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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

JULIAN C. YOUNG,

APPELLANT.

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1 immediate family ever been involved in a case where the
2 Solicitor's office was on the other side? If so, please stand
3 at this time.

4 No one is standing.

5 Alright. The defendant, Julian Young, is present in the
6 courtroom. Mr. Young, would you mind standing, please, sir?
7 Thank you, sir. Okay. Is any member of the jury panel
8 related by blood or marriage or a close personal friend of Mr.
9 Julian Young? If so, please stand at this time.

10 Alright, no one is standing.

11 Mr. Young is represented by Mr. Johnson and Mr. Williams.
12 Mr. Johnson, if you wouldn't mind identifying yourself to the
13 jury, please.

14 MR. YOUNG: My name is Virgin Johnson, my partner, Corey
15 Williams, we practice together right here in Orangeburg.

16 THE COURT: Alright, thank you, sir.

17 COURT REPORTER: I didn't get your name?

18 MR. WILLIAMS: Corey Williams.

19 COURT REPORTER: Thank you.

20 MR. WILLIAMS: And our assistants that are here and
21 present in the courtroom are Mr. William Chain and Ms. Andrea
22 Scott.

23 THE COURT: Thank you, Mr. Williams.

24 Now, is any member of the jury panel related by blood or
25 marriage or a close personal friend of Mr. Johnson or Mr.

1 MR. JOHNSON: But obviously, we have to talk to our
2 witnesses, but - - -

3 THE COURT: Right. yeah, right.

4 MR. JOHNSON: --- but the witnesses should not be talking
5 ...

6 THE COURT: Right, the witnesses should not be talking
7 between themselves. Alright, anything else?

8 MR. JOHNSON: Your Honor, the second motion is, now, it's
9 two parts, Rule Five and Brady. The Solicitor has given me
10 the information but I renew this motion out of an abundance of
11 precaution to make sure there's no new information. We had
12 talked today and it's my understanding I have all the
13 information, but for the record I'm renewing the information,
14 that if there is any Rule Five or Brady information, and Brady
15 being any exculpatory information that would help us, if there
16 is any new information that I haven't got we are asking for
17 that now.

18 THE COURT: Okay. And you've given him all the
19 information, Mr. Sorenson?

20 SOLICITOR SORENSON: I believe, he's come over and I've
21 allowed him to look through the whole book, and what have you.

22 THE COURT: Alright, so I think we've got everything, Mr.
23 Johnson.

24 MR. JOHNSON: Alright, and the last one, which is the
25 most extensive motion, some of the testimony in this case is

1 going to be, I think, from Officer Kendra Williams and a
2 Captain Turner. They had an opportunity to talk to the
3 deceased after he was shot while or nearby the ambulance.
4 They made some statements, they did a statement and in their
5 statements they made, I handed up a Brief to the Court.

6 THE COURT: I've already got -- you were kind enough to
7 give them to me ahead of time - - -

8 MR. JOHNSON: Alright, sir.

9 THE COURT: --- or Mr. Williams gave it to me, I don't
10 know which.

11 MR. JOHNSON: And Your Honor, I've also handed the same
12 Brief to the Solicitor's office. The statement was the victim
13 did not want to talk or answer questions because he advised he
14 was in too much pain. I asked him if he was in the Queen
15 Village, and he shook his head, yes. Then I asked him if he
16 robbed again, and he nodded -- he was robbed again, and he
17 nodded, yes. I asked him how many victim she held up four
18 fingers. I asked if he saw the gun and was it a revolver.
19 Victim nodded yes. When I asked if the gun was silver or
20 black he nodded no for -- he nodded to both. The victim would
21 not give his name or any other information, Captain then
22 turned and went into the ambulance and the victim advised him
23 his name and address. Upon Captain Turner's initial arrival
24 he stated the victim said, they robbed me, they robbed me.
25 And that's when they shot me. Your Honor, my first part of

1 the motion is, Number One, that under Crawford versus
2 Washington, and that was another murder case, that any
3 testimony where the witness is unavailable, in this case he is
4 unavailable, and any testimony, prior testimony where the
5 defendants have not had the opportunity to cross-examine,
6 regardless whether the statements are deemed reliable by the
7 trial court, we are asking that any testimony as to excited
8 utterance be excluded, Your Honor, because it is prejudicial
9 and shifts the burden from the State to the Defendant to prove
10 that he did not say -- that the deceased did not say this.
11 And Your Honor, there's no way for us to cross-examine him,
12 there's no way for this testimony to be reliable. As a matter
13 of fact, it's about as unreliable as you can get. WE have two
14 officers that could allegedly testify that what might have
15 been said in the car, we've never had the opportunity to talk
16 to, cross-examine, or seek any information from the deceased
17 in this case.

18 The second thing, Your Honor, we would like to argue is
19 that that is also hearsay testimony, and again, if the
20 declarant is unavailable to testify at trial and the accused
21 has no opportunity to cross-examine, State vs. Gardner, that,
22 and under Rule Eight 0 Three, that this evidence should not be
23 admitted into trial because it's prejudicial.

24 As to the dying declaration, there may be an exception as
25 to the dying declaration. There are three elements to the

1 dying declaration in South Carolina: One, the death must be
2 eminent at the time the declaration is in question; Two, the
3 declarant must be so fully aware of this as to be without any
4 hope of life; and Three, the subject of the charge must be the
5 death of the declarant and the circumstances of death must be
6 the subject of the declaration. Well, Your Honor, in this
7 case, from Officer Kendra Williams and Officer, and Captain
8 Turner, there is no testimony, there's not even an inference
9 where he was at the point where he thought he was going to
10 die, or it was hopeless or it was eminent, at hand. As a
11 matter of fact, he wouldn't even tell the officer who he was
12 because -- and I think as the testimony goes along the Court
13 will -- the Court doesn't know now but as the testimony goes
14 along we will find out that he was in the business of selling
15 drugs. And I think one of the reasons you can infer from this
16 is, he did not want to give his name because he didn't, he
17 didn't want to get into trouble later on. There is no
18 testimony that was given to us, there's none that we have
19 found that he, himself, thought he was in eminent death. And
20 if he wasn't in eminent death, not only does the State Court,
21 but also the Supreme Court said that is just evidence that
22 cannot be used, and if it's used it's reversible, it's
23 reversible error, it's prejudicial. And we are asking the
24 Court not to allow that, this testimony in under, Number One,
25 dying declaration; Number Two, Eight 0 Three, excited

1 utterance; and Number Three is because our Sixth -- how can we
2 challenge this information if we can never cross-examine him?
3 It's a direct affront to the confrontational clause. So we
4 are asking that the Court not allow any of the testimony from
5 Officer Kendra Williams and Captain Turner as it relates to
6 anything that the decedent might have told them. Now, if
7 they're going to testify to something else they can, only as
8 it relates to the decedent said. And Your Honor, if you look
9 at the Brief, in the Brief it said that a research was done
10 of this particular issue, and the vast majority of the cases
11 does not allow it in. If you allow this testimony in, I mean,
12 it shifts the burden, it shifts it to us. And there's no way
13 for us to cross-examine or prove that he didn't say it,
14 because we didn't get to talk to him. So, we are asking that
15 this testimony not be allowed into this trial.

16 THE COURT: Thank you, Mr. Johnson.

17 Mr. Sorenson, anything in reply?

18 SOLICITOR SORENSON: Your Honor, may it please the Court,
19 I guess the first thing I'm going to say would kind of handle
20 this a little premature because actually I mean, I really
21 think that this is something that needs to be addressed when
22 the witness takes the stand and we have an opportunity to
23 develop what that testimony is going to be. So, I mean, I'll
24 be glad to kind of argue my position right now because that's
25 kind of, I mean, what I think needs to be done.

1 THE COURT: Well, and Mr. Johnson, you know, you have
2 referenced some of the testimony and like that about whether
3 he feels like he's in, close to death or not. Actually, you
4 know, because I haven't heard any testimony, you know, I ,I --
5 I appreciate you making me aware of this issue, and I think
6 after I hear the testimony it will put me in a better to
7 determine how to rule on this.

8 MR. JOHNSON: Well, Your Honor, I would ask that any
9 testimony by either one of those, then, be done first before
10 the Court outside the presence of the jury, because once you
11 ring that bell it's hard to unring it. I mean, if you're
12 going to hear the testimony I would ask the Court to please
13 hear it first prior, outside of the jury, in camera, so you
14 can make your determination and not the possibility of it
15 going before the jury.

16 THE COURT: Is, are any of these people going to testify
17 today?

18 SOLICITOR SORENSON: Sergeant Williams is going to be our
19 first witness.

20 THE COURT: Okay, okay.

21 SOLICITOR SORENSON: And I don't intend on calling
22 Captain Turner, he's not employed, he has charges pending
23 right now in our office, but he's not employed with Public
24 Safety. I did not intend on calling him as a witness, I don't
25 intend on getting into anything the decedent may have told

1 him, so ...

2 MR. JOHNSON: I was about to say, Your Honor, if he's not
3 going to call him, then anything the decedent may have told
4 him is definitely - - -

5 THE COURT: Right, right.

6 MR. JOHNSON: --- hearsay, but we still hold the same
7 position with Officer Williams, and if the Court would in
8 camera listen to the testimony and maybe give us a chance,
9 Your Honor, to cross-examine, and whatever the Court rules
10 after that.

11 THE COURT: Okay. Well, is that ...

12 SOLICITOR SORENSON: That would be fine, Your Honor. And
13 just to give you a little, just briefly kind of address what
14 Mr. Johnson said, I mean, it's our position that basically
15 Crawford would not apply because it's not testimonial
16 evidence. I mean, this wasn't information that was given in
17 basically anticipation of litigation. I mean, this is going
18 to be Your Honor determination in our position whether it's
19 either an excited utterance or a dying declaration. And as I
20 said, I think we need to basically develop, you know, the
21 testimony through Sergeant Williams for Your Honor to make
22 that determination. But that would be our position, because
23 otherwise, under Mr. Johnson's theory, the fact that he
24 doesn't have the opportunity to cross-examine, I mean, you'd
25 never get a dying declaration in because that deals with a

1 homicide, and I mean, the victim's obviously not around to be
2 cross-examined. So, I mean, that ...

3 THE COURT: Alright. Do y'all want to go ahead and do
4 that now?

5 SOLICITOR SORENSON: She's going to be here, I want to
6 say I told her to be here at Twelve:thirty.

7 THE COURT: Okay. Well, do y'all want to ...

8 SOLICITOR SORENSON: We can come back at maybe
9 One:fifteen?

10 THE COURT: Yeah, do y'all come back at One:fifteen and
11 we'll do that?

12 MR. JOHNSON: That's fine.

13 THE COURT: Alright. Anything else before -- we need to
14 do before we take a break until One:fifteen?

15 MR. JOHNSON: Your Honor, there was, and I did not tell
16 the Solicitor this, but there is -- it may not even come up.
17 Nothing else.

18 THE COURT: Alright. Okay. We'll take a break, if
19 you'll be back here at One:fifteen we'll get going on this.
20 Thank y'all.

21 (Recess)

22 THE COURT: Okay. I need to put some things on the
23 record. We have excused ...

24 COURT REPORTER: Wait one minute. Okay, I'm ready.

25 THE COURT: Okay. We have excused two jurors, we've

1 excused Juror Saundra Sumpter, that was Juror Number ...

2 COURT REPORTER: Excuse me just a minute.

3 THE COURT: Ma'am? Saundra Sumpter, that was Juror
4 Number ...

5 COURT REPORTER: I'm sorry, it's happening again, Your
6 Honor. Okay, I'm ready.

7 THE COURT: Alright. The Court has excused two jurors,
8 Saundra Sumpter, Juror Number One Sixty-seven, and Thomas D.
9 Sutcliff, Juror Number One Sixty-eight. When we came back for
10 Court the Bailiff made me aware of some issues. Ms. Sumpter
11 knows the Smalls family, and apparently that is the mother and
12 grandmother of the defendant. There were no possible
13 witnesses with the last name of Smalls, so she does not know
14 the defendant but she knows the family, and she indicated in
15 my conversations in chambers that she did not feel that she
16 could be impartial in listening to the testimony with her
17 knowledge of the family.

18 Mr. Sutcliff was excused, I was made aware of the fact
19 that he has, his being chosen for the jury had caused his
20 blood pressure to go up. He indicated in my conversation in
21 chambers that he was not, he wanted to serve on the jury but
22 in chambers he appeared to be very shaken and on the verge of
23 a panic attack, and so I have excused him from jury duty as
24 well.

25 Mr. Sorenson, any objection from the State?

1 SOLICITOR SORENSON: No, sir.

2 THE COURT: Okay. Mr. Johnson, any objection from the
3 Defense?

4 MR. JOHNSON: No, sir.

5 THE COURT: Alright. Additionally, so that y'all will be
6 aware of it, the jury has picked Mr. Cocke, Michael Cocke,
7 Juror Number Thirty-seven, as the foreperson for the jury.

8 And Ms. Harry Dot, that will be Court's Number One.
9 Okay?

10 COURT REPORTER: Court's One.

11 (Court's Exhibit One
12 marked and filed.)

13 THE COURT: Okay. Alright, now, I know we've got -- would
14 you mind telling the jury it's going to be about Fifteen
15 minutes before I can bring them out?

16 Okay. Alright, Mr. Sorenson, I believe Mr. -- you've got
17 some testimony so I can address Mr. Johnson's motion?

18 SOLICITOR SORENSON: Yes, sir.

19 THE COURT: Okay.

20 SOLICITOR SORENSON: The State would call Sergeant Kendra
21 Williams.

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

24 (Whereupon, Kendra Williams
25 is duly sworn.)

1 CLERK: Please be seated and state your name again for
2 the record.

3 WITNESS: My name is Kendra Williams.

4 SOLICITOR SORENSON: Alright, Sergeant Williams, make
5 sure you keep your voice up nice and loud for me.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court.
9 See next ensuing page for sequential continuation of record.)

KENDRA WILLIAMS - DIRECT, IN CAMERA, BY SOL. SORENSON

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1 KENDRA WILLIAMS - DIRECT EXAMINATION, IN CAMERA,

2 BY SOLICITOR SORENSON:

3 Q. If you would, tell the Court where it is that you're
4 employed?

5 A. South Carolina State University Police Department.

6 Q. Okay. And what are your current duties there?

7 A. I'm a sergeant over the patrol division.

8 Q. Okay. And how long have you worked at S. C. State?

9 A. Since October, Two thousand nine.

10 Q. Alright, now, I want to turn your attention back to the
11 evening of April Fifteenth of Two thousand eleven. Did you
12 have the occasion that night to respond over to Twenty-one
13 ninety-five Russell Street initially in response to a traffic
14 accident there?

15 A. Yes, sir, I did.

16 Q. Okay. And in responding there did you have the occasion
17 then to come in contact with the victim in this case, Jonathan
18 Bailey?

19 A. Yes, sir, I did.

20 Q. Okay. If you would, tell the Court where when you got to
21 that residence, to that location, where Mr. Bailey was located
22 at?

23 A. Mr. Bailey was in the back of the ambulance.

24 Q. Okay. And had you learned whether he had been injured?

25 A. Yes, sir.

KENDRA WILLIAMS - DIRECT, IN CAMERA, BY SOL. SORENSON

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1 Q. Okay. And did you have an opportunity then to kind of
2 check up on him and find out yourself what his physical
3 condition was?

4 A. Yes, sir.

5 Q. Alright. And tell the Court how that, how that went about
6 and what your observations were?

7 A. When I learned that he was in the back of the ambulance I
8 crawled up, I got up in the back of the ambulance. He had a
9 gun shot wound, what appeared to be a gun shot wound to his
10 right chest area. There was also another wound on the left
11 side.

12 Q. Okay. And describe for the Court how Mr. Bailey was
13 acting when you got up into the ambulance with him?

14 A. He was frantic, he was rolling back and forth, he was
15 scared, he kept saying, get me to the hospital, I'm going to
16 die. He was, he was scared.

17 Q. Did he appear in your, in your experience as a law
18 enforcement officer, to be in pain at that point in time?

19 A. He appeared to be in a lot of pain.

20 Q. Alright. And did you then have an opportunity, Sergeant
21 Williams, to question him or to ask him anything about what
22 had happened to him to lead to him being in the back of that
23 ambulance?

24 A. Yes, sir, I did.

25 Q. Okay. And tell the Court, if you would, how that went

KENDRA WILLIAMS - DIRECT, IN CAMERA, BY SOL. SORENSON

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1 about?

2 A. I asked Mr. Bailey if he had been robbed, and he shook his
3 head, yes. I asked him if he had been in the parking lot of
4 Queen's Village, and he shook his head, yes. And I asked him
5 if he saw who robbed him, and he shook his head, yes. I asked
6 him how many? And he stuck his hand up and had four fingers
7 up. I said, four? He shook his head, yes. I asked him if,
8 you know, if he saw the weapon. He shook his head. I asked
9 him if it was ...

10 Q. He shook his head?

11 A. Yes. I guess he had seen the weapon. I asked him if the
12 weapon was silver or black. At that time he was, kept shaking
13 his head, no. And there were some other questions that I
14 asked him, but he did tell me that he lived in Queen's
15 Village. He did tell me that he saw the person who shot him.
16 He told me there was four of them, but most of it was just him
17 shaking his head. He, if he took any kind of effort to speak
18 he would just shake his head and kept saying he's in pain, he
19 couldn't talk he was having a hard time talking, real frantic,
20 still saying, you know, get me to the hospital, I'm going to
21 die.

22 Q. And was he ultimately transported from that scene?

23 A. Yes, sir.

24 Q. Okay. And did you learn later on that evening whether, in
25 fact, he had passed away from his injuries?

KENDRA WILLIAMS - DIRECT, IN CAMERA, BY SOL. SORENSON

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1 A. Yes, sir.

2 Q. Okay.

3 SOLICITOR SORENSON: I beg the Court's indulgence.

4 Thank you, Sergeant, that's all I'd have as to this
5 issue.

6 THE COURT: Alright, Mr. Johnson.

7 MR. JOHNSON: Your Honor, may it please the Court.

8 THE COURT: Yes, sir.

9 (NOTE: Blank lines on this page do not indicate any part of
10 record has been omitted. Headers on testimony pages and hard
11 page breaks between testimony are now required by the Court.
12 See next ensuing page for sequential continuation of record.)

KENDRA WILLIAMS - CROSS, IN CAMERA, BY MR. JOHNSON

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1 KENDRA WILLIAMS - CROSS-EXAMINATION, IN CAMERA,

2 BY MR. JOHNSON:

3 Q. Sergeant Williams, did you sometime give a voluntary
4 statement after this occurred?

5 A. Yes, sir, I did.

6 Q. Who did you give a voluntary statement to?

7 A. It was to, I believe Investigator Johnson with SLED.

8 Q. Okay. And did he ask you about the circumstances of what
9 happened that night?

10 A. Yes, sir.

11 Q. And did you tell him?

12 A. Yes, sir.

13 Q. Okay. And you told him everything that happened?

14 A. If I recall, yes, sir.

15 Q. Okay. Do you have a copy of the statement?

16 A. Yes, sir.

17 Q. Okay.

18 SOLICITOR SORENSON: Just make sure that that's what you
19 want to look at.

20 Q. Okay. You testified today that he was frantic, correct?

21 A. Yes, sir.

22 Q. Okay. Can you tell me in this statement where you said he
23 was frantic?

24 A. No, sir.

25 Q. It's not in here, is it?

KENDRA WILLIAMS - CROSS, IN CAMERA, BY MR. JOHNSON

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1 A. No, sir.

2 Q. Okay. And you also testified today that he said, get me
3 to the hospital, is that correct?

4 A. Yes, sir.

5 Q. Can you tell me which line of the statement he said, get
6 me to the hospital?

7 A. No.

8 Q. It's not in there, is it?

9 A. No, sir.

10 Q. Okay. You said he was scared. Can you tell me which line
11 of the statement that he told you that he was scared?

12 A. No, sir.

13 Q. Okay. Now, this statement was done on
14 Four/Sixteen/Eleven, was that correct?

15 A. Yes, sir.

16 Q. At Four:forty-five P.M., is that correct?

17 A. A.M.

18 Q. A.M. Correct. And you talked to SLED Agent Johnson, is
19 that correct?

20 A. Yes, sir.

21 Q. And you was giving him a full discovery of what you knew
22 about the case, is that correct?

23 A. To my knowledge, yes, sir.

24 Q. Okay. Was that your knowledge then?

25 A. Yes, sir.

KENDRA WILLIAMS - CROSS, IN CAMERA, BY MR. JOHNSON

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1 Q. The thing you said today, was that your knowledge then?

2 A. Yes, sir.

3 Q. But you didn't put it in your statement?

4 A. No, sir.

5 Q. But you said it today?

6 A. Yes, sir.

7 Q. So you, didn't remember it on Four/Sixteen, the day after,
8 but you remembered it today, a year and something later?

9 A. My observation, yes, sir.

10 Q. Okay. Wasn't it your observation then?

11 A. Yes, sir.

12 Q. Okay. But you didn't remember to put that observation in
13 the statement?

14 A. No, sir.

15 Q. Okay. And you didn't remember to put that, get me to the
16 hospital in the statement?

17 A. No, sir.

18 Q. And you didn't remember to put, I'm scared, in the
19 statement?

20 A. He didn't say he was scared.

21 Q. Oh, you said he was scared?

22 A. I said, he appeared to be scared.

23 Q. Okay. But -- Okay, but you didn't put that in the
24 statement, did you?

25 A. No, sir.

KENDRA WILLIAMS - CROSS, IN CAMERA, BY MR. JOHNSON

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1 Q. And you didn't put in the statement that he was frantic?

2 A. No, sir. I didn't put anything in the statement about my
3 opinion. Everything in here is, it's not my opinion. In my
4 opinion he appeared scared.

5 Q. Okay. Okay. But you said he said, get me to the
6 hospital, and that's not your opinion, but he didn't say, you
7 didn't put that in your statement, is that correct?

8 A. No, sir, I did not.

9 Q. Okay. Alright, Now, the other thing I want to get to is,
10 when you got to the scene he was in the ambulance, is that
11 correct?

12 A. Yes, sir.

13 Q. And you went in and you started asking him questions, is
14 that correct?

15 A. Yes, sir.

16 Q. When you got in the door he didn't blurt out, I'm in pain,
17 he didn't blurt out -- you started asking him questions and he
18 responded to your questions, is that correct?

19 A. Yes, sir.

20 Q. Okay. And you made a determination that none -- I can't
21 cross-examination you on a head shake, so today you are
22 telling us you determined that when he shook his head it was,
23 yes or no?

24 A. Yes, sir.

25 Q. But there is no other testimony we've got other than the

KENDRA WILLIAMS - CROSS, IN CAMERA, BY MR. JOHNSON

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1 fact that you say he shook his head, yes or no, there's no
2 other objective testimony that he did that, is that correct?

3 A. Yes, sir.

4 COURT REPORTER: You said, yes, sir?

5 A. Yes, sir.

6 Q. When you got to the scene were there a lot of people
7 standing around?

8 A. There were some police officers from public safety, and I
9 believe one or two from the county.

10 Q. Okay. Did you, how long after the incident occurred do
11 you think you got to the scene?

12 A. I'd have to look at the time.

13 Q. Okay. And he couldn't tell you what kind of gun it was,
14 you said he said it was a revolver, he couldn't tell you the
15 identity of the gun, is that correct?

16 A. No, sir, he didn't say revolver, I asked him, and he just
17 shook his head.

18 Q. Okay. So, quite frankly, he didn't give you any response,
19 all you got is nods?

20 A. Yes, sir. I mean, every once in a while he was say, yes
21 or no, but mainly it was just the nods.

22 MR. JOHNSON: Your Honor, indulge me just one second.

23 THE COURT: Okay. Take your time.

24 Q. Didn't you arrive, and initially he wouldn't tell you his
25 name?

1 A. He didn't tell me his name.

2 Q. Okay. You asked him and initially he wouldn't tell you
3 his name, is that correct?

4 A. Yes, sir.

5 MR. JOHNSON: Your Honor, that's all I have.

6 THE COURT: Okay. Anything on redirect?

7 SOLICITOR SORENSON: No, sir.

8 THE COURT: Alright. You may step down. Thank you,
9 ma'am.

10 Any other witnesses?

11 SOLICITOR SORENSON: No, sir.

12 THE COURT: Okay. Alright. Alright, any witnesses for
13 the Defense?

14 MR. JOHNSON: No, sir, Your Honor.

15 THE COURT: Alright. I'm aware of your -- I have read
16 your Memo, I remember your argument.

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Anything you want to add to that?

19 MR. JOHNSON: Your Honor, I definitely - - -

20 THE COURT: Yes, sir.

21 MR. JOHNSON: --- I want to, on the excited utterance,
22 Your Honor, excited utterance has to be an utterance that
23 somebody blurts out without any response. She said he didn't
24 -- I asked her and she specifically said he didn't blurt it
25 out, she specifically said she asked him the questions. This

1 is, an excited utterance is one which, and I had the rule, "a
2 startling event or condition made while the declarant is under
3 stress or excitement caused by the event or condition." It's
4 startling. There's nothing about this that's startling. He
5 was in pain, you know, that's a given, but there was nothing
6 about startling. So, definitely, it's not an excited
7 utterance. Then the only question left is if he was a dying
8 declaration. Now, Your Honor, you heard me cross-examine her
9 on her statement. Now, the statement on that night mentioned
10 nothing about, get me to the hospital. And get me to the
11 hospital still don't say he think he's going to die. He said
12 get me to the hospital because I'm shot, I'm hurt. There is
13 no definitive statement about him with an impending death or
14 loss of hope as it relates to life. And then, Your Honor,
15 even if there was, I think it's the Four 0 Three, it's more
16 prejudicial than probative. So, there's not an excited
17 utterance, there's not a dying declaration, and even if there
18 was, it's more prejudicial than probative because we've got
19 nods that we can't cross-examine, we have nobody that can
20 verify these statements. So, it's highly prejudicial, highly
21 unreliable, and again, it shifts the burden. And I know His
22 Honor knows this, but in a case like this, particularly a
23 dying declaration, I mean, it -- I mean, not only does it
24 shift the burden, I think the case that we read, it's just,
25 that's definitely prejudicial and it's an error of law, it's

1 reversible. I mean, and how we unring, I mean, if we let this
2 prejudicial testimony get to a jury how do we unring that
3 bell? It's not, you can't do it. So, we are asking the Court
4 to bar all of that testimony as not an excited utterance, as
5 not a dying declaration, and even if there was it's more
6 prejudicial than probative. And I ask that the arguments that
7 were made in the Brief be part of my argument to you to make
8 sure I didn't overlook any details.

9 THE COURT: Alright, thank you, Mr. Johnson.

10 Alright, Mr. Sorenson, any response? Or Mr. Bell, I'm
11 sorry, Mr. Bell.

12 MR. BELL: Your Honor, first of all, I think the main
13 question, or the threshold question is whether this is
14 testimonial or not under Crawford versus Washington, and while
15 I would argue, or I would concede it's close, I think it's
16 not, I think from the totality of the circumstances, I mean,
17 the officer didn't put in there, you know, all about the dying
18 declaration and all that to make it prosecutorial testimonial,
19 but even the answers, I think it has to be the declarant's
20 state of mind that that's going to be used down the road in a
21 prosecutorial setting, and nods and not giving your name is, I
22 think goes against, or shows that he didn't want it to be
23 used, it doesn't show his state of mind. He's in pain, he's
24 wanting to get to the hospital because he said, I'm going to
25 die. So, I think it's non-testimonial to get past that

1 threshold. And then, is there an exception to which it can
2 come in. And Number One, our exception is dying declaration,
3 of course. The officer testified, get me to the hospital, I'm
4 dying. I don't know how much more state of mind a person is
5 that they're under impending death or no hope that, I'm dying,
6 get me to the hospital. I mean, I think that clearly shows
7 that he's under the influence of his dying declaration. The
8 fact that's he's using nods instead of being able to
9 articulate these questions to the officer shows that, that
10 this isn't an interrogation, per se, because, you know, he's
11 not formally verbalizing these answers.

12 And also, an excited utterance, I mean, he's just been
13 shot and he thinks he's dying, I don't know how much more
14 excited you can be in that. I think that's basically what it
15 is.

16 And furthermore, talking about prejudice, he says it's
17 prejudicial but it's not prejudicial to his client because, A,
18 he doesn't mention his client's name, he only says there's
19 four people involved without specifically naming anybody. The
20 only prejudice is, he was robbed, but he doesn't say, you
21 know, Julian Young, or whoever, robbed me, he just says, I was
22 robbed, four men used a gun.

23 THE COURT: Okay. Mr. Bell, let me ask you a question.
24 You're not indicating that the last sentence in that statement
25 is going to be admissible in this argument, is it?

1 MR. BELL: The last ...

2 THE COURT: The last sentence, what Captain Turner said.

3 MR. BELL: Oh, no.

4 THE COURT: I just wanted to make sure.

5 MR. BELL: No.

6 THE COURT: Alright.

7 MR. BELL: Just what Officer, Sergeant Williams said.

8 THE COURT: Okay. Alright, anything else?

9 MR. BELL: No.

10 THE COURT: Okay. Thank you.

11 Anything in reply?

12 MR. JOHNSON: Your Honor, just quickly, I mean, the
13 statement just said, four men, but it happens so, one of those
14 happens so they're alleging that my client is one of those
15 four men. So, it is prejudicial to him, because he's sitting
16 to the table. And with the state of mind, Your Honor, it
17 says it has to be decisive and not left to conjecture and ...

18 THE COURT: You mean, his dying declaration?

19 MR. JOHNSON: --- in the dying declaration, it has to be,
20 and it has to be, not, I guess, it has to be threat of eminent
21 death and death is near, and if it's conjecture or if it's
22 speculative, he has to know, the case law says he has to know
23 he's dying. That testimony did not come forward today.

24 THE COURT: Alright. Thank you, sir, alright.

25 This is my ruling. Okay? I've got questions about

1 whether or not it's a dying declaration, the statement about
2 needing to get to the hospital, I'm going to die, it's not in
3 the statement. So, I do have an issue about whether or not
4 it's a dying declaration, but I'm not going to decide that on
5 that issue. I'm deciding it on whether or not it's excited
6 utterance based on the totality of the circumstances. There
7 are three elements to an excited utterance. This kind of
8 relates to the startling event. A gentleman has just been
9 robbed and shot. While the declarant was under the stress of
10 excitement, this was shortly after the event, and he was in
11 the ambulance, I think it's unquestioned that he was in a
12 stressful situation, and her testimony, Sergeant Williams's
13 testimony would back that up. Number Three, or the third
14 element of excited utterance is that the stress of the
15 excitement must be caused by a startling event. And I think
16 it's unquestioned that the stress that the victim was under,
17 Mr. Bailey was under was caused by the robbery and the
18 shooting. Additionally, he was an actual witness and had
19 first hand knowledge to the event so he can talk about it.
20 And so, I find that it is an excited utterance and she can
21 testify as to that amount. Now, that does not include the
22 last sentence about what Sergeant Turner said in that. That
23 is not a part of what she can testify to as an excited
24 utterance.

25 MR. JOHNSON: But, Your Honor, can I say ...

1 THE COURT: Yes, sir.

2 MR. JOHNSON: May I say one thing?

3 THE COURT: Yes, sir.

4 MR. JOHNSON: Now, Mr., he brought up some of the nodding
5 of the head as an excited utterance?

6 THE COURT: Yes, sir. Yes, sir. You can have non -- you
7 can have essentially statements made that are, you know,
8 physical, like something that someone does physically can
9 essentially be an excited utterance.

10 MR. JOHNSON: Just, Your Honor, for the purpose of ...

11 THE COURT: I note, I note your objection to it, yes,
12 sir.

13 MR. JOHNSON: Yes, sir, note my objection.

14 THE COURT: Yes, sir.

15 MR. JOHNSON: And you said in the totality of the
16 circumstances, the three arguments, you know, I thought the
17 motion was to, in the light most favorable to the moving
18 party. As you look at the totality of the circumstances, the
19 nearness of it, the fact that he was, she doesn't -- you
20 remember me asking her, she doesn't know how close it was, she
21 doesn't remember. She said she got to the scene after the
22 fact. So, she doesn't know how close the shooting was, if
23 that was the nearness for the excited utterance. And we don't
24 know if it was an hour, we don't know if it was two hours, so
25 he was in pain, so his argument, is the ruling that because he

1 was in pain it's an excited utterance?

2 THE COURT: I'm ruling, because he is in the ambulance
3 after he had just been shot and robbed, he's still under a
4 stressful event at that point. So, at that point it meets one
5 of the elements of an excited utterance.

6 MR. JOHNSON: Alright, sir.

7 THE COURT: So, hopefully, I clarified that.

8 MR. JOHNSON: Yes, sir.

9 THE COURT: But it's not, but I note your objection to
10 any and all parts of it, Mr. Johnson.

11 MR. JOHNSON: Yes, sir, yes, sir.

12 THE COURT: Okay. Alright, thank you, sir.

13 MR. BELL: Your Honor, I think to make sure the record is
14 clear, I think the State would ask that you probably need to
15 make a finding on whether it's testimonial or non-testimonial,
16 I think under Crawford versus Washington as well, just to
17 protect ...

18 THE COURT: Okay. I'm going to let it in, I say it will
19 be non-testimonial and let it in. It's just part of his
20 excited utterance at the time, whether or not -- you know, the
21 purpose of letting an excited utterance in is that he doesn't
22 have time for any kind of reflective thought. And so, right
23 now, this is a gentleman that's just been robbed and shot,
24 he's in an ambulance, and I don't think based on the testimony
25 I heard that he had time to have much reflection about what

1 was going on so he could make up a story. Okay? He was just
2 answering questions that were posed to him by a police officer
3 trying to get to the bottom of the situation.

4 MR. BELL: I understand, I'm just trying to make sure the
5 record is clear, Your Honor.

6 THE COURT: Yes. And we want it as clear as it can be.

7 MR. BELL: Yes, sir, yes, sir.

8 THE COURT: Okay. Anything else?

9 MR. JOHNSON: Your Honor, and the fact that he refused to
10 tell them who he was does not give him time to be reflective?
11 He refused, they asked who, he refused -- she testified he
12 refused to say who he was. So, that's reflection.

13 THE COURT: As -- well, I'm going along with this -- I
14 understand your arguments, Mr. Johnson, I think you got, I
15 hope you got all of your points in.

16 MR. JOHNSON: Yes, sir.

17 THE COURT: You know, if not, let me know which other
18 points you want me to put in there.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: But I do believe it's an excited utterance.
21 Again, the last part of that statement does not go into the
22 record. Okay? Alright, anything else?

23 MR. JOHNSON: No, sir, thank you.

24 THE COURT: Okay, thank you.

25 Alright, are we ready to bring the jury in? Alright,

1 bring them on out.

2 SOLICITOR SORENSON: Your Honor, can our first witness
3 stand here during the openings or does she need to go out for
4 openings?

5 THE COURT: Is it alright for her to stay in for
6 openings, the first witness?

7 MR. JOHNSON: That's Ms. Williams? Yes, it's fine.

8 THE COURT: Okay. Alright.
9 (Whereupon, the jury enters
10 the courtroom.)

11 THE COURT: We're getting ready to begin the trial of
12 this case. Before we can begin the trial y'all have got to be
13 sworn in as jurors. So, I'm going to ask you to please stand
14 and raise our right hand, and Ms. Ferguson will swear you in
15 as the jury on this case.

16 (Whereupon, the jury is duly
17 sworn and impaneled.)

18 CLERK: Thank you.

19 THE COURT: Alright, thank y'all very much. And Mr.
20 Cocke, congratulations on being named the foreperson.

21 Okay, Ladies and Gentlemen, this is Indictment Number
22 2011-GS-38-1833, State versus Julian C. Young, and we're about
23 to begin the trial of this case. What I'm going to do right
24 now is to give you kind of an overview, hopefully, of what you
25 can expect in this trial. As you have been told before, Mr.

1 Young has been indicted for the crime of murder, and the
2 elements of murder will be explained to you later, but this
3 indictment is simply a charge by which this case is brought to
4 Court. It is not evidence in any sense of the word.

5 The defendant has pled not guilty to this indictment and
6 therefore the State has the burden of proving each of the
7 elements of the indictment beyond a reasonable doubt. And it
8 will be your duty, Ladies and Gentlemen, to decide whether or
9 not the State has met that burden.

10 Your job, your duty as jurors is to find and determine
11 the facts in this case. You are the sole judges of the
12 facts. If I make any comment regarding the facts in this case
13 I ask you to disregard it, you must disregard it. You are to
14 determine the facts from the testimony that you hear from this
15 witness stand and any other evidence that is introduced in
16 Court. It is up to you to determine the inferences which you
17 feel may properly be drawn from the evidence. It is
18 especially important that you perform your duty in determining
19 the facts diligently and conscientiously because ordinarily
20 there is no way to correct an erroneous determination of facts
21 by a jury.

22 The law that makes you the judges of the facts makes me
23 the judge of the law. The law as given by the Court is the
24 only law you must consider. You must accept it and follow it
25 even though you may disagree with it. I cannot tell you what

1 the facts are and you cannot disagree with me about what the
2 law is or should be. Your job is to take the law as I give
3 it to you and apply it to the facts as you find them from the
4 testimony of the witnesses and any other evidence that is
5 introduced during this trial. After doing that you will render
6 your verdict, a true and just verdict under the solemn oath
7 that you just took as jurors.

8 As I mentioned earlier, until I advise you to begin your
9 deliberations you must not discuss this case with anyone,
10 including fellow jurors. You cannot discuss it with family,
11 friends, or anyone else involved in this case or not involved
12 in this case. After the case is submitted to you, you must
13 discuss it only in the jury room among your fellow jurors.
14 The parties and the attorneys have been advised that they are
15 not to talk to you at all, so if you see them in the hall and
16 they don't speak like we always do in the South, we always
17 speak and say, hello, they're not being rude, they're
18 following my instructions. They cannot speak to you.

19 During the trial you may not read, look into, watch any
20 news reports or go on the internet to try and read anything
21 about this case. If you find that there is something in the
22 newspaper about it, you cannot read that article. If you hear
23 something on the radio or see something on T.V. you cannot
24 listen to it or watch it. Okay? You are not to consider
25 anything about this case except what you hear in this

1 courtroom, and you're not to do any kind of investigation like
2 I mentioned earlier. Once -- at the end of the day you will
3 know some more facts about this case but you are not to go on
4 the internet and try to find out anything else. Everything
5 you will need to know for you to make your decision in this
6 case you will know and find out in this courtroom.

7 It is important that you keep an open mind and not decide
8 any issue in this case until all of the evidence has been
9 presented, the parties have made their closing arguments, and
10 I have instructed you on the law in this case. It is your
11 solemn responsibility to determine the guilt or innocence of
12 the defendant and your verdict must be based solely on the
13 evidence as it is presented to you in this trial and on the
14 law as I will instruct you during and at the close of the
15 trial.

16 In a moment the Solicitor will make an opening statement,
17 at which time he will explain to you what he believes are the
18 important issues in this case. The attorney for the defendant
19 will also make an opening statement in which he will advise
20 you of the issues he believes are important in this case.
21 What the attorneys tell you in their opening statements is not
22 evidence, it is only their contention as to what the issues
23 are. The evidence in this case will be presented from the
24 testimony of sworn witnesses from this witness stand and from
25 any exhibits that are made part of the record.

1 Now, at times, from time to time during this trial I will
2 have to excuse y'all from the courtroom, and the reason you
3 will be excused from the courtroom is because at certain times
4 I will have to listen to arguments of the attorneys about
5 certain areas of law. If that comes up when we are talking
6 about the law it will require me to at sometime make comments
7 about the facts. Since I am not allowed or supposed to
8 influence you about the facts at all, you will not be present
9 in the courtroom while I discuss those matters so that it can
10 in no way prejudice you about what you determine to be the
11 facts in this case, because as I will tell you over and over
12 both now and at the end of this case, the only people that can
13 determine the facts in this case are you. You're the only
14 ones.

15 In determining what the true facts are in this case you
16 must decide whether or not the testimony of a witness if
17 believable. It is my responsibility to rule as a matter of
18 law as to whether certain testimony is admissible, but once
19 the testimony is admitted, whether or not you believe it is
20 solely for you to determine. In deciding whether to believe a
21 witness you have the right to consider the interest of any
22 witness, the bias of any witness, the prejudice of any
23 witness, the opportunity for the witness to have seen the
24 matters and things about which the witness may testify, and
25 the way the witness acts on the witness stand. You have a

1 right to consider anything that is in the record that will
2 help you evaluate the testimony of these witnesses. That
3 means that it is your duty to pay close attention to them, to
4 observe them, to listen to them, and to pay close attention
5 to the attorneys and the Court.

6 Please give strict attention to the testimony in this
7 case so that at the end of all the testimony, after the
8 arguments of counsel and the charge on the law by me, you will
9 then be in a position to determine what the true facts are and
10 apply the law to those facts and then render a true and just
11 verdict.

12 Mr. Sorenson, or Mr. Bell, excuse me, Mr. Bell.

13 SOLICITOR BELL: Thank you, Your Honor, if it please the
14 Court.

15 THE COURT: Certainly.

16 SOLICITOR BELL: Mr. Johnson, Mr. Williams.

17 OPENING STATEMENT BY SOLICITOR BELL:

18 Mr. Foreman, and Ladies and Gentlemen of the jury, greed
19 with a window of opportunity sometimes leads to bad results.
20 In this case it led to a deadly result. Back on April
21 Fifteenth of Two thousand eleven, in the married housing just
22 off the edge of South Carolina State University campus the
23 victim in this case, Jonathan Bailey, was shot and eventually
24 died as a result of that shot by this man, Julian Young.

25 What you will hear during this case is that three fellows

1 came up from Charleston to get up with some other fellows here
2 in Orangeburg. They met up at Pine Hill Apartments, the three
3 individuals, Maurice Thompson, Ray Alston, and another fellow
4 named Timothy Harrison, went up to an apartment, they got up
5 with Hilliard Pinckney. Julian Young was there, it was kind
6 of a place where they make music, they had some engineering
7 boards and all. During the course of them being there
8 together it was decided mainly by Ray Alston and Julian Young,
9 and you will find out that Ray Alston goes by the name of Big
10 Man, or Big Ray, and Julian Young goes by the name of Gouda,
11 they decided they needed some weed, some marijuana. So,
12 Julian Young started calling a fellow he had met on campus to
13 try to find some marijuana. Later that night, probably about
14 Ten:thirty or Eleven o'clock four people, Julian Young,
15 Maurice Thompson, Ray Alston and Hilliard Pinckney, go up on
16 the campus of State to pick up another individual named Ricky
17 Gipson, or who they call the college kid or the college guy.
18 They picked him up and went back off campus, went around
19 Russell Street, came onto the street that goes to the married,
20 the college married housing which I think is Bailey Street,
21 and the parked, they backed in and parked. Not long after
22 Jonathan Bailey showed up in his vehicle. Ray Alston, Ricky
23 Gipson and the defendant, Julian Young, get out of the
24 vehicle, they were all in the back seat. Ricky Gipson goes up
25 and kind of introduces them and then backs off. Ray Alston

1 gets in the vehicle to make the purchase. He's the one that
2 had the money, he was going to make the purchase. But he got
3 in the vehicle, looked at the marijuana, and he didn't like
4 it, he didn't like it, it was brown, he didn't want it. So,
5 he got out of the vehicle and went around, when all of a
6 sudden Julian Young reaches in through the window and the
7 testimony as you will hear, at some point while he's in the
8 window, the car revs, the victim's car revs, and backs up out,
9 somebody hears a pop, and all of a sudden Julian Young is out,
10 and that vehicle takes off. And where it goes, it goes down
11 Bailey, it goes out onto Russell Street and does a One hundred
12 and eighty degree, and runs into a house. At that point the
13 police are called, and these four individuals in their
14 vehicle, they take off, they go down the same street and take
15 a right, and they go back, and go back to the Pine Hill
16 Apartments off of St. Matthews. The police are called
17 thinking this is a traffic accident. When they get there they
18 find the victim, Jonathan Bailey, in the car and they find a
19 gun shot wound to his right side from which he died. And
20 that's why we're here, Ladies and Gentlemen, because this
21 individual has been charged with murder.

22 Basically, what the State would allege and what we feel
23 the testimony is going to show is that he tried to rip off
24 Jonathan Bailey and that when Jonathan Bailey tried to get
25 away he shot him because he was trying to flee. And the

1 reason that, you know, he tried to rip him off is, think about
2 it, it's an easy mark, a guy selling marijuana, who's going to
3 complain about being robbed, because he was selling marijuana?
4 But in this case it went too far, in the ultimate death of
5 Jonathan Bailey.

6 My name is Harrison Bell, along with Don Sorenson we
7 represent the State of South Carolina and it's our honor and
8 duty to prosecute this defendant for the crime of murder for
9 killing Jonathan Bailey on the night of April Fifteenth, Two
10 thousand eleven. We have the burden of proof, that is, we
11 must prove to you beyond all reasonable doubt that that
12 defendant is guilty of murder. He has nothing to prove, he
13 sits there innocent and he doesn't have to put up evidence, he
14 doesn't have to testify, he doesn't have to do a thing. He
15 has to force us to prove the case against him, and that's what
16 we're here to do.

17 Now, Ladies and Gentlemen, in order to do that we must
18 prove each element of the crime of murder. And the elements
19 of the crime of murder are the unlawful killing of a person
20 with malice aforethought, either express or implied. What
21 does all that mean, what does all that legal mumbo jumbo mean?
22 Well, easily, we must prove that somebody was killed by
23 another, with malice. Malice means ill will or hatred or some
24 type of reckless disregard for human life, and it must exist
25 right before the act. It can be a millisecond before the act,

1 but it must exist before the act. And malice express or
2 implied, there aren't different kinds of malice, it's just the
3 way in which they can be proved. For example, express malice
4 can be proved if somebody, there is testimony that a person
5 said, I'm going to kill you, that's express malice. Or they
6 were lying in wait for somebody. Implied malice means you
7 have to look at the circumstances. The use of a deadly weapon
8 you can imply, or the fact that during the commission of a
9 crime, another crime - - -

10 MR. JOHNSON: Your Honor, I have a motion before the
11 Court, please.

12 THE COURT: Okay. Alright. Do I need to excuse the
13 jury?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Okay. Ladies and Gentlemen, I'm going to
16 excuse y'all to go back into the jury room for a second.
17 While you're back there, remember you cannot begin talking
18 about this case at all. Okay? Go back.

19 (Whereupon, the jury retires
20 to the jury room and the following
21 takes place out of the presence
22 of the jury.)

23 THE COURT: Mr. Johnson, let me hear from you, please,
24 sir.

25 MR. JOHNSON: May it please the Court. At this time I

1 would move before this Court for a mistrial based upon the
2 fact that this, Mr. Bell just said that it can be implied from
3 a deadly weapon. That is not the case law. The jury just has
4 been told they can be implied that there was a deadly weapon
5 involved that you can find him guilty of murder and that
6 creates malice. It does not create malice, and if there's any
7 other, if -- the law is if there's any other evidence at all
8 you cannot imply or infer malice from a deadly weapon, and
9 they just have been told that you can infer malice from a
10 deadly weapon, and I don't think you can cure that.

11 THE COURT: Alright, Mr. Bell.

12 SOLICITOR BELL: Your Honor, I think Mr. Virgin has
13 confused the law. The law I think that has become is that if
14 there is evidence of self-defense, and the Court is going to
15 charge self-defense, the Court cannot charge -- and if that
16 self-defense involves a weapon, the Court can't charge that
17 implied malice, or malice can't be implied from the use of a
18 deadly weapon. However, I think the same case, however, says,
19 there's nothing that prevents the State from arguing the use
20 of a deadly weapon can imply malice. And implication of
21 malice from a deadly weapon is good law in South Carolina, has
22 been forever as far as I know.

23 THE COURT: I think, -- yes, sir, Mr. Johnson.

24 MR. JOHNSON: The implication of malice is there is not
25 any testimony that would reflect any other lesser charge is

1 the law, not the fact that you can infer malice. That has
2 been, I think it is State versus Belcher, is that State versus
3 Belcher? That is not the law.

4 THE COURT: Alright, if I recall, and -- if I recall,
5 Belcher is a fairly recent case where they said, you cannot
6 charge the implied malice charge when there is evidence of
7 self-defense.

8 MR. JOHNSON: Your Honor, I may have read the case
9 wrong, but my understanding of the case is that whether you
10 charge self-defense or not, whether it's accident or not, it
11 cannot be inferred if there is any other evidence, it's not
12 just self-defense. Maybe I understood it wrong.

13 THE COURT: Well, the way it reads, it says, "A jury
14 charge" -- now this is a jury charge -- "instructing malice
15 may be inferred from the use of a deadly weapon. That malice
16 may be inferred from the use of a deadly weapon is no longer
17 good law in South Carolina where the evidence is presented
18 that would reduce, mitigate, excuse or justify the homicide."

19 MR. JOHNSON: Yes, sir. It is, it is a jury charge, but
20 if you tell the jury that now, the jury in the whole
21 deliberation, if they hear about a gun they're going to be
22 saying, well, we can infer, it's planted now that they can
23 infer from a gun, and that's just not the law.

24 THE COURT: Well, you have the absolute right in your
25 opening argument to tell them that, you know, it cannot be

1 inferred if there is any evidence which would reduce,
2 mitigate, excuse or justify the homicide.

3 MR. JOHNSON: Well, just note my objection.

4 THE COURT: Okay. Alright.

5 MR. BELL: Well, I think the case goes on to say, the
6 prosecution can argue it.

7 THE COURT: Well, I -- I'm not ruling that you can argue
8 it, Mr. Bell, I'm just merely mentioning that -- I'm going to
9 note your objection to his statement. I'm going to let him
10 complete that. You get the right to argue it, and then, as far
11 as the charge on the law once all the evidence is in, I plan
12 to make the correct charge to the jury at that time. Okay?

13 MR. JOHNSON: Thank you, sir.

14 THE COURT: Okay. Thank you, sir. Alright, would you
15 bring the jury back in?

16 MR. JOHNSON: Can it be overruled on in front of the
17 jury, Your Honor?

18 THE COURT: Huh? Oh, no, sir.
19 (Whereupon, the jury enters
20 the courtroom.)

21 THE COURT: Mr. Bell, proceed, please, sir.

22 SOLICITOR BELL: Thank you, Your Honor.

23 OPENING STATEMENT BY SOLICITOR BELL CONTINUES:

24 As I was saying, Ladies and Gentlemen of the jury,
25 malice, inferred malice is not a different type of malice, it

1 can be inferred from the circumstances surrounding the crime,
2 such as use of a deadly weapon, or involvement in another
3 crime.

4 Now, the State must prove each element of murder, that
5 is, the unlawful killing, malice aforethought, beyond all
6 reasonable doubt. And what's reasonable doubt? Well, what
7 it's not, Number One, is beyond all doubt, beyond every doubt,
8 or beyond, if you like old movies, beyond the shadow of a
9 doubt. It's not that extreme. Beyond all reasonable doubt.
10 One definition for reasonable doubt is, proof beyond all
11 reasonable doubt is proof that leaves a reasonable juror
12 firmly convinced of the guilt of the defendant. That's one
13 definition, I'm sure you'll hear others during the course of
14 this trial, and at the end of the trial as Judge Dickson gives
15 you the charge.

16 Now, Ladies and Gentlemen, as you've heard, we've got
17 Judge Dickson, who is the judge of the law. That is, what he
18 tells you about the law during the course of this case you
19 must follow. You just took an oath to follow that law even if
20 you don't like it, you've got problems with it, that cannot
21 enter into it. But he's not the only judge in this courtroom.
22 You, Ladies and Gentlemen, as the jury are the judges of the
23 facts, and nobody in this courtroom can tell you how to find
24 those facts. Judge Dickson can't tell you how to find those
25 facts, the prosecutor, I can't, the defense attorney can't,

1 it's solely up to you. You listen to testimony that comes up
2 on this witness stand plus any and all evidence that is
3 entered into the record, and you use that to find the facts of
4 this case. And at the end you will take those facts and you
5 will apply the law that Judge Dickson gives you to render a
6 verdict.

7 Now, as I said, part of what you do is, you listen to
8 testimony, and as Judge Dickson has told you, part of your job
9 is to determine the credibility or the believability of the
10 witnesses. And you're going, well, how do I do that? Well, I
11 wish I could tell you a sure fire way. The only way I can
12 suggest to you is that you do like you do every day of your
13 life when you talk to your friends, family or strangers. When
14 they tell you something you usually have a pretty good idea
15 whether somebody is handing you a line or they're being
16 straight up with you. You use that same standard, You didn't
17 change coming into the courtroom in using that way to
18 evaluate how people tell you, tell you a story or determine
19 whether somebody is telling you the truth or not. And I ask
20 you to use that same method in this courtroom today.

21 Now, Ladies and Gentlemen, I will say that, as Judge
22 Dickson told you, all I can ask of you, all we can ask of you
23 is to listen carefully to all the testimony that comes from
24 the witness stand, observe all the exhibits that we present
25 and that anybody presents in this case, because it is

1 important. It's an important day for the State of South
2 Carolina, we're here to uphold our laws, it's an important day
3 for the Bailey family because they're here to seek justice for
4 their son, and it's an important day for the defendant because
5 his liberty is at stake. But in the end, Ladies and
6 Gentlemen, I believe that the State will give you more than
7 enough testimony, more than enough evidence to find the
8 defendant, Julian Young, guilty of murder.

9 Thank you.

10 THE COURT: Thank you, Mr. Bell.

11 Mr. Johnson.

12 MR. JOHNSON: Your Honor, may it please the Court.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: Solicitor Bell and Solicitor Sorenson.

15 OPENING STATEMENT BY MR. JOHNSON:

16 It's about Two:thirty. My name is Virgin Johnson,
17 Junior, and my partner is Corey Williams, and the young man
18 sitting beside him is Julian Young. Julian is charged with
19 murder, just like Mr. Bell said. That he will be charged --
20 and charged means he's not guilty. If the judge stops this
21 case right now, if everybody go home, y'all would have to find
22 him not guilty, because he's charged, you haven't heard any
23 evidence, and until you Twelve people say he is guilty, he is
24 not guilty. You have to listen to what's said here, and after
25 you've listened to all of it, then you Twelve determine the

1 facts of whether or not he's guilty. You can't do it by
2 suspicion, you can't do it by guessing, you have to do it from
3 the facts. And anytime you are in a tragic situation
4 sometimes our emotions come into being, but you don't have the
5 luxury of your emotions, you have to do what is right based
6 upon the facts. And a lot of times what is right is tough to
7 do.

8 Now, I'm not going to do a lot in the opening because
9 I'll probably talk more in the closing. They say they're
10 going to prove it to you, and they're going to prove it beyond
11 a reasonable doubt. The definition that I usually use is a
12 doubt which would cause one to hesitate to act. Proof beyond
13 a reasonable doubt, if it causes you to hesitate to act,
14 that's a reasonable doubt. I heard Attorney I. S. Levy
15 Johnson argue when I was much younger, and I didn't think it
16 was important, but while I was sitting over there he argued
17 the case, and he said, where's the beef? Those commercials
18 about where is the beef, he said, where is the beef? Now, I
19 want the Solicitor today and this week to give y'all some
20 beef, because I tell you today, there is no beef. There is no
21 testimony, and we believe from the evidence we have seen,
22 there is no testimony that you Julian had a gun there. You
23 may be able to infer it, but no testimony. There's no
24 testimony of anybody going there to rob anybody. So, if he
25 was shot with a gun through the side and if Julian didn't have

1 the gun, then that would cause one to hesitate to act.

2 Now, you're going to see me jumping up and down. I'm
3 here, I feel sorry because there's really two tragedies in
4 this case, the Bailey had a tragedy, they lost a son, I'm very
5 sympathetic to them. In and out of the courtroom nobody
6 deserves to do that, I don't want that to happen to anybody.
7 But also, the other tragedy is, they have a young man on trial
8 that they can't put a gun in his hand, and nobody -- and ask
9 them, where is the gun, and ask them to put a gun in his hand.

10 Now, when you hear the evidence I want you to ask those
11 questions. I believe you will be fair, we are hoping you will
12 be fair. When we go through the selection process the State
13 wants fair jurors, the Defense wants fair jurors, because if
14 you do the right thing everybody leaves a winner, and our
15 community wins. But if you convict somebody on suspicion,
16 innuendo, or you make the leap with no evidence because of
17 your emotions, then justice hasn't been served.

18 Now, I'm telling you to make them prove the case. We
19 don't have to prove nothing. He can sit right there, he
20 doesn't have to testify. That's the law. That's not
21 trickery, that's not us trying to do anything, that's the law
22 for every citizen in this country. And the Judge will charge
23 you that if he don't testify, he will charge you he doesn't
24 have to testify. You shouldn't consider it. Don't shift the
25 proof to us, we didn't write the charge, we have to come and

1 deal with it. They charged him, the State should prove it,
2 and we'd just ask you to make them do their job.

3 Thank you.

4 THE COURT: Thank you, Mr. Johnson, appreciate it.

5 Is the State ready to call its first witness?

6 SOLICITOR SORENSON: Yes, sir.

7 THE COURT: Alright, Mr. Sorenson, who is your first
8 witness?

9 SOLICITOR SORENSON: The State calls Sergeant Kendra
10 Williams.

11 THE COURT: Okay. Sergeant Williams.

12 (Whereupon, Kendra Williams

13 is duly sworn.)

14 CLERK: Thank you, you may have a seat and state your
15 name again for the record.

16 WITNESS: Kendra Williams.

17 (NOTE: Blank lines on this page do not indicate any part of
18 record has been omitted. Headers on testimony pages and hard
19 page breaks between testimony are now required by the Court.
20 See next ensuing page for sequential continuation of record.)

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 KENDRA WILLIAMS - DIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Good afternoon, Sergeant Williams.

4 A. Good afternoon.

5 Q. If you would, you need to make sure you keep your voice up
6 nice and loud for me, alright?

7 A. Yes, sir.

8 Q. If you would, tell the jury where it is that you are
9 employed?

10 A. South Carolina State University Police Department.

11 Q. Okay. And how long have you been with S.C. State's Police
12 Department?

13 A. It's almost three years, I started October of Two thousand
14 nine.

15 Q. Okay. And what, if you would, tell the jury what your
16 current duties are there?

17 A. I am a sergeant over the, or in the patrol division.

18 Q. Okay. And how many, how many years total do you have in
19 law enforcement?

20 A. I started in Two thousand four.

21 Q. Okay. And where have you worked prior to S. C. State?

22 A. Orangeburg County Sheriff's Office.

23 Q. Alright. I want to turn your attention, if I could,
24 Sergeant Williams, back to, back to the evening of April the
25 Fifteenth of Two thousand eleven, so last year. Were you

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 working that evening, ma'am?

2 A. Yes, sir, I was.

3 Q. Okay. And did you have an occasion that night to be
4 dispatched over to Twenty-one ninety-five Russell Street?

5 A. Yes, sir.

6 Q. And tell the jury about what time that was that you were
7 dispatched there?

8 A. Can I look at the time?

9 Q. Yeah, if you need to refresh your memory with your report,
10 yes, ma'am.

11 A. I was dispatched at Eleven:fourteen, I arrived on the
12 scene at Eleven:twenty.

13 Q. Okay. So, it was Eleven:fourteen p.m.?

14 A. Yes, sir.

15 Q. Okay. And if you would, tell the jury what -- first of
16 all, what is Twenty-one ninety-five Russell Street, what is
17 located there?

18 A. It is a building, it holds some offices for South Carolina
19 State University. It's campus property that we maintain
20 control.

21 Q. Okay. Alright, and if you would, tell the jury what was
22 the reason that you were initially dispatched at
23 Eleven:fourteen p.m. that night to that, to that location?

24 A. We were dispatched for a traffic accident. We were
25 advised that a vehicle had hit our property.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. And now, were there, is that, where that building
2 is located, what -- and that's on Russell Street?

3 A. Yes, sir.

4 Q. Is that actually on State's campus?

5 A. No, sir, it's on the outskirts, it's actually out of the
6 main property.

7 Q. Okay. So, I guess that's in Public Safety's jurisdiction?

8 A. Yes, sir.

9 Q. Okay. But it's your testimony that the reason you were
10 called out there that night was because it was actually an S.

11 C. State building that was struck though, is that correct?

12 A. Yes, sir.

13 Q. Okay. And if you would, when you arrived out there around
14 Eleven:twenty p.m., some five or six minutes later, describe
15 for the jury, Sergeant, what, kind of what you encountered
16 when you came up to that scene?

17 A. There were several public safety officers, there was a
18 green in color car that was, had struck the front of Twenty-
19 one ninety-five Russell, there were a lot of car pieces and a
20 lot of bricks everywhere, a lot of officers, a lot of blue
21 lights, there was an ambulance. When I arrived public safety
22 advised me of the accident.

23 Q. Okay. Let me show you State's Exhibits Numbers Three and
24 Four, Sergeant. Do you recognize those photographs?

25 A. Yes, sir.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. Do they kind of reflect that scene that you
2 encountered that night as far as the location of the vehicle
3 and where it had struck that building?

4 A. Yes, sir.

5 SOLICITOR SORENSON: Your Honor, at this time we'd offer
6 State's Three and Four, I believe without objection.

7 THE COURT: Any objection?

8 MR. JOHNSON: Without objection, Your Honor.

9 THE COURT: Okay. Three and Four are in evidence without
10 objection.

11 (State's Exhibits Three and Four
12 marked and filed.)

13 Q. And State's Exhibit Number Three, is that the vehicle that
14 you were speaking of?

15 A. Yes, sir.

16 Q. And that's where it was located when you arrived that
17 night?

18 A. Yes, sir.

19 Q. And State's Exhibit Number Four, is that just more a close
20 up of the vehicle?

21 A. Yes, sir.

22 Q. Now, when you arrived there you had indicated there was an
23 ambulance on the scene. Was there anybody still inside this
24 vehicle?

25 A. Yes, sir.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Inside this vehicle?

2 A. Oh, no, sir, not in the vehicle.

3 Q. Alright. I'm going to show you State's Exhibit Number One

4 - - -

5 SOLICITOR SORENSON: Have you got any objection?

6 MR. JOHNSON: No objection.

7 Q. --- I'm showing you State's Exhibit Number One, is that a
8 map that kind of reflects that area around Twenty-one ninety-
9 five Russell Street?

10 A. Yes, sir.

11 SOLICITOR SORENSON: Okay. Your Honor, I believe we'd
12 offer this without objection also.

13 THE COURT: Okay.

14 MR. JOHNSON: Without objection, Your Honor.

15 THE COURT: Alright.

16 (State's Exhibit One
17 marked and filed.)

18 Q. And I'm going to let you look at State's Exhibit Number
19 One, does that reflect the location of this residence, or this
20 building that was struck by that vehicle?

21 A. Yes, sir.

22 Q. Can you point that out for the jury?

23 A. Right here.

24 Q. Okay. So, it's the property that's outlined in blue on
25 the diagram, is that correct?

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 A. Yes, sir.

2 Q. Okay. So that's where that was located at.

3 THE COURT: Ms. Harry Dot, note that State's One is in
4 evidence without objection.

5 COURT REPORTER: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 Q. Now, you had indicated, and let me ask you this, Sergeant
8 Williams, is that area that's depicted in this diagram, is
9 that all located here in Orangeburg County?

10 A. Yes, sir, it is.

11 Q. Alright. Now, you had indicated that when you got there,
12 that there was nobody in that vehicle, is that correct?

13 A. Yes, sir.

14 Q. But that there was an ambulance on the scene?

15 A. Yes, sir.

16 Q. Was there anybody inside the ambulance?

17 A. Yes, sir.

18 Q. Okay. Did you ultimately learn who that, the identify of
19 that person that was inside the vehicle?

20 A. Yes, sir, I did.

21 Q. And what was his name?

22 A. Jonathan Bailey.

23 Q. Okay. And did you learn out there on the scene what his,
24 what condition he was in inside the vehicle?

25 A. Yes, sir, I did.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. And what was that?

2 A. I was advised that he had been shot.

3 Q. Okay. And did you have an opportunity then to, to
4 physically observe Mr. Bailey and attempt to talk to him out
5 there at the scene at Twenty-one ninety-five Russell Street?

6 A. I did.

7 Q. Okay. And describe for the jury how that, how that
8 occurred?

9 A. When I was advised he was in the ambulance I got in the
10 back of the ambulance with him. He was lying on the, I guess
11 it was a stretcher. I did observe he had a gun shot wound to
12 the right chest area, and there was another on the left side a
13 little higher up.

14 Q. Okay. Alright, and describe for the jury if you would,
15 Sergeant Williams, what his demeanor or how he was acting
16 inside the back of that ambulance?

17 A. He was frantic, he was scared, terribly scared. He was
18 rolling back and forth on the stretcher talking about how much
19 pain he was in, you know, get me to the hospital. He was
20 just, kind of hard to describe, he was just frantic, I mean,
21 he ...

22 Q. Okay. Did you have an opportunity then to speak with him
23 at all about what had happened?

24 A. I did.

25 Q. Okay. And tell the jury how that went about?

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 A. I first asked him his name, I asked him if he was a
2 student at State. He wasn't answering questions, he was
3 shaking his head and rolling back and forth, and he kept
4 saying, you know, get me to the hospital, I'm going to die.
5 He was just very, very frantic about pretty much everything.
6 I asked him if he was Queen's Village, he said he -- well, he
7 shook his head, yes. I asked him if he had been robbed, he
8 shook his head, yes. I asked him if, how many, and he stuck
9 his hand up and showed me four fingers. I asked him if he saw
10 the weapon, he shook his head, yes. I asked him if it was a
11 revolver, he shook his head, yes. When I asked him if he saw
12 the color of the weapon, he just shook his head, no. He just
13 kept saying he was in pain, get me to the hospital. It wasn't
14 real easy to get anything out of him.

15 Q. Okay. So, that, pretty much what you described to the
16 jury, was that about the extent of what you were able to get
17 out of Mr. Bailey at that time?

18 A. Yes, sir.

19 Q. Okay. And did the ambulance ultimately end up
20 transporting him?

21 A. Yes, it did.

22 Q. And are you aware of where they took him?

23 A. They took him to the heli-pad at TRMC.

24 Q. Okay. And was he then flown to another hospital?

25 A. Yes, sir.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. And let me ask you, did you ultimately learn out
2 there that night that he had passed away from his injuries?

3 A. I did.

4 Q. Now, you had referenced, one of the questions that you had
5 asked him was whether he was in Queen's Village?

6 A. Yes, sir.

7 Q. Okay. And had you gotten information out there on the
8 scene that that was where his vehicle had come from?

9 A. Yes, sir.

10 Q. Okay. And where is, in relation to that building at
11 Twenty-one ninety-five Russell Street, where is Queen's
12 Village located at in relation to that?

13 A. It's about two houses down, it's a street that goes in --
14 it doesn't go into campus but it dead ends.

15 Q. Okay. And is that reflected on this State's Exhibit
16 Number One?

17 A. Yes, sir, it is.

18 Q. Okay. And where, can you point that to the jury?

19 A. The village is right here.

20 Q. Okay. So, at the end of, that's Baldwin Street I believe
21 is what that says?

22 A. Yes, sir, Baldwin Street.

23 Q. Okay. So, Baldwin runs off of Russell but dead ends
24 without actually going onto campus, is that correct?

25 A. It dead ends right there.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. So, what are these, what are these buildings here
2 at the end of Baldwin Street?

3 A. It's marriage houses.

4 Q. Okay. So, that's S. C. State property?

5 A. Yes, sir, it's married buildings.

6 Q. I guess you can't get to it from, vehicle-wise from
7 campus, you have to actually come in off of Russell Street?

8 A. Yes, sir.

9 Q. Is that correct? Okay. And then again, that part is
10 still, I mean, that's all in Orangeburg County, is that
11 correct?

12 A. Yes, sir.

13 Q. Alright. Now, what, after kind of getting that
14 information from him out there on the scene, what did you then
15 do, Sergeant Williams?

16 A. I contacted my supervisors.

17 Q. Okay. Did you now realize that this had happened
18 actually, I guess, in your jurisdiction on campus?

19 A. Yes, sir.

20 Q. Okay. And as a result of that did other officers then
21 with our agency respond out there to, to that area?

22 A. Yes, sir.

23 Q. Okay. And where did you, where did you go, or where did
24 you stay out there at that time, ma'am?

25 A. I stayed at Twenty-one ninety-five Russell Street.

KENDRA WILLIAMS - DIRECT BY SOL. SORENSON

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1 Q. Okay. And did you help kind of secure that area for it
2 ultimately to be processed for any evidence?

3 A. Yes, sir.

4 Q. Okay. Now, how about the area over, over here down
5 Baldwin Street around the marriage housing, what, if anything
6 was done there?

7 A. I sent Officer Bowers and Officer Millhouse into Queen's
8 Village to secure that area.

9 Q. Okay. Alright, and ultimately, Sergeant Williams, that
10 evening, did anybody from your agency respond out to those two
11 locations to process not only the vehicle and around the
12 vehicle but also that Queen's Village area for any potential
13 evidence?

14 A. Yes, sir.

15 Q. Okay. And who was that that did that?

16 A. Investigator Dusty Johnson.

17 Q. And he's employed with South Carolina State?

18 A. Yes, sir.

19 SOLICITOR SORENSON: I beg the Court's indulgence.

20 THE COURT: Take your time.

21 SOLICITOR SORENSON: I believe that's all I'd have, thank
22 you, Sergeant Williams, please answer any questions that Mr.
23 Williams has for you.

24 MR. WILLIAMS: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

KENDRA WILLIAMS - CROSS BY MR. WILLIAMS

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1 KENDRA WILLIAMS - CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Sergeant Williams, you stated that when you arrived there
4 were several officers already on the scene, is that correct?

5 A. Yes, sir.

6 Q. How many officers were on the scene?

7 A. I don't know, I can't say definitely.

8 Q. Were there already officers from your agency on the scene?

9 A. No, sir.

10 Q. Were there other individuals on the scene?

11 A. That I can't ...

12 Q. Bystanders?

13 A. Not on the scene, they were across the street.

14 Q. And about how many people were around the area or across
15 the street when you arrived?

16 A. I don't know.

17 Q. Sergeant, I think you testified -- you testified that you
18 spoke with the victim, is that correct?

19 A. Yes, sir.

20 Q. And you questioned him?

21 A. Yes, sir.

22 Q. Did he give you any audible responses?

23 A. Very, very few.

24 Q. You asked the victim his name, didn't you?

25 A. Yes, sir.

KENDRA WILLIAMS - CROSS BY MR. WILLIAMS

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1 Q. Did he tell you?

2 A. No, sir..

3 Q. You learned that later from someone else?

4 A. His ID.

5 Q. The victim told you he didn't want to talk to you, is that
6 correct?

7 A. No, sir, he didn't say he didn't want to talk to me.

8 Q. Did he tell you where he had been?

9 A. I asked him if he had been in Queen's Village, and he
10 shook his head, yes.

11 Q. You said you also asked him was he robbed?

12 A. Yes, sir.

13 Q. How did he respond?

14 A. He shook his head, yes.

15 Q. Did he tell you who robbed him?

16 A. No, sir.

17 Q. Did he identify anyone who had robbed him?

18 A. No, sir.

19 Q. I think you testified also that you asked him the color of
20 the gun, is that correct?

21 A. Yes, sir.

22 Q. And I think you're looking at your statement, you asked
23 him whether it was black or white, I mean, black or silver?

24 A. Black or silver, yes, sir.

25 Q. And what was his response?

KENDRA WILLIAMS - CROSS BY MR. WILLIAMS

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1 A. He shook his head, no.

2 Q. So, it was neither one?

3 A. Yes, sir, he just shook his head, no.

4 Q. Okay. Sergeant, did you go down to the scene at Queen's
5 Village?

6 A. Yes, sir, I did.

7 Q. Was that before or after you had dispatched other officers
8 to secure the location?

9 A. It was after.

10 Q. How long after?

11 A. I'm not exactly sure.

12 Q. Sergeant, just briefly, from your report did the victim
13 give you any other information other than what you've
14 testified to today?

15 A. No, sir.

16 Q. And from your report, the victim would not give you his
17 name?

18 A. He wouldn't.

19 Q. Or any other information?

20 A. No, sir.

21 MR. WILLIAMS: Thank you. One moment.

22 THE COURT: I'm sorry, Mr. Williams, go ahead.

23 Q. Just one other question, Sergeant Williams, - - -

24 A. Yes, sir.

25 Q. You testified that the victim told you that he was

KENDRA WILLIAMS - CROSS BY MR. WILLIAMS

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1 frantic, and he was in pain, is that correct?

2 A. He didn't say he was frantic, but I observed he was
3 frantic, yes, and yes, he did say he was in pain.

4 Q. He did? Did you note that in your report?

5 A. No, sir, I didn't. It may be in my report, it's not in my
6 statement.

7 Q. Is it in your statement?

8 A. No, sir, it's not.

9 Q. And you gave that statement on the night of this incident?

10 A. The next morning.

11 Q. What time did you give the statement?

12 A. It was Four:forty-five a.m.

13 MR. WILLIAMS: Thank you. NO further questions.

14 THE COURT: Anything on redirect?

15 SOLICITOR SORENSON; Just very briefly, Your Honor.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and hard
18 page breaks between testimony are now required by the Court.
19 See next ensuing page for sequential continuation of record.)

KENDRA WILLIAMS - REDIRECT BY SOL. SORENSON

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1 KENDRA WILLIAMS - REDIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Just to kind of follow up on that last thing Mr. Williams
4 asked you, I believe he had asked you whether you had noted in
5 your report whether the victim was frantic or in pain, is that
6 correct?

7 A. Yes, sir.

8 Q. I think you had said, no, you didn't think you had noted
9 that. Let me show you your statement here. In fact, did you
10 not note that you made, that he told you that he was in too
11 much pain?

12 A. Yes, sir.

13 Q. So, you did note that in your statement that night?

14 A. Yes, sir.

15 SOLICITOR SORENSON: That would be all I'd have, thank
16 you, Your Honor.

17 THE COURT: Anything on recross?

18 MR. WILLIAMS: Nothing further, Your Honor.

19 THE COURT: Alright. You may step down, Sergeant
20 Williams, thank you.

21 Is the State ready to call its next witness?

22 SOLICITOR SORENSON: Yes, sir. The State calls Detective
23 Dustin Johnson.

24 (Whereupon, the witness
25 enters the courtroom.)

1 CLERK: Will you please place your left hand on the Bible
2 and raise your right hand.

3 (Whereupon Dustin Johnson
4 is duly sworn.)

5 CLERK: Thank you, you may have a seat. And please state
6 your name again for the record.

7 WITNESS: Dustin Johnson.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court.
11 See next ensuing page for sequential continuation of record.)

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1 DUSTIN JOHNSON - DIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Investigator Johnson, if you would, tell the jury, please,
4 where it is that you work?

5 A. I currently work -- I work for South Carolina State
6 University at -- out there at the University, for the police
7 department.

8 Q. Okay. And what are your current duties out there with the
9 South Carolina State Police Department?

10 A. What I do is, I do crime scene investigations. I also do
11 the canine program, and assist with any investigation that
12 they need, you know, help with, you know, just standard
13 investigations as well.

14 Q. Okay. And how long have you been employed out there in
15 that capacity?

16 A. Since October of Two thousand nine.

17 Q. Okay. And where were you employed prior to October of Two
18 thousand nine?

19 A. At the City of Orangeburg Public Safety.

20 Q. And how long were you with Public Safety prior?

21 A. Right at two years.

22 Q. Alright. And I want to turn your attention, if I could,
23 Investigator Johnson, back to the evening of April Fifteenth
24 of last year. Did you ultimately respond out there to a
25 shooting that has occurred on campus?

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1 A. Yes, sir, yes, sir, I did.

2 Q. And where, if you would, tell the jury where it is that
3 night that you initially responded to?

4 A. Okay, well, initially I responded, I got a call that said
5 there had been a shooting in Queen's Village on the campus, so
6 that's where I initially responded to eventually, because I
7 wasn't sure exactly, they said to meet over there, so I
8 responded to Queen's Village and spoke with Commander Craft.
9 And then I ultimately spoke with Sergeant Kendra Williams who
10 informed me of what was going on at the time.

11 Q. Okay. And that Queen's Village, if you would just kind of
12 describe that area, was that area kind of secured when you got
13 there by other officers?

14 A. Yes, the area had already been secured, crime scene tape
15 was up and there was officers standing by, by the crime scene
16 tape as well.

17 Q. Okay. And describe, if you would, what that area over in
18 Queen's Village, what that kind of, that crime scene consisted
19 of at that location?

20 A. Okay. When I arrived on the scene, like I said, when I
21 first got there I did, you know, I talked to Sergeant Williams
22 who gave me an overview of what they thought was going on. At
23 that point I started looking around, investigating, doing some
24 of my initial processing of the scene. As I began processing
25 the scene I started noticing items, I started looking for

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1 items of evidence that, to be found on the scene. A couple of
2 things that I notice on the scene were, I noticed, I picked up
3 several pieces of what I thought at the time were evidence on
4 the scene. I picked up two green, two bags of green leafy
5 like substance that appeared to be marijuana on the scene.
6 Also, I picked up a Fifty Dollar bill on the scene that were
7 possibly evidence, that you know, I thought were possibly
8 evidence at the time. Also, something else that was strange,
9 and you could tell there were fresh tire marks, skidding tire
10 marks coming off the scene. I photographed that as well
11 because you could see where on the dirt it looked like it had
12 been fresh marks coming out of Queen's Village.

13 Q. I'm showing you, Investigator Johnson, State's Exhibit
14 Number One, and the jury has already been shown by Sergeant
15 Williams, but where, if you would kind of point out where the
16 Queen's Village is located?

17 A. Okay. Queen's Village is actually right here on Baldwin
18 Street. It runs off, it runs right here off of Russell Street
19 and it goes up in the, right into this area here. This is
20 Queen's Village, all these houses right here on both sides are
21 Queen's Village.

22 Q. Okay. So, what area was it that you were kind of
23 processing or looking for evidence around Queen's Village?

24 A. Okay. Actually, where we were at was right in this
25 general area right here, between this building and this

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1 building, on the roadway though, but it was between these two
2 buildings here, and actually, it was closed off starting about
3 right here, so we had it secured all the way down.

4 Q. Okay, so basically that's kind of parking you see, I guess
5 there's cars kind of parked on the diagram?

6 A. Yes, there's a parking lot, this right here, and then,
7 sometimes people park on the end, it's not really parking
8 places, and you know, across everywhere.

9 Q. Okay. So that area around all here, though, that's all
10 paved?

11 A. Yes, sir.

12 Q. Okay. Alright, and you had indicated -- and let's kind of
13 takes these a couple at a time, did you ultimately end up kind
14 of preparing a crime scene diagram of, kind of that area at
15 the end of Baldwin there?

16 A. Yes, sir, yes, sir.

17 Q. I'm showing you State's Exhibit Number Two, is that just
18 an enlargement of that diagram that you prepared?

19 A. Yes, sir.

20 SOLICITOR SORENSON: Let me show you this.

21 MR. WILLIAMS: No objection.

22 SOLICITOR SORENSON: Your Honor, we'd offer State's Two
23 into evidence.

24 THE COURT: State's Exhibit Two is in evidence without
25 objection.

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1 (State's Exhibit Two
2 marked and filed.)

3 Q. And if you could ...

4 SOLICITOR SORENSON: Can I, can I get him to step down,
5 Your Honor, in front of the jury?

6 THE COURT: Sure. Mr. Williams, you need to get where
7 you can see as well.

8 Q. Make sure you keep your voice up nice and loud.

9 SOLICITOR BELL: Your Honor, there's an easel over there.

10 Q. Just kind of point to the jury kind of what they're seeing
11 there.

12 A. Okay, basically, this is Baldwin Street. It's not exactly
13 to scale. What I did was did a rough sketch of Baldwin when I
14 got out on the scene. Like I said, it runs off of Russell
15 Street. Baldwin Street comes out and you can see the parking,
16 and where we were at, like I said, the houses were back in
17 this general area. Basically, what you see is what, basically
18 what I saw when I got there and I started processing the area.
19 The items that I found that I collected, that's what's marked
20 on the different areas right there. It's Item Number One,
21 which is a, you know, is one of the green leafy like substance
22 bags. Item Number Two is one of the second green leafy
23 substance bags. And Item Number Three, which was the -- I'm
24 sorry, Item Number Two right here was the Fifty Dollar bill,
25 and Item Number Three, which is the third green leafy like

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1 substance bag. Basically, there's more -- how far they are
2 out from the edge of the roadway, from the edge of the
3 concrete right here in the parking area, they were actually in
4 the parking area. This one was found actually about half way
5 between one side and the other. Item Number Four is the skid
6 marks which I was talking about. The skid mark actually went
7 up onto the grass and started on from the grass, and that's
8 what actually caught my attention about the skid marks,
9 because you could see the grass was torn up and it looked like
10 it seemed to be fairly fresh. And the skid mark come off of
11 the grass and went onto the concrete at an angle coming like
12 it was going out in this direction right here.

13 Q. Alright. And if I could, let me show you State's Exhibits
14 Five through nine. And do those reflect the kind of area in
15 those items of evidence that you've just been describing for
16 the jury?

17 A. Yes, sir.

18 SOLICITOR SORENSON: Your Honor, at this time we would
19 offer State's Five through Nine into evidence.

20 THE COURT: Any objection?

21 MR. WILLIAMS: Without objection.

22 THE COURT: Alright, State's Five through Nine are in
23 evidence without objection.
24 (State's Exhibits Five through
25 Nine marked and filed.)

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1 SOLICITOR SORENSON: Thank you.

2 Q. Alright, and you had testified first about, I guess the
3 two leafy bags of kind of green leafy substances. I'm showing
4 you State's Exhibits Numbers Six and Seven, are those those
5 two items?

6 A. Yes, sir.

7 Q. Okay. And I notice that there's two different, these are
8 numbered Numbers One and Two. Do those correspond necessarily
9 with that diagram or ...

10 A. No, sir, actually, they're Number One and Number Three.
11 Number Two was an accidental marking on there in the picture.

12 Q. Okay. So Number One, though, is going to correspond with
13 Number One on the diagram?

14 A. With Number One, yes, sir.

15 Q. So, that's found basically kind of in the middle of the
16 parking lot sort of?

17 A. Yes, sir, Number One was found out there, and like I said,
18 the other one, being Number Three and it was found in here.

19 Q. So, that one was found closer to the, I guess, to those
20 parking spaces?

21 A. Yes, sir, it was found right here. It was actually found
22 dead between the two lines, where the lines came through, it
23 was sitting right on the line.

24 Q. And that would be just so we're kind of related, as you
25 turn off of Russell Street, as you come off of Russell Street

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1 down Baldwin, as you said, and down in this area on the right
2 hand side?

3 A. Yes, sir, if you come down ...

4 Q. I'm sorry, on the left hand side?

5 A. If you come down, if you turn onto Baldwin and you come
6 down onto the left hand side, yes, sir.

7 Q. And then you had also testified that there was a Fifty
8 Dollar bill that was collected, is that State's Exhibit Number
9 Eight, that Fifty Dollar bill?

10 A. Yes, sir.

11 Q. Okay. And that was yet again ...

12 A. That was right here, yes, sir, it was just in the middle
13 of one of the parking places, yes, sir, found up closer
14 towards the, from the concrete.

15 Q. Okay. And I'm showing you State's Exhibit Number Five,
16 what is depicted in State's Exhibit Number Five?

17 A. Basically this picture is a picture taken from right where
18 the skid marks are, across the parking lot area. I was trying
19 to get -- my flash wasn't working very well, but I was trying
20 to, it will show, and you can kind of see a little bit of them
21 in the side, and also, you know, just basically from where the
22 skid marks are back towards where we found the rest of the
23 evidence.

24 Q. Okay. And a couple of vehicles that are depicted in this
25 picture, they, they were parked there when you got there?

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1 A. Yes, sir.

2 Q. And then lastly, you had talked about that skid mark on
3 the right side of the diagram, shown in State's Exhibit Number
4 Nine, does that show that skid mark?

5 A. Yes, sir, that's it.

6 Q. Okay. And you described, I mean, does it show where it
7 kind of goes up on the, up on the grassy area also?

8 A. Yes, sir.

9 SOLICITOR SORENSON: Okay, you can step back on the
10 stand.

11 Q. Alright, now, were there any other items that were located
12 out there on Baldwin Street, kind of in that area?

13 A. No, sir.

14 Q. Okay. Did you ever find any bullets out there?

15 A. No, sir.

16 Q. Any shell casings?

17 A. No, sir.

18 Q. In your experiences, those two bags that you found, what
19 did those appear to be in your experience as a law enforcement
20 officer?

21 A. As a law enforcement officer, it appeared to be marijuana
22 in the two bags.

23 Q. Alright. So after you finished up out there on Baldwin
24 Street, Investigator Johnson, what did you then do?

25 A. At that point I left from Baldwin Street to go to the

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1 second scene. I had not seen the second scene at that point
2 in time. There was an officer from the city and I'm not sure
3 who he was, it would have to be in Sergeant Williams's report,
4 that stood by where we had it cordoned off. And I went up to
5 the second scene on Russell Street.

6 Q. Okay. And where is that scene located at in relation to
7 where you were on Baldwin Street?

8 A. Basically, if you were to make a right, when you're on
9 Baldwin Street if you come out and make a right and come down
10 ...

11 Q. Take a left?

12 A. I'm sorry, take a left, if you make a left and come down,
13 it was about three houses farther down where the vehicle had
14 actually struck into one the State's pieces of property.

15 Q. Okay. And the jury has already seen State's Exhibits
16 Numbers Three and Four. Is that how, the condition of the
17 scene when you arrived - - -

18 A. Yes, sir.

19 Q. --- out there that night?

20 A. Yes, sir.

21 Q. That would be the condition when you arrived out there?

22 A. Yes, sir.

23 Q. Okay. And in fact, are these pictures you took?

24 A. Yes, sir.

25 Q. Okay. What, what then did you do as far as going about

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1 processing that scene, Detective Johnson?

2 A. Well, at first I started, I began taking pictures, and as
3 I took pictures I was actually looking over, doing just a
4 glance over of the vehicle. I began to process and started
5 looking for evidence around the vehicle. As I came into the
6 driver's side door, as I stepped into the driver's side door I
7 could -- I noticed a mark on the side of the door, and at that
8 point in time what looked like, it appeared to be, you know a
9 marking that had blood splatter on it, and it appeared like an
10 impact mark as well on the side of the door. So, at that
11 point I immediately stopped and began to try to locate a
12 bullet projectile. It took a few minutes. The bullet
13 projectile was ultimately found on the ground within a couple
14 of minutes right there. I found it and marked it so we could,
15 it wouldn't be lost later on. I continued my processing
16 around, found several other pieces of evidence in the vehicle
17 as well.

18 Q. Okay. Let me stop you right there so I can kind of go
19 through some of the photographs.

20 A. Okay.

21 Q. So, you had indicated that you observed what appeared to
22 be where something has struck the arm rest?

23 A. The arm rest, yes, sir.

24 Q. On the driver's side of the door. And I'm showing you
25 State's Exhibit Number Twelve, does that depict that, the

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1 driver's side arm rest?

2 A. Yes, sir.

3 SOLICITOR SORENSON: Your Honor, at this time we'd offer
4 -- I've shown Mr. Williams State's Exhibits Ten through
5 Sixteen, and I don't believe there's any objection to any of
6 those.

7 THE COURT: Any objection to State's Ten through Sixteen,
8 is that correct, Mr. Sorenson?

9 SOLICITOR SORENSON: That's correct, that's the right
10 numbers, yes, sir.

11 THE COURT: Any objection?

12 MR. WILLIAMS: No objection, Your Honor.

13 THE COURT: Alright, State's Ten through Sixteen are in
14 evidence without objection. Thank you, Mr. Williams.
15 (State's Exhibits Ten through
16 Sixteen marked and filed.)

17 SOLICITOR SORENSON: Thank you.

18 Q. So, State's Exhibit Number Twelve, what is that a picture
19 of?

20 A. That's a picture of the arm rest, and as you can see,
21 there's a little bit of, what appeared to be blood, a marking
22 on it like an impact mark on the side of the arm rest.

23 Q. Okay, and that's on the driver's side of the vehicle?

24 A. The driver's side door, yes, sir.

25 Q. Okay. And as a result of that you had indicated you kind

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1 of got to looking around, and I'm showing you State's Exhibit
2 Number Eleven, what's depicted in State's Exhibit Number
3 Eleven?

4 A. That is a bullet fragment, a projectile fragment that was
5 found in the grass.

6 Q. Okay. And where is that located at in relation to the
7 driver's side door?

8 A. It was actually found extremely close to the driver's side
9 door. It was found from my second diagram, I can tell you
10 exactly. It was found Eighteen inches away from the side of
11 the car, right under the driver's side door.

12 Q. Okay. And showing you, what is that that's next to it,
13 that white item next to it?

14 A. It was a piece of the concrete that was broken off the
15 side of the building that was used as a marker when we found,
16 to keep from losing it again because it was dark and
17 everything, so we wanted to mark it right then and there.

18 Q. Okay. And so you put that piece of brick there?

19 A. Yes.

20 Q. Okay. and I'm showing you, in fact, going back to State's
21 Exhibit Number Four, is that piece of brick in State's Exhibit
22 Number Four?

23 A. Yes, sir.

24 Q. So, basically, right next to that white piece of brick is
25 where that bullet fragment was found?

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1 A. Yes, sir.

2 Q. Okay. And was that item collected?

3 A. Yes, sir.

4 Q. Okay. I'm showing you State's Exhibit Number Twenty-one,
5 do you recognize what's in that envelope?

6 A. Yes, sir, this would be what I collected the projectile in
7 at the time, just a pill bottle, and it was actually encased
8 in paper inside of that to preserve it.

9 Q. Okay. And it is now kind of loose in an envelope next to
10 it, is that correct?

11 A. Yes, sir, that's it.

12 SOLICITOR SORENSON: Your Honor, at this time we'd offer
13 State's Twenty-one into evidence.

14 THE COURT: Any objection.

15 MR. WILLIAMS: Without objection.

16 THE COURT: State's Twenty-one into evidence without
17 objection. Thank you, Mr. Williams.
18 (State's Exhibit Twenty-one
19 marked and filed.)

20 Q. Okay. And yet again, that, so that item was what was
21 found in the grass right outside of that car door, is that
22 correct?

23 A. Yes, sir.

24 Q. And did you find any other items kind of outside the
25 vehicle at that scene, I mean, other than, I guess the

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1 condition of the building, but as far as any other items?

2 A. Not outside of the vehicle, no, sir.

3 Q. Okay. Let me just get you, I've got this other photograph
4 here, State's Exhibit Number Ten, what's depicted in State's
5 Exhibit Number Ten?

6 A. That's the passenger side of the vehicle, and basically
7 the reason I took that, I took several pictures of the side of
8 that vehicle, but what you can see in that picture is the back
9 wheel, the way the back wheel is dug into the dirt as of when
10 the vehicle whatever, you know, when it hit the building, as
11 it was continuing to accelerate, which dug the vehicle deeper
12 into the ground.

13 Q. Okay. And when you got on the scene that passenger side
14 door was closed like that?

15 A. Yes, yes.

16 Q. Okay. Alright, now, Detective Johnson, did you then have
17 an opportunity to, to kind of search and look in and see if
18 there was any items inside the interior of the vehicle?

19 A. Yes, sir, I did. The driver's side door was open. Like I
20 said, once I got there I looked in through the driver's side
21 door. From the driver's side door, you know, you could see
22 several things laying around.

23 Q. I'm showing you State's Exhibit Number Thirteen, does that
24 kind of show, kind of looking into that driver's side door?

25 A. Yes, sir.

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1 Q. Was that kind of the condition, I guess, that you found in
2 the interior of that vehicle?

3 A. Yes, sir.

4 Q. And I ask you, what condition was that steering wheel in?

5 A. The steering wheel had been crushed completely. It was a
6 wood grain steering wheel and it had splintered and broken
7 into hundreds of pieces actually.

8 Q. Okay. Alright, and as far as looking inside the vehicle,
9 were there any items that you saw in your initial kind of
10 looking in it that caught your attention as potentially being
11 of interest to you?

12 A. Yes, sir, when I was on the driver's side I noticed some
13 money could be seen on the passenger side. So I walked around
14 and opened the passenger door. When I opened the passenger
15 door I was actually able to find, I found another Fifty Dollar
16 bill along with five Twenty Dollar bills and another bag of
17 green leafy substance that appeared to be marijuana.

18 Q. Okay. I'm showing you initially State's Fifteen and
19 Sixteen, does that kind of show some of that money, those six
20 bills kind of strewn around the floor board in the, inside the
21 passenger side door?

22 A. Yes, sir.

23 Q. Okay. And I'm specifically showing you State's Sixteen,
24 is that where those two bills were located at, right inside
25 the, kind of right where the door closed basically would be on

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1 top of the bills?

2 A. Yes, sir, those two Twenties were actually right inside
3 the crease of the door when I opened it.

4 Q. State's Exhibit Number Fifteen shows some of the other
5 money on the floor board there?

6 A. Yes, sir.

7 Q. And I believe you also indicated you saw another bag of
8 the kind of leafy substance inside the vehicle?

9 A. Yes, sir.

10 Q. I'm showing you State's Exhibit Number Fourteen, - - -

11 A. Yes, sir.

12 Q. --- does that show that? And where was that located at in
13 the vehicle?

14 A. On the floor board of the passenger side.

15 Q. In the same vicinity as the money?

16 A. Same vicinity, yes, sir.

17 Q. And those items were all collected at that time?

18 A. Yes, sir.

19 Q. Including all those bills, the bills?

20 A. Yes, sir.

21 Q. And, alright, at that point in time, Investigator Johnson,
22 did you do anything else with the vehicle out there that
23 night?

24 A. Not -- what I did at that point in time, and it seemed
25 like everything we had could be secured from there with, you

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1 know, basically, the initial search was just to make sure
2 everything could be secured and we weren't going to lose any
3 evidence right there at the time. I rolled the driver's side
4 window up because it was down, took the vehicle, secured the
5 vehicle with evidence tape, marked it, and secured the
6 vehicle, the doors, the trunk and everything, and then had it
7 towed to a secure location.

8 Q. Okay. And ultimately, at some point in time that night
9 did y'all learn that Mr. Bailey had passed away?

10 A. Yes, sir.

11 Q. Okay. And as a result of that was any other agency called
12 in to kind of take over the investigation?

13 A. yes, sir, once we learned that Mr. Bailey was deceased,
14 SLED was actually called in to take over the investigation at
15 that point in time.

16 Q. Okay. And did you have an opportunity to meet with
17 anybody from the State Law Enforcement Division with regards
18 to kind fo what you had done up until that point in time?

19 A. Yes, sir, initially I met with Crime Scene Investigator
20 Carl Kenley, and also Investigator Johnson, and a little later
21 on I met with Jeremy, Investigator ...

22 Q. Smith, Jeremy Smith?

23 A. Jeremy Smith, that's right.

24 Q. Did you ultimately turn over those items, the bullet that
25 you had recovered, the money that you had recovered, the bags

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1 of what appeared to be marijuana, did you turn all that stuff
2 over to Agent Kenley?

3 A. Yes, sir, I turned it over to Agent Kenley.

4 Q. Okay. Now, the following morning you said that that
5 vehicle was towed, where was it towed to?

6 A. It was actually towed to Orangeburg Department of Public
7 Safety Station Three. They've got an impound out there but
8 they also at the time had a secure bay. They had, some fire
9 engines were down and the station itself was not being used,
10 so we locked it in the bay so that elements wouldn't mess with
11 it or anything of that nature, and I spoke with the
12 supervisor and we went out there and I got the key from the
13 supervisor so it would stay secure and locked, you know,
14 throughout the night.

15 Q. Okay. And the next day did you have an opportunity to go
16 back out there to that vehicle?

17 A. Yes, sir, yes, sir, probably about nine o'clock in the
18 morning I was able to obtain a search warrant for the
19 vehicle. At that point in time myself and Agent Kenley and
20 Agent Johnson went back out to the vehicle for further
21 processing.

22 Q. And did Agent Kenley then continue with processing as far
23 as for prints and things of that nature on the vehicle?

24 A. Yes, sir.

25 Q. And obviously, I guess, would he be the person to testify

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1 about that?

2 A. Yes, sir.

3 Q. Okay.

4 SOLICITOR SORENSON: I beg the Court's indulgence.

5 THE COURT: Take your time.

6 SOLICITOR SORENSON: Thank you, Detective Johnson, that's
7 all I would have, please answer any questions that Mr.
8 Williams has.

9 A. Yes, sir.

10 THE COURT: Mr. Williams, your witness.

11 MR. WILLIAMS: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 BAILIFF: Judge, can the jury just stand up and stretch
14 for a minute?

15 THE COURT: Oh, yes.

16 BAILIFF: Stand up and stretch.

17 THE COURT: Y'all go ahead and stand up and stretch.

18 BAILIFF: Thank you, sir.

19 THE COURT: Do you need to take a break?

20 COURT REPORTER: I just need a minute.

21 THE COURT: Okay. Alright. Mr. Williams, do you mind if
22 we take a short break so we can get some more tapes for the
23 machine? Apparently, we're running out. So, do you mind if we
24 take a break?

25 MR. WILLIAMS: No, Your Honor.

1 THE COURT: Okay. Ladies and Gentlemen, we're going to
2 take a short break now, we've got to get some more tapes for
3 the machine right now, so that was probably a good stretch.
4 Y'all can go back into the jury room for a minute. Remember,
5 you cannot begin talking about this case yet. Okay? Thank
6 y'all.

7 (Whereupon, the jury
8 retires to the jury room.)

9 (Recess)

10 THE COURT: Alright. Are we ready to proceed? Mr.
11 Williams, I don't want you to be upset by Ms. Harry Dot's
12 implication. She needed more tapes for your cross-
13 examination.

14 MR. WILLIAMS: No, sir.

15 THE COURT: Okay, good. I Just wanted to make sure.
16 Okay. Alright, Ms. Harry Dot, are you ready?

17 COURT REPORTER: Yes, sir.

18 THE COURT: Okay. Alright, would you bring the jury back
19 in?

20 (Whereupon, the jury enters
21 the courtroom.)

22 THE COURT: Ladies and Gentlemen, we're going to continue
23 with Mr. Williams's cross-examination.

24 Detective Johnson, you know you're still under oath.

25 DETECTIVE JOHNSON: Yes, sir.

1 THE COURT: Okay. Alright, Mr. Williams, your witness.

2 MR. WILLIAMS: Thank you.

3 THE COURT: Yes, sir.

4 MR. WILLIAMS: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court.
9 See next ensuing page for sequential continuation of record.)

DUSTIN JOHNSON - CROSS BY MR. WILLIAMS

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1 DUSTIN JOHNSON - CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Investigator Johnson, - - -

4 A. Yes, sir.

5 Q. --- you testified during your direct that you examined two
6 crime scenes?

7 A. Yes, sir.

8 Q. The first at Queen's Village, is that correct?

9 A. Yes, sir.

10 Q. Okay. I show you again what's been marked as State's
11 Exhibit One.

12 A. Would you like me to step down, sir?

13 Q. Would you please?

14 A. Okay.

15 Q. Just so I can keep straight in my head, would you just tag
16 where the Queen's Village scene was located?

17 A. Okay. It would be right there.

18 Q. Okay. And you also examined the second crime scene on
19 Russell Street, is that correct?

20 A. Yes, sir.

21 Q. Can you tag for me where that's located?

22 A. Right there.

23 Q. Okay. Step back and let me ask you just a couple of
24 questions before we -- at the ...

25 THE COURT: Mr. Williams, you might want to take that ...

DUSTIN JOHNSON - CROSS BY MR. WILLIAMS

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1 MR. WILLIAMS: Okay.

2 THE COURT: I know the jury wants to see him. Alright,
3 thank you, sir.

4 Q. Now, Investigator Johnson, - - -

5 A. Yes, sir.

6 Q. Is your testimony that you found, you located some
7 evidence at the Queen's Village site, is that correct?

8 A. Yes, sir.

9 Q. And I show you what's been marked as State's Exhibits Five
10 through Nine, and you've looked at those before, but those are
11 the -- are those your crime scene photos of the Queen's
12 Village incident site?

13 A. Yes, sir.

14 Q. Can you tell us again for our record, what evidence did
15 you find at the Queen's Village?

16 A. I found two small bags, small plastic bags containing a
17 green leafy substance. Also, I found a Fifty Dollar bill, as
18 well as a skid mark.

19 Q. A skid mark. Okay. And I think your testimony, this
20 looked from your experience in law enforcement, this looks to
21 be marijuana?

22 A. Yes, sir.

23 Q. And you also at that scene you found money?

24 A. Yes, sir.

25 Q. Did you locate anything else at that scene?

DUSTIN JOHNSON - CROSS BY MR. WILLIAMS

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1 A. No, sir.

2 Q. And did you locate any bullet fragments at that scene?

3 A. No, sir.

4 Q. Did you locate any weapon at that scene?

5 A. No, sir.

6 Q. And then subsequently you went down to the Russell Street?

7 A. Yes, sir.

8 Q. And at Russell Street tell us what evidence did you find
9 at Russell Street?

10 A. I found another Fifty Dollar bill, five Twenty Dollar
11 bills, another plastic bag of green leafy substance also
12 appearing to be marijuana. I also found a projectile fragment
13 as well.

14 Q. And I show you what's been previously marked as State's
15 Exhibit Eleven, is the fragment you found?

16 A. Yes, sir.

17 Q. Investigator Johnson, how far is it from your first crime
18 scene, from your first investigative site to the second?

19 A. I can't say for sure but it's several hundred yards.

20 Q. On a different street?

21 A. It's on a separate street, yes, sir.

22 Q. Investigator Johnson, did you ascertain what type of
23 weapon this fragment came from?

24 A. We sent it to SLED, SLED has it in their report, sir, I'm
25 not sure.

DUSTIN JOHNSON - CROSS BY MR. WILLIAMS

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1 Q. But you found no bullet fragments at the Queen's Village
2 site?

3 A. No, sir.

4 Q. When you arrived at the scene were there other people
5 present?

6 A. Yes, sir.

7 Q. Other officers present?

8 A. Yes, sir.

9 Q. Other bystanders present?

10 A. Yes, sir.

11 Q. How far away from the vehicle was that Exhibit Number
12 Eleven located?

13 A. That's the bullet fragment?

14 Q. Yes, sir.

15 A. Eighteen inches.

16 Q. So, fairly close?

17 A. Yes, sir.

18 Q. In that vehicle you stated you also found some additional
19 marijuana?

20 A. Yes, sir.

21 Q. Or what looked like marijuana?

22 A. What appeared to be marijuana, yes, sir.

23 Q. You also found money?

24 A. Yes, sir.

25 Q. At that scene did you locate a weapon?

DUSTIN JOHNSON - CROSS BY MR. WILLIAMS

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1 A. No, sir.

2 Q. The fragment you found in the ground, on the ground, do
3 you know how long it had been there?

4 A. No, sir.

5 Q. Do you know whether it was, whether or not it was from
6 this incident?

7 A. I can't say for sure, sir.

8 Q. Where in the vehicle did you locate what's been previously
9 marked as State's Exhibit Fourteen?

10 A. On the floor board of the passenger side right by the edge
11 of the seat, like kind of where there's a hump, like a
12 transmission hump, right by the seat and hump right there.

13 Q. And this was after a crash?

14 A. Yes, sir.

15 Q. And you located money in the vehicle?

16 A. Yes, sir.

17 Q. How much?

18 A. Altogether it was a Hundred and fifty Dollars, Five
19 Twenties and one Fifty.

20 MR. WILLIAMS: One moment, Your Honor.

21 THE COURT: Take your time.

22 Q. Investigator Johnson, after you had secured and processed
23 the scene, both scenes did you ever locate a weapon?

24 A. No, sir.

25 MR. WILLIAMS: Thank you. One moment. Thank you. No

1 further questions of this witness, Your Honor.

2 THE COURT: Alright, thank you, sir. Anything on
3 redirect?

4 SOLICITOR SORENSON: No, sir.

5 THE COURT: Alright, you may step down. Thank you, sir.

6 WITNESS: Thank you, sir.

7 THE COURT: Is the State prepared to call its next
8 witness?

9 SOLICITOR SORENSON: Yes, sir.

10 THE COURT: Alright, you can call your next witness,
11 please.

12 SOLICITOR SORENSON: The State calls Ricky Gipson.

13 THE COURT: Gipson?

14 SOLICITOR SORENSON: Gipson.

15 (Whereupon, the witness
16 enters the courtroom.)

17 SOLICITOR SORENSON: Come right around up there, place
18 your left hand on the Bible and face the front.

19 CLERK: Raise your right hand, please.

20 (Whereupon, Ricky Gipson
21 is duly sworn.)

22 CLERK: Thank you. You may have a seat, and please state
23 your name again for the record.

24 WITNESS: Ricky Gipson.

25 CLERK: Thank you.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 RICKY GIPSON - DIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Good afternoon, Mr. Gipson.

4 A. Good afternoon.

5 Q. Alright, the first thing we need to start with, you need
6 to keep your voice up nice and loud, alright?

7 A. Alright.

8 Q. All Twelve of those jurors need to be able to hear you,
9 okay?

10 A. Okay.

11 Q. Alright. And Ricky, where, where are you from?

12 A. Maryland.

13 Q. Maryland? Is that where you grew up?

14 A. Yes, sir.

15 Q. Where did you go to high school?

16 A. McDonald High School.

17 Q. And where is that located at?

18 A. It's in Maryland also.

19 Q. Okay. And did you graduate?

20 A. Yes, sir.

21 Q. And when did you graduate from McDonald High School?

22 A. Two thousand ten.

23 Q. Two thousand ten. And in the fall of Two thousand ten did
24 you enroll in college somewhere?

25 A. Yes, sir.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. And where was that that you enrolled in college?

2 A. South Carolina State.

3 Q. Okay. So, you were a freshman in the fall of Two thousand
4 ten, into the spring of Two thousand eleven?

5 A. Yes, sir.

6 Q. Now, let me ask you this, back in April of Two thousand
7 eleven, so April of last year, did you know the victim in this
8 case, Jonathan Bailey?

9 A. Yes, a little bit.

10 Q. Okay. And what did, what did you know Mr. Bailey by, what
11 name did you know him by?

12 A. Jon.

13 Q. Jon. And tell the jury how long you had known Jon?

14 A. Before when?

15 Q. How long had you known him prior to when he was killed?

16 A. A little bit, beginning the first semester, I'd say about
17 from November to April.

18 Q. Okay, about six months or so?

19 A. Yeah, about six months.

20 Q. Alright. And back in April of Two thousand eleven, do you
21 know whether Mr. Bailey was a student also at South Carolina
22 State?

23 A. Yes, he was a student.

24 Q. Okay. Let me ask you this, do you know what year he was
25 at State?

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 A. A junior or a senior, one or the two.

2 Q. Okay.

3 A. An upperclassman.

4 Q. He was an upperclassman?

5 A. Right.

6 Q. Alright. Now, let me ask you this, Ricky, back in the
7 spring of Two thousand eleven when you were a student, a
8 freshman at South Carolina State, were you doing something
9 that you shouldn't have been doing to make money?

10 A. Yes, sir.

11 Q. Okay. And tell the jury what that was that you were doing
12 back in the spring of Two thousand eleven?

13 A. Selling marijuana.

14 Q. Okay. And where were you selling marijuana at?

15 A. On the school campus.

16 Q. On campus. Okay. And what about, what about Jonathan
17 Bailey, Jon, was Jon doing the same thing?

18 A. Yes, sir.

19 Q. Okay. And in fact, is that how you got to know him was
20 through that?

21 A. Yes, sir, you could say that.

22 Q. And did you know back in April of Two thousand eleven what
23 kind of car Mr. Bailey was driving?

24 A. It was a green Cutlass.

25 Q. Okay. And I'm showing you State's Exhibit Number Four,

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 was that his car that he was driving back at that time?

2 A. Yes, sir.

3 Q. I want to turn your attention, Ricky, back to the night
4 that Mr. Bailey got shot. What were you doing that night kind
5 of leading up to, up to when all this happened?

6 A. That night?

7 Q. Yes, sir.

8 A. Just hanging out. It was these upperclassman, dorms
9 called the suites, and I was hanging out over there.

10 Q. Okay. And where you staying at in your freshman year at
11 S. C. State?

12 A. I was in Mitchell Dorm, but I also was spending a lot of
13 time in the suites.

14 Q. Okay. And that's on campus where you were hanging out?

15 A. Yes, sir.

16 Q. Alright. Now, did there come a time that night, Mr.
17 Gipson, when you were contacted by someone with regards to
18 them wanting to buy some marijuana?

19 A. Yes, sir.

20 Q. And did you know who that person was that contacted you?

21 A. No, sir.

22 Q. Okay. And how was it that you were contacted?

23 A. It was through the phone.

24 Q. Through a phone?

25 A. Yes.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And let me ask you, that person that contacted you,
2 had you met that person at some point in time prior?

3 A. Prior to the conversation, no, sir.

4 Q. Prior to that night?

5 A. No, sir.

6 Q. You had never seen him before?

7 A. No, sir.

8 Q. Okay. Alright, let me ask you this, did there come a time
9 earlier that day, April the Fifteenth of Two thousand eleven,
10 when you had met somebody on campus with regards to buying
11 some marijuana?

12 A. Oh, yes, sir.

13 Q. Okay. And let me ask you this, did you know that person
14 prior to meeting them on the campus that day?

15 A. No, I didn't know them prior.

16 Q. Okay. And that's what I was kind of getting at. So,
17 let's kind of back up to earlier that day. Could you describe
18 for the jury how that, how that contact earlier in the day on
19 April the Fifteenth came about?

20 A. Are you talking about earlier?

21 Q. Earlier, yes, sir.

22 A. Basically I was contacted to, I thought I was selling
23 something small like a Ten or Twenty, and they asked for a
24 larger quantity, and that was something I didn't have, so I
25 told them I didn't have it, and that's when I contacted Jon

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 because I was going to let him make the, basically make the
2 money.

3 Q. Okay. And who was it that contacted you about trying to
4 buy some marijuana that day, can you describe those people for
5 the jury?

6 A. It was a group of people but I don't know them by names.
7 It was earlier that day, it was about four of them.

8 Q. Okay. Alright, and what other, can you describe any of
9 them that you dealt with earlier that day?

10 A. One of them had dreds and the other one had a buzz cut,
11 and that was it. That's all I can remember.

12 Q. And the guy, when you talked to S.C. about the guy with
13 the dreds, was he light skinned or dark skinned?

14 A. Light skinned.

15 Q. Okay. And did, did either one of them give you either
16 their names or nick names or anything that they went by?

17 A. One of them they said their name was Gouda, but that was
18 it.

19 Q. Gouda?

20 A. Yeah.

21 Q. And which one was that supposedly, the light skinned guy
22 with the dreds or the guy with the hair cut more like yours?

23 A. I think it was the dreds but I'm not too sure, I can't be
24 a hundred per cent.

25 Q. Okay. And yet again, prior to you dealing, talking to

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 them, where did that conversation take place earlier that day?

2 A. It was behind the dorm on campus place.

3 Q. Alright. And had, prior to you talking to these guys
4 about them trying to buy some marijuana, had you ever seen
5 either one of them prior to that day?

6 A. No, sir.

7 Q. Okay. Now, ultimately that, that, during the day did they
8 end up buying any marijuana from Jon that you're aware of?

9 A. No, sir. We arranged a meeting but it didn't go through.

10 Q. Alright. And did you have anymore dealings with that guy
11 that was calling himself Gouda or the other guy with him
12 throughout that afternoon?

13 A. No, it wasn't until later on that night.

14 Q. Okay. And tell the jury then later on that night what,
15 what happened with regards to those people then?

16 A. Well, I was contacted again and saying that they were
17 trying to meet up with Jon. Basically, the arrangement we
18 made earlier that day, they were trying rearrange it and make
19 it happen that night.

20 Q. Okay. And how were you contacted then later on in the
21 evening?

22 A. It was by phone again.

23 Q. By phone?

24 A. Yeah, yes, sir.

25 Q. Okay. And do you know how they got your phone number?

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 A. No, sir.

2 Q. Okay. Let me ask you this, do you give, had you given
3 out your number to people around campus that knew that you
4 were selling marijuana back in April of Two thousand eleven?

5 A. Yes, sir.

6 Q. Okay. So, you ultimately ended up getting contacted that
7 evening by somebody now, is that somebody that you had met
8 with earlier with, as far as ...

9 A. Can you repeat that question?

10 Q. When you got contacted later on in the evening, was that
11 by one of the people that you had met with earlier on campus?

12 A. Oh, yes, sir.

13 Q. Okay. And which person was that, the light skinned guy
14 with the dreds or the guy with the buzz cut?

15 A. I wasn't sure who I was talking to over the phone.

16 Q. Okay.

17 A. It was just one of them.

18 Q. Okay. Alright. And did you ultimately then make
19 arrangements to meet with them that night?

20 A. Yes, sir.

21 Q. Okay. And tell the jury kind of how that went about and
22 where you met with them that night?

23 A. Basically, it's a spot by the marriage houses, by the
24 marriage houses on campus, and I arranged -- me and Jon
25 usually meet there so I arranged for Jon to meet us there.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 And so, they picked me up on campus by the Ugueney Suites, and
2 we went over there to the marriage apartments.

3 Q. Okay, you said, so they came and picked you up?

4 A. Yes, sir.

5 Q. Okay. And what kind of car was it that picked you up?

6 A. It was a silver car.

7 Q. A silver car?

8 A. A four door, I don't know what kind, though.

9 Q. Okay. And how many people were in the car that came and
10 picked you up?

11 A. It was four people already in the car.

12 Q. Four people in the car? Where, where did you get into the
13 vehicle, then, Ricky?

14 A. I got in the back but I sat in between two passengers.

15 Q. Okay. So, in the middle, in the back seat?

16 A. Yes, sir.

17 Q. Okay. So, there were two other people in the back with
18 you?

19 A. Yes, sir.

20 Q. Okay. And describe those two people for the jury that
21 were in the back seat with you?

22 A. One was black and had dreds, and the other one was light
23 skinned and also had dreds.

24 Q. Okay. So, one was darker skinned than the other?

25 A. He was heavy set.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. That's what I was going to ask you. So, the guy
2 who was darker skinned was a bigger guy?

3 A. Yes, sir.

4 Q. Okay. And how about the lighter skinned guy with the
5 dreds, was he - - -

6 A. Slim.

7 Q. --- slim?

8 A. Slim.

9 Q. Okay. And did you recognize him from anywhere?

10 A. He was -- earlier, he was from earlier.

11 Q. That's what I was getting at when I started this. So, that
12 was one of the guys that you met with earlier in the day?

13 A. Yes, sir.

14 Q. Okay. And what name did, earlier in the day, were you
15 under the impression that he went by?

16 A. Gouda.

17 Q. Gouda? Alright. Now, let me ask you, the two, you said
18 there were four guys, so there was two guys in the back seat
19 with you, obviously there was somebody driving and somebody in
20 the front passenger seat?

21 A. Yes, sir.

22 Q. Okay. Did you interact at all with the two people in the
23 front seat?

24 A. No, sir.

25 Q. Okay. Did you get a good look at either one of their

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 faces?

2 A. No, sir, I wasn't really paying attention to them.

3 Q. Okay. Do you know whether either one of them could have
4 been the other guy that was with the light skinned Gouda guy
5 earlier in the day?

6 A. Possibly, but I don't know.

7 Q. Alright. Now, let me ask you this, so you had made
8 arrangements at that point in time for y'all to go meet Jon
9 over, you said in the marriage housing?

10 A. Yes, sir.

11 Q. Okay, now, is that marriage housing, how do you get to
12 that, is it from campus or from off campus?

13 A. Well, you can get to it on campus and off campus.

14 Q. If you are in a vehicle how do you get to it?

15 A. Oh, you've got to go off campus.

16 Q. Okay. And obviously, you were in a care at this point in
17 time, right?

18 A. Yes, sir.

19 Q. Okay. So, y'all left campus and then drove around to that
20 marriage housing?

21 A. Yes, sir.

22 Q. Okay. Now, did you have any, any conversation at that
23 point in time with the two guys in the back seat about the
24 marijuana that they were attempting to purchase?

25 A. Not really, I just, they showed me the money, and ...

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And do you remember which one of them it was that
2 showed you the money?

3 A. It was the black one.

4 Q. The black one?

5 A. Yeah, I'm pretty sure.

6 Q. You say, black, it was the darker skinned?

7 A. Yes, the dark -- I'm sorry.

8 Q. That's alright. Okay. So, now, did y'all ultimately end
9 up over there in the marriage housing where it's located at?

10 A. Yes, we ended up over there.

11 Q. Okay. And tell the jury how, did y'all park or what did
12 y'all do when you got there?

13 A. When we got there we parked and basically we were waiting
14 for a while. I called Jon a few times to tell him we was
15 there, and he was just on his way.

16 Q. Okay. Alright. And do you remember if y'all pulled into
17 a spot or backed into a spot or even ...

18 A. He pulled into it I believe.

19 Q. Alright. Now, did Jon ultimately end up ...

20 A. No, no, we backed in, I'm sorry.

21 Q. You backed in. Okay. And let me ask you, did Jon
22 ultimately end up showing up?

23 A. Yes, sir.

24 Q. And that was in his green Monte Carlo?

25 A. Yes, sir.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And where did, where did he park in relation to
2 where y'all were?

3 A. It was a few spots down, it wasn't next to each other, but
4 he pulled in. It was probably about four or five parking
5 spaces away.

6 Q. Okay. And you said he pulled in. Did he back in, too, or
7 did he actually pull into the spot?

8 A. He pulled in.

9 Q. Okay. So, y'all were basically facing different
10 directions at that point in time?

11 A. Yes, sir.

12 Q. And what, what did you then do, Ricky, after, when Jon
13 arrived?

14 A. When he arrived I asked for the money because Jon knew me,
15 so I was asking for the money, I was going to go get it for
16 him, but then they kept on saying that they wanted to see the
17 product. And so, I kind of understood where they were coming
18 from, you know, they didn't want to spend their money and see
19 what they was getting. So basically, ultimately all three of
20 us ended up walking towards the car and...

21 Q. By all three of you, you mean who, you and who?

22 A. The darker skinned one with the dreds and the light
23 skinned one with the dreds also.

24 Q. The three of y'all that were in the back seat?

25 A. Yes, sir.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. I've got you. Alright, and what did you do then after,
2 when the three of y'all got out of the car, where did y'all
3 go, where did you go?

4 A. I got into the car because I was the only one that knew
5 Jon at the time, so he was expecting me to get in the car
6 anyway, and he passed me one of the, basically, one of the
7 ounces of marijuana because they were purchasing two, and I
8 handed it to them so they could see it. And while they was
9 looking at it they were basically complaining, basically
10 saying, you know, it wasn't what they was looking for at the
11 time, you know, like it wasn't it. And after that they was
12 just talking about that for a few minutes actually, like
13 complaining about it. And ...

14 Q. I'm showing you, Ricky, State's Numbers Six and Seven, do
15 those appear to be consistent or inconsistent with the two
16 bags of marijuana that ...

17 A. Consistent.

18 Q. Okay. So, it was consistent with at least one of the bags
19 that you handed to the other two guys?

20 A. Yes, sir.

21 Q. Do you remember who you handed it to, the darker skinned
22 bigger guy or the light skinned guy?

23 A. At the time they were next to each other so I'm not too
24 sure who I handed it to.

25 Q. I've got you. And you said that they were kind of

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 complaining about how it looked and it wasn't what they
2 wanted?

3 A. Yeah, yes, sir.

4 Q. Alright. What did you, where were you while all that was
5 going on initially?

6 A. I was still in the car, the passenger side.

7 Q. The front passenger seat?

8 A. Yes, sir.

9 Q. Let me ask you this, sitting in the front passenger seat
10 did you see, did you see a gun anywhere in Jon's car?

11 A. No, sir.

12 Q. Now, what, and what was Jon doing while all this was going
13 on?

14 A. He was just in the driver's seat, you know, just observing
15 I guess.

16 Q. Waiting, I guess, for either the money or his marijuana
17 back?

18 A. Yeah, yes, sir.

19 Q. And what did you end up doing then, did you stay seated in
20 the front passenger seat?

21 A. After about five minutes, well, yeah, after five minutes
22 when they was complaining about the produce I was basically
23 saying that they could, one of them could sit in the car, you
24 know, because they were basically talking over me and it
25 didn't have anything to do with me at the time. So, I was

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 saying, one of y'all can get in the car, you know, I seen him
2 lean over a little, I guess, you know, it's less suspicious if
3 one of them is in the car. And the first couple of times I
4 said that, you know, like they kind of ignored me, or I guess
5 I wasn't heard. So, I actually got out of the car and was,
6 like, one of y'all can get in the car and basically talk about
7 this because, you know, it didn't have anything to do with me.
8 And like right after I said that, when I was outside of the
9 car already a car pulls up behind us, it was another silver
10 car. We didn't, nobody knew who it was, who was in it, I
11 don't remember anybody getting out either, but while I was
12 looking at that for about Fifteen seconds I turned back around
13 and I see the light skinned guy with the dreds and Jon
14 tussling in the car basically, and I see Jon's car basically
15 in reverse, the passenger door was still open at this time.
16 And he's in reverse, and you hear his tires spur out. And
17 after his tire spurs out you hear a pop, and originally I
18 thought it was a tire but I wasn't too sure yet. And while,
19 after that I basically got away from the situation, I ran off
20 because I didn't have anything on me, and yeah, there was
21 nothing I could really do in this situation. And when I
22 turned back around, when I got to the gate I looked behind me
23 and Jon's car was away from the scene but still in the
24 marriage houses but away from the scene, pulling toward, yeah,
25 pulling away. So, after I did that I just kept running. That

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 was the last thing I remember - - -

2 Q. Okay. Let me kind of go ...

3 A. --- about the situation, that was the last time I was
4 there.

5 Q. Let me back up and kind of touch on a few things there,
6 Ricky. Alright, so you get out of the car and you said you
7 saw another vehicle pull up and it kind of caught your
8 attention trying to see who it was?

9 A. Yes, sir.

10 Q. Alright. And you said that when you turned back around
11 you saw now the lighter skinned of the two guys tussling with
12 Jon?

13 A. Yes, sir.

14 Q. And where was that taking place, in the car or out of the
15 car?

16 A. It was inside of the car.

17 Q. Okay.

18 A. Jon never got out of his car.

19 Q. Okay. And the lighter skinned guy, was he all the way
20 sitting in the car or leaning in the car or what?

21 A. He was leaning in the car.

22 Q. Okay. Now, could you see their hands and see what they
23 were tussling over from where you were?

24 A. No, sir.

25 Q. Okay. Let me ask you this, I mean, did you ever see

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 anybody with a gun?

2 A. No, sir.

3 Q. And you said kind of while that was going on suddenly
4 Jon's car started backing up?

5 A. Yes, sir.

6 Q. Okay. And where were you at when the car started backing
7 up?

8 A. I was at the rear of the car close to, I wasn't all the
9 way at the end, by the bumper, in between the bumper and the
10 tire you could say, the bumper and the back tire.

11 Q. Okay. Alright, and where was the darker skinned heavier
12 set guy?

13 A. He was kind of next to me but wasn't next to me, I would
14 say about two feet diagonal from me, away from Jon's car door.

15 Q. Okay. So, he wasn't in the car at that point in time?

16 A. No, sir.

17 Q. He had backed up kind of in the same direction you had
18 gone, I guess?

19 A. You could say that.

20 Q. Alright. And at that point in time you said you heard a
21 pop, is that right?

22 A. Yes, sir.

23 Q. Okay. And do you know what that pop was?

24 A. No, sir, not at the time.

25 Q. Okay. Now, when you heard the pop where was the lighter

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 skinned guy, was he still hanging in the car tussling with
2 Jon?

3 A. I think so, but after I heard the pop I was really trying
4 to get away from the scene.

5 Q. Okay. And you said, I believe, you took off running at
6 that point in time?

7 A. Yes, sir.

8 Q. Okay. What direction did you run?

9 A. I ran back towards campus, there's a gate that you can get
10 back onto campus from.

11 Q. I'm showing you State's Exhibit Number One, and I think
12 you've seen this diagram before, right?

13 A. Yes, sir.

14 Q. Alright. I'm going to move this sticky here for a second,
15 but that -- there's been testimony that that's the marriage
16 housing down in here, so is that the kind of parking lot that
17 you're talking about all this taking place in?

18 A. Yes, sir.

19 Q. And this is Russell Street out there, Russell Street?

20 A. Okay.

21 Q. So, it's where you would turn in to go into the marriage
22 housing?

23 A. Aright.

24 Q. Alright, so what direction did you take off running then?

25 A. I actually ran back towards campus, back towards the

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 guards, and when I kept running though I went past Williams
2 and ultimately back over to the suites.

3 Q. Alright. I guess, and you testified there are two ways
4 in, is that, I guess the other way you can go in is it ...

5 A. Yeah, but there's only walk, yeah.

6 Q. If you walk in there there's a gate, but you can't drive
7 that way?

8 A. Yes, sir.

9 Q. Okay. And you saw Jon, the last you saw Jon what
10 direction was his car going?

11 A. Back towards Russell Street. It wasn't all the way out
12 of Baldwin Street yet but it was going towards that way.

13 Q. Going away?

14 A. Yeah, yes, sir.

15 Q. At that point in time did there appear to be, when you
16 last saw his vehicle did there appear to be anybody hanging
17 out of his vehicle when you last saw it?

18 A. No, sir, not when I last saw it.

19 Q. Okay. Alright. Let me ask you, the two guys that were in
20 the front seat of the silver car, did either one of them ever
21 get out of the vehicle that you saw?

22 A. No, sir, not that I saw.

23 Q. And where did you ultimately end up going when you left
24 from there?

25 A. I went all the way back to the suites across campus.

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1 Q. Okay. Did you go to anybody's room or did you go back ...

2 A. Yes, sir, I went to my friend's room.

3 Q. Okay. Did you tell him at that point in time what had
4 just happened?

5 A. Yes, I did tell him.

6 Q. Do you know where Jon went other than just seeing, the
7 last you saw his vehicle driving kind of down Baldwin back
8 towards Russell?

9 A. No, sir. I tried to contact him a few times and I
10 couldn't get an answer.

11 Q. So, you tried to contact him that evening?

12 A. Yes, sir.

13 Q. How about the guy, the phone number that you had gotten
14 the call from that kind of set this whole thing up, did you
15 try to contact that number back?

16 A. I probably called a couple of times, I couldn't get any
17 response from him, and when, the next time I got to a voice
18 mail I basically left a message saying that that wasn't cool,
19 you know, it's not something that I do, and it was a little
20 more words than that but that was the gist of it, paraphrase.

21 Q. Alright. And when, when did you ultimately find out that
22 Jon had actually been shot and was, and had died as a result
23 of what happened out there?

24 A. It was later on that morning. Actually that night I heard
25 about his car crashing but I didn't know any of the details.

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And did you ever see any of those guys that were in
2 that silver car anymore that night?

3 A. No, sir.

4 Q. And the guy with, the light skinned guy with the dreds
5 back, back in April of last year, you said you didn't know him
6 prior to this day?

7 A. No, sir.

8 Q. Okay. And do you recognize him now?

9 A. Yes, sir.

10 Q. Would you point him out for the Court and the jury?

11 A. He's right there.

12 Q. Right there?

13 A. Yes, sir.

14 Q. Where is he sitting at at that table?

15 A. Yes, sir, in the middle.

16 Q. In the middle. Is something different about him today
17 than back in April of last year?

18 A. He doesn't have dreds.

19 Q. Now, Ricky, do you remember a couple of weeks later, I
20 believe it was May the Sixth of Two thousand eleven, being
21 contacted and meeting with officers with the State Law
22 Enforcement Division?

23 A. Yes, sir.

24 Q. Okay. And did you give them a statement at that point in
25 time, did they talk to you about what had happened?

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 A. Yes, sir.

2 Q. Alright. And let me show you State's Exhibit Number
3 Nineteen. Let me show you State's Exhibit Number Nineteen, do
4 you remember them showing you that, that page with some
5 photographs on it?

6 A. Yes, sir.

7 Q. And did you tell them that you recognized that guy?

8 A. Yes, sir, I picked him out among a group.

9 Q. Okay. And where did you recognize the person that's in
10 State's Exhibit Number Nineteen, who is that?

11 A. He was the other one that was with the ...

12 Q. The guy that you described, the darker skinned, the bigger
13 dark skinned guy?

14 A. Yes, sir.

15 Q. Okay. And in fact, did you note that on that and sign it
16 and date it?

17 A. Yes.

18 SOLICITOR SORENSON: Your Honor, at this time we'd offer
19 State's Nineteen into evidence.

20 MR. WILLIAMS: Your Honor, without objection.

21 THE COURT: Alright, State's Nineteen is in evidence
22 without objection.

23 (State's Exhibit Nineteen
24 marked and filed.)

25 Q. And that according to at least what's on here is a picture

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 of Ray Anthony Alston, is that correct?

2 A. Yes, sir, it would seem so.

3 Q. Okay. I mean, you didn't know -- prior to that night had
4 you ever seen that person before prior to that night?

5 A. No, sir.

6 Q. Was he there earlier in the day when you had met with the
7 defendant about ...

8 A. I don't remember him being there.

9 Q. You don't remember him? When you met with officers with
10 the State Law Enforcement Division do you remember where it
11 was that that happened, that you gave them that statement and
12 picked that person out?

13 A. I think I was, yeah, they picked me up in Sumter, so I was
14 at the police station in Sumter.

15 Q. In Sumter. And what were you doing in Sumter, Ricky?

16 A. I was actually preparing to go back to Maryland when they
17 contacted me.

18 Q. Okay. And was school over by that point in time?

19 A. Yes, sir, the semester had just ended. Well, I took my
20 finals, the semester wasn't over but I had took my finals.

21 Q. Okay, you were done as far as - - -

22 A. Yes, sir.

23 Q. --- classes for you at that point in time? Alright. Now,
24 let me ask you this, Ricky, did you come back to State this
25 year?

RICKY GIPSON - DIRECT BY SOL. SORENSON

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1 A. No, sir.

2 Q. Okay. And where are you living now?

3 A. I'm living in Maryland currently.

4 SOLICITOR SORENSON: I beg the Court's indulgence.

5 THE COURT: Okay.

6 Q. The last thing, and it may sound kind of stupid, Ricky,
7 but when you got out of the vehicle and left Jon in the
8 driver's seat in his vehicle, - - -

9 A. Yes, sir.

10 Q. --- was he injured at all when you left the vehicle?

11 A. No, sir.

12 Q. Obviously, he hadn't been shot at that point in time, is
13 that correct?

14 A. No, sir.

15 SOLICITOR SORENSON: Thank you, Ricky, please answer any
16 questions Mr. Johnson has.

17 THE COURT: Mr. Johnson, your witness.

18 (NOTE: Blank lines on this page do not indicate any part of
19 record has been omitted. Headers on testimony pages and hard
20 page breaks between testimony are now required by the Court.
21 See next ensuing page for sequential continuation of record.)

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 RICKY GIPSON - CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Ricky, I want to get something straight up front. Now,
4 you are drug dealer, is that correct?

5 A. I was.

6 Q. You was? Okay. When this happened you were a drug
7 dealer, is that correct?

8 A. Yes, sir, that's correct.

9 Q. Okay. And I think you testified that the only reason that
10 the deceased, Jonathan, got involved was because you called
11 him, is that correct?

12 A. Yes, sir.

13 Q. Okay. Because you couldn't supply enough drugs, so Jon
14 had it so you called Jon, is that correct?

15 A. Yes, sir.

16 Q. And I think you testified also that y'all were friends and
17 if you didn't have it you would go ahead and get him to get
18 the bigger amount, is that correct?

19 A. Yes, sir.

20 Q. Okay. And you, when this happened -- let me ask you this,
21 did an investigator from our office try to call you, a guy by
22 the name of Charles Dallas, didn't try to call you and your
23 parents, is that correct?

24 A. I'm not sure.

25 Q. You're not sure? Okay. If I told you he tried to call

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 you would you disagree with me?

2 A. I was contacted by a few involving the investigation, so
3 possibly.

4 Q. Okay. And you wouldn't talk to us, would you? You
5 wouldn't talk to us about the case, would you?

6 A. I had a lawyer present so I was expecting y'all to go
7 through him if y'all had any questions.

8 Q. Oh, you had a lawyer present so your lawyer went through
9 the Solicitor's office?

10 A. I believe so.

11 Q. Who is your lawyer?

12 A. His name is Dietrich.

13 Q. Okay.

14 A. Mr. Dietrich.

15 Q. Okay. And did your lawyer go through the Solicitor's
16 office? I want you to know now, you're under oath now, and
17 the Solicitor's office can't protect you. You know, if you
18 lie in Court, you know, the Judge handles it now, now do you
19 understand that?

20 A. I understand that.

21 Q. Okay. Now, did you go through your lawyer to get to the
22 Solicitor's office, a yes or no?

23 A. I believe so, possibly.

24 Q. Now, sir, you know whether you went through your lawyer or
25 not. Did you go through your lawyer to get to the Solicitor's

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 office?

2 A. Yes, sir.

3 Q. Don't play that game.

4 A. Yes, sir.

5 Q. You went through him or you didn't.

6 SOLICITOR SORENSON: Objection, Your Honor, I mean, let
7 him answer the question, I mean.

8 THE COURT: He's going to let him answer the question.

9 A. The answer is yes, sir.

10 Q. Okay. Okay. So, when you talked to the SLED agent did
11 you go through your lawyer then?

12 A. To who?

13 Q. TO the SLED agent, Mr. Johnson, Agent Johnson?

14 A. No, I didn't have one at the time.

15 Q. So, you talked to them twice before you got a lawyer, is
16 that correct?

17 A. Possibly, I know ...

18 Q. How many times did you talk with him?

19 A. Actually, I, the second time they contact me, my dad had a
20 lawyer and I referred him to my lawyer.

21 Q. Okay. Okay. How many times did you talk with them
22 without a lawyer?

23 A. Once.

24 Q. Okay. The second did you talk -- you say you had a
25 lawyer?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. And after the second time did you, not only did you talk
3 to them twice, but you signed a statement, is that correct?

4 A. I signed a statement on my first visit.

5 Q. You signed a statement on your first visit. And I want to
6 be sure, in all of those statements not one time did you say
7 Julian had a gun, is that correct?

8 A. I don't know who had the gun, because I don't know any
9 names.

10 Q. I didn't ask you that, sir, please answer my question and
11 then you can explain. In any one of those statements did you
12 say Julian had a gun?

13 A. No, sir.

14 Q. Okay.

15 A. It was one of the two, though, so technically, yes.

16 Q. Okay. If that's what you want to say. The only thing I'm
17 asking, and I want to get that clear, did you say in any
18 statement that Julian had a gun?

19 SOLICITOR SORENSON: Your Honor, he asked that, he told
20 him he could answer it and then explain it, and then when he
21 did that he makes it sound like he didn't do what he told him
22 to do, and that's exactly what he did. He answered it and then
23 explained it.

24 THE COURT: Alright, Mr. Johnson, just give him a chance
25 to answer and give him a chance to explain. Okay. If you want

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 to answer the question again I'll let you do it.

2 MR. JOHNSON: Your Honor, if I -- and I can also answer,
3 ask the question again to really clarify something he said.

4 THE COURT: And that's what I'm saying, but give him an
5 opportunity to explain it, please, sir. Okay? Alright.

6 Q. Did in either statement you say that Julian had a gun?

7 A. No, but as, in the statement I said either his, the friend
8 that was with him or he had the gun.

9 Q. You said that in your statement?

10 A. Yes, sir.

11 Q. I think you gave a statement on the Fifth, on May Sixth,
12 Two thousand eleven, at four:fifty-two, is that correct?

13 A. Yes, sir.

14 Q. In Sumter, South Carolina?

15 A. Yes, sir.

16 Q. You gave it at, to Agent Richard Johnson?

17 A. Yes, sir.

18 Q. And the interviewing agent R. Bond?

19 A. Yes, sir.

20 Q. Is this a copy of that statement?

21 A. Yes, sir.

22 Q. Okay. Would you pick it up and look at it, please? Would
23 you read it?

24 A. The whole statement?

25 Q. Yes, sir, please, sir.

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. "This statement is written by Sergeant Johnson in my
2 presence, and at my request. The day that Johnny J. was
3 killed I inadvertently left four black males in the back of --
4 about three of them had dreds and the other did not. They
5 were standing by a green truck."

6 Q. Keep reading.

7 A. I continue, the handwriting is a little sketchy, I can't
8 really read it.

9 Q. Okay. Is it anywhere in there you -- point out in that
10 statement where you said you didn't know which one had a gun?

11 A. It might be on the picture, I don't know if it's in the
12 statement. I'm still readying, though.

13 Q. Okay. Well, help yourself.

14 A. I don't know if it's in there.

15 Q. Is it in there?

16 A. I'm not too sure, I can't honestly read - - -

17 Q. Okay. You said ...

18 A. --- I can't honestly read the statement, it's a little
19 sketchy, the print.

20 Q. Okay. It's a little sketchy. Let me ask you, didn't I
21 hear you say you were a student?

22 A. Yes, sir.

23 Q. And you said you were a student at South Carolina State?

24 A. Yes, sir.

25 Q. And this is your statement?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. And this is the statement you gave?

3 A. Yes, sir.

4 Q. And it's a little sketchy and you can't read it?

5 A. Yes, sir, the print.

6 Q. You can't read the print?

7 A. Yes, sir, the photocopy may have messed it up.

8 Q. The photocopy messed it up. Okay. How many days did you
9 spend in jail?

10 A. None.

11 Q. Were you ever under arrest?

12 A. No, sir.

13 Q. Didn't you set this deal up?

14 A. Yes, sir.

15 Q. Okay. Do you remember when -- did you have any, you did
16 do a recording transcript, do you remember they were recording
17 you when you were talking at the station, do you remember
18 that?

19 A. Yes, sir.

20 Q. And you agreed to that recording, that's right?

21 A. Yes, sir.

22 Q. Okay. Okay. Now, do you remember being promised that if
23 you would just, do you remember the discussion, Big Daddy, if
24 you will just tell us the truth, I've already talked with the
25 Solicitor, do you remember that from the recording?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. I don't remember those words, honestly.

2 Q. Do you want me to get the recording?

3 A. Well, it must have happened.

4 Q. It must have happened? Well, please, sir, did it happen
5 or not?

6 A. Yes, sir, I guess, I'm not too sure if he talked to the
7 Solicitor before.

8 Q. Okay. And he said, all we need you to do is be honest and
9 truthful with us, ain't that right, Big Daddy?

10 A. He did say be honest and truthful.

11 Q. And you would be alright because you're going back to your
12 aunt, isn't that right?

13 A. He did say that.

14 Q. And don't you take the load, Big Daddy, for what you
15 didn't do, didn't he tell you that?

16 A. He said that if I keep it honest that I'll be released,
17 and that's what happened.

18 Q. Okay. And also he said, we're not dough police so we
19 don't care about you selling drugs?

20 A. Yes, he said he was more interested in the homicide.

21 Q. Okay. And he knew about -- have you ever heard of felony
22 murder?

23 A. Yes, sir.

24 Q. What's felony murder?

25 A. Murder.

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 Q. Okay. Okay. That means you call it a murder and you're
2 committing a felony?

3 A. Yes, sir.

4 Q. Okay. Did you not cause this murder with helping sell
5 these drugs?

6 A. Inadvertently, yes.

7 Q. Inad -- but you did?

8 A. Yes, sir.

9 Q. And you did not one day in jail?

10 A. No, sir.

11 Q. You wasn't even locked up?

12 A. No, sir.

13 Q. Do you know how long he's been in jail?

14 A. No, sir.

15 Q. Do you care?

16 A. No, sir.

17 Q. Okay. Did you see -- you saw a struggle that night. Did
18 you see anybody with a gun?

19 A. No, sir, not prior.

20 Q. You rode there in the car with them?

21 A. Yes, sir.

22 Q. Did you see -- you didn't see a gun in the car, did you?

23 A. No, sir.

24 Q. They got out of the car, you didn't see a gun, did you?

25 A. No, sir.

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 Q. They talked, you didn't see a gun, did you?

2 A. No, sir.

3 Q. You don't know where the gun came from, do you?

4 A. No, sir.

5 Q. Okay. So, you were speculating?

6 A. I wouldn't say those words, I was ...

7 Q. Okay, you were lying?

8 A. No, I would use something more accurate than speculating.

9 Q. Okay. Give me something more accurate than speculating.

10 A. I assume, well, ..

11 Q. You assume.

12 A. Yes, I assume.

13 Q. Okay. That's a first cousin to speculate. Okay, you
14 assume. You didn't ...

15 SOLICITOR SORENSON: Objection, is he going to let him
16 answer the question? I mean ...

17 MR. JOHNSON: Your Honor, I didn't interfere with him
18 with his cross-examination at all. I've got a right to cross-
19 examine him the way I want to.

20 THE COURT: And I think the only thing he's asking, just
21 make sure that Mr. Gipson has an opportunity to respond
22 completely.

23 Q. Mr. Gipson, I apologize if I don't give you the
24 opportunity to respond. You said you assume?

25 A. Yes, sir.

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 Q. Assume means you didn't see it, is that correct?

2 A. Yes, sir.

3 Q. Okay. So, your testimony here, and I just want to get a
4 full understanding, your testimony here is that you set up a
5 drug deal, is that correct?

6 A. Uh-huh, yes, sir.

7 Q. That Julian and three other guys wanted to buy drugs?

8 A. Yes, sir.

9 Q. You didn't hear them talk about robbing?

10 A. No, sir.

11 Q. You didn't see a gun?

12 A. No, sir.

13 Q. They had money?

14 A. Yes, sir.

15 Q. And you didn't think they would do anything because you
16 got out of the car and left your friend in the car with them,
17 so you didn't think anything was going to happen?

18 A. No, sir.

19 Q. And when you heard a pop you dashed?

20 A. Yes, sir.

21 Q. Those were your exact words?

22 A. Yes, sir.

23 Q. So, you didn't see anything, you didn't know anything, all
24 you had to do is to say that they were at the car, is that
25 correct?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. A little more than at the car.

2 Q. Okay.

3 A. I actually visually saw them tussling.

4 Q. Oh, okay, you saw, but you don't know what they tussling
5 over?

6 A. No, sir.

7 Q. Okay. And you don't know why they were tussling?

8 A. No, sir.

9 Q. And you don't know what went on in the car to make the
10 tussling go on?

11 A. No, sir, I can only ...

12 Q. Again, all you did was, you're here to say you saw a
13 tussling in the car, and they were at the car, is that
14 correct?

15 A. Yes, sir.

16 Q. And you don't know what happened at the car?

17 A. No, sir.

18 Q. Didn't they cut you a deal because you wasn't charged?

19 A. No, sir.

20 Q. Everybody else went to jail.

21 A. I wasn't with them.

22 Q. Okay. You wasn't, you didn't ride over there with them in
23 the car?

24 A. Inadvertently, yes.

25 Q. You inadvertently got in the car?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. Yes.

2 Q. Where did you inadvertently get in the car at?

3 A. The suites.

4 Q. On the campus you inadvertently got in the car?

5 A. Yes, sir.

6 Q. Inadvertently with four people you don't know?

7 A. Yes, sir.

8 Q. And inadvertently rode out the back gate?

9 A. It sounds foolish, but yes, sir.

10 Q. No, sir, and inadvertently made the turn and went into the
11 marriage housing, and inadvertently waited for them, waited
12 for Johnny J. to get there, and inadvertently got out of the
13 car, is that correct?

14 A. Those are all actions I don't one hundred per cent
15 control. I can only control myself.

16 Q. Okay. You didn't do all that?

17 A. I didn't drive the car, I told them where to go.

18 Q. Okay. Did you ride?

19 A. Yes, sir.

20 Q. Did you set the deal?

21 A. Yes, sir.

22 Q. Okay. Because you didn't have the drugs?

23 A. No, sir.

24 Q. Okay. Now, when you leave here you're going back home
25 again today, right?

RICKY GIPSON - CROSS BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. And you admitted to facts that you could get charged for
3 felony murder?

4 A. Yes, sir.

5 Q. And you're going home?

6 A. Yes, sir.

7 Q. And he's been in the jail a year and a half.

8 A. I'm sorry to hear that, sir.

9 MR. JOHNSON: Your Honor, I beg your indulgence for just
10 a few minutes.

11 THE COURT: Alright.

12 Q. Last question, you did not see a gun in the car that you
13 rode in at all, did you?

14 A. No, sir.

15 Q. And to your knowledge none of those guys had a gun?

16 A. To my knowledge.

17 THE COURT: Is that it?

18 MR. JOHNSON: That's it, Your Honor.

19 THE COURT: Okay. Anything on redirect?

20 SOLICITOR SORENSON: Just a few things, Your Honor.

21 THE COURT: Okay.

22 (NOTE: Blank lines on this page do not indicate any part of
23 record has been omitted. Headers on testimony pages and hard
24 page breaks between testimony are now required by the Court.
25 See next ensuing page for sequential continuation of record.)

RICKY GIPSON - REDIRECT BY SOL. SORENSON

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1 RICKY GIPSON - REDIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Mr. Gipson, let me kind of back you up, when Mr. Johnson
4 was asking you about where, if you remember him showing you
5 your statement about where you said that it had to be one or
6 the other that shot him?

7 A. Yes, sir.

8 Q. Okay. And I think you went through and looked at your
9 statement you had given, and let me ask you this first of all,
10 whose handwriting is that statement in, is that yours or the
11 detective's?

12 A. The detective's handwriting.

13 Q. Alright. But did you also, when you filled out that same
14 day on May the Sixth of Two thousand eleven, did you make some
15 notations on that actually in our handwriting?

16 A. Yes, sir.

17 Q. Okay. Tell the jury, would you read for the jury what you
18 wrote on that, that same day?

19 A. "This is one of the guys there, either it was him or the
20 man with him that had the gun, that shot the gun, shot Jon."

21 Q. Okay. So, you did, in fact, tell the police back on May
22 the Sixth of Two thousand eleven, and write it down on State's
23 Exhibit Number Nineteen that it had to be one or the other
24 that shot Jon, is that correct?

25 A. Yes, sir.

RICKY GIPSON - REDIRECT BY SOL. SORENSON

167

1 Q. Let me ask you this, Ricky, if you, if you had seen a gun
2 on one of these guys in the back seat would you have taken
3 them over to buy drugs from Jon?

4 A. No, sir.

5 SOLICITOR SORENSON: That's all I have, Your Honor, thank
6 you.

7 THE COURT: Alright. Anything?

8 MR. JOHNSON: One question, Your Honor.

9 THE COURT: Okay, now, I'm counting this time, Mr.
10 Johnson.

11 MR. JOHNSON: Alright, sir, one and a half then.

12 THE COURT: Alright, thank you, sir.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and hard
15 page breaks between testimony are now required by the Court.
16 See next ensuing page for sequential continuation of record.)

RICKY GIPSON - RECROSS BY MR. JOHNSON

168

1 RICKY GIPSON - RECROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Did you know that for a fact or you were guessing?

4 A. I know that for a fact.

5 Q. And you testified you didn't know what happened in the
6 car, right, so you're assuming that one of them had the gun,
7 right, because you wasn't there, right, because you dashed?

8 A. Well, you could say that.

9 MR. JOHNSON: Thank you, sir, that's all I wanted.

10 THE COURT: Alright. You may step down. Thank you, sir.
11 Appreciate it.

12 SOLICITOR SORENSON: May he be excused, Your Honor?

13 THE COURT: Do you have any objection to him being
14 excused?

15 MR. JOHNSON: Your Honor, I've got ...

16 SOLICITOR SORENSON: May we approach, I mean, if there's
17 something ...

18 THE COURT: If y'all need to talk.
19 (Whereupon, a bench conference
20 is had out of the hearing of
21 the jury and court reporter.)

22 THE COURT: Alright, thank you.

23 Mr. Sorenson, or Mr. Ball, call your next witness.

24 SOLICITOR BELL: Your Honor, the State calls Hilliard
25 Pinckney.

1 (Whereupon, the witness
2 enters the courtroom.)

3 THE COURT: Come right on down here and the Clerk will
4 swear you in.

5 CLERK: Please place your left hand on the Bible and
6 raise your right hand.

7 (Whereupon, Hilliard Pinckney
8 is duly sworn.)

9 CLERK: Please state your name again for the record.

10 WITNESS: Hilliard Pinckney.

11 THE COURT: Alright, Mr. Bell.

12 SOLICITOR BELL: Thank you, Your Honor.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and hard
15 page breaks between testimony are now required by the Court.
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HILLIARD PINCKNEY - DIRECT BY SOL. BELL

170

1 HILLIARD PINCKNEY - DIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Good afternoon, Mr. Pinckney, how are you?

4 A. Good afternoon.

5 Q. Mr. Pinckney, where do you live?

6 A. North Charleston.

7 Q. And where did you go to high school?

8 A. Fort Dorchester.

9 Q. And did you graduate?

10 A. Yes, sir.

11 Q. Are you employed now?

12 A. Yes, sir.

13 Q. Where are you employed?

14 A. At the port.

15 Q. The port? What are you doing at the port?

16 A. Unloading trucks.

17 Q. Okay. Do you do anything else?

18 A. Take care of my daughter.

19 Q. Okay. Do you have a hobby or, a hobby you're trying to
20 make into a business?

21 A. Music.

22 Q. What are you doing with music?

23 A. Engineering.

24 Q. What do you do with engineering, how do you ...

25 A. Recording, computer, stuff like that.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

171

1 Q. Okay. Do you come to Orangeburg much?

2 A. Not no more, I used to.

3 Q. Okay. When did you come to Orangeburg?

4 A. When my daughter was up here.

5 Q. And how long ago was that?

6 A. Three, four years ago.

7 Q. How long?

8 A. Two years ago.

9 Q. Two years ago. And did you stay in Orangeburg much during
10 that time?

11 A. Pretty much back and forth.

12 Q. Between North Charleston and Orangeburg?

13 A. Yes, sir.

14 Q. Did you do anything else when you were up here besides
15 caring for your daughter?

16 A. Music.

17 Q. Okay. Where did you stay when you came up here?

18 A. I was with my d-mama, my child's ...

19 COURT REPORTER: I didn't hear you, I'm sorry, I didn't
20 understand what you said.

21 A. My child's mother.

22 Q. Where did she live?

23 A. In Pine Hills.

24 Q. Excuse me?

25 A. Pine Hills.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

172

- 1 Q. Where is that located?
- 2 A. In Orangeburg.
- 3 Q. You don't know what street it's off of?
- 4 A. No, sir.
- 5 Q. Okay. Now, Mr. Pinckney, you got caught up in a situation
- 6 about, a little over a year and a half ago, is that true, is
- 7 that correct?
- 8 A. Yes, sir.
- 9 Q. Do you remember back on April Fifteenth of last year, Two
- 10 thousand eleven?
- 11 A. A little bit.
- 12 Q. A little bit?
- 13 A. Not too much.
- 14 Q. Okay. Where were you on that day?
- 15 A. We was at the studio.
- 16 Q. And where was the studio?
- 17 A. By Goldstein's.
- 18 Q. Okay. And that's where, where is Goldstein's located?
- 19 A. I don't know street names so, was it Russell Street, I
- 20 guess, I don't know.
- 21 Q. Okay. On Russell Street?
- 22 A. I don't know street names.
- 23 Q. Okay. Was the studio at somebody's house or was it just a
- 24 stand alone studio?
- 25 A. It was somebody's house.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

173

1 Q. And whose house was it?

2 A. A friend.

3 Q. What's his name?

4 A. Nard.

5 Q. And do you know what his whole name is?

6 A. No, sir.

7 Q. You just know him as Nard?

8 A. Yes, sir.

9 Q. Okay. Did you have some friends that came up from
10 Charleston on that day?

11 A. Yes, sir.

12 Q. And who came up from Charleston?

13 A. Shatodd and Ray.

14 Q. Okay. Do you what Shatodd - is it Shatodd?

15 A. Yes, sir.

16 Q. What's his name, or full name, do you know?

17 A. I think it's Shatodd Thompson.

18 Q. Is he a friend or is he kin to you?

19 A. He's kin to me.

20 Q. How is he kin to you?

21 A. My cousin.

22 Q. And how did you, what did you call him?

23 A. Todd.

24 Q. Todd? And who was the other fellow?

25 A. Ray.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

174

- 1 Q. Do you know what his name was?
- 2 A. Ray Anthony.
- 3 Q. And what did you call him?
- 4 A. Big Man.
- 5 Q. Big Man? Okay. Did you have a name that people called
- 6 you other than Hilliard Pinckney?
- 7 A. H. D.
- 8 Q. H. D.?
- 9 A. Hilliard Pinckney's a mouthful, isn't it? Now, after
- 10 that, Nard, at Nard's studio, what time of day was this when
- 11 they came up, do you recall?
- 12 A. I can't remember.
- 13 Q. Afternoon, night, morning?
- 14 A. Probably afternoon, I can't remember.
- 15 Q. Okay. Did they come up with another fellow?
- 16 A. Yeah, but I don't know who that was though.
- 17 Q. Okay. They did?
- 18 A. Yes, sir.
- 19 Q. Okay. Now, at the studio, Nard's studio were there other
- 20 people there?
- 21 A. Yes, sir.
- 22 Q. Who do you remember being there?
- 23 A. It was them and some girls and Nard.
- 24 Q. Anybody else?
- 25 A. I can't remember who else was there.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

175

1 Q. Okay. And what was going on while y'all were at the
2 studio?

3 A. Recording, and people laughing and playing, having fun.

4 Q. Okay. Did you know a fellow named Gouda?

5 A. Yes, sir.

6 Q. Was he there at that time?

7 A. Yes, sir.

8 Q. Okay. How did you know him?

9 A. Through Pine Hills.

10 Q. How, I mean, how through Pine Hills?

11 A. He was a close friend.

12 Q. Do you know what his name was?

13 A. No, sir, I can't remember.

14 Q. You can't remember?

15 A. No, sir.

16 Q. Do you see him in the courtroom today?

17 A. Yes, sir.

18 Q. Where is he?

19 A. Right there.

20 Q. Could you point him out, please?

21 (Witness points toward
22 defendant.)

23 SOLICITOR BELL: Your Honor, we'd ask that the record
24 reflect that the witness has identified the defendant.

25 THE COURT: The record will so reflect.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

176

1 Q. Does he look the same today as he did back then?

2 A. Yes, sir.

3 Q. Anything different about him?

4 A. No, sir.

5 Q. Okay. Now, y'all were recording, did y'all at some point
6 leave from Nard's place?

7 A. Yes, sir.

8 Q. And do you recall who left?

9 A. Me and Shatodd, Ray and Gouda.

10 Q. Do you, how did y'all leave?

11 A. The other fellow's car, I don't know his name.

12 Q. Okay. And when y'all left, do you recall what kind of car
13 it was?

14 A. I can't remember.

15 Q. Okay. Who was driving?

16 A. Shatodd.

17 Q. Okay. And how were y'all seated in the car?

18 A. I can't remember how we was sitting, I know I was in the
19 passenger side, though.

20 Q. Back seat, front seat?

21 A. Me and Todd was in the front, I don't remember how it was
22 in the back.

23 Q. Would Gouda and Ray have been in the back?

24 A. Yes, sir.

25 Q. Okay. Where were y'all going?

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

177

- 1 A. Going to get some weed.
- 2 Q. Whose, do you remember whose idea that was?
- 3 A. No, sir.
- 4 Q. You just, y'all were going to get some weed?
- 5 A. Yes, sir.
- 6 Q. Did you have, were you going to buy some weed?
- 7 A. I was just down for the ride.
- 8 Q. Do you know who was going to?
- 9 A. No, sir.
- 10 Q. Do you know where y'all were going?
- 11 A. No, sir.
- 12 Q. Where did y'all go?
- 13 A. We went on campus first, then a little past Goldstein's.
- 14 Q. Okay. What did y'all do when you went on campus first?
- 15 A. We picked up somebody, I don't know.
- 16 Q. Okay. So, y'all had to go through a gate or something to
- 17 get on campus?
- 18 A. Yes, sir.
- 19 Q. Okay. And what happened at the gate, do you recall?
- 20 A. The lady checked the ID and we just went on campus.
- 21 Q. And picked up another fellow?
- 22 A. Yes, sir.
- 23 Q. And do you recall where he got in the car?
- 24 A. Yeah, he got in the car.
- 25 Q. Okay. Did he get in the front seat with y'all?

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

178

1 A. No, the back seat.

2 Q. Okay. And then once you picked him up what did y'all do?

3 A. We left campus.

4 Q. The same way you came in?

5 A. Yes, sir.

6 Q. And then where did you go from -- do you recall what gate
7 you went in, from what street?

8 A. I don't know street names but I guess across the street
9 from the U.V.

10 Q. Okay. And when y'all went out the gate where did y'all
11 go?

12 A. A little past Goldstein's, the street by Goldstein's.

13 Q. Okay. And what did y'all do, did y'all ...

14 A. We turned on the street and, and we sat there and wait on,
15 just a guy.

16 Q. What was on the street that you turned on?

17 A. A bunch of houses.

18 Q. Did y'all park?

19 A. Yes, sir.

20 Q. And how did you park, do you recall?

21 A. No, sir.

22 Q. Okay. What were you doing during this time?

23 A. We was parked, I was on the phone.

24 Q. Okay. What happened after you parked, did anybody show
25 up?

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

179

1 A. Yes, sir.

2 Q. What, tell us about that?

3 A. A green car pulled up and the guy we picked up got out the
4 car.

5 Q. Let me ask you, where did the car pull up to?

6 A. Beside our car.

7 Q. On which side?

8 A. I think it was the right.

9 Q. On your side?

10 A. Yes, sir.

11 Q. Okay. And you said the fellow that y'all picked up got
12 out?

13 A. Yes, sir.

14 Q. Did anybody else get out?

15 A. I remember Big Man getting out.

16 Q. Okay. Anybody else?

17 A. And Gouda got out, too.

18 Q. Okay. So all three of them eventually all got out of the
19 back seat?

20 A. Yes, sir.

21 Q. Okay. Where did they go?

22 A. I don't recall, I don't know where everybody went because
23 I was on the phone in the front seat.

24 Q. Okay. What do you remember happening next?

25 A. We was sitting, well, me and Todd was sitting in the front

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

180

1 listening to music, and I heard the engine revving up.

2 Q. Which engine?

3 A. The engine of the person next to us. And I felt a bump.

4 When I looked up I just saw, Gouda was already to the right of
5 the car.

6 Q. To the right of which car?

7 A. Our car.

8 Q. Okay. And whereabouts was he?

9 A. Like by the back seat.

10 Q. Okay. Where was the other car?

11 A. It was like, like, across, to the right in front of me.

12 Q. To the right in front of you?

13 A. Yes, sir.

14 Q. Okay. Where, the guy that you picked up, where was he?

15 A. I don't know where he was at, I want to say he was in the
16 car.

17 Q. What about Big Ray, Big Man?

18 A. I didn't see him.

19 Q. Okay. What happened next?

20 A. After that we got in the car and we left and went to Pine
21 Hills, went in the house, came back out, and went back to
22 Nard's house later on that night.

23 Q. Okay. What happened to Gouda?

24 A. Gouda was at home.

25 Q. Did he go back to Pine Hills with you?

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

181

1 A. Yes, sir.

2 Q. When y'all left who was in the car?

3 A. It was me, Todd, Gouda and Big Man.

4 Q. And y'all went straight back to Pine Hill at that point?

5 A. Yes, sir.

6 Q. Okay. You went in your house?

7 A. Yes, sir.

8 Q. Where did the rest of them go?

9 A. I don't know where the rest of them went at. I know Gouda
10 was at, in the house, though.

11 Q. And you don't know where Big Man and Todd went to?

12 A. No, sir.

13 Q. Did you see them anymore that night?

14 A. No, sir.

15 Q. Let me show you these photographs, Mr. Pinckney.

16 SOLICITOR BELL: Any objection?

17 MR. JOHNSON: No objection.

18 Q. Let me show you what's been marked as State's Eighteen and
19 ask if you recognize that?

20 A. Yes, sir.

21 Q. What is it?

22 A. It's Pine Hills.

23 Q. Is that where you were staying with your daughter's
24 mother, those apartments?

25 A. I'm trying to see which one.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

.182

1 Q. Well, is that an apartment at Pine Hills?

2 A. Yeah.

3 SOLICITOR BELL: Okay, Your Honor, we'd offer State's
4 Eighteen into evidence.

5 MR. JOHNSON: Without objection.

6 THE COURT: State's Eighteen is in evidence without
7 objection.

8 (State's Exhibit Eighteen
9 marked and filed.)

10 Q. And let me show you what's been marked as State's
11 Seventeen and ask if you recognize that?

12 A. That's Pine Hills.

13 Q. Okay. And that's the entrance to Pine Hills?

14 A. Yes, sir.

15 SOLICITOR BELL: Okay, we'd offer State's Seventeen.

16 MR. JOHNSON: Without objection.

17 THE COURT: You said Seventeen?

18 SOLICITOR BELL: Seventeen, yes, sir.

19 THE COURT: State's Seventeen is in evidence without
20 objection.

21 (State's Exhibit Seventeen
22 marked and filed.)

23 Q. Mr. Pinckney, you were charged in this case with accessory
24 after the fact, is that right?

25 A. Yes, sir.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

183

1 Q. And have you been offered anything for your testimony?

2 A. No, sir.

3 Q. But you're expecting to cooperate to help yourself, is
4 that correct?

5 A. Yes, sir.

6 Q. Alright, let me go back, Mr. Pinckney, when y'all were
7 parked in the, where all the houses were, do you remember
8 that, talking about that?

9 A. Yes, sir.

10 Q. How were y'all parked?

11 A. I think we went ...

12 COURT REPORTER: I think we went?

13 Q. You need to speak up, Mr. Pinckney.

14 A. I think we pulled in.

15 Q. Pulled in front ways or back?

16 A. Front ways.

17 Q. Front ways? And you said that you heard, you felt the car
18 bump. Where did the car bump your car?

19 A. On the side.

20 Q. On which side?

21 A. The door on the passenger side.

22 Q. Was it all towards the front or towards the back?

23 A. Towards the front.

24 Q. Okay. If you were backed in how did it hit towards the
25 front?

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

184

1 A. I said we pulled in front ways, I was facing, you know,
2 just pulled in straight, we didn't back in.

3 Q. You didn't back in?

4 A. No.

5 Q. Well, then, how did the other car you front ways if you
6 were pulled front in, if that car was leaving out the street?

7 A. I think it was backed in.

8 Q. You think you were backed in?

9 A. Yes, sir, I can't remember, that was a long time ago.

10 Q. Okay. And you were listening to music, is that right?

11 A. Yes, sir.

12 Q. Okay. If y'all were backed, and you said the car hit you
13 towards the front of the vehicle?

14 A. Yes, sir.

15 Q. And you said you looked up. Where was Gouda?

16 A. He was, like in front of our car, Todd's, like, by the
17 door.

18 Q. The driver's side?

19 A. Yes, sir.

20 Q. Over there?

21 A. Yes, sir.

22 Q. In front?

23 A. Yes, sir.

24 Q. So, if you're looking out, he was over that way?

25 A. Yes, sir.

HILLIARD PINCKNEY - DIRECT BY SOL. BELL

185

1 Q. Where was the car that was parked, the green car?

2 A. It was like, kind of like in front of -- well, I guess ...

3 Q. As best you can remember.

4 A. It was kind of in front of us but it was like a distance.

5 Q. Farther past Todd's side.

6 A. Like on my side.

7 Q. On your side?

8 A. Yes.

9 Q. Okay.

10 SOLICITOR BELL: Thank you, Mr. Pinckney, please answer
11 any questions that Defense counsel may have for you.

12 MR. JOHNSON: Thank you.

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14 record has been omitted. Headers on testimony pages and hard
15 page breaks between testimony are now required by the Court.
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HILLIARD PINCKNEY - CROSS BY MR. JOHNSON

186

1 HILLIARD PINCKNEY - CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Mr. Pinckney, just a couple of quick questions. The group
4 of y'all, y'all didn't go there to rob anybody, did you?

5 A. No, sir.

6 Q. Y'all didn't go there to rob anybody. And when Julian got
7 out of the car he didn't get out of the car with a gun, did
8 he?

9 A. No, sir.

10 Q. And he didn't get back in the car with a gun, did he?

11 A. No, sir.

12 MR. JOHNSON: Thank you, sir.

13 THE COURT: Anything on redirect?

14 (NOTE: Blank lines on this page do not indicate any part of
15 record has been omitted. Headers on testimony pages and hard
16 page breaks between testimony are now required by the Court.
17 See next ensuing page for sequential continuation of record.)

HILLIARD PINCKNEY - REDIRECT BY SOL. BELL

187

1 HILLIARD PINCKNEY - REDIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. You just didn't see a gun, is that right?

4 A. No, sir.

5 Q. It could have been a gun in his pocket?

6 MR. JOHNSON: Your Honor, objection to him speculating.

7 THE COURT: He can ask the question.

8 A. I didn't see any gun.

9 Q. You didn't see any gun but that doesn't mean he didn't
10 have one, right?

11 A. I didn't see no gun.

12 SOLICITOR BELL: Okay.

13 THE COURT: Anything on recross?

14 MR. JOHNSON: No, sir. No questions, Your Honor.

15 THE COURT: Okay. You may step down. Thank you, sir.

16 Okay. Can I see y'all one second?

17 (Whereupon, a bench conference
18 is had out of the hearing of the
19 jury and court reporter.)

20 THE COURT: This was an important conversation on whether
21 we're going to stop today or not. Okay? The next witness is
22 going to take a little bit longer than, you know, Ten or
23 Fifteen minutes, so we are going to stop for the day.

24 Now, the thing that I am going to tell you again is, you
25 cannot talk about this case. You haven't heard all the

1 testimony yet. Okay? You can't read anything about the case,
2 you can't talk to anybody about the case, you can't even talk
3 among yourselves about this case. Okay? We will start back
4 nine o'clock tomorrow morning. I want y'all to be back in
5 your jury room at nine o'clock in the morning and we will get
6 started on this. Y'all are now excused for the day, have a
7 good evening. Thank you, appreciate it.

8 (Whereupon, the jury leaves
9 the courtroom for the day, and
10 the following takes place out
11 of the presence of the jury.)

12 COURT REPORTER: Solicitor what do you want to do with
13 all these exhibits?

14 SOLICITOR BELL: They're yours.

15 COURT REPORTER: Do you want to lock them up?

16 THE COURT: We can lock up the courtroom.

17 Okay, Mr. Johnson, we were having a conference at the
18 table. You had indicated that even though Mr. Gipson had been
19 served with a subpoena you're releasing him from that
20 subpoena?

21 MR. JOHNSON: Yes, sir, I did.

22 THE COURT: Okay. Alright. The only other thing I want
23 to take up is, you had an objection to -- I didn't ask all the
24 questions on the Voir dire.

25 MR. JOHNSON: Yes, sir.

1 THE COURT: And just to protect the record, do you have
2 an extra copy of those that we can mark as a Court's exhibit,
3 or if you can get one?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Alright. Just so we'll have it in the
6 record.

7 MR. JOHNSON: Alright. Thank you, Your Honor.

8 THE COURT: Okay. And we can do that -- if you don't
9 have it right now we can get it later.

10 MR. JOHNSON: Alright.

11 THE COURT: I just want to make sure, and we'll do that.

12 Anything else we need to go over before we take a break
13 for the day, anything from the State?

14 SOLICITOR SORENSON: I can't think of anything.

15 THE COURT: Anything from the Defense?

16 MR. JOHNSON: No, sir.

17 THE COURT: Alright, we'll start back at nine o'clock in
18 the morning then. Thank you.

19 (Recess for the day)

20 DATE:

21 AUGUST 15, 2012

22 THE COURT: Anything before we bring out the jury?

23 SOLICITOR SORENSON: Our first witness is actually
24 incarcerated, so I don't know if you want to just wait until
25 the jury comes out and we'll call them and have them bring him

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1 out or have them bring them out ahead of time, or what do you
2 want to do?

3 THE COURT: Whatever y'all want to do, it doesn't matter
4 to me.

5 SOLICITOR SORENSON: I guess we'll just have him wait on
6 the side of the door there.

7 THE COURT: Okay.

8 SOLICITOR SORENSON: Peggy, she's back there with them.

9 THE COURT: Alright, bring the jury on out.
10 (Whereupon, the witness

11 enters the courtroom.)

12 SOLICITOR SORENSON: I thought you were supposed to be
13 waiting right inside the door is what we just said.

14 (Whereupon, the jury
15 enters the courtroom.)

16 THE COURT: Mr. Sorenson, I guess, the State's ready to
17 call its first witness?

18 SOLICITOR SORENSON: Yes, sir.

19 THE COURT: Alright, sir.

20 SOLICITOR SORENSON: At this time the State calls Ray
21 Anthony Alston.

22 THE COURT: Alright, Mr. Alston.

23 CLERK: Mr. Alston, will you please place your left hand
24 on the Bible and raise your right hand as best you can.

25 THE COURT: Alright, that's as good as he can get it.

1 (Whereupon, Ray Anthony Alston
2 is duly sworn.)

3 CLERK: Thank you. Please have a seat and state your
4 name for the record.

5 WITNESS: Ray Anthony Alston.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court.
9 See next ensuing page for sequential continuation of record.)

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

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RAY ANTHONY ALSTON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Alright, Mr. Alston, make sure you keep your voice up nice and loud for us, okay?

A. Alright.

Q. Alright, if you would, tell the jury, Mr. Alston, how old you are?

A. Twenty-three.

Q. And where, where are you from?

A. Charleston, South Carolina.

Q. Okay. And did you go to high school down in Charleston?

A. Yes, sir.

Q. Where did you go to High School?

A. Stall High School.

Q. Stall High School?

A. Yes, sir.

Q. Did you graduate?

A. No, sir.

Q. What year did you stop going to Stall?

A. Probably like Two thousand seven.

Q. Okay. And let me ask you this, do you have a nick name that you go by?

A. Yes, sir.

Q. What is that?

A. Stew.

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1 Q. Stew?

2 A. Yes, sir.

3 Q. Alright. Some people call you Big Man also?

4 A. Yes, sir.

5 Q. Okay. And let me ask you this, back in April of last
6 year, of Two thousand eleven, were you working anywhere back
7 at that time?

8 A. Yes, sir.

9 Q. And where were you working back in April of last year?

10 A. Wendy's in Mount Pleasant.

11 Q. Okay. And what were you doing at the Wendy's in Mt.
12 Pleasant?

13 A. I was a crew leader.

14 Q. And how long did you work at the Wendy's in Mt. Pleasant?

15 A. About a year and a half.

16 Q. And obviously, from the way you're dressed and all you're
17 currently incarcerated, is that correct?

18 A. Yes, sir.

19 Q. Okay. And is that here in Orangeburg at the jail?

20 A. Yes, sir.

21 Q. Alright. And what is it that you're locked up for?

22 A. Murder.

23 Q. Okay. Is that stemming out of this incident that we're
24 here about today?

25 A. Yes, sir.

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1 Q. And do you remember when it was that you got charged with
2 murder stemming out of this incident?

3 A. I think it was around May.

4 Q. A couple of weeks after this all happened?

5 A. Yes, sir.

6 Q. Okay. I'm going to get, I'm going to go through your
7 statements with you in a little while, kind of the dates a
8 little better, but have you been locked up since May of last
9 year?

10 A. Yes, sir.

11 Q. Alright. And let me ask you this, do you have a lawyer?

12 A. A public defender.

13 Q. Okay. And what is her name?

14 A. Peggy Hinds.

15 Q. Okay. Ms. Hinds has been representing you on this charge?

16 A. Yes, sir.

17 Q. Let me ask you this, Mr. Alston, when you were arrested
18 back in May of last year did you, did you talk with law
19 enforcement and give them some, a couple of statements - - -

20 A. Yes, sir.

21 Q. --- stemming out of this incident?

22 A. Yes, sir.

23 Q. Did you cooperate with them?

24 A. Yes, sir.

25 Q. And just kind of looking at, and you've had just a little

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

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1 bit of trouble in the past, is that right, a couple of
2 marijuana convictions in the past?

3 A. Yes, sir.

4 Q. Is that correct? The first thing I want to do, Mr.

5 Alston, is kind of go through just kind of how you know the
6 other parties that are involved in this. Okay?

7 A. Yes, sir.

8 Q. Alright. Let me ask you, the young man that testified
9 yesterday by the name of Hilliard Pinckney, do you know Mr.
10 Pinckney?

11 A. Yes, sir.

12 Q. Okay. And how, tell the jury how you know Mr. Pinckney?

13 A. I met him through Maurice Thompson, that's his cousin.

14 Q. Alright. And let me ask you, Mr. Pinckney, how long do
15 you think you've known Mr. Pinckney?

16 A. Probably since like Two thousand eight.

17 Q. Okay. So about four years maybe - - -

18 A. Yes, sir.

19 Q. --- somewhere in that range? And did you, what did you
20 know him by, what did he go by?

21 A. H.D.

22 Q. H.D.?

23 A. Yes, sir.

24 Q. And then you brought up the name, Maurice Thompson. Did
25 Maurice Thompson also get charged in this incident?

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

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1 A. Yes, sir.

2 Q. Okay. And how do you know Mr. Thompson?

3 A. We went to school together.

4 Q. Okay. And how long do you think you've known Mr.
5 Thompson, then?

6 A. About eight years.

7 Q. Okay. And do you know Mr. Thompson by any other name
8 besides Maurice?

9 A. We call him T sometimes.

10 Q. T?

11 A. Uh-huh.

12 Q. Okay. And you had said that Mr. Thompson and Mr. Pinckney
13 were cousins, to your knowledge, - - -

14 A. Yes, sir.

15 Q. --- is that correct? And how about the defendant in this
16 case, Julian Young, do you know Mr. Young?

17 A. Yes, sir.

18 Q. Okay. And how do you know Mr. Young?

19 A. Through H. D.

20 Q. Through H. D.?

21 A. Yes, sir.

22 Q. Okay. And how, how long, how long prior to this incident
23 in April of last year, how long had you known Mr. Young prior
24 to that?

25 A. Just a few months.

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1 Q. Okay. And do you know where -- let me ask you, back in
2 April of Two thousand eleven, where was Mr. Thompson staying
3 at, not specifically but just town-wise??

4 A. Oh, in Charleston.

5 Q. In Charleston?

6 A. Yes, sir.

7 Q. Okay. How about Mr. Pinckney?

8 A. He been back and forth here and in Charleston.

9 Q. Back and forth here and in Charleston, and how about the
10 defendant, do you know where he was staying at back in April
11 of Two thousand eleven?

12 A. In Orangeburg.

13 Q. In Orangeburg? And you said you had met him through H. D.
14 a couple of months prior?

15 A. Yes, sir.

16 Q. Did you know him, or tell the jury what you knew him by?

17 A. Repeat that?

18 Q. What did you know him by, did he have a nick name or a
19 name that you ...

20 A. Who was that?

21 Q. Mr. Young.

22 A. Gouda.

23 Q. Gouda. Okay. Now, let me ask you this, out of you,
24 Maurice Thompson and Hilliard Pinckney, out of the three of
25 y'all who was closest to the defendant?

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1 A. I would say H. D.

2 Q. Alright. And the jury heard yesterday from a young man by
3 the name of Ricky Gipson. Prior to April of Two thousand
4 eleven did you know Mr. Gipson?

5 A. No, sir.

6 Q. Ever see him before prior to that night?

7 A. No, sir.

8 Q. I want to turn your attention, if I could now, back to
9 April the Fifteenth of last year.

10 A. Uh-huh.

11 Q. Mr. Alston, what, kind of late that afternoon what, what
12 were you doing that day, kind of leading up to that evening?

13 A. Just chilling out at Charleston, and then I got with my
14 manager, and we wanted to go out, and so we came down, we
15 wanted to come down here.

16 Q. Okay. Who was your manager back then at Wendy's?

17 A. Timothy Harrison.

18 Q. Timothy Harrison?

19 A. Yes, sir.

20 Q. And now, is Timothy somebody that you hung out with a lot
21 back in April of last year?

22 A. Yes, sir.

23 Q. So, did you ultimately end up coming somewhere or going
24 somewhere that night with Mr. Harrison?

25 A. We came to Orangeburg.

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1 Q. Okay. And did anybody else come with you to Orangeburg?

2 A. Yes, sir.

3 Q. And who was that?

4 A. Maurice Thompson.

5 Q. Maurice Thompson. So, it was the three of y'all?

6 A. Yes, sir.

7 Q. Anybody else that came from Charleston up this way?

8 A. No, sir.

9 Q. Alright. And tell the jury how y'all got to, got to
10 Orangeburg?

11 A. We drove in Mr. Harrison's Buick at the time.

12 Q. Okay, and what color was that Buick?

13 A. Silver.

14 Q. Okay. And you had said that Mr. Harrison worked with you,
15 he was your manager - - -

16 A. Yes, sir.

17 Q. --- at Wendy's?

18 A. Yes, sir.

19 Q. And let me ask you, do you know back in April of Two
20 thousand eleven whether Mr. Harrison knew the defendant?

21 A. No, he didn't.

22 Q. Okay. How about whether he knew Hilliard Pinckney, H.D.?

23 A. Uh-huh.

24 Q. He knew him?

25 A. Yes, sir.

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1 Q. And how about Maurice Thompson, did he know Mr. Thompson?

2 A. Yes, sir.

3 Q. Okay. Is that from hanging around with you?

4 A. Yes, sir.

5 Q. Alright. Now, tell the jury about what time it is that
6 y'all ultimately got to Orangeburg that evening?

7 A. Probably like five, six o'clock.

8 Q. And do you remember where it is that y'all went when you
9 got here?

10 A. I think we went to Pine Hills, and then Nard's house.

11 Q. Okay, you went to Pine Hills first?

12 A. Yes, sir.

13 Q. Okay. And what is Pine Hills?

14 A. An apartment complex.

15 Q. Okay. And what did you do over at the Pine Hills
16 apartment complex?

17 A. Nothing, just hang out.

18 Q. And then where did you go after there?

19 A. Just by Goldstein's.

20 Q. Okay. And whose place was that that you went to?

21 A. Nard?

22 Q. Nod, or Nard?

23 A. Nard, yes, sir.

24 Q. Nard? Okay, and who is Nard?

25 A. Just somebody who, he's from Charleston, too, but he was

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1 going to State, he was living down here.

2 Q. Okay. Do you know his full name?

3 A. No, sir.

4 Q. And you said that was near Goldstein's, is that over kind
5 of near South Carolina State?

6 A. Yes, sir.

7 Q. And, and when you went over there was Mr. Harrison and Mr.
8 Thompson still with y'all?

9 A. Yes, sir.

10 Q. Y'all were still in Mr. Thompson's car?

11 A. Yes, sir.

12 Q. Okay. And at any point in time that night then did y'all
13 end up meeting up with the defendant, Mr. Young?

14 A. Yes, sir.

15 Q. Okay. And where was that at that y'all met him?

16 A. Nard's house.

17 Q. Nard's house?

18 A. Yes, sir.

19 Q. Okay. And how about, how about Hilliard Pinckney, H.D.,
20 did y'all meet him somewhere that night also?

21 A. He was there, too.

22 Q. He was where?

23 A. At Nard's house.

24 Q. At Nard's house, too? Do you remember, were there other
25 people there also or ...

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1 A. It was a few other people there.

2 Q. Okay. And what were y'all doing at Nard's?

3 A. Just hanging out. They got a studio there so we was doing
4 music and had decided I wanted to get me some weed and stuff.

5 Q. Okay. And that's what we'll get to next. So who made the
6 decision that y'all wanted to try to get some weed that
7 evening?

8 A. Me.

9 Q. Me, or you?

10 A. Yes, sir.

11 Q. Alright. And how did you go -- let me ask you, I mean,
12 are you familiar with Orangeburg?

13 A. Not really.

14 Q. Did you know anybody personally that was selling weed up
15 here in Orangeburg?

16 A. No, sir.

17 Q. Okay. So, when you decided that you wanted to buy some
18 weed, who did you talk to about trying to arrange that?

19 A. I had talked to Gouda about it.

20 Q. Okay. And what was the result fo that conversation with
21 Gouda?

22 A. He said he was going to call his people for me.

23 Q. Okay. And are you aware of whether he made some phone
24 calls?

25 A. Yes, sir.

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1 Q. Okay. And ultimately, some arrangements made for y'all to
2 go get some weed?

3 A. Yes, sir.

4 Q. Okay. Who out of the group was going to buy that
5 marijuana?

6 A. Me.

7 Q. And do you remember how much you were looking to buy?

8 A. Probably like an ounce or something, just for us when we
9 go out.

10 Q. Okay. So the plan at that point in time was still to go
11 out after you went and got the weed?

12 A. Yes, sir.

13 Q. Okay. And did you have any specific plans about where
14 y'all were going to go?

15 A. The Script Club, Zodiac.

16 Q. Okay. Alright, now you said you were going to buy an
17 ounce, about how much would that typically cost you back in
18 April of last year?

19 A. Probably like a hundred dollars or so.

20 Q. And who had that money that was going to pay for it?

21 A. Me.

22 Q. Now, ultimately, did y'all, did y'all leave Nard's, that
23 kind of music studio apartment, and go somewhere to attempt to
24 purchase that marijuana?

25 A. Yes, sir.

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1 Q. Okay. And tell the jury how, how you left Nard's
2 apartment?

3 A. We left Nard's apartment and we went to State campus to
4 pick up a college student.

5 Q. Okay. And were you on foot or ...

6 A. No, sir, we was in the Buick, the silver Buick.

7 Q. Okay. And that's Timothy Harrison's Buick?

8 A. Yes, sir.

9 Q. Alright. Tell the jury who, when you left Nard's
10 apartment who left there to go over to South Carolina State's
11 campus in that Buick?

12 A. Me, H. D., Mr. Thompson and Gouda.

13 Q. Okay. So, it was the four of you?

14 A. Yes, sir.

15 Q. You, H. D., Maurice Thompson, and the defendant?

16 A. Yes, sir.

17 Q. Okay. And so, Timothy Harrison didn't go?

18 A. No, sir.

19 Q. Okay. Who -- but y'all took his vehicle?

20 A. Yes, sir.

21 Q. Okay. And who out of the four of y'all then was driving
22 that vehicle?

23 A. Maurice Thompson.

24 Q. Okay. And was there a reason Maurice was driving out of
25 the four of y'all?

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1 A. He had his license.

2 Q. Okay. And do you remember who was sitting up front with
3 Mr. Thompson?

4 A. Hilliard Pinckney.

5 Q. Okay, Mr. Pinckney, and then, obviously then, you and the
6 defendant were sitting in the back?

7 A. Yes, sir.

8 Q. Okay. And do you remember where you were sitting in the
9 back?

10 A. If I'm not mistaken, behind the passenger seat.

11 Q. Okay. Alright. And you said that you then went over to
12 campus and picked somebody up?

13 A. Yes, sir.

14 Q. Okay. And describe that person that y'all picked up?

15 A. A short, skinny, slim kid.

16 COURT REPORTER: What? I'm sorry.

17 A. A short, slim kid, black.

18 Q. Had you, had you ever seen him before?

19 A. No, sir.

20 Q. Did you know what his name was back then?

21 A. No, sir.

22 Q. Do you remember, did he introduce himself or anything, a
23 nick name or a name or anything when he got in the car?

24 A. No, sir.

25 Q. Alright. And out of the four of y'all in the car, did

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1 anybody appear to know him in the car?

2 A. Yes, sir.

3 Q. Who was that?

4 A. Gouda.

5 Q. Okay. And let me ask you, before you picked him up did
6 y'all have to do anything before you picked him up?

7 A. No, we went straight and picked him up.

8 Q. Okay. And where was it that you picked him up?

9 A. On the college campus.

10 Q. And let me ask you, to get on the campus at that time of
11 night was there a gate that y'all had to go through?

12 A. Yes, sir.

13 Q. Okay. And tell the jury what happened when y'all got to
14 that gate?

15 A. When we got to the gate they asked for, if anyone else was
16 a college student at the time, and none of us was a college
17 student so they asked us why was we going on campus, and we
18 told them we was going to pick up someone. And so, they got
19 Maurice's license and they wrote down his information and
20 wrote down the tag number of the vehicle.

