COURT.
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 END OF PART 1 - END OF RECORD

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#416

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10/05/2011 33913 SC007015A

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TXT

HDR/2L0136690006C32QR

0942 EDT 20111005 SC007015A CIRCUIT SOLICITORS OFFICE BEAUFORT

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THIS RECORD IS BASED ONLY ON THE SID NUMBER IN YOUR REQUEST-

SID/MD944940

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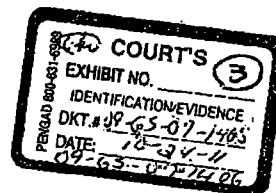
- MARYLAND CRIMINAL HISTORY -

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M W 05/06/1964 505 125	BROWN	BLACK	
FINGERPRINT CLASS	BIRTH PLACE		
PO 10 10 17 15MARYLAND			
PM 08 12 PI PI			
OTHER SCARS, MARKS,			
BIRTH DATES TATTOOS	SOCIAL SECURITY	MISC NUMBERS	

CYCLE NO. 1

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	OCA: 137776		
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04011986	DISTRICT COURT 08/0622234C4	01	NOLLE PROSEQUI
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ICHR 003FB275A1 from SCCH

BEUSL400

.ICHR.003FB275A1.SCCH.20111011 08:19:13

TO: BEUSL400-3837 20111011 08:19:13 003FB275A1

FROM: SCCH-11695521 20111011 08:19:13

ICHR REQUEST FOR RAP SHEET

ORI-SC007015A FBI- 10809EC4 PUR-C

ATN-BURKE9274

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Office of the Clerk of Court
PRESENT LIST FOR PANEL - 2009GS0701406

Roll call list for Jurors Present

Filtered by: Panel ID, Court Agency Code

Sorted by: Juror Name

NAME	JUROR #	RACE	SEX	DOB	#FEER	DEFERRED DATE	CMNT/PAY
21 Bronzert, Diane A	12784	W	F	3/28/1947	1	___/___/___	
33 Caldwell, Patricia P	16937	W	F	1/3/1946	0	___/___/___	
34 Campanella, Brian M	17191	W	M	5/14/1962	0	___/___/___	
~~49 Goulet, Anne~~	23625	W	F	2/27/1956	0	___/___/___	
70 Eve, Susan J	34535	W	F	4/9/1956	0	___/___/___	
88 Gilkey-Walters, Barbara A	41927	W	F	7/10/1964	0	___/___/___	
115 Horry, William W JR	54339	W	M	4/21/1974	0	___/___/___	
119 Humphreys, Donna L	55530	W	F	3/8/1972	0	___/___/___	
120 Isaacson, Joan P	56478	W	F	2/11/1944	1	___/___/___	
141 ~~Loconte, Michael E~~ <i>Joanna Exp. 6/23/12</i>	69120	W	M	3/4/1960	0	___/___/___	
153 Matt, Verneta M	73615	W	F	6/17/1941	0	___/___/___	
195 Rivera-Oates, Brenda	96477	W	F	6/19/1952	0	___/___/___	
198 Robinson, Maureen R	97420	W	F	11/6/1962	1	___/___/___	
214 Smolek, Judith J	108371	W	F	5/23/1955	0	___/___/___	

Total Number of Jurors: 14

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 APPEAL FROM BEAUFORT COUNTY
 COURT OF GENERAL SESSIONS
 CARMEN T. MULLEN, CIRCUIT COURT JUDGE
 INDICTMENT NO(s). 2009GS07-01405 thru 01406

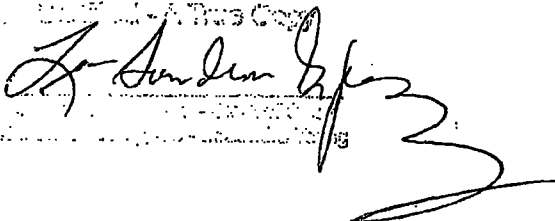
STATE OF SOUTH CAROLINA - RESPONDENT,
 versus
 ERIC WRIGHT - APPELLANT.

