

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Williamsburg County
R. Knox McMahon, Circuit Court Judge

S.C. Supreme Court

JAVON RIVERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2013-002647

APPENDIX

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(STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

COURT OF GENERAL SESSIONS

State of South Carolina)

PLAINTIFF,)

v.)

Javon Lamont Rivers,)

DEFENDANT.)
_____)

TRANSCRIPT OF RECORD
GS #: 2008-GS-45-275

Williamsburg County
Kingstree, South Carolina

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING

APPEARANCES:

Assistant Solicitor Ronnie A. Sabb, Esquire
Assistant Solicitor Kimberly Barr, Esquire
Attorneys for The State

Legrand Carraway, Esquire

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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HEARING

4

1 THE COURT: Mr. Sabb, call your first case.

2 MS. BARR: May it please the Court, the first case we have to call is
3 State vs. Javon Lamont Rivers. Mr. Rivers was indicted by Williamsburg County
4 Grand Jury on December the 4th, 2008 and charged with the offense of murder and
5 possession of a weapon during the commission of a violent crime. He is being
6 represented at trial by Mr. Carraway and the State is ready for trial.

7 THE COURT: Do you have a witness list?

8 MS. BARR: Yes, sir.

9 COURT REPORTER: I need one, too.

10 THE COURT: Mr. Carraway, any potential witness list you may have
11 ...

12 MR. CARRAWAY: Not in the Court, we don't.

13 THE COURT: All right, ladies and gentlemen, we are now going to
14 select a jury for the trial of the case of the State vs. Javon Lamont Rivers. You're still
15 under oath and make sure you listen very carefully to these questions because the
16 primary goal of the jury selection process is to make sure that we impanel a jury that
17 is fair and impartial and one that will be able to base a verdict in this case on the
18 evidence and the law. Many people think that these questions are throwaway
19 questions and really don't mean anything but in this courtroom and in courtrooms
20 around the state these questions are asked and the parties and the Court expect
21 truthful and honest responses to all of these questions. If you think a question may
22 have some application to you and you're not sure, you need to still stand up and I will
23 take information from you as necessary just to make sure that whoever is selected to
24 be on this jury will be a fair and impartial and base the verdict on the evidence and
25 the law. All right. The indictment that I'm holding in my hand ladies and gentlemen

HEARING

5

1 is proof of nothing. The indictment is a charging document for the offense the State
2 claims that the Defendant committed. The Defendant has entered pleas of not guilty
3 to both of these charges and that plea of not guilty puts the burden of proof on the
4 State to prove the elements of these crimes beyond a reasonable doubt. So when I
5 refer to the indictment that is simply to give you information about what the case is
6 about just in case it's possible that you may know something about it. All right. The
7 indictment says that the Defendant did in Williamsburg County on or about May 17,
8 2008 feloniously, willfully and with malice aforethought kill one Darrel McCrea by
9 means of shooting the victim and that the victim did die as a result of that shooting.
10 The second count says that on the same date in Williamsburg County the Defendant
11 did possess or visibly display a firearm during the commission of or the attempted
12 commission of a violent crime. All right. Mr. Rivers, if you would please stand and
13 face the jury panel for us. All right, the lady beside him, Mr. Carraway?

14 MR. CARRAWAY: That is his mother.

15 THE COURT: And her name?

16 MS. JAMES: Yvette Rivers James.

17 THE COURT: All right. Thank you. You all can have a seat. Is there
18 any member of the jury panel or member of your immediate family and by immediate
19 family I mean father, mother, brother, sister, or child, anyone on the jury panel or any
20 of your immediate family members kin to the Defendant or his mother, Yvette Rivers
21 James? Anybody kin to them at all? All right, is there any member of the jury panel
22 or member of your immediate family who knows the Defendant or his mother or has
23 any type of connection, acquaintance or association of any kind whatsoever? Do you
24 work with them, go to school with the, go to church with them, or have any type of
25 connection at all? All right, yes, sir, your name, please?

HEARING

6

1 MR. GAMBLE: Alfred Gamble.

2 THE COURT: Sir?

3 MR. GAMBLE: Alfred Gamble.

4 THE COURT: Gamble?

5 MR. GAMBLE: Yes.

6 THE COURT: All right, Mr. Gamble is Number 56. Yes, sir, what is
7 your connection?

8 MR. GAMBLE: I'm a friend.

9 THE COURT: Friend of the Defendant?

10 MR. GAMBLE: Yes, sir.

11 THE COURT: All right. How long have you known him?

12 MR. GAMBLE: About five years.

13 THE COURT: About five years? Is that just a generally acquaintance
14 as a friend in the community or have you worked with him or what ... what is the
15 nature of that connection?

16 MR. GAMBLE: (can't hear him).

17 THE COURT: All right. Mr. Gamble, would that have any impact on
18 your ability to be fair and impartial to both sides of this case?

19 MR. GAMBLE: Yes, sir.

20 THE COURT: It would?

21 MR. GAMBLE: Yes, sir.

22 THE COURT: All right. Thank you, Mr. Gamble, you can have a
23 seat. All right, ladies and gentlemen, ... and Ms. Barr, let me ask you this first and
24 Mr. Carraway, where did the events in question allegedly take place?

25 MS. BARR: Sadie's Nightclub here in Kingtree, Your Honor.

HEARING

7

1 THE COURT: Ma'am?

2 MS. BARR: Sadie's Nightclub here in Kingtree. Sadie's.

3 THE COURT: Sadie's?

4 MS. BARR: Yes, sir.

5 THE COURT: All right. Ladies and gentlemen, the events in question
6 that again I read to you from the indictment were alleged to have occurred at a
7 location called Sadie's Nightclub. The first question is there any member of the jury
8 panel who knows anything about this case or has heard any information about it from
9 any source other than from me today? Anybody heard anything about it or read
10 anything about it or has any information about other than what I have given to you
11 today? All right. No ... all right, yes, sir, stand up, please.

12 JUROR: I read about it.

13 THE COURT: You can just come on up. Thank you, sir. Your
14 name, sir?

15 MR. CONYERS: James Conyers.

16 THE COURT: All right, Mr. Conyers, come on up.

17 CLERK: Juror Number 32.

18 (Discussion held off the record).

19 THE COURT: Which one?

20 BAILIFF: 21.

21 THE COURT: 21?

22 BAILIFF: All right.

23 THE COURT: All right, Mr. Burgess.

24 (Discussion held off the record).

25 BAILIFF: Juror Number 110.

HEARING

8

1 (Discussion held off the record).

2 THE COURT: All right. Who's next?

3 BAILIFF: 94.

4 THE COURT: 94?

5 BAILIFF: 94. Yes, sir.

6 (Discussion held off the record).

7 BAILIFF: 144.

8 (Discussion held off the record).

9 THE COURT: All right, ladies and gentlemen, the following is a list
10 of potential witnesses in this case. That doesn't mean that all of the witnesses will
11 testify but it's possible that they will. If any of these witnesses are present, if you
12 would please stand when I call your name. The question will be the same, is there
13 any member of the jury panel kin to any of these witnesses or do you know them or
14 have any connection or association with them at all now or in the past. Deputy
15 Kennedy Grayson of the Williamsburg County Sheriff's Office. Sergeant Caressa
16 Blunt of the Sheriff's Office. Investigator Debra Collins of the Williamsburg County
17 Sheriff's Office. Back here to my left. Investigator Justin Whack of the
18 Williamsburg County Sheriff's Office. Lieutenant Jeffrey Scott of the Williamsburg
19 County Sheriff's Office.

20 BAILIFF: Got one standing.

21 THE COURT: All right. If you all would remain standing.

22 All right. Sergeant SC Monteith of the Kingstree Police Department. Dr. Erin
23 Presnell of the Medical University of South Carolina. Dr. Cynthia Schandl, Medical
24 University of South Carolina. Maxine McCrea. Victor Nesmith. Leslie Morant.
25 Ernie Wilson. Sadie McBride. Erica McBride. Or Dyshea or Dyshea McBride.

HEARING

9

1 Any member of the panel or a member of your immediate family kin to any of these
2 potential witnesses or do you know them or have any connection, acquaintance or
3 association with them at all? All right, Mr. Hasselden, yes, sir?

4 MR. HASSELDEN: Mr. Scott is my brother-in-law.

5 THE COURT: Sergeant Scott is? All right. So, he's married
6 to your sister or you're married to his sister?

7 MR. HASSELDEN: He's married to my sister.

8 THE COURT: He's married to your sister. All right. Mr.
9 Hasselden, would that ... if Sergeant Scott were to testify in that case would the fact
10 that he is your brother-in-law have any impact on your ability to be fair and impartial
11 to both sides? Could you set that aside and base your verdict on the evidence of the
12 law?

13 MR. HASSELDEN: Yes, sir.

14 THE COURT: Thank you, Mr. Hasselden. Yes, sir, your
15 name?

16 MR. GAMBLE: Alfred Gamble.

17 THE COURT: All right, Mr. Gamble?

18 MR. GAMBLE: Ms. Collins.

19 THE COURT: You know Ms. Collins?

20 MR. GAMBLE: Yes, sir.

21 THE COURT: All right. How long have you known her?

22 MR. GAMBLE: (Can't hear).

23 THE COURT: All right. If she were to testify in this case
24 would the fact that you've known her for that period of time have any impact on your
25 ability to be fair and impartial to both sides?

HEARING

10

1 MR. GAMBLE: No, sir.

2 THE COURT: Sir?

3 MR. GAMBLE: No, sir.

4 THE COURT: All right, would you ... would you base your
5 verdict on the evidence and the law?

6 MR. GAMBLE: Yes, sir.

7 THE COURT: Thank you. All right, yes, ma'am, closer to the
8 wall, your name, please?

9 MS. BRANTLEY: Crystal Brantley.

10 THE COURT: Brown?

11 MS. BRANTLEY: Brantley.

12 THE COURT: Brantley? All right, Ms. Brantley is Number
13 10. Yes, ma'am?

14 MS. BRANTLEY: I'm related to Justin Whack and also went
15 to high school with Dyshea.

16 THE COURT: All right. How are you related to Mr. Whack?

17 MS. BRANTLEY: My grandmother is related to his mother.

18 THE COURT: Okay. And you know ... if you could speak up
19 a little bit. You said your grandmother ... grandparents are related somehow and
20 what else?

21 MS. BRANTLEY: And I've kept contact with his mom.

22 THE COURT: All right. And you also indicated that you are
23 acquainted with Dyshea McBride?

24 MS. BRANTLEY: Yes, sir.

25 THE COURT: All right and tell me the nature of that

HEARING

11

1 acquaintance?

2 MS. BRANTLEY: We went to high school together.

3 THE COURT: How long ago was that?

4 MS. BRANTLEY: We graduated in 2007.

5 THE COURT: Okay. And how long have you known her?

6 MS. BRANTLEY: Probably 5 years.

7 THE COURT: Do you consider yourself to be close friends or
8 just acquaintances or what?

9 MS. BRANTLEY: Just acquaintances.

10 THE COURT: All right. Will you be able to set all of what
11 you've told me aside and be fair and impartial to both sides?

12 MS. BRANTLEY: Yes, sir.

13 THE COURT: Would you base your verdict on the evidence in
14 the law and put aside any prior associations that you have?

15 MS. BRANTLEY: Yes.

16 THE COURT: Thank you, ma'am, your name?

17 MS. BURGESS: Vernetta Burgess.

18 THE COURT: All right. All right, Ms. Burgess is Number 22.
19 Yes, ma'am?

20 MS. BURGESS: I'm acquainted with Justin Whack.

21 THE COURT: How long have you known him?

22 MS. BURGESS: Approximately 15 years.

23 THE COURT: All right. So that would be since the early
24 90's?

25 MS. BURGESS: Correct.

HEARING

12

1 THE COURT: Did you all go to school together?

2 MS. BURGESS: No, church.

3 THE COURT: Church? Okay. Do you all still go to church
4 together?

5 MS. BURGESS: No.

6 THE COURT: All right. Would you be able to set aside the
7 fact that you've known Mr. Whack for that amount of time and be fair and impartial
8 100 percent to both sides?

9 MS. BURGESS: Yes.

10 THE COURT: Would you base your verdict on the evidence
11 and the law?

12 MS. BURGESS: Yes.

13 THE COURT: Thank you, ma'am. Yes, ma'am, your name?

14 MS. JOHNSON: Trecea Johnson.

15 THE COURT: Trecea Johnson?

16 MS. JOHNSON: Debra Collins.

17 THE COURT: All right, Number 87. Yes, ma'am?

18 MS. JOHNSON: Debra Collins.

19 THE COURT: Ma'am?

20 MS. JOHNSON: Ms. Collins.

21 THE COURT: You know her? How long have you known
22 her?

23 MS. JOHNSON: All my life.

24 THE COURT: All right. Ms. Johnson, just for the record, that
25 would be 30 some odd years?

HEARING

13

1 MS. JOHNSON: Yes.

2 THE COURT: All right. Are you related to her?

3 MS. JOHNSON: My cousin is sister-in-law with her.

4 THE COURT: Are you blood related?

5 MS. JOHNSON: No.

6 THE COURT: Okay. The fact that you've known this
7 potential witness that long wouldn't have any impact on your ability to be completely
8 fair and impartial to both sides?

9 MS. JOHNSON: No, sir.

10 THE COURT: Would you base your verdict on the evidence
11 and the law?

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Thank you, ma'am. All right, the State of
14 South Carolina in this case is represented by Kimberly Barr and Ronnie Sabb of the
15 Third Circuit Solicitor's Office. And the Defendant in this case is represented by
16 LeGrand Carraway. Is there any member of the jury panel who is kin to any of these
17 lawyers or do you have any connection, acquaintance or association with any of these
18 lawyers? Have you ever been represented by them or by their offices? Have any
19 connections or associations with them at all? All right, Mr. Hasselden?

20 MR. HASSELDEN: I conduct business with Mr. Sabb.

21 THE COURT: All right. That's your business?

22 MR. HASSELDEN: Yes, sir.

23 THE COURT: You're in the exterminating business?

24 MR. HASSELDEN: Yes, sir.

25 THE COURT: All right. How long have you conducted

HEARING

14

1 business with Mr. Sabb?

2 MR. HASSELDEN: That's a good question. I'd say 10 years
3 or so.

4 THE COURT: Okay. And that's ... that's in the nature of your
5 extermination business?

6 MR. HASSELDEN: Yes, sir.

7 THE COURT: All right. Would you be able to set that aside
8 and be fair and impartial to both sides and base your verdict on the evidence in the
9 law?

10 MR. HASSELDEN: Yes, sir.

11 THE COURT: All right. Thank you, sir. Yes, ma'am. Your
12 name again?

13 JUROR: Verrette Burgess.

14 THE COURT: Ms. Burgess is #22. Yes, ma'am.

15 MS. BURGESS: Attorney Sabb has represented me.

16 THE COURT: How long ago?

17 MS. BURGESS: Maybe 6 years.

18 THE COURT: Was that a civil matter?

19 MS. BURGESS: Yes.

20 THE COURT: Is it concluded?

21 MS. BURGESS: Yes.

22 THE COURT: All right. Was it an injury case or another
23 matter?

24 MS. BURGESS: Another matter.

25 THE COURT: All right. But that's been concluded?

HEARING

15

1 MS. BURGESS: Correct.

2 THE COURT: All right. Could you be fair and impartial, put
3 aside that fact and base your verdict on the evidence in the law?

4 MS. BURGESS: Yes.

5 THE COURT: Thank you, ma'am. All right, yes, sir, your
6 name?

7 MR. JOHNSON: Vern Johnson.

8 THE COURT: Johnson?

9 COURT REPORTER: 88.

10 THE COURT: All right. Number 88. Yes, sir?

11 MR. JOHNSON: Mr. Carraway.

12 THE COURT: All right. Was that legal business?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: He represented you?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: How long ago?

17 MR. JOHNSON: About 7, 8 years ago.

18 THE COURT: Has that matter been concluded?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: All right. Would you be able to set that aside,
21 Mr. Johnson, and base your verdict on the evidence and the law?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: Would you be completely fair to both sides?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Thank you, sir. Yes, ma'am, your name.

HEARING

16

1 MS. BOURKARD: Rebecca Bourkard.
2 THE COURT: Bradford?
3 MS. BOURKARD: Yes.
4 THE COURT: All right, Ms. Bradford is Number ...
5 MS. WILLIAMS: She's Number 8, Rebecca Bourkard.
6 THE COURT: How do you pronounce your last name?
7 MS. BOURKARD: Bourkard.
8 THE COURT: Oh, I'm sorry. All right, Number 8. Yes,
9 ma'am?
10 MS. BOURKARD: I know Legrand Carraway.
11 THE COURT: How long have you known him?
12 MS. BOURKARD: About 14 years.
13 THE COURT: Okay. Have you ever been represented by
14 him?
15 MS. BOURKARD: No, sir.
16 THE COURT: All right. You've known him personally for the
17 last 14 years?
18 MS. BOURKARD: Yes, sir.
19 THE COURT: All right. Would you be able to set that aside,
20 Ms. Bourkard, and base your verdict on the evidence and the law?
21 MS. BOURKARD: Yes, sir.
22 THE COURT: Could you be completely fair to both sides?
23 MS. BOURKARD: Yes, sir.
24 THE COURT: Thank you, ma'am. Yes, ma'am in the white
25 shirt.

HEARING

17

1 BAILIFF: Kimberly Brown.

2 THE COURT: All right. Ms. Brown is #17? Yes, ma'am.

3 MR. BROWN: I worked at the County Assessor's Office for
4 five years and know Ronnie Sabb.

5 THE COURT: All right. How long has it been since you
6 worked there?

7 MS. BROWN: Approximately 4 years.

8 THE COURT: Could you be fair and impartial and set that
9 aside and base your verdict on the evidence and the law?

10 MS. BOURKARD: Yes, sir.

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

12 MS. WRENN: Stephanie Wrenn.

13 THE COURT: Last name?

14 MS. WRENN: Wrenn.

15 THE COURT: Wrenn?

16 MS. WRENN: 199.

17 THE COURT: All right, yes, ma'am?

18 MS. WRENN: (Can't understand).

19 THE COURT: How long ago was that?

20 MS. WRENN: About 5 years.

21 THE COURT: Okay. Could you set that aside, Ms. Wrenn,
22 and base your verdict on the evidence and the law?

23 MS. WRENN: Yes, sir.

24 THE COURT: Could you be completely fair to both sides?

25 MS. WRENN: Yes.

HEARING

18

1 THE COURT: All right. Ms. Wrenn is Number 199. Thank
2 you. Is there any member of the jury panel who has formed or expressed any opinion
3 about any issue or matter involved in this case? If you have formed or expressed any
4 opinion even though that might be a privately held opinion to you, please stand. Is
5 there any member of the jury panel who is aware of any bias or prejudice that you
6 might have for or against the State or for or against the Defendant? Is there any
7 member of the panel who may have been a member of the Grand Jury that issued the
8 Indictment in this case? Is there any member of the jury panel who is a member of or
9 a contributor to any organization that has as its primary focus the promotion of law
10 enforcement or victim's rights? These organizations include but are not limited to
11 The State Law Enforcement Officers Association, Sheriff's Association, Citizens
12 Against Violent Crime, Mothers Against Drunk Driving, or such other organizations.
13 Is there any member of the jury panel who knows of any reason why you should not
14 serve as a juror in this case that is covered by a question that I asked you previously
15 or not covered by a question that I asked you previously. Anybody who knows of
16 any reason why you should not serve as a juror in this case? In case I didn't ask it
17 clearly, some of you when you came up indicated the answer to this question would
18 be yes but since I didn't specifically ask it, is there any member of the jury panel or
19 member of your immediate family who is kin to or knew or had any connection or
20 association with Darrell McCrea? If you've already given me that information up
21 here you don't need to stand again. Is there anyone on the panel or member of your
22 immediate family who is kin to Mr. McCrea or had any connection or association or
23 acquaintance with him, please stand. All right, your name, please?

24 MS. SCOTT: Gloria Scott.

25 THE COURT: Scott?

HEARING

19

1 MS. SCOTT: Yes.

2 THE COURT: All right, Ms. Scott is Number 155. Yes,
3 ma'am?

4 MS. SCOTT: My mother knew his grandmother.

5 THE COURT: Whose grandmother?

6 MS. SCOTT: Javon's.

7 THE COURT: Mr. Rivers?

8 MS. SCOTT: Yes.

9 THE COURT: All right. How long ago was that, please,
10 ma'am?

11 MS. SCOTT: Maybe, oh God, I don't even know. I guess for
12 years maybe.

13 THE COURT: Okay. And is your grandmother still alive?

14 MS. SCOTT: No, my mother and his grandmother, his
15 grandmother has passed.

16 THE COURT: Okay. Would that fact, Ms. Scott, have any
17 impact on your ability to be fair and impartial to both sides?

18 MS. SCOTT: No.

19 THE COURT: Would you base your verdict on the evidence
20 and the law?

21 MS. SCOTT: Yes.

22 THE COURT: Do you know Mr. Rivers?

23 MS. SCOTT: No, I don't.

24 THE COURT: All right. Thank you. Any other questions
25 from the State?

HEARING

20

1 MS. BARR: Your Honor, there is one additional person we'd
2 like to add to the witness list. His name is David McCrae. He's seated here.

3 THE COURT: All right, same question, ladies and gentlemen,
4 anyone of your number who or member of your immediate family who is kin to Mr.
5 McCrea or do you have any connection, acquaintance, association, friendship at all
6 with this individual? All right, thank you, Mr. McCrea, you may be seated. All
7 right, Mr. Carraway, any additional questions?

8 MR. CARRAWAY: None, Your Honor.

9 THE COURT: All right. The parties come up for just a
10 second.

11 (Discussion held off the record).

12 THE COURT: Two witnesses, Ladies and Gentlemen, the
13 question will be the same and these witnesses are Keanina Robinson and Tatania
14 Rivers. Is there any member ... you all can stand ... You're Tatania Rivers? All right,
15 any member of the jury panel or member of your immediate family kin to these ...
16 either of these potential witnesses? Friends with them, acquaintances or have any
17 connection, association with them at all? All right. Ma'am?

18 MS. SCOTT: My mother knows her.

19 THE COURT: All right. Your name again, please, ma'am?

20 MS. SCOTT: Gloria Scott.

21 THE COURT: All right, Ms. Scott, your mother knows
22 Tatania Rivers?

23 MS. SCOTT: Yes, sir.

24 THE COURT: All right. Do you know how long that's been
25 the case?

HEARING

21

1 MS. SCOTT: Maybe 2 or 3 years.

2 THE COURT: Would that have any bearing on your ability to
3 be fair and impartial?

4 MS. SCOTT: No.

5 THE COURT: With regard to that could you base your verdict
6 on the evidence and the law?

7 MS. SCOTT: Yes, I can.

8 THE COURT: All right. Ms. Barr, any additional questions?

9 MS. BARR: No, Your Honor. Thank you.

10 THE COURT: Mr. Carraway, anything else?

11 MR. CARRAWAY: No, sir, Your Honor.

12 THE COURT: All right, ladies and gentlemen, the way the
13 process will work here ... you all use the box, right?

14 MS. WILLIAMS: Yeah, we still use the box.

15 THE COURT: All right. Your names are all placed into that
16 round rotating drum and the clerk of court is going to draw names out individually.
17 If you name is called, simply come through the center aisle towards where Ms.
18 Williams is sitting, walk up to her desk and simply turn and face the back of the
19 courtroom. You won't have to say a word. When you do come up please bring
20 whatever belongings that you do have, bring those with you. All right.

21 MS. WILLIAMS: Number 21, Sebastian Burgess.

22 MS. BARR: Please present Mr. Burgess.

23 MR. CARRAWAY: Please excuse Mr. Burgess from the trial
24 of just this case.

25 MS. WILLIAMS: You may return to your seat, Mr. Burgess.

HEARING

22

1 Number 83, Naomi James Hamm.

2 MS. BARR: Please present Ms. Hamm.

3 MR. CARRAWAY: Please seat Ms. James.

4 MS. WILLIAMS: Have a seat in the petit jury box. Number
5 38, Robert Davis, Junior.

6 MS. BARR: Please excuse Mr. Davis from the trial of this
7 case.

8 MS. WILLIAMS: You may return to your seat. Number 88,
9 Vern Johnson.

10 MS. BARR: Please present Mr. Johnson.

11 MR. CARRAWAY: Please seat Mr. Johnson.

12 MS. WILLIAMS: Have a seat to my right in the petit jury box.

13 Number 64, Sara Godwin.

14 MS. BARR: Please present Mrs. Godwin.

15 MR. CARRAWAY: Please excuse Mrs. Godwin from the trial
16 of this case.

17 MS. WILLIAMS: Return to your seat. Number 50, Kathleen
18 Felder.

19 MS. BARR: Please present Mrs. Felder.

20 MR. CARRAWAY: Please excuse Ms. Felder from the trial
21 of this case.

22 MS. WILLIAMS: You may return to your seat, Mrs. Felder.

23 Number 17, Kimberly Brown. 17.

24 MS. BARR: Please present Ms. Brown.

25 MR. CARRAWAY: Please seat Ms. Brown.

HEARING

23

1 MS. WILLIAMS: Have a seat in the petit jury box. Number
2 111 Herbert McCullough.

3 MS. BARR: Please present Mr. McCullough.

4 MR. CARRAWAY: Please excuse Mr. McCullough from the
5 trial of this case.

6 MS. WILLIAMS: You may return to your seat, Mr.
7 McCullough. Number 33, Patricia Conyers.

8 MS. BARR: Please present Ms. Conyers.

9 MR. CARRAWAY: Please excuse Ms. Conyers from the trial
10 of this case.

11 MS. WILLIAMS: You can return to your seat, Ms. Conyers.
12 173, Matthew Tisdale.

13 MS. BARR: Please present Mr. Tisdale.

14 MR. CARRAWAY: Please excuse Mr. Tisdale from the trial
15 of this case.

16 MS. WILLIAMS: You may return to your seat. Number 99,
17 Virginia McBride. 99, Virginia McBride.

18 MS. BARR: Please present Ms. McBride.

19 MR. CARRAWAY: Please seat Ms. McBride.

20 MS. WILLIAMS: Have a seat in the petit jury box, Ms.
21 McBride. Number 18, Mary J. Brown.

22 MS. BARR: Please present Ms. Brown.

23 MR. CARRAWAY: Please seat Ms. Brown.

24 MS. WILLIAMS: Have a seat in the petit jury box. Number
25 154, Dorothy Scott.

HEARING

24

1 MS. BARR: Please present Ms. Scott.
2 MR. CARRAWAY: Please seat Ms. Scott.
3 MS. WILLIAMS: Number 97, James Mason, Junior.
4 MS. BARR: Please present Mr. Mason.
5 MR. CARRAWAY: Please excuse Mr. Mason from the trial
6 of this case.
7 MS. WILLIAMS: Number 197, Bobby Woods.
8 MS. BARR: Please present Mr. Woods.
9 MR. CARRAWAY: Please seat Mr. Woods.
10 MS. WILLIAMS: Have a seat in the petit jury box. Number
11 201, Tamri Gaskins.
12 MS. BARR: Please present Ms. Gaskins.
13 MR. CARRAWAY: Please excuse Ms. Gaskins.
14 MS. WILLIAMS: 110, Latasha McCrea.
15 MS. BARR: Please present Ms. McCrea.
16 MR. CARRAWAY: Please excuse Ms. McCrea from the trial
17 of this case.
18 MS. WILLIAMS: Number 63, Patricia Giles.
19 MS. BARR: Please excuse Ms. Giles from the trial of this
20 case.
21 MS. WILLIAMS: You may return to your seat. Number 8,
22 Rebecca Bourkard Blanding.
23 MS. BARR: Please present Ms. Bourkard.
24 MR. CARRAWAY: Please seat Ms. Bourkard.
25 MS. WILLIAMS: Number 162, Tommy Shaw.

HEARING

25

1 MS. BARR: Please excuse Mr. Shaw.

2 MS. WILLIAMS: You may return to your seat, Mr. Shaw.

3 Number 126, Tramaine Miskel.

4 MS. BARR: Please present Mr. Miskel.

5 MR. CARRAWAY: Please seat Mr. Miskel.

6 MS. WILLIAMS: Have a seat, Mr. Miskel. Over here, Mr.

7 Miskel. Number 145, Gloria Pressley.

8 MS. BARR: Please present Ms. Pressley.

9 MR. CARRAWAY: Please excuse Ms. Pressley from the trial
10 of this case.

11 THE COURT: You're excused. Number 27, Ellis Carter.

12 MS. BARR: Please present Mr. Carter.

13 MR. CARRAWAY: Please seat Mr. Carter.

14 MS. WILLIAMS: Have a seat in the petit jury box. Number
15 19, Jennifer Burgess.

16 MS. BARR: Please present Ms. Burgess.

17 MR. CARRAWAY: Please excuse Ms. Burgess from the trial
18 of this case.

19 MS. WILLIAMS: Just a minute. Just a minute, Ms. Burgess.

20 THE COURT: The State has presented this juror, Mr.

21 Carraway?

22 MR. CARRAWAY: Please seat this juror, Your Honor.

23 MS. WILLIAMS: Have a seat in the petit jury box, Ms.

24 Burgess. Number 177, Adriane Vanduyne.

25 MS. BARR: Please excuse this juror from the trial of this case.

HEARING

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1 MS. WILLIAMS: You may return to your seat, Ms. Vanduyne.
2 Number 10, Crystal Brantley.
3 MS. BARR: Please present Ms. Brantley.
4 MS. WILLIAMS: Have a seat in the petit jury box.
5 THE COURT: All right. Two alternates, one strike for the
6 State and two for Defendant. All right.
7 MS. WILLIAMS: Number 61, Barney Gause.
8 MS. BARR: Please present Mr. Gause.
9 MR. CARRAWAY: Please seat Mr. Gause.
10 MS. WILLIAMS: Have a seat in the petit jury box.
11 MS. WILLIAMS: Number 46, Gloria Edwards.
12 THE COURT: 46?
13 MS. WILLIAMS: 46.
14 MS. BARR: Please present Ms. Edwards.
15 MR. CARRAWAY: Please excuse Ms. Edwards from the trial
16 of this case.
17 MS. WILLIAMS: Number 94, Justin Latson.
18 MS. BARR: Please present Mr. Latson.
19 MR. CARRAWAY: Please excuse Mr. Latson.
20 MS. WILLIAMS: Number 123, Katrina Miller.
21 MS. BARR: Please excuse Ms. Miller.
22 MS. WILLIAMS: You're excused. Number 35, Tracie Cook.
23 MS. BARR: Please present Ms. Cook.
24 MR. CARRAWAY: Please seat Ms. Cook.
25 MS. WILLIAMS: Have a seat in the petit jury box.

HEARING

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1 THE COURT: All right. Any motions or matters pertaining to
2 jury selection from the State?

3 MS. BARR: No, sir.

4 THE COURT: From the Defendant?

5 MR. CARRAWAY: No, Your Honor.

6 THE COURT: All right. You all come up for just a second.

7 (Discussion held off the record).

8 THE COURT: All right, ladies and gentlemen, we have
9 selected the jurors of this case. Right now, the only two of your who have assigned
10 seats are Ms. Cook and Mr. Gause. You two folks sit in either one of those two seats
11 everyone else, people get territorial when they start sitting in the same seat and that's
12 fine, but try to make it so that fellow jurors won't have to crawl over you to get to the
13 next seat. Right now we are going to excuse you folks until 9:30 in the morning. If
14 you will go with Mr. Brown he will show you to the jury room that you are to report
15 to at 9:30. I want to make sure that you understand a couple things. Please be on
16 time at 9:30. We're going to start right then. And you may not under any
17 circumstances discuss this case with anybody. When you get home somebody who
18 knows you're on jury duty may say well, what happened. The only thing you can tell
19 them is you got picked on a jury. Don't tell them anything about what the charge is,
20 who the parties involved are. Don't tell them anything about it. If you go back to
21 work this evening, the same thing. And when you get back to your jury room
22 tomorrow, you can't talk about it amongst yourselves. This is probably the only thing
23 the fourteen of you have in this case. The only thing you can't talk about in that
24 room, until I will tell you when you can start talking about the case. As a matter of
25 fact, you can't begin to form any conclusions in your mind about what your verdict

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1 may be in this case until I tell you that you can. As the case goes on you will be
2 permitted to evaluate the believability of witnesses who testified but you cannot
3 begin to form any opinions about this case until I tell you that you can. All right,
4 we'll see you tomorrow morning at 9:30. If you have any questions just address them
5 to Mr. Brown and the other bailiffs on your way out ..and they will try to answer
6 those for you. You all can go out this way. See you tomorrow morning at 9:30.

7 (Jury out)

8 THE COURT: Mr. Carraway, Ms. Barr, and Mr. Sabb, based
9 on your knowledge of the overall docket, will there be anything before we break
10 today?

11 MS. BARR: Judge, I think there's a probation violation.

12 THE COURT: This case?

13 MS. BARR: Oh, no, sir, no.

14 THE COURT: There be any pretrial issues we have involving
15 this case?

16 MR. CARRAWAY: I don't believe so.

17 MS. BARR: I don't have any, Judge.

18 THE COURT: The Defendant in custody?

19 MS. BARR: He is.

20 THE COURT: All right. Mr. Carraway, did you talk to the
21 folks at the jail to make your client available for this evening?

22 MR. CARRAWAY: I'll speak to him after this.

23 THE COURT: All right.

24 MR. CARRAWAY: I'll be over there tonight.

25 (Off the record).

March 10, 2009

(Jurors enter courtroom)

(Jury is Sworn)

THIRD JUDICIAL CIRCUIT
(803)

HEARING

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1 there is a dispute as to a point of law we'll take that up more than likely outside of
2 your presence. All right. From time to time during the course of the trial one or both
3 will decide they might stand up and object to a question or object to some item that
4 might come into evidence or object to a question or an answer during exchanges
5 between a lawyer and a witness. Those are points of law. Those are the points of
6 law that I have to rule on. So, take some comfort in knowing that when you retire to
7 deliberate and discuss the facts of the case itself, we won't go with you. By the same
8 token, when we discuss points of law, you may have to be out of the room. Don't
9 take offense at that. That's simply the way the process works. Sometimes I may be
10 able to rule on things with you sitting right there. And sometimes it may be a
11 situation where I send you out of the room, rule on something, come back in, and I
12 may have to send you immediately back out. You will see that these cases in court in
13 this state and all states aren't tried like they're tried on television. So there is no ... no
14 screaming by the lawyers to the witnesses. There will be no table slamming. There
15 won't be any high end theatrics. The lawyers will try this case according to the rules
16 and I'm confident they will do a very good job in that. Now, you will be allowed to
17 base your decisions in this case on your view of the evidence that is introduced. And
18 the evidence will come to you in the form of testimony from this witness stand. It
19 will come to you in the form of Exhibits that are introduced and in the form of
20 stipulations or agreements between the sides. That is the evidence you are entitled to
21 see. If during the course of the trial I instruct you to disregard something a witness
22 said or some document or Exhibit that you might see that is not authorized to be in
23 evidence, you will be duty bound according to your oath to disregard what I tell you
24 to disregard. Now, again, as finders of the facts you have a very serious undertaking
25 and I will tell you now that the testimony of the very first witness, the third, fifth,

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1 seventh, ninth of eleventh, the testimony of all witnesses is very important. So don't
2 pay attention to one and decide well, I'm going to take a little mental break here and
3 not pay attention to the next one. Because both sides expect and are entitled to a fair,
4 impartial trial at your hands. The only way that you can accomplish that is to pay
5 very, very close attention to everything that is said. That will be especially important
6 after lunch. When you've had a meal and your body may become time to take a little
7 break. You will not be allowed to do that. And I will be keeping an eye on you. If I
8 notice any of you wandering off a little bit, we will stop and take a break and I may
9 ask you to stand in the jury box and stretch. As finders of the facts, you will have to
10 evaluate the believability of the witnesses who testify. That is why you have to pay
11 attention. You can believe every word of what a witness has to say. You can
12 disbelieve every word or you can believe parts and reject the rest of what a witness
13 has to say. It's all up to you. You use your good common sense and judgement to
14 determine who to believe and what to believe. You can base your determination in
15 that regard or how the witness appears on the witness stand. Was the witness
16 hesitant or straight forward in answering questions? Does the witness have a reason
17 to give testimony that would help or hurt one side or the other. In other words, was
18 that witness biased or prejudiced in favor of one side over the other. And you can
19 base your determination on whether to believe a witness on whether or not that
20 witness' testimony is strengthened or weakened by other testimony or evidence in the
21 record or perhaps based on whether or not that witness may have said something
22 different on a prior occasion. Those are only examples of what you can use to
23 determine who to believe and what to believe. And again, you can use other things
24 that are in your realm of common sense in determining who to believe. And again, if
25 you do come to this courtroom armed with a very powerful weapon and that is your

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1 good common sense. So what you do is you take your view of the evidence in this
2 case and you will take the law as I give it to you and when you retire to deliberate
3 you will come up with a true verdict. Now, in this case the Defendant has been
4 charged with two offenses. And he has entered a plea of not guilty to those two
5 offenses. And that plea of not guilty puts the burden of proof on the State to prove
6 his guilt beyond a reasonable doubt. As the trial proceeds I will explain to you what
7 that burden of proof means. And you will not be allowed to find the Defendant
8 guilty unless the State proves his guilt again beyond a reasonable doubt. At all times
9 prior to a guilty verdict a Defendant is entitled to the presumption of innocence. And
10 that presumption cannot be stripped away unless and until the State establishes guilt
11 again beyond a reasonable doubt. In a moment the lawyers are going to stand and
12 give you their opening statements and I will tell you that what the lawyers say to you
13 is not evidence. They are allowed under the rules of this state to give an opening
14 statement and at the conclusion of the trial to give a closing argument. But again,
15 once more you are to view the form of those statements and arguments is not
16 evidence and what the lawyers are saying in the form of a question to a witness is not
17 evidence. All right, is the state ready to proceed?

18 MS. BARR: Yes, Your Honor.

19 THE COURT: Mr. Carraway, is the Defense ready?

20 MR. CARRAWAY: The Defense is ready, Your Honor.

21 THE COURT: All right. Ms. Barr.

22 MS. BARR: Thank you, Your Honor. May it please the Court.

23 Mr. Carraway, ladies and gentlemen of the jury, good morning. My name is

24 Kimberly Barr and I along with Ronnie Sabb are Assistant Solicitors in this case and

25 we want to thank you all for being with us this morning. First of all, let me tell you I

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1 am most sincere when I say that. Obviously I know probably most of you would
2 rather be any place other than in this courtroom. I am sure that no one imagined that
3 during this week sitting in court preparing to hear a case about a murder trial. But we
4 certainly want to thank you all so much for being here. You all will serve a great
5 function serving your community and your country by giving of your time today and
6 we certainly appreciate it. Folks, one of ... one of the things that I want to be most
7 clear about other than the time that you give us, but most important is the attention
8 that you give this case. The nature of this charge makes it the most serious crime that
9 a person can be convicted of or accused of in the state of South Carolina. And so for
10 those reasons it's very important to the State and very important to the Defense that
11 you give us your utmost attention. You all are here today because of a very serious
12 and a very senseless shooting that happened at a local night club here in our county,
13 Williamsburg County, back on May 17th of 2008. The young man who fell victim to
14 the shooting was named Dariel McCrea and during the course of this trial you will
15 see his family members here in the courtroom. This young man was shot in the most
16 violent way. He was shot in the face. You will hear testimony that he lived for
17 several weeks after the shooting but ultimately lost his fight and lost his life because
18 of the shooting. You will hear evidence and testimony that the person that fired the
19 shot was the Defendant, Javon Rivers, who is seated at the Defense table with Mr.
20 Carraway. Now, there are two charges that you will hear about. The first charge is
21 obviously the murder charge. When a Defendant is charged with murder the State
22 has to prove that the Defendant took the life of the victim in the case and he had what
23 we call malice aforethought. Which means that he intended to take the life of the
24 victim and he had evilness or bad will in his heart. The second charge that we will
25 have for you is called possession of a weapon during the commission of a violent

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1 crime. And that charge makes it unlawful for the somebody to have a weapon on
2 him during the course or while they are committing a violent crime and folks, in
3 South Carolina murder is considered a violent crime. And so at the conclusion of the
4 trial if you find the Defendant guilty you should ... and you find that he had a firearm
5 then you should also find him guilty of possession of a weapon during the
6 commission of a violent crime. Now, one of the things I'm not going to do is I'm not
7 going to stand up here and talk for very long. We appreciate your time so we want to
8 go ahead and get started with the trial of this case. You will hear from several
9 witnesses. A couple of folks who were actually out there at the club that night and
10 witnessed the shooting. They will testify as to what they saw. You will hear from
11 law enforcement. In addition you will hear from the pathologist at the Medical
12 University of South Carolina who performed the autopsy on Mr. Denial McCrea and
13 she will testify as to her findings. And folks, that will be our case. At some point I
14 will have an opportunity, once all the evidence is in, to come and address you again.
15 That part of the trial is called closing arguments. Again, I want to tell you all that
16 this is important. It doesn't get more serious than this. This is important for Denial's
17 family. This is important for the Defendant. So I invite you and I encourage you to
18 again pay very close attention. There were some folks you may recall that came on
19 yesterday who didn't want to serve or couldn't serve and you all made a commitment
20 to us to serve and we ... we appreciate that. There were some folks whose name got
21 called and they were not picked. Mr. Carraway and I picked 14 of you all because
22 we thought that you could be the most fair jurors to hear this case and I think we ... I
23 think we got it right, folks. So again, thank you all for your time. Thank you most
24 importantly for your attention.

25 THE COURT: Thank you, Ms. Barr. Mr. Carraway.

HEARING

35

1 MR. CARRAWAY: Ms. Barr, Mr. Sabb, Your Honor, ladies
2 and gentlemen of the jury, this is a case about self defense is what it's about. This is
3 what Mr. Rivers, he has a right ... and the judge will give you a charge here ... he has
4 the right to defend others. What the evidence of this case is going to show is that Mr.
5 McCrea on this night was arguing with another female ... we're going to tell you all
6 the background about all of ... the background in all of this and whatever. He was
7 arguing with a female. Mr. Rivers was standing there. Then he gets to the point to
8 where he threatens to physically harm this female. Mr. Rivers steps forward and says
9 you want to fight somebody, you fight me. Now, to show you the state of mind ...
10 there's not going to be any doubt about this particular fact among any witnesses here.
11 To show you where Mr. McCrea's head was on this night, he pulls a knife out at this
12 point and moves forward to cut Mr. Rivers. Mr. Rivers leaves, goes down ... you
13 may say the biggest ... this is your ... this is the real question you all are going to have
14 here, he left, went to a car that he had nearby and got a gun and came back. This was
15 a relative you will learn that Mr. McCrea was threatening or whatever. He ... he ... he
16 left Mr. McCrea pulled out a knife at that point when he challenged him or whatever.
17 And he was threatening this woman or whatever. He said, you want to fight
18 somebody you fight me. He leaves, comes back with this gun or whatever. Now,
19 who is to think here that somebody with a knife is going to attack somebody with a
20 gun. Evidence is going to show he just walked up and Mr. McCrea had been pulled
21 off down the road by some other people or whatever. They said you just need to
22 back off and leave. Mr. Rivers comes up. Everything's over with here. There's not
23 going to be any dispute among any witnesses. I want you to listen to this, what
24 happens at this point. Mr. McCrea breaks away, comes back towards Mr. Rivers and
25 says I know you're not going to shoot me. You've got a gun, I know you're not going

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1 to shoot me. Walks right up to him. Now, there is some dispute about this. Some
2 witnesses say one thing, some witnesses say another. Some witnesses say he pulled a
3 knife on him. He had that knife, that large knife, moved towards him with that large
4 knife and was about to stab Mr. Rivers at that point. Mr. Rivers shot him at that
5 point and Mr. Rivers will tell you if I hadn't shot him at that point Mr. McCrea, if
6 he'd of stabbed and killed me, Mr. McCrea would be sitting here beside Mr.
7 Carraway and my mother who was sitting beside me yesterday would be sitting over
8 here by Mr. Sabb. And that's what you all have to determine. The judge will tell you
9 that the law allows someone to defend themselves and to defend others. Ain't no doubt
10 about it. If this woman wasn't involved there, Mr. Rivers gets in an altercation with
11 this man. This man pulls a knife. Mr. Rivers leaves, goes to his car and Mr. McCrea
12 doesn't follow him. He can't come back and do anything. He's already had a chance
13 to leave. But he does have a right to defend others. That's how all this started was
14 Mr. McCrea threatened to physically harm this woman. Now, he listened to them
15 argue or whatever but when it escalated to the point where he was going to physically
16 harm her he stepped forward. And then a knife comes out. There's not going to be
17 any dispute he pulled a knife on him at that point. There's not going to be any
18 dispute about him going to the car and coming back or whatever. Your question is
19 going to be did he come back because he was mad at Mr. McCrea for pulling a knife
20 or did he come back actually to defend his relative. That's what he's going to tell you
21 he did. There's not going to be any dispute among any witnesses that Mr. McCrea
22 broke away from these people that pulled him down the road and ran back towards
23 him. The dispute is going to be did he have a knife at that point, was he displaying a
24 knife, was he about to harm Mr. Rivers. Some will say they didn't see a knife. Some
25 will say they did. Our argument will be that he had a right to come back and defend

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1 someone else. Defend a relative who was arguing with somebody who had already
2 threatened to physically harm them and who had a knife out. Everybody agrees at
3 that point that's what happened at that point he ran off. The question is does he have
4 the right to come back and defend this person and is that really what he was doing,
5 coming back to defend this person. That's what the question will be. And the other
6 question you might to determine is did Mr. McCrea indeed ... Mr. McCrea ... it's one
7 thing for Mr. McCrea to just walk towards him, got up there and said I know you're
8 not going to shoot me with that gun. Go ahead, I don't think you've got the nerve to
9 shoot me or whatever. That's one thing. It's another thing if he came towards him
10 with a knife and had the knife up and was very close and was trying to stab him at
11 that point. Those are the questions that I would argue to you that you all have to
12 determine, both of those things there. And you will listen to the evidence in this
13 case. The State also has a burden of proofing beyond a reasonable doubt that he is
14 guilty of this crime. He comes into this courtroom not guilty. Comes sit in this
15 courtroom innocent. They have to prove to you beyond a reasonable doubt he is
16 guilty. And what they have to do is prove to you and the judge will tell you this,
17 listen to his instructions. He will tell you they've got to prove to you beyond a
18 reasonable doubt that this was not self defense at that point. He has to ... at the point
19 that he fired that gun, he has to either he or someone else has to be in immediate
20 danger of serious bodily harm or losing their life or whatever, if you all believe, if
21 you all have got a doubt in ya'lls minds, you know, I've heard all the evidence, I've
22 heard some witnesses here, and I think there's a chance that boy did have a knife
23 coming at him or whatever. I think first of all, I think he was coming back to attack
24 him I think that is why he came back. And you think beyond that I've listened to the
25 witnesses from both sides and I think there's a chance ... I think there's a good chance

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1 the victim did pull out a knife and had a knife and was moving forward towards the
2 Defendant. If you find those things, those are the two crucial questions you're going
3 to have to answer in this case, you're going to hear evidence on both sides and it's
4 whoever you not necessarily believe that somebody is lying or whatever but who had
5 the opportunity to look and see what happened if somebody, some friend or relative
6 or somebody trying to help somebody or whatever, look at that or if somebody really
7 had clear opportunity to view what happened or whatever, then I'll tell you what, you
8 put 12 heads together now the average person's IQ of 100 or whatever, then we've got
9 12 people here, we've got a lot of brain power here today. If you all will put all of
10 this together here today and I'm not going to tell you what to do, you all ... you all are
11 going to put your heads together and you all will decide from hearing all the evidence
12 whether this man did have a knife right there at the end and whether when he came
13 back from that car or whatever he really came back ... was it reasonable for him to do
14 that, to come back to defend that woman or leaving this man there with this knife
15 with that woman. That's what you all have to determine basically those two
16 questions. And we picked you ... we picked you you jurors here. There were a lot of
17 people we rejected on both sides or whatever. We picked you, we wanted you people
18 because we thought you all would be fair here today. I have confidence that you all
19 will be fair here today. Ms. Barr, she wanted ... she is my very good friend. Mr.
20 Sabb is my very good friend. I wasn't out there that night. Ms. Barr wasn't out there
21 that night. And Mr. Sabb wasn't out there that night. The witnesses will tell you
22 what happened out there. They will tell you their side of what happened. You
23 people will go back in that jury room and you all will decide what the facts are what
24 happened and the judge will give you the law that you will apply to those facts. We
25 have confidence that you all will come to the right decision.

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1 THE COURT: Thank you, Mr. Carraway. All right, Ms. Barr,
2 call your first witness.

3 MS. BARR: Your Honor, ... I'm sorry. Do what now?

4 THE COURT: Call your first witness.

5 MS. BARR: The State calls Ernie Wilson to the stand.

6 MS. WILLIAMS: Place your left hand on the Bible and raise
7 your right hand. Do you solemnly swear that the evidence and testimony you will
8 give this Court will be the truth, the whole truth and nothing but the truth so help you
9 God?

10 MR. WILSON: I do.

11 MS. WILLIAMS: Thank you. Have a seat in the witness
12 chair.

13 THE COURT: Ms. Barr, before you start. Ladies and
14 gentlemen, if anybody needs to take a break just let us know. Okay, go ahead Ms.
15 Barr.

16 MS. BARR: Thank you.

17 MR. WILSON - DIRECT EXAMINATION BY MS. BARR:

18 Q: Good morning, Mr. Wilson. Let me take care of some formalities. Do you
19 have your cell phone on?

20 A: No.

21 Q: All right. I just wanted to make sure that that was turned off.

22 A: I think I turned it off a while ago. Yes, it is.

23 Q: All right. Can you hear me?

24 A: Yes.

25 Q: Okay. I need you to make sure you speak nice and clear for me, okay?

HEARING

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- 1 A: Okay.
- 2 Q: Sir, are you from Williamsburg County?
- 3 A: Yes.
- 4 Q: And how long have you resided in Williamsburg County?
- 5 A: All my life.
- 6 Q: All your life. How old are you?
- 7 A: 41.
- 8 Q: Okay. Now, Mr. Wilson, did you know or do you know Denial McCrea?
- 9 A: Yes.
- 10 Q: Okay. Tell me how it is that you knew him.
- 11 A: We grew up together same neighborhood.
- 12 Q: Okay. All right. Did you all ever work together? Did you ever work with
- 13 him?
- 14 A: No, we went to school together.
- 15 Q: You went to school together. Okay. All right. Now, sir, where do you work?
- 16 A: Williamsburg County.
- 17 Q: What do you for Williamsburg County?
- 18 A: Animal control officer.
- 19 Q: Animal control officer. All right. Now, I'm going to take you back to the
- 20 early morning hours on May 17th of 2008. Okay?
- 21 A: Yes.
- 22 Q: All right. On that occasion you were at a night club called Sadie's?
- 23 A: Yes.
- 24 Q: All right. If you will, Mr. Wilson, tell us where Sadie's is located.
- 25 A: It's on [REDACTED].

HEARING

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- 1 Q: Okay. That's right here in Kingstree.
- 2 A: Correct.
- 3 Q: Is that correct.
- 4 A: Yes.
- 5 Q: How far is that from the courthouse?
- 6 A: Approximately two miles.
- 7 Q: Okay. All right. All right. On that night do you recall seeing Denial there at
- 8 the night club?
- 9 A: Yes.
- 10 Q: Okay. All right. Now, prior to that night did you know the Defendant, Javon
- 11 Rivers?
- 12 A: No.
- 13 Q: All right. Prior to that night had you ever seen him?
- 14 A: No.
- 15 Q: All right. When you arrived at the night club Denial was already there?
- 16 A: Yes, he was.
- 17 Q: All right. You understand that you've been subpoenaed to testify as to what
- 18 you actually observed that night, is that correct?
- 19 A: Correct.
- 20 Q: All right. Tell us what happened once you arrived there including the time
- 21 that you got to the club.
- 22 A: Okay. Denial was dancing. He said he got to go. I went outside there was a
- 23 fight going on in the highway.
- 24 Q: All right. Who was fighting when you came outside?
- 25 A: Denial.

HEARING

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- 1 Q: Okay. And who else?
- 2 A: Mr. Rivers.
- 3 Q: Javon Rivers?
- 4 A: Uh-huh (affirmative response).
- 5 Q: All right. Now, do you know why they were fighting?
- 6 A: No.
- 7 Q: Okay. They were outside. Were they in the roadway or in the parking lot or
- 8 where?
- 9 A: In the roadway.
- 10 Q: Okay. All right. They were fighting.
- 11 A: Uh-huh (affirmative response).
- 12 Q: Okay. And how many people were outside?
- 13 A: A crowd.
- 14 Q: It was a crowd of people?
- 15 A: Crowd.
- 16 Q: Okay. Now, what were the folks, the crowd of people doing while the two of
- 17 them were fighting?
- 18 A: All around ...
- 19 Q: They were looking at the fight?
- 20 A: Yes.
- 21 Q: All right. So the crowd of people were standing around watching the fight, is
- 22 that correct?
- 23 A: Correct.
- 24 Q: All right. What happened next?
- 25 A: Well, the fight break up. From what I can see the fight break up and then I

HEARING

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- 1 notice the Defendant went to the car to get a gun.
- 2 Q: Okay. Now, I need you to be clear. You noticed the Defendant, you're
- 3 talking about Mr. Rivers.
- 4 A: That's right.
- 5 Q: All right. Now, that's the gentleman who's seated there at the defense table?
- 6 A: That's right.
- 7 Q: All right. Now, how he looks today did he look that same way on the night of
- 8 the shooting?
- 9 A: No.
- 10 Q: All right. How was his appearance different?
- 11 A: He had braids in his hair that night. I guess he took the braid out.
- 12 Q: Okay. He had corn rows in his hair?
- 13 A: Uh-huh (affirmative response).
- 14 Q: All right. Now, you said you saw him go to a car and get a gun?
- 15 A: That's right. Correct.
- 16 Q: Say that again.
- 17 A: Correct.
- 18 Q: All right. Do you recall what the car looked like, what color it was, or the
- 19 make or model?
- 20 A: It was a silver vehicle.
- 21 Q: Okay. Was it a four door or a two door, if you remember?
- 22 A: It was a two door.
- 23 Q: Okay. All right. He went to a car and where did he get the gun from?
- 24 A: Pocket.
- 25 Q: Out of the pocket of ...

HEARING

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- 1 A: That passenger side of the car.
- 2 Q: The passenger doorway of the car? The passenger side.
- 3 A: That's correct.
- 4 Q: All right. Now, do you recall what kind of gun it was?
- 5 A: I don't know what kind it was. It was silver.
- 6 Q: Okay. Was there anybody else in the car if you remember?
- 7 A: No.
- 8 Q: All right. So he opened the door, got the gun out and then what happened?
- 9 A: Then he disappeared through the crowd again.
- 10 Q: Okay. Then what happened?
- 11 A: Next thing I know I heard shots.
- 12 Q: Okay. All right. Now, when he went and got the gun he went back to the
- 13 crowd where Denial was?
- 14 A: Yes. Matter of fact he probably went right back and forth.
- 15 Q: All right. He went back there. Can you tell me the approximate distance
- 16 between where his vehicle was that he got the gun from and where Mr.
- 17 McCrea was before the shooting? If we're in this courtroom and imagine that
- 18 you are sitting where Denial was standing right before Mr. Rivers got the gun
- 19 and the car was pointing, tell me the distance in this courtroom between
- 20 where Denial was and where the car was parked.
- 21 A: Right outside the door there, back there.
- 22 Q: Back ...
- 23 A: Yes.
- 24 Q: ... where the bailiffs are?
- 25 A: Yes.

HEARING

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- 1 Q: Okay. All right. So he walked from that area to where that car is where the
2 back ... the courtroom's back door is to get a gun.
- 3 A: That's correct.
- 4 Q: And walked back to where Denial was.
- 5 A: Yes, ma'am.
- 6 Q: Now, when he was walking back did you hear Denial say anything?
- 7 A: I heard exactly what he said. You have a gun, you gonna shoot me.
- 8 Q: That's what Denial said?
- 9 A: Yes.
- 10 Q: He said, you gonna shoot me?
- 11 A: Yes.
- 12 Q: And then what happened?
- 13 A: And then I heard the shots.
- 14 Q: Okay. Now, what did you do when you heard the shots?
- 15 A: I called 911.
- 16 Q: Okay. All right. Did you go back to where Denial was?
- 17 A: Yes. After they said Denial got shot I went and he was laying on the ground,
18 bleeding on the ground. And I got on the phone and called 911.
- 19 Q: All right. So you saw him on the ground?
- 20 A: Yes, ma'am.
- 21 Q: All right. Did he say anything? You never spoke to him? He never spoke
22 after that?
- 23 A: No, ma'am.
- 24 Q: All right. Where was he shot?
- 25 A: In the face.

HEARING

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- 1 Q: All right. Now, what happened to the crowd of people once the shots were
2 fired?
- 3 A: They disappeared.
- 4 Q: Everybody ran?
- 5 A: Yes, ma'am.
- 6 Q: Okay. Now, you indicated that you called 911. What did you say to the 911
7 operator?
- 8 A: I told him we have a 1075 at Sadie McBride's place. Need an ambulance.
- 9 Q: All right. Tell me what it ... what does it mean ... what is a code 1075?
- 10 A: 1075 is some has been shot.
- 11 Q: All right. Now, did you see the vehicle that the Defendant left in?
- 12 A: No, ma'am.
- 13 Q: Okay. All right. Did you give any information to law enforcement about the
14 vehicle that the Defendant got the car from?
- 15 A: I give them a partial tag number of the vehicle ...
- 16 Q: Okay. And during the course of your speaking with law enforcement, do you
17 recall giving them the tag number, 848 H something another.
- 18 A: Yes.
- 19 Q: Does that sound familiar to you?
- 20 A: Yes.
- 21 Q: Okay. Now, when you observed the Defendant with the gun, how was the
22 lighting in that area? How could you tell that he had a gun in his hand?
- 23 A: Because the light was shining in the car like where the car ... the car was park
24 at.
- 25 Q: Okay.

HEARING

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- 1 A: The light was shining directly on the car.
- 2 Q: Okay. All right. At any point in time did you see Denial McCrea with a
- 3 knife in his hand?
- 4 A: No, I didn't.
- 5 Q: When you went up to him after he was shot and he was laying there on the
- 6 ground, did you see a knife or any other sort of weapon around his body?
- 7 A: No, I did not.
- 8 Q: Did you ever see anybody pick up a knife or take a knife from Denial
- 9 McCrea?
- 10 A: No.
- 11 MS. BARR: Beg the Court's indulgence. Mr. Wilson, I believe
- 12 that that's all the questions I have at this time. Please answer any questions defense
- 13 counsel may have.
- 14 MR. WILSON - CROSS EXAMINATION BY MR. CARRAWAY:
- 15 Q: Mr. Wilson, how you doing?
- 16 A: Fine.
- 17 Q: I mean it's just a small thing, do you recall telling the officer ... telling the
- 18 officer in your statement that you thought you heard three shots but it may
- 19 have been two, right?
- 20 A: (Nods head affirmatively).
- 21 Q: Okay. I mean, that's ... that's a small thing. And I think you actually ... did
- 22 you get ... you said you got behind a bush in your statement?
- 23 A: No, I said tree or a trailer.
- 24 Q: Okay.
- 25 A: Trailer.

HEARING

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- 1 Q: Okay. A trailer what?
- 2 A: Trailer.
- 3 Q: So you got behind a trailer?
- 4 A: Yes.
- 5 Q: Okay. So you got behind a trailer. At what point did you get behind a trailer?
- 6 A: When I see the gun I got behind it.
- 7 Q: Okay. Now, you told the officer that you thought Denial had a knife, didn't
- 8 you?
- 9 A: It look like he had a knife.
- 10 Q: Pardon?
- 11 A: It looked like he had a knife when he was fighting but I didn't see a knife.
- 12 Q: Okay.
- 13 A: But I ain't never seen a knife.
- 14 Q: Okay. But what you're saying is it looked like he had a knife, is that right?
- 15 A: Correct.
- 16 Q: Okay. And was that because of the way he was swinging or whatever as
- 17 opposed to punching, the way he was swinging? Why ... why did it look like
- 18 to you that he had a knife?
- 19 A: The way he was swinging.
- 20 Q: The way he was swinging? He wasn't ... he was not swinging as if he was
- 21 punching, right?
- 22 A: Swinging in a fighting way.
- 23 Q: Swinging in a fighting way?
- 24 A: Yeah.
- 25 Q: But he was swinging as if he had a knife, right? Is that what you said?

HEARING

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1 A: According to how he was swinging he was swinging like ... like this.

2 Q: But you said you thought he had a knife. I asked you why did you think ...

3 A: The crowd was yelling knife when he was swinging.

4 Q: So the crowd was yelling knife.

5 A: That's right.

6 Q: Okay. And you saw him swing at him as if he had a knife, isn't that right?

7 But you didn't see the knife.

8 A: Didn't see the knife.

9 Q: Okay. Are you saying that he was swinging at him as if he had a knife?

10 A: Seemed like he had one.

11 Q: Seemed like he had one. Okay. But you weren't standing right there on top
12 of him. You were a little bit away, were you not?

13 A: I was behind the crowd over there.

14 Q: You were behind the crowd. Okay.

15 MR. CARRAWAY: Thank you, Mr. Wilson.

16 MS. BARR: Judge, I don't have any other questions. We'd ask
17 that Mr. Wilson be excused.

18 THE COURT: Any objection?

19 MR. CARRAWAY: No objection.

20 THE COURT: Thank you, sir, you may step down. You can
21 leave or stay whichever you like. Ms. Barr?

22 MS. BARR: We call Leslie Morant.

23 THE COURT: All right. You all come up.

24 MS. WILLIAMS: Place your left hand on the Bible and raise
25 your right hand. Do you solemnly swear that the evidence and testimony you will

HEARING

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1 give this court will be the truth, the whole truth, and nothing but the truth so help you
2 God?

3 MS. MORANT: Yes, ma'am.

4 MS. WILLIAMS: Have a seat.

5 MS. BARR: May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. MORANT - DIRECT EXAMINATION BY MS. BARR:

8 Q: Good morning, Ms. Morant.

9 A: Good morning.

10 Q: Now, I understand and appreciate you're a little nervous so you just take your
11 time. Okay? And one of the things I've got to make sure that you do is
12 you've got to answer my questions affirmatively, okay? You can't say uh-huh
13 or uh-uh and you can't shake your head. You have to say yes or no, okay? Is
14 that fair?

15 A: Yes.

16 Q: Okay. The court reporter is going to take down everything that you say,
17 okay?

18 A: Okay.

19 Q: All right. Now, ma'am, you're living in Florida now, is that correct?

20 A: Yes.

21 Q: Back in May of 2008, where were you living?

22 A: On [REDACTED].

23 Q: And that's here in Kingstree, is that correct?

24 A: Yes, ma'am.

25 Q: And that is the same street where Sadie's Night Club is?

HEARING

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- 1 A: Yes, ma'am.
- 2 Q: Okay. All right, now, ma'am, prior to that night, did you know Denial
- 3 McCrea?
- 4 A: Yes, ma'am.
- 5 Q: Okay. Tell me how it is that you know ... you knew him.
- 6 A: I was staying in Kingstree for a good while then I moved. Me and Denial was
- 7 friends together and we use to work together at Brown's.
- 8 Q: Okay. Now, you said you all used to work together at Brown's ... Brown's
- 9 Barbeque?
- 10 A: Yes. Brown's Barbeque.
- 11 Q: Okay. I need you to make sure you speak up nice and clear so all the jurors
- 12 can hear you, okay?
- 13 A: Okay.
- 14 Q: Again, it's okay to be nervous just take your time. Okay?
- 15 A: Okay.
- 16 Q: All right. Now, I normally don't ask a woman this because I don't like when
- 17 people ask me but how old are you?
- 18 A: 41.
- 19 Q: Okay. All right. And how old was Denial?
- 20 A: I don't know.
- 21 Q: About mid 30's, he was a little younger than you maybe?
- 22 A: Yes, he younger than me.
- 23 Q: Okay. All right. Now, I'm going to take you back to the early morning hours
- 24 of May 17th of 2008 when the shooting happened, okay?
- 25 A: All right.

HEARING

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- 1 Q: What time did you get to Sadie's Club?
- 2 A: It was probably 1:30 in the morning. I got there about 9:00 o'clock because I
- 3 helped the DJ unload ...
- 4 Q: Okay.
- 5 A: ... and put his equipment in there and I went home and went to sleep and I
- 6 jump up at 1:30 and go back to help him unload.
- 7 Q: Okay. All right. And what is the DJ's name?
- 8 A: Richard Pryor.
- 9 Q: Richard Pryor?
- 10 A: Yeah.
- 11 Q: Okay. All right. So you went to help him put up his equipment and so forth,
- 12 is that correct?
- 13 A: Take his equipment out and put it back on his truck.
- 14 Q: When you got there do you recall seeing Denial there?
- 15 A: Yes, ma'am.
- 16 Q: Okay. Tell me what happened when you got there.
- 17 A: When I got there, he was dancing with his friend. He was dancing.
- 18 Q: Okay.
- 19 A: And she went outside and her mother went outside.
- 20 Q: Okay. When you say she, who are you talking about?
- 21 A: Okay. Dyshea went outside.
- 22 Q: Dyshea McBride?
- 23 A: Yes.
- 24 Q: Okay. So Dyshea was Denial's girlfriend at the time?
- 25 A: Yes.

HEARING

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- 1 Q: Okay. And Dyshea's mother was there as well?
- 2 A: Yes. Erica.
- 3 Q: Erica McBride. Okay. So, Dyshea and Erica went outside. Denial was still
- 4 in the night club.
- 5 A: He was in the night club dancing by himself.
- 6 Q: Okay.
- 7 A: And some other females. I don't know their name.
- 8 Q: Okay.
- 9 A: Dancing on the floor by theyself. And the way Derial was dancing they say
- 10 he was dancing with somebody but he liked dancing by himself.
- 11 Q: Okay.
- 12 A: And ...
- 13 Q: Go ahead. Take your time.
- 14 A: And then he was dancing by himself and Erica McBride came in the club and
- 15 saw him dancing which he was like dancing with a girl but he wasn't ...
- 16 Q: Okay.
- 17 A: ... and she went back outside and tell Dyshea McBride that they better get in
- 18 the club because Denial was dancing with a girl. Derial came up outside and
- 19 tried to speak. Then Dyshea said let's go outside and talk about it. And they
- 20 went outside and Erica say ...
- 21 Q: You can say what she said.
- 22 A: I can say it?
- 23 Q: Yeah.
- 24 A: Excuse me. Erica said, You're damn right, I told her that you was in there
- 25 dancing with a girl. And she ... him and her ... Denial and Erirea start arguing

HEARING

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1 on the outside.