21 Q. Okay. Alright, and at that point in time, I mean, none of
22 the four of y'all were students at State, is that correct?

23 A. No, sir.

24 Q. So, you ultimately ended up picking this guy up. What,
25 after you picked him up where did he get in the car?

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1 A. In between me and Gouda.

2 Q. In the back seat?

3 A. Yes, sir.

4 Q. Okay. And what -- do you know where y'all went from
5 there?

6 A. To the marriage housing.

7 Q. And the marriage housing, is that, did y'all have to go
8 back outside the gate to get to there?

9 A. Yes, sir.

10 Q. And the marriage housing, do you know, is that fairly
11 close to where Nard was staying at?

12 A. I'm not, I can't really answer that.

13 Q. Alright. And, alright, tell the jury then when you kind
14 of got over to that marriage housing area, what happened when
15 you got there, Mr. Alston?

16 A. We reversed and parked in a space, and then that's when --
17 we waited probably like two, maybe five minutes for the guy to
18 come with the marijuana.

19 Q. Okay. So, you said you reversed, so you backed into a
20 parking space?

21 A. Yes, sir.

22 Q. Alright, and at that point in time were the five of y'all
23 just sitting in the car waiting for the guy to show up?

24 A. Yes, sir.

25 Q. Okay. And ultimately did another vehicle show up?

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1 A. Yes, sir.

2 Q. Alright. And describe, if you would for the jury, what
3 that vehicle looked like?

4 A. It was a green, I don't know the model of the car, what
5 kind of car it was, but it was a green car.

6 Q. A green car?

7 A. Yes, sir.

8 Q. And where, if y'all are now backed up into a parking
9 space, where did that green car park in relation to your car?

10 A. Right next to us.

11 Q. Okay. On the driver's side or on your side, the passenger
12 side?

13 A. The passenger side.

14 Q. Okay. And did that green car, did it pull in or back in
15 next to y'all?

16 A. It pulled in.

17 Q. It pulled in?

18 A. Yes, sir.

19 Q. So, basically, their passenger side is next to your
20 passenger side, is that right?

21 A. Yes, sir.

22 Q. Alright. And after that happened, after that vehicle
23 pulled up, what happened next, Mr. Alston?

24 A. That's when the college kid got out the vehicle, then he
25 pursued to go to the car and he talked to the young man who

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1 was selling us some marijuana.

2 Q. How many people were in that green car?

3 A. Just one.

4 Q. Just one? Okay. And let me ask you this, had you ever
5 seen him before?

6 A. No, sir.

7 Q. Okay. Alright, so the college kid kind of went over to
8 the vehicle and talked to him?

9 A. Yes, sir.

10 Q. And what were you doing at that point in time?

11 A. Just sitting in the back seat of the car waiting for him
12 to tell me.

13 Q. Okay. And what, what happened, what ultimately happened?

14 A. That's when he said, he told me I could come out the car.
15 And I went out the car and I went up to his window, and that's
16 when he handed me the marijuana, and it wasn't what I wanted,
17 so I just threw it back.

18 Q. Describe what it kind of looked like and why it wasn't
19 what you were looking for?

20 A. It was like dirty brown, really not what I smoked at the
21 time, so I just put it back in his car.

22 Q. Okay. And during the time when you were looking over it,
23 how many, did you remember how much, how many, what he handed
24 you?

25 A. He handed me two bags.

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1 Q. Two bags?

2 A. Yes, sir.

3 Q. Okay. And did you look at both of those bags?

4 A. Yes, sir.

5 Q. Either one fo them appear to be what you were interested
6 in?

7 A. No, sir, they were the same.

8 Q. Okay. And let me ask you -- and where were you at when
9 that was taking place?

10 A. I was at his passenger window.

11 Q. Okay. And do you remember where the college kid was?

12 A. I think he was like behind this car or something like
13 that.

14 Q. Okay, so he had kind of ...

15 A. He was running off.

16 Q. He had kind of gotten out of the way by that point in
17 time?

18 A. Yes, sir.

19 Q. Alright. Now, did anybody else, had anybody else gotten
20 out of your car that you arrived in besides you and the kid
21 that y'all picked up?

22 A. Gouda got out after, like after I was finished.

23 Q. Okay. And so, what was he doing when he got out.

24 A. He went up to the passenger window when I walked off and
25 got in my car again. And it looked like those two were

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1 talking at first and then that's when we saw him reverse the
2 car with him inside the car. We heard a pow go off, and he
3 got back in the car. I asked him if he was alright, and then
4 I asked him if he shot the guy, but he never answered me.

5 Q. He never answered you?

6 A. No, sir.

7 Q. Let me kind of back up and kind of go over that again just
8 to make sure I understand. So, you had walked away from the
9 car?

10 A. Yes, sir.

11 Q. And the kid that y'all picked up, the college kid, was he
12 around the passenger door at that point in time?

13 A. No, sir.

14 Q. Okay. And it's your testimony that the defendant then
15 went up - - -

16 A. Yes, sir.

17 Q. --- to the victim's car?

18 A. Yes, sir.

19 Q. Okay. And tell the jury again what you observed when you
20 looked over?

21 A. Like he was inside the car, like he was talking, I don't
22 know what he was really doing inside the car.

23 Q. Could you see any of their hands at that point in time?

24 A. No, sir.

25 Q. Okay. Now, Mr. Young, Gouda, was he sitting in the car or

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1 leaning in the car?

2 A. He was leaning in the car.

3 Q. Okay. And I believe it's your testimony at that point in
4 time that the victim's car started backing up?

5 A. Yes, sir.

6 Q. Alright. And when it started backing up where was he?

7 A. Inside the car.

8 Q. Inside the car?

9 A. Getting dragged by it, somewhat getting dragged by it.

10 Q. Okay. And that's when you said you heard a pow?

11 A. Yes, sir.

12 Q. Okay. And what did that pow sound like, what did you
13 think it was?

14 A. A gun shot.

15 Q. A gun shot? Alright. And where, when you were observing
16 all this, where were you at?

17 A. Back in the car.

18 Q. Back in your car?

19 A. Yes, sir.

20 Q. Alright. And had you been back in your car long?

21 A. Yes, sir, since he was at the car.

22 Q. Okay. How much, how much time are we talking about going
23 by here?

24 A. Everything happened so fast, I can't really put a time to
25 it.

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1 Q. So, it was all pretty quick?

2 A. Yes, sir.

3 Q. Alright. And after you heard that pow, I mean, what was
4 the victim's car doing when you heard that pow?

5 A. He had already start from reversing, and that's when he
6 drove off, he sped off.

7 Q. Okay. And where was Gouda when he went driving off?

8 A. He was outside the car then.

9 Q. He was outside the car then?

10 A. Yes, sir.

11 Q. And where, where, I mean, where is he outside the car?

12 A. Like standing on the side of the car.

13 Q. The side of what car?

14 A. The car that sped off, like he was standing like ...

15 Q. So, he had gotten basically out of the passenger's side?

16 A. He got out, yes, sir.

17 Q. But where was that, was that out in front of y'all's
18 vehicle?

19 A. Yes, sir.

20 Q. Okay. So, kind of out in the parking lot, or the street,
21 I guess, really?

22 A. Yes, sir.

23 Q. Alright. And you said that he, being the defendant, got
24 back into the vehicle at that point in time?

25 A. Yes, sir.

v

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1 Q. And what is it that you asked him?

2 A. I asked him if he was alright. Then I asked him if he
3 shot the guy, but he never answered me.

4 Q. He never answered either one of them?

5 A. No, sir.

6 Q. Did he say anything?

7 A. No, sir.

8 Q. And what, while all this was going on, what was, what was
9 Mr. Thompson doing?

10 A. Driving off.

11 Q. Okay. But while you had gone up to the vehicle and looked
12 at the marijuana and then when Gouda had gone up to the
13 vehicle, where was Mr. Thompson at during all that time?

14 A. He was sitting in the car, him and H.D. was still sitting
15 in the car.

16 Q. And did you ever see either one of them get out of the
17 vehicle - - - .

18 A. No, sir.

19 Q. --- over there in that marriage housing area?

20 A. No, sir.

21 Q. Okay. And now you said that the victim's car ultimately
22 ended up driving off?

23 A. Yes, sir.

24 Q. I mean, was it speed off or just drive off normally or ...

25 A. Yeah, he sped off.

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1 Q. Sped off? Okay. And what did, what did y'all do at that
2 point in time?

3 A. We drove off, too.

4 Q. Okay.

5 A. I think he made like a left and we made a right.

6 Q. Okay. So, y'all went the opposite way that he went when
7 you hit - - -

8 A. Yes, sir.

9 Q. --- Russell Street, I guess, the main road out there?

10 A. Yes, sir.

11 Q. Alright. Now, did you see what happened to his vehicle?

12 A. No, sir.

13 Q. And were y'all leaving kind of in a hurry, too, or ...

14 A. You could have sensed something probably happened so we
15 was just leaving.

16 Q. Y'all weren't going to, didn't plan on sticking around out
17 there, were you?

18 A. No, sir.

19 Q. Alright. And let me ask you this, right after, you know,
20 you saw the car speeding off did Gouda come get in the car
21 right away?

22 A. Yes, sir.

23 Q. And your testimony is that he, he didn't say anything when
24 he got in the car?

25 A. No, sir.

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

216

1 Q. Never said the victim had a gun?

2 A. No, sir.

3 Q. Never said the victim tried to rob him, did he?

4 A. No, sir.

5 Q. And let me ask you this, you had testified earlier, Mr.

6 Alston, that you were the one that was planning on buying the
7 weed?

8 A. Yes, sir.

9 Q. Obviously, you had the money on you?

10 A. Yes, sir.

11 Q. Did you ever take any of that money out?

12 A. No, sir.

13 Q. Ever hand any of it to the victim?

14 A. No, sir.

15 Q. And after y'all left and kind of got away from there,
16 where was the money that you had planned to buy the weed
17 with?

18 A. It was still in my pocket.

19 Q. Okay. And did you ever see Gouda with any money that
20 evening?

21 A. No, sir.

22 Q. Alright. Now, you said that you, you kind of got back --
23 let me ask you this, did you ever, did you ever see a gun?

24 A. No, sir.

25 Q. Period?

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

217

1 A. No, sir.

2 Q. Ever see anybody with a gun that night?

3 A. No, sir.

4 Q. Did you see a gun in the victim's car when you were
5 talking to him about the marijuana?

6 A. No, sir.

7 Q. Did you see Gouda with a gun?

8 A. No, sir.

9 Q. Did you have a gun?

10 A. No, sir.

11 Q. How sure are you that that was a gun shot that you heard?

12 A. You can pretty much tell a gun shot.

13 Q. Now y'all, you testified that y'all ended up kind of
14 going out of the marriage housing and taking a right, is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. And where did y'all go after you left the marriage
18 housing?

19 A. We went to take Gouda home.

20 Q. You took Gouda home?

21 A. Yes, sir.

22 Q. And where was that at that you took him home?

23 A. To Pine Hills Apartments.

24 Q. Pine Hills Apartments?

25 A. Yes, sir.

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

218

1 Q. I don't know how familiar you are with those apartments,
2 but I'm showing you State's Exhibits Seventeen and Eighteen,
3 is that the apartments that y'all took him to?

4 A. Yes, sir.

5 Q. Okay. And did he get out there?

6 A. Yes, sir.

7 Q. Did y'all hang out with him anymore that night?

8 A. No, sir.

9 Q. And what about, what about Mr. Pinckney, did y'all drop
10 him off anywhere?

11 A. I'm not sure if he got out the car there or at Nard's
12 house.

13 Q. Okay. After you left Pine Hills Apartments did you go
14 back to Nard's?

15 A. Yes, sir.

16 Q. Okay. And why, why did you have to go back to Nard's?

17 A. To pick up Timothy Harrison.

18 Q. Okay. Is that where he had stayed the whole time?

19 A. Yes, sir.

20 Q. And after you picked up Mr. Harrison what did y'all end up
21 doing then?

22 A. That when we went back home to Charleston.

23 Q. So, y'all drove back to Charleston at that point in time?

24 A. Yes, sir.

25 Q. Do you know about what time that was then that y'all were

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

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1 leaving Orangeburg?

2 A. No, sir.

3 Q. Was it before midnight or ...

4 A. I'm not sure.

5 Q. You're not sure?

6 A. I don't remember the time.

7 Q. Okay. Let me ask you this, did y'all hang out at all
8 after all this had happened over in the marriage housing?

9 A. No, sir.

10 Q. You dropped off Gouda, dropped off Mr. Pinckney either
11 there or at Nard's, got Mr. Harrison, and did y'all at that
12 point in time head back to Charleston?

13 A. Yes, sir.

14 Q. Let me ask you, did y'all talk at all about what had
15 happened?

16 A. No, sir.

17 Q. Other than the initial couple of questions you asked him?

18 A. No, sir.

19 Q. Let me ask you this, in the early part of May, so several
20 weeks later, did you get locked up down in Charleston County
21 initially?

22 A. Yes, sir.

23 Q. What did you initially get locked up for down there?

24 A. Just a DUS, a five day warrant for DUS.

25 Q. That's driving under suspension?

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

220

1 A. Yes, sir.

2 Q. And that was down in Charleston County?

3 A. Yes, sir.

4 Q. Alright. Let me ask you this, have you gotten out of jail
5 since then?

6 A. No, sir.

7 Q. Okay. What happened when you were getting ready to get
8 out from serving those five days on that?

9 A. They told me that they had a hold for my arrest, and they
10 said it was for Orangeburg. So, I went back to sleep that
11 night, and I woke up the next morning and that's when they
12 told me to roll up my things, some people wanted to see me.
13 And that's when I went down there and it was SLED agents.

14 Q. Okay. And that was, I believe looking at your statements,
15 I think the first one was on May Fourteenth, does that sound
16 about right?

17 A. Yes, sir.

18 Q. Okay. And did you tell them on May Fourteenth, that first
19 time when they talked to you what had happened that night?

20 A. Yes, sir.

21 Q. And as you said, you were aware at that point in time that
22 they had a warrant for you, correct, for murder?

23 A. Yes, sir.

24 Q. And Mr. Alston, you haven't been promised anything to come
25 testify here today, have you?

RAY ANTHONY ALSTON - DIRECT BY SOL. SORENSON

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1 A. No, sir.

2 Q. Cooperative with law enforcement back then?

3 A. Yes, sir.

4 Q. Let me ask you this, back in May of Two thousand eleven,
5 when you talked to law enforcement, I mean, did you tell them
6 about, you know, who was involved?

7 A. Yes, sir.

8 SOLICITOR SORENSON: I beg the Court's indulgence.

9 THE COURT: Okay.

10 SOLICITOR SORENSON: Thank you, Mr. Alston, please answer
11 any questions Mr. Johnson has for you.

12 THE COURT: Mr. Johnson, your witness.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and hard
15 page breaks between testimony are now required by the Court.
16 See next ensuing page for sequential continuation of record.)

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

222

1 RAY ANTHONY ALSTON - CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Good morning, Mr. Alston.

4 A. Good morning, how you doing?

5 Q. Not a lot of questions.

6 A. Yes, sir.

7 Q. I just want to follow up on some the Solicitor asked you.

8 I heard the Solicitor ask you, and I just want to make some
9 things clear, I heard him ask you did Julian call about the
10 drugs, and you said he did, is that correct?

11 A. That's correct.

12 Q. Okay. And, but didn't he call more than one person, he
13 wasn't just particular calling this kid?

14 A. I didn't see.

15 Q. You didn't see?

16 A. No, sir. I can't say who he -- I know he was calling a
17 college kid.

18 Q. Okay.

19 A. And the college kid, I guess they was doing back and forth
20 calls.

21 Q. Okay. But do you have any knowledge, well, if the college
22 kid didn't have it he was calling more than one people, or you
23 don't know?

24 A. I don't know.

25 Q. Okay. Alright. And you said the amount you wanted to buy

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

223

1 was an ounce, is that correct?

2 A. Yes, sir.

3 Q. Okay. And that, you're certain that's the amount you
4 wanted to buy?

5 A. Yes, sir.

6 Q. Okay. And you were the one who wanted to buy it, is that
7 correct?

8 A. Yes, sir.

9 Q. Nobody else?

10 A. No, sir.

11 Q. Okay. And you said you backed into the space, is that
12 correct?

13 A. Yes, sir.

14 Q. Okay. And you said the college kid got out first?

15 A. Yes, sir.

16 Q. Okay. And you said the drugs were dirty brown?

17 A. Yes, sir.

18 Q. And tell me what the significance of the dirty brown was?

19 A. It's not no good.

20 Q. It's not no good?

21 A. No, sir.

22 Q. Okay. And, and you handed the drugs back to him?

23 A. Yes, sir.

24 Q. Okay. And the two bags he handed you trying to get you to
25 choose which bag?

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

224

1 A. Yes, sir.

2 Q. Okay. Alright. Now, you say you saw, do you have any
3 idea what time of night it was?

4 A. No, sir.

5 Q. Would, would you agree with me that it was dark and it was
6 good and dark?

7 A. Yes, sir.

8 Q. You would agree with that?

9 A. Yes, sir.

10 Q. Okay. And it was dark enough, and there were no lighting,
11 so you actually didn't see what was going on in the car, is
12 that correct?

13 A. Yes, sir.

14 Q. Okay. And the Solicitor asked you -- let me get this
15 straight, you did see a tugging, is that correct?

16 A. Yes, sir.

17 Q. But you don't know what the tugging was about, do you?

18 A. No, sir.

19 Q. Okay. And, and I think you testified that when you were
20 at the car you didn't see a gun in the car, is that correct?

21 A. No, sir.

22 Q. But now here -- and I think you also testified that Gouda
23 rode there in the car with you, and that's the name you used,
24 Gouda, Julian, right?

25 A. Yes, sir..

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

225

1 Q. And you didn't see a gun?

2 A. No, sir.

3 Q. He got out of the car?

4 A. Yes, sir.

5 Q. You didn't see a gun?

6 A. No, sir.

7 Q. You said after the event occurred you said he stood
8 around, you got a chance to see him, didn't you, you didn't
9 see a gun then, did you?

10 A. No, sir.

11 Q. He got back into the car?

12 A. Yes, sir.

13 Q. And y'all drove off?

14 A. Yes, sir.

15 Q. And you didn't see a gun then, did you?

16 A. No, sir.

17 Q. So your testimony today is, you observed him going in,
18 getting out of the car, and getting back in, and you didn't
19 see a gun?

20 A. No, sir.

21 Q. Okay. And I just want to make this perfectly clear, and
22 when he was standing outside of the car after the alleged pop
23 you saw his hands and all?

24 A. Yes, sir.

25 Q. You didn't see a gun?

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

226

1 A. No, sir.

2 Q. Okay. Now, you were in the car and you had some concerns
3 about what happened?

4 A. Yes, sir.

5 Q. So, it would be natural for Gouda to have some concerns
6 about what happened, is that correct?

7 A. Pretty much.

8 Q. And the fact that he didn't say nothing in those
9 circumstances wouldn't mean nothing, everybody was scared, is
10 that correct?

11 A. I can't speak on everybody's behalf but ...

12 Q. But you know you were scared?

13 A. Yes, sir.

14 Q. And if you were scared it's reasonable to think that
15 somebody else would be scared?

16 A. Yes, sir.

17 Q. Okay. So, if money was found in the car, if I told you
18 Twenty Dollar bills and Fifty Dollar bills were found in the
19 car, none of that would be any of your money, is that correct?

20 A. No, sir.

21 Q. That would have to be the money of somebody in the car, is
22 that correct?

23 A. Yes, sir.

24 Q. Okay. And you did give, I think two statements, and I
25 think you also took the time to sit down and talk with them,

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

227

1 and you told them everything you knew, is that correct?

2 A. Yes, sir.

3 Q. And in the statements you signed, I think you signed one
4 on Five/Sixteen/Eleven, and I think you signed one on
5 Five/Fourteen/Eleven, and the one on Five/Sixteen/Eleven I
6 highlighted -- well, first of all I want you to look at that
7 to see if that's the one, one of the ones you signed?

8 A. Yes, sir.

9 Q. And that was right after it happened?

10 A. Uh-huh.

11 Q. How about please read the highlighted part for me?

12 A. "I was, I did not know Gouda was going to rob or shoot
13 this guy. I did not know that Gouda had a gun."

14 Q. Alright. So, what you were saying is, none of y'all
15 planned to go there to rob, did you?

16 A. Oh, no, sir.

17 Q. There was never a plan between the four of y'all to rob?

18 A. No, sir.

19 Q. So, nobody went up there with the idea of a robbery?

20 A. No, sir.

21 Q. So, when you were cross, being, when the police were
22 talking to you and you were doing the statement you were
23 explaining to them that you didn't know anybody had a gun?

24 A. Yes, sir.

25 Q. And you didn't know a robbery was going to occur?

RAY ANTHONY ALSTON - CROSS BY MR. JOHNSON

228

1 A. Yes, sir.

2 Q. Okay. And I think they asked you questions intensely over
3 a period of time about that and you continued to say, I didn't
4 know he had a gun and I didn't know a robber was going to
5 occur?

6 A. Yes, sir.

7 Q. So, there was no preplan for no robbery?

8 A. No, sir.

9 Q. And nobody had a gun in your car?

10 A. No, sir.

11 Q. And yet there was a pop?

12 A. Yes, sir.

13 MR. JOHNSON: Okay. Thank you, sir.

14 THE COURT: Anything on redirect?

15 SOLICITOR SORENSON: Just real briefly, Your Honor.

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17 record has been omitted. Headers on testimony pages and hard
18 page breaks between testimony are now required by the Court.
19 See next ensuing page for sequential continuation of record.)

RAY ANTHONY ALSTON - REDIRECT BY SOL. SORENSON

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1 RAY ANTHONY ALSTON - REDIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Mr. Alston, I mean, you don't know if somebody had a gun
4 in your car or not, right?

5 A. No, sir.

6 Q. You just didn't see one?

7 A. I didn't see one.

8 Q. In fact, and based on what Mr. Johnson just had you read,
9 I mean, that would imply that you do think that he did rob and
10 shoot him, is that correct, is that what you told them? Is
11 that correct?

12 A. Yes, sir.

13 SOLICITOR SORENSON: Thank you, Mr. Alston.

14 THE COURT: Anything on recross?

15 MR. JOHNSON: Yes, sir, just a couple of questions.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and hard
18 page breaks between testimony are now required by the Court.
19 See next ensuing page for sequential continuation of record.)

RAY ANTHONY ALSTON - RECROSS BY MR. JOHNSON

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1 RAY ANTHONY ALSTON - RECROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Now, when you said you didn't know he had a gun, you
4 didn't see one, you never did tell the offices you thought he
5 did the robbery, though, did you?

6 A. I said I thought something occurred like that.

7 Q. Right, right, but you -- what I'm getting at, it's normal
8 for somebody to think something occurred?

9 A. Yes, sir.

10 Q. But you didn't see that, did you?

11 A. No, I didn't see nothing.

12 Q. You didn't see a gun, did you?

13 A. No, sir.

14 Q. I mean, that's a normal thing, there's nothing wrong with
15 thinking that?

16 A. Yes, sir.

17 Q. But you didn't see that with your own eyes?

18 A. No, sir.

19 Q. So, anything about that is your guess?

20 A. Yes, sir.

21 Q. It's speculation, you don't know that for a fact?

22 A. No, sir.

23 Q. Is that what you're saying?

24 A. Uh-huh.

25 MR. JOHNSON: Thank you, sir.

1 THE COURT: Alright. Are you through?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Thank you, sir, you may step down.

4 Is the State ready to call it's next witness?

5 SOLICITOR BELL: Yes, Your Honor.

6 THE COURT: Alright, Mr. Bell.

7 SOLICITOR BELL: The State would call Michael Richardson.

8 THE COURT: Michael Richardson?

9 SOLICITOR BELL: Yes, sir.

10 (Whereupon, the witness

11 enters the courtroom.)

12 SOLICITOR BELL: Come around and be sworn, Mr.

13 Richardson.

14 CLERK: Please put your left hand on the Bible and raise
15 your right hand, please.

16 (Whereupon, Michael Richardson
17 is duly sworn.)

18 CLERK: Thank you. You may have a seat and please state
19 your name again for the record.

20 WITNESS: My name is Michael Richardson.

21 (NOTE: Blank lines on this page do not indicate any part of
22 record has been omitted. Headers on testimony pages and hard
23 page breaks between testimony are now required by the Court.
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MICHAEL RICHARDSON - DIRECT BY SOL. BELL

232

1 MICHAEL RICHARDSON - DIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Mr. Richardson, where are you employed?

4 A. South Carolina State University.

5 Q. And how are you employed there?

6 A. South Carolina State Police Department, a parking
7 enforcement officer.

8 Q. Okay. And what are your duties as a parking enforcement
9 officer at South Carolina State?

10 A. Ticket, giving out tickets on the campus, gate security.

11 Q. How long have you been working at South Carolina State?

12 A. Two and a half...

13 Q. Years?

14 A. Yes.

15 Q. And you've been doing parking enforcement that whole time?

16 A. Yes.

17 Q. Okay. So, you were working back on April Fifteenth of
18 last year, Two thousand eleven?

19 A. Yes.

20 Q. What time, do you recall what time you were working on
21 that day?

22 A. Come on duty at Seven:forty-five for briefing and started
23 at eight o'clock.

24 Q. Morning or night?

25 A. Evening.

MICHAEL RICHARDSON - DIRECT BY SOL. BELL

233

1 Q. Evening?

2 A. Yes.

3 Q. And during the evening what are your duties as a parking
4 enforcement officer?

5 A. All I do is check IDs coming in on campus, basically
6 that's it. We maintain that gate.

7 Q. Okay. So, how was the, how do you get on campus at South
8 Carolina State at night?

9 A. At night all gates are closed at eight o'clock except on
10 the by-pass.

11 Q. Okay. How many gates are there -- I'm sorry, I didn't
12 mean to interrupt you. Go ahead.

13 A. The only gate is open is on the by-pass, everyone else is
14 locked at eight o'clock.

15 Q. How many gates are there at South Carolina State
16 University?

17 A. Open, let me see, One, Two, Three, Four, Five -- Six.

18 Q. Six gates?

19 A. Yes, sir.

20 Q. So, they're all locked and closed at eight p.m., eight in
21 the evening?

22 A. Yes, sir.

23 Q. Except for the one off of Chestnut, the by-pass?

24 A. Right, right.

25 Q. Alright. And you were manning that gate on April

MICHAEL RICHARDSON - DIRECT BY SOL. BELL

234

1 Fifteenth, Two thousand eleven?

2 A. Yes, sir.

3 Q. And what do you do, when a car comes up what do you do?

4 A. I ask him for his ID, driver's license. I write it in,
5 driver's license number, and tag number on the vehicle, what
6 kind of car it is, what color it is.

7 Q. Okay. And if it's a student do you do anything different
8 for students and non-students?

9 A. Students just show their ID.

10 Q. Okay.

11 A. Their State ID.

12 Q. And you make a notation about them as well?

13 A. Yes, sir.

14 Q. And then, for non-students you look at the driver's
15 license?

16 A. Right.

17 Q. Get a description of the vehicle?

18 A. Right.

19 Q. Tag number?

20 A. Yes, sir.

21 Q. And time they come in, is that correct?

22 A. Yes, sir.

23 Q. And you did that on that night?

24 A. Yes, sir.

25 Q. Okay.

MICHAEL RICHARDSON - DIRECT BY SOL. BELL

235

1 MR. JOHNSON: No objection.

2 SOLICITOR BELL: Okay. Let me get this marked, I don't
3 think it's been marked.

4 COURT REPORTER: That's State's Twenty-two.

5 SOLICITOR BELL: Okay.

6 COURT REPORTER: And did they say no objection?

7 SOLICITOR BELL: No objection, Mr. Johnson?

8 MR. JOHNSON: No objection, none.

9 COURT REPORTER: State's Twenty-two.

10 THE COURT: State's what, Twenty ...

11 SOLICITOR BELL: Twenty-two.

12 THE COURT: State's Twenty-two without objection is in
13 evidence.

14 (State's Exhibit Twenty-two
15 marked and filed.)

16 SOLICITOR BELL: It's a South Carolina State Vehicle
17 Registrations.

18 COURT REPORTER: Okay.

19 Q. Mr. Richardson, let me show you what has been marked and
20 is in evidence as State's Twenty-two, and I ask you if you
21 recognize that?

22 A. Yes, sir.

23 Q. And what is that?

24 A. Vehicle Registrations.

25 Q. Okay. What date is it from?

MICHAEL RICHARDSON - DIRECT BY SOL. BELL

236

1 A. It's the Fifteenth, Four/Fifteen/Eleven.

2 Q. Okay. And this is the one that you filled out at your
3 gate off the by-pass?

4 A. Yes, it is.

5 Q. Okay. At the top I believe at Eleven o'clock, you have
6 between Eleven and Eleven:twenty, is that correct for times?

7 A. Yes, yes.

8 Q. There are, I think, four vehicles at Eleven o'clock?

9 A. At Eleven o'clock, between Eleven and Eleven:twenty?

10 Q. Yeah, Eleven ...

11 A. One, Two, Three, Four, Five, -- Five vehicles

12 Q. Five vehicles.

13 A. Yes, sir.

14 Q. Is there a name of Maurice Thompson on there?

15 A. Yes, sir.

16 Q. And what number vehicle was that after Eleven o'clock, or
17 between Eleven and Eleven:twenty?

18 A. That's the third vehicle.

19 Q. Okay. And you took, you got his ID, took his name,
20 Maurice Thompson?

21 A. Right.

22 Q. And a description of the vehicle?

23 A. Yes.

24 Q. What's the description?

25 A. Uginny Suites, He was going to Uginny Suites, it's a gray

MICHAEL RICHARDSON - DIRECT BY SOL. BELL

237

1 four door Buick.

2 Q. Okay. And he was going to where?

3 A. He said he was going to Uginny Suites.

4 Q. Okay. And you also took the tag number, is that correct?

5 A. Yes, sir.

6 Q. Okay. And this is what you filled out that night?

7 A. Yes.

8 Q. And checked out?

9 A. Yes, sir.

10 SOLICITOR BELL: Thank you, Mr. Richardson, please answer
11 any questions Mr. Johnson may have for you.

12 THE COURT: Anything on cross?

13 MR. JOHNSON: No questions of Mr. Richardson.

14 THE COURT: Thank you, sir. May this witness be excused?

15 MR. JOHNSON: Yes, as far as I'm concerned.

16 THE COURT: Alright, you may be excused. Thank you, sir.

17 Is the State ready to call its next witness?

18 SOLICITOR SORENSON: Yes, sir. The State calls Maurice
19 Thompson.

20 (Whereupon, the witness

21 enters the courtroom.)

22 SOLICITOR SORENSON: Please go around right up there, and
23 put your left hand on the Bible and raise your right and face
24 the Court.

25 (Whereupon, Maurice Thompson

1 is duly sworn.)

2 CLERK: Thank you. You may have a seat, and please state
3 your name again for the record.

4 WITNESS: Maurice Thompson.

5 THE COURT: Mr. Sorenson, your witness.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court.
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MAURICE THOMPSON - DIRECT BY SOL. SORENSON

239

1 MAURICE THOMPSON - DIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Now, Mr. Thompson, make sure you keep your voice up nice
4 and loud for me, alright?

5 A. Yes, sir.

6 Q. If you would, tell the jury how old you are?

7 A. Twenty-four.

8 Q. And where are you from, Mr. Thompson?

9 A. North Charleston, South Carolina.

10 Q. And where did you go to high school?

11 A. Stahl High School.

12 Q. And did you graduate from Stahl?

13 A. Yes, sir.

14 Q. What year did you graduate?

15 A. Two thousand six.

16 Q. Alright. And do you still live down in the Charleston
17 area now?

18 A. Yes, sir.

19 Q. Okay. And let me ask you this, out of this incident did
20 you ultimately get charged with something?

21 A. Accessory to murder after the fact.

22 Q. Accessory after the fact of murder, is that correct?

23 A. Yes, sir.

24 Q. Okay. And do you remember when it was that you got
25 arrested?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

240

1 A. May Nineteenth.

2 Q. Okay. Of last year, Two thousand eleven?

3 A. Two thousand eleven.

4 Q. Alright. And do you have a lawyer?

5 A. I have a public defender.

6 Q. A public defender. Is that Mr. Wise?

7 A. Yes, sir.

8 Q. Alright. Now, Mr. Thompson, I want to kind of go over
9 initially with you -- well, first let me ask you, you got,
10 from back in Two thousand ten, you were convicted of receiving
11 stolen goods and obtaining property by false pretenses, is
12 that correct?

13 A. Yes, sir.

14 Q. Alright. Let me kind of go over how you know some of the
15 other people that were involved in this incident. The first
16 person I want to ask you about is Ray Anthony Alston. Do you
17 know Mr. Alston?

18 A. Yes, sir.

19 Q. Okay. And tell the jury how you know Mr. Alston?

20 A. We went to school together.

21 Q. Okay. That was Stahl High School?

22 A. Yes, sir.

23 Q. Okay. And how long do you think you have known Mr. Alston
24 for?

25 A. A little bit over ten years.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And what, what do you call him, has he got a nick
2 name that he goes by?

3 A. Big Man.

4 Q. Big Man? Alright. And was he somebody that you hung out
5 with frequently back in the early part of Two thousand eleven?

6 A. No, I mean, we used to be at the same house, but we used
7 to be at work and back and forth up here, so not too much.

8 Q. Okay. And do you know back in April of last year where he
9 was working at?

10 A. Wendy's.

11 Q. Wendy's? Alright. Were you working anywhere back at that
12 time?

13 A. No, sir.

14 Q. Okay. How about Hilliard Pinckney, do you know Mr.
15 Pinckney?

16 A. Yes, sir.

17 Q. Okay. How do you know Mr. Pinckney?

18 A. That's my cousin.

19 Q. Your cousin? And how are y'all cousins?

20 A. His mama and my grand mama is sisters.

21 Q. Okay. Alright, and what, what did you know Mr. Pinckney
22 by, does he have a nick name he goes by?

23 A. H.D.

24 Q. H.D.? Alright. And was he somebody that you used to hang
25 around with a lot?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 A. He used, he used to be up here, so not too much to be
2 around.

3 Q. Okay. He used to be up here, be in Orangeburg?

4 A. Yes, sir.

5 Q. Okay. If he was down, when he was down in Charleston,
6 would you hang out with him down in Charleston sometimes?

7 A. If he would have come by my mom's house, but not too much.

8 Q. Okay. Alright. And the last thing, how about the
9 defendant, Mr. Young, did you know Mr. Young back in April of
10 last year?

11 A. Yes, sir, I meet him a couple of times through Ray Anthony
12 and Hilliard Pinckney.

13 Q. Okay. So you met him through Mr. Alston and Mr. Pinckney?

14 A. Yes, sir.

15 Q. Alright. And what name did you know him by back the early
16 part of last year?

17 A. Little Gouda.

18 Q. Little Gouda? And how many times do you think you had
19 been around, around the defendant?

20 A. Two, no more than three times.

21 Q. Alright. And back in, back in April of last year do you
22 know where Mr. Young, Little Gouda, where he was living at
23 back at that time?

24 A. I just know we used to take him to Pine Hills.

25 Q. Pine Hills, those are the apartments?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 A. Yes, sir.

2 Q. And would you point out in the picture, that's State's
3 Exhibit Number Eighteen, is that the apartments that you would
4 take him to?

5 A. That's how the apartments looked.

6 Q. Okay. Alright, Mr. Thompson, I want to kind of turn you
7 attention back to the, to the evening of April Fifteenth of
8 last year. Do you remember what y'all were doing or what you
9 were doing that evening?

10 A. After six o'clock we end up right here at these
11 apartments. We were sitting out there for a little while.

12 Q. Okay. Who, you said, we, who ...

13 A. Me, Ray, Hilliard Pinckney was already out there, Little
14 Gouda was already out there, and a couple of other girls.

15 Q. Okay. And now, had y'all been in Orangeburg or had y'all
16 come up from - - -

17 A. From Charleston.

18 Q. --- from Charleston?

19 A. Yes, sir.

20 Q. Who was it that came up from Charleston that day?

21 A. Me, Ray Anthony and T.

22 Q. And T? Who ...

23 COURT REPORTER: I'm sorry, I didn't hear.

24 A. Me, Ray Anthony and T.

25 Q. Okay. And who, tell the jury, who was T?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 A. That's Ray Anthony's friend.

2 Q. Okay. And let me ask you, did you know -- and I may have
3 asked you this already, do you know where Mr. Alston was
4 working last year?

5 A. Uh-huh.

6 Q. Where was that at?

7 A. Wendy's.

8 Q. Wendy's?

9 A. Mt. Pleasant.

10 Q. Okay. And do you know whether T. worked with him at Mt.,
11 at that Wendy's?

12 A. Yes. That was his manager.

13 Q. His what?

14 A. His manager.

15 Q. Manager? Alright. Now, that person, T., was he somebody
16 that you hung around with frequently?

17 A. No, sir.

18 Q. Okay. But did you know who he was?

19 A. Through Ray Anthony.

20 Q. Through Ray Anthony? Okay. And let me ask you this, Mr.
21 Thompson, do you have a nick name that you kind of went by
22 back then?

23 A. Yes, sir.

24 Q. What was that?

25 A. Double.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 Q. Double? How about, did you also go by the nick name,
2 Todd?

3 A. Yes, sir.

4 Q. Okay. What is Todd from?

5 A. From my middle name.

6 Q. Okay. What's your middle name?

7 A. Shatodd.

8 Q. Okay. It's S-H-A-T-O-D-D?

9 A. Yes, sir.

10 Q. Okay. So, some people may have called you Todd back then?

11 A. Yes, sir.

12 Q. Okay. Alright. So, you said you got up and I think you
13 had made reference to these apartments, that you had gone by
14 there about six o'clock that night?

15 A. Yes, sir.

16 Q. Is that correct? And was it the three of y'all that had
17 come up from Charleston?

18 A. Yes, sir.

19 Q. And how did y'all get up here that day?

20 A. We drive T.'s car.

21 Q. Okay. And do you remember what kind of car that was?

22 A. A Buick SENTRY, Silver.

23 Q. Silver? Alright. And what -- just kind of tell the jury
24 then that evening what y'all were doing?

25 A. We was hanging out on Pine Hills just, just sitting out

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 there, and a couple of them was on the phone. We left from
2 Pine Hills and we end up in another -- I don't know nothing
3 about Orangeburg, it was in another neighborhood, a long
4 street where some other girls was at. After that we end up at
5 Nard's house, like Nard's house.

6 Q. Okay. And did you know who Nard was?

7 A. I had meet him a couple of times.

8 Q. Okay. Did you know, do you know his real name?

9 A. I just know his name, they call him Nard.

10 Q. Okay. And where, and kind of what was, what was at his
11 house?

12 A. He had a little studio over there.

13 Q. A music studio?

14 A. Yes, sir.

15 Q. Alright. And what were y'all doing over there?

16 A. Just sitting around.

17 Q. Okay. And was Mr. Alston with y'all?

18 A. Yes, sir.

19 Q. Was T., his manager, T.?

20 A. Yes, sir.

21 Q. Mr. Pinckney, your cousin?

22 A. Yes, sir.

23 Q. Okay. How about Mr., Mr. Young?

24 A. Yes, sir.

25 Q. Alright. And at some point in time that night did y'all

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 end up leaving Nard's apartment, or his place?

2 A. Yes, sir.

3 Q. Okay. And what was the reason why y'all left there?

4 A. To go buy some marijuana.

5 Q. Okay. And do you know who it was that was going to go
6 buy, who was planning on actually purchasing the marijuana?

7 A. Little Gouda was on the phone with the people, between him
8 and H.D., both of them was on the phone, so ...

9 Q. Okay. Did you know who had the money or anything about
10 that?

11 A. No, sir, I just know they want to purchase weed.

12 Q. Were you planning on actually - - -

13 A. No, sir.

14 Q. --- paying for any of it?

15 A. No, sir.

16 Q. Okay. And let me ask you this, tell the jury, how come
17 you ended up going?

18 A. Because I was the only other person that had a license,
19 and T. said he didn't feel like driving because he was driving
20 all day.

21 Q. Okay. So, how, how did y'all go, what, whose vehicle did
22 you take?

23 A. T.

24 Q. Okay. And tell the jury who then left Nard's apartment in
25 T.'s, in that Buick Sentry?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 A. It was me, Ray Anthony Alston, Hilliard Pinckney and
2 Little Gouda.

3 Q. Okay. And so, obviously, from what you said, you were
4 driving?

5 A. Yes, sir.

6 Q. Okay. And who was sitting up front with you?

7 A. H. D., Hilliard Pinckney.

8 Q. Okay. And I guess the other two in the back seat?

9 A. Yes, sir.

10 Q. Do you remember where they were sitting in the back?

11 A. Gouda was on the back passenger side and Ray Anthony was
12 right behind me.

13 Q. Alright. And now, you had already said you weren't real
14 familiar with Orangeburg. I mean, do you know where it was
15 that you ultimately ended up going?

16 A. To State.

17 Q. To State?

18 A. Yes, sir.

19 Q. And had you been on State's campus before?

20 A. No, sir.

21 Q. Okay. And what happened when you tried to get onto
22 State's campus?

23 A. The guard asked for IDs.

24 Q. Okay. And did you give him your driver's license?

25 A. Yes, sir.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 Q. Alright. In fact, is that, looking at State's Exhibit
2 Number Twenty-two, on the third line there, is that your name,
3 your driver's license?

4 A. Yes, sir.

5 Q. And you probably don't recognize the license plate, but
6 did they also write down the license tag at that point in
7 time?

8 A. Yes, sir.

9 Q. Alright. And a gray four door Buick, is that pretty much
10 what y'all were in?

11 A. Silver, yes, sir.

12 Q. Silver. Once you got onto State's campus what, after the
13 guard took your information, where, where did you go?

14 A. We went towards the D Dorm.

15 Q. Okay.

16 A. And a guy, sounded like he was from up north, a dark
17 skinned guy got in the car, and we left from the campus and we
18 turned and made and ended up making another right, and ended
19 up by some apartments.

20 Q. Okay. And did you know, had you ever been to that place
21 before?

22 A. No, sir.

23 Q. Okay. And when the guy got in the car with y'all, where,
24 where did he get in?

25 A. He got in the back seat.

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1 Q. Okay. And had you ever seen him before?

2 A. No, sir.

3 Q. Okay. Did you talk to him at all even when he got in the
4 car?

5 A. No, sir.

6 Q. Alright. What, tell the jury then, after you got to that
7 other, kind of took those couple of rights and ended up around
8 those other apartments, what did y'all do?

9 A. We parked, and we waited for the guy in the green car, we
10 waited for the guy in the green car. As soon as we got over,
11 he came like two minutes, probably two minutes after, right
12 after. He came, the three in the back seat got out the car,
13 and he went over to the car and started talking, or whatever
14 it was they was doing.

15 Q. Okay. And how, let me ask you, when y'all pulled in how
16 did you park?

17 A. I backed in.

18 Q. You backed in?

19 A. Yes, sir.

20 Q. Alright. And then when the green car came where did it
21 go?

22 A. It pulled up right along the side of us.

23 Q. Okay. On the passenger side or your side?

24 A. On the passenger side.

25 Q. The passenger side. Alright, and did he back in, too, or

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 pull in?

2 A. No, sir, he pulled in.

3 Q. Okay. And you said the three guys in the back seat, so
4 that would be Gouda, Little Gouda, Ray Anthony and the kid
5 y'all had picked up?

6 A. Yes, sir.

7 Q. All of them? Now, do you know what -- were you able to
8 hear what any of that conversation, or anything that was going
9 on?

10 A. No, sir.

11 Q. Alright. What were you doing at that point in time?

12 A. I was on my phone, playing with my phone.

13 Q. Okay. And what about, what about Mr. Pinckney, who was
14 sitting up front with you, what was Mr. Pinckney doing?

15 A. He was on his phone, too, sitting in the passenger side.

16 Q. Okay. And do you remember, did y'all have music going in
17 the car?

18 A. Just a little bit.

19 Q. Alright. And what is the next thing that you kind of
20 remember happening?

21 A. The back door opening, Ray Anthony got in on the inside,
22 and after that I felt the car jerk, and Little Gouda hanging
23 out the passenger side of the car, and then after that I heard
24 a loud bang, and I just ducked down.

25 Q. Okay. What did you think that bang was?

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 A. I, I couldn't ...

2 Q. You were ducking, though, right?

3 A. Yeah. I just don't know.

4 Q. And you said, and when you heard that bang, so Mr. Alston,
5 he had gotten back?

6 A. Yeah, he was in the inside of the car.

7 Q. He was inside the car?

8 A. Yes, sir.

9 Q. Mr. Pinckney was inside the car?

10 A. Yes, sir.

11 Q. Do you know where the kid y'all picked up was?

12 A. No, sir.

13 Q. Did you ever see him again?

14 A. No, sir.

15 Q. And where was, where was he?

16 A. Hanging out the side of the door.

17 Q. Hanging out the side of what door?

18 A. Of the green car.

19 Q. And you said when you heard the bang you ducked?

20 A. Yes, sir.

21 Q. What did you do, did you eventually kind of look back up?

22 A. Yes, sir.

23 Q. Tell the jury what you saw when you looked back up?

24 A. I looked up, I saw Little Gouda standing up, like I
25 couldn't see over the hood, but then the green car backed up

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 and speed off real fast.

2 Q. So, the green car had sped, had backed up with him hanging
3 out of the car and you heard the bang?

4 A. After the bang.

5 Q. You ducked, when you looked back up the car then is
6 speeding - - -

7 A. Yes, sir.

8 Q. --- out of the apartments and away?

9 A. Yes, sir.

10 Q. Alright.

11 A. And it turned off to the left.

12 Q. And it turned to the left. Alright. And you said he was
13 standing, where was he standing in relation to your car?

14 A. At this time now he was in the front, in the front of the
15 car, like, on the other side, puffing a little bit.

16 Q. Okay. So how, so if you look out the front windshield
17 that's where he is, out front there?

18 A. Yes, sir.

19 Q. And what, what happened then, I mean, what was going on?

20 A. Ray Anthony said, he screamed and said, get in the F-ing
21 car, and after that I crank up and we leave, and he directed
22 me back to Pine Hills.

23 Q. Okay. Now, when y'all left that, kind of that apartment
24 complex did you go left also or right?

25 A. Right.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 Q. Did you see what had happened to the green car, where it
2 went after you saw it take a left?

3 A. No, sir, I just know it speed off real fast and take a
4 left.

5 Q. Okay. Now what, you said that Ray Anthony was yelling,
6 get in the F-ing car, who was he yelling that to?

7 A. Little Gouda.

8 Q. Alright. And what, anybody say anything once he got in
9 the car?

10 A. Just, which way to go, go this way, go that way.

11 Q. Did you ask anybody, I mean, what happened?

12 A. I mean, I didn't ask them anything because they just,
13 everything good, man, everything good, and just go this way,
14 go that way.

15 Q. That's all they were saying just, everything is good, and
16 otherwise telling you where to go?

17 A. Yes, sir.

18 Q. And you said that you went back to Pine Hills Apartments?

19 A. Yes, sir.

20 Q. And what, what happened when you got back to Pine Hills
21 Apartments?

22 A. We going upstairs, Little Gouda went on the inside, then
23 we left and we went to, on to Nard's house?

24 Q. Uh-huh, back to Nard's house?

25 A. Yes, sir.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 Q. Okay. And what happened when you got back to Nard's
2 house?

3 A. We sat there for a little while, and then we went back
4 over here to Pine Hills, and then we left.

5 Q. Okay. And what did you go back over to Pine Hills for?

6 A. We take Hilliard back around there.

7 Q. Okay.

8 COURT REPORTER: You said you did what?

9 A. Take Hilliard.

10 Q. Took Hilliard. Alright. And I guess at some point in
11 time -- where, let me ask you this, where was T., Timothy
12 Harrison, where was he during all of this?

13 A. At Nard's house.

14 Q. Okay. And you ultimately picked him back up?

15 A. Yes, sir.

16 Q. Where did you ultimately end up going that night?

17 A. Back to North Charleston.

18 Q. And who went back to North Charleston?

19 A. Me, Ray Anthony and T.

20 Q. So, you left Mr., Little Gouda back at the Pine Hills
21 Apartments?

22 A. Yes, sir.

23 Q. And ultimately ended up leaving H.D. over there, too?

24 A. Yes, sir.

25 Q. Let me ask you this, back then did you, do you know

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 whether H.D., your cousin, whether he had a child that was
2 living over in those apartments?

3 A. No, sir, no, sir, I just know that's what he tell us
4 coming, when we got up there.

5 Q. Okay. Let me ask you this, now obviously, you were in the
6 front seat, driver's seat, right, the whole time this all
7 happened?

8 A. Yes, sir.

9 Q. And you never got out of the vehicle?

10 A. No, sir.

11 Q. Mr. Pinckney never got out of the vehicle?

12 A. No, sir.

13 Q. Did you ever see anybody with a gun?

14 A. No, sir.

15 Q. Okay. You never saw anybody with a gun beforehand?

16 A. No, sir.

17 Q. What did you think y'all were going to do when you went
18 over there?

19 A. Buy marijuana.

20 Q. Never saw a gun afterwards?

21 A. No, sir.

22 Q. Of course, nobody ever would say what had happened
23 afterwards either, right?

24 A. No, sir.

25 Q. And I think you had testified earlier, Mr. Thompson, that

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 you ultimately find out that the police were looking for you?

2 A. Yes, sir.

3 Q. And they had a warrant. And I think, you said you were
4 arrested, you turned yourself in on, I believe it was May
5 Nineteenth I think you said, is that right?

6 A. Yes, sir.

7 Q. And did you talk to the SLED agents and give them a
8 statement at that time?

9 A. Yes, sir.

10 Q. Alright. Let me ask you, do you remember them the
11 following day showing you a lineup?

12 A. Yes, sir.

13 Q. I'm showing you State's Exhibit Number Twenty, do you
14 remember them showing you that?

15 A. Yes, sir.

16 Q. Alright. And did you pick somebody out of that lineup?

17 A. Yes, sir.

18 Q. Who did you pick out?

19 A. Number Two.

20 Q. And who is Number Two?

21 A. Little Gouda.

22 Q. Little Gouda?

23 SOLICITOR SORENSON: Your Honor, at this time I'd offer
24 State's Number Twenty into evidence.

25 MR. JOHNSON: Without objection.

MAURICE THOMPSON - DIRECT BY SOL. SORENSON

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1 THE COURT: Okay. State's Number Twenty is in without
2 objection, in evidence without objection.

3 SOLICITOR SORENSON: And that ...

4 COURT REPORTER: Just a minute. State's Twenty. Okay.
5 (State's Exhibit Twenty
6 marked and filed.)

7 Q. And you actually dated that and put an arrow pointing to
8 that picture, is that correct?

9 A. Yes, sir.

10 Q. And back in April of last year was that how Mr. Young's
11 hair was also, like that, kind of short little dreds like
12 that?

13 A. Yes, sir.

14 SOLICITOR SORENSON: One second, Your Honor, please.

15 THE COURT: Okay.

16 Q. The last thing, the person that you saw, Mr. Thompson,
17 hanging out of that vehicle when you heard the bang, can you
18 point him out, is he in the courtroom?

19 A. Right there.

20 Q. Is that the defendant, sitting in the middle of the
21 table?

22 A. Yes, sir.

23 SOLICITOR SORENSON: Thank you, Mr. Thompson, that would
24 be all the State would have.

25 THE COURT: Alright, Mr. Johnson, your witness.

MAURICE THOMPSON - CROSS BY MR. JOHNSON

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1 MAURICE THOMPSON - CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Good morning, Mr. Thompson.

4 A. How you doing?

5 Q. I want to ask you a few quick questions, okay?

6 A. Yes, sir.

7 Q. First of all, you did a recording transcript for them,
8 didn't you?

9 A. Yes, sir.

10 Q. And you gave a statement, didn't you?

11 A. Yes, sir.

12 Q. And, and you told the truth, didn't you?

13 A. Sir?

14 Q. And you told the truth when you were doing that, didn't
15 you?

16 A. Yes, sir.

17 Q. Okay. Alright. And one of the things you said was, there
18 was never a plan of robbery with the four or the five of
19 y'all, is that true?

20 A. Right.

21 Q. Nobody ever sat down and said, let's rob somebody of some
22 weed?

23 A. Right.

24 Q. That never happened, did it?

25 A. No, sir.

MAURICE THOMPSON - CROSS BY MR. JOHNSON

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1 Q. Okay. Okay. And you said they were only going to -- I
2 saw it in your statement, you said, they were only going to
3 buy an ounce, is that correct?

4 A. Yes, sir.

5 Q. Okay. Alright, and I think I also saw you say, you never
6 saw a gun, is that correct?

7 A. Right.

8 Q. Okay. Alright, now, let me ask you, you had been hanging
9 out with Julian, how long y'all were together that day?

10 A. Since, from like six o'clock until eleven:thirty, forty-
11 five.

12 Q. And y'all were moving around and walking and talking and
13 all of that, is that correct?

14 A. Yes, sir.

15 Q. Doing your normal activities, is that correct?

16 A. Yes, sir.

17 Q. Okay. And from the time you got with him that day until
18 the time this occurred you never saw a gun, is that correct?

19 A. No, sir, I never saw a gun.

20 Q. Now, after the pow, and I heard you just now testify that
21 you saw Julian standing on the other side of the car. You had
22 an opportunity to view his whole body, is that correct?

23 A. No, sir, I saw from here down.

24 Q. You saw from here down?

25 A. Yes, sir.

MAURICE THOMPSON - CROSS BY MR. JOHNSON

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1 Q. Okay. At some point in time he came and got in the car,
2 is that correct?

3 A. Yes, sir.

4 Q. Did you see him getting in the car?

5 A. I seen him get in the car.

6 Q. You seen him, and you didn't see a gun while he was
7 getting in the car?

8 A. No, sir.

9 Q. Okay. Alright. And let me ask you this, just like today,
10 you're a little nervous, you were a little scared then,
11 weren't you, you were a lot scared then probably?

12 A. I just was afraid of what was going on.

13 Q. Well, I mean, okay, so it wasn't the usual circumstance
14 then?

15 A. Right.

16 Q. Okay. And you was just trying to figure out what was
17 going on and you did what you thought was best, by leaving,
18 getting out of there?

19 A. Yes, sir.

20 Q. Is that true?

21 A. Yes, sir.

22 Q. Okay. Okay. And I think in your statement you said over
23 and over, I didn't see anything, I don't know anything, I
24 think that's about what you said?

25 A. Right.

MAURICE THOMPSON - CROSS BY MR. JOHNSON

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1 Q. No more than what you said today?

2 A. Right.

3 Q. Did, did y'all ever, when y'all left the marriage housing,
4 I think you said y'all took a right, is that correct?

5 A. Yes, sir.

6 Q. So, you never did get out on Russell towards where the
7 other accident occurred, did you?

8 A. I don't even know where Russell is at.

9 Q. You don't know where it is?

10 A. No, sir.

11 Q. Okay.

12 MR. JOHNSON: Your Honor, one minute, please.

13 THE COURT: Okay. Take your time, Mr. Johnson.

14 Q. My last question, it's repetitive in the sense, I just
15 want to ask for clarity, alright?

16 A. Uh-huh.

17 Q. That night you never saw Julian with a gun?

18 A. No, sir, never.

19 Q. Not coming nor going?

20 A. Coming or going, I never saw a gun.

21 MR. JOHNSON: Thank you, sir.

22 THE COURT: Anything on redirect?

23 SOLICITOR SORENSON: No, sir.

24 THE COURT: Alright, thank you, sir, you may step down.

25 We're going to take a mid-morning break now. Okay?

1 Ladies and Gentlemen, y'all have been, you know, listening to
2 testimony now for one afternoon and one morning, but remember,
3 you cannot begin talking about this case yet. Okay? We're
4 going to take a break of about Ten or Fifteen minutes, and
5 then we'll come back in here and we'll continue with the
6 State's case. Okay? Thank y'all for your attention. Okay?
7 Thanks.

8 (Whereupon, the jury retires
9 to the jury room.)

10 (Recess)

11 THE COURT: Is the State ready?

12 SOLICITOR BELL: The State's ready, Your Honor.

13 THE COURT: Alright. Is the Defense ready?

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: Alright, please bring the jury back in. Thank
16 you.

17 (Whereupon, the jury
18 enters the courtroom.)

19 THE COURT: Alright, Solicitor Bell, please call your
20 next witness.

21 SOLICITOR BELL: Your Honor, The State calls Dr. Kelly
22 Rose.

23 (Whereupon, the witness
24 enters the courtroom.)

25 THE COURT: Good morning, Dr. Rose, if you'll come up and

1 let the Clerk swear you in.

2 CLERK: Please place your left hand on the Bible and
3 raise your right hand.

4 (Whereupon, Dr. Kelly Rose
5 is duly sworn.)

6 CLERK: Please state your name again for the record.

7 WITNESS: My name is Dr. Kelly Rose.

8 THE COURT: Solicitor Bell, your witness.

9 SOLICITOR BELL: Thank you, Your Honor, may it please
10 the Court.

11 THE COURT: Yes, sir.

12 (NOTE: Blank lines on this page do not indicate any part of
13 record has been omitted. Headers on testimony pages and hard
14 page breaks between testimony are now required by the Court.
15 See next ensuing page for sequential continuation of record.)
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DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 DR. KELLY ROSE - DIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Good morning, Dr. Rose.

4 A. Good morning.

5 Q. Dr. Rose, how would you characterize your profession?

6 A. In South Carolina I am Board Certified as a Forensic
7 Pathologist.

8 Q. And what do you do as a Forensic Pathologist?

9 A. I perform autopsies to determine cause of death.

10 Q. And how many autopsies have you done?

11 A. Approximately One thousand.

12 Q. And have you ever been qualified as an expert in the field
13 of forensic pathology?

14 A. Yes, sir.

15 SOLICITOR BELL: Your Honor, I would move ...

16 MR. JOHNSON: She's qualified, without objection.

17 THE COURT: Alright. Dr. Rose is qualified as an expert
18 in the field of Forensic Pathology without objection.

19 You may proceed.

20 Q. And where have you been practicing?

21 A. I have been practicing mostly in Newberry, and that is
22 where we do autopsies.

23 Q. And you were doing them from all over the State of South
24 Carolina?

25 A. Yes, sir.

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 Q. Specifically, did you have an occasion to perform an
2 autopsy on a person identified as Jonathan Bailey?

3 A. Yes.

4 Q. And when was that?

5 A. That was on April Seventeenth, Two thousand eleven, when
6 the Orangeburg County Coroner brought him to the Hospital.

7 Q. And do you recall about what time you performed his
8 autopsy?

9 A. Ten:thirty A.M. that morning.

10 Q. Was there anyone else there when you performed the
11 autopsy?

12 A. I mean, there are always other people there.

13 Q. When you receive a body for autopsy what is the first
14 thing you do?

15 A. You kind of like to examine, look at the head, chest,
16 stomach, arms, legs, for injuries, signs of disease, and after
17 that we do an internal examination and note any disease or
18 injuries.

19 Q. So first you inspect -- can you tell the jury the general
20 description of the body of Jonathan Bailey as you saw it?

21 A. This was a young male, he was about six feet tall.

22 Q. And was there anything unnatural that you saw?

23 A. He had an open wound in his stomach. He had an exit wound
24 coming out of his left side.

25 Q. And were you able to see any other wounds?

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 A. After I photographed the body and I observed the gunshot
2 wound, then I examined it as well. When that is done we then
3 open the body. In this instance we had already observed the
4 gunshot wound, so I was looking for the internal wounds.

5 Q. And let's talk about these wounds, were they on both
6 sides?

7 A. Right. Where your chest meets your stomach toward the
8 right side, and the exit wound also was in a similar position
9 on the left side.

10 Q. Can you describe the entrance wound, based on your
11 observation?

12 A. Gunshot wounds have characteristics, and that helps
13 classify them. It was about half an inch, Point Four to Point
14 Five inches in size, the hole was. It had the characteristics
15 of an entrance wound, which means the edges, they call it
16 beveled, kind of sloped inward.

17 Q. And the other wound on the left side?

18 A. Corresponding exit wound also, was also about the same
19 size, and it had characteristics that were more classic for an
20 exit wound.

21 Q. Okay. And on this individual you, did you measure how far
22 the entrance wound - - -

23 A. Yes.

24 Q. --- from various points on the body?

25 A. Uh-huh.

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 Q. And what were those?

2 A. With, we have diagrams that we use in the autopsy, and
3 with the body and what we call standard anatomic position,
4 which is standing up like this, which normally stands like
5 that, but we need a standard reference for our reports. We
6 measure the wound from the top of the head, the distance from
7 the midline in inches, and then in other coordinates. And in
8 this instance I measured it from the nipple down to the center
9 of the wound.

10 Q. Okay. And how far was it from the top of the head?

11 A. It was, it looks like it was Twenty-one inches.

12 Q. Okay. And how far from the mid-line?

13 A. It was nine inches.

14 Q. And from the nipple?

15 A. It was about seven inches in the eight o'clock direction,
16 the face, if you're looking at the face of the clock, about
17 the eight o'clock direction.

18 Q. Alright. Okay. And about the exit wound, what were the
19 measurements on it?

20 A. It was Twenty-two and a half inches from the top of the
21 head, so it was a little lower, it was six inches to the left
22 of midline, so a little bit more forward, and it -- I'm sorry,
23 that was seven and a half inches, and then it was six inches
24 from the nipple.

25 Q. Okay. Thank you. And then you did the incision, the Y

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 incision to look at the internal damage?

2 A. Yes.

3 Q. And what were your findings on the internal damage?

4 A. On the right it had, the bullet had passed through his
5 lung. His right kidney was absent and there were some sutures
6 there like stitches, so I presume that at the hospital he had
7 his kidney removed. It went also through his liver, it
8 crossed his midline, went through his intestines, went through
9 his pancreas, which is this little organ that sits in your
10 intestines, it got, it went through his stomach, and there's a
11 really large artery that runs near the stomach called the
12 splenic artery, and it had gone through that and then
13 proceeded out the body.

14 Q. Okay. Based on the external examination and internal, can
15 you, can you give an opinion as to how, the path that the
16 bullet traveled through the body?

17 A. Yes. In standard anatomic position the bullet would have
18 traveled from right to left, slightly down, and slightly
19 forward, so ...

20 Q. I guess like that?

21 A. Uh-huh.

22 Q. Okay. And can you give any opinion based on your
23 experience and expertise about how close a weapon would have
24 been when the shot was fired?

25 A. That in real life is a ...

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 MR. JOHNSON: Objection, Your Honor, I object, I don't
2 think her opinion - I think her opinion is medical but I
3 don't think she can give an opinion as to how close a weapon
4 was, if she's not there and she doesn't know the situation
5 that's around. I object to the opinion of how close the
6 weapon was.

7 THE COURT: If you'd just ask her if she has any way of
8 being able to qualify that, Mr. Bell.

9 SOLICITOR BELL: Thank you, Your Honor.

10 THE COURT: Okay.

11 Q. Dr. Rose, in doing autopsies and in the field of forensic
12 pathology, are you and other doctors able to give an estimate
13 in distances of a fired weapon, of a gun or a gun shot wound?

14 A. In certain instances we can.

15 Q. Okay. What are those instances?

16 A. If it's a contact wound you'll see a muzzle imprint
17 because the gun was actually pressed to the skin and it leaves
18 a big mark. If it was within ...

19 MR. JOHNSON: Your Honor, again, I understand she is
20 explaining. I think my question was, if she's not an expert
21 and if she can't explain it I wish she wouldn't discuss it.

22 THE COURT: Well, I'm going to overrule your objection.

23 MR. JOHNSON: Alright, sir.

24 THE COURT: I'm going to let her testify as to what she
25 can qualify and what she can explain. I'm going to find out

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 about that, and if this is one of those exceptions that she
2 can qualify as an expert I'm going to let her testify about
3 it. But I'll note your objection. Now, if she comes up and
4 says she can't, then I'll go forward, I'll address your
5 objection at that time.

6 MR. JOHNSON: Your Honor, could I make a motion outside
7 the presence of the jury, please?

8 THE COURT: Sure. Alright, Ladies and Gentlemen, I'm
9 going to excuse y'all for a second. This is one of those
10 situations where y'all can't be in here while we talk.
11 Remember, you can't talk about the case.

12 (Whereupon, the jury retires
13 to the jury room and the following
14 takes place out of the presence
15 of the jury.)

16 THE COURT: Mr. Johnson, can you see if that door is
17 closed? Yeah. Alright. Eventually, it's going to be closed.

18 Alright, Mr. Johnson, I didn't mean to interrupt you.

19 MR. JOHNSON: No, sir, I understand the Court's ruling,
20 and I understand why they did it. I would just ask that it be
21 done first in camera, because if it's done before the jury and
22 then His Honor so finds out it's information she couldn't
23 testify to, then it's already before the jury.

24 THE COURT: I'll be glad to let him go forward and
25 question her about that.

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 SOLICITOR BELL: Your Honor, I mean, I think it can be
2 done. I'm not asking her, I'm not asking her about a distance
3 in feet or inches, I'm asking what she can within her
4 expertise. And I mean, it's routinely done.

5 MR. JOHNSON: Your Honor, he's asking her to tell whether
6 the gun was close or far off, and I don't think ...

7 THE COURT: Hold up. What I'm going to do is, -- okay,
8 we're taking a break right now. Just let me find out what she
9 can talk to us about, and then we can bring them back in here.
10 It shouldn't take long. Out of an abundance of caution we're
11 going to do this. Okay?

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13 record has been omitted. Headers on testimony pages and hard
14 page breaks between testimony are now required by the Court.
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DR. KELLY ROSE, IN CAMERA - DIRECT BY SOL. BELL

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1 DR. KELLY ROSE, IN CAMERA, DIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Let me ask you, you started talking about, through your
4 training and all.

5 A. Uh-huh.

6 Q. How you and others in forensic pathology can talk about
7 the distance of a weapon - - -

8 A. Yes.

9 Q. --- such as a gun or a shotgun or a rifle?

10 A. Uh-huh. Because firearms have characteristics and they
11 use cartridges with bullets that have gun powder there are
12 certain signs that we can use to determine approximate
13 distances. If it's within several inches you'll get soot on
14 the skin, if it's a little bit farther out you'll get what we
15 call gun powder stippling, which is where gun powder flakes
16 from the cartridge, actually impacts the skin and leaves
17 abrasions, and then anything farther out than around two feet
18 you get no markings, and it's called distance. Oftentimes if
19 there's clothing involved it could have masked some of the
20 signs like the soot of the gun powder, and so we would say,
21 non-specific, meaning it looks like a distance wound; however,
22 there could have been some clothing that blocked a little
23 soot.

24 Q. But you can't give specific - - -

25 A. No.

DR. KELLY ROSE, IN CAMERA - DIRECT BY SOL. BELL

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1 Q. --- two feet, six inches distance?

2 A. That's CSI, and that doesn't happen.

3 Q. Okay. But you can tell whether it's close contact, close
4 or distant, or non-specific?

5 A. Yes, sir, definitely.

6 Q. Okay.

7 THE COURT: Alright.

8 MR. JOHNSON: Your Honor, if you'll note my objection,
9 and my objection is based upon, in her report she's got, non-
10 specific range of fire. And just note for the record that she
11 said if it's non-specific she couldn't tell it. And that was
12 my ...

13 THE COURT: Well, that's what she just said.

14 SOLICITOR BELL: She didn't testify to it.

15 MR. JOHNSON: I understand she hasn't testified, but the
16 point was, I didn't want her to testify to it in an
17 explanation, the jury heard it, and the Court have to come
18 back and say, well, she couldn't, she said it was something
19 she could testify to, something she would, and at this point
20 I'm still saying, this is information she couldn't testify to,
21 but I understand whatever the Court rules, and you know, we'll
22 move on.

23 THE COURT: Alright, sir. Well, I think she can testify
24 to it. I think she is, that's her specialty. She's testified
25 to how she arrived at that decision, so I'm going to -- or her

DR. KELLY ROSE, IN CAMERA - DIRECT BY SOL. BELL

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1 opinion on that, so I'm going to overrule your objection and
2 I'm going to let her testify to that.

3 MR. JOHNSON: Thank you, sir.

4 THE COURT: Okay, thank you, sir.

5 Bring the jury back in.

6 (Whereupon, the jury enters
7 the courtroom and the following
8 takes place in the presence of
9 the jury.)

10 THE COURT: I believe Dr. Rose was talking about if there
11 was contact you could see the muzzle, I think that's where we
12 left off, unless your notes indicate otherwise.

13 SOLICITOR BELL: I think that's correct but I want to
14 kind of preface her further explanation with a question as
15 well.

16 THE COURT: Right.

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18 record has been omitted. Headers on testimony pages and hard
19 page breaks between testimony are now required by the Court.
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DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 DR. KELLY ROSE - DIRECT EXAMINATION

2 BY SOLICITOR BELL CONTINUES:

3 Q. Dr. Rose, in your expertise and experience, you can't give
4 specific distances to tell how far a weapon fired, is that
5 correct?

6 A. Only ranges.

7 Q. Ranges. And your ranges, correct me if I'm wrong, are
8 contact, close, distant or non-specific?

9 A. And intermediate.

10 Q. Okay.

11 A. So, ...

12 Q. Okay. Can you explain to the jury about how you come to
13 those conclusions, in general?

14 A. Sure. As I was saying earlier, a contact wound, you'll
15 see a muzzle imprint. A close gun shot wound, the gun is
16 farther away but still close enough that some of the gun
17 powder soot that comes out of the cartridge which powers the
18 bullet comes out of the barrel of the gun and will land on the
19 skin. When people get gun show residue testing that's what
20 they, similar stuff they're testing for. If it -- and that's
21 within inches. When you enter the range of about one to three
22 feet you get what's called stippling, which is where gun
23 powder flakes that are unburned will come out of the gun also
24 and impact the skin and leave abrasions, and we call that
25 stippling. And then anything greater than two to three feet

DR. KELLY ROSE - DIRECT BY SOL. BELL

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1 we call distant; however, since soot is one of the findings we
2 use to classify, if someone has clothing or if there is a
3 wall, anything that could have blocked the soot we would call
4 it non-specific, and we mean that we didn't see a muzzle
5 imprint, we didn't see soot, but the soot could have been
6 stopped by a lawyer of clothing.

7 Q. Okay. And in this specific autopsy on Jonathan Bailey
8 what was your finding as to a range?

9 A. I classified this as non-specific. Two reasons, the
10 clothing was not sent with the body because he had been to the
11 hospital first, and hospitals are notorious for washing their
12 wounds where they can wash off stuff. But I called it non-
13 specific.

14 Q. But you saw no evidence of, say, contact?

15 A. There is no evidence of a muzzle imprint and no soot.

16 Q. Okay. Now, Dr. Rose, after all of these, looking at the
17 external and internal examination, did you come to a
18 conclusion as to the cause of death of Jonathan Bailey?

19 A. I did.

20 Q. And what was that?

21 A. It was hypo-balemic shock due to gun shot wound, and
22 hypo=balemic shock means his blood pressure bottomed out
23 because he was losing so much blood. But the bottom line was
24 that he died of a gunshot wound.

25 Q. How about the damage to, the internal damage that you

DR. KELLY ROSE - DIRECT BY SOL. BELL

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described, would all that have been potentially fatal as well?

A. Well, that's what caused him to bleed so much because the bullet went through the liver which is basically a bunch of blood held together by a little bit of tissue, and it went through a huge artery.

Q. And did you classify a manner of death?

A. I did.

Q. And what is that?

A. Homicide.

Q. And homicide just means death at the hands of another, is that correct?

A. Yes, intentional. And our classification is a little different than what you hear on the street. It's death by another.

SOLICITOR BELL: Thank you, Dr. Rose, please answer any questions that the Defense counsel may have.

THE COURT: Alright, Mr. Williams.

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

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DR. KELLY ROSE - CROSS BY MR. WILLIAMS

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1 DR. KELLY ROSE - CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Dr. Rose, just a few brief questions.

4 A. Sure.

5 Q. Dr. Rose, I think you testified that you did not determine
6 a range of gunfire, is that correct?

7 A. Yeah, I classified it as non-specific.

8 Q. So, it could have been in close proximity?

9 A. Yes.

10 Q. You also testified, I believe, about the soot?

11 A. Yes, sir.

12 Q. And you usually find that with a close contact wound, is
13 that correct?

14 A. You find it with contact in the wound, with clothes, you
15 find it on the skin or clothing, and that's been washed off.

16 Q. You didn't find any fo that in this autopsy?

17 A. No. And his clothes did not come with him.

18 Q. So, we don't know if he had on a big jacket or anything
19 that could have kept ...

20 A. I don't.

21 Q. Okay. So, Dr. Rose, in your opinion, we don't know how
22 far the bullet was shot?

23 A. No. I couldn't determine from my information.

24 Q. And just, in your experience, Doctor, even sometimes in a
25 near contact or a close contact wound the bullet, the weapon

DR. KELLY ROSE - CROSS BY MR. WILLIAMS

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1 is pressed against the skin and you don't find those types of
2 wounds because the muzzle is so up against?

3 A. You do. There's so much force that exits with the bullet
4 that it will, if it's pressed to the skin it will leave muzzle
5 imprint, a partial imprint soot deposition within the wound.

6 Q. And lots of times most of the soot or the grains, it
7 enters the wound in that type of ...

8 A. But you can see it. And I look for it.

9 Q. In this particular case there had been stapling, you said?

10 A. Yes.

11 Q. He had been operated on on that side?

12 A. He had been operated on throughout.

13 Q. So, the wound had been altered?

14 A. Yes.

15 MR. WILLIAMS: Thank you. I beg the Court's indulgence
16 one second, Your Honor.

17 THE COURT: Alright.

18 Q. And Dr. Rose, your examination of the body was at the
19 request of Orangeburg County, is that correct?

20 A. Yes, sir.

21 Q. And you weren't present at the scene?

22 A. No, sir.

23 Q. And you have no opinion as to who did the shooting?

24 A. No, sir.

25 MR. WILLIAMS: Thank you, no further questions.

DR. KELLY ROSE - CROSS BY MR. WILLIAMS

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1 THE COURT: Anything on redirect?

2 SOLICITOR BELL: One question.

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4 record has been omitted. Headers on testimony pages and hard
5 page breaks between testimony are now required by the Court.
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DR. KELLY ROSE - REDIRECT BY SOL. BELL

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1 DR. KELLY ROSE - REDIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Dr. Rose, based on your observation and experience, is the
4 wound that you saw on Jonathan Bailey consistent with him
5 being in a car and being shot from the passenger side of the
6 vehicle?

7 A. Yes, it could be consistent with that.

8 SOLICITOR BELL: Thank you.

9 THE COURT: Anything on recross?

10 MR. WILLIAMS: Nothing, Your Honor.

11 THE COURT: Alright, you may step down, Dr. Rose, thank
12 you, ma'am.

13 DR. ROSE: Thank you.

14 SOLICITOR BELL: Your Honor, we'd ask that Dr. Rose be
15 excused.

16 MR. JOHNSON: Without objection.

17 THE COURT: Alright. Thank you, Dr. Rose, you're
18 excused.

19 Is the State prepared to call its next witness?

20 SOLICITOR BELL: The State would call Karl Kenley,
21 please.

22 (Whereupon, the witness
23 enters the courtroom.)

24 CLERK: Please place your left hand on the Bible and
25 raise your right hand.

1 (Whereupon, Karl Kenley
2 is duly sworn.)

3 CLERK: Thank you. You may have a seat and please state
4 your name again for the record.

5 WITNESS: My name is Karl, That's Karl with a K, last
6 name, Kenley, K-E-N-L-E-Y.

7 THE COURT: Yes, sir, Mr. Bell.

8 SOLICITOR BELL: Thank you, Your Honor.

9 (NOTE: Blank lines on this page do not indicate any part of
10 record has been omitted. Headers on testimony pages and hard
11 page breaks between testimony are now required by the Court.
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KARL KENLEY - DIRECT BY SOL. BELL

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1 KARL KENLEY - DIRECT EXAMINATION

2 BY MR. BELL:

3 Q. Mr. Kenley, where are you employed?

4 A. I am a crime scene, slash, special agent with the South
5 Carolina Law Enforcement Division, commonly known as SLED.

6 Q. And how long have you been with SLED?

7 A. I have been with SLED for six years.

8 Q. How long have you been in law enforcement?

9 A. Twenty-one years.

10 Q. Okay. What, basically in generally, what general law
11 enforcement training have you had in your background?

12 A. I graduated from the Criminal Justice Academy in Nineteen
13 ninety. I've been a police officer, slash, fireman for the
14 Casey Police Department. I started my career actually with
15 the South Carolina State University Police Department in
16 Nineteen ninety and worked my way up to investigator with the
17 Casey Police Department before I came to SLED.

18 Q. And what are your duties at SLED?

19 A. The SLED laboratory is located in Columbia, South
20 Carolina, and local agencies, that is, Sheriff's Departments
21 and City Police Departments submit evidence to that
22 laboratory, and one of my responsibilities is to process that
23 evidence for fingerprint evidence. We also conduct tire and
24 shoe comparisons, blood stain pattern analysis and crime scene
25 reconstruction.

KARL KENLEY - DIRECT BY SOL. BELL

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1 Q. Okay. As part of your duties do you also, or are you also
2 called out to crime scenes?

3 A. Yes. In addition to that, when requested we respond to
4 all Forty-six counties in the State of South Carolina to
5 process crime scenes for physical evidence.

6 Q. And those are your current duties?

7 A. Yes.

8 Q. Okay. And those were your duties back in April of Two
9 thousand eleven?

10 A. Yes.

11 Q. And Agent Kenley, did you have an occasion to be called to
12 South Carolina State University here in Orangeburg back then,
13 in April?

14 A. Yes, sir, it was on April Sixteenth, Two thousand eleven.

15 Q. And why were you called?

16 A. I received a call from our fusion center, which is the
17 point of contact for state agencies or local agencies to get
18 in contact with SLED for assistance, and I was asked to call
19 Chief Mike Bartley at that time who was the Chief of Police
20 with the South Carolina State University Police Department in
21 reference to a death investigation.

22 Q. When were you called during that day, were you called
23 early in the morning or ...

24 A. I was actually called at three:thirty a.m.

25 Q. Okay. And once you talked with the chief what did you do?

KARL KENLEY - DIRECT BY SOL. BELL

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1 A. I responded from my residence to the South Carolina State
2 University, which was the scene of the crime scene.

3 Q. Okay. Did you go to someplace at South Carolina State
4 University?

5 A. Yes, I went to what's called Queen's Village, which is a
6 marriage housing facility for married students on the campus,
7 and that's where I responded.

8 Q. What did you do when you got there?

9 A. Well, let me back up. Initially I went to the Police
10 Department and met with, I think it was Agent Richard Johnson
11 and the Chief, and we then responded to the crime scene.

12 Q. Okay. And were you alone during this?

13 A. Yes, I responded alone. Normally, we work in pairs of
14 two, but because of the logistics of that call I responded by
15 myself.

16 Q. Okay. After going to the police you said you went over to
17 married housing three on the campus of State?

18 A. Yes, sir.

19 Q. Okay. What did you do when you got there?

20 A. I was informed prior to getting there that the actual
21 scene itself had already been processed by the University
22 Police Department but because it was a, what we would call a
23 fresh scene for our crime scene unit, I wanted to actually see
24 the scene myself and again search for any possible evidence
25 that was possibly missed or run over because there was a time

KARL KENLEY - DIRECT BY SOL. BELL

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1 distance between the actual incident and when I was actually
2 called.

3 Q. Okay. Did you make contact with, with Investigator
4 Johnson, Dustin Johnson?

5 A. Yes, Dustin Johnson, correct.

6 Q. And were you aware that he had kind of worked the crime
7 scene for South Carolina State University?

8 A. Yes. He had already taken pictures and collected evidence
9 prior to my arrival.

10 Q. And he had told you all about that, is that correct?

11 A. Correct, he did.

12 Q. Okay. So, when you went over to the marriage housing,
13 what did you do?

14 A. I basically walked around again looking for physical
15 evidence, just trying to kind of acclimate myself with the
16 actual crime scene again. There were some hours that had
17 passed so that obviously the scene was not as it was when the
18 incident took place, but I just kind of wanted to get familiar
19 with actually how the scene looked or, and in relation to the
20 accident, the car accident.

21 Q. Did you find anything or anything else?

22 A. No, no, sir.

23 Q. Were you accompanied by Investigator Johnson, Dustin
24 Johnson?

25 A. Yes, yes, Dustin Johnson.

KARL KENLEY - DIRECT BY SOL. BELL

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1 Q. Okay. And did he show you what he found and where he
2 found it?

3 A. He did.

4 Q. Okay. And what did you do after you kind of looked around
5 the married housing?

6 A. We walked over, which was in walking distance from the
7 actual scene of the shooting to the actual vehicle accident,
8 and from there we went to the Orangeburg Department of Public
9 Safety, Fire Department Number Three, which is where the
10 vehicle was towed for processing.

11 Q. So, when you went over to where the accident was the
12 vehicle was no longer there, is that correct?

13 A. That's correct, it had already been towed to the Fire
14 Department.

15 Q. Okay. Did you find any evidence when you were out at the
16 married housing or at the accident scene?

17 A. No, sir, other than evidence of an accident, no physical
18 evidence was collected.

19 Q. And again, Investigator Dustin Johnson told you what he
20 found and where, he showed you what he found and where he
21 found it?

22 A. That's correct.

23 Q. Okay. And so then you went over, as you stated, to
24 Station Number Three, - - -

25 A. That's correct.

KARL KENLEY - DIRECT BY SOL. BELL

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1 Q. --- the Department of Public Safety of Orangeburg?

2 A. That's correct.

3 Q. And what did you find when you got there?

4 A. There was a green Monte Carlo parked in that fire bay and
5 I was told that that was the vehicle that was, actually
6 belonged to the victim and involve din the vehicle accident,
7 and it had been towed there by the University Police
8 Department, and had been sealed with evidence tape on each
9 door to show that the car hadn't been entered or anything
10 prior to my arrival.

11 Q. Let me show you what's been marked as State, or what's in
12 evidence as State's Four and State's Ten and ask you if that,
13 those are pictures of that vehicle that you saw?

14 A. Yes, sir, these are actually pictures that Investigator
15 Johnson took prior to my arrival, but this is the vehicle.

16 Q. Okay. And you stated that when you found the vehicle it
17 had been sealed, is that correct?

18 A. That's correct.

19 Q. And I think Investigator Dustin Johnson had sealed the
20 vehicle?

21 A. That's correct, he put seal tape on each door, then he
22 wrote his name, I think, and his initials to show that the car
23 had not been entered after it was impounded.

24 Q. Okay. And what did you do when you started looking at the
25 vehicle?

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1 A. From that point that became actually a crime scene from my
2 standpoint, so I photographed the vehicle, documented the
3 license plate, the VIN number and then I began to process the
4 vehicle for physical evidence.

5 Q. Okay. What did you do?

6 A. From the information that I was given as, in relation to
7 the incident, everything took place on the left side,
8 passenger -- right side, I'm sorry, of the vehicle, so I first
9 swabbed every area on the right side of the vehicle for DNA,
10 and those swabs were submitted to our DNA laboratory.

11 Q. Okay. And what specific areas did you swab?

12 A. I swabbed the window, the top of the door frame on the
13 passenger side, the door handle, anyplace that I would assume
14 anybody on that side of the vehicle would have come in contact
15 with it.

16 Q. Okay. Since we have what's State's Ten, which is a pretty
17 good picture of the right side of the vehicle, is that the
18 side that you did all that to?

19 A. That's correct.

20 Q. Could you stand up and show the jury where you ...

21 A. Again, the information that I was given was that the
22 incident took place on the passenger side of the vehicle, so I
23 swabbed the top from here to here, I swabbed the window, it
24 was up and at the time that the vehicle was towed the windows
25 were down. And I asked Investigator Johnson that, because I

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1 wanted to know if possibly the gunshot went through the
2 window, if the window was not broken did that mean the window
3 was down, and he told me the windows were down partially, but
4 when they towed it they put it up so the inside of the vehicle
5 would be preserved. So, I then actually swabbed the top of
6 the window, the door handle and every, again, every portion of
7 the passenger side that I would think someone would come in
8 contact with the inside of the vehicle.

9 Q. Okay. You can have a seat. And you said those swabs were
10 submitted to the laboratory?

11 A. They were.

12 Q. Are you aware if they matched those swabs to anybody?

13 A. No, they did not get any results from those swabs.

14 Q. Let me ask you, in your external examination of the
15 vehicle, you looked all around the vehicle?

16 A. Correct.

17 Q. Three hundred and sixty degrees all around?

18 A. Correct.

19 Q. Did you see any, what appeared to be where a gunshot had
20 gone into the vehicle?

21 A. No, sir, not on the outside.

22 Q. Okay. So, no gunshot passed through, didn't break a
23 window?

24 A. No.

25 Q. Did go through any of the panels, the doors?

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1 A. No, sir, the only damage that I observed was the damage
2 that probably occurred during the time of the vehicle
3 accident.

4 Q. Okay. After you said you swabbed the outside for the DNA
5 that didn't come back with anything, what did you do next?

6 A. next I used basic black powder and a brush and I actually
7 processed those same areas that I swabbed with black powder
8 for fingerprint evidence.

9 Q. Okay. And what does the black powder do?

10 A. Black powder actually enhances -- a latent print is a
11 print that's there but you just can't see it visibly with your
12 eye, and it lets you enhance it or process with some process.
13 In this incidence I used black powder, and if there is a print
14 there the black powder adheres to the ridges and it makes it
15 visible to your eye so that you can see it.

16 Q. Okay. And did you find anything?

17 A. Yes, sir, I did.

18 Q. Let me ask you, where did you dust this black powder, just
19 on the right side or all over the vehicle?

20 A. Just on the right side, the same areas where I processed
21 for DNA evidence.

22 Q. Okay. Did you find anything when you put the black powder
23 and dusted for fingerprints?

24 A. Yes, sir, I did.

25 Q. And what did you find?

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1 A. On the passenger side window, outside, above the top of
2 the window I got a partial fingerprint, or a partial latent
3 print.

4 Q. Okay. And when you saw that what do you do, you just, you
5 dusted it and you were able to see it on the vehicle?

6 A. You dust it, you've visibly able to see it with your eye,
7 and then you use a piece of clear tape that actually adheres
8 to that same print that you're looking at, it doesn't distort
9 the image at all, all you do is put the clear tape on it, and
10 you lift it, and then you put that on a white backer so that
11 you can actually visibly see it. It doesn't change the print
12 at all, it just lifts it and basically duplicates it from the
13 window or whatever that object is to the white backer so that
14 you can see it.

15 Q. And do you have that with you, the latent print?

16 A. Yes, sir, I do. That's one, and that's the first one.

17 Q. Okay.

18 SOLICITOR BELL: Let me mark these.

19 COURT REPORTER: What are these?

20 SOLICITOR BELL: Prints, fingerprints, latent prints.

21 COURT REPORTER: That will be State's Twenty-three and
22 Twenty-four.

23 SOLICITOR BELL: Do you need to put the sticker on this?

24 COURT REPORTER: Yes, sir.

25 Q. Alright, Agent Kenley, let me show you what's been marked

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1 as State's Twenty-three first, and is that the print that you
2 got from the window, you said?

3 A. Yes, sir, this is the first print that I lifted from the
4 window, and after I lifted it and placed it on the backer I
5 actually put my initials at the bottom to show that this is
6 actually evidence that I collected.

7 Q. Okay. And on the reverse, on the back of that what did
8 you do?

9 A. I actually wrote the date and the time and my name, and a
10 short description of where the print was lifted, and a very
11 elementary diagram of actually where the print was lifted.

12 SOLICITOR BELL: And we'd offer this as State's Twenty-
13 three, Your Honor.

14 MR. JOHNSON: Without objection.

15 THE COURT: State's Twenty-three is in evidence without
16 objection.

17 (State's Exhibit Twenty-three
18 marked and filed.)

19 Q. Okay. And did you find any other latent prints?

20 A. Yes.

21 Q. Where did you find that?

22 A. It was on the same side of the vehicle, on the passenger
23 side near the door, near the key entry on the door itself.

24 Q. Okay. Let me show you what's been marked as State's
25 Twenty-four and ask if you can identify that?

KARL KENLEY - DIRECT BY SOL. BELL

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1 A. Yes, sir, again, this is the same print that was lifted
2 from the door. I placed my initials on the opposite again,
3 the date that it was lifted, my name, a short description of
4 where it was lifted, and then a diagram of approximately where
5 it was taken.

6 SOLICITOR BELL: Okay. We'd offer this as State's
7 Twenty-four.

8 MR. JOHNSON: Without objection.

9 THE COURT: State's Twenty-four is also in evidence
10 without objection.

11 (State's Exhibit Twenty-four
12 marked and filed.)

13 Q. Okay. Agent Kenley, let me ask you to step down, and I
14 will again refer you to what's been -- the photograph, State's
15 Ten, which is the right side of the green vehicle. And if you
16 could show the jury where you got State's Twenty-three and
17 Twenty-four from, the latent prints?

18 A. The first latent print, which is from the window, was
19 taken from this portion of the window, because again, the
20 information that I received, during the incident the window
21 was partially down. So, I processed that part of the window
22 to possibly if anybody touched it. And that's where this
23 latent print was.

24 Q. You might want to kind of move over here and show the
25 jurors over here.

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1 A. Okay. This is the first one that was lifted, and it was
2 lifted from the top part of the window. I processed the
3 window, it was partially down, so I did the top part as well
4 as the bottom. The second print, which is near the key hold
5 is this print, again, on the passenger side of the door, right
6 near the key hold.

7 Q. Okay. Thank you. Did you find any other prints on the
8 outside that you processed?

9 A. No, sir.

10 Q. Okay. What did you do after -- did you do anything else
11 on the outside of the vehicle?

12 A. No, sir.

13 Q. Okay. What was the next step that you did?

14 A. After all the evidence was collected I went back to the
15 University Police Department shortly to meet with the
16 investigators and the chief, and then I went back to Columbia
17 to submit the evidence.

18 Q. Okay. Let me back up a little bit. After you did the,
19 your external examination of the vehicle did you look inside
20 the vehicle at all?

21 A. Yes, we searched the inside, I searched the inside of the
22 vehicle for any other physical evidence, with negative
23 results.

24 Q. Did you find anything?

25 A. No, sir.

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1 Q. Did you find a weapon, a firearm, handgun, a rifle?

2 A. No, sir.

3 Q. Shotgun?

4 A. No, sir.

5 Q. And you then stated you went back to the University Police
6 Department?

7 A. Correct.

8 Q. And what evidence did you receive, did you receive any
9 evidence there?

10 A. No, sir, I did not.

11 Q. Okay. You just took your latent prints back to SLED?

12 A. The latent prints, the swabs, and the photographs that I
13 took of the vehicle, correct.

14 Q. And what did you do when you got to SLED, you submitted
15 the DNA samples to the DNA lab?

16 A. Correct, not that same day but it would have probably been
17 the following Monday I would have submitted that evidence to
18 the lab.

19 Q. And the latent prints, you submitted that to the latent
20 print department?

21 A. Correct.

22 Q. You did not examine the prints?

23 A. I did not examine them, I submitted them and it was
24 examined by another agent.

25 Q. Okay. Did you look at any evidence in, any other evidence

KARL KENLEY -- DIRECT BY SOL. BELL

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1 in this case during the course of your investigation?

2 A. Yes.

3 Q. What did you look at?

4 A. Some money was submitted by the University Police
5 Department again to be processed for latent print evidence.

6 Q. Okay. And did you process those items?

7 A. Yes, yes.

8 Q. Do you recall how many items there were?

9 A. It was a series of, it was currency, I'm just trying to
10 make sure I give you the correct denominations, but it was
11 Fifty Dollar bills and Twenty Dollar bills.

12 Q. Okay.

13 A. That's correct, it's currency.

14 Q. Alright. And how did you process those for latent prints?

15 A. We use a chemical called an inhydren, which is a liquid
16 chemical, and you simply saturate the money with an inhydren,
17 with that chemical, and with money normally it changes hands
18 so many times you have to let it set. Any paper product that
19 you process you would process it with an inhydren. And after
20 you process it or soak it with that chemical we normally let
21 it set for Twenty-four hours and that gives the chemical a
22 chance to soak into the material, and if there is a latent
23 print, again, a print that is not visible, that chemical will
24 adhere to it and turn it a very bright purple color, again so
25 that it is visible to the eye.

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1 Q. Did, on any of these did you raise any latent prints?

2 A. Yes.

3 Q. Did you examine those prints?

4 A. No, sir, I sent that evidence to photography. After we
5 develop the latent print we send it to our photograph
6 department photography department so that they can photograph
7 it, and then that evidence is submitted to another agent for
8 examination.

9 Q. Okay. After that did you process any other evidence in
10 this case?

11 A. No, sir.

12 Q. Okay. Now, I think very recently you came down and you
13 took some other evidence in this case?

14 A. I did, I came down to get a thumb print from Mr. Julian
15 Young.

16 Q. Okay. The defendant?

17 A. That's correct.

18 Q. Do you see him in the courtroom?

19 A. Yes, I do.

20 Q. Is that the individual that you got the, you just got a
21 thumb print?

22 A. Yes, sir.

23 Q. Okay. When did you do that?

24 A. August Sixth.

25 Q. Okay. Do you have a copy of the prints that you obtained?

KARL KENLEY - DIRECT BY SOL. BELL

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1 A. I do.

2 Q. Okay. These are all the same print?

3 A. Yes, they're all the same print, and because I knew what
4 area the examiner that was going to conduct the examination,
5 what area of the finger he needed for his examination, I just
6 rolled multiple prints of the same print to make sure that I
7 captured what area that he would need.

8 Q. Okay. Okay, again, these are the prints that you rolled
9 from the defendant, Julian Young?

10 A. That's correct.

11 SOLICITOR BELL: Okay.

12 MR. JOHNSON: That's fine.

13 COURT REPORTER: Do you want these marked as a group or

14 ...

15 SOLICITOR BELL: Yeah, as a group, not individually.

16 COURT REPORTER: Okay. How many are in the group?

17 SOLICITOR BELL: Seven. Just paper clip them for now.

18 COURT REPORTER: State's Twenty-five.

19 SOLICITOR BELL: Okay. And we'd move those into
20 evidence, Your Honor.

21 MR. JOHNSON: Without objection, Your Honor.

22 THE COURT: Alright, State's Twenty-five, there are seven
23 prints?

24 SOLICITOR BELL: Seven prints together.

25 THE COURT: They are in evidence without objection.

KARL KENLEY - DIRECT BY SOL. BELL

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1 (State's Exhibit Twenty-five
2 marked and filed.)

3 Q. And I'm showing you what's been marked State's Twenty-
4 five, the handwriting on that is yours?

5 A. That's correct, and also the signature of the defendant.

6 Q. Okay.

7 SOLICITOR BELL: Thank you, Agent Kenley, please answer
8 any questions the defense may have for you.

9 A. Sure.

10 THE COURT: Mr. Williams.

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: Okay. Yes, sir.

13 MR. WILLIAMS: May it please the Court.

14 THE COURT: Yes, sir.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and hard
17 page breaks between testimony are now required by the Court.
18 See next ensuing page for sequential continuation of record.)

KARL KENLEY - CROSS BY MR. WILLIAMS

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1 KARL KENLEY - CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Agent Kenley, - - -

4 A. Yes, sir.

5 Q. I show you again what's been marked as State's Exhibit
6 Number Twenty-five, are these the prints you took of Mr.
7 Young?

8 A. Yes.

9 Q. And you took that on what date?

10 A. August Sixth.

11 Q. Of this year?

12 A. Correct.

13 Q. Did Mr. Young freely give you these prints?

14 A. Yes.

15 Q. Agent Kenley, how long after this incident occurred, I
16 think you responded to the crime scene, or scenes?

17 A. What was your question?

18 Q. How long after the event occurred did you respond to the
19 crime scenes?

20 A. The actual call for the vehicle incident was roughly
21 Eleven:fifteen on the Fifteenth, and I responded at
22 three:thirty on the Sixteenth.

23 Q. Okay. Agent Kenley, I think you also testified that you
24 examined two separate crime scenes, is that correct, one at
25 the marriage housing, and then you said you walked to another

KARL KENLEY - CROSS BY MR. WILLIAMS

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1 spot on Russell Street?

2 A. That's correct, where the vehicle accident took place,
3 correct.

4 Q. About how far is it from one place to the next?

5 A. Maybe a block, it's walking distance, out of the parking
6 lot, make a left and several feet down on the same street.

7 Q. Prior to August Sixth, Two thousand twelve, had you met
8 Mr. Young before?

9 A. No.

10 Q. And Agent Kenley, you don't know how the victim, Mr.
11 Bailey, was shot - - -

12 A. No.

13 Q. --- or who shot Mr. Bailey?

14 A. No.

15 MR. WILLIAMS: Thank you. No further questions.

16 THE COURT: Anything on redirect?

17 SOLICITOR BELL: No, Your Honor.

18 THE COURT: Alright. Thank you, sir, I appreciate it.

19 You may step down. May he be excused?

20 SOLICITOR BELL: Yes, sir, Your Honor.

21 MR. WILLIAMS: Yes, Your Honor.

22 THE COURT: You are excused. Thank you, sir, appreciate
23 it, Agent Kenley.

24 Is the State prepared to call its next witness?

25 We need to take about a ten minute break just to kind of

1 get some things set up in here. I'm going to let y'all go
2 back into the jury room for a minute and take a break.
3 Remember, you cannot talk about the case yet, and we'll bring
4 you back out in about ten minutes. Thank y'all.

5 (Whereupon, the jury retires
6 to the jury room.)

7 (Recess)

8 THE COURT: Is the State ready to proceed?

9 SOLICITOR BELL: Yes, Your Honor.

10 THE COURT: Is the Defense ready to proceed?

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: Bring them out. Have you had a chance to see
13 whatever . . .

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Okay.

16 (Whereupon, the jury enters
17 the courtroom.)

18 THE COURT: Mr. Bell.

19 SOLICITOR BELL: The State would call Jeff Crooks to the
20 stand.

21 (Whereupon, the witness
22 enters the courtroom.)

23 CLERK: Please place your left hand on the Bible and
24 raise your right hand.

25 (Whereupon, Jeff Crooks

1 is duly sworn.)

2 CLERK: Thank you. You may have a seat, and please state
3 your name again for the record.

4 WITNESS: My name is Jeff Crooks.

5 (NOTE: Blank lines on this page do not indicate any part of
6 record has been omitted. Headers on testimony pages and hard
7 page breaks between testimony are now required by the Court.
8 See next ensuing page for sequential continuation of record.)

JEFF CROOKS - DIRECT BY SOL. BELL

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1 JEFF CROOKS - DIRECT EXAMINATION

2 BY SOLICITOR BELL:

3 Q. Where are you employed?

4 A. I'm a special agent with the South Carolina State Law
5 Enforcement Division commonly referred to by the acronym,
6 SLED.

7 Q. Okay. And how are you employed with SLED?

8 A. I am the lieutenant of the SLED Latent Print Crime Scene
9 Department.

10 Q. How long have you been with SLED?

11 A. I've been at SLED approximately Sixteen years.

12 Q. Any other law enforcement experience?

13 A. Yes, sir, prior to that I was a Deputy Sheriff with the
14 Lexington County Sheriff's Department for approximately three
15 years.

16 Q. What's your educational background?

17 A. I have a Bachelor's of Science Degree from the Citadel, I
18 have, I am certified by the South Carolina Criminal Justice
19 Academy as a law enforcement officer, I have successfully
20 completed numerous courses in crime scene investigation as
21 well as fingerprint examination, footwear and tire tread
22 examination and blood stain pattern analysis.

23 Q. Okay. Are you a latent fingerprint examiner at SLED?

24 A. Yes, sir, I am.

25 Q. Okay. Can you specifically tell us what, what education

JEFF CROOKS - DIRECT BY SOL. BELL

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1 or training you've had in regards specifically to latent print
2 examination?

3 A. Yes, sir, I successfully completed a fingerprint course at
4 the South Carolina Criminal Justice Academy, I have completed
5 fingerprint courses sponsored by the International Association
6 for Identification and Fingerprint Comparisons, Thumb Print
7 Comparisons, I completed a Federal Bureau of Investigation
8 course in fingerprint examination, I've also completed an
9 advanced fingerprint examination course through the IAI as
10 well.

11 MR. JOHNSON: Your Honor, may it please the Court.

12 THE COURT: Yes, sir?

13 MR. JOHNSON: I would certainly, if it's going to save
14 time I would certainly stipulate that he is qualified to
15 examine fingerprints.

16 THE COURT: Expert?

17 SOLICITOR BELL: And we'd offer him as an expert in
18 latent fingerprint examination.

19 THE COURT: Okay. He is so qualified. Thank you, Mr.
20 Johnson.

21 Q. Lieutenant Crooks, let me ask you, as a fingerprint
22 examiner or a latent print examiner, what do you do?

23 A. Well, in our department we wear many hats. One of the
24 responsibilities we have is, any evidence that's submitted to
25 the SLED laboratory for examination for the presence of

JEFF CROOKS - DIRECT BY SOL. BELL

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1 fingerprints, we process that evidence looking for
2 fingerprints on those items. We also conduct examinations of
3 fingerprints that we recover from those items, as well as any
4 latent prints submitted to us by local agencies. We examine
5 those against known standards.

6 Q. Now, we've used the term, latent prints. Could you tell
7 the jury what you mean by latent prints?

8 A. Yes, sir, latent means hidden. A latent fingerprint is
9 basically a fingerprint that you cannot see normally without
10 the use of visually enhancing devices. One of the more common
11 example of a device that enhances the print would be
12 fingerprint powder.

13 Q. Black powder, is that ...

14 A. Yes, sir. We have quite a few methods at our disposal to
15 develop latent prints off of various types of items of
16 evidence.

17 Q. Okay. And you said a latent print is one you can't see.
18 Could you tell us about the fingerprint, what makes up a
19 fingerprint?

20 A. Yes, sir, on the surface of one's fingers, hands and feet
21 are raised lines of skin called ridges. The ridges form
22 during pregnancy on an infant and remain permanent and unique
23 until decomposition after death. We classify these types of
24 ridges into three different types: an ending ridge which is a
25 ridge that flows and comes to an abrupt stop and ceases to

JEFF CROOKS - DIRECT BY SOL. BELL

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1 continue; bifurcating or forking ridge which is a single ridge
2 that splits to two separate and distinct ridges and continues
3 to flow; and a dot which is a ridge that forms a dot. It's
4 these three types of ridges when we're doing an examination
5 and their relationship to each other in a fingerprint is what
6 we look at when we determine whether an unknown print was made
7 by an individual. Located along these ridges, or these raised
8 lines of skin are tiny holes called pores. These pores exude
9 sweat from the body. This sweat along with oil residues from
10 the face that collect on the ridges during normal contact with
11 your face collect on the ridges, and sometimes when you touch
12 an object it's possible to leave an outline of your ridges on
13 the surface of that object much like a rubber stamp would do
14 with ink.

15 Q. So these lines on our fingers are the ridges you're
16 talking about?

17 A. Yes, sir. The purpose of the ridges are for grip. If you
18 didn't have them you wouldn't be able to hold many things very
19 easily, and because of, because of the three types of ridges
20 that exist and where they exist on the surface of your
21 fingers, hands and feet we can use those to identify an
22 individual.

23 Q. And I notice when you were talking about leaving
24 fingerprints you said sometimes we leave fingerprints. Does
25 that mean that every time you touch an object you're going to

JEFF CROOKS - DIRECT BY SOL. BELL

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1 necessarily leave a fingerprint?

2 A. No, sir. The transfer of the residue has to take place.
3 If your hands are really dry you may touch an object and not
4 leave a fingerprint. Some occupations where your hands get
5 very callused, the ridges aren't as distinct. Someone who,
6 say, like a brick mason for example, who handles rough
7 surfaces a lot, their hands may get callused and that would
8 reduce the chance of leaving fingerprints. However, if, if
9 they discontinue that work for a period of time and the
10 calluses went away the ridges would come back just like they
11 were prior to the calluses.

12 Q. Is there anything else that determines whether you may or
13 may not leave a fingerprint when you touch an object?

14 A. Yes, sir. The surface of the object would also have an
15 impact. We tend not to find fingerprints as much on rough or
16 textured surfaces. Smooth surfaces tend to be a better
17 surface to locate fingerprints. Also, certain items of
18 evidence that are handled a lot we tend to have difficulty
19 getting individual latent prints. What we'll often find is
20 numerous fragments of prints that kind of overlap each other
21 but not, they're not distinct enough to allow us to do an
22 examination.

23 Q. Okay. So, for instance, you would suspect in this
24 courtroom this top right here would be a better surface for
25 leaving fingerprints than, say, the carpet?

JEFF CROOKS - DIRECT BY SOL. BELL

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1 A. Absolutely, yes, sir.

2 Q. Okay. And you said earlier also, you said something about
3 individual unique, but why do we, why are we so interested in
4 fingerprints?

5 A. It is a reliable source for identifying an individual that
6 might have handled an object.

7 Q. In your experience, training, reading, has there ever been
8 two individuals that had the same fingerprint?

9 A. No, sir.

10 Q. And how long have fingerprints been used in the United
11 States or in the world based on your education?

12 A. Since approximately the Seventeen hundreds throughout the
13 world. I believe they started being used in the United States
14 regularly around Nineteen hundred.

15 Q. And so, in all that history there's never been two
16 individuals that had the same fingerprints?

17 A. Not that I'm aware of, no, sir.

18 Q. So, they're unique to everybody?

19 A. Yes, sir. And that's based on physiology and the way
20 that, the randomness in which fingerprints, the ridge lines
21 develop during fetal development during pregnancy.

22 Q. Okay. So, that's basically what you do, and why we're
23 interested in latent prints or comparing latent prints with
24 known prints, is that correct?

25 A. Yes, sir.

JEFF CROOKS - DIRECT BY SOL. BELL

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1 Q. And what are known prints?

2 A. We refer to ink fingerprints that we take of an individual
3 as known prints. We use printer's ink to cover an
4 individual's ridge detail and then we will use a fingerprint
5 card or a major case print sheet, and then when you're
6 referring to palm prints or footprints to make a recording of
7 that individual's ridge detail.

8 Q. And that brings up another question, you were talking
9 about the fingerprints but you can also have palm prints, is
10 that correct?

11 A. You can have fingerprints, you can have palm prints, you
12 can have footprints, yes, sir.

13 Q. And they're all unique to the individual?

14 A. Yes, sir, they are.

15 Q. Okay. Let me direct your attention specifically to the
16 case involving the victim, Jonathan Bailed. Did you receive
17 items of evidence in this?

18 A. Yes, sir, I did.

19 Q. Okay. First of all, let me show you what is in evidence
20 as State's Twenty-three and State's Twenty-four. I know that
21 you have different numbers so it might get confusing, but
22 those are the evidence numbers, Twenty-three and Twenty-four.
23 And those were latent prints that were taken from a vehicle,
24 is that correct?

25 A. Yes, sir, these are latent lifts that were provided to me

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1 from Special Agent Karl Kenley.

2 Q. Okay. And what was done when you originally received
3 those items?

4 A. At the time we did not have any known standards that the
5 investigating agency had asked us to compare to, so we ran it
6 in what we call our, it's our automated fingerprint
7 identification system, also known as AFIS.

8 Q. And what is that?

9 A. AFIS is a computer system that allows us to rapidly search
10 unknown fingerprints to known standards that are in our State
11 database. Anytime someone is arrested in this State and their
12 fingerprints are taken their known standards are entered into
13 the AFIS system. Our records division at SLED is responsible
14 for maintaining those known standards. The known standards
15 are entered into the AFIS system on their end and then when we
16 have an unknown print we can enter that unknown print also
17 into the system and it will search the unknown print against
18 the known standards that have been entered in by our records
19 department.

20 Q. Okay. Does this AFIS give you like an automatic identical
21 print?

22 A. No, sir, the way the AFIS system works is, we have an
23 operator who's trained to enter the unknown prints in on, in
24 our department, and our SLED records department has AFIS
25 operators that are trained to enter the known prints. And

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1 basically what you do is, she, she will mark these individual
2 ridge characteristics, these three types, the ending ridges,
3 the forking ridges and the dots. She will enter these
4 unknown, she'll mark these ridges in the unknown latent on the
5 computer. The computer will take those marks that she enters
6 where she highlights these ridges, and it will create an
7 algorithm, basically a numeric formula. So, the computer
8 doesn't actually compare the latent, it compares the numbers.
9 On the records side they do the same thing with the known
10 fingerprints, and the system will look for the closest match
11 to these algorithms, and it will score them based on how close
12 they are. So, if the AFIS operator asks for the top ten
13 scores the computer will give her the top ten scores and then
14 it will be up to that AFIS operator to look at each one and
15 determine if any one of these closely matches the unknown to
16 the known. If she finds one that she feels like needs to be
17 looked at by an examiner, that's what we refer to as an AFIS
18 hit, she will notify an examiner and say, hey, you need to
19 look at t his guy, it looks really close, I think it's worth
20 looking at. At that point is when a latent examiner like
21 myself will get involved, and we actually have to physically
22 compare the known to the unknown, do a side by side comparison
23 ourselves. So, the computer merely -- the purpose of the
24 computer is to limit who to look for. It's a shortcut, it
25 speeds up the process; otherwise, before AFIS we had people

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1 that would flip through cards and it could take a long time to
2 find an individual to compare.

3 Q. So, AFIS isn't like what CSI, where they have the
4 computer, it comes up like an automatic match, it just gives
5 you, kind of cuts out all of the ones that aren't even close?

6 A. It speeds up the searching process. There's no system
7 that does that for you. In our agency we have to physi - an
8 examiner has to physically compare any unknown to known
9 standards. So, if, whether AFIS gives us a hit or whether the
10 requesting agency calls in a suspect that they want us to look
11 at, we have to physically pull that card and do a visual
12 examination between the unknown and the known impressions.

13 Q. So, you submitted what is State's Twenty-three and Twenty-
14 four to AFIS to see if they could come up with a hit, is that
15 correct?

16 A. Yes, sir, I did.

17 Q. Did either one provide a hit?

18 A. Yes, sir. The latent that's listed as State's Exhibit
19 Twenty-three, which is for our reporting purposes, was Item
20 One, we actually got an AFIS hit on that palm print, which is
21 what this one is. And I pulled that, the individual's card
22 that we got the hit on and did an examination of the unknown
23 to the known.

24 Q. And who was that individual?

25 A. It was Anthony -- I'm sorry, Ray Anthony Alston, Junior.

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1 Q. Okay. And let me show you what's been marked as State's
2 Twenty-seven and ask if you identify that?

3 A. Yes, sir, I do. This is a copy, this is the fingerprint
4 card that we obtained through our SLED records department of
5 Ray Anthony Alston, Junior.

6 SOLICITOR BELL: And Your Honor, we'd offer State's
7 Twenty-seven into evidence.

8 MR. JOHNSON: Without objection.

9 COURT REPORTER: What was the number?

10 SOLICITOR BELL: Twenty-seven.

11 COURT REPORTER: Just one?

12 SOLICITOR BELL: Just one.

13 COURT REPORTER: Twenty-seven?

14 SOLICITOR BELL: Just Twenty-seven.

15 COURT REPORTER: Okay.

16 SOLICITOR BELL: So far.

17 THE COURT: Alright. State's Twenty-seven is in evidence
18 without objection.

19 (State's Exhibit Twenty-seven
20 marked and filed.)

21 Q. And you examined what is State's Twenty-three, is that
22 correct? Let me make sure I've got the right, is that the ...

23 A. Yes, sir.

24 Q. And you compared it to State's Twenty-seven?

25 A. Yes, sir.

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1 Q. And what was your finding?

2 A. I was able to identify the unknown palm print to the left
3 palm of Mr. Alston.

4 Q. And when did you do that, what date did you make that
5 identification?

6 A. The examination was started on April Eighteenth of Two
7 thousand eleven, the, my examination was completed on May
8 Nineteenth of Two thousand eleven.

9 Q. Okay. Now, did you, did you look at -- that's Ray Anthony
10 Alston's. State's Twenty-four, which I think is your Item
11 Two?

12 A. Yes, sir.

13 Q. Did you find anything on that?

14 A. We were not able to get a hit on, through AFIS on Item
15 Two, which is State's Exhibit Twenty-four.

16 Q. Okay. Now, as to State's Item Twenty-four, eventually
17 were you given some known prints to compare State's Twenty-
18 four with?

19 A. Yes, sir, I was.

20 Q. When was that?

21 A. Originally we were given the, we obtained, or one of our
22 agents went and obtained a set of major case prints on a
23 Julian Young, and an examination was completed on June the
24 Twenty-second of Item Two, along with additional items of
25 evidence, and the result of that examination I was able to

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1 identify Item Two, which is State's Exhibit Twenty-four, to
2 Julian Young.

3 Q. Okay. Let me show you what's been marked as State's
4 Twenty-eight and ask if you can identify that?

5 A. Yes, sir, I can.

6 Q. And what is that?

7 A. This is actually part of a set of major case prints that
8 we obtained, and when I say, major case print, when we record
9 the fingers, the ten fingers as well as the palm prints we
10 call those, as latent examiners we call those major case
11 prints because it includes all of the surface of the hands.
12 We obtained -- this is the fingerprint cards of that set of
13 major case prints that one of our agents collected from Mr.
14 Young.

15 Q. Which agent was that?

16 A. It was Special Agent Kiki Stanley.

17 Q. Okay. And that we done in June of this year?

18 A. Yes, sir.

19 Q. Okay. And did you also look at another set of prints in
20 regards to State's Twenty-four at a later date?

21 A. Yes, sir, I did.

22 Q. And let me show you what's been marked as State's Twenty-
23 five, and ask if you recognize that?

24 A. Yes, sir, I do. This is a series of fingerprint cards
25 that contain the left thumb print of Julian Young that was

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1 obtained, the prints were actually taken by Special Agent Karl
2 Kenley and provided to me for examination.

3 Q. Okay. Does it state when they were taken?

4 A. I believe they were taken on August the Sixth.

5 Q. Okay. And does -- well, first let me ask you, the thumb
6 print taken as State's Twenty-five matches the same thumb
7 print in State's -- I'm sorry, State's Twenty-eight, of Julian
8 Young?

9 A. Yes, sir, my second examination of Julian Young's
10 fingerprints to Item Two I actually compared the, the known
11 standards obtained by Agent Kenley, I compared it to Item Two
12 which is State's Exhibit Twenty-four, and I also compared it
13 to the major case prints obtained by Special Agent Stanley to
14 confirm it was the same individual.

15 Q. Okay. And can I ask you why these later thumb prints were
16 taken by Agency Kenley?

17 A. Yes, sir. Once we were notified that I needed to examine
18 the, the Item Two, or State's Exhibit Twenty-four latent to
19 Mr. Young, Special Agent Stanley was sent to obtain a set of
20 his major case prints. Special Agent Stanley is currently in
21 Indianapolis going through some fingerprint training this
22 week, and she was unavailable for Court. As a result I needed
23 to obtain a set of fingerprints, an additional set of his left
24 thumb so that I could testify in Court today and we would have
25 the agent available that obtained those known standards to be

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1 able to testify as well. So, Agent Kenley went and obtained
2 the left thumb prints so that he could be here today since
3 Agent Stanley was not able to be here.

4 Q. And so, the defendant is the person he got the print from,
5 is that correct?

6 A. Right. We want to be able to provide the individual that
7 obtained the known standards in case there was any question
8 about where they came from we could have that agent available
9 to testify.

10 Q. But the results are the same from both sets of print that
11 State's Twenty-four, which is on the back of, behind the door
12 matches the prints of the defendant, Julian Young?

13 A. Yes, sir. The Item Two as identified with State's Exhibit
14 Twenty-five, which in my report is actually Item Thirty-five,
15 it was identified to his left thumb, and the, both sets of
16 known standards were compared to each other and I was able to
17 confirm that both sets were the same, were from Julian Young.

18 Q. And finally, let me show you what's been marked as State's
19 Twenty-six and ask if you can identify that, please, too?

20 A. Yes, sir, I can.

21 Q. And what is that?

22 A. This is a, what we call a Court chart. It is a
23 photographic enlargement of the latent impression from State's
24 Exhibit Twenty-four, and also a photographic enlargement of
25 Mr. Young's left thumb from the, from the known standards

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1 obtained by Special Agent Kenley.

2 Q. Okay. And you made this for Court?

3 A. Yes, sir, this was created for the purpose of
4 demonstrating our fingerprint examination of the Item Two
5 unknown impression to Mr. Young.

6 SOLICITOR BELL: Your Honor, we would offer this as
7 State's Twenty-six.

8 MR. JOHNSON: Without any objection.

9 THE COURT: State's Twenty-six is in evidence without
10 objection.

11 (State's Exhibit Twenty-six
12 marked and filed.)

13 Q. Okay. And I'd ask Agent, Lieutenant Crooks if he'd come
14 down and show the jury how he does the comparison.

15 THE COURT: Yes, sir, step down.

16 Q. Let me ask you first, you said it came back to the left
17 thumb of the defendant?

18 A. Yes, sir.

19 Q. Julian Young?

20 A. Yes, sir.

21 Q. What part of the thumb, was it the middle, side or ...

22 A. It was the side of the thumb, a little bit closer to the
23 index finger.

24 Q. So, it would have been this side?

25 A. Yes, sir, it would have been this general area, or a

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1 little more to the side.

2 Q. Okay. And you might have to do it in sections, this
3 section of the jury and this section of the jury, and kind of
4 show them what you're looking at?

5 A. Sure. This is the chart that was created for the purpose
6 of demonstration. On this side it says, known, this is the
7 known standard, or the ink fingerprint of Mr. Young that was
8 collected by, that was taken by Agent Kenley. On this side
9 you'll see where it says, unknown. This is the latent print
10 that was on the latent lift that was lifted from the vehicle
11 by Agent Kenley during the crime scene investigation. What
12 you'll also notice is, you'll see a series of numbers. What I
13 did on this demonstration is, I identified eight of the ridge
14 characteristics that I used to conduct my comparison. There's
15 actually more than that, I believe I counted Twenty-two ridge
16 characteristics that were in agreement, but for the purposes
17 of demonstration I only highlighted eight to show. So, if you
18 start with the unknown image with Number One and follow the
19 line down you'll see there's an ending ridge, which is one of
20 the three types that we classify the ridge characteristics in.
21 You go to the known side, Number One, and follow the line down
22 to the end you'll see the same correlating ending ridge. You
23 do the same thing for Number Two, you'll see what we call a
24 forking or bifurcating ridge, which is the single ridge that
25 splits into two separate ridges. Same thing for Number Three.

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1 Number Two over here on the known. Do the same thing for
2 three through eight on the unknown and three through eight on
3 the known. This is a demonstration of the ridge
4 characteristics and how the relationships of one through eight
5 on the known are the same as the relationships of one through
6 eight on the unknown. So, it's where they are in the latent,
7 the unknown impressions and where they are in the known
8 impressions correspond. And again, there was actually Twenty-
9 two ridge characteristics that can be located throughout here.
10 I just didn't mark all Twenty-two, I just did eight for the
11 purpose of demonstration.

12 Q. Okay. Thank you, Lieutenant Crooks. And Lieutenant
13 Crooks, did you look at any other items of evidence in this
14 case for latent prints?

15 A. Yes, sir, I did. There was some, some U. S. currency,
16 some cash that Agent Kenley had processed for the existence of
17 latent print evidence, and I reviewed the results of his
18 evidence processing to determine if there were any, if there
19 was any latent impressions that were of sufficient value to
20 compare.

21 Q. Did you find anything?

22 A. No, sir, there were some ridge detail observed on some of
23 the bills; however, they were not of a sufficient quality.
24 Typically, when we determine if an unknown impression is
25 suitable for comparison we look at the amount of the latent

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1 that's there, if there's enough there, and also the clarify or
2 the quality of the latent. And sometimes we'll see ridge
3 detail on an object but the quality, the clarity of that ridge
4 detail might not be sufficient to conduct a comparison, and in
5 this particular case all of the bills either had no ridge
6 detail or they had some ridge detail that was not suitable, of
7 a suitable quality to conduct and examination.

8 Q. Is that surprising on currency?

9 A. No, sir, U. S. currency typically is handled so much that
10 the process we use which is, we treat it with a chemical, we
11 can treat paper objects with a chemical that will make any
12 latent impressions visible because with paper items the ridge
13 actually absorbs into the paper, it's not on the surface like
14 it would be on that marble. So, we can't use traditional
15 fingerprint techniques we have to use a chemical treatment
16 which this treatment actually will stain amino acids present
17 which comes from your sweat. It will turn it a pink color,
18 and it will make any ridge detail present visible. Typically
19 when we find something like money it's handled to much that
20 instead of getting distinct ridge detail we just get a lot of
21 pink, and you know, typically, if we actually do get ridge
22 detail it's not, it's not very often that it's suitable
23 quality. That's a typical result that, at least in my
24 experience I've see when I process money.

25 Q. So, you couldn't basically, there was nothing to compare

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1 which you found on the money to, you just, you couldn't
2 compare it, is that correct?

3 A. That's right. I, there's nothing I can tell you from the
4 standpoint of identifying an individual to or excluding them
5 from handling that money.

6 Q. Okay. And I just want to make sure I've offered all
7 Twenty-six -- Twenty-five, Twenty-six, Twenty-seven, Twenty-
8 eight into evidence, I think it was without objection.

9 THE COURT: I believe all of them are into evidence
10 without objection, is that correct?

11 MR. JOHNSON: Yes, sir, Your Honor, they're all in.

12 THE COURT: Alright.

13 (State's Exhibit Twenty-eight
14 marked and filed.)

15 Q. Okay. And to sum up, Lieutenant Crooks, based on your
16 examination, your comparison, State's Twenty-three, which was
17 a latent print that was found on the window of a vehicle, you
18 were able to identify to Ray Alston, is that correct?

19 A. Yes, sir, I was.

20 Q. And then, State's Twenty-four, which is a latent print
21 that was on the left side behind the door of the vehicle, you
22 identified the left thumb of the defendant, Julian Young, is
23 that correct?

24 A. Yes, sir. And also, it was not just me, all of our
25 examinations go through what we call a hundred per cent peer

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1 review, so when I conduct an examination and I'm done with a
2 case I give it to another qualified latent print examiner and
3 they conduct the same examinations, and we both have to agree
4 with our conclusion before a report is written. So, all this
5 evidence was actually examined by two examiners before any
6 report was issued.

7 SOLICITOR BELL: One moment. Thank you, Lieutenant
8 Crooks, please answer any questions that Defense may have for
9 you.