11 NOV - 1 AM 9:04
 JENNIFER ROSENE
 BEAUFORT COUNTY, SC
 CLERK OF COURT

ERIC WRIGHT, appeals from his trial and conviction on the charges of ABIK and Possession of a Weapon During the Commission of a Crime on October 27, 2011 before the Honorable Carmen T. Mullen, Presiding Judge, Fourteenth Judicial Circuit.


 Ian Deysach
 Attorney for Eric Wright
 Assistant Public Defender
 P O Box 525
 Beaufort, SC 29901-0525
 (843) 255-5805

Other counsel of record:
 Dawn Burke
 Assistant Solicitor
 P O Box 1880
 Bluffton, SC 29910
 (843) 255-5880


 Dawn Burke
 Assistant Solicitor

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA

Respondent

versus

ERIC WRIGHT

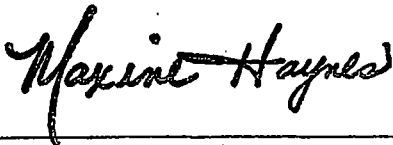
Appellate

AFFIDAVIT OF SERVICE BY MAIL

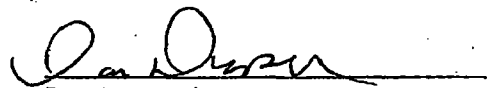
PERSONALLY appeared before me, Ian Deysach, who being duly sworn, states:

1. That regular communication exists throughout the State of South Carolina, and this is the proper circumstances for hand delivered mail.
2. That on November 1, 2011 an Original Notice of Intent to Appeal in the above captioned case was filed with the Beaufort County Clerk of Court.
3. That an original Notice of Intent to Appeal in the above captioned case was served on Kenneth A. Richstad, Clerk, South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC, by depositing same in the United States Post Office at Beaufort, S.C. on November 1, 2011, with the proper postage prepaid thereon.
4. That a true copy of the Notice of Intent to Appeal in the above captioned case was served on the Solicitor's Office, Fourteenth Judicial Circuit, P.O. Box 1880, Bluffton, SC, by depositing same in the United States Post Office at Beaufort, S.C. on, November 1, 2011 with the proper postage paid thereon.

SWORN to and subscribed before me
this 1st day of November, 2011



Notary Public for South Carolina
My Commission Expires: 1/24/2015


Ian Deysach
Attorney for Defendant

WITNESSES

D. Jackson / Bluffton PD

ARREST WARRANT NUMBER

J350584

ACTION OF GRAND JURY

True Bill

Angela Courteney
Foreperson of Grand Jury
Date: 7/30/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0701406

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2009

THE STATE

vs.

Eric Wright Aka Joseph Bo Derrick Wright

Indictment for

Possession of a weapon during a violent crime

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0701406

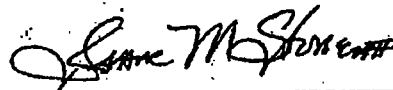
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At a Court of General Sessions, convened on July 30, 2009, the Grand Jurors of Beaufort County present upon their oath:

Possession of a weapon during a violent crime

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, Eric Wright Aka Joseph Bo Derrick Wright, did possess a gun or visibly display what appeared to be a gun during the commission, or attempted commission, of assault and battery with intent to kill, a violent crime. This is in violation of 16-23-490 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.



Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2009GS0701405

June Bill

At a Court of General Sessions, convened on July 30, 2009, the Grand Jurors of Beaufort County present upon their oath:

Assault and battery with Intent to Kill

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Troy Jim ^{AS} to wit: the Defendant did shoot and injure the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

D. Jackson / Bluffton PD

ARREST WARRANT NUMBER

J350581

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 7/30/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0701405

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2009

THE STATE

vs.

Eric Wright Aka Joseph Bo Derrick Wright

Indictment for

Assault and battery with Intent to Kill

SC Code: 16-03-0620
CDR Code:0014

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 17th, 2013

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT