

CONFIDENTIAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY

SC Court of Appeals

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEVON S. THOMAS,

APPELLANT

APPELLATE CASE NO. 2014-001182

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON) IN THE COURT OF GENERAL SESSIONS
) 2012-GS-04-01478S01481
STATE OF SOUTH CAROLINA,))
))
PLAINTIFF,))
))
VERSUS))
))
DEVON S. THOMAS,))
))
DATE: FEBRUARY 24-26, 2014
DEFENDANT.)) ANDERSON, SOUTH CAROLINA

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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P R O C E E D I N G S

THE COURT: Good morning, Ladies and Gentlemen. My name is Lawton McIntosh. I am the resident circuit court judge here in the tenth judicial circuit, which is Anderson and Oconee. It is my pleasure to be with you this week during this term of general sessions and what that simply means is that that is the criminal side of court. I've spoken with the attorneys. We have one trial. Because of your presence, a lot of cases have been resolved, they pled out, and so we have one case. I hear it will last until Wednesday or Thursday and then if you are not selected, you will be excused for the week and so that is the good news. Before we get started, though, I am going to ask the clerk to go through and call the roll, please, sir.

(Whereupon, the Clerk of Court calls the roll and voir dire of the jury is conducted by Judge McIntosh)

JURY SELECTION

CLERK OF COURT: May it please the Court?

THE COURT: Yes, sir.

CLERK OF COURT: Juror #84, John D. Holland.

(Whereupon, John Holland, a white male, comes forward)

CLERK OF COURT: What say you for the State?

SOLICITOR: Present Mr. Holland.

CLERK OF COURT: What say you for the Defense?

DEFENSE ATTORNEY: Please seat Mr. Holland.

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1 CLERK OF COURT: Have a seat in the jury box, please,
2 sir.

3 CLERK OF COURT: Juror #72, Larry E. Gray.

4 (Whereupon, Larry Gray, a black male, comes forward)

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

6 SOLICITOR: Present Mr. Gray.

7 CLERK OF COURT: What say you for the Defense?

8 DEFENSE ATTORNEY: Please seat Mr. Gray.

9 CLERK OF COURT: Have a seat in the jury box, please,
10 sir.

11 CLERK OF COURT: Juror #159, Ariel S. Walker.

12 (Whereupon, Ariel Walker, a black female, comes forward)

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

14 SOLICITOR: Present Ms. Walker.

15 CLERK OF COURT: What say you for the Defense?

16 DEFENSE ATTORNEY: Please excuse Ms. Walker.

17 CLERK OF COURT: Juror #124, James L. Moore.

18 (Whereupon, James Moore, a white male, comes forward)

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

20 SOLICITOR: Present Mr. Moore.

21 CLERK OF COURT: What say you for the Defense?

22 DEFENSE ATTORNEY: Please seat Mr. Moore.

23 CLERK OF COURT: Have a seat in the jury box, please,
24 sir.

25 CLERK OF COURT: Juror #41, Carl D. Dailey.

1 (Whereupon, Carl Dailey, a white male, comes forward)

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

3 SOLICITOR: Present Mr. Dailey.

4 CLERK OF COURT: What say you for the Defense?

5 DEFENSE ATTORNEY: Please seat the juror.

6 CLERK OF COURT: Have a seat in the jury box, please,
7 sir.

8 CLERK OF COURT: Juror #113, Cynthia A. Martin.

9 (Whereupon, Cynthia Martin, a white female, comes forward)

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

11 SOLICITOR: Present Ms. Martin.

12 CLERK OF COURT: What say you for the Defense?

13 DEFENSE ATTORNEY: Please seat Ms. Martin.

14 CLERK OF COURT: That way, please, ma'am.

15 CLERK OF COURT: Juror #161, Holly F. Webb.

16 (Whereupon, Holly Webb, a white female, comes forward)

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

18 SOLICITOR: Present Ms. Webb.

19 CLERK OF COURT: What say you for the Defense?

20 DEFENSE ATTORNEY: Please excuse Ms. Webb.

21 CLERK OF COURT: Juror 17, Deborah T. Cabe.

22 (Whereupon, Deborah Cabe, a white female, comes forward)

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

24 SOLICITOR: Present Ms. Cabe.

25 CLERK OF COURT: What say you for the Defense?

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1 DEFENSE ATTORNEY: Please seat Ms. Cabe.

2 CLERK OF COURT: Have a seat in the jury box, please,
3 ma'am.

4 CLERK OF COURT: Juror #43, Laura J. Dillon.
5 (Whereupon, Laura Dillon, a white female, comes forward)

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

7 SOLICITOR: Present Ms. Dillon.

8 CLERK OF COURT: What say you for the Defense?

9 DEFENSE ATTORNEY: Please excuse Ms. Dillon.

10 CLERK OF COURT: Have a seat back in the audience,
11 please, ma'am.

12 CLERK OF COURT: Juror #99, Bobby G. Lawson.
13 (Whereupon, Bobby Lawson, a white male, comes forward)

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

15 SOLICITOR: Present Mr. Lawson.

16 CLERK OF COURT: What say you for the Defense?

17 DEFENSE ATTORNEY: Please seat Mr. Lawson.

18 CLERK OF COURT: That way to the jury box, please, sir.

19 CLERK OF COURT: Juror #111, Jeffrey C. Marshall.

20 (Whereupon, Jeffrey Marshall, a white male, comes forward)

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

22 SOLICITOR: Please excuse Mr. Marshall.

23 CLERK OF COURT: Have a seat back in the audience,
24 please, sir.

25 CLERK OF COURT: Juror #100, Sandra C. Leaphart.

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1 (Whereupon, Sandra Leaphart, a white female, comes forward)

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

3 SOLICITOR: Present Ms. Leaphart.

4 CLERK OF COURT: What say you for the Defense?

5 DEFENSE ATTORNEY: Please seat the juror.

6 CLERK OF COURT: That way to the jury box, please,
7 ma'am.

8 CLERK OF COURT: Juror #3, Bradley M. Barker.

9 (Whereupon, Bradley Barker, a white male, comes forward)

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

11 SOLICITOR: Please excuse Mr. Barker.

12 CLERK OF COURT: Have a seat back in the audience,
13 please, sir.

14 CLERK OF COURT: Juror #112, Charles E. Martin.

15 (Whereupon, Charles Martin, a white male, comes forward)

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

17 SOLICITOR: Present Mr. Martin.

18 CLERK OF COURT: What say you for the Defense?

19 DEFENSE ATTORNEY: Please seat the juror.

20 CLERK OF COURT: That way to the jury box, please, sir.

21 CLERK OF COURT: Juror #168, James C. Wiles.

22 (Whereupon, James Wiles, a white male, comes forward)

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

24 SOLICITOR: Present Mr. Wiles.

25 CLERK OF COURT: What say you for the Defense?

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1 DEFENSE ATTORNEY: Please seat the juror.

2 CLERK OF COURT: That way to the jury box, please, sir.

3 CLERK OF COURT: Juror #116, Debra L. McAbee.

4 (Whereupon, Debra McAbee, a white female, comes forward)

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

6 SOLICITOR: Present Ms. McAbee.

7 CLERK OF COURT: What say you for the Defense?

8 DEFENSE ATTORNEY: Please seat the juror.

9 CLERK OF COURT: Have a seat in the jury box, please,
10 ma'am.

11 CLERK OF COURT: Juror #152, Tracy L. Taylor.

12 (Whereupon, Tracy Taylor, a white female, comes forward)

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

14 SOLICITOR: Present Ms. Taylor.

15 CLERK OF COURT: What say you for the Defense?

16 DEFENSE ATTORNEY: Please seat Ms. Taylor.

17 CLERK OF COURT: Have a seat in the jury box, please,
18 ma'am. Thank you.

19 CLERK OF COURT: Your Honor, I have that as twelve
20 jurors.

21 THE COURT: Yes, sir.

22 CLERK OF COURT: We are doing two alternates?

23 THE COURT: Yes, sir.

24 CLERK OF COURT: Juror #37, Gretchen W. Craig.

25 (Whereupon, Gretchen Craig, a white female, comes forward)

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

2 SOLICITOR: Present Ms. Craig.

3 CLERK OF COURT: What say you for the Defense?

4 DEFENSE ATTORNEY: Please seat Ms. Craig.

5 CLERK OF COURT: Have a seat in the jury box, please,
6 ma'am.

7 CLERK OF COURT: Juror #77, Hadji S. Harper.

8 (Whereupon, Hadji Harper, a black male, comes forward)

9 CLERK OF COURT: What say you for the State?

10 SOLICITOR: Present Mr. Harper.

11 CLERK OF COURT: What say you for the Defense?

12 DEFENSE ATTORNEY: Please seat Mr. Harper.

13 CLERK OF COURT: That way, please, sir. All right, that
14 is twelve jurors and two alternates.

15 THE COURT: Very good.

16 CLERK OF COURT: Would you like me to review the
17 numbers?

18 THE COURT: Yes, sir.

19 CLERK OF COURT: I have that we selected juror #84, #72,
20 #124, #41, #113, #17, #99, #100, #112, #168, #116, #152, and
21 two alternates, #37 and #77. I also have the State struck
22 #111, #3, and the Defendant struck #159, #161, and #43.

23 THE COURT: All right, very good. Ladies and gentlemen
24 of the jury, what I'm going to do, we are going to break in
25 just a few minutes and bring you back this afternoon to start

1 the trial. Before we do, I will ask that you go with Buck in
2 just a minute to your jury room and determine who you would
3 like to be the foreperson of the jury. The two alternates
4 may not serve as foreperson, but they may vote. It's not
5 100%, it's just simply a majority. Whomever is elected to
6 serve as the foreperson needs to be able to communicate with
7 the Court and also be in charge of deliberations at the time
8 that you begin your deliberations at the end of this case.
9 Once that person is selected, I will ask that they write
10 their name down on a piece of paper along with their juror
11 number and then tally the remaining of your fellow jurors to
12 determine who, if anyone, would like to have pad and pencil
13 for use during the trial of this case. Once you get that
14 information down, write the number on a piece of paper next
15 to your name, knock on the door. We will receive you back in
16 the courtroom and dismiss you for lunch. We'll bring you
17 back this afternoon to start the trial. But if you would go
18 with the bailiff right now, please.

19 (Jury out at 11:21 AM)

20 THE COURT: Before we excuse the remaining jurors, is
21 there any motions directed to the jury selection process from
22 the State?

23 MR. CAMPBELL: No, sir, Your Honor.

24 THE COURT: From the Defense?

25 MR. MCELHANNON: No, Your Honor.

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1 THE COURT: Very good. Now, is Ms. Reeves here? There
2 you are. My understanding is there is no reason I shouldn't
3 dismiss the remaining jurors?

4 MS. REEVES: No, sir.

5 MR. CAMPBELL: I agree with that.

6 THE COURT: Very good. All right. Ladies and
7 gentlemen, I can see the dismay on all your faces out there
8 by not being selected to serve this week, but what that means
9 is, you are done for the week. I want to thank you and your
10 willingness to do your public duty. Without you, there is no
11 way to resolve our differences, whether it be criminal court
12 or civil court in a civilized manner and if you don't have
13 the mechanism to resolve your differences in a civilized
14 manner, the only way to do it is in an uncivilized manner.
15 So, thank you for being here. The good thing is, you are
16 done for the rest of the week and the better thing is, you
17 can't be called back up here for three years. Okay? Now, if
18 anybody needs a statement for their employer, they will be
19 sent out in the mail this afternoon. Is that correct?

20 CLERK OF COURT: Yes, Your Honor.

21 THE COURT: And everyone else, you will receive a small
22 check in the mail to thank you for being here.

23 (Jury panel released at 11:23 AM)

24 (Jury in at 11:28 AM)

25 THE COURT: Are you juror #124?

1 MR. MOORE: Yes, sir.

2 THE COURT: Okay. I understand you have been selected
3 to be our foreperson. Is that correct?

4 MR. MOORE: Yes, sir.

5 THE COURT: If you would, each time that we come in and
6 out of the courtroom throughout this trial, if you would sit
7 in that seat. Also, jurors #37 and #77, you are our
8 alternates, if you would remain in those seats. It just
9 helps us perform a few administrative functions. I
10 understand, Mr. Foreman, that you have eleven folks on the
11 jury that would like to have pad and pencil. Is that
12 correct?

13 MR. MOORE: That is correct.

14 THE COURT: Very good. What we are going to do, I'm
15 going to go ahead and excuse you until 1:25. If you would be
16 back in your jury room by 1:25. I will try to start this
17 trial promptly at 1:30. I remind you that while you on the
18 jury, you may not speak with anyone about this case. That
19 includes each other during breaks, that includes spouses,
20 friends, neighbors, either directly face to face or by other
21 forms of communications such as text messages or twitters or
22 emails or something along those lines. The reason being, and
23 I will remind you of this, we want you to be able to listen
24 to the testimony, listen to the evidence presented, the law
25 as I give it to you at the end of this case, and base your

1 decision on that unaffected by any outside inferences. But
2 if you would go back to your jury room now and excuse
3 yourselves until 1:25, then we'll get you back in here and
4 start the trial. Thank you very much.

5 (Jury out at 11:30 AM)

6 (Whereupon, a note from the jury electing the foreperson
7 is handed to the court reporter by Judge McIntosh to be
8 entered as Court's Exhibit #1.)

9 (Lunch Break)

10 AFTERNOON - FEBRUARY 24, 2014

11 THE COURT: Mr. Campbell, anything from the State before
12 we bring the jury in?

13 MR. CAMPBELL: Just a couple things, Your Honor. We
14 talked about this prior to the case. In this matter, there
15 is a statement given by the Defendant, Devon Thomas, on a
16 recording and a written statement. Mr. McElhannon and I have
17 talked about this and we also talked about it pre-trial, Your
18 Honor, that we are not having a Jackson/Denno hearing. This
19 is, basically, a third-party guilt case and so the statement
20 can be consented to coming in without having to have or go
21 through a Jackson/Denno hearing.

22 The other thing is, Mr. McElhannon and I, there is very
23 little physical evidence in this case. There is a shell
24 casing and the .45 cartridge bullet. We are stipulating the
25 chain of custody on that and that will shorten the trial a

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1 little bit.

2 Other than that, the only other thing Mr. McElhannon
3 brought up is, I do have about 15 people under subpoena,
4 which a lot of them are the same witnesses that Mr.
5 McElhannon will be using and he just asked that they remain
6 under subpoena until they get finished with their testimony
7 and see if he needs to have them stay or recall them.
8 Other than that, we have not cleared the courtroom yet. I
9 spoke with Mr. McElhannon about this and once you are ready,
10 we will tell the individuals who are on the witness list that
11 they will have to step out of the courtroom until such time
12 they are called except for the victims and the victim's
13 mother.

14 THE COURT: Do you want them to step out before opening
15 statements or after? Does it matter?

16 MR. MCELHANNON: Well, since the jury will be in here at
17 that point, it seems more efficient that they would be out
18 before.

19 THE COURT: Very astute. Mr. Thomas, would you raise
20 your right hand? I just want to ask you a question or two.

21 MR. THOMAS: (Complies)

22 (Whereupon, Judge McIntosh administers the oath to the
23 Defendant, Mr. Thomas)

24 THE COURT: I need you to speak loud enough for me to
25 hear you, okay?

1 MR. THOMAS: Okay.

2 THE COURT: And I don't want you to say anything but
3 address the questions that I'm asking you, okay?

4 MR. THOMAS: Yes, sir.

5 THE COURT: You can drop your hand. Your attorney is
6 advising me, or the attorneys are advising me that you do not
7 wish to challenge the voluntariness of a statement that
8 allegedly was made by you earlier. Is that correct?

9 (Mr. Thomas confers with Mr. McElhannon)

10 THE COURT: If you wish to challenge that, we would
11 conduct a hearing outside the presence of the jury and I
12 would determine from a preliminary standpoint whether or not
13 the jury would hear about that statement. Do you understand?

14 (Mr. Thomas confers with Mr. McElhannon)

15 MR. THOMAS: No, sir.

16 THE COURT: I'm sorry?

17 MR. THOMAS: No, sir. I don't need it.

18 THE COURT: You do not care to have a hearing on that?

19 MR. THOMAS: No, sir.

20 THE COURT: All right. Very good. That's all I wanted
21 to ask you about. So, Mr. McElhannon, your client waives his
22 right to a Jackson/Denno hearing?

23 MR. MCELHANNON: Yes, sir.

24 THE COURT: Very good. Otherwise, you agree with the
25 stipulations on the record made by Mr. Campbell?

1 MR. MCELHANNON: I do.

2 THE COURT: Okay. I tell you what, then. Let's take
3 two seconds. I need to get my ears on and I'll be right back
4 and then we will get started. Anyone who has been identified
5 as a witness, let's go ahead and take this opportunity to
6 clear the courtroom and you will be sequestered throughout
7 this trial until you are called and finished testifying.
8 Okay? You can go ahead and do that now.

9 (Brief Break)

10 MR. CAMPBELL: Your Honor, we have asked all the
11 individuals, except for those four listed as victims and Ms.
12 Jones and the victim's mother. Everyone else is an observer
13 or family member. Everybody else has stepped out.

14 THE COURT: All right. Before we bring the jury in, let
15 me just admonish the gallery. This is a public courthouse
16 and a public space, but we ask that you conduct yourselves in
17 a manner that befits a courtroom, please. Is the State ready?

18 MR. CAMPBELL: Yes, sir. Just one more thing. We are
19 stipulating to the evidence. We've already looked at it. We
20 looked at it on Friday. We've pre-marked it and so we won't
21 have to go through the chain.

22 THE COURT: And my court reporter has given me a list of
23 twenty-five exhibits on behalf of the State.

24 COURT REPORTER: No, thirty-five.

25 THE COURT: Thirty-five on behalf of the State. Is that

1 correct, Mr. McElhannon?

2 MR. MCELHANNON: That's correct.

3 THE COURT: And you are not contesting the admissibility
4 or authenticity of any of these?

5 MR. MCELHANNON: No, Your Honor.

6 THE COURT: Okay. So, #1-#35 will be admitted, without
7 objection.

8 (Whereupon, Thirty-five exhibits are entered into
9 evidence as State's exhibits, without objection)

10 MR. CAMPBELL: The only thing Mr. McElhannon brought up
11 pre-trial is, some of the pictures are of the scene, just
12 showing the property, and we will put on the record that this
13 was actually a nighttime event so there's no question about
14 that.

15 THE COURT: Very good. All right. Mr. McElhannon, are
16 you ready?

17 MR. MCELHANNON: Yes, sir.

18 THE COURT: Okay. Would you bring the jury in.

19 (Jury in at 1:38 PM)

20 (Clerk of Court hands out pads and pens to the jury)

21 THE COURT: Do all members of the jury who requested
22 pads and pencils have a pad and pencil? All right. If you
23 have any technical problems, raise your hand during the
24 trial, okay? Mr. Clerk, would you swear the jury, please,
25 sir?

1 (Oath administered to the jury by the Clerk of Court)

2 THE COURT: Ladies and gentlemen of the jury, before I
3 give you my opening statement, I want to address our foreman.
4 If, at any time, Mr. Foreman, we call you back to the
5 courtroom before the jury is ready, please let us know. If,
6 at any time, the jury or anyone on the jury needs to have a
7 break, if you would just let your foreman know, stop me,
8 raise your hand and we will make sure that we accommodate
9 you. Okay? If anybody needs any special consideration such
10 as being able to stand up, move around or whatnot, let us
11 know so we can accommodate you, okay?

12 INTRODUCTORY REMARKS BY THE COURT

13 That being said, ladies and gentlemen, we are about to
14 start the trial of the case of the State of South Carolina
15 versus Devon Shermayne Thomas, who has been indicted on four
16 counts of attempted murder under Indictments 2012-1478,
17 2012-1479, 2012-1480, and 2012-1481. As I told you earlier,
18 the fact that Mr. Thomas has been arrested, charged, and
19 indicted, is not and shall not be considered by you evidence
20 of his guilt. I will tell you, that is simply the mechanism
21 by which The State of South Carolina brings folks such as Mr.
22 Thomas before a jury, such as yourselves, for a trial and for
23 a determination of guilt or innocence. So, at the end of the
24 case Mr. Foreman, if anybody were to bring up the fact of the
25 indictment as proof of guilt, that will be your job to make

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1 sure that doesn't happen, okay?

2 Now, I don't know if any of you have ever been involved
3 in any kind of court proceedings in the past, either as a
4 witness, as a party, as a spectator, or in some other
5 capacity, but I would suspect that each and every one of you
6 have watched what purports to be a criminal trial on T.V. or
7 at the movies. Let me quickly dispel you. What you're about
8 to engage in is nothing like you've seen on TV or at the
9 movies. This is not entertainment. Criminal trials and
10 other trials are very slow, very deliberate, they are very
11 methodical. Like I said, they are not entertainment. They
12 are a fundamental part of our democracy. They are a search
13 for the truth to try to see that justice is done. Now, these
14 attorneys in here are fine attorneys and have been around and
15 practiced law for a while, but when they took their oath as
16 attorneys, they agreed that they would zealously represent
17 their client's interest in a particular case and you can
18 expect no less than that of them in this trial. But by the
19 same regard, they are also officers of this court. What that
20 means is, you can expect that they will be professional, they
21 will be competent and ethical towards one another, towards
22 any witness that may appear, towards me and towards anyone
23 else who is participating in this case.

24 Likewise, you've just taken an oath that you will try to
25 reach a fair and just verdict. What that means, ladies and

1 gentlemen, the parties and the attorneys and the Court have
2 the right to expect of you that you will be fair, that you'll
3 be impartial, and that you will be ethical in fulfilling your
4 duties as jurors in this case.

5 What I'm telling you now is not the law that you will
6 receive at the end of this case that you will apply to the
7 facts of this case. I will give that to you at the end of the
8 testimony before the lawyers give you their closing arguments
9 or after they give you their closing arguments. Now, during
10 this trial several of you have elected to take notes and
11 that's fine. Let me point out two things about note taking.
12 Number one, just because something appears in someone's notes
13 as opposed to somebody's memory of that same fact, doesn't
14 mean because it is written down it trumps somebody's memory.
15 That is what deliberations are for and, Mr. Foreman, it will
16 be your job to hash out any differences based on notes and
17 memories.

18 Also, one of your functions as jurors, or your main
19 function, is to be judges of the facts. Now, you determine
20 what the facts are, in part, by determining credibility of
21 the people you hear and the testimony you hear and the
22 exhibits that are submitted to you. If you're so engrossed
23 in taking notes in your case, you may miss some subtle
24 reaction that a person may have while on the stand and
25 testifying that may be indicative of their truthfulness or

1 lack of truthfulness in the matter, or in other words, their
2 demeanor. So, I just caution you about that.

3 In this case, the Defendant has asserted that he is not
4 guilty to all four indictments in this matter. What this
5 simply means is, the State of South Carolina is therefore
6 placed on the duty of proving his guilt by evidence that
7 convinces you of that guilt by proof beyond a reasonable
8 doubt. The burden is, and will always be, on the State of
9 South Carolina to prove the Defendant's guilt. He has no
10 obligation to prove anything, whatsoever.

11 Now, reasonable doubt is this -- and I'll tell you more
12 about it at the end of this case. It's the kind of doubt
13 that would cause a reasonable, sincere person to hesitate to
14 act in an important matter in their own affairs. Now, in
15 this case, as I told you, the State has the burden of proving
16 the Defendant's guilt beyond a reasonable doubt. If any of
17 you have ever been in a civil case, there, the burden of
18 proof is called a preponderance of the evidence. That's a
19 relatively low standard, or the greater weight of the
20 evidence. In this case, the standard is much higher and it's
21 much more powerful evidence. It is evidence that proves
22 guilt beyond a reasonable doubt. It is a higher standard
23 that we recognize, in law, in this state.

24 Proof, beyond a reasonable doubt, is proof that leaves
25 you firmly convinced of the Defendant's guilt. With that

1 being said, there are very few things in life, ladies and
2 gentlemen, that we know with absolute certainty and the law
3 does not require absolute mathematical certainty in this
4 case. If, after consideration of all the evidence you are
5 firmly convinced of the Defendant's guilt, is guilty, it will
6 be your duty to find him guilty. On the other hand, if you
7 think that there is a real possibility that the Defendant is
8 not guilty, or you have a doubt as to any element of that
9 guilt, it will be your duty to find him not guilty.

10 Now, your function, or your role as jurors, is to
11 determine what the facts are. In the vernacular of the law,
12 you are the sole judges of the facts. Therefore, if I do
13 anything throughout the course of this trial that seems to
14 indicate to you how you are to find facts or the verdict you
15 are supposed to reach, I'm going to ask you and also instruct
16 you to disregard it. In South Carolina, trial judges are not
17 allowed by our Constitution to make any comments on the facts
18 nor are we allowed to have an opinion of the facts and I can
19 assure you in this case, I don't. I equate my job somewhat
20 as being a referee to make sure that the process is followed,
21 that both sides have a fair trial, a proper trial, and then I
22 instruct you on the law that you must apply at the end of
23 this case.

24 Now, you will determine what the facts are from the
25 testimony and the evidence that you hear in this courtroom, a

1 lot of which will come from this witness stand right here.
2 You are not to be influenced by anything that you hear
3 outside of this courtroom and any opinions or comments you
4 may hear when court is not in session. It will be up to you
5 to determine which inferences you may want to draw from the
6 evidence being presented in this courtroom once you've heard
7 all the testimony, all the evidence presented, and I charge
8 you on the law. I would ask and instruct you to pay
9 attention throughout this trial. I will tell you that,
10 normally, if I make a mistake of law, there is a group of
11 judges down in Columbia that can correct an error of law, but
12 normally, if you make a mistake of fact, there is no way to
13 correct that on appeal, so pay close attention throughout
14 this trial.

15 The law that makes you the judges of the facts makes me
16 the judge of the law. I cannot invade your province as being
17 finders of the facts, nor can you invade my province of being
18 the instructor of the law. What that simply means is, you
19 must apply the law as I give it to you. You may not and
20 shall not be concerned with what you'd like it to be or what
21 you think it should be. If there is a correction to be made,
22 it will be made at another date or time.

23 Now, also, do not begin any deliberations prior to the
24 time that you, unequivocally, are sent word to begin your
25 deliberations. That means comments made by fellow jurors

1 during breaks, over lunch, overnight, amongst yourselves and
2 any third party and the reason for that is, as I told you
3 earlier, we do not want you to make a decision,
4 preliminarily, until you have heard all the testimony, all
5 the evidence, and you've heard the law that you must apply.
6 You may come to a premature fact that is not really warranted
7 by the evidence and testimony. Also, our chief justice of
8 the South Carolina Supreme Court, Chief Justice Jean Toal,
9 has instructed all trial judges to inform jurors that they
10 are not to engage in what is called independent juror
11 research. What the simply means is, during the course of this
12 trial and until you have been dismissed, you're not to look
13 up anything about any party, any attorney, any court
14 official, any issue involved in this case, and any issue that
15 you think may be helpful to you in this case. Again, the
16 same reason applies or rationale applies, and that is, we
17 want you to make your decision based on the testimony, the
18 evidence that you hear in this courtroom according to the law
19 as I give it to you uninfluenced by anything else that you
20 may have heard or seen throughout this case.

21 Also, if by chance you happen to see, read, or hear
22 anything in the press or some other media about this case,
23 you are not to listen to it, watch it or hear it. You are
24 supposed to cut it off and I'll ask you each day throughout
25 this case whether anyone has seen, read, or heard anything

1 about this matter. Okay?

2 With that being said, every case in South Carolina has
3 five phases: There will be opening statements, there will be
4 the presentation of the evidence, there will be closing
5 arguments by the attorneys, I will charge you on the law and
6 then you will begin your deliberations. I tell you that so
7 you will generally know where you are at any given time
8 during this case.

9 In just a minute, the State will make what is called an
10 opening statement and that is, the attorney is going to tell
11 you what their contention is in this case. The Defendant
12 may, but is not required to give an opening statement because
13 the burden remains on South Carolina to prove their case.
14 Now, what these attorneys tell you is helpful, but it is not
15 evidence. They've not been put on the witness stand, they've
16 not been sworn, they've not been through the crucible of
17 examination of cross-examination. Not to minimize it, but the
18 true evidence is what you hear from the witness stand and
19 submitted into evidence.

20 With that being said, Mr. Foreman, I'm going to send you
21 back to your jury room for a very brief stay. I will check
22 to see if I mis-stated anything to you or I omitted to say
23 something I should have. If you need anything while you are
24 back there, please let the bailiff know. We will make sure
25 we get it to you. Otherwise, we will bring you right out

1 here for opening statements. Okay, sir?

2 (Jury out at 1:53 PM)

3 THE COURT: Any exceptions from the State?

4 MR. CAMPBELL: No, Your Honor.

5 THE COURT: Defense?

6 MR. MCELHANNON: No, Your Honor.

7 (Brief bench conference off the record)

8 (Jury in at 1:57 PM)

9 THE COURT: Mr. Foreman, ladies and gentlemen of the
10 jury, one thing I did neglect to tell you, in every case,
11 there are going to be objections. In every case I've been
12 involved with as an attorney and as a judge, a lawyer has an
13 ethical duty to object at any time that they see something in
14 the courtroom that's not appropriate. The fact that an
15 attorney raises an objection, to the extent I let you stay in
16 the courtroom and see what my ruling is on that objection,
17 may not be subject to your deliberations. That is just a
18 part of the process. So, Mr. Foreman ---

19 MR. FOREMAN: Could you increase the mic a little bit?
20 Some of the jurors are having difficulty hearing you.

21 THE COURT: Sure. Is that a little better now? (Nods
22 head) Okay. If, at any time, you cannot hear, that's
23 exactly what I want you to do. What I was telling you is
24 that there will be objections. The fact that there has been
25 an objection or to the extent I let you look, stay in here

1 and watch my ruling on that objection, shall not be discussed
2 by you in the jury room in your deliberations or any time
3 during this trial. That is simply the process we go through
4 in every single case. Okay? That being said, is the State
5 ready to proceed?

6 MR. CAMPBELL: The State is ready, Your Honor.

7 THE COURT: The Defense?

8 MR. MCELHANNON: Ready, Your Honor.

9 THE COURT: Okay. Mr. Campbell.

10 MR. CAMPBELL: Mr. McLain will give the opening, Your
11 Honor.

12 THE COURT: Mr. McLain.

13 OPENING STATEMENT - MR. MCLAIN

14 Good afternoon, ladies and gentlemen. My name is Austin
15 McLain, as we introduced ourselves earlier, and that's Rame
16 Campbell. He and I are prosecutors here in Anderson County.

17 In the early morning hours of March 25th, 2012,
18 Anquavious Smith, who is a student at BHP High School and was
19 16 years old at the time, was shot in the leg when this
20 Defendant, Devon Thomas, aimed a .45 caliber pistol at a
21 truck she was in a pulled the trigger.

22 This all started when Anquavious was throwing a Sweet
23 Sixteen birthday party for one of her good friends on the
24 evening of the 24th. At some point that evening, several
25 people, multiple groups of people who were not initially

1 invited to this party, started showing up. Later on in the
2 evening, a fight broke out between two of these groups of
3 uninvited guests. At that point in time, the lights came on
4 and everyone was told to leave, the party was over. Devon
5 Thomas participated in that fight and he got roughed up a
6 little bit. As he left that building that night, he wasn't
7 satisfied that the fight was over. His solution that night
8 was to go grab a pistol. He walked out to a car, grabbed a
9 pistol, walked across the parking lot, loaded the pistol,
10 aimed it at a small Mazda pickup truck, and pulled the
11 trigger. When Devon shot that night, Anquavious Smith, her
12 boyfriend Charles Lindsay, and two other young victims were
13 crammed inside that pickup truck just trying to leave. I

14 Now, it's our job as prosecutors to prove to you, beyond
15 a reasonable doubt, that Devon Thomas is guilty of attempted
16 murder. Judge McIntosh touched on reasonable doubt and he
17 will explain in further detail what exactly that is.

18 I want to talk to you about two things this afternoon.
19 First, what we intend to prove and second, how we intend to
20 prove it. Simply put, we intend to prove that Devon Thomas
21 intended to kill another human being that night. We intend
22 to prove this mainly through eyewitness testimony, other
23 people that were at the party, they're going to give you
24 their accounts of what they saw. You are going to hear from
25 several other BHP students. These students are also familiar

1 with the Defendant and they are going to tell you they saw
2 him with a gun that night. There will be different accounts
3 that everyone had and about how things happened, but the one
4 constant theme in all those accounts is that Devon Thomas had
5 a gun. You are also going to hear from one of Devon's
6 friends who was at the party with him. He participated in
7 the fight with him. He left with him and he saw everything
8 that happened after that. Finally, you are going to hear
9 from law enforcement officers that took statements, collected
10 evidence, connected the dots, that type of thing. This isn't
11 a complicated case. It's not full of forensic testimony,
12 scientific testimony, anything like that. It's about people
13 giving their firsthand recollections of what they saw that
14 night.

15 Over the coming days, I want you to listen closely to
16 the testimony, use your common sense and judge for yourself
17 how you think things happened that night. At the close of
18 evidence, we feel that you will have no choice but to find
19 Devon Thomas guilty of attempted murder. Thank you.

20 THE COURT: Mr. McElhannon, does the Defense wish to
21 have an opening statement?

22 MR. MCELHANNON: Very briefly, Your Honor. May it
23 please the Court, Mr. Campbell, Mr. McLain.

24 THE COURT: Yes, sir.

25 OPENING STATEMENT BY MR. MCELHANNON

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

1 Ladies and gentlemen, first of all I want to apologize.
2 My voice is going and I hope I don't start coughing. Just
3 bear with me, please, if I do.

4 This is a case of whodunit. If you believe that Devon
5 Thomas had a gun that night, that doesn't mean that he shot
6 into this truck. We are going to present evidence in the
7 Defense's case that is going to show you that someone else,
8 in fact, was the shooter in this case. This was a rush to
9 judgment on behalf of law enforcement when they got one name,
10 which was Devon Thomas. You are going to hear some of the
11 witnesses in the State's case testify to, they rolled with
12 that. They rolled with it. As a matter of fact, in the
13 interviews of a lot of these witnesses, Investigator Mills
14 tells the witness he was talking to, "I know Devon did it. I
15 know Devon did it. Why don't you just come clean and tell me
16 what you saw, because I know Devon did it." Devon Thomas has
17 maintained from the beginning that he did not shoot into this
18 truck. He maintains that today and he's entitled to maintain
19 that. As the judge said, he is innocent until proven guilty
20 beyond a reasonable doubt.

21 After we present our case, I believe you're going to
22 have more reasonable doubt than you need to, to find him not
23 guilty. So, I would ask you to just pay attention to the
24 witnesses. It's going to ebb and flow. You're going to
25 think at one point the State's got this wrapped up. I just

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1 ask that you keep an open mind until everyone testifies in
2 this matter and then make up your mind and I believe you will
3 bring justice. Thank you.

4 THE COURT: Call your first witness.

5 MR. McLain: Your Honor, the State calls Investigator
6 Matthew Voigt with the Anderson County Sheriff's Office.

7 (After being duly sworn by the Clerk of Court, **MATTHEW**
8 **VOIGT** testified as follows:)

9 CLERK OF COURT: If you would take the stand and state
10 your full name for the record, please.

11 OFFICER VOIGT: Matthew Barnes Voigt. V-O-I-G-T.

12 DIRECT EXAMINATION

13 BY MR. MCLAIN:

14 Q Investigator Voigt, who do you work for?

15 A I work for the Anderson County Sheriff's Office.

16 Q Okay. How long have you worked for the Sheriff's
17 office?

18 A I've been there about eight-and-a-half years.

19 Q And what is your current position?

20 A Currently, I'm an investigator assigned to the Criminal
21 Investigations division.

22 Q How long have you been in that position you're currently
23 in?

24 A About four-and-a-half years.

25 Q Four-and-a-half years?

1 A Yes, sir.

2 Q So, you were in your current position on March 24th and
3 25th of 2012?

4 A Yes sir, that's correct.

5 Q Did you get a call about a shooting that occurred in
6 Honea Path early in the morning of the twenty-fifth of
7 March?

8 A Yes, sir. I was the assigned investigator on call that
9 night and I did receive a call from a road officer
10 requesting that I respond.

11 Q Can you explain in a little further detail? You said
12 you were the assigned investigator on call.

13 A Yes, sir. We take turns in rotations. Investigators
14 take, basically, a week of calls. During that week,
15 anything that occurs like armed robbery, attempted
16 murder, or severe crimes that require immediate, further
17 investigation, they contact the investigator on call.

18 Q Okay. So, you received a call. What was the initial
19 information that you got?

20 A The initial information that I got was that there had
21 been a shooting at the Shrine club in Honea Path and
22 that ---

23 Q Let me stop you right there. You said the Shrine Club
24 in Honea Path. Can you explain what the Shrine Club is?
25 Is that a dance club?

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1 A Yes, sir. Well, my understanding of it is, it's kind of
2 like a community building where you can have gatherings
3 and events together, kind of like, you pay to rent it, I
4 guess, and then you come and you can have birthday
5 parties or fundraisers or dances or whatever.

6 Q It's not, in itself, a business that continuously
7 conducts business?

8 A No, sir. I don't believe so. It's not like a
9 nightclub. It's more like a community building.

10 Q Okay. So, once you got that call that there had been a
11 shooting at the Shine Club, what did you do at that
12 point?

13 A I responded down to the scene.

14 Q Okay. Do you remember around what time you arrived?

15 A It was probably around 3:40, 3:45, somewhere in there.

16 Q In the morning?

17 A Yes, sir.

18 Q Okay. What was the first thing that you noticed when
19 you arrived?

20 A The first thing I noticed, the scene had been secured.
21 The altercation appeared to have taken place outside.
22 There were some folks inside, but the uniformed patrol
23 had secured the scene and had isolated the witnesses
24 that were left on scene.

25 Q Okay. And did you speak to the people that were still

1 there?

2 A Yes. I was able to speak with, I believe it was Ms.
3 Martin, one of the witnesses that was left on scene.
4 There were some other folks, but they were inside when
5 everything transpired and didn't witness anything.

6 Q Okay. Did you take written statements from these
7 witnesses?

8 A Yes, sir, I did.

9 Q Can you explain the purpose of taking those written
10 statements when you first arrive on scene?

11 A Okay. One of the things we're doing is, we are trying
12 to establish the beginning of the investigation. We
13 take a written statement from a person, basically, just
14 get a gist of what they heard or what they saw or what
15 they witnessed. At that time, we were doing it in
16 written form, you know, just to kind of, more of a firm
17 documentation of it. So, we are just trying to get a
18 quick synopsis of what happened in as much detail as
19 possible.

20 Q Okay. So, you met with witnesses, took statements. Did
21 you do anything else while on scene, initially on scene?

22 A Yes. I also assisted with the canvass of the scene and
23 witnessed where some of the evidence was located and was
24 with the forensic investigator when he collected them.

25 Q Can you explain what you meant by " you canvassed the

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1 scene"?

2 A Yes, sir. That's where -- this area was actually an
3 outdoor area and so we actually lined up in a line and
4 walked, looking on the ground to see if there was
5 anything left behind as a result of the incident.

6 Q And were you able to find anything?

7 A Yes, sir, we did.

8 Q What did you find?

9 A We located a shell casing and also a bullet, which would
10 be the shell casing with the projectile still in it. I
11 believe a couple of lighters. I think, some tire tracks
12 and I believe a blood sample was taken.

13 Q Okay. Investigator Voigt, I'm showing you what has been
14 marked as State's Exhibit #1. Do you recognize this?

15 A Yes, sir. That is the bullet that was on scene.

16 Q Okay. And this is State's Exhibit #2. Do you recognize
17 that picture?

18 A Yes, sir. That is the shell casing, which would be the
19 spent bullet minus the projectile.

20 Q I'm going to show you State's Exhibit #3. Do you
21 recognize that picture?

22 A Yes, sir. This is a overall shot of the, I guess -- it's
23 kind of like a fielded parking area is the best way to
24 describe it. It's mainly just open grass, but during
25 events folks will park in that area. Sometimes there

1 are a lot of vehicles there and if you are standing on
2 the -- if you are facing the building from the road, if
3 you are standing on the right corner, this area would
4 kind of be off to your left, so it would be the right
5 area of the building if you're facing it from the road.

6 Q Okay. Investigator, I'm going to show you what's been
7 marked as State's Exhibit #15. Can you explain what
8 that is?

9 A Yes, sir. This is a photograph of the area that is
10 photographed there, as well, only it would be looking
11 from the road onto the side of the building. Does that
12 make sense?

13 Q Okay. I'm actually going to put this on the overhead.
14 Would you mind stepping down and explain what this is a
15 picture of? (Witness complies)

16 A Okay. This right here (indicating) is actually a picture
17 of the Shrine Club itself and then this would be like a
18 circle that goes around in front of it and this is the
19 grassy area in question where vehicles were parked and
20 where the orange markers are at is going to be,
21 actually, in this grassy field area here.

22 Q And this is State's Exhibit #3 that we had spoken about.

23 A Yes, sir.

24 Q Can you point out what that is a picture of for the
25 jury?

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1 A Okay. That's the -- Marker #1 is where the bullet was
2 at and then #2 would be the shell casing, I believe.

3 Q Okay. And this is.

4 A That is the bullet.

5 Q And why would you normally find an unspent bullet like
6 that?

7 A Typically, if someone has a semiautomatic handgun and
8 they are trying to chamber one, but one is already in
9 the chamber, a non-fired bullet will eject out or if
10 they do have some kind of a malfunction or a misfeed and
11 they rack the slide back, a bullet that is not fired
12 will be racked out.

13 Q And this is State's Exhibit #2 and can you explain what
14 that is for the jury?

15 A Yes, sir. That's a spent shell casing. The projectile
16 has been fired and after it was fired, it was ejected
17 out of the handgun.

18 Q Okay. And, finally, I'm going to go back to State's
19 Exhibit #15, and can you point out where those two
20 articles were found?

21 A Yes, sir. It would have been, approximately, in this
22 area right through here. (Indicating)

23 Q And this picture was taken at a later date?

24 A Yes, sir.

25 Q Okay. (Witness returns to the witness stand)

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1 Investigator Voigt, I'm handing you what has been marked
2 as State's Exhibit #23. Would you open that and explain
3 what that is.

4 A Yes, sir. This would be the spent shell casing.

5 Q You say the spent shell casing, is that the same one
6 that is identified in State's Exhibit #2?

7 A Yes, sir. It appears to be and it has also been
8 indicated on the outside packaging, as well.

9 Q Okay.

10 A With the same case number and the officer who collected
11 it was Investigator McElrath.

12 Q Okay.

13 A And this is going to be the .45 caliber bullet that was
14 also collected on the scene and it contains the same
15 case number and collecting officer, Investigator
16 McElrath.

17 Q And that's the same bullet that's identified in State's
18 Exhibit #1?

19 A Yes, sir.

20 Q Were you present when those photographs were taken?

21 A Yes, sir.

22 Q If you don't mind stepping down. I want to show you a
23 few other pictures. (Witness complies) Investigator
24 Voigt, this is State's Exhibit #16. Can you describe
25 what this is?

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1 A Okay. That looks like a closer-up picture of the Shrine
2 Club, as I call it, and that's the building right there,
3 and again, the field to the right would be where the
4 incident occurred.

5 Q And, again, could you point out in that picture where
6 the bullet and the spent shell casing were found?

7 A Yes, sir. It should be, approximately, right in here.

8 Q Okay. And this is State's Exhibit #17. Do you
9 recognize this picture?

10 A Yes, sir, that should be the other direction, facing out
11 towards the road. And that's the roadway here. I'm not
12 sure which highway it is that runs right in front of The
13 Shrine Club. I can't think of it off the top of my
14 head.

15 Q Okay. And this is State's Exhibit #18?

16 A Yes, sir. And that would be the beginning -- the very
17 front of the building of the Shrine Club.

18 Q In the front of the building. So, is that the front
19 door?

20 A Yes, sir.

21 Q Okay.

22 A And the incident would have occurred to the right.

23 Q This is State's Exhibit #19.

24 A That would be the circle. It's like a circle drive that
25 comes around the front of it. So, the incident would

1 have occurred over here.

2 Q If you were taking that picture, where would the
3 building be in relation to you?

4 A The building should be behind you.

5 Q Okay. This is State's Exhibit #20.

6 A That would be the opposite side of the building from
7 where the incident occurred.

8 Q Okay. State's Exhibit #21.

9 A That would be the front of the building, looking towards
10 where the incident occurred, back in here.

11 Q And, finally, this is State's Exhibit #22.

12 A And, again, that would be a shot looking away from the
13 building, looking, I guess, in the opposite direction.

14 Q Okay. Thank you, Investigator Voigt.

15 A Okay. (Returns to witness stand)

16 Q Investigator Voigt, once you finished canvassing the
17 area, what was your next move? What did you do after
18 that?

19 A After everything that could have been done at the scene,
20 given the time of day, was completed, I responded to the
21 hospital.

22 Q You responded to the hospital?

23 A Yes, sir.

24 Q Okay. And why did you go to the hospital?

25 A I went to the hospital to check on the victim's status

DIRECT EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCLAIN

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1 and see if I could obtain a statement from her.

2 Q Okay. And when you arrived, were you able to speak with
3 anyone?

4 A Yes, I did check with hospital personnel who said that
5 she did suffer a gunshot wound to her left thigh, about
6 mid-thigh, and I did observe that. Said she was in
7 stable condition and that they would be operating to
8 pull the projectile out of her leg, because it was
9 wedged against her femur, I believe.

10 Q Okay. Were you able to take a statement from the victim
11 at that time?

12 A. Yes, sir, I did. I took a brief statement from her at
13 that time.

14 Q Okay. And you said it was a brief statement. Why was
15 it brief?

16 A Well, you know, typically, when these incidents occur,
17 folks have -- it's a lot for someone to process. So,
18 you're trying to pull this information out of them and
19 they're still kind of in shock from what happened,
20 especially in her condition. She obviously had a
21 gunshot wound to the leg. They're prepping her for
22 surgery. She's not in a lot of condition to want to
23 talk to me and be very -- she can provide about as much
24 information as you can given the circumstances. So, I
25 try and get as much information without getting in the

1 way of hospital personnel trying to care for her
2 injuries. We can always go back and talk to her later.
3 Just want to get as much initial information to begin
4 the investigation.

5 Q Okay. And were any pictures taken at the hospital ---

6 A Yes, sir.

7 Q --- when you were taking the statement or while you were
8 in the room with the victim?

9 A Yes, sir. Forensic Investigator McElrath responded and
10 did take pictures.

11 Q Okay. Investigator Voigt, I'm showing you what's been
12 marked State's Exhibit #4. Do you recognize that
13 picture?

14 A Yes, sir.

15 Q Were you present when that picture was taken?

16 A Yes, sir, I was.

17 Q And State's Exhibit #5, do you recognize that picture?

18 A Yes, sir.

19 Q Were you present when that picture was taken?

20 A Yes, sir.

21 Q Would you step down for a minute and explain to the jury
22 what these are pictures of. (Witness complies)

23 A Okay. That is a picture of the wound of Ms. Smith. You
24 can see it's her left thigh.

25 Q Okay.

1 A And the markers are just to show the, are just to kind
2 of show the size of the entrance wound.

3 Q And what are those? What is the size on that? Is that
4 a ruler?

5 A Yes, sir, it is. I believe they're...

6 Q I'm showing you what's been marked as State's Exhibit
7 #5. Can you explain what this is?

8 A Yes. And that is an overall picture of the victim. You
9 can see the wound there on her left thigh.

10 Q Okay.

11 A You can also see that her hands have been bagged, as
12 well, so that that way she can be tested to see if she
13 has any gunshot residue on her hands.

14 Q Why were her hands bagged?

15 A Typically, anytime we have a victim or suspect or
16 somebody who has been involved in a shooting incident,
17 the hands are bagged until a GSR test can be completed.
18 And that's kind of to keep them from wiping their hands
19 off or, you know, unknowingly washing off any of that
20 residue, kind of hold it there until we can get someone
21 there to test it.

22 Q Okay. Thank you. (Witness returns to witness stand)

23 Q So, after you spoke to the victim, Ms. Smith, did you do
24 anything else? Did you speak to anyone else at the
25 hospital?

CROSS EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCELHANNON 48

1 A Yes. While I was speaking with her, I was advised that
2 there was another subject that was being treated. I
3 believe it was a case subject. He'd had a broken jaw, I
4 believe, that had been sustained during an altercation.
5 So, I made contact with him and it appeared that he had
6 been involved in the altercation at the Shrine Club, as
7 well. But given the time he checked in and by his and
8 his brother's statement, I believe they were gone before
9 any of the shooting took place.

10 Q Okay. And at this point in time, were you done with
11 your portion of the investigation?

12 A Yes, sir, at this point in time, I took all the
13 information I had and basically handed it off to my
14 supervisor to give to the, one of the first shift
15 investigators. I'd been out most of the night at this
16 point in time.

17 Q Okay. And thank you, Investigator Voigt. I don't have
18 anymore questions for you right now. Please answer any
19 questions that Mr. McElhannon has.

20 A Yes, sir.

21 THE COURT: Cross Examination.

22 CROSS-EXAMINATION

23 BY MR. MCELHANNON:

24 Q Investigator Voigt, the photos that were just shown to
25 the jury, these were taken, what, last week? Of the

CROSS EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCELHANNON 49

1 scene.

2 A I'm not sure, sir. I wasn't present when those were
3 taken.

4 Q Okay. You showed up -- what time did this occur on the
5 24th?

6 A I believe this occurred around 2:30, 2:30ish, in the
7 morning.

8 Q In the morning?

9 A Yes, sir.

10 Q And you got there about 3:40, 3:45?

11 A Yes, sir, I did.

12 Q So, wouldn't it be fair to say that these photos -- I
13 mean, it was a lot darker than these show when you got
14 there.

15 A Yes, sir.

16 Q I mean it was night.

17 A Yes, sir. I wasn't present when those photographs were
18 taken.

19 Q No, I'm saying when you got on the scene that night, it
20 wasn't this bright, it wasn't this easy to see, was it?

21 A Oh, no, sir. No, sir.

22 Q I mean, the parking lot and the grassy area and all
23 that's pretty much in the dark, right?

24 A Yes, sir. Yes, sir.

25 Q And the unspent .45 and the shell casing, were those

CROSS EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCELHANNON 50

1 fingerprinted?

2 A I believe they were.

3 Q Do you know if any fingerprints came back on them?

4 A I do not believe any came back on them.

5 Q You do not believe anything came back? They were clear?

6 A No, sir. I don't think they located any fingerprints on
7 either one.

8 Q So they did not match my client's fingerprints?

9 A No, sir, not to my knowledge.

10 Q And you took a brief statement from Ms. Smith at the
11 hospital.

12 A Yes, sir, that's correct.

13 Q Didn't she write -- initially tell you, I don't know who
14 shot me?

15 A I'd have to look at the statement, sir.

16 Q Well, it's in your incident report that you wrote. You
17 put that she said, I do not know who shot me. Would you
18 agree with that?

19 A I would have to look at the statement and see, sir. If
20 you're asking for a verbatim quote, I would like to look
21 at it, please.

22 MR. MCELHANNON: Your Honor, may I approach.

23 THE COURT: Yes, sir.

24 A (Looks at document) Yes, sir, that is correct. But she
25 did also later advise that she believed it was Devon.

CROSS EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCELHANNON 51

1 Q Right. That was later after -- I mean, that wasn't
2 right after this. That was later on when she gave
3 another statement?

4 A No, sir. That would have been during this same initial
5 interview.

6 Q She actually did say, I do not know who shot me, in the
7 beginning?

8 A Yes, sir. Typically, when I take a statement, I ask
9 folks to give me information that they are a hundred
10 percent sure of, not things they've heard somebody else
11 say or a friend of theirs has told them. I want to know
12 their exact opinion and take on this, what she knew to
13 be true. And at the time, she said she didn't know,
14 that she thought it was the Devon subject. So, if she
15 did not know exactly, then that is what I put in the
16 statement.

17 Q So, she wasn't sure at that point who shot her?

18 A That's correct, sir.

19 Q You said that by the time you got there, there was
20 really nobody on the scene, just a few people inside?

21 A Yes, sir, that's correct.

22 Q Do you remember who was still there?

23 A Not off the top of my head, sir.

24 Q But Ms. Martin was?

25 A Yes, sir, that is correct.

1 Q I think you took her statement?

2 A Yes, sir.

3 Q Did you take it at the Shrine Club?

4 A Yes, sir, I did.

5 Q And that was -- and I apologize if I'm saying the name
6 wrong, but Nalshia Martin?

7 A I believe so. I remember her last name was Martin. I'd
8 have to see the actual statement to confirm the
9 spelling.

10 Q Did you do any further follow-up on this case or was
11 that your involvement pretty much?

12 A That was my involvement, sir.

13 MR. MCELHANNON: I have nothing further.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. MCLAIN:

17 Q Investigator Voigt, when you first responded to the
18 hospital and you were able to speak to Ms. Smith, did
19 she seem -- had they give her medication that you're
20 aware of?

21 A I believe so. That's typically the case. You know,
22 when they're in the hospital, they're treating them for
23 some sort of pain for their ailment, especially during
24 the initial treatment until they can get everything
25 figured out.

REDIRECT EXAMINATION OF INVESTIGATOR VOIGT BY MR. MCLAIN 53

1 Q Is it uncommon for investigators, after getting an
2 initial statement right after something like this
3 happens, is it uncommon to go back and get a more
4 complete statement at a later date?

5 A It's very common to go back and do that. Like I said,
6 when you take that initial statement from someone,
7 they've had a lot -- it's a lot to process. Obviously,
8 if you've just witnessed someone shooting at you or
9 you've been shot yourself, you've got a lot going on.
10 And never mind all the pain and everything else that's
11 going on, now you've got someone there asking you fifty
12 questions, so it's very common to ---

13 MR. MCELHANNON: Objection, Your Honor.

14 THE COURT: Just one second. What's your objection?

15 MR. MCELHANNON: He's testifying as if he's been a
16 victim and been shot. I mean, he's getting in the mind of a
17 victim and I just object to that.

18 THE COURT: I sustain that. It's speculation. Go
19 ahead.

20 MR. MCLAIN: We'll move on, Your Honor.

21 Q I want to talk about the, the Shrine Club itself.

22 MR. MCELHANNON: Objection, Your Honor. I thought this
23 was merely -- this is a new question. I mean, I didn't come
24 up with any ---

25 THE COURT: Does it address any matters brought up by

1 Mr. McElhannon?

2 MR. MCLAIN: Yes, Your Honor.

3 THE COURT: Okay.

4 Q When you arrived that night, were there any lights at
5 all that lit up the parking lot anywhere on that
6 property?

7 A No, sir. It's very dark.

8 Q Okay. Okay.

9 A However, we did use flashlights and, like I said, lineup
10 to form a line to consistently search an area.

11 Q Okay. Investigator Voigt, I'm going to show you,
12 briefly, State's Exhibit #19. If you could step down
13 for one second.

14 A (Witness complies).

15 MR. MCELHANNON: Your Honor, it's, again, the same
16 objection. Is this going into something new?

17 THE COURT: Let him ask his question first.

18 MR. MCELHANNON: Well, before the answer comes out, I
19 guess ---

20 THE COURT: I understand.

21 Q Is that a lightbulb on the property?

22 A Yes, sir.

23 Q Was that there that night?

24 A I'll be honest with, I really -- I cannot remember. It
25 was, it was dark.

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q Okay. Thank you.

2 MR. MCLAIN: I have no further questions, Your Honor.

3 THE COURT: All right. Do you not want to release the
4 officer at this point?

5 MR. MCELHANNON: This one, Your Honor, I don't have an
6 objection to.

7 THE COURT: Okay. Any reason why, Mr. McLain, this
8 officer can't be excused? Any reason why this officer can't
9 be excused?

10 MR. MCLAIN: No, Your Honor.

11 THE COURT: All right. Thank you, sir.

12 INVESTIGATOR VOIGT: Thank you, Your Honor.

13 THE COURT: Call your next witness.

14 MR. CAMPBELL: Your Honor, the State calls LaJames
15 Glass.

16 (After being duly sworn by the Clerk of Court,
17 **LAJAMES GLASS** testified as follows:)

18 CLERK OF COURT: If you would take the witness stand and
19 state your name for the record, and spell your last for the
20 reporter, please.

21 MR. GLASS: My name is LaJames Glass, G-L-A-S-S.

22 DIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q Mr. Glass, you're going to have to speak up, okay? She
25 has to take down everything you're saying and they need

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1 to be hear what you're saying. Okay?

2 A Okay. My name LaJames Glass, G-L-A-S-S.

3 Q Now, Mr. Glass, you're currently -- you have pled guilty
4 to your role and involvement in the shooting of
5 Anquavious Smith on or about March 25th, 2012. Is that
6 right?

7 A That's right.

8 Q And you pled to four counts of assault and battery of a
9 high and aggravated nature.

10 A Yes, sir.

11 Q And prior to that, you also had a record for stalking.
12 Is that correct?

13 A Yes.

14 Q In fact, both of those cases dealt with Detective Wayne
15 Mills.

16 A Yes, sir.

17 Q Now, do you know Anquavious Smith?

18 A Yes.

19 Q How do you know her?

20 A From Honea Path, a couple of parties and stuff like
21 that.

22 Q And back on March 25th, 2012, how old were you?

23 A Nineteen.

24 Q And you currently live in Honea Path or you live in
25 Anderson?

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 A Anderson.

2 Q Now, I want to talk to you about the night that
3 Ms. Smith was shot. Do you recall that night?

4 A Yes, sir.

5 Q And were you present when Ms. Smith was shot?

6 A Yes, sir.

7 Q And did you go to the birthday party that she attended?

8 A Yes, sir.

9 Q How did you get invited to that birthday party?

10 A Through a friend.

11 Q Come again?

12 A Through a friend.

13 Q Through somebody else?

14 A Yes, sir.

15 Q And that person asked you to come along with them?

16 A Yeah.

17 Q Do you recall whose birthday it was for?

18 A I think it's somebody named Nalsheen, something like
19 that.

20 Q And who did you go with to the party?

21 A Cornelius and Tyrell.

22 Q Did you go with Keydarius Edwards?

23 A Yeah. He was in the car we was in.

24 Q He rode with y'all?

25 A Yeah.

1 Q Anybody else ride with y'all or it was just the four of
2 you?

3 A Just the four of us.

4 Q And about what time did you get there. Do you recall?

5 A I don't recall the time frame.

6 Q Was it dark or was it still light?

7 A It was dark.

8 THE COURT: Let me see, can the jury hear him? (Nod
9 heads) Okay. Go ahead.

10 Q And how did y'all get to the birthday party?

11 A We drove.

12 Q And whose car did y'all drive?

13 A Cornelius'.

14 Q What kind of vehicle is it?

15 A A van.

16 Q And when you got there, were y'all planning on meeting
17 up with other people or were you just going to see who
18 was there already?

19 A Just going there already.

20 Q Were a lot of people there that night?

21 A Yes, sir.

22 Q Did you know most of the people?

23 A No.

24 Q And did you know where these other people were from?

25 A No, sir.

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q Did you know about what part of the community they were
2 living in?

3 A No.

4 Q Now, did you go with Devon Thomas to the party?

5 A No, sir.

6 Q Did you meet up with him?

7 A No, sir.

8 Q At the party?

9 A (Shakes head)

10 Q You have to speak up.

11 A No, sir.

12 Q Did you see him at the party?

13 A Yes.

14 Q Now, Devon Thomas was a friend of yours?

15 A Yes, sir.

16 Q Is he from Anderson?

17 A Yes.

18 Q Now, at some point during the time you were at this
19 birthday party, did a fight break out?

20 A Yes, sir.

21 Q I want to talk to you a little bit about that. Did a
22 fight break out on the inside of the club or the
23 outside?

24 A On the inside.

25 Q And do you know why the fight broke out?

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- 1 A (No verbal response)
- 2 Q Do you know what started it?
- 3 A Yes.
- 4 Q What's that?
- 5 A Keydarius, his female friend, somebody was trying to
- 6 talk to her and it all started from there from my place,
- 7 anyway, at the party.
- 8 Q You're going to have speak up.
- 9 A Keydarius Edwards and his girlfriend was there.
- 10 Somebody was trying to talk to her, from Greenwood, and
- 11 that's just how it started from there.
- 12 Q Was there a lot of people there from Greenwood?
- 13 A You could say. I say a lot.
- 14 Q And were there people from Anderson at this party?
- 15 A Yes, sir.
- 16 Q Were there people from Belton?
- 17 A Yeah.
- 18 Q Honea Path area?
- 19 A Yes, sir.
- 20 Q And who was trying to talk Keydarius Edwards'
- 21 girlfriend?
- 22 A Some guy in an orange shirt. That's all I know.
- 23 Q Do you know where he was from?
- 24 A Greenwood.
- 25 Q And at some point, a fight broke out?

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1 A Yeah.

2 Q Were a lot of people involved in this fight?

3 A Yes, sir.

4 Q And were you involved in this fight?

5 A Yes, sir.

6 Q Was Devon Thomas involved in this fight?

7 A Yes, sir.

8 Q Would you tell the ladies and gentlemen of the jury --
9 tell us about the fight, what was going on, what
10 happened, what lead up to it, and then what took place.

11 A What lead up to the fight, like I said, somebody was
12 trying to talk to this girl from the other side. Time
13 go by. A whole bunch of pushing and shoving going on
14 and fighting. Everybody was fighting. Greenwood and
15 Anderson, basically. We run and we jumped on them for a
16 little while, a couple of seconds. I was fighting.
17 Everybody in the room was fighting. I leave for
18 outside. Everybody ran their separate ways outside.

19 Q Okay. Before we get to outside -- now, while
20 the fight was going on in the inside and before the
21 fight took place on the inside, did you see anybody with
22 a weapon such as a gun or a knife?

23 A Not inside.

24 Q At some point -- were the lights on or off inside the
25 club?

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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- 1 A They was on. As soon the fight started they came on.
- 2 Q And people were punching one another?
- 3 A Yeah.
- 4 Q Were people throwing chairs?
- 5 A Yes, sir.
- 6 Q And did you get hit in this fight?
- 7 A Yes, sir.
- 8 Q What happened to you?
- 9 A Got hit. I was fighting.
- 10 Q Did you get the worst end of it?
- 11 A No.
- 12 Q Did you get slammed?
- 13 A Yeah.
- 14 Q Did you see Mr. Thomas involved in the fight?
- 15 A Yes, sir.
- 16 Q And what was he doing?
- 17 A He was fighting.
- 18 Q And who was he fighting?
- 19 A I don't know their names, but I just know that he was
- 20 fighting.
- 21 Q Okay. Where were they from?
- 22 A Greenwood.
- 23 Q So, basically, it was the Anderson crowd fighting the
- 24 Greenwood crowd?
- 25 A Yes, sir.

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1 Q And did you see what happened to him during the fight?

2 A Yes.

3 Q What happened to him?

4 A He was being jumped on.

5 Q And do you recall who was jumping on him?

6 A Guys from Greenwood.

7 Q And was it one of the guys you mentioned earlier, the
8 guy in the orange shirt?

9 A No.

10 Q At some point, did the fight spill over to the outside?

11 A Yes, sir.

12 Q What happened?

13 A It lead to the outside. Everybody ran outside. I ran
14 to the van, I was going, too, and Cornelius was driving.
15 Then Devon Thomas ran out to the van, too.

16 Q Did he run out before you or after you, outside the
17 club?

18 A (No verbal response)

19 Q Did he come out of the club before you or after you?

20 A He came out after.

21 Q Okay. You went to your van that you came in. And then
22 what happened?

23 A Then that's when he came to the van and grabbed a gun.

24 Q And at some point in time -- when he came over to the
25 van, did he say anything to you?

- 1 A Yeah.
- 2 Q What was he saying?
- 3 A He was coming to get the gun.
- 4 Q And did he get a gun?
- 5 A Yes, sir.
- 6 Q And what kind of gun was it?
- 7 A A forty-five.
- 8 Q A forty-five?
- 9 A Yes, sir.
- 10 Q Do you know the difference between a revolver and a
- 11 semi-automatic gun?
- 12 A Yes, sir.
- 13 Q What kind was it?
- 14 A A forty-five.
- 15 Q Was it a semi-automatic or a revolver?
- 16 A Oh, semi-automatic.
- 17 Q And to your knowledge, do you know if the gun was
- 18 loaded?
- 19 A Yes, sir.
- 20 Q And after Devon got the gun, what did he do with it?
- 21 A He ran back across the parking lot looking for the
- 22 people who jumped on him.
- 23 Q And prior to him running across the parking lot with a
- 24 gun, did he load the weapon?
- 25 A (No verbal response)

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q Did he do anything with it?

2 A No. It was already loaded. He started shooting, but
3 that's when the clip fell out, the magazine, and I ended
4 up giving him a magazine.

5 Q The clip fell out where?

6 A Right on the left side of the building, on this side of
7 the parking lot.

8 Q Did the clip fall to the ground?

9 A Yes, sir.

10 Q And why did the clip fall to the ground?

11 A I guess from the way he was trying to shoot it.

12 Q So, did he cause the clip to fall to the ground?

13 A Yes, sir.

14 Q And did you see him attempt to try to shoot this gun in
15 the air?

16 A Yes, sir.

17 Q And what happened?

18 A Nothing happened.

19 Q Why is that?

20 A I guess because he didn't shoot it.

21 Q Did the gun have bullets in it at that time?

22 A Not until I gave him the clip back.

23 Q And what did he do with that clip?

24 A He put it in and tried to shoot it and that's when it
25 didn't shoot and he ended up shooting after a couple of

1 tries.

2 Q And what direction was he shooting in?

3 A Towards the left side of the building, if you're coming
4 out of it.

5 Q When he was shooting, was he shooting up in the air, at
6 the ground ---

7 A No.

8 Q --- or was he pointing the gun in a certain direction?

9 A He was pointing.

10 Q And what direction was he pointing at?

11 A Towards where the guys was running to.

12 Q When you say "guys," what guys are you talking about?

13 A From Greenwood.

14 Q And at any point, did you say anything to him as he was
15 running towards the guys from Greenwood?

16 A Yes, sir.

17 Q What did you tell him?

18 A Tell him to come on, get in this car.

19 Q Did he?

20 A No, sir.

21 Q What did he do?

22 A Still going off mad.

23 Q What did you say?

24 A He was still going off mad. He wouldn't get in the car.

25 Q So your opinion was that he was mad at that point in

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 time?

2 A Yes, sir.

3 Q And how close to you -- how close was he to you when the
4 gun went off?

5 A I would say about fifteen feet.

6 Q About from me to you?

7 A Yeah.

8 Q And so when the gun went off, was he aiming it at
9 anybody in particular?

10 A Yes.

11 Q Who?

12 A The guys from Greenwood.

13 Q Do you know what they were wearing?

14 A An orange shirt and I want to say a couple of guys were
15 wearing a red shirt, a red striped shirt.

16 Q And in between the guys from Greenwood and Devon, was
17 there anything blocking him?

18 A Yes, sir. A red pickup truck took off.

19 Q Was it a big truck or a little truck?

20 A It was a little truck.

21 Q And when the gun went off, do you know if that truck was
22 hit by the bullet?

23 A No, sir.

24 Q How many times was the gun fired? Do you recall?

25 A I'd say twice.

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1 Q And after the gun was fired -- who was pulling the
2 trigger?

3 A Devon.

4 Q Is Devon in the courtroom today?

5 A Yes, sir.

6 Q Will you please identify him?

7 A (Points)

8 Q Is he wearing the striped shirt?

9 A Yes, sir.

10 MR. CAMPBELL: Your Honor, let the record reflect he is
11 referring to the Defendant in this case.

12 THE COURT: The record will so reflect.

13 Q How long have you known Mr. Thomas?

14 A Since middle school.

15 Q And up until this point, y'all were friends, right?

16 A Yes, sir.

17 Q Do you hang out with him since then?

18 A No, sir.

19 Q When did you learn that Ms. Smith had been shot?

20 A The same night.

21 Q Now, after you learned Ms. Smith had gotten shot, did
22 you talk to any of the guys that you were there with
23 that night about what happened?

24 A Yes, sir.

25 Q Who did you talk to?

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DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 A I talked to Devon.

2 Q And what did he tell you?

3 A Don't worry about it, don't say nothing.

4 Q And you do know he's blaming you for the shooting?

5 A Yes, sir.

6 Q Why is that?

7 A Sh, I don't know.

8 Q Prior to that night, did y'all have any difficulties
9 between one another?

10 A We weren't really straight like that, like friends. Had
11 little disagreements, stopped talking for awhile, but I
12 don't know.

13 Q So, you don't know why he's blaming you?

14 A No, sir.

15 Q Did you shoot Ms. Smith?

16 A No, sir.

17 Q What did you do?

18 A I handed Devon the clip.

19 Q Did you tell him to shoot?

20 A No, sir.

21 Q Did you make him shoot?

22 A No, sir.

23 Q Now, when all of this was going on, where was Keydarius
24 and Cornelius?

25 A I know where Cornelius is, he was already in the car.

- 1 He stay in the car. I don't know where Keydarius was.
- 2 Q And do you know a Charles Edwards?
- 3 A Yes, sir.
- 4 Q How do you know him?
- 5 A Devon kin to him.
- 6 Q How is he kin?
- 7 A Cousins.
- 8 Q So, Devon is Charles Edwards' cousin?
- 9 A Yes, sir.
- 10 Q Did you see Charles Edwards out there that night, the
- 11 morning of March 25th, 2012?
- 12 A No, sir.
- 13 Q Did you see him at the party?
- 14 A Not that I can recall.
- 15 Q Now, when did you learn that law enforcement was also
- 16 looking for you?
- 17 A After they came to my mother house with a warrant.
- 18 Q Say that again?
- 19 A After they came to my mother house with the warrants.
- 20 Q Who is they?
- 21 A The officers, the arresting officers.
- 22 Q Sheriff's office?
- 23 A Yes, sir.
- 24 Q Let me ask you to step back before we get into that.
- 25 Prior to the shooting, did you see or witness Mr. Thomas

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 rack the pistol back?

2 A Yes, sir.

3 Q And what was the purpose, why did he do that?

4 MR. MCELHANNON: Objection, Your Honor. I don't think
5 he can -- that calls for speculation, for one thing.

6 THE COURT: Lay some foundation for that, please, sir.

7 Q From what you could tell, what did he do with the gun
8 once he had it in his hand?

9 A He cocked it back.

10 Q And how did he do that?

11 A By pulling the top back, sliding it back.

12 Q And after he did that, was it shortly after that, that
13 the shot went off?

14 A Yes, sir.

15 Q Did you see anybody else outside with a weapon besides
16 Mr. Thomas?

17 A No, sir.

18 Q Now, law enforcement came to your house, or they went to
19 your mother's house and they had warrants out for your
20 arrest. Is that right?

21 A Yes, sir.

22 Q What did you do once you found that out?

23 A I called my probation to let them know I wasn't running
24 or hiding from them and I told them what charges I had
25 and asked them should I just come up there then and turn

1 myself in or wait until my initial court date? I didn't
2 know what they wanted me to do. She told me just to
3 wait until I come in.

4 Q Now, why were you calling your probation agent? Why did
5 you tell her you had warrants out for your arrest?

6 A Because I ain't want them to feel like I was hiding or
7 running from them or that I didn't really do nothing.

8 Q Why didn't you run?

9 A I knew that I didn't do nothing.

10 Q Now, afterwards -- now after -- you went to your
11 probation. Is that right?

12 A Yes, sir.

13 Q And did you meet Detective Mills there or another
14 officer there?

15 A Another officer.

16 Q And they placed you under arrest?

17 A Yes, sir.

18 MR. MCELHANNON: Objection, Your Honor. Leading.

19 THE COURT: Rephrase.

20 Q Were you placed under arrest at that time?

21 A Yes, sir.

22 Q And did they take you back to the law enforcement
23 center?

24 A Yes, sir.

25 Q At some point, did you have an opportunity to speak to

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Detective Mills?

2 A Yes, sir.

3 Q And what did y'all speak about?

4 A The case and what happened that night.

5 Q And when he spoke to you, did you come out and say that
6 you were involved?

7 A No, sir.

8 Q When you first spoke to him, did you come out and tell
9 him that Devon Thomas was involved in this shooting
10 incident?

11 A No, sir.

12 Q Why not?

13 A Because he's a friend. I didn't really want to tell on
14 him. We were friends.

15 Q Well, what got you to change your mind?

16 A Not telling so long and just hearing how he was trying
17 to put it on me, just everything.

18 Q Well, you're saying you heard him trying to put it on
19 you. How did you hear him?

20 A Video or audio.

21 Q And who did you hear it from?

22 A Detective Wayne Mills.

23 Q He played you an audio recording?

24 A Yes, sir.

25 Q And who was that recording of?

- 1 A Devon Thomas.
- 2 Q And who was he blaming for the shooting?
- 3 A Me.
- 4 Q How did that make you feel?
- 5 A Not happy.
- 6 Q Tell me again. I'm sorry, I didn't hear you.
- 7 A Not happy.
- 8 Q What did you do at that point in time?
- 9 A Worried about it.
- 10 Q Well, did you continue your interview with Detective
- 11 Mills?
- 12 A Well, yes, sir.
- 13 Q What did you tell him?
- 14 A I told him how it all went down.
- 15 Q Was it like what you have said today here in court?
- 16 A No, sir.
- 17 Q What was different?
- 18 A That I found the clip for him.
- 19 Q Why is that?
- 20 A Because I was already on probation, so, I didn't really
- 21 want to say too much about me involved with a gun.
- 22 Q Are you allowed to be around a gun or ammo while you are
- 23 on probation?
- 24 A No, sir.
- 25 Q Do you know the reason why or what Mr. Devon Thomas was

DIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 mad about that caused him to get a gun?

2 MR. MCELHANNON: Objection, Your Honor, calls for
3 speculation.

4 THE COURT: Sustained.

5 Q What events lead up to Mr. Thomas getting the gun?

6 MR. MCELHANNON: Objection, Your Honor, asked and
7 answered.

8 THE COURT: Overruled.

9 Q Answer it.

10 A Him being jumped on.

11 Q Was everybody else that you were at the party with
12 jumped on, also?

13 A No, most of us was outnumbered.

14 Q You will have to say it again.

15 A Most of us was outnumbered.

16 Q There was more of them than y'all?

17 A Yeah.

18 Q And, basically, it was a Homeland Park crowd against a
19 Greenwood crowd.

20 A Yes, sir.

21 Q And were you jumped on?

22 A I was fighting one-on-one with somebody.

23 Q And everybody else you were with, they were also
24 fighting, too?

25 A Yes, sir.

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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1 Q And after the fight broke up and everybody went outside,
2 did anybody else, did you see anybody else grab a gun?

3 A No, sir.

4 Q Who's the only person you saw that night with a gun?

5 MR. MCELHANNON: Asked and answered again, Your Honor.

6 THE COURT: Sustained. I sustain that.

7 Q Mr. Glass, please answer any questions Mr. McElhannon
8 may have.

CROSS-EXAMINATION

9
10 BY MR. MCELHANNON:

11 Q Mr. Glass, do you tend to stretch the truth or not tell
12 it all?

13 A Repeat that?

14 Q I said, you either tend to stretch the truth or not tell
15 the truth at all, don't you?

16 A Neither one them.

17 Q Pardon?

18 A I said neither one of them.

19 Q Neither one of them. Okay. The reason you didn't tell
20 Detective Mills at the beginning of your interview that
21 Devon Thomas had this weapon is because he didn't have
22 it and the only reason that you told him he did was,
23 once Detective Mills told you that he was blaming you.
24 Correct?

25 A I'm sorry, repeat that?

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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1 Q The only time that you said Devon Thomas had a gun and
2 had anything to do this was after you found out that he
3 was telling the truth and saying you were the one with
4 the gun. Isn't that correct?

5 A Yes, sir. Yes, sir.

6 Q And you were on probation, so you weren't supposed to be
7 around any weapons. Correct?

8 A Yes, sir.

9 Q You rode there with Cornelius -- what's his last name?

10 A Jones.

11 Q Jones. You rode in Cornelius Jones' van to the party.
12 Right?

13 A Yes, sir.

14 Q And y'all had guns in that van. Right?

15 A We had a gun.

16 Q All right. A gun. So, you knew at that point you
17 weren't supposed to be in that van. Didn't you?

18 A Yes, sir.

19 Q And who took that gun in that van?

20 A I did.

21 Q You did. And it was a .45?

22 A Yes, sir.

23 Q So, that gun, the only gun that's been talked about in
24 this case is your gun?

25 A Yes, sir.

1 Q And you knew it was loaded. Correct?

2 A Yes, sir.

3 Q And you say that Devon went to this van, ran to the van
4 and got this gun out of the van. Right?

5 A Yes, sir.

6 Q That's your testimony?

7 A Yes, sir.

8 Q Okay. Do you remember giving a statement to Detective
9 Mills on April the 4th of 2012?

10 A Yes, sir.

11 Q So, roughly a week after this happened, nine days,
12 something like that. You remember that?

13 A Yes, sir.

14 Q Let me read you part of what you told him back then.

15 "That's when I saw Devon Thomas next to a white car and
16 he pulled out a gun." So which is, did he get the gun
17 out of the white car or out of the van?

18 A The van.

19 Q Why did you tell Detective Mills he got it out of the
20 white car?

21 A I said I saw him beside the white car, because he ran to
22 the left side of the building, which was where the gun
23 was at when all this was going on. But I mean pull it
24 out, I don't mean grab out of the car. Pull it out,
25 this and this and this. That's a little bit of slang.

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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1 Q So, your testimony is that he ran to this van and ran
2 toward the car that he came in?

3 A That's where they was parked at. That's where the guys
4 ran out, they ran out the left side. Everybody -- the
5 Greenwood guys was parked on the left side of the
6 building. I'm on the right side of the building were my
7 van is. He's parked on the left. He came to the right,
8 the right side of the building to get the gun. Once I
9 see him, he ran across the parking lot, that's the left
10 side of the building.

11 Q Let me ask you something. Did Devon Thomas come with
12 you in that van?

13 A No, sir.

14 Q He rode in a white Camry, didn't he?

15 A Yes, sir.

16 Q How did Devon Thomas know that there was a gun in the
17 van you came in?

18 A Because we was friends and before this night he had rode
19 in the van before.

20 Q So, you always roll with guns? You always have a gun
21 everywhere you go?

22 A At that moment, I did.

23 Q And you pled guilty pretty quick to four counts of
24 assault and battery of a high and aggravated nature,
25 didn't you?

- 1 A Yes, sir.
- 2 Q Because you knew that was a lot less than what you
- 3 should have been charged with, don't you?
- 4 A Yes, sir.
- 5 Q You're the one that fired the shot.
- 6 A No, sir.
- 7 Q And you say that in this statement of April the 4th,
- 8 again, of 2012, that's when Devon picked up the clip and
- 9 put it back in the gun and the gun fired. Now, today,
- 10 you're saying that you're the one that actually handed
- 11 him the clip. Is that your testimony?
- 12 A No, sir. I been saying it and the reason I said it
- 13 today, I said when I went to court April 16th, I would
- 14 say I handed him the clip then.
- 15 Q But you lied again in your statement of April 4th,
- 16 didn't you? Because you didn't want to be involved in
- 17 this, even though you knew you're the one that actually
- 18 shot the gun.
- 19 A No, because I knew I was on probation and I wasn't
- 20 supposed to have a gun.
- 21 Q Well, that's what I'm saying. That goes along with it.
- 22 You're not supposed to have a gun, anyway.
- 23 A But I'm not saying I shot at a person.
- 24 Q So, we've got at least two lies in your statement you
- 25 gave to Wayne Mills April the 4th, 2012, right?

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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- 1 A No, sir.
- 2 Q No? Well, Devon didn't pick up the clip, did he?
- 3 A I did.
- 4 Q Okay. Well, that's a lie, isn't it?
- 5 A (No verbal response).
- 6 Q Isn't that lie if it's not the truth?
- 7 A Yeah.
- 8 Q Okay. And after -- you say after that, I got back into
- 9 Cornelius' car, which is a blue van and we left, right?
- 10 A Yes, sir.
- 11 Q And you took the gun with you.
- 12 A No, sir.
- 13 Q Back in the van.
- 14 A No, sir.
- 15 Q Is there any doubt in your mind that you left in that
- 16 van that night?
- 17 A No, I left in the van that night.
- 18 Q Did Devon leave in that van with you?
- 19 A No, sir.
- 20 Q You absolutely positive about that?
- 21 A Positive.
- 22 Q Okay. Do you know what Devon left in?
- 23 A A white car.
- 24 Q The car he came in?
- 25 A Yes, sir.

1 Q Do you know who was driving?

2 A Chris Smith.

3 Q Okay. Now, I think on direct exam you said Devon got
4 jumped on, right?

5 A Yes, sir.

6 Q By some Greenwood guys.

7 A Yes, sir.

8 Q But you said he was not fighting the guy in the orange
9 shirt, right?

10 A No, sir.

11 Q And then your testimony, I think was, that you saw him
12 shooting at the guy in a orange shirt. Is that right?

13 A Yes, sir.

14 Q Why would he be shooting at the guy if he wasn't
15 fighting with him?

16 A He wasn't really aiming it. He didn't know who was in
17 there. He was just aiming at all the guys from
18 Greenwood.

19 Q You didn't know who you were aiming at, did you?

20 A No, I'm not saying that. I'm saying he ---

21 Q I'm saying that. You didn't know ---

22 MR. CAMPBELL: Objection, Your Honor. Let him answer
23 the question.

24 THE COURT: Sustained.

25 Q And you claim that you were telling Devon to come on and

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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1 get in the car?

2 A Yes, sir.

3 Q Wouldn't it have been a lot simpler if you had never
4 handed him the clip like you say you did?

5 A I can't say. I don't know.

6 Q If you hadn't handed him the clip like you say you did,
7 there wouldn't have been any shooting, would there?

8 A I wouldn't necessarily say that.

9 Q And isn't it true that, actually, Charles Edwards calls
10 you his cousin?

11 A No.

12 Q You're sure about that?

13 A Positive.

14 Q Okay. And you think that Charles Edwards and Devon are
15 cousins?

16 A Yes, sir.

17 Q How do you know that?

18 A Because that's how I know Charles Edwards, through
19 Devon, and they claim each other as cousins.

20 Q You're saying Charles and Keydarius don't claim you as a
21 cousin?

22 A No, sir.

23 Q Let me show you a -- it's printed off of a phone, I
24 believe, and I think it's from your, probably your
25 Facebook page. Can you identify it and any of those

1 people on there?

2 A You want me to read through them?

3 Q No, just is that -- can you identify that as your
4 Facebook page?

5 A Oh, yeah. It's my Facebook page.

6 Q It's your Facebook page. So, those people who sent you
7 messages, you know them?

8 A Yeah. These are not messages though.

9 Q What are they? Text or...

10 A No. On Facebook, this is half of my picture that was
11 posted.

12 Q Okay.

13 A And different people made comments on it.

14 Q Okay. That's what I'm saying. But it's to you, right?

15 A Yeah.

16 Q They were sending you comments?

17 A Yes, sir.

18 Q And is it because -- didn't you have a wreck in October
19 of last year?

20 A Yes, sir.

21 Q 2013?

22 A Yes, sir.

23 MR. MCELHANNON: Your Honor, I would like to mark this
24 for identification.

25 (Whereupon, a copy of LaJames Glass's Facebook page is

CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON

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1 marked as Defendant's Exhibit Number #1, for identification.)

2 Q And one of these people who sent you a message is the
3 victim in this case, Anquavious Smith?

4 A Yes, sir.

5 Q I believe this is dated October the 21st, 2013, at 7:37
6 a.m. and she sent you a message saying, "No hard
7 feelings. I'm glad to see that you're okay." Did you
8 read that?

9 A Yes, sir.

10 Q Why would she have hard feelings against you?

11 A Because all of everything that was going on at that
12 time.

13 Q Because you're the one that shot her?

14 A No. Because all that was going on at the time, and she
15 was hurt in the process and both of us got locked up for
16 it. So, really she didn't know what to believe.

17 Q She just had to believe what everybody was telling her,
18 didn't she?

19 A Yes, sir.

20 MR. MCELHANNON: Your Honor, I would ask this be
21 admitted.

22 THE COURT: Any objection?

23 MR. CAMPBELL: Your Honor, I actually have a full copy.
24 I'm going to have the whole thing introduced.

25 THE COURT: All right. That'll be fine. Why don't you

1 just tape it to the back.

2 (Whereupon, LaJames Glass's Facebook page is entered
3 into evidence as Defendant's Exhibit #1, without objection)

4 Q And, let's see. In the van it was Cornelius. Who is
5 Tyrell?

6 A A friend.

7 Q Do you know his last name?

8 A Pulliam.

9 Q Pulliam. And Keydarius Edwards. Correct?

10 A Yes, sir.

11 Q And just y'all four in the van?

12 A Yes, sir.

13 Q What were you wearing that night, do you remember?

14 A. A white T-shirt and black jeans and black shoes.

15 Q What was the demeanor, or what were y'all doing when
16 y'all left in the van after this shooting happened?

17 A What do you mean?

18 Q I mean, were you talking about it?

19 A Yeah.

20 Q And who was in the van when you left?

21 A Me, Cornelius -- me, Cornelius and Tyrell and Keydarius.

22 Q Okay. You mean Cornelius?

23 A Yeah.

24 Q Cornelius was driving?

25 A Yeah, he was driving.

REDIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q Okay. So, it was the same ones that came to the party
2 is the ones that left in the van?

3 A Yeah.

4 Q Nobody else, just y'all four?

5 A Nobody else.

6 Q And was anybody upset about what had happened, about the
7 shooting?

8 A Yeah.

9 Q Who was upset?

10 A Everybody.

11 Q Anybody say anything to you about it, any of those other
12 three people in that van?

13 A No.

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

16 THE COURT: All right. Redirect?

17 REDIRECT EXAMINATION

18 BY MR. CAMPBELL:

19 Q Now, Mr. Glass, when you arrived at the party, you
20 didn't arrive with Mr. Thomas?

21 A No, sir.

22 Q Did you see him arrive at the party?

23 A No, sir.

24 Q Did you know how he got to the party?

25 A Yes, sir.

1 Q How do you know how he got to the party?

2 A By Chris, when he came in.

3 Q Did you see him come in?

4 A Yes, sir.

5 Q Did you see what kind of vehicle he was riding in?

6 A No, sir. Except in Chris's car.

7 Q And what was that?

8 A A white car.

9 Q Now, you mentioned, when Mr. McElhannon was talking
10 about the van, had Mr. Thomas ever been in this, in
11 Cornelius Jones' van before?

12 A Yes, sir.

13 Q How often had he been in that van?

14 A Just as much as I have.

15 Q A lot?

16 A Yeah.

17 Q Did he go with you and Cornelius to other types of
18 parties and events?

19 MR. MCELHANNON: Objection, Your Honor. That's --
20 again, I didn't bring out anything about other parties.

21 THE COURT: I sustain that.

22 MR. MCELHANNON: It's not relevant.

23 Q And when this occurred, when the shooting occurred on
24 March 25th, 2012, you were on probation. Is that right?

25 A Yes, sir.

REDIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q Does the fact that you were on probation mean you pulled
2 the trigger that night?

3 A No, sir.

4 Q And there's been some talk, and I'm starting to get a
5 little bit confused. Let's talk about this clip that
6 Mr. McElhannon was talking to you about. Explain to me,
7 how did he get the clip?

8 A I gave it to him.

9 Q Now, was the clip separate from the gun to begin with?

10 A No, sir.

11 Q Well, how did you wind up with the clip?

12 A It fell out.

13 Q And when it fell out, where did it fall to?

14 A To the ground.

15 Q And what did you do with it?

16 A I grabbed it.

17 Q And did he ask for it?

18 A Yeah.

19 Q And what did you do?

20 A I gave it ---

21 MR. MCELHANNON: Objection, Your Honor. He's bringing
22 out things, again, that I did not cross examine him on.

23 THE COURT: I overrule that. Go ahead.

24 Q And once he had the clip in his hand, what did he do
25 with it?

- 1 A Put it back in.
- 2 Q Put it back into what?
- 3 A The gun.
- 4 Q Now, do you know what happened to this gun?
- 5 A No, sir.
- 6 Q Did it leave with you?
- 7 A No, sir.
- 8 Q Did he ever tell you what he did with it?
- 9 A No, sir.
- 10 Q Did the fact that you gave him the clip, did that make
- 11 him shoot Ms. Smith?
- 12 A No, sir.
- 13 Q And after you learned that she had been shot, did you
- 14 attempt to contact her?
- 15 MR. MCELHANNON: Objection, Your Honor. That is new
- 16 material.
- 17 THE COURT: I sustain that.
- 18 Q Let me ask you this: I'm going to show you what's been
- 19 marked as State's Exhibit #36. Can you please identify
- 20 what this is, sir. Take a look at it.
- 21 A A picture of me after the wreck and the car.
- 22 Q Well, take a look. I think there's about four or five
- 23 pages. Tell me what this is. What is this from?
- 24 A This is all from Facebook. I uploaded a picture with me
- 25 beside the car after the wreck.

REDIRECT EXAMINATION OF LAJAMES GLASS BY MR. CAMPBELL

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1 Q And when was your wreck?

2 A October the 12th?

3 Q What year?

4 A 2013.

5 Q Over a year past the incident date, right?

6 A Yes, sir.

7 Q Now, showing Defense Exhibit #1, is that taken from your
8 Facebook page?

9 A Yes, sir.

10 Q And in it, Ms. Smith did reach out to you. Is that
11 right?

12 A Yes, sir.

13 Q She sent you a text or a message. No hard feelings, I
14 hope you get better, or something along those lines,
15 right?

16 A Yes, sir.

17 Q And she indicated in that text that she didn't have any
18 hard feelings towards you. Is that right?

19 MR. MCELHANNON: Objection, Your Honor. I think it
20 speaks for itself. It is what it is. Her words are there.

21 THE COURT: Overruled.

22 Q Is that correct?

23 A (No response)

24 Q You want me to repeat the question?

25 A Yeah.

1 Q Ms. Anquavious Smith, she texted or typed out to you
2 that she had no hard feelings towards you. Is that
3 right?

4 A Yes, sir.

5 Q That's because you didn't shoot her. Did you?

6 MR. MCELHANNON: That's leading, Your Honor.

7 THE COURT: Sustained.

8 Q Did you shoot her?

9 A No, sir.

10 Q Who shot her?

11 A Devon.

12 Q And in that, your Facebook page, there's a lot of other
13 people that's wishing you well. Is that right?

14 A Yes, sir.

15 Q How many pages is there?

16 MR. MCELHANNON: Objection, Your Honor.

17 THE COURT: Do you have an objection?

18 MR. MCELHANNON: Relevance. The other people have
19 nothing to do with this case. It's irrelevant.

20 MR. CAMPBELL: Your Honor, he opened the door once he
21 published the Defense Exhibit #1. I have the right to go in
22 to fully explain what it is and to publish the entire
23 document, not just a snippet of it.

24 THE COURT: I'll give you a little leeway there.

25 MR. CAMPBELL: I'm almost done.

RE-CROSS EXAMINATION OF LAJAMES GLASS BY MR. MCELHANNON 93

1 Q How many pages is there?

2 A It's four pages of people wishing me to get well, asking
3 about me and a hundred and forty-six people liking the
4 picture.

5 Q And that's all dealing with your wreck in October of
6 2013?

7 A Yes.

8 MR. CAMPBELL: I have no further questions.

9 THE COURT: All right. Any re-cross?

10 RE-CROSS EXAMINATION

11 BY MR. MCELHANNON:

12 Q Just of all the four pages, I think there's probably
13 four or five people on each page, and actually, there's
14 not but two on one page, so there's about, I don't know,
15 ten people on here. They're all your friends, I take
16 it. Right?

17 A I don't know some of those people.

18 Q Okay. So people are, just like they do, just go on
19 Facebook, they see something like it and say, yeah, I'm
20 glad you're okay too, even though they don't know you?

21 A No. I know them through other people or ---

22 Q That's what I'm saying. And there's only one person on
23 here that you shot, and that's Anquavious?

24 A No.

25 MR. MCELHANNON: I have nothing further.

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1 THE COURT: All right. Mr. Glass, I'm going to let you
2 step down. I'm not going to excuse you until later. You'll
3 have to stick around throughout the trial until you are
4 excused. Okay, sir?

5 MR. GLASS: Yes, sir.

6 THE COURT: Thank you. All right. Mr. Foreman, this is
7 a good time of day to take a little afternoon break. Let's
8 take about a ten to fifteen minute break and we'll bring you
9 back in for further testimony.

10 (Jury out at 3:19 PM)

11 THE COURT: All right. Let's take about a fifteen
12 minute recess.

13 (Brief Recess)

14 THE COURT: All right. Is the State ready to proceed?

15 MR. CAMPBELL: The State's ready, Your Honor.

16 THE COURT: Is the Defense ready?

17 MR. MCELHANNON: We're ready, Your Honor.

18 THE COURT: All right. Would you bring the jury in,
19 please, sir?

20 (Jury in at 3:40 PM)

21 THE COURT: All right. Would the State call its next
22 witness, please?

23 MR. CAMPBELL: Your Honor, the State would call Savion
24 Richard.

25 (After being duly sworn by the Clerk of Court,

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DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL

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1 **SAVION RICHARD** testified as follows:)

2 CLERK OF COURT: If you would take the witness stand and
3 state your name and spell your last name for the record,
4 please.

5 MR. RICHARD: What did he say?

6 THE COURT: State your name and spell your last name for
7 the record.

8 MR. RICHARD: Savion. And the last name, R-I-C-H-A-R-D.

9 DIRECT EXAMINATION

10 BY MR. CAMPBELL:

11 Q Mr. Richard, I need you to speak up, okay? Just speak
12 into the microphone. How old are you?

13 A Sixteen.

14 Q So, that made you fourteen back in 2012?

15 A Yes, sir.

16 Q And where do you currently go to school?

17 A BHP.

18 Q What grade are you in?

19 A Ninth.

20 Q Do you know Anquavious Smith?

21 A Yes, sir.

22 Q How do you know her?

23 A She's my cousin.

24 Q Does she go -- do you call her Anquavious?

25 A I call her Quay.

- 1 Q Quay?
- 2 A Yes, sir.
- 3 Q And you currently live in Honea Path?
- 4 A Yes, sir.
- 5 Q Do you recall the night in which Ms. Smith was shot?
- 6 A Yes, sir.
- 7 Q Did you go to the birthday party?
- 8 A Yes, sir.
- 9 Q Whose birthday party was it?
- 10 A It was Natia's.
- 11 Q Do you know her last name?
- 12 A Tatum.
- 13 Q And how did you get there?
- 14 A I walked.
- 15 Q Did you go by yourself?
- 16 A Yes, sir.
- 17 Q Were you invited to the party?
- 18 A Yes, sir.
- 19 Q Who invited you?
- 20 A Natia.
- 21 Q And it was her birthday party, right?
- 22 A Yes, sir.
- 23 Q And about what time did you get there that night?
- 24 A Started about -- the party started about nine. Probably
- 25 got there about ten.

DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL

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1 Q And approximately how many people were at the party?

2 A Probably about fifty, sixty, maybe.

3 Q It was a lot of people?

4 A (Nods head affirmatively)

5 Q Were there more people there than you expected?

6 A Yeah.

7 Q Did you know all the people?

8 A (Shakes head negatively)

9 THE COURT: You've got to give verbal responses, please
10 sir.

11 Q Mr. Richard, would you pull the microphone closer
12 towards you. They have to hear what you're saying,
13 okay?

14 A (Witness complies)

15 Q Now, were you inside the Shrine Club when the fight
16 broke out?

17 A Yes, sir.

18 Q Do you know what the fight was over?

19 A No, sir.

20 Q Were you involved in the fight?

21 A No, sir. I took a couple of swings and then I left.

22 Q And where did you go?

23 A I stood at the door and then, you know what I'm saying,
24 I went outside.

25 Q And did you know who was fighting?

- 1 A A whole bunch of people was fighting.
- 2 Q And where were these people from, you know?
- 3 A Everywhere.
- 4 Q Where's everywhere?
- 5 A Local.
- 6 Q Say it again?
- 7 A Local.
- 8 Q They were from different towns or different streets?
- 9 A Different towns.
- 10 Q What towns were the people there from?
- 11 A Anderson, Greenwood, Ware Shoals, Honea Path.
- 12 Q And do you know how the fight started?
- 13 A No, sir.
- 14 Q Was there a lot of people in the fight?
- 15 A Yes, sir.
- 16 Q And do you know LaJames Glass?
- 17 A Yes, sir.
- 18 Q How do you know him?
- 19 A He's come to Honea Path a few times to a court over
- 20 there.
- 21 Q He went to Honea Path. I lost it after Honea Path.
- 22 A He came to Honea Path a few times and shot ball at the
- 23 court sometimes.
- 24 Q Okay. Played basketball?
- 25 A Yes, sir.

DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL

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1 Q And what -- does he have a nickname he goes by?

2 A I hear people call him Kool-aid.

3 Q Kool-aid?

4 A Yeah.

5 Q Do you know Devon Thomas?

6 A Not like that.

7 Q Say again?

8 A Not like that, not know him.

9 Q Okay. Did you know of him?

10 A No, sir.

11 Q Have you ever met him before?

12 A No, sir.

13 Q Had you met him before that party that night?

14 A No, sir.

15 Q And do you know who he is?

16 A No, sir.

17 Q And what was going on during the fight?

18 A They was just fighting.

19 Q What was taking place?

20 A Swinging, kicking, throwing.

21 Q Throwing, what kind of things were being thrown?

22 A Anything that can be thrown.

23 Q Like what?

24 A Chairs, tables.

25 Q And did you see anybody inside the club with a weapon?

- 1 A No, sir.
- 2 Q At some point, did the people who were involved in the
3 fight go outside?
- 4 A Yes, sir.
- 5 Q Did you go outside?
- 6 A Stood at the door.
- 7 Q And, at some point, did you go out?
- 8 A Yes, sir.
- 9 Q Did you see LaJames Glass? Was he already outside?
- 10 A I don't think so.
- 11 Q So, tell me what you saw when you got outside.
- 12 A Everybody running.
- 13 Q And then what was taking place besides running?
- 14 A Shooting.
- 15 Q Well, let's talk about the shooting. Did you see
16 anybody with a gun outside?
- 17 A I seen a couple of people.
- 18 Q And how many guns did you see?
- 19 A Maybe two, three.
- 20 Q And do you know who had the guns?
- 21 A Yes, sir.
- 22 Q Who?
- 23 A That nigger right there.
- 24 Q The guy in the striped shirt?
- 25 A Yeah.

DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL 101

1 Q Do you know his name?

2 A (Shakes head)

3 MR. CAMPBELL: Your Honor, I guess I'd better let the
4 record reflect he is referring to the Defendant.

5 THE COURT: So reflects.

6 Q But you saw him there that night?

7 A Yes, sir.

8 Q At the party?

9 A Yes, sir.

10 Q And where did you see him at?

11 A From outside. That was my first time seeing him,
12 outside.

13 Q And could you see outside?

14 A (Nods head affirmatively)

15 Q You have to speak up. She has to take ---

16 A Yes, sir.

17 Q --- down these verbal responses, okay? And are there
18 lights out there?

19 A Yeah. It's like a street light when you first come
20 outside.

21 Q So, you could see what was going on?

22 A Yes, sir.

23 Q And where did you see him shoot?

24 A In a crowd.

25 Q And where was the crowd?

1 A Toward, on the other side of the building.

2 Q When you come out the front door, would it be to the
3 'left or to the right?

4 A To your left.

5 Q Now, how close to him were you when you saw him shoot?

6 A Maybe like, maybe like a couple feet.

7 Q You were right near him, close to him?

8 A Probably like me to you.

9 Q About twenty feet?

10 A (Nods head)

11 Q And before he shot, do you know where this gun came
12 from?

13 A (Shakes head)

14 Q You have to speak up.

15 A No, sir.

16 Q And what did you see him do once he had the gun?

17 A Shoot.

18 Q Did he do anything before that?

19 A No, sir.

20 Q And when he shot, which direction was he pointing the
21 gun at?

22 A Where everybody was running to.

23 Q And where was that?

24 A Towards the bushes, I guess.

25 Q That's on the left side of the building when you come

DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL 103

1 out of the door, the front door?

2 A Yes, sir.

3 Q And when he shot the gun, was the gun pointed up in the
4 air, straight out, or down to the ground?

5 A Straight. Everyone was scared of him shooting.

6 Q Say it again?

7 A Straight.

8 Q What did you say after that?

9 A That's all.

10 Q Now, when he was shooting, do you know what he was
11 shooting at?

12 A I guess, I guess a dude.

13 Q Did you see the dude?

14 A Like, he had dreads or whatever.

15 Q And do you recall what kind of clothing he was wearing?

16 A It was an orange shirt, maybe.

17 Q And when he shot, was there anything between him and the
18 dude in the orange shirt and the dreads?

19 A A truck.

20 Q Okay. And what truck was it?

21 A A red truck.

22 Q Do you know whose truck this was?

23 A (Nods head)

24 Q You have to speak up.

25 A Yes, sir.

- 1 Q Whose truck is it?
- 2 A My homeboy Charles.
- 3 Q Charles who?
- 4 A Lindsey.
- 5 Q And was that truck, was it parked, was it moving, what
- 6 was it doing?
- 7 A It was parked.
- 8 Q Was it moving at all?
- 9 A No.
- 10 Q That you recall?
- 11 A That I recall.
- 12 Q And did you know that your cousin, Anquavious Smith, was
- 13 inside that truck?
- 14 A Not at the time.
- 15 Q After the shot, after the gun was fired, did you see
- 16 anybody else shoot a gun?
- 17 A No, sir.
- 18 Q And once the gun was fired, what did you do?
- 19 A I took off running.
- 20 Q And where did you run to?
- 21 A Shamrock.
- 22 Q And you were interviewed on the night or the early
- 23 morning of March 25th, 2012. Is that right? I think
- 24 Detective Lacy Holden interviewed you?
- 25 A (Nods head)

DIRECT EXAMINATION OF SAVION RICHARD BY MR. CAMPBELL 105

1 Q You have to speak up.

2 A Yes, sir.

3 Q All right. And about what time of the morning was that?

4 A About six.

5 Q Can you recall how many interviews she did that night?

6 MR. MCELHANNON: Objection, Your Honor. I don't think
7 he would know the answer to how many interviews ---

8 MR. CAMPBELL: I'm going to re-phrase the question.

9 Q Were you present when she interviewed anybody else?

10 A Asleep.

11 Q You were asleep? Why is that?

12 A Because it was a little bit cold outside.

13 Q You're going to have to speak up.

14 A I fell asleep. It was cold outside.

15 Q It was cold the night of the shooting?

16 A Yes, sir.

17 Q And she woke you up and interviewed you?

18 A Yes, sir.

19 Q Now, when this shooting took place that you saw, was
20 there a lot of people outside at the time?

21 A Yes, sir.

22 Q Were a lot of other cars outside at the time?

23 A Yes, sir.

24 Q What were the people doing at that time?

25 A Trying to get, trying to leave.

- 1 Q Was a lot of people leaving?
- 2 A Yes, sir.
- 3 Q And do you recall what kind of clothing that he had on
- 4 at the time when he was shooting the gun?
- 5 A No, sir.
- 6 Q I'm going to show you what's been marked -- or excuse
- 7 me. Let me show you this. Can you please identify what
- 8 this is, sir? What is it?
- 9 A Statement.
- 10 Q You have to speak up, okay? They have to hear
- 11 everything you're saying and she has to take it down,
- 12 okay? Is that your signature at the bottom?
- 13 A Yes, sir.
- 14 Q Okay. And can you read that? (Hands document to
- 15 witness) Read it to yourself. Have you finished reading
- 16 it? Does that help refresh your memory of what the
- 17 person was wearing that night? What color shirt?
- 18 A No.
- 19 Q Is that your signature at the bottom?
- 20 A Yes, sir.
- 21 Q Are you nervous?
- 22 A No, sir.
- 23 Q What does it say right here? Read it out loud. Well,
- 24 let me start. Let's see.
- 25 A He was wearing a black shirt.

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 107

1 Q Start here. What does this say? (Indicating)

2 A It was black.

3 Q So, what color shirt was he wearing?

4 A Black.

5 Q And the shooter was wearing a black shirt?

6 A (Nods head)

7 Q I have no further questions. Please answer any
8 questions Mr. McElhannon would have.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. MCELHANNON:

12 Q Mr. Richard, Mr. Campbell just showed you your statement
13 that you gave on March 25th of 2012. You just read
14 that.

15 A (No response)

16 THE COURT: You need to answer. When you're asked a
17 question you need to give a verbal response. And you cannot
18 sit there and say not say anything. Okay, sir?. Beginning
19 right now, okay? Go ahead.

20 Q At the beginning of your statement you said, "I was at a
21 party earlier and a fight broke out. Somebody threw a
22 chair and a guy named LaJames or LaDarius said,
23 somebody's about to get shot. Went outside to a green
24 van and got a gun." Do you remember saying that in your
25 statement?

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 108

1 A No, sir.

2 Q You don't? It's got your signature on it, doesn't it?
3 You just looked at it.

4 A That was two years ago.

5 Q Yeah, it was two years ago, but you don't remember
6 saying it?

7 A No.

8 Q Pardon?

9 A No, sir.

10 Q Well, if it's in this statement you probably said it on
11 March 25th.

12 A Yeah, two years ago. I'm sixteen. I was fourteen when
13 I said that. I don't remember that.

14 Q Are you saying you were lying then?

15 A (No response)

16 Q Huh?

17 A Was I?

18 Q You were lying?

19 A I ain't saying I am.

20 Q Pardon?

21 MR. MCELHANNON: Your Honor, I can't hear him. I can't
22 understand what he's saying.

23 THE COURT: Do me a favor. Give him a copy of the
24 statement. Let him finish his question. You answer your
25 question after he asks you, okay? Let him finish before you

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 109

1 begin to answer.

2 MR. MCELHANNON: This is only copy I have, Your Honor.

3 MR. CAMPBELL: Here's a copy.

4 Q This is the statement Mr. Campbell just showed you and
5 you identified that as your signature at the bottom, did
6 you not?

7 A Yes, sir.

8 Q Read that statement for me. Out loud.

9 A I can't read this.

10 THE COURT: Read it for him.

11 Q You said, you say, "I was at a party earlier and a fight
12 broke out. Somebody threw a chair and a guy named
13 LaJames or Ledarius said, somebody's about to get shot.
14 Went outside to a green van and got a gun." Remember
15 saying that?

16 A No, sir.

17 Q Well, did somebody make this statement up for you and
18 have you sign it?

19 A No, sir.

20 Q So, I don't understand. Are you saying this is true or
21 it's not true?

22 A Not.

23 Q Not true. What changed your mind in the last two years,
24 Mr. Richard?

25 A Nothing changed my mind.

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 110

1 Q You didn't change your mind. Are you saying LaJames
2 Glass did not go to a green van and get a gun?

3 A No, sir.

4 Q But you said it two years ago.

5 A Two years ago.

6 Q So, he magically didn't do it now that it's two years
7 later?

8 A I listened to what people was saying when I said that.

9 Q Oh, so this is just from what people were saying. Is
10 that what you're telling me?

11 A (No response)

12 Q How many people were telling you Devon Thomas did this
13 shooting?

14 A Wasn't nobody telling me that. I seen it with my own
15 eyes.

16 Q Why didn't you put that in here?

17 A It's in there, ain't it?

18 Q Yeah, it's in here at the end. But you say there were a
19 lot of people shooting.

20 A I didn't say it was a lot of people shooting. I said it
21 was a lot of people fighting. You the one saying
22 there's a lot of people shooting.

23 Q No. No. You say, "there was another guy -- one guy was
24 shooting another guy was telling him not to shoot. Then
25 another guy came up, took the gun away and started

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 111

1 shooting. I think his name was Demond. He's short and
2 had a black shirt on." And you say, "I only saw one
3 person shooting until Demond came up and took the gun."
4 Who was the other person you saw shooting?

5 A I don't know.

6 Q LaJames Glass?

7 A No.

8 Q But you saw him run into a van and get a gun, didn't
9 you?

10 A (No response)

11 Q Who you covering for Mr. Richard?

12 A I ain't covering for nobody.

13 Q You're covering for LaJames Glass, aren't you?

14 A I ain't covering for nobody.

15 Q Well, why aren't you honest?

16 A I'm honest. I ain't lying.

17 Q You lied in this statement then, what you said?

18 A The statement.

19 Q Huh? When the officer told you, tell me what happened,
20 this is what you told her, is it not?

21 A (No response)

22 THE COURT: Answer the question.

23 A Yes, sir, I told her that.

24 Q Okay. So you did tell her that LaJames said somebody's
25 about to get shot and went to a green van and got a gun?

CROSS EXAMINATION OF SAVION RICHARD BY MR. MCELHANNON 112

- 1 A I told her that.
- 2 Q You told her that, so that's what happened that night,
3 isn't it?
- 4 A No, sir.
- 5 Q Why would you tell her, LaJames Glass, if it didn't
6 happen?
- 7 A I told you that I was listening to people.
- 8 Q Who all were you listening to? Who all was telling you
9 this?
- 10 A No names.
- 11 Q No names. You don't remember or you don't want to tell?
- 12 A (Shakes head)
- 13 Q Do you know what perjury is?
- 14 A No.
- 15 Q It's when you lie under oath. Who else did you see
16 shooting that night?
- 17 A (Shrugs) I didn't see nobody.
- 18 Q You didn't see anybody shooting?
- 19 A (Shakes head)
- 20 Q So, this whole statement's a lie?
- 21 A Yeah.
- 22 Q This entire statement's a lie?
- 23 A Yeah.
- 24 MR. MCELHANNON: Nothing further, Your Honor.
- 25 THE COURT: Redirect?

DIRECT EXAMINATION OF CORETTA WOODY BY MR. MCLAIN

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1 MR. CAMPBELL: No, Your Honor.

2 THE COURT: Do you want him to remain?

3 MR. MCELHANNON: I would, Your Honor.

4 THE COURT: Okay. Sir, you cannot leave. You need to
5 be here until you're excused from this trial. So, just have
6 a seat in the courtroom, please, sir.

7 MR. ROBERT: Okay.

8 THE COURT: Call your next witness, please.

9 MR. MCLAIN: Your Honor, the State calls Ms. Coretta
10 Woody.

11 (After being duly sworn by the Clerk of Court,
12 **CORETTA WOODY** testified as follows:)

13 CLERK OF COURT: If you would take the witness stand and
14 state your name and spell your last name for the record,
15 please.

16 MS. WOODY: Coretta Woody. Spell my last name?

17 THE COURT: Yes, ma'am.

18 MS. WOODY: W-O-O-D-Y.

19 THE COURT: Can y'all hear her okay? (Jurors nod)

20 DIRECT EXAMINATION

21 BY MR. MCLAIN:

22 Q Ms. Woody, how old are you, currently?

23 A Nineteen.

24 Q You're nineteen?

25 A Yes, sir.

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1 Q What do you do for a living?

2 A Nothing. I go to school.

3 Q You go to school?

4 A Yes, sir.

5 Q Where do you go to school at?

6 A BHP.

7 Q Okay. You're nineteen now. How old were you on March
8 24, 25, 2012, roughly two years ago?

9 A Sixteen. Seventeen.

10 MR. MCLAIN: Seventeen.

11 Q Were you at a party at the Shrine Club in Honea Path on
12 the evening of March 24th?

13 A Yes, sir.

14 Q Who invited you to that party?

15 A My cousin, Natia.

16 THE COURT: Would you speak up a little bit, please?
17 They're having a hard time hearing you.

18 A My cousin, Natia.

19 Q Your cousin Natia?

20 A Yes, sir.

21 Q Was it her party?

22 A Yes, sir.

23 Q Okay. Do you remember what time you got to the party?

24 A No, sir.

25 Q Do you remember if you came with a group of people, came

DIRECT EXAMINATION OF CORETTA WOODY BY MR. MCLAIN

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1 by yourself?

2 A A group.

3 Q A group of people? Who did you come to the party with
4 that night?

5 A I don't remember, sir.

6 Q You don't remember exactly who?

7 A No.

8 Q Now, at some point there was a fight. During the party,
9 do you remember a fight breaking out ---

10 A Yes, sir.

11 Q --- inside? And what were you doing when that happened?

12 A I was standing there.

13 Q Standing there. Where were you standing?

14 A Right on the side, by the door.

15 Q By what door?

16 A It's the ---

17 Q The front door?

18 A No. This door.

19 Q Okay. Okay. So you were standing off to the side.

20 A (Nods head)

21 Q Okay. And when the fight started you said you were
22 standing -- were you by yourself at that point?

23 A Somebody was standing right there with me.

24 Q Okay. What did you do once the fight broke out?

25 A I ran out the door.

- 1 Q I'm sorry, I couldn't hear you.
- 2 A I ran out the door.
- 3 Q You ran out the door?
- 4 A Yes, sir.
- 5 Q Once you went outside, what did you see?
- 6 A I was running towards the field. I was running towards
7 the field.
- 8 Q Which field? When you went outside, which direction did
9 you turn?
- 10 A Right.
- 11 Q Right? Okay. And did you see anything?
- 12 A Not like right when I got out there.
- 13 Q Okay.
- 14 A I was like running towards the field and then looked
15 back. I looked back.
- 16 Q Okay. And when you looked back, what did you see?
- 17 A I saw Devon.
- 18 Q You saw who?
- 19 A Devon.
- 20 Q Do you know Devon?
- 21 A Not know him, I just know his name.
- 22 Q You just -- I'm sorry. I couldn't hear you.
- 23 A I know his name.
- 24 Q You know his name?
- 25 A As in speaking terms, no.

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1 Q Okay. You aren't friends?

2 A No.

3 Q But you've seen him around?

4 A (Nods head)

5 Q Okay. And you saw Devon when you turned around.

6 A Yes, sir.

7 Q Did you see anything else that you took notice of?

8 A Yeah. He had a gun in his hand.

9 Q He had a gun in his hand?

10 A Yes, sir.

11 Q Is the person that you know to be Devon, the person that
12 was holding that gun, are they in the courtroom today?

13 A Yes, sir.

14 Q Can you point them out?

15 A (Indicates)

16 Q You're pointing to the young man in the striped shirt?

17 A Yes, sir.

18 MR. MCLAIN: Let the record reflect that she's
19 identified the Defendant.

20 THE COURT: It so reflects.

21 Q Was Devon doing anything with the gun when he was
22 holding it?

23 A He was going like that. (Indicating)

24 Q Can you describe in words what you just did with your
25 hands?

- 1 A He was doing his hand like this. (Indicating)
- 2 Q Well, what part of the gun was he slapping?
- 3 A It was the bottom.
- 4 Q Okay. Do you remember what the gun looked like?
- 5 A No, sir.
- 6 Q Nothing about it?
- 7 A (Shakes head)
- 8 Q Okay. After you turned around and saw Devon, what did
- 9 you do at that point?
- 10 A I heard two gunshots, then I ran towards the highway.
- 11 Q How long after you saw Devon with the gun did you hear
- 12 the gunshots?
- 13 A I don't know.
- 14 Q Did you see Devon shoot the gun?
- 15 A No, sir.
- 16 Q Do you know anyone by the name of LaJames Glass or
- 17 someone that has the nickname of Kool-aid?
- 18 A Yes, sir.
- 19 Q You do?
- 20 A Yes, sir.
- 21 Q And how do you know him?
- 22 A He, he -- I just know his name. He used to hang with
- 23 Kat.
- 24 Q What's that?
- 25 A He used to hang with Kat.

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1 Q Who is Kat?

2 A That's what I know him by.

3 Q Just another person you know?

4 A Yeah.

5 Q Okay. At any point in time did you see LaJames with a
6 gun?

7 A No, sir.

8 Q At any point in the night, do you remember seeing
9 anybody else with a gun?

10 A No, sir.

11 Q Devon was the only person you saw with a gun?

12 A Yes, sir.

13 Q Ms. Woody, I asked you a second ago how long after you
14 saw Devon with the gun and you heard the gunshots and
15 you didn't really answer. Do you remember? Do you
16 remember how long it was after you turned around and saw
17 him, in between the time when you actually heard the
18 gunshots?

19 A I really don't.

20 Q You don't? Do you remember the number of gunshots you
21 heard?

22 A Two.

23 Q Do you remember the color of the gun Devon was holding
24 that night?

25 A I wasn't paying attention to the color.

CROSS EXAMINATION OF CORETTA WOODY BY MR. MCELHANNON 120

1 Q I'm sorry?

2 A I wasn't paying attention to the color.

3 Q You weren't paying attention to the color?

4 A No, sir.

5 Q And you don't remember what it looked like?

6 A No, sir.

7 Q I don't have any further questions at this time. Answer
8 any questions that Mr. McElhannon has.

9 THE COURT: Cross-Examination.

10 CROSS-EXAMINATION

11 BY MR. MCELHANNON:

12 Q Ms. Woody, are you related to Savion Richard?

13 A No, sir.

14 Q At all?

15 A No, sir.

16 Q Do you know him?

17 A Yes, sir.

18 Q Did y'all talk about this at all?

19 A No, sir.

20 Q Y'all haven't talked about it since it happened?

21 A No, sir.

22 Q He's younger than you?

23 A Yes, sir.

24 Q Now, after this fight broke out, were there a lot of
25 people out in this yard, in this, you know, outside the

REDIRECT EXAMINATION OF CORETTA WOODY BY MR. MCLAIN 121

1 Shrine Club?

2 A Not really.

3 Q There weren't a whole lot of people running around?

4 A Not where I was.

5 Q So, you're saying that you were outside and you just saw
6 Devon with the gun. Was he by himself or were there
7 other people? What I'm trying to get at is, he wasn't
8 just out there by himself with a gun, was he?

9 A Wasn't nobody with him, like running with him when I saw
10 him.

11 Q But, I mean, if you heard two gunshots, were there other
12 people out there, is what I'm saying.

13 A My back was turned ---

14 Q So, you didn't ---

15 A --- when I heard those ---

16 Q Pardon?

17 A When I heard those gunshots, I took off.

18 Q So, you don't know if Devon shot the gun or not?

19 A No.

20 Q You just heard two gunshots, but your back was turned?

21 A Yes, sir.

22 Q Okay. And do you remember giving a statement on March
23 25th, 2012, to the officer?

24 A Yes, sir.

25 Q Do you remember part of that statement saying, actually

REDIRECT EXAMINATION OF CORETTA WOODY BY MR. MCLAIN 122

1 the end, the very last thing you put in your statement,
2 the guy that had the gun came to the party in a van?

3 A Yes, sir.

4 Q How do you know the guy with the gun came to the party
5 in a van?

6 A The reason why I said that is because I'm used to seeing
7 him in a van.

8 Q Did you see anybody go to the van and get a gun?

9 A No, sir.

10 Q You didn't see that.

11 A (Shakes head)

12 Q So, basically, you were scared and running?

13 A (No verbal response)

14 Q You were scared and running?

15 A Yes, sir.

16 Q But you never saw Devon Thomas fire that gun?

17 A No, sir.

18 MR. MCELHANNON: That's all the questions I have.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. MCLAIN:

22 Q You said you didn't actually see Devon get out of the ,
23 van that day?

24 A No, sir.

25 Q You just assumed. Why did you assume that?

DIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN

123

1 A Because I'm used to seeing them in a van.

2 Q You're going to have to speak up.

3 A I'm used to seeing them in a van.

4 Q Who is they?

5 A Him and his homeboys.

6 Q Okay. Just this same group that kind of always hangs
7 out?

8 A Yeah.

9 Q Okay. You said that when you turned to run away, you
10 were scared, and you heard gunshots right after that?

11 A Yes, sir.

12 MR. MCLAIN: No further questions, Your Honor.

13 THE COURT: All right. Thank you, ma'am. Ms. Woody,
14 I'm going to ask you to stick around until you're released,
15 okay? Stay in the courtroom if you don't mind. Call your
16 next witness, please, sir.

17 MR. MCLAIN: The State calls Ms. Josselyne Posey.

18 (After being duly sworn by the Clerk of Court,

19 **JOSSELYNE POSEY** testified as follows:)

20 CLERK OF COURT: If you will take the witness stand and
21 state your name and spell your last name for the record,
22 please.

23 MS. POSEY: Josselyne Posey, P-O-S-E-Y.

24 THE COURT: I'm going to ask you to get a little closer
25 to that microphone and speak louder so everybody can hear

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

1 you, please, ma'am.

2 MS. POSEY: Josselyne Posey, P-O-S-E-Y.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. MCLAIN:

6 Q Ms. Posey, how old are you?

7 A Twenty. Twenty.

8 Q You're twenty years old? Have you graduated from high
9 school?

10 A Yes.

11 Q What do you do for a living now?

12 A I go to school.

13 Q You go to school?

14 A (Nods Head)

15 Q Okay. Where do you go to school at?

16 A Greenville Tech.

17 Q Okay. How old were you on the 24th and 25th of March,
18 2012, about two years ago?

19 A (No verbal response)

20 Q About eighteen?

21 A Yes.

22 Q Okay. And were you a student at that time also?

23 A Yes.

24 Q Where did you go to school then?

25 A BHP.

DIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN

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1 Q Okay. Were you at a party at the Shrine Club in Honea
2 Path on those dates?

3 A Yes.

4 Q Who invited you to that party?

5 A Natia.

6 Q Natia. Was it her birthday?

7 A It was her birthday.

8 Q Okay. Do you remember what time you got there?

9 A Around 9-ish, I want to say.

10 Q Okay. And who did you come to the party with? Who did
11 you come to the party with that night?

12 A I came with a friend guy from Abbeville.

13 Q Okay. Once you were inside the party, do you remember
14 there being a fight that ended up occurring at some
15 point?

16 A Yes.

17 Q And where you when this happened?

18 A Towards the back.

19 Q Towards the back?

20 A Yes, sir.

21 Q Okay. What did you do once this fight started?

22 A Just stood there. The one that happened inside, just
23 stood there.

24 Q You just stood there?

25 A Yes.

- 1 Q What did you do after that?
- 2 A The girl that was having the party, her mama broke it
- 3 up.
- 4 Q She broke it up?
- 5 A Yeah. It wasn't no big, big fight at the time, you
- 6 know, like a smaller one.
- 7 Q Okay. Once the fight was broken up, what happened then?
- 8 A Then the party started back.
- 9 Q Okay. Was there another fight that occurred?
- 10 A Yeah, outside.
- 11 Q Okay. Did you witness that fight?
- 12 A Yes.
- 13 Q You have to speak up?
- 14 A Yes.
- 15 Q Yes? Okay. And where were you when you witnessed this
- 16 fight?
- 17 A Outside.
- 18 Q Outside? And what did you see when you were outside?
- 19 A Just people arguing. That's all.
- 20 Q I'm sorry?
- 21 A People arguing.
- 22 Q Okay. Did you see anyone with a gun that night?
- 23 A Yes.
- 24 Q Did you recognize the person holding the gun?
- 25 A Yes.

DIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN

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1 Q Who did you recognize that person to be?

2 A Devon.

3 Q How do you know it was Devon?

4 A Because I know him and when I walked outside, that's
5 when he had the gun in his hand, at the time.

6 Q Did you know Devon before this party?

7 A (No verbal response)

8 Q Before these dates, earlier before these dates, did you
9 know who he was?

10 A Yes.

11 Q Is the person that you recognize to be Devon and the
12 person that you saw with a gun that night in the
13 courtroom today?

14 A Yes.

15 Q Can you point him out?

16 A (Indicates)

17 Q Are you pointing at the young man wearing the striped
18 shirt?

19 A Yes.

20 MR. MCLAIN: Your Honor, let the record reflect that Ms.
21 Posey has identified the Defendant.

22 THE COURT: It will so reflect.

23 Q And once you saw Devon with the gun, what did you do at
24 that point?

25 A I ran to the side of the car.

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

- 1 Q Okay. Were you with anyone then?
- 2 A Yes.
- 3 Q Who were you with?
- 4 A Keyaija.
- 5 Q Do you know her last name?
- 6 A Smith.
- 7 Q Keyaija Smith?
- 8 A Yes.
- 9 Q What did y'all do -- you said you ran to the side of the
- 10 car?
- 11 A Uh-huh.
- 12 Q What did y'all do after that?
- 13 A They said he was coming this way, so that's when I ran
- 14 back to, ran back inside of the building and ran to the
- 15 back of the room.
- 16 Q Okay. You ran inside to the back room?
- 17 A Uh-huh.
- 18 Q Did you hear any gunshots at any point?
- 19 A Yes.
- 20 Q How many gunshots did you hear?
- 21 A One.
- 22 Q Only one?
- 23 A One or two.
- 24 Q One or two. How long after you saw Devon hold the gun
- 25 did you hear those gunshots?

DIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN

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- 1 A When I ran back inside.
- 2 Q I mean, was that right after you ran back inside?
- 3 A Yeah.
- 4 Q You didn't see Devon shooting the gun?
- 5 A Huh-uh. No.
- 6 Q Do you know someone that goes by the name of LaJames
- 7 Glass or Kool-aid?
- 8 A Yes.
- 9 Q You do?
- 10 A Uh-huh.
- 11 Q And how do you know him?
- 12 A Parties.
- 13 Q Parties?
- 14 A Yes. I see him at parties sometimes.
- 15 Q Was he at the party that night?
- 16 A Yes, at the beginning. But after that, I didn't see him
- 17 no more.
- 18 Q Did you see Kool-aid or James LaGlass with a gun that
- 19 night?
- 20 A No.
- 21 Q Did you see anybody else with a gun that night, other
- 22 than Devon?
- 23 A No.
- 24 Q Ms. Posey, in your statement you mentioned that the gun
- 25 Devon had didn't have any bullets in it.

CROSS EXAMINATION OF JOSSELYNE POSEY BY MR. MCELHANNON 130

1 A Uh-huh.

2 Q How did you know it didn't have any bullets in it?

3 A Because as he was holding the gun like this, and he was
4 trying to shoot or whatever, then somebody came over
5 beside him and handed him something.

6 Q And handed him something?

7 A Yes.

8 Q Did you see what they handed him?

9 A No.

10 Q What did he do with that something that they handed him?

11 A I mean I wasn't there. I just seen them give him
12 something and that's when the shooting, the shooting
13 started happening.

14 Q Okay. Do you remember what the gun looked like that
15 Devon was holding?

16 A No.

17 Q You don't remember what color it was, how big it was?

18 A No.

19 Q I don't have any further questions. If you'll answer
20 any questions that Mr. McElhannon has.

21 THE COURT: Cross examination?

22 CROSS-EXAMINATION

23 BY MR. MCELHANNON:

24 Q Ms. Williams -- Ms. Posey, I'm sorry. Ms. Posey, let me
25 get this straight. I think you just testified that when

CROSS EXAMINATION OF JOSSELYNE POSEY BY MR. MCELHANNON 131

1 the fight broke out you were near the back of the
2 building, near the back of the Shrine Club?

3 A No.

4 Q You didn't say that?

5 A No.

6 Q Okay. I must have mis-heard you. In your statement, you
7 said you were sitting in the front door when a fight
8 broke out. Does that sound more correct?

9 A Uh-huh.

10 Q Pardon?

11 A Uh-huh.

12 THE COURT: You have to give verbal responses, please.

13 MS. POSEY: Oh.

14 A Yes.

15 Q Now, you say in your statement this dude I know from --
16 this dude I know named Devon ran outside to get his
17 pistol. Do you remember saying that?

18 A Yes.

19 Q How did you know what he was going to do?

20 A Because he was fighting inside the club.

21 Q So, just because somebody's fighting they run outside to
22 get a pistol?

23 A I mean, he was fighting inside the party.

24 Q But you don't that he was running outside to get a
25 pistol, do you?

CROSS EXAMINATION OF JOSSELYNE POSEY BY MR. MCELHANNON 132

- 1 A No.
- 2 Q Then why did you put that in your statement?
- 3 A Cause when I walked out, I saw that he had something in
- 4 his hand, well, he had the gun in his hand.
- 5 Q But you didn't know that's why he ran outside, but you
- 6 put it in your statement anyway?
- 7 A Well, why else would somebody run outside?
- 8 Q Well, because they were fighting or maybe just to get
- 9 away. Did you see him get jumped on?
- 10 A Nope.
- 11 Q Did you see him get hit with a chair?
- 12 A I saw people throwing chairs but, you know, I didn't see
- 13 him get hit with a chair.
- 14 Q Well, he could have been going outside to get away from
- 15 people who were hitting him with the chair, couldn't he?
- 16 A Yeah.
- 17 Q How long were you standing there looking at Devon?
- 18 A Not long.
- 19 Q Not long? Long enough though for your statement to say
- 20 at first it didn't have any bullets in it and then
- 21 somebody came up and handed him some bullets?
- 22 A Yeah.
- 23 Q Why did you put your statement that somebody came up and
- 24 handed him some bullets? You just testified under oath
- 25 in direct exam that they gave him something. You didn't

CROSS EXAMINATION OF JOSSELYNE POSEY BY MR. MCELHANNON 133

1 know that was bullets, did you?

2 A But at first there was nothing inside the gun, so -- and
3 then it started shooting, so, why? I mean, if nothing
4 was in the gun at first, somebody had to give him
5 something for it to shoot.

6 Q You say, somebody gave him some bullets. And then I ran
7 back inside to the bathroom.

8 A No, I did not.

9 Q Pardon? Isn't that what you said in your statement?

10 A I ran to the side of the car and they said he was coming
11 this way.

12 Q That's nowhere in this statement that you ran beside a
13 car. You say you ran back inside the bathroom. So,
14 what's the truth?

15 A I ran to the side of the car and then I ran to the
16 bathroom.

17 Q So, it's both now?

18 A I mean, you're ---

19 Q You are fitting your story now to match your testimony,
20 aren't you? Which is it?

21 A I ran to the side of the car and then once they said
22 that he was coming this way towards the side of the
23 building, I ran inside the building.

24 Q That's not in your statement and this was taken the day
25 this happened.

- 1 A Yeah.
- 2 Q You didn't mention being beside a car or anything in
- 3 your statement, did you?
- 4 A (No verbal response)
- 5 Q And you know LaJames Glass, don't you? Don't you know
- 6 him as Kool-aid?
- 7 A Yes.
- 8 Q Did you see him give Devon some bullets?
- 9 A I don't know who it was. I don't know who it was that
- 10 gave him something.
- 11 Q But you saw somebody give him something?
- 12 A Uh-huh. Yes.
- 13 Q But it wasn't LaJames Glass?
- 14 A I don't know.
- 15 Q But you know LaJames, don't you?
- 16 A Yes.
- 17 Q You know what he looks like, don't you?
- 18 A Yes.
- 19 Q And you identified Devon Thomas, but you can't identify
- 20 LaJames Glass?
- 21 A I know what he looks like.
- 22 Q Pardon?
- 23 A I said I know what he looks like.
- 24 Q But you're saying LaJames Glass did not give Devon
- 25 Thomas any bullets?

REDIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN 135

1 A I don't know. I mean, I'm not saying who gave him
2 something, but I know somebody gave him something.
3 Somebody was standing beside him that night when I saw
4 him.

5 Q And you could identify Devon Thomas, but you can't
6 identify LaJames Glass who was standing right beside
7 him?

8 A Because somebody came up. By the time somebody came up,
9 I had ducked down.

10 Q Why don't you tell the truth, Ms. Posey?

11 A That is the truth.

12 Q Why won't you say that LaJames Glass was involved in
13 this?

14 A I mean, I don't know if he was involved. I mean, once
15 you see one, once you see them, you see all of them. So,
16 all of them was there at the party, but I don't know
17 which one gave him something.

18 Q Did you see LaJames Glass near Mr. Thomas when you say
19 you saw him with a gun?

20 A No, I did not see him.

21 Q You didn't see him with LaJames Glass?

22 A No.

23 MR. MCELHANNON: No further questions.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 BY MR. MCLAIN:

2 Q You said you ran outside and then you ran next to a car?

3 A Yes.

4 Q And then you ran inside?

5 A Yes.

6 Q Do you remember how long that whole series of events
7 took?

8 A Not long. Because the car was like right there beside
9 the door.

10 Q And when you said that you saw someone hand Devon Thomas
11 something, were you standing there staring at it or were
12 you ---

13 A No.

14 Q Can you describe how you saw that happen?

15 A I saw -- when I saw it, I was standing right there. I
16 saw -- I was looking and then they was like, he coming
17 this way, he coming this way. That's when I ducked down
18 and then that's when I ran inside the building.

19 Q Okay. And at what point did you see somebody hand him
20 something?

21 A While I was right there beside the car, while I was ---

22 Q When you were ducked down beside the car?

23 A No, I wasn't ducked down. I was still up, but that's
24 when I -- when somebody gave him something, that's when
25 I ducked down. And then they said, he's coming this

REDIRECT EXAMINATION OF JOSSELYNE POSEY BY MR. MCLAIN 137

1 way, then that's when I ran back inside the building.

2 Q Okay. When you first saw Devon after going outside, did
3 he already have a gun in his hand?

4 A Yes.

5 Q And when you saw him leave to go outside, did he have a
6 gun in his hand?

7 MR. MCELHANNON: Objection, Your Honor. I didn't bring
8 that up on cross-exam.

9 THE COURT: I sustain that.

10 Q Do you remember around what time you gave your
11 statement?

12 MR. MCELHANNON: Objection, Your Honor. Again, that's -
13 - I didn't bring up what time the statement was made.

14 MR. MCLAIN: Your Honor, he quoted the statement. It
15 goes to her state of mind.

16 THE COURT: I'll give you little bit of leeway.

17 MR. MCELHANNON: It doesn't matter, Your Honor. That's
18 fine.

19 THE COURT: All right. Go ahead.

20 Q Do you remember what time you gave the statement?

21 A No, I don't remember.

22 Q Was it early in the morning?

23 MR. MCELHANNON: Objection, Your Honor. That's leading.

24 THE COURT: Sustained.

25 MR. MCLAIN: No further questions, Your Honor.

1 THE COURT: Any re-cross?

2 MR. MCELHANNON: No.

3 THE COURT: All right. Ms. Posey, you will need to stay
4 here in the courtroom until you are excused from court, okay?

5 MS. POSEY: Okay.

6 THE COURT: Thank you. You may step down. Do we have
7 time for one more witness? Okay.

8 MR. MCLAIN: Your Honor, the State calls Ms. Keyaija
9 Smith.

10 (After being duly sworn by the Clerk of Court,
11 **KEYAIJA SMITH** testified as follows:)

12 CLERK OF COURT: If you would take the witness stand and
13 state your name and spell your last name for the record,
14 please.

15 MS. SMITH: My name is Keyaija Smith, S-M-I-T-H.

16 DIRECT EXAMINATION

17 BY MR. MCLAIN:

18 Q How old are you currently, Ms. Smith.

19 A Seventeen.

20 Q And are you a student?

21 A Yes, sir.

22 Q Where do you go to school?

23 A Belton Honea Path.

24 Q How old were you two years ago?

25 A Fifteen.

DIRECT EXAMINATION OF KEYAIJA SMITH BY MR. MCLAIN

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1 Q And were you at the party at the Shrine Club in Honea
2 Path?

3 A Yes, sir.

4 Q On March 24th?

5 A Yes, sir.

6 Q Who invited you to that party?

7 A It was like word-of-mouth. It was like -- It was just
8 like word-of mouth. Basically, everybody was finding
9 out about it.

10 Q Okay. Do you remember what time you got there?

11 A No, sir.

12 Q Do you remember if you went to the party with a group of
13 people or by yourself?

14 A It was a group of us.

15 Q Do you remember who it was?

16 A It was just a group I know. It was a big group of us.

17 Q Do you remember there being a fight during the party?

18 A Yes, sir.

19 Q What were you doing when that fight happened?

20 A I was standing like -- it was a little table like right
21 beside the door. I was standing, like, right in front
22 of the table.

23 Q Right beside what door?

24 A The main entrance.

25 Q The front door?

1 A Yes, sir.

2 Q Okay. And were you by yourself at that time?

3 A I think it was me, Josselyne and Coretta.

4 Q Okay. What did you do once the fight started?

5 A Like, I saw it's -- like when I was standing there, it
6 looked like the crowd was going one way so -- I was
7 looking. I was thinking I was seeing stuff at first,
8 but then I turned on the lights and after I turned on
9 the lights, I seen, like, people fighting and chairs
10 being thrown.

11 Q Okay. After you turned on the lights, did you stay
12 inside?

13 A Yes, sir.

14 Q Okay. At any point in time, did you go outside?

15 A Yes, sir.

16 Q Why did you go outside?

17 A I don't know. I guess I was being crazy.

18 Q What's that?

19 A I said, I don't know. I guess I was being crazy.

20 Q When you went outside, what did you see?

21 A When I went outside it was a car like -- okay the main
22 entrance right here. It was a car, kind of right beside
23 the door and me and Josselyn was together and we went to
24 the side of the car and we stood beside -- well, we
25 squatted beside the car.

DIRECT EXAMINATION OF KEYAIJA SMITH BY MR. MCLAIN

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1 Q Okay.

2 A And the way that everything was set, we could see a
3 group of boys standing there and like one of them had a
4 gun. It looked like he tried to shoot it, but nothing
5 would come out of it at first, sort of like that.

6 Q Let me stop you right there. You said one of them had a
7 gun.

8 A Yes, sir.

9 Q Did you recognize the person who had a gun?

10 A Yes, sir.

11 Q Who did you recognize that person to be?

12 A Devon.

13 Q And how do you know Devon?

14 A Because I see him, I seen him before, but I never like
15 just talked to him or nothing. But, you know, when
16 somebody else knows them, they let you know who that
17 person is.

18 Q Okay. Did you know him before this party?

19 A No, sir.

20 Q Okay. When you saw -- is the person that you recognized
21 that night as being Devon that was holding the gun, is
22 he in the courtroom today?

23 A Excuse me?

24 Q Is the person you saw holding the gun that night, that
25 you said was Devon, is he in the courtroom today?

1 A Yes, sir.

2 Q Can you point him out?

3 A Him. (Indicating)

4 Q The young man in the striped shirt?

5 A Yes, sir.

6 MR. MCLAIN: Let the record reflect that Ms. Smith has
7 identified the Defendant.

8 THE COURT: It so reflects.

9 Q So, I want to go back to where you're talking about you
10 saw Devon holding a gun. What does he seem to be doing?

11 A It was like he was trying to shoot it, but nothing would
12 come out.

13 Q Okay.

14 A And he got back in the group with the guys and it looked
15 like they was passing around something and I thought,
16 obviously, it had to be a clip or whatever because right
17 after that, when he came back, he looked back and he
18 turned towards me and Josselyn. Like, we could, we kind
19 of made eye contact with him and then, like, he went to
20 the side of the building and that's when me and Josselyn
21 went back in. It wasn't like thirty seconds -- it
22 wasn't even thirty seconds and we heard gunshots.

23 Q So, you said you heard gunshots thirty seconds after you
24 went back inside?

25 A Uh-huh.

DIRECT EXAMINATION OF KEYAIJA SMITH BY MR. MCLAIN

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1 Q What did you do when you went inside?

2 A We went to the restroom.

3 Q To the restroom?

4 A Yes, sir.

5 Q And when did you end up leaving the premises that night?

6 A After I got to the restroom, I call my mama. Well, I
7 called my sister and she told my mama to come pick us
8 up.

9 Q Okay.

10 A And it wasn't even five minutes, I don't think.

11 Q Do you know someone that goes by the name of LaJames
12 Glass or Kool-aid?

13 A (Nods head)

14 Q You do?

15 A Yes, sir.

16 Q Did you see him at the party that night?

17 A Yes, sir.

18 Q Did you know him before the party that night?

19 A Not really.

20 Q Could you recognize him, though?

21 A Yes, sir.

22 Q Did you see him that night with a gun?

23 A No, sir.

24 Q Did you see anybody that night, at any point in time,
25 with a gun, other than Devon?

CROSS EXAMINATION OF KEYAIJA SMITH BY MR. MCELHANNON 144

1 A No, sir.

2 Q Do you remember what the gun looked like that Devon was
3 holding?

4 A It was like, it was like the size of a, it was black.
5 It was about the size of a police gun.

6 Q Okay. Do you remember what Devon was wearing that
7 night?

8 A He had on khaki shorts and either a black or orange
9 shirt.

10 Q Okay. Did you see who he came to the party with that
11 night?

12 A No, sir.

13 Q You didn't?

14 A No, sir.

15 Q Who was Devon normally seen with?

16 A I don't know.

17 Q No further questions. If you'll answer anything Mr.
18 McElhannon has.

19 A All right.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. MCELHANNON:

23 Q Ms. Smith, did I hear you say that you did not know
24 Devon before this party? Is that right?

25 A (Nods head)

CROSS EXAMINATION OF KEYAIJA SMITH BY MR. MCELHANNON 145

1 Q You didn't know him before this party?

2 A (Shakes head)

3 Q Do you remember giving a statement March 25th of 2012 to
4 an officer?

5 A Yes, sir.

6 Q Do you remember at the end of the statement you said
7 when Devon and his friends come to a party they usually
8 in this green van?

9 A Well, his friends are usually in the green van.

10 Q His friends?

11 A Yes, sir.

12 Q Not Devon? Because, you didn't know him ---

13 A I mean, they was friends, I mean ---

14 Q But you didn't know him before this party, right? Now,
15 that's a pretty general statement to say that him and
16 his friends always come to parties in a green van, when
17 this is the first party you've seen him at. Correct?

18 A Yes, sir.

19 Q You didn't see Devon Thomas shoot that gun, did you?

20 A No, sir.

21 Q Because you ran back to the bathroom.

22 A Yes, sir.

23 Q About thirty seconds later you heard gunshots.

24 A Yes, sir.

25 Q How many did you hear?

- 1 A I mean, it was a couple.
- 2 Q A couple?
- 3 A Yeah.
- 4 Q And you say some other guy handed him a clip with the
- 5 bullets and he loaded the gun and he started running.
- 6 Do you remember saying that?
- 7 A Yes, sir.
- 8 Q How do you know what was handed to him?
- 9 A I mean, I figured it was that.
- 10 Q You just assumed it was a clip?
- 11 A Yes, sir.
- 12 Q And you know LaJames Glass, correct?
- 13 A Yes, sir.
- 14 Q Know him as Kool-aid?
- 15 A Yes, sir.
- 16 Q So, you know him. He's one of the ones that always
- 17 comes to parties in a green van, isn't he?
- 18 A Yes, sir.
- 19 Q Okay. And did you see LaJames Glass give a, what you
- 20 assumed was a bullet clip, to Devon Thomas?
- 21 A No, sir. Because they was all in a group. It was a
- 22 couple of people in a group.
- 23 Q But you saw somebody. You can't identify who it was?
- 24 A No, sir.
- 25 Q Well, why not? You can identify Devon Thomas and that

CROSS EXAMINATION OF KEYAIJA SMITH BY MR. MCELHANNON 147

1 person was standing right beside him, so why can't you
2 identify him?

3 A I have no idea who gave it to him, because they was in a
4 group. The way they was standing, they was in a group.
5 And the only reason I knew it was him with the gun was
6 because he was standing there at first, all right, the
7 group was right in here and he was like kind of -- he
8 wasn't away, way from them, but you could see him, then
9 you can see everybody else in the group.

10 Q And it was pretty dark out there, wasn't it?

11 A Yes. Kind of.

12 Q Well, it was night?

13 A Yeah. But it's a street light right there, right there
14 where the flagpole was, where they was.

15 Q It's not like it was daytime, though, was it?

16 A No. No, sir.

17 Q And you said Devon Thomas had on khaki shorts?

18 A Yes, sir.

19 Q Are you sure about the khaki shorts?

20 A I guess.

21 Q You guess? Now, when you ---

22 A I mean, the best that I seen, khaki shorts.

23 Q Khaki shorts.

24 MR. MCELHANNON: No further questions, Your Honor.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MCLAIN:

Q You said there was a streetlight outside?

A Yes, sir.

Q And where was that streetlight located?

A Right beside the flagpole.

Q Where was the flagpole?

A In the middle, like kind of in the middle. Like, if you come out the door, it was a road right there and then it was like in the, like right in the grass.

Q You're talking about the front door of the ---

A Yes, sir.

Q The front of the building?

A Yes, sir.

Q Were there any other lights out there?

A No, sir.

Q You said in your statement that you identified the person holding the gun as his name being Devon. How did you know his name was Devon?

A Because, I mean, I seen him one time at Anderson Break. I can't remember who I was with and they was telling me that that was his name.

Q Okay. Someone ---

A I never talked -- I never, like, talked to him like that.