10 A. Yes, sir.

11 THE COURT: Mr. Williams, anything on cross?

12 MR. WILLIAMS: No questions of this witness, Your Honor.

13 THE COURT: Alright. You may step down. Thank you, sir.

14 SOLICITOR BELL: We'd ask that he be excused, Your Honor.

15 MR. JOHNSON: Without objection.

16 THE COURT: Alright. You may be excused, Lieutenant.

17 Y'all come up here a minute.

18 (Whereupon, a bench conference
19 is had out of the hearing of
20 the jury and court reporter.)

21 THE COURT: Alright, before the State calls it's next
22 witness we're going to take a break for lunch. There are a
23 couple of things that I've got to do that are unrelated to
24 this trial, but I've got some other hearings and things that
25 I've got to take care of. So, I'll give y'all a little bit

1 longer for lunch and ask y'all to be back in the jury room at
2 two:fifteen, and we will continue with the State's case at
3 that time. Again, I know y'all are tired of me saying this,
4 but y'all cannot talk about this case, you haven't heard all
5 the evidence. You can't talk among yourselves, you can't do
6 any investigation. Okay? Have a good lunch and come back
7 here ready to go at two:fifteen. I appreciate it. Thank
8 y'all very much.

9 (Whereupon, the jury leaves
10 the courtroom and the following
11 takes place out of the hearing
12 of the jury.)

13 THE COURT: Ms. Harry Dot, earlier when we were picking a
14 jury, when I was doing the Voir Dire Mr. Johnson had submitted
15 a four page Voir Dire. We had met in chambers, I had told him
16 that some of the follow up questions that he asked more
17 specifics about crimes and things like that I had told him I
18 was not going to ask. He wanted me to note his objection to
19 not asking all of these questions during the Voir Dire. At
20 the time we did the Voir Dire he expressed in a timely manner
21 that, his objection. For the record I have a copy of that, a
22 clean copy of the jury Voir Dire that he submitted to me and
23 it will be marked as Court's Exhibit, is that Two?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Okay. It will be marked as Court's Two so

1 he'll have that preserved for the record.

2 (Court's Exhibit Two

3 marked and filed.)

4 THE COURT: Anything else, Mr. Johnson?

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

6 THE COURT: Okay. Thank you. Do y'all want to come on
7 back and we'll ...

8 (Recess)

9 THE COURT: Mr. Johnson, we met after we took a break,
10 and the State had indicated that they wanted to, that they may
11 just have one other witness.

12 MR. JOHNSON: Yes, sir.

13 THE COURT: And normally speaking, what we would do, as
14 you are well aware of is, after the State presents it's
15 witness we would take a break, and I'd question the defendant
16 about whether or not he wishes to take the stand or not.

17 MR. JOHNSON: Yes, sir.

18 THE COURT: But we talked about doing that beforehand so
19 he could have a little bit more time to talk about it. Is
20 that correct?

21 MR. JOHNSON: Yes, sir, and I asked the Court to do it.

22 THE COURT: Okay. Alright, sir.

23 Mr. Young, stand up please, sir. First of all, the
24 Clerk's got to put you under oath because I've got to explain
25 some things to you. Okay? And you've got to answer some

1 questions for me. Alright?

2 DEFENDANT YOUNG: Yes, sir.

3 THE COURT: Would you swear him in, please, ma'am?

4 CLERK: Please raise your right hand.

5 (Whereupon, Julian Young

6 is duly sworn.)

7 CLERK: Thank you.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court.
11 See next ensuing page for sequential continuation of record.)

JULIAN YOUNG - IN CAMERA EXAMINATION BY THE COURT

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1 JULIAN YOUNG - IN CAMERA EXAMINATION

2 BY THE COURT:

3 Q. Alright. Mr. Young, I know your attorney has mentioned
4 this to you before about whether or not you are going to
5 testify?

6 A. Yes, sir.

7 Q. Okay. Normally speaking, at the conclusion of the State's
8 case is when I would go over this with the defendant. But
9 after talking with your attorney back in chambers, I'm trying
10 to give you a little more time to think about this. Okay?

11 A. Yes, sir.

12 Q. So, at this time I'm going to explain your rights, and if
13 there's something that I tell you that you don't understand,
14 if you'll just let me know I'll be glad to explain it or Mr.
15 Johnson will help me explain it to make sure you understand
16 where we are now.

17 A. Okay, sir.

18 Q. Okay. We have just about reached the stage of the trial
19 where you may present your defense. You have the right to
20 claim the protections given to you by the Fifth Amendment of
21 the Constitution of the United States. That Amendment states
22 in part that "No person shall be compelled in any criminal
23 case to be a witness against himself." This means that you
24 cannot be required to testify in this case. You have the
25 right to testify on your on behalf; however, no one can make

JULIAN YOUNG - IN CAMERA EXAMINATION BY THE COURT

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1 you testify. This is a personal right and no one can waive
2 this right except you. If you decide to testify you will be
3 subject to the same rules that govern other witnesses and you
4 may be examined and cross-examined on any relevant issue in
5 this case.

6 Additionally, if you have any convictions involving
7 dishonesty or false statement or for crimes punishable by
8 imprisonment for more than one year and this Court determines
9 that the probative value of admitting this evidence outweighs
10 its prejudicial effect to you, the Solicitor will be able to
11 introduce your record to attack your credibility.

12 If you decide to testify this decision on your part must
13 be freely, voluntarily and intelligently made with knowledge
14 of the protections given to you by the Fifth Amendment and the
15 consequences of your decision to testify.

16 A. Okay.

17 Q. Now, if you decide not to testify I will instruct the
18 jurors that they cannot give the fact that you did not testify
19 any consideration whatsoever and there is to be absolutely no
20 prejudice to you because you did not testify. It is left
21 entirely up to you whether or not you testify. You may talk
22 with your attorney, your family and friends or anyone else,
23 but the final decision is left entirely to you.

24 A. Yes, sir.

25 Q. Do you understand everything that I have explained to you?

JULIAN YOUNG - IN CAMERA EXAMINATION BY THE COURT

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1 A. Yes, sir.

2 Q. Do you have any questions about what I've explained?

3 A. No, sir.

4 Q. Okay. I know you have talked this matter over with your
5 attorney already, is that correct?

6 A. Yes, sir.

7 Q. Okay. What I'm going to do is, I'm going to allow you
8 some more time to talk with him, - - -

9 A. Yes, sir.

10 Q. --- and, because -- and some time for you to think about
11 it. Okay?

12 A. Yes, sir.

13 Q. And have you talked about it with any members of your
14 family or friends or anything?

15 A. No, sir.

16 Q. Did you want them to join in the discussion?

17 A. Yes.

18 Q. Then we'll arrange for you to meet with, you know,
19 whatever family member you want to at the conclusion of the
20 State's case when we take a break. Okay?

21 A. Yes, sir.

22 Q. Now, after that, you know, y'all will need to come back
23 and you're going to have to tell me whether you decide to put
24 up a defense or not. Okay? Do you understand?

25 A. Yes, sir.

1 THE COURT: Alright, thank you, sir. You can sit down
2 now. I appreciate it.

3 Alright, is there anything else from the State?

4 SOLICITOR SORENSON: I don't believe so, no, sir.

5 THE COURT: Okay. Anything from the Defense?

6 MR. JOHNSON: No, Your Honor.

7 THE COURT: Okay. Is the jury ready?

8 BAILIFF: Yes, sir.

9 THE COURT: Okay. If you'd bring them on out, please,
10 ma'am.

11 (Whereupon, the jury enters
12 the courtroom.)

13 THE COURT: Alright, Ladies and Gentlemen, I hope you had
14 a good lunch. We're getting ready to continue with the
15 State's case right now.

16 Is the State ready to proceed?

17 SOLICITOR SORENSON: Yes, sir, may it please the Court?

18 THE COURT: Yes, sir.

19 SOLICITOR SORENSON: The State calls Agent Richard
20 Johnson.

21 THE COURT: Alright, Agent Johnson. Okay.

22 CLERK: Please place your left hand on the Bible and
23 raise your right hand.

24 (Whereupon, Richard Johnson
25 is duly sworn.)

1 CLERK: Thank you. You may have a seat and please state
2 your name again for the record.

3 WITNESS: Agent Richard Johnson.

4 (NOTE: Blank lines on this page do not indicate any part of
5 record has been omitted. Headers on testimony pages and hard
6 page breaks between testimony are now required by the Court.
7 See next ensuing page for sequential continuation of record.)

RICHARD JOHNSON - DIRECT BY SOL. SORENSON

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1 RICHARD JOHNSON - DIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. Good afternoon, Agent Johnson.

4 A. Good afternoon.

5 Q. If you would, tell the jury where it is that you're
6 employed?

7 A. I'm employed by the South Carolina Law Enforcement
8 Division, also referred to as SLED.

9 Q. Alright. And how long have you been employed with SLED?

10 A. Approximately eight years.

11 Q. Okay. And what are your current duties and
12 responsibilities with SLED?

13 A. I conduct criminal investigations out of Twelve counties,
14 sometime out of all Forty-six when required.

15 Q. Okay. And where is your main office located at?

16 A. The main office is in Columbia. Our regional office is in
17 Walterboro.

18 Q. Okay. And one of those counties that you're assigned to
19 assist in investigations, is that here in Orangeburg?

20 A. Yes, sir.

21 Q. Okay. And specifically, Agent Johnson, were you assigned
22 to assist in an investigation of a homicide that occurred on
23 S. C. State's campus back in April of last year?

24 A. Yes, I was.

25 Q. Okay. And that would be this one involving the death of

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1 Jonathan Bailey?

2 A. That's correct.

3 Q. Alright. And when is it that you were assigned, and when
4 did you first respond down here to Orangeburg?

5 A. I was assigned on April Sixteenth, I think the incident
6 occurred on April Fifteenth, but we didn't get notified until
7 the following morning, which would have been after midnight at
8 April Fifteen -- Sixteen, I'm sorry.

9 Q. Okay. And that would be after, I guess after Mr. Bailey
10 had passed away from his injuries?

11 A. That's correct.

12 Q. Okay. Is that when y'all were called in at that point in
13 time?

14 A. Yes, sir.

15 Q. Alright. And did you at that point in time have an
16 opportunity then to come down to Orangeburg that morning, that
17 early morning of April Sixteenth?

18 A. Yes, I did.

19 Q. Okay. And who did you make contact with when you came
20 down here then that morning?

21 A. Chief Michael Bartley was the first person that I made
22 contact with. He started to brief me on the surrounding
23 events of that night and how we ended up getting involved with
24 it.

25 Q. Okay. And did your investigation then kind of entail

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1 attempting to identify who the individuals were that were
2 involved in Mr. Bailey's death?

3 A. Yes, sir.

4 Q. Okay. And the jury heard earlier before lunch ultimately
5 that Lieutenant Crooks with the latent print crime scene
6 division in Columbia had identified ultimately within a couple
7 of weeks after this a palm print that was left on the vehicle
8 that belonged to Ray Anthony Alston?

9 A. That's correct.

10 Q. Okay. Were you provided with that information?

11 A. Yes, sir.

12 Q. Okay. And what, as a result of that information did you
13 attempt then to locate Mr. Alston?

14 A. At that very moment, no, we didn't proceed to locate Mr.
15 Alston. We pretty much was concerned as to when did, the
16 print was made, that we didn't know if it was made during the
17 time of this incident, so at that very moment Alston was not a
18 primary suspect, although he was a person of interest. I
19 advised the other officer that was with me, an agent, that, to
20 let's try to get more information so we can verify if Alston
21 was in fact in Orangeburg the night that this occurred. And
22 so, we proceeded through other avenues for moving in Alston's
23 direction.

24 Q. Okay. And did you ultimately, were you ultimately able to
25 identify, and I believe when the jury heard from him

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1 testifying yesterday, a young man by the name of Ricky Gipson?

2 A. That's correct.

3 Q. Okay. And I believe in looking, when he was shown his
4 statements yesterday and the, the piece of paper where he
5 identified Mr. Alston, that that occurred on May the Sixth of
6 Two thousand eleven?

7 A. Yes, sir.

8 Q. Alright, tell the jury how it was that you came about
9 getting in contact with and talking with Mr. Gipson?

10 A. Well, initially we had nothing to operate off of other
11 than just canvassing S. C. State trying to determine if anyone
12 knew Jonathan Bailey, anyone knew his background of who he may
13 have been associated with. During that, the course of that
14 time we was able to obtain the phone records of Jonathan
15 Bailey, I think he had two phone records, but there was one of
16 them that showed a good deal of activity on that we focused
17 on. Through that phone record we identified a number that
18 Bailey seems to have been in constant contact with prior to
19 his death, and then right after Orangeburg Department of
20 Public Safety received a Nine One One call we were able to
21 identify at least two text messages that came in following
22 it. That suggested that this person which turned out to be
23 Ricky Gipson is a person that we needed to make contact with
24 because apparently either he was there or he had information
25 as to what took place. He knew clearly who all was involved.

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1 Sod, after we then got the phone records for Ricky Gipson and
2 it came back to his grandmother out of, I think it was
3 Maryland, and Maggie Gordon, which was her name, I made
4 contact with her. She confirmed that she had a son who were a
5 student -- I'm sorry, a grandson who was a student at, in
6 Orangeburg. However, the name that she gave me did not match
7 up with South Carolina State University's data base nor
8 Claflin University's data base, and I don't think I checked
9 with O.C. Tech. However, Lieutenant Barnes with S. C. State
10 and myself continued to review Maggie Gordon's phone record,
11 which was the last number in contact with Jonathan Bailey,
12 and we were able to identify another number off of Maggie
13 Gordon's phone records that struck our attention because of
14 the duration of time that that call was made after the
15 approximate death time of Jonathan Bailey to another number
16 out of Maryland, at which time we then made contact with that
17 individual. And the person identified himself as a, I think a
18 Walker, if I'm not mistaken. Nevertheless, he informed us, we
19 were informed that his daughter was in contact with an
20 individual by the name of Ricky who was a student in
21 Orangeburg. We then began to search S. C. State's data base
22 again and discovered a Ricky O'Keif Gipson. At that point we
23 got his records, class records to determine where would he
24 have been at at a certain time so we could make contact with
25 him, and it was clear to us from that that his class was over.

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1 So, we figured he was getting ready to go back to Maryland.

2 But the address on S. C. State's data base indicated that he
3 had an address in Sumter. So, we went to Sumter, and from
4 there we were able to locate Ricky Gipson and commenced to
5 talk with him.

6 Q. Okay. And that was when you took a statement from him at
7 the Sumter County Sheriff's Office?

8 A. That's correct.

9 Q. Okay. And he, at that point in time is that when, May the
10 Sixth, and you had an opportunity to show him this photograph
11 and have him identify Mr. Alston was being somebody that now
12 as involved in what had happened that night?

13 A. That's correct.

14 Q. Okay. So, that kind of corroborated, I guess, the palm
15 print match that you had already gotten off of the vehicle, is
16 that correct?

17 A. Yes, sir.

18 Q. And as a result of that information, did you then make an
19 attempt to then track down Mr. Alston and talk to him about
20 this situation?

21 A. Yes, sir. We, actually we entered his information into
22 NCIC data base, and once he was arrested in Charleston, I
23 think it was on a DUS, that's how we was able to pick him up.

24 Q. Okay. And he ultimately, as he had testified, gave y'all,
25 talked to y'all and gave you statements on two different days,

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1 on May Fourteenth and May Sixteenth - - -

2 A. Yes, sir.

3 Q. --- of last year? Alright. And he was arrested at that
4 point in time for murder, is that correct?

5 A. That's correct.

6 Q. He was arrested?

7 A. Yes, sir.

8 Q. Okay. And upon talking to him did you then have some
9 information about some other individuals then that were
10 allegedly, according to Mr. Alston and also Mr. Gipson, were
11 present and potentially involved in this situation?

12 A. Can you repeat that again, please?

13 Q. Okay. After talking then with Mr. Alston on May
14 Fourteenth and later on May Sixteenth, additionally with the
15 information you had been provided by Mr. Gipson, did you have
16 information then about a couple of other individuals, three
17 other individuals that you were then looking for in relation
18 to this incident?

19 A. Yes. And even by then, during the first interview with
20 Mr. Alston he also provided those additional names of who all
21 was involved or who all was with them when they came onto
22 campus, and who was with them when Jonathan Bailey was shot.

23 Q. Okay. And one of those names, was it the nick name Gouda?

24 A. Gouda.

25 Q. Okay. And were y'all ultimately able to, and let me ask

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1 you this, not only the nickname, Gouda, but also did you know
2 what apartment complex that Gouda supposedly lived in at that
3 time?

4 A. Yes, sir.

5 Q. And what apartment complex was that?

6 A. That was the Pine Hill Apartments.

7 Q. Okay. I'm showing you State's Exhibits Numbers Seventeen
8 and Eighteen, is that the apartment complex?

9 A. Yes, sir.

10 Q. Okay. And were y'all ultimately able to find a young man
11 by the name of Gouda that fit that description that lived in
12 Pine Hill Apartments back in April of Two thousand eleven?

13 A. Yes, sir.

14 Q. And who was that that you determined went by that nickname
15 that lived in that apartment complex?

16 A. Julian Young.

17 Q. The defendant?

18 A. Yes, sir.

19 Q. And let me ask you, ultimately, on May Seventeen, so a
20 couple of days after Mr. Alston was arrested, was the
21 defendant, Julian Young, arrested at that point in time?

22 A. I'd have to look back and see the exact date that he was
23 arrested. Bear with me one moment. Yes, sir, May Seventeenth
24 he was arrested.

25 Q. Okay. And I'm showing you State's Exhibit Number Twenty,

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1 that is ultimately a lineup that you prepared with Mr. Young's
2 photograph in it, is that correct?

3 A. That's correct.

4 Q. And I believe this is the lineup that was shown later on
5 to Maurice Thompson, but that photograph of Mr. Young in
6 State's Exhibit Number Two, when was that photograph then
7 taken?

8 A. When he was arrested.

9 Q. Okay. So that is how he looked back on May Seventeenth of
10 Two thousand eleven?

11 A. Yes, sir.

12 Q. Hair and what have you?

13 A. Yes, sir.

14 Q. Let me ask you this, when he was arrested on May
15 Seventeenth, on that day did officers with your agency search
16 his apartment in Pine Hill Apartments?

17 A. Yes, sir.

18 Q. Okay. Was any weapon found?

19 A. No, sir.

20 Q. Okay. Additionally, however, did you find some, some
21 paperwork belonging to the co-defendant, Hilliard Pinckney, in
22 his apartment?

23 A. Yes, sir, we did.

24 Q. Now, you knew -- let me ask you this to kind of back up a
25 second here, were you aware from the initial investigation

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1 that a bullet had been found basically kind of right outside
2 of the driver's door after Mr. Bailey had been removed from
3 his vehicle?

4 A. Yes, sir.

5 Q. Okay. And were you aware that that had been submitted to
6 your firearms department out at SLED?

7 A. Yes, sir, yes, sir.

8 Q. And as a result of that were you provided kind of a list
9 of kind of what kind of weapons to be kind fo on the lookout
10 for in this case?

11 A. Yes, sir.

12 Q. Okay. And what kind of weapons did your firearms
13 department indicate to you could have fired that, that bullet?

14 A. Either a Thirty-eight or a Three fifty-seven revolver.

15 Q. Okay. A revolver. Okay. And what would be the
16 difference between a revolver and a semi-automatic, for
17 somebody that may not be familiar with firearms?

18 A. That revolver is going to discharge one round at a time as
19 you pull the trigger and it's generally going to hold
20 approximately five to six rounds of ammunition. Where that
21 semi-automatic is subject to holding at least Twelve to maybe
22 Fifteen or Sixteen, and the bullet can fire out a lot more
23 quicker.

24 Q. And also, are you aware of what a shell casing is?

25 A. Yes, sir.

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1 Q. And what is a shell casing?

2 A. That's the casing that would hold the projectile with
3 powder compressed up on it to help discharge the projectile.

4 Q. Okay. And when you fire a revolver what happens to that
5 shell casing?

6 A. It's generally -- well, since it's a revolver it stays in
7 the cylinder, it doesn't kick out like a semi-automatic would
8 kick it out.

9 Q. Okay. So, a semi-automatic, when you pull the trigger it
10 actually ejects - - -

11 A. It ejects it.

12 Q. --- the shell casing?

13 A. Yes.

14 Q. Okay. So, when you have a scene such as this and a
15 revolver was used would you expect to find a shell casing
16 somewhere at the scene?

17 A. No.

18 Q. Okay. And upon talking to Mr. Alston on May Fourteenth,
19 was one of the names that you were ultimately provided with
20 Maurice Thompson?

21 A. Maurice Thompson.

22 Q. I'm showing you State's Exhibit Number Twenty-two, were
23 y'all as a part of your investigation able to go back and kind
24 of, kind of verify and corroborate the fact that Maurice
25 Thompson had in fact driven a gray four door Buick onto S. C.

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1 State's campus on the evening of May the Fourteenth of, I'm
2 sorry, April the Fifteenth of Two thousand eleven?

3 A. Yes, sir.

4 Q. Now, the co-defendant that testified yesterday afternoon,
5 Hilliard Pinckney, H.D., was he arrested I guess the following
6 day, I think May Eighteenth, is that accurate?

7 A. Yes, sir, May Eighteenth.

8 Q. And did Mr. Pinckney cooperate and give y'all a statement
9 when you interviewed Mr. Pinckney?

10 A. No, sir, no interview was conducted with Pinckney.

11 Q. Okay. He asked for a lawyer when you attempted to
12 interview Mr. Pinckney?

13 A. Yes.

14 Q. And then lastly, the co-defendant, Maurice Thompson, was
15 he arrested, I think he had testified, on May the Nineteenth,
16 does that sound right?

17 A. Yes, sir.

18 Q. Okay. And did he, in fact, cooperate and give a statement
19 to you?

20 A. Yes, sir.

21 Q. Okay. And I believe he had testified and it was
22 documented on here that he was shown this lineup and
23 identified Mr. Young the following day, on May the Twentieth,
24 at two:fifteen in the afternoon, is that correct?

25 A. That's correct.

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1 Q. And did you in any way force him or coerce him to pick
2 somebody out of this?

3 A. No, sir.

4 Q. And was he freely and voluntarily cooperating at that
5 point in time with you?

6 A. Yes, sir.

7 Q. Let me ask you this, we've heard through several of these
8 witnesses over the last two days, the nickname, Nard?

9 A. Yes.

10 Q. Is that correct? Were you able to identify who Nard was?

11 A. Yes. Through Lieutenant Barnes of S. C. State we
12 determined that Nard was actually Bernard Singleton.

13 Q. And Mr. Singleton lived there kind of in close proximity
14 to South Carolina State's campus?

15 A. Yes, sir.

16 Q. Okay. Did you have an opportunity to attempt to interview
17 Mr. Singleton?

18 A. Yes, we did.

19 Q. Did he provide you any information that he knew anything
20 about this incident?

21 A. I think his exact wording was, I don't know nothing about
22 nothing. And that was just the gist of the interview with
23 him.

24 SOLICITOR SORENSON: Okay. I beg the Court's indulgence.
25 I appreciate it, Agent Johnson, please answer any

1 questions Mr. Johnson would have.

2 THE COURT: Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor, may it please the
4 Court?

5 THE COURT: Yes, sir.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court.
9 See next ensuing page for sequential continuation of record.)

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1 RICHARD JOHNSON - CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Agent Johnson, are you the primary case officer on this
4 case, would that be a correct statement?

5 A. Yes, sir, I guess you could say that.

6 Q. Let me do it like this. If I wanted to talk to an officer
7 about information I would come to you maybe primarily first?

8 A. Not necessarily.

9 Q. Okay. Who would be the primary on the case?

10 A. I would.

11 Q. You would be?

12 A. Yes.

13 Q. So primary is a good word, then, you would be the primary?

14 A. Yes.

15 Q. You would be the primary on the case. And as the primary
16 on the case, I think that -- and I want to make sure I'm
17 right, that says that you probably know as much about this
18 case as anybody, would that be a fair statement?

19 A. I should know as much about the case as anybody.

20 Q. Okay. Well, let me put it this way, would anybody know
21 more about the case, the investigative part, more so than
22 you?

23 A. It's hard to say. Again, Agent Smith worked on the case,
24 Lieutenant Rodney Bond worked on the case. In fact, I think
25 Lieutenant Bond and I probably worked more than Agent Smith

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1 did.

2 Q. But were you the one who arrested Julian?

3 A. I was one of the ones, yes, sir.

4 Q. Okay. And when you arrested him did you do the
5 background check and interview -- not interview, but did you
6 do the background check and you know determine his status like
7 his age and all that kind of stuff like that?

8 A. Yes. And that was done during the, pretty much
9 preliminary investigation, establishing who he was at the
10 time.

11 Q. Well, while you were establishing who he was, he was
12 about, during that time he was about Sixteen years old, he's
13 Seventeen now, is that correct?

14 A. Somewhere in that ballpark.

15 Q. Okay, okay. You wouldn't disagree with me with that?

16 A. No, I wouldn't disagree.

17 Q. Okay. And let me go to this question, basically you, the
18 other agent, was it Agent Simpson?

19 A. Smith.

20 Q. Agent Smith, and I think Lieutenant Bond or some of them,
21 y'all did the primary investigation on this case?

22 A. Pretty much, yes, sir.

23 Q. Okay. Alright. Okay, now, during your investigation did
24 you at some time get a search warrant and search the home of
25 Julian?

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1 A. We got a search warrant, I don't recall if I was the
2 Affiant on the search warrant.

3 Q. Okay. Alright, I just want to say, a search warrant was
4 given?

5 A. Yes, sir.

6 Q. Okay. Not necessarily who got it, but a search warrant
7 was given?

8 A. Yes, sir.

9 Q. And you, and you did the, and you searched his home?

10 A. We did, yes, sir.

11 Q. Okay. And there was, to my understanding there was no gun
12 found that relates to this case, is that correct?

13 A. That's correct.

14 Q. Okay. And then through some other information, I don't
15 know how, I think there was some other information that came
16 up about a gun, and I don't know how but, and I think y'all
17 recovered that gun and checked it, is that correct?

18 A. That's correct.

19 Q. And that gun was after the testing and all determined not
20 to be the gun, is that correct?

21 A. I think, without looking at my note, it was inconclusive.

22 Q. That's what it says, inconclusive.

23 A. Yeah.

24 Q. Inconclusive, that's what it says. But inconclusive means
25 it can be any number of guns, isn't that correct?

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1 A. It means it can or it cannot be, we just couldn't say if
2 that was the weapon that was used to kill Jonathan Bailey or
3 not.

4 Q. And the reason you don't is, if it's not conclusive you
5 don't present it because it can't say he did it, is that
6 correct?

7 A. Say that again?

8 Q. The reason it was conclusive because there was no
9 certainty that that was the gun that killed Jonathan Bailey,
10 is that correct?

11 A. Yes, sir.

12 Q. Okay. Okay. Alright, so during your investigation
13 everything that you could run down to find that gun you tried
14 to find it, is that correct?

15 A. That's correct.

16 Q. Okay. And, and when we did the preliminary hearing I
17 asked you about it and you still was looking for that gun, is
18 that correct?

19 A. That's correct.

20 Q. And you have yet 'til today to find the gun that was
21 involved in the shooting, is that correct?

22 A. That's correct, at least a gun that I can say
23 unequivocally is the weapon.

24 Q. Right.

25 A. Again, the initial one that was submitted was

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1 inconclusive, - - -

2 Q. Right.

3 A. --- we couldn't say one way or the other.

4 Q. Right. But what I'm asking though, but you didn't find a
5 gun that you could conclusive say is the weapon?

6 A. That's correct.

7 Q. Is that correct? And you did a due diligence search
8 trying to find that weapon, is that correct?

9 A. That's correct.

10 Q. Okay. Alright. Did you also do a search warrant to
11 search the apartment of Mr. Bailey?

12 A. Again, we did, yes, sir.

13 Q. You did? And what was found?

14 A. I'm sorry, you're saying the apartment of Mr. Bailey?

15 Q. Mr. Bailey.

16 A. We didn't search Mr. Bailey's apartment.

17 Q. Alright. You didn't search his apartment?

18 A. No.

19 Q. I just want to make sure, I'm not trying to trick you.

20 A. Yeah, I'm sorry.

21 Q. You didn't search his apartment?

22 A. No, sir.

23 Q. Okay. Alright, now, during your investigation did you
24 determine that there was, that he carried a gun to protect
25 himself?

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1 A. From all account, no, sir. Everyone said he didn't carry
2 a weapon.

3 Q. During your investigation, during the process of your
4 investigation you have, you never determined that he carried a
5 gun to protect himself?

6 A. I don't recall that, no, sir.

7 Q. Oh, you don't recall it?

8 A. Yes, sir.

9 Q. Alright. During your investigation did you ever find out
10 the information that he had, did you ever find out the
11 information that he had multiple guns?

12 A. Jonathan Bailey?

13 Q. Yes, sir.

14 A. No, sir, I don't ...

15 SOLICITOR SORENSON: Objection, I mean, he's asked and
16 answered this. I mean, he asked him about one gun, so I mean,
17 ...

18 THE COURT: Well, he's already answered that he didn't
19 have any guns, so ...

20 MR. JOHNSON: Well, Judge, I was trying to identify two
21 different people, or two different situations, but that was
22 the reason for asking the, that was the reason for asking the
23 question.

24 Q. I just want to be a hundred per cent sure. You reviewed
25 all of the documents that you gave to the Solicitor and that

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1 the Solicitor gave to me, you have reviewed all of those
2 documents?

3 A. Yes, I have reviewed them, but it has been over a year ago
4 and I have not re-reviewed them again because I've worked
5 multiple homicides since then. I just don't ...

6 Q. Okay. So, are you saying you don't remember that?

7 A. Yeah, I just don't recall that, that's what I kept
8 saying.

9 Q. Oh, okay, okay, you're not saying it's not so, you're
10 saying you didn't recall it?

11 A. I just don't recall that.

12 Q. Okay, okay, alright, good enough. I just want to
13 distinguish the difference. Let me ask you this, the actual
14 shooting took place in the marriage housing, is that correct?

15 A. That's correct.

16 Q. What street is that on?

17 A. I worked at S. C. State for Ten years, I don't know the
18 actual street name, I just know the area.

19 Q. Okay. Okay.

20 A. It's off of Russell Street.

21 Q. But the actual accident itself occurred on Russell Street?

22 A. Yes, sir.

23 Q. Okay. And the projectile, it wasn't discovered in the
24 marriage housing, was it?

25 A. That's according to Detective Dustin Johnson, where he got

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1 it from, yeah.

2 Q. I understand that, I understand that, but to your
3 knowledge, I'm just asking to your knowledge, you can't speak
4 for him, but to your knowledge it wasn't -- the projectile
5 wasn't discovered at the marriage housing, was it?

6 A. No, sir.

7 Q. It was discovered on Russell Street, is that correct?

8 A. Yes, sir.

9 Q. Where the shooting didn't occur, is that correct?

10 A. That's correct.

11 Q. Okay. Now, let's get to -- you had an opportunity to take
12 statements, if I'm correct, from Mr. Thompson?

13 A. Yes, sir.

14 Q. And I think you took a recording statement and a written
15 statement, is that correct?

16 A. Yes, sir.

17 Q. Okay. And Mr. Thompson told you that he never saw Julian
18 with a gun, is that correct?

19 A. That's correct.

20 Q. Alright. You had, you took recording statements and
21 written statements from Mr. Ricky Gipson, is that correct?

22 A. That's correct.

23 Q. And Mr. Ricky Gipson also told you he never saw Julian
24 with a gun, is that correct?

25 A. That's correct.

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1 Q. You took recoding statement from Mr. Ray Alston. As a
2 matter of fact I think you took, you talked to Mr. Alston, you
3 took two statements and a recoding statement from Mr. Alston,
4 is that correct?

5 A. Yes, sir.

6 Q. And that were on one of them, they were on three separate,
7 I'm not sure, they were on two separate days, is that correct?

8 A. That's correct.

9 Q. Because the recording statement and one statement was on
10 the same day?

11 A. That's correct.

12 Q. So they were on two separate days, is that correct?

13 A. Correct.

14 Q. And this was at the very beginning of your investigation,
15 right after, is that correct?

16 A. No, sir.

17 Q. Okay. How far down the road was it?

18 A. I think this investigation took a span of almost Thirty
19 days if I'm not mistaken, - - -

20 Q. Okay.

21 A. --- so it was more or less close to the end of the
22 investigation when we made contact with Alston.

23 Q. Okay. We're a year and something down the road. This
24 took, the investigation and these statements and recordings,
25 you received them at Thirty days from the time of the event,

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1 is that correct?

2 A. Approximately.

3 Q. Okay. And he also told you that Mr. Gipson, I mean, he
4 didn't see Julian with a gun, is that correct?

5 A. That's correct.

6 Q. Okay. Alright, n ow, I just want to make sure. There
7 were five people allegedly in the car, is that correct?

8 A. Yes, sir.

9 Q. Two in the front and three in the back?

10 A. That's correct.

11 Q. Okay. And it's my understanding that the three in the
12 back got out and the two in the front never got out of the
13 car?

14 A. That's correct.

15 Q. It's my understanding that the three in the back were Mr.
16 Alston, Mr. Gipson and Mr. Young?

17 A. That's correct.

18 Q. Okay. It's my understanding that Mr. Young and Mr. Alston
19 went to the door, went to the passenger door of the other
20 car?

21 A. Yes, sir.

22 Q. Alright. It's my understanding from the testimony that
23 Mr. Alston left the car?

24 A. That's correct.

25 Q. Okay. It's my understanding that it was Ten -- from

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1 reading the recording statement it's a question whether it was
2 Eleven or Twelve O'clock but it's my understand it was late
3 and it was dark, is that correct?

4 A. That's correct.

5 Q. And it's my understand that the only testimony anybody saw
6 that they had, it was a struggle but nobody saw anybody --
7 nobody could tell you what the struggle was over, is that
8 correct?

9 A. The testimony was a struggle, and the hearing of a sound.

10 Q. Right. But nobody could tell you what, what the struggle
11 was over, they just saw a struggle?

12 A. That's correct.

13 Q. Nobody could tell you how the weapon got to the car, is
14 that correct?

15 A. That's correct.

16 Q. Okay. All they could tell you is what they saw, is that
17 correct?

18 A. Yes, sir, and heard.

19 Q. Okay. Okay. And this might be redundant, and these are
20 my last couple of questions so I want to be clear. So, if
21 they didn't see him with the gun that means they couldn't see
22 him get out of the car with one, is that correct?

23 A. Repeat that?

24 Q. If they did not see him with a gun that would mean they
25 did not see him get out of the car with a gun, is that

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1 correct?

2 A. You probably can conclude that.

3 Q. Okay. Okay. All of the testimony was, they didn't see
4 him, is that correct?

5 A. That's correct.

6 Q. So, it wouldn't be a conclusion, it would be a fact,
7 wouldn't it?

8 A. I can't say it would be a fact because someone didn't see
9 or did see, but it would be more, I guess, believable that
10 they did not saw him with a gun.

11 Q. Okay. But anything else would be an assumption or
12 speculation, wouldn't it?

13 A. Yes.

14 Q. Okay. And we don't deal in assumption and speculation, -
15 - -

16 A. No, sir.

17 Q. --- we deal in fact, don't we?

18 A. Absolutely.

19 Q. And the facts are, nobody saw him with a gun, is that
20 correct?

21 A. Based on the information they testified to, that's
22 correct.

23 MR. JOHNSON: Your Honor, one second, please.

24 Q. Agent Johnson, you and I been knowing each other a long
25 time. The question I'm about to ask you now is my way of

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1 presenting an example, no disrespect is meant. Did you bring
2 your -- I'll do it this way, is there a distinct difference in
3 a revolver and a semi-automatic?

4 A. Yes, a distinct difference. One has a cylinder and
5 generally discharges five to six rounds as you pull the
6 trigger.

7 Q. Okay. Alright, now, it's my understanding that if you
8 have a semi-automatic like a nine millimeter or something,
9 when you shoot it the shell pops out, is that correct?

10 A. Yes, it would project it out.

11 Q. Okay. And a semi-automatic means you can either do one
12 shot or you can pull the trigger and it can - - -

13 A. No.

14 Q. Okay. Tell me what it means.

15 A. You're saying a semi-automatic you can do that?

16 Q. Yes, sir.

17 A. Alright. A revolver, when you pull the trigger nothing
18 kicks out.

19 Q. I understand that, but I'm asking, with a semi-automatic
20 when you pull the trigger, won't -- you can either pull it and
21 it will, one shell will pop out at a time, or you could
22 squeeze it and it will be a continual pop out?

23 A. No, if you squeeze it and there's a continual pop out,
24 that's an automatic.

25 Q. Okay. Then I'm corrected.

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1 A. Yeah.

2 Q. Well, then, an automatic then, and a nine millimeter would
3 be considered an automatic?

4 A. A semi.

5 Q. A semi? So, you mean to tell me with a nine millimeter I
6 can't keep pulling the trigger and it keep popping out?

7 A. Yeah, you can keep pulling the trigger.

8 Q. Okay. So, that means when you pull it, it pops out with
9 the nine millimeter?

10 A. Yes.

11 Q. But with a revolver it's different, isn't that correct?

12 A. That's correct.

13 Q. With a revolver you will pull it but it stays in the
14 cylinder?

15 A. That's correct.

16 Q. Okay. And so, if it stays in the cylinder with the
17 revolver then you wouldn't have been able to find it in the
18 car, is that correct?

19 A. You wouldn't be able to find a casing in the car.

20 Q. Okay. What did you, so what did you find in the car?

21 A. From Detective Dustin's information at the initial
22 investigation he found a projectile, which is what came out of
23 the casing that entered the victim and exited the victim, and
24 that was found, if I'm not mistaken, in the car.

25 Q. No, if I'm correct that was found, not in the car, it was

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1 found outside of the car on the ground, wasn't it?

2 A. I'd have to look back at his report then and confirm that,
3 but I know it was found in, adjacent with the car. Actually,
4 right, approximately, I think, eight inches I think he said
5 from the car.

6 Q. I think he said Eighteen but either Eight or Eighteen, it
7 will be found.

8 A. Eighteen inches, right, yeah.

9 Q. It will be found. So, it wasn't found in the car either?

10 A. Absolutely.

11 Q. Okay. Now, all of the testimony you received in this case
12 was testimony you got from somebody else, is that correct?

13 A. That's correct.

14 Q. Okay. And you witnessed none of this yourself, is that
15 correct?

16 A. That's correct.

17 Q. So, so the only thing that you are testifying to the jury
18 today is what the other people who were at the scene told you,
19 is that correct?

20 A. That's correct.

21 Q. Okay. So, the people that were there, their testimony
22 would probably be the most reliable testimony, is that
23 correct?

24 A. That's correct.

25 Q. And the most reliable testimony said that they didn't see

RICHARD JOHNSON - CROSS BY MR. JOHNSON

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1 Julian with a gun, is that correct?

2 A. Yes, sir.

3 MR. JOHNSON: Thank you, sir.

4 THE COURT: Anything on redirect?

5 SOLICITOR SORENSON: Just a couple of things, Your Honor.

6 THE COURT: Okay.

7 (NOTE: Blank lines on this page do not indicate any part of
8 record has been omitted. Headers on testimony pages and hard
9 page breaks between testimony are now required by the Court.
10 See next ensuing page for sequential continuation of record.)

RICHARD JOHNSON - REDIRECT BY SOL. SORENSON

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1 RICHARD JOHNSON - REDIRECT EXAMINATION

2 BY SOLICITOR SORENSON:

3 Q. And obviously, I mean, the jury has heard all the
4 testimony, I mean, nobody has come in here and said they saw
5 anybody with a gun that night, is that correct?

6 A. That's correct.

7 Q. And the fact of the matter is, is that Jonathan Bailey was
8 shot and died as a result of a gun shot wound, is that
9 correct?

10 A. That's correct.

11 Q. Just to sort of clear something up, State's Exhibit Number
12 Twenty-one is what was testified to that Dustin Johnson found
13 kind of right outside the vehicle?

14 A. That's correct.

15 Q. Alright. That is a bullet, is that correct, - - -

16 A. Yes.

17 Q. --- or a projectile, and that's not a shell casing when
18 we're talking about shell casings?

19 A. Can I see it?

20 Q. Yes, sir.

21 A. Yes, that's a bullet, a projectile.

22 Q. Okay. And no matter what type of gun you're firing,
23 whether it's a revolver or a semi-automatic or a fully
24 automatic gun, I mean, this is what comes out of the end of
25 the gun when you pull the trigger if it's loaded, is that

RICHARD JOHNSON - REDIRECT BY SOL. SORENSON

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1 correct?

2 A. Absolutely.

3 Q. Okay. He was asking you about shell casings, that's not
4 what we're talking about, is that correct?

5 A. That's correct.

6 Q. Alright. And yet again, with a revolver, if you had a
7 revolver, which is what this was fired by according to the
8 firearms report, right?

9 A. That's correct.

10 Q. You would not expect to find a shell casing anywhere at
11 the scene?

12 A. Absolutely.

13 Q. Unless somebody had taken it out of the revolver and left
14 it there, is that correct?

15 A. That's correct.

16 Q. When Mr. Johnson asked you about, you did have one gun
17 that was recovered, is that correct?

18 A. That's correct.

19 Q. Alright. And I believe you had testified that the results
20 of that came back and it was inconclusive?

21 A. Yes, sir.

22 Q. In other words, your firearms department couldn't say if
23 it was involved or not?

24 A. That's correct.

25 Q. It could be, it could not be?

RICHARD JOHNSON - REDIRECT BY SOL. SORENSON

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1 A. Absolutely.

2 Q. And obviously, if we can't say it is, I mean, that's not
3 something we were presenting, but he asked you about it?

4 A. Absolutely.

5 Q. Alright. Who was that gun recovered by that was
6 inconclusive as to whether it fired this bullet or not?

7 A. Julian Young's brother.

8 Q. And was that a type of gun that was on the list of guns
9 that you were provided initially that could have fired this
10 bullet?

11 A. Yes, sir.

12 Q. Of course, by the time you were searching Mr. Young's
13 apartment, I mean, it's over a month later, is that correct?

14 A. Approximately, yes, sir.

15 Q. Do you have a gun on you today?

16 A. Yes, sir.

17 Q. Do you have your gun? Where is it? Can you stand up?
18 Obviously, when you came walking in I couldn't see that you
19 had a gun, I didn't know if you had it or not, is that
20 correct?

21 A. I just kind of keep it pushed to the back a little bit.

22 SOLICITOR SORENSON: Okay, fine. Thank you.

23 THE COURT: Anything on recross?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Okay.

RICHARD JOHNSON - RECROSS BY MR. JOHNSON

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1 RICHARD JOHNSON - RECROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. The reason you checked the gun was because it was of the
4 style that they found, so you wanted to check it out to verify
5 whether it was the gun or not, is that correct?

6 A. Yes, sir.

7 Q. Okay. Okay. And I'm pretty sure, Officer Johnson,
8 you're dressed pretty good, you're in a nice suit, and I'm
9 pretty sure they wasn't dressed in suits that night, and I'm
10 pretty sure they didn't have on coats and ties. With your
11 gun, you dress so nobody can't really see your gun, is that
12 correct?

13 A. Yes, sir.

14 Q. Okay. And I'm pretty sure they didn't, they don't dress
15 the same way you do, they wasn't dressed that night the same
16 way you're dressed now, is that correct?

17 A. I would have -- I can't say that.

18 Q. You can't say that, but on a hot summer night, I think
19 this was May, I don't think hanging around, I don't think
20 they'd be walking around with a suit, with a gun in a case,
21 you don't think so, would you?

22 A. Well, it sounds like you're asking me to make an
23 assumption. If I did then ...

24 Q. You know, I believe I did.

25 A. Yeah. I mean, kids at that age or even, I guess mid-

RICHARD JOHNSON - RECROSS BY MR. JOHNSON

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1 twenties, wear a lot of baggy clothes and it makes it
2 difficult to see anything of what they're carrying. So, I
3 just can't, I guess I can't clearly answer your question like
4 that.

5 Q. Touche, you got that in, I like that. But since you say
6 you don't know what they had, but the one fact we do know is,
7 nobody saw him with one?

8 A. Yes, sir.

9 MR. JOHNSON: Thank you.

10 THE COURT: Alright. May he be excused?

11 MR. JOHNSON: I have no objection.

12 SOLICITOR SORENSON: Yes, sir.

13 THE COURT: Alright, you can step down. Thank you, sir.

14 Alright, next witness from the State.

15 SOLICITOR SORENSON: Your Honor, at this time the State
16 would rest.

17 THE COURT: Alright, Ladies and Gentlemen, the State has
18 rested their case. That means I've got some matters I've got
19 to take up outside the presence of the jury. When we come
20 back we'll find out, we will get started with the Defense's
21 part of this case. Right now we're going to take about a Ten
22 minute break, or probably about Fifteen minute break.

23 Remember, you've only heard one part of the case, you can't
24 begin talking about any testimony. Okay? Y'all go back into
25 the jury room and I'll get y'all back out as soon as I can.

1 Thanks.

2 (Whereupon, the jury retires
3 to the jury room and the following
4 takes place out of the presence
5 of the jury.)

6 THE COURT: Anything from the Defense?

7 MR. JOHNSON: Of course, at this time I'd like to ...

8 THE COURT: Alright. Do you want to talk about the
9 charge?

10 MR. JOHNSON: No, sir, I was going to move for a directed
11 verdict.

12 THE COURT: Oh, okay.

13 SOLICITOR SORENSON: This is dealing with the jury
14 instructions, is that what you're making it on?

15 MR. JOHNSON: Yes, sir, yes, sir. I meant to give both
16 of y'all one.

17 THE COURT: You've got it. I just, I thought. Okay.
18 I'm ready for your directed verdict motion.

19 MR. JOHNSON: I'd move for a directed verdict based upon
20 the fact that looking at it in the light most favorable for my
21 client there is no testimony of malice, implied or express.
22 All of the people in the car testified, everybody testified
23 that they didn't go there for a robbery, they didn't know
24 Julian had a gun, that all of the testimony we have, that
25 Julian didn't have a gun. There is nothing to show express or

1 implied malice aforethought in this case. So based upon the
2 fact that the element of malice has not been met -- and
3 another thing, Your Honor, how do you show an unlawful
4 killing when you can't show who did it? I mean, there's no
5 testimony, he can't kill somebody with a gun that he did not
6 have, all of the testimony is that he did not have a gun.
7 There's no testimony that he had a gun, so there is no malice,
8 no testimony of him having a gun, and the State's allegation
9 is that he was killed by a gun. So, based upon those two, I
10 would move that the Court should grant a directed verdict on
11 this issue, because they have not proved every element of this
12 crime.

13 THE COURT: Alright, thank you, sir. Alright, anything
14 you want to say, Mr. Sorenson?

15 SOLICITOR SORENSON: Just very briefly, Your Honor. The
16 first thing I'd start with is, I think Mr. Johnson is a little
17 confused and is applying the wrong standard at this point in
18 time. I think, Your Honor, when you're considering a directed
19 verdict motion you're looking at in the light of the evidence
20 most favorable to the State, the non-moving party. So, that's
21 kind of the first thing I'd like to mention.

22 MR. JOHNSON: That's correct, I said it wrong, he's
23 absolutely right to point that out.

24 SOLICITOR SORENSON: And Your Honor, I would point out
25 that, I mean, you know, the witnesses, I think he's twisting

1 also a little bit what they're saying. These witnesses are
2 not, none of them have said the defendant didn't have a gun,
3 they have all said they didn't see the defendant with a gun.
4 You know, there's not been any testimony that anybody, you
5 know, did a strip search on Mr. Young that night, and you
6 heard just kind of the last comment out of Agent Johnson, I
7 mean, that, you know, baggy clothes, I mean, he wasn't wearing
8 baggy clothes and you couldn't see that the had a gun on him.
9 But Your Honor, when you look at the evidence in the light
10 most favorable to the State you have three different witnesses
11 that have testified, Ricky Gipson, Ray Anthony Alston, and
12 Maurice Thompson, that they all saw this defendant hanging out
13 of the passenger side of the victim's vehicle when he put it
14 in reverse and started to back up, and they all heard a bang.
15 They described it in various different ways but you know, at
16 least one of them's first comment when he got in the car with
17 the defendant afterwards was, asking him if he had shot that
18 guy. So, I submit to you that it's three people that put the
19 defendant, I submit, as being the only person that was in a
20 position to have shot the victim. And if you listen, look
21 back at Dr. Rose's testimony, the victim was shot in the right
22 side, exiting the left side, consistent with being shot from
23 the passenger side of the vehicle. And then just to kind of
24 corroborate that you have, you know, damage to the arm rest,
25 the driver side arm rest where it appears to be an indentation

1 of what appears to be a little bit of blood, and then, I
2 submit to you, a bullet that has fallen out, basically when
3 they have opened the door to remove Jonathan Bailey from that
4 vehicle, that that bullet fell out, yet again consistent with
5 him being shot from somebody in the passenger side of that
6 vehicle. Because there's no, you know, windows weren't
7 damaged, there wasn't one shot through the door or a window.
8 So I submit to you, when you look at all that in the light
9 most favorable to the State, I submit to you that it is
10 clearly enough evidence that this defendant is the individual
11 that, that pulled the trigger. You know murders happen all
12 the time that there are no eye witnesses to, so obviously,
13 there's nobody that saw the person with the gun but that
14 doesn't mean he didn't have a gun.

15 So, the only other thing you'd be looking at is whether
16 we've proven malice. And Your Honor, at this point in time,
17 I mean, I think the evidence is that there was a struggle,
18 which I submit to you that the evidence on the scene
19 corroborates the fact that this defendant basically was
20 trying to steal from this guy, either trying to take his
21 marijuana and/or money, and when the victim, you know,
22 resisted and attempted to put that car in reverse to get
23 away from there, that he was shot. And I submit to you that
24 from that right there you can infer malice. And at this point
25 in time I think you're, I mean, if nothing else is presented I

1 think part of Your Honor's charge to the jury would be that
2 you can infer malice from the use of a deadly weapon,
3 because there's been no evidence that this was, you know,
4 self-defense, or an accident, or somehow a lesser offense
5 than murder. So, I think part of the jury charge at this
6 point in time would be that they could infer malice from the
7 use of a deadly weapon. So, I mean, that would be our
8 argument that we'd ask you to respectfully deny this motion at
9 this time.

10 THE COURT: Alright, Mr. Johnson.

11 MR. JOHNSON: For the purpose of making the record
12 perfectly clear, - - -

13 THE COURT: Yes, sir.

14 MR. JOHNSON: --- Number One, there's a case, State
15 versus Miller And I think Miller is almost on point with
16 this. It's not a Supreme Court case but it is a Court of
17 Appeals case, and I think it addresses this issue. I would
18 ask the Court to read Miller, consider the holding of Miller,
19 Your Honor. And the second thing it is, here's the thing that
20 concerns me, Your Honor, is, to get to the point, to make the
21 leap that Julian had the gun and did the shooting we've got
22 to infer that, and make a decision, or draw a conclusion that
23 the other person in the car didn't have the gun. I mean, to
24 me you can draw the inference either way. And Your Honor, we
25 choose, and we believe that he didn't, but that's an

1 inference, that's not a fact. And what that does is, it
2 shifts to us, in a sense, it shifts to us a burden. We don't
3 have to prove where it came from or who had it, all we've got
4 to do is prove we didn't have it. So, I think it also shifts
5 the burden to us, and I think that's why it's proof beyond a
6 reasonable doubt. They have to prove not only that the gun
7 was there but who had the gun, who did the shooting. That's
8 what we're doing, that's just my argument for the record, Your
9 Honor.

10 THE COURT: And it's also your argument for the jury.

11 MR. JOHNSON: Yes, sir, yes, sir. But I want to put that
12 on the record.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: So, it's burden shifting and the coroner
15 said, I mean, the pathologist said it was unspecified. She
16 said it could be consistent with, not that it was consistent
17 with, and there's no testimony about -- there was testimony
18 that the bullet and lots of blood was there, not how long they
19 were there, not who put them there. So, we've got a lot of
20 inferences that we're drawing, and I just want that on the
21 record, Your Honor, it just depends on how you rule, I just
22 want that on the record.

23 THE COURT: Yes, sir, alright, thank you, Mr. Johnson.

24 MR. JOHNSON: Thank you.

25 THE COURT: Thank you. Alright, Mr. Johnson, I'm going

1 to deny your motion for a directed verdict. I think there is
2 evidence in the record from which a jury could, a reasonable
3 jury could conclude that Mr. Young shot the victim.
4 Additionally, I think the argument over -- I have read the
5 Miller case. I think the argument about whether or not to
6 charge malice may be a little premature. I will tell you that
7 my charge of malice includes the fact that malice is the
8 intentional doing of a wrongful act without just cause or
9 excuse with the intent to inflict an injury under
10 circumstances that the law will infer evil intent. Malice
11 also may be inferred from conduct showing a total disregard of
12 human life. That doesn't even get into your argument about
13 the gun. So, I think there has been evidence so far that
14 would indicate that a reasonable jury could find malice. But
15 I'm going to not rule on that, depending on what else happens
16 in this case. Okay?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Alright, anything else at this time?

19 MR. JOHNSON: No, sir.

20 THE COURT: Alright. Are you going to need a few more
21 minutes?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: About how many minutes are you going to need
24 to talk with your client and family and like that, so you can
25 get back with me?

1 MR. JOHNSON: Your Honor, I would say about Fifteen
2 minutes. I just need permission for him to be able to talk to
3 the family.

4 THE COURT: Alright. I'm going to tell the bailiff to
5 tell the jury that we'll be back out at about three:thirty.
6 Okay? That will give you Fifteen minutes.

7 MR. JOHNSON: Yes, sir.

8 THE COURT: Okay. And Deputy Asbury, if y'all will just
9 make whatever arrangements y'all can so that you can
10 accommodate Mr. Johnson, Mr. Young and a family member to
11 talk with him, I'd appreciate it.

12 DEPUTY ASBURY: One family member?

13 THE COURT: Well, unless -- Mr. Johnson, do you need ...

14 MR. JOHNSON: Your Honor, I would at least need his
15 mother, his grandmother and his aunt, at least.

16 THE COURT: Okay. Alright. I'll allow that. Okay?
17 Thank you, sir.

18 Alright, we're going to be in recess. Would you let the
19 jury know it's going to be about three:thirty before we get
20 back in. Get them some drinks, snacks, whatever.

21 BAILIFF: Yes, sir.

22 THE COURT: Appreciate it.

23 (Recess)

24 THE COURT: Alright, Mr. Young, would you stand up again,
25 please, sir?

JULIAN YOUNG - IN CAMERA, EXAM BY THE COURT

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1 JULIAN YOUNG - IN CAMERA EXAMINATION

2 BY THE COURT:

3 Q. Mr. Young, you know you're still under oath?

4 A. Yes.

5 Q. Okay. Mr. Young, before the State put up their last
6 witness I advised you of your right to testify and put up a
7 defense, is that correct?

8 A. Yes, sir.

9 Q. Okay. And then afterwards, we have now taken a break. I
10 know you met with your attorney and your family members?

11 A. Yes, sir.

12 Q. Okay. And you've talked about whether or not you're going
13 to testify, is that correct?

14 A. Yes, sir.

15 Q. Okay. Now, after listening to, and talking with both of
16 your attorneys and all the family members that you need to
17 talk to, have you, have you, yourself - - -

18 A. Yes, sir.

19 Q. --- made a decision about whether or not you wish to
20 testify in this case?

21 A. I don't want to, no, sir.

22 Q. Okay. And this is, you've made that decision freely?

23 A. It's my decision, sir.

24 Q. It's your decision?

25 A. Yes, sir.

JULIAN YOUNG - IN CAMERA, EXAM BY THE COURT

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1 Q. You know that?

2 A. Yes, sir.

3 Q. Okay. You understand that I will instruct the jury that
4 they can't consider that in any way whatsoever?

5 A. Yes, sir.

6 Q. But you have chosen not -- you have decided not to
7 testify, is that correct?

8 A. Yes, sir.

9 Q. And nobody has forced you to make that decision?

10 A. Nobody has forced me to.

11 THE COURT: Okay. Alright, thank you, Mr. Young.

12 Alright, what I'm going to do now is, we'll bring the
13 jury back out. Mr. Johnson, then, it's my understanding
14 you're not putting up any defense, is that correct?

15 MR. JOHNSON: No, sir.

16 THE COURT: So, you're going to rest in front of the
17 jury, and then what I will do is, I will excuse them and tell
18 them to come back tomorrow morning at Nine:thirty.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: And we'll do the closing arguments and my
21 charge. Okay?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: Alright, thank you, sir. Bring the jury back
24 in.

25 (Whereupon, the jury enters

1 the courtroom.)

2 THE COURT: Alright, Ladies and Gentlemen, I thank you
3 for your patience. We're now ready to go forward with the
4 Defense portion of the trial.

5 Mr. Johnson.

6 MR. JOHNSON: Your Honor, may it please the Court, the
7 Defense rests.

8 THE COURT: Alright, thank you, sir.

9 Alright, Ladies and Gentlemen, the Defense has rested.
10 It is now three:thirty in the afternoon. The next phase of
11 the trial is the closing arguments, my charge of the law to
12 you, and what we're going to do, because we have some matters
13 again that we need to take up before we can begin that, since
14 it's late in the afternoon I'm going to ask y'all to come back
15 tomorrow morning at nine:thirty. Okay?

16 Now, you've heard all of the testimony in this case.
17 Again, you have not heard the closing arguments of counsel nor
18 have you heard the charge on the law. And once again, I'm
19 going to remind you, you cannot talk about this case to anyone
20 or even among yourselves. You can't do any investigation or
21 read anything or listen to anything about this case. Alright?
22 Y'all are now excused, I'll see y'all tomorrow morning at
23 nine:thirty. Thank you very much.

24 (Whereupon, the jury leaves
25 the courtroom for the day and

1 the following takes place out
2 of the presence of the jury.)

3 THE COURT: Anything for the record before we break, Mr.
4 Sorenson?

5 SOLICITOR SORENSON: I don't think so.

6 THE COURT: Mr. Johnson?

7 SOLICITOR SORENSON: We may need to talk a little bit
8 about your charge, I guess.

9 THE COURT: What we'll do is, let's go back in there and
10 we'll talk about that.

11 SOLICITOR BELL: He needs to renew his motion.

12 THE COURT: Alright. As soon as y'all finish getting
13 your stuff together if y'all will come back in chambers ...

14 SOLICITOR SORENSON: You need to just officially renew
15 your motion now.

16 THE COURT: Oh, yeah, I'm sorry, that's correct, I'm
17 sorry.

18 MR. JOHNSON: Okay. I renew my directed motion for all
19 of the above issues, Your Honor, and the issues that are in
20 the Brief that I handed you up, based upon all of that.

21 THE COURT: Alright, again, for the reasons I mentioned
22 earlier, I'm denying your motion for a directed verdict, and
23 as I indicated, the, since nothing has changed, I will look at
24 this and we'll talk about what I'm going to charge with that
25 back in chambers, and we'll come back and put that on the

1 record. Okay? Alright, thank y'all.

2 (Recess)

3 THE COURT: Ms. Harry Dot, we have gone back in chambers
4 to go over the charge, and I have gone over my charges with
5 the attorneys. It appears from my reading or my take on the
6 evidence, I'm not going to be charging voluntary or
7 involuntary manslaughter as lesser included offenses.

8 The State has requested that I make the standard charge
9 for malice, common law or inference that malice may be, may
10 arise when a deed is done with a deadly weapon. The Defense,
11 Mr. Johnson, has objected to that charge, and referred me both
12 to the Belcher case and to the Miller case which was a Court
13 of Appeals Decision. In my review of the Miller case which is
14 the most recent it appeared that there was some testimony by
15 the State's witnesses that would mitigate the charge of murder
16 in the Miller case. I do not find them in this case; however,
17 Mr. Johnson takes exception to that, and I'm noting his
18 objection in the record. And anything else, Mr. Johnson, you
19 want to add to that?

20 MR. JOHNSON: Your Honor, I don't want to add anything,
21 you have been kind enough to -- I just want to add that my
22 argument is the argument in the Brief that I handed up.

23 THE COURT: Well, what we'll do is, Mr. Johnson, just
24 preserve that, your defendant's trial be for exclusion of
25 evidence of statement -- wait a minute, that's not it. Hold

1 on. It's the one that you gave me concerning malice.

2 MR. JOHNSON: If you want to read that caption.

3 THE COURT: Oh, I'm sorry, thank you, sir. Defendant's
4 Trial Be On the Issue of Implied Malice Jury Instruction.

5 MR. JOHNSON: That's right.

6 THE COURT: Yes, sir, I will mark -- if you have an extra
7 copy we'll mark that as Court's Exhibit Number Three so that
8 objection to my ruling will also be preserved along with all
9 the points that you made.

10 MR. JOHNSON: Your Honor, that's all I have.

11 THE COURT: Okay.

12 MR. JOHNSON: Thank you, and we'll be here in the
13 morning.

14 THE COURT: Okay. See y'all at nine:thirty.

15 COURT REPORTER: So, what do I ...

16 THE COURT: Huh?

17 COURT REPORTER: Where is Court's Three? Will you give
18 that to me tomorrow?

19 MR. WILLIAMS: Yeah, we've got highlights on this one.

20 THE COURT: Oh, I've got one back here, I'll get it.

21 Okay, wait right there, I'll get it for you.

22 COURT REPORTER: Alright, sir.

23 THE COURT: Here we go. That's okay, I've got it right
24 here, Mr. Williams. Okay? Thank you. Ms. Harry Dot, here it
25 is, that's Court's Three.

1 (Court's Exhibit Three
2 marked and filed.)