2 Q: Okay.

3 A: And when Denial and them start arguing on the outside all I hear is a fellow
4 say, Yeah, you can argue with a woman but you can't argue with me.

5 Q: Okay. This fellow, who was that fellow that said that?

6 A: It was the ... the Defendant.

7 Q: Okay. Mr. Javon Rivers?

8 A: Yes.

9 Q: All right. So he came and got into their argument?

10 A: Yes.

11 Q: Okay. Did you know whether or not anybody was even talking to him at this
12 point?

13 A: To my knowledge, no.

14 Q: Nobody was speaking but he came and got into a conversation between ...

15 A: Yeah, he came in.

16 Q: Okay. He didn't have anything to do with between Erica and Denial. Okay.
17 And then what happened?

18 A: And then him and Denial ... Javon and Denial start arguing and they went into
19 the road beside the club and then they start fighting. Which Dyshea ... me
20 and Dyshea was standing by the car. She was trying to break up the fight.

21 Q: Okay.

22 A: And I grabbed Dyshea and said hold her back so she wouldn't get into the
23 fight.

24 Q: Okay.

25 A: And so I was holding her, bracing her against the car so she wouldn't jump

HEARING

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- 1 into it and she said they want to jump then when I say ain't nobody going to
2 jump nobody, you just stay out of it.
- 3 Q: Okay. Dyshea was saying they going to jump him?
- 4 A: Denial.
- 5 Q: Okay. She was concerned that somebody may jump Denial.
- 6 A: Yeah. But I had told her.
- 7 Q: Okay. All right. Now, when you say that Denial and the Defendant were
8 fighting, do you mean physically fighting?
- 9 A: Yes.
- 10 Q: Tussling and so forth?
- 11 A: Yes. Fist fighting.
- 12 Q: Could you tell who was getting the better of who? Who was winning the
13 fight so to speak?
- 14 A: To me it was Denial winning the fight.
- 15 Q: Okay. And then what happened as you were kind of pushing Dyshea away
16 from the fight? Then what happened?
- 17 A: Some of the fight end up by the light post in the road and they must be stop
18 but I was still holding Dyshea onto the car leaning on it and he walked by her
19 and then he came back by and I ... I saw him with a gun on this side.
- 20 Q: Okay. When you say he walked by us, who are you talking about?
- 21 A: Javon.
- 22 Q: Javon walked by you. Where did he go?
- 23 A: I guess to the car, I wasn't paying him no attention.
- 24 Q: Okay. You said he came back and you saw that he had a gun.
- 25 A: Yeah, on this side.

HEARING

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- 1 Q: Okay. Can you kind of stand up and show me how he was holding the gun
2 when he came back?
- 3 A: He came back he was walking like this with the gun down here.
- 4 Q: Okay. And how ... how ... describe the gun ...
- 5 A: He had it like this.
- 6 Q: Okay. Describe ...
- 7 A: It was a black gun.
- 8 Q: Black gun. Okay. You can sit down. Did he say anything when he was
9 coming back with the gun?
- 10 A: No, not with the gun.
- 11 Q: Okay. All right. So when he came back with the gun which direction was he
12 going in?
- 13 A: Where Denial was standing.
- 14 Q: Okay. I'm assuming that the fight had broke up by this point in time?
- 15 A: Yes.
- 16 Q: Where was Dyshea when he came back with the gun?
- 17 A: Me and her was standing up to the same car hollering, "Denial, he got a gun,
18 he got a gun, he got a gun."
- 19 Q: And that's what you were telling Denial.
- 20 A: Me and Dyshea was telling, hollering at him.
- 21 Q: All right. When he came ... when Javon Rivers came back with the gun, how
22 far were you from Denial?
- 23 A: I think about 30 feet.
- 24 Q: Okay.
- 25 A: Because then me and her moved from by the car. We was like about, I

HEARING

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- 1 estimate about 30 feet.
- 2 Q: Okay.
- 3 A: Because then she was trying to get back and my back was turned to her ... to
- 4 them. I was holding her.
- 5 Q: Dyshea was trying to get to Denial?
- 6 A: Yeah, but I was holding her.
- 7 Q: Okay. You were yelling or both of you all were yelling ...
- 8 A: At first we was started yelling, "He got a gun, he got a gun." When he
- 9 walked by.
- 10 Q: Okay.
- 11 A: And then she moved ...
- 12 Q: And that's when Javon walked by you?
- 13 A: Yeah.
- 14 Q: Okay. All right. And what happened next?
- 15 A: And then a few minutes, all I heard was ... excuse me, Your Honor ... he go,
- 16 "You gonna shoot me, shoot me, mother fucker. Shoot me, shoot me, mother
- 17 fucker." Like that. That what I heard Denial say.
- 18 Q: Okay.
- 19 A: And then that after Dyshea moved, I had to move because I didn't want her to
- 20 get hurt.
- 21 Q: Okay.
- 22 A: And then when she went out to the club yard that's when all I heard was
- 23 gunfire.
- 24 Q: Okay. How many times did you hear the gunfire?
- 25 A: Twice.

HEARING

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- 1 Q: The first time that you heard the gunfire did you see Denial fall?
- 2 A: _No.
- 3 Q: Okay. All right. What was the time frame between the first and the second
- 4 shot? Was it a matter of seconds, was it right behind each other boom,
- 5 boom?
- 6 A: Yes, it like boom, boom.
- 7 Q: Okay. All right. Now, when you heard the gunfire, did you turn around?
- 8 A: When I heard the gunfire I still was holding Dyshea and then when I did turn
- 9 around I saw him on the ground.
- 10 Q: You saw Denial on the ground?
- 11 A: On the ground, yes.
- 12 Q: All right. Where was Javon at this point in time?
- 13 A: I didn't even see him.
- 14 Q: He had left just that quick?
- 15 A: I guess so cause I ain't ... all I saw was Denial on the ground. I still been
- 16 holding Dyshea.
- 17 Q: Okay. All right. When you saw Denial on the ground what did you do?
- 18 A: I went back and grabbed Dyshea and she say something to him.
- 19 Q: Okay.
- 20 A: And I pulled her back against the car.
- 21 Q: All right. Could you tell where Denial had been shot when you went up and
- 22 saw him laying on the ground?
- 23 A: His blood was like a ... streak of blood..
- 24 Q: Okay. But where on his body had he been shot?
- 25 A: I didn't see.

HEARING

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- 1 Q: You couldn't see? Okay. Did you see any blood on the ground?
- 2 A: Yes.
- 3 Q: Did he say anything or do anything after he hit the ground, after he was shot?
- 4 A: I don't know.
- 5 Q: Okay. Where did you and Dyshea go after the shooting?
- 6 A: To the hospital.
- 7 Q: You all went to the hospital?
- 8 A: Yeah.
- 9 Q: To check on him?
- 10 A: Yeah, by the time I get her and say let's go that been the time I heard sirens.
- 11 He done been gone to the hospital.
- 12 Q: Ms. Morant, now, this part is important. You observed the initial
- 13 confrontation between Mr. Rivers and Denial, correct?
- 14 A: Right.
- 15 Q: Did you at any point in time ever see Denial with a knife or any other type
- 16 weapon?
- 17 A: No, ma'am.
- 18 Q: When you heard the gun shots, and you turned around and you saw Denial on
- 19 the ground, did you see any gun, knife or any other type weapon around
- 20 Denial?
- 21 A: No, ma'am.
- 22 Q: Did you ever see anybody take any weapon from Denial?
- 23 A: No, ma'am.
- 24 Q: When you saw Dyshea talking with Denial while he was on the ground, did
- 25 you observe any weapon or anything in his vicinity or on him?

HEARING

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1 A: No, ma'am.

2 Q: Okay. Now, the ... when you saw the Defendant that night. Do you
3 remember how he was dressed or how he looked? Had you ever seen him
4 before?

5 A: It was like, I saw him one time and ran into him.

6 Q: So you saw him around the area.

7 A: Yes.

8 Q: Okay. So you've seen him a couple of times before the shooting?

9 A: Yes.

10 MS. BARR: I beg the court's indulgence. Ms. Morant, that's
11 all the questions I have at this time. Please answer any questions Mr. Carraway
12 might have.

13 MS. MORANT - CROSS EXAMINATION BY MR. CARRAWAY:

14 Q: Ms. Morant, how you doing?

15 A: Fine.

16 Q: You know him as Scooter, do you not?

17 A: I don't really know him.

18 Q: You don't? Can you count how many times ... do you remember when you
19 made this statement? You made this statement the day after this happened,
20 didn't you? Matter of fact, that morning to the Deputy Sheriff, didn't you. If
21 you don't know him why would you refer to him as Scooter about 20 times in
22 here?

23 A: Because that's the name that they was giving me at the club. I hear people
24 call him that.

25 Q: You heard people call him that. Okay. But you call him Scooter throughout

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1 this whole thing, don't you? You don't call him Javon or anything, do you?

2 A: No, because I didn't know his real name.

3 Q: Okay. All right. And let's get a little background on the relationships of
4 these people, too. It's a little convoluted here. But you know that Marcella
5 McCrea ...

6 MS. BARR: Objection. Relevance.

7 MS. CARRAWAY: Relevance ...

8 THE COURT: Yeah, I don't know what the question is yet.
9 He hasn't asked the question. Go ahead and just ask ... ask the question and then I'll
10 rule.

11 Q: Okay. Marcella McCrea is the wife of Denial McCrea, is that right?

12 A: Yes.

13 Q: And she was living with ...

14 THE COURT: All right. Now, your objection is relevance?

15 MS. BARR: Objection. Relevance, Your Honor.

16 THE COURT: Overruled. Go ahead.

17 Q: Okay. And Marcella ... Marcella and Denial were separated were they not?

18 A: Yes, they are.

19 Q: Okay. They were separated and Scooter was living with Marcella. Isn't that
20 right?

21 A: I don't know that.

22 Q: You don't know that.

23 A: I don't know that.

24 Q: Okay. All right. But you ... do you know if they were going together or not?

25 A: I don't know that either.

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- 1 Q: You don't know that. All right. Dyshea is a friend of yours, isn't she?
- 2 A: I know her mother, I mean..
- 3 Q: And you know Dyshea.
- 4 A: Yeah, I know Dyshea.
- 5 Q: All right. And Dyshea has a ... had a baby with Denial. Isn't that right?
- 6 A: That's what they told me. I don't know that either.
- 7 Q: Okay. All right. You didn't testify that you knew Dyshea very well earlier?
- 8 A: Yeah, I know her but I don't know if she had a baby with that man or not.
- 9 Q: Okay. All right. But Denial was married to Marcella as far as you know,
- 10 right?
- 11 A: Yes.
- 12 Q: Okay. And Dyshea was his girlfriend. Isn't that right?
- 13 A: Yes.
- 14 Q: Okay. And he was there at Sadie's Club ... Sadie McBride owns the club, is
- 15 that right?
- 16 A: Yes.
- 17 Q: And she has a daughter named Erica, is that right?
- 18 A: Yes.
- 19 Q: And Erica's daughter is Dyshea.
- 20 A: Yes.
- 21 Q: Is that not right? Okay. And you understand Dyshea has a baby by Denial ...
- 22 THE COURT: That's been asked and answer Mr. Carraway.
- 23 Q: Okay. All right.
- 24 THE COURT: Go to your next question.
- 25 Q: Okay. And you testified that this argument came about because Dyshea

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1 thought Denial was dancing with someone in the club, is that right?

2 A: Yes.

3 Q: Okay. And you testified that she ... did she see him or did her mother tell her
4 that Denial was inside ...

5 A: Her mother told her.

6 Q: Her mother told her that. Okay. All right. And she went in and confronted
7 Denial about that, is that right?

8 A: Yes.

9 Q: And I think you testified that she and Denial then came outside to talk about
10 it, right?

11 A: Uh-huh (affirmative response).

12 Q: And Erica was out there, right?

13 A: Uh-huh (affirmative response).

14 Q: Okay.

15 THE COURT: Is that a yes?

16 A: Yes.

17 Q: Okay. And Erica was out there. And then Denial got angry with Erica, didn't
18 he?

19 A: Yes.

20 Q: Okay. And their argument got rather heated, didn't it?

21 A: I guess.

22 Q: Okay.

23 A: Well ...

24 Q: I'm going to refer to page nine of your statement. You were asked okay, why
25 were they fighting, were you not? Okay. You were asked why were they

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1 fighting. I want you to read your response after that, your answer starting on
2 line 15.

3 MS. BARR: Your Honor, I'm going to object based on lack of
4 foundation .

5 THE COURT: I don't have the statement. You might want to
6 give me a copy of it. Come on up.

7 (Discussion held off the record).

8 THE COURT: All right. Ladies and gentlemen, will you
9 please step into your jury room. Please remember that you may not discuss the case.
10 Just take the opportunity now to take your morning break. If you need to bring any
11 refreshments out here with you, such as water or soft drinks, you can bring that with
12 you. Do not discuss the case.

13 (Jury out).

14 THE COURT: All right. Mr. Carraway.

15 MR. CARRAWAY: Yes, Your Honor?

16 THE COURT: All right. What ... what was your ... what is
17 your question of the witness?

18 MR. CARRAWAY: My question of the witness is to ask her if
19 she didn't tell law enforcement what the deceased said to Erica. His whole defense is
20 is that I was defending Erica here and his point is ...

21 THE COURT: His defense is he was defending Erica.

22 MR. CARRAWAY: Yeah, Erica, who is his cousin. And I'm
23 standing there listening to this and once it gets to this level where the deceased calls
24 Erica an MF here that's when I said, wait a minute, this is getting out of hand.

25 THE COURT: Why ... why do you need to use the statement

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1 to say that? Why can't you just ask her ...

2 MR. CARRAWAY: I'll ask her.

3 THE COURT: All right. Ask her a question to propel the use
4 of this statement if you have to.

5 MR. CARRAWAY: Okay.

6 THE COURT: So ask her the question.

7 MR. CARRAWAY: Okay.

8 THE COURT: Ms. Barr, listen to the question if you have an
9 objection. All right, go ahead, Mr. Carraway. Ask her ... ask her the question.

10 Q: All right. Did the deceased call Erica during their argument an MF?

11 A: Did the deceased call Erica that?

12 Q: Yes.

13 A: Yes.

14 Q: Okay.

15 MS. BARR: And Judge my objection to that is hearsay.

16 THE COURT: Is it offered to prove the truth of the matter
17 asserted?

18 MS. BARR: Well, he's attempting ...

19 THE COURT: I'm talking about is ... is it offered to prove that
20 she is one?

21 MS. BARR: I hope not, Judge.

22 THE COURT: Okay. And I'm not being facetious but that is
23 the rule. It's not hearsay unless it's offered to prove the truth of the matter asserted.
24 And anyway, I'm kind of lost with the contact Mr. Carraway explained about it's
25 relevance but if his defense is based on that I would agree at least at this point that

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1 that defense is established some condition of the mind. And again I'm certainly not
2 being facetious. I'm just trying to get at the point of the rule pertaining to evidence
3 things that are offered to prove the truth of the matter.

4 MR. CARRAWAY: Yes, sir.

5 THE COURT: So, Mr. Carraway, the question will be if
6 during the course of this verbal altercation between Denial and Erica Denial said
7 Dyshea, every time something happens between me and you your client has got
8 something to do with it, is that right? You can ask her the question but you're not
9 going to be allowed to use the statement unless it is for impeachment purposes. And
10 at this point she hasn't said anything that will entitle you to use the statement to ...

11 MR. CARRAWAY: If I will go further.

12 THE COURT: All right.

13 MR. CARRAWAY: She says here I don't now, it's ...

14 THE COURT: Yeah, but you've got to ask her. You can't ...

15 MR. CARRAWAY: Okay.

16 THE COURT: ... use the statement. If she says something
17 different you may be able to use the statement ...

18 MR. CARRAWAY: Okay. And the reason he is ... she says
19 Denial and Erica were fussing because Denial said every time something goes on
20 between me and Dyshea your MF has got something to do with it.

21 THE COURT: All right. And ...

22 MR. CARRAWAY: Denial and Erica were fussing.

23 THE COURT: ... and that may be ... that may be the ... you
24 come up with a proper question ...

25 MR. CARRAWAY: Yeah.

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1 THE COURT: ... over the State's objection but you can't use
2 her statement to get that in unless she says ...

3 MR. CARRAWAY: Only to impeach.

4 THE COURT: Only to impeach.

5 MR. CARRAWAY: Okay.

6 THE COURT: All right. Ms. Barr, do you have any other
7 objections to that?

8 MS. BARR: Not at this time.

9 THE COURT: All right. Let's take a break for about five
10 minutes.

11 (Off the record).

12 THE COURT: Let's talk about the photograph?

13 MS. BARR: Absolutely, Judge.

14 THE COURT: All right. I believe they've been placed with
15 the court reporter as One through Eight for ID?

16 MS. BARR: Yes, sir.

17 THE COURT: All right. And Mr. Carraway, you might want
18 to come on up here. I understand that you do not have an objection to Number One.

19 MR. CARRAWAY: No, Your Honor.

20 THE COURT: Number Two?

21 MR. CARRAWAY: No, sir.

22 THE COURT: Number Five.

23 MR. CARRAWAY: No, sir.

24 THE COURT: Six.

25 MR. CARRAWAY: No.

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1 THE COURT: Seven.

2 MR. CARRAWAY: Without objection.

3 THE COURT: Eight? I don't know about Eight. Talking
4 about between Five and Six?

5 THE COURT: All right. Ms. Barr, any comments on those?

6 MS. BARR: Close up of the location.

7 THE COURT: Make sure you say it so she can hear you.

8 MS. BARR: This is the make and model, an older model.

9 THE COURT: Five?

10 MS. BARR: Five.

11 MR. CARRAWAY: But you're not suggesting that either of
12 those pictures depicts the Defendant's car.

13 MS. BARR: Okay.

14 THE COURT: You all need to talk louder. Which picture are
15 you talking about, Ms. Barr?

16 MS. BARR: Judge, I'm talking about ...

17 THE COURT: The one I would call him laying yonder.

18 MS. BARR: Yes, sir.

19 THE COURT: Okay.

20 MR. CARRAWAY: You're not suggesting

21 THE COURT: You all need to speak up.

22 MR. CARRAWAY: You're not suggesting any of those
23 pictures depicted the Defendant's car, are you?

24 THE COURT: All right. You can object when they are offered and I'll ...I
25 don't see any that are unduly prejudicial at this point. Okay, now, as far as Number

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1 four is concerned it shows ... it shows Mr. McCrea lying on the ground, face up. Just
2 to give me an idea, Mr. Carraway, your objection. Is it the graphic nature of the
3 photograph.

4 MR. CARRAWAY: The graphic nature. We certainly argue
5 that ... we've got an autopsy scene where we've got him lying out there or whatever
6 at the location he was shot. That doesn't really ...

7 THE COURT: What is the probative value

8 MR. CARRAWAY: There's no question about the autopsy ...

9 THE COURT First of all, what probative value is Number
10 Four?

11 MS. BARR: Judge, it shows the victim and how he was left at
12 the scene. Judge clearly an indication of the point where the victim was shot or
13 someone was shot in the face from ...

14 THE COURT: Where ... where does the photo show that?

15 MS. BARR: Right here

16 THE COURT: All right. And how about Number Three, Mr.
17 Carraway, what is your objection to that one? Probative value substantially
18 outweighed by the danger of unfair prejudice?

19 MR. CARRAWAY: And I would argue with both of them,
20 Judge, both of them are horrific here as far as that goes. There's no question as to
21 where he was shot. We're not questioning that. We're not questioning that he shot
22 him or whatever. We're not questioning any of that. It's just both of them are.

23 THE COURT: All right. At this time, Ms. Barr, my
24 inclination is to allow Number Three. That does show the entry wound under the eye
25 and my inclination at this time is to not allow Number Four on the basis that the

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1 probative value is substantially outweighed by the ...

2 MS. BARR: Yes, sir.

3 THE COURT: ... I don't know ... is there are going to be any
4 autopsy photographs or just going to be autopsy testimony and diagram?

5 MS. BARR: Just testimony and diagram, Your Honor.

6 MR. CARRAWAY: Your Honor, here is what I would argue.
7 The autopsy photographs be used instead --- I would argue that this lady will bring
8 autopsy photographs or whatever and they be a clean version of this injury wound. I
9 would strongly urge that that be used or whatever. That will be a cleaned up version
10 and if that's what they say they want to show us the entry wound position or
11 whatever, that would show it even clearer as to where it was.

12 MS. BARR: Judge, I ...

13 THE COURT: Ms. Barr.

14 MS. BARR: ... I don't know if there are any murder scenes
15 where the victim is shot in the face that are not graphic. I mean, it clearly shows how
16 he left him. The location of the body, the location of the entry wound. It suggests
17 that it was a face to face confrontation so any time you have that situation where a
18 victim is shot in the face you're going to have graphic photographs. And so, you
19 know, the picture scene I would argue of course that the prejudicial effects is
20 outweighed by the probative value.

21 MR. CARRAWAY: Your Honor, this — go ahead.

22 THE COURT: I understand what your argument is.

23 MR. CARRAWAY: Okay.

24 THE COURT: Your argument is the exact opposite. Anything
25 in addition to what you have already said?

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1 MR. CARRAWAY: Well, just because they are always
2 photographs of a graphic nature doesn't mean that you show everyone of them.
3 What they claim is, they want to show the entry wound. The can call the lady from
4 Charleston and tell her to bring one up. I'm sure they've got them.

5 THE COURT: All right. At this point ... at this point ... of
6 course this is a preliminary ruling ... I'm inclined to not allow Number Four, is that
7 correct?

8 MS. BARR: It's Number Four, Your Honor.

9 THE COURT: All right. And the two photos that show the
10 car, I will allow one ... since one is close up and one far away, I will allow both of
11 those. All right.

12 COURT REPORTER: So we need to take the ID off of all but
13 Number Four?

14 THE COURT: Yes.

15 COURT REPORTER: Okay. All but Number Four.

16 THE COURT: All right. You all ready for the jury?

17 MS. BARR: Yes, sir.

18 MR. CARRAWAY: Your Honor, I will not have to restate the
19 objection to the ruling. That's already been done.

20 THE COURT: No, you have to ... you will have to restate it.

21 MR. CARRAWAY: Okay.

22 THE COURT: All right. Ma'am, you can come back up to the
23 witness stand. All right. Bring in the jury. And by the way, Mr. Carraway, further,
24 ... further foundation for my ruling is that there are photographs from a distance that
25 show the gentleman lying on the ground and we have the close up of the side of the

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1 head. That would tend to put the entire scene into perspective that an autopsy
2 photograph in a different location would not lend itself to.

3 MR. CARRAWAY: All right, Your Honor.

4 THE COURT: They're not ready yet? Whenever ... whenever
5 they're ready bring them in.

6 (Jury in).

7 THE COURT: Ms. Brown? I'm going to ask you to have a
8 seat in that second seat right there. Okay?

9 MS. BROWN: Okay.

10 THE COURT: All right, Ms. Kimberly Brown? You're going
11 to be the foreperson in this jury. That means that you will be the basically the
12 spokesperson for the jury. I'll explain to you in more detail what your obligations
13 and responsibilities are. You don't have any greater authority than anybody else but
14 if there are any concerns that arise during the trial on the part of the jury as a whole
15 you will be the spokesperson and at the end of the case you will be responsible for
16 reading the verdict form and making sure that the verdict is unanimous so at this
17 point you and the two alternates are the only folks that have assigned seats. Okay?
18 All right. Mr. Carraway, you can continue questioning the witness.

19 MR. SABB: Judge, before Mr. Carraway begins, I ...

20 THE COURT: Okay. Thank you, Mr. Sabb.

21 MR. SABB: Yes, sir.

22 THE COURT: All right. Mr. Carraway.

23 MS. MORANT - CROSS EXAMINATION BY MR. CARRAWAY CONTINUED:

24 Q: How you doing?

25 A: I'm doing.

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1 Q: Again. All right. You over ... to go back just a little, Dyshea ... did Erica ...
2 Erica is Dyshea's mother, is that not right?

3 A: Yes.

4 Q: And Dyshea is Denial's girlfriend, is that not right?

5 A: Yes.

6 Q: Okay. And did Erica, the mother, tell her daughter that Denial was dancing
7 with some in the club?

8 A: Yes.

9 Q: Okay. And Dyshea went into the club to confront Denial about it, right?

10 A: Yes.

11 Q: And she and Denial came outside.

12 A: Yes.

13 Q: And Erica was outside, right?

14 A: Yes.

15 Q: And Denial started arguing with Erica, did he not?

16 A: At first him and Dyshea was talking about it.

17 THE COURT: You need to speak up, ma'am.

18 Q: Okay.

19 A: At first him and Dyshea was talking. Denial and Dyshea was talking. Then
20 Erica ...

21 Q: And then Denial started fussing with Erica, didn't he?

22 A: Yes.

23 Q: And he referred to Erica as an MF, didn't he?

24 A: Yes.

25 Q: Okay.

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- 1 A: But ...
- 2 Q: And you're sure he called ... he was talking to her when he said that and he
- 3 called her an MF, isn't that right?
- 4 A: Both of them was arguing.
- 5 Q: Okay. And he called her an MF, didn't he?
- 6 A: Yes.
- 7 Q: Okay. And the officer even asked you about that and to clarify that and you
- 8 said that that's what Denial told Erica. Isn't that right?
- 9 A: Yes.
- 10 Q: About the MF, isn't that right?
- 11 A: Yes.
- 12 Q: Okay. Tell me how far you were away ... you and Dyshea were standing there
- 13 talking and Scooter came by you all, tell me how far away you were from
- 14 where Denial eventually fell.
- 15 A: Probably about ... I'd say about 30 feet.
- 16 Q: 30 ...
- 17 A: But I'm not sure.
- 18 Q: And tell me this, is this about the distance or is it further away or closer? Do
- 19 you want me to back up some?
- 20 A: From where Denial fall at?
- 21 Q: From where you ... you two were standing from where Denial fell.
- 22 A: Like we had moved from by the car when he got shot and we was like a little
- 23 bit closer.
- 24 Q: I know. When he got shot, where were you all standing?
- 25 A: Like in the dirt area ...

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- 1 Q: And how far away was that? Am I too far away or do I need to back up
2 some?
- 3 A: Come up some.
- 4 Q: Come up some.
- 5 A: Right there.
- 6 Q: Okay. Were you looking at them when the shots went off?
- 7 A: No, my back was turned because I was bracing myself against Dyshea
8 holding her. My back was turned when he got shot. I mean, I turned ... I
9 heard the gun firing.
- 10 Q: Okay. Now, tell me how far was it from Denial ... you testified you ... you
11 also in your statement said that some guys ... some people were pulling
12 Denial back down the road when all this happened.
- 13 A: I didn't say that. I say ... I say that when they fought they was right there at
14 me. Then they moved Denial. Then the fight there had broke up.
- 15 Q: Do you recall telling in your statement that some guys had pushed Denial
16 further down the road?
- 17 A: I said they moved further down the road.
- 18 Q: Okay. And you were asked who pushed Denial down the road and you said it
19 was some guys but I don't know them. You don't recall saying that? Let me
20 just let you look at this and see if that refreshes your memory. Does that
21 refresh your memory of this?
- 22 A: Yes, this says they pushed him down the road.
- 23 Q: Okay. Now, does that refresh your memory? Do you recall now that some
24 guys were pushing him down the road?
- 25 A: There was a bunch of guys and they just was moving down the road. I say

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1 push but it's move.

2 Q: Let me ask you this. Were some people trying to get Denial away from this?

3 A: I can't really answer that question ...

4 Q: Okay.

5 A: ... because I was holding Dyshea. I ... I really ... all I know was when they
6 start fighting. That's all I ... I cannot say that people stop him or whatever
7 because I was holding Dyshea back. I was with her.

8 Q: But you do agree that on this night you said they pushed him down the road.

9 A: I said that but then I was nervous at the time and I'm nervous now.

10 Q: Okay. Now, I'm not arguing but they didn't say that. This is what you said.

11 A: I know.

12 Q: Okay. And they asked you again who pushed Denial down the road and you
13 said it was some guys, I just don't know who. And you don't deny that you
14 said that that night, right?

15 A: No, because I was nervous.

16 Q: But this was just a few hours after this happened. I think this was about ...
17 you went there that morning to tell them this, didn't you?

18 A: It was like when that happened, I went to the hospital, leave the hospital, I
19 don't know what time.

20 Q: Okay.

21 A: And I was nervous then.

22 Q: If it was 6:30 on that morning, if this said it was 6:30 would you ... does that
23 sound about right? Do you recall doing that in the morning?

24 A: ... because I don't know what time of the morning it was.

25 Q: Okay. But it was within a day after ... shortly after the shooting, wasn't it?

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1 Within a day?

2 A: This was the day that it happened.

3 Q: The day it happened?

4 A: Because it was Saturday morning that they talk to me.

5 Q: Okay. Okay. And it was Saturday morning they talked to you. Okay. All
6 right. And Scooter was walking with the gun at his side is what you testified
7 to. And he didn't say anything, did he?

8 A: No, not when he passed by.

9 MR. CARRAWAY: Beg the Court's indulgence.

10 THE COURT: All right.

11 Q: Now, Denial came back to Scooter and got in Scooter's face, didn't he?

12 A: I didn't see that.

13 Q: Well, let me ask you this. Did you not say that Dyshea saw Scooter and
14 shouted out to Denial that he's got a gun?

15 A: Me and Dyshea hollered that out ...

16 Q: Okay.

17 A: ... gun but he passed right by us with a gun on his side.

18 Q: Did you not then say when Denial went up to him they got up close enough to
19 each other's face?

20 A: Yes.

21 Q: And he said shoot me, MF. Shoot me.

22 A: I — he hollered shoot me.

23 Q: I'm going to ask you to read and say did you say that when Denial went up to
24 him. Let me tell you the line. Excuse me. That's page four, the very last line
25 of page four. I want you to read that and say did you not tell them that when

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1 Denial went up to Scooter.

2 A: When Denial went to him, they got up close enough to each other face.

3 Q: Okay. When Denial went up to him, is that right?

4 A: Yes.

5 Q: The wording is Denial went up to him.

6 A: That's what I said but ...

7 Q: Okay. And that's what you ... that's what you said, isn't it?

8 A: Yeah.

9 Q: Okay. And on page seven, line 15, 19, and 20, ...

10 THE COURT: What page?

11 Q: Page seven, lines 18, ... 17, 18, 19, and 20. You say then that's when Dyshea
12 said he's got a gun and Denial ... and that's when Denial went up and said,
13 shoot me, MF, shoot me, MF like that. You said he said that twice.

14 A: Shoot me, correct.

15 Q: Did you not say that he said that? That Denial went up to Scooter and said
16 shoot me, MF, shoot me, MF?

17 A: I said that Denial said shoot me MF, shoot me MF.

18 Q: All right. Okay. He said it twice, didn't he?

19 A: Yes.

20 Q: And went up and got right in his face, didn't he?

21 A: They was close enough ...

22 Q: I know.

23 A: ... to each other face.

24 Q: Well, you said ... you said on two different occasions here that Denial went
25 up to Scooter, didn't you?

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1 A: Yeah, they were in each other face, he went up ...

2 Q: Went up in his face.

3 A: ... went up and he said it.

4 Q: Okay. She told him twice shoot me MF, shoot me MF.

5 MS. BARR: Objection. Asked and answered.

6 MR. CARRAWAY: Court's indulgence.

7 Q: And on page 4, line 19, you refer, look at this line right here. That's a
8 different occasion. That's a different time when you talk about them pushing
9 Derial down the road.

10 MS. BARR: Judge, that's been asked and answered.

11 THE COURT: Sustained.

12 MR. CARRAWAY: That's a different time she said it anyway. She
13 said it. This was on another page when she said that. This is a different time in her
14 statement where she refers to them pushing him down the road.

15 MS. BARR: Judge, we would object to counsel testifying.

16 THE COURT: Objection is sustained.

17 MR. CARRAWAY: Okay. Court's indulgence?

18 THE COURT: Yes, sir.

19 Q: You testified you had your back turned when the gun shots were fired. Is that
20 what you testified to? Obviously, you had your back turned — not only did
21 you have your back turned but you were not looking in that direction were
22 you?

23 A: No.

24 MR. CARRAWAY: Court's indulgence. I don't have any further
25 questions. Thank you very much.

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1 THE COURT: Redirect?

2 MS. BARR: Yes, sir.

3 MS.MORANT - REDIRECT BY MS. BARR:

4 Q: Ms. Morant, you indicated that prior to the shooting you observed the
5 Defendant walk a distance away from Denial, correct?

6 A: (Nods head affirmatively).

7 Q: I need you to say yes.

8 A: Yes.

9 Q: Now, walk a distance back to him, is that right?

10 A: Yes.

11 Q: And he had a gun in his hand and was tapping it against his leg, is that
12 correct?

13 A: Yes.

14 Q: Now, did you see anybody else out there with a gun other than the Defendant,
15 Mr. Rivers?

16 A: Only Mr. Rivers as he passed by me and Dyshea and back toward.

17 Q: Okay. Now, when you testified about the argument that Denial had with
18 Erica, Dyshea's mother, remember you testified about that?

19 A: Yes.

20 Q: Okay. You indicated that Mr. Rivers came out of nowhere and got into that
21 argument.

22 A: Yes.

23 Q: Is that correct?

24 A: Yes.

25 Q: Is it also your testimony that he had ... that argument had absolutely nothing

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1 to do with him.

2 A: It ain't had nothing to do with him.

3 Q: Were you surprised that he'd gotten into it?

4 MR. CARRAWAY: I would object, Your Honor, to any
5 speculation as to her surprise about anything.

6 THE COURT: No, sir, she can testify about her own surprise
7 or lack of surprise. That's not speculation. Restate the question the same way.

8 Q: How ... how ... were you surprised that Mr. Rivers had actually gotten into
9 that argument?

10 A: Yes.

11 Q: And the argument between Denial and Erica, it wasn't of such a nature that
12, you felt you needed to get involved, was it?

13 A: No.

14 MR. CARRAWAY: I'm going to object to the leading nature
15 ...

16 THE COURT: Sustained. That's sustained.

17 MS. BARR: I'll rephrase.

18 Q: How did you feel about the argument? Were you concerned about the
19 argument between Denial and Erica McBride?

20 A: No, because they just go at ... argue a couple times before like that but it
21 never came down to that. If it had got bad I would have stopped it.

22 Q: Okay. If you were concerned about it, if it rose to the level is your testimony
23 that you would have stopped it?

24 A: Yes.

25 Q: And you didn't stop it, is that correct?

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1 A: No, because they just been words going back at each other ...

2 Q: Just words.

3 A: ... just like anybody, anyone arguing.

4 Q: Okay. Just words.

5 A: Just words.

6 MS. BARR: That's all I have. Thank you.

7 THE COURT: Recross only on those points?

8 MR. CARRAWAY: Yes.

9 MS. MORANT - RECROSS EXAMINATION BY MR. CARRAWAY:

10 Q: Did you know that ... you know that they argue like that, don't you?

11 A: Yes.

12 Q: You know how they are back and forth.

13 A: Yes.

14 Q: But you don't know him, do you? You don't know what he knows about that,
15 do you?

16 A: No.

17 Q: All right. If someone ... if a man is arguing with you and starts calling you an
18 MF, someone may think that the argument has gotten out of hand, might
19 they?

20 A: No.

21 MS. BARR: Object to speculation.

22 THE COURT: Overruled.

23 Q: No?

24 THE COURT: Answer the question.

25 Q: Oh, so, now that's no, on this question. If you don't know that. That's just

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1 common language or whatever to you? Is that what that is?

2 A: If me and a guy get into an argument I know how to handle it.

3 Q: You know how to handle it but you don't know what somebody else thinks.

4 A: I can't think for no one else...

5 Q: All right. Thank you very much.

6 A: ... you said if I get in an argument.

7 Q: Thank you. Thank you. Thank you.

8 THE COURT: Ms. Barr, anything else?

9 MS. BARR: No, Your Honor. We'd ask that the witness be
10 excused.

11 THE COURT: All right. Ma'am, you can leave or stay,
12 whichever you'd like. Mr. Carraway, any objection?

13 MR. CARRAWAY: No objection.

14 THE COURT: Okay. So you can stay in the courtroom or you
15 can leave. Thank you very much. All right, Ms. Barr?

16 MR. SABB: Your Honor, the State call Sergeant Monteith to
17 the stand.

18 MS. WILLIAMS: Place your left hand on the Bible. Raise
19 your right hand. Do you solemnly swear that the evidence or testimony you will give
20 this court and jury will be the truth, the whole truth and nothing but the truth so help
21 you God?

22 MR. MONTEITH: Yes, ma'am.

23 MR. SABB: May it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 MR. MONTEITH - DIRECT EXAMINATION BY MR. SABB:

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1 Q: Officer, if you would, introduce yourself to the folks on the jury.

2 A: My name is Sergeant Johnny Monteith. I'm a police officer in the Kingtree
3 Police Department.

4 Q: All right, sir, and how long have you been with the Kingtree Police
5 Department?

6 A: Going on a little over six years.

7 Q: I need you to pull the mic up just a little bit. Reverend Brown is going to
8 help you. Okay. And just speak a little louder for me, if you would, please.

9 A: Yes, sir.

10 Q: Thank you, sir. Let me ask that question again. How long have you been
11 with the Kingtree Police Department?

12 A: A little over six years.

13 Q: All right, sir, and as a sergeant with the Kingtree Police Department what are
14 your duties and responsibilities as a law enforcement officer?

15 A: Currently I'm working as a shift supervisor. I'm a police department captain.

16 Q: And as a shift supervisor what is ...

17 THE COURT: Speak up into the microphone, please or you
18 can speak louder.

19 Q: As a shift supervisor what is it that you do?

20 A: Maintain supervisor's office on my shift.

21 Q: Okay. Which shift is that?

22 A: Our shifts rotate from day to night.

23 Q: All right, sir. Let's revert back to the day of this incident, were you
24 supervising a shift on that day?

25 A: Yes, sir.

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- 1 Q: And which shift was it that you were supervising?
- 2 A: Night shift.
- 3 Q: All right, sir. And night shift goes from what time to what time?
- 4 A: 7:00 p.m. to 7:00 a.m.
- 5 Q: And as an officer with the Kingstree Police Department what physical area do
- 6 you primarily enforce the laws upon?
- 7 A: Everything inside the city limits.
- 8 Q: Now, this incident that occurred in Sadie's happened in Kingstree but not in
- 9 the city limits of Kingstree, is that correct?
- 10 A: Yes, sir.
- 11 Q: Tell the jurors how was it that you became involved in this particular
- 12 incident.
- 13 A: I received a call over the radio, dispatch said that deputies were requesting
- 14 assistance at Sadie's in reference to a shooting.
- 15 Q: All right, sir, and is it common for you all as law enforcement officers when
- 16 help is needed also it is outside of your area to respond and give assistance in
- 17 any way you can?
- 18 A: Yes, sir.
- 19 Q: All right. And as part of your responding to the call for additional assistance
- 20 tell us what if anything you did.
- 21 A: As I arrived on the scene I could see the person laying on the ground with a
- 22 lot of blood around him.
- 23 Q: Keep your voice up for me, please.
- 24 A: I immediately grabbed my camera out of the passenger side of the vehicle and
- 25 started taking pictures.

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1 Q: And the photographs that you took on the morning that this occurred you then
2 shared those photographs with us.

3 A: Yes, sir.

4 Q: All right.

5 MR. SABB: Request permission to approach the witness.

6 THE COURT: You may proceed.

7 Q: Sergeant Monteith, let me hand you what's marked for identification as State's
8 Exhibit One, Two, Three, Five, Six, Seven, and Eight, hand you those
9 photographs and examine them and tell us whether or not you recognize
10 them.

11 THE COURT: All right, Mr. Carraway, your previously stated
12 objection is repeated, is that correct?

13 MR. CARRAWAY: That's correct, Your Honor.

14 THE COURT: All right. And with regard to these photos
15 those objections are overruled. All right, go ahead, Mr. Sabb. Just ask him to
16 identify them and he can comment on them and please if you do that just refer to the
17 number on the back.

18 Q: Have you had an opportunity to examine the seven photographs that I gave to
19 you?

20 A: Yes, sir.

21 Q: Do those photographs clearly and accurately depict the scene at Sadie's on the
22 day in question?

23 A: Yes, sir.

24 MR. SABB: If Your Honor please, I would offer State's
25 Exhibits One, Two, Three, Five, Six, Seven and Eight into evidence at this time.

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1 THE COURT: Any other objections?

2 MR. CARRAWAY: With the noted objection.

3 THE COURT: All right. Those are put into evidence, One,
4 Two, Three, Five, Six, Seven and Eight.

5 MR. SABB: Yes, sir.

6 (State's Exhibits Number One, Two, Three, Five, Six, Seven and Eight were
7 placed into evidence.).

8 MR. SABB: Your Honor, request permission for the witness
9 to be able to come down.

10 THE COURT: All right. Sergeant, please keep your voice
11 way up so the court reporter can hear you. You can step down.

12 Q: Sergeant Monteith, we're going to break this up a little bit. Since the
13 photographs are small I'm going to ask you questions relating to the jurors on
14 this side and then we'll move to this side so all the jurors will have the benefit
15 of listening to the ... your testimony while watching the photographs.

16 A: Yes, sir.

17 Q: The first photograph that I have in my hand is State's Exhibit Number One.
18 Will you tell the jurors what is depicted on this particular photograph?

19 A: This is a picture of the victim when he was lying on his back..

20 Q: All right. And from the moment that you got there up and until this present
21 time when you took this photograph, was that the position that Darrel McCrea
22 was in?

23 A: Yes, sir.

24 Q: Flat on his back?

25 A: Yes, sir.

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1 Q: Okay. And there was a bullet wound to the face?

2 A: Yes, sir.

3 Q: Did you have occasion to ... now this picture is off a distance, is it not?

4 A: Yes, sir.

5 Q: Did you have occasion to take a photograph that was a little closer up?

6 A: Yes, sir.

7 Q: Let me hand you what's in evidence now as State's Exhibit Number Two. Is
8 that also a picture of Dariel but a little closer up?

9 A: Yes, sir.

10 Q: Now, let me hand you what's in evidence as State's Exhibit Number Three.
11 That's a photograph that's a little closer.

12 A: Yes, sir.

13 Q: And that's a photograph of his facial area where the gunshot appeared to have
14 entered his head.

15 A: Yes, sir.

16 Q: All right. Again, Officer, this is State's Exhibit Number One that's in
17 evidence. Is this a photograph that depicts the position of the body of Dariel
18 McCrea as you found it when you arrived on the scene?

19 A: Yes, sir.

20 Q: And you had occasion, I believe, to take a closer up shot. This is State's
21 Exhibit Number Two.

22 A: Yes, sir.

23 Q: You moved a little closer took an additional shot which is State's Exhibit
24 Three?

25 A: Yes, sir.

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- 1 Q: And that's the Exhibit that depicts the entrance of the gunshot wound into his
2 head?
- 3 A: Yes, sir.
- 4 Q: Stay with me. Officer, I now have in my hand State's Exhibits Five, Six,
5 Seven and Eight. I want you if you would, please, since we're down on this
6 end to start with these photographs ... I'm going to give them to you. Make
7 sure you refer to the number on the back so that the record is straight and go
8 through those photographs and tell the jurors about the significance of what's
9 depicted in those photographs.
- 10 A: Picture Seven and Eight I did not take.
- 11 Q: Okay.
- 12 A: I don't know what they are..
- 13 Q: All right.
- 14 A: But with pictures Five and Six, we'll go with picture five,. This is a picture
15 of the scene after the victim was removed from the scene. I just took some
16 broad shots where you can see the actual blood and building and more of the
17 scene. Still in the area.
- 18 Q: All right. Can you repeat what you just said for these jurors so that they're
19 focused on it.
- 20 A: This is a more broad shot of the area after the victim had been removed. You
21 can see the building and everything relevant, you can see the position of the
22 body was after.
- 23 Q: All right. And also the people have now been dispersed.
- 24 A: That's correct.
- 25 Q: All right. Now also in this particular photograph is that a light pole that's

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1 right there? Is that a light pole that is there or is that just the lighting? Do
2 you see it?

3 A: Yes, sir, there is a light pole there.

4 Q: All right. There's a light pole that in this photograph, is that right?

5 A: Yes, sir.

6 Q: Now, also can you tell us whether or not there were any lights on the building
7 this parking ... this little area?

8 A: I can't tell.

9 Q: Can you tell?

10 A: No, sir.

11 Q: All right. You may return to your seat. Are you familiar with Sadie's Club,
12 Sergeant Monteith?

13 A: Yes, sir.

14 Q: Is it reasonably well lit?

15 A: Reasonably, yes.

16 Q: There are ... there is lighting on the outside.

17 A: Yes, sir.

18 Q: And it's not a situation where you walk out of the club and you can't see your
19 hand before your face?

20 A: No, sir.

21 Q: How long ... I realize that the photos that you took, the first one, the crowd
22 and everybody was there and then you showed the jurors the photos that you
23 took after the crowd had dispersed and after Denial's body was removed, how
24 long did you stay out there if you recall?

25 A: Probably about 45 minutes I would say.

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1 Q: And you were there when the ambulance arrived?

2 A: Yes, sir.

3 Q: Do you know whether or not Denial was still alive at the time that the
4 ambulance arrived?

5 A: Yes, sir, he was alive.

6 Q: All right. Do you know where he was transported to?

7 A: I have no idea.

8 Q: And other than you assisting the Williamsburg County Sheriff's Department
9 initially did you play any other type of role as it relates to this case?

10 A: I just assisted in trying to find any evidence at the scene and crowd control.

11 MR. SABB: Judge, I believe those are all the questions we
12 have for Sergeant Monteith.

13 THE COURT: Any questions?

14 MR. CARRAWAY: The Court's indulgence. I don't have any
15 further questions. Thank you, Officer Monteith.

16 THE COURT: Thank you, sir, you can step down. The
17 witness may be excused, Ms. Barr?

18 MS. BARR: Yes, Your Honor.

19 THE COURT: Mr. Carraway?

20 MR. CARRAWAY: Yes, Judge.

21 THE COURT: And if you'd like to stay you may. If you'd like
22 to leave you can.

23 MR. MONTEITH: Thank you, sir.

24 MS. BARR: Judge, we call Dyshea McBride at this time.

25 MS. WILLIAMS: Place your left hand on the Bible, raise your

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1 right hand. Do you solemnly swear that the evidence or testimony you will give this
2 Court and jury will be the truth, the whole truth and nothing but the truth so help you
3 God?

4 MS. MCBRIDE: Yes, ma'am.

5 MS. MCBRIDE - DIRECT EXAMINATION BY MS. BARR:

6 Q: Ma'am, let me get you to state your full name.

7 A: Dyshea McBride.

8 Q: All right. I need to make sure you speak up nice and clear for me so that the
9 jurors can hear you. Okay? You're kind of soft spoken and I need you to
10 speak up loud, okay?

11 A: Dyshea McBride.

12 Q: Now, can you hear me?

13 A: I can hear you.

14 Q: Okay. All right. Now, do you live in Williamsburg County?

15 A: Yes, ma'am.

16 Q: And how long have you lived in Williamsburg County? All your life?

17 A: All my life.

18 Q: All right. Where do you live, with your parents or you live on your own?

19 A: I live on my own.

20 Q: Okay. All right. Now, ma'am, you understand why you are subpoenaed here
21 today, is that correct?

22 A: Yes, ma'am.

23 Q: All right. One of the things I need you to make sure you do is to do exactly
24 what you're doing now and answer my questions affirmatively. Don't shake
25 your head or don't say uh-huh or uh-uh. We need to make sure the court

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- 1 reporter can take down everything you say.
- 2 A: Okay.
- 3 Q: Is that fair enough?
- 4 A: Yes, ma'am.
- 5 Q: All right. Now, you knew Denial McCrea, right?
- 6 A: Yes, I did.
- 7 Q: All right. Was that your boyfriend at the time?
- 8 A: That was my boyfriend.
- 9 Q: Prior to him being killed how long had the two of you dated?
- 10 A: For several years.
- 11 Q: All right, now, back on the night of the 16th leading into the morning of May
- 12 the 17th of 2008, were you at Sadie's Night Club?
- 13 A: I was there but I wasn't there the whole time.
- 14 Q: Okay. Did you come there to pick him up?
- 15 A: Yes, I did.
- 16 Q: Okay. All right. When you got there he was there. Where was your mother?
- 17 A: She ... when I got there she walked out.
- 18 Q: Okay. What's your mom's name?
- 19 A: Erica McBride.
- 20 Q: Erica McBride. Okay. All right. Now, you got there, tell the ladies and
- 21 gentlemen of the jury what happened.
- 22 A: When I got there probably about 2:00 o'clock and I was asking him was he
- 23 ready to go. He said he wasn't ready to go. He danced a little more and I went
- 24 outside to catch some air because it was hot. When I went back, he was
- 25 dancing with someone, he was dancing with another female. Me and him had

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1 some pass words. He said come on let's go. He and my mama had some
2 words and after they had passed words I went to the car. And that's when
3 Javon Rivers, he came out of nowhere. I didn't see where he come from and
4 he came that's when they start arguing.

5 Q: Okay. Slow down for me. Now, prior to that occasion had you ever seen
6 Javon Rivers before?

7 A: Yes, I seen him before.

8 Q: Okay. You've seen him around Kingstree?

9 A: Yes, ma'am.

10 Q: How many times had you seen him around Kingstree?

11 A: Not too many times.

12 Q: More than maybe three or four? Or about three or four?

13 A: I don't know, three or four or less I would say.

14 Q: I got you. Now, did you know him by a nickname?

15 A: Yes, ma'am.

16 Q: All right. What was his nickname?

17 A: Scooter.

18 Q: That's what everybody called him?

19 A: Yes, ma'am.

20 Q: All right. Now, at the time of the shooting how was his hair fixed at that
21 time?

22 A: I think it was braided.

23 Q: Okay.

24 A: It was braided.

25 Q: Not clean cut like he is today?

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- 1 A: No, ma'am.
- 2 Q: Okay. All right. Now, you said he came out of nowhere.
- 3 A: Yes.
- 4 Q: All right. You and Denial were outside?
- 5 A: Uh-huh (affirmative response).
- 6 THE COURT: You need to say yes or no.
- 7 A: Okay. We was outside.
- 8 Q: Okay. Did you know where he came from, whether it out of the club or out
- 9 of a vehicle or where? Do you know where he came from?
- 10 A: No, I ... I wasn't paying any attention.
- 11 Q: All right. So Mr. Rivers came from nowhere as you described it and then did
- 12 what?
- 13 A: He and Derial started arguing and they was fixing to get into a fight.
- 14 Q: Okay.
- 15 A: And after that he went to his vehicle. Javon took off running and he came
- 16 back and everybody was saying he had a gun, he had a gun. And that's when
- 17 I pushed and I tell him to come on and he said he ain't scared to die and he
- 18 pushed me out the way. I told him it ain't worth it.
- 19 Q: Okay. Did you see Mr. Rivers with a gun that night?
- 20 A: Yes, I did.
- 21 Q: Do you recall what type of gun it was?
- 22 A: Oh, no, ma'am.
- 23 Q: Okay. Now, you said that after he and Denial got into this argument that it
- 24 then turned into a fist fight?
- 25 A: See Derial swung, then he shoot, Derial swung and he shoot and Derial fall.

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- 1 Q: Okay. All right. Now, at what point in time did Mr. Rivers have the gun?
2 Did he have the gun during the first time before he ran off and came back or
3 did he go and then get the gun and come back, if you remember?
- 4 A: He walked to get the gun and came back.
- 5 Q: He walked to get the gun and came back. I need you to say yes or no.
- 6 A: Oh, yes, ma'am.
- 7 Q: Okay. All right. During the first confrontation between Denial and Javon
8 Rivers, did you ever see Denial with a ... with a knife or with any type
9 weapon?
- 10 A: No, ma'am, I haven't ... I didn't see any.
- 11 Q: Okay. All right. He was fighting with his fists? Denial?
- 12 A: Yes, ma'am.
- 13 Q: Okay. Okay. And how far away from him were you or your mom or anybody
14 else at the time of the first argument between Denial and Mr. Rivers?
- 15 A: I was right there.
- 16 Q: Okay. Were you standing to him as close as I'm standing to you right now or
17 were you closer to him?
- 18 A: I was closer to him.
- 19 Q: Okay. So about here? Were you close enough to him so you could touch
20 him?
- 21 A: Yes, ma'am.
- 22 Q: All right. You indicated that you were pulling him to your car?
- 23 A: Our car.
- 24 Q: Okay. In that little circle was there anybody else there with you at that time
25 that you knew?

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- 1 A: Everybody that was there. Everybody.
- 2 Q: How many people do you think were out there at the club?
- 3 A: It was a good many. I don't really know .
- 4 Q: Do you recall seeing Leslie Morant out there at the club that night?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And when Mr. Rivers went and got the gun and he came back where
- 7 was your mother?
- 8 A: I didn't see her anymore.
- 9 Q: Okay. At what point did she leave?
- 10 A: When Javon shot Denial I was looking for somebody to call the ambulance
- 11 and I went to her to call the ambulance and she called the ambulance.
- 12 Q: Okay. When you say you went to her, where ... where did you go? Where
- 13 was she?
- 14 A: She was like back by --- back behind a truck and by the club.
- 15 Q: Okay. How far was that from where Denial got shot?
- 16 A: I don't know that.
- 17 Q: Okay. Did you ...
- 18 A: I can't remember.
- 19 Q: Okay. Did you see when she left, was it before or after the shooting?
- 20 A: I can't remember.
- 21 Q: Okay. That's fine. All right. Once Mr. Rivers came back and once he shot
- 22 Denial, what did you do?
- 23 A: When he shot Denial, I ... he shot Denial I got down and I hold him and tell
- 24 him they was coming..
- 25 Q: Could you tell where he had been shot?

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- 1 A: In the head. He had blood all over.
- 2 Q: Did he say anything or do anything after he was shot?
- 3 A: I don't believe so.
- 4 Q: Once shots were fired you mentioned that there were a bunch of people out
- 5 there when it happened, where did they go?
- 6 A: They were standing all around. Everybody was standing around looking.
- 7 Q: Where did Mr. Rivers go?
- 8 A: Took off.
- 9 Q: Okay. Did you see how he left, whether he was on foot on in a vehicle?
- 10 A: No, ma'am.
- 11 Q: Were you there when the ambulance arrived?
- 12 A: Yes, ma'am.
- 13 Q: Were you there when the police arrived?
- 14 A: When the ambulance came I left.
- 15 Q: How long did it take the ambulance to get there?
- 16 A: Forever.
- 17 Q: It certainly seemed that way, I know.
- 18 A: Uh-huh (affirmative response).
- 19 Q: Now, when they got there where was Mr. Rivers?
- 20 A: I didn't see him no more.
- 21 Q: He had left?
- 22 A: Yeah.
- 23 Q: Did you see him any more after he fired the shot?
- 24 A: No, ma'am.
- 25 Q: Now, you indicated that you heard you say Denial and your mom arguing. I

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1 need you to say yes or no.

2 A: Yes, ma'am.

3 Q: Okay. Did the argument ever at any point turn physical or was it just words?

4 A: Just words.

5 Q: Okay. Did you ever feel the need to intervene in the argument between your
6 mom and between Denial?

7 A: No, ma'am.

8 Q: Were you concerned about her safety at all?

9 A: Yes, I was.

10 Q: After the shooting?

11 A: After the shooting I wasn't because he had already left.

12 Q: Where did you go after you left the scene?

13 A: I went straight to the hospital.

14 Q: Okay. To Kingstree Hospital?

15 A: Yes, ma'am.

16 Q: And that's where Denial was?

17 A: Yes, ma'am.

18 Q: And how long was he there?

19 A: 30 minutes maybe, I'm not really sure..

20 Q: And then where did he go from there?

21 A: To Charleston.

22 Q: That's the Medical University of South Carolina?

23 A: Yes, ma'am.

24 MS. BARR Beg the Court's indulgence.

25 Q: Now, you indicated that Denial and your mom exchanged some words, okay.

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- 1 A: Yes, ma'am.
- 2 Q: And you described that you had been dating Denial for several years, is that
- 3 correct?
- 4 A: Yes.
- 5 Q: Did your mom and Denial always get along?
- 6 A: No. They always had words. Always.
- 7 Q: Okay. All right. Would they stay mad for long periods of time?
- 8 A: They would stay mad for a little while and then they would start starting off
- 9 and on like that.
- 10 Q: Okay. Now, are you aware of any kinship that you may have to Mr. Rivers?
- 11 Do you know whether or not you all are related?
- 12 A: No, ma'am.
- 13 Q: Have you ever heard that you all are related?
- 14 A: Yes, ma'am, I heard it.
- 15 Q: But you don't know that to be the case?
- 16 A: No.
- 17 Q: Did your mom call 911?
- 18 A: My mom when I was asking her would she call them.
- 19 Q: Are you related to Sadie McBride?
- 20 A: She's my grandmother.
- 21 Q: Okay. She's your grandmother?
- 22 A: Yes, ma'am.
- 23 Q: All right. Sadie McBride was the owner of the club, is that correct?
- 24 A: Yes, ma'am.
- 25 Q: All right. Now, did you know Ernie Wilson? Do you happen to know him?

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1 A: No, ma'am.

2 Q: If he were a witness to the shooting you wouldn't know anything because
3 you've never spoken with him, is that correct?

4 A: Oh, you talking about Ernie back there?

5 Q: Yes.

6 A: Oh, I mean, I don't know him but I know of him.

7 Q: Okay. You're aware that he was there at the club that night?

8 A: I never ... I ain't seen him at the club.

9 Q: Okay.

10 MS. BARR: Ma'am, I believe that's all the questions I have.

11 Please answer any questions Mr. Carraway may have.

12 MS. MCBRIDE - CROSS EXAMINATION BY MR. CARRAWAY:

13' Q: Ms. Barr asked you if you were afraid for your mother's safety and you told
14 her yes, didn't you?

15 A: Yes.

16 Q: Now, you ... when is your birthday, what year?

17 A: '88.

18 Q: '88? So you are 20 now. Is that right?

19 A: Yes, sir.

20 Q: And how long had Denial was 35. Is that right?

21, A: He was.

22 Q: Okay. And you all were together for how long?

23 A: About two years.

24 Q: So he was 31 and you were 16?

25 A: Yes.

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1 Q: Okay. Do you have a child by Denial?

2 A: Yes, I do.

3 Q: Okay. And Denial is married but separated from Marcella, is that right or
4 wrong?

5 A: That's right.

6 Q: Okay. And he had been separated for a while before this ... before this
7 incident happened, isn't that right?

8 A: Yes, sir.

9 Q: Okay. And this happened did he ... did he leave his wife because of you or
10 were they just having problems and you all got together?

11 MS. BARR: Objection to relevance.

12 THE COURT: Mr. Carraway?

13 MR. CARRAWAY: Yes?

14 THE COURT: Relevance?

15 MR. CARRAWAY: I withdraw the question.

16 THE COURT: All right.

17 MR. CARRAWAY: Okay.

18 THE COURT: The objection is sustained.

19 Q: But he was separated from his wife. He was not living with Marcella, was
20 he?

21 A: He was living with me.

22 Q: He was living with you.

23 A: We were living together.

24 Q: You all were living together. Okay. And do you know or do you now know
25 if Javon Rivers was living with Marcella? Or staying there or whatever?

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- 1 A: He was.
- 2 Q: Okay. And is it true that Marcella and Denial had a child also?
- 3 A: Yes, sir.
- 4 Q: Is that right? And Javon ... and the child stayed with Marcella, is that right?
- 5 A: Yes, sir.
- 6 Q: And how old is your child with Denial?
- 7 A: She's one.
- 8 Q: She's one now? Okay. And this happened back in July ... when is ... was she
- 9 born before he passed?
- 10 A: Yes, sir, she was born [REDACTED]
- 11 Q: She was born [REDACTED]
- 12 A: [REDACTED]
- 13 Q: And this happened around [REDACTED]?
- 14 A: [REDACTED]
- 15 Q: This happened in [REDACTED] and she was born in [REDACTED]
- 16 A: Yes, sir.
- 17 Q: Okay. All right. And of course you haven't ... you haven't heard what any
- 18 other witnesses have said, right? Is that right? You've been back there for
- 19 whatever. Did Denial ... you were standing there when Denial and your
- 20 mother were arguing, were you not?
- 21 A: I mean, they wasn't on each other. There was distance ...
- 22 Q: Okay.
- 23 A: ... there was a distance but they wasn't on each other.
- 24 Q: Okay. Did you hear Denial use any real bad ... call your mother any bad
- 25 names?

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- 1 A: Yes.
- 2 Q: Okay.
- 3 A: He did.
- 4 Q: You can use an abbreviation if you want but what did he call her?
- 5 A: He said you jealous B. Fat B. Like that.
- 6 Q: Did he say anything else?
- 7 A: Not that I can recall.
- 8 Q: Okay. But ... okay. But you do remember him saying that, calling her those
- 9 things.
- 10 A: Yes, sir.
- 11 Q: Okay. All right. You didn't ... and your presence sense impression to that
- 12 you didn't appreciate him talking to your mother that way, did you?
- 13 A: No, sir.
- 14 Q: Okay. Now, were you with Ms. Morant when the actual gunshots ... shots
- 15 were fired, shot or shots were fired, were you with Ms. Morant or were you
- 16 with Denial?
- 17 A: I was with Denial.
- 18 Q: You were with Denial. How far from Denial were you?
- 19 A: I was up on him.
- 20 THE COURT: You need to speak up some.
- 21 Q: Let me ... let me ... I'm talking about not after he was shot. I'm talking about
- 22 at the time the gunshot went off are you saying you were right up on him?
- 23 A: I was pulled away. I was pulled away.
- 24 Q: You were pulled away before the gunshot?
- 25 A: Yes.

HEARING

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- 1 Q: Okay. You were pulled away. Did Leslie pull you away or did someone
2 else?
- 3 A: I don't know who pulled me.
- 4 Q: Okay. But ... and how far away were you pulled?
- 5 A: About right here, a little past the bench.
- 6 Q: A little past this bench?
- 7 A: Yes, sir.
- 8 Q: Okay. So you ... your testimony when Derial was shot you were this close up
9 to him.
- 10 A: Yes, sir. I was pulled by the side.
- 11 Q: So you were like, how close, do I need to move closer or back up?
- 12 A: Right there.
- 13 Q: And you were pulled, were you standing over here?
- 14 A: Over there ...
- 15 Q: I move a little closer or I back up?
- 16 A: Little closer.
- 17 Q: How far were you when the gun was fired? Were you this close or were you
18 a little further away or what? Maybe this far away?
- 19 A: Yes, sir.
- 20 Q: Okay. You were looking when the gun was fired, right?
- 21 A: Yes, I was.
- 22 Q: Okay. And you testified earlier that Derial swung twice at Scooter.
- 23 A: He swung.
- 24 Q: Swung twice at Scooter. Okay. And you testified earlier that you don't know
25 whether Derial had a knife or not.

HEARING

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- 1 A: No, I didn't.
- 2 Q: Okay. You did testify to that or you didn't?
- 3 A: I don't whether he had a knife or not.
- 4 Q: You don't know whether he had a knife or not.
- 5 A: No, sir.
- 6 Q: Okay. That's your testimony, you don't know whether he had a knife.
- 7 A: Yes, sir.
- 8 Q: Okay. What did you hear Derial say? How ... how far away did ... how far
- 9 away when Scooter came back, how far away was Derial?
- 10 A: He was parked along beside the trailer, I mean beside the bar almost to the
- 11 car, the stop sign..
- 12 Q: Okay. Did anybody ... did Scooter and Derial fight earlier before Scooter
- 13 went to the car?
- 14 A: No, sir.
- 15 Q: They didn't fight earlier? Okay. All right. They didn't fight. Did they argue
- 16 earlier?
- 17 A: They argued but they didn't fight.
- 18 Q: They argued. And what did Scooter say to Derial?
- 19 A: ... he was shot in the head.
- 20 Q: Okay. You ... you're the one that saw the gun, is that right?
- 21 A: Yes, sir.
- 22 Q: You saw the gun and you informed Derial that Scooter had a gun.
- 23 A: Yes, sir.
- 24 Q: Is that right?
- 25 A: Well, I heard that everybody saying he got a gun, he got a gun.

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- 1 Q: And then you said it.
- 2 A: I said, "Derial, come on cause he got a gun."
- 3 Q: Okay. What did Derial do at that point?
- 4 A: He said, he got a gun. I ain't scare of no gun.
- 5 Q: What did he do then?
- 6 A: Sir?
- 7 Q: What did he do after he said that?
- 8 A: He turned away and went back to Scooter.
- 9 Q: Went back to Scooter?
- 10 A: Yes.
- 11 Q: Do you recall ... I know it was a traumatic night but do you recall anything
- 12 else that Derial said as he was walking towards Scooter?
- 13 A: You gonna shoot me? You gonna shoot me?
- 14 Q: Did he use any bad words along with that, too?
- 15 A: I mean, all I heard you gonna shoot me?
- 16 Q: You don't recall if he said any ... called him any names along with that?
- 17 That's what ...
- 18 A: I'm not sure.
- 19 Q: ... that's what you remember. He could have called him names ...
- 20 A: He could have but ...
- 21 Q: Okay.
- 22 A: ... I'm not sure.
- 23 Q: But he said that twice.
- 24 A: Yes.
- 25 Q: And he walked up to Scooter and got this close to him?

HEARING

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- 1 A: Derial was going towards ...
- 2 Q: And did you see Scooter with a gun?
- 3 A: Yes, sir.
- 4 Q: And Derial swung twice at Scooter?
- 5 A: Yes, sir.
- 6 Q: And you do not know whether he had a knife or not?
- 7 A: No, sir.
- 8 Q: Okay. Do you know whether he hit Scooter or not? He tried to hit him. He
- 9 swung twice at him, I guess, he was trying to hit him, right?
- 10 A: Yes, sir.
- 11 Q: And he was close enough that if he had ... to hit him?
- 12 A: Well, they pulled me away. Scooter shot Derial swung Scooter shot. Derial
- 13 swung, Scooter shot. Derial swung again and Scooter shot, Derial fall.
- 14 Q: Do you know if Derial hit Scooter?
- 15 A: I'm not sure.
- 16 Q: And you just don't know.
- 17 A: No, sir.
- 18 Q: Okay. He may have or he may not have. Right?
- 19 A: Yes, sir.
- 20 Q: Okay.

21 MR. CARRAWAY: May we approach, Your Honor?

22 THE COURT: Yes.

23 (Discussion held off the record).

24 THE COURT: Ladies and Gentlemen, please go to your jury

25 room and do not discuss the case. Do not talk about the case. Thank you.

HEARING

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1 (Jury out).

2 THE COURT: All right. Mr. Carraway, you asked ... you
3 came up during the bench conference and you asked to listen to a tape recorded
4 statement of this particular witness?

5 MR. CARRAWAY: Yes, Your Honor.

6 THE COURT: All right. Discovery was served with
7 exculpatory material, too?

8 MR. CARRAWAY: Yes, Your Honor, I received other ...

9 THE COURT: I understand. I understand that. I take it then
10 that the prosecution views there is nothing exculpatory in the statement?

11 MS. BARR: Judge, that would be our position.

12 THE COURT: How long is the recording?

13 MS. BARR: Judge, it's 30 minutes.

14 THE COURT: 30 minutes?

15 MS. BARR: Yes, sir.

16 THE COURT: All right. Mr. Carraway, when did you learn
17 about the recording?

18 MR. CARRAWAY: This morning. She was on the stand. Mr.
19 Sabb said to me we can do this before you start cross examining her, he said, we'll
20 ask the judge to allow you to listen to the tape. I didn't see, really any ... I didn't think
21 about it at the time and I still don't see the prejudice in listening to it now or before.
22 I can't think of any but maybe there is some. That's what happened.

23 THE COURT: Mr. Sabb, what's the State's position on that or
24 Ms. Barr?

25 MR. SABB: Judge, we're on break. Let's assume that during

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1 the break what we can do Judge, if you want to, we can recess the trial of this case
2 and maybe start it back at 2:30. Let Mr. Carraway listen to it over lunch. There are
3 two Defendants that are here that we're tried to take their pleas yesterday afternoon
4 and if we can do that ...

5 THE COURT: Let's do that. Mr. Carraway, get the tape now
6 and listen to it and then we'll be back on the record in this case at 2:30. Is there any
7 ... well, I tell you what, let's bring the jury in. I'll turn them loose for lunch and then
8 we'll take a brief, brief break and then we'll take ...and that will take care of your
9 lunch time, too. All right?

10 MR. SABB: Yes, sir.

11 MR. CARRAWAY: And then I have these two guilty pleas
12 and I will have plenty of time to listen to the tape.

13 THE COURT: All right.

14 MR. CARRAWAY: Because we're not going to come back
15 until 2:30.

16 THE COURT: Okay. Yes, sir. All right, bring in the jury.

17 (Jury in).

18 THE COURT: All right, ladies and gentlemen, we're going to
19 ... what we're going to do at this point is break a good bit earlier than we would
20 normally break for lunch. We're going to have a longer lunch period than we would
21 otherwise normally have. Don't be distressed we're going to continue to work not
22 involving this case. We've got some other things we're going to do involving this
23 case that will not necessitate your presence so be back in your jury room at 2:30.
24 Again, you may not discuss this case. You may not begin to form any conclusions
25 about what your ultimate decision will be in this case either. So during your lunch

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1 time just enjoy yourself. Also they have now ... now that the information of exactly
2 where this event is alleged to have occurred. Don't go by there. Don't visit the
3 location. You are not allowed to do any investigation on your own. Like I said at the
4 beginning of the case, everything that you are going to need to decide this case you
5 will hear in this courtroom. Please enjoy your lunch and I will see you back in ... be
6 back in your jury room at 2:30. All right. Thank you very much. When you do
7 come back you can bring soft drinks of whatever with you just as long as you don't
8 spill them. Thank you.

9 (Jury out).

10 THE COURT: All right. This case will be in recess until 2:30.
11 The one thing that I wanted to put a bug in the lawyers ears about is this. You're
12 familiar with the law of self defense pertaining to the duty to retreat. And Mr.
13 Carraway has indicated that another defense would be the defense of others. If you
14 know of any authority or are able to locate an authority about when those two
15 defenses intertwine. In other words, if a Defendant does retreat but does come back
16 ostensibly to engage in the defense of another person. How does that re-shuffle the
17 deck so far as self defense and defense of others is concerned. If there is any
18 authority on that intertwining but you might as well start to look.

19 MS. BARR: Yes, sir.

20 THE COURT: And I'll do the same. All right. We'll take a
21 break for just a couple minutes and Mr. Sabb, is that okay to get your things in order?

22 (Off the record).

23 THE COURT: Ms. Barr, Mr. Carraway, you all ready for the
24 jury?

25 MR. CARRAWAY: Ready, Your Honor.

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1 MS. BARR: Judge, before the jury comes in I just want to
2 place on the record we have two additional witnesses that we will call this afternoon.
3 I told Ms. Erica McBride who is Dyshea's mother that I would release her for today
4 and call her first thing in the morning as well as the pathologist. So those are the two
5 witnesses that we are going to call in the morning. We have two witnesses this
6 afternoon and that will be it for us this afternoon.

7 THE COURT: Who do you have this afternoon?

8 MS. BARR: Investigator Whack and David McCrea.

9 MR. CARRAWAY: And the second one? The second
10 witness?

11 MS. BARR: Is David McCrea. He was the add on, Judge.

12 THE COURT: Okay. All right. Those will take the rest of the
13 afternoon?

14 MS. BARR: I'm sorry?

15 THE COURT: Will those take the rest of the afternoon?

16 MS. BARR: They'll probably ... I don't know, depending on
17 how quick the cross examination is they may take an hour, hour and a half.

18 THE COURT: Total?

19 MS. BARR: Yes, sir. I would think so.

20 THE COURT: All right. Is anybody else ... nobody else that
21 you would be able to call if we stop by 4:00?

22 MS. BARR: I may call the evidence custodian, Lieutenant
23 Jeffrey Scott, but he'll ... he'll be the last one.

24 THE COURT: All right.

25 MS. BARR: And as I understand it from one of the bailiffs,

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1 Ms. McBride, Dyshea McBride is on the way up.

2 THE COURT: On the way up?

3 MS. BARR: From downstairs.

4 THE COURT: Okay. Do you want to put her back on the
5 stand?

6 MS. BARR: Judge, I just ... yes, I want to clarify a couple of
7 points if I can so she's on the way up.

8 THE COURT: She's ...

9 MR. SABB: Judge, she's here.

10 THE COURT: Okay. Bring her right in. All right, Ms.
11 McBride, you're still under oath, okay?

12 MS. MCBRIDE: Okay.

13 THE COURT: All right. Bring in the jury.

14 (Jury in)

15 THE COURT: All right, ladies and gentlemen, we're ready to
16 proceed. Ms. McBride is still testifying. Mr. Carraway, do you have any additional
17 questions?

18 MR. CARRAWAY: I have one question.

19 THE COURT: All right.

20 MS. MCBRIDE - CROSS EXAMINATION BY MR. CARRAWAY:

21 Q: Now, do you recall making a taped statement after this incident, right, I think
22 later on that night or early that morning.

23 A: Yes, sir.

24 Q: You made a taped statement and I believe you made it to Justin Whack, is
25 that right?

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1 A: Yes, sir.

2 Q: Okay. And is it possible that you told Justin Whack at that time that Scooter
3 ran away during the first altercation when he first ran away from Derial when
4 they first had their first confrontation, is it possible that you told Officer
5 Whack that Scooter ran away?

6 A: He did run away.

7 Q: He ran away. Okay. He didn't walk away. He ran away the first time. Not
8 after the ... the shot was fired but the first time he ran away, is that right?

9 A: Yes, sir.

10 Q: Okay.

11 MR. CARRAWAY: I don't have any further questions. Thank
12 you ma'am.

13 MS. MCBRIDE - REDIRECT EXAMINATION BY MS. BARR:

14 Q: Ms. McBride, when Javon Rivers ran away what was Derial doing when he
15 ran away?

16 A: I was pulling him to the car.

17 Q: Okay. So you were pulling him in the opposite direction?

18 A: Uh-huh (affirmative response). Yes, ma'am.

19 Q: Okay. From where who you call Scooter was going.

20 A: Yes, ma'am.

21 Q: Okay. Where was your mom at that time?

22 A: I don't know. I can't recall.

23 Q: Okay. You don't remember her being there in the fray so to speak?

24 A: No, ma'am, she wasn't there.

25 Q: She wasn't there?

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1 A: No, ma'am.

2 Q: Okay. How long did it take for Mr. Rivers to get back to where Derial was?

3 A: It wasn't long.

4 Q: Okay. A matter of seconds? Minutes?

5 A: Seconds. Probably seconds.

6 Q: All right. And I just want to be clear. At no point in time did you ever see
7 Derial with a weapon?

8 A: No, ma'am.

9 MS. BARR: That's all I have.

10 MR. CARRAWAY: No questions. Thank you, ma'am.

11 THE COURT: All right. You may stay or you may leave,
12 whichever you like. Ms. Barr?

13 MS. BARR: We call David McCrea.

14 MS. WILLIAMS: Place your left hand on the Bible and raise
15 your right hand. Do you solemnly swear the testimony the evidence and testimony
16 you will give this court and jury will be the truth, the whole truth and nothing but the
17 truth so help you God?

18 MR. MCCREA: Yes, ma'am.

19 MS. WILLIAMS: Have a seat.

20 MS. BARR: May it please the Court?

21 THE COURT: Yes, ma'am.

22 MR. MCCREA - DIRECT EXAMINATION BY MS. BARR:

23 Q: David, let me get you to state your full name.

24 A: David McCrea.

25 Q: All right. Tell me where you live.

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- 1 A: Thorn ...
- 2 Q: Okay. How many brothers do you have all together?
- 3 A: Well, now, I have two brothers.
- 4 Q: All right. Now, David, are you familiar with Sadie's Night Club?
- 5 A: Yes.
- 6 Q: That's located in Williamsburg County, is that correct?
- 7 A: (Nods head affirmatively).
- 8 Q: All right. Now, had you ever been there before?
- 9 A: Yes, I have.
- 10 Q: Okay. And did you have any plans to go that particular night?
- 11 A: My intention was to go there that night, I stayed home that night.
- 12 Q: Okay. All right. David, tell me about what time was it that you learned of
- 13 the shooting?
- 14 A: Well, it was late that night. I ... I received two phone calls. I think one from
- 15 my sister or my aunt, whatever and Marcella called me.
- 16 Q: Okay.
- 17 A: So I was ... I don't remember what time it was. But I know it was late.
- 18 Q: Okay. Now, prior to the time that your brother was shot was he working
- 19 anywhere?
- 20 A: Yes, he was a truck driver. Drive a truck ... he drive ... he drive a truck. He
- 21 was driving a truck.
- 22 Q: How long had he been a trucker?
- 23 A: Well, he was truck driver all along, you know .
- 24 Q: What did he do there?
- 25 A: I don't know.

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- 1 Q: Okay. All right. In addition to being a truck driver and working at Santee,
2 did he have any ... did he do any odd jobs here and there?
- 3 A: Well, he was a electrician, you know, he would help or whatever electrical
4 work and all that stuff.
- 5 Q: Okay. Now, as part of that trade so to speak, did you ever know him to carry
6 a pocket knife?
- 7 A: He always carried a little pocket knife in his ... in his pocket.
- 8 Q: All right. And did you ever know him to use it for his trade in terms of being
9 an electrician and that sort of thing?
- 10 A: I've seen him use it to cut wires and everything, you know, but other than
11 that, specifically.
- 12 Q: Now, you said you heard about the shooting early that morning, is that
13 correct?
- 14 A: Yes.
- 15 Q: All right. Heard about the shooting where did you go?
- 16 A: I went to the emergency room right in Kingstree.
- 17 Q: Right here in Kingstree?
- 18 A: Yes.
- 19 Q: And was Derial there at the emergency room when you got there?
- 20 A: Yes, they had him in the back.
- 21 Q: Okay. All right. And did you go in the back in the room where he was?
- 22 A: Not right on him. They only ... they only allowed two people at a time to go
23 back there.
- 24 Q: Okay. All right. So at some point you went back there.
- 25 A: Yes.

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- 1 Q: All right. And can you describe how he was when you went back in the
2 emergency room?
- 3 A: Well, he was ... he was unconscious and everything, you know. People from
4 the Medical University come down and pick him up.
- 5 Q: Okay.
- 6 A: He was under.
- 7 Q: All right. Was he ... had ... did he have on his regular clothes still or had they
8 put him in hospital gear?
- 9 A: No, still had on his regular clothes.
- 10 Q: Okay. All right. Now, and I'm ...
- 11 A: He just had his shirt cut way, you know, they had his shirt cause see, he got
12 shot in his chest as well.
- 13 Q: Okay.
- 14 A: He still had on his regular clothes.
- 15 Q: He had tubes and everything in him at that time?
- 16 A: Yes.
- 17 Q: Okay. Now, you went in the room with him, you were there along with
18 Marcella.
- 19 A: Yes, me and her was in there at the same time.
- 20 Q: Marcella was his wife at the time, is that correct?
- 21 A: Yes.
- 22 Q: He and her had separated for a period of time?
- 23 A: Yes. Well, it was an on and off thing.
- 24 Q: Okay. All right. Now, while you were in the hospital room with him, did
25 you observe the nurse remove anything from his person?

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- 1 A: Yes, they ... they took the wallet, took the wallet out of his pocket and some
2 ... I think it was 30 or 40 cents or something and the little pocket knife. That's
3 all he had on him.
- 4 Q: All right. And you personally observed the nurse remove a pocket knife from
5 him?
- 6 A: Yes. They took it up ... they took it him up to Charleston. They give her,
7 Marcella, everything that he had on him.
- 8 Q: Okay. All right. Was it in his pants pocket or his shirt pocket or his jacket
9 pocket?
- 10 A: It was in his pants pocket.
- 11 Q: All right. And how would you describe the knife?
- 12 A: It was just a little knife.
- 13 Q: Was that the one you had been accustomed to seeing him with?
- 14 A: Yes.
- 15 Q: Okay. I'm going to hand you what has been marked for Identification
16 purposes only as State's Exhibit Number Nine and ask you if you recognize
17 that.
- 18 A: Yes, these.
- 19 Q: All right. And when the nurse removed this item from Derial's pocket, could
20 you tell whether the blade was open or close?
- 21 A: It was closed.
- 22 Q: It was closed.
- 23 A: Yes.
- 24 Q: All right. And once it was removed from his pocket and given to Marcella
25 did you all then turn it over to Investigator Whack with the Sheriff's

HEARING

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1 Department?

2 A: Not at that same ... not at that moment. No, because we actually went home
3 and we went to Charleston the next ... next day.

4 Q: Okay. Was it within a day or two of the shooting that you turned it over?

5 A: I think it was a couple days later.

6 Q: Okay. Now, you indicated that you all had been gone to Charleston, the
7 Medical University in Charleston, we call it MUSC, is that correct?

8 A: Yes.

9 Q: All right. And you ... your brother had been transported there?

10 A: Yes.

11 Q: Okay. Was it the same day or the next day?

12 A: We went that same day. Because he got shot that ... that morning.

13 Q: Okay.

14 A: So that same morning we went to Charleston.

15 Q: Okay.

16 A: We just follow ... we just went, went that same morning.

17 Q: What reason ... what was your understanding as the reason as to why he was
18 being transported to Charleston?

19 A: Because my understanding that he got shot three times but then I find out
20 later he only got shot one time which was in his face.

21 Q: That's what somebody had told you over the phone that he had been shot
22 three times?

23 A: Three times. Yeah, went to the emergency room the lady told me he got shot
24 one time in the face.

25 Q: Okay. All right. And what type of treatment did they provide him?

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- 1 A: Well, you know, they had to remove the right side of his brain was all ... all
2 his bones on the right was shattered and then messed up the right side of his
3 brain so they had to remove that part of his brain.
- 4 Q: Now, did ... were you hopeful about his prognosis after they had the surgery
5 and removed a portion of his brain?
- 6 A: Yes, because they told us, you know, that he had a chance of making it, but,
7, you know, he would have to go through rehab and everything but he still had
8 to learn how to walk again and talk and remember his family and everything.
- 9 Q: Okay. And that would have been due to the fact that part of his brain was
10 removed, is that correct?
- 11 A: Yes.
- 12 Q: All right.
- 13 A: They said, you know, they take out ... that was only if nothing else didn't
14 anything happen to him.
- 15 Q: Okay. Now, during the ... the time in which Derial was in the hospital did he
16 ever gain consciousness?
- 17 A: No, he didn't.
- 18 Q: All right. Now, at some point did his prognosis change for the worse?
- 19 A: Yes, it did. I received a phone call, you know, asking all the family members
20 to come up there it was an emergency and they told us ...
- 21 Q: These are the doctors and the nurses that are telling you this?
- 22 A: Yes.
- 23 Q: Okay.
- 24 A: Say he ... he had suffer I think a stroke to the brain, the other part of the brain
25 as well.

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1 Q: Okay.

2 A: And after that they said you know he had one percent chance of making it and
3 they told us then that, the doctors say if he did make it he would be just a
4 vegetable.

5 Q: So at some point you received an emergency call from one of the doctors.

6 A: Yes.

7 Q: And indicated to you that Derial had had a stroke.

8 A: Yes.

9 Q: All right. And you were ... and your family was advised at that time that he
10 had a one percent chance of survival.

11 A: Yes.

12 Q: And if he did survive he would be a vegetable.

13 A: That's right.

14 Q: Now, what was the family's decision once you all received that information
15 from the doctors?

16 A: Well, we thought about and we was hoping that things would change or
17 whatever but then I knew my brother real good and he wouldn't want nobody
18 taking care of him the rest of his life. And me and the family and his wife got
19 together and said, you know, best just let him go because ain't nothing ... the
20 doctors already told us that there was nothing else they could give him. They
21 had more doctors come in and they told us the same thing that the doctor did.

22 Q: Derial then would have been pronounced dead on June 3rd of 2008?

23 A: That's correct.

24 Q: Between the time of the shooting and his ultimate passing about three or so
25 weeks later, did he ever talk ... did he ever talk to you?

HEARING

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1 A: He never been able to talk to me.

2 MS. BARR: Sir, that's all the questions I have. Please answer
3 any questions Mr. Carraway has.

4 MR. CARRAWAY: No questions.

5 THE COURT: All right, Ms. Barr?

6 MS. BARR: Call Investigator Justin Whack.

7 MS. WILLIAMS: Do you solemnly swear that the evidence
8 and testimony you will give this court and jury will be the truth, the whole truth and
9 nothing but the truth so help you God?

10 MR. WHACK: Yes, ma'am.

11 MR. WHACK - DIRECT EXAMINATION BY MS. BARR:

12 Q: Investigator Whack, let me get you to state your full name for me.

13 A: Justin Whack.

14 Q: And if you will, please, introduce yourself to the ladies and gentlemen of the
15 jury and tell us where you work and what it is that you do for them.

16 A: I'm an investigator for the Williamsburg County Sheriff's Office. My job is
17 after an initial visit to go out and take an initial report and solve the crime.
18 Interview witnesses and make contact with whoever we can, witnesses,
19 victims, hope to make an arrest if we can.

20 Q: Now, sir, were you working with the Sheriff's Department in May of 2008?

21 A: Yes, ma'am.

22 Q: Okay. And on May 17th of 2008, were you assigned to investigate a shooting
23 that happened at Sadie's Night Club?

24 A: Yes, ma'am.

25 Q: And tell me when the call initially came out about the shooting at the night

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1 club?

2 A: Our central dispatch received the call at 2:35 that morning, 2:35 a.m. the
3 morning of May the 17th.

4 Q: Okay. And who would have been the first officer to respond to the scene
5 according to your information?

6 A: The first officer there was Deputy Edwards and Sergeant Blunt and Sergeant
7 Grayson came shortly after.

8 Q: And after you were assigned to investigate the shooting did you receive
9 information from them about any witnesses to the shooting?

10 A: I was informed that they had a couple witnesses one of them being Ernie.
11 The other one being ...

12 Q: Ms. Dyshea ...

13 A: ... Dyshea ...

14 Q: ... McBride?

15 A: ... McBride.

16 Q: And Ms. Leslie Morant?

17 A: And Morant. That's correct.

18 Q: And you took recorded statements from those witnesses?

19 A: That's correct.

20 Q: All right. And would that have been the same day the shooting occurred?

21 A: Well, later on that day.

22 Q: Okay. All right.

23 A: Actually Ernie's statement wasn't taken until the 19th. I'm not sure about
24 Leslie's.

25 Q: Now, sir, based on the information that you received after you interviewed

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1 these witnesses, did you have a suspect in mind as to the shooting?

2 A: Yes, ma'am.

3 Q: Okay. And who was that suspect?

4 A: We had a name of Scooter.

5 Q: Scooter?

6 A: That's correct.

7 Q: Okay.

8 A: We made contact also with Ms. Sadie McBride and she told us that Scooter ...

9 MR. CARRAWAY: Object, Your Honor, hearsay.

10 THE COURT: Ms. Barr?

11 MS. BARR: Judge, we're certainly not offering for the truth of
12 the matter asserted. We're offering to find out why law enforcement undertook the
13 action that they did.

14 THE COURT: All right. I don't know what the response to
15 the question might be. All right. You can ask the question.

16 Q: Sir, you indicated that you had a conversation with Sadie McBride?

17 A: That's correct.

18 Q: And Sadie is the owner of Sadie's Night Club, is that correct?

19 A: That's correct.

20 Q: And you informed her that you were looking for somebody whose nickname
21 was Scooter?

22 A: Yes, ma'am.

23 Q: And did she provide you a lead as far as that was concerned?

24 A: Yes, ma'am.

25 Q: All right. Now, tell me what did you do after you had the conversation with

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1 Sadie about Scooter?

2 A: I took the information that she gave me and went to a residence over on Pine
3 Avenue.

4 Q: All right. Now, whose residence did you go to?

5 A: Eric York's residence.

6 Q: Okay. All right. Now, you went to Eric York's residence. Did you find an
7 individual named Scooter there?

8 A: No, ma'am.

9 Q: All right. Was anyone there?

10 A: No, ma'am. We got no response at the door of the residence.

11 Q: Okay. Did you make contact with anybody else or what other action did you
12 undertake to find Scooter?

13 A: Well, while we were at Eric's residence, his mom came up and we asked her
14 about the subject.

15 Q: About Scooter?

16 A: About Scooter, yes, ma'am.

17 Q: She gave you some information?

18 A: Yes.

19 Q: I think that you said she gave you some information.

20 A: Yes, ma'am.

21 Q: All right. And as a result of that conversation with her, then where did you
22 go?

23 A: We went to Scooter's mom's residence.

24 Q: Okay. And is that the woman seated next to him?

25 A: Yes, ma'am.

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- 1 Q: All right. And so you went to the Defendant's mother's residence.
- 2 A: Yes, ma'am.
- 3 Q: Now, just for clarity, did you understand Scooter later to be identified as
- 4 Javon Rivers, the Defendant?
- 5 A: That's correct. His mom gave us his ... his name.
- 6 Q: Okay. All right. So you went to Scooter's mom's house.
- 7 A: That's correct.
- 8 Q: You spoke with Mrs. Rivers.
- 9 A: Yes, ma'am.
- 10 Q: And she is the woman that is seated next to the Defendant.
- 11 A: Yes, ma'am.
- 12 Q: And she gave you her son's name full name.
- 13 A: Yes, ma'am.
- 14 Q: Javon Lamont Rivers. Is that correct?
- 15 A: Yes, ma'am.
- 16 Q: All right. Now, at that time did she have any idea where he was?
- 17 A: No, ma'am.
- 18 Q: Okay. Did she provide any leads as to where you might could find him?
- 19 A: No, ma'am.
- 20 Q: All right. Did you tell her why it is that you were looking for her son?
- 21 A: I gave her a little information about the investigation.
- 22 Q: All right. Now, tell me what other actions did you take to try to find Mr.
- 23 Rivers at that point.
- 24 A: After we left Ms. Rivers' residence, we went to ... actually we were on our
- 25 way to Marcella's residence.

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- 1 Q: Okay.
- 2 A: On our way going there we go to Gay's
- 3 Q: Okay. All right, so did you go to Gay Miller's house?
- 4 A: Couldn't find the residence although I knew where her daughter stayed so
- 5 went to her daughter's residence and her daughter took us to her residence.
- 6 Q: All right. And did you have any luck finding Mr. Rivers there?
- 7 A: No, ma'am.
- 8 Q: Okay. All right. Could he be found anywhere in Williamsburg County?
- 9 A: No, ma'am.
- 10 Q: Could he be found anywhere in the state of South Carolina?
- 11 A: No, ma'am.
- 12 Q: Now, obviously he's here so at some point law enforcement was able to find
- 13 him, is that correct?
- 14 A: That's correct.
- 15 Q: All right. Tell me ultimately where was he discovered?
- 16 A: In ... I think it was in Miami.
- 17 Q: Miami, Florida?
- 18 A: Yes, ma'am.
- 19 Q: He was all the way in Miami, Florida?
- 20 A: Yes, ma'am.
- 21 Q: All right. Now, do you know whether or not he has any relatives or he's ever
- 22 lived there?
- 23 A: That's where he's originally from. That's where the family moved to South
- 24 Carolina from Florida is my understanding.
- 25 Q: And when did he leave South Carolina to go to Florida if you know?

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- 1 A: That same night when the shooting was committed.
- 2 Q: Okay. Now, how were you all able to arrest him, find him in Miami, Florida?
- 3 What type of information did you all put out to other law enforcement
- 4 agencies to help you find him?
- 5 A: We actually make ... after we got the warrant for the charge ... for the initial
- 6 charge, we entered him in the NCIC of warrants, did a broadcast,
- 7 newspapers, made contact with law enforcement , got the last known address.
- 8 Q: Yes, sir.
- 9 A: That's how we made ... well, you know, that's how the trail started.
- 10 Q: All right. And as I understand it he was picked up by officials, law
- 11 enforcement officials in Miami?
- 12 A: Yes, ma'am.
- 13 Q: On a traffic stop.
- 14 A: Traffic stop.
- 15 Q: All right. And did you all then send a couple of your deputies to the state of
- 16 Florida to pick him up and bring him back to South Carolina to face these
- 17 charges?
- 18 A: Yes, ma'am.
- 19 Q: Tell me when was the date he was actually picked up in Florida. How much
- 20 time went by between the shooting and the time when he was captured?
- 21 A: It was actually ... he was actually arrested in Florida on the 9th of July.
- 22 Q: On the 9th of July?
- 23 A: Yes, ma'am.
- 24 Q: So almost two months went by when he was on the run?
- 25 A: That's correct.

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1 Q: Okay. Did you ever receive any information in the course of your
2 investigation about any type of vehicle that he may have been driving? Were
3 you looking for a particular vehicle?

4 A: No, ma'am, we didn't have any description of any vehicle

5 Q: Okay. Now, when you interviewed the witnesses that you interviewed, do
6 you recall talking to Mr. Ernie Wilson?

7 A: Yes, ma'am.

8 Q: All right. Did you receive any information from him that was pertinent to
9 this investigation as far as where the gun was?

10 A: Yes, ma'am.

11 Q: All right. Tell me the information that you got from him.

12 A: He stated that during the altercation that Mr. Rivers went to a ... a vehicle that
13 was parked in the yard of a night club, Sadie's Club ...

14 Q: Yes, sir.

15 A: ... and retrieved a ... a gun, a handgun on the passenger side of the vehicle.
16 And he described the vehicle as being ... he gave a partial tag for the vehicle it
17 was 840 ...

18 Q: All right. So he gave you a partial tag number and a make and color of the
19 vehicle, is that correct?

20 A: That's correct.

21 Q: All right. Did you ever find a vehicle matching that description?

22 A: We did. Like I said that was Eric York's residence.

23 Q: Okay.

24 A: Went around there. The vehicle matched Mr. Wilson's tag numbers with ---
25 that were pretty close. I checked the hood of the vehicle, the hood was still

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1 hot.

2 Q: All right. And so ... now tell me in relation to the shooting ... the shooting
3 happened about 2:30. When was it when you all would have gone to Eric
4 York's residence and observed a vehicle matching the description that was
5 given by an eyewitness? Would it have been that same day?

6 A: That ... that same night. That very same night.

7 Q: Same night?

8 A: Yes, ma'am.

9 Q: Okay. All right. I'm going to hand you what's been marked State's Exhibits
10 Number Seven and Number Eight and ask you if you recognize what is
11 depicted in those photos?

12 A: Yes, ma'am.

13 Q: And tell me what it is.

14 A: That's the vehicle that Mr. Wilson described to us and located at Eric York's
15 residence.

16 MS. BARR: Judge, as I understand these documents ... these
17 Exhibits have already been admitted into evidence?

18 MR. CARRAWAY: Yes, ma'am.

19 THE COURT: They are Seven and Eight.

20 MS. BARR: Judge, we would move to publish at this time.

21 THE COURT: All right, ladies and gentlemen, publishing the
22 Exhibit means it is shown to you and passed through the jury box. Make sure when
23 you're looking at the photographs, you need to pay very close attention to the
24 question and answers. All right.

25 MS. BARR: Thank you.

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- 1 Q: Sir, I believe that you talked about the initial charges. You initially charged
2 the Defendant with Assault and Battery with Intent to Kill, is that right?
- 3 A: That's correct.
- 4 Q: And some of us may ... may think of that as a charge we often hear called
5 attempted murder, is that right?
- 6 A: That's correct.
- 7 Q: And that was the charge that was pending at the time you signed the warrants
8 a day or so after the shooting, is that correct?
- 9 A: Yes, ma'am.
- 10 Q: All right. At some point later you learned that the victim had died?
- 11 A: Yes, ma'am.
- 12 Q: And the charges were elevated or upgraded to murder, is that correct?
- 13 A: Yes, ma'am.
- 14 Q: Now, did you ever meet with Marcella McCrea and/or David McCrea
15 regarding any evidence that they have may seen?
- 16 A: Yes, ma'am.
- 17 Q: Okay. All right. And it was a few days or so after the shooting?
- 18 A: Yes, ma'am.
- 19 Q: All right. And I'm going to show you what's been marked as State's Exhibit
20, Number Nine and ask you if you recognize this particular Exhibit?
- 21 A: Yes, ma'am.
- 22 Q: All right. And how is it that you recognize it?
- 23 A: This is the pocket knife that Marcella brought to me at the Sheriff's Office.
- 24 Q: Okay. Once you received that pocket knife did you then turn it over to your
25 evidence custodian?

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1 A: Yes, ma'am.

2 Q: And that's Lieutenant Scott?

3 A: Yes, ma'am.

4 Q: And has it remained with Lieutenant Scott as far as you know since the
5 shooting up until today?

6 A: Yes, ma'am.

7 MS. BARR: Judge, we would move State's Exhibit Nine into
8 evidence at this time.

9 THE COURT: Mr. Carraway?

10 MR. CARRAWAY: Without objection.

11 THE COURT: All right. That's Nine?

12 (State's Exhibit Number Nine was placed into evidence).

13 MS. BARR: Permission to publish, Your Honor?

14 Q: Now, sir, when you got the call about investigating the shooting, did you
15 actually go to the scene, Sadie's?

16 A: Yes, ma'am.

17 Q: Was any evidence recovered from the scene at Sadie's?

18 A: The only thing that was recovered when I got there was shell casings.

19 Q: To this day have you ever recovered the gun that was used in the shooting?

20 A: No, ma'am.

21 Q: Other than the witnesses that we've identified, did any other witnesses come
22 forward to tell you they had witnessed the shooting?

23 A: Not to me.

24 Q: Do you recall ever speaking with Kiama Robinson about the shooting?

25 A: Not sure.

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1 Q: What about a Titania Rivers? Have you ever talked to her about the
2 shooting?

3 A: I spoke with her. Yes, ma'am.

4 MS. BARR: Sir, I believe that's all the questions that I have.
5 Please answer any questions Mr. Carraway may have for you.

6 MR. WHACK - CROSS EXAMINATION BY MR. CARRAWAY:

7 Q: How many shell casings did you find?

8 A: One.

9 Q: Is it true that each time this gun is fired it would throw out a shell casing?

10 A: Yes.

11 Q: You found one shell casing.

12 A: One shell casing.

13 Q: All right.

14 MR. CARRAWAY: Court's indulgence.

15 THE COURT: All right.

16 MR. CARRAWAY: Thank you, Officer Whack, I don't have
17 any further questions. Thank you.

18 THE COURT: Anything else, Ms. Barr?

19 MS. BARR: No, Your Honor.

20 THE COURT: You can step down. Thank you, Mr. Whack.

21 MS. BARR: Your Honor, the State has two additional
22 witnesses. One being the pathologist at MUSC. However, Your Honor, I promised
23 her ... so we would ask that we be allowed to recess this afternoon and start back at
24 9:30 in the morning.

25 THE COURT: All right. How many witnesses ... more

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1 witnesses will you call tomorrow other than the pathologist?

2 MS. BARR: One other person, Ms. Erica McBride.

3 THE COURT: I'm sorry?

4 MS. BARR: One other person, Ms. Erica McBride.

5 THE COURT: Okay. I thought you said something about

6 Lieutenant Scott. You have two more witnesses in your case in chief?

7 MS. BARR: Yes, Your Honor.

8 THE COURT: All right. Any objection to breaking early, Mr.

9 Carraway? Any objection to breaking early?

10 MR. CARRAWAY: I can't think of any.

11 THE COURT: All right. All right, then we can discuss the
12 jury charge issues this afternoon. Ladies and gentlemen, we're going to break for the
13 day. Please be back in your jury room at 9:30. We will resume the trial at that time.
14 You are not permitted to discuss the case amongst yourselves and obviously follow
15 my prior instructions that you not discuss it with anybody else and you may be
16 wondering I continue to say that but I can tell you that if you even mention to
17 someone that you are on this jury, that person may say something that has an impact
18 on your decision and that would not be appropriate. I was trying a case one time in a
19 County where I gave the jury that very specific instruction and just like the one I gave
20 you before lunch ... before lunch not to visit the scene. Well, a lady on the jury went
21 and walked through a house that was the subject of the very house and see what she
22 thought at it's construction. We ended up mistrying the case and parties had to start
23 over at a later time. So, again, get everything you need to decide case right here in
24 the courtroom and when you leave today put this out of your mind and come back
25 tomorrow morning at 9:30 and be ready to move forward with the trial. Ms. Barr,

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1 you stated the case in chief will be concluded by lunch?

2 MS. BARR: Yes, sir.

3 THE COURT: All right. Thank you, ladies and gentlemen,
4 we'll see you tomorrow morning.

5 (Jury out).

6 THE COURT: All right, as far as your client is concerned, Mr.
7 Carraway, but would you mind before you client is to be taken back today, talk to
8 him about his right to testify. Let him know that I will be asking him certain specific
9 questions about whether or not he will be testifying in this case.

10 MR. CARRAWAY: I sure will, Your Honor.

11 THE COURT: Brief him on what I'm going to be asking him
12 ...

13 MR. CARRAWAY: I will, Your Honor.

14 THE COURT: ... so he can make an informed decision at that
15 time.

16 MR. CARRAWAY: Yes, Your Honor.

17 THE COURT: Is there any ... any question that we might be at
18 least through tomorrow testimony tomorrow? Ms. Barr?

19 MS. BARR: No, Your Honor. We ... Judge, I don't know if
20 we want to address this issue or not but if the Defendant chooses to testify, he has
21 every right to do so. The State would seek to impeach him for prior convictions.

22 THE COURT: What are those?

23 MS. BARR: Judge, he's got cocaine convictions, bribing,
24 offering bribes to an officer back in 2002..

25 THE COURT: When was the cocaine?

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1 MS. BARR: I'm sorry, sir?

2 THE COURT: When was the cocaine?

3 MS. BARR: 2002. That was in Florence County, sir.

4 THE COURT: Possession of cocaine?

5 MS. BARR: Yes, sir. Attempting to bribe an officer.

6 THE COURT: Was that the same year?

7 MS. BARR: Yes, sir, at the same time.

8 THE COURT: All right.

9 MS. BARR: Your Honor, he has --- looks like he was arrested

10 on 4/03/98, I'm not sure when he was convicted.

11 THE COURT: We have to establish ...

12 MS. BARR: Ten year time ...

13 THE COURT: Ten year

14 MS. BARR: Judge, it looks like, I do see the date there. It's

15 like it was June 6, 1998.

16 THE COURT: All right. If it's a imprisonment it would be at

17 least ten years confinement.

18 MS. BARR: Yes, sir.

19 THE COURT: And, of course, there is a balancing test,

20 criminal convictions that do not amount to crimes of dishonesty and false statements

21 I guess, I need to have the record ... a possession of cocaine is not a crime,

22 Attempting to bribe an officer.

23 MS. BARR: Judge, we would take the position that attempting

24 to bribe an officer and vehicle theft were all crimes of dishonesty.

25 THE COURT: Vehicle theft certainly would but we have a ten

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1 year issue ...

2 MS. BARR: Yes, sir.

3 THE COURT: ... that would deal with that.

4 MS. BARR: Your Honor, he also has a grand ... grand larceny
5 third degree from September of 2006 received two years probation and that would
6 have been in Florida as well.

7 THE COURT: 2006?

8 MS. BARR: Yes, sir. He had a possessing, we would not be
9 seeking to impeach him on that most marijuana.

10 THE COURT: How about possession of cocaine?

11 MS. BARR: Judge ...

12 THE COURT: The probative value must outweigh the
13 prejudicial impact on the accused there. So that would be I guess my discretion. I'll
14 have to balance that out. I'll have to take into account the impeachment value of the
15 crime at the point in time of that conviction and subsequent history, the similarity
16 between that crime and the crime charged, the importance of the Defendant's
17 testimony and credibility issue in this case. All right. At this time, at least I will not
18 be inclined to allow the possession of cocaine, the attempt to bribe the officer, I don't
19 know if that's a crime of dishonesty. I just don't know. In some jurisdictions armed
20 robbery is not a crime of dishonesty. But in South Carolina it is. So I know there is
21 no South Carolina case law. Attempting to bribe an officer. All right. Mr.
22 Carraway, do you have thoughts at this point on whether or not your client can be
23 impeached on the grand larceny conviction in 2006?

24 MR. CARRAWAY: I would argue he cannot.

25 THE COURT: The basis for that would be what?

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1 MR. CARRAWAY: (Did not hear him).

2 THE COURT: All right. For what it's worth, I know the
3 terminology may be similar but it's a crime involving dishonesty and false statement.
4 I think in South Carolina grand larceny is. How about the ... how about the attempt
5 to bribe a police officer?

6 MR. CARRAWAY: (Couldn't hear).

7 COURT REPORTER: I'm sorry. I did not hear that.

8 MR. CARRAWAY: I would certainly argue that that is a
9 crime that does not involve dishonest.

10 THE COURT: All right. Well, I will deal with that this
11 afternoon. We'll move forward in the morning at 9:30. All right, as far as jury
12 charges are concerned just thinking out loud the issues that I have heard addressed at
13 least theoretically chargeable and I have not heard all of the evidence yet but we have
14 murder we've got the standard charge on. Possession of a weapon during a violent
15 crime. Is there going to be any requests or is there going to be room in this case on a
16 lesser included voluntary manslaughter?

17 MS. BARR: Judge, we would request that. I think there is
18 enough evidence in the record that a jury could find that a lesser included offense of
19 voluntary manslaughter.

20 THE COURT: Mr. Carraway?

21 MR. CARRAWAY: I agree.

22 THE COURT: All right. All right. Then the Defendant's, at
23 least in his opening statement with regard to some questions asked of witnesses in
24 advance the theory of self defense and defense of others so what I'm going to do is at
25 least have charges prepared on that. I don't know if they are going to be given until

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1 after I hear all of the evidence. I think that's all I have. Are there going to be any
2 additional charges either of you think may consider to be somewhat out of the
3 ordinary?

4 MS. BARR: Evidence of flight, Your Honor.

5 THE COURT: Mr. Carraway?

6 MS. CARRAWAY: No.

7 THE COURT: I'll take a look at that issue as well. All right,
8 anything else before we break this afternoon?

9 MS. BARR: Judge, there is one more matter.

10 THE COURT: Ma'am?

11 MS. BARR: I believe there may be one more matter .

12 THE COURT: All right. Ms. ... Ms. Barr, I think ... I think the
13 law is in South Carolina that certain argue inferences be derived under the essences
14 of flight but I don't think it's going to be appropriate to charge it. I'm thinking about
15 a case from a fairly long time ago and I can't recall the name of it but that charge will
16 not stand ...

17 MS. BARR: And, Your Honor, I will think after recess today
18 research that issue and make appropriate arguments in the morning.

19 THE COURT: All right. I'll try to find the case in just a few
20 minutes when I can get into the office up there.

21 MS. BARR: Yes, sir.

22 THE COURT: Mr. Sabb, do you know?

23 MR. SABB: No, Your Honor, I don't. I was trying to reflect
24 back on a case that we had but it was a death penalty case and the Defendant was
25 actually incarcerated and during his incarceration escaped twice. Yes. But when I

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1 think about the case I'm inclined to think that there was a charge ... well, I can't
2 remember, Judge. And then I was thinking that that may have been in the penalty
3 phase as opposed to the actual case in chief so I'm really not certain, Your Honor.

4 MR. CARRAWAY: Most incredibly in that case the guy
5 called back both times from New York and told them where he was, took ... they sent
6 him a train ticket back one time and they went up and picked him up up there the
7 second time. He was gone for a number of months. Is that not correct, Mr. Sabb?

8 MR. SABB: Yeah. I can't remember whether or not the Court
9 gave a charge on flight.

10 MR. CARRAWAY: Of course he may have flown away but
11 he flew back, too.

12 THE COURT: South Carolina criminal court case. State vs.
13 Grant. It was not appropriate for the judge to charge on flight, charge on the law of
14 flight given a robbery trial is erroneous

15 MS. BARR: I'm sorry, Judge, can I have that case name again?

16 THE COURT: State vs. Grant. 275-SC-404, 272SC2nd169.

17 MR. SABB: What year is that case, Judge?

18 THE COURT: '82. Okay, anything else before we break?

19 MS. BARR: No, sir, Your Honor.

20 THE COURT: Mr. Carraway, anything else?

21 MR. CARRAWAY: Nothing, Your Honor.

22 THE COURT: All right, you all can just be back tomorrow
23 about ten after 9:00 and we can take up anything that we have to deal with before the
24 jury comes back. All right. Thank you.

25 (Off the record).

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1 THE COURT: Mr. Carraway, the witnesses name that you
2 referenced, what is his name?

3 MR. CARRAWAY: His name is Christian Brand.

4 THE COURT: B-R-A-N-D?

5 MR. CARRAWAY: Yes, Your Honor.

6 MR.. SABB: Judge, what I would propose for the Court's
7 consideration is for the jurors to be qualified in regard to that witness at the time that
8 that witness is called or close in proxcity thereto.

9 THE COURT: Just in case he is not called?

10 MR. SABB: That's correct, Judge.

11 THE COURT: Any problem with that Mr. Carraway?

12 MR. CARRAWAY: None, Your Honor.

13 THE COURT: Ms. Barr, are you ready to go?

14 MS. BARR: Yes, Your Honor.

15 THE COURT: Bring in the jury.

16 (Jury enters Courtroom)

17 THE COURT: Good-morning Ladies and Gentlemen, sorry to
18 keep you waiting in the jury room for just a few minutes but we are ready to proceed
19 and the State is still presenting evidence on its case and chief. Ms. Barr, you may
20 call your next witness.

21 MS. BARR: The State calls Erica McBride.

22 MS. WILLIAMS: Place your left hand on the Bible and raise
23 your right hand.

24 (Juror sworn to tell the truth)

25 MS. MCBRIDE - DIRECT EXAMINATION BY MS. BARR:

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1 Q: Ms. McBride, let me get you to state your full name for me.

2 A: Erica Diane McBride.

3 Q: And you reside in Williamsburg County?

4 A: Yes.

5 Q: And you were subpoenaed to testify in this case, is that correct?

6 A: Yes.

7 Q: Where do you work?

8 A: Erins.

9 Q: Okay. I need to make sure that you do a couple of things. I need to make sure
10 that you speak up loud and clear so that everybody can hear you, okay? I
11 need you to make sure that when you answer a question you answer yes or no
12 instead of a uh-huh or uh-uh so that the court reporter can understand what
13 you're saying. Is that fair enough?

14 A: Yes.

15 Q: Now, your daughter is Dyshea McBride?

16 A: Yes.

17 Q: How are you related to Sadie McBride?

18 A: She's my mother.

19 Q: How many children do you have?

20 A: Seven.

21 Q: Dyshea, you were aware that she had a relationship with Derial McCrae?

22 A: Not at the beginning.

23 Q: Okay. As of May of '07 you aware that they had a relationship? May of '08,
24 I'm sorry, last year.

25 A: Yes.

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- 1 Q: Okay. They were boyfriend and girlfriend, is that correct?
- 2 A: Yes. Living together.
- 3 Q: And they have a child together?
- 4 A: Yes.
- 5 Q: Now, ma'am, would it be fair to say that you and Derial didn't always get
6 along?
- 7 A: We didn't.
- 8 Q: There were points in time when you all got along pretty good?
- 9 A: Yes.
- 10 Q: Okay. Was it usual for you and Derial to disagree on things?
- 11 A: No.
- 12 Q: You all had had arguments before?
- 13 A: Yeah. We argued every other day.
- 14 MR. CARRAWAY: I object to the leading nature of the questions.
- 15 THE COURT: Those questions were not leading. Proceed.
- 16 Q: Were you all able to resolve your differences?
- 17 A: Yes.
- 18 Q: Tell me how that would work. You made a point to say you all argued every
19 other day.
- 20 A: Yes. I didn't agree with my daughter being with Derial. I didn't ... that's
21 why I got upset with him. That's my child so I had to get along with him.
22 She wasn't going to leave him along. She was going to be with him so I had
23 to get along with him.
- 24 Q: So, how long would you all stay mad with each other?
- 25 A: I'd be mad with him a day and he'd be off the next day or two or three days

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1 and he would come over to the house.

2 Q: So they have been to your house, ate at your house, that sort of thing?

3 A: Yes.

4 Q: Now, Erica were you at Sadie's back on the 9th or I guess the early morning
5 hours of the 8th?

6 A: Yes.

7 Q: Do you remember what time you got there?

8 A: No.

9 Q: When you got there, was Derial already there?

10 A: Yes.

11 Q: Did you have a conversation with him.

12 A: When I got there I went in to talk to my mother, but when I got there he said
13 will you take me to the house. I said yeah. He said Dyshea is supposed to
14 come and pick me up but if she don't pick me up you take me home and I
15 said yeah, I'll take you to the house.

16 Q: At some point your daughter came?

17 A: She came before I was getting ready to leave she came.

18 Q: Now, did you observe something on the dance floor that caused you to tell
19 your daughter?

20 A: -Yeah.

21 Q: Tell us about that?

22 A: He was on the dance floor dancing with some girl and I told her she need to
23 go and get him.

24 Q: Did she do that.?

25 A: Yes. She went in and got him.

HEARING

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- 1 Q: Did the two of them have a argument after that?
- 2 A: When I came out they was standing in the road. They was on they side and
- 3 they was arguing and I said cut it out. I said cut it out and go home
- 4 because that's what they want to see out here.
- 5 Q: Okay.
- 6 A: And then that's when he told me, you saw me? I said yeah I saw you.
- 7 Q: Now, had Derial been drinking at the club?
- 8 A: Yes, ma'am.
- 9 Q: Most people at the club had been drinking?
- 10 A: Yes, ma'am.
- 11 Q: He asked you did you see me?
- 12 A: Yes.
- 13 Q: And you said that you did?
- 14 A: Yes.
- 15 Q: Now were ugly words exchanged between you and Derial?
- 16 A: Yes. Both of us.
- 17 Q: He said some ugly things to you?
- 18 A: Very ugly.
- 19 Q: You said some ugly things to him?
- 20 A: Very ugly.
- 21 Q: Okay. At any point and time did that altercation, if you will, ever turn
- 22 physical?
- 23 A: No.
- 24 Q: Were you fearful for your life as far as you fussing with him and him fussing
- 25 with you?

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- 1 A: No, ma'am.
- 2 Q: During the course of your argument with him, what happed? While you were
- 3 arguing with him what happened, did you see the Defendant there that night?
- 4 A: I didn't see him until we was arguing and I didn't see him until he appeared
- 5 beside me.
- 6 Q: Where did he come from?
- 7 A: I don't know.
- 8 Q: He just came and stood beside you?
- 9 A: I didn't know where he came from beside me. He came up beside me and I
- 10 didn't even know that was him at the time.
- 11 Q: Now, when you say he are you referring to the Defendant?
- 12 A: Yes, ma'am.
- 13 Q: That's Javon Rivers, is that correct?
- 14 A: Yes.
- 15 Q: Did you know him by a nickname?
- 16 A: Yes, I did.
- 17 Q: What did you know him to be, what was his nickname.
- 18 A: I didn't know him, I would just look at him and he was like you don't know
- 19 me, you don't know me. I'd be like no. He'd be like you know me.
- 20 Q: When he came up out of nowhere tell me what happened then?
- 21 A: Him and Derial they had their fist up to fight. That's when Derial tell him
- 22 you don't have anything to do with this.
- 23 Q: Who was Derial talking to when he said that?
- 24 A: He was talking to Mr. Rivers.
- 25 Q: Okay.

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- 1 A: He told him he didn't have anything to do with this.
- 2 Q: Then what happened?
- 3 A: They go back and forth like they going to fight and a whole bunch of other
- 4 guys came around. My daughter was in this to so I pulled her.
- 5 Q: Pulled her away?
- 6 A: Yeah, because she was trying to get in the mix of a bunch of guys. I told her
- 7 she didn't need to get in there. She said, Mama, let me go. I can't let them
- 8 jump him.
- 9 Q: I can't let them jump him, who was she talking about?
- 10 A: There was a bunch of guys. I don't know their names.
- 11 Q: The bunch of guys, were they coming toward Derial?
- 12 A: They was all around him.
- 13 Q: Do you know whether they were friends with Derial or do you know if they
- 14 were with Mr. Rivers?
- 15 A: I don't know who they was.
- 16 Q: Please continue. What happened next?
- 17 A: I was down by the stop sign and next thing you know I heard him say, Oh,
- 18 you going to shoot me and then I heard gunshots and then after that my
- 19 daughter come run to me and said, Mama, please call 911 that boy done shot
- 20 Derial. I got on my phone and I called 911. While I was calling 911 Scooter
- 21 walked down the road beside us and I tell him, Scooter gone on.
- 22 Q: You told him to go on?
- 23 A: Yeah.
- 24 Q: You didn't want him around you?
- 25 A: No.

HEARING

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1 Q: Okay. Did you actually see the shooting itself?

2 A: No.

3 Q: How far away from the area were you were Derial was shot?

4 A: Where they was at, there was the light and he was laying ... I was at the stop
5 sign.

6 Q: Tell me, so we can get some perspective. If you were standing where you
7 were at the time of the shooting, tell me how far you were from Derial? We
8 can use this court room as an example. If I walk, will you tell me, can you
9 tell me to stop when I get to the point that you were away from Derial?

10 A: About that far.

11 Q: Right there?

12 A: Yeah.

13 Q: After the physical fight between Derial and who you call Scooter, was there
14 anyone else involved in that physical fight other than Derial and Scooter?

15 A: No.

16 Q: Okay. Do you know what the other guys that were surrounding Derial, do you
17 know what they were doing?

18 A: All I heard them say, I'm not telling no lie ...

19 Q: I understand.

20 A: She said Mama, they gonna jump him.

21 Q: Once you pull her out of the crowd of guys involved in that initial
22 consultation, did she try to remove Derial from the scene?

23 A: Yeah.

24 Q: Did you see when Scooter left after the first fight?

25 A: He ran.

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1 Q: He ran ...

2 A: That's when I walked down to the other stop sign because I thought he was
3 leaving.

4 Q: You thought he was leaving?

5 A: And Derial was leaving, too. He was walking to the other side.

6 Q: And Derial was leaving, too. Okay. In terms of time frame, from the time
7 you saw him run off, do you believe in your mind that he was leaving, how
8 much time past until you ultimately heard the gunshots?

9 A: It wasn't long.

10 Q: Okay. Minutes? Two minutes, five minutes?

11 A: It wasn't long.

12 Q: When you heard Derial say, Oh you going to shoot me. Did you hear Scooter
13 say anything?

14 A: No.

15 Q: You just heard gunshots?

16 A: (Nods head affirmatively).

17 Q: I need you to say yes or no.

18 A: Yes.

19 MS. BARR: I beg the Court's indulgence. Ms. McBride, that's all the
20 questions that I have for you. Answer any questions that defense counsel may have.

21 **MS. MCBRIDE - CROSS EXAMINATION BY MR. CARRAWAY:**

22 Q: Ms. McBride, how are you doing? I was wondering can you step down here
23 and let's show the jury something on these pictures here? Will you step
24 down?

25 A: (Witness complies).

HEARING

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1 Q: Now, this is Sadie's McBride's place, is it not. Is that not true? Wasn't that
2 what that is a picture of?

3 A: Yes.

4 THE COURT: May sure all the jury can see. Ma'am., keep your
5 voice up very high so that the court reporter can hear you.

6 A: Yes, sir.

7 Q: Now, this street that we see in this picture that is [REDACTED], is it not? That's
8 not [REDACTED], that is [REDACTED]?

9 A: Yeah.

10 Q: That's [REDACTED] Okay. The club actually is sideways to [REDACTED].
11 It's on the corner, isn't it?

12 A: It's on the corner but it's facing [REDACTED]. The side of it is on [REDACTED]
13 [REDACTED].

14 Q: But the long side is on [REDACTED], isn't it and the door and everything, the
15 big door there?

16 A: No. It's on [REDACTED]. This is the front door is facing [REDACTED].

17 Q: Okay.

18 A: And there's a side door on the side.

19 Q: That's facing [REDACTED].

20 A: Yes.

21 Q: Okay. All right. And in this picture right here ...

22 THE COURT: What number is it?

23 Q: This is State's Exhibit Number Five. Is this not where the argument between
24 you and your daughter and Derial started a little ...

25 A: No.

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- 1 Q: Well, you tell me then. Just point out where it was.
- 2 A: When we started arguing ... when we started arguing this is where that he was
- 3 saying. This is where we were arguing up in here.
- 4 Q: Okay.
- 5 A: They was in the road and I walked over ... they was in the road and I told him
- 6 and her they needed to go home.
- 7 Q: Let me ask you this. Okay? You understand [REDACTED] is in this
- 8 direction, right?
- 9 A: [REDACTED] is here.
- 10 Q: Okay. You say this is [REDACTED] where this happened and there's another
- 11 mobile home ...
- 12 A: Right behind.
- 13 Q: There's some trees right there and there's a mobile home back there and you
- 14 say they was up there.
- 15 A: No, that's not what I said.
- 16 Q: Okay. I'm just asking you.
- 17 A: I said up in here is where we were standing.
- 18 THE COURT: Just a second. Showing Mr. Carraway is fine
- 19 but you've got to show the jury.
- 20 Q: Show the jury where you all were standing when you all argued. Go down ...
- 21 go down the row so each one of them can see.
- 22 A: We were showing up in here.
- 23 Q: Show each one where you all were.
- 24 MS. BARR: Ms. McBride, make sure you keep your voice up
- 25 so that the court reporter can hear you.

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- 1 A: (Witness complies).
- 2 Q: All right. Now, did you testify that ... let me ask you this. Did not Scooter
- 3 run in this direction towards the front of the club?
- 4 A: Yes.
- 5 Q: Okay. He ran towards the front of the club or whatever. And that's where his
- 6 car was in front of the club and you ... you don't know that.
- 7 A: I don't know.
- 8 Q: You don't know that. But that's where he ran to, right?
- 9 A: Yes.
- 10 Q: Okay. And he ran and he ... he was back ... he was back in two seconds, was
- 11 he not?
- 12 A: Yes.
- 13 Q: Okay.
- 14 A: Wasn't even long.
- 15 Q: Wasn't even long at all. Ran ... ran ... you thought he was leaving.
- 16 A: Yes.
- 17 Q: And then he was back, right.
- 18 A: Yes.
- 19 Q: He was running back?
- 20 A: I don't know.
- 21 Q: Okay. But he was back quick, is that right?
- 22 A: Yes.
- 23 Q: And is it your testimony that you moved down towards Thorn, towards the
- 24 stop sign at Thorn.
- 25 A: Down the street.

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- 1 Q: You came back towards Thorn.
- 2 A: Back at the stop sign.
- 3 Q: Back at the stop sign at the corner of Gates and ...
- 4 A: The stop sign is actually on that street but you've got to turn off of Thorn but
- 5 we was down next to the stop sign.
- 6 Q: Okay.
- 7 A: By the other side of the road.
- 8 Q: But you were ... you moved down towards Thorn Avenue, towards the corner,
- 9 right?
- 10 A: Uh-huh (affirmative response).
- 11 Q: All right. And show the jury where you moved back to. I think it was back
- 12, down here where you moved to ...
- 13 A: I can't ...
- 14 Q: ... show them ...
- 15 A: I can't even see where I was.
- 16 Q: But show them where you went towards or whatever.
- 17 A: I went towards this way.
- 18 Q: All right. And let me ask you this, is it not true that your daughter was taking
- 19 Derial up this way on the street?
- 20 A: I can't ...
- 21 Q: Or across the street anyway, she was taking him away from the club, right?
- 22 A: Yes.
- 23 Q: They weren't coming towards you on ... down on Thorn, were they? They
- 24 were going up across Gates or up Gates, were they not?
- 25 A: I don't know.

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1 Q: Okay.

2 A: I was on the other end.

3 Q: Okay.

4 A: Talking to Leslie.

5 Q: Okay. All right. But you and Leslie were even further down this way, right,
6 and they were up here, is that right?

7 A: Uh-huh (affirmative response).

8 Q: Okay.

9 THE COURT: You need to say yes or no.

10 A: Yes.

11 Q: Is that right?

12 A: Yes.

13 Q: Okay. All right. And at some point obviously he and Scooter met around,
14 it's obvious?

15 A: Yes.

16 Q: All right. And your daughter was not able to hold Derial back?

17 A: At that time I was on the other end like I said.

18 Q: And there were a bunch of guys around. Okay. You didn't actually see much
19 of that.

20 A: No, I didn't.

21 Q: Okay. All right. If there's any ... well, anyway, you can take a seat. Do you
22 recall Scooter telling Derial that something to the effect that I don't mind you
23 arguing with your ... with your girlfriend here but you're not going to be
24 arguing ... this is my family here pointing to you? Do you recall him saying
25 anything like that?

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1 A: No.

2 Q: Saying that? You don't ... are you saying he didn't say that or you just don't
3 remember.

4 A: I don't recall it.

5 Q: He did say something to Derial ...

6 A: Yes, he did.

7 Q: ... and he came right up beside you, right?

8 A: Yes, he did.

9 Q: And did it have anything to do with defending you or whatever?

10 A: I don't know because he just appeared out of ... I don't know where he came
11 from.

12 Q: Okay. And you just don't recall what he said.

13 A: No.

14 Q: Okay. But he was right beside you?

15 A: When I was over there he was beside me.

16 Q: Okay. And Derial ... a lot of dirty names ...

17 A: Yes, sir.

18 Q: ... before?

19 A: He did.

20 Q: He had called you a MF.

21 A: And I called him an MF.

22 Q: All right. He called you some different kinds of B's, didn't he?

23 A: Yes.

24 Q: Okay. All right. And is it not true that you may be related to Mr. Rivers and
25 you may not?

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- 1 A: I'm not related to Mr. Rivers.
- 2 Q: But did he think you all were related? Did you all ever talk about that?
- 3 A: No. My husband is related to him.
- 4 Q: Oh, your husband is related.
- 5 A: Yes.
- 6 Q: So in that way it may be but your husband is related to Mr. Rivers.
- 7 A: Yes.
- 8 Q: Okay. So your husband in a way is ... is part of his family, right?
- 9 A: His mother is my husband's grandmother's mother. I don't know.
- 10 Q: That's close enough. But anyway, there's some connection there, right?
- 11 A: Yes.
- 12 Q: And did you ever get the idea when you were talking to him that that's one
- 13 reason why he ...
- 14 A: I know ...
- 15 Q: ... when Mr. Rivers would talk to you did he ever mention that you all were ...
- 16 when you ... did he ever mention that you all might be related?
- 17 A: I knew that my husband was related to him.
- 18 Q: Okay.
- 19 A: I knew that.
- 20 Q: Okay. And he would ... he would speak to you at various times. He would
- 21 come up to you and talk and say hi, wouldn't he?
- 22 A: Like in passing like when ...
- 23 Q: Yeah.
- 24 A: ... yeah.
- 25 Q: Yeah. Okay.

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1 A: He would ...

2 Q: He would always ...

3 A: ... I didn't see him all the time. He wasn't here all the time.

4 Q: Okay.

5 A: And he had dreds ...

6 Q: Now, what did he have? Did he have corn row is that what you call, his hair
7 was braided?

8 A: No. No. I think he had dreds. His hair was long.

9 Q: You think he did? Okay. Is it your testimony here you didn't see too much of
10 either altercation between them? When they started arguing did you sort of
11 even at first did you sort of move off down the road?

12 A: When they ... when they first started arguing I was standing ... me and Derial
13 was arguing. He appeared.

14 Q: Okay.

15 A: Scooter did.

16 Q: Okay.

17 A: That's when they had their fist up like they about to fight. At that time, we
18 had words back and forth. Derial was walking — Scooter ran off,...

19 Q: Okay.

20 A: ... Derial was going back next to the car. And that's when I walked off, back
21 down the other side of the road.

22 Q: Okay. All right.

23 MR. CARRAWAY: Court's indulgence. I don't have any
24 further questions of Ms. McBride.

25 THE COURT: Redirect?

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1 MS. BARR: One, if I may, Judge.

2 MS. MCBRIDE - REDIRECT EXAMINATION BY MS. BARR:

3 Q: Ms. McBride, you said at a point in time the Defendant wasn't always here in
4 South Carolina?

5 A: I didn't say that.

6 Q: Did you understand from his family that he was from Florida?

7 A: Yes.

8 MS. BARR: Okay. Judge, that's all the questions I have.

9 THE COURT: Thank you, you may step down.

10 MS. BARR: Judge, we'd ask that Ms. McBride be excused.

11 MR. CARRAWAY: Without objection.

12 THE COURT: You can be excused or stay whatever you want.

13 Mr. Sabb.

14 MR. SABB: Your Honor, if it please, we would call Dr. Erin
15 Presnell to the stand at this time.

16 (Dr. Presnell was sworn in)

17 DR. PRESNELL - DIRECT EXAMINATION BY MR. SABB:

18 Q: Dr. Presnell, good morning. How you doing?

19 A: Good morning.

20 Q: I trust that the trip from Charleston was uneventful.

21 A: It was uneventful, yes.

22 Q: Okay. And thank you for coming. Would you, please, ma'am, introduce
23 yourself to the ladies and gentlemen of the jury, please.

24 A: My name is Erica Presnell. I'm a forensic pathologist at the Medical
25 University of South Carolina.

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1 Q: For some reason, Dr. Presnell, our mic is not amplifying very well this week.
2 So I'm going to ask you would you please kind of keep your voice up. Tell us
3 what a forensic pathologist is and what that type doctor does.

4 A: Okay. Well, most people are getting more familiar with forensic pathology
5 after all those CSI shows and all. But just to kind of put it in a broader
6 perspective, forensic pathology is actually a subspecialty of the field of
7 pathology. Pathology is the study of disease and most pathologists actually
8 spend a lot of their time looking at tissues. For example, if you go to your
9 family doctor and get a skin biopsy or a breast biopsy or they do surgery, to
10 take out some diseased tissue that tissue goes to the pathologist and they look
11 at it, they look through the microscope and then they diagnose disease. Is it a
12 cancer? Is it not cancer? Is it infection or not infection? So that's pathology.
13 Forensic pathology is a subspecialty of that. And we don't just look at a piece
14 of tissue, we of course look at a whole human being, a deceased human
15 being. And our purpose is to find the cause of death. We're looking disease
16 processes but additionally we're also looking at traumas and interpreting those
17 traumas. When we do the whole procedure is an autopsy and ultimately come
18 up with the cause and manner of death.

19 Q: Now, we might digress just a moment. We want to know a little bit about
20 how you became a forensic pathologist. So if you would give us a little bit of
21 information about your education, training and background.

22 A: All right. Well, a pathologist are MD's. Medical doctors. So the process ...
23 that process is finish high school, go to college, earn your four year degree.
24 Mine was microbiology at Clemson and then I went to MUSC for medical
25 school which is four years. After medical school you're supposed to ... you

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1 pick your specialty whether it's pathology, surgery, family medicine,
2 pediatrics. I chose pathology which is a five year training program for
3 general pathology and then I did an additional year as a subspecialty training
4 in ... in forensic pathology.

5 Q: Okay. And are you licensed in the state of South Carolina?

6 A: Yes, I'm licensed and I'm also board certified in some national boards which
7 are the general pathology as well as forensic.

8 Q: And you work where?

9 A: At MUSC, Medical University in Charleston.

10 Q: You've worked there how long?

11 A: I went to medical school there in 1989 and I ... I haven't left. I was hired in
12 1999. Went there in 1989 and I was hired in 1999 as help.

13 Q: And in terms of you and of course I've had the occasion to meet you on
14 several occasions. Unfortunately we find ourselves in these type
15 circumstances most of the time when we encounter each other. But you tell
16 the jurors approximately how many times you've been qualified as an expert
17 witness in the area of forensic pathology.

18 A: Interesting asking that. I would estimate that would be 70, 80 times.

19 MR. SABB: If Your Honor please, we would tender Dr.
20 Presnell as an expert in the area of forensic pathology.

21 THE COURT: Any questions or objections, Mr. Carraway?

22 MR. CARRAWAY: None, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, this witness is
24 qualified as an expert in the field of forensic pathology. Normally a person that
25 testifies cannot give opinions. Normally witnesses are permitted to testify about only

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1 things that they saw, heard, smelled, touched, things of that nature. For example that
2 would be an eye witness. There is an exception in the rules of evidence for expert
3 witnesses. Someone who qualifies by reason of education, training or experience can
4 give opinions in that ... in that person's particular field of expertise. You are to weigh
5 the testimony of an expert witness just as you would the testimony of any other
6 witness. In other words, use your good common sense to judge it. You're not
7 obligated to accept the testimony of an expert just because it comes from an expert.
8 Again, use your good common sense of judgement in that regard and evaluate the
9 credibility of this witness just as you would that of any other witness. All right, Mr.
10 Sabb.

11 MR. SABB: Thank you, Your Honor.

12 Q: Dr. Presnell, did you have occasion to come in contact with the remains of a
13 young man by the name of Derial McCrea?

14 A: Yes, we performed an autopsy on him on June 4th, 2008.

15 Q: June the 4th of 2008. Can you tell us as best you know what the history of
16 Derial was prior to your encounter with him?