1 Q Okay. Had anyone pointed him out to you at the party?

2 A No, sir.

3 MR. MCLAIN: No further questions, Your Honor.

4 THE COURT: Re-cross?

5 MR. MCELHANNON: No, Your Honor.

6 THE COURT: Ms. Smith, I'm going to ask that you stick
7 around in the courtroom until you're released from this
8 trial, okay?

9 MS. SMITH: Yes, sir.

10 THE COURT: You may step down. Thank you. Mr. Foreman,
11 ladies and gentlemen of the jury, I'm going to go ahead and
12 stop the proceedings this afternoon. We're close enough to
13 5:00, it doesn't make a whole lot of sense to go further. Is
14 there any problem with any member of the jury being in the
15 jury room by 9:25 tomorrow? Okay. We'll resume proceedings
16 at 9:30. Let me remind you that you can't speak amongst
17 yourselves or with anyone else about this case. If you
18 happen to hear something, see something or -- see, hear, and
19 whatever the other adjective I'm trying to come up with,
20 while I'm drawing a blank, just don't listen to any of it,
21 hear, or watch anything about this case, okay? Thank you
22 very much and you're excused for the evening.

23 BAILIFF: Are they going to be on the third floor
24 tomorrow?

25 THE COURT: Yes. You guys, we're going to go down to

1 the third floor tomorrow. We're going to swap around so they
2 can do some pleas up here. Thank you, Buck.

3 (JURY OUT AT 4:30 PM)

4 THE COURT: Let me ask you, Mr. McElhannon, some of the
5 concerns that I have is some of these witnesses may be in
6 school. I don't want them just sitting up here in the
7 courtroom and missing school if we can possibly avoid that.

8 MR. MCELHANNON: Your Honor, actually, I think at this
9 point the ones who have testified, I don't have a problem
10 releasing them.

11 THE COURT: Okay. Just to be on the safe side, the
12 people who testified today, that would be, well, besides
13 Officer Voigt, you have Josselyne Posey, Savion Richard,
14 Keyaija Smith, and LaJames Glass.

15 MR. CAMPBELL: Coretta Woody.

16 THE COURT: Sir?

17 MR. CAMPBELL: Coretta Woody.

18 THE COURT: Coretta Woody. Thank you. If you would
19 make your numbers available to Mr. McElhannon, we can go
20 ahead and release you from your subpoena unless you're called
21 back and then you'll have to come back. Okay, so if you
22 would, just before you leave here, give Mr. McElhannon your
23 contact information, okay?

24 Now, let me say something to the general gallery. I
25 know you're not used to being up here in the courtroom. I'm

1 going to ask again, though, that during the course of this
2 trial that you observe the proper demeanor in the courtroom.
3 I saw some things today and that is not appropriate behavior.
4 So, we can't have people laughing, people giving -- saying
5 something back up here to the witness on the stand. I saw
6 somebody do that. I think it's involuntary, but I don't want
7 it to happen tomorrow. If you do, I'm going to remove you
8 from the courtroom, okay? With that being said, anything
9 from the State before we recess for the night?

10 MR. CAMPBELL: What floor are we going to be on
11 tomorrow?

12 THE COURT: We're on the third. And let me tell you, I
13 went and double-checked it and they have a bunch of pleas and
14 everything up here. And that's just -- you'll just have to
15 deal with it. I'm sorry. I've got a rule and that's just
16 the way it is. It is what it is, okay? All right. Anything
17 from the Defense?

18 MR. MCELHANNON: No, Your Honor. 9:30?

19 THE COURT: 9:30. All right. Mr. Thomas, you'll be
20 here tomorrow morning. We'll start back at 9:30. If you're
21 not, the trial will be in your absence. You understand that?

22 MR. THOMAS: Yes, sir.

23 THE COURT: Now, I'm going to leave you out without
24 putting you in the detention center.

25 MR. MCELHANNON: Thank you, Judge.

1 THE COURT: We're in recess until tomorrow morning at
2 9:30.

3 MORNING - FEBRUARY 25, 2014

4 THE COURT: All right. Is there anything from the State
5 before we bring the jury out?

6 MR. MCLAIN: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. MCELHANNON: No, Your Honor.

9 THE COURT: Would you bring the jury out? Counsel, take
10 a look around and make sure we have all of our witnesses
11 still sequestered.

12 (JURY IN AT 9:31 AM)

13 THE COURT: Mr. Foreman, ladies and gentlemen of the
14 jury, good morning. Sometimes we have musical courtrooms and
15 this is one of those days. They have a bunch of other things
16 going on the big courtroom, but the acoustics down here are a
17 bit better. Before we get started, let me ask, has anyone
18 read, heard, or seen anything about this case or spoken with
19 anyone about this case or had anyone speak with them about
20 this case? (Jurors shake heads) All right. Very good. Let
21 the record reflect. Mr. Campbell are you ready to proceed?

22 MR. CAMPBELL: Yes, sir.

23 THE COURT: Mr. McElhannon?

24 MR. MCELHANNON: Yes, Your Honor.

25 THE COURT: Call your next witness.

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

DIRECT EXAMINATION OF TERRY JACKSON BY MR. MCLAIN

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1 MR. MCLAIN: The State calls Ms. Terry Jackson.

2 (After being duly sworn by the Clerk of Court,

3 **TERRY JACKSON** testified as follows:)

4 CLERK OF COURT: If you would take the witness stand and
5 state your name and spell your last name for the reporter,
6 please?

7 MS. JACKSON: My name is Terry Jackson, J-A-C-K-S-O-N.

8 DIRECT EXAMINATION

9 BY MR. MCLAIN:

10 Q Ms. Jackson, how old are you, currently?

11 A Eighteen.

12 Q And where do you work?

13 A KFC.

14 Q Okay. How old were you on March 24th and 25th of 2012?

15 A Like, about sixteen, seventeen.

16 Q And were you at a party at the Shrine Club in Honea Path
17 on those days?

18 A Yes, sir.

19 Q Who invited you to that party?

20 A It was just like going around on, like, the internet.

21 Q Can you speak up just a little bit?

22 A It was going around, like, on the internet.

23 Q Okay. Do you remember what time you got there?

24 A It was dark, probably about nine.

25 Q About 9:00? Did you come with a group of people that

- 1 night or did you come by yourself?
- 2 A I came with a group of people.
- 3 Q Do you remember who was in that group?
- 4 A It was me, Quay, Josselyn, and a couple of other people.
- 5 Q Okay. And you remember there being a fight that
- 6 occurred at some point inside the party?
- 7 A Yes, sir.
- 8 Q And what were you doing when that happened?
- 9 A I was sitting down.
- 10 Q You were sitting down?
- 11 A Uh-huh.
- 12 Q Where were you sitting?
- 13 A Like, right behind the dance floor.
- 14 Q Right behind the dance floor?
- 15 A Uh-huh.
- 16 Q Okay. So, when the fight started, what did you do at
- 17 that point?
- 18 A I ran.
- 19 Q You ran? Where did you run to?
- 20 A I ran and hid behind the table, first, and then I went
- 21 to the bathroom and then I went outside.
- 22 Q Okay. Once you got outside, what did you see?
- 23 A I saw Devon holding a gun.
- 24 Q You saw Devon holding a gun?
- 25 A Uh-huh.

DIRECT EXAMINATION OF TERRY JACKSON BY MR. MCLAIN

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1 Q And did you know Devon before this party?

2 A Uh-huh.

3 Q How did you know him?

4 A Just around.

5 Q Okay. Is the person that you recognized to be Devon in
6 the courtroom today?

7 A Yes, sir.

8 Q Can you point to him?

9 A (Indicates)

10 Q And you're pointing at the young man in the white shirt?

11 A Yes, sir.

12 MR. MCLAIN: Your Honor, let the record reflect that the
13 witness has identified the Defendant.

14 THE COURT: So reflects.

15 Q What was Devon doing with the gun?

16 A He was trying to shoot it in the air.

17 Q Okay. Were bullets coming out?

18 A No.

19 Q Okay. What happened after that?

20 A Somebody handed him something.

21 Q Okay. And do you remember what the gun looked like?

22 A It was smaller.

23 Q Okay. Would you recognize the person that handed him
24 whatever was in his hand, that handed him something,
25 would you recognize that person?

- 1 A No, sir.
- 2 Q Okay. So, after you saw Devon shooting or trying to
3 shoot or trying to shoot the gun up in the air and
4 someone handed him something, what did you do at that
5 point?
- 6 A I ran back inside.
- 7 Q Okay. Did you hear gunshots at any point that night?
- 8 A Yes, sir.
- 9 Q How many gunshots did you hear?
- 10 A I wouldn't count the number. I mean, we could hear
11 gunshots. I wouldn't count the number. I don't know
12 how many I heard.
- 13 Q Okay. How long after you ran back inside did you hear
14 the gunshots?
- 15 A It probably was like a couple of seconds, a couple of
16 minutes.
- 17 Q Okay. Did you see Devon shoot the gun?
- 18 A No.
- 19 Q Okay. Do you know anyone by the name of LaJames Glass?
20 He also goes by Kool-aid?
- 21 A Uh-huh.
- 22 Q Did you see him with a gun that night?
- 23 A No, sir.
- 24 Q Did you know him before the party that night?
- 25 A Yes, sir.

CROSS EXAMINATION OF TERRY JACKSON BY MR. MCELHANNON 157

1 Q How do you know him?

2 A Just around.

3 Q Okay. The same way you knew Devon?

4 A Yeah.

5 Q Did you see anyone else with a gun that night?

6 A No, sir.

7 Q Do you remember what Devon was wearing that night?

8 A A black shirt.

9 Q A black shirt. I don't have any further questions at
10 this time. Answer any questions that Mr. McElhannon may
11 have.

12 THE COURT: Cross-examination.

13 MR. MCELHANNON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MCELHANNON:

16 Q Ms. Jackson, he was wearing a black shirt, you say.
17 What kind of pants was he wearing?

18 A I don't remember.

19 Q Well, you were looking at him. You noticed his shirt
20 and not his pants?

21 A Yes, sir.

22 Q Pardon?

23 A Yes, sir.

24 Q You know Kool-aid, you know LaJames Glass? Do you know
25 what he looks like?

- 1 A Yes, sir.
- 2 Q You didn't see him give anything to Mr. Thomas?
- 3 A No, sir.
- 4 Q So, he's not the one that you say you saw give Mr.
- 5 Thomas something? And you say bullets. How do you know
- 6 it was bullets?
- 7 A I didn't say it was bullets.
- 8 Q You didn't? You gave a statement on March 25th, 2012,
- 9 to law enforcement, did you not?
- 10 A Yes, sir.
- 11 Q Let me read you a part of it. "This guy I know named
- 12 Devon who was wearing a black shirt came outside and was
- 13 trying to shoot a gun up in the air, but it didn't have
- 14 any bullets in it. Some other guy went up to him and
- 15 handed him some bullets."
- 16 A Well, I said he handed him something, yes, sir.
- 17 Q You didn't say bullets?
- 18 A I might have did, yeah. He handed him something.
- 19 Q But you didn't know it was bullets?
- 20 A I didn't know what he handed him.
- 21 Q But back then you were sure it was bullets?
- 22 A I didn't know what he handed him. I'm pretty sure it
- 23 was bullets ---
- 24 Q How can you be sure?
- 25 A --- but I did not know directly.

CROSS EXAMINATION OF TERRY JACKSON BY MR. MCELHANNON 159

1 Q I mean, are you sure?

2 A I'm not sure.

3 Q Okay. Thank you. And then you went back inside and hid
4 in the bathroom, according to your statement.

5 A Yes, sir.

6 Q And I think you just testified, and I think you kind of
7 went under and mumbled a little bit when Mr. McLain
8 asked you how long was it before you went back inside
9 before you heard shots, and I think at first you said a
10 couple of seconds and then you said a couple of minutes.
11 That's a long time, two seconds and two minutes. That's
12 a big difference. Which was it?

13 A Uh-huh. I would say a couple of seconds.

14 Q So, you got from outside into the bathroom in a couple
15 of seconds?

16 A Uh-huh.

17 Q Like, one, two. And you were in the bathroom?

18 A I mean, it's not that far from the door.

19 Q Two seconds, and you were from outside ---

20 A I'm not going to say two seconds, but a couple seconds,
21 yeah.

22 Q Well, why did you say a couple of minutes?

23 A I don't know.

24 Q And you saw nobody actually fire a weapon?

25 A No.

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL 160

1 MR. MCELHANNON: That's all the questions I have.

2 THE COURT: Redirect?

3 MR. MCLAIN: No further questions at this time, Your
4 Honor.

5 THE COURT: All right. At this point, may this witness
6 be excused?

7 MR. MCELHANNON: Yes, Your Honor.

8 THE COURT: Call your next witness.

9 MR. CAMPBELL: Your Honor, the State calls Mijelica
10 Smith to the stand.

11 (After being duly sworn by the Clerk of Court,
12 **MIJELICA SMITH** testified as follows:)

13 CLERK OF COURT: If you would take the witness stand and
14 state your name and spell your last name for the record,
15 please.

16 MS. SMITH: Mijelica Smith, S-M-I-T-H.

17 DIRECT EXAMINATION

18 BY MR. CAMPBELL:

19 Q Ms. Smith, how old are you?

20 A Sixteen.

21 Q And how old were you back on March 25th, 2012?

22 A Fourteen.

23 Q And what grade in school were you in?

24 A The seventh in Honea Path Middle School.

25 Q Seventh grade? Is that what you said?

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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1 A Yes, sir.

2 Q Okay. Now, how do you know Anquavious Smith?

3 A That's my sister.

4 Q Is it your older sister or younger sister?

5 A Younger -- well, my older sister.

6 Q Now, I want to talk to you about the night your sister
7 got shot. Were you present that night?

8 A Yes, sir.

9 Q Did you have a chance to go the birthday party that she
10 attended?

11 A Yes, sir.

12 Q And whose birthday party was that?

13 A Natia.

14 Q Natia. Do you know her last name?

15 A Tatum.

16 Q And how were you invited to this party?

17 A My sister.

18 Q Did she have any involvement in this party?

19 A I think she was helping plan it.

20 COURT REPORTER: What did you say?

21 A I think she was helping plan it.

22 Q All right. Speak up. Now, did you go to the party with
23 your sister that night?

24 A No, sir.

25 Q And how did you get there?

- 1 A I went with my cousin.
- 2 Q And what time did you get there?
- 3 A Maybe nine.
- 4 Q Do you recall what day of the week this was?
- 5 A Saturday.
- 6 Q And when you got there, were there a lot of people
- 7 already there?
- 8 A Yeah.
- 9 Q And there were a lot of cars out in front of the Shrine
- 10 Club?
- 11 A Yes, sir.
- 12 Q And at some point, did you go inside the club?
- 13 A Yes, sir.
- 14 Q And what was going on inside the club?
- 15 A Talking, dancing, having fun.
- 16 Q Was there a DJ there?
- 17 A Yes, sir.
- 18 Q And while you were on the inside, did you witness the
- 19 fight that had taken place?
- 20 A Yes, sir.
- 21 Q Tell me about that. What did you observe?
- 22 A Fighting and chairs being thrown.
- 23 Q Were the lights on?
- 24 A Yes, sir.
- 25 Q Were they off when it started or were they on when it

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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1 started?

2 A They were off and then they were turned on.

3 Q Do you know what they were fighting about?

4 A No, sir.

5 Q Was there a lot of people fighting?

6 A Yeah.

7 Q Now, did you have a chance to see them fighting?

8 A Yes, sir.

9 Q And where were you when this was going on?

10 A Sitting right behind the dance floor.

11 Q I'm sorry?

12 A Sitting right behind the dance floor.

13 Q And were you out of the way?

14 A Yes, sir.

15 Q And while this was going on, did you see anybody with
16 any type of a weapon, whether a gun, or a knife or
17 anything like that on the inside?

18 A No, sir.

19 Q And do you know Devon Thomas?

20 A Yes, sir.

21 Q How do you know him?

22 A He was pointed out to me.

23 Q That night?

24 A Yes, sir.

25 Q Had you seen him before that night?

- 1 A No, sir.
- 2 Q And do you know LaJames Glass?
- 3 A I know of him. I don't really know him.
- 4 Q And did you see him there that night?
- 5 A No, I didn't see him.
- 6 Q And did you see Mr. Thomas inside the club that night?
- 7 A Yes, sir.
- 8 Q Is he in the courtroom today?
- 9 A Yes, sir.
- 10 Q Where is he?
- 11 A (Indicates)
- 12 Q You're pointing to the man in the white shirt?
- 13 A Yes, sir.
- 14 MR. CAMPBELL: Your Honor, let the record reflect she
- 15 pointed at the Defendant.
- 16 THE COURT: So reflects.
- 17 Q Now, had you ever seen him in Honea Path before?
- 18 A No.
- 19 Q And did you see him involved in this fight?
- 20 A Yes, sir.
- 21 Q Okay. And do you recall who he was fighting?
- 22 A No, I didn't.
- 23 Q Now, as this was going on, did you eventually go
- 24 outside?
- 25 A Yes, sir.

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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- 1 Q Why were you leaving?
- 2 A I was looking for my sister.
- 3 Q Did you find her?
- 4 A No, sir.
- 5 Q Now, when you say your sister, you're referring to
- 6 Anquavious?
- 7 A Yes, sir.
- 8 Q Did you find her on the inside or the outside of the
- 9 club?
- 10 A I met her at the door.
- 11 Q And what did y'all do?
- 12 A We went to the truck.
- 13 Q Okay. Whose truck was that?
- 14 A Charles's.
- 15 Q And what color truck was it?
- 16 A Red.
- 17 Q Was it a big truck, small truck?
- 18 A Small.
- 19 Q And when you came out that front door -- you went out
- 20 the front door of the Shrine club. Is that right?
- 21 A Yes, sir.
- 22 Q And when you went out the front door, which direction
- 23 did you go?
- 24 A Left.
- 25 Q To the left?

- 1 A Uh-huh.
- 2 Q Was Charles already in his truck?
- 3 A Yes, sir.
- 4 Q And you were with Anquavious?
- 5 A Yes, sir.
- 6 Q And was anybody else with you?
- 7 A Chrislacia.
- 8 Q And what's her last name?
- 9 A Slappy.
- 10 Q So, you went to the truck. Did you see anything going
- 11 on around the truck?
- 12 A People were running, trying to get behind cars.
- 13 Q And at that point, were you able to get inside the
- 14 truck?
- 15 A Yes, sir.
- 16 Q And how were y'all seated inside the truck?
- 17 A My sister was at the door, I was beside my sister,
- 18 Chrislacia was in the floor and Charles was in the
- 19 driver's seat.
- 20 Q You say she's in the floor. Is she in the floorboard?
- 21 A Yes, sir.
- 22 Q There was not a lot of room in the truck, was there?
- 23 A No.
- 24 Q And what did you see while you were in the truck? What
- 25 did you observe or witness?

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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1 A While we were driving, I saw somebody run behind the
2 truck as we were backing out and when we was going
3 forward, I heard a shot, and that's when I looked and I
4 heard another shot and I saw Devon pointing the gun at
5 the truck.

6 Q Let me ask you this: When you say you saw someone run
7 behind the truck, do you recall what this person looked
8 like and was wearing?

9 A No, sir.

10 Q Did you know that person?

11 A No, sir.

12 Q And you didn't see the shooting take place, but you
13 observed it afterwards? Is that what you're saying?

14 A Yes, sir, when I looked up.

15 Q And you were seated right next to your sister? /

16 A Yes, sir.

17 Q Did you hear the truck being hit?

18 A Yes, sir.

19 Q Could you see if Devon had a gun in his hand?

20 A Yes, sir.

21 Q Can you describe what the gun looked like?

22 A It was black.

23 Q Was it a big gun, small gun?

24 A I'm not sure.

25 Q Can you recall what kind of clothes he was wearing?

- 1 A A black shirt.
- 2 Q Now, how close to the truck was he when he shot?
- 3 A Maybe me to you.
- 4 Q About twenty feet?
- 5 A Uh-huh.
- 6 Q And you have to use verbal responses, okay?
- 7 A Yes, sir.
- 8 Q Now, were you injured or were you hit by the bullet in
- 9 the truck?
- 10 A No, sir.
- 11 Q But you're one of the victims in the case, right?
- 12 A Yes, sir.
- 13 Q Now, did you know, initially, that your sister had been
- 14 hit by the bullet?
- 15 A No, sir.
- 16 Q When did you realize that she had been injured?
- 17 A When she said there was blood on her leg.
- 18 Q How did she do that?
- 19 A She didn't feel it at first and then she lifted up her
- 20 hand and it had blood on it.
- 21 Q Then what happened?
- 22 A We went towards our home. We started driving to my
- 23 home.
- 24 Q Well, how was she acting after she realized she'd been
- 25 shot?

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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- 1 A She was screaming, scared.
- 2 Q And what were you trying to do for her?
- 3 A I was trying to calm her down. \
- 4 Q And how were you doing that?
- 5 A I was just holding her, telling her to calm down.
- 6 Q Was she in bad shape?
- 7 A Yes.
- 8 Q Have you ever witnessed anything like that before?
- 9 A No, sir.
- 10 Q And when -- so y'all left. Is that right?
- 11 A Yes, sir.
- 12 Q Did y'all leave right after she was shot?
- 13 A Yes, sir.
- 14 Q And what -- where did y'all go?
- 15 A We went towards my house.
- 16 Q Now, did anybody call EMS or 911?
- 17 A I called my mother and she called them.
- 18 Q And who's your mother?
- 19 A Ann Jones.
- 20 Q And so you called your mom on the way home?
- 21 A Uh-huh. Yes, sir.
- 22 Q And you told her what had happened?
- 23 A Yes, sir.
- 24 Q Now, after you were leaving the scene, after the gunshot
- 25 had gone off, did you see what Mr. Thomas was doing?

- 1 A After I saw him?
- 2 Q After you saw him shoot.
- 3 A He was just standing there when I looked and that's when
4 we left.
- 5 Q Now, after the shot went off, was there other people
6 outside in the area in which he was standing?
- 7 A Yes, sir.
- 8 Q And what did they do?
- 9 A They were just standing there when I left.
- 10 Q Did they stay there as you were leaving or were they
11 moving around?
- 12 A They were moving around.
- 13 Q Now, after that took place, did you go -- you went to
14 your mother's house. Is that right?
- 15 A Yes, sir.
- 16 Q And did you go to the hospital that night?
- 17 A No, sir.
- 18 Q What did you do? Did you stay at home?
- 19 A I was waiting for them.
- 20 Q Ma'am?
- 21 A I was waiting, because they was taking statements.
- 22 Q Who's they?
- 23 A I guess the police were.
- 24 Q Did they come to your house?
- 25 A Yes, sir.

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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1 Q And did you give a statement to one of the law
2 enforcement officers?

3 A Yes, sir.

4 Q And when you were giving the statement, what was your
5 state of mind? How were you feeling?

6 A I was scared. I was just afraid.

7 Q Afraid for your sister?

8 A Yes, sir.

9 Q Now, you did give a statement that night. Is that
10 correct?

11 A Yes, sir.

12 Q Ms. Smith, is that your signature at the bottom of this?
13 (Shows witness a document)

14 A Yes, sir.

15 Q And is this the statement that you gave on early morning
16 hours of March 25th, 2012?

17 A Yes, sir.

18 Q Now, when you gave this statement and you spoke to law
19 enforcement, do you recall about what time in the
20 morning it was?

21 A Almost four.

22 Q Almost four? And you gave a statement. Is that right?

23 A Yes, sir.

24 Q And you told them what you thought you observed at that
25 time?

1 A Yes, sir.

2 Q And in your statement, you put down, "I did see who was
3 shooting". Is that right?

4 A Yes, sir.

5 Q And you also stated that there was a whole van of boys
6 had guns. I would say more than five people had guns.
7 The van was old looking and dark green, maybe. Is that
8 right?

9 A Yes, sir.

10 Q And in your statement, nowhere did you mention that
11 Devon was the shooter. You said you didn't know who was
12 shooting.

13 A Yes, sir.

14 Q How are you certain now that Devon is the shooter?

15 A When I had a couple of hours to think about it, I
16 realized that he was pointed out to me earlier that
17 night.

18 Q And when you gave this statement, were you in the mood
19 to give a statement?

20 A No, not at all.

21 Q Were you in a state of mind to think about everything
22 that occurred?

23 A Not at all.

24 Q But after you had time to reflect upon it, did you
25 realize you left out some details?

DIRECT EXAMINATION OF MIJELICA SMITH BY MR. CAMPBELL

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1 A Yes, sir.

2 Q And one of the details was who actually did the
3 shooting?

4 A Yes, sir.

5 Q Now, and then you also said that you saw more than one
6 person that had a gun. Was that true?

7 A No, sir,

8 Q Why did you put that down?

9 A I thought -- I saw five people in a group and I saw
10 somebody with a gun, but I didn't see five people with
11 guns.

12 Q Actually have a weapon?

13 A Yes, sir.

14 Q And did you get with anybody to get your testimony
15 straight and say Devon was the shooter?

16 A No, sir.

17 Q And who pointed Devon out to you inside the club?

18 A It was a friend, somebody sitting next to me.

19 Q And you never -- have you ever had any experience
20 dealing with law enforcement before?

21 A No, sir.

22 Q This is your first time?

23 A Yes, sir.

24 Q Now, when Mr. Thomas was pointed out to you inside the
25 club, why was he pointed out to you?

- 1 A Somebody, they was having a conversation and I was just
2 kind of there listening to them, so he was...
- 3 Q He was talking to your friend?
- 4 A Yes, sir.
- 5 Q You asked who that was?
- 6 A No, they were talking about something and I was just
7 there listening. I don't know what they were talking
8 about, but they pointed out Devon.
- 9 Q Did you actually see Mr. Thomas get into a van?
- 10 A No, sir.
- 11 Q Did you see anybody else get into the van and leave?
- 12 A I saw some people getting into the van, but they didn't
13 -- they weren't leaving when I saw them get into the
14 van.
- 15 Q Could you identify who those people were?
- 16 A No, sir.
- 17 Q And was there enough light out there where you could see
18 who was actually doing the shooting?
- 19 A Yes, sir.
- 20 Q And what was the light coming from?
- 21 A A street light.
- 22 Q And where was this streetlight located?
- 23 A I think it was located, like, in the middle of it.
- 24 Q Ms. Smith, I have no further questions. Please answer
25 any questions Mr. McElhannon may have.

CROSS EXAMINATION OF MIJELICA SMITH BY MR. MCELHANNON 175

1 THE COURT: Cross examination?

2 CROSS-EXAMINATION

3 BY MR. MCELHANNON:

4 Q Ms. Smith, how many people were at this party?

5 A A lot.

6 Q More than a hundred?

7 A I'm not sure.

8 Q Well, can you estimate it? You estimated how far away,
9 twenty feet?

10 A Yes, sir.

11 Q How many people were at this party?

12 A I'm not sure.

13 Q More than a hundred? Less than a hundred?

14 MR. CAMPBELL: I would object. She's already answered
15 she's not sure.

16 THE COURT: Sustained.

17 Q And you gave a statement that morning, right?

18 A Yes, sir.

19 Q And now -- did you ever give a supplemental statement?

20 Today's the first day that you've testified about seeing
21 it was Devon, knowing it was Devon that was shooting.

22 A Made another statement after?

23 Q Yeah. You made two statements?

24 A I didn't make another statement, but we talked.

25 Q You talked. So, you've talked about this case with a

CROSS EXAMINATION OF MIJELICA SMITH BY MR. MCELHANNON 176

1 number of people, haven't you, since it happened?

2 A Not people. .

3 Q Not people. Who?

4 A Just them, right there.

5 Q Just law enforcement and the solicitor's office?

6 A Yes, sir.

7 Q Did they tell you you needed to clean up your statement
8 cause it didn't really go with the facts?

9 A No, sir.

10 Q Well, back then -- let's go back over this. A few hours
11 after this happened you say somebody shot and the bullet
12 hit my sister in the leg. I didn't see who was
13 shooting. There was a whole van of boys had guns. I'd
14 say more than five people had guns. The van was old
15 looking and dark green. Do you remember giving that
16 statement?

17 A Yes, sir. .

18 Q And now, today, your testimony is that none of this is
19 right and you miraculously remember who was shooting.
20 Nobody else had guns. That was the only gun. Is that
21 what your testimony is today?

22 A No, sir.

23 Q So, what's true in this statement?

24 A Mostly, all of it. Like I said, I was scared and I had
25 a lot going on. My sister could have lost her life.

CROSS EXAMINATION OF MIJELICA SMITH BY MR. MCELHANNON 177

1 Q So, you're saying this statement is true?

2 A Yes, sir.

3 Q So, you didn't see who was shooting?

4 A I did see who was shooting.

5 Q Well, this says you didn't see who was shooting in this
6 statement, so which is it? You did or you didn't?

7 A I did.

8 Q Well, why did you -- you just said this was true.

9 MR. CAMPBELL: I'm going to object, Your Honor, he's
10 already gone over ---

11 MR. MCELHANNON: This is cross-examination.

12 THE COURT: Just a minute. Overruled. Go ahead.

13 MR. MCELHANNON: Thank you, Your Honor.

14 Q And why would you say more than five people had guns if
15 they didn't?

16 A That's what I thought. But after I was, when I was in
17 my right mind, I realized it was just a group of people
18 and somebody had a gun.