3 (Recess for the day)

4 DATE:

5 AUGUST 16, 2012

6 THE COURT: Is the State ready to go?

7 SOLICITOR SORENSON: Yes, sir.

8 THE COURT: Alright. Where is Mr. Williams?

9 MR. JOHNSON: He was right here a moment ago, I think he
10 just went in the hall.

11 THE COURT: Alright. Is the Defense ready?

12 MR. JOHNSON: Yes, sir.

13 THE COURT: Okay. Is the jury here?

14 BAILIFF: Yes, sir.

15 THE COURT: Alright, bring them on out.

16 MR. JOHNSON: Your Honor, he's going to try to go get Mr.
17 Williams, he's in the hall.

18 (Whereupon, the jury
19 enters the courtroom.)

20 THE COURT: Good morning, Ladies and Gentlemen, thank
21 y'all. Y'all have been very attentive during the trial, and I
22 appreciate that. We are now getting ready to get down to the
23 final parts of the trial. What we're -- we've got -- both
24 attorneys are going to give you closing statements and then
25 I'm going to charge you with the law. After I charge you with

1 the law I'm going to excuse you to go back into the jury room.
2 You will not begin your deliberations at that time because
3 I've got to go over my charges then with the attorneys, and
4 make sure I didn't mis-speak, leave something out, or have to
5 correct a charge. If I have to do that I will bring you back
6 out, correct the charge and then send you back into the jury
7 room. If, however, everything goes fine I will send the
8 evidence back into the jury room with you along with the
9 verdict form, and the bailiff will tell you to begin your
10 deliberations at that time. But again, until you are told to
11 begin your deliberations you cannot begin talking about this
12 case.

13 Now, as I told you, we're getting ready to get the
14 closing arguments of the attorneys. Remember, that's not
15 evidence but you need to pay attention to their closing
16 arguments. They're going to be talking about the evidence
17 that you have heard in this case, so if you would give them
18 your close and undivided attention I'd appreciate it.

19 Alright, Mr. Sorenson.

20 SOLICITOR SORENSON: Thank you, may it please the Court.

21 THE COURT: yes, sir.

22 CLOSING ARGUMENT BY SOLICITOR SORENSON:

23 Good morning, Mr. Foreman, and Ladies and Gentlemen of
24 the jury. No doubt about it, back in April of Two thousand
25 eleven Jonathan Bailey was selling marijuana. Even worse, he

1 was selling out of one of our college campuses, it's no doubt
2 about that. He was young, he was stupid, I submit to you,
3 that lure of an easy buck pulled him in. But unfortunately,
4 he paid the ultimate price for those decisions that he made
5 back in Two thousand eleven. Nobody condones those actions,
6 his family I'm sure are not proud of those actions. Ladies
7 and Gentlemen, I submit to you, those actions ultimately are
8 tragically the reason why we're here today.

9 I keep flashing back when I was going over and kind of
10 outlining my closing last night, Mr. Bell's kind of opening
11 statement, the opening kind of quote he gave to you in his
12 opening statement, it's, greed with a window of opportunity
13 sometimes leads to bad results. Greed with a window of
14 opportunity sometimes leads to bad results, and in this case
15 deadly, fatal, tragic results. Now, at first blush you might
16 think -- look at that and think that we're talking about,
17 talking about Jonathan Bailey, but that's not the case, Ladies
18 and Gentlemen. What we're talking about is that man right
19 there's greed, that man right there, seeing a window of
20 opportunity on the night of April Fifteenth, Two thousand
21 eleven, when he thought he could get away with snatching this
22 money, snatching this marijuana that led to those fatal
23 results in pulling that trigger as Jonathan Bailey tried to
24 get away from him in that parking lot on Baldwin Street.

25 Before I forget, let me start by this. Just as His Honor

1 said, the first thing he said to you when you came out here
2 this morning, I, too, want to echo that, I want to thank you,
3 not only on behalf of the citizens of Orangeburg County, State
4 of South Carolina, the family and friends of Jonathan Bailey,
5 not only for your time, because I know you basically you
6 didn't have any choice in the matter when you came here on
7 Tuesday once you got picked. I mean, basically, it's nothing
8 you can do about that. So, not only for your time, but more
9 importantly and most importantly for your attention. The
10 attention that I've seen you give this matter over the last
11 several days. We've had a chance to sit and observe you,
12 you've been on time, we haven't had to wait for you, if
13 anything you've had to wait for us sometimes, but for that
14 attention that I'm sure you going to continue to give this
15 matter, not only this morning to myself, to Mr. Johnson, and
16 to Judge Dickson when he charges you on the law, but most
17 importantly when you get back into that jury deliberation
18 room. You've had to sit here quietly for the last couple of
19 days and you haven't gotten to ask question, haven't gotten to
20 say anything, and you were reminded that every time you leave
21 the courtroom that, you know, you can't go talk about the
22 case. But in a little while you're going to have that
23 opportunity, and I know that you're going to give it the
24 attention that everyone in this courtroom deserves, not only
25 the family of Jonathan Bailey but also the defendant and his

1 family.

2 Alright, so what's going to happen now? Alright, as His
3 Honor told you, I have an opportunity to come before you and
4 give you my closing argument. Alright? And I'm going to take
5 a few minutes initially and go over a little bit, kind of a
6 little bit of the law in the case. I'm going to talk to you a
7 little bit about the charge of murder and what we have to
8 prove to you before, before you can convict Mr. Young of that,
9 and I'm going to talk to you about a couple of other kind of
10 legal principles that kind of go along with that. And then
11 I'm going to talk to you a little bit about the facts which
12 you've heard from this witness stand over the last two days
13 which I submit to you proves beyond all doubt that Julian
14 Young shot and killed, murdered Jonathan Bailey back on April
15 Fifteenth of last year.

16 Like I said, the first thing I want to talk to you about
17 is the charge. And as you are aware by now, Mr. Young was
18 indicted by the Orangeburg County Grand Jury, he was charged
19 back in May of last year, indicted for murder. Murder, while
20 it's the most serious charge we have on our law books,
21 probably has the simplest and shortest definition of any one
22 of them. Very simply, murder is the unlawful killing of any
23 person with malice aforethought, either express or implied.
24 The unlawful killing of another person with malice
25 aforethought, either express or implied. And I want to take

1 a minute and kind of talk to you about what some of those
2 terms mean.

3 The first one I want to talk to you about is the first
4 one that kind of comes up on there is malice. And His Honor
5 is going to charge you, and this comes in his charge, what
6 he's going to tell you what malice is. Malice is hatred or
7 ill will or hostility towards another person. It's the
8 intentional doing of a wrongful act without just cause or
9 excuse. In other words, you're not defending yourself, so you
10 don't have just cause to do it, with an intent to inflict an
11 injury or under circumstances that the law will infer an evil
12 intent.

13 If you remember back here at the very end of this it says
14 that that malice could be either express or implied. And I
15 think Mr. Bell touched on this briefly in his opening Tuesday.
16 Express malice is if somebody comes up to somebody and says,
17 I'm going to kill you, pulls out a gun and shoots them. I
18 mean, that's obvious, that's express malice. They're
19 expressing their hatred, their ill will, their hostility
20 towards another person. Sometimes you have a situation where
21 somebody, you know, will lie in wait for somebody, you know,
22 they will stake out an area and wait for somebody to come.
23 So, if you have some sort of acts of preparation that lead up
24 to it, that can be express malice, because they are basically
25 showing us their evil intent, their hostility, their ill will

1 towards another person.

2 Often, though, in, I'll say, the vast majority of the
3 homicide cases you have, you don't have that, you don't have a
4 witness that heard somebody say, I'm going to kill you, or
5 something like that. So, obviously, you have to then look at
6 the circumstances surrounding the incident to determine
7 whether you, then, the jury, can infer malice from the
8 defendant's actions and the circumstances surrounding the
9 killing. And malice, as it says here, may be inferred from
10 conduct showing a total disregard for human life. It can also
11 be, arise when the deed is done with a deadly weapon. The
12 fact that Julian Young, I submit, pulled out a hand gun and
13 shot and killed Jonathan Bailey without just cause or excuse,
14 you can infer malice and find him guilty of murder. The fact
15 that, I submit to you, the evidence is going to show that he
16 was trying to steal from Mr. Bailey, trying to swipe it that
17 led to that tussle that ultimately led to Mr. Bailey's death,
18 you can infer from that conduct that he had malice at the time
19 he pulled that trigger.

20 And the other part of that, Ladies and Gentlemen, on here
21 is, murder is the unlawful killing of a person with malice
22 aforethought. The word, aforethought, essentially, all that
23 means is, at the time that fatal blow was struck, at the time
24 that trigger was pulled, that malice had to have existed at
25 that point in time. If you will notice, nowhere in that

1 definition does it say we have to prove premeditation, nowhere
2 in there does it say we have to prove some sort of planning.
3 You've probably heard on T.V. before on shows where they talk
4 about premeditated murder. We don't have that here in South
5 Carolina. What our law requires very simply, is that malice
6 existed at the time that that fatal blow was struck. So, if
7 you find, Ladies and Gentlemen, that these four guys went
8 there to buy marijuana that night, and there had been no plan
9 and no thought of anybody dying prior to that, of trying to
10 rob or trying to steal anything from Mr. Bailey, but when that
11 window of opportunity opened, when Mr. Alston decided he
12 didn't want this marijuana and walked away, that he got greedy
13 and decided he was going to take it and ultimately pulled out
14 a gun and shot Mr. Bailey when Mr. Bailey was justified in
15 trying at that point in time to get away from him by putting
16 his car into reverse, Ladies and Gentlemen, that's murder
17 under our law, and under these facts.

18 Now, the next, the next thing I want to talk to you about
19 is, you've heard, and this is something I'm sure you've heard
20 thousands of times in the past. In our courts and every
21 criminal court in South Carolina, all the way down to simple
22 Magistrate's Court or a Town Court somewhere, all the way up
23 to the highest, highest court in any state in our country, the
24 burden of proof in a criminal case is always on the State,
25 it's always on the prosecution, and that's how it should be.

1 A person shouldn't have to come into Court and prove
2 themselves not guilty. And that's a burden that we welcome,
3 that we welcome. And the burden in this case, just like it is
4 in every other criminal case, is that we have to prove to you
5 beyond a reasonable doubt. Notice, I didn't say beyond any
6 doubt, I didn't say beyond the shadow of a doubt, it's beyond
7 a reasonable doubt, the defendant's guilt. We have to do that
8 before you can find him guilty. Very simply, what that means,
9 Ladies and Gentlemen, is after you've heard all of the
10 evidence, which you have at this point in time, when you get
11 back into that jury room and start looking over it and judging
12 it and weighing it, if you're firmly convinced at that point
13 in time of Julian Young's guilt, under your oath you have a
14 duty to find him guilty. Okay? By the same token, when you
15 look at it and you think there's a real possibility that he's
16 not guilty, then I submit to you, under your oath, you must
17 find him not guilty. Alright? That's the burden of proof,
18 it's very simple. Okay?

19 And I guess the last kind of legal kind of thing that I
20 want to talk to you about that His Honor is going to charge
21 about, there's basically two types of evidence that comes
22 into a court, okay, that you're going to have to consider when
23 you get back into your jury room. There's direct evidence and
24 there's circumstantial evidence. And this is a case that has
25 both of them. It's a case to you that I'm going to show you

1 as I start talking about the facts to you, circumstantial
2 evidence is pretty important in this case. So, I want to take
3 a couple of minutes and kind fo explain to y'all what those
4 are just so you'll have that in your mind as you're listening
5 to the rest of our arguments this morning.

6 Direct evidence is very simply something a witness
7 observed with their senses, what you saw, what you heard, what
8 you felt, what you smelled, something you observed with one of
9 your senses. Examples of that in this case is, you know,
10 Ricky Gipson, Ray Alston, Maurice Thompson, you know,
11 observing Julian Young hanging out of the passenger side of
12 the vehicle, and hearing the pow, or the bang or the gun shot
13 that they all heard. Okay? Those are examples of direct
14 evidence, something that somebody perceived with their senses.

15 On the other hand, there's something called
16 circumstantial evidence. What circumstantial evidence is is
17 when you have facts such as those facts, and you take a series
18 of those facts and when you put them together they ultimately
19 prove another fact. Okay? And that's -- the law gives it, I
20 mean, the same weight between direct and circumstantial
21 evidence. An example I want to give to you about that, let's
22 say you go home, say kind of to cool things off a little bit,
23 put ourselves in the wintertime here. You go home one night
24 after work and it's kind of cloudy out, kind of overcast, kind
25 of blustery, kind of cold in the air, the middle of January,

1 let's say. Alright? You look at the weather forecast and
2 they're talking about a chance of snow tonight. Okay?
3 Excited, maybe you don't have to go to work tomorrow. It
4 still hasn't started doing anything outside. Okay? The
5 temperature's dropping, it's gotten down into, let's say, the
6 low twenties, high teens, and you ultimately go to bed. It's
7 still not doing anything outside but it's gotten cloudy, and
8 it looks like it's going to storm. You get up the next
9 morning and look out your window, there's a winter wonderland
10 outside. Trees are covered with snow, the ground is covered
11 with snow, the house is covered with snow, the car is covered
12 with snow. And if I came in and asked you then, did it snow,
13 and you have no direct evidence that it snowed, you didn't see
14 it snow, you didn't hear it snow, you didn't feel it snow, you
15 didn't taste it snow, you didn't perceive that with your
16 senses, but obviously, from those chain of factors leading up
17 to what you ultimately observed the next morning, there's no
18 doubt in your mind that it snowed overnight, there's no doubt
19 about it. I submit to you, Ladies and Gentlemen, that's what
20 this case is about, it's about a chain of facts that you're
21 going to hear, that I'm going to talk to you about, about the
22 fact of a young man hanging out the side of a passenger
23 vehicle, about the fact of a young man tussling, struggling
24 with the driver of that vehicle, the fact that drugs and money
25 are found outside that vehicle, the fact that drugs and money

1 are found on the floor board and basically where they would
2 have gotten closed when the door closed in there, the fact
3 that three witnesses heard a pow or a gunshot as that person
4 is hanging out that passenger side door of that vehicle, and
5 the victim was shot on the right side right where the driver
6 would be shot if somebody shot him from the passenger side of
7 the vehicle, the fact that one of the witnesses then, after he
8 ducked down and looked back up and the defendant, Julian
9 Young, is now standing basically out in the middle of the
10 parking lot, the same spot that one of those bags of marijuana
11 was found. And Mr. Johnson made a big deal, and I'm sure he's
12 going to continue when he gets back up here this morning, made
13 a big deal about the fact that nobody saw Julian Young with a
14 gun, nobody saw him pull the trigger, nobody saw the gun shot.
15 But I submit to you, Ladies and Gentlemen, use your common
16 sense, is there any doubt, just like is there any doubt that
17 it snowed when you woke up that morning, is there any doubt in
18 your mind that Jonathan Bailey was shot in his car on the
19 night of April Fifteenth, Two thousand eleven? I submit to
20 you, no. Is there any doubt in your mind when you look at
21 that evidence and put those facts together that he did it? I
22 submit to you, the answer is, no. The answer is no.

23 I want to talk to you about just a few minutes here, and
24 part of this unfortunately, since we have the burden of proof
25 and I have to get up here and go first. Mr. Johnson is then

1 going to have an opportunity to get up here and argue, and I'm
2 not going to have an opportunity to get back up and attempt to
3 rebut anything he says, so a lot of it at this point in time
4 I've got to do some kind of anticipating, trying to anticipate
5 what I think he's going to get up here and argue to you. And
6 the first thing I want to talk to you about, just as His Honor
7 told you a few minutes ago, while all our arguments to you are
8 important, they're not evidence. The evidence is what you've
9 heard from this witness stand and these exhibits that have
10 been introduced. Along those same lines, Ladies and
11 Gentlemen, the questions we ask when we're questioning a
12 witness, the questions are not evidence either. And the
13 assertions that are made from those questions are not
14 evidence. The evidence is the answers that are given from
15 this witness stand. And a couple of those things, and the
16 reason I bring that up, because I was kind of going over this
17 last night, and came up with five or six different situations
18 where Mr. Johnson was asking questions, and a lot of times he
19 was asking them over and over, the same question over and over
20 again and getting the same answer basically. But just because
21 he asked the question a bunch of times doesn't suddenly make
22 what he's saying the truth. The evidence is what comes from
23 the witness on the witness stand. Okay? And a couple of
24 examples of that, if you think back to the first witness that
25 I called was Sergeant Williams, Sergeant Kendra Williams. And

1 one of the things Mr. Johnson asked her on cross-examination
2 was the fact that, you didn't write in your report that Mr.
3 Bailey told you that he was in pain, or that he appeared to be
4 in pain, with the implication being that she was making that
5 up. You know, he handed her a report and she was kind of
6 flipping through it, and she didn't see it initially where it
7 was in there. So, I mean, her answer to him on cross-
8 examination at that point was, no, I didn't put that there.
9 So, obviously, the implication that he was going to argue to
10 you was that she was making that up, you know, she didn't
11 document that because if it was true she would have documented
12 it. If you remember, when I got back up on redirect and
13 handed her and pointed it to her, she had on there documented
14 where she had written down that he was in a lot of pain.
15 Okay? So, something like that, something just as simple as
16 that.

17 Alright, the next example I kind of came up with, going
18 through notes, was here when Ricky Gipson testified. You
19 remember the young, the college kid that they had picked up.
20 Alright, he said over and over again, you never told those
21 SLED officers, and handed him his statement, and he was
22 getting on him because he was having trouble reading it,
23 because ultimately as we found out it wasn't in his
24 handwriting, he wasn't the one that had written it, you never
25 told them it had to be either Ray Alston or my client that

1 shot him, you never told them that, did you, you're just
2 saying that now for the first time today. And of course, he's
3 reading through his statement, and it's not in there. So, of
4 course, his answer to that has to be, I guess I didn't tell
5 them that. But you know, Mr. Johnson failed to show him the
6 same affidavit or photo affidavit that he filled out in his
7 own handwriting that same day, on May Sixth of Two thousand
8 eleven, where he told them in his own handwriting, this is one
9 of the guys there, either it was him or the other man with him
10 that shot Jon. He did tell them that, he said it. It's a
11 minor, petty little point, but it's the kind of thing when he
12 does it over and over and over again, just because he asks the
13 question doesn't mean that it's true. Ultimately, the answers
14 and the evidence that supports the answers are the facts that
15 you need to consider.

16 And the last couple of things along those kind of, that
17 kind of topic dealt with Agent Richard Johnson, when Agent
18 Johnson testified yesterday. Alright, there's several things
19 he asked him about. Remember, he asked him, asked him the
20 question probably two or three times about whether he had
21 information that Jonathan Bailey carried a gun for protection.
22 Well, in hindsight I guess maybe he wishes he was carrying a
23 gun for protection, because obviously April Fifteenth he
24 needed it. Alright, Agent Johnson's answer every time was
25 that he wasn't aware of that. Okay? I don't know, I don't

1 have information to that fact. You know, he asked him over
2 and over again, and I suspect he's going to get up here and
3 argue and now argue to you in his closing that Jonathan Bailey
4 had a gun, and I'm going to talk to you a little bit about
5 that in a few minutes, and that somehow it was Jonathan
6 Bailey's gun that he got shot with, I guess. I submit to you,
7 there's no evidence of that, none whatsoever.

8 The same token, along the lines of the gun, you remember,
9 I had Agent Johnson stand up, asked him if he was carrying a
10 gun, had him stand up. Sure enough, he had a gun on his hip.
11 Okay? Mr. Johnson gets back up on recross-examination and
12 starts basically asking him about, I want to say the way he
13 initially led up to it was, you know, this happened in May,
14 during the heat of the summer, you know, nobody has been
15 wearing a heavy coat. But yet again, this didn't happen in the
16 heat of summer, I mean, it's the second week of April. It
17 didn't happen in May when his question is, it happened two and
18 half months before, or two months and a week before summer
19 would even start. Use your common sense of what people's
20 clothing, young people's clothing they wear. You know, people
21 when they're wearing guns, you know, they don't wear them,
22 it's not like the wild west where they're wearing them in a
23 holster on their hips, you know, they're hiding them in
24 clothes.

25 And the last thing kind of along this, dealing with Mr.

1 Johnson's questions, you know, over and over again he's asking
2 the question of these witnesses, you didn't see,-- never said,
3 never told anybody and you're not saying here today that you
4 saw my client with a gun? And that is true, none of those
5 witnesses, Ricky Gipson, Ray Alston, Maurice Thompson,
6 Hilliard Pinckney, none of them ever said, or said here in
7 this courtroom that they saw Julian Young with a gun. But
8 suddenly that turns into, he did not have a gun. Well, I
9 submit to you, Ladies and Gentlemen, those are not the same
10 thing. A witness coming in and saying, I didn't see somebody
11 with a gun is not the same thing as, that person did not have
12 a gun. And harping back to the same example with Richard
13 Johnson, Agent Johnson, if I had never asked him to stand up
14 and he had ultimately just left the witness stand, and at the
15 end of that polled the Twelve of y'all and asked y'all, did
16 you see Richard Johnson, Agent Richard Johnson with a gun?
17 The truthful answer I suspect out of all Twelve of y'all would
18 be, no, you didn't, unless one of y'all happened to have
19 caught him when he turned the right way or something and saw
20 it on his hip. Does that mean he didn't have a gun? Well, we
21 know it doesn't because he showed us that he did. No
22 different than what was going on that night out there. I
23 submit to you, he's running around out there when they're
24 getting checked into that gate at S. C. State, he's not
25 sitting in the back seat with a gun on his waist in full view

1 for that officer to see. Like I said, Ladies and Gentlemen,
2 the evidence is what comes from this witness stand and the
3 facts that you can reasonably infer from them, just like the
4 fact that it snowed outside, the facts that you can reasonably
5 infer from the evidence from the witness stand.

6 So, let's talk now about what was proven. And I'm going
7 to start off with the first witness, Sergeant Kendra Williams.
8 But more importantly, not only what she told us, but I submit
9 to you, through her what Jonathan Bailey told us. What did he
10 tell us happened back the night of April Fifteenth of Two
11 thousand eleven, as he's sitting in the back of the ambulance
12 after being removed from this car after crashing into this
13 building? I submit to you, he knew he was dying at that point
14 in time. You heard from the doctor what that bullet did. It
15 started here, exited here and went through about every organ
16 besides his heart that you have inside your body. It tore
17 through his liver, his lung, kidney, his colon, I'm sure there
18 was one or two more. What did he tell Sergeant Williams? He
19 was over in Queens Village, which we know from the map, of
20 course, they knew that already and that's why she was asking
21 him that, because they knew that he had come out of there into
22 here. He had been in Queen's Village, he had been robbed, and
23 most significantly, Ladies and Gentlemen, when she asked him
24 how many people, what does he do? He holds up four fingers,
25 he holds up four fingers. He had been robbed by four people.

1 Think about it, on the night of April Fifteenth of Two
2 thousand eleven nobody had talked to Ricky Gipson, nobody had
3 talked to Maurice Thompson, nobody had talked to Ray Anthony
4 Alston, didn't have any idea who Gouda was, didn't have any
5 idea who H.D. was. Sergeant Williams has no idea how many
6 people were involved in this robbery. Jonathan Bailey told us,
7 that's how we know that, I submit to you, it has credibility,
8 corroborates the fact that he was, somebody had attempted to
9 rob him. This isn't something that she's just making up,
10 she's got no way to know, I mean, otherwise, I mean, most
11 robberies don't involve four people. Okay? And in this case
12 there were four people that Jonathan Bailey didn't know that
13 showed up in that car, and I submit to you, that's why he told
14 her that, four people. And, of course, we know all this is
15 happening, you know, she testified that she responded, she got
16 the call at Eleven:fourteen and was there at Eleven:twenty.
17 We know from the gate log, you know, that they entered campus
18 sometime between Eleven and Eleven:twenty. So, she's talking
19 to him, I submit to you, within, you know, less than ten
20 minutes of him getting shot, less than ten minutes of them
21 attempting to rob him.

22 But what else do we have, Ladies and Gentlemen? You
23 know, that little bit of information that he was able to give
24 is basically corroborated by the two crime scenes that they
25 find. You know, they go back over, they go back over, Officer

1 Detective Johnson, Dustin Johnson goes back over to Baldwin
2 Street, to that marriage housing, and what does he find there?
3 You know, evidence, I would submit, corroborates what the
4 victim says. I mean, you find a Fifty Dollar bill sitting in
5 the parking lot in one of the parking spaces right near where
6 you ultimately find out the victim's car would have been
7 initially parked. You find another bag of marijuana in the
8 same spot, and then another bag out in the middle of the
9 parking lot. Tire tracks, and I'm going to get to that in a
10 little while because that ultimately kind of corroborates what
11 these other witnesses end up telling you. And then when they
12 search his vehicle, you know, they find, you've got a bullet
13 that I submit to you, is consistent with right where Dr. Rose
14 said it would have gone, you know, out of his left side if
15 he's sitting in the driver's seat of that vehicle. It's going
16 to strike that arm rest, where there appeared to be a little
17 bit of blood on the arm rest at the impact there. And if you
18 think about it, where is that bullet going to go at that point
19 in time? Basically, it's going to fall, you know, right
20 inside of his door. It's got nowhere else to, I mean, once it
21 impacts it's going to fall. And ultimately, what ends up
22 happening to it? When they're dragging, getting him out of
23 the vehicle, getting him into the ambulance it's ultimately
24 found, I believe Eighteen inches he said from the vehicle.

25 But what else do we have in the vehicle? You know, we've

1 got another bag of marijuana on the floor, we've got five
2 Twenty Dollar bills strewn out on the floor. Two of them, and
3 this ends up being, I think, I mean it's most significant,
4 that's not somewhere where people keep money. I mean, that is
5 obviously money that has fallen, I submit to you, during that
6 struggle inside the vehicle, and then when he peels off and
7 the car door closes, it closes on those two Twenty Dollar
8 bills. Okay? A Fifty Dollar bill has fallen out already as
9 he is backing up to attempt to get away from the person I
10 submit to you is trying to rob him, Julian Young.

11 But where do we go from there? Alright, ultimately State
12 Law Enforcement Division is called in that night, early
13 morning. And their involvement at that point in time is, once
14 it turns into a homicide, once Mr. Bailey passes away, SLED's
15 called in. Alright. And you heard Agent Johnson testify
16 that, you know, basically the investigation kind of went a
17 couple of different angles to ultimately end up identifying
18 the individuals that were involved. You had the victim's cell
19 phone that they looked at, text messages that they ultimately
20 were able to track back belonging to Ricky Gipson, where they
21 saw where Mr. Gipson had been texting and calling with the
22 victim throughout the day, throughout the evening, right
23 around the time of the incident, and then some text messages
24 right after the incident. And you heard Ricky Gipson, I mean,
25 he testified that that was part of, I mean, when he ran away,

1 you know, he attempted after that to contact multiple times
2 Mr. Bailey and was never able to get a hold of him, and also
3 the people that had called in about setting up the drug deal.
4 So, they find Ricky Gipson, and they get Ricky Gipson's name
5 that way.

6 While all that's going on they have these two prints off
7 of the car, and they ultimately find this palm print here that
8 gets matched up when they run it through their state data base
9 to Ray Anthony Alston. Okay? So, now we have Mr. Alston and
10 Mr. Gipson. And at that point in time they get Mr. Gipson in
11 and that's when he, you know, give his statement, what he
12 testified about and identifies Mr. Alston as being somebody
13 involved, and that's not going to be somebody that just
14 happened to have touched Mr. Bailey's car, you know,
15 somewhere else. I mean, it's clearly, at that point in time
16 they know that he's involved. May Fourteenth and May
17 Sixteenth he gives two statements to SLED implicating himself
18 as being involved in there, implicating him, Maurice Thompson
19 and Hilliard Pinckney. Mr. Young is arrested, Mr. Thompson
20 is arrested, and Mr. Pinckney is arrested over the next three
21 days, Seventeenth, Eighteenth and Nineteenth.

22 So, let's talk about these witnesses. Alright, the first
23 one is Ricky Gipson, alright, and we're going to try to take
24 them kind of in the order they testified. Alright, Ricky
25 Gipson. No doubt about it, back in April he was selling

1 drugs, too, no doubt about it. And I imagine, Ladies and
2 Gentlemen, and you saw it from him on the witness stand, you
3 know, he's got a decent amount of guilt inside of him about
4 what happened to Mr. Bailey. Let's face it, he's the one that
5 brought these four guys over there that night. He's the one
6 that met up with him earlier in the day, he's the one that was
7 fielding the calls and setting up the deal that night, and
8 he's the one that ultimately brought them to Mr. Bailey that
9 night. And Mr. Johnson was asking him about that, and I'm
10 sure he was expecting him to say no when he asked him about
11 that. I think he was probably a little bit shocked when he
12 said, yeah, I mean, I feel very responsible for that. And
13 that's something that, you know, I guess they could have
14 charged him with, you know, with selling marijuana or
15 something, but you know, that's something what, his actions
16 and what they led to that night are something that he's going
17 to have to live with for the rest of his life. And hopefully,
18 it's something that's going to change his life at this point
19 in time, but only time will be able to tell that. Well, let's
20 look at what, at Mr. Gipson's testimony. Alright, Mr. Johnson
21 gets up there and attacks him, attacks him, and attacks him.
22 He was jumping all over him, you know, basically, telling him
23 he's guilty of murder, he's guilty of murder for setting up
24 this drug deal that led to, led to a homicide. You know, so
25 he wants you to basically convict Mr. Gipson of murder. But

1 that kind of begs the fact, you know, if he's guilty of
2 murder, then I don't see how there's any question at all about
3 his guilt, I mean, any at all, the person that pulled the
4 trigger, the person that was trying to steal from Mr. Bailey.
5 Alright, but then he also jumps all over him about the fact
6 that he had the gall basically to go talk to a lawyer after,
7 you know, the cops talked to him that first time, and when
8 they had got back with him he had contacted a lawyer. I
9 submit to you, the very thing I submit to you Mr. Johnson, if
10 Mr. Gipson had come to him, would have advised him to do is,
11 you need a lawyer. Alright, but let's talk about what he says
12 happened. Alright? You know, the fact of the matter is, I
13 mean, he, I mean, Mr. Gipson, and Mr. Johnson wants to make
14 him out to be this bad person, and as I said, I mean, nobody
15 is condoning what he was doing that night, he was a drug
16 dealer, and that's wrong. Alright, but he doesn't really say
17 anything any different than his friends. I mean, it's not
18 like Ricky Gipson is coming in here and saying, you know, I
19 saw him with a gun, you know, I saw him shoot my friend. You
20 know, it's no different than what Ray Anthony Alston told
21 y'all, it's no different than what Maurice Thompson told
22 y'all. And I'm going to get to Hilliard Pinckney in a second.
23 Alright? I submit to you, he's telling you what he saw. and
24 I submit to you, if he knew he had a gun he wouldn't have been
25 taking them over there to buy weed from his friend. Alright,

1 but what does Ricky Gipson tell us? You know, earlier in the
2 day he had gotten contacted and ultimately met up with some
3 guys over on the campus that were looking for, looking for
4 some marijuana, and it was more than he had. And he at that
5 point in time attempted to get them up with Mr. Bailey.
6 Alright? And he ultimately told you that Julian Young, Gouda
7 who he introduced himself as, was one of those individuals.
8 Didn't recognize the other ones, didn't know any of them
9 before that. He knows that Ray Anthony Alston, the big dark
10 skinned guy that got in the back seat with him later on that
11 night was not one of them, but he was sitting in the back seat
12 when he gets in the car later, so he doesn't ever get a good
13 look at the driver and the front passenger. So, we don't know
14 if one of them could have been the other person, one of the
15 other people that was with Mr. Young earlier that day. But
16 you know, I think it's -- you know, it's odd that, you know,
17 they're there looking for marijuana, he gets them hooked up
18 with Mr. Bailey, and then suddenly they've got to leave,
19 suddenly they've got to leave, and we'll call you later, we'll
20 call you later. Now, I don't know if the wheels started
21 spinning at that point in time in his head, and we know it
22 wasn't Maurice Thompson with him because Maurice Thompson had
23 been in Charleston and didn't come up until within, you know,
24 hours later, but maybe it was Hilliard Pinckney, you know, his
25 friend that was with him earlier that day. And maybe those

1 wheels are turning at that point in time, I don't know.
2 Alright? There's no way to get inside of their minds and know
3 that. But what does Mr. Gipson tell us? You know, he gets a
4 call later on that night, you know, from people I had met
5 earlier that day. And now they do want to -- they want to buy
6 some weed. They come and pick him up on campus, the same
7 thing that Maurice Thompson and Ray Anthony Alston and
8 Hilliard Pinckney tells you, and they take him around to the
9 marriage housing where he's set up, because that's where he
10 usually meets with Mr. Bailey when they do their business.
11 And what does he tell you? Alright, he gets out of the car,
12 he sees the money initially in the car before they drive
13 around there. It's Ray Alston that has the money, and I'm
14 going to talk to you about what he tells you in a minute.
15 They drive around there, he gets out initially and goes up to
16 Mr. Bailey, and then the other two from the back seat, Mr.
17 Alston and Mr. Young, come up. There's some conversation
18 going on that he ultimately ends up getting out of the middle
19 of about them not wanting the marijuana. He says it's Mr.
20 Alston he thinks that he had handed the money to, and he gets
21 out of the way, and at that point in time he says, remember,
22 he says he thought it was another car that pulled up that kind
23 of caught his attention, looking to make sure, basically to
24 see who it was. When he turns back around the victim has put
25 his car in reverse. Remember, Mr. Alston, he says, at that

1 point in time was standing back by him, not at the victim's
2 car anymore. The victim puts the car in reverse, and is
3 backing up, and that that man hanging in the passenger seat
4 appeared to be tussling or struggling with Mr. Bailey, and he
5 hears a pop. I can't remember, you know, one of them
6 described it as a pop, one of them as a bang, but we know that
7 it was a gun shot that they hear. And he takes off running at
8 that point in time, he says, I didn't have anything on me. In
9 other words, I mean, he wasn't going to get into a shootout at
10 that point in time because he didn't have a gun on him. So,
11 he takes off running. I submit to you, when you look at, and
12 I mean, we're going to get into these other witnesses'
13 testimony here in a second, but when you look at, you look at
14 his testimony, I mean, there's no doubt, I mean, there's
15 nobody else that could have shot Jonathan Bailey. I mean,
16 there's nobody else that could have. And he's got no
17 allegiance to this guy, I mean, but he standing back by him.
18 And that's corroborated by, I submit to you, him and also the
19 other witnesses. There's nobody else that could have shot
20 him, because where, when you think about it, where the victim
21 was shot, you know, he's seated in his vehicle, the driver's
22 seat of his vehicle and he's shot on the right hand side right
23 here. If it's somebody outside the vehicle away who's
24 shooting him, the problem is, he's in the way, he's in the
25 way. There's no way that he could be shot except by Julian

1 Young.

2 And when you start looking at these other witnesses, I
3 mean, even let's start with the next one that we called
4 Tuesday afternoon, Hilliard Pinckney, and I submit to you, he
5 was a horrible witness. I mean, he couldn't remember anything
6 about anything. And when you think about it, if you look at
7 them, and there's a reason for that. If you look at both him,
8 Mr. Alston and Mr. Thompson, who out of the three of them is
9 the one that's closest to Julian Young? Hilliard Pinckney.
10 He's the one that hangs out with him, I believe he even
11 referred to him as a close friend. His baby's mama was living
12 in the same apartment complex back then that Julian Young was
13 living in, Pine Hill Apartments. And it was obviously that he
14 didn't want to be up there. The last thing he wanted to be
15 doing Tuesday afternoon was in here testifying with his friend
16 sitting over there charged with murder. So, it's convenient
17 that he basically didn't remember anything about anything that
18 mattered. But I submit to you, what he does tell us that ends
19 up being helpful is, he corroborates everybody else on where
20 everybody was sitting, who got out of the car, things of that
21 nature.

22 Alright, then you turn to Ray Alston. Remember, Mr.
23 Alston when he came in here all shackled up, he's been in jail
24 for Fifteen months because of that man's actions, for Fifteen
25 months, because of Julian Young's actions. He's got every

1 right in the world to be bitter. I submit to you, he told you
2 the truth. He cooperated with law enforcement, and he's the
3 first one they end up arresting. He cooperated, gave them two
4 statements back in May of last year, laying out what everybody
5 did, came in here Fifteen months later and told you the same
6 thing. He didn't change his story, didn't suddenly say now,
7 you know, yeah, I saw him with a gun. But what does Mr.
8 Alston tell us? Alright, he had the money, he was the one
9 that was planning on buying the marijuana, but you know, he's
10 come up here from Charleston so he doesn't know where to do
11 that. So, people that live up here are the ones that are
12 making the phone calls, Julian Young, Gouda. Alright. That
13 they ultimately come around and pick up this guy that he's
14 never seen before, they go around, park, back into the parking
15 space. He gets out after the college kid goes over, and he
16 goes over and takes a look at the marijuana. He says he hands
17 him two bags, I submit to you, the two bags that are
18 ultimately going to end up on the ground, and he doesn't like
19 the way they look. They're brown and trashy looking. He's
20 not interested, he gives them back. But what Mr. Alston tell
21 us? You know, at that point in time, you know, he wasn't
22 buying the marijuana, okay, Mr. Alston was. He said he was
23 the only one up there talking. He turns around and he has
24 walked up. And why is that? He has walked up, and as Mr.
25 Alston now is walking away, he turns back around and he sees,

1 now he is in the vehicle, tussling, tugging, struggling with
2 Mr. Bailey. The car starts going in reverse, he hears a pop.
3 Yet again, we look at his, just like with Mr. Gipson, there's
4 nobody else that could have fired that shot, nobody. What's
5 more important with him, though? You know, he gets back in
6 the car and he said that basically when all this was happening
7 he was just basically back at the car getting in. He sees all
8 this happen. And what does he tell you the first thing he
9 says to Julian Young when Julian Young gets back in the car?
10 He initially asked him if he's okay, and he says, did you
11 shoot that guy? And if he didn't know that that was a gun
12 shot and didn't know basically what had happened, I mean, he
13 may not have had any idea what was going to happen beforehand,
14 that doesn't -- and I'm going to talk to you about that in a
15 while, but it really doesn't matter. But it's telling that
16 the first thing he asks him is, did you shoot that guy? And
17 what's his response? Because that's even more telling, you
18 know. He doesn't say, no, which would be, if you didn't do
19 anything would be the logical response. He doesn't say, no,
20 what the hell are you talking about? He doesn't come up with
21 some other story and say, man, he pulled a gun on me and tried
22 to rob me. He didn't say anything. He didn't say anything.

23 Then we look at what Mr. Alston tells the police, you
24 know, when he gets arrested a couple months later, or a month
25 later, on May Fourteenth. You know, in his initial statement

1 he tells them that the defendant, Mr. Young, Gouda, you know,
2 tried to take the weed from the victim. Okay? You know, why
3 is he saying that if that's not what he knew happened? Okay.
4 But even more telling is on the second statement, May
5 Sixteenth. and it's actually Mr. Johnson that asked him about
6 this. Alright, his statement on, and part of his statement on
7 May Sixteenth is, I did not know Gouda was going to rob or
8 shoot this guy. I did not know that Gouda had a gun." You
9 see, Mr. Johnson is trying to, trying to make that imply that
10 basically he didn't rob or shoot him, he didn't have a gun.
11 But I submit to you, Ladies and Gentlemen, when you look at
12 those statements, I mean, if you, imagine if you're Mr. Alston
13 and you're writing those statements, I did not know Gouda was
14 going to rob or shoot this guy. I did not know that Gouda had
15 a gun. That doesn't say that he didn't do those things. If
16 anything, it almost says the opposite, it basically is
17 implying that he did. He just didn't know beforehand that he
18 was going to rob or shoot this guy or that he had a gun.
19 Okay? So, that's the same type of thing with the questions.
20 I'm sure he's going to get up here and try to make that mean
21 that Ray Anthony Alston said that Julian Young didn't have a
22 gun. I submit to you, that's not what he said. He's never
23 said that a single time. He said he didn't see him with a
24 gun, but when he has an opportunity in his own writing to
25 write a statement to the police, I mean, he basically implies

1 that he ultimately, it had to have been him that shot him. I
2 mean, there's no other, as I said, no other person that could
3 have done it.

4 Alright, then we have Maurice Thompson. You know, he
5 basically says, for the most part, the same thing as Mr.
6 Alston. You know, he, remember, he's ultimately the one that
7 ends up driving because he's the one that's got a driver's
8 license that leads to him checking in through the gate.
9 Alright. What else does Mr. Thompson tell us? Alright, you
10 know, he is sitting, messing around with his phone in the
11 driver's seat. You know, he has backed in, and a picture of
12 the victim's car has pulled in next to him so that the
13 passenger sides are next to each other. Alright. He is
14 messing around on his phone. I can't remember if he said Mr.
15 Alston had just got back to the vehicle or had gotten in the
16 vehicle, when he hears a bang. Alright, he looks up, and he
17 sees, you know, as he hears the bang he sees Mr. Young hanging
18 out of the passenger side door of the victim's vehicle. Yet
19 again, corroborated, I mean, exactly what Ricky Gipson and Ray
20 Anthony Alston had told you. Alright. He ducks down at that
21 point in time. Alright, logical, the logical thing to do when
22 you hear a gun shot is you're going to duck. By the time he
23 looks back up over the steering wheel, alright, the victim now
24 is speeding off. Alright. You know, he had backed up across
25 onto here, had done that skid mark and headed back down

1 Baldwin Street, alright, leaving that skid mark on the grass
2 and the sidewalk. Alright. But more importantly is, where,
3 where does he say Julian Young is? You know, he is now --
4 remember, initially, the car, you know, the car is parked over
5 here -- they're in these parking spaces. Okay? He's facing
6 out. Okay? He hears a commotion, hears the bang, looks and
7 sees the victim's car backing up with the victim, I mean, with
8 the defendant in the passenger side door. Alright. He ducks
9 down. I submit to you, the defendant, I mean, the victim, I'm
10 sorry, backs up, takes off, and when he looks back up now, the
11 defendant is standing out in the middle of the parking lot,
12 standing out in the middle of the parking lot, which I submit,
13 is where he basically jumped out of the vehicle as Mr. Bailey
14 is backing up. And it just so happens it's right where, you
15 know, we find the bag of weed sitting out in the parking lot.
16 I submit to you, in all the commotion after this, I mean, it's
17 last thing he was expecting, was this guy to throw that car in
18 reverse and take off with him hanging out of that car. You
19 know, money is falling, money is falling that stays in the
20 car, money is falling on the ground, a bag of marijuana is
21 falling on the ground, and lastly, when he jumps out of the
22 car in the middle of that parking lot the last one falls. And
23 at this point in time, I mean, you know, we've heard from Mr.
24 Thompson, you know, Mr. Young -- I mean, Mr. Alston is yelling
25 at him, get in the f-ing car. I mean, they need to get out of

1 there. And they may have, all of them, kind of played down
2 knowing what happened, but I submit to you, there is no doubt
3 about it, at that point in time they knew what had happened.
4 It's why they go in the opposite direction when they hit
5 Russell Street, and more telling is why they do what they all
6 do after this. Remember, the testimony is, the plan, -- you
7 know, I mean, two of these guys, or three of them technically,
8 Mr. Harrison and the other guy that was left back at the
9 apartment, they had drove all the way up from Charleston to
10 come and party. The plan is to go buy some marijuana so they
11 can go out to a club. Well, this happens, you know, if it's
12 no big deal what they think happened, and nobody thought
13 anything out of the ordinary happened, it's no big deal,
14 everything's okay, everything's fine, as Mr. Alston and Mr.
15 Young are telling Mr. Thompson when he's driving away, how
16 come they all go home? You go from one minute when they're
17 all getting ready to get, you know, an ounce or two ounces of
18 weed to go out partying, to suddenly, we're dropping Mr.
19 Young, you know, we're dropping Mr. Young back at his
20 apartment, we're dropping Mr. Pinckney either at his apartment
21 or back over at Nard's studio, we're picking up Mr. Harrison,
22 we're heading on back to Charleston. That right there tells
23 you that they knew something real bad had happened, that they
24 knew that he had done something real bad, and they need to get
25 out of here and didn't need to be hanging around S. C. State

1 out on the streets anymore looking for somebody else to maybe
2 buy marijuana from.

3 Alright. I'm just about done, Ladies and Gentlemen, I
4 appreciate your attention.

5 Alright, the last thing I want to just touch on, just a
6 couple of things here. As I told you before, I'm not going to
7 get an opportunity to get back up here and so, part of this
8 is, I've got to anticipate some of what Mr. Johnson I think is
9 going to argue. And one of the things, you know, he brought
10 out with Mr., with Agent Johnson, Agent Johnson yesterday, you
11 know, defendant is Seventeen years old now. Okay? And I
12 assume he's going to try to, I'm sure that age is going to
13 come up a few times in his closing argument, that he was
14 Sixteen at the time this happened, Seventeen now. And he's
15 going to hope that you're going to feel sorry for him because
16 of his young age. I submit to you, everybody involved in this
17 was young. Alright? I'm going to ask you, Ladies and
18 Gentlemen, under your oath, to do something, to decide this
19 case based on the facts and the law. Okay? It would be
20 improper for anybody in any homicide case for the State to get
21 up here and, you know, ask you to basically convict a
22 defendant just because somebody was killed. And I submit to
23 you, for you to decide your verdict based simply upon how old
24 Mr. Young was at the time would be just as improper. Okay?
25 Under your oath, you said that you'd decide this case based on

1 the facts from this witness stand. If at the end of the day
2 you find that we haven't proven him beyond a reasonable doubt
3 guilty, then find him not guilty and nobody can quarrel with
4 that. But I just ask you to base your decision on that, on
5 the facts, the evidence, the facts and the law in this case,
6 and not on Mr. Johnson trying to tug on your sympathy because
7 of how old Mr. Young is. You know, he made his own decisions
8 that night, and maybe he thought he was going to show off, you
9 know, being the youngest guy, he was going to show off with
10 these older guys, he thought that was his way of being a big
11 man out there that night, I don't know. You know, he made
12 those decision back in April of last year, you know, to be the
13 one, you know, that was hanging out on a college campus, you
14 know, getting in with drug dealers, setting up and calling,
15 setting up the drug deals, toting a gun around, hanging around
16 with a bunch of guys, you know, that are five, six years older
17 than him, and I submit to you, ultimately pulling and using
18 that gun that night. Those are his decisions, and under our
19 law he's an adult, he's responsible for those actions.

20 I'm sure Mr. Johnson, another thing that, from the
21 questions he's asked, you know, the fact that nobody ever saw
22 Julian Young with a gun, nobody ever saw him pull the trigger,
23 that that right there is reasonable doubt. I submit to you if
24 that was the case then we'd have a hard time convicting, you
25 know, the vast majority of homicides. You know, people don't

1 usually kill people with a bunch of witnesses around. Okay?
2 That's why you have to look at the facts. That's why
3 circumstantial evidence in cases like this is so important.
4 Okay? A lot of times we don't have eye witnesses that
5 actually saw somebody pull the trigger.

6 And as I touched on earlier, you know, that malice
7 aforethought doesn't require any kind of premeditation. It
8 doesn't require any kind of plan. Alright, it doesn't matter,
9 Ladies and Gentlemen, under the law whether Ray Anthony
10 Alston, Maurice Thompson, Hilliard Pinckney, Julian Young,
11 whether the four of them or any combination of them hatched
12 this plan earlier in the day, hatched this plan that evening.
13 Okay? It doesn't matter with regards to his guilt.

14 Very simply, Ladies and Gentlemen, if you find that there
15 was no plan, that the other three of them had no earthly idea
16 what he was going to do at the time he did it, that might
17 affect their culpability, whether any of them are guilty of
18 anything, but it doesn't affect his culpability, because like
19 Mr. Bell said, greed with that window of opportunity. If you
20 find, Ladies and Gentlemen, that, you know, he got a little
21 bit upset when he found out and saw that Mr. Alston wasn't
22 buying the weed, and saw an opportunity to take it, and then
23 things went terribly wrong, and he pulled out that gun and
24 shot Mr. Bailey, he's guilty of murder. We don't need to
25 prove the planning.

1 Alright, and then the last little thing as far as, you
2 know, just from some of the questioning that Mr. Johnson had
3 asked, is somehow applying that, I guess this gun must have
4 been the victim's gun. And yet again, going back to what I
5 talked about the questioning of Agent Johnson, okay, those
6 questions aren't evidence, his answers are evidence. As I
7 said to you, first of all, there's no evidence that the victim
8 had a gun. Alright. Let's argue this thing for a second,
9 let's just pretend it was. Alright? Where did it go? Where
10 did it go? You know, there's money all in this car and
11 there's another bag of weed in the car, you know, if
12 somebody's going to come along and swipe something out of the
13 car, you know, I guess in those minutes before law enforcement
14 get there and secures the scene, don't you think the money and
15 the weed would go too? Alright. But more importantly, if you
16 assume it's the victim's gun, it still doesn't explain how he
17 got shot. Alright. I mean, that he somehow shot himself in
18 the side, when we know it's not a contact -- I mean, that
19 just, it makes no sense. Alright. That is Mr. Johnson trying
20 to get y'all's, kind of off, your focus off of what the facts
21 are. Okay?

22 And I guess the arguing would be that, you know, I guess
23 that even though there's no evidence of it, that Mr. Bailey
24 decided to try to rob Mr. Young. Does that make sense? I
25 mean, just for a second, just think about that. If Jonathan

1 Bailey, from the evidence we know, was selling drugs on
2 State's campus. From what Mr. Gipson tells us, you know, this
3 is where they would meet up to do their business. Okay? So,
4 do you honestly believe that he is going to rob one of his
5 potential customers? I mean, he's driving, I mean, it's not
6 like that's a, I mean, a non-descriptive vehicle. Okay? You
7 know, it just makes no sense. But yet again, it's their
8 attempt to try to get your attention off of the facts.

9 Alright, so where does this leave us? I'm going to go
10 through one more time with y'all and then I'm going to sit
11 down, about, I submit to you, what happened that night,
12 because when you look at all the facts, just like the example
13 I gave you early on about it snowing, I submit to you, while
14 there was no doubt when you got up that morning and looked
15 outside that it had snowed last night, there's no doubt that
16 Julian Young murdered Jonathan Bailey.

17 Look at the facts, what do we know? We know that we've
18 got a car with five guys that go to meet him. Three of them
19 get out of the vehicle. We ultimately know that Ricky Gipson
20 initially goes up to the vehicle, and we know that at some
21 point in time Ray Alston and Julian Young go up to that
22 vehicle. We know that not only from the testimony but also
23 from the fact that they each left a fingerprint on the car.
24 Alright. We know that Ray Anthony Alston had never taken any
25 money out at the scene, still had his money that he took with

1 him to go buy the weed in his pocket when he got back to
2 Charleston, and we know that this money that's strewn in the
3 car and on the ground over on Baldwin Street is not Mr.
4 Alston's. We know from his testimony that, you know, he was
5 the one going to buy the marijuana, and he had never shown
6 anybody any money that night. We know then that when he was
7 not interested he walks away from the vehicle. In the process
8 of getting back in his vehicle Mr. Thompson, Mr. Alston, Mr.
9 Gipson and I submit to you, to some degree, Mr. Pinckney, his
10 friend, all say they see at that point in time Julian Young
11 hanging in the passenger side, the passenger side of this
12 vehicle, the door open, tussling, struggling, tugging with
13 Jonathan Bailey, and at that point in time he puts the car in
14 reverse, starts to back up, and they hear a gun shot, a pow, a
15 bang, enough to make people start ducking, enough to make
16 people start running, enough to make people start asking him
17 when he gets back in the car, did you shoot that guy? He puts
18 that car in reverse, ultimately ends up backing up across the
19 parking lot, throws it in gear, peels out, takes off down
20 Baldwin Street. In the process of that we know that Mr. Young
21 somehow ends up out in the middle of the parking lot, because
22 I submit to you, that's where he bailed out of that car as it
23 was backing up, leaving that bag of weed behind, the other
24 bag and the Fifty Dollar bill initially where the initial
25 struggle, tussling, tugging took place. We know at that point

1 in time that Mr. Bailey goes down Baldwin Street and ends up
2 basically doing a hundred and eighty degree turn smack down in
3 the front of the building. I submit to you, he's dying at
4 that point in time. He may not fully comprehend that yet, but
5 you heard Dr. Rose's testimony, that bullet has torn through
6 just about every one of his vital organs, hit major arteries,
7 he's bleeding to death. And that bullet, I submit to you,
8 that I talked to you about earlier, hat tore through his --
9 vitally tore through his body, as I said before, has hit this
10 arm rest and has fallen and is sitting inside this vehicle.
11 He ends up wrecking the car, they get him out and the bullet
12 falls to the ground and they find it later on. And they open
13 the passenger side door, you know, they look in the vehicle
14 when they get there to process it, and they look inside and
15 there appears to be some money, and you can see it on the
16 floorboard. They go around and open the passenger side door
17 and there's two Twenty Dollar bills that are basically stuck
18 in the door well there, since the door was closed on top of
19 it, I submit to you yet again, money that has fallen out, I
20 submit to you, the victim's money. I submit to you, at some
21 point in time, you know, he sees and he knows there's a couple
22 of bags of weed. We know the victim had been a little late
23 after them getting there. Maybe he had just sold some weed
24 somewhere else before he came over there, and had that money
25 stuffed in the visor or something and he saw it and tried to

1 snatch it, too, because people don't leave money laying like
2 that around their vehicle.

3 I submit to you, when you look at all that, and couple
4 that, then, with what Jonathan Bailey tells Sergeant Williams
5 out there, that he was robbed by four men with a revolver,
6 which would yet again be consistent with not finding a shell
7 casing anywhere, I submit to you, there's no doubt, when you
8 look back at this definition of malice, and if that is not ill
9 will or hostility towards another person or the intentional
10 doing of a wrongful act without just cause or excuse, with
11 intent to inflict an injury or under circumstances showing a
12 total disregard for human life, it's hard to imagine how much
13 more -- how much less disregard you can have for somebody than
14 what he showed for Jonathan Bailey on the night of April
15 Fifteenth, Two thousand eleven.

16 So, I submit to you, just like harking back one last time
17 to that example, there's no doubt when you wake up on that
18 January morning that it snowed and you're, snowed outside,
19 there's no doubt, I submit to you, when you look at the facts,
20 look at the facts there's no doubt, there's no doubt, not even
21 beyond a reasonable doubt, I submit to you there's no doubt
22 that Julian Young murdered Jonathan Bailey. There's no doubt
23 he was shot, and no doubt he died as a result of that gun
24 shot. I submit to you there's no evidence of any kind of,
25 anything that was excuse those actions and there's nobody else

1 that could possibly have pulled that trigger based on the
2 evidence in this case.

3 Ladies and Gentlemen, respectfully on behalf of the State
4 of South Carolina and the citizens of Orangeburg County, I'm
5 asking you to do one thing for me when you get back into that
6 jury room, hold Julian Young accountable, hold him responsible
7 for his actions. And the way you do that, Ladies and
8 Gentlemen, is you find him guilty of murder.

9 Thank you.

10 THE COURT: Thank you, Mr. Sorenson.

11 Mr. Johnson.

12 MR. JOHNSON: Your Honor, may it please the Court.

13 THE COURT: Yes, sir.

14 CLOSING ARGUMENT BY MR. JOHNSON:

15 Solicitor Sorenson, Solicitor Bell, Mr. Foreman, and
16 Madam, Ladies and Gentlemen of the jury, I had a long, I
17 stayed up most of the night trying to put together my closing
18 argument, and the more I sat in that chair, I'm not going to
19 stay up here with y'all long, I just want to point out some
20 few points.

21 Did I bring up Julian was Seventeen years old? Yes, I
22 did. Did I think that was a concern? Yes, it was a concern.
23 But there has never been an issue as to whether or not Julian
24 was at the car. The only issue that has always been an issue
25 was, where did the gun come from and how did the shooting

1 occur? That has always been the issue. That has always been
2 the issue. And everything that Solicitor Sorenson say, -- my
3 daddy had this story he told me, two buckets went to the well,
4 one came back from the well happy because he was half full,
5 the other one came back sad because he was half empty. And we
6 see the evidence from two different point of views. He has
7 said some things, now I didn't hear it like that from the
8 stand. I may some things he didn't hear like that from the
9 stand. It doesn't matter how we heard it from the stand, what
10 matters is how you heard it from the stand. And you go back
11 through and you remember what you heard.

12 Well, first of all, I did not question Sergeant Kendra
13 Williams in front of y'all. That's how we can get so involved
14 with the evidence. Attorney Williams questioned her in front
15 of the jury. So, we can get excited about the evidence we
16 heard. Yes, I harped on the fact of, there was no gun, and
17 here's the fact that I harped on. They were with them all
18 day. If he was bragging and such a braggadocios young man and
19 wanted to show his pizzazz and all of that, it seems like
20 sometime that day he would have brought up that gun. He was
21 with them when they went on campus, they got in the car.
22 Five, three people in the back, two people in the front,
23 somebody at some time should have saw that gun. I don't car
24 what kind fo clothes they got on. When they got to the scene
25 where the shooting occurred everybody testified upon my cross-

1 examination that he got out of the car with no gun, he got
2 back in the car with no gun. So, what does that leave? That
3 leaves one place -- now, yes, there had to be a gun some
4 place. But all of the direct testimony -- now there is direct
5 testimony and there's circumstantial testimony. All of the
6 direct testimony, even Officer, I mean, even Agent Johnson
7 said there is no testimony that Julian had a gun. Well, how
8 can I shoot you with a gun that I don't have if I don't bring
9 it out and I don't get back out with it? Well, let's try to
10 clear that up. Well, then, you could infer from the fact that
11 the gun was already in the car. I asked -- and here is how I
12 remember Agent Johnson's testimony. I asked him, did, during
13 his investigation did he receive any information as to Mr.
14 Bailey having a gun? He first said, he said, no. I said, are
15 you sure? He said, no, and I said -- and I went to walk to
16 the table, and I said, I want to make sure, are you sure? And
17 he said, well, I don't recall, It could be, I don't recall.
18 And in my mind, and in his mind he knew why I was going to the
19 table. He said, I don't recall, it could have been, I just
20 don't recall. He said, my file was so big, I don't remember.
21 But that's kind of important. He is here charged with murder
22 and he can conveniently remember the facts that help but
23 inconveniently remember the facts that would help Mr. Young.
24 The law enforcement's job is just to -- and I got this from
25 Mr. Johnson, -- to put the facts on the table and let y'all

1 decide.

2 Here's the leap they want you to make, and it's no
3 question from the testimony, Julian was the last person in the
4 car. Let's just be honest in this, there's no question from
5 all of the testimony, he was the last person to the car with
6 mr. Bailey. But there's no question, he never had a gun. So,
7 there's but one other place for the gun to come from. Now,
8 Mr. Sorenson talked about somebody shooting through the window
9 or shooting from the door. It's almost like everybody should
10 forget that there was a tussle in the car. But what were they
11 tussling over? Could it have been the gun? Could it have --
12 and if you're tussling over a gun and nobody knows what
13 position you were in while you were tussling, and you got shot
14 through the side, nobody knows how it happened. And the
15 pathologist said, well, if I had the clothes I could have
16 determined how close it was. She said, well, it's kind of
17 unspecified but I'm not sure, but I could do more or I could
18 tell you more if I had the clothes. They want you to think
19 because Julian was the last person in the car, he's the person
20 that's alive and he's the one that they charged with murder,
21 well, he's the one that did it all. They're inferring that he
22 had the gun. But there's another inference, there's the
23 inference that Mr. Bailey, and if you use the standard of
24 proof beyond a reasonable doubt you've got to make the leap
25 that if Mr. Bailey had the gun, then were is malice? If

1 Julian didn't take the gun to the car where is the ill will,
2 where is the malice, where is the evil intent to give you
3 malice? There is none.

4 Now, you may be saying in your mind, well, we don't know
5 what goes on in the car. None of us know what went on in the
6 car, but now, is that a doubt? The fact that you don't know,
7 is that a doubt? Is that a reasonable doubt? And then,
8 somebody might say, well, he didn't testify so let's punish
9 him because he didn't testify. But the Court is going to
10 instruct you, he doesn't have to testify, they have to prove
11 it. I read a story, this dad bought his little girls some
12 crayons and it was red crayon, and he went to work that
13 morning and he left her home, and when he got back home that
14 evening the walls had red crayon all over the walls in her
15 room. And he was about to go punish his little girl because
16 he said, I bought this crayon, and why are all the walls
17 marked up? And she said, well, Daddy, I didn't mark the walls
18 up. He said, yeah, but I gave you the crayon. But he forgot
19 that his little niece spent the day with her, and at the end
20 of the story, the little niece, while playing with the crayon,
21 marked the wall. The daddy didn't see the niece, the mother
22 did, but the little girl was blamed for the crayon. None of
23 us know what happened in that car, and the fact that we don't
24 know, that's reasonable doubt. And what they are asking you
25 to do is to say, well, he's the last one there, there was

1 nobody else that could have shot through the window, let's
2 disallow any inference that the gun came from the car, and
3 let's convict him. Well, justice is doing the right thing
4 during tough times. It is easy during these troubled times in
5 society, it is easy to say somebody is guilty. That's why
6 we've got this system in play, because sometimes you can't
7 prove yourself innocent. It is easy to say somebody -- it is
8 difficult to get in a tough situation and somebody has to
9 kill, it's easy, I mean, it's difficult to say, because you're
10 questioning yourself, do I go, am I letting a guilty person go
11 free? But if you've got a reasonable doubt, if you've got a
12 question about where that gun came from, and God knows, in
13 this case there is a question where the gun came from.
14 There's not a question about the shooting, there's not a
15 question about Julian being to the car, but there is a
16 question as to who had that gun, and that's a reasonable
17 doubt.