17 A: Well, we ... South Carolina is a coroner state. Coroner ... a coroner of this
18 county, Harrison McKnight, Mr. Harrison McKnight, informed us of the
19 death of Derial McCrea and the circumstances surrounding what had
20 happened and led up to that death. Basically that he had been in an
21 altercation outside a parking lot where he was shot. At that time that he had
22 been taken to the hospital and subsequently was transferred to MUSC where
23 they did a number of medical procedures and surgical procedures to try to
24 save him and he ... he lived for a while but ultimately succumbed to death on
25 June 3rd, 2008.

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1 Q: And what is the date that you understand that Derial was shot?

2 A: On May 15th.

3 Q: And ...

4 A: I'm sorry, May 17th.

5 Q: May 17th. Yes, ma'am. And so from May 17th to June what?

6 A: June 3rd.

7 Q: June 3rd, he survived and had been hospitalized where they attempted to save
8 his life?

9 A: Yes.

10 Q: Can you tell us based upon your area of expertise what medical
11 determinations you made as a result of the examination that you performed on
12 Derial?

13 A: Yes. Well, as part of our ... this sort of examination also involved looking at
14 the medical records. So there are a number of procedures that have been
15 done so we had to take that in context with what we saw on autopsy. And I'll
16 probably keep backtracking here as I'm trying to explain and demonstrate so
17 you can understand exactly where this gunshot wound was located. But when
18 we saw him at autopsy he had a gunshot wound to the right side of his face
19 and it was sloping down beside the right eye. The bullet actually tracked
20 going a little bit upwards and a little bit to the right. The bullet actually
21 tracked right along in this direction. Now, understand with your ... your head
22 you have your facial bones up in front and your skull in the back here. So the
23 right, up on the top here. So your skull is around in this direction and your
24 face is here. So the bullet tracks along the side of his ... of his head right here
25 and basically disrupts all of the, fractures all of the skull bones at the base of

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1 his skull on the right side. All of that fracturing disruption of the bones along
2 the base of the skull caused damage and disruption and brain damage to the
3 bottom of the right side of his head. The right side of his brain. Whenever
4 any type of body part is damaged you get inflammatory response and you can
5 see on yourself like you get a bruise or get a cut you get a lot of fluid that, a
6 lot of inflammatory so you try to clean up the damage in that tissue as well.
7 Well, the same thing happens to the brain. The brain will swell in ... in
8 reaction to the damage. The only problem with that is your brain is situated
9 in the back of your skull and the skull doesn't have any give. So if your brain
10 swells too much it doesn't have anywhere to go and it can cause more damage
11 to the brain. It squishes ... squishes the brain cells, it also can strip the blood
12 vessels and the oxygen can't get to it and causes more brain damage. So in an
13 attempt to alleviate that a surgeon at MUSC went in and removed a portion of
14 his skull here to try to give the brain some area, some breathing space. In
15 addition to that they saw a lot of damage on the bottom of the ... the right side
16 of the brain, remember right along the path of the gunshot wound so they
17 actually had to take away some of that brain tissue at the bottom of the base
18 of the brain. They did that and went back into recovery, had what they also
19 call catheters which are little sheaths that go ... run inside the head to outside
20 the head to try to help drain more fluid. Remember it's still swelling. And so
21 he had a number of complications associated with the brain swelling. But on
22 the 25th of May he had an abrupt rise in what they call intra cranial pressure.
23 You know how they --- that you have high blood pressure. This is pressure
24 inside your head. So they took him back to surgery to try to see what was
25 going ... going wrong. They replaced one of the catheters that wasn't working

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1 very well. But at that time because of that massive increase in pressure he ...
2 basically his brain became more destroyed. After that he continued to be on
3 life support. He didn't show any signs of recovery and ultimately they
4 disconnected his life support and he died right after that. I mean, after that ...
5 again, at autopsy what we ... we see the remains of what was done and we see
6 the fractures all along the base of the skull. See the healing gunshot wound,
7 evidence of the gunshot wound. See where they resected the tissue from the
8 brain. We see hemorrhages associated with that, a lot of brain swelling. Also
9 evidence of what we call herniation which is when the brain swells so much it
10 actually for lack of a better term squishes the brain stem. The brain stem is
11 what connects the brain to your spinal cord. It sends out all the signals to the
12 rest of your body on how to function, how to breathe, how your heart beats, et
13 cetera. When it squished the brain stem it caused hemorrhages in that. We
14 saw all of these things as a result of the massive what we call cerebral edema
15 or brain swelling from that damage that was caused by the gunshot wound.
16 Ultimately with those findings we concluded that the cause of death was due
17 to the single gunshot wound to the head.

18 Q: And Dr. Presnell, at the time where he was placed upon life support, there
19 was significant brain damage at that time. That was on ... was that on May
20 the 25th?

21 A: I don't know when he was initially placed on life support but I know that ...

22 Q: Okay.

23 A: ... on the 25th they returned him to the operating suit for the additional ... if the
24 interventions had relieved the increasing ... continuing ... continuing increase
25 in pressure on the brain and had been on life support from that.

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1 Q: Okay. And while he was on life support there was really no signs of a
2 recovery.

3 A: They didn't find any ... any encouraging signs of recovery. He had massive
4 brain damage at that point.

5 Q: And there is a term to most of us lay folks that we just classify as being brain
6 dead. Can you give us your best medical opinion with regard to whether or
7 not he was essentially brain dead at that time?

8 A: Well, brain death is a clinical criteria. Something that you assess when
9 somebody is still ... their body is still working through life support. You do
10 different tests. Like for instance you turn off the respirator and see if they
11 continue breathing by themselves. You test the brain stem reflexes. You do a
12 number of clinical things to assess brain death. I don't know if they
13 necessarily did that with him but when they ... what they did was they turned
14 off the life support and because he had such massive brain damage and
15 ultimately it is brain death. Because he had such massive brain damage it
16 didn't send any other signals out to the rest of the body to function and ... and
17 he passed.

18 Q: Obviously Dr. Presnell, when it comes to families and these kinds of
19 decisions most families are tied in with their heart and is it not true that a part
20 of what you all do as doctors is help families make an informed decision as to
21 what the best course of action is at that time.

22 A: Right.

23 Q: And to your best understanding this family was following the advice of the
24 doctors that were working on him.

25 A: Yes, they did.

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1 Q: And immediately after life support was removed Derial expired.

2 A: I'm not sure the timing of it was the same day.

3 Q: Yes, ma'am. And you've told us the cause of death and I need to ask the
4 question a different way because of the legal forum that we're in and so if
5 you'll allow me, let me pose this question to you. Do you have an opinion to
6 a reasonable degree of forensic pathological certainty as to what the cause of
7 death of Derial McCrea is?

8 A: The cause of death was massive brain damage due to a gunshot wound to the
9 head.

10 Q: But for the gunshot wound, he'd be alive.

11 A: Unless there was some intervening factor, yes. The gunshot wound
12 precipitated all of this ... all of the damage to the head ...

13 Q: Okay.

14 A: ... and ultimately his death.

15 Q: Thank you, ma'am. Now, one more series of questions and then I'm finished
16 and Mr. Carraway can ask you any questions he chooses to. Occasionally Dr.
17 Presnell, we have these kinds of cases you're in a position to help us in
18 determining the distance between the assailant and the victim. In this case
19 you're not able to be of any assistance to us or are you?

20 A: Well, one of the things that ... that we do in forensics is also try to interpret
21 injuries and with gunshot wounds we try to help with an interpretation of how
22 far away was the gun from the victim. And to understand that think about
23 what comes off the end of a gun. Not only does a bullet come out the end of
24 the gun but also some material from firing the weapon as well as and this is
25 important in this case little gun powder particles. Gun powder particles are

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1 what's in the bullet and the casing that ignites to propel the bullet down the
2 chamber or down the muzzle of the gun. So you have a bullet coming out,
3 material coming out and little gun powder particles. If a gun is right up
4 against somebody's face, contacting it, it would be what we call a contact
5 gunshot wound. We could see soot surrounding that ... that gunshot wound,
6 entrance gunshot wound. And we call that a contact wound. Out of the
7 barrel comes soot away from the target not only does the soot possibly get
8 there but also the little gun powder particles will strike the skin and cause
9 little scratches, little abrasions, little round looking abrasions, what we call
10 stippling and that signifies a close range gunshot wound. As the gun gets
11 further away neither soot nor that ... those gun powder particles will reach the
12 skin. There is stippling and little concave marks around it and that's what we
13 call a distant gunshot wound. So it's those three broad categories. In this
14 case, remember he had lived for several weeks before the incident and ... and
15 the death so any soot or any other injuries may have had the opportunity to
16 heal. We did not see soot or ... or they might have been wiped away. Soot is
17 easy to wipe away. We did not see the soot but what we did see around the
18 wound were these little tiny light colored dots like healed ... healed little ---
19 because it's healed I can't confirm for sure that this is a remnant of stippling.
20 It has the appearance and the location of what it would appear like if that ... if
21 I --- around the entrance. It suggested a close range gunshot wound but again
22 it had healed up and so I can't be sure because of the length of time between
23 the incident and his death. But it does suggest a close range gunshot wound.
24 Q: All right. One more area of inquiry and then I'm finished. The other thing
25 that you're able to do to help us out some times is bullet trajectory. You

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1 demonstrated to the jurors earlier the course that the bullet traveled, correct?

2 A: Yes.

3 Q: And is the course of the traveling of the bullet consistent with an individual,
4 i.e. the assailant, person doing the shooting, being in front of the ... the victim
5 who was Derial McCrea in this case?

6 A: Yes. It could have been ... it suggests that --- let me also just say when
7 trajectory it's going a little bit up and little bit to the right and back. That's as
8 looking at the person like if he was standing straight in front of you looking
9 straight on. And then you can kind of put your finger in the direction of the
10 bullet but if you move the person's head like in our case the victim's head,
11 back in any direction that they move you can see ... you keep that trajectory
12 unstable. So that if he was looking up then the bullet may have been coming
13 from upward. If he was looking down, the bullet may have been coming
14 from downward. If he's looking straight at somebody, yes, then the bullet
15 may have come straight ... coming straight in front of him.

16 Q: Yes, ma'am. So that's why I asked the question the way I did. And so let me
17 try it again the. I appreciate the explanation. But is the entrance consistent
18 with an individual, i.e., the assailant, being in front of the victim?

19 A: If the decedent was looking up or looking towards that person.

20 Q: Yes, ma'am. That's ... that's my question. You've been very helpful and we
21 appreciate it. Give me one quick second to confer with co-counsel and then
22 ... one more thing if you would, please, ma'am. Help us out on the physical
23 description of Derial McCrea in terms of height and weight.

24 A: He weighed about 150 pounds or 148 and he was 71 inches which is 5'11".
25 Five feet 11 inches.

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1 Q: 5'11", 148 pounds.

2 A: Yes.

3 Q: Thank you.

4 MR. SABB: No further questions, Your Honor.

5 THE COURT: Mr. Carraway?

6 MR. CARRAWAY: I don't have any questions.

7 THE COURT: Thank you, ma'am, you can step down.

8 MR. SABB: And Judge, we would ask that Dr. Presnell be
9 excused to return to Charleston.

10 THE COURT: All right. Any objection, Mr. Carraway?

11 MR. CARRAWAY: Without objection.

12 THE COURT: Thank you, Doctor, you can leave the stand.
13 Everybody on the jury okay? Anybody need to take a break? All right, Mr. Sabb,
14 Ms. Barr?

15 MS. BARR: Your Honor, the State rests at this time.

16 THE COURT: All right. All right, ladies and gentlemen,
17 under the rules that govern the procedure of trial it is necessary for me to take a break
18 at this time to take up some issues with the attorneys. We're going to do that now for
19 the next few minutes. If there is something that you need that's not in the jury room
20 just let Mr. Brown know and we'll have you back out hopefully momentarily. But
21 this break will likely take between 15 to 20 minutes. Again, we'll have you back out
22 as soon as possible. You may not discuss the case. It would be very, very premature
23 for you to do so at this time. Thank you very much.

24 (Jury out).

25 THE COURT: All right, Mr. Carraway, does the Defendant

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1 have any motions at this point?

2 MR. CARRAWAY: We would make the motion at this time
3 for insufficiency of the evidence.

4 THE COURT: The count of murder? All right. All right, that
5 motion is respectfully denied. Anything else? All right. Of course we're ... it's
6 10:45. Ms. Barr had indicated before we started this morning she may be calling
7 another witness but that witness obviously is not going to be testifying in the
8 prosecution's case in chief. Have you had a chance to discuss with your client
9 whether or not he will testify in this case?

10 MR. CARRAWAY: I haven't discussed that with him.

11 THE COURT: Do you need some additional time?

12 MR. CARRAWAY: We ... he is not ... he is not planning to
13 testify at this point.

14 THE COURT: All right. Here's ... here's the situation that we
15 left yesterday. The Defendant has a criminal record consisting of and Ms. Barr if you
16 would make sure that Mr. Carraway has this information. Make sure that you follow
17 along. Possession of cocaine conviction in 2002. Attempting to bribe a police
18 officer 2002. Vehicular theft in Florida in 1998 with an unknown date of his release
19 from confinement if any. Grand larceny in the 3rd degree in 2006 and possession of
20 marijuana some time in that general neighborhood as well. Does that summarize it?

21 MS. BARR: It does, Your Honor.

22 THE COURT: All right. Of course Rule 609 governs the
23 admissibility of prior convictions for impeaching purposes and as I indicated
24 yesterday possession of cocaine carries term of imprisonment greater than one year
25 but I have to make a finding that the probative value outweighs the prejudicial effect

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1 to the accused. I'm not inclined to allow in that particular conviction based on the
2 five factors that I reviewed yesterday, impeachment value of the crime, in other
3 words, if it doesn't connote any dishonesty and though some may say that committing
4 any crime necessarily involves crime, that's not the case law that's relevant.
5 Possession of a drug under our laws is not of dishonesty. I was taking into account
6 the point in time of the prior conviction, 2002, and the Defendant's subsequent
7 history. He did have attempting to bribe a police officer at the same time of the
8 cocaine.

9 MS. BARR: It was, Your Honor.

10 THE COURT: All right. Then the grand larceny and
11 marijuana and they were in 2006. In my view, the Defendant's subsequent history at
12 the time of that cocaine possession would cut in favor of not permitting that. The
13 third one the similarity between the possession of cocaine and the charged crime
14 because they're totally different cut in favor of allowing them but that's just one thing
15 for me to make note of. The importance of the Defendant's testimony and fourth the
16 centrality and credibility issues and I've weighed all of those things. I don't think the
17 cocaine can come in. Ms. Barr, do you have any information of the vehicle theft
18 charge in Florida? When he ... if he was confined and when he was released.

19 MS. BARR: Your Honor, he was sentenced in 2006.

20 THE COURT: No, I was talking about the vehicle theft from
21 April 3, 1998.

22 MS. BARR: Oh, I'm sorry. Judge, no, this indicates that his
23 plea of guilty but it does not indicate what his sentence was. Disposition date was
24 6/10/1998.

25 THE COURT: All right. That more than likely is a crime of

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1 dishonesty in my view ...

2 MS. BARR: Yes, sir.

3 THE COURT: ... vehicle theft. So I wouldn't have to do any
4 balancing test there on the probative value and prejudicial effect. However, it would
5 be considered remote, greater than ten years ago and I would therefore have to make
6 a finding that the probative value substantially outweighs the prejudicial effect and
7 I'm not prepared to make that finding on that point. The grand larceny, 3rd degree,
8 Mr. Carraway, do you have any legal arguments other than you just don't think so as
9 far as whether the grand larceny from 2006 would come in as a crime of dishonesty
10 for which no balancing test would be important?

11 MR. CARRAWAY: I think my source for that is I don't think
12 so.

13 THE COURT: All right. All right, in South Carolina armed
14 robbery is a crime of dishonesty and so is shoplifting. In my view of the grand
15 larceny is a crime of dishonesty so in that sense I wouldn't employ a balancing test
16 since it comes in to impeach his credibility. The jury will be ... would be told that.
17 The only way they could use that prior conviction would be to impact ... determine
18 whether or not it impacted their view of his credibility. They cannot use it to
19 determine whether or not he's guilty or not just because he may have committed a
20 crime. Even if grand larceny is not a crime of dishonesty it does carry a term of
21 imprisonment of greater than one year and under the five part balancing test I think
22 it's admissible. Grand larceny is not quote unquote crime of dishonesty or false
23 statement. It is one that has impeachment value because of the nature of the crime.
24 The point in time of that conviction and his subsequent history which is only two
25 years that cuts in favor of its admissibility and with that balancing test there is no

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1 similarity between that crime and the crime charged. That also cuts in favor of its
2 admissibility since they are so different. The centrality of the credibility issue I
3 would assume that if the witness testifies he will provide testimony that will tend to
4 bolster at least in the Defense's view the issues of defense of others and self-defense
5 in the overall circumstances of malice aforethought and so forth so I think his
6 credibility is certainly an issue. I think ... I think that cuts in favor of allowing —
7 The importance of the Defendant's testimony. I leave that up to Mr. Carraway and
8 the Defendant's wisdom. It is important that the Defendant testify and in the sense
9 that one might argue that me allowing that conviction into evidence would cause him
10 to choose not to testify is just one of those five factors. Taking all of those factors
11 into account, the importance of his testimony in the sense that my ruling would cause
12 him to not testify would cause me to conclude that all and all the probative value is
13 outweighed or that the probative value does outweigh the prejudicial impact on the
14 accused. So I'm going to allow the grand larceny charge in under the scenario. Of
15 course the possession of marijuana I'm not going to let in. So what we have is my
16 ruling that that one comes in. The attempting to bribe a police officer. What's the
17 State's position on whether or not that is a crime of dishonesty?

18 MS. BARR: Judge, we take the position that it is. If you're
19 attempting to bribe a law enforcement officer either out of the charge or getting more
20 favorable disposition on the charge you are in fact trying to get something for which
21 you're not otherwise not entitled to receive. So we take the position that it involves
22 dishonesty.

23 THE COURT: Do you happen to have on the rap sheet what
24 code section that was or ...

25 MS. BARR: Just ...

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1 THE COURT: ... I've got a code section in the book 16-9-210
2 giving or offering bribes to an officer. Those are executive, legislative or judicial
3 officers. Not necessarily restricted to congressmen or governors or judges. It
4 probably does extend to law enforcement officers but there is common law bribery,
5 too. Go ahead.

6 MS. BARR: Judge, it appears to be a situation where it might
7 have filed under 16-9-210, is that what Your Honor referenced?

8 THE COURT: Yes, ma'am.

9 MS. BARR: Okay. Judge, is that a ... I will just double check
10 but it appears that ...

11 THE COURT: Well, if you find and I assume that the
12 indictment indicates what it says whoever corruptly is offered or promises any
13 executive, legislature or judicial officer after report any gift or gratuity in the attempt
14 to influence his action or judgement or decision in any matter which may be brought
15 before him in his official capacity ... I'm paraphrasing there ... shall be punished by a
16 term of imprisonment not greater than five years or fined \$30,000.00.

17 MR. SABB: Ms. Barr and I just wanted to also to share with the Court so that
18 you will have it as a part of your analysis the rap sheets show in terms of the
19 conviction that there was a forfeiture. I know that sometimes that distinction that the
20 courts use in their analysis and I wanted to bring that to the Court's attention.

21 THE COURT: The property?

22 MR. SABB: Judge, it just says forfeit.

23 THE COURT: Well, that ... the forfeiture, that was the same
24 time as the possession of cocaine.

25 MR. SABB: Yes, sir. Judge, I don't know the answer to, it's

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1 just there and so I don't know whether you had that information or not so I wanted
2 you to have the information.

3 THE COURT: I don't have it. Do you have the indictment
4 from that charge?

5 MS. BARR: Judge, it appears and just to be candid with you it
6 appears that he was ... a situation where he may have received a ticket based on how
7 the warrant number reads because the warrant is usually a letter followed by
8 numbers. A ticket, uniform traffic citations are usually numbers followed by letters
9 so this charge is under 16-9-210 but classifies warrant number 63653C as in cat, A
10 alpha.

11 THE COURT: It's a traffic ticket.

12 MS. BARR: Right. Which suggests that either maybe he
13 posted a fine or something ...

14 MR. SABB: Forfeited the fine.

15 MS. BARR: ... forfeited the fine.

16 THE COURT: All right. Well, I think the law only allows me
17 to ... it only allows me to look at the four corners of the indictment and not ... not any
18 circumstances ... specific facts and circumstances behind the charge. He entered a
19 plea of guilty to 16-9-210 or whatever the case was it was a conviction.

20 MS. BARR: It was a conviction, yes, Your Honor.

21 THE COURT: All right. Mr. Carraway, do you have any ...
22 any input you'd like to give us on whether or not that's a crime of dishonesty?

23 MR. CARRAWAY: No, Your Honor.

24 THE COURT: All right. In my view attempting to bribe an
25 officer is a crime of dishonesty by the very nature of bribery in the statute reflects

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1 that whoever corrupting is offer or promise, so I think the word corrupting is
2 dishonesty. So in my view that is a crime of dishonesty. If I employ the five factor
3 test again if it's not. It is a crime with a period of imprisonment that is greater than
4 one year. And again bear with me because the decisions we have require me to go
5 through these five parts individually. The impeachment value of the crime
6 committed is favor of allowing, if it didn't arrive at being a crime of dishonesty and
7 does have striking impeachment value because of the nature of the crime. The point
8 in time of that conviction, 2002, and the history is such that it shows some
9 continually behavior. It's not so long before the 2008 event for which he is charged
10 that it shouldn't come into evidence. Six years is not ... that would not bar the
11 admissibility. Similarity between that crime and the crime charged strikingly
12 different so that would ... it would not unnecessarily confuse or influence the jury.
13 The cases would say for example that if this were an armed robbery trial and you
14 have a prior armed robbery conviction the similarity would be such it would cause
15 me to ... So I think the two crimes are certainly different enough that cut in favor of
16 the prior case coming in. Again, the centrality and credibility issue in this case is
17 such that the jury is going to have to weigh who to believe and what to believe and
18 that goes to the Defendant's testimony as well. I think the jury should hear the prior
19 crimes and prior convictions that would tend to impact the credibility in accordance
20 that the Defendant's testimony is such that again, the Defendant and his lawyer may
21 conclude that he has to take the witness stand to effectively make an impression on
22 the jury even though he doesn't have the burden of proof. Having said that however,
23 I think that all of the factors as a whole lead me to allow that particular conviction in.
24 I'll continue to weigh that as we go forward. Mr. Carraway, are you going to need ...
25 I trust you'll need some additional time to talk to your client about whether or not he's

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1 going to testify.

2 MR. CARRAWAY: And I also need some time to put together
3 our witnesses.

4 THE COURT: Yes, sir. All right. What is ... what do you
5 think would be a reasonable time for us to be back? It's 11:00 o'clock now. How
6 much time do you need to gather those witnesses and talk to your client?

7 MR. CARRAWAY: I have two witnesses that aren't even here.

8 THE COURT: All right.

9 MR. CARRAWAY: I told his mother to go find those
10 witnesses.

11 THE COURT: All right. What time do you want to be back?
12 Start with two hours? Talking about 1:30?

13 MR. CARRAWAY: 1:30 is fine.

14 THE COURT: That suit you, Ms. Barr?

15 MS. BARR: I'm sorry, Your Honor?

16 THE COURT: 1:30 suit you for him to gather his witnesses?

17 MS. BARR: Yes, Your Honor.

18 THE COURT: All right. All right. Bring in the jury. And
19 Mr. Carraway, do you think all those witnesses will be concluded by the end of the
20 day?

21 MR. CARRAWAY: Yes, sir.

22 (Jury in)

23 THE COURT: All right, ladies and gentlemen. Thank you for
24 your patience. Again, the rules that we operate under, certainly the rules there are
25 procedural requirements that we must follow. In this particular case obviously the

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1 State has rested its case in chief and in many instances at that point in time on any
2 given day such as today it's not known to the prosecutor or to the Defense lawyer.
3 Some of the witnesses you may have testify today are not credible and the Defense
4 will be given some time to determine the availability of those ... the witnesses are
5 available but not here and I will tell you this the Defendant is not obligated to present
6 any evidence but just in case some choose to do that, we have to give the Defendant
7 time to gather those folks and make all of that determination. We're going to break
8 early for lunch. We're going to start back at 1:30. That's two and a half hours.
9 That's an appreciable amount of time for you folks to do whatever you might need to
10 do and also to get some lunch. But you should be back at 1:30. We'll start at that
11 time. We will resume the trial at that time. Of course you may not discuss the case
12 with anybody. You should not begin to form any conclusions in your mind about
13 what conclusions you will reach. That will come later in the trial. All right. You
14 may leave at this time. I'll see you back at 1:30. That's two and a half hours.

15 (Jury out).

16 THE COURT: All right, Mr. Carraway, let me bring your
17 client up and let me go over comments about the specific questions I'll be asking him
18 later today. Come on up, please, sir. All right. Raise your right hand, please, sir. Do
19 you swear to tell the truth, the whole truth and nothing but the truth so help you God?

20 MR. RIVERS: Yes, sir.

21 THE COURT: All right. At this point, sir, I'm not going to be
22 discussing anything pertaining to the facts of this case. Of course, you do have the
23 right to remain silent. What I'm going to do right now is talk to you about certain
24 rights that you have under the Constitution. I'm not going to go into that in detail but
25 I'm going to give you an idea of the specific questions I'm going to be asking you

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1 later. Under the 5th Amendment of the United States Constitution no person in any
2 criminal case may be compelled ... that means forced ... to be a witness against
3 himself or herself. In simple terms that means you have the right to remain silent.
4 And that you cannot be forced to testify in this case. Do you understand that?

5 MR. RIVERS: Yes, Your Honor.

6 THE COURT: That means neither Mr. Carraway nor me nor
7 the prosecutor nor anyone else can make you take that witness stand. Do you
8 understand that?

9 MR. RIVERS: Yes, sir.

10 THE COURT: All right. You do have to understand however
11 that if you give up the right to remain silent and take the witness stand that decision
12 on your part has to be made freely and voluntarily with full knowledge of those rights
13 that I just explained to you. Do you understand that?

14 MR. RIVERS: Yes, sir.

15 THE COURT: There are certain issues that you will be talking
16 to your lawyer about and perhaps your mother and whoever else you confide in. I
17 want to make sure that you understand that that decision has to be yours. It can't be
18 made under any duress or coercion. When we come back after lunch I'm going to be
19 asking you specific questions and I do want to make sure that you also understand
20 that if you do decide to testify you will be subject to the same rules that govern
21 examination and cross examination of any other witnesses who testifies. There are
22 some differences about the fact that you are accused so far as the rules on questions
23 about prior convictions. But in a general sense you are subject to the same rules that
24 govern the questions of all other witnesses. Do you understand that?

25 MR. RIVERS: Yes, sir.

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1 THE COURT: So make sure you ask all the questions of your
2 lawyer that you need to ask during this extended break. When we come back from
3 lunch I will be asking you the same questions and probably some more specific
4 questions. I just wanted to prepare for that. All right?

5 MR. RIVERS: Yes, sir.

6 THE COURT: All right. Thank you, sir. All right, Mr.
7 Carraway, Ms. Barr, Mr. Sabb, we'll break until let's just say the lawyers could be
8 back at ten after 1:00. Is that suitable?

9 MR. CARRAWAY: Yes, Your Honor.

10 THE COURT: All right. And just in case we need the court
11 reporter the court reporter will be here then. That's two hours. Okay?

12 MR. SABB: Judge, in terms of ... of when you want to sort of
13 give us a heads up on your request for charges do you want to try to do that after the
14 Defense has rested the case or ...

15 THE COURT: Well, that we can probably make use of this
16 long lunch break if you want to start putting those in order. I'm not going to give a
17 flight charge.

18 MR. SABB: Okay.

19 THE COURT: I think the case law is very clear on that. You
20 can argue it but I'm not going to charge it.

21 MR. SABB: We understand.

22 THE COURT: I'll have available considering in my mind the
23 murder charge, the lesser included, voluntary manslaughter, possession of a weapon
24 during a violent crime and I haven't made a decision yet because we haven't heard all
25 of the evidence yet on self defense and defense of others.

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1 MR. SABB: Yes, sir.

2 THE COURT: So those ... I'll have those and it will be a
3 situation where I have all of them in my stack and I'll take out the ones that I don't
4 think apply.

5 MR. SABB: All right.

6 THE COURT: Is there any one ... any additional charges that I
7 didn't just reference that you think are appropriate? I'll need to know what those are.

8 MR. SABB: Judge, if you do the manslaughter charge do you
9 typically using Irvin on cooling off?

10 THE COURT: I typically don't use Irvin.

11 MR. SABB: Okay.

12 THE COURT: But I ... I don't ... that's not to say I don't use the
13 cooling off ...

14 MR. SABB: I got you.

15 THE COURT: So what we could do, Mr. Carraway, if it suits
16 you we can take a few minutes in chambers and go over some very specific points on
17 that so that and we'll be able to discuss it.

18 MR. SABB: All right.

19 THE COURT: All right?

20 MR. SABB: Yes.

21 THE COURT: Okay.

22 MR. CARRAWAY: Let me make one thing for sure here. I
23 don't think our case will take very long this afternoon, so if we run into arguing this
24 afternoon and the jury getting the case at 4:30 or 5:00 or whatever.

25 THE COURT: Which I don't want to do.

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1 MR. CARRAWAY: But that's just a thought.

2 THE COURT: Well, if we start at 1:30 and let's assume that
3 you have four witnesses. That would be a total of 30 minutes, they could be a total
4 of an hour and a half. I don't want to be in a situation where we argue and charge and
5 make the lawyers feel rushed and the jury psychologically thinking it's 5:00 o'clock,
6 we've got this case. I want to make a decision and leave. I know time is ... the time
7 of day is irrelevant but if we finish by 2:00, we're going to go ahead and do it all. If
8 we finish by 3:00, I'm going to have to make that call. If we finish much past 3:30,
9 we're not going to do that today. Some ... a lot of people disagree with me on that
10 but peoples watches don't make any difference in the operation of the world but it
11 does some times when ...

12 MR. CARRAWAY: 5:00 o'clock.

13 THE COURT: Yes. So I can't answer that question
14 intelligently. If we were going to start back at 3:30 I could say that it would be likely
15 that we wouldn't argue, but we're starting at 1:30. And none of these jurors have
16 indicated to me they have any day care issues and that's a consideration they might
17 get to. There's no reason to rush and get it all in today and make the jury feel rushed.
18 How long are you going to need to argue, Ms. Barr or Mr. Sabb?

19 MS. BARR: Mr. Sabb will argue on the law and I will do the
20 last argument and I'll probably take ten, fifteen minutes.

21 MR. SABB: I'll probably take ten to 15 minutes.

22 THE COURT: I was going to say we'll probably just say 45
23 total. Mr. Carraway? One thing I considered to be not something that I have to
24 explain but some judges do it, if he does submit evidence you lose the last argument.
25 The Defendant hasn't introduced any Exhibits, have they?

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1 MR. SABB: Not at this point, Your Honor.

2 THE COURT: So if he does introduce evidence, you would
3 probably need I assume 45 minutes?

4 MR. CARRAWAY: Then you've got a half hour of charges.

5 THE COURT: Another half hour of charges. We're talking
6 about two hours there so that's all we have to play with. If we have to have a charge
7 conference on the record, too. That may all solve itself and maybe we will operate
8 like the courts in California where they start at 11:00 and finish 2:00 every day.
9 Let's talk in the back just a few minutes.

10 MR. SABB: All right.

11 THE COURT: About the charges. Do you have any witnesses
12 here?

13 (Off the Record)

14 THE COURT: All right. Can the Defendant come back up? All right.
15 Obviously, Mr. Rivers, we've had an opportunity to speak briefly about certain of
16 your rights that are pertinent to this stage of the proceedings. We have now reached
17 the stage of the trial where you present your defense. And you do have the right of
18 course as I told you before the break to claim the protection granted to you by the 5th
19 Amendment. Specifically that constitutional provision states that no person shall be
20 compelled in any criminal case to be a witness against himself. That means you
21 can't be required to testify but you do have the right to testify. No one can make you
22 testify. The right that you enjoy under the Fifth Amendment is a personal right and
23 no one can give that right up except for you. As I told you before we broke if you
24 decide to testify you will be subject to the same rules that govern the examination
25 and cross examination of other witnesses. You will be examined and cross examined

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1 on any relevant issues in the case, the rules of evidence, and in addition if you have
2 any convictions that are for crimes of dishonesty or false statements those
3 convictions can be introduced to impeach or impact your credibility should they
4 choose to you a conviction for that purpose. I will tell the jury they only use a
5 conviction only for the purpose of assessing your believability. In addition, if you
6 have been convicted of any crimes that are punishable by imprisonment for more
7 than one year if I determine the probative value of admitting that evidence outweighs
8 its prejudicial effect that crime will be — If you decide to testify that decision on
9 your part has to be made freely, voluntarily, and intelligently with full knowledge of
10 the protection granted to you under the 5th Amendment. If you decide not to testify I
11 will tell the jury that they can give the fact that you did not testify no consideration at
12 all. They can't use it against you. I will tell the jury during the charge that the reason
13 for that is that you or any other criminal defendant has a right not to testify and it is
14 left entirely up to you to decide whether or not you want to testify or not. And you
15 have the opportunity ... have you had the opportunity to talk to your lawyer about it?

16 MR. RIVERS: Yes, sir.

17 THE COURT: And your mother or anyone else you wanted to talk to
18 about it?

19 MR. RIVERS: Yes, sir.

20 THE COURT: Have you made up your mind as to whether or not you
21 will testify?

22 MR. RIVERS: Yes, sir.

23 THE COURT: What was your decision?

24 MR. RIVERS: I will not testify.

25 THE COURT: Sir?

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1 MR. RIVERS: I will not testify.

2 THE COURT: You will not testify?

3 MR. RIVERS: No, sir.

4 THE COURT: All right. Do you want to talk to your lawyer any more
5 about that particular point?

6 MR. RIVERS: No, sir.

7 THE COURT: Now, if the two witnesses testify, I understand you
8 may call some witnesses. If you change your mind after they testify simply discuss
9 that with your lawyer and he'll make that known to me. I want to make sure, so what
10 I'll do, Mr. Carraway, is after those two testify Mr. Carraway is have you put on the
11 record whether or not he has changed his mind. Now, you're making that decision
12 based on your own free will?

13 MR. RIVERS: Yes, sir.

14 THE COURT: Has anybody forced you to make that particular
15 decision?

16 MR. RIVERS: No, sir.

17 THE COURT: Any other questions, Mr. Carraway?

18 MR. CARRAWAY: No further questions, Your Honor.

19 THE COURT: All right. Ms. Barr, do you think I covered it
20 adequately?

21 MS. BARR: I believe you have, Your Honor.

22 THE COURT: All right. Thank you, sir. Have a seat. My law clerk
23 has a medical appointment today and she is emailing to me a jury charge that I asked
24 her to e-mail to me and I don't know what to do with it as far as getting it printed off.
25 Do you all have any suggestions where I can e-mail it and get it printed? The verdict

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1 form will say basically the following: We, the jury, unanimously find the Defendant
2 guilty or not guilty of Murder. If the verdict is not guilty then you must address the
3 lesser included offense of voluntary manslaughter and then unanimously find the
4 Defendant not guilty or guilty of that. If they find him not guilty of both they would
5 not even get to the question of possession of a weapon. So they'll be charged on both
6 of those offenses. Thirdly, would be guilty or not guilty of possession of a weapon
7 during a violent crime. Any objection to that?

8 MS. BARR: No, sir.

9 THE COURT: Mr. Carraway? Any objection to that ...

10 MR. CARRAWAY: Well, of course, after all the evidence is in there
11 would be a discussion at that point on the evidence to support both of those charges.
12 There may not be evidence.

13 THE COURT: I'm talking ... I'm just talking about the verdict form. If
14 ... if I ... if I include the voluntary manslaughter charge.

15 MR. CARRAWAY: Yes, sir.

16 THE COURT: Murder, not guilty or guilty. If not guilty, then
17 voluntary manslaughter, not guilty or guilty. If found guilty of either one, they have
18 to go to possession of a weapon during a violent crime. Do you agree with that?

19 MR. CARRAWAY: I agree.

20 THE COURT: Is the e-mail at the Solicitor's Office?

21 MS. BARR: Yes, sir.

22 THE COURT: Okay. Thank you. All right. The jurors are here.
23 Anything we need to cover before we start back?

24 MS. BARR: Nothing from the State, Your Honor.

25 THE COURT: Anything before we proceed, Mr. Carraway?

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1 MR. CARRAWAY: Nothing, Your Honor.

2 (Jury in).

3 THE COURT: All right, ladies and gentlemen, we are ready to
4 continue with the trial. The State has rested which of course as I told you earlier but
5 the State has presented all of the evidence they are going to present in their case in
6 chief. Now comes the stage of the trial where the Defendant can call witnesses and
7 present evidence. Mr. Carraway, are you calling any witnesses?

8 MR. CARRAWAY: Yes, Your Honor.

9 THE COURT: All right. You may call your first witness.

10 MR. CARRAWAY: The Defense calls Christian Brand to the stand.

11 THE COURT: All right, ladies and gentlemen, before he comes in let
12 me ask you this question. Mr. Brand's name was not announced to you as one of the
13 prospective witnesses. There's no particular reason for that but his name was not
14 included on the ... on the list. Mr. Brand ... he's not in the courtroom, is he?

15 MR. CARRAWAY: No, Your Honor.

16 THE COURT: All right. Is there any member of your number, ladies
17 and gentlemen, who is kind to Mr. Brand or any member of your immediate family
18 who is kin to Mr. Brand? Do you know him or have any connection or acquaintance
19 or association with him at all? Any one of you who responds yes to that question?
20 Any additional questions in that regard, Mr. Carraway?

21 MR. CARRAWAY: No, Your Honor.

22 THE COURT: Ms. Barr?

23 MS. BARR: None, Your Honor.

24 MR. SABB: Judge, only to the extent that sometimes when we see
25 folk we don't equate, so only to that extend, Your Honor.

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1 THE COURT: If that changes when the witness walks in, I'll follow
2 up after that. All right. Mr. Brand. Where is he?

3 MR. CARRAWAY: He's in the back. Off to the left. Sitting up there.

4 MS. WILLIAMS: Place your left hand on the Bible. Do you solemnly
5 swear that the evidence and testimony you will give this court and jury will be the
6 truth, the whole truth and nothing but the truth so help you God?

7 MR. BRAND: Yes, ma'am.

8 THE COURT: All right, sir, would you step back a minute. Ms.
9 Brown, you raised your hand?

10 MS. BROWN: Yes, sir. His mother is a friend with my cousin's
11 family.

12 THE COURT: All right. Do you know the particular individual?

13 MS. BROWN: I, you know, know him because his mother and my
14 cousin are friends.

15 THE COURT: How long has that been the case?

16 MS. BROWN: I mean they were friends for a while.

17 THE COURT: Just acquaintances?

18 MS. BROWN: Yes, sir, just acquaintance with him.

19 THE COURT: All right. Would that have any impact on your ability
20 to continue to be fair and impartial to both sides?

21 MS. BROWN: No, sir.

22 THE COURT: You could set aside the circumstances related to the
23 individual and base your verdict based on the evidence and the law?

24 MS. BROWN: Yes, sir.

25 THE COURT: All right. Any additional questions, Ms. Barr? Would

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1 you all like to approach at this time?

2 THE COURT: Ladies and Gentlemen, if you would please excuse
3 yourselves we will have you back out in just a few moments.

4 (Jury out)

5 THE COURT: To provide some background. They juror who
6 responded by raising her hand after the witness came into the court room, Juror
7 Number 17. At some point this morning before we started the trial Mr. Carraway
8 advised the prosecution that there was one additional witness that he would call and
9 the name was Christian ...

10 MR. CARRAWAY: Christian Brand.

11 THE COURT: ... Christian Brand. We decided that we would address
12 the issue if and when he was called. And I think the census in Chambers was that I
13 would inquire of the jurors after the name, basic questions about kinship and
14 acquaintance. And address the issue if there was any affirmative response for the
15 record. The juror said her mother knew his mother and she was acquaintance with
16 Mr. Brand and she could still be impartial. What's the objection, Mr. Sabb?

17 MR. SABB: Judge, there's really no objection to the matter in which
18 the Court has proceeded thus far. We think that the Court's level, given where we are
19 in this trial it would certainly appropriate, you know, we would not object to the
20 manner in which the Court queried the witness in regard to her ability to be fair and
21 impartial. Judge, the problem is that the information that this juror candidly shared
22 with us, we believe was information that she would have candidly shared with us
23 during the qualification portion of this trial which would have allowed us an
24 opportunity to determine whether or not we wished to exercise our peremptory
25 challenges in that regard. Judge, when you look at the posture of this case, Judge, it

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1 is not something that we take lightly, when we use terms like star witness. But based
2 upon the representations of counsel we believe this to be their quote unquote star
3 witness and so to have the forelady of the jury have a relationship with their star
4 witness, Judge, certainly from our vantage point had we had the benefit of that
5 information we would have struck her. And so the comment that opposing counsel
6 made when we were in chambers when we brought up the fact that due to the lack of
7 a better term them giving us the name of this witness at the 11th hour after we'd begun
8 the trial that we may run into an issue like this and so Defense counsel's response was
9 that's why we have two alternates. And so, Judge, we would certainly ask the Court
10 to remove this juror and move one of the alternates up and Judge, we were candid
11 with the Court off the record when we discussed this matter in chamber earlier and
12 realize to excluded a witness that Defense felt like they needed would have been an
13 extreme remedy for this Court to give us and we were not going to proceed along
14 those lines so we did not ask the Court to consider the idea of excluding Mr. Brand.
15 We wanted the Court to engage in the inquiries that the Court did. We appreciate the
16 complete candor of this juror. Judge, we certainly think that everyone in this case is
17 entitled to a fair trial. Everyone in this case is entitled to be on the same playing field
18 to the extent in terms of the information that we have relative to the witnesses that
19 the other side intends to put up. And Judge, you may recall that at the point when we
20 approached the bench on this very issue and the question was whether or not the
21 Defense would be calling any witnesses. All of us realizing that they don't have to
22 but the question was if you might, let's just throw them in the pool, not identifying
23 them as Defense witnesses but throw them in the pool as being potential witnesses so
24 we would avoid this kind of situation. But, Judge, we are where we are and we
25 certainly think that it would be unfair at this point to place us in the position where

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1 we are now stuck with a juror when we otherwise would have exercised a
2 peremptory challenge against based upon her relationship with the Defense's star
3 witness.

4 THE COURT: All right. Mr. Carraway?

5 MR. CARRAWAY: We don't have any problem with that at all.
6 Judge, he's had some problems as a juvenile. She may not like him. She may know
7 him and know him to be untruthful. I don't have any ... it cuts both ways. I got no
8 objections. None. That's fine.

9 THE COURT: All right. Based on that, what we'll do, Ms. Williams,
10 is the way the process works is criminal cases ... criminal cases, ... civil cases the
11 alternate is seated in order of which the alternate is drawn. In criminal cases there's a
12 blind fold. . I trust the State has no objection to that.

13 MR. SABB: No objection.

14 MR. CARRAWAY: No objection.

15 THE COURT: All right. Do you have their little slips ...

16 MS. WILLIAMS: Yes, we do.

17 THE COURT: All right. Put those in a barrel Is the barrel empty?

18 MS. WILLIAMS: Yes, it is.

19 THE COURT: All right.

20 THE COURT: Mr. Carraway and Ms. Barr, any objection to one of
21 the bailiffs drawing a number out of the envelope?

22 MS. BARR: No objection from the State.

23 THE COURT: Mr. Carraway? Any objection?

24 MR. CARRAWAY: No objection.

25 THE COURT: All right.

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1 MS. WILLIAMS: Reverend Brown?

2 THE COURT: All right. The new juror will be Tracie Cook, juror
3 number 35. All right. What I'll do then is call Ms. Kimberly Brown out, excuse her,
4 and allow her to go on her way and then we'll call the rest of the jury out. Any
5 objection to that?

6 MR. CARRAWAY: May we approach with one thing. I know this
7 may be silly but the jury's not here or whatever.

8 (Discussion held off the record).

9 THE COURT: All right, Ms. Brown. I thank you for your patience.
10 As you know the dynamics of jury selection based on facts, what I have decided to
11 do in this situation is excuse you from this trial. Obviously you've done nothing
12 wrong. The problem that I face is that you're the foreperson and I picked you
13 because I thought you would be good and now I've got the job of picking another
14 foreperson but I want to make sure that you understand that your service in this case
15 is greatly appreciated and the State hasn't done anything wrong, the Defense hasn't
16 done anything wrong and you certainly haven't. It's just in the process sometimes
17 caused this to happen. What we're going to do is excuse you and Mr. Barr, ... excuse
18 me, Mr. Sabb, will the jury be coming back this week?

19 MR. SABB: Judge, we're not absolutely sure. It appears unlikely,
20 Your Honor, please, but Judge, we ask the Court to have them call at 6:00.

21 THE COURT: Call back. Call the number that you have after 6:00.

22 MS. BROWN: Okay.

23 THE COURT: Again, do me this favor. Don't talk to anybody about
24 this case until you're sure a verdict is reached. You are free to go. Do you have any
25 questions about when you are to call back?

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1 MS. BROWN: No.

2 THE COURT: All right. And you're free to go or you can stay in the
3 courtroom. It's a public courtroom so you can do what you like.

4 MS. BROWN: Okay.

5 THE COURT: All right. Thank you very much.

6 MS. BROWN: Thank you.

7 THE COURT: Do you have any questions about the call back?

8 MS. BROWN: No, sir, I can call back after 6:00.

9 THE COURT: All right. Thank you. All right, I take it, Ms. Barr and
10 Mr. Carraway, there are no objections to those remarks?

11 MR. CARRAWAY: None, Your Honor.

12 MS. BARR: No, Your Honor.

13 THE COURT: Thank you for your allowing me to do that in an
14 orderly fashion. All right, you all ready for the jury?

15 MS. BARR: The State is ready, Your Honor.

16 THE COURT: All right. When they come back in they can just come
17 into their normal places and I'll seat the alternate first in the other seat and I'm going
18 to appoint Naomi Hamm as the foreperson. She'll have a seat in the foreperson's
19 chair.

20 (Jury in).

21 THE COURT: All right. Ms. Hamm, Naomi Hamm, have a seat in
22 the foreperson's seat, please, ma'am. All right. And Tracie Cook. If you would have
23 a seat on the front row where Ms. Hamm used to be, Ladies and gentlemen, as I
24 explained to the juror who is now absent, Ms. Brown, sometimes during the course
25 of a trial it becomes evident why alternates are needed. And what I ... what I told

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1 Ms. Brown I will tell you. Through no fault of the State or the Defendant, from time
2 to time issues arise that I have to monitor and take care of within my discretion. And
3 out of an abundance of caution in this case I've decided to release Ms. Brown from
4 this case and seat the alternate. By a series of coincidence she was the foreperson
5 who I've had to select another foreperson and we are now ready to proceed with the
6 trial. Ms. Cook, you are ... the only thing that is different of course you continue to
7 pay attention and the only thing different is that you do not have an assigned seat any
8 longer. And Ms. Hamm, I will talk with you in detail at the conclusion of this case
9 about what your responsibilities are. You are now the spokesperson for the jury.
10 You don't have any greater authority than anybody else. It's just you will be
11 responsible for making sure that the verdict in this case is unanimous meaning
12 everybody agrees and making sure that deliberation process is orderly and you've
13 allowed everyone to speak. Of course in the meantime during the rest of the trial, if
14 anybody has any concerns on the jury they can express those to you and in turn to
15 you alert one of the bailiffs. All right. Again, we have got to the point where the
16 State has rested. The Defendant has called a witness and Mr. Brand, you can come
17 around. He's been sworn, is that correct?

18 MS. WILLIAMS: Yes, he has.

19 THE COURT: All right. The witness has been sworn. You can have
20 a seat over here. And your first name is Christian Brand? Christian Brand?

21 MR. BRAND: Yes, sir.

22 THE COURT: All right. Have a seat. All right. Make sure you speak
23 up loud and clear and talk into that microphone. Okay?

24 MR. BRAND: Yes, sir.

25 MR. BRAND - DIRECT EXAMINATION BY MR. CARRAWAY:

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- 1 Q: Christian, how are you doing today?
- 2 A: All right.
- 3 Q: Are you a little nervous?
- 4 A: No, sir.
- 5 Q: You're not? Okay. All right. Christian, how old are you?
- 6 A: 16.
- 7 Q: You are 16 years old, is that right?
- 8 A: Yes, sir.
- 9 Q: Okay. And you are a friend of the Rivers family, are you not?
- 10 A: Yes, sir.
- 11 Q: What is your relationship with them?
- 12 A: Ms. Yvette, that's ... well, her brother is my mother's boyfriend.
- 13 Q: Okay. So this is Yvette Rivers James right here, is that right?
- 14 A: Yes, sir.
- 15 Q: That is her. She has a brother, is that right?
- 16 A: Yes.
- 17 Q: And her brother and your mother are boyfriend and girlfriend. Is that correct?
- 18 A: Yes, sir.
- 19 Q: Okay. Now, let me ask you this. Were you at Sadie's on the night of May
- 20 16th of 2008 or in the early morning hours of May 17th ... I think I've got those
- 21 dates right ... when Derial McCrea was shot?
- 22 A: Yes, sir.
- 23 Q: Tell the jury what did you observe on that night?
- 24 A: That night I was outside and I heard some voices and I been outside. The
- 25 man, Derial, he was fussing and girl on the other side they was fussing, they

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1 was going at it and then ...

2 Q: Who was Derial arguing with?

3 A: Some ... a girl name Dyshea.

4 Q: All right. He was with a girl at first and ...

5 A: Him and the girl was fussing at first.

6 Q: Girl at first. Are you talking about the girl or the girl's mother or Scooter or
7 who you talking?

8 MR. SABB: Your Honor, that's a leading question and I'm objecting
9 to them beginning now.

10 THE COURT: All right. The objection is to a leading question?

11 MR. SABB: Yes, sir.

12 THE COURT: I think that was a little bit of both. So you can
13 rephrase the question, Mr. Carraway.

14 Q: Tell me who ... who was arguing with who when you came out?

15 A: Scooter and Derial were arguing.

16 Q: All right. Okay. All right. And did you ... what did Scooter say?

17 A: He just been ... when Derial, the girl said something to Derial, I seen him go
18 in his pocket and he had like a pocket knife with a black handle on it. He was
19 walking towards Scooter and he try to stab Scooter. He swung and then I see
20 Scooter take out and running I don't know where he went but in a few
21 seconds he came back and he ain't said nothing, Ms. Erica was behind ...
22 been behind him. That when Dyshea say he got a gun, now everybody yell
23 out he got a gun, he got a gun. That when Derial say I ain't scared to die. I
24 ain't scared to die. So that when he walk up to Scooter and started swinging.
25 When he swing ... when he swing again is when the gun went off so I seen

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1 him fall on the ground.

2 Q: Okay.

3 A: He started bleeding out his head.

4 Q: All right. Did Derial have anything in his hand?

5 A: Yes, sir.

6 Q: What did he have?

7 A: A knife.

8 Q: All right. How long was the blade?

9 A: About this long.

10 Q: And what did the handle look like?

11 A: Black.

12 Q: Black handle?

13' A: Yes, sir.

14 Q: Okay. Now, when this occurred where was Erica? How close was ... where
15 was she in relation to Scooter?

16 A: Like right behind Scooter.

17 Q: She was behind Scooter?

18 A: Yes, sir.

19 Q: Okay. How far behind him?

20 A: Two or three feet behind him.

21 Q: Okay. All right. Are you sure about all of that?

22 A: Yes, sir.

23 Q: Okay. Did Scooter ever say anything to Derial?

24 A: Well, at the part when ...

25 MR. SABB: Your Honor, please, I object.

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1 THE COURT: All right. State the basis.

2 MR. SABB: The question is what did somebody else say. It's

3 hearsay.

4 THE COURT: All right, Mr. Carraway?

5 Q: What did Scooter say? Did you hear Scooter say ...

6 MR. SABB: Self-serving and so I object on a different ground.

7 THE COURT: Mr. Carraway, any response to that?

8 MR. CARRAWAY: I'm asking if he heard the Defendant say anything
9 to Derial McCrea.

10 THE COURT: All right, ladies and gentlemen of the jury, please step
11 out. We're going to take up the matter outside of your presence. You may not
12 discuss the case.

13 (Jury out).

14 THE COURT: All right, continue the questioning, Mr. Carraway.
15 Ask the ... ask the question again.

16 Q: Did Scooter ever say anything to Derial McCrea?

17 A: No, sir.

18 THE COURT: Mr. Sabb, you have a problem?

19 MR. SABB: All right. There's no problem as far as I'm concerned,
20 Judge.

21 THE COURT: All right. Any other questions that you're going to be
22 asking about any comments made by anyone else?

23 MR. CARRAWAY: No.

24 THE COURT: All right. We cannot hold it to you but you anticipate
25 that will be the extent of your question?

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1 MR. CARRAWAY: Well, I will ask him what did Derial say to
2 Scooter.

3 THE COURT: Any objection to that? Go ahead and ask the question.

4 Q: Did you hear Derial at any time during these two confrontations say anything
5 to Scooter?

6 A: Yes, sir.

7 Q: What did he say?

8 A: You don't have anything to do with this.

9 Q: And?

10 A: I do because this my family. Derial came charging him.

11 THE COURT: Any objection to that?

12 MR. SABB: Yes, sir.

13' THE COURT: All right. Which part?

14 MR. SABB: Well, all of a sudden he now remembers what Scooter
15 said. Notice how he slipped that in.

16 THE COURT: All right. Let's not have any reaction ... if anybody has
17 any reaction in the audience you can simply leave the courtroom. All right? All
18 right, Mr. Carraway, that does kind of stick out. A moment ago the witness said that
19 Scooter said nothing or he heard Scooter say nothing to Derial and of course that's
20 neither here nor there for my ruling but how about the hearsay component ... hearsay
21, objection made by the State that you don't have anything to do with this, I do
22 because she's my family.

23 MR. CARRAWAY: Well, that's what the victim said and that's his
24 reply. Mr. Sabb can certainly or Ms. Barr can certainly cross examine him and say
25 you didn't say anything at first when he asked you that at first you said he didn't say

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1 anything.

2 THE COURT: Anybody can be cross examined on anything.

3 MR. CARRAWAY: Yes, sir.

4 THE COURT: But that doesn't make it admissible in the first place.

5 Mr. Sabb, is ... is that statement being offered to prove the truth of the matter
6 asserted?

7 MR. SABB: It is, Judge, unquestionably.

8 THE COURT: How?

9 MR. SABB: That's their Defense of others argument The question,
10 Judge, at that particular ...

11 THE COURT: Has that not already come out through other witnesses
12 through the State's questioning that ...

13 MR. SABB: Give me a second, Judge.

14 THE COURT: ... the Defendant said that? I've heard other witnesses
15 in the case, in your case in chief called that said that Derial ... the Defendant said
16 she's family.

17 MR. SABB: No, sir. I think the only time that's been mentioned in
18 this case is during opening statements by Mr. Carraway. I can't think of a single and,
19 you know, Judge, I wasn't here for every witness. I missed a portion of Dyshea's
20 testimony and I missed a portion of David's testimony. But in regard to the moment,
21 of course, Kimberly is here along with me. Judge, I don't believe a single solitary
22 witness has said that this Defendant made any mention about Erica and being his
23 cousin. The only time I recall the kinship issue being raised was when Mr. Carraway
24 was questioning Dyshea initially about it and she said she didn't know and then he
25 turned around and questioned Erica about it and then Erica described a relationship

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1 through her husband.

2 THE COURT: All right. Let's examine the ... let's examine the
3 statement that you object to. Mr. Rivers said to the victim this is my business, she is
4 my family. All right. That is already in the record by some stretch that they are ...
5 have some relationship.

6 MR. SABB: Just the ...

7 THE COURT: Is that not correct?

8 MR. SABB: It is correct that the record reflects that the ... that Erica's
9 husband is related to Mr. Rivers.

10 THE COURT: Right.

11 MR. SABB: That's in the record.

12 THE COURT: All right.

13 MR. SABB: We think this is a different animal, Your Honor, please,
14 with regard to stepping in and at the moment where he steps in says it is my business,
15 this is my family, as if he's all of a sudden stepping in and ... and ...

16 THE COURT: Well, the statement tends not to establish so much that
17 there is a relationship. It's tends to establish why he's stepping in.

18 MR. SABB: It's more than an attempted, Your Honor, which it does.
19 That's exactly what he's ...

20 THE COURT: Well, everything is attempted in front of the jury.

21 MR. SABB: Yes, sir.

22 THE COURT: That's why I phrased it that way.

23 MR. SABB: All right.

24 THE COURT: Attempt to raise an inference as to why he stepped in.

25 MR. SABB: Yes, sir.

HEARING

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1 THE COURT: All right. All right, any response, Mr. Carraway?

2 MR. CARRAWAY: Well, that's what he said. He said ...

3 THE COURT: I know that's what he said.

4 MR. CARRAWAY: ... this is not any of your business. That was his
5 response to that or whatever.

6 THE COURT: All right, Mr. Sabb, I'm going to protect and overrule
7 your objection. Mr. Carraway, I want you to ask the witness now if there were any
8 other statements made by the Defendant to Mr. McCrea.

9 MR. CARRAWAY: All right.

10 Q: Were there any other statements that Scooter made to Mr. McCrea?

11 A: No, sir.

12 THE COURT: All right.

13 MR. CARRAWAY: And what I would do is I would ask him about
14 the first confrontation, what ... did Mr. McCrea say anything to Scooter, did Scooter
15 replay.

16 THE COURT: In other words, what was just discussed?

17 MR. CARRAWAY: Yes. Just state what he just said.

18 THE COURT: All right. Mr. Sabb, are you ready for the jury?

19 MR. SABB: Yes, sir, Judge.

20 THE COURT: Bring in the jury.

21 (Jury in).

22 THE COURT: Mr. Carraway.

23 CONTINUATION EXAMINATION OF CHRISTOPHER BRAND BY MR.

24 CARRAWAY:

25 Q: You witnessed the first confrontation between Derial McCrae and Scooter, di

HEARING

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1 you not?

2 MR. SABB: I object. It's a leading question.

3 THE COURT: The context of where we are in the context of this
4. witness, the objection is overruled. He has testified about that. I will allow you to
5 ask that question and continue on.

6 Q: You did witness the first confrontation between Derial McCrae and Scooter,
7 did you not?

8 A: Yes.

9 Q: Did Derial say anything to Scooter and did Scooter reply anything to Derial?

10 A: (No response).

11 Q: Did Derial say anything to Scooter during that first confrontation?

12 A: No, sir.

13 Q: Did Scooter say anything to Derial?

14 A: Scooter — Derial say you ain't got nothing to do with this and Scooter said
15 this my family..

16 Q: Okay. Now, is that what he said? Is that what Derial said and is that what
17 Scooter said?

18 A: Yes, sir.

19 Q: All right. Now repeat that.

20 A: He said ... Derial said you ain't got nothing to do with this. Scooter said that
21 my people.

22 Q: Okay.

23 MR. CARRAWAY: The Court's indulgence?

24 THE COURT: Yes, sir.

25 MR. CARRAWAY: I don't have any ... I don't have any further

HEARING

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1 questions for you, Mr. Brand. I want you to answer anything Mr. Sabb may have to
2 ask you or Ms. Barr would have to ask you, all right?

3 A: Yes, sir.

4 MR. CARRAWAY: Thank you, Mr. Brand.

5 THE COURT: Mr. Sabb?

6 MR. SABB: Thank you, Your Honor. May it please the Court.

7 MR. BRAND - CROSS EXAMINATION BY MR. SABB:

8 Q: You are Christopher Brand, is that right?

9 A: Yes, sir.

10 Q: And you're now 16 years old.

11 A: Yes, sir.

12 Q: And so in May of last year you were 15.

13 A: Yes.

14 Q: Now, what time did you come to this night club?

15 A: About 12:00.

16 Q: All right. Now, who do you live with?

17 A: My mother.

18 Q: Okay. You leave home at 15 to go to a night club?

19 A: She don't allow me to.

20 Q: I'm sorry?

21 A: She don't allow me to, but I didn't stay with her then.

22 Q: Where were you ... where did you stay this night?

23 A: I stayed with my cousin.

24 Q: And what cousin is that?

25 A: Raheem Cribb.

HEARING

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- 1 Q: Raheem who?
- 2 A: Cribb.
- 3 Q: Okay. How old is Raheem?
- 4 A: 15.
- 5 Q: All right. Was Raheem at the club with you?
- 6 A: Yes, sir.
- 7 Q: So you and Raheem was at the club?
- 8 A: Yes, sir.
- 9 Q: All right. And you go inside the club?
- 10 A: Yes, sir.
- 11 Q: All right. Let me ask you about the people you might have seen if you were
- 12 in the club. All right. Did you see Macine McCrae in the club?
- 13 A: I don't know who that is.
- 14 Q: All right. Did you see Victor Nesmith in the club?
- 15 A: (No response).
- 16 Q: Come on, you know Victor, he's the guy that stands at the door. You know
- 17 the one that's got some of his front teeth missing?
- 18 A: Oh, yes, sir.
- 19 Q: Did you see him there?
- 20 A: Yes, sir.
- 21 Q: You don't know whether you seen him there or not. Are you sure you were
- 22 there?
- 23 A: Yes, sir.
- 24 Q: Are you sure you went inside?
- 25 A: Yes, sir.

HEARING

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- 1 Q: All right. How many other 15 year olds inside the club at night?
- 2 A: None.
- 3 Q: So, you the only 15 year old inside the club that night?
- 4 A: Yes, sir.
- 5 Q: You go inside the club but you don't stay, is that right?
- 6 A: Yes, sir.
- 7 Q: And that's 12:00 when you got there?
8. A: Yes, sir.
- 9 Q: So you and your cousin Raheem walked to the club?
- 10 A: Yes, sir.
- 11 Q: Went down which street?
- 12 A: Thorn.
- 13 Q: So, you all walked from his house down the street?
- 14 A: Yes, sir.
- 15 Q: And just the two of you?
- 16 A: Yes.
- 17 Q: And you went inside the club at twelve then you came back outside?
- 18 A: Yes.
- 19 Q: What did you all do when you got outside?
- 20 A: Stand up.
- 21 Q: Stand up where?
- 22 A: Outside.
- 23 Q: And do what?
- 24 A: Talk.
- 25' Q: Who else did you talk to other than Raheem?

HEARING

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- 1 A: Older guys.
- 2 Q: Yes, sir. Older guys got names?
- 3 A: Yes, sir.
- 4 Q: All right. Who else you talking to out there?
- 5 A: I see Scooter and I talked to him a little bit and I walked off and I talking to
- 6 Bibb and Tootsie.
- 7 Q: Where did you see Scooter?
- 8 A: Outside the place.
- 9 Q: Did he have a gun on him at that time?
- 10 A: No, sir.
- 11 Q: How do you know?
- 12 A: Because he walked up to me and if he had a gun I could feel it.
- 13 Q: You're sure about that?
- 14 A: Yes, sir.
- 15 Q: All right. Not saying that to cover for him?
- 16 A: I ain't covering for him.
- 17 Q: How long you talked to Scooter?
- 18 A: Five or ten minutes.
- 19 Q: And Bibb?
- 20 A: He on this side and Scooter on the other side.
- 21 Q: All right. Who is Toostie?
- 22 A: A guy.
- 23 Q: What's his name?
- 24 A: I don't know. I just know Toostie.
- 25 Q: All right. You don't have a name for Toostie.

HEARING

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- 1 A: He come from the streets Toostie. I don't know his real name.
- 2 Q: All right. Who else you talking to this night?
- 3 A: Maurice.
- 4 Q: Maurice who?
- 5 A: I don't know his last name I just know Maurice.
- 6 Q: Another one you don't know the full name of. Who else you talking to?
- 7 A: Nita.
- 8 Q: Nita who?
- 9 A: I don't know.
- 10 Q: Who else you talking to?
- 11 A: That was it.
- 12 Q: Sir.
- 13 A: That was it
- 14 Q: Give me a full name of any individual you claim you were talking to this
- 15 night. Other than this Defendant.
- 16 A: Who I be talking to?
- 17 Q: Yes, sir. Did you hear my question young fellow?
- 18 A: No, say it again.
- 19 Q: Give me the full real name of anybody you were talking to that night?
- 20 A: You I was talking to, I don't know.
- 21 Q: So, you can't ... I'm sorry. Were you finished? You can't give me the full
- 22 name of a single solitary person you were talking to that night?
- 23 A: I just now give you the names.
- 24 Q: Do you understand what full name means?
- 25 A: I don't know. I just now give you the name.

HEARING

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- 1 Q: What is your full name?
- 2 A: Christian Brand.
- 3 Q: That's right. Give me the full name of a single solitary person that you talked
4 to that night. You can't do it, can you?
- 5 A: No, I don't know their real name. Name was street name.
- 6 Q: So you're outside talking to Dita, Raheem, Scooter and somebody else, is that
7 right?
- 8 A: Yes, sir.
- 9 Q: And you're out there talking to them for two hours. Right?
- 10 A: 30 minutes..
- 11 Q: Well, what if I told you this incident didn't happen at 12:30?
- 12 A: Around 3:00.
- 13 Q: Yeah, 3:00 or 2:00 in the morning. Right?
- 14 A: Yes, sir.
- 15 Q: I mean that's two to three hours from the time you claim you arrived. Right?
- 16 A: That is correct.
- 17 Q: So yeah, so 30 minutes later is 12:30. And this thing happened an hour and a
18 half to two hours and a half later, right? So were you there or not?
- 19 A: I was there.
- 20 Q: The whole time?
- 21 A: The whole time.
- 22 Q: Yeah. So from two and a half to three hours on the outside you claim talking
23 to four or five people. Is that what you were doing?
- 24 A: Yes, sir.
- 25 Q: I can't hear you?

HEARING

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- 1 A: Yes, sir. We been outside.
- 2 Q: All right, so your 30 minutes that you just indicated has now stretched to two
- 3 and a half to three hours.
- 4 A: No, sir.
- 5 Q: Were you talking 30 minutes or were you talking two and a half to three
- 6 hours?
- 7 A: I was talking 30 minutes. I been out there like two and a half hours.
- 8 Q: What else were you doing?
- 9 A: Nothing, just sit down talking.
- 10 Q: So then you were talking for more than 30 minutes.
- 11 A: No, I wasn't.
- 12 Q: All right. Fine. Let's leave that one alone. All right. So tell me about this
- 13 notion of this commotion that you saw again. Let me hear you say it. What
- 14 did you see?
- 15 A: We walked outside ... I walk outside. I heard arguing and I looked at Scooter
- 16 and Derial.
- 17 Q: Let me stop you there for a second. Now, all of a sudden you're telling us at
- 18 the moment that you recognized something was going on you walked outside.
- 19 Isn't that what you just said?
- 20 A: Yes, sir.
- 21 Q: Now, walking outside sort of infers that at the time you were inside.
- 22 A: Sir.
- 23 Q: In order to walk outside you got to be inside something in order to get on the
- 24 outside, do you agree with me?
- 25 A: Yes, sir.

HEARING

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- 1 Q: So ... so all of a sudden now you're not on the outside you're in the inside
2 when you understand the commotion goes on.
- 3 A: Yeah, I walked out the club.
- 4 Q: When were you going to tell us about that?
- 5 A: You didn't ask me about that.
- 6 Q: Okay. Didn't I ask you where you were?
- 7 A: Yes, sir.
- 8 Q: And you told me you were on the outside, didn't you?
- 9 A: Walking up. Standing outside.
- 10 Q: All right. Let's ... let's ... we'll leave that one along. Let's go to the next one.
11 All right. This commotion starts. Tell me about it.
- 12 A: The commotion was going on. I heard Derial just fussing and then when he
13 get through with his girl, her mom and then when ... then he said something
14 to Erica and then Erica said, I mean, Scooter said disrespect my family like
15 that. And then he was standing ... well, he was standing in front of Erica and
16 telling Erica like now, she say something and I Scooter say you say something
17 to my famly again and Derial said ... he snatch, he start coming towards
18 Scooter. Then when Scooter ain't move and he came up towards Scooter and
19 he try to stab Scooter aiming for his neck. That when Scooter pushed ... that
20 when Scooter pushed him off ... get down and pushed him off and he peel
21 out. I don't know where he went but he ran. And it was just about two
22 seconds later he walked back up and he walked back up that when everybody
23 talking about he got a gun, he got a gun. And that when Dyshea say he got a
24 gun and she say come on. When she say that Derial say I ain't scared of
25 dying. And pull out and he pull out and come towards Scooter and tries to

HEARING

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1 stab Scooter and the gun went off and I see him fall down.

2 Q: All right. Let's break up what you said. Are you absolutely sure that what
3 you said is what happened?

4 A: Yes, sir.

5 Q: Now, tell me whether I'm right or wrong. Didn't you just testify that when
6 you came out and you first heard the commotion there was an argument
7 between Scooter and Derial, isn't that what you just testified to?

8 A: Yes, they been arguing.

9 Q: That the second you walked out the first argument you noticed was an
10 argument between the guy who is dead and the guy who shot him?

11 A: Yes, sir.

12 Q: Would it surprise you to know that others have testified that the first
13 arguments were between Derial and Derial's girlfriend? Would that surprise
14 you? That surprises you, doesn't it? And that Dyshea's mother, Erica came
15 up at the time when Derial who is now dead and his girlfriend, Dyshea, was
16 arguing. Does that surprise you?

17 A: Yes, sir.

18 Q: Now, you've known this guy for a while, haven't you?

19 A: Yes, sir. Since he came back from Florida.

20 Q: You consider him family since he's come back from Florida.

21 A: Yes, sir.

22 Q: You all are boys.

23 A: Yes, sir. We buddies.

24 Q: Now, Son, when he shot Derial you didn't see a knife in Derial's hand, did
25 you?

HEARING

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- 1 A: Yes, sir.
- 2 Q: Let's talk about that just for a moment. How far away were you?
- 3 A: How far?
- 4 Q: Yes, sir.
- 5 A: Right at about that pole.
- 6 Q: All right. Let's pretend for a second that you are where you were by the light
- 7 pole. Okay? Stop me ... well, let me ask this question first. Would where
- 8 Derial was and where this Defendant was, would it be closer if I were where
- 9 ... if I am standing now where they were, would I be closer to you or would I
- 10 be farther away from you?
- 11 A: I think right back there.
- 12 Q: All right. So I need to back up a little bit?
- 13 A: No, you ... you right there.
- 14 Q: All right. So if you are now where you were then at the light post and I am
- 15 where the argument took place then it's about this distance. Is that right?
- 16 A: Yes, sir.
- 17 Q: Were you the first person in line or were there other people out there?
- 18 A: No, sir, I wasn't the first person in line.
- 19 Q: Yeah, there was a crowd of people out there. Wasn't there?
- 20 A: Yes, sir.
- 21 Q: People in front of you. Wasn't there?
- 22 A: I was ... they was standing like ... I'm right here, they standing beside of me.
- 23 Q: Come on now.
- 24 A: Some were closer but there wasn't ...
- 25 Q: Come on.

HEARING

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- 1 A: ... it was none in front of me.
- 2 Q: Young man, are you telling this jury that there is an argument going on.
- 3 People are gathered. You are back up by the light pole. There's nothing in
- 4 between you all and everybody's stands behind you so that you can see?
- 5 A: Ain't nobody wasn't in my way.
- 6 Q: My question, young man, please were there people in front of you yes or no?
- 7 A: No, sir.
- 8 Q: That's right. So everybody moved back because you ...
- 9 A: They ain't ...
- 10 Q: Mind if I finish? Do you mind? So everybody moves back and to the side.
- 11 Nobody comes in the front of you so that you can have a clear vision of
- 12 what's going on.
- 13 A: Ain't nobody got in front of me.
- 14 Q: Right. Everybody's to the side of you and in other places so that you could
- 15 have a clear view of everything that's going on.
- 16 A: Ain't nobody was standing ... people beside me, man, nobody wasn't in front
- 17 of me there.
- 18 Q: Right. Everybody's to the side of you and away so that you could have a clear
- 19 vision of what's going on, right? So that you can see this knife that you're
- 20 talking about. Right?
- 21 A: Yes, sir.
- 22 Q: Because if people were in front of your you can't see, can you?
- 23 A: No, sir.
- 24 Q: And so you can't come in here and claim he had a knife, can you?
- 25 A: Yes, sir, I know what I see.

HEARING

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- 1 Q: And you claim that you saw a black knife. Any question about that in your
2 mind?
- 3 A: I told you exactly it was long, not that long but it was ... the blade was kind of
4 long.
- 5 Q: Are you absolutely certain that the handle on the knife was black?
- 6 A: Yes, sir.
- 7 Q: No question in your mind about that?
- 8 A: No, sir.
- 9 Q: All right. Now, you're where you are, right?
- 10 A: Yes, sir.
- 11 Q: And I'm where Derial was, right?
- 12 A: Yes, sir.
- 13 Q: And it's dark. Right?
- 14 A: Yes, sir.
- 15 Q: You never got any closer than where we are right now, did you?
- 16 A: The light on the light pole was shining.
- 17 Q: You never got any closer than we are right now, did you?
- 18 A: No, sir.
- 19 Q: Did there ever come a point in time where Derial took the knife and hold it up
20 like this so that you could see the full knife?
- 21 A: When he pull it out his pocket.
- 22 Q: All right. So you're there, it's nighttime, he reaches in his pocket and he pulls
23 it out and you see what it is.
- 24 A: Yes, sir.
- 25 Q: You see the full thing.

HEARING

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- 1 A: I see the blade and that's when he went ... when he went I see the black of the
2 handle, it was black.
- 3 Q: Oh, okay. All right. So you're telling this jury that when he took the knife
4 and I guess he either swung like this or like this that during that motion you
5 saw what color the handle was.
- 6 A: He were walking up, when he walking up.
- 7 Q: At what point did you see what color the handle was?
- 8 A: When he lift his hand up and swing.
- 9 Q: So, when he's got the knife in his hand, I guess his hand is clinched, right.
10 Like a fist?
- 11 A: Yes, sir.
- 12 Q: All right. So then when he swings like this you see the back of the knife.
- 13 A: Yes, sir.
- 14 Q: That would mean that the handle of the knife is wider than his hand or
15 otherwise you couldn't see it.
- 16' A: I seen the ... see the back of the handle.
- 17 Q: Listen to my question. I understand what you're hear to say but listen to my
18 question. That would mean that the handle of the knife itself is bigger than
19 the hand, wouldn't it?
- 20 A: No, sir.
- 21 Q: You just don't want to agree with me, do you?
- 22 A: I'm telling you the truth. I know what I see and I didn't see.
- 23 Q: All right. Is the knife longer than this pen?
- 24 A: A little bit longer. Not the handle but the knife been a little bit longer.
- 25 Q: The full knife was longer than this pen. Help me somebody. Let me see that

HEARING

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1 Magic Marker.

2 MS. WILLIAMS: This one?

3 Q: Yes, ma'am. All right. Longer than this?

4 A: Take ... take that top off.

5 Q: Take the top off of what?

6 A: How long the knife was. Take the top off the magic marker.

7 Q: All right. So how much of it is blade and how much of it is handle? Show
8 the jury. That's how long the knife, how much is blade and how much is
9 handle.

10 A: This is blade.

11 Q: All right. So let's ... let's make sure the jury is clear now. Can you see from
12 where you are? See the blue writing? Now, are you telling us that the blue
13 writing, the tip of the blue writing is a good indicator of how long the handle
14 is and then from that point to the top is an indication of how long the blade
15 is? That's a fair statement?

16 A: Yes sir.

17 Q: All right. Now, hold this for me. Hold it in your hand. Clutch it for me.
18 Tell me ... now a portion of your hand is on the blade, isn't it?

19 A: No, sir.

20 Q: Come on now, fellow, I know you're not going to

21 A: Like this.

22 Q: No. No. Hold on now. Hold on. Let's ... let's just ... let me just show you
23 what I'm talking about. Stay with me. You still there? Now, give me some
24 slack, just a little bit of slack. Move it up. Move it up. Move it up. Now,
25 you see where the blue is? See that's where you told me the blade began. So

HEARING

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- 1 if you're clutching here you're actually clutching the blade, aren't you?
- 2 A: Yes, sir.
- 3 Q: Okay. Now, that's a good point, son. When you are trying to cut somebody
- 4 with a knife you're not going to put your hand on the what?
- 5 A: The blade.
- 6 Q: On the blade. You're going to hold on to the what?
- 7 A: The handle and the ... the handle and the blade.
- 8 Q: I'm sorry, I couldn't hear you. Say what now?
- 9 A: The handle and the ... people going to have their hands on that blade.
- 10 Q: I can't hear you. You're talking a little fast for me. Let me ask the question
- 11 and then you answer it. Now, do you agree with me, young man, or do you
- 12 disagree with me, when you're going to cut somebody with a knife you're not
- 13 going to put your hand on the blade, are you?
- 14 A: No, sir.
- 15 Q: You're going to hold on to the handle, aren't you?
- 16 A: Yes, sir.
- 17 Q: All right. Now, let's go back to our demonstration. I understand why you
- 18 want the bottom of it to show but let's go back to our demonstration. Now,
- 19 clutch just this portion that covers up to where you say the blade began.
- 20 Don't move your hand down. Now, that's the point where the blade would
- 21 begin to show, isn't it? Sir?
- 22 A: Yes, sir.
- 23 Q: It's at that very point that if you're holding the knife you're not going to cut
- 24 yourself because your hand's on the handle and not the blade, isn't that
- 25 correct?

HEARING

220

1 A: Yes, sir.

2 Q: Now, put your hand totally back on it, please, young fellow. Now, you're
3 how tall? How tall are you?

4 A: 5'7".

5 Q: Now, you knew Derial was about 5 feet 11, right? Had you ever been close
6 to Derial before?

7 A: Yes, sir.

8 Q: Would you agree with me that his hand is probably at least as big as your
9 hands are?

10 A: Yes, sir.

11 Q: Now, clutch the bottom of that Magic Marker just covering the tip end and
12 tell me whether or not you can see the bottom of the handle.

13 A: Yes, sir.

14 Q: Yes, sir, what?

15 A: You can see it.

16 Q: Let me see it. No, son, you're on the blade, aren't you? That's right. Now, tell
17 me can you see the bottom of the handle?

18 A: No, sir, but he had his hand at the end of that blade.

19 Q: Okay. So ... so although the average person would not put their hand on the
20 blade when they're trying to stab somebody because they might cut themselves
21 in this particular instance as best you can see and as best as you can recall
22 Derial had his hand on the blade so that you could see the end on the handle.

23 A: Yes, sir, no sir.

24 Q: I'm sorry, which one is it? Yes, sir or no, sir?

25 A: Yes, sir.

HEARING

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- 1 Q: So, son, did he have his handle ... his hand on the blade yes, sir or no?
- 2 A: He had his hand on the blade where the handle was.
- 3 Q: I'm sorry, tell me that again.
- 4 A: He had his hand right here where the blade and where the handle at,
- 5 beginning of the handle. He had his hand right there.
- 6 Q: All right. Are you claiming he tried jook him or he tried to reach for his
- 7 neck?
- 8 A: He was trying to aim for the neck.
- 9 Q: All right. So then why do it like this if you're aiming for his neck. I mean, I
- 10 understand if you want to jook somebody you might jook them like that but if
- 11 you're aiming for his neck you're not going to have your finger up like that,
- 12 are you?
- 13 A: I ain't had my hand up.
- 14 Q: Sir?
- 15 A: I ain't had my hand up.
- 16 Q: Okay. All right. All right. But your testimony is that you were able to see
- 17 the back of the handle and that you're absolutely certain that it was black.
- 18 A: Yes, sir.
- 19 Q: All right. And that you saw the knife during the initial confrontation between
- 20 Derial and Javon. Is that right?
- 21 A: Yes, sir.
- 22 Q: Now, not finished yet. Got a few more things I want to talk with you about.
- 23 Would it surprise you, young man, to know that after Javon left and went to
- 24 the car and got a gun that Dyshea and Derial were going towards the car,
- 25 would that surprise you?

HEARING

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1 A: (can't understand)

2 Q: Would it surprise you, young man, to know that during the early morning
3 hours ...

4 MR. CARRAWAY: Your Honor, I object at this point. There's no
5 testimony that Dyshea and Derial ever went to their car. I think that's what he said,
6 they went to the car. I haven't heard any testimony about that.

7 MR. SABB: That's not what I said.

8 MR. CARRAWAY: Okay.

9 THE COURT: Objection overruled.

10 Q: Would it surprise you, young man, to know that when Javon was coming
11 back towards Derial that Derial was going in the opposite direction? Would
12 that surprise you?

13 A: (Can't understand).

14 Q: I can't hear you anymore. I can't understand you.

15 A: He was in the same spot when he left.

16 Q: So it would surprise you to know that at the point where Javon had gone to
17 the car and come back that Derial was being asked to let's go by Dyshea.
18 That surprises you, doesn't it?

19 A: No, sir.

20 Q: I thought you told me before it did. It doesn't surprise you?

21 A: No, sir. I don't know nothing about no car.

22 Q: I ain't ask you nothing about no car.

23 A: Yes, you did, sir.

24 Q: Oh, you're talking about the question that I asked you four questions ago that
25 Mr. Carraway's talking about. No, you understood my question at that time. I

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- 1, didn't say they were ... they were ... they were in the car. I said they were
2 going towards the car.
- 3 A: When Scooter went to the car and get a gun I don't know nothing about that.
- 4 Q: Oh, yeah, I see what you're saying. Yeah, I'm talking about Derial right now.
5 I'm going to talk about Scooter and the gun in a minute. Because you didn't
6 even see that, did you?
- 7 A: No, sir.
- 8 Q: That's right. You don't want to see that.
- 9 A: I didn't see it.
- 10 Q: I understand. Although you were right there you can see the confrontation,
11 you can't see where Scooter goes.
- 12 A: I wasn't paying Scooter no attention.
- 13 Q: Why not? That's your boy.
- 14 A: Because he didn't hear. He don't listen when he get mad.
- 15 Q: I'm sorry, he doesn't listen when he get mad. Yeah, come on, that's what you
16 said. Say it again, he doesn't listen when he get mad.
- 17 A: No.
- 18 Q: Now, it took longer than two seconds for him to go get that gun, didn't it?
19 Where did that two seconds come from?
- 20 A: That how long it seem like to me. When he run he be — He came back
21 walking ... he was walking fast when he came back.
- 22 Q: Well, one thousand one, one thousand two. That's two seconds. It was
23 substantially longer than that, wasn't it?
- 24 A: No, sir.
- 25 Q: Have you ever heard of cooling off?

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- 1 A: No, sir.
- 2 Q: Huh?
- 3 A: No, sir.
- 4 Q: You've never heard of cooling off?
- 5 A: No, sir.
- 6 Q: You don't know anything about when people are in the heat of passion that if
- 7 they get away from the heat and they go some place else that the law talks
- 8 about cooling off? You don't know anything about that?
- 9 A: No, sir.
- 10 Q: That if you've got an opportunity to calmly reflect that you're supposed to use
- 11 that time to sort of come to your senses rather than being of the mind set that
- 12 once I get angry I'm just angry and I'm going to do what I got to do?
- 13 A: No, sir.
- 14 Q: All right, sir. But clearly, I mean, there's no question in your mind that in
- 15 order for him to have left and go get a gun that quickly he knew where the
- 16 gun was, didn't he?
- 17 A: I do not know nothing about that.
- 18 Q: Must have gone straight to it. Right?
- 19 A: I don't know.
- 20 Q: Because ...
- 21 A: I ...
- 22 Q: Because it happened so quickly that he didn't have time to search for it.
- 23 A: I don't know, I wasn't paying no attention.
- 24 Q: But not enough time passed where he could search for it. You agree with me
- 25 on that, don't you? Come on, you can agree with me on that.

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- 1 A: No, sir.
- 2 Q: You don't agree with that either, do you?
- 3 A: No, sir.
- 4 Q: And I know that you saw this young fellow that night, Investigator Whack.
- 5 You saw him out there, didn't you?
- 6 A: No, sir.
- 7 Q: You didn't stay out there after this thing had happened?
- 8 A: When the police came I leave.
- 9 Q: You stayed out there until the police got there?
- 10 A: Yes, sir.
- 11 Q: All right. Tell the jurors who you saw move the knife from Derial's hand
- 12 before the police got there.
- 13 A: Nobody. He had been shot, his hand went up and then he fall. He fall
- 14 straight back.
- 15 Q: You understand my question?
- 16 A: Yes, sir.
- 17 Q: Tell the jurors who you saw take the knife from Derial's hand before the
- 18 police got there.
- 19 A: I do not know. Everybody was around him.
- 20 Q: Oh, so you can't see now.
- 21 A: I see when they was arguing. When he shoot, some people was in front of
- 22 me. I didn't see where the knife go.
- 23 Q: Your fellow, you making this up as you go, aren't you?
- 24 A: No, sir.
- 25 Q: Now, you're telling us that the natural response of people is that when

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- 1 somebody's arguing they back up. When somebody shoots they go forward?
2 Come on.
- 3 A: When he shoot that man and they say he dead everybody surrounding him
4 people started yelling and stuff.
- 5 Q: How did you know he got shot in the face?
6 A: Because it happened right there.
- 7 Q: How do you know he got shot in the face?
8 A: Because you could see where he was bleeding out his head..
- 9 Q: And you saw the blood according to you.
10 A: I saw the blood.
- 11 Q: So you were close up to him, weren't you?
12 A: He was right there where you at. I stand and I stay right there over him and I
13 see blood. Everybody went here I standing and I see blood and I see the
14 wound where he get hit at.
- 15 Q: You ain't see no knife though, did you?
16 A: Yes, sir.
- 17 Q: See, you know how we know you didn't see the knife?
18 A: How?
- 19 Q: Because if you had seen the knife at that point you wouldn't have had to been
20 scrounging about how he lunged with ... with the ... with the blade and stuff.
21 Because see, the knife would have been in his hand at the time. And so if he
22 hand is wide open at that time, you would have seen the full thing then.
- 23 A: That's wrong. When he shot him, the knife had gone out his hand.
- 24 Q: Oh, you had to have seen where the knife went because when he fell back he
25 fell back in your direction, didn't he?

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- 1 A: No, sir.
- 2 Q: Well, did he fall in the opposite direction?
- 3 A: Yes, see. He fall back facing the parking lot. He has his backed turned to the
- 4 parking lot.
- 5 Q: And the knife flew away. You don't know what happened to it?
- 6 A: No, sir. He fall I don't know what happened to it. I know he had the knife in
- 7 his hand.
- 8 Q: How do you know it dropped?
- 9 A: Because he was going down on his back
- 10 Q: That's what you want everybody to believe. A man is fighting with another
- 11 man who shoots him and somebody's just going to grab the knife and run
- 12 with it.
- 13 A: Sir, I ain't see. I don't know what happened to that knife. I know when he
- 14 came I see something. I know I see something shining.
- 15 Q: What kind of car does Javon drive?
- 16 A: Sir, I ain't sure.
- 17 Q: Let me show you what's in evidence as State's Exhibit Seven. Do you
- 18 recognize that car?
- 19 A: Yes, sir.
- 20 Q: Whose car is it?
- 21 A: I don't know the person driving the car but I know the car.
- 22 Q: One of Javon's boys. Isn't it? Come on now. It's one of his boys, isn't it?
- 23 A: I don't know, sir.
- 24 Q: You're telling us you never saw Javon in that car with his boy?
- 25 A: No, sir. Every time I see him he be walking.

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1 Q: All right.

2 MR. SABB: Court's indulgence, Your Honor.

3 Q: Where did Javon go after he shot Derial?

4 A: I don't know, sir.

5 Q: Well, he's like an older brother to you.

6 A: Yes, sir.

7 Q: You weren't concerned about him? You don't know where he went?

8 A: No, sir.

9 Q: And when he left that night you didn't see him for a while, did you?

10 A: No, sir.

11 Q: Did you have any contact with him when he had run down to Florida?

12 A: No, sir. I didn't know he was in Florida.

13 Q: Sir?

14 A: I didn't know he was in Florida.

15 Q: You didn't see him around.

16 A: No, sir.

17 Q: You didn't have no more contact with him.

18 A: No, sir.

19 Q: What did he do with the gun?

20 A: I do not know.

21 Q: Have you talk to him since this incident occurred?

22 A: No, sir.

23 Q: Who did you tell about this claim for this knife? Who did you tell about it?

24 A: Who I told about it?

25 Q: Uh-huh (affirmative response). I know you didn't tell your mama because

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1 you wasn't supposed to be out there.

2 A: No, sir.

3 Q: You didn't tell her. Who did you tell about it?

4 A: I been talking, they like yeah, he had a knife in his hand.

5 Q: No, no, no, son. Answer my question, please. Don't do that. I asked you a
6 specific question and you know it. Who did you tell about the knife?

7 A: Nobody. People know he had a knife.

8 Q: Sir? Let me tell you something, son. You came in here ...

9 MR. CARRAWAY: I want to ask at this point ...

10 THE COURT: The objection ... the objection is sustained. That's
11 argumentative, Mr. Sabb.

12 MR. SABB: Yes, sir, Judge, I apologize.

13 THE COURT: Okay. Ask a question.

14 MR. SABB: I apologize.

15 Q: Now, the only reason why you said what you said just now is because you
16 want the jury to think that there are a bunch of other people who saw what
17 you saw, isn't that right?

18 A: People saw what I saw.

19 Q: The only reason that you blurted out what you just said was because that's
20 what you want them to think, isn't it?

21 A: I don't understand that. I'm telling the truth.

22 Q: You know full good and well that that wasn't the question that I asked you,
23 don't you?

24 A: Yes, sir.

25 Q: You know the difference between the question of what you ... why you keep

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1 looking over at the table?

2 A: I ain't ...

3 Q: You know the difference between the question of what does people say and
4 what do you say. You know the difference between those two questions,
5 right?

6 A: Yes, sir, I know.

7 Q: And you heard my question clearly, didn't you? But you chose to give a
8 different answer, didn't you?

9 A: No, sir.

10 Q: You're not even admitting that you were non-responsive to my question?

11 A: I responded to it.

12 MR. SABB: Thank you, Judge.

13 THE COURT: Mr. Carraway, any questions?

14 MR. CARRAWAY: No, Your Honor.

15 THE COURT: Step down. Any objection to this witness being
16 excused, Mr. Carraway? Do you release the witness?

17 MR. CARRAWAY: No objection.

18 THE COURT: All right. Mr. Sabb?

19 MR. SABB: No objections, Judge.

20 THE COURT: All right. You can be excused. Thank you, sir. Mr.
21 Carraway? Oh, anybody on the jury need a break? All right. Call your next witness.

22 MR. CARRAWAY: Call Tatiana Rivers to the stand.

23 MS. WILLIAMS: Place your left hand on the Bible, raise your right
24 hand. Do you solemnly swear that the evidence and testimony you will give this
25 Court and the jury will be the truth, the whole truth and nothing but the truth so help

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1, you God?

2 MS. RIVERS: Yes..

3 MS. RIVERS - DIRECT EXAMINATION BY MR. CARRAWAY:

4 Q: Will you spell your first name, please.

5 A: It's T-A-T-I-A-N-A.

6 Q: You are Tatiana Rivers.

7 A: Yes, sir.

8 Q: How old are you, Tatiana?

9 A: Just turned 26.

10 Q: Just turned 26. And Scooter is your brother, is he not?

11 A: Yes, sir.

12 Q: Okay. And how old is Scooter?

13 A: He should be like 28 going on 29.

14 Q: 28 going on 29.

15 A: Uh-huh (affirmative response).

16 Q: Okay. Were you at Sadie's Club on the evening of May 16th on into the
17 morning of May 17th? Were you there?

18' A: Yes, sir.

19 Q: Tell the Court what you observed at this time.

20 A: Okay. When I walked out Sadie's Club ...

21 THE COURT: She's going to have to ...

22 Q: Speak up.

23 THE COURT: ... speak louder into that microphone, please.

24 Q: I want you to speak loud enough ... get up under the mic and speak loud
25 enough so I can hear you.

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- 1 A: Okay.
- 2 Q: All right. Go ahead.
- 3 A: When I left out the club I heard a commotion, so when I got to the side of the
- 4 club where the DJ be at and went over there and when I looked over there I
- 5 see my brother standing there and I see Erica standing there. Then I see
- 6 Dyshea and her boyfriend standing there. And I hear her saying he got a gun,
- 7 got a gun and the boyfriend say oh, I ain't scared to die, I ain't scared to die.
- 8 Next thing I knew we was across the street over there with Erica and he like
- 9 launched at my brother and my brother shot him.
- 10 Q: Okay. All right. You didn't see ... you weren't outside ... you didn't see
- 11 anything earlier, is that right?
- 12 A: No, sir.
- 13 Q: That's what you saw, just then and you don't know what happened.
- 14 A: No, sir.
- 15 Q: You were inside the club.
- 16 A: Yes, sir.
- 17 Q: All right. How long had you been at the club that night?
- 18 A: I didn't get until about 1:30.
- 19 Q: Okay. Where when you saw your brother ... when you saw the confrontation
- 20 between Derial and Scooter, where in relation to Scooter was Erica?
- 21 A: She was ... she was like behind him.
- 22 Q: Okay. Did you hear Derial say anything?
- 23 A: I hear him say you gonna shoot me, MF, you gonna shoot me and he launched
- 24 at my brother.
- 25 Q: And what did he do when he launched at your brother?

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1. A: He just like swung a knife at him.

2 Q: Okay. Can you describe the knife?

3 A: I knew he had a knife. I can't say how long it was, color, but I know I see a
4 knife.

5 MR. CARRAWAY: Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. CARRAWAY: I don't any further questions. Answer anything
8 that Ms. Barr or Mr. Sabb might have.

9 MS. BARR: May it please the Court.

10 THE COURT: Yes, ma'am.

11 MS. RIVERS - CROSS EXAMINATION BY MS. BARR:

12 Q: Ms. Rivers, tell me again what time you got to the club that night.

13 A: We be there about 1:30.

14 Q: Okay. And I'm assuming that your brother was already there?

15 A: Yes.

16 Q: When you arrived Derial was already there?

17 A: I don't know when he was there.

18 Q: Okay. All right. You had known Derial before this night?

19 A: Yes, ma'am.

20 Q: Now, you indicated that you came up at some point and observed your
21 brother and Derial in some sort of argument or confrontation.

22 A: Yes, ma'am.

23 Q: And you of course are not hear to testify as to what may have happened that
24 resulted in that confrontation, are you?

25 A: No, ma'am.

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- 1 Q: Because you don't know anything about that. Is that correct?
- 2 A: Yes, ma'am.
- 3 Q: Now, you first saw your brother when you came out to the club, he didn't have
- 4 a gun then, did he?
- 5 A: I didn't know what was going on. I just heard the confrontation.
- 6 Q: I understand. When you first came out to the club that night ...
- 7 A: I walked in ...
- 8 Q: Let me finish my question before you answer. Okay? Is that fair?
- 9 A: That's fair.
- 10 Q: All right. When you came out to the club you came at just the exact moment
- 11 of the confrontation or you came earlier?
- 12 A: No, I came when I heard ... when I heard him ...
- 13 Q: I'm sorry?
- 14 A: When I was smoke ... first step outside to smoke I heard the confrontation. I
- 15 walked over to him and I heard that's when my brother was standing on there
- 16 at Derial and I see my brother, Erica. And I looked at the rest of them and I
- 17 seen Derial and I seen Dyshea across the street.
- 18 Q: Okay. You arrived at the club at 1:30.
- 19 A: Yes, ma'am.
- 20 Q: How long were you there before you observed the confrontation?
- 21 A: Can't be precise what time it was but it was not very long.
- 22 Q: When you're saying long are we talking an hour, five minutes, give us some
- 23 time frame.
- 24 A: Longer than five minutes.
- 25 Q: I'm sorry?

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- 1 A: Longer than five minutes.
- 2 Q: All right. When you first got to the club did you see your brother, Javon,
- 3 there? When you first got there?
- 4 A: I wasn't looking for Javon. When I first got in, when I pay my way in, I
- 5 wasn't looking for him when I first walk in the club.
- 6 Q: I understand you wasn't looking for him. My question is whether or not you
- 7 saw him.
- 8 A: Didn't.
- 9 Q: You did not see him?
- 10 A: No, ma'am.
- 11 Q: So the first time you would have seen him would have been during that
- 12 confrontation, is that correct?
- 13 A: Yes, ma'am.
- 14 Q: Your brother is known to carry a gun?
- 15 A: Not that I know of.
- 16 Q: You never knew him to carry a gun?
- 17 A: I don't ...
- 18 Q: Let's be honest. You're under oath.
- 19 A: I am ... I'm being honest.
- 20 Q: You're telling this Court under oath ...
- 21 A: Yes.
- 22 Q: ... you did not know your brother to carry a gun?
- 23 A: I've heard of it but I've never seen him.
- 24 Q: He carried a gun. He was known to carry a gun.
- 25 A: What I'm saying is I've never seen him actually with a gun .

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- 1 Q: When you come up and you start talking about this confrontation, you
2 indicated that you saw the victim supposedly with a knife. Right?
- 3 A: I see him with a knife.
- 4 Q: Describe it to me. Was it a steak knife, kitchen knife, pocket knife, butcher
5 knife? Give us some idea what the knife was like.
- 6 A: The only thing I can tell you is it was a knife. I don't know what color it was.
- 7 Q: You can't tell us whether it was a pocket knife or a butcher knife?
- 8 A: I know it was a knife. A pocket knives are big and some butcher knives are
9 small so I can't really give any detail. I know he had a knife.
- 10 Q: And you don't know what color it was.
- 11 A: No, ma'am.
- 12 Q: All right. You saw your brother kill Derial McCrea?
- 13 A: I seen ... I seen ... I heard one shot.
- 14 Q: My question was you saw your brother kill Derial McCrea?
- 15 A: I seen him shoot.
- 16 Q: You saw him kill him? Saw him shoot him in the face? All right.
- 17 A: I believe I shouted ... I believe I shouted but I can't say ...
- 18 Q: You saw your brother fire a gun, correct?
- 19 A: Yes, ma'am. Yes, ma'am.
- 20 Q: And you saw Mr. McCrea fall down as a result of that, correct?
- 21 A: Yes, ma'am.
- 22 Q: And you saw him bleeding from his head as a result of that, correct?
- 23 A: Didn't see no blood. After I see that I left.
- 24 Q: All right. You left. Where did Javon go? Javon go?
- 25 A: I have no idea. I went my separate way. I went to my boyfriend to his house.

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- 1 Q: You went back in the club?
- 2 A: Yes, ma'am. My boyfriend was in there. He had drive, I got him to take me
- 3 home.
- 4 Q: All right. So you went and got your boyfriend and left.
- 5 A: Yes, ma'am.
- 6 Q: So as I understand it you just witnessed according to your testimony
- 7 somebody try to kill your brother.
- 8 A: Yes, ma'am.
- 9 Q: You witnessed your brother shoot somebody in the face and you're not
- 10 concerned at all where he is? You just leave?
- 11 A: He left.
- 12 Q: Weren't worried about him at all?
- 13 A: A little bit.
- 14 Q: Did he get cut?
- 15 A: I couldn't see --- didn't see.
- 16 Q: So as I understand it after this complication after Derial was shot you didn't
- 17 see which direction your brother went in?
- 18 A: No, ma'am, because I went in the club to get my boyfriend.
- 19 Q: You didn't see whether he got in the car?
- 20 A: No, ma'am.
- 21 Q: Whether he went walking?
- 22 A: No, ma'am.
- 23 Q: You didn't see whether he was hurt or not hurt?
- 24 A: No, ma'am.
- 25 Q: All right. When was the next time you would have saw him after the

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1 shooting?

2 A: When I went to see him last Saturday.

3 Q: Say it again.

4 A: When I went to see him last Saturday.

5 Q: When was the last time ... when was the first time you would have talked to
6 him after the shooting?

7 A: Same time.

8 Q: You hadn't talked to your brother in almost a year since last Saturday.

9 A: No, because I heard my mother talking to him.

10 Q: You love your brother?

11 A: I love him very much, yes.

12 Q: And he was being stabbed at and shot a guy and you just was like oh well, let
13 me go and get my boyfriend and go. What happens to him happens to him.
14 That's what you want us to believe?

15 A: No. That's not how it was.

16 Q: Well, tell me how it was. I mean, this is your brother, right?

17 A: Okay. When I ... when I see what happened I left.

18 Q: And you weren't concerned about calling him, checking up on him?

19 A: I knew he was all right.

20 Q: Because he had a gun. He was packing, right? Now, your testimony that
21 Denial supposedly had this knife, I mean, it's pretty important information,
22 wouldn't you say?

23 A: Very important.

24 Q: As a matter of fact, if that's to be believed then you would certainly advance it
25 to the jury that your brother was just defending himself, right?

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- 1 A: Yes, he was.
- 2 Q: Nothing wrong with that. You defending yourself, right?
- 3 A: Yes.
- 4 Q: And you were supposedly if the jury is to believe you an eyewitness, right? Is
- 5 that right?
- 6 A: Yes, ma'am.
- 7 Q: All right. Do you recall that Investigator Whack came to talk to you a day or
- 8 so after the shooting?
- 9 A: Who's
- 10 Q: Right up there. Remember him?
- 11 A: Yes, ma'am, I do.
- 12 Q: All right. And as a matter of fact, he asked you ma'am, were you at the club
- 13 that night. Do you remember him asking you that?
- 14 A: I remember he asking to speak to him
- 15 Q: You remember him asking you if you were at the club that night?
- 16 A: I remember he asked me can he get a tape recording.
- 17' Q: And what did you tell him? You told him no, right?
- 18 A: No, I told him yes.
- 19 Q: You told him yes?
- 20 A: Yes, ma'am.
- 21 Q: Okay. All right. So you told him that you witnessed all this that you're
- 22 telling this jury now?
- 23 A: I didn't get a chance to tell him nothing about. He came to the house, that
- 24 officer was really rude. I asked him to please leave my house right now and
- 25 come back with a subpoena.

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- 1 Q: So all this important information that you had about your brother ...
- 2 A: Uh-huh (affirmative response).
- 3 Q: ... you being an eyewitness ...
- 4 A: Uh-huh (affirmative response).
- 5 Q: ... an officer came out there to talk to you about what you saw ...
- 6 A: Uh-huh (affirmative response).
- 7 Q: ... you told them with all your important information you come back when
- 8 you got a subpoena.
- 9 A: Yes, sir, because the officers were rude. Very rude.
- 10 Q: Was Investigator Whack rude to you?
- 11 A: No, ma'am, but he wasn't the officer on the porch.
- 12 Q: Other than this 11th hour story that you're telling us today, tell me how many
- 13 other people did you told your eyewitness account to?
- 14 A: The lawyer.
- 15 Q: Okay.
- 16 A: Mama.
- 17 Q: The lawyer? Or your brother's lawyer, your mama and who else?
- 18 A: A couple people, family members.
- 19 Q: Okay. Nobody outside the family members?
- 20 A: Not really.
- 21 Q: Now, at some point surely within a day or two or a week or so after you
- 22 cooled off and after the officer who was supposedly rude to you cooled off
- 23 you went and surely said wait a minute, now, they getting ready to charge my
- 24 brother with something he's not going to do, I'm going to tell them what really
- 25 happened, right? You had that conversation, right?

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1 A: No, because the officer was rude I had nothing else to say to him.

2 Q: Your brother's what, about 5'10", 5'11"?

3 A: 5'10, 5'11.

4 Q: About 190 pounds?

5 A: I don't know.

6 Q: He's certainly in terms of his ... his stature he's certainly bigger than Derial,
7 right?

8 A: I don't know.

9 Q: Would it surprise you to know that Derial was 148 pounds?

10 A: No, I don't know.

11 Q: Now, you did not mention something that I thought was interesting. You
12 never mentioned where Erica was at the time of the shooting. Do you know
13 where she was?

14 A: Actually I think she was right behind my brother.

15 Q: She was right behind your brother?

16 A: Yes, ma'am.

17 Q: Not in front of your brother?

18 A: No, ma'am.

19 Q: All right. So your brother would have been at least according to you between
20 Derial and Erica, correct?

21 A: Yes.

22 Q: After the shooting, did you understand that Derial had been taken to the
23 hospital and was in critical condition?

24 A: Yes, ma'am.

25 Q: And a couple weeks later did you hear that he had died as a result of the

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1 gunshot?

2 A: Yes.

3 Q: And at this point in time you realized that the charges would be elevated to
4 murder, right?

5 A: No, because the officer told my mother that it was self defense.

6 Q: Said what was self defense?

7 A: The shooting that occurred.

8 Q: Who told you that?

9 A: Whichever officer come to my mother's ... come to her house, he was talking
10 to her.

11 Q: Talked to your brother?

12 A: My mother.

13 Q: Whichever officer talked to your brother said it was self defense?

14 A: No, ma'am, whichever officer came to my mother house and talked to my
15 mom told her that he had a lot of witnesses saying that Derial approach him.

16 Q: Tell me who that officer was.

17 A: You'll have to ask my mom because I was not there. She never told me the
18 officer name. She just told me the conversation.

19 Q: Well, would it surprise you to know that he had warrants signed on him that
20 day?

21 A: Yeah, because she would have told me that.

22 Q: All right. And would it surprise you to know that they were looking for him
23 and they just wanted him to turn himself in?

24 A: Well, it's not surprising.

25 Q: But your brother had hightailed it down to Miami, Florida, didn't he?

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1 A: I don't know if that's where he went, I really don't.

2 Q: He didn't stay around here, right?

3 A: No, ma'am.

4 Q: Went all the way ... you later found out he was in Florida, right?

5 A: Yes, ma'am.

6 Q: And you found out he was picked up on a traffic stop. He didn't never turn
7 himself in, is that correct?

8 A: Yes, ma'am.

9 MS. BARR: That's all.

10 THE COURT: Redirect?

11 MR. CARRAWAY: Nothing, Your Honor.

12 THE COURT: Any objection to this witness being excused?

13 MS. BARR: No objection from the State.

14 THE COURT: You can be excused. You can either leave or stay.

15 Everybody in the jury okay? If you need to take a break just let me know. All right,

16 Mr. Carraway?

17 MR. CARRAWAY: We call Justin Whack.

18 MS. WILLIAMS: Place your left hand on the Bible. Raise your right
19 hand. Do you solemnly swear the evidence and testimony you will give this Court
20 and jury will be the truth, the whole truth and nothing but the truth so help you God?

21 MR. WHACK: I do.

22 MR. WHACK - DIRECT EXAMINATION BY MR. CARRAWAY:

23 Q: Do you recall questioning Ernie Wilson?

24 A: Yes, sir.

25 Q: All right. And you asked Ernie Wilson about a knife, didn't you?

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1 MS. BARR: Objection. Hearsay.

2 THE COURT: All right.

3 MR. CARRAWAY: That's what he said.

4 THE COURT: Wait, wait.

5 MR. CARRAWAY: Okay.

6 THE COURT: Do you have an extra copy of the statement?

7 MR. CARRAWAY: Yes.

8 THE COURT: All right. Jurors, will you please exit to the jury room
9 for just a moment while we take up a matter outside of your presence. You may not
10 discuss the case. We'll just use this as an opportunity to take a break for the
11 afternoon. If you'd like something that is not in the jury room let the foreperson
12 know.

13 (Jury out).

14 THE COURT: All right, Mr. Carraway, you questioned the witness, if
15 anybody has got a copy. The only statement I have up here is the statement from Ms.
16 Morant. Do you have an extra copy? Thank you. You asked him if he took a
17 statement from Mr. Wilson. All right, in the statement there is reference to Von, is
18 that Javon?

19 MR. CARRAWAY: Yes.

20 THE COURT: Javon. All right. Go ahead, Mr. Carraway.

21 Q: It was Officer Brown that ask the question. You and Officer Willie Brown
22 questioned him, is that right?

23 A: Yes, sir.

24 Q: Okay. Both of you all were in there the whole time?

25 A: Yes, sir.

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1 Q: Okay. So illie Brown asked him the questions.

2 A: That's right.

3 Q: You didn't ask him anything.

4 A: Right.

5 MR. CARRAWAY: And I don't have any further ... I don't have ... that
6 was the only thing.

7 THE COURT: Mr. Sabb?

8 MR. SABB: That resolves it as far as we are concerned.

9 THE COURT: All right. There won't be any ... certainly won't be any
10 questions from the prosecution since there won't be any questions on direct. Mr.
11 Carraway, are you going to have any other witnesses? Do you need some time to talk
12 to your client?

13 MR. CARRAWAY: Yes, Your Honor.

14 THE COURT: All right. Let me ask you this and again, not to hold
15 you to it. Is the Defendant's intention at this point not to testify, will you be calling
16 any other witnesses or do you also want to talk to him about that?

17 MR. CARRAWAY: I want to talk to him about that. I ... am I correct
18 in assuming that we're going to argue in the morning?

19 THE COURT: Well, if there is any reply. We're going to finish the
20 testimony today.

21 MR. CARRAWAY: Okay. But we're not going to argue before in the
22 morning.

23 THE COURT: Well, I don't think so. Let me just ask prosecution this.
24 If there are no further Defendant's witnesses, will you be calling any reply?

25 MS. BARR: No, Your Honor.

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1 THE COURT: All right.

2 MR. CARRAWAY: There may be ..., I've had ...

3 THE COURT: What I don't want to do is break now for the day and
4 then at 9:30 in the morning you say you want to call one, two or three witnesses. So I
5 am going to hold you to that.

6 MR. CARRAWAY: Okay. It shouldn't be any more than one. As I've
7 said to the Court I've spoken to two other witnesses but I can't find them now or
8 whatever. I don't know that I'm going to call them anyway ...

9 THE COURT: Well ...

10 MR. CARRAWAY: ... because it may be cumulative ...

11 THE COURT: ... if you're going to call them you're going to call them
12 this afternoon. Not in the morning.

13 MR. CARRAWAY: Okay. Well, I don't have them here.

14 THE COURT: I know. But ...

15 MR. CARRAWAY: What you're ...

16 THE COURT: ... it's ten after 3:00 so that was part of the reason ...

17 MR. CARRAWAY: My only argument would be I have not ... we
18 have not been able to locate this witness. If he is a crucial witness I would ... here's ...
19 here's what happened. I understand that he gave me a fictitious name or whatever. He
20 has charges against him. He gave the name to me. I spoke to him, a Jonathan Smith.
21 He gave that name to me. I spoke to him yesterday. I don't know ...

22 THE COURT: His name wasn't called out on the list as I recall.

23 MR. CARRAWAY: Yeah. I was ... I did not know at that time ...

24 THE COURT: What is his name?

25 MR. CARRAWAY: I don't know what it is now but I have reason to

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1 believe that he gave me a fictitious name or whatever.

2 THE COURT: All right. We're ... we're going to break for a few
3 minutes. Since it's time for you to present your case you have to show compelling
4 reasons why we stop today and don't start until tomorrow because I want to make
5 good use of our time.

6 MR. CARRAWAY: I sure do. All I can ask is I will be here at 9:00
7 o'clock tomorrow. If there is somebody ... if there is somebody we find there will not
8 be but one. There may not be any. But if I can find this one guy I would like to be
9 able to call him. We've been looking for him for two days. I'd like to be able to call
10 him first thing tomorrow to have the opportunity. I don't know that I'll find him.
11 Sounds like he's probably somebody that don't want to be found.

12 THE COURT: Mr. Whack, you can step down. You are still
13 technically a witness so you can't talk about the case with anyone until you are
14 released and it's more than likely going to be in about 15 minutes. All right? Thank
15 you. We'll break ... we'll break for 15 minutes.

16 (Off the record).

17 THE COURT: Mr. Carraway, what I'll do is this. If you were to rest
18 right now we're at that witching hour where I wouldn't want to impose on the jury the
19 charge and the time to gather your thoughts on your arguments but if we do the
20 arguments and charge by that it would be 5:30 and then to give them some
21 meaningful deliberations.

22 THE COURT: Do you have any witnesses you're going to call today?

23 MR. CARRAWAY: No, Your Honor.

24 THE COURT: All right. The only witness I'm going to allow you to
25 call because I want to make use of the court time is the individual who you indicated

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1 gave you the name of Jonathan Smith. And after that Ms. Barr and Mr. Sabb can
2 determine whether or not they're going to call any reply witnesses. Yes, ma'am?

3 MS. BARR: Your Honor, may it please the Court? There is one
4 witness and I apologize. I didn't have the benefit of Investigator Whack at the table
5 with me but there is one witness that we'd like to call in reply and that person is on
6 the witness list and will probably take five minutes.

7 THE COURT: Is this person here now?

8 MS. BARR: Yes.

9 THE COURT: All right. If Mr. Carraway's witness is not located we'll
10 do that first thing in the morning. And so I'm not going to require you to rest at this
11 time, Mr. Carraway. The witness, maybe he'll be here tomorrow morning. All right.
12 Will you all be ready to ...

13 MR. SABB: I apologize, Judge.

14 THE COURT: Be ready to argue and charge promptly at 9:30
15 assuming there are no more witnesses. If there weren't any additional witnesses then
16 we would argue and charge this afternoon. All right. Bring in the jury.

17 (Jury in).

18 THE COURT: Mr. Carraway, would you like to question the witness?

19 MR. CARRAWAY: I withdraw my questions for Officer Whack.

20 THE COURT: Officer Whack ...

21 MR. CARRAWAY: He may be excused.

22 THE COURT: Thank you. All right, ladies and gentlemen, there
23 comes a time in a trial when there are parties involved ... that cell phone needs to be
24 removed. All right. Just ask the individual to stay behind. There comes a time in a
25 trial where the parties have to determine whether or not they will call any additional

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1 witnesses and the parties are determining that now. If there were on witnesses
2 remaining to be called, the next phase of the trial will be for the lawyers to give their
3 closing arguments and then the charge on the law. And if we were to start that right
4 now that would be tremendously inconvenient because that process in and of itself
5 would take us well past 5:30. So I'm going to pull the trigger on breaking for the day.
6 We're going to start promptly at 9:30 and we will finish the testimonial phase and the
7 arguments and the charge by lunch tomorrow. And after lunch tomorrow I'm 95
8 percent sure you will be free to deliberate this case. For the rest of the afternoon and
9 this evening of course you may not discuss the case. Don't discuss what your verdict
10 might be in the case that's because you have not heard everything and I trust you will
11 continue to follow that instruction. If you have any questions or concerns about
12 anything the foreperson who will alert the bailiff who will provide you with that. Be
13 back in your jury room at 9:30 and we'll make sure we start promptly at that time. I
14 believe a problem with transportation for one of the jurors was caused because of the
15 shift change and one deputy didn't know that he was supposed to pick somebody up.
16 See you back tomorrow morning at 9:30 and again, do not discuss the case.

17 (Jury out).

18 THE COURT: All right. I think we've reached the point ... we've
19 reached the point where I think we can intelligently discuss the charges based on the
20 ... the testimony that's in the record. I know Mr. Carraway we're not at the point
21 where we need to be making any motions since you have not closed the case yet.
22 Does either side want to be heard on whether or not the self defense or defense of
23 other charge is warranted? Mr. Carraway, are you asking for a self defense charge?

24 MR. CARRAWAY: Yes, Your Honor.

25 THE COURT: And the defense of others charge?

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1 MR. CARRAWAY: Yes, Your Honor.

2 THE COURT: All right. Would the prosecution like to be heard on
3 that?

4 MS. BARR: Judge, we would. Judge, we think that there is
5 insufficient evidence in the record certainly at this point to warrant any charge of
6 defense of others. There has been no evidence whatsoever that a third person was
7 placed in any sort of danger to provide safety. We believe that's inappropriate.

8 THE COURT: How about self defense?

9 MS. BARR: Judge, of course we would take the position that there is a
10 duty to retrieve, therefore self defense. The jury charge is not appropriate on the facts
11 of this case. Of course we understand that the benefit of the doubt has to be given to
12 the Defendant. The fourth element of self defense requires that a Defendant means
13 there was no other reasonable, safe, appropriate alternative then to act as he did.
14 Clearly the evidence here is being disputed at this time. The Defendant left, went got
15 a gun, armed himself and then came back so given that we believe that there is not
16 evidence in the record to support a self defense charge.

17 THE COURT: All right. Here's the I guess the situation we're faced
18 with. In the first instance, the initial altercation the Defendant indicated or at least
19 Mr. Carraway has indicated that he thinks that he's entitled to a defense of others or
20 that the table was set for defense of others because of the initial altercation where no
21 gun was involved. Is that correct, Mr. Carraway?

22 MR. CARRAWAY: Only arguing that it is evidence that the victim
23 had a knife.

24 THE COURT: Initially.

25 MR. CARRAWAY: Initially.

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1 THE COURT: All right. Tell me how ... tell me how we go from
2 there to entitled to you get to the point where the defense of others charge is
3 warranted.

4 MR. CARRAWAY: If someone is standing there arguing with a
5 relative of mine and calling them an MF on more than on occasion, calling them a B
6 on more than one occasion, standing there arguing with them and I step forward and
7 say as the evidence here is ... there's evidence on the record that the ... that he steps
8 forward and the victim says this isn't any of your business and he says it is my
9 business because this is my family right here. Then the victim pulls incredibly
10 enough the evidence ... there is evidence on the record, he pulls out a knife on this
11 guy. He pulls a knife out at this point and my guy as everyone said now, why in the
12 world would a 190 pound guy run from a 148 pound guy, take off running like that
13 unless there was a knife. There's a witness that said he swung at him as if he had a
14 knife and he heard people say he had a knife.

15 THE COURT: Is that snapshot self defense scenario or defense of
16 others ...

17 MR. CARRAWAY: That is a defense of others because this man's still
18 right with the relative or whatever. That's who he was fighting with. He wasn't
19 fighting with me. He was ... he was fighting with her. That's the reason I intervened
20 anyway.

21 THE COURT: But he pulled the knife according to your view of the
22 evidence because of something the Defendant did.

23 MR. CARRAWAY: Because the Defendant ...

24 THE COURT: Because he intervened. Because the Defendant
25 intervened.

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1 MR. CARRAWAY: That's right. He ... he did that at that point and
2 swung at him. But he's still got the knife in his hand and the object of who he's mad
3 at is ... that who he was arguing with is Erica and the evidence is ... there's evidence
4 on the record that when he came back from the car, ran to the car, came back in a
5 very short period of time the evidence is Erica was right behind him when the victim
6 advanced on him and swung at him twice. Now, I don't know where this ... and no
7 one has come in here and said that the man did not have a knife. Someone yelled out
8 to the crowd he had a knife or whatever and I ask you why he would run away if this
9 man didn't have a knife and if he comes right back gee, where is the knife, that's
10 going to be our argument anyway. When he left the person he was arguing with was
11 still right in front of him or whatever.

12 THE COURT: Where was the person he was defending? At the
13 moment your client steps away and he goes to the vehicle, where is the person being
14 defended? Did he just leave her there?

15 MR. CARRAWAY: He left her there because the man pulled a knife.

16 THE COURT: All right. Why leave the person defending ... you step
17 in between two people ...

18 MR. CARRAWAY: Yeah.

19 THE COURT: ... the person who you intend was using fowl language,
20 he pulls a knife and comes at you once or twice. So you leave to go to your car and
21 again I may be commenting on the facts here, not on the existence of the evidence but
22 why would you leave a man wielding a knife to go to get something out of your car to
23 protect someone and leave that person exposed to the knife wielding man?

24 MR. CARRAWAY: I guess he didn't want to get cut. Because the
25 man had already swung at him twice with a knife.

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1 THE COURT: So did he leave to defend himself or to retreat or did he
2 leave to go get a gun and come back and finish the defense of others?

3 MR. CARRAWAY: Come back and finish defense of others.

4 THE COURT: Why would he leave her there?

5 MR. CARRAWAY: Because the man was about to cut him with a
6 knife.

7 THE COURT: Why didn't he take her with him if that's who he was
8 defending?

9 MR. CARRAWAY: I don't think he's attached to her or whatever. I
10 don't think they ... I don't think they ...

11 THE COURT: Would you say under the law of self defense of course
12 the Defendant can take somebody else's life if he's defending ... lawfully defending
13 somebody else? Of course she mentioned the law isn't that ... the Defendant may take
14 a life if a person assaults a friend, a relative or bystander if that friend or relative or
15 bystander would have the right of self defense. And that person being defended in
16 order to have had the right of self defense that first show that the person being
17 defended and that the Defendant were without fault in bringing on the difficulty.
18 Have you established that by any ... by any evidence?

19 MR. CARRAWAY: Yes, we have. All he did was get involved in this
20 because this man was calling this who he says is his family and she is related to him
21 or they ... they are related I think there's ... yeah, there's a connection.

22 THE COURT: Or it could be a bystander. It doesn't have to be a
23 relative.

24 MR. CARRAWAY: And ...

25 THE COURT: It helps.

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1 MR. CARRAWAY: Yeah. And what happened. He's not at fault of
2 bringing this on. You know, I would hope that someone ... I ... I don't ... I don't ... I
3 wouldn't want to argue that ... that just because we are at Sadie's Club is that there's a
4 one standard of civility everywhere. There's not two standards. I don't think you can
5 call some ... some lady an MF and call her a B and a B ...

6 THE COURT: That ... that doesn't allow him to use deadly force.
7 That just allows him to step in.

8 MR. CARRAWAY: And that's what he did. He didn't use deadly
9 force at that point. He didn't use deadly force. But then a knife comes out. Now a
10 knife was directed at him but, you know, he swings at him.

11 THE COURT: All right. Here's ... here is what I'm getting at. Defense
12 of another person is excusable if the Defendant had reasonable grounds to believe and
13 in good faith did believe that the person being defended was in imminent danger of
14 death or serious bodily harm. Do you contend that's present because of the knife
15 swipe.

16 MR. CARRAWAY: Because of the knife swipe and he's mad. The
17 victim was mad at Erica. That's who he was mad at. That's who he was arguing ...

18 THE COURT: But also mad at the Defendant for intervening.

19 MR. CARRAWAY: For intervening.

20 THE COURT: All right. Now, is this an improper ... am I improperly
21 weighing the evidence by saying how does that made sense. He's defending the life
22 of another person from a knife attack. Walk away, run away, scoot away or whatever
23 and leave that unprotected person there.

24 MR. CARRAWAY: Because the person is swinging a knife at him.

25 THE COURT: So he's ...

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1 MR. CARRAWAY: He's not ... he's either ... what he goes is to get ...
2 he goes and he's back in seconds or whatever with something that's going to stop this
3 person ...

4 THE COURT: Maybe I'm making ... in other words, maybe I'm
5 making a jury argument instead of a legal rule.

6 MR. CARRAWAY: I think so.

7 THE COURT: And I ... and I ...

8 MR. CARRAWAY: That makes sense to me. If this man's got a knife
9 or whatever I'm gonna ...

10 THE COURT: You don't hey, Erica, come with me, he's got a knife
11 and I'm protecting you?

12 MR. CARRAWAY: I don't know they had time for that when the guy
13 is swinging at him twice. If everybody has said he really ran off quickly. That's the
14 way it happened.

15 THE COURT: Okay. Ms. Barr, any ... and what I may be doing is
16 looking at the weight instead of the existence of the evidence. What's your comment
17 on that.

18 MS. BARR: Judge, I don't think that ... that you are. I think that when
19 you are trying to determine which jury charges are appropriate and you have to look
20 at the existence of evidence and there is no existence of evidence in this case that this
21 third person who he professes to have been trying to protect was ever in any danger of
22 any imminent physical harm.

23 THE COURT: Well, the twist we have ... wait a minute ...

24 MR. CARRAWAY: Okay.

25 THE COURT: ... the twist we have is that the knife never appeared in

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1 the equation until he verbally stepped in, physically stepped between them.

2 MS. BARR: And the knife was never reported to have been by any
3 witness directed toward this third party. Ever.

4 THE COURT: That ...

5 MS. BARR: And she testified that she wasn't fearful.

6 THE COURT: And that's what I'm struggling with. So under the law,
7 let's just assume defense of others is out for the time being. When he walks away,
8 he's retreated as he's required to do if he has the ability to retreat. Nothing if you're
9 dealing strictly with self defense allows him to come back. The only thing that
10 allows him to come back is he's completing a defense of others.

11 MR. CARRAWAY: Absolutely.

12 THE COURT: All right. And that's where it somewhat leaves me in
13 my mind chasing my tail.

14 MR. CARRAWAY: May I add one other thing?

15 THE COURT: Yes, sir.

16 MR. CARRAWAY: The daughter said on the direct questioning to
17 Ms. Barr, Ms. Barr asked the daughter, were you in fear for your mother's safety. She
18 said yes she was.

19 THE COURT: Well ...

20 MR. CARRAWAY: The daughter was in fear.

21 THE COURT: Well, it's got to be danger of death or serious bodily
22 harm ...

23 MR. CARRAWAY: Yes.

24 THE COURT: ... in the view of a reasonable person.

25 MR. CARRAWAY: Judge, if someone's got a knife and they're mad at

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1 somebody here I think it would have been irresponsible for him not to come back.

2 THE COURT: Did your ... did your client's leave now based on your
3 view of the evidence ... I don't mean just anything your client has told you. He hasn't
4 testified. Did your client leave because he believed that Ms. McBride was in
5 imminent danger or did he leave because he was in imminent danger? Or both?

6 MR. CARRAWAY: Both.

7 MS. BARR: Judge, if I may add, Your Honor, all of these witnesses
8 testified: Dyshea McBride, Erica McBride, Leslie Morant, Ernie Wilson. No one of
9 them saw the victim with a knife. The only person ...

10 THE COURT: Well, Mr. Wilson said he was swinging like he had a
11 knife.

12 MS. BARR: Correct, Judge.

13 THE COURT: But and I know ... I understand the evidence sometimes
14 doesn't come out in bits and pieces and the weight may give you some comfort, but
15 the existence is what I've got to deal with. You have two, Mr. Brand ...

16 MR. CARRAWAY: Is the only one that said there was a knife at first.

17 THE COURT: No ...

18 MR. CARRAWAY: His sister did not view the first incident.

19 THE COURT: But the ... Mr. Brand said he saw a knife both times.

20 MR. CARRAWAY: Yeah.

21 THE COURT: What I'm struggling with is the person supposedly
22 being defended never really expressed any concern about the situation. Doesn't mean
23 there wasn't a knife. It just means she didn't see it. She may not have known what
24 danger she was facing because of what she didn't see. I think I understand the ... the
25 nuances we're faced with and I'm just trying to make sure that legally I'm not going to

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1 allow ... I'm not going to allow a charge that's putting a square peg in a round hole.
2 It's going to have to fit. All that I've just referenced is going to have to be based on
3 whether or not the evidence exists, not according to whether I agree with the weight
4 of it.

5 MR. SABB: Judge, with regard to the analogy about the round versus
6 square, square versus round isn't it also a having your cake and eat it, too, analysis
7 that relates to this notion of self defense and defense of others? Seems like at best it's
8 one or but not both.

9 THE COURT: Well, there might be two different — It's kind of the
10 same academic brain teaser when you talk about self defense and defensive actions.
11 Those don't make any sense unless you really, really peel that onion and the law says
12 that those two aren't mutually exclusive. This is according to Mr. Carraway's point a
13 question where both ... I can see where both could easily occur if someone were to
14 come after you and Ms. Barr on the street corner with a knife and lunge at you and
15 you have your own knife or gun and you shoot him, you were defending yourself and
16 her. But what you're saying is that Mr. Carraway depending upon what point he is in
17 the string switching from one to the other.

18 MR. SABB: Yes, sir.

19 THE COURT: Now, as long as the string remains in tact I think he can
20 do that. But what I'm struggling with is when he leaves the first time to go get the
21 gun, what is the evidence of how he left. That's what I'm going to have to think
22 about. And I looked. There aren't any cases on this point where the person retreats,
23 comes back to defend another and used the self defense scenario to start with. If he
24 came back, there there is room for a charge on self defense and defense of others. I'm
25 going to have to make that decision. I would suggest that you prepare your

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1 arguments as if I were going to give a charge on both.

2 MR. SABB: Yes, sir.

3 THE COURT: Now, if you would, Mr. Sabb, you had a question about
4 Judge Irvin's charge on voluntary manslaughter. If you've got a copy I'll be glad to
5 read it the law permits, I think it basically says the same thing but sometimes Judge
6 Anderson and Judge Irvin can say it in a better way. Now, if either of you want to
7 have an idea of my reasonable doubt charge? I know Ms. Barr has heard it given
8 before. I don't know that Mr. Carraway has but it in a general sense is reasonable
9 doubt is a doubt that makes a honest, sincere, conscientious juror hesitate to act,
10 any sort of doubt is substantial. Of course, if you need to take a look at anything that
11 I have, I'll be glad to make it available to you. All right. Do both you still want a
12 voluntary manslaughter charge.

13 MS. BARR: Yes, sir.

14 THE COURT: Okay. I'll be around for another hour if you need me.
15 Thank you all. Anything else?

16 MS. BARR: Nothing else from the State, Judge.

17 THE COURT: All right. Why don't you ... why don't you all get here
18 at about 9:00 and I'll probably be here shortly after that and if find him and know
19 you're not going to call him then I'll allow you to rest. If you're not going to call him
20 to go ahead and take care of your directed verdict motions. Okay? All right. Thank
21 you.

22 (Court adjourned for today).

23 (March 12, 2009)

24 THE COURT: For the record, one of the jurors, Ms. Mary Brown,
25 juror number 18, with the permission of the lawyers and in the presence of the

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1 lawyers I spoke to her in the office just a moment ago. She indicated that she was
2 coming up the steps this morning and she started feeling panicky shortness of breath
3 and she said she got here about 9:00 and about 9:00, a little after 9:25 when I spoke to
4 her. She was still immediately visibly having trouble breathing and it was clear to me
5 that it would be appropriate for somebody take her to the doctor or hospital and she
6 said did want to do that. So I've released her based on that reason, is that correct, Ms.
7 Barr?

8 MS. BARR: That's correct.

9 THE COURT: Mr. Carraway?

10 MR. CARRAWAY: That is correct, Your Honor.

11 THE COURT: All right. That would mean that Mr. Barney Gause,
12 juror number 61, the only remaining alternate, will now take a seat on the jury. Mr.
13 Carraway, from a procedural standpoint I will give you the opportunity to rest in front
14 of the jury but perhaps now we can go ahead. Are you going to call any other
15 witnesses?

16 MR. CARRAWAY: No, Your Honor.

17 THE COURT: All right. Mr. Rivers, you can talk to me from where
18 you are seated. Has any of the activities from yesterday during the presentation of
19 your evidence caused you to change your mind as to whether to not you want to
20 testify?

21 MR. RIVERS: No, sir.

22 THE COURT: All right. You still do not want to testify?

23 MR. RIVERS: No, sir.

24 THE COURT: All right. Thank you very much. And I again find the
25 Defendant has freely, voluntarily and knowingly — Mr. Carraway, do you have any

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1 motions that you would like to make and when you do rest in front of the jury I will
2 simply note unless I grant your motion that all necessary motions have been made. Is
3 there anything you'd like to place in the record?

4 MR. CARRAWAY: I would just like to renew the motion for a
5 directed verdict.

6 THE COURT: Okay. And the same grounds as before?

7 MR. CARRAWAY: Yes, sir.

8 THE COURT: Those are respectfully denied. Will the State be
9 presenting any reply?

10 MR. SABB: We will, Judge. We concluded that we will have one
11 witness on reply. If Your Honor please, this particular witness's name was mentioned
12 yesterday.

13 THE COURT: That witness's name?

14 MR. SABB: Raheem McCrea.

15 THE COURT: Is there any objection to me voir diring the jury on that
16 particular witness?

17 MR. SABB: No, Judge, in fact we would ask that you do that .

18 THE COURT: Is he in the courtroom now?

19 MR. SABB: He is not, Judge, he's sequestered outside in the hall. We
20 can bring him in.

21 THE COURT: All right. Bring in that witness, Mr. McCrea. All
22 right. Is the State ready for the jury?

23 MR. SABB: We are, Judge.

24 THE COURT: Mr. Carraway?

25 MR. CARRAWAY: Ready.

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1 THE COURT: All right. All right. Bring in the jury. The witness can
2 have a seat or stand right over there against that rail, sir.

3 (Jury in).

4 THE COURT: All right, ladies and gentlemen, thank you for your
5 patience. We took a few minutes this morning to discuss the schedule for this
6 morning and also as you see one of the jurors that was previously seated with you,
7 she ... Ms. Brown was not feeling well and I and the lawyers spoke with her briefly
8 this morning and she explained her difficulties and I have taken it upon myself to
9 release her from further duty in this case so Mr. Gause you can have a seat right down
10 there and now there are 12 jurors. That's again the reason we have alternates. It's
11 somewhat unusual for alternates to be seated but from time to time that is
12 unavoidable proposition. We are ready to continue the trial of the case and the
13 Defendant ... well, when we broke yesterday the Defendant was presenting evidence.
14 Mr. Carraway, will you be calling any additional witnesses?

15 MR. CARRAWAY: The Defense rests, Your Honor.

16 THE COURT: All right. I note that all appropriate motions have been
17 made and heard. Does the State have any reply?

18 MR. SABB: Judge, if Your Honor please, we do.

19 THE COURT: All right.

20 MR. SABB: Judge, if it pleases the Court at this time we call Raheem
21 McCrea.

22 THE COURT: All right, Mr. McCrea, if you can stand right over here,
23 please, sir. Right where ... where you were a moment ago. Ladies and gentlemen,
24 this witness's name was not pronounced during the preliminary questioning of the
25 jurors Monday. I'll ask you the same questions. Of course you're familiar with the

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1 questions by now. Is there anyone on this jury or member of your immediately family
2 who is kin to Mr. McCrea or do you know him, have any connection, acquaintance,
3 association with him at all? If so simply raise your hand. All right. Any additional
4 questions, Mr. Sabb?

5 MR. SABB: No, sir, thank you very much.

6 THE COURT: Any additional questions, Mr. Carraway?

7 MR. CARRAWAY: No, Your Honor.

8 THE COURT: All right. Mr. McCrea, come around and be sworn,
9 please, sir.

10 MS. WILLIAMS: Place your left hand on the Bible and raise your
11 right hand. Do you solemnly swear that the evidence and testimony you will give this
12 Court and jury will be the truth, the whole truth and nothing but the truth so help you
13 God?

14 MR. McCrea: Yes.

15 MS. WILLIAMS: Please have a seat up here.

16 MR. SABB: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. MCCREA - DIRECT EXAMINATION BY MR. SABB:

19 Q: Young man, the bailiff just placed the microphone closer to you. That's to
20 help you in order that you might speak loud enough in order that everybody
21 can hear you. And I need you to sit up for me if you can. It shouldn't take
22 long. Tell the folks on the jury what your name is.

23 A: Raheem McCrea.

24 Q: And Raheem, where do you live?

25 A: [REDACTED]

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1. Q: Okay. And you live with your mother?
- 2 A: Yes, sir.
- 3 Q: Do you know a young fellow by the name of Christian Brand?
- 4 A: Yes, sir.
- 5 Q: How do you know Christian Brand?
- 6 A: We're friends.
- 7 Q: Okay. Now, were you at Sadie McBride's club in May of last year when a
- 8 fellow was shot and killed?
- 9 A: Yes, sir.
- 10 Q: I can't hear you.
- 11 A: Yes, sir.
- 12 Q: You were there? Is there any reason why you told me this morning that you
- 13 weren't there?
- 14 A: Scared.
- 15 Q: Why? Why?
- 16 A: (No response).
- 17 Q: Now, let's just kind of go back through. Now, I met you this morning for the
- 18 first time, didn't I?
- 19 A: Yes, sir.
- 20 Q: I told you that your name had been called in court yesterday, didn't I?
- 21 A: Yes, sir.
- 22 Q: And the principal, Ms. Cumbee, was in there, right?
- 23 A: Yes, sir.
- 24 Q: And I told you that you weren't in any kind of trouble, didn't I?
- 25 A: Yes, sir.

HEARING

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- 1 Q: Told you you didn't have anything to worry about, didn't I?
- 2 A: Yes, sir.
- 3 Q: Told you that I simply needed to know whether or not you were at Sadie's
- 4 club when Derial McCrea was shot and killed. Didn't I ask you that?
- 5 A: Yes, sir.
- 6 Q: And I asked you to just simply tell me the truth, right? And what did you tell
- 7 me? You told me what?
- 8 A: I told you I wasn't there.
- 9 Q: And then I explained to you that Christian Brand had called your name
- 10 yesterday, didn't I?
- 11 A: Yes, sir.
- 12 Q: Told you that he had indicated that he had stayed with you that night ...
- 13 A: Yes, sir.
- 14 Q: ... and what did you tell me when I asked you whether or not he had stayed
- 15 with you that night?
- 16 A: I told you he wanted to know if he could stay with me that night and I told
- 17 him I don't care if you stay with me.
- 18 Q: That's right. You didn't mind him staying with you, right? But that he didn't
- 19 stay with you. Now, are ...
- 20 MS. BARR: He's got ... he's got ...
- 21 Q: Yes or no?
- 22 A: Yes, sir.
- 23 Q: So now are you telling me now that you lied to me then and that he did stay
- 24 with you that night?
- 25 A: Yes, sir.

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1 Q: All right. Now, why is it that you are free now to tell the truth when I was in
2 there with your principal you weren't free to tell the truth?

3 A: Because I was scared. I didn't know what you wanted.

4 Q: Yeah, I want to know why aren't you scared now?

5 A: I don't be in front of other people.

6 Q: No, sir. I need a specific answer to this question. Why were you scared and
7 not scared now? Sir?

8 A: I don't know.

9 Q: All right. Tell me what you saw.

10 A: Tell you what I saw?

11 Q: Yes, sir. I want to know what you saw. You were out there that night when
12 he got killed. Tell me what you did.

13 THE COURT: You need to sit up and pull that microphone up and
14 lean forward into the microphone.

15 Q: What time did you get out there?

16 A: Sir?

17 Q: What time did you get out there?

18 A: I was out there.

19 Q: What time did you get out there?

20 A: About 1:30.

21 Q: All right. You got out there at 1:30. Who were you ... who did you go out
22 there with?

23 A: Me and some other people.

24 Q: Who are the other people? I want to know names.

25 A: My friends. I don't know.

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- 1 Q: Come on. You got friends that you're out there with and you don't know their
2 names?
- 3 A: No, sir.
- 4 Q: Their your friends, right?
- 5 A: Yes, sir.
- 6 Q: People you spend time with.
- 7 A: Yes, sir.
- 8 Q: And you don't know any of their names?
- 9 A: No, sir.
- 10 Q: All right. Who were you talking to then?
- 11 A: Sir?
- 12 Q: Who were you talking to?
- 13 A: Who?
- 14 Q: No, sir, that night. I wasn't there.
- 15 A: Oh.
- 16 Q: Who were you talking to?
- 17 A: My friends.
- 18 Q: Who? Who were you talking to?
- 19 A: I can't tell.
- 20 Q: You can't tell me? You're afraid now to tell the truth. Let me make sure I'm
21 clear. When you and Ms. Cumbee and I and Justin Whack are talking you're
22 scared and you're afraid, right?
- 23 A: (Can't hear).
- 24 Q: Sir?
- 25 A: Yes, sir.

HEARING

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1 Q: And then you come in to the courtroom and all of a sudden you're no longer
2 afraid so the light comes on and you decide that you're going to tell the truth
3 about being out there that night, right? Sir? And now all of a sudden you're
4 afraid again and so you're not going to tell the truth any more.

5 A: I don't know what to say.

6 Q: Well, tell the truth. Who were you talking to?

7 MR. CARRAWAY: Your Honor, can we approach at this point?

8 THE COURT: Yes, sir.

9 (Discussion held off the record).

10 THE COURT: Any objection?

11 MR. CARRAWAY: Yes, Your Honor, this is not proper reply.

12 Obviously the ... the question ... the purpose he put him up there for ...

13 MR. SABB: Judge, I object to a speaking objection.

14 THE COURT: The objection is not proper reply, correct?

15 MR. CARRAWAY: Not proper reply.

16 THE COURT: All right. I ... the objection is overruled. Go ahead,

17 Mr. Sabb.

18 Q: Who were you talking to? All I want you to do is tell the truth, son.

19 A: My friends.

20 Q: What are their names?

21 A: Dita.

22 Q: Dita?

23 THE COURT: You need to just pretend that Mr. Sabb is at the very
24 back of the courtroom and you need to talk that loud, okay? All right? He asked you
25 what your friend's name was and you can repeat that, please.

HEARING

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- 1 A: Dita.
- 2 Q: All right. So you got there at 1:30 in the morning.
- 3 A: Yes, sir.
- 4 Q: All right. Who did you ... how did you get there?
- 5 A: Walked.
- 6 Q: Who did you walk with?
- 7 A: Friends.
- 8 Q: So where did you and your friends get together at to walk to Sadie's?
- 9 A: A little juke joint..
- 10 Q: What juke joint is that?
- 11 A: Buster's.
- 12 THE COURT: Lean up to the microphone.
- 13 Q: All right. What ... so you, Dita and who else left Buster's and went to Sadie's?
- 14 A: There was a lot of people.
- 15 Q: Yes, sir, who else can you recall?
- 16 A: Can't remember.
- 17 Q: Can't remember anybody except you and Dita. Is that right?
- 18 A: Yes, sir.
- 19 Q: All right. And you all get to Sadie's, what happens next?
- 20 A: I don't know I was inside the club.
- 21 Q: Inside the club when?
- 22 A: Since I get there I ain't came out.
- 23 Q: All right. So you stayed inside the club the whole time.
- 24 A: Half of the time.
- 25 Q: Well, which is it now? Is it half or whole?

HEARING

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- 1 A: Half.
- 2 Q: All right. Where were you the other half?
- 3 A: Basically I was in and out.
- 4 Q: All right. Tell us what if anything you saw as far as this ...
- 5 THE COURT: Mr. Sabb, did he say in and out?
- 6 MR. SABB: Yes, sir, that's what he said, Judge.
- 7 THE COURT: All right.
- 8 Q: Tell us what if anything you saw happen out there that night as far as an
- 9 altercation is concerned involving Derial McCrea?
- 10 A: I just saw where they was arguing or something. And Derial had a knife, I
- 11 believe and the other guy went someplace to get a gun to defend himself.
- 12 That's what I saw.
- 13 Q: All right. The ... Derial had a knife you believe.
- 14 A: Yes, sir.
- 15 Q: And the other guy went some place to get a gun to defend himself.
- 16 A: Yes, sir.
- 17 Q: Well, let me ask you this. If you're going somewhere ... if you've got a knife
- 18 on me, right?
- 19 MR. CARRAWAY: I'm going to object to speculation.
- 20 THE COURT: Overruled.
- 21 Q: You've got a knife on me, right? All right. And I'm going somewhere am I
- 22 defending myself when I'm going? Sir?
- 23 A: Yes, sir.
- 24 Q: I am? I mean I'm getting away, aren't I? When I get away there's no danger in
- 25 where I am, is there?

HEARING

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1 A: No, sir.

2 Q: Because you've got the knife and you're over there. But your testimony is guy
3 goes to get the knife and comes all the way back and now he's defending
4 himself because he's got ... the guy got the knife and he's got the gun. That's
5 your testimony. And if the guy is defending himself and he kills the guy
6 nothing said, nothing done, the guy is just dead. Self defense guy goes free,
7 right? Now, tell me about your relationship with Javon. The two of you.

8 A: I don't even really know him like that. I just met him.

9 Q: You met him when?

10 A: Whenever I'm with my friend.

11 Q: What friend?

12 A: Christian.

13 Q: Was Christian out there that night?

14 A: Yes, sir.

15 Q: Did he come out there with you that night?

16 A: Yes, sir.

17 Q: Now, why didn't you tell the jurors that earlier? I asked you clearly who had
18 you gone to Buster's Place and come back with. At that point you didn't know
19 who your friends were. You only knew Dita. Now, all of a sudden you know
20 Christian and Christian was with you. Was he with you?

21 A: Yes, sir.

22 Q: You had forgotten about that before. Is that right? Now, tell me about the
23 conversation between you and Christian as it relates to testifying. Well, let's
24 go back a second. Describe the knife for me that you said that you believe he
25 had, you believe Derial had.

HEARING

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- 1 A: He was about to fight. I guess, he dropped the knife when he start swinging.
- 2 Q: Describe the knife. Do you understand my question? Do you know what ...
- 3 A: Describe.
- 4 Q: Yes, sir, tell me what it looks like.
- 5 A: It was a knife. (Can't understand).
- 6 Q: How long was it?
- 7 A: I believe six.
- 8 Q: How long?
- 9 A: Six.
- 10 Q: Six what?
- 11 A: Inches.
- 12 Q: Was that blade or the entire knife?
- 13 A: The knife.
- 14 Q: Did it have a handle?
- 15 A: Yes, sir.
- 16 Q: What color was the handle?
- 17 A: Black.
- 18 Q: All right. Tell me where you were when you observed this knife and Mr.
- 19 Rivers with the gun. Where were you?
- 20 A: Walking.
- 21 Q: Walking where?
- 22 A: Towards.
- 23 Q: Towards where?
- 24 A: Towards the fight.
- 25 Q: Walking towards the fight?

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1 THE COURT: Speak up, son.

2 A: Yes, sir.

3 Q: Walking towards the fight from where?

4 A: The club.

5 Q: All right. So you were in the club and then you began walking out of the club
6 towards the fight.

7 A: Yes, sir.

8 Q: And at what point were you when you observed this knife and you observed
9 this gun and you saw this shooting? Where were you specifically at that time?

10 A: I was outside.

11 Q: Where outside? What was close to you?

12 A: The road.

13 Q: You were in the road? Where was Christian?

14 A: Beside me.

15 Q: Beside you in the road.

16 A: Yes, sir.

17 Q: Where was Derial shot and killed? Where was he when he was shot and
18 killed?

19 A: Sir?

20 Q: Where was he when he was shot?

21 A: Right in front of me..

22 Q: What's the distance between you and ... and where Derial was?

23 A: He was in front of me..

24 Q: All right. Come here, young fellow.

25 MR. SABB: Permission for him to come down, Judge?

HEARING

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1 THE COURT: Yes, sir. Mr. McCrea, you've got to keep your voice
2 way up. You're not around the microphone when you're down there. Step down.
3 Keep your voice very loud. You're not going to offend anybody.

4 MR. SABB: If Your Honor please, Judge, I have in my hand what's in
5 evidence as State's Exhibit Number Five. Young fellow, what I'm going to do is the
6 picture is small. So we're going to talk to these six jurors first, pointing to the
7 photograph then we're going to go down and talk to the other six jurors and do the
8 same thing. Okay? All right. Now, this photograph ... back up just a little bit for me
9 so that all the jurors can see. This photograph is the area out there where Derial was.
10 Do you agree with me on that?

11 A: (Can't hear).

12 THE COURT: You need to respond out loud so that she can hear you,
13 okay?

14 A: Yes, sir.

15 Q: And that pool of blood ...

16 THE COURT: You need to respond out loud so she can hear you,
17 okay?

18 A: Yes, sir.

19 MR. SABB: Thank you, Judge.

20 Q: And this area ... you see a pool of blood.

21 A: Yes, sir.

22 Q: And now, you ... you were standing in the roadway?

23 A: Yes, sir.

24 Q: All right. And Christian's beside you in the roadway.

25 A: Yes, sir.

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1 Q: And you see the light pole that's way there? You see that light pole? It's way
2 over there, right?

3 A: Yes, sir.

4 Q: But you and Christian were not over by the light pole. You all were in the
5 road.

6 A: Yes, sir.

7 Q: Come down this way.

8 THE COURT: You need to keep your voice up, Mr. McCrea.

9 Q: All right, now, this is the photograph of the area out there where Derial was
10 shot and killed. Right? Or well, he was injured and you know that he died
11 later, right? Now, this pool of blood that's right here, that's where his body
12 lied, isn't it?

13 A: Yes, sir.

14 Q: And there's a road out here, right? And you're saying that you and Christian
15 were in the road and there is a light pole back there. You see that light pole?

16 A: Yes, sir.

17 Q: But you all weren't by the light pole, you were in the road. Anybody in front
18 of you all?

19 A: No, sir.

20 Q: You all were at the front. The very front. How close were you to the pool of
21 blood? Point to me. How close were you?

22 A: Right here.

23 THE COURT: You need to speak up, sir.

24 Q: All right. So you're over here by the cars. And there's nobody in between you
25 and the altercation area.

HEARING

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1 A: (Can't hear).

2 THE COURT: Wait a minute. I can't ... wait just a minute. I can't
3 hear. You're going to have to speak up.

4 Q: Keep your voice up. What were you telling us now?

5 A: I say, when he was laying there, there was a lot of people gathered around.

6 Q: Yeah, I'm talking about before he was shot. The area that you claim you were
7 in that you were able to see everything. Now, you're back here by the car.

8 A: Uh-huh (affirmative response).

9 Q: Yes or no?

10 A: Yes.

11 Q: And nobody's in front of you from the car you were able to see everything.
12 Let's go down to the end. Let's just pick up right where we left off. All right.
13 Point to the area where you were.

14 A: (Witness complies).

15 Q: You're down here by the car.

16 A: (Nods head affirmatively)

17 THE COURT: Yes?

18 A: Yes.

19 Q: And nobody's in between you and the altercation so you've got a clear view of
20 everything. Yes?

21 A: Yes.

22 Q: All right.

23 THE COURT: Can he have a seat, Mr. Sabb?

24 MR. SABB: Yes, sir, Judge, I'm sorry.

25 Q: All right, now, you got here this morning, right?

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- 1 A: Yes, sir.
- 2 Q: And you had your cell phone with you, didn't you?
- 3 A: Yes, sir.
- 4 Q: Now, in the hallway you were talking on the cell phone, weren't you?
- 5 A: No, sir.
- 6 Q: You weren't on your cell phone this morning?
- 7 A: No, sir.
- 8 Q: You're absolutely sure about that? Let me see it for a second. How do you ...
- 9 how do you check your text messages on your phone? Check your text
- 10 messages for me. So I can see the last text you did and when. That's voice
- 11 mail. How do you check the texts that you did this morning?
- 12 A: I didn't text.
- 13 Q: You didn't text this morning?
- 14 A: No, sir.
- 15 Q: Okay. So when we saw you out there using your phone you just had it playing
- 16 with it?
- 17 A: Yes, sir..
- 18 Q: Just playing with the phone out there. All right. Son, you know what you're
- 19 involved in is very serious, don't you?
- 20 A: Yes, sir.
- 21 Q: Sir? I mean, this is a serious situation. It's not television. It's not fun and
- 22 games. It's serious business. You understand that, don't you?
- 23 A: Yes, sir.
- 24 Q: Now, I know that Christian's your friend. I understand that. But you can't just
- 25 not tell the truth to cover for your friend. You know that, don't you? I mean,

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1 if he comes in here and doesn't tell the truth it ought to be just him. You don't
2 have to drag yourself into that. You can come clean right at this moment and
3 be honest and candid and say that that's what you did. You understand that?

4 A: Yes, sir.

5 Q: You're sure you don't want to come clean? Come clean, son. Do you want to
6 come clean?

7 THE COURT: You need to answer out loud.

8 A: Yes, sir.

9 Q: Christian lied on you, didn't he?

10 A: No, sir.

11 Q: Who told you about the fact that you all were claiming self defense? Did
12 Christian tell you that?

13 A: No, sir.

14 Q: Sir?

15 A: No, sir.

16 Q: And that you needed to testify that Derial was swinging the knife. But he
17 didn't tell you ... he didn't go into details to tell you where he told the jury that
18 you all were standing.

19 A: No, sir.

20 Q: Sir?

21 A: No, sir.

22 Q: And it surprises you at this point to know that Christian claims that you all
23 were over by the light pole.

24 A: Yes, sir.

25 Q: How long did it take Scooter to get the gun?

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- 1 A: I couldn't remember.
- 2 Q: Was it quick?
- 3 A: I say I couldn't remember.
- 4 Q: I asked you another question, was it quick?
- 5 A: Sir?
- 6 Q: Was it quick?
- 7 A: Yeah; yes, sir.
- 8 Q: Two minutes?
- 9 A: Probably.
- 10 MR. SABB: The Court's indulgence, Judge?
- 11 THE COURT: Yes, sir.
- 12 Q: Where did Scooter get the gun from?
- 13 A: I don't know.
- 14 Q: Where did he go?
- 15 A: I don't know.
- 16 Q: How you know he went some place then?
- 17 A: I saw when he run.
- 18 Q: What direction did he go in?
- 19 A: I don't remember.
- 20 Q: Wait a minute now. You're out there, you're watching the guy, the guy runs
- 21 and you can't even tell me what direction he went in?
- 22 A: I just saw him running. I didn't see where he went.
- 23 Q: How can you not see ... that's all right, son. Christian told you that he told the
- 24 jury that the guy ran, right?
- 25 A: Yeah.

HEARING

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- 1 Q: But he didn't tell you to tell them what direction it was in.
- 2 A: No, sir.
- 3 Q: Well, what about ... about this car? Seen this car before? And Judge for the
- 4 record I've got State's Exhibits Seven and Eight in my hand. Recognize that
- 5 car? Yes or no?
- 6 A: Yes, sir..
- 7 Q: Whose care is that?
- 8 A: I don't know.
- 9 Q: Would it surprise you to know that this is Scooter's sister's boyfriend car? Is
- 10 that how you recognize it? Sir?
- 11 A: Yes, sir.
- 12 Q: This car was out there that night, wasn't it?
- 13 A: Yes, sir.
- 14 Q: That's where Scooter got the gun from, isn't it?
- 15 A: I don't know.
- 16 Q: Sir?
- 17 A: I don't know.
- 18 Q: Do you know whether or not Scooter got with Eric, who is his sister's
- 19 boyfriend and hightailed it to Florence? Do you know anything about that?
- 20 A: (Shakes head negatively).
- 21 Q: You don't?
- 22 A: No, sir.
- 23 Q: You don't know whether that's where he purchased the Amtrak ticket to go to
- 24 Florida?
- 25 A: No, sir.

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1 Q: Don't know nothing about that.

2 THE COURT: You need to answer.

3 A: No, sir.

4 MR. SABB: Judge, I have no more questions at this time.

5 THE COURT: Mr. Carraway.

6 MR. MCCREA - CROSS EXAMINATION BY MR. CARRAWAY:

7 Q: You saw what happened out there that night, didn't you?

8 A: Yes, sir.

9 Q: Okay. And did you see the deceased with a knife?

10 A: Yes, sir.

11 Q: All right. Chris was there with you?

12 A: Yes, sir.

13 Q: And Dita was out there.

14 A: Yes. There was a lot of people out there.

15 Q: So what is it that ... you said you lied about something. What did you lie
16 about?

17 A: When I told him I wasn't there.

18 Q: Oh, you told him you weren't there.

19 A: Yes, sir.

20 Q: Is that the only lie you've told? But now you saw the deceased with a knife,
21 Derial McCrea, right?

22 A: Yes, sir.

23 Q: And you saw him going at Scooter. Is that right?

24 A: Yes, sir.

25 Q: Okay.

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1 MR. CARRAWAY: There are no further questions.

2 THE COURT: Redirect?

3 MR. SABB: Nothing, Judge.

4 THE COURT: Thank you, sir. You can step down. Mr. McCrea,
5 you're excused. Ms. Barr, Mr. Sabb?

6 MS. BARR: Your Honor, the State rests.

7 THE COURT: All right. All right, ladies and gentlemen, we're going
8 to take brief recess at this point. You've heard and seen all of the evidence that have
9 anything to do with this case. Of course the Exhibits you will have with you in the
10 jury room. The next phase of the trial will be the lawyers giving their closing
11 arguments which we are going to discuss for just a couple of minutes the progression
12 of those arguments and how long they think they might take and then have you back
13 out and hear the closing arguments and I will tell you or remind you that what the
14 lawyers say to you during the course of their closing arguments is not evidence. In
15 other words, if the lawyer says something during the closing argument that does not
16 correspond with your collective memory of what the evidence actually was then you
17 go with your memory. The lawyers do have the right under the rules to argue the
18 conclusions they think you should or should not reach in this case and you will be
19 given that opportunity very shortly. You may not discuss the case in any way, shape
20 or form at this time. That time is coming near. You will probably have the case in
21 your hands just before lunch today. What I'm going to do is ask the clerk of court to
22 go ahead and make plans to have lunch here for you by 12:30 so that you can eat your
23 lunch and deliberate during that time frame. See you back in the courtroom in just a
24 few minutes.

25 (Jury out).

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1 THE COURT: All right, Mr. Carraway, just to rule more fully on your
2 objection made that the testimony was not proper reply. Obviously, you indicated at
3 the bench since you agreed that the threshold reason for calling him was appropriate
4 to contradict what Mr. Brand said about being there in the first place, much less Mr.
5 McCrea.

6 MR. CARRAWAY: He may have told Mr. Sabb that they were all
7 somewhere together.

8 THE COURT: The situation was a bit unusual and I think the
9 prosecution had the right to impeach the witness to the extent that I think I was
10 appropriate in giving Mr. Sabb about the fact that under the circumstances I just want
11 to make sure that you did have the opportunity to voice your objection and I think
12 you've already stated it. All right. Any motions at this time? You want to repeat
13 your other motions?

14 MR. CARRAWAY: I'm going to keep those motions.

15 THE COURT: All right. Those motions are denied. I think it's all a
16 jury issue. As far as the charge is concerned ... well, let me ask first. The order of
17 argument, Mr. Sabb, you're going to open on the law?

18 MR. SABB: That's correct, Your Honor.

19 THE COURT: All right. And then Mr. Carraway will argue for the
20 Defendant and then Ms. Barr, you're going to argue ... you're going to close?

21 MS. BARR: Yes, Your Honor.

22 THE COURT: All right. As far as ... all right, as far as --- Ms.
23 Williams just handed me a note from the foreperson I think, from a juror, wanting me
24 to ask the witness who is Mr. McCrea ... he's not here anymore ... if he knows Justin
25 McBride.

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1 MS. WILLIAMS: She wants to know if the witness knew a Justin
2 McBride who is her grandson.

3 THE COURT: All right. Any input from the State on that? It's late
4 for that question to be asked. The witness has already testified and the witness is
5 gone. Of course she doesn't have any way of knowing that.

6 MR. CARRAWAY: Well, I think if they don't know that that ... let's
7 leave it at that.

8 THE COURT: Does either side want to inquire of the juror any
9 further? In other words, would it make a difference if such and such were the case?
10 The witness is still in the hallway but I'm not going to put the witness back on the
11 witness stand in front of the jury just to answer that question.

12 MR. SABB: Judge, as I think about it is the only reason I can think
13 that those inquires would be there is the likelihood and Judge you know this is
14 guesstimate kind of stuff, let me jump over ...

15 THE COURT: Have Mr. McCrae step down.

16 MR. SABB: I think, Judge, that your thought, if I read you right, is a
17 proper one from the standpoint of saying the juror to the extent that that question is
18 answered in any way the overall question in this case as it relates to them in
19 discharging their responsibility is whether or not they can take the evidence as it has
20 been presented in this case, take the law as the Court has or will give it to them and
21 render a fair, true and just verdict to the State and to the Defense and to the extent
22 that they confirm that then I think we can just plow ahead.

23 MR. CARRAWAY: Either way whether ...

24 THE COURT: Just let me ask the question. Mr. McCrea, do you
25 know Justin McBride?

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1 MR. MCCREA: No, sir.

2 THE COURT: What is your mother's name?

3 MR. MCCREA: Erica.

4 THE COURT: Erica? Is that question Ms. Williams that the juror
5 wanted to know? So do you know Virginia McBride. Sir?

6 MR. MCCREA: No, sir.

7 THE COURT: All right. For the purpose of building a record is there
8 anything the Defendant wants me to ask this witness about the scope of what the
9 Clerk has advised? Anything you want me say?

10 MR. CARRAWAY: No, Your Honor.

11 THE COURT: You may step down. All right, Mr. Carraway, any
12 input you want to have on how I handle this particular situation?

13 MR. CARRAWAY: No, sir.

14 THE COURT: Would either side object if I simply brought that juror
15 in or the whole jury in, it doesn't matter to me, and say this young man doesn't know
16 Justin McBride or Virginia McBride and his mother's name is Erica McCrea? You
17 all have a problem with that?

18 MS. BARR: Judge, we don't. We would probably prefer that that
19 particular juror be brought in separately and be instructed not to discuss what
20 happened with the other jurors.

21 THE COURT: Okay. The juror's name is McBride? And then
22 Dorothy Scott?

23 MS. WILLIAMS: Dorothy Scott.

24 THE COURT: Okay. All right. Bring ... bring Ms. McBride out first.
25 Ms. McBride, you stand right there so you won't have to come down the stairs. You

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1 have inquired as to whether the witness knew a Justin McBride.

2 MS. MCBRIDE: Yes, sir.

3 THE COURT: He did not.

4 MS. MCBRIDE: He didn't.

5 THE COURT: Yes, ma'am. If he did would that make a difference ...

6 MS. MCBRIDE: No.

7 THE COURT: ... in your deliberations being fair and impartial and
8 being able to base your verdict on the evidence and the law?

9 MS. MCBRIDE: No, sir.

10 THE COURT: All right. Since it doesn't ... this closes off that inquire.
11 I just wanted to make sure you understood that.

12 MS. MCBRIDE: Okay.

13 THE COURT: Thank you, ma'am. Any other ... Mr. Sabb, Ms. Barr,
14 Mr. Carraway, any additional questions you have for that juror?

15 MR. CARRAWAY: No, Judge.

16 THE COURT: All right. All right. You can bring out the other jurors.
17 Stand right there. Your name, please, ma'am?

18 MS. SCOTT: Dorothy Scott.

19 THE COURT: All right, Ms. Scott, you had a question of the name of
20 the last witness's mother?

21 MS. SCOTT: Yes.

22 THE COURT: The witness's mother's name is Erica McCrea.

23 MS. SCOTT: I don't know her.

24 THE COURT: All right. If you had known her would that make any
25 difference in your ability to be fair and impartial?

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1 MS. SCOTT: No.

2 THE COURT: It would not?

3 MS. SCOTT: No.

4 THE COURT: Since that ... that name does not register with you,
5 Erica McCrea, can you continue to be fair and impartial?

6 MS. SCOTT: Yes.

7 THE COURT: Base your verdict on the evidence and the law?

8 MS. SCOTT: Yes.

9 THE COURT: All right. If you would, please, just simply not discuss
10 with the other jurors what we just talked about.

11 MS. SCOTT: All right.

12 THE COURT: Thank you very much.

13 MS. SCOTT: Thank you.

14 THE COURT: All right. We'll take just a few minutes for you to
15 collect your thoughts and be right back in.

16 (Off the record).

17 THE COURT: Do you all want to take a look at the jury form? Mr.
18 Carraway, any objection to the verdict form?

19 MR. CARRAWAY: None, Your Honor.

20 THE COURT: Ms. Barr or Mr. Sabb?

21 MR. SABB: Nothing, Your Honor.

22 MS. BARR: No objection, Your Honor.

23 THE COURT: All right. In many instances charge the jury that their
24 verdict on one charge does not control their verdict on the other. But I'll make
25 mention of that with regard to the murder and possession of a weapon and

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1 involuntary manslaughter and possession of a weapon. In other words, they have to
2 find a lesser included if they don't find him guilty of murder. Then they have to make
3 a decision on that. I guess conceivably they could find him guilty of one of those and
4 not guilty of possession of a weapon but in order for the jury to find him guilty of
5 possession of a weapon they have to find him guilty of ... of either murder or
6 involuntary manslaughter. All right, are we ready for the jury?

7 MS. BARR: State's ready, Your Honor.

8 THE COURT: Mr. Carraway?

9 MR. CARRAWAY: Yes, Your Honor.

10 (Jury in)

11 THE COURT: All right. Thank you, ladies and gentlemen. We are
12 now ready to proceed to closing arguments in this case. As I told you before, this is
13 the opportunity for the attorneys to argue the inferences and conclusions they want
14 you to draw and reach in this particular case. I will remind you that what they say is
15 not evidence and again, if their comments do correspond with your collective
16 memory of the evidence you go with your memory. The lawyers will be permitted to
17 reference the points of law that they anticipate that I will charge to you. I will tell you
18 this that if a lawyer makes a statement about what the law is try to make sure that you
19 listen to me when I give you the charge on the law and accept the law as I give it to
20 you. If there is any ... I'm sure it will be unintentional if any misstatement of the law
21 in that regard you go with what I tell you because you will be obligated to follow the
22 law as I give it to you even if you do not agree with it and even if it does not
23 correspond with what you thought the law was when you walked in here today. All
24 right, Mr. ... the way the order will go the State will open first and the Defendant if he
25 chooses to present arguments and since the State does have the burden of proof they

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1 have the right to have the last argument. Ms. Barr and Mr. Sabb?

2 MR. SABB: May it please the Court?

3 THE COURT: Yes, sir.

4 MR. SABB: Ms. Barr, Mr. Carraway, madam forelady and ladies and
5 gentlemen of the jury, good morning. This is my first opportunity to speak with you
6 all and so I just want to start off by saying thank you for being here. Thank you for
7 giving of yourselves and ... and of your time to this important purpose. When we find
8 ourselves in an environment like this we understand what Winston Churchill talked
9 about when he said that jury service is the most important service second only to one
10 serving his country in a time of war. And so it's at these moments that we understand
11 the brilliance in that statement by him. Let me repeat something that His Honor said
12 because at this point I'm going to open on the law. Which means that I'd like to
13 discuss a few legal principles with you all. I consider myself one who will try to do
14 his best to be accurate in my description of it but if anything I say conflicts with what
15 the Judge says please pardon me for the mistake and please accept the law as His
16 Honor will give it to you all. One of the important principles that jurors are asked to
17 determine, it is the credibility, that is, the believability of witnesses. You have to
18 determine whether or not what you hear from the witness stand is in fact the truth and
19 where the truth lies. And in a case like this you've got stuff from all ends of the
20 spectrum and so the belief is that the 12 of you collectively will follow His Honor's
21 charge as to the kinds of things that you can use to determine believability, the
22 credibility of witnesses. And one of the things that you all will look at is you'll look
23 at the demeanor of a witness, how a witness presents himself or herself, whether or
24 not they are hesitant and forthright in their answering of questions. Whether or not
25 the witness has anything to gain or to lose, any kind of bias or prejudice for or in

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1 favor of anybody. And so those are factors that you consider when you go back
2 through the testimony of the witnesses that testified on the witness stand. And so
3 when you look at the credibility issue, I want to talk about that just for a little while
4 and then I'd like to talk about the charge of murder, manslaughter, self defense and
5 defense of others and then I'll take my seat. But, for instance, the young man that
6 testified a few moments ago where he says that when he spoke with me in the
7 presence of Justin Whack and the principal, Ms. Cumbee, he said he was scared to
8 tell the truth then and that at this moment when he was in front of you all he's no
9 longer scared to tell the truth, he's going to tell the truth and then when you get to the
10 point where he's talking about the friends that are out there he calls one name and
11 then later he calls another name and then he says well, I can't tell the truth right now.
12 And so the question is when is the truth the truth when it comes to persons like that
13 and so that's one of the things that you all consider in terms of credibility. The other
14 thing was is you notice when I went back through it with him and asked him to come
15 clean, notice how he hesitated, how he soul searched himself for a while and really a
16 thought was that he had searched himself sufficient that he would come clean and tell
17 you all but then he reared back and said, no. And quite frankly, a part of me
18 understands because he's got to go back to his friends and be in that environment, in
19 that arena and I recognize that a being a part of our society but the system relies on
20 you all for when it comes to sorting those kinds of things out. You can look at the
21 witnesses as they testify and one of the things the Judge is going to tell you all that
22 you don't count how many witnesses the State presents versus how many the
23 Defendant presents. You know, the number of witnesses is not what is key. It's what
24 they say. That you can take some of what a witness says, none of what a witness
25 says, all of what a witness says, all of that is within the province of the jury and that's

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1 what the law is. That's what the law says. That's one of the tools it gives you in
2 deciding important cases like this. And so one of the things that we notice when it
3 comes to the ... the younger ones, you know, my daughter can take a phone and do all
4 kinds of stuff with it. Take the computer and do all kinds of stuff because they grow
5 up or grew up with the technology. So for him to not be able to find the text box on
6 his phone, what does that tell you? Do you really believe that, you know, a 16 year
7 old who kind of grew up with all of that stuff can't find it? He doesn't want to find it.
8 Why? Because he communicated with his friend.

9 Now, this case involves the charge of murder. Murder is the unlawful killing
10 of another with what we call malice aforethought. Unlawful killing means that it's an
11 unjustifiable killing. Malice aforethought is the evil intent, the depravity of heart, the
12 evil mind at the time an act of violence like this is committed. The law says that the
13 use of a deadly weapon like a gun you can infer malice because folk know when you
14 pull the trigger what it does to the recipient of a bullet. So then one can infer malice.
15 Voluntary manslaughter is what we call a lesser included offense of murder and so
16 when you all get the verdict form, madam forelady, that all of you will use to indicate
17 to us all what the truth of this case is, you'll consider murder first. And if he's guilty
18 of murder than you will stop there. Guilty of murder. If he's not guilty of murder
19 then you consider the lesser included offense which is voluntary manslaughter. And
20 then if he's not guilty of voluntary manslaughter then he's simply not guilty. If you
21 find him guilty of either murder or voluntary manslaughter, then he's guilty of
22 possession of a weapon during a violent crime as well because both of those offenses
23 are violent crimes. So then Mr. Sabb, what's the difference and why are you telling
24 us about the lesser included offense? In some cases you have this issue of what we
25 call acting in the heat of passion. The classic example that they gave us when we

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1 were in law school was man comes home late at night, finds another man in his
2 home, in his bed with his wife, there's his shotgun right there in the corner and before
3 he knows it he grabs it and he shoots the guy and the guy is dead. That's not a
4 justifiable killing. That's still the unlawful taking of a life but the law says he was in
5 the heat of passion when he did it. No time to reflect, no time to cool off, there's the
6 gun, there's the act. I get it, I use it and oh, my God, what have I done. You know,
7 that kind of situation is the classic voluntary manslaughter situation. So in this case
8 you will have to determine whether or not the Defendant acted in the heat of passion.
9 You may look at the evidence from the standpoint of well, wait a minute, you've got a
10 situation where two people were arguing and he just jumps in. You know, one of the
11 questions in a case like this is what would have happened if he had done nothing. If
12 he had just minded his own business and not gotten involved, would have gone on
13 home and we wouldn't be here on this case. Why did he inject himself into the fray?
14 The person who he claims that he injected into the fray on behalf of says that she
15 wasn't afraid, she handled the situation. Had had disagreements with Derial before
16 and so it would have ended just like all of the other arguments that they had had and
17 that none ever ended in violence. Words exchanged, everybody go on about their
18 business, feelings are hurt, somebody apologizes, the next day or the day after that
19 and life continues. And really, there was a movie some 15, 20 or more years ago
20 called Juice and that movie dealt with the idea of having a gun and how folks feel
21 empowered once they have the gun because they control life and death in their hand
22 and so they fear nothing because they know that they are prepared to take care of the
23 situation. That's really what this guy did. He jumped in knowing that he was ready
24 and the second things didn't go his way went and got the gun and took care of Derial.
25 And as a result Derial is no longer with his brothers and sisters, his family, his

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1 children. And so then the question is was he really defending her? The young man
2 mentions the idea of he was in self defense at the time and that was an interesting
3 term for him to use because nobody really asked him about that. So then doesn't it
4 become clearer that what he wanted to do was to try to create a self defense and that's
5 a part of how you know ... at least he did admit that he talked to Christian this
6 morning. Did you all hear when he actually admitted that part? But, that's a part of
7 what they intended to show.

8 Now, with regard to self defense there are a couple of things that the Judge is
9 going to charge you on. One of the things is that the Defendant, that is Mr. Rivers,
10 must not have been without fault in bringing on the difficulty. He must have had no
11 other probable means of avoiding the danger of losing his life or sustaining serious
12 bodily injuries than to act as he did in a particular instance. So must have no other
13 means of avoiding placing himself in in peril at the time he acted the way he did.
14 And so then you evaluate the evidence and say well, my goodness, wait a minute
15 now, he had left the fight, he had gone on to the car, and what are the other means?
16 Go off to wherever you want to. There's no evidence in this case that Derial chased
17 him. In fact, the evidence is to the contrary, isn't it? That he was going the opposite
18 direction. And then this guy comes with a gun and then Derial turns around and says
19 oh, yeah, shoot me, then shoot me. You know, using some other language that I don't
20 repeat but had he not come back there again it was over. He was going on about his
21 business. Derial was going on about his. But when he comes back, we submit to
22 you, he had other means of avoiding the whole situation but he chose not to. And
23 then they ask you all to say, okay, he could have gone, sure he could have but he
24 came back and ... and that's when they're claiming that there was this knife and that
25 he's defending himself at that moment. We submit to you that that's not a justifiable

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1 situation. That's not the kind of situation where we want to say that life is the most
2 precious gift that God has given to us, the most precious give that he's given to us and
3 are we willing to say that it's okay for you to take away that precious give under the
4 circumstances because you had no choice? Are we prepared to say that is really the
5 issue of self defense because self defense is a complete defense. That means that you
6 have taken the life and ... and that's all there is to it because you had absolutely no
7 other choice. It was you or him. So we submit to you when you examine the facts of
8 this case it's not a self defense case for a couple of reasons. Number one, he brought
9 on the difficulty by coming back. Number two, he had alternative means of dealing
10 with the situation other than take the life. So we submit to you that self defense is not
11 a defense of this case.

12 Now, Mr. Carraway may suggest to you all based upon some things that he
13 heard that wait a minute, the only reason why he came back was he came back to
14 protect Erica McBride. That that's why he came back and then after he came back he
15 couldn't avoid the difficulty. I know how they try to spin these things sometimes you
16 see. But now, here's why Javon Rivers' sister placed Erica right there in front of her
17 brother at the time her brother shot Derial. You know why she did that? To set up
18 that defense. See, because if you place Erica real close where she's in imminent
19 danger of dying, being killed, then it justifies the idea of him coming back with a gun
20 because at that point he's not coming back to protect himself, he's coming back to
21 protect somebody else. So see, they're trying to use what we call the shotgun
22 approach. Let's do it both ways and then we can get out of defense. Remember what
23 Erica said. She said she did what after it went over and after she pulled her daughter
24 back? She wasn't even there at that moment. She said her daughter came to her and
25 said, "Oh, mama, my God, Derial's been shot. Please call 911." So see, she wasn't

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1 even there at the time. But that's the only way that they can justify him coming back
2 with the gun. So I wouldn't be at all surprised. You all listen for it. I wouldn't be at
3 all surprised if they suggest that to you. But please remember the testimony of the
4 individual that was in the argument initially. That's what you're called upon to do as
5 jurors in this case.

6 I just wanted to mention those couple of principles to you all. Ms. Barr will
7 further expound on the evidence fully after Mr. Carraway does his closing arguments
8 if he chooses to do so. Before I take my seat let me just tell you all as solicitors our
9 job is not to pick witnesses. If we know of somebody that's there to tell the jurors
10 about it. Let the jurors hear it all. If we know that Derial's got a knife in his pocket
11 that the nurse took out, bring it to court, let the jurors see it, let them examine it.
12 Photographs of where people were and all of that, let the jurors see it, let them
13 examine it. And that's what we've attempted to do. And so when we got the young
14 man this morning only because his name was mentioned yesterday for the first time
15 so then our job is to find him and see what in the world's going on. If he's somebody
16 that let the jurors hear from him. And that's what we've tried to do in this case. In
17 cases, there are oftentimes inconsistencies based upon people's observations because
18 it's been said that five of us can watch a car wreck happen and we may all have a
19 different perspective on exactly the way that it occurred. But that's a person's
20 perception. It's not for the lawyers to formulate their perception. It's for the lawyers
21 to ask them what they saw and what they witnessed. We've attempted to do that as
22 honestly and as candidly as we can in this case. We don't believe that anybody else is
23 better suited to decide this case than you all, the citizens of Williamsburg County. I
24 call you the gatekeepers of justice. You're what stands between a civilized society
25 and an uncivilized society and it's been my privilege to serve in the position that I

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1 served in for some 20 years. It's been my privilege to be a part of presenting these
2 kinds of cases on behalf of families in our community that suffer the tragic kind of
3 loss unnecessarily as a result of the actions of that young man sitting right beside Mr.
4 Carraway. And so we thank you for your time and attention in this case.

5 THE COURT: Thank you, Mr. Sabb. Mr. Carraway?

6 MR. CARRAWAY: Your Honor, Mr. Sabb, Ms. Barr, and ladies and
7 gentlemen of the jury, ... I'm sorry ... one thing that has struck me about all of this is it
8 is a good thing for everyone to come here. I think people said they saw something
9 about this in the paper or whatever, people had heard about this and this is a good
10 thing to come here, for the family to come here and I've noticed that both families
11 here have gotten along here, you don't see a police between anybody. We've had
12 cases at other times where the people ... you had to keep the families apart and
13 everything. But everybody has come here ... two of the best friends I have are Ms.
14 Barr and Mr. Sabb and the way they presented the case. We've done this for many,
15 many years whatever here. And we've come here and they always ... see, they control
16 the witnesses. They ... you know, they can go out and get the witnesses, law
17 enforcement and SLED, they can go out and do that. They can hide things if the
18 wanted to or whatever but they never did that. They always let people get up on the
19 stand and testify and whatever happens is what happens.

20 Let's skip to the facts of this case and the evidence of this case. The evidence
21 in this case is you 12 put you all's heads together and decide what happened here.
22 Now, let's go straight to this night and get this out of the way about this night. To
23 begin with, Ernie Wilson, who is a friend said I went up there and listen to everything
24 here. Now, you all will determine ... I will tell you what I think the evidence will
25 show here, what the evidence is and you all determine whether there was a knife in

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1 this case. By the way, not a single witness has come up here and said there was no
2 knife. Dyshea did not say he did not have a knife. She was standing right there.
3 Erica McBride did not come up here and tell you he did not have a knife. Leslie
4 Morant did not come up here and tell you he did not have a knife. Law enforcement
5 never found anybody to come up here and say he did not have a knife. And Sadie
6 McBride's place where Erica McBride who has a daughter who has a child with the
7 deceased or whatever in one year they've never come up with a soul that's come in
8 here to say that this man did not have a knife. Now, what happens when people come
9 in in a situation like this? Don't you know good and well they know he had a knife?
10 They wouldn't have said that they know good and well he had a knife or they would
11 have said he did not. Any time somebody doesn't want to tell you something but they
12 don't want to flat out lie, they say well, I didn't see one. How in the world would
13 Dyshea miss if he had a knife? She said she saw him go and swing twice at him.
14 And then she says well, I don't know whether he had a knife or whatever. Now, she's
15 not a bad person or whatever or any of this but he had a knife. Ernie Wilson got up
16 on the stand who is a friend of the deceased. He got up here and he said he was
17 swinging at him like he had a knife. And I heard the crowd yell out he had a knife is
18 what I heard there. Now, listen to the other little facts of what went on here. Another
19 little thing here, you never heard a soul get up on that witness stand and say that
20 Javon or Scooter ever swung at the deceased. Ever. You remember what people
21 said? They said they were doing this or whatever is what it appeared. Now, that's not
22 what happens if ... if a 140 pound guy is going to fight a 190 pound guy they just
23 come together and they start throwing punches is what happens. He's circling around
24 here because this guy's got a gun. Remember what ... what else they said that it
25 looked like he went down and pushed him off at one time. You remember that? You

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1 remember when they said that. Now, tell me another reason why this man everybody
2 testified that he ran off. Ran away and just ... somebody said he tore off there. Now,
3 why would a 190 pound man go tearing off from a 148 pound man? Why would he
4 do that unless that man had a knife? Ernie Wilson said he heard the crowd say he's
5 got a knife and he said he was swinging at him like he had a knife. Ernie Wilson
6 never said that this man swung at him. Nobody ever said that this man did anything
7 aggressively.

8 The other thing about this, now you get up to Erica McBride, now, Erica
9 McBride has been blamed for all of this by this family. I will guarantee you because
10 you're arguing right here. Now, everybody said ... everybody wants to say here oh,
11 well, you know, she wanted to say now remove herself and she's down the road.
12 Well, you heard Leslie Morant and her daughter, they didn't say she was down the
13 road. They were all right there together and you heard the daughter say that I was
14 standing right here off to this side here when they were that close together when her
15 friend pulled her out of that and remember how Leslie and all of them said they were
16 together with mom or whatever. No mom doesn't want to be around here. Mom
17 wants to be to where oh, I was out of there or whatever and wants to say I don't know
18 why this man interceded or whatever. Let me ask you something. You all heard
19 three witnesses up there. You heard Dyshea, you heard Erica and you heard Leslie.
20 You know what you didn't hear out of any of them? You didn't hear a one of them
21 say that Erica turned to him when he stepped forward, when he got in there, you
22 heard this ain't any of your business. It is my business, this ... this is my family or
23 whatever. Did you ever hear anybody say or Erica claim to turn and say wait a
24 minute, excuse me, that's all right. I got this under control. Don't worry about it. Did
25 Leslie ever step in and say wait a minute, wait a minute, they do this all the time.

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1 Don't worry about it. Did Dyshea say oh, I said, that, I heard Mom say it? No. None
2 of them said any of that because Dyshea got on the stand and when Ms. Barr asked
3 her she said I was afraid for my mother's safety. That's what she said. Now, I don't
4 know what planet somebody else is from here or whatever but when somebody starts
5 calling a woman an MF and a B two or three different times in an aggressive manner
6 you know what, you know what ... we have ... we do have fortunately in this country
7 you do have a right to defend others is what you have. You ought to have a duty to
8 defend others. Are you aware that a man can lie on a railroad track with a train
9 coming in five minutes or whatever and you don't have a duty ... the law is ... does not
10 create a duty to you to move that man off those tracks or whatever? You don't have a
11 duty to jump in and save somebody out of a pool or whatever. But you should. You
12 should have that. And it doesn't make one bit of difference whether somebody is a
13 member of somebody's family or not. You ought to treat every human being and help
14 any human being is what you need to do and to protect any human being and that's
15 what he was doing here and I will present you with exactly what the facts are as far as
16 that goes. They never said one ... now, she wants to act like oh, I had it all under
17 control and blame it all on him. Well, I want that family every single one of them to
18 remember that she never said one thing at that point about ... she could have stopped
19 all of this and said, "Scooter, I ... we do this all the time now, don't ... you ... you just
20 go on, I know it looks like something here but don't you worry about it or whatever."
21 No, she didn't say that. She didn't get up there on the stand and say she said anything
22 to him about that. And neither did her daughter step in or the other girl or anybody
23 else. They never said anything to him. No, they didn't do one thing. Now, what
24 happened here is Ernie Wilson, what other reason would this man ... this is ... if I hear
25 one other suggestion that this man didn't have a knife I'm gonna throw up. That's not

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1 right. This man had a knife. What other reason would he go running off to his car
2 for? Here's what the Judge is going to tell you. You got a right to defend others is
3 what you've got. Self defense and defense of others. That to defend others. You've
4 got a right. You ought to have a duty to do it. He did what anybody else would have.
5 And let me tell you another thing here. The Judge is going to tell you that the force
6 he uses to protect this person and to defend this person has to be appropriate, that
7 nobody has stopped and thought about this or whatever, they want to gloss over all of
8 what happened here or whatever. But let me tell you what the real deal is. He's got a
9 very thin ... it's a very thin line he's got to walk not to step over this line as far as
10 defending or doing whatever. And when I heard about this I said I don't know
11 whether anybody can ... can walk that line or whatever. But I'll tell you what, this is
12 what he did here and this is the evidence here. This woman said ... let me ... let me
13 tell you ... I want to tell you a story ... I was ... I was in a bar one time, in a bar. I'd
14 taught tennis to a girl about five years before and I'm talking to this girl and
15 somebody grabs me by the neck and picks me up and turns me around or whatever. I
16 thought what in the world is this? It was a guy Spring Valley High School, Sam he
17 was a tackle on the Carolina football team and he was drunk and he said, "What are
18 you doing talking to my girlfriend?" And he draws his ... I said, my God, it's all ... I
19 couldn't move. Some guy walks up and says, "Wait a minute. I know this guy. He
20 plays tennis at this place or whatever." And I thought, my God, I'm sure glad this guy
21 was in here. But if Sam would have pulled a knife on this guy this guy would have
22 run off I can guarantee you what I'd have been hoping then. I sure hope this boy's
23 coming back. I hope he's not going to leave me here with this guy and this knife or
24 whatever. Here's what he did. Listen and tell me ... I want you to tell me that there's
25 any evidence that this man didn't do just what I'm going to tell you to do. Now, the

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1. State ... self defense and defense of others is a ... is a defense that the State has to
2 disprove beyond a reasonable doubt. Now, you tell me if he did anything other than
3 this. She said I was arguing with this guy and he was calling me an MF and a B and
4 everything else and this guy appears beside me and he said ... she said ... I asked her
5 what she said. She said well, I don't remember what he said. Well, she knows what
6 he said. And it was said by other witnesses and it makes perfect sense that he would
7 say you're not going to talk to this woman like that. He said you're not going to be
8 doing this or whatever. And it makes perfect sense that the other man's reply would
9 be, this isn't any of your business and it makes sense that he would reply it is my
10 business, that's my family. All right. That doesn't seem like ... that seems fine to that
11 point. Tell me what could be better? Now, if that were my daughter out there, if I
12 were out there I would the same thing and I would want him to do that if that's my
13 daughter. Now, if my daughter at that point turns to him and Erica McBride had
14 plenty of chances and time to turn right then and say, "Scooter, hey, don't ... don't
15 worry about this. Hey, we do this all the time." Nobody said that she said any of
16 that. Because it ain't true that she had it under control. It's not true. Her daughter
17 said I was afraid for my mother's safety and not any of them went to him to say just
18 stay out of this, they do this all the time. The daughter didn't do that. Erica McBride
19 didn't do that. And Leslie Morant, nobody said any of that to him. You know why?
20 Because it ain't true. She was in fear for her safety or whatever. Just like her
21 daughter got up on that stand and said. I feared for my mother's safety. No, she
22 wants to distance herself and if they want to blame somebody that's part of the blame
23 right there. That alcohol. That's the other part of it.

24 All right. Let's see what happens after that. I'll guarantee you I'm just glad
25 that that boy pulled a knife and that guy ran off. I hope he will come back. But here's

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1 what he did. This is where it gets a little tricky here, too. All right. He turns here
2 and Ernie Wilson describes this fight where he hears somebody say the man's got a
3 knife. I saw the guy. I saw him sort of sparring around and I saw the deceased
4 swinging at him. Nobody ever said they saw this man take a swing at him either time
5, or say a word to that man during that fight. Nothing at either time. The last word
6 anybody said that this man ever said was this is my business. This is my family.
7 That's the last word anybody ever said that he said. That's the last ... nobody ever said
8 this man acted aggressively towards the deceased, swung at him or did anything.
9 They described backing up and going down, pushing off, running to the car and
10 coming right back is what they described. Now, here's the other thing. I want you to
11 know here, I want you to listen to this. Any evidence here that he came back mad
12 about the guy that the guy had ... with the ... because he pulled a knife on him? He
13 was mad at the guy for that reason. Nobody said he said one word. They said he
14 came back quickly and walked over ... walked over and then every single person even
15 his girlfriend said the same thing and the other lady said on two different occasions
16 and in her transcript she did at the time that this guy comes towards him. Once again
17 they don't ever say that this guy moved towards this guy. They say he came towards
18 him. Broke away from his girlfriend or whatever. Now, you know everybody sits
19 here and it's nice for everybody to say oh, nothing would have happened here or
20 whatever. Well, you got a guy calling somebody an MF and a B and he's just pulled
21 out a knife or whatever. Now pulling out a knife because somebody said ... nobody
22 ever said if he said anything beyond you're not going to talk to her that way. This is
23 my business or whatever here. Don't get, you know, I am going to step in here. You
24 want to fight with somebody you fight with me. Nobody has ever said he said
25 anything beyond that or whatever. That's the last words he spoke or whatever.

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1' Nobody said and here's the thing here he had Leslie Morant, Erica McBride ...
2 whatever here. No, he never said a word. Not one word. I can tell you what. If my
3 daughter or --- or anybody else I would want somebody rightly to do that. All he did
4 was come back over and he stood and they said he had a gun by his side. You want
5 somebody ... now, let me tell you, you know what they used to call the .45 revolver in
6 the old west? Peace maker. You know what happens when ... usually when
7 everybody is rowdy and somebody pulls out a gun and fires it up in the air? You
8 know what usually happens then? People hey, where? He didn't do anything ... they
9 didn't say he pointed the gun. They said he walked up, had it by his side and they
10 moved over. Now, wherever you're talking about Erica McBride being here, whether
11 she wants to be down here or up in here or whatever, whatever she wants to be, look
12 where he is in between she and this guy. Where he moved to. Nobody ever said that
13 she was anywhere but behind this guy. Now, she wants to be a little further back
14 there or whatever. She wants to be completely out of this and I don't know why he
15 got involved. Well, if you don't know why he got involved why didn't you tell them
16 if he or she felt like ... like she tries to say now, oh, this man was interfering here. I
17 don't know why he jumped in here or anything. Why didn't she or anybody say
18 Scooter, you don't understand. I know it sounds but I got it under control and then if
19 he still --- that's different. But he didn't. And they didn't say anything. And the
20 reason they didn't say anything. They would have said something if that had been the
21 case. If it had just been a case of oh, I know it looks worse they would have said
22 something. The reason they didn't say anything and you didn't hear anything from
23 any of those three is she was afraid just like her daughter said that I was afraid for my
24 mother's safety.

25 Now, once he runs off what else did they say is going on here? Dyshea is

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1 pulling him down the road or whatever, after he's run off here. Remember that.
2 Now, who are they pulling him away --- who is she pulling her boyfriend away from
3 if he's already run off? Erica McBride. That's who. Now, that's what she said and
4 then she said he comes back and he's over there and then she says he's got a gun.
5 Now, most people ... what else are you supposed to do if somebody pulls a knife, is
6 arguing with somebody and getting into what you think is a violent argument, you
7 step in and the person you're defending doesn't tell you hey, I got this under control or
8 whatever and the guy pulls a knife on you. He ... now, you run off there and you run
9 off and you leave the person that he's mad with or whatever and keep in mind after he
10 ran off the daughter said she's still pulling him down the road. Ernie Wilson said
11 there was a knife. Ernie Wilson said he was swinging like there was a knife. And the
12 crowd said there was a knife or whatever. And Dyshea knows there was a knife.
13 And you heard what that boy ... now, you all might say that's who they brought in
14 here or whatever. Look like a knife that you would carve up animals, that you would
15 cut on animals, that you would dissect animals with is what he said. I don't know
16 about any of that. Let me tell you. Would I rather have a knife like or would I rather
17 have a knife like or would I rather have a night like this or whatever. I don't know. I
18 might rather have a knife like this as a weapon because you know what, I can get up
19 close to somebody and it has got a blade about this long and they ain't even gonna
20 know I got a knife. And I go to swing at somebody the next thing the guy knows he's
21 dead because I've already cut his artery in his neck and I don't care whether he's
22 sitting in the Mayo Clinic in Rochester, Minnesota with a hundred doctors around.
23 You know what, he's a dead man. He's a dead man right there. Nothing can save his
24 life. So I don't know what. Here's the thing. It wasn't this knife. This is a knife in
25 his pocket. There's another knife out there. This man would not have run away, this

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1 190 pound man would not have run from 140 pound man. And never laid a hand,
2 they said they were looked like sparring around there or whatever. That ain't the way
3 people do. This ain't no boxing match or whatever. He's sparring around because
4 this guy is showing a knife. His friend, Ernie Wilson, said it looked like ... it looked
5 like he had a knife. He was swinging at him like he had a knife. Somebody yelled
6 out he's got a knife. And he ain't lost that knife when he's ... after he runs off. He
7 didn't ... where did the knife go between there and ... and the end there when that final
8 confrontation? What do you think he was moving towards him with? What do you
9 think? And you know, they want to act like oh, God they were just using some
10 language here and this is just, you know, they weren't really all that mad. They just of
11 used some of this very violent language back and forth toward each other but it wasn't
12 no big deal. Well, sometimes you've got to be there to see what alcohol and whatever
13 else he had along with that alcohol what it does to you and what it makes you feel
14 like and what it makes you, you know, I could jump over this building or whatever. I
15 can take on the world or whatever here. But he got a glimpse of that. He looked this
16 man in the eye when that man turned on him. And these people said it looked like he
17 was swinging at him with a knife. The crowd said he's got a knife. And then he ran
18 off because he did have a knife.

19 Now, that ... and now he had a suspicion right there. Here, this guy ... this is
20 ... you know when you can tell somebody's sort of crazy when they completely
21 overreact to me telling him what he should have done was you're right. I shouldn't be
22 arguing. It's gotten out of hand, the arguing and talking with this woman and
23 everything. All right. You're right. I don't appreciate you getting into it but that's
24 okay. How would anybody think and this guy's got a knife. Now, if I come back
25 with a knife we're just going to have a fight or whatever here. Generally when

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1 somebody's got a knife and somebody's got a gun there is some distance in between
2 them or whatever here, that's the end of the argument. Usually somebody says gee
3 whiz I feel sort of stupid here standing back here with my girlfriend trying to pull me
4 away from this guy or whatever and she's already said this man's got a gun or
5 whatever. Now, what kind of frame of mind and what is it that you take a drink or
6 take a combination of what you're drinking to make you say I'm not afraid to die. She
7 said that's what he said. That's what she ... both the ladies --- he broke away from her
8 and went towards him and said, I'm not afraid. Now, what if this man ... this man had
9 not done anything to provoke him. He ran off and he walked back. He didn't say
10 anything. He didn't challenge him or whatever or try and embarrass him in front of
11 anybody, didn't say all right, now let's see what you got now. Let's see what you're
12 gonna do now. All right, you got a knife, all right, let's see what you gonna do now
13 and walk ... he didn't do any of that. Nobody said he said a word but he walked over
14 and stood here wherever Erica McBride wants to put herself. That ain't where she is.
15 She's right behind him is where she is. She's right there with her daughter and her
16 daughter claimed I'm right to the side. Whatever she says about, oh, mommy, they
17 running off down here, they've done this to him or whatever. That ain't what
18 happened. Leslie was right there pulling her away from in between. She said she
19 was right there. Mom's right there. And she didn't say her mom was down here.

20 Everybody wants to act like oh, nothing would have happened here or
21 whatever. Well, you know what, you can make sure nothing happens if you come
22 back and you let somebody in this situation, all right, this is the end of it. Who would
23 ever ... when in history is somebody ever charging somebody who said I'm not afraid
24 to die and come at somebody and what did his girlfriend, Erica, said that this man
25 ever pointed the gun at him, said a word to him or anything. But he ran ... never said

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1 he pointed the gun, said anything, came over in a belligerent manner at all. They've
2 got to prove to you ... all they said was he was there and all of them said he came
3 towards him. He came over here and see right where this was. Remember where this
4 argument took place. At the road and halfway in the road in there and where he ends
5 up right there. This is not the parking lot. So that's why he had to come that far
6 because that's where they were. And nobody said they fight like this all the time.
7 Erica didn't turn to him, hey, you don't need to get involved. I appreciate this but you
8 need to go on. They would have said that and Erica would have said that if that were
9 the case. If the case were I got this thing under control or whatever. No we do this
10 all the time. But she didn't say that because it's not the case. And her daughter when
11 Ms. Barr asked her said I was afraid for my mother's safety. And it was not pro --- I
12 didn't see anybody say anything about him being provocative when he came back.
13 Nothing. Saying anything or doing anything. He stood here with her and that woman
14 said this and I also argue that you hear reverberations on gunshots. Somebody said
15 three somebody said two. There's one discharged cartridge or whatever there.
16 There's only one bullet. It was only fired one time. Now, remember what the girl
17 said. This is his girlfriend. He broke away from me, said I'm not afraid to die and
18 moved towards him saying shoot me, MF, shoot me, MF and then that he swung at
19 him not once but twice. She said she ... he swung at this man and then there was a
20 gunshot. Then he swung at him again and then there was a gunshot. Now, how can
21 you miss somebody if somebody's close enough to you to swing. I would suggest to
22 you and the evidence shows that this man and keep in mind here words can really be
23 provocative. He didn't say a word. Nobody has said that he said a word to that man
24 but come here and stand. Now, I'd like for somebody ... and he ... and the man swung
25 at him twice. Now, this knife ... he ain't lost that knife from the first time to this time.

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1 And these guys that testified about that. People have testified and nobody has come
2 in here at any time and said look, I was there, I saw it and he ain't had no knife. He
3 did not have a knife in his hand. I saw it. And you know Dyshea, if he didn't have a
4 knife, she'd know if he didn't have a knife. And she say he didn't have a knife. She
5 would have said that but she did not say that because she knows that's not so. She
6 knows he had a knife. She don't want to come out and say it but she knows whether
7 he has a knife or not I would guarantee you. She knows whether he had a knife in his
8 hand or not because she saw him swing at this man twice. That's what she said. I
9 saw him swing at him twice or whatever. She knows what he had and what he didn't
10 have. And she didn't say no. She didn't say no, he didn't have a knife. And you
11 know what that means. She don't want to say ... but well, I didn't see it. Well, you
12 have an opinion. He did --- I would hope that ... there are a lot of people that just
13 don't want to get involved. Tell me he didn't do any ... he used no force more than he
14 had to. The man's got a knife. You've got ... you come back that's gonna stop ... that
15 should stop. You come back ... you run off, you come back and get ... remember it's
16 right down the road where argument started or whatever. She's back here. Even she
17 said she's back behind him. She wants to be further back behind him or whatever but
18 where he is nobody ever says he moved forward or anything. See, the confusion here
19 is people think he went to the car and came back and shot the man. No. That's no ...
20 he didn't come back and shoot the man. No, he came back to defend her and the this
21 guy basically committed suicide is what he did. The girlfriend had him in her grasp
22 and said he's got a gun and he said I am not afraid to die and then he came ... he
23 swung at him twice and you think he swung at him with his fist or whatever? Do you
24 really think this man ran from him the first time because he was afraid just of getting
25 hit with the man's fist or whatever? Everybody said this man peeled out and he came

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1 back with a gun. But he was as calm as can be. This is ... now, they're going to tell
2 you manslaughter, voluntary manslaughter is when you kill somebody in the heat of
3 passion or whatever. This ain't ... there ain't no passion here. He's not mad at this
4 man about anything. He didn't get upset. There's no indication that he was upset
5 about this guy pulling the knife on him or doing anything, swinging at him. People
6 yelled out in the crowd and like Ernie Wilson said I saw him swinging at him like he
7 had a knife. Well, why else would he run if not a knife. There's no indication he
8 came back and that his purpose was that all even one percent I'm gonna get this guy
9 for that ... because he'd of been saying something. Dyshea would have said
10 something. Would have said that he said something. Leslie would have said he said
11 something or Erica. Or somebody in the crowd. Man, he's coming back raising Cain
12 about man you pull a knife on me, I've got something for you, something to that
13 effect. But no. Nobody said that. They said he didn't say anything. He just came
14 back. Let me ask you. This is Harrison Ford in a movie. This is any actor in a movie
15 or anything, what else ... tell me what you would write in a script of what has
16 happened here. How could he have been more responsible? He did ... this thing of
17 don't even ask me why he got ... why didn't he get in the car and leave? He came ...
18 he was defending this woman. This guy is calling this woman all these names. He
19 goes and says man, you need to stop that now. If you want to fight somebody, you
20 fight me. And the guy pulls a knife on him and is trying to cut him and he's able to
21 get off, push him off enough to where he can get to a car. Now, what kind of a ...
22 what kind of a person would he be to go ahead and leave? No, I've got a gun. I'm
23 walking back. I'm not coming back to end anything. I'm coming back just to get in
24 between these two or whatever here. This man had to swing at him twice with the
25 knife he still had in his hand before he shot even one time. Please tell me what more

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1 he could have done. What else could he have done? Keep in mind the ... only he
2 could judge, because you know, this guy really wasn't that ... the deceased really
3 wasn't that crazy. Wasn't that crazy? He pulled a knife on this man almost for no
4 reason at all. And then he couldn't even at that point come to his senses when he's off
5 at a distance there and somebody says, his girlfriend says he's got a gun. Craziest
6 thing I've ever heard somebody say. I wonder if in the history of mankind someone
7 has ever charged at a man who had a gun on himself. I wonder if anybody has ever
8 done that. That usually ... now, this shows the state of mind of the deceased here. I'm
9 not saying this guy wasn't a good guy a lot of the time. But I'm saying what in the
10 world was he thinking at this point. Not only that, he could have thrown up with his
11 hands and said go ahead and shoot me ... you're not gonna shoot me or whatever. I
12 don't think you're gonna do that or whatever. But he didn't just do that. He swung at
13 him twice with the knife he had before. Now, you don't think he swung at him with
14 his fists. You don't think this man really ran off from that guy at first and tore off to
15 the car just because he was afraid of getting hit, do you? 190 pounds? 148 pounds?
16 You don't really think that. You don't think Ernie Wilson was mistaken as a friend of
17 the deceased when he said looked like he was swinging at him with a knife. And I
18 heard people in the crowd say he's got a knife. I believe that's consistent with what
19 they told about sort of sparring around or whatever. Never said a word to that man
20 except this is my business, that's my family. If you want to fight somebody you fight
21 me. Nobody said he said another word after that. Nobody ever said he through a
22 punched that man. Nobody said anything except he walked over and stood right here.
23 Now, I'm going to tell you what, you ... and here's the other thing. Don't ... it doesn't
24 matter about family. If you offer to protect anyone ... I want anyone ... we are all part
25 of mankind. We are all one. You need to help everyone. This is somebody ...

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1 remember ... here's the other funny thing about it. Erica McBride said that man was
2 drunk. He said he had been drinking that night or whatever. You don't have to ... I
3 don't know what else he had had or whatever here but who in the world would break
4 away and I'm not afraid to die and go walking towards swinging at a man with a
5 knife when he's got a gun? You know what the definition of that is? Suicide. That's
6 what it is. That is suicide at that point. This man didn't provoke him. He didn't do
7 one thing provocative, it didn't make a provocative move, an aggressive move, or
8 say a provocative word or any word to incite anything. Now, tell me has there been
9 any evidence to the contrary now. No. Not a bit. If you saw this ... if you saw this
10 happen and you'd say that guy just killed himself. That guy I don't know what in the
11 world that was about over there. Until I heard all the facts of it I thought at some
12 time this guy must have gotten angry about what that guy had done, said something,
13 done something, come back. But I have not heard one iota of evidence that he came
14 back ... because you're gonna talk, you're going to say something now, they talk about
15 being empowered with a gun or whatever. He never raised the gun, never pointed the
16 gun. He said he had the gun right here. He walked over and you know, Mr. Sabb
17 talked about ---they don't say all this stuff. I can say what I want. I can say what I
18 want to anybody out here, everybody going to listen to it or whatever. But he never
19 said a word. He never said one single word. Nobody has testified he said anything,
20 that he ran back over or ran at him or did anything. Now, at that point of course he's
21 defending himself and shoots him, you know, he came back over to defend her but of
22 course this man is ... he's still got that knife that Ernie Wilson talked about, he heard
23 people talking about it, why he ran off and what it looked like he was swinging at
24 him. Well, he's still got that. He ain't lost that or whatever. Somebody picked that
25 knife up. You heard somebody describe that as a knife that you would cut up a

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1 animal with. Not a single soul has come in here and told you that he said a
2 provocative word to him or made a provocative act at all towards him to provoke that
3 man other than come back here and stand. Did he point the gun? Did he say a word
4 to him? Didn't do anything. His girlfriend is holding him telling him let's go, let's go,
5 let's go and him saying, I'm not afraid to die. And walking up there and saying shoot
6 me, MF, shoot me, MF. And I'll agree even at this point he still doesn't have a right
7 to shoot him but when you swing at him with a knife and the girlfriend said he swung
8 at him twice and he still had the knife Ernie Wilson talked about. Because that's why
9 he ran off to begin with or whatever. He ain't running from that man unless there's a
10 knife. Why did people in the crowd yell out there's a knife? Why do you think they
11 said that? Because there was a knife. That's why. It looked to Ernie Wilson like he
12 was swinging at him with a knife and he sure wouldn't have run if there hadn't of
13 been a knife. I can tell you that. If it had just been a fist fight there and he still had
14 the knife because he came right back. Where did it go? And the girlfriend backing
15 him down the road. I'm not afraid to die here today. I'm gonna come up here ...
16 everybody talked about him swinging at his throat, too. Remember how the girl
17 talked about swinging or whatever? I didn't hear anybody talk about swinging at the
18 body either. The evidence here is this man ... listen to what his girlfriend said. He
19 swung at him twice before he shot him in the face. That's what she said.

20 What would have happened in this case a million times only one in a million
21 times every other time it would have ended up the guy say okay, all right, let's go on
22 home or whatever here. All right. That's it. Gun comes out, somebody fires a gun up
23 in the air, everybody wakes up then. Aha, okay. The gun comes in, hey, all right,
24 we're going on home. He didn't point the gun or do anything. He just stood there.
25 He had it by his side so the guy could see it. He wasn't looking to provoke him. He

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1 wasn't looking to say a word to provoke or to do anything. And he stood there after
2 the man swung at him once and then swung at him twice. But he wasn't gonna let
3 him swing at him again. Now, you all ... if you all ... if there's anything they can say
4 to ... to you the facts I'd like to hear it. I'd just like to hear it. What in the world are
5 they going to say about that? Not a word. Not a single aggressive act. He never
6 swung at the man. Never did anything. Ran away, came back. Never said a word,
7 never coming back to him ... I'm a man and I can do what I want to do. But you
8 would turn tail and run. Stood there. Let the man walk, break away from his
9 girlfriend, heard him say I'm not afraid to die. Shoot me, MF, shoot me, MF. Swung
10 at him once. The girlfriend said it. Still had that knife in his hand. Swung at him
11 twice. And only then did he shoot and she said at that point I don't care whether
12 you're at Sunset Acres out there at a party. I don't care if you're at the Moose Lodge.
13 I don't care if you're down at the beach or wherever this kind of behavior of talking
14 like this ... we're not going to lower the conduct of civility just because you're at
15 Sadie McBride's or whatever. Everybody doesn't talk that way at Sadie McBride's
16 and talk to women that way. And all she would have had to say at any time ... all she
17 would have had to say hey, I got this. Don't worry about it. Hey, this is not ... you
18 stay out of it. I can handle it. She never said that. Nobody ever said she said
19 anything like that because she didn't have it under control. And her daughter said I
20 was afraid for my mother's safety. And that's what happened. This man strangely,
21 you know, it's just ... he came ... there's no evidence otherwise and he just came back
22 to protect this woman. To be there having that gun, that should have made peace.
23 That shouldn't incite anything else. That shouldn't incite anything else. I'm here and
24 I'm just like this. I think it's, it's getting so late, I think I need to go on home here. I
25 don't think I need to go back over there or whatever. We'll start this tomorrow. All

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1 right. Hey. But no. He comes at him, I'm not afraid to die. And he says shoot me,
2 MF, shoot me, MF and swings at him twice and that's when he shot him. Now, tell
3 me ... if I've missed something because that's all have heard here. You don't hear all
4 this hype about oh, God, he just left. Well, you can't be sure about that or whatever.
5 You cannot be sure about that at all. He went ... he knew how crazy this guy was , or
6 whatever. And this guy ... I think this guy's crazy and turned out this guy was crazy.
7 If that guy was crazy enough to come at him when he had a gun he certainly may
8 have cut that woman with that knife or whatever. Or all that woman would have had
9 to say hey, I know this guy well, but she didn't say a single word. When he had a
10 knife that's why he ran off and he had the knife still there at the end. Broke away
11 from his girlfriend and swung at him twice and that's when he got shot. And it is but
12 now all ... all the testimony hadn't heard that. It's down to we've heard all of what
13 happened. And the facts of this case if you hadn't heard it from their own witnesses.
14 You wouldn't believe that he just told you ... if his side just said that man broke —
15 and said I'm not afraid to die. He said all this. You wouldn't believe it. You would
16 not believe somebody had been that crazy. But ____ night, whatever else. I don't
17 know. I'm going to let my very good friend, Ms. Barr, talk to you. She's going to
18 take facts, take the evidence and she will ague the other side as we always do here.
19 You all have heard all of this evidence here. You twelve have heard all of it. You
20 will make up you all's minds but I sure hope if my daughter is out at some place and
21 this comes up I want a man to react just like this guy did and with a cool and calm
22 that he reacted. He was stirring up nothing. Nothing. There is no evidence that he
23 stirred anything. Nothing. He never did one thing to provoke this man when he came
24 back. But he came back to protect this woman . He wasn't gonna let him cut ... try to
25 cut him a third time. He only did what he had to do. This man told him what he

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1 could do. He let him know how crazy he was. He knew this man had that knife from
2 before he saw that knife swing at him twice and he wasn't gonna let it happen a third
3 time. And I wouldn't have either. Thank you.

4 THE COURT: Ms. Barr?

5 MS. BARR: Mr. Carraway, madam forelady, ladies and gentlemen of
6 the jury, good morning. Almost good afternoon. Is everybody okay in terms of a
7 break? Everybody good to go? I'm probably going to be about maybe 20 minutes or
8 so. So hopefully will not keep you all here too much longer. Mr. Carraway said
9 about ten or 15 times talking about the victim and the victim's statements oh, you
10 gonna to shoot me, you gonna shoot me, shoot me, shoot me, I'm not afraid to die. So
11 I'll ... I guess I'll make it 16 times. I'm not afraid to die. Are you gonna shoot me?
12 You gonna shoot me? That justifies a killing now? Well, let's just go home. I mean
13 why are we here today? If words enough standing alone can justify somebody taking
14 the life of another human being why are we here? Why do we have a justice system?
15 Why do we have a judge with a robe? If it's all in his power, he is the judge and he is
16 the jury. We don't need to be here. Now, I ... I've been a assistant solicitor for
17 Williamsburg County for probably now four and a half years. Unfortunately during
18 that four and a half year period I along with Mr. Sabb have been involved in the
19 prosecution of numerous murders and to think that after a period of time you kind of
20 would think that well, you know, you've seen the worst of the pictures, go through the
21 process each time with the victim's family and you kind of think as a prosecutor you'd
22 get used to it. That is not true. You never get used to it. Each time I'm in this
23 position I feel the pain of the family members, feel the pain of what happened and of
24 their loss. But you know, folks, this case is ... I'm just having a hard time wrapping
25 my mind around it because out of all the murder cases that I've been involved in, you

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1 know, I usually will see a situation where there's ... there's some element that never
2 excuses the killing but as a prosecutor I can say well, this happened because, you
3 know, A happened because of B. You have somebody dealing drugs, somebody
4 breaks in their house and robs them for the drugs so there's a murder. Or you have a
5 situation where somebody at a store, they're working there, they're a clerk, somebody
6 goes in the store in the middle of the night with a gun and robs the store, things turn
7 bad, they kill them. Or boyfriend and girlfriend get into a violent argument it turns
8 deadly, the boyfriend kills the girlfriend. So in all those instances you say okay, well,
9 this is a horrible murder but as a prosecutor I say A happened because of B. I can't
10 say that in this case. This is absolutely one of the most senseless, horrific killings
11 that I've ever seen. It makes absolutely no sense to me. At all. Now, Mr. Carraway
12 and I don't agree on a whole lot about the facts. There's one thing that we agree on.
13 There's no evidence that the Defendant's passions as we call it were inflamed. There's
14 no evidence that he was in the heat of the moment. He was acting under the stress,
15 excited or afraid or fearful or anything. There's no evidence that when he came back
16 with that gun he was acting in the heat of the moment. That's the only thing that we
17 agree about in this entire case. But you know what, that almost serves to show you
18 that is only proof positive of the type of cold blooded, heartless killer that guy is.
19 Congratulations, you're the big man, you took a life. Congratulations. He must be
20 proud. He took a life, a father and a brother and a friend that night. And the fact that
21 he came back and he never said a word, he wasn't angry, wasn't provoked is a
22 testament to how really cool and vicious he is. And you're right. Mr. Carraway is
23 absolutely right. It's not evidence of voluntary manslaughter, this lesser included
24 offense. It's evidence of murder. Evidence of premeditation because what that shows
25 you is that when he left that fray, that initial fight with Derial McCrea, when he left to

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1 go to that car he made up his mind right then and there he was going to take him out.
2 Because see, he knew he had the gun. He knew where it was. He knew where to go
3 get it. And so when he leaves here and he takes his time, he walks all the way to the
4 car. He opens the door. He reaches in the pocket of the passenger door. He takes the
5 gun out. He walks all the way back. They said he had the gun on his hip. Doesn't
6 say a word to the guy. Yeah, you want to be bad now, I got something for you. He
7 walks right up to him, points the gun in his face, fires the first time, misses. Fires the
8 gun the second time. Not near him to scare him. Not up in the air. Right in his face
9 with intent to kill. And when he shoots him and Derial falls to the ground, blood is
10 splattered all over the place. There is no oh, my God, what did I just do. Oh, I didn't
11 mean to do that. He walks out just as cool, calm as if he had ran over a bird. Folks I
12 hit a squirrel one time and I turned back around. I mean, that's just how much it
13 frightened me. This kid didn't even look back. Didn't even think twice that he had
14 taken a life.

15 Now, let me tell you all what I submit to you ... out there dancing, listening
16 to the music, drinking. That's what people do at night clubs. There's nothing wrong
17 with that. Nothing wrong with having a drink. Man worked full time, had a good
18 job. Nothing wrong with going out and having a good time on the weekend. Erica
19 McBride, who is his girlfriend's mother, comes in and sees a girl dancing with him or
20 around him or whatever it was that she saw. So she goes out and she tells her
21 daughter, listen, you better go in there and you better get that. So Derial feels listen,
22 you've misconstrued everything that just happened. It wasn't like that. Why did you
23 go and why did you tell her that? That's ... that's none of your business, why did you
24 tell her that? That's just between me and Erica ... me and Dyshea. So he and Erica
25 they begin to have a ... an argument. Now, I don't know Erica McBride outside of

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1 this trial, this case, this courtroom, but one of the things that struck me about her ... I
2 don't know maybe you all share my view ... she didn't seem to me to be the type of
3 person that was frail or a little damsel in distress who needs some man to come
4 rescue her and come to her defense. I didn't ... I didn't get that impression of her. As
5 a matter of fact, she came across to me as the type of person that could handle her
6 own, wasn't afraid of anybody, gave as good as she got. And when she got on that
7 stand she said that. Yeah, he said some ugly things to me, called me everything under
8 the sun and I said some ugly things to him and I called him everything under the sun.
9 This guy, Scooter, Shooter, or whatever you want to call him, comes out of nowhere,
10 interjects himself and he and the Defendant get into a fight. You heard testimony that
11 all these other people came out with the Defendant and Dyshea was concerned mama,
12 they gonna jump him. All these people out there against just Derial. They gonna
13 jump him. Hear Leslie when she testified at some point Derial got the best of the
14 Defendant. Now, that's important. That's significant. Because at the risk of having
15 my colleague throw up in Court, I'm going to suggest to you Derial had a knife as
16 they want you to believe and he was getting the better of him, they man on man, man
17 on man, and they're fighting each other, he would have landed, hit him with his knife.
18 There wouldn't be a cut? No blood? No scratches? No nothing on Mr. Rivers?
19 Nothing? They're on the ground, they're passing licks, and he just doesn't get cut?
20 Well, Mr. Rivers at this point ... Derial was a guy of smaller stature got the better of
21 him in front of this club with all these people, with all of his boys, showed him up.
22 Embarrassed him. Couldn't let him get away with that. Small fellow gonna come
23 and ... and get the better of me? He ran off because he said, well, I got something
24 that'll fix him. I got something that'll stop him. He goes out to his car, he gets a gun
25 and he comes back and he shoots this fellow. Cold blood.

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1 Now, I told you what I will submit to you is true. Let me tell you what I
2 would submit to you his story is a fairy tale. I love to read. I've always loved to read.
3 As a child I read many books. One of the favorite types of books that I like to read
4 are fairy tales. Well, this Defense theory that they've advanced to you I would submit
5 to you is a fairy tale. It's a story. You know all the characters in their story, they have
6 these wonderful powers of observation. All the objects in their story, in their fairy
7 tale, they're magical. These objects that they're placing in the story like the knife that
8 the victim supposedly had, it's amazing because that knife at some point it becomes
9 invisible. Nobody sees the knife but the characters in their story. The people who are
10 right up there with Derial, his girlfriend, the girlfriend's mom, Leslie Morant, none of
11 them saw this magical knife. And if you believe some of the characters in their story,
12 that knife changes. See the knife goes from ... if you believe Christian ... being a
13 pocket knife with a black blade. Yesterday that's what it was. Now, today magically
14 the knife is this huge knife that you use to cut up an animal with. See, Christian
15 forgot to tell Raheem McCrea what kind of knife it was. They discussed all the other
16 stuff but they forgot to discuss that particular ... but the knife changes and becomes
17 something greater than what it was yesterday. And the things about these characters
18 in this story they change. They become invisible. All of these characters supposedly
19 out there that night never once came to law enforcement. Christian really surprised
20 me. He said, yeah, I was out there. I saw everything. When the guy got shot I went
21 over there and I stood over there and I looked at him. Didn't see that invisible knife
22 because see, only he could see that. But I looked over him. I ... I saw the blood and I
23 stayed there until the police came and then when the police came, that's ... that's when
24 I left. Didn't tell my mama what happened. Almost a year now this happened, still
25 hasn't told his mama. But ... but I saw everything. Never once talked to the police.

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1 This guy's sister comes into Court. She's also an important character in the story
2 because she's out there. Yeah, I saw everything. I saw this guy swinging a knife at
3 my brother. I thought he was gonna kill my brother. Police comes to her, ma'am,
4 what did you see? What happened? Well, I'm not gonna talk to you. You come back
5 to me when you got a subpoena then I'll talk to you. Now mind you now, according
6 to her she doesn't know whether her brother's alive or dead, she doesn't know where
7 he went, she doesn't know what happened. She ... she saw him that night. She didn't
8 see him anymore until last Saturday. The police come, ma'am, where's your brother.
9 I don't know. I just assumed he was okay. I, you know, I don't know. He ... he was
10 all right. But I'm not gonna talk to you. The interesting thing about her, what did
11 she tell you all? Said ma'am, where did you go? I left. You know, I ... once the
12 shooting happened, I left. I ... I went and found my boyfriend and I left. What's
13 interesting about that her boyfriend is Eric York. You all remember him? Eric
14 York's name come up? Well, Eric York was the fellow that Investigator Whack
15 talked about. You all remember he said he had gone to Eric York's house and took a
16 picture of this car like a couple of hours after the shooting? You all remember what
17 the witnesses said about this car? This was the car where they got the gun from. Is it
18 really a coincidence that the gun came from the Defendant's sister's boyfriend's car
19 and it was at his house when the deputies came out there the same night? Do we
20 really wonder why she wasn't worried about her brother after she was ... I would
21 submit to you she wasn't worried about him because she helped him get away. They
22 got in that car and took him away. If that's true, folks, that makes her an accomplice.
23 And if that's true then that means she's gonna get up here and she's gonna lie to
24 protect herself. Now, we talk about these Defense witness, all these great witnesses.
25 I've always wondered when you have somebody charged with murder which again is

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1 the most serious crime why these people wouldn't ever tell the police what they saw.
2 And I understand people get scared. I mean, I understand that. I'm not naive in that
3 respect. But when the police come to you and you won't talk I've always wondered
4 about that. And you all may remember that when we picked you all to serve on this
5 jury on Monday we went through a list of people who we thought were gonna be
6 witnesses and remember the Judge asked you all if you knew the folks. Well, the first
7 time we heard about Christian Brand was yesterday. That's the first time the State
8 had any inclination whatsoever that he might have been a witness. Why is that
9 important? That is important because the Defense wants to tell this story we're not
10 going to give the State too much notice because see if we tell them that there are
11 witnesses, gosh, they might want to go and interview them. No, we can't have that.
12 And if they interview them, gosh, they might want to check out their story. No, we
13 want to ... we want it to be a surprise. We want to save them. So we don't give them
14 enough time to check out their story. And unfortunately for Raheem McCrea he
15 didn't have enough time to prepare the story. And it's obvious that it's more important
16 for him to save his friendship with Christian Brand than it is to tell the truth today.
17 That's obvious.

18 Now, you talk about characters. The most important character in this whole
19 story, this fairy tale, is the Defendant himself. Because see, if he's acting as Mr.
20 Carraway so passionately suggested to you that he's acting, don't have any other
21 choice, I did what I had to do because I had to protect myself. It was either me or
22 him. Let's assume that's the case. Honestly. Somebody's coming at you with a knife
23 and you did what you had to do because it was your life or the victim's life. He didn't
24 believe that. You don't believe that. A man who runs, hightails it to Florida, stays
25 there for two months, is ultimately picked up on a traffic stop, never turns himself in,

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1, that's behavior of an innocent person? Is that even the behavior of a person who
2 thinks they're innocent? Absolutely not. Those are the actions of a guilty man
3 because he knew that what he did was cold blooded murder. Now, I don't know what
4 they do down in Miami but maybe they ... they have that going on down there. But
5 folks, that's not conduct we can tolerate here in our county and in our state.

6 One of the things that Mr. Sabb said and I want to piggy back on is this whole
7 notion about self defense. You all please understand self defense is complete
8 defense. You know, it's not self defense and then you convict him of a lesser
9 included offense. For you to find self defense is applicable in this case that means he
10 goes home. It's done. The case is over. You basically find that the man did nothing
11 wrong. Here's why self defense doesn't work. There are four elements of self defense
12 that the Judge will tell you about. And it is the first and the last element that really
13 make it ludicrous for him to come up and make this argument. But the first element
14 says you have to be without fault in bringing on the difficulty or the conflict. In other
15 words, you didn't do anything to bring about the conflict to begin with. He can't say
16 that. And the Defense can argue day long well, I was coming to the aid of her. He
17 can't say that in this case. The last element and the most important element is this
18 whole notion about a duty to retreat. That's where his goose is cooked. He had the
19 opportunity and the obligation to remove himself and leave the scene and stay away if
20 he could. Now even Defense counsel doesn't get up there and tell you well, the
21 victim was supposedly swinging a knife at Erica and that's why I came back to protect
22 Erica. They didn't even argue that point to me. And that would have been the only
23 thing that could have justified what he did. Didn't happen. He came back because he
24 wanted to be the bigger man. He wanted to prove a point. He left and he had enough
25 presence of mind to get in that car and get a gun. He had the presence of mind to get

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1 in that car and leave. And he didn't. There were so many opportunities that he had to
2 act right and he acted wrong. There were so many times when he had the opportunity
3 to do what was legal and he did what was illegal. Could he have stayed out of the
4 fray to begin with? Absolutely. Did he do it? Absolutely not. Could he have simply
5 come over to Erica and say, you know, Erica, this guy messing with you, you okay,
6 you need anything, you want me to give you a ride home? Absolutely. Did he do it?
7 Absolutely not. Could he have said man, you know, don't talk to her like that, you
8 know, that ain't right, you know, whatever happened between you and your girl that's
9 between you and your girlfriend. Don't talk to her like that. Could he have just
10 simply done that? Absolutely. Did he do it? Absolutely not. When he walked back
11 to the car could he have said, you know what, I don't like the way he's talking to that
12 girl. I'm gonna call the police and tell the police he's creating a disturbance out there.
13 Did he have the opportunity to do that? Absolutely. Did he do it? Absolutely not.
14 He is so fearful they would have you believe for Erica. Not for himself. For Erica.
15 He leaves her there. You have this crazy man wielding a gun, cussing up and down,
16 you coming to protect this little helpless woman and you leave her. They want you to
17 believe he was protecting her. He didn't grab Erica and say Erica, come on, let's just
18 get out of here. He leaves her. But he's acting on her behalf. That is why this case is
19 not voluntary manslaughter. That's why this case is murder.

20 Now, you wonder in the back of ... or I've wondered in the back of my mind,
21 one of the things I want you all to keep in mind, sometimes you get caught up in all
22 of these extraneous things that are going on with the case and sometimes it's difficult
23 to see the forest for the trees. Now, various facts came out that the victim was in a
24 relationship with Dyshea, that they had a baby together. Evidence came out that the
25 Defendant was living with the victim's wife. You wonder whether or not, you know,

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1' the victim or the Defendant went and got the gun, you wonder whether or not it
2 crossed his mind, well, you know, let me go ahead and get rid of this guy since his
3 wife won't ever divorce him. That's one way to get him out of the picture for good.
4 You wonder whether or not those kind of things went in the back of his mind. You
5 know, they've been separated forever, why don't 'she divorce him, well, this is one
6 way to get rid of him. And you can't ignore those possibilities that that's what went
7 through his mind. Now, folks, we brought all of these witnesses to you. We brought
8 the evidence. One of the things that we know that there is no way that victim could
9 have had this knife out because once he was shot in the face would the Defense have
10 you suggest that he folded the knife back up, put it in his pocket and laid down?
11 Come on, you all. They need the knife to be in the story because that needs to make
12 the story fit. He doesn't get off any other way.

13 One of the last things that I'll tell you is that I know that this case is difficult.
14 You all probably saw pictures of some things you never had seen in your life, never
15 expected that you would see. Mr. Sabb and I and the family of Derial McCrea want
16 to thank you all for your service. Periodically through the course of the trial while
17 I'm sitting back at the Prosecution's table I'll look at the jury. Sometimes you have a
18 couple jurors that'll nod off and I want to make sure I'm not boring you all up there.
19 But I am satisfied that we've got attentive jurors. We got smart jurors. We got a jury
20 that will see through all of the mess and cut right down to the core and know what
21 was going on and what happened and why it happened. Folks, this ain't self defense.
22 This ain't defense of others. This is a murder. It's cold blooded murder. Doesn't get
23 much colder than this. Justice speaks out. Justice speaks out in this courtroom very
24 loudly and very clearly. Folks, justice demands one verdict. One honest and true
25 verdict. And ladies and gentlemen, that verdict is guilty. Thank you all

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1 THE COURT: Thank you, Ms. Barr. All right, ladies and gentlemen,
2 we're going to take a brief break at this time, probably five or ten minutes to give you
3 a chance to refresh yourselves if you need to. And I'll have you back out and I will
4 give you the charge on the law and that charge by my estimate will take
5 approximately 30 minutes. After that point you will be free to deliberate this case.
6 But not until I tell you that you can are you permitted to begin that process so please
7 go to your jury room and don't discuss the case yet. I'll have you back out very
8 shortly. When the bailiff comes to the door, if you're not ready, just let him know.

9 (Jury out).

10 THE COURT: All right. We'll take just a few minutes.

11 (Off the record).

12 THE COURT: All right, is the State ready?

13 MS. BARR: Yes, Your Honor.

14 THE COURT: The Defense?

15 MR. CARRAWAY: Yes, Your Honor.

16 (Jury in).

17 THE COURT: All right. Ladies and Gentlemen, you are now
18 getting ready to moves forward to the phrase of the trial in which I will give you a
19 charge on the law. And after receiving the charge there will be a brief recess so that I
20 can discuss with the lawyers if the charges were proper. After that you will be
21 deliberate this case. The verdict does have to be unanimous. All twelve of you have
22 to agree. It's not 7 to 5 or 8 to 4 or 10 to 2. While you're in the jury room make sure
23 that deliberations are conducted in an orderly fashion. Everyone who wants to speak
24 is given that opportunity to do so. Make sure that the verdicts are unanimous. If
25 someone needs to excuse himself or herself to use the restroom, stop your

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1 deliberations until that person comes back. If for some reason a jury wants to leave
2 the jury room, certainly a person has to get permission. If somebody leaves that jury
3 room make sure you stop deliberations. All right, ladies and gentlemen, in this case
4 the State of South Carolina has charged the Defendant, Javon Lamont Rivers with the
5 crime of murder and the crime of possession of a weapon during a violent crime.
6 Ladies and gentlemen that the Defendant has entered a plea of not guilty to those two
7 offenses. And that plea puts the burden of proof on the State to prove those charges
8 or prove the elements of those crimes beyond what is called a reasonable doubt. I
9 will tell you what all of that means. During the next few minutes I'm going to be
10 saying several terms to you that you may in your minds maybe something that doesn't
11 deal with jury service with what you thought reasonable doubt was. Or what you
12 thought murder was or what you thought voluntary manslaughter was. Or what you
13 thought certain points of law actually meant. You have to put those aside when I give
14 you this charge and you have to accept the law as I give it to you. You can't base any
15 decisions in this case on what you think the law is or what you think it ought to be.
16 You have to base it on the evidence and on the law as I give it to you. If I tell you
17 something that is incorrect there's another time and another place for that error to be
18 corrected but today you have to base your verdict on the law as I give it to you. The
19 case is gets to Court by way of an indictment. An indictment is just a piece of paper
20 that sets forth the charge ... the charges against the Defendant. The Defendant has
21 entered a plea of not guilty and he is entitled to a presumption of innocence unless
22 and until the State proves his guilt to the current charge beyond a reasonable doubt.
23 A presumption of innocence does not leave the Defendant unless and until that
24 occurs. The indictment then is simply an accusation. It is not proof of anything. The
25 State has to prove those charges ... the State must prove those charges with evidence

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1 they have presented to you during this trial.

2 Now, ladies and gentlemen, the Defendant again has entered a plea of not
3 guilty. That puts the burden of proof on the State and the Defendant enjoys that
4 presumption of innocence that I explained to you a moment ago. Now, the words
5 presumption of innocence are not just a catch phrase. It is not a fancy or theory.
6 Presumption of innocence is a substantial right that the Defendant and every
7 Defendant enjoys until that presumption of innocence is stripped away by evidence
8 which convinces you the jury of guilt beyond a reasonable doubt. Now, ladies and
9 gentlemen, during the course of this trial you and I have had certain duties to perform.
10 Obviously you noticed or you recall when we started this trial that I told you those
11 witnesses would be testifying to you. Not once did they turn around and testify to
12 me. I'm not permitted to have a view on the facts. Even if I have a view of the facts,
13 I would not be allowed to share with you what that was. If I've said or done anything
14 during the course of the trial that makes you think that I favor one side or the other,
15 put that out of your mind because I certainly don't favor one side or the other you can
16 put that out of your mind because I certainly don't favor one side or the other. .

17 You will have several things in that jury room with you when you retire to
18 deliberate. You'll have your memory of my charge of the law. You will have your
19 collective view of the evidence. You'll have the exhibits that have been introduced.
20 Those are the things that you will use to render a true verdict according to the
21 evidence and the law just as you've sworn to do. You will remember that from when
22 the jury was qualified numerous times these questions were asked. Can you be fair
23 and impartial, base the verdict on the evidence and the law. The reason for those
24 questions is that once twelve people get into the jury room to decide the system relies
25 on a fair and impartial juror who will decide the case on the evidence of the law. So,

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1 you may have gotten weary of hearing that there is a reason for it. The twelve of you
2 are now in the position now to be fair and impartial jurors decide the facts of this case
3 in accordance to the evidence and the law. Now, you can only considerate competent
4 evidence that has been introduced during this trial. If during the course of the trial I
5 instructed you to disregard a question or answer that was given, then you must
6 disregard that and not take it into account during the course of your deliberations.

7 Now, the charge that I'm going to give you on the law is specific and maybe
8 somewhat repetitive but please bear with me and accept the law as the Judge gives it
9 to you. When you retire to deliberate nobody's going to go with you. There is not ...
10 there is not going to be tape recorder. There is not going to be a camera. There's not
11 going to be a bailiff. There's not going to be court reporter. There aren't going to be
12 any lawyers and I'm not going to be in there with you. That's because when it comes
13 down to facts you alone decide what those are. Now, in the context of you resolving
14 the issues in this case you must necessarily weigh the evidence that has been
15 presented to you. How do you weigh evidence? During the course of the trial you
16 may have heard certain evidence and perhaps the rules of procedure. There is no rule
17 that says here's how a juror weighs evidence. Weighing evidence is entirely a mental
18 process. Don't count up the number of witnesses for one side or the other to
19 determine the truth or non truth of the matter. Take all the evidence that you hear, the
20 evidence weighs with you if it convinces you of its truth. As fact finders no one in
21 the world other than the 12 of you can evaluate in any meaningful way the credibility
22 of the witnesses who testified. But you 12 are the only ones that can do it. How do
23 you evaluate credibility? Good common sense. Some of the things you can use to
24 evaluate credibility are but certainly aren't limited to how did the witness appear on
25 the witness stand, was the witness hesitant or straightforward in answering the

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1 questions. Did the witness have any reason to give testimony that would help or hurt
2 one side or the other? In other words, was the witness biased or prejudiced for or
3 against one side or the other? Was the witness's testimony strengthened or weakened
4 by other testimony in the record? Or other evidence in the record? Was the testimony
5 strengthened or weakened by what that witness may have said on a prior occasion?
6 Again, these are ... and you can use your good common sense and what (juror
7 coughing) ... to evaluate if you believe or whether you can believe everything of what
8 someone says or disbelieve every word or believe parts and reject the rest. That is
9 entirely up to you.

10 Now, the rules of evidence as I charged you at some point I believe on
11 Wednesday, the rules of evidence specifically do not permit a person to give an
12 opinion. There are an exception in the rule of evidence for experts who are qualified
13 by reason of education, training or experience. You don't have to accept the opinion
14 of an expert just because it's from an expert. If the reasons given for the opinion are
15 not sound in your judgement, you can disregard the opinion entirely. In other words,
16 weigh the testimony of the expert using your good common sense to judge it. Just as
17 you would the testimony of any other witness. And a witness ... an expert witness's
18 opinion does not have to be accepted even if it's been contradicted.

19 All right, ladies and gentlemen, during the course of the trial you have heard
20 the word evidence used on numerous times. That's what this case is about, the
21 presentation of evidence. There are two types of evidence that are generally
22 presented during a trial. They're called direct evidence and circumstantial evidence.
23 Direct evidence is the testimony of a person who claims to have actual knowledge of
24 the facts. An example of that is an eyewitness. An eyewitness might say I saw the
25 man walk through the door. That's what he saw. That's direct evidence. Direct

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1 evidence is evidence that usually establishes the facts thought to be true. Now,
2 circumstantial evidence is proof of a chain of facts and circumstances that would
3 indicate the existence of a fact. It's a little bit cumbersome so I'll give you an
4 example. If the room in which the man walked in was completely windowless,
5 soundproof room you have no way of knowing directly ... from direct evidence what
6 he saw, heard or smelled or what the weather was outside. You have no direct
7 evidence of that. If that man comes walking through the door carrying a wet umbrella
8 and sits down and says I just came in from the outside. Did you see it raining
9 outside? You did not. But you saw the man walk in, you saw him shake the
10 umbrella off and he said I just came in from the outside. That could be in your mind
11 if you chose to accept it circumstantial evidence that it was raining outside. Now,
12 ladies any gentlemen, circumstantial evidence is based on inference and not on
13 firsthand knowledge or observation. I will tell you, ladies and gentlemen, that the
14 law makes no distinction whatsoever between the weight and value that you are to
15 give direct evidence or circumstantial evidence. Nor is a greater degree of certainty
16 required on circumstantial evidence than on direct evidence. In other words, you
17 weigh it all the same whether it's direct or circumstantial using your good common
18 sense.

19 Now, ladies and gentlemen, after you hear all, after you weigh, during the
20 course of the deliberations all of the evidence in this case if you are not firmly
21 convinced of his guilt of these offenses that he is charged when you are considering
22 beyond a reasonable doubt you must find him not guilty. That gets us to the point,
23 ladies and gentlemen, where the question arises of what is reasonable doubt. Now,
24 reasonable doubt is the kind of doubt that would make an honest, sincere,
25 conscientious juror in search of the truth to hesitate to act. The State has the burden

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1 of proving the Defendant guilty beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is the proof that leaves you firmly convinced of the Defendant's
3 guilt. Now, the law does not require proof that overcomes every possible doubt. If
4 based on your consideration of the evidence in this case you are firmly convinced that
5 the Defendant is guilty of the crime that you are considering on the verdict form, you
6 must find him guilty. If on the other hand, you think that there is a real possibility
7 that the Defendant is not guilty you must give the Defendant the benefit of that doubt
8 and find him not guilty of the particular crime or charge you are considering at that
9 time.

10 Now, ladies and gentlemen, I instruct you and I emphasize to you that the fact
11 that the Defendant did not testify in this case is not a factor to be considered by you in
12 any way during your deliberations and it may not be considered in any way in your
13 considerations of the questions of the guilt or non guilt of the Defendant. In simple
14 terms, it must not be considered by you in any manner whatsoever. The Defendant
15 has the Constitutional right to remain silent and the assertion of that right must not be
16 considered at all during your deliberations. You can't think about it. You can't talk
17 about it. It can't enter into your mind at all during the course of your deliberations. I
18 repeat under your oath take the law as I give it to you you can draw no conclusion
19 whatsoever from the fact that the Defendant did not testify. The burden of proof at
20 all times remains on the State in that regard.

21 Now, ladies and gentlemen, in order to establish criminal liability or to prove
22 a crime criminal intent is required. For example, the mental state requires to be
23 proven by the State for a particular crime like the purpose of recklessness, so forth
24 and so on. Criminal intent must be proven by the State beyond a reasonable doubt.
25 Criminal intent is always a matter for the jury to determine. There is no way that

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1 medical science can dissect a persons brain to look at it and tell what a person may
2 have intended at any given time. So the law says that it's up to the jury to view all the
3 facts and circumstances as to what if anything this particular criminal Defendant may
4 have intended to do at any given time. It's not necessary to establish intent by direct
5 or cognitive evidence. But intent may be established by inference in the same way
6 that any other fact by taking into consideration the acts of the parties and all the facts
7 and circumstances with the intent. Simply put criminal intent is a mental state of
8' conscious wrongdoing. Therefore, it's up to you to determine what if anything the
9 Defendant intended to do based on the circumstances show to have existed.

10 Now, ladies and gentlemen, in this case count one on the indictment is the
11 charge of murder. The State with regard to that charge must prove beyond a
12 reasonable doubt that the Defendant killed the other person with malice aforethought.
13 Malice is hatred, ill will, or hostility towards another person. Malice is the
14 intentional doing of a wrongful act without just cause or excuse and with the intent to
15 inflict injury or under circumstances that the law would infer intent. Now, the term
16 malice aforethought does not require that malice exists at any particular time before
17 the act is committed. But malice must exist in the mind of the Defendant just before
18 and at the time the act is committed. Therefore there must be a combination of the
19 previous criminal intent and the act. Now, malice aforethought may be expressed or
20 it may be inferred. Now these terms express or infer don't mean different kinds of
21 malice. But they're the manner in which malice may be shown to exist. That's either
22 again by direct evidence or by inference for the facts and circumstances which are
23 proved. Expressed malice is shown when a person speaks words which express
24 hatred or ill will toward another person or when that person prepares beforehand to
25 do an act which is later accomplished. For example, lying in wait for a person or any

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1 other act of preparation is going to show that the deed was in the Defendant's mind
2 would be expressed malice. Now, inferred malice. Malice may be inferred from
3 conduct showing the total disregard for human life. Inferred malice may also arise
4 when the deed is done with a deadly weapon. A deadly weapon is any article,
5 instrument or substance that is likely to cause death or great bodily harm. Now,
6 whether an instrument has been used as a deadly weapon depends on the facts and
7 circumstances of each case. The following are examples of instruments of a deadly
8 weapons: a rifle, a dagger, a knife, slingshot, metal knuckles, razor, gasoline, pistols
9 or shotguns, firebombs or Molotov cocktail. Those are examples of what may be
10 considered to be a deadly weapon.

11 Now, ladies and gentlemen, I've concluded for the moment the charge to you
12 on the law pertaining to murder. On your verdict form that is the first charge listed.
13 That is the first charge that you will be required to render a verdict on. Of course
14 don't come back out, you do it all through and then come back out. But the first
15 charge you must consider is the charge of murder. If you have concluded that the
16 State has failed to prove beyond a reasonable doubt that the Defendant is guilty of
17 murder, you must consider whether the State has proved beyond a reasonable doubt
18 that the Defendant committed voluntary manslaughter. Included within the offense of
19 murder is what the law calls a lesser included offense of voluntary manslaughter. To
20 prove voluntary manslaughter the State must prove beyond a reasonable doubt that
21 the Defendant took the life of another in the sudden heat of passion based on
22 sufficient legal provocation. Now, both heat of passion and sufficient legal
23 provocation must be present at the time of the killing to constitute voluntary
24 manslaughter. Sudden heat of passion may for a time affect a person's self control
25 and temporarily disturb a person's reasoning. The sudden heat of passion must be the

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1 type that would make an ordinary person unable to coolly reflect on his actions and
2 would produce uncontrollable impulses to do violence. Now, the term sufficient
3 legal provocation ... sufficient legal provocation must be the type that would make a
4 person of ordinary reason and caution to become enraged and lose control
5 temporarily. The provocation needed for voluntary manslaughter must come from
6 some act or must be related to the victim. Words alone however vulgar or insulting
7 are not enough to be a legal provocation where death is caused by the use of a deadly
8 weapon. The words must be accompanied by some overt threatening act which could
9 have produced the attack.

10 Now, ladies and gentlemen, in connection with what I instructed you about
11 voluntary manslaughter that means ... that is a whether or not reasonable time for
12 cooling off has elapsed. You should take into consideration all of the circumstances
13 surrounding the incident. You should consider the nature of the provocation, the
14 Defendant's physical and mental condition, his condition and his peculiar situation at
15 the time of the incident, his conduct, manner and conversation throughout the
16 incident. And in short, all pertinent circumstances may be considered and the time in
17 which an ordinary man under like circumstances would have cooled that is to a
18 reasonable time.

19 Now, ladies and gentlemen, even when a Defendant's passion was sufficiently
20 inflamed by a legally adequate provocation if at the time of the killing his passions
21 had cooled or sufficient time had elapsed that the passions of the ordinary reasonable
22 person would have cooled then the killing would not be voluntary manslaughter.
23 Again, ladies and gentlemen, the first inquiry on the verdict form deals with the
24 charge of murder. If you have concluded that the State has proven the Defendant's
25 guilt beyond a reasonable doubt as to that charge you will simply skip over the next

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1 inquiry which is voluntary manslaughter and go to the next inquiry which deals with
2 the charge of possession of a weapon during the commission of a violent crime. If
3 you find and these instructions are on the verdict form so don't be concerned. If you
4 find the Defendant not guilty of murder go the inquiry about voluntary manslaughter.
5 If you find that the Defendant is not guilty of that charge as well, then your
6 deliberations will be concluded. Then you can go to the charge of possession of a
7 weapon during the commission of a violent crime. Now, the Defendant is charged
8 with possession of a weapon during the commission of a violent crime. The State has
9 to prove beyond a reasonable doubt that the Defendant was in possession of a firearm
10 or visibly displayed what appeared to be a firearm during the commission of a violent
11 crime. A firearm is any machine gun, automatic rifle, revolver, pistol or any weapon
12 which will or is designed to or may be readily converted to expel a projectile. In
13 order to find the Defendant guilty of possession of a weapon during the commission
14 of a violent crime you must first find the Defendant guilty of committing a violent
15 crime. I charge you ladies and gentlemen that that murder is a violent crime and
16 voluntary manslaughter is a violent crime.

17 I may have gotten ahead of myself for just a moment but with regard to the
18 charges of murder and voluntary manslaughter whichever you might be considering
19 at the time, the Defendant has raised a defense of self defense. Self defense is a
20 complete defense. I charge you, ladies and gentlemen, that the Defendant does not
21 have the burden of establishing self defense. He's also raised a defense of defense of
22 others. I explain that in detail in just a moment. The Defendant does not have the
23 burden of establishing the defense of defense of others. The State has the burden of
24 disproving self defense or defense of others whichever you may be considering at the
25 time by proof beyond a reasonable doubt. And since the State has the burden of

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1 disproving those two defenses by proving beyond a reasonable doubt.

2 Ladies and gentlemen, if during the course of your deliberations or at the
3 conclusion of your deliberations you have a reasonable doubt of the Defendant's guilt
4 after considering all of the evidence, including the evidence of self defense and/or
5 defense of others, then you must find the Defendant not guilty. The following
6 elements are involved in the self defense scenario: ... the following elements are
7 required for the to be a valid defense of self defense. First, the Defendant must be
8 without fault in bringing on the difficulty. If the Defendant's conduct was the type
9 which was reasonably calculated to and did provoke a deadly assault the Defendant
10 would be at fault of bringing on the difficulty and would not be entitled to a finding
11 of not guilty based on self defense. If the Defendant voluntarily participated in lethal
12 combat for purposes other than protection, killing of the victim would not be self
13 defense. That's true even if during the combat the Defendant feared death or serious
14 bodily injury. However, if before the killing is committed the Defendant withdraws
15 and tried in good faith to avoid further conflict and by either word or act makes that
16 fact known to the victim he would be without fault of bringing on the difficulties.
17 For mutual combat there must be true intent and willingness to fight. And that intent
18 may be shown by the act, conduct of the parties, and the circumstances surrounding
19 the incident. In addition, it must be shown that both parties were armed with a deadly
20 weapon.

21 The second element of self defense is that the Defendant was actually in
22 imminent danger of death or serious bodily injury or that the Defendant actually
23 believed he was in imminent danger of death or serious bodily injury. If the
24 Defendant actually was in imminent danger it must be shown that the circumstances
25 would have warranted a person of ordinary firmness and courage to strike the fatal

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1 blow to prevent death or serious bodily injury. If the Defendant believed he was in
2 imminent danger of death or serious bodily injury then it must be shown that a
3 reasonably prudent person of ordinary firmness and courage would have had the same
4 belief. Now, ladies and gentlemen, in deciding whether the Defendant actually was
5 and believed he was in imminent danger of death or serious bodily injury consider all
6 the facts and circumstances surrounding the incident including the physical condition
7 and the characteristics of the Defendant and the victim. Now, the Defendant did not
8 actually have to be in danger. It is enough if the Defendant believed he was in
9 imminent danger and a reasonably prudent person of ordinary firmness and courage
10 would have had the same belief. And the Defendant has the right to act on
11 appearances even though his beliefs in that regard may have been mistaken. It is for
12 you to decide whether or not the Defendant's fear of imminent danger of death or
13 serious bodily injury was reasonable and would have been felt by an ordinary person
14 in the same situation.

15 Now, ladies and gentlemen, I charge you that words accompanied by hostile
16 acts may depending upon the circumstances establish self defense. I further charge
17 you that the relative sizes ages and weight of the Defendant and the victim may be
18 considered in deciding the apparent or actual need of force in self defense and the
19 amount of force needed. Now the third element, ladies and gentlemen, of self
20 defense is that the Defendant had no other probable way to avoid the danger of death
21 or serious bodily injury then to act with as he did in this particular incidence. I
22 charge you, ladies and gentlemen, that in that regard the Defendant has no duty to
23 retreat if by doing so the danger of being killed or suffering serious bodily injury
24 would decrease. Further, ladies and gentlemen, with regard to self defense, a person
25 cannot be required to make that calculation as to the degree or amount of force which

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1 may be needed to avoid death and serious bodily harm. Therefore, self defense the
2 Defendant has the right to use the force needed to avoid death and serious bodily
3 harm and that force does not have to be limited to the degree or amount of force by
4 the victim. Again, the Defendant has the right to use so much force as it appears to
5 be necessary for complete self protection and that amount of force which a person of
6 ordinary reason would have believed to be needed to prevent death or serious bodily
7 harm.

8 If the Defendant is justified in defending himself or others and in firing the
9 first shot the Defendant is also justified in continuing to use force until it is apparent
10 that the danger of death or serious bodily injury has completely ended.

11 Now, under the law of self defense the Defendant may also take another's life
12 in the defense of others. The right to intervene to protect another person is subject to
13 the same rights and limitations as the right of self defense which I just explained to
14 you. The Defendant may take the life of a person who assaults a friend, relative, or
15 bystander if that friend, relative, or bystander would have had the right to self
16 defense. To show that the person being defended had the right to self defense it must
17 first be shown that the person being defended and that the Defendant both were ...
18 were without fault in bringing on the difficulty. The conduct of the person defended
19 or the conduct of the Defendant was the type which was reasonably calculated to and
20 did provoke the other the person would be at fault in bringing on the difficulty and
21 would not have a right to self defense. If that were the case the Defendant would not
22 have the right to use deadly force in defending that person. The defense of another
23 person is excusable if the Defendant had reasonable grounds to believe and in good
24 faith did believe that the person being defended was in imminent danger of death or
25 serious bodily harm from the victim.

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1 Now, again, you are to consider all of the facts and circumstances surrounding
2 the incident in determining whether the person defended actually was or that the
3 Defendant actually believed the person was in imminent danger of death or serious
4 bodily injury. Now, a Defendant doesn't have to show that the person he was
5 defending was actually in danger. It's enough if the Defendant believes that the
6 person was in imminent danger and that Defendant has the right to act on appearances
7 even though the Defendant beliefs may have been mistaken. If a person of ordinary
8 reason and prudence incurred with that same belief under the same circumstances.
9 All in all, ladies and gentlemen, it's up to you to determine after evaluating all the
10 facts and circumstances whether the Defendant's theory of immediate danger of death
11 or serious bodily injury the person defending was reasonable and would have been
12 felt by an ordinary person in that situation. The Defendant does not have to wait until
13 the victim gets the drop on the person defending. The Defendant has the right to act
14 under the law self preservation to prevent the victim from getting the drop on the
15 person he's defending. In order to be entitled to defend another person the person
16 defending must have had no other probable way to avoid the danger of death or
17 serious bodily injury than to act as the Defendant himself did in this particular
18 instance. When the person being defended had no opportunity to retreat, the
19 Defendant likewise would have no duty to retreat.

20 All right, ladies and gentlemen, that concludes the charge to you on the law as
21 it applies to this case. I can't emphasize enough that your task in many respects is just
22 beginning. You spent the last three days in this courtroom listening to the evidence
23 be presented and you listened to the arguments and statements of the attorneys. Now
24 is when you go back into your jury room with your collective view of the evidence,
25 exhibits that have been introduced, the charges that I've given to you and your good

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1 common sense. I'm not so much concerned about what your verdict is going to be, I
2 just want to make sure that it is the product of honest and a sincere evaluation of the
3 evidence. I want to make sure you understand completely that your verdict must be
4 the truth. The word verdict comes from a Latin word which means the truth. The
5 only way you can fulfill your oath is to continue to do your job and deliberate the
6 issues in this case honestly and consciously. Madam forelady, you're not permitted
7 during the course of deliberations to make a determination on your own when
8 someone on the jury has talked long enough. Someone is entitled to talk and discuss
9 the issues as long as that person thinks it's reasonably necessary. So in other words,
10 you can't cut off the debate because you think enough time has gone by.

11 Now, that doesn't mean that everyone has to fully take part in that debate.
12 Some may talk more than others. You can't insist on everybody talking the same. In
13 other words, conduct your deliberations in a ordinary and reasonable manner that all
14 of you conclude result in a verdict that speaks the truth? If you have any questions
15 during the course of your deliberations there will be a note pad made available to you.
16 If a questions arrive that relates to me, write it down on a sheet of paper, tap on the
17 door and let the bailiff know you have a question. There is lunch back there for you
18 now. Is that right? There's lunch already here for you. You have all the time that you
19 need. If you have any concerns again, concerns or questions during the course of
20 your deliberations, write those down on a piece of paper and if the law permits I'll
21 answer the question. I will evaluate the question and I will address the question and
22 answer it if the law permits. I'll let you know if I cannot answer the question.

23 All right. Right now, ladies and gentlemen, I want to ask you go to your jury
24 room. Do not begin discussing the case yet. Your signal to deliberate will be one of
25 two things: I will either bring you back out and clarify or charge something that was

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1 charged either incorrectly or I left something out or a tap on the door from maybe the
2 Bailiff to come to your jury room with the Exhibits and the verdict form. He'll say
3 begin deliberations. If there is any evidence in a package, don't open the package. In
4 other words, don't open the package or any other container in which the evidence
5 might be. Just leave that container or package in tack. All right. You may not
6 discuss the case yet. So go to your jury room and either I'll have you back out
7 momentarily or you'll be told to begin your deliberations.

8 (Jury out).

9 THE COURT: Any exceptions or additions from the State?

10 MS. BARR: Your Honor, just one. I believe that during the course of
11 Your Honor's instructions regarding voluntary manslaughter and legal provocation
12 you indicated that if the evidence in the case suggest that there was inadequate legal
13 provocation, then the Defendant would not be guilty of voluntary manslaughter and I
14 think that it's, the complete law would go on to say then that that would make him
15 guilty of murder. So, we would just ask that Your Honor consider adding that
16 language not just that there is insufficient legal provocation that he's not guilty of
17 voluntary manslaughter but that he would be guilty of murder.

18 THE COURT: Your train of thought is logical. Mr. Carraway?

19 MR. CARRAWAY: I think that's ... I don't think that's a given I think
20 that's just logical. I very much argue against coming out and adding that to that.

21 THE COURT: All right. Do you have any additions or exceptions,
22 Mr. Carraway?

23 MR. CARRAWAY: No, Your Honor.

24 THE COURT: Any others, Ms. Barr?

25 MS. BARR: No, Your Honor.

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1 THE COURT: All right, Ms. Barr, I understand your ... your objection
2 and I read the condition given by Mr. Sabb the ... the excerpt from Judge Irvin's
3 book. It does read that if sufficient time had elapsed so that the passions of an
4 ordinary person would not have cooled or excuse me would have cooled then the
5 killing would be murder and not manslaughter. The reason that I left out the killing
6 would have been murder and not manslaughter is that I told the jury that without
7 voluntary manslaughter would only be considered if they found the Defendant not
8 guilty of murder. I understand your concern that they based on stringing together it
9 would lead them to conclude that if there had been sufficient time elapsed that the
10 passion of an ordinary person would have cooled the killing would not be
11 manslaughter. So, Mr. Carraway, I'm going to bring the jury back out and simply tell
12 them that in the sense that I may have left a passage out I am just going to read that
13 part of the charge again. Anything else Mr. Carraway?

14 MR. CARRAWAY: No.

15 THE COURT: All right. Bring the jury in.

16 (Jury enters the courtroom)

17 THE COURT: All right. Thank you for your patience Ladies and
18 Gentlemen. What I am going to do is not going to take much time at all. During the
19 course of my charge to you voluntary manslaughter I may have made a verbal misstep
20 and I want to make sure I clarify things for you. Again, this is not to draw any
21 particular attention. This particular offense that you must consider I wanted to make
22 sure that you have a complete explanation of the law in this regard.

23 As I told you earlier. If you find that the Defendant is not guilty of
24 murder you have to consider the lesser included offense of voluntary manslaughter.
25 And to prove voluntary manslaughter the State has to prove beyond a reasonable

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1 doubt that the Defendant took the life of another in a sudden heat of passion based on
2 a sufficient legal provocation. In both of those — passion and sufficient legal
3 provocation constitute before there can be voluntary manslaughter. Now, sudden
4 heat of passion may for a time affect a person's self control and temporarily reserve a
5 person's reasoning. That heat of passion must be the type that can make a ordinary
6 person unable to coolly reflect on his actions and would produce an uncontrollable
7 impulse to violence. Now, ladies and gentlemen, the provocation needed for
8 voluntary manslaughter must come from some act of or be related to the victim.
9 Words alone however vulgar or insulting are not enough to be a legal provocation
10 where death is caused by the use of a deadly weapon. The words must be
11 accompanied by some overt threatening act which could have produced the attack.
12 Now, ladies and gentlemen in connection with that instruction that is whether or not
13 reasonable time for cooling, excuse me the heat of passion cooled or if there was
14 enough time between the provocation, if any, and the killing for the passion for a
15 reasonable person to cool, the killing would not be voluntary manslaughter instead it
16 would be murder. In deciding whether a reasonable person would have had enough
17 time to cool off consider all the facts and circumstances. You may consider the
18 nature of the provocation, if any, the Defendants mental and physical state and the
19 circumstances and relations between the parties.

20 All right. Ladies and Gentlemen, you can retire to your jury room. Do
21 not begin your deliberations yet. I will have you back out if necessary. A tap on the
22 door with the verdict form and the exhibits will be your signal to deliberate if I don't
23 need you any further. Thank you very much.

24 (Jury exits the Court room)

25 THE COURT: Ms. Barr, any additional exceptions?

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1 MS. BARR: No, Your Honor.

2 THE COURT: Mr. Carraway?

3 MR. CARRAWAY: No, Your Honor.

4 THE COURT: All right. If you all could get with the court reporter
5 and make sure all the exhibits are in order. And if you leave the court room if you'll
6 let somebody know, where you can be reached and can get back in two or three
7 minutes in case they have a question. It's ten after 1:00. Are all the Exhibits in
8 order?

9 COURT REPORTER: Yes, sir.

10 (Off the record - Deliberations begin)

11 THE COURT: All right. I understand that we have a verdict. If I
12 could have the attention of the folks in the courtroom. I know this is a stressing
13 situation all around but I am going to have to insist on everybody in the courtroom
14 having no audible or visible reaction to the verdict and that specifically goes to the
15 folks beyond the rail so to speak and Mr. Carraway, of course, if you would provide
16 your client and his mother the same thing in any manner which you think is
17 appropriate. I want there to be no response. After the verdict is received the jury will
18 be permitted to depart and anybody in the court room will stay in the courtroom for
19 the minimum of 15 minutes after the jury has been dismissed. No one, this doesn't
20 directly apply to the lawyers because you know your ethical responsibilities I don't
21 expect anyone in the audience or anyone in the case to have any contact with the
22 jurors on the courthouse grounds after the verdict is reached. Do you have any
23 objections to those remarks Ms. Barr?

24 MR. BARR: None.

25 THE COURT: Mr. Carraway?

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1 MR. CARRAWAY: None, Your Honor.

2 THE COURT: All right. Bring in the jury.

3 (Jury enters Court Room)

4 MS. WILLIAMS: Madam forelady, have you reached a verdict?

5 FORELADY: Yes, ma'am, we have.

6 MS. WILLIAMS: Unanimous?

7 FORELADY: Yes, ma'am.

8 THE COURT: All right. Mr. Rivers if you could please stand, sir.

9 MS. WILLIAMS: State of South Carolina vs. Javon Lamont Rivers, as
10 to the charge of murder we the jury unanimously find the Defendant guilty. As to the
11 charge of a firearm during the commission of a violent crime we the jury
12 unanimously find the Defendant guilty. If these are your verdicts so say you all
13 please let it be known by raising your right hand.

14 (All jurors comply)

15 THE COURT: All right. The record will show that all twelve have
16 raised their hand. Anything before we discharge the jury Ms. Barr and Mr. Sabb?

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

18 THE COURT: Anything before we discharge the jury, Mr. Carraway?

19 MR. CARRAWAY: We ask that the jury be polled.

20 MS. WILLIAMS: Naomi Hamm, were those your verdicts and are
21 those still your verdicts?

22 MS. HAMM: Yes, ma'am.

23 MS. WILLIAMS: Verne C. Johnson, were those your verdicts and are
24 those still your verdicts?

25 MR. JOHNSON: Yes, ma'am.

HEARING

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1 MS. WILLIAMS: Virginia McBride, were those your verdicts and are
2 those still your verdicts?

3 MS. MCBRIDE: Yes, ma'am.

4 MS. WILLIAMS: Dorothy Scott, were those your verdicts and are
5 those still your verdicts?

6 MS. SCOTT: Yes, ma'am.

7 MS. WILLIAMS: Bobby Woods, were those your verdicts and are
8 those still your verdicts?

9 MR. WOODS: Yes, ma'am.

10 MS. WILLIAMS: Rebecca Bourkard Branson, were those your
11 verdicts and are those still your verdicts?

12 MS. BRANSON: Yes, ma'am.

13 MS. WILLIAMS: Tremaine Mitchell, were those your verdicts and are
14 those still your verdicts?

15 MR. MITCHELL: Yes, ma'am.

16 MS. WILLIAMS: Ellis Carter, were those your verdicts and are those
17 still your verdicts?

18 MR. CARTER: Yes, ma'am.

19 MS. WILLIAMS: Jennifer Burgess, were those your verdicts and are
20 those still your verdicts?

21 MS. BURGESS: Yes, ma'am.

22 MS. WILLIAMS: Crystal Brantley, were those your verdicts and are
23 those still your verdicts?

24 MS. BRANTLEY: Yes, ma'am.

25 MS. WILLIAMS: Ronnie Gause, were those your verdicts and are

HEARING

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1 those still your verdicts?

2 MR. GAUSE: Yes, ma'am.

3 MS. WILLIAMS: Tracy Cooke, were those your verdicts and are those
4 still your verdicts?

5 MS. COOKE: Yes, ma'am.

6 MS. WILLIAMS: That completes the polling.

7 THE COURT: All right. The polling confirms the verdict. Anything
8 else, Mr. Carraway, before the jury is dismissed?

9 MR. CARRAWAY: Just ...

10 THE COURT: Before the jury is dismissed.

11 MR. CARRAWAY: No, Your Honor.

12 THE COURT: All right. All right, ladies and gentlemen, that of
13 course concludes your service in this case. And I want to commend you for the
14 attention that you devoted to the case and that was throughout the trial. I certainly do
15 appreciate that. The system of justice we have could not survive without juries being
16 attendant, paying attention and ready to devote substantial time and attention to task
17 at hand. You are released from this case. You are released from your jury service for
18 the rest of the week. You will receive a check in the mail for your service in due time
19 and that will come from Williamsburg County. If you need a work excuse where can
20 they get that?

21 MS. WILLIAMS: The Bailiff has them and she will meet you in the
22 jury room.

23 THE COURT: You can get a work excuse in the jury room. Now,
24 since this case is concluded you can discuss this case however you see fit. That's up
25 to you. If someone approaches you and wants to talk to you about this case, you may

HEARING

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1 do so. It's my request, however, that you do not do so on the courthouse grounds
2 today. If you are approach by someone who wants to discuss the case and you do not
3 want to simply tell that person that you don't want to talk about the case and that
4 person should comply with that wish. If the person persist, get that person's name,
5 relay that to Ms. Williams in the Clerk's Office and she will relay that to me and I
6 will address it. Thank you again for the time and attention that you have paid and
7 you are released. Thank you very much.

8 (Jury dismissed).

9 THE COURT: All right, Mr. Carraway, you all can have a seat. Can I
10 see the lawyers up here for just one minute?

11 (Discussion held off the record).

12 THE COURT: Mr. Carraway, do you have any motions?

13 MR. CARRAWAY: Yes, Your Honor.

14 THE COURT: Would you like ten days to make those?

15 MR. CARRAWAY: I would, Your Honor.

16 THE COURT: All right, that ten days, the 22nd would be a Sunday so
17 that's Monday, the 23rd, will be the last day to make those. Make sure that you file the
18 motions and serve the State's attorneys and send a copy to me at my office in Sumter.
19 That way I will know when the motions have been made. All right, is the State ready
20 for sentencing, to proceed to sentencing?

21 MS. BARR: The State's ready.

22 MR. SABB: We are, Judge.

23 THE COURT: Mr. Carraway, come up with Mr. Rivers. I'll just give a
24 blanket ... or make a blanket comment or give blanket instruction Ms. Barr. The
25 victim's family certainly does have the right to speak and I want to make sure they

HEARING

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1 understand that but any comment they may have they have to direct it to me and not
2 to the Defendant and not to the Defendant's family. I wanted to make sure we
3 resolved that protocol. All right, Ms. Barr.

4 MS. BARR: Your Honor, please the Court, of course, Judge you have
5 presided over the trial and have heard all the relative facts. At this time, we just place
6 the Defendant's record, criminal history in the record. There is a conviction for
7 possession of crack cocaine out of Florence County, South Carolina 2002. At the
8 same time he had a conviction of giving and offer to bribe an officer. Public
9 Disorderly Conduct conviction in Williamsburg County '02. He's got a conviction for
10 theft 3rd degree of a vehicle in Miami, Florida back in 1998. Criminal mischief and
11 damage to property back in 1998. Leaving the scene of an accident involving
12 property damage in 1998 and possession of marijuana 1998. Another possession of
13 marijuana conviction in 2003. Resisting conviction in Florida in 2004. Grand larceny
14 of a motor vehicle 3rd degree 2006 in Florida as well as a possession of cocaine
15 conviction in Florida in 2007. Your Honor, I believe he's currently in the
16 Department of Corrections pursuant to a probation violation and revocation out of
17 Florence County. Your Honor, to my right is his brother and sister ...

18 THE COURT: All right. Who would like to be first? All right, Mr.
19 McCrea.

20 MR. MCCREA: Well, I just want to on behalf of the McCrae we glad
21 this case is finally over with. We are glad that justice has been served. Even though
22 it is not going to bring our brother back we are glad that justice has been served.

23 THE COURT: Thank you, Mr. McCrae,. Your name, please?

24 MS. DAVIS: Pam Davis.

25 THE COURT: All right. Anything you'd like to say?

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1 MS. DAVIS: He has said it.

2 THE COURT: Anything else from the State, Ms. Barr? Any victim
3 impact statements or any comments from victim advocate?

4 MS. BARR: Judge, I don't think so. The siblings of Derial McCrea
5 completed the Victim Impact Statement. Of course, they feel the loss of their brother
6 everyday. This is probably been one of the most dramatic things that has happened to
7 the family. One of the things that they have mentioned that they were going to place
8 their faith in God's hands and he was going to satisfied that the right thing would be
9 done and so I believe the family is ...

10 THE COURT: Anything from the State pertaining to sentencing?

11 MS. BARR: No, Your Honor.

12 THE COURT: Mr. Sabb, anything — is Ms. Barr speaking for you as
13 well?

14 MR. SABB: Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. SABB: Judge, only to the extent that the family trusts Your
17 Honor to give a sentence that's just and proper under the circumstances given the
18 gravity —

19 THE COURT: All right, Mr. Carraway?

20 MR. CARRAWAY: Your Honor, I don't have anything to add to any
21 words I've already said.

22 THE COURT: All right. The potential sentence for murder of course
23 is 30 years to life. Any comments on that?

24 MR. CARRAWAY: I would certainly ask for the minimum for him or
25 whatever, Your Honor. The Court to be as lenient as possible with him. Every word

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1 I said in court I believe.

2 THE COURT: All right, ma'am, is there anything you would like to
3 say? Your name, first of all, please?

4 MS. JAMES: My name is Yvette Rose James.

5 THE COURT: Yes, ma'am.

6 MS. JAMES: Just would like to address to the Court that I'm sorry that
7 this happened and it just wasn't ... feel and sympathize for both families, not just one.
8 And I'm so sorry that it had to occur that way. You know, I'm sorry that it happened.

9 THE COURT: All right. Mr. Carraway, would your client, would he
10 like to speak?

11 MR. RIVERS: Yes, sir. I'd like to address the Court and also the
12 McCrea family. I'd like to say that I apologize for the loss of their brother, the kids
13 the loss of their child ... loss of their father. I never intended to be taking another
14 man's life it was never that. I love his kids like I love my own. So it was never
15 intention of my heart to take this man's life. I hope and pray that the things the way it
16 happened would have not happened. I would like to apologize to the family for the
17 loss of their ... their brother, their friend and loved one.

18 THE COURT: Thank you, Mr. Rivers. All right, you can have a seat
19 back over there. You folks give me about five minutes and I'll be back out.

20 (Off the record).

21 THE COURT: All right, Mr. Rivers, I don't ever have any prepared
22 remarks when I'm passing a sentence. However, manner or severe the crime might
23 have been the only thing I can say in this circumstance is that this is what happens
24 when tempers and guns come together. Some might say that 15, 20 or maybe ten
25 years ago difficulties like this would have just been resolved with fists. But now it

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1 seems like folks want to resolve these problems with guns. And that's certainly what
2 makes the job of law enforcement officer probably one of the most admirable
3 undertakings of the world. It's just a senseless situation where people think that is
4 the way to resolve these kind of problems. The evidence in the case leant itself of
5 course to you having a defense of self defense or defense of others or both and the
6 jury has obviously rejected that and the jury spent a fair amount of time trying to
7 resolve the issue and has resulted in a unanimous verdict of guilty. You are 27 years
8 old. And I ... I really don't know ... I'm not asking what might have been going
9 through your mind at the time you decided to go get the gun and come back. Of
10 course, the jury has spoken on that. I don't know whether any sentence in the world
11 would give the victim's family any comfort at all so what I'm going to do now is
12 announce the sentence that I think is appropriate under the circumstances.

13 On the conviction of murder you will be committed to the State Department
14 of Corrections for a period of 30 years. Consecutive to that is a five year sentence for
15 conviction of possession of a weapon during commission of a violent crime. I don't
16 know the circumstances the time the probation might have been revoked for but what
17 ... what is he currently serving, does anybody know?

18 MR. RIVERS: Three years, sir.

19 MR. CARRAWAY: Three years he says.

20 THE COURT: All right. Well the two sentences that I just
21 pronounced will likewise run consecutive to that. The Department of Corrections
22 will be calculating whatever credit you may be given for the time that you have
23 served but I will take it based on the representations to me that you have been serving
24 time for your probation violation. I will check the block that you are to be given
25 credit for time served. This means that you won't be getting out of prison for a very,

HEARING

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1 very long time. No wound like this will ever heal in the victim's mind, but hope the
2 passage of time will give the victim's family some comfort. If you are released from
3 prison you will have some appreciable amount of time with your life to do something.
4 I want to commend the lawyers on the way they tried the case, with the
5 professionalism they showed. Mr. Carraway it was a difficult set of circumstances
6 and he was able to advance a very credible issue of self defense and defense of others.
7 The State had the burden of disproving that and it absolutely did give the jury some
8 pause and something they had to resolved. Against, I thank the lawyers for the way
9 they tried the case. Only a remark that I make if I truly mean it. And I mean it in this
10 case.

11 MR. CARRAWAY: Thank you.

12 THE COURT: All right. Thank you. And members of the victim's
13 family I certainly do appreciate your time and attention and your conduct this week
14 and same with regard to the folks that were here to support Mr. Rivers. Thank you
15 very much we are adjourned for the day.

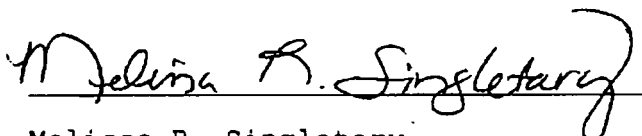
16 (Off the record).
17
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CERTIFICATE

This is to certify that the hearing in the matter of State of South Carolina vs. Javon Lamont Rivers, consisting of Three Hundred Fifty-Four (354) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 31st day of August, 2009.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

JAVON LAMONT RIVERS

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED] 1981

SS#: [REDACTED]

Address: [REDACTED], Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-45-0275

355

AW#: J990792

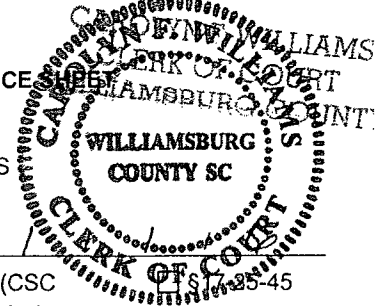
Date of Offense: May 17, 2008

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

A CERTIFIED TRUE COPY

Carolyn J. Williams



SENTENCE

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 01

☐ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS (CSC

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly V. Barr
Solicitor

Defendant

LeGrand Carraway
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

Possession of weapon during violent crime

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§90.11 TP (SCCJA Surcharge)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$5

\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

Melissa Winfield

Carolyn J. Williams

LeGrand Carraway

Kimberly V. Barr

Melissa Winfield

Carolyn J. Williams

LeGrand Carraway

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Melissa Winfield

Carolyn J. Williams

LeGrand Carraway

356
STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

JAVON LAMONT RIVERS

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED] 1981

SS#: [REDACTED]

Address: [REDACTED] Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

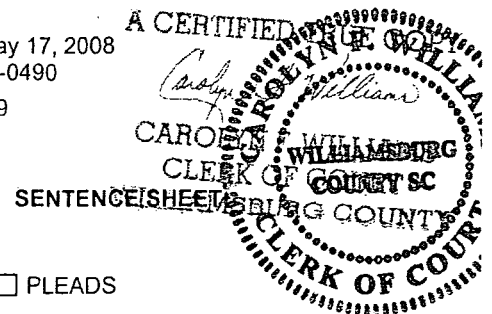
INDICTMENT/CASE#: 2008-GS-45-0275

AW#: J990796

Date of Offense: May 17, 2008

S.C. Code §: 16-23-0490

CDR Code #: 0549



In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Possession of Weapon During Violent Crime

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Simlur V. Barr
Solicitor

Defendant

LeBrand Carraway
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Blunder

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____

Carolyn J. Williams
Clerk of Court/ Deputy Clerk

Court Reporter: Melissa Willfield

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2111413
3/12/09

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) **MURDER AND POSSESSION OF A WEAPON
DURING VIOLENT CRIME**

At a Court of General Sessions, convened on December 8, 2008, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - MURDER

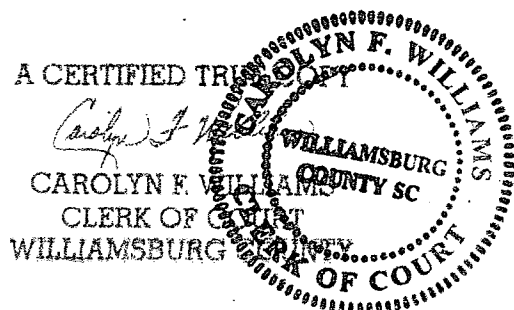
That **JAVON LAMONT RIVERS** did in Williamsburg County on or about May 17, 2008, feloniously, wilfully and with malice aforethought, kill one **Derial McCre** by means of shooting the victim in the face, and that the said victim did die as a proximate result thereof, in violation of Code Section 16-3-10, Code of Laws of South Carolina (1976), as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING VIOLENT CRIME

That **JAVON LAMONT RIVERS** did in Williamsburg County on or about May 17, 2008, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, 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.

A CERTIFIED TRUE COPY



C. Kelly Jacobson
SOLICITOR

WITNESSES

SHERIFF'S OFFICE

Justin Whack

DOCKET NO. 2008-GS-45- 275

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

JAVON LAMONT RIVERS

ARREST WARRANT NUMBER

J 990792 & J 990796

D/A: 7/17/08

ACTION OF GRAND JURY

True Bill

W. L. Lamont
Foreperson of Grand Jury

Date: 12/4/08

VERDICT

Indictment for

MURDER AND POSSESSION OF A
WEAPON DURING VIOLENT CRIME

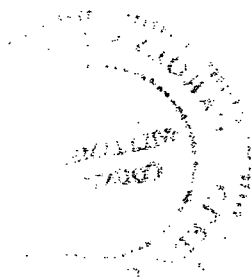
Foreperson of Petit Jury

Date:

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C. KELLY JACKSON, SOLICITOR

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CLERK OF COURT
WILLIAMSBURG



FORM 5

12 CP 45 I 7 2

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of WILLIAMSBURG)

FILED

27 MAR 2012 PM 01:02

JAVON RIVERS SR. #332402)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

A CERTIFIED COPY

CAROLYN WILLIAMS

CLERK OF COURT

WILLIAMSBURG COUNTY

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence THE COURT OF GENERAL SESSIONS THIRD JUDICIAL CIRCUIT: KINGSTREE, SC.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-G15-45-275

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 12 2009
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- JUDGMENT OF CONVICTION
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 21 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) TRIAL LAWYER WAS INEFFECTIVE FOR FAILURE TO ADEQUATELY
- (b) PREPARE FOR TRIAL AND CONSEQUENTLY IN CONDUCTING TRIAL.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES!
 (b) your trial, if any? YES!
 (c) your sentencing? YES!
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES!
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. LEGRAND CARRAWAY; 124 SOUTH ACADEMY ST.; KINGSTREE,
SOUTH CAROLINA, 29556
 ii. ROBERT M. DUKER; P.O. BOX 11589; COLUMBIA, S.C.
29211-1589
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. (A) i. ARRAIGNMENT AND PLEA, TRIAL, AND SENTENCING.
 ii. (A) ii. APPEAL
 iii. _____

19. State clearly the relief you seek in filing this application:

THAT CONVICTION BE REVERSED AND REMANDED FOR NEW TRIAL....

20. Are you now under sentence from any other court that you have not challenged?

NO!

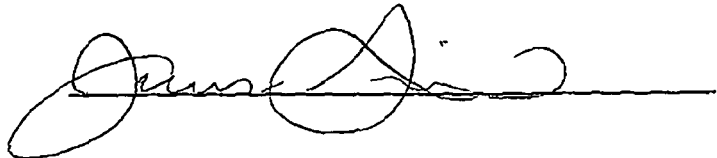
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of WILLIAMSBURG)

VERIFICATION

I, JAVON PIVERS SR. #332402, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 26
day of March, 2012.

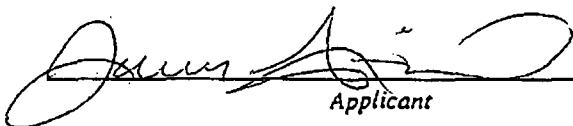
Eugene Kerth (L.S.)
Notary Public

My Commission Expires: Apr. 24, 2016

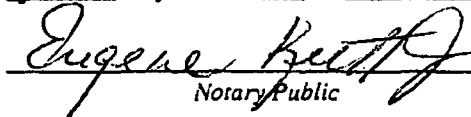
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JAVON RIVERS Sr. #332402, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
26 day of March, 2012.


Notary Public

My Commission Expires: April 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Javon Rivers, #332402,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-0172

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post-conviction relief, filed March 27, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was indicted during the December 2008 term of the Williamsburg County Grand Jury for Murder and Possession of a Weapon during the Commission of a Violent Crime (2008-GS-45-0275). LeGrand Carraway, Esquire, represented him. The Applicant proceeded to a jury trial before the Honorable George C. James, Jr., where he was convicted as indicted. On March 12, 2009, Judge James sentenced Applicant to thirty years imprisonment for Murder and a consecutive five years imprisonment for the Possession of a Weapon during the Commission of a Violent Crime.

Applicant appealed his convictions, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Rivers, 2012-UP-199 (Ct. App. filed March 21, 2012). The Remittitur was sent on April 6, 2012.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel."
 - a. "Trial lawyer was ineffective in failing to adequately prepare for trial and consequently in conducting trial."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCPP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

September 10, 2012

1 State of South Carolina) In the Court
2 County of Williamsburg) Of Common Pleas
3
4 Docket No. 2010-CP-45-0172
5
6 Javon Rivers,)
7 Applicant)
8 vs.) Transcript of Record
9)
10 State of South Carolina)
Respondent.)

11
12 October 3, 2013
13 Sumter, South Carolina
14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.
17

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

19 Charles T. Brooks, Esquire
20 Attorney for the Applicant

21 Mary Willis, Assistant Attorney General
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
25 For the Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T SNO.DESCRIPTIONPAGE

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. You ready, Ms. Williams?

2 MS. WILLIAMS: I am, Your Honor.

3 THE COURT: Mr. Brooks, have you had an opportunity
4 to speak with your client?

5 MR. BROOKS: Yes, sir.

6 MS. WILLIAMS: May it please the Court?

7 THE COURT: All right. Yes, ma'am.

8 MS. WILLIAMS: This is Javon Rivers,
9 2012-CP-45-0172. Mr. Rivers was represented by LeGrand
10 Carraway and he went to a jury trial facing a charge of
11 murder and possession of a weapon during the commission of
12 a violent crime. This incident arose from a disagreement
13 outside of a small club in Williamsburg County. It was
14 alleged that the victim in this case had a knife and that
15 Mr. Rivers had intervened in an altercation and then had
16 gone to his car and retrieved a weapon and the victim was
17 ultimately killed.

18 He was convicted and received the sentence of
19 thirty years with the five years for possession of a weapon
20 running consecutively to that and his appeal was dismissed.
21 This application was timely filed and Mr. Brooks is
22 representing him today.

23 THE COURT: Thank you. Thank you, Ms. Williams.

24 Anything, Mr. Brooks, before you call your first
25 witness?

Javon Rivers - Direct Examination by Mr. Brooks

1 **MR. BROOKS:** No, sir, we're ready to begin.

2 **THE COURT:** All right. Thank you, Mr. Brooks.

3 You may call your first witness.

4 **MR. BROOKS:** We'd call Javon Rivers.

5 **THE COURT:** Come around for me, please and
6 be sworn, Mr. Rivers.

7 **JAVON RIVERS,**
8 having been duly sworn, testified as follows:

9 **THE BAILIFF:** State your name and spell your last
10 for the record.

11 **THE WITNESS:** Javon Rivers. R-i-v-e-r-s.

12 **MR. BROOKS:** Ready, Judge?

13 **THE COURT:** Yes, sir.

14 **DIRECT EXAMINATION**

15 **BY MR. BROOKS:**

16 **Q** Javon? We're going to cut to the chase in this
17 case, but you're here to ask for a new trial. The victim
18 in this case was -- and we want to make sure I pronounce
19 his name correctly. It's Darryl McCray?

20 **A** Derell McCray.

21 **Q** Derell McCray?

22 **A** Yes, sir.

23 **Q** There was no dispute about you shooting him?

24 **A** Yes, sir.

25 **Q** There was no question about that?

Javon Rivers - Direct Examination by Mr. Brooks

1 A No, sir.

2 Q Your position was that it was self-defense?

3 A Yes, sir.

4 Q And Mr. McCray -- and a lot of witnesses actually
5 said during the trial that he had a knife; is that correct?

6 A Yes, sir.

7 Q He used that knife and threatened you?

8 A Yes, sir.

9 Q But now, you never testified in this case?

10 A No, sir.

11 Q And you didn't testify basically because your
12 lawyer told you not to testify?

13 A Yes, sir.

14 Q Okay. Now, if you had testified what would you
15 have said about that encounter where you ended up shooting
16 Mr. McCray and felt threatened?

17 A Well, I'd first told them that a guy came to me and
18 told me -- a family member of mine said --

19 MS. WILLIAMS: Your Honor, I would object to
20 anything hearsay.

21 THE COURT: All right.

22 MR. BROOKS: It's not really offered for the matter
23 asserted, we're just trying to paint a background as to
24 what the circumstances wherein --

25 THE COURT: So it's offered for the purpose of his

Javon Rivers - Direct Examination by Mr. Brooks

1 mental state?

2 MR. BROOKS: Sir?

3 THE COURT: For the purpose of his mental state and
4 knowledge --

5 MR. BROOKS: Yes, sir.

6 THE COURT: -- that he had?

7 MR. BROOKS: Yes, sir.

8 THE COURT: All right. Slow down a little bit for
9 me too, Mr. Rivers.

10 THE WITNESS: When I approached the situation, I
11 told Mr. McCray that -- I actually asked Erica what was
12 going on. You know, I never --

13 THE COURT: You asked who?

14 THE WITNESS: Erica.

15 BY MR. BROOKS:

16 Q This was a woman who was there?

17 A Yes, sir.

18 Q Okay. Now, but did Mr. McCray say anything to you
19 to make you feel threatened?

20 A Yeah. When I told him that his family sold him
21 out, he said I'd just as soon beat your ass too. So...

22 Q So basically what happened is there was a dispute
23 between someone else and Mr. McCray?

24 A Yes, sir.

25 Q And you had come up on it?

Javon Rivers - Direct Examination by Mr. Brooks

1 A Yes, sir.

2 Q All right. And Mr. McCray then focussed his
3 attention to you and threatened you?

4 A Yes, sir.

5 Q And he says, I'm going to beat your ass if you jump
6 in this?

7 A Yes, sir.

8 Q Okay. And what did you take that to mean?

9 A I took it to mean it was a challenge because I'm
10 really just trying to intervene to stop the situation that
11 was going on. You know, this --

12 Q What did you take -- his, I'm going to beat your
13 ass -- what did you take that to mean when he said that?

14 A I took -- I took real offense to it. I really had
15 to step up my guard.

16 Q Did you feel threatened?

17 A I feel threatened seriously.

18 Q Okay. When did you see the knife?

19 A When I -- I really left, I was going to go until I
20 heard him and Erica arguing again and that what made me go
21 back to the scene. I never went and got no gun and came
22 back. I was about to leave when I heard him and Erica
23 arguing again. That what made me go back and see what was
24 going on then.

25 Q Just for background, who is -- who is Erica in

Javon Rivers - Direct Examination by Mr. Brooks

1 this --

2 A Erica is the female that Mr. McCray was arguing
3 with at first that made me intervene into the situation.

4 Q What was Erica to you?

5 A Oh, she's my cousin. She's any cousin's wife.

6 Q Okay. All right. So then you came back.

7 A Yes, sir. Because Erica -- they started arguing
8 again so that what made me go back?

9 Q Okay. Now, when did he -- when did the -- when was
10 the knife branded? When did that come in to play?

11 A On my way coming back, you know, everybody knew
12 that he had to pull that knife on me because the whole
13 crowd screaming, I just seen him pull a knife on you, so I
14 be coming back, you know, armed. One of the home boys seen
15 me coming back so he handed me a gun. I told him I didn't
16 need it and he said you might need it, so he handed me a
17 gun. When I did go back to see what was going on he was --
18 they had taken him down the street, so I had nothing to
19 say. I was going to go--

20 Q They'd taken Derell down the street?

21 A Yes, sir. Take him down the street so I was out of
22 this. I was going about my business. And then a girl
23 screamed to him, he got a gun. I said why did you tell him
24 that. He said I ain't scared of anybody. You ain't going
25 to shoot at nobody and then he swung a knife at me twice.

Javon Rivers - Direct Examination by Mr. Brooks

1 Q He swung a knife out -- you know, when we say
2 there's a knife, there are all types of different knives
3 and so there's other kind of knives that you're sitting in
4 the cafeteria and eating, you know, when you're at the
5 restaurant and then there are butcher knives and a big 'ole
6 hunting knives -- what --

7 A It was more like a little -- the knife you use to
8 like -- if you was to go deer hunting, you know how --

9 Q So it was a hunting knife?

10 A It was a hunting knife. Not too big, but just
11 enough that it can cut you and do some damage to you, sir.

12 Q Did you -- but it -- did you think it was enough to
13 do damage to you?

14 A Yes, sir.

15 Q Okay. All right. And is that when you shot him?

16 A Yes, sir.

17 Q After he swung at you?

18 A Twice.

19 Q He swung at you twice?

20 A He swung at me twice before I started shooting.

21 Q Okay. Did you feel that your life was in danger
22 when he was swinging at you?

23 A Yes, sir.

24 Q Okay. Now, all of this, did you relay that to
25 Mr. Carraway?

Javon Rivers - Direct Examination by Mr. Brooks

1 A Yes, sir.

2 Q Okay. Now, why didn't you tell the jury in
3 Williamsburg County this information?

4 A Well, during the process of trial, you know, me and
5 Mr. Carraway never had any communication whatsoever,
6 period. So I didn't know how he was going to come and
7 bring defenses to the trial. The day of trial,
8 Mr. Carraway told me that, you know, I would testify to
9 what I told him.

10 Q Which is what you just told us?

11 A Yes, sir.

12 Q Okay.

13 A And later on, during trial, they made arguments
14 about my past record and you know, the things I got into in
15 my past record and Mr. Carraway informed me that by the
16 record he heard, it wouldn't be a good idea to testify to
17 the fact of my credibility would be at risk due to the fact
18 of my past record.

19 Q Okay. What was your past record?

20 A Armed robbery, grand theft auto, possession of
21 crack cocaine, possession of marijuana, you know, few other
22 charges. I can't really name.

23 Q Now, a lot of this stuff is from the State of
24 Florida?

25 A Yes, sir.

Javon Rivers - Direct Examination by Mr. Brooks

1 Q Okay. Do you think that if you had had the chance
2 to tell the jury what you just told us here that that would
3 have changed the outcome of your case?

4 A Yes, it would, sir.

5 Q And what you're saying is that you acted in
6 self-defense?

7 A Yes, sir.

8 Q You, in effect, were standing your ground; is that
9 right?

10 A Yes, sir.

11 Q And you -- what your position is, is that
12 Mr. Carraway should have employed that defense; is that
13 right?

14 A Yes, sir.

15 Q In order to prevent your conviction?

16 A Yes, sir.

17 Q Okay. And, obviously, that was never presented to
18 the jury?

19 A No, sir.

20 Q Okay. Matter of fact, the State's witnesses said
21 he brandished the knife?

22 A Yes, sir.

23 Q So, I mean, it was clearly established that the
24 victim in this case was carrying a dangerous weapon?

25 A Yes, sir.

Javon Rivers - Direct Examination by Mr. Brooks

1 Q Okay. And the gun you shot him with, that wasn't
2 your gun, that was a gun that somebody had given you for
3 protection?

4 A Yes, sir.

5 Q Because they thought that -- somebody warned you
6 that you might need it, right?

7 A Yes, sir.

8 Q Okay. But when you were first there at the
9 gathering, you didn't bring any weapons --

10 A No, sir, I don't carry -- I don't carry a gun, sir.

11 Q Okay.

12 A I don't own a gun.

13 Q Do you -- you said the gun belonged to your home
14 boy?

15 A Yes, sir.

16 Q Okay. So basically -- and as we talked about it,
17 Javon, basically you want the judge, Judge McMahon, to
18 grant you a new trial so that you have an opportunity to
19 present that defense to a jury?

20 A Yes, sir.

21 Q Okay. And that -- you never had opportunity to
22 present that defense; is that right?

23 A No, sir.

24 Q Okay. Is there anything else that you want to tell
25 the Court that you feel is important about your case that

Javon Rivers - Direct Examination by Mr. Brooks

1 we haven't talked about?

2 A Yes. It starts with no preparation for the trial.
3 Mr. Carraway never properly examined -- how can I say
4 this -- if you never did talk to me threw the evidence
5 inside the trial, one thing I'd say mostly he didn't
6 because, I know for sure that he didn't because he had five
7 Miranda warnings from -- five Miranda warnings from
8 witnesses that would have testified, that wanted to
9 testify -- signed statement saying that they would like to
10 testify without a lawyer.

11 Now DeCelia McBride was one of those witnesses that
12 signed a statement saying that -- signed another one that
13 said she'd like to make a statement without counsel being
14 present.

15 Q Let me ask you this. Let me ask you this, Javon.
16 Those people were basically saying the same thing that you
17 said, correct?

18 A Yes, sir.

19 Q Okay. They're not going to say anything different?

20 A No, sir.

21 Q And State's witnesses had already said that
22 Mr. McRay had a knife?

23 A They do got one statement that said in his prior
24 testimony to the officers, but at trial everybody claimed
25 that he might have had a knife or they didn't see a knife.

Javon Rivers - Direct Examination by Mr. Brooks

1 Q But any way -- basically, there were some State's
2 witnesses that talked about the possibility of a knife
3 being present?

4 A Yes, sir.

5 Q But when it came to your part of the case, there
6 was really no presentation that there was a knife because
7 you didn't testify and then this other stuff was brought
8 up?

9 A I had two witnesses that testified to it and one of
10 the witnesses at trial that the State had come and
11 testified to what -- he testified the same as the defense
12 witnesses did.

13 Q Okay. All right. Go ahead, anything else you want
14 to tell the Court?

15 A Yes. Back to DeCelia McBride testimony, her
16 testimony was only heard about the morning of trial and
17 Mr. Carraway never even got the taped statement for us to
18 get prepared for the cross-examination of Ms. McBride.
19 During -- he found out about her after she testified and
20 she, of course told Mr. Carraway that if he wanted to
21 listen to it, they would take a brief recess and let him
22 listen to it. I asked Mr. Carraway to listen to it, review
23 the tape. He never did. He sent me back to the jail,
24 which I told him, I'm waiting on Mr. Carraway. I never --
25 I don't know what's on the tape. I don't know what she

Javon Rivers - Direct Examination by Mr. Brooks

1 said, she could have been saying cat, dog or mouse, I don't
2 know. But I was never given a chance to even review the
3 taped statement that she made and that goes to show that he
4 didn't properly give a proper investigation to prepare for
5 the trial. He had a few other things like the statement
6 from -- the lists that he gave to the police -- on the
7 night of the incident he gave -- saying that when he
8 observed that me and DeCelia told -- they said that she
9 pulled out a knife on me and that's when I took off running
10 and that's when I took off running and said that I went to
11 the car.

12 But there was never a car involved. This -- I mean
13 they two different colors of cars saying the car was gold
14 and silver one time, and the car was blue at another time.
15 So evidently there was never a car involved or you never
16 see me go to a car that was involved in this case here.

17 And another thing I said -- oh, yeah. The
18 uncorroborated testimonies between Doshier (phonetic),
19 Leslie and Erica, they gave uncorroborated testimony,
20 meaning because Erica -- because Erica said she was this
21 place at the intent, the first incident happened, but
22 Doshier (phonetic) saying she this place. So neither one
23 of these testimonies was challenged due to the fact of the
24 lack of Mr. Carraway's unprepared -- not being prepared for
25 cross-examination.

Javon Rivers - Direct Examination by Mr. Brooks

- 1 Q You mean, there were things that were inconsistent?
- 2 A I would say that, yeah.
- 3 Q Okay. Anything else?
- 4 A No.
- 5 Q Let me ask you, the victim Mr. McCray, was he a
- 6 small fellow?
- 7 A No, he was -- you know, he was even taller than me.
- 8 Q He was a pretty big fellow?
- 9 A Yeah. He had a nice size on him.
- 10 Q So even if he didn't have a knife, he posed a
- 11 threat?
- 12 A He posed a threat when I seen the knife. I seen
- 13 the knife.
- 14 Q Well, I mean even without the knife, he was
- 15 threatening?
- 16 A Oh yes, he's a threat. Because any man that come
- 17 to me in an aggressive manner --
- 18 Q He was a pretty large fellow -- like, how tall are
- 19 you?
- 20 A I'd say 5, 9.
- 21 Q And how much you weigh?
- 22 A Now?
- 23 Q Back then.
- 24 A Oh, back then I weighed about 185.
- 25 Q Okay. And Mr. McCray was how tall you say?

Javon Rivers - Direct Examination by Mr. Brooks

- 1 A I'd say about 5, 11.
- 2 Q Okay. And was he well over two hundred pounds?
- 3 A About that.
- 4 Q Okay. So by himself without any weapon, he was a
- 5 threat?
- 6 A Yes, sir.
- 7 Q Okay. And you throw the knife in, I mean you can
- 8 say that it was one that you saw could be used for bear
- 9 hunting and something else?
- 10 A My granddaddy had that same kind of knife he has.
- 11 Q And to use your words, he can do some damage?
- 12 A Yes, sir.
- 13 Q And you thought he was going to do some damage to
- 14 you?
- 15 A Yes, sir.
- 16 Q And he swung at you twice?
- 17 A Yes, sir.
- 18 Q Okay. And the jury never heard, never heard he
- 19 swung at you twice, right? They never heard that?
- 20 A They heard it from Dachier. Dachier gave a
- 21 statement saying that he swung at me twice, but it wasn't
- 22 properly followed up on.
- 23 Q But they didn't hear it as far as --
- 24 A My testimony.
- 25 Q -- your testimony he posed a threat to you?

Javon Rivers - Direct Examination by Mr. Brooks

1 A No, sir.

2 Q That you were in fear of your life?

3 A Yes, sir.

4 Q Okay. Anything else?

5 A No, sir. Just a few other things, you know, I
6 would like to bring forth to the Court's, due to the fact
7 of Mr. Carraway's lack of being prepared for trial -- hold
8 on for a second, please.

9 (WHEREUPON there was a pause in the proceedings.)

10 THE WITNESS: Yeah. During one of the judge's
11 instructions to the jury, he gave the jury a supplemental
12 recharge, due to the fact that -- supplemental charge of
13 voluntary manslaughter and Mr. Carraway objected to it
14 before the judge gave this instruction, but after the judge
15 gave this instruction which was burden shifting, a
16 burden-shifting instruction, he never gave a contemporary
17 objection and let it be preserved for appellate review.

18 Q Okay.

19 A And I feel had he objected to it, it -- a
20 contemporary objection -- it would have been preserved for
21 appellate review.

22 Q Okay. All right. Anything else?

23 A The fact that he didn't properly prepare for trial,
24 you know.

25 Q All right.

Javon Rivers - Direct Examination by Mr. Brooks

1 A Oh, yeah, one more thing. I apologize, yeah, one
2 more thing. During the autopsy report that Dr. Presley
3 done, I believe that's her name, let me be sure, yeah,
4 Presley, that she gave; she said that while the victim was
5 in the hospital, he went through a certain -- all types of
6 surgeries and all this, this, that and the third, and
7 whatever. And during that, they put him -- they put him
8 into, I guess it was stable motion -- a stable mode, and
9 while he was in was being stable, he informed the family
10 because the brother testified that the doctor's told them
11 that, the family, that Mr. McCray had a chance to make it
12 if nothing else didn't go wrong while he was in the
13 hospital.

14 Q Uh-huh.

15 A I guess a few days later, his brain swell and he
16 had intracranial pressure due to the fact of a
17 nonfunctioning hole in the catheter that the hospital put
18 inside to help drain fluid. Now, due to the fact of that,
19 I've read in case laws, but I just can't get them --

20 Q So what you're saying is that your actions might
21 not have actually been the probable cause of his death?

22 A No, sir.

23 Q And this was something that Mr. Carraway should
24 have raised or objected or raised in some manner --

25 A Yes, sir.

Javon Rivers - Cross-Examination by Ms. Williams

1 Q -- to the form during the trial?

2 A Yes, sir.

3 Q Okay. All right. Got that on the record. Glad
4 you remembered that. Is there anything else?

5 A That's about it.

6 Q Answer any questions of Ms. Williams.

7 THE COURT: Thank you.

8 Ms. Williams?

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q Now, Mr. Rivers, there were several witnesses at
12 this trial who testified kind of just like you just said;
13 isn't that correct?

14 A Yes, ma'am.

15 Q You had witnesses that said you intervened and said
16 Erica was your family, right?

17 A Yes, ma'am.

18 Q And how Erica had denied you or she said that you
19 were kind of related to her husband. She didn't know you
20 like that, right?

21 A Uh-huh.

22 Q But you had witnesses saying this was a home boy
23 night, right?

24 A Yes.

25 Q Just like you just said, right?

Javon Rivers - Cross-Examination by Ms. Williams

1 A Yes.

2 Q All right. You had witnesses that said that he
3 kind of came at you, right?

4 A Yes, ma'am.

5 Q Just like what you just said?

6 A Yes, ma'am.

7 Q Erica denied that she needed your help though,
8 right?

9 A Yeah.

10 Q Okay. And Mr. Carraway, he didn't look into your
11 case at all, you don't think?

12 A He couldn't have, ma'am, because due to the fact of
13 certain evidence that was in about the case was not brought
14 forth to the jury for the jury to take notice on.

15 Q Where do you think he got all the information of
16 all your family members and who was related to who and that
17 you knew the victim's wife, how did he get that
18 information?

19 A From me, ma'am. He got that from me, yes, ma'am.

20 Q So he did talk to you about this case at some
21 point.

22 A He talked to me the day of the pretrial hearing
23 that I had. We had a pretrial hearing.

24 Q Okay.

25 A But before then, they appointed him to my case in

Javon Rivers - Cross-Examination by Ms. Williams

1 December. I think I had a bond hearing.

2 Q Uh-huh.

3 A And I think -- no, I think it was early in
4 December. When I had a bond hearing, that was when he was
5 appointed to my case. At preliminary hearing, I tried
6 to -- I tried to fight Mr. Carraway as my counsel just to
7 the fact that he never contacted me. I wrote him twice
8 since my bond hearing. He never contacted me back, never
9 wrote me back or nothing. Due to the fact that I feel it
10 was crucial for him to write back, because he had no
11 collect calls on his phone, so he had no way of
12 communicating.

13 After the preliminary hearing, the jail informed
14 him that it would be best that we sit down and talk and we
15 did. I gave him my mama phone number and told him to
16 advise -- that she would advise him of everything that he
17 needed to know prior to trial as to the witnesses and I
18 didn't know nothing.

19 Q Okay. Now, with Ernie, you wanted to point out
20 that Ernie wasn't very credible; is that what you wanted
21 your attorney to do?

22 A Yes, ma'am.

23 Q Now, Ernie said the victim had a knife, right?

24 A Yes, ma'am.

25 Q You want the jury to bring that up, right?

Javon Rivers - Cross-Examination by Ms. Williams

1 A Yes, ma'am.

2 Q Okay. And so this victim, was he bigger than me,
3 probably?

4 A Well --

5 Q Bigger build than me, taller than me?

6 A Yeah.

7 Q Now that -- the doctor testified that he was about
8 148 pounds, right.

9 A Yes, ma'am, as to weight then. But this was before
10 he went to the hospital. When you go to the hospital and
11 you got to go in brain surgery, you know everybody --

12 Q But you're not a doctor, right? You don't know how
13 much people lose weight. You think he lost 50 pounds
14 while --

15 A I've been in the hospital much -- many times so I
16 know how much people lose weight.

17 Q Lose 50 pounds in just a few days? A couple of
18 weeks?

19 A So who?

20 Q Do you think he lost 50 pounds during that time?
21 But no doctor's said that, right?

22 A I can't answer that.

23 Q Okay. Thank you.

24 A I didn't have any --

25 Q Because I'm about 160 pounds, so that means that

Javon Rivers - Cross-Examination by Ms. Williams

1 this guy is smaller than me and that's why I was asking
2 that question.

3 The issue about your jury charge, that was
4 addressed by your appellate attorney; is that correct?

5 A Yes, ma'am.

6 Q Okay. And you're not a doctor, you can't really
7 say exactly what caused this man's death?

8 A No, I just -- I looked up on his case notes stating
9 that surgical technicians job are just to make sure that
10 all equipment before surgery is in working and so that
11 being said by the surgery technician before that surgery
12 that had that equipment there, she had to observe that
13 equipment and if she had observed that equipment, she
14 didn't observe the --

15 Q And he wouldn't have been there if he didn't have a
16 bullet in his head, right?

17 A Ma'am?

18 Q He wouldn't have been in the hospital without that
19 bullet in his head.

20 A He wouldn't have been if he had a knife and came at
21 me, if you put it that way then.

22 Q That's all.

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: Thank you. Thank you very much,
25 Mr. Rivers, you may step down.

LeGrand Carraway - Direct Examination by Mr. Brooks

1 **MR. BROOKS:** At this time, we would like to call
2 Mr. Carraway to the stand.

3 **THE COURT:** Mr. Carraway? Come around and be
4 sworn, please.

5 **LEGRAND CARRAWAY,**
6 having been duly sworn, testified as follows:

7 **THE BAILIFF:** State your full name and spell your
8 last name for the record, please.

9 **THE WITNESS:** LeGrand Carraway, C-a-r-r-a-w-a-y.

10 **THE COURT:** Mr. Books?

11 **DIRECT EXAMINATION**

12 **BY MR. BROOKS:**

13 **Q** Mr. Carraway, you represented Mr. Rivers?

14 **A** Yes, I did.

15 **Q** As a public defender?

16 **A** Yes.

17 **Q** And he told you that this gentleman had a knife and
18 he swung at him twice?

19 **A** Yes, he did.

20 **Q** And he did not get an opportunity to tell the jury
21 that -- his version of the defense; is that correct?

22 **A** That's correct.

23 **Q** Now, you familiar with whether or not we had the
24 stand your ground law of South Carolina at that time?

25 **A** I argued defense of others. He stood -- I went out

LeGrand Carraway - Direct Examination by Mr. Brooks

1 to the scene with Erica McBride and where he went to and
2 where the victim was, he stood -- he just went and stood in
3 between them is what he did.

4 Q Okay.

5 A All he did was he walked to there because this guy
6 was still yelling at her and Dachier was trying to drag him
7 off or whatever. And all he did was come and stand in
8 front of Erica; and this guy was probably 25 yards down --
9 10 or 15 yards down the road or whatever and the daughter
10 was trying to drag him off. And that's all he did. He
11 just came and stood right there.

12 He didn't -- and no one said he ever said a word to
13 that guy. Once he came back to the scene with that gun.
14 He never said a word. Nobody said he ever said a word.

15 He didn't say, All right, now -- as I argued at
16 trial, All right now. Now, you have a knife, now let's see
17 what you can do with that. Mr. Rivers never said anything.
18 He just came back and stood there in front of Ms. McBride,
19 Ms. Erica McBride. That's all he did. That's what
20 everybody -- nobody testified he said a word or whatever.
21 He didn't let anybody know that he had a gun. He wasn't
22 trying to display anything or to rile up Mr. McCray or do
23 anything. He just came back. It was Mr. McCray that
24 turned and someone said that he's got a gun. He never said
25 a word from the time he came back -- and he never said

LeGrand Carraway - Direct Examination by Mr. Brooks

1 anything when Mr. McCray was saying -- running back at him
2 with this knife saying, I'm not afraid to die.

3 Q All right.

4 A Here's a man with a gun and he's coming back at him
5 with a knife. And everybody -- there was testimony there
6 that he swung at him twice with the knife.

7 Q I understand that. But my question is, do you
8 acknowledge that South Carolina had the stand your ground
9 law --

10 A I was not familiar with that at the time.

11 Q Okay. All right. Are you familiar with the law in
12 effect that if a person asserts that, they can have an
13 in-camera hearing to determine if they're immune from
14 prosecution?

15 A I would not think that would be satisfied in this
16 particular case because this was out at a club. This was
17 actually Erica McBride's mother's club. This is Sadie
18 McBride's club where they were. This is Sadie McBride's
19 club where they were or whatever. This is here. He came
20 back to the scene -- he was not -- he put himself -- he
21 came back and put himself in front of Ms. McBride for the
22 reason to protect Ms. McBride. Not for anything else. He
23 didn't say a word when he came back -- everybody said. So
24 that's what he did. He came back and put himself in that
25 position.

LeGrand Carraway - Direct Examination by Mr. Brooks

1 Q Isn't that something that a person can still use
2 stand your ground --

3 A I wouldn't think so.

4 Q Okay. But if it had been asserted, he would have
5 had an in-camera hearing prior to going to trial?

6 A I don't know anything about that.

7 Q Okay. You familiar with it in the -- are you
8 familiar with it that if you had an in-camera hearing and
9 even if the hearing denies your ability to use stand your
10 ground to exempt you from prosecution you could appeal?
11 You can do an interlocutory appeal?

12 THE COURT: You can't now under State v Isaacs.

13 MR. BROOKS: Okay.

14 THE COURT: That's been changed within the probably
15 last several months. It's a case out of Richland County.

16 MR. BROOKS: Judge, I said -- we had a hearing on
17 it about two months --

18 THE COURT: It's very recently been changed and all
19 of those interlocutory appeals have been sent back to the
20 trial courts. It's -- except for one that I'm familiar
21 with. All of the others have been sent back from the
22 Supreme Court. The Supreme Court took that case -- Judge
23 Nettles was trying that case in Richland County.

24 MR. BROOKS: Okay.

25 THE COURT: That's just recently been changed.

LeGrand Carraway - Direct Examination by Mr. Brooks

1 BY MR. BROOKS:

2 Q Okay. You learn something new every day?

3 A Well, things change every day.

4 Q Every day. But you do acknowledge that these
5 circumstances could have fit --

6 A I'm not denying that.

7 Q Okay.

8 A I don't know.

9 Q Okay.

10 A I just don't know.

11 Q Because -- you heard Mr. Rivers testify about what
12 happened?

13 A Yes, I did.

14 Q As far as your recollection, that was consistent
15 with the evidence?

16 A That's it. That's it. He -- and the thing about
17 him testifying, he didn't really have to testify. And if
18 he had -- and he didn't want to testify. He didn't want to
19 testify and there was no reason for him to testify because
20 like he said, he had some serious charges on his record.
21 He had other people to tell his story completely.

22 It was not any question -- these were State's
23 witnesses saying that this guy swung a knife at him twice;
24 came charging at him, and said I'm not afraid to die. When
25 a man's standing there -- no reason for him to come back.

LeGrand Carraway - Direct Examination by Mr. Brooks

1 And Erica McBride's daughter trying to pull him away from
2 her or whatever -- he didn't do anything to incite him. He
3 came back. He did not say anything to this guy. He did
4 not brandish the gun or do anything. He just came back and
5 stood in front of Erica McBride. That's all he did.

6 Q Okay. And it was only after --

7 A Because this guy was yelling and screaming at Erica
8 McBride, calling her all sorts of terrible names and
9 everything.

10 Q And it was only after the victim swung at Javon --

11 A Twice.

12 Q Twice?

13 A Twice. He wouldn't have swung at me either time.
14 He comes at me with a knife, no, he wouldn't. But he
15 actually swung -- got close enough to actually swing the
16 knife at him twice. He just ducked away is what he did.
17 He just figured I'm not going to keep on doing this. You
18 know, it's -- you know.

19 So at that point, he was defending himself. These
20 are the uncorroborated facts of this case. His problem was
21 they were able to bring in that he was from Florida and
22 he'd be from -- that he was from Florida and they pounded
23 on that and he left after the trial. They actually had to
24 find him down in Florida or whatever.

25 Q He didn't leave after trial, he left after the

LeGrand Carraway - Direct Examination by Mr. Brooks

1 incident?

2 A Left after the incident.

3 Q Okay.

4 A Because he thought he might get railroaded, and of
5 course, that ended up what did happen. He did get
6 railroaded is what I would say because if -- not only --
7 had they not brought out this fact that he was from
8 Florida, that would have been different. I really believe
9 that had everything to do with this when you look at the
10 actual facts of the case, a guy swinging a knife at
11 somebody two times or whatever, doesn't that give you the
12 right -- but there point was, when he left -- when he
13 left -- when this guy pulls a knife on him to begin with
14 and he left, he should have kept on going. And I guess
15 subliminally, that thought was he's not from here, these
16 people are family or whatever.

17 What this was all over was Mr. -- the victim had a
18 baby with Dachier McBride. He was dancing with somebody
19 else and Erica McBride -- as is her habit or whatever --
20 she came up and started screaming and arguing with the
21 victim or whatever. She started this over him dancing with
22 somebody in this club or whatever.

23 Q The victim?

24 A That the victim was dancing, was dancing with
25 another female in the club. She started and as is her

LeGrand Carraway - Direct Examination by Mr. Brooks

1 habit, I know her very well, she didn't let up on it or
2 whatever and just kept on and on and on, or whatever, and
3 that's what -- and kept on and on and on. And that's what
4 brought on this verbal argument with this guy -- with the
5 victim that Mr. Rivers came up and observed: And all
6 anybody ever said that he did is he came up and he said,
7 You need to move on from here. You need to leave her
8 alone. This is my family here. That's all he said. He
9 didn't say anything else. Which is what I think a
10 gentleman should have said, as I argued. That's all he
11 said.

12 And this guy proceeds to get, of course, very angry
13 like you know, you're not supposed -- well, this isn't --
14 all you did -- your only connection with Erica McBride is
15 that you had a baby with her daughter or whatever here and
16 now you're off with somebody else in here or whatever and
17 that's all Mr. Rivers said. And then he pulls a knife on
18 Mr. Rivers there and that's what Mr. Wilson observed, him
19 chasing Mr. Rivers with a knife.

20 Q So -- and let me ask you this: If all of that had
21 been used --

22 A It was used.

23 Q Well -- at an in camera, for lack of a better
24 phrase, stand-your-ground hearing and at that hearing,
25 Mr. Rivers could have testified to that. Do you think that

LeGrand Carraway - Direct Examination by Mr. Brooks

1 could have changed the outcome --

2 A His stand you're ground was when he came back. He
3 came back for the reason to Defend Erica McBride. That's
4 what he came back for and he was not aggressive at all when
5 he came back. He just came back -- this guy had already
6 displayed he had a knife. He was yelling and screaming and
7 calling Erica McBride all these names. All he did was just
8 come back -- he didn't say anything to that guy. That guy
9 was walking away, he's got a gun or whatever, he wasn't
10 going to say anything. He did not say a word. He never
11 said a word.

12 Q When you say he didn't say, what's all that --

13 A Mr. Rivers never said a word, no. This other guy's
14 the one -- the victim is the one that flipped out about him
15 having a gun or whatever and just --

16 Q Instigated the incident?

17 A Oh my gosh, he should have kept on walking because
18 the daughter was trying to -- Erica McBride's daughter was
19 trying to drag him off or whatever.

20 Q Okay.

21 A Mr. Rivers did not say anything to antagonize him,
22 nothing.

23 Q So if he had been utilized a potential
24 stand-your-ground hearing, he could have been immune from
25 prosecution, potentially?

LeGrand Carraway - Direct Examination by Mr. Brooks

1 A I don't know about that. I don't know because it
2 came back to that -- but he came back for the purpose to
3 defend others and you have a right to defend others.

4 Q And that could have been asserted in that type of
5 hearing. You acknowledge that potentially now?

6 MS. WILLIAMS: Asked and answered about four or
7 five times at this point, Your Honor.

8 MR. BROOKS: Trying to make sure we get it on the
9 record.

10 BY MR. BROOKS:

11 Q Okay.

12 A But they pounded on the fact that he was from
13 Florida or whatever. That was -- they knew that that
14 was -- oh, and he should leave these people alone to decide
15 their own problems or whatever and he didn't understand
16 what the relationship is between these two people and all
17 of that. I guess subliminally that's what the whole idea
18 was and that if he's up here -- if he's in Williamsburg
19 County from Florida, he's a drug thug anyway or whatever --
20 which he's not -- but I mean that's the idea, is he's up
21 here Florida. And then they pounded on the fact that they
22 had to go down and find him down in Florida.

23 MR. BROOKS: Beg the Court's indulgence, Your
24 Honor.

25 (WHEREUPON there was a pause in the proceedings.)

LeGrand Carraway - Cross-Examination by Ms. Williams

1 MR. BROOKS: No further questions, Your Honor.

2 THE COURT: All right. Ms. Williams?

3 CROSS-EXAMINATION

4 BY MS. WILLIAMS:

5 Q Mr. Carraway, this trial was in 2009, correct?

6 A Yes.

7 Q And you were a public defender?

8 A Yes.

9 Q How long have you been a public defender in
10 Williamsburg?

11 A Twenty-one years.

12 Q Twenty-one years, and you went out to the scene
13 with Erica?

14 A Yes.

15 Q So you had done a little work on this case prior to
16 trial?

17 A Yeah, I had gone out to the club.

18 Q Okay. And you also used the victim being kind of
19 smaller to support your theory that that guy had a knife
20 because Javon only ran from him because he had a knife,
21 right.

22 A That's the only reason he would have run from him.

23 Q Okay.

24 A I'm going to tell you, that shows what kind of
25 character he has. A guy swung at him twice with a knife

LeGrand Carraway - Redirect Examination by Mr. Brooks

1 and all he did was step out of the way or whatever. He
2 didn't do anything. But as the guy got closer and really
3 was about to really, you know, get right up to him or
4 whatever. That's the only time he responded. He didn't
5 respond until then. Nobody ever said a word until then and
6 if he was from Kingstree and the victim were from Florida,
7 he would have never been tried.

8 **MS. WILLIAMS:** Thank you, Your Honor.

9 **THE COURT:** Redirect?

10 **REDIRECT EXAMINATION**

11 **BY MR. BROOKS:**

12 Q Now, you know you possibly could have had a
13 pretrial hearing --

14 A I don't know that, I don't know that, but I'm not
15 denying that.

16 Q Okay. And you do acknowledge if you had -- if you
17 had tried to do that, that could have made a difference?

18 A I don't know whether it would have. I don't deny
19 it. I've not given that any thought.

20 Q Okay.

21 **THE COURT:** Recross examination, Ms. Williams?

22 **MS. WILLIAMS:** Nothing further, Your Honor.

23 **THE COURT:** Thank you, Mr. Carraway.

24 **MS. WILLIAMS:** And that would be the State's case,
25 Your Honor.

LeGrand Carraway - Redirect Examination by Mr. Brooks

1 **THE COURT:** Thank you, thank you very much.

2 Anything further, Mr. Brooks?

3 **MR. BROOKS:** Nothing further as far as testimony,
4 Judge, but obviously what our position is -- you can tell
5 what our position is just from the testimony. Actually
6 Mr. Carraway did obviously -- we this Javon should have
7 been given a chance to perhaps even be immunized from
8 having the prosecution, and the type of hearing -- he could
9 have testified to what he testified to here today. And
10 that's what we feel should have happened in this particular
11 case. And then, in addition to that, he also should have
12 testified at the trial -- both aspects, we feel put
13 Mr. Rivers in a situation where he should be granted a new
14 trial -- his post conviction relief should be granted and
15 he should be granted a new trial.

16 We think that there is overwhelming evidence that
17 stand your ground should have been used and if not he
18 should have been allowed to testify and use self-defense
19 from what he testified to here. And we think that if
20 either one of those things would have been done, that would
21 have changed the outcome of his case.

22 **THE COURT:** Thank you, Mr. Brooks.

23 Ms. Williams?

24 **MS. WILLIAMS:** Just to summarize, I believe the
25 record supports Mr. Carraway's preparation. When you read

LeGrand Carraway - Redirect Examination by Mr. Brooks

1 this transcript, I believe that you'll see he tried an
2 excellent case. There was conflicting evidence about
3 whether this victim had a knife so that was a big issue.
4 He did a lot to put that knife in the victim's hands and
5 he -- he was arguing self defense and defense of others,
6 which was really the primary assertion.

7 The applicant's testimony -- he had lots of reasons
8 to put him on the stand. His record, in addition to things
9 he mentioned, also included bribing a police officer. He
10 -- at that point, the defendant's testimony was cumulative
11 from other people that said -- including you know, some of
12 the State's witnesses did say they thought he might have
13 had a knife. So rather than run that risk, I think that he
14 made a good decision to advise his client about that and
15 Mr. Rivers was advised that it was still his own decision.
16 He agreed with his attorney and I just think -- urge you to
17 read the record and review those matters. Thank you.

18 **THE COURT:** Do you have any position on the
19 stand-your-ground issue.

20 **MS. WILLIAMS:** Your Honor, I don't think this is
21 one that this would apply. But to be candid with you, I
22 would have to look more -- closer to that to be able to
23 argue in an educated way with you about it.

24 **THE COURT:** Well, perhaps you should both address
25 that in any proposed orders.

LeGrand Carraway - Redirect Examination by Mr. Brooks

1 MR. BROOKS: Yes, sir.

2 MS. WILLIAMS: Yes, sir.

3 MR. BROOKS: I'll do that, Judge.

4 THE COURT: Isaacs was decided August 13th, I
5 think.

6 MR. BROOKS: Yes, sir.

7 THE COURT: August 21st, '13, so it's less than two
8 months old.

9 MR. BROOKS: We'll do that, Judge.

10 THE COURT: All right. Thirty days then?

11 MR. BROOKS: Yes, sir.

12 THE COURT: Thank you. Thank you very much,
13 Ms. Williams.

14 Good luck to you Mr. Rivers.

15

16 * * * * * END OF TRANSCRIPT * * * * *

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LeGrand Carraway - Redirect Examination by Mr. Brooks

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 3rd day of October, 2013.

12 I FURTHER CERTIFY that the 39 foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 5th day of March, 2014.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

RECEIVED
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 S.C. Supreme Court

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

Javon Rivers, #332402,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-45-0172

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 27, 2012. An evidentiary hearing into the matter was convened on October 3, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Legrand Carraway, Esquire ("Counsel"). This Court had before it the records of the Williamsburg County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was indicted during the December 2008 term of the Williamsburg County Grand Jury for Murder and Possession of a Weapon during the Commission of a Violent

CRIME (2008-GS-45-0275). LeGrand Carraway, Esquire, represented him. The Applicant proceeded to a jury trial before the Honorable George C. James, Jr., where he was convicted as indicted. On March 12, 2009, Judge James sentenced Applicant to thirty years imprisonment for Murder and a consecutive term of five years imprisonment for the Possession of a Weapon during the Commission of a Violent Crime.

Applicant appealed his convictions, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Rivers, 2012-UP-199 (Ct. App. filed March 21, 2012). The Remittitur was sent on April 6, 2012.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel."
 - a. "Trial lawyer was ineffective in failing to adequately prepare for trial and consequently in conducting trial."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."



Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Summary of Facts Adduced at Trial

In the early hours of May 17, 2008, Derial McCrea ("Victim") was a patron of Sadie's Place in Williamsburg County. Victim's girlfriend (and granddaughter of club owner Sadie McBride),

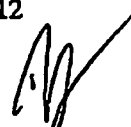


Dyshea McBride ("Dyshea"), arrived to pick him up. While Dyshea was outside the club, Dyshea's mother (and Sadie's daughter), Erica McBride ("Erica"), told Dyshea that Victim was inside dancing with another woman. Erica had often argued with Victim during the course of his relationship with Dyshea, and Victim and Erica argued outside the club following confrontation about Victim's dancing with another woman.¹ During the verbal altercation between Victim and Erica, Applicant stepped in. Erica conceded that there were some "very ugly" words exchanged between them but denied being in fear for her safety. Witnesses stated that Applicant intervened and an argument between Victim and Applicant ensued. Applicant was alleged to have said something along the lines of "you can argue with a woman but you can't argue with me" and "this is my family," when Victim told Applicant that Applicant had nothing to do with the argument.² (Tr. p. 54, lines 3-4; p. 204, lines 14-21; p. 212, lines 14-15.) The argument between Applicant and Victim apparently became physical. As the crowd gathered, Erica attempted to pull Dyshea away, but Dyshea protested saying that she could not "let them jump [Victim]." (Tr. p. 148, lines 7-15.) Applicant then ran quickly from the area. According to witness Ernie Wilson ("Wilson"), Applicant went to a vehicle and retrieved a gun from the passenger side. (Tr. p. 42, line 25 - p. 44, line 7.) After the initial altercation, Erica remained outside but distanced herself from the spot, removing herself away and near the stop sign. Dyshea pulled Victim from the scene toward their car. (Tr. p. 96, lines 22-23; p. 107, lines 1-2; p. 212, lines 23-24; p. 114, lines 14-20; p. 149, lines 21-23; p. 150, line 5.)

Applicant returned momentarily, however, now walking toward Victim, and spectators,

¹ Erica remarked that she often disagreed with Victim, but Dyshea and Victim had been living together and shared an infant child. Since Dyshea would not leave Victim, she had to try to cope with him. Victim also shared a child with his estranged wife, Marcella. It was stated at trial that Applicant had been living with Marcella.

² Erica testified that her husband is related to Applicant though she seemed unsure of the exact kinship, stating "[Applicant's] mother is my husband's grandmother's mother. I don't know." (Tr. p. 157, lines 1-11.) Erica stated that Applicant may speak to her in passing but she "didn't see him all the time. He wasn't here all the time." (Tr. p. 157, line



including Dyshea, immediately shouted, "he got a gun." (Tr. p. 56, lines 16-20; p. 57, lines 8-9; p. 77, lines 13-17; p. 106, lines 20-25; p. 197, lines 22-23; p. 212, line 23; p. 232, lines 6-7.) Victim then turned back to Applicant and approached him, reportedly shouting "I ain't scare of no gun," "you gonna shoot me," "shoot me, MF," and "I ain't scared to die." (Tr. p. 45, lines 6-11; p. 78, lines 11-14; p. 107, lines 3-15; p. 197, line 23.) Victim swung at Applicant, though witnesses vary over whether it appeared he had a knife, and Applicant shot him in the face. (Tr. p. 108, lines 4-20; p. 197, line 24 – p. 198, line 7.)

Wilson, some distance away from the fight, testified that he never saw Victim with a knife, though Wilson told police it looked like Victim may have had a knife from the way he was swinging. (Tr. p. 47, lines 2-9; p. 48, line 7 – p. 49, line 13.) Leslie Morant, a friend who testified that she had held Dyshea back from the fight, stated that she never saw a knife. (Tr. p. 59, line 12 – p. 60, line 1.) Dyshea, who was close to the fight, did not see a knife during the first confrontation. (Tr. p. 96, lines 7-21.) Dyshea testified that she did not know whether Victim had a knife or not when Applicant returned for the second part of the conflict though she also testified she never saw him with one. (Tr. p. 105, line 24 – p. 106, line 7; p. 115, lines 6-8.)

The defense also presented witnesses. Christian Brand ("Brand"), a friend of Applicant's family and only fifteen years old at the time, was outside Sadie's that evening. According to Brand, Victim had reached into his pocket, retrieved a knife with a black handle, and approached Applicant. Brand agreed that Applicant had run away but came back seconds later. At that point, Victim swung at Applicant, and Applicant fired. Brand testified that Erica was behind Applicant when he fired, only a few feet away. Applicant's sister, Tatiana Rivers, also testified that Victim had swung at



Applicant with a knife prior to the shooting.

In response, the State called Raheem McCrea ("Raheem"), a friend Brand claimed to have been at Sadie's with. Raheem initially denied being with Brand at Sadie's when he met with the solicitor outside of court. However, once on the stand, Raheem stated that he was at Sadie's with Brand. Raheem stated that he believed Victim had a knife and Applicant went and got a gun to defend himself.

After the incident, law enforcement attempted to locate Applicant. Applicant left for Miami, Florida, and was apprehended following a traffic stop nearly two months after the shooting. Victim was treated but never regained consciousness. As the prognosis worsened, the decision was ultimately made to remove life support on June 3, 2008, just over two weeks after the shooting. Victim's wife and brother were given items from Victim's pockets while he was in the hospital. Among the items was a small pocket knife with the blade closed when retrieved by hospital staff. No knife was recovered at the scene.

Failure to Request Pre-Trial Hearing Pursuant to Protection of Persons and Property Act

Applicant asserts that Counsel was ineffective in failing to request a pre-trial hearing pursuant to the Protection of Persons and Property Act, S.C. Code §16-11-410 *et. seq.* (2006) ("Act"). However, at the time of Applicant's trial, such a procedure was not clearly established. In State v. Duncan, 392 S.C. 404, 409, 709 S.E.2d 662, 664 (2011), decided more than two years after Applicant was sentenced, the South Carolina Supreme Court found that:

Whether immunity under the Act should be determined *prior to trial* is an issue of first impression in this state. Further, the Act does not explicitly provide a procedure for determining immunity.

[Emphasis supplied.] In the decision, for the first time, the Court found that the legislature intended



through the Act to shield a defendant from trial and not simply to create an affirmative defense. Therefore, at the time of Applicant's trial, a demand for a pre-trial hearing was not within the common standard of practice. I therefore find that Counsel was not deficient in this regard. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)).

Moreover, even if Counsel had requested a pre-trial hearing, Applicant has failed to show the motion would have been successful. State v. Duncan also announced the proper standard of proof at a pre-trial hearing: "when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." 392 S.C. at 411, 709 S.E.2d 665. The only potentially applicable portion of the Act in Applicant's case would be S.C. Code §16-11-440(C). The primary difference between §16-11-440(C) and self-defense is that §16-11-440(C) does away with the duty to retreat, allowing a person attacked in a place where he has a right to be (other than his dwelling, residence, occupied vehicle, or place of business) to "meet force with force." In Applicant's case, the undisputed evidence is that Applicant did retreat from his encounter with Victim. When Applicant retreated, testimony at trial was that Victim was also pulled away from the scene toward his car, no longer a threat. However, Applicant returned, this time armed with a pistol. The intent of §16-11-440(C) is clearly not to allow an individual in a place other than his dwelling, residence, occupied vehicle, or place of business to leave the area of danger, retreat to safety, then return in order to draw his retreating opponent into a second confrontation where danger to himself and the person he claimed to defend, Erica, had passed upon his retreat. If Applicant had already been armed at the time of the initial confrontation and it



was believed that Victim was armed and attacking Applicant or Erica with a knife, the protection could have foreseeably applied. However, where Applicant retreated and then returned with a pistol visibly in hand, an act which could have ostensibly caused his retreating opponent fear of attack, the Act's protection does not apply.

Even under Applicant's version of events, recounted for the first time at his PCR hearing, Applicant retreated then heard more arguing and returned. In Applicant's version, on his way back toward Victim, his "homeboy" handed him a gun. Applicant's claim that Victim had reignited the argument with Erica following Applicant's retreat is contrary to all testimony at trial. Not even defense witnesses mention that any conflict between Victim and Erica resumed when Applicant left. Most agreed that Applicant was gone for a very short time and that he had walked to a vehicle to retrieve the gun. Erica testified that she had removed herself to an area near a stop sign following the initial confrontation. She had not felt any danger even in the first confrontation. No witness, not even Applicant, testified that Victim threatened Erica with a knife or anything other than words in the first confrontation. In that Applicant's own self-serving statement that he returned only because he heard arguing between Erica and Victim is the only evidence that he had any basis for believing Erica may be the victim of violence without his intervention and contradicts other evidence that Victim was leaving the area, I find that Applicant has not established that he should be entitled to the protections of the Act by a preponderance of the evidence.

Moreover, the jury, charged with the law of self-defense and defense of others, found Applicant guilty beyond a reasonable doubt. For all these reasons, even if Counsel had moved for dismissal of charges pre-trial based on the Act, Applicant would not have been successful in showing he was entitled to its protection by a preponderance of the evidence. Therefore, Applicant has failed



to demonstrate prejudice even if Counsel's failure to request a pre-trial hearing could be considered deficient.

Proximate Cause of Death

Applicant also argued that he believed, in his lay opinion, Victim died due to errors by hospital staff in Victim's care, and therefore he was not the proximate cause of Victim's death. I find no error in Counsel's failure to present such an argument. State v. Doe, 218 S.C. 520, 63 S.E.2d 303 (1951) (defendant guilty of manslaughter where victim died when doctor manipulated gunshot wound several months after gunshot in course of necessary treatment, releasing a blood clot which was immediate cause of death); 40 C.J.S. Homicide §11 (2013); Lorenzen v. State, 376 S.C. 521 S.E.2d 771 (2008) (no prejudice from failure to call expert witness where expert does not testify); See also Graham v. Whitaker, 282 S.C. 393, 399, 321 S.E.2d 40, 44 (1984) ("The intervening negligence of a third person will not excuse the original wrongdoer if such intervention ought to have been foreseen in the exercise of due care.")

Advice not to Testify

Applicant stated that Counsel advised him not to testify at trial. Applicant believes this advice was in error. Applicant stated that Counsel advised him that testifying would not be beneficial due to introduction of his criminal record. Counsel further reflected that he felt that witnesses at trial testified to the facts as Applicant told him. Given that Applicant's record would be introduced and other witnesses would testify to Victim's possession of a knife, Counsel did not believe it was advisable for Applicant to testify. Counsel also stated that Applicant did not want to testify. Applicant's right to testify was also discussed by the trial court. (Tr. p. 136, line 6 – p. 139, line 9; p. 171, line 8 – p. 178, line 1; p. 179, line 21 – p. 181, line 5; p. 184, line 14 – p. 186, line 21; p. 260,



lines 17 – 23.) During colloquy with the trial court, Applicant was informed of his right to testify. Applicant informed the court that he had spoken with his attorney, his mother, and anyone else he wished. Applicant informed the court that his decision was not forced by anyone else.

Based on the foregoing, I find that Counsel's advice in this matter was not unreasonable. Counsel's concern with introducing his client's prior record was reasonable, especially when others would testify as to Victim's possession of a weapon. Further, based on the colloquy with the Court, it does not appear that Applicant's will was in any way overborne; his decision appears to have been made with full consideration of his rights and advice of his attorney and others. For these reasons, I find no error in this regard.

Preparation

Applicant further alleged that his attorney was inadequately prepared for trial. Counsel believed that he was adequately prepared. Counsel had access to all pertinent evidence and even visited the crime scene with Erica McBride. Applicant complains that one taped interview with a witness was not provided to Counsel until trial. Applicant has failed to show that Counsel's preparation was deficient. I further find that Applicant has failed to demonstrate any prejudice in this regard. Applicant has failed to produce any evidence that additional investigation into the facts of the case or would have yielded, and Applicant has failed to show what benefit earlier access to the taped interview would have provided. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result).

Jury Instruction

Applicant also stated that the supplemental jury instruction given by the trial court was in error. The trial court gave the following charge:



Even when a defendant's passion was sufficiently inflamed by a legally adequate provocation if at the time of the killing his passions had cooled or sufficient time had elapsed that the passions of the ordinary reasonable person would have cooled then the killing would not be voluntary manslaughter.

(Tr. p. 334, lines 19-22.) Over defense counsel objection, the trial court charged additionally:

If there was enough time between the provocation, if any, and the killing for the passion for a reasonable person to cool, the killing would not be voluntary manslaughter but instead it would be murder.

(Tr. p. 343, lines 3-19.) I find that this is not a burden-shifting charge. Therefore, Counsel was not ineffective in failing to object on this basis.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be **DENIED AND DISMISSED WITH PREJUDICE**; and
2. The Applicant must be remanded to the custody of the Respondent.



AND IT IS SO ORDERED this 26 day of Nov, 20 .



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit

_____, South Carolina.