19 Q So, you didn't get this name Devon from Facebook and
20 when word got out that maybe Devon Thomas was the
21 shooter, that's how you came up with his name?

22 A No, sir.

23 Q And how long after this statement did you talk to the
24 police or the solicitor's office and change your story?
25 When did you do that?

CROSS EXAMINATION OF MIJELICA SMITH BY MR. MCELHANNON 178

1 A I didn't change my story and I don't how long it was.

2 Q I mean, estimate. Was it last week, two weeks ago?

3 A I'm not sure.

4 Q And today's the first day also that you stated -- you
5 didn't put in your statement that Devon Thomas had on a
6 black shirt, did you?

7 A No, sir.

8 Q And you were sitting back here just a minute ago when
9 you heard the prior witness say he had on a black shirt,
10 did you not?

11 A Yes.

12 Q Why didn't you put that in this statement?

13 A Like I said, I was not in the condition -- I was scared
14 and stressing and I had a lot going through my head and
15 after I thought about it, I was, like, that he was
16 pointed out to me earlier that night.

17 Q And, I mean, you don't remember when you talked to them
18 about this case again?

19 A Maybe some weeks ago.

20 Q A couple of weeks ago in getting ready for this trial,
21 correct?

22 A Yes, sir.

23 Q And they told you you needed to say a name on who was
24 doing the shooting?

25 A No, sir.

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 179

1 MR. MCELHANNON: That's all the questions I have, Your
2 Honor.

3 THE COURT: Redirect?

4 MR. CAMPBELL: No, Your Honor.

5 THE COURT: May this witness be excused?

6 MR. CAMPBELL: Yes, sir.

7 MR. MCELHANNON: Yes, Your Honor.

8 THE COURT: Thank you. Call your next witness, please,
9 sir.

10 MR. CAMPBELL: The Court's indulgence?

11 THE COURT: Yes, sir.

12 MR. CAMPBELL: Your Honor, the State calls Charles
13 Lindsey to the stand.

14 (After being duly sworn by the Clerk of Court,
15 **CHARLES LINDSEY** testified as follows:)

16 CLERK OF COURT: If you would take the stand and state
17 your name and spell your last name for the record, please.

18 MR. LINDSEY: I'm Charles Lindsey, L-I-N-D-S-E-Y.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q Mr. Lindsey, how old are you?

22 A Twenty-two.

23 Q And how old were you back on March 25th, 2012?

24 A I was twenty.

25 Q And how do you know Anquavious Smith?

1 A I used to date her.

2 Q Do you date her today?

3 A No, sir.

4 Q But back in March of 2012, y'all were boyfriend and
5 girlfriend?

6 A Yes, sir.

7 Q And do you call her Anquavious or does she go by another
8 name?

9 A Quay.

10 Q That's a nickname sort of that you call her?

11 A Yes, sir.

12 Q Now, do you recall the night on which she was shot?

13 A Yes, sir.

14 Q Did you attend the birthday party in which this
15 occurred?

16 A Yes, sir.

17 Q I want to talk to you a little bit about that. Where
18 was this birthday party held?

19 A Honea Path, at the Shrine Club.

20 Q That's in Anderson County?

21 A Honea Path.

22 Q And when you got to the Shrine Club -- how did you get
23 there?

24 A I drove.

25 Q Did anybody go with you?

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 181

- 1 A By myself.
- 2 Q And about what time did you get there?
- 3 A About ten.
- 4 Q And how did you get invited to this party?
- 5 A I know the girl.
- 6 Q The girl whose birthday party it was?
- 7 A Yes, sir.
- 8 Q And who was that?
- 9 A Natia Taylor.
- 10 Q And what kind of vehicle did you drive?
- 11 A I drove a Mazda truck.
- 12 Q Is it a big truck, small truck?
- 13 A Small.
- 14 Q How many doors does it have?
- 15 A Two.
- 16 Q Does it have the cab behind it?
- 17 A No, just a bed.
- 18 Q Just a bed?
- 19 A Yeah.
- 20 Q And when you showed up, were there already a lot of
- 21 people already at the club?
- 22 A Oh, yes, sir.
- 23 Q Do you know about how many?
- 24 A I'd say about fifty-something.
- 25 Q There was a lot of cars in the parking lot?

1 A It was a good bit.

2 Q And when you got there, did you go inside the club?

3 A Yes, sir.

4 Q And what was going on inside?

5 A People were dancing, music was playing.

6 Q Did you know a lot of the people already there?

7 A I know the people from Honea Path that were there.

8 Q And was there other people there from other communities?

9 A Yes, sir.

10 Q And what communities did you recognize people from?

11 A Greenwood and Anderson.

12 Q And at some point, did you see a fight take place
13 inside?

14 A Yes, sir.

15 Q Tell me about that.

16 A Well, the fight broke out. I think it was on a slow
17 song. And like, they was fighting each other until the
18 lights came on. Somebody turned the lights on, and then
19 people started going outside.

20 Q And what was happening during the fight?

21 A As I recall I seen Devon, he was getting jumped by a
22 gang of dudes. Him and his crew was fighting the other
23 dudes.

24 Q And did you see who he was fighting?

25 A I just know there was three people jumped him.

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 183

1 Q And were you involved in the fight?

2 A No, sir.

3 Q And when this fight was going on in the inside, did you
4 see anybody on the inside fighting?

5 A I saw a lot of people fighting.

6 Q When this was going on, were you involved in the fight?

7 A No, sir.

8 Q And when this was happening, did you see anybody with a
9 weapon of any type, whether a gun, knife, club,
10 anything?

11 A No, sir.

12 Q So, as this fight was going on, what did you do at that
13 point in time?

14 A At first, when it starts going on, I sat there. Then as
15 it broke up, I seen him and another person run outside.

16 Q Do you recall what he was wearing?

17 A He had blue jean pants on and a black shirt.

18 Q And you saw him run outside. Is that right?

19 A Yes.

20 Q Did you see which way he went after he got outside?

21 A He went to the right.

22 Q To the right?

23 A When I went outside, I went to the left. I was parked
24 on the left.

25 Q As you come out of the club door, you went to the left?

- 1 A (No verbal response)
- 2 Q Is that where you were parked?
- 3 A Yes, sir.
- 4 Q Was anybody with you when you went to your truck?
- 5 A When I was walking back in, I seen Quay. I got Quay and
- 6 she was with her sister and then we walked to the truck.
- 7 Q And who's her sister?
- 8 A Mijelica Smith.
- 9 Q The young lady who just testified?
- 10 A Yes.
- 11 Q And so you got in your truck. Did y'all get into your
- 12 truck at that point in time?
- 13 A Yes, sir.
- 14 Q And what was -- was anything going on? Were people
- 15 around your truck at that point in time?
- 16 A Some dude was running toward it.
- 17 Q And do you recall what they looked like, what they were
- 18 wearing?
- 19 A He was dark skinned with a orange shirt on.
- 20 Q And was there enough light out there so you could see
- 21 this guy?
- 22 A Yes, sir.
- 23 Q So, you got in the truck. Is that right?
- 24 A Yes, sir.
- 25 Q And how were y'all seated inside your truck?

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 185

1 A I was sitting in the driver's seat, lacy was in the
2 floor, and Quay was on the seat and her sister was
3 sitting in the middle.

4 Q And so Anquavious was on the passenger side door?

5 A Yes, sir.

6 Q So, as you got into your truck, everybody's seated in
7 there, you've got the doors closed. Is that right?

8 A Yes, sir.

9 Q Tell me what you observed next.

10 A Well, before I had got in the truck, I had seen the
11 dudes ran out of the door towards the car they came in.
12 When I seen him with the gun in the air, they was
13 walking towards, they was walking towards like where we
14 was going, to the left.

15 Q Who had the gun in the air?

16 A Devon Thomas.

17 Q Is he in the courtroom today?

18 A He's right there.

19 Q And what is he wearing?

20 A White.

21 MR. CAMPBELL: Your Honor, I'd like the record to
22 reflect he pointed to the Defendant.

23 THE COURT: So reflects.

24 Q Now, what was he doing with the gun when you saw him?

25 A He had it in the air.

- 1 Q Say it again?
- 2 A He had the gun pointed in the air.
- 3 Q In the air, okay. And did he fire the gun?
- 4 A He like tried to but nothing came out.
- 5 Q And what happened next?
- 6 A I saw a dude run up beside him and hand him something.
- 7 Q Could you tell who this person was?
- 8 A It was, I know a bunch of people who came with LaJames,
- 9 one of those two people.
- 10 Q It was one of those two people?
- 11 A Yes.
- 12 Q And did either one of them have a gun?
- 13 A Well, not at the time I seen them. He was the only
- 14 person that had a gun.
- 15 Q And after they ran up to him they handed him something,
- 16 what happened next?
- 17 A Started walking towards the truck where the dude hanging
- 18 at, because I was parked by the bushes and the dude was
- 19 running towards it.
- 20 Q And this guy, is this the guy, is this the guy in the
- 21 orange shirt, you're saying?
- 22 A Yes, sir.
- 23 Q Was he beside your truck at some point in time?
- 24 A Yeah, he ran around my truck. Yes, sir.
- 25 Q So, at this point in time, Mr. Thomas is approaching

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 187

1 your truck?

2 A Yes, sir.

3 Q Now, tell me what happened as he was approaching you.

4 A Well, I was crunk up and I was turning around and that's
5 when I was starting to leave and I heard a bunch of
6 shots and that's when I seen sparks. When they hit the
7 door, I seen sparks and I pulled up because I panicked.

8 Q You pulled up?

9 A I pulled up and I panicked.

10 Q Okay. You panicked. Is that what you're saying?

11 A Yes.

12 Q And how far away was Mr. Thomas when he shot at your
13 vehicle?

14 A He couldn't have been as far as me to you.

15 Q About twenty feet?

16 A Yes, sir.

17 Q And you were inside this vehicle. Is that right?

18 A Yes, sir.

19 Q And you are also a victim in this case.

20 A Yes, sir.

21 Q Could you describe what the gun looked like?

22 A It was black. I noticed it was like the police carry.

23 Q It was kind of like the police carry?

24 A Yes, sir.

25 Q Did you know that anyone had been injured or wounded in

1 your truck?

2 A No.

3 Q Initially?

4 A No, sir. But like once we got down the road, she said,
5 she said, I got shot, but I didn't believe her and then,
6 eventually, as we were going towards her house, she
7 started hollering.

8 Q How was she acting?

9 A She was like she fixing to get ready to cry and in pain.

10 Q How were you doing?

11 A Well, actually I was shocked when it happened and I was
12 crying -- I was crying, actually.

13 Q You ever been involved in anything like this before?

14 A No, sir.

15 Q You ever been involved anything with law enforcement?

16 A No, sir.

17 Q Why didn't you stay at the Shrine Club?

18 A Because I figured that something was going down.

19 Q You felt you had to leave?

20 A Yes, sir.

21 Q You didn't want for the police to get there?

22 A Oh, no, sir.

23 Q Did you call EMS?

24 A Oh, no, sir. Her sister did, called her mother on the
25 way to her house.

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 189

1 Q And you went to her house?

2 A Yes, sir.

3 Q And when you got there, was EMS already there?

4 A Uh-huh.

5 Q Do you think Mr. Thomas was actually trying to shoot
6 y'all?

7 A I don't think he was shooting at us. I think he was
8 shooting at the dude that run by.

9 Q Did you go to the hospital that night?

10 A After I took my statement, then I went to the hospital.
11 I left my truck at her mother's house and my mama came
12 down there and took me.

13 Q And after this, did you eventually go up to the
14 hospital?

15 A Yes, sir.

16 Q And when was that?

17 A It was later on that night after they took my statement.

18 Q I'm sorry. I didn't ---

19 A It was later on that night after they took my statement.

20 Q A couple of days later?

21 A No, I talked to the police the same night.

22 Q Okay. But you went to the hospital several times that
23 week?

24 A Yes, sir. I stayed up there a couple of times, too.

25 Q How long was she in the hospital?

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 190

- 1 A She was in there a good many days, until she recovered.
- 2 Q Do you know how many days that was?
- 3 A No, sir.
- 4 Q And when y'all were driving back to her house after she
- 5 had been shot, how was everybody acting? What was their
- 6 mood like inside your truck?
- 7 A Frightening. Hollering and stuff, crying.
- 8 Q Everybody?
- 9 A Not everybody. I was crying at the moment.
- 10 Q Now, you said the guy in the orange shirt that was next
- 11 to your truck, was he the one Mr. Thomas was fighting
- 12 with inside the club there?
- 13 A Well, in the club, he and his homeboys was fighting each
- 14 other. And I did see him swing at him.
- 15 Q Now, at some point in time later in the week, you spoke
- 16 with Detective Wayne Mills at the hospital. Is that
- 17 right?
- 18 A Yes, sir.
- 19 Q And during that time, he actually showed you some photo
- 20 lineups. Is that correct?
- 21 A Yes, sir.
- 22 Q And what was the purpose of why he showed this to you?
- 23 A To see if any of the dudes involved.
- 24 Q Do you know LaJames Glass?
- 25 A I don't know him. I've heard of him before, though.

DIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 191

- 1 Q Did you know of him?
- 2 A Yes, sir.
- 3 Q Did you know him enough that you could recognize him?
- 4 A Yes, sir.
- 5 Q Did you see him at the party that night?
- 6 A Yes, sir.
- 7 Q And what nickname does he go by?
- 8 A Kool-aid.
- 9 Q Did you see him with a gun?
- 10 A No, sir.
- 11 Q How about Cornelius Jones, you know him?
- 12 A Yes, sir.
- 13 Q And how do you know him?
- 14 A I seen him at a couple of parties before.
- 15 Q And do you know what kind of car he drives?
- 16 A No, sir. But I seen him come in that van before.
- 17 Q Did you see the van at the party that night?
- 18 A Yes, sir.
- 19 Q And where was it parked?
- 20 A On the right.
- 21 Q On the right, as you came out the front door?
- 22 A Yes, sir.
- 23 Q Now, have you ever seen Devon Thomas in that van before?
- 24 A I have seen him in the van. I'm not sure if he rode
- 25 with him to the party, but he hangs with them people.

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 192

1 Q Is that the group he hangs out with?

2 A Yes, sir.

3 Q Now, I'm going to show you what's been marked State's
4 Exhibits #6 through #14.

5 A Yes, sir.

6 Q Can you please identify what these are, sir? Just take
7 a look through all of them and tell me what they show.

8 A Well, that's my truck at the scene. That's some
9 pictures of the back and bullet holes and the inside and
10 outside with blood on the seat.

11 Q And these pictures accurately represent what your truck
12 looked like on the night of March 25th, 2012?

13 A Yes, sir.

14 Q And do these accurately reflect the bullet hole entry
15 into your passenger door?

16 A Yes, sir.

17 MR. CAMPBELL: Your Honor, at this time, these are
18 already moved into evidence, but I would like to publish
19 these to the jury.

20 THE COURT: Yes, sir.

21 MR. CAMPBELL: Since we have changed floors, I can't
22 show them on the projector and so I'd just like to hand them
23 to them and pass them down, if that's okay with you.

24 THE COURT: Yes, sir.

25 MR. CAMPBELL: I'm just going to put them in order real

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 193

1 quick.

2 Q That's all the questions I have for you, Mr. Lindsey.
3 Please answer any questions Mr. McElhannon may have.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. MCELHANNON:

7 Q Mr. Lindsey, just a few minutes ago on direct exam, I
8 believe I heard you say you didn't see anyone inside the
9 Shrine Club with a weapon of any type.

10 A You're wrong. I mean, I didn't see nobody at the time,
11 not until I went outside.

12 Q You didn't see anybody inside with a weapon?

13 A No, sir.

14 Q But you remember your statement that you gave?

15 A Yes, sir.

16 Q Again, March 25th, 2012. I'll read you a part of it and
17 you tell me if this is correct. Someone turned -- this
18 is after the fight. Someone turned on the lights and
19 they were swinging at each other. I saw a dude with a
20 gun. So me, my girlfriend, Anquavious M. Smith, her
21 sister, Mijelica Smith, and one of her friends ran
22 outside to my truck to leave.

23 A I didn't say that.

24 Q You didn't say that?

25 A Huh-uh. I didn't see nobody inside with no gun.

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 194

- 1 Q So, you didn't say that in your statement?
- 2 A No, sir.
- 3 Q Is this your signature?
- 4 A That's my signature, but I didn't see nobody inside the
- 5 club with a gun.
- 6 Q Well, you signed the statement saying that you saw a
- 7 dude with a gun so then you and your girlfriend and her
- 8 sister and another friend ran outside to my truck.
- 9 A But not inside then.
- 10 Q So, this statement is wrong?
- 11 A It's right. You're just saying incorrect stuff.
- 12 Q Pardon?
- 13 A This writing here, you're saying incorrect stuff.
- 14 Q I didn't say that you did it.
- 15 A I know, but you trying to switch my words up. I know
- 16 what I said.
- 17 Q I'm reading exactly what you put on there. I'm not
- 18 switching any words.
- 19 A I know what I said.
- 20 Q And you didn't say this?
- 21 A I didn't see nobody inside with a gun.
- 22 Q And you say Mr. Thomas had on bluejean pants?
- 23 A And a black shirt.
- 24 Q Not khaki shorts?
- 25 A Bluejean pants and a black shirt.

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 195

1 Q Okay. And you didn't actually see him shoot, did you?

2 A I seen him with a gun walking towards me.

3 Q That wasn't my question. The question is, you didn't
4 actually see him shoot the gun, did you?

5 A He had the gun and he was walking towards me when he
6 shot the gun.

7 Q That's not the answer to my question. You didn't
8 actually see him shoot the gun, did you?

9 A I didn't see him pull the trigger he had, no.

10 Q So, you did not -- yes or no. You did not actually see
11 him shoot the gun?

12 A I didn't see him.

13 Q You did not see him?

14 A But he had the gun.

15 Q I didn't ask you if he had the gun.

16 A I know. I answered your question the first time.

17 Q No, you didn't.

18 A I said I didn't see him shoot.

19 Q Okay. That's all I needed. And you now, today, say --
20 now you say a dude ran up beside him and handed
21 something to him, right?

22 A Yes, sir.

23 Q Where is that in your statement of two years ago?

24 A Well, I was shocked at the time.

25 Q Oh, so you were listening to testimony ---

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 196

1 A I know what I saw.

2 THE COURT: Just one second. You don't answer until he
3 finishes his question and then listen to the question and
4 answer it. If you want to explain, you can do so. Okay,
5 sir?

6 MR. LINDSEY: All right, sir.

7 THE COURT: All right. Now, go ahead. You give him a
8 chance to explain if he needs to, Mr. McElhannon.

9 MR. MCELHANNON: Yes, sir. Thank you, Your Honor.

10 Q So, now you're on the same bandwagon of being in shock
11 when you say your statement's not correct back then?

12 A Actually, I know what I saw.

13 Q But you didn't put in that you saw somebody else hand
14 him some bullet cartridge?

15 A I was shocked that time, but I know what I saw.

16 Q Well, why didn't you include that? That's pretty
17 important.

18 A Because at the time, I was thinking about my girlfriend.

19 Q There were a bunch of people running around out there,
20 weren't they?

21 A Where at?

22 Q After the fight?

23 A Everybody went outside.

24 Q Everybody went outside. So, you're saying at least
25 fifty or sixty people were outside?

CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 197

1 A Well, most of the people went outside and they were
2 getting in their car getting ready to leave, so...

3 Q So, I mean, you weren't eyeing everybody, were you, in
4 the parking lot?

5 A No, sir.

6 Q So, you don't know for sure if somebody else didn't have
7 a gun, do you?

8 A From what I saw, no.

9 Q But what I'm saying is, you don't know that someone else
10 did not have a gun, do you?

11 A No, sir. But I know what I saw.

12 Q And you heard one shot and then you pulled off?

13 A Yes, sir.

14 Q But you didn't see anybody shoot?

15 A As I recall, I saw him with the gun, but I didn't see
16 anybody shoot.

17 Q Okay. And how many people now are you saying run up
18 beside Mr. Thomas?

19 A Just one.

20 Q Just one?

21 A Yes, sir.

22 Q It wasn't a group of people?

23 A (Shakes head)

24 Q And you say you know LaJames Glass, Kool-aid?

25 A I know of him. I ---

REDIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 198

1 Q Would you know him -- do you know what he looks like?

2 A Yes, sir, if I see him.

3 Q Was that LaJames Glass who ran up to Mr. Thomas and
4 handed him something?

5 A I didn't see him. I just saw Mr. Jones, Cornelius Jones
6 with one or two.

7 Q Well, you just said only one person came up to him.

8 A I know, but I don't know exactly who it was, they favor,
9 like the same complexion, same skin.

10 Q Is Cornelius Jones five foot five? Is he that short?

11 A Actually, I don't know how tall he is, because I don't
12 know him. I just know of him.

13 Q Well, LaJames Glass is short, isn't he?

14 A He's taller than me.

15 Q He's taller than you?

16 A Yes, sir.

17 Q How tall are you?

18 A I'm like five, five.

19 Q So he's right around the same height?

20 A Yes.

21 MR. MCELHANNON: That's all the questions I have.

22 THE COURT: Redirect?

23 MR. CAMPBELL: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. CAMPBELL:

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

REDIRECT EXAMINATION OF CHARLES LINDSEY BY MR. CAMPBELL 199

1 Q Mr. Lindsey, you just testified on the cross-
2 examination, you didn't see Mr. Thomas actually pull the
3 trigger.

4 A I seen him walk towards me with a gun. He was the one
5 that had the gun.

6 Q And how long after you saw him with a gun did you hear
7 the shot go off?

8 A Right after. Like I was parked, I was pulling around
9 and it had to be like a couple of seconds or a minute or
10 two and I heard the gunshot.

11 Q But you weren't timing it on your watch, were you?

12 A No. I was trying to leave.

13 Q And after the gunshot went off, you saw the sparks on
14 your truck as you testified on direct.

15 A Yes, sir.

16 Q And did you see Mr. Thomas standing there as you were
17 pulling off?

18 A Yes, sir.

19 Q Was he holding the gun at that time?

20 A Still had the gun in his hand.

21 Q Did anybody else -- was there anybody else out there
22 with a gun?

23 A No, sir.

24 MR. CAMPBELL: No further questions.

25 THE COURT: Re-cross?

RE-CROSS EXAMINATION OF CHARLES LINDSEY BY MR. MCELHANNON 200

RE-CROSS EXAMINATION

BY MR. MCELHANNON:

Q Now, that's something new. You didn't testify on direct that when you were pulling off you saw Mr. Thomas standing there with a gun.

A He had a gun.

Q Well, why didn't you say that before? I mean, are you just making things up as you go along?

A No, he had a gun.

Q And you say after you saw him with a gun -- help me out here. It was a couple of seconds or a minute or two before you heard the shot?

A I wasn't timing it. When I had pulled off, he had the gun in his hand, he was pointing it towards us.

Q But you didn't see him shoot?

A If he had the gun, he had to shoot it.

Q Now, you're assuming that, aren't you?

A He the only person that had a gun.

Q He's the only person you saw with a gun in your testimony. That doesn't mean someone else didn't have a gun, does it?

A Well, at the time, he had the gun.

Q Is it not possible, in the realm of possibility, that someone else, with fifty or sixty people outside, had a gun, other than Mr. Thomas?

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 201

1 A I seen him with the gun.

2 Q But you didn't see him fire it?

3 A (Shakes head)

4 Q Is that a no?

5 A No, sir.

6 MR. MCELHANNON: That's all I have, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. CAMPBELL: Yes, sir.

9 THE COURT: Any objection, Mr. McElhannon?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: Thank you. You may be excused. Call your
12 next witness, please, sir.

13 MR. CAMPBELL: Your Honor, the State calls Chrislacia
14 Slappy.

15 (After being duly sworn by the Clerk of Court,

16 **CHRISLACIA SLAPPY** testified as follows:)

17 CLERK OF COURT: If you would take the witness stand and
18 state your name and spell your last name for the record,
19 please?

20 MS. SLAPPY: Chrislacia Slappy, S-L-A-P-P-Y.

21 DIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q Ms. Slappy, how old are you?

24 A Fifteen.

25 Q How old were you back on March 25th, 2012?

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 202

- 1 A Thirteen.
- 2 Q And what grade are you currently in?
- 3 A Ninth grade.
- 4 Q And where do you go to school?
- 5 A BHP.
- 6 Q And were you at the birthday party in which Ms.
- 7 Anquavious Smith was shot?
- 8 A Yes, sir.
- 9 Q I want to talk a little bit about that night. Do you
- 10 recall it?
- 11 A Yes, sir.
- 12 Q How did you know about the birthday party?
- 13 A Mijelica.
- 14 Q Mijelica Smith?
- 15 A Yes, sir.
- 16 Q Is she your friend?
- 17 A Yes, sir.
- 18 Q In fact, what do you call her?
- 19 A She's basically one of my family.
- 20 Q Does she go by another name? Do you call her Mijelica?
- 21 A Mama.
- 22 Q Mama. And how were you invited to the party?
- 23 A I was at her house, so she invited me when I stayed over
- 24 with her.
- 25 Q Did you know whose party it was?

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 203

- 1 A Yes, sir.
- 2 Q Who was that?
- 3 A Natia Tatum.
- 4 Q And do you know how old she was that day?
- 5 A I think she was kind of like sixteen, too, or seventeen.
- 6 Q And how did you get to the party that night?
- 7 A With mama.
- 8 Q And you rode with her?
- 9 A Yes.
- 10 Q Who else did you ride with?
- 11 A Keyaija.
- 12 Q Is that Keyaija Smith?
- 13 A Yes, sir.
- 14 Q And about what time do you think you got there?
- 15 A Around like nine or ten, something like that.
- 16 Q And what was going on when you got there?
- 17 A People were dancing and talking.
- 18 Q Was there a DJ at the party?
- 19 A Yes, sir.
- 20 Q And what took place, what happened while you were at the
- 21 party?
- 22 A Somebody started fighting.
- 23 Q Do you know who was fighting?
- 24 A No, sir.
- 25 Q And can you describe what was going on?

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 204

- 1 A People were fighting and somebody turned the lights on
2 and somebody threw a chair.
- 3 Q What were you thinking when this was going on?
- 4 A I was scared.
- 5 Q Where were you standing or sitting?
- 6 A Like right behind the dance floor.
- 7 Q Do you know what started the fight?
- 8 A No.
- 9 Q Was there a lot of people fighting?
- 10 A Yes, sir.
- 11 Q Did you see anybody during this fight with any type of
12 weapon, gun, knife, club, anything like that?
- 13 A No, sir.
- 14 Q Now, as this fight was taking place, what did you do?
- 15 A I looked for mama.
- 16 Q And why were you doing that?
- 17 A Because that's who I came with.
- 18 Q And had you planned on leaving at that time?
- 19 A We just stood around and watched.
- 20 Q And what made you decide you had better leave?
- 21 A Everybody was running outside.
- 22 Q And y'all went with them?
- 23 A Yes, sir.
- 24 Q Did you go with Anquavious, was she also with y'all?
- 25 A Yes, sir.

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 205

1 Q And when you got outside, when you ran out the front
2 door, which direction did you go?

3 A Left.

4 Q And where were y'all going?

5 A To Charles' truck.

6 Q And did you get in his truck?

7 A Yes, sir.

8 Q And what kind of truck does he have?

9 A A small red truck.

10 Q Now, when you got in the truck, was anybody around the
11 truck at that time?

12 A No.

13 Q Did you get inside the truck, all of y'all?

14 A Yes, sir.

15 Q And how were y'all seated?

16 A It was Charles, Mama, Quay, me. I was right there at
17 the edge.

18 Q Were you on the floorboard?

19 A When we pulled out, I ducked to the floorboard.

20 Q Were y'all pretty cramped inside the truck?

21 A Yes, sir.

22 Q Now, at this point in time, did y'all decide to leave?

23 A Yes, sir.

24 Q And as you were leaving, did you observe anything or see
25 anything?

- 1 A Somebody was behind the truck.
- 2 Q Do you recall what the person looked like and what they
- 3 were wearing?
- 4 A No, sir.
- 5 Q Were they next to your truck that you were in?
- 6 A Yes, sir.
- 7 Q And as y'all were leaving, what happened next?
- 8 A Charles backed up and then he pulled out and I saw
- 9 someone shooting.
- 10 Q Somebody shoot where?
- 11 A Like, first, he was shooting up in the air and then when
- 12 we pulled out, he was like pointing straight at us.
- 13 Q And do you recall what this person was wearing?
- 14 A A black shirt.
- 15 Q And did you know who this person was?
- 16 A No, sir.
- 17 Q And how many shots did you hear?
- 18 A I don't remember.
- 19 Q Did you see the gun?
- 20 A Yes, sir.
- 21 Q And what kind of gun was it? Can you describe it?
- 22 A Black, kind of like a police gun.
- 23 Q And did you hear the bullet hit the truck?
- 24 A No, sir.
- 25 Q Now, were you hit by the bullet?