18 Now, let me give you some more doubt, if he was in there
19 wrestling and pulling over money, we've got all these, we had
20 these fingerprint people to come down and talk, and it amazed
21 me, they got fingerprints off the door, they got two different
22 sets of fingerprints off the door. But if you're pulling on
23 money, there's no fingerprint. They tested the money. If I'm
24 fighting and struggling for money wouldn't there be some
25 fingerprints? I cannot pull on your money and there not be

1 any fingerprints. Is that reasonable doubt? I submit to you,
2 that's reasonable doubt.

3 The other thing, the hanging on the door, I don't
4 remember which two, you recall, and if you don't recall like
5 I recall, then disregard it, but ever since that thing
6 happened so fast, and it's almost like the State is trying to
7 lay it out like this happened, this happened, this happened.
8 This happened so fast, I heard the pop, I think -- Gipson
9 said, I dashed, I run. The others said what happened, I mean,
10 this happened in a matter of seconds. Were they tussling,
11 then they saw him hanging out the door? Was he hanging out
12 that door? If he was hanging out that door then how were they
13 tussling? You have to use your common sense, you have to use
14 your judgement as to what happened at that car. It was dark,
15 nobody saw what happened.

16 I had this belief that nothing is done by accident. As a
17 matter of fact, I say most of the situation we are in, when we
18 were created God had his destiny set up for us. The Twelve of
19 you are not here by accident. You came because you have to
20 make a critical decision. There has been one tragedy. Mr.
21 Bailey's family lost a son. Anybody that cannot sympathize or
22 be hurt by that, something is wrong with you. That's a
23 tragedy. But let's not make it too tragedies. Let's not
24 convict him because we want somebody to be punished. We don't
25 want somebody to be punished, we only want him to be punished

1 if he with malice, if he with ill will, hatred, hostility
2 toward another, it's an intentional doing of a wrongful act
3 without just cause or excuse and with the intent to inflict
4 injury. No evidence to that. That's the law, that's what the
5 Judge is going to charge you. And we can sit back on our
6 emotions and say, somebody died and I just can't let it go,
7 I've just got to forget about the law. The law serves us all.
8 When you do justice, it serves justice over all. Where is the
9 malice? When you go back there ask yourself, where is the
10 malice?

11 Express or implied. I submit to you that the only way
12 for you to find malice is if you imply it from circumstances.
13 But if you take the direct testimony of Ricky Gipson, Hilliard
14 Pinckney, Mr. Thompson, Mr. Alston, and even Agent Johnson,
15 every decision you make is going to be based on the fact he
16 didn't have a gun when he got out, he didn't have a gun when
17 he got back. There was no fingerprints on the money, and
18 neither did they find the gun. So, you have the right to
19 infer from the circumstances, and the Judge will tell you
20 that, you've got a right to do that, you can infer facts from
21 the circumstances, but then do you disallow the express
22 testimony, the direct testimony?

23 I asked Ricky Gipson, I said, so you speculated what
24 went on in the car? He said, no, that's not the right word.
25 I said, give me the right word. He said, assumed is better.

1 I looked at the Twelve of y'all, I see this difficulty,
2 but I ask you, please be fair, please do what's right.

3 Now, Mr. Sorenson made some comments about my tough
4 questioning and all that. Well, Fifteen months ago the family
5 placed Julian in my hands to do the best for him, and if I
6 within my zealousness have said or acted or have done anything
7 that you dislike, I ask you to count that towards me, count
8 that towards my partner. It wasn't my intent, but I probably
9 did, and I'd probably do it again if I thought it was in his
10 best interest, but he didn't do it. Just like he didn't, he
11 did not murder. He was the last one at the car but he did not
12 murder Mr. Bailey. Two tragedies are not going to help his
13 situation. As I go to my seat, I told you I wasn't going to
14 be long, because I mean, y'all know the facts, y'all heard
15 them. I'm just going to ask y'all to have the courage to do
16 what's fair. The signal that we want to send is that at the
17 end of the day we did what was right, not at the end of the
18 day we meet society's need to say we are crime free. Well,
19 until you do justice we're not crime free. I don't care what
20 community you come from, I don't care what background you are,
21 the Twelve of you are going to have to sit down and come
22 together unanimously on a verdict. The word verdict comes
23 from the Latin word, Vere dicto. It means to speak the truth.
24 Sometimes society don't like, because our feelings are in
25 conflict with what the law says. But courage connects our

1 feelings to the conflict. Courage says I want to leave here
2 doing the right thing. What is the right thing? The Twelve
3 of y'all will decide. I told you he was charged when the
4 trial started, he was charged through all of the testimony, he
5 is still charged right now, he's not convicted. He won't be
6 convicted until the Twelve of you make that decision. When
7 you walk out with a unanimous decision whatever you decide,
8 guilty or not guilty, that is when we will have a conclusion
9 to this matter.

10 Thank you for listening to me. I had a lot more notes
11 but I'm not going to burden you. It's time for y'all to do
12 y'all's work.

13 I think the last thing I'm going to do is, Fifteen months
14 ago Julian and his family put themselves in my hands, so as I
15 leave I'm putting Julian in y'all's hands, and the only thing
16 we ask is that you follow the law. The only thing we ask is
17 that you make them prove the case, not shift the burden to us
18 to prove what happened in the car. They must prove what
19 happened in the car. Shifting it to us is not the law. You
20 may not have the answers you want, and the fact that you don't
21 have the answers itself is reasonable doubt, because you've
22 got to infer whether he had a gun, and then you've got to
23 infer whether he used that gun with malice. That's doubt,
24 that's reasonable doubt.

25 Thank you.

1 BAILIFF: Your Honor, may I approach?

2 THE COURT: Yes, ma'am. Thank you, ma'am.

3 (Whereupon, the Court examines
4 the verdict.)

5 THE COURT: Alright, Madam Clerk, would you please
6 publish the verdict.

7 VERDICT OF THE JURY:

8 CLERK: I'd like to bring the Court's attention to
9 Indictment Number 2011-GS-38-01833, the State of South
10 Carolina versus Julian Young. We, the jury, unanimously find
11 the defendant as to the charge of murder, guilty. Signed,
12 Michael Cocke, date, Eight/Sixteen/Two thousand twelve.

13 THE COURT: Thank you, ma'am.

14 Alright, anything from the defense?

15 MR. JOHNSON: Your Honor, no, I'm not going to poll the
16 jury.

17 THE COURT: Alright, thank you, sir.

18 Alright, Ladies and Gentlemen of the jury, y'all have had
19 to serve on jury duty for three days. Y'all have been
20 attentive. I know it was not an easy thing to do to serve on
21 the jury. I want to tell you that I appreciate your service,
22 I appreciate your attention, and now y'all are excused. Okay?
23 Thank y'all for your service.

24 (Whereupon, the jury leaves
25 the jury box.)

1 THE COURT: This is the State versus Julian C. Young.

2 Ladies and Gentlemen, when I got ready to read the
3 verdict I reminded everybody they had to keep their composure.
4 Now that I'm getting ready to sentence Mr. Young I need to
5 remind you that you've got to keep your composure as well. If
6 you cannot keep your composure now is the time to leave the
7 courtroom.

8 Alright. Mr. Jefferson, I appreciate you coming up and
9 speaking about your son, I really do. And I understand where
10 you're coming from and why you want the time you requested,
11 and I can probably honestly say if I was in your situation I'd
12 say the same thing. But the other thing though is, Mr. Young
13 is a very young man. I believe he doesn't have any kind of a
14 record, is that correct, Mr. Sorenson?

15 SOLICITOR SORENSON: That's correct.

16 THE COURT: And I have to consider that. Okay?

17 Mr. Young, the jury has heard all the evidence in this
18 case. You know, they have found you guilty, and what occurred
19 was a senseless act, there was no reason for you to even be in
20 that situation. You didn't need to be around there. What I'm
21 doing is ...

22 SENTENCE OF THE COURT:

23 The sentence of this Court, Mr. Young, is that you are
24 committed to the State Department of Corrections for a period
25 of Thirty-five years. I'm going to give you credit for the

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Indictment No. 2011GS38-1832
 2011GS38-1833

STATE OF SOUTH CAROLINA)

v.)

JULIAN YOUNG)

DEFENDANT'S TRIAL BRIEF FOR
 EXCLUSION OF EVIDENCE OF
 STATEMENTS MADE BY
 DECEDENT

Now comes the Defendant, Julian Young, by undersigned counsel, and offers the following Brief in support of Defendant's motion to exclude any and all evidence of statements purportedly made by the decedent Johnathan M. Bailey on or about April 16, 2011:

FACTS

The investigative file provided to the defense includes a written document entitled "Voluntary Statement", signed by South Carolina University Police Officer Kendra DeAnne Williams, at approximately 4:45 a.m. on April 16, 2011. The narrative of this Statement includes the following:

...The victim did not want to talk or answer questions because he advised he was in too much pain. I asked him if he was in Queens Village and he shook his head yes. Then I asked if he was robbed, again he nodded yes. I asked how many and [sic] victim held up four fingers. I asked if he saw the gun and was it a revolver, victim nodded yes. When I asked if the gun was silver or black he nodded no for both. The victim would not give his name or any other information. Capt. Thad Turner went into the ambulance and the victim advised his name and address... Upon Capt. Turner's initial arrival he stated the victim said, "They robbed me, they robbed me, that's when they shot me!"

SLED Investigative File, Case Number 31110030, Orangeburg County, Attachment #4 (emphasis added) (attached hereto and incorporated herein by this reference as "Defendant's Exhibit "A").

Upon information and belief, the State of South Carolina seeks to enter into evidence, this written Statement, as well as the testimony of Officer Williams, and/or other hearsay evidence of decedent's statements, as *excited utterances* or *dying declarations*.

ARGUMENT

1. STANDARD OF REVIEW

Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. *State v. Rice*, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct.App.2007) (emphasis added). The trial court abuses its discretion when the ruling is based on an error of law or factual conclusion that is without evidentiary support. *State v. Garner*, 389 S.C. 61, 65, 697 S.E.2d 615, 617, 2010 WL 1755057 (Ct. App. 2010), reh'g denied (Aug. 27, 2010), cert. denied (Feb. 8, 2012) (emphasis added).

2. THE CONFRONTATION CLAUSE BARS ADMISSION OF UNCONFRONTED 'EXCITED UTTERANCES'

The United States Supreme Court held that the United States Constitution's Confrontation Clause bars testimonial out-of-court statements by witnesses, unless witnesses are unavailable and defendants had a prior opportunity to cross-examine them, regardless of whether such statements are deemed reliable¹ by the trial court. *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), abrogating *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 59 (1980) and, by implication, overruling *dicta* in *State v. McHoney*², 344 S.C. 85, 544 S.E.2d 30 (2001).

"Leaving the regulation of out-of-court statements to the law of evidence would render

¹ A review of Officer Williams' Statement reveals its unreliability, developed in Argument 3, below, but it applies here as well.

²In *dicta*, the Court found: "Although we find the victim's statement was a valid dying declaration, her statement also satisfies the excited utterance exception to the hearsay rule. Rule 803(2), SCRE" *McHoney*, *supra* 344 S.C. at 94, 544 S.E.2d at 34.

the Confrontation Clause powerless to prevent even the most flagrant inquisitorial practices." *Crawford supra*, 541 U.S. at 51, 124 S. Ct. at 1364. "The text of the Confrontation Clause reflects this focus. It applies to "witnesses" against the accused - in other words, those who "bear testimony." *Id.* Barred testimonial statements include "statements that declarants would reasonably expect to be used prosecutorially." *Id.* "Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard." *Id.* 541 U.S. at 52, 124 S. Ct. at 1364.

South Carolina follows this directive: "The Supreme Court has held testimonial hearsay against a defendant violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the witness." *State v. Garner*, 389 S.C. 61, 66, 697 S.E.2d 615, 617, (Ct. App. 2010), reh'g denied (Aug. 27, 2010), cert. denied (Feb. 8, 2012). Thus, any and all evidence of statements made by the decedent to law enforcement personnel are not admissible under the 'excited utterance' exception of Rule 803 SCRE, or any other evidentiary rule, because the declarant is unavailable and the defendant has not had an opportunity to cross-examine him; and also because the decedent would have 'reasonably expected it to be used prosecutorially'.

Defendant contends that such evidence includes documentary evidence, such as Officer Williams Statement, and testimony about decedent's statements to any law enforcement personnel, or to any person after Officer Williams identified herself in the ambulance. From the moment Officer Williams identified herself, and again when Captain Turner entered the ambulance, decedent 'reasonably expected' a criminal investigation to be underway. From this knowledge he reasonably expected his statements - to all persons present - to be monitored and made a part of the investigation for prosecutorial use.

3. DECEDENT'S STATEMENTS ARE NOT 'DYING DECLARATIONS'

Statements amounting to dying declarations may be admitted under certain circumstances; but the decedent's gestures and cryptic answers to Officer Williams do not meet the requirements set forth by the U.S. Supreme Court. First, nothing in the evidence indicates that the decedent believed his death was imminent.

Fear or even belief that illness will end in death will not avail of itself to make a dying declaration. There must be 'a settled hopeless expectation' that death is near at hand, and what is said must have been spoken in the hush of its impending presence. Despair of recovery may indeed be gathered from the circumstances if the facts support the inference. There is no unyielding ritual of words to be spoken by the dying. Despair may even be gathered, though the period of survival outruns the bounds of expectation. What is decisive is the state of mind. Even so, the state of mind must be exhibited in the evidence, and not left to conjecture. The patient must have spoken with the consciousness of a swift and certain doom.

Shepard v. United States, 290 U.S. 96, 100, 54 S. Ct. 22, 24 (1933) (citations omitted) (emphasis added). Accord, *Giles v. California*, 554 U.S. 353, 358, 128 S. Ct. 2678, 2682-83 (2008).

Undersigned's research found that *Shepard, supra*, has been cited 172 times around the country for this point. Further, *Shepard* held that admission of evidence as a dying declaration, which fails to qualify under these strictures is reversible error, even if it might have been admissible on some other ground. *Shepard*, 290 U.S. at 98 and 104, 54 S. Ct. at 23 and 25-26. This holding has been cited 78 times. Here, the decedent hardly spoke to Officer Williams, and instead, mostly gestured. There is nothing from which to draw a reasonable inference that he "spoke[] with the consciousness of a swift and certain doom", a "settled hopeless expectation" of death, or "despair of recovery". South Carolina has long recognized that *certainly* of imminent death is required:

The rules in regard to such testimony are well settled: 1st. That death must be imminent at the time the declarations in question are made. 2nd. That

the declarant must be so fully aware of this as to be without any hope of life. And 3rd. That the 'subject of the charge' must be the death of the declarant, and the circumstances of the death must be the subject of the declarations.

State v. Bethea, 241 S.C. 16, 21, 126 S.E.2d 846, 849 (1962).

4. THE EVIDENCE IS INHERENTLY PREJUDICIAL

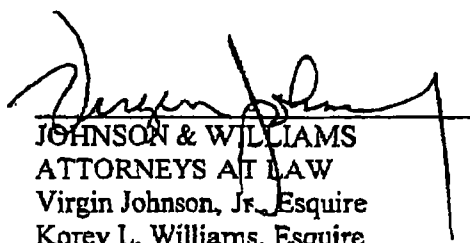
Next, a review of Officer Williams' Statement reveals its inherent uncertainty and unreliability – the decedent purportedly "nodded no"; "nodded yes"; but, also, "shook his head yes". We have no way of knowing what these gestures actually meant. Decedent answered compound questions "if he saw the gun and was it a revolver." Again, we have no way of knowing which question he answered when he "nodded no for both". Likewise, we cannot know whether his answer to "I asked how many" meant how many assailants, how many items were taken from him, or some other referent, when he "held up four fingers". Further, the Statement contains hearsay within hearsay: "Upon Capt. Turner's initial arrival he stated the victim said, "They robbed me. they robbed me, that's when they shot me!"" (Exhibit "A")(Emphasis added).

Thus, if the Statement and Officer Williams' testimony about the Statement are offered on other grounds, they should be excluded as inherently unreliable, confusing, prejudicial and thus, incompetent. "Even relevant evidence may be excluded on the grounds of its competency." *State v. Pipkin*, 359 S.C. 322, 327, 597 S.E.2d 831, 833, (Ct. App. 2004). "For instance, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *Id.* (Citations omitted). This confusion and unreliability renders the evidence utterly inadmissible: "Homicide may not be imputed to a defendant on the basis of mere suspicions, though they are the suspicions of the dying." *Shepard*, 290 U.S. at 101, 54 S. Ct. at, 24. "The declaration is kept out if the setting of

the occasion satisfies the judge, or in reason ought to satisfy him, that the speaker is giving expression to suspicion or conjecture, and not to known facts". *Id.*

CONCLUSION

On the basis of all of the above and foregoing, it is respectfully requested that this Court exclude the Statement of Officer Williams, Captain Turner, or any other individual, any testimony related thereto, and any and all other hearsay evidence of "dying declarations" or "excited utterances" of the decedent.



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Orangeburg, South Carolina
August 13, 2012

WITNESSES

Richard Johnson

State Law Enforcement Division

ARREST WARRANT NUMBER
M805407

Arrested: May 17, 2011

ACTION OF GRAND JURY
TRUE BILL

E. J. Hester

Date: FEB 08 2012
Foreperson of Grand Jury
ate: February 8, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1833

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 6, 2012 TERM

THE STATE
vs.

Julian C Young

Indictment for
MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

2012 FEB - 8 PM 1:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

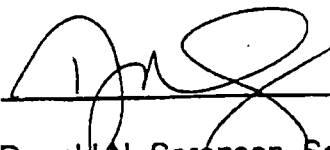
INDICTMENT
2011GS38-1833

At a Court of General Sessions, convened on February 6, 2012 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about April 15, 2011, with malice aforethought, the defendant, Julian C Young did kill one Johnathan Bailey by means of shooting the victim with a handgun. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

RESPONDENT

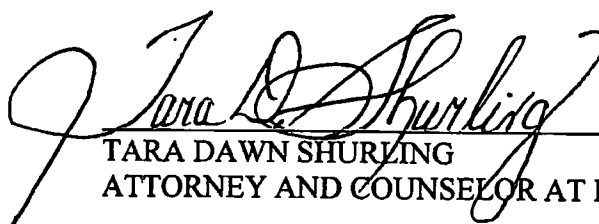
v.

JULIAN C. YOUNG,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.


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ATTORNEY FOR APPELLANT.

This 2nd day of December, 2013.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Orangeburg County
Court of General Sessions**

Edgar W. Dickson, Circuit Court Judge

**Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006**

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

JULIAN C. YOUNG,

APPELLANT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

I.

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

STATEMENT OF THE CASE

The Appellant was indicted by the Orangeburg County Grand Jury for the offense of murder. See, Indictment no. 2011-GS-38-1833. He was represented in the trial court by Virgin Johnson and Corey L. Williams, of the Orangeburg County Bar. The Appellant proceeded to trial by jury on August 14 – 16, 2102. The State was represented at trial by Assistant Solicitors Donald Sorenson and Harrison Bell. At the conclusion of this trial, the Appellant was found guilty as indicted and was sentenced by the Honorable Edgar W. Dickson, presiding circuit court judge, to a term of thirty-five (35) years incarceration.

The Appellant served and filed a timely Notice of Appeal from his judgment and sentence. This appeal follows.

ARGUMENT

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

At trial, the Appellant made a motion pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004) that any testimony concerning statements attributed to the victim-deceased be excluded. The Appellant argued that admission of testimony concerning these statements, where the victim was not available for cross-examination, would violate his rights pursuant to the confrontation clause of the United States Constitution. The Appellant cited *State v. Gardner*¹ and *Rule 803, SCRE*, in support of his position that the testimony in question would be prejudicial hearsay. The Appellant further argued that the statements in question should not be admitted as dying declarations where there was no reliable evidence from which it could be determined that the victim-deceased actually believed he was dying. Defense Counsel argued that the fact that the victim-deceased, who was known to be a drug dealer, did not want to give his name to the police, was evidence that he was capable of reflective thought at the time. This fact, the Appellant argued, directly evidenced that the victim-deceased was capable of reflective thought at the time the statements were made. Likewise, it was argued that the statements in questions were not spontaneous utterances but rather, were made in response to questioning by a sergeant with the South Carolina State University Police Department; Kendra Williams. ROA p. 4, line 11 – p. 7, line 15. In response to the Appellant's motion, the State argued that *Crawford*, supra, should not apply because the statements were not testimonial in nature. ROA p. 9 lines 12-22.

Testimony from Sergeant Williams was presented *in camera*. She testified that when she arrived at the scene the victim-deceased was in the back of an ambulance. ROA p. 14, lines 10 –

¹ The record reflects that Counsel cited to *State v. Gardner*, however, based upon the content of his argument, Appellant asserts that this is a probable reference to *State v. Garner*, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012).

23. He had a gunshot wound to his right chest and another wound on his left side. ROA p. 15, lines 5 – 11. According to Sgt. Williams, he appeared to be in a lot of pain. She said, “[h]e was frantic, he was rolling back and forth, he was scared, he kept saying, get me to the hospital, I’m going to die. He was, he was scared.” ROA p. 15, lines 14 – 19.

According to this witness, she asked the victim if he had been robbed and he shook his head, yes. She asked him if he had been in the parking lot of Queen’s Village and he once again nodded, yes. She asked him if he saw who robbed him and he indicated that he did by shaking his head. She then asked him how many people robbed him and he held up four fingers. When she asked, “four?” he shook his head, yes. Although he supposedly shook his head yes in response to the question about whether he saw the gun that shot him, he shook his head “no” when asked if the gun was black or silver. ROA p. 16, lines 2- 13. She testified that the victim was having a really hard time speaking and that he mostly just shook his head to answer questions. She did claim that he said he was in pain and that he was going to die. ROA p. 16, lines 11 – 21. On cross-examination, Sgt. Williams acknowledged that she had given a statement to Investigator John Johnson with SLED. She said that she had told him everything that happened, “if I recall.” ROA p. 18, lines 6 – 14. She admitted that in her statement to SLED

- She did not say the victim was frantic;
- She did not say that he had said “get me to the hospital”;
- She did not say that the victim was scared;

ROA p. 18, line 3 – p. 18, line 12.

Sgt. Williams also acknowledged that when she first spoke to the victim he would not tell her his name. ROA p. 22, line 24 – p. 23, line 4. In response to the testimony of Sgt. Williams, Trial Counsel noted that in the statement she gave to SLED, Sgt. Williams reported that the victim said, “get me to the hospital because I’m shot, I’m hurt.”, as opposed to, “I’m going to die” as she claimed in court. ROA p. 24, lines 10 – 14. The Appellant renewed his objections to

the admission of this testimony on the ground that it clearly wasn't an excited utterance nor was it a dying declaration. Trial Counsel argued that the statements in question were more prejudicial than probative under Rule 403, SCRE. ROA p. 23, line 21 – p. 25, line 8. The State argued that the fact that the victim was in pain, and wanting to get to the hospital, coupled with the fact that he thought he was about to die, made these statements non-testimonial. The State additionally argued that since the victim did not name the Appellant in any of these statements to Sgt. Williams, the statements were no prejudicial to the Appellant. ROA p. 25, line 12 – p. 26, line 22.

Ultimately, the trial judge acknowledged that he had questions about whether, or not, it would be a dying declaration because the statement this witness gave to SLED after interviewing the victim, did not contain the statement about *"needing to get to the hospital, I'm going to die."* The judge noted that he had *"an issue with whether or not it's a dying declaration"* and he declined to decide the admissibility of this testimony on that issue. ROA p. 27, line 24 – p. 28, line 5. The trial court found however, that the statements in questions were excited utterances and ruled that, as such, they were admissible. ROA p. 28, lines 5 – 24. Trial Counsel challenged the notion that a nodding of the head could qualify as an excited utterance however, the trial court found non-verbal communication could constitute an excited utterance. ROA p. 28, lines 4 – 14. In addition, Trial Counsel noted that Sgt. Williams was not able to say how close in time these statements were made to the shooting. Also, Trial Counsel objected to the position that someone being in pain would qualify as a foundation for a finding that a statement was an excited utterance. ROA p. 29, line 15 – p. 30, line 12.

The State subsequently asked the trial court to rule on whether the statements in questions were testimonial in nature. ROA p. 30, lines 13 – 17. The trial court then stated for the record,

Okay. I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of the excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective thought. And so, right now, this is a

gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. Okay? He was just answering questions that were put to him by a police officer trying to get to the bottom of the situation.

ROA p. 30, line 18 – p. 31, line 3.

In response to this ruling, the Appellant asked the Court to note, once again, that the fact that this witness refused to give his name to the officer interviewing him was evidence of reflective thought. ROA p. 31, lines 9 – 12. The Court responded, "But, I do believe it's an excited utterance." ROA p. 31, line 20.

The testimony of Sgt. Williams in the presence of the jury was largely consistent with her testimony *in camera*. In her testimony in camera she indicated that the victim shook his head and indicated yes when she asked him if he had seen the weapon. She said that when she asked him if the weapon was black or silver, he "*kept shaking his head, no.*" ROA p. 16, lines 7 – 13. In her testimony in the presence of the jury, she added that she had asked him if the gun was a revolver and he answered yes. ROA p. 58, lines 10 – 11. With this exception, her trial testimony was consistent with her *in camera* testimony on the operative points concerning the circumstances surrounding this shooting. ROA p. 57, lines 17 – 21 and ROA p. 58, lines 1 – 14.

The Supreme Court of the United States has found that testimonial hearsay against a defendant violates the Confrontation Clause of the United States Constitution if 1) the declarant is unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004). As recognized by the Court in *Crawford*, "not all hearsay implicates the Sixth Amendment." *Id.*, 541 U.S. at 51. On the other hand, otherwise admissible hearsay testimony may be rendered inadmissible if it is testimonial in nature. *Id.*, 541 U.S. at 68. Thus, if a statement is testimonial in nature, it is not admissible simply because it would otherwise fall under a recognized exception to the hearsay rule. On the other hand, the fact that a statement is not testimonial, does not render it admissible

simply because it does not infringe upon the Sixth Amendment right of confrontation. *State v. Garner*, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012). Where non-testimonial hearsay is at issue, the Sixth Amendment is not implicated. *State v. Ladner*, 373 S.C. 103, 113, 644 S.E.2d 684, 689 (2007). In discussing what the standard for determining whether a statement is testimonial should be, the high court stated, “we leave for another day any effort to spell out a comprehensive definition of ‘testimonial.’ Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Crawford*, 541 U.S. at 68. The Court went on to find that “[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.” *Id.* at 68-69. South Carolina has clearly recognized that a statement that would otherwise be admissible under an exception to the hearsay rule is inadmissible if it is testimonial nature. In *State v. Mitchell*, 378 S.C. 305, 662 S.E.2d 493 (Ct. App. 2009), a prior statement to police which would have been admissible as a statement against penal interest under Rules 804(a)(2) and (b)(3), SCRE, where the declarant refused to testify, was found by the Court of Appeals to violate the confrontation clauses of both the United States Constitution and the South Carolina Constitution. *U.S.C.A. Const. Amend. 6 and 14 and S.C. Const. Art. I, §14*. Our Supreme Court has held that a violation of the Sixth Amendment right to confront witnesses is not per se reversible error. *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006)

On the facts of this case, the statements attributed to the victim-deceased should have been excluded from evidence inasmuch as they were testimonial in nature and the declarant would not be available for cross-examination. The testimony presented during the Appellant’s trial established that drugs were found in the victim’s car. ROA p. 70, lines 4-5. Multiple state witnesses would ultimately testify that the victim was a drug dealer. Despite the fact that he was seriously injured, the fact remains that he made the statements in question while being

questioned by a law enforcement officer concerning the circumstances surrounding his shooting. He made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial. *Crawford, 541 U.S. at 51-52*. On these facts, the statements attributed to the victim by Sgt. Williams were testimonial and their introduction violated the confrontation clauses of both United States Constitution and the South Carolina State Constitution. *U.S.C.A. Cont. Amend. 6 and 14 and S.C. Cont. Art. I, §14*. See also, *State v. Green, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1977)*.

The trial court appears to have concluded that the statements in questions were admissible because the circumstances surrounding these statements met the criterion for the excited utterance exception to the hearsay rule. Assuming *arguendo* that they would, this fact would not render the statements admissible in light of the fact that they were testimonial. As previously noted, otherwise admissible hearsay may be rendered inadmissible if it is testimonial.

Even if this Honorable Court were to conclude that the statements in questions were not testimonial in nature, the Appellant would submit that the circumstances under which they were made did not meet the standard for admission as an excited utterance. Rule 803(2) defines an excited utterance as a,

[s]tatement relating to a startling event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

A court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance hearsay exception and the determination in such matters is generally left to the sound discretion of the trial judge. *State v. Burdette, 335 S.C. 34, 43-44, 515 S.E. 525, 530(1999)*. The rationale behind the excited utterance exception is that “the startling event suspends the process of reflective thought, reducing the likelihood of fabrication.” *State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006)*. As argued by the Appellant at trial, the victim-deceased in this case, knowing he had drugs in his car, refused to give his name to

Sgt. Williams. Such a ploy clearly evidences reflective thought and therefore, establishes that the statements in questions were no made while the victim's state of mind was such that he was incapable of reflective thought and therefore, less likely to fabricate. Hiding your identity in fear of the police is not an action one would expect to see in a person who wasn't expecting to be around to suffer the consequences of their unlawful behavior.

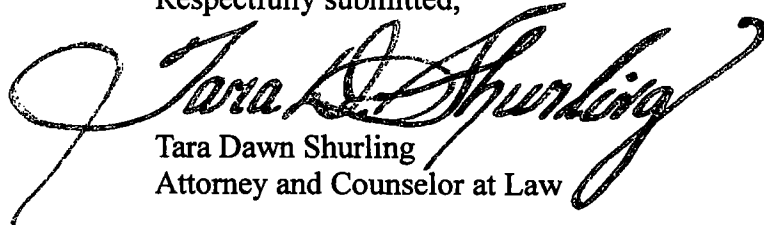
The Appellant would respectfully assert that the admission of the statements attributed to the victim irreparably tainted his ability to review a fair trial. Absent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. Given the totality of the evidence presented in this case, while the circumstances may have given rise to suspicion, they did not establish how the victim died. If anything, the testimony of all the states other witnesses left as a mystery what happened in the moments preceding the victim's shooting. Based on the testimony of the State's own witnesses, it was equally possible that the deceased pulled a gun on the Appellant and was shot in an ensuing tussle for the weapon. The testimony of Sgt. Williams is all the more dangerous inasmuch as she questioned the injured man in a manner which suggested an answer. After all, her question to the deceased was not, what happened? Her question was, were you robbed? ROA p. 16, lines 2-5. It is not unreasonable to suggest that a young man cool enough to refuse to give the police his name after he had been shot, and caught with drugs in his car, might also have been cool enough to seize on the opportunity to shift attention away from himself by answering that question affirmatively. It is also important to note that the statements in question were not blurted out by someone experiencing the immediate effects of a stressful event. He was questioned by the police and his refusal to answer the questions about his identity demonstrates that he was thinking reflectively about his answers.

For all these reasons the Appellant respectfully submits that the trial court erred in admitting the hearsay testimony of Sgt. Williams.

CONCLUSION

Based upon all the above reasons and authorities, the Appellant asks that his judgment and sentence for murder be vacated and that his case be remanded to the Orangeburg County Court of General Sessions for a new trial.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 17th day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
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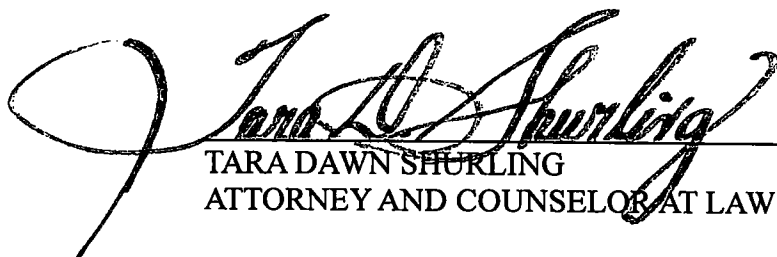
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CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.


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This 17th day of December, 2013.

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IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIAN C. YOUNG,

APPELLANT,

Appellate Case No. 2012-213006.

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

RESPONDENT'S STATEMENT OF THE CASE

An Orangeburg County Grand Jury indicted Appellant, Julian C. Young, in February 2012 for murder. (R. pp. 413–14). On August 14, 2012, Appellant's case was called to trial before the Honorable Edgar W. Dickson. (R. p. 1). Appellant was represented by Virgin Johnson and Corey L. Williams during the three-day trial. (R. pp. 1–2). Assistant Solicitors Donald Sorenson and Harrison Bell represented the State. (R. p. 1). On August 16, 2012, the jury returned a verdict of guilty. (R. p. 405, lines 5–12). Judge Dickson sentenced Appellant to a term of thirty-five years of incarceration. (R. p. 406, lines 17–25). Thereafter, on August 21, 2012, Appellant filed a timely Notice of Appeal.

RESPONDENT'S STATEMENT OF THE FACTS

A Conversation with Victim

Kendra Williams, a sergeant with the South Carolina State University (SC State) Police Department, was dispatched to 2195 Russell Street on the night of April 15, 2011. (R. p. 51, line 3–p. 52, line 5). Williams was called to the property around 11:14 p.m. because a vehicle had hit the building at 2195 Russell Street, which held offices for SC State. (R. p. 52, lines 6–25). Williams arrived on the scene at 11:20 p.m. (R. p. 52, lines 6–12). When Williams arrived at the scene, she observed that a green car had struck the front of the building at 2195 Russell Street. (R. p. 53, lines 13–22). Williams observed “a lot of car pieces and a lot of bricks everywhere. . . .” (R. p. 53, lines 19–20). There were a number of public safety officers already at the scene when Williams arrived. (R. p. 53, lines 13–21). An ambulance was also on the scene. (R. p. 54, line 22–p. 55, line 2).

Williams found the former occupant of the wrecked vehicle, a man named Jonathan Bailey (Victim), in the ambulance when she arrived. (R. p. 56, lines 11–22). Williams got in the back of the ambulance with Victim and observed that he had a gunshot wound to the right chest area and another wound to the left chest area.¹ (R. p. 57, lines 3–13). Williams observed that Victim “was frantic, he was scared, terribly scared.” (R. p. 57, lines 14–17). Victim was rolling back and forth on a stretcher and complaining of the pain he was in. (R. p. 57, lines 14–21). According to Williams, he kept saying, “get me to the hospital, I’m going to die.” (R. p. 58, lines 3–4).

¹ Dr. Kelly Rose, the forensic pathologist who performed Victim’s autopsy, testified that Victim had an open gunshot wound to his stomach and an exit wound coming out of his left side. (R. p. 234, line 1–p. 236, line 20).

Williams asked Victim his name and if he was a student at SC State, but Victim would not answer her. (R. p. 57, line 22–p. 58, line 2). Victim gave few audible responses. (R. p. 62, lines 22–23). But Williams testified that she

asked him if he was Queen's Village, he said he—well, he shook his head, yes. I asked him if he had been robbed, he shook his head, yes. I asked him if, how many, and he stuck his hand up and showed me four fingers. I asked him if he saw the weapon, he shook his head, yes. I asked him if it was a revolver, he shook his head, yes. When I asked him if he saw the color of the weapon, he just shook his head, no. He just kept saying he was in pain, get me to the hospital. It wasn't real easy to get anything out of him.

(R. p. 58, lines 6–14). The ambulance ultimately took Victim to the helipad at The Regional Medical Center of Orangeburg, and then he was transported to another hospital. (R. p. 58, lines 19–25). Victim died later that night from his injuries. (R. p. 59, lines 1–3).

After getting information from Victim, Williams contacted her supervisors, and then a number of officers from the SC State Police Department responded to 2195 Russell Street and also to Queen's Village. (R. p. 60, line 13–p. 61, line 14). The officers secured both locations and began looking for evidence. (R. p. 61, lines 1–14).

Investigation

When Dustin Johnson, an officer with the SC State Police Department responded to Queen's Village the night of April 15, 2011, the crime scene had already been secured. (R. p. 68, line 1–p. 69, line 16). Johnson began to process the crime scene. (R. p. 69, lines 17–24). Johnson found and collected the following pieces of evidence from the crime scene at Queen's Village: two bags of a green leafy substance that appeared to be marijuana and a fifty dollar bill. (R. p. 69, line 24–p. 70, line 8; R. p. 72, line 10–p. 73, line 5). Johnson also photographed an area that had—what he perceived to be—fresh, tire skid marks. (R. p. 70, lines 8–12; R. p. 73, lines 5–12). Johnson did not find any bullets or shell casings in the area. (R. p. 76, lines 14–17).

Johnson then went to process the second crime scene, a short distance away on Russell Street. (R. p. 76, line 23–p. 77, line 14). While observing the wrecked car at the crime scene, Johnson noticed a marking on the arm rest of the driver side door that appeared to be blood spatter, so he began looking for a bullet projectile. (R. p. 78, line 2–p. 79, line 24). He found the bullet projectile about eighteen inches from the side of the car, right under the driver side door. (R. p. 79, line 25–p. 80, line 11). In the passenger side of the car, Johnson found another fifty dollar bill, along with five twenty dollar bills and another bag of a green leafy substance that appeared to be marijuana. (R. p. 83, line 8–p. 84, line 20). Johnson then secured the vehicle with evidence tape and had it towed to a secure location. (R. p. 84, line 21–p. 85, line 7).

Once police learned that Victim had died from his injuries, the South Carolina Law Enforcement Division (SLED) was called in to take over the case. (R. p. 304, line 1–p. 305, line 14). SLED Agent Richard Johnson came to Orangeburg on April 16, 2011 to begin his investigation. (R. p. 305, lines 14–24). Investigators lifted two latent prints from the outside of the passenger door of Victim’s vehicle, one from the top of the window and one from the door, near the key entry. (R. p. 261, line 22–p. 265, line 9). The latent print from the window was identified as belonging to Ray Alston. (R. p. 284, line 13–p. 286, line 8; R. p. 294, lines 15–19). The other print could not be identified at first, but eventually it was identified as belonging to Appellant.² (R. p. 286, line 9–p. 292, line 11).

As part of SLED’s investigation, Agent Johnson obtained Victim’s phone records. (R. p. 307, lines 8–17). From those records, Agent Johnson identified Ricky Gipson as someone who had been in “constant contact” with Victim before his death and who had sent two text messages to Victim shortly after the 911 call regarding Victim’s accident was made. (R. p. 307, lines 17–

² The bills collected from the crime scenes were also examined for latent prints, but none of the latent prints on the bills were of sufficient value to compare. (R. p. 292, line 12–p. 294, line 5).

25). Agent Johnson contacted Gipson and took his statement about what happened the night of April 15th. (R. p. 309, lines 3–8). Agent Johnson showed Gipson Alston's photograph, and Gipson identified Alston as someone who was present the night Victim was shot. (R. p. 309, lines 9–17).

Thereafter, Alston was arrested for murder, and Alston identified the other individuals who were present the night Victim was shot. (R. p. 309, line 18–p. 310, line 22). Alston identified Appellant, who goes by the nickname Gouda, as one of the individuals present the night Victim was killed. (R. p. 310, lines 8–24).

Night of April 15, 2011

At trial Alston testified that, on the night of April 15, 2011, he was hanging out with Appellant and others at a friend's house. (R. p. 167, line 8–p. 171, line 4). Alston decided he wanted to get some marijuana. (R. p. 171, lines 3–10). Alston asked Appellant about arranging for him to buy marijuana, and Appellant made some phone calls and set something up. (R. p. 171, line 11–p. 172, line 3). Then, Alston, Appellant, Hilliard Pinckney, and Maurice Thompson drove to the SC State campus in silver Buick. (R. p. 168, lines 9–13; R. p. 173, lines 1–20). Thompson drove, and Pinckney sat in the passenger seat. (R. p. 173, line 21–p. 174, line 4). Alston and Appellant sat in the back seat. (R. p. 174, lines 5–24).

On the SC State campus, the group picked up Gipson, who had been contacted by Appellant earlier in the day about purchasing marijuana. (R. p. 99, line 16–p. 104, line 4). Because Gipson did not have as much marijuana as Alston wanted to buy, Gipson arranged for Victim to sell to Alston. (R. p. 100, line 16–p. 101, line 20). In the car Gipson sat between Alston and Appellant, but Appellant was the only one there who knew Gipson. (R. p. 103, line 18–p. 105, line 16; R. p. 174, line 25–176, line 3).

Gipson testified that he had arranged to meet with Victim at the marriage housing area. (R. p. 103, line 18–p. 104, line 4). The group arrived before Victim, so they reversed and parked in a parking space and waited for Victim to arrive. (R. p. 107, lines 8–21; R. p. 176, lines 4–24). When Victim arrived, he pulled into a parking spot such that his passenger side was closest to the passenger side of the Buick. (R. p. 107, line 21–p. 108, line 11; R. p. 176, line 25–p. 177, line 21). Gipson, Alston, and Appellant went to Victim's car, and Gipson got in the passenger seat to facilitate the transaction. (R. p. 109, lines 1–13). Alston and Appellant were not happy with the quality of the marijuana, and they began complaining to Victim. (R. p. 109, line 8–p. 110, line 18; R. p. 178, line 13–p. 179, line 7). Gipson then got out of the car and turned his attention to another car in the parking lot. (R. p. 110, line 19–p. 111, line 12). When Gipson turned back around, he saw Appellant and Victim "tussling in the car. . . ." (R. p. 111, lines 12–14). Gipson observed that Appellant was leaning in the car, but Gipson could not tell what Appellant and Victim were fighting over. (R. p. 112, lines 10–24). Gipson never saw anyone with a gun. (R. p. 112, line 25–p. 113, line 2). Gipson noticed that Victim's car was in reverse and the passenger door was open. (R. p. 111, lines 14–16). Gipson also observed that Alston was standing away from the car. (R. p. 113, lines 11–19). Gipson testified that he heard Victim's tires make a noise, then he heard a pop, and he ran away. (R. p. 111, lines 16–21). Gipson looked back at the scene and saw that Victim's car had left the parking spot. (R. p. 111, lines 21–25). Gipson kept running. (R. p. 111, line 25).

Alston also testified that Appellant was leaning in Victim's car when he "heard a pow go off." (R. p. 179, line 19–p. 181, line 11). Alston thought the "pow" was a gun shot. (R. p. 181, lines 12–14). Appellant then got back in the Buick. (R. p. 180, lines 2–3). Alston asked

Appellant "if he was alright, and then [Alston] asked if he shot the guy, but [Appellant] never answered. . . ." (R. p. 180, lines 3-6; R. p. 183, lines 1-7).

ARGUMENT

The trial court did not err, nor did it violate Appellant's rights under the Confrontation Clause, when it admitted into evidence hearsay testimony concerning an excited utterance or dying declaration made by Victim to a law enforcement officer after Victim was shot.

Introduction

Victim's statement to Officer Kendra Williams was non-testimonial. Thus, the admission of Williams's testimony regarding that statement did not violate Appellant's rights under the Confrontation Clause. Even if the statement was not properly admitted, the admission was harmless error. Moreover, the statement was properly admitted under a hearsay exception.

Standard of Review

Confrontation Clause

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The United States Supreme Court has held that this provision bars "admission of testimonial statements of a witness who did not appear at trial unless he was available to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). According to the Supreme Court

when a court must determine whether the Confrontation Clause bars the admission of a statement at trial, it should determine the "primary purpose of the interrogation" by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs. The existence of an emergency or the parties' perception that an emergency is ongoing is among the most important circumstances that courts must take into account in determining whether an interrogation is testimonial because statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation.

Michigan v. Bryant, __ U.S. __, 131 S.Ct. 1143, 1162 (2011).

“A violation of the Confrontation Clause is not *per se* reversible but is subject to a harmless error analysis.” *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (citing *Delaware v. Van Arsdall*, 475 U.S. 813, 822 (2006)).

“Whether such an error is harmless in a particular case depends upon a host of factors The factors include the importance of the witness’s testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.”

Id. (quoting *Van Arsdall*, 475 U.S. at 684).

Hearsay

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. In general, hearsay is not admissible for purposes of trial; however, there are a number of exceptions. *See* Rule 802, SCRE. For example, S.C. R. Evid. 803(2) provides that “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” is not excluded. That exception is known as the excited utterance exception. *See* Rule 803(2), SCRE. Another exception, known as the dying declaration exception, provides that “[i]n a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death” is not excluded by the hearsay rule if the declarant is unavailable. Rule 804(b)(2), SCRE.

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion

accompanied by probable prejudice.” *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 494–95 (2013) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 349, 737 S.E.2d at 495 (quoting *Douglas*, 369 S.C. at 429–30, 632 S.E.2d at 848)).

How the Issue Was Raised at Trial

Before trial began, defense counsel moved to have Williams’s testimony concerning her conversation with Victim excluded. (R. p. 3, line 24–p. 7, line 16). Defense counsel argued before the trial court (1) that the testimony would violate Appellant’s rights under the Confrontation Clause, (2) that the testimony was inadmissible hearsay and was not admissible under the excited utterance exception, and (3) that the testimony was inadmissible hearsay and was not admissible under the dying declaration exception. (R. p. 3, line 24–p. 7, line 16). Defense counsel also submitted a brief to the court providing case law in support of their arguments and additionally asserting that Williams’s testimony was inherently prejudicial. (R. pp. 407–12).

In response, the State argued that the evidence was not testimonial because it “wasn’t information that was given in . . . anticipation of litigation.” (R. p. 9, lines 12–17). As to whether the testimony was admissible under a hearsay exception, the State asserted that it would be up to the court to decide whether Victim’s statement to Williams was an excited utterance or a dying declaration. (R. p. 9, line 17–p. 10, line 2).

The trial court then heard Williams’s testimony *in camera*. (R. p. 13, line 1–p. 23, line 9). On direct examination Williams testified that she spoke with Victim in the back of an ambulance. (R. p. 15, lines 1–8). Williams observed that Victim had a gunshot wound to his

right chest area and another wound on his left side. (R. p. 15, lines 8–11). Williams described Victim's demeanor as "frantic[. H]e was rolling back and forth[;] he was scared[;] he kept saying, [']get me to the hospital, I'm going to die.['] He was, he was scared. . . . He appeared to be in a lot of pain." (R. p. 15, lines 14–19). Williams then described her conversation with Victim:

I asked [Victim] if he had been robbed, and he shook his head, yes. I asked him if he had been in the parking lot of Queen's Village, and he shook his head, yes. And I asked him if he saw who robbed him, and he shook his head, yes. I asked him how many? And he stuck his hand up and had four fingers up. I said, four? He shook his head, yes. I asked him if, you know, if he saw the weapon. He shook his head. . . .

....

. . . . I asked him if the weapon was silver or black. At that time he was, kept shaking his head, no. And there were some other questions that I asked him, but he did tell me that he lived in Queen's Village. He did tell me that he saw the person who shot him. He told me there was four of them, but most of it was just him shaking his head. He, if he took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die.

(R. p. 16, lines 2–21).

When asked on cross-examination how long after the incident occurred did Williams get to the scene, she responded that she would have to look at the time. (R. p. 22, lines 10–12). Williams also testified that when she initially spoke with Victim, he would not tell her his name. (R. p. 22, line 24–p. 23, line 4).

Following Williams's *in camera* testimony, defense counsel argued that Victim's statement was not an excited utterance because Williams was asking Victim questions—he was not just blurting the information out. (R. p. 23, line 21–p. 24, line 7). Additionally, defense counsel argued that there was nothing about Victim's situation that was startling. (R. p. 24, lines

1-7). Defense counsel then argued that Victim's statement was not a dying declaration because Williams did not put in her statement, which she gave to SLED the day after she spoke with Victim, that Victim told her that he thought he was dying. (R. p. 24, lines 7-14). Defense counsel also argued that the statement was more prejudicial than probative and that it should have been excluded under S.C. R. Evid. 403. (R. p. 24, line 14-p. 25, line 8).

The State then argued that, looking at the totality of the circumstances, Victim's statement was non-testimonial. (R. p. 25, line 12-p. 26, line 1). The State further argued that Victim's statement was admissible as either a dying declaration or an excited utterance. (R. p. 25, lines 1-15). As to the issue of prejudice, the State pointed out that Victim did not even identify Appellant by name in his statement—he merely confirmed that he had been robbed by four people. (R. p. 25, lines 16-22).

Defense counsel replied that it was prejudicial because one of those four men was the defendant. (R. p. 27, lines 12-16). Defense counsel then went into more depth with his arguments concerning whether Victim's statement was either a dying declaration or an excited utterance. (R. p. 27, line 16-p. 30, line 1).

Judge Dickson found the testimony to be admissible, specifying that "because he is in the ambulance after he had just been shot and robbed, he's still under a stressful event at that point." (R. p. 30, lines 2-4). Upon prompting by the State, Judge Dickson clarified his ruling, stating

I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of his excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective thought. And so, right now, this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story.

(R. p. 30, line 13-p. 31, line 3).

Analysis

Confrontation Clause

Respondent submits that Victim's statement to Williams was non-testimonial, and, thus, admission of that statement did not violate Appellant's constitutional rights. Appellant, on the other hand, argues that Victim "made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial." (Final Br. of Appellant at 11). Respondent disagrees.

The facts under which Victim made his statement are substantially similar to those in another case, *Michigan v. Bryant*, __ U.S. __, 131 S.Ct. 1143 (2011), in which the United States Supreme Court found that a gunshot victim's statement to police was non-testimonial. In *Bryant*, the Supreme Court described the circumstances surrounding the victim's statement as "a nondomestic dispute, involving a victim found in a public location, suffering from a fatal gunshot wound, and a perpetrator whose location was unknown at the time the police located the victim." 131 S.Ct. at 1156. That description is on all fours with the circumstances in which Victim spoke to Officer Williams in this case.³

In deciding whether the primary purpose of the victim's statement was to enable police assistance to meet an ongoing emergency, the Court in *Bryant* "first examine[d] the circumstances in which the interrogation occurred." *Id.* at 1163. As part of the analysis, the

³ There are a few slight differences between the facts in *Bryant* and those in the instant case. For example, in *Bryant*, police spoke to the victim before emergency medical services had arrived. 131 S.Ct. at 1150. Also, in *Bryant*, the victim identified the person who had shot him when he spoke to the police, but he did not indicate the cause of the shooting. *Id.* at 1150, 1163–64.

Court noted that when the police questioned the victim, they did not know, and the victim did not tell them, if the threat was limited to the victim. *Id.* at 1163–64. The Court also explained that because the *Bryant* case involved a gun, “[t]he physical separation that was sufficient to end the emergency in [a domestic violence case where fists were the weapon] was not necessarily sufficient to end the threat in this case.” *Id.* at 1164. Also, the Court considered that the police in *Bryant* did not know the location of the shooter when they questioned the victim. *Id.* The Court then looked at the statement by the victim and the questions by the police. *Id.* at 1165. As to the victim, “[h]is answers to the police officers’ questions were punctuated with questions about when emergency medical services would arrive. He was obviously in considerable pain and had difficulty breathing and talking.” *Id.* (internal citations omitted). On the other hand, “[t]he questions [the police] asked—what had happened, who had shot him, and where the shooting had occurred, were the exact type of questions necessary to allow the police to assess the situation, the threat to their own safety, and the possible danger to the potential victim.” *Id.* at 1166 (internal quotations and citations omitted). Finally, the Court considered the informality of the situation, which in the *Bryant* case was “fluid and somewhat confused.” *Id.* The Court found that “[t]he informality suggest[ed] that the interrogators’ primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements.” *Id.* Based on its assessment of the facts in *Bryant*, the Court ultimately concluded that the victim’s statement was not testimonial and that admission of the statement did not violate the Confrontation Clause. *Id.* at 1167.

Respondent submits that the circumstances analyzed by the Supreme Court in *Bryant* are substantially similar to the circumstances surrounding Victim’s statements to Williams, and, like

the Court in *Bryant*, this Court should find that Victim's statements were non-testimonial and, thus, admission of the statements did not violate Appellant's rights under the Confrontation Clause. Like in *Bryant*, when Williams spoke to Victim, she did not know if the threat was limited to him. Also like in *Bryant*, this case involved a shooter, whose whereabouts were unknown at the time Williams spoke with Victim. When Williams questioned Victim, she sought to find out where Victim had been at the time of the shooting, what had instigated the shooting, how many people had been involved in the shooting, and if Victim knew any details about the gun that had been used. All of these questions indicate that Williams's primary purpose in speaking with Victim was to address the ongoing emergency—namely, the situation of having an unknown shooter on the SC State campus. Like the victim in *Bryant*, here, Victim was clearly in considerable pain. While Appellant makes much of the fact that Victim would not tell Williams his name, the record reflects that Victim mostly responded to Williams's inquiries by nodding his head, which is not surprising considering Victim was suffering from a gunshot wound to his abdomen. In Williams's own words, "if [Victim] took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die." (R. p. 16, lines 17–21). Finally, the informality of the conversation between Williams and Victim did not put Victim on notice that his statement would be for future prosecutorial use. For the same reasons that the Court in *Bryant* found the victim's statement to be non-testimonial, Respondent submits that Victim's statement in the instant case, too, is non-testimonial.

Respondent submits that even if this Court finds that Victim's statement was testimonial, the admission of the statement through Williams's testimony at trial was harmless error. Foremost, Victim did not even identify Appellant as the shooter when he communicated with

Williams. Victim merely confirmed that the shooting happened in Queen's Village, that he had been robbed, that there had been four people, and that he had seen the gun. Appellant argues that Victim's statement was particularly prejudicial because "[a]bsent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. . . . If anything, the testimony of all the states [sic] other witnesses left as a mystery what happened in the moments preceding the victim's shooting." (FBOA at 12). Respondent disagrees. Though the eyewitnesses to the shooting could not see exactly what happened in Victim's car that night, they observed Appellant leaning in Victim's vehicle and tussling with Victim, and they observed Victim trying to reverse while Appellant was still in the car immediately before they heard a gunshot. Additionally, investigators found money and bags of marijuana in the passenger side of Victim's car and on the ground at the location of the shooting. Respondent submits that the combination of this circumstantial evidence suggests that Appellant attempted to rob Victim. Finally, the State's case was strong even without Victim's statement. As such, if the Court finds that Victim's statement was testimonial, admission of the statement through Williams's testimony was harmless error.

Excited Utterance

Victim's statement was properly admitted under the excited utterance exception to the general hearsay rule.

Three elements must be met in order for a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008) (citing *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007)). "The rationale underlying the excited utterance

exception is that ‘the startling event suspends the declarant’s process of reflective thought, reducing the likelihood of fabrication.’” *Id.* (quoting *State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006)). In determining whether a statement is admissible under the excited utterance exception, a court must consider the totality of the circumstances. *Id.*

In this case the court considered “the totality of the circumstances” and decided to admit Victim’s statement to Williams under the excited utterance exception. (R. p. 28, lines 4–24). The court did not abuse its discretion as the South Carolina Supreme Court has “generally allowed as excited utterances statements made by the victim to the police immediately following a physical attack.” *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999). In this case, though Williams was unsure of how long after the shooting occurred she spoke to Victim, he was in the ambulance and still at the scene when she questioned him. Respondent submits that such proximity is sufficient considering the circumstances of this case. *See State v. Blackburn*, 271 S.C. 324, 327, 247 S.E.2d 334, 336–37 (1978) (concluding that a statement given while declarant was “still under the stress and pain of the assault” would be admissible under the excited utterance exception though the statement was given in excess of one hour after the incident).

Appellant argues that the statement evidenced reflective thought because Victim would not tell Williams his name, and, thus, the statement was not an excited utterance. However, the trial court rejected that argument, stating

this is a gentleman that’s just been robbed and shot, he’s in an ambulance, and I don’t think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. . . . He was just answering questions that were posed to him by a police officer trying to get to the bottom of the situation.

(R. p. 30, line 23–p. 31, line 3). Indeed, Victim’s refusal to give his name could be a result of the considerable pain that he was feeling, as opposed to an indication that he was trying to hide his

identity. As previously discussed, Williams testified that any time Victim attempted to speak, he would start shaking his head and complaining of his pain. Consequently, during Williams's conversation with Victim, he gave "[v]ery, very few" audible responses—again, not surprising considering he was suffering from a gunshot wound to his abdomen. (R. p. 62, lines 22–23). Respondent submits that the continuing stress of the attack makes Victim's statement to Williams inherently reliable. *See State v. McHoney*, 344 S.C. 85, 95, 544 S.E.2d 30, 34–35 (2001) (finding victim's statement to a nurse while she was still under the continuing stress of being stabbed seven times in the abdomen and having her throat slit was inherently reliable because there was no time for the victim to reflect on the event).

Appellant additionally takes issue with the fact that Victim's statement was the result of questions posed by Williams. Appellant asserts that Williams "questioned the injured man in a manner which suggested an answer." (FBOA at 12). Respondent disagrees that Williams's questions suggested an answer—for the most part, Williams's questions allowed Victim to respond by nodding yes or no, but Williams did not suggest an answer. Additionally, the Supreme Court of South Carolina has previously found statements made in response to questions to be admissible under the excited utterance exception. For example, in *State v. McHoney*, the Court found the statement of a victim, whose throat had been slit, to be admissible under the excited utterance exception. 344 S.C. at 94–95, 544 S.E.2d at 34–35. In *McHoney* the victim was unable to speak, but she nodded in response to questions asked by a nurse—questions including if victim knew her attacker, if victim's family knew her attacker, if victim's attacker lived in her neighborhood, and if victim's boyfriend was the attacker. *Id.* at 89–90, 544 S.E.2d at 32. In another case, the Court found that a trial court did not err in admitting a son's statement concerning who murdered his mother under the excited utterance exception. *State v. Sims*, 348

S.C. 16, 20–23, 558 S.E.2d 518, 520–22 (2002). The court specifically noted in that case, “[a]lthough the son’s statement was in response to a question, under the circumstances presented, we find this fact does not prevent his answer from being an excited utterance.” *Id.* at 23 n. 1, 558 S.E.2d at 522 n. 1.

Respondent submits that this case is distinguishable from *State v. Washington*, 379 S.C. 120, 665 S.E.2d 602 (2008), a case where the Supreme Court excluded a statement made in response to a police interrogation. In the *Washington* case, the victim’s girlfriend gave a statement “in a formal interview with law enforcement at police headquarters almost ninety minutes after the events.” *Id.* at 124, 665 S.E.2d at 604. The girlfriend’s statement “consisted of a written narrative of the incident, which [the girlfriend] wrote, and three pages of questions and answers, which the Officer transcribed.” *Id.* at 123, 665 S.E.2d at 603. The circumstances under which Victim gave his statement to Williams in this case are vastly different from those of *Washington*. As previously discussed, the exchange was informal and was limited to the information that Williams needed to address the ongoing emergency. Thus, the trial court properly admitted Victim’s statement.

“Whether a statement is admissible under the excited utterance exception to the hearsay rule depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court.” *State v. Burdette*, 335 S.C. 34, 43–44, 515 S.E.2d 525, 530 (1999). Respondent submits that in light of this principle, the court’s admission of Victim’s statement under the excited utterance hearsay exception should not be disturbed.

Dying Declaration

Though the court did not admit Victim's statement as a dying declaration,⁴ Respondent submits that the statement would also be admissible under that exception.

A statement made under the belief of impending death is not excluded by the hearsay rule if the declarant is unavailable as a witness in a prosecution for homicide, the statement is made by a declarant while believing the declarant's death is imminent, and the statement concerned the causes or circumstances of what the declarant believed to be impending death.

State v. McHoney, 344 S.C. 85, 92, 544 S.E.2d 30, 33 (2001). Because Victim's statement meets all of the above criteria, in addition to being admissible as an excited utterance, it is admissible as a dying declaration.

⁴ The trial court neither accepted nor rejected the State's argument that Victim's statement should be admitted as a dying declaration. The court expressed that it had

questions about whether or not it's a dying declaration, the statement about needing to get to the hospital, I'm going to die, it's not in the statement. So, I do have an issue about whether or not it's a dying declaration, but I'm not going to decide that on that issue. I'm deciding it on whether or not it's excited utterance based on the totality of the circumstances.

(R. p. 27, line 25–p. 28, line 6). It appears that because Williams did not include in her statement to SLED that Victim had said he was going to die, the trial court declined to make a ruling as to whether Victim's statement was a dying declaration. Respondent notes that Williams testified *in camera* and before the jury that when she spoke to him, Victim said, "I'm going to die[.]" (R. p. 16, lines 20–21; R. p. 58, line 4). The trial court never made a finding that Williams's testimony was either credible or not credible. As such, Respondent submits this argument as an additional sustaining ground.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

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Attorney General

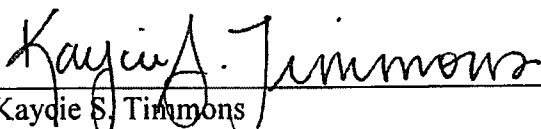
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December 23, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

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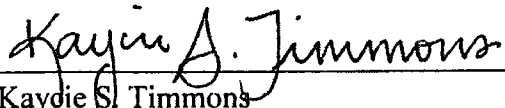
JULIAN C. YOUNG,

APPELLANT,

Appellate Case No. 2012-213006.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


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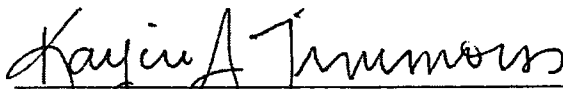
PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record Tara Dawn Shurling at:

3614 Landmark Drive, Suite A
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I further certify that all parties required by Rule to be served have been served.

This twenty-third day of December, 2013.



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