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 207

- 1 A No, sir.
- 2 Q Did you come close to getting hit?
- 3 A Yes, sir.
- 4 Q How do you know that?
- 5 A Because I felt it brush past my arm.
- 6 Q I'm sorry. I couldn't hear you?
- 7 A I felt it brush past my arm.
- 8 Q And you were seated where, in relationship to
- 9 Anquavious?
- 10 A I was on the side.
- 11 Q Were you sitting on top of her?
- 12 A No.
- 13 Q Were you sitting right in front of her?
- 14 A (Nods head)
- 15 Q You've got to give -- speak up.
- 16 A Yes, sir.
- 17 Q Now, did you know Anquavious had been hit by the bullet?
- 18 A No, sir.
- 19 Q When did you learn she'd actually been shot?
- 20 A She said it, but I didn't believe it until she started
- 21 screaming.
- 22 Q And how was she acting?
- 23 A She was screaming and crying. She was scared.
- 24 Q How was everybody else in the truck acting?
- 25 A We was scared.

DIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 208

- 1 Q What were you doing?
- 2 A I was shocked.
- 3 Q Were you upset?
- 4 A Yes, sir.
- 5 Q Could you tell if she was in a lot of pain?
- 6 A Yes.
- 7 Q And did y'all stay at the Shrine Club or did y'all
- 8 leave?
- 9 A We left.
- 10 Q And where did y'all go?
- 11 A To Quay's house.
- 12 Q And when you got there was law enforcement already
- 13 there?
- 14 A No, sir.
- 15 Q Was EMS there?
- 16 A No.
- 17 Q Did they get there about the same time you arrived?
- 18 A Yes, sir.
- 19 Q And after they arrived, what did EMS do?
- 20 A They tried to get Quay out of the car.
- 21 Q And did they?
- 22 A Yes, sir.
- 23 Q And did she go to the hospital?
- 24 A Yes, sir.
- 25 Q Did you go to the hospital with her?

CROSS EXAMINATION OF CHRISLACIA SLAPPY BY MR. MCELHANNON 209

1 A No, sir.

2 Q What did you do?

3 A I waited until they got my statement and then I went
4 home.

5 Q And when you gave your statement, how were you feeling?
6 What kind of mood were you in?

7 A Scared.

8 Q Had you ever dealt with anything like this before?

9 A No, sir.

10 Q You ever been involved with law enforcement?

11 A No, sir.

12 Q Ms. Slappy, I have no further questions. Please any
13 questions Mr. McElhannon may have.

14 THE COURT: Cross examination

15 CROSS-EXAMINATION

16 BY MR. MCELHANNON:

17 Q Ms. Slappy, when you were in the truck you were in the
18 floorboard?

19 A At first I was like seated in the seat, and then when we
20 pulled out, I ducked in the floorboard.

21 Q Okay. Were you in the floorboard before or after you
22 heard the shot?

23 A After.

24 Q Now, you remember giving a statement, correct?

25 A Yes, sir.

CROSS EXAMINATION OF CHRISLACIA SLAPPY BY MR. MCELHANNON 210

1 Q And in the last part of your statement you gave back
2 then, you said, "Charles was backing up to get out and
3 somebody went behind his truck and while we was pulling
4 out, I heard a shot and I felt the bullet brush past my
5 arm and it hit Anquavious in the leg." And the last
6 thing that you put in your statement is, I didn't, did
7 not, see who was shooting.

8 A Yes, sir.

9 Q Do you remember saying that?

10 A Yes, sir.

11 Q But today your testimony is that you saw who was
12 shooting and you even saw what kind of gun it was.

13 A I didn't see who was shooting. I saw what he had on and
14 what kind of gun he had.

15 Q But you didn't put that -- you didn't even say you saw
16 anybody with a gun in your statement, did you?

17 A No.

18 Q So, who all have you talked to in the last two years to
19 get your story straight on the type of gun it was, and
20 what he had on and all of that?

21 A I mean, I saw what he had on.

22 Q But didn't you think that was important to say back then
23 that you saw what he was wearing and that you saw he had
24 a big black gun, like a police gun, just like everybody
25 else has testified to?

REDIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 211

1 A I mean, I was scared at the time. So, I left out some
2 stuff.

3 Q You left out some stuff? You didn't leave it out. You
4 put in, I didn't see who was shooting.

5 A I didn't see him. I don't know what he looked like. I
6 saw what he had on.

7 Q Either you saw him or you didn't see him. It can't be
8 both.

9 A I didn't see his face.

10 Q Well, you don't even say you saw anybody with a gun?

11 MR. CAMPBELL: Your Honor, I'm going to object. This
12 has been asked and answered.

13 THE COURT: Overruled.

14 A I was scared at the time.

15 Q But over the last two years, you've been talking with
16 your friends and y'all all got together and got your
17 stories straight. Isn't that right?

18 A No.

19 MR. MCELHANNON: No further questions.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q Ms. Slappy, did you identify that night who actually did
24 the shooting?

25 A No.

REDIRECT EXAMINATION OF CHRISLACIA SLAPPY BY MR. CAMPBELL 212

1 Q Have you identified in this courtroom today who actually
2 did the shooting?

3 A No.

4 Q Do you know who did the shooting?

5 A No.

6 Q You're only describing what you saw. Is that right?

7 A Yes, sir.

8 MR. CAMPBELL: No further questions.

9 THE COURT: May this witness be excused?

10 MR. CAMPBELL: Yes, sir.

11 MR. MCELHANNON: No objection.

12 THE COURT: All right. All right. Mr. Foreman, ladies
13 and gentlemen of the jury, let's go ahead and take a morning
14 break. If you need anything in your jury room, let the
15 bailiffs know. They'll make sure you have it.

16 (JURY OUT AT 10:41 AM)

17 THE COURT: All right. We'll be in recess until 11:00.

18 (BRIEF BREAK)

19 THE COURT: All right. Anything from the State before
20 we proceed?

21 MR. CAMPBELL: No, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: All right. Would you bring the jury in,
25 please, sir.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 213

(JURY IN AT 11:04 AM)

THE COURT: All right. The State will call its next witness.

MR. CAMPBELL: Your Honor, the State calls Anquavious Smith to the stand, please.

(After being duly sworn by the Clerk of Court,
ANQUAVIOUS SMITH testified as follows:)

CLERK OF COURT: If you would take the witness stand, please ma'am, and state your name and spell your last name for the record, please.

MS. SMITH: ANQUAVIOUS Smith, S-M-I-T-H.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q Ms. Smith, can you tell us why you're here today?

A Because of an incident that happened at a birthday party.

Q And what was that incident?

A I was shot by Devon Thomas.

Q Now, before the incident, I want to talk a little bit about you. How old are you?

A Eighteen.

Q And how old were you at that time?

A Sixteen.

Q You're currently in school?

A Yes, sir.

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

- 1 Q And where do you attend school?
- 2 A Belton Honea Path High.
- 3 Q And did I ask you what grade you were in?
- 4 A No, sir.
- 5 Q What grade are you in?
- 6 A Twelfth.
- 7 Q And what grade would you have been in back in March of
- 8 2012?
- 9 A Tenth.
- 10 Q And you live in Honea Path?
- 11 A Yes, sir.
- 12 Q And who do you live with?
- 13 A My mother -- well, my parents and my little sister and
- 14 my grandmother.
- 15 Q Are you the oldest child?
- 16 A No, sir.
- 17 Q Who's older than you?
- 18 A My sister, and I have an older brother.
- 19 Q And where are they?
- 20 A My brother goes to Coastal Carolina and my sister stays
- 21 in Clinton.
- 22 Q Now, are you currently employed?
- 23 A Yes, sir.
- 24 Q And what do you do?
- 25 A Clean.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 215

1 Q Is that a part-time position or full-time?

2 A Part-time.

3 Q Are you still in school?

4 A Yes, sir.

5 Q. And when do you intend to graduate?

6 A May 24th, 2014.

7 Q And what, currently, do you participate in school
8 activities?

9 A BETA Club, Renaissance, A/B Honor Roll.

10 Q And what kind of GPA do you have?

11 A 3.5.

12 Q Now, I want to talk to you about the incident we're here
13 to discuss. Do you recall March 25th, 2012?

14 A Yes, sir.

15 Q Do you recall what day of the week that was?

16 A A Saturday.

17 Q And did it carry over into Sunday morning?

18 A Yes, sir.

19 Q And what was significant about, I guess it would be,
20 March 24th, 2012. What was going on that day?

21 A We were all preparing for a party.

22 Q And whose party was it?

23 A My best friend, N.T.

24 Q And what -- how old was she turning?

25 A Sixteen.

- 1 Q And what kind of role, how did you participate in
2 planning this party?
- 3 A I had to get the cake.
- 4 Q And where was the party held at?
- 5 A At the Shrine Club.
- 6 Q Now, did y'all make up the invitation list on who you
7 wanted to attend the party?
- 8 A Yes, sir.
- 9 Q And approximately -- how did y'all send out
10 announcements about attending the party?
- 11 A Mail and we sent them out.
- 12 Q Now, how many people were y'all planning on being there?
- 13 A Twenty.
- 14 Q And were the invitations sent out?
- 15 A Yes, sir.
- 16 Q And were those also present at this birthday party?
- 17 A Yes, sir.
- 18 Q Was it to be a surprise birthday party?
- 19 A Yes, sir.
- 20 Q And did it turn out to be a surprise birthday party?
- 21 A No, sir.
- 22 Q Why is that?
- 23 A Word got around, everybody was talking about it, so she
24 found out.
- 25 Q And to your knowledge, do you know if she invited

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 217

1 anybody?

2 A No, sir.

3 Q And what was the time the party was supposed to be held?

4 A From 8:00 to 12:30.

5 Q Now, I want to talk to you a little bit about the day of
6 the party itself, okay? What did you do that day?

7 A Well, that morning, me and some other friends had got
8 together and went to go help setup the birthday party.
9 We did decorations, moved the tables back, just made
10 room for the party.

11 Q When you say moved the tables back, what was -- what
12 were you doing that for?

13 A So we could have a dance floor.

14 Q Was there a DJ to be at this party?

15 A Yes, sir.

16 Q And at some point, after you did the decorations, you
17 left?

18 A Yes, sir.

19 Q And did you do anything else related to the party?

20 A I went to get the birthday cake.

21 Q And where was this?

22 A In Anderson at Brewsters.

23 Q What kind of cake were you getting?

24 A An ice cream cake.

25 Q Now, was there also supposed to be another cake for the

1 party?

2 A Yes, sir. Her mother had prepared it already.

3 Q And this cake was for whom?

4 A Natia's table.

5 Q Kind of her personal cake?

6 A Yes, sir.

7 Q So, you went to Anderson, got the cake, and came back to
8 Honea Path, right?

9 A Yes, sir.

10 Q And at some point you got ready. Did you go to the
11 party that night?

12 A Yes, sir.

13 Q And about what time did you get there?

14 A Probably about 8:30.

15 Q And how did you get to the party that night?

16 A Keelee.

17 Q Is that a friend of yours?

18 A Yes, sir.

19 Q Did she drive you there?

20 A Yes, sir.

21 Q Did anybody else go with you, ride with you?

22 A Not that I remember.

23 Q And you say you got there about 8:30?

24 A Yes, sir.

25 Q Describe when you pulled in, what you saw?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 219

1 A A bunch of cars.

2 Q Was it more people than you expected?

3 A Yes, sir.

4 Q And did you eventually go inside the Shrine Club?

5 A Yes, sir, after I finished putting the cake in the bag.

6 Q And was there more people there than you invited?

7 A Yes, sir.

8 Q Do you know, approximately, how many people were there?

9 A Probably about thirty, thirty-five.

10 Q More than you were expecting?

11 A Yes, sir.

12 Q Did you know all these people?

13 A No, sir. I only knew the ones we invited.

14 Q Now, at some point in time, the music is playing, people
15 are dancing, everybody's having a good time. Is that
16 right?

17 A Yes, sir.

18 Q At what point in the night did things start -- that a
19 problem cropped up?

20 A When somebody went and told Ms. Taylor that they heard
21 that somebody had a gun. So, Ms. Taylor turned on the
22 lights to check and she was going to shut the party
23 down, but we begged her to continue the party.

24 Q Why is that?

25 A Because we was having fun. A lot of people was there.

1 It was no problem at the time.

2 Q Then what happened?

3 A Then the party continued.

4 Q And at some point, did you observe or witness a fight
5 take place inside the Shrine Club?

6 A Yes, sir.

7 Q And tell me about that.

8 A There was chairs being thrown, fighting, pushing.

9 Q And where were you when all of this was going on?

10 A At the back.

11 Q And were you out of the way?

12 A Yes, sir.

13 Q And did you decide to stick around?

14 A Yes, sir.

15 Q And do you recall anybody -- did you see -- did you know
16 anybody who was involved in the fight?

17 A Yes, sir.

18 Q And who did you see that you knew?

19 A Homeland Park.

20 Q And when you say Homeland Park, are you talking about
21 the boys from the Homeland Park area?

22 A Cornelius Jones, that goes by Kat. Keydarius Edwards,
23 that goes by KD, Tyrell Pulliam, Devon Thomas, and
24 that's it.

25 Q Did you see LaJames Glass?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 221

1 A And LaJames Glass.

2 Q What does he go by?

3 A Kool-aid.

4 Q Now, how do you know these boys?

5 A I used to be -- I went to school with Keelee Haley and
6 we was friends and I used to always hang out with them
7 at Homeland Park.

8 Q And prior to that night, did you know LaJames Glass?

9 A Yes, sir.

10 Q And prior to that night did you know Devon Thomas?

11 A Yes, sir.

12 Q And did you see Devon Thomas at the party that night?

13 A Yes, sir.

14 Q And did you invite him to the party?

15 A No, sir.

16 Q Do you know if anybody else invited him or LaJames Glass
17 to the party?

18 A No, sir.

19 Q Do you recall what he was wearing that night?

20 A He had on a black shirt.

21 Q Now, did you see these Homeland Park boys, did you see
22 them involved in a fight on the inside?

23 A Yes, sir.

24 Q Did you, specifically, see Devon Thomas involved in this
25 fight?

1 A Yes, sir.

2 Q And describe that to me. What was going on with him?

3 A He was being jumped.

4 Q And did you see the guys that were jumping him? Can you
5 describe who they were?

6 A They was from Greenwood.

7 Q Do you recall what they were wearing?

8 A I just remember one. He had on an orange shirt with
9 dreds.

10 Q And when you've seen these Homeland Park boys before,
11 have you always seen them in the same vehicle?

12 A Yes, sir.

13 Q And what is that?

14 A A green van.

15 Q Do you know whose van that is?

16 A Cornelius Jones'.

17 Q Did you see the van there that night?

18 A Yes, sir.

19 Q Now, as this fight was going on, at some point, did you
20 decide you'd better leave?

21 A Yes, sir.

22 Q And before you went outside the door, what, if anything
23 did you do?

24 A I was looking for my sister.

25 Q Is that Mijelica Smith?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 223

- 1 A Yes, sir.
- 2 Q Did you find her?
- 3 A Yes, sir.
- 4 Q And when this was going on, did you see anybody inside
5 with a gun, a knife, any kind of a weapon?
- 6 A No, sir.
- 7 Q I think you said you just -- someone said they heard
8 someone had a gun?
- 9 A Yes, sir.
- 10 Q Now, you said you observed Mr. Thomas being jumped on
11 inside the club?
- 12 A Yes, sir.
- 13 Q Did you actually see him leave the club?
- 14 A Yes, sir.
- 15 Q And describe that for us.
- 16 A We was leaving. He was in front of me and I heard him
17 say, "I'm going to get my gun," and at that time, I
18 yelled at my sister to get in the car, because I knew
19 something was about to go wrong.
- 20 Q And where was the car parked?
- 21 A To the left of the Shrine Club.
- 22 Q As you came out the front door?
- 23 A Yes, sir.
- 24 Q Did you see which way Mr. Thomas ran?
- 25 A Yes, sir, to the right.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 224

1 Q And as you were outside, did the party spill over to the
2 outside?

3 A Yes, sir.

4 Q And what was going on when you were out there?

5 A Everybody ran, screaming, everybody's...

6 Q Did you decide at that point, you'd better leave?

7 A Yes, sir.

8 Q And when you went to the left, where did you go?

9 A To the truck.

10 Q And whose truck was that?

11 A Charles'.

12 Q And you were dating Charles at that time?

13 A Yes, sir.

14 Q And what kind of truck was it?

15 A A red truck.

16 Q Big truck, little truck?

17 A Small.

18 Q Now, when you got to the truck, did you have everybody
19 with you?

20 A Yes, sir.

21 Q Did you, at that point in time, get in the truck or did
22 you go look for anybody else?

23 A I went back to look for my cousin, Savion.

24 Q And did you find him?

25 A No, sir.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 225

1 Q And did you go back to Charles' truck?

2 A Yes, sir.

3 Q And then what did y'all do?

4 A We got in the truck.

5 Q And how were y'all seated?

6 A Charles was in the driver's seat and then it was my
7 sister, Mijelica and then Lacy was on the floor mat and
8 it was me by the door.

9 Q Were you on the passenger's side door?

10 A Yes, sir.

11 Q Now, when this was going on, after y'all got to the
12 truck, were y'all fixing to leave?

13 A Yes, sir.

14 Q And did you observe or notice anybody in or around
15 Charles' truck?

16 A The dude in the orange shirt was running to the truck.

17 Q Was this a guy from Greenwood?

18 A Yes, sir.

19 Q Was this the guy that you saw Mr. Thomas being jumped on
20 by?

21 A Yes, sir.

22 Q And what was he doing?

23 A He was running towards -- Devon? You said Devon?

24 Q What was the guy in the orange shirt doing?

25 A He was running around the truck.

- 1 Q And y'all were leaving at this point in time?
- 2 A Yes, sir.
- 3 Q Now, was it light enough for you to see what was going
- 4 on?
- 5 A Yes, sir.
- 6 Q And where was the light?
- 7 A Right here in the middle of the Shriner's Club, in the
- 8 grass.
- 9 Q Is it a light pole?
- 10 A A light pole, yes, sir.
- 11 Q And was it enough light for you to clearly see what was
- 12 going on?
- 13 A Yes, sir.
- 14 Q Now, at this point in time, did y'all decide to leave?
- 15 A Yes, sir.
- 16 Q Now, tell me, as y'all were leaving, what happened.
- 17 A I seen Devon coming with the gun and he was pointing it
- 18 at the truck.
- 19 Q And how do you know it was Devon?
- 20 A Because I know him.
- 21 Q And how close to the truck was he?
- 22 A He was like fifteen feet.
- 23 Q And was he saying anything?
- 24 A No, sir.
- 25 Q And when he was holding the gun, which direction was he

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 227

1 holding it?

2 A Towards the truck.

3 Q Not in the air?

4 A No, sir.

5 Q Not at the ground?

6 A No, sir.

7 Q And was anybody else around him at this point in time?

8 A No, sir.

9 Q And what, if anything, did you see him do with this gun?

10 A Point it straight at the truck.

11 Q And did you see him shoot the gun?

12 A Yes, sir.

13 Q Now, how many times did you hear the gun go off?

14 A One.

15 Q And can you describe, do you know what type of gun it
16 was?

17 A I just know it was a black gun.

18 Q Now, at what point or when did you realize that you had
19 been hit?

20 A Right after it started burning and it was real bad pain.

21 Q Were you bleeding?

22 A Yes, sir.

23 Q And did you tell the people who you were with inside the
24 truck that you'd been hit?

25 A Yes, sir.

1 Q Did they believe you?

2 A No, sir.

3 Q They thought you were joking?

4 A Yes, sir.

5 Q Okay. At what point did people realize you had actually
6 been hurt?

7 A Once I showed them the blood.

8 Q And what was going through your mind? What was going
9 on?

10 A I was panicking. I was shocked.

11 Q And do you know what type of angle the bullet entered
12 your truck at?

13 A No, sir.

14 Q Did it come straight on or a down angle?

15 MR. MCELHANNON: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: Sustained.

18 Q Where were you hit?

19 A My left femur, my left thigh.

20 Q And when you were shot, were you standing up or were you
21 seated in the truck?

22 A I was seated.

23 Q Do you know if anybody else in the vehicle was hit also?

24 A No, sir.

25 Q Is the person who shot you in the courtroom today?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 229

1 A Yes, sir.

2 Q Would you please identify him?

3 A (Indicates)

4 Q What color shirt does he have on?

5 A White.

6 MR. CAMPBELL: Let the record reflect she's identifying
7 Mr. Thomas.

8 THE COURT: The record so reflects.

9 Q And you're positive that he's the one who did the
10 shooting?

11 A Yes, sir.

12 Q Did you see LaJames Glass with a gun?

13 A No, sir.

14 Q Cornelius Jones?

15 A No, sir.

16 Q Keydarius Edwards?

17 A No, sir.

18 Q Charles Edwards?

19 A No, sir.

20 Q Tyrell Pulliam?

21 A No, sir.

22 Q Anybody from Homeland Park?

23 A No, sir.

24 Q Who's the person you saw with the gun?

25 A Devon.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 230

- 1 Q Now, at that point, did y'all leave the Shrine Club?
- 2 A Yes, sir.
- 3 Q Where did y'all go?
- 4 A To my house.
- 5 Q How far away do you live from Shrine Club?
- 6 A Two-and-a-half miles.
- 7 Q How long did it take you to get there?
- 8 A Probably, like, two minutes, three minutes.
- 9 Q And when you got there, was EMS or law enforcement
- 10 already there?
- 11 A They met up with us.
- 12 Q Who's they?
- 13 A The EMS and police officers.
- 14 Q Now, at that point, did EMS put you in the ambulance and
- 15 you left to go to the hospital?
- 16 A Yes, sir.
- 17 Q Which hospital did they take you to?
- 18 A Anderson.
- 19 Q And when you were riding in the back of that ambulance,
- 20 did they give you any type of pain medication?
- 21 A No, sir.
- 22 Q And how were you feeling? What were you feeling?
- 23 A I was in pain.
- 24 Q Do you even remember arriving at the hospital?
- 25 A No, sir.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 231

- 1 Q Do you recall talking to Detective Voigt at the
2 hospital?
- 3 A No, sir.
- 4 Q How many days, total, were you in the hospital?
- 5 A Ten, nine. Nine or ten.
- 6 Q Now, when you got there, law enforcement showed up, too.
7 Is that right?
- 8 A Yes, sir.
- 9 Q And you were present in the courtroom yesterday. Is
10 that right?
- 11 A Yes, sir.
- 12 Q Did you see the first detective that testified?
- 13 A Yes, sir.
- 14 Q Did you recall him at all?
- 15 A No, sir.
- 16 Q Do you recall that they actually put bags over your
17 hands?
- 18 A Yes, sir.
- 19 Q And why do you recall that?
- 20 A Because I was upset.
- 21 Q Upset about what?
- 22 A Putting bags on my hands.
- 23 Q Do you know why they did it?
- 24 A No, sir.
- 25 Q Now, was your mother also at the hospital?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 232

- 1 A Yes, sir.
- 2 Q That's Ms. Jones, Ann Jones?
- 3 A Yes, sir.
- 4 Q At that point in time, or later that morning, did they
5 actually take you into the operating room?
- 6 A Yes, sir.
- 7 Q And how long were you in the operating room?
- 8 A I don't know.
- 9 Q And were they able to actually remove or extract the
10 bullet?
- 11 A No, sir.
- 12 Q Did it break your leg?
- 13 A Yes, sir.
- 14 Q And that bullet, is it still in your leg today?
- 15 A Yes, sir.
- 16 Q As we sit in this courtroom right now?
- 17 A Yes, sir.
- 18 Q Are you still under a doctor's care regarding this wound
19 that you received from Devon Thomas?
- 20 A Yes, sir.
- 21 Q How often do you go to the doctor?
- 22 A Every three months.
- 23 Q And do they prescribe any type of pain medication?
- 24 A Yes, sir.
- 25 Q What do they give you?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 233

1 A Lortab.

2 Q Now, you were in the hospital, I think you said, nine,
3 ten days?

4 A Yes, sir.

5 Q Did you eventually go home?

6 A Yes, sir.

7 Q Now, let me ask you this, while you were out, did you
8 miss school?

9 A Yes, sir.

10 Q Did you go back to BHP, I think you said the tenth
11 grade, for the rest of the year?

12 A No, sir.

13 Q Well, let me ask you this, are you graduating on time?

14 A Yes, sir.

15 Q Well, if you missed so much school, how did you make it
16 up?

17 A Homebound.

18 Q And did you continue your studies during the summer?

19 A Yes, sir.

20 Q And did you, in fact, catch up and graduate from the
21 tenth grade that year?

22 A Yes, sir.

23 Q And you are going to graduate on time?

24 A Yes, sir.

25 Q And during this, were you able to keep your grades up?

- 1 A Yes, sir.
- 2 Q And what type of grades do you have?
- 3 A As and Bs.
- 4 Q Now, prior to your injury, did you participate in any
- 5 type of school activities?
- 6 A No, sir.
- 7 Q Did you participate in any type of sporting activities
- 8 at BHP before you were shot?
- 9 A Yes, sir.
- 10 Q What type of activities did you participate in?
- 11 A Basketball and track.
- 12 Q And tell me a little bit about each of them? What did
- 13 you do on the basketball team?
- 14 A I was the point guard and I got an award for most
- 15 rebounding. In track, I got a state award for track.
- 16 Q And what did you run in track?
- 17 A 4x4, 4x1, 400, and 200.
- 18 Q Now, after you were shot in the leg, were you able to
- 19 continue these activities?
- 20 A No, sir.
- 21 Q Do you miss doing them?
- 22 A Yes, sir.
- 23 Q And has this wound limited you in any way?
- 24 A Yes, sir.
- 25 Q How is that?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 235

- 1 A I can't run, jump.
- 2 Q Do you still have pain from this injury?
- 3 A Yes, sir.
- 4 Q Now, after you got home did you also have to go through
- 5 physical therapy?
- 6 A Yes, sir.
- 7 Q And describe that.
- 8 A Well, actually my daddy, you know, he used to helped me.
- 9 Q And did y'all have to do exercises?
- 10 A Yes, sir.
- 11 Q Prescribed by the doctor?
- 12 A Yes, sir.
- 13 Q And how often did you have to do these exercises?
- 14 A He made me do them every day.
- 15 Q Let me ask you this, did it effect you mentally?
- 16 A Yes, sir.
- 17 Q Tell me about it.
- 18 A Well, I can't do the things I love. I don't have a
- 19 dream.
- 20 Q Did you have a dream before?
- 21 A Yes.
- 22 Q What was that?
- 23 A To become a professional basketball player.
- 24 Q Is that dream a reality now?
- 25 A Yes, sir.

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 236

1 THE COURT: Get her a glass of water. (Witness is
2 emotional) Let's do this, Mr. Foreman, let's take a couple
3 of minute break and everybody get re-composed and we'll be
4 back. Let's do about a five-minute break.

5 (Jury out at 11:30 AM)

6 THE COURT: Ms. Smith, if you need to step out, you can.
7 You just can't speak to anybody about your testimony at all;
8 your friends, family, or the Solicitor's office, okay?

9 MS. SMITH: Okay.

10 THE COURT: Let's take five minutes.

11 (Brief Break)

12 THE COURT: Is the State ready to proceed?

13 MR. CAMPBELL: Yes, Your Honor.

14 THE COURT: Is the Defense ready?

15 MR. MCELHANNON: Yes, Your Honor.

16 THE COURT: Any additions or exceptions during the break
17 to anything?

18 MR. CAMPBELL: No, sir.

19 MR. MCELHANNON: No, sir.

20 THE COURT: All right. Bring the jury in, please, sir.

21 (Ms. Smith returns to witness stand)

22 (Jury in at 11:38 AM)

23 THE COURT: Yes, sir.

24 CONTINUED DIRECT EXAMINATION OF MS. SMITH BY MR. CAMPBELL:

25 Q Now, Ms. Smith, you were talking about your dream to

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 237

1 play basketball. Is that possible anymore?

2 A No, sir.

3 Q Now, have you let this get you down, keep you back?

4 A No, sir.

5 Q Are you planning on going to college after you graduate?

6 A Yes, sir.

7 Q And where are you going?

8 A Denmark Technical.

9 Q And what are you majoring in?

10 A Technology.

11 Q And how are you going there?

12 A On a scholarship.

13 Q Now, after you got back home did -- let's step back.

14 Now, while you were in the hospital, did people reach
15 out to you?

16 A Yes, sir.

17 Q By social media?

18 A Yes, sir.

19 Q Talked to you about the event that took place?

20 A Yes, sir.

21 Q And who was one of those people?

22 A Charles Edwards.

23 Q And how did he reach out to you?

24 A Through a message on Facebook.

25 Q I'm going to show you what's been marked State's Exhibit

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 238

- 1 #24. Can you please identify what this is, ma'am?
- 2 A Charles Edwards in-boxing me.
- 3 Q All right. And when did you get that? Did you get it
- 4 that day?
- 5 A I got it that morning.
- 6 Q Did you see that, did you see it while you were at the
- 7 hospital or after you got out of the hospital?
- 8 A I seen it like a day in the hospital, after the day I
- 9 got shot, in the hospital.
- 10 Q And what date was that dated and what time was it?
- 11 A March the 25th at 3:58 a.m.
- 12 Q And were you at the hospital at that time?
- 13 A Yes, sir.
- 14 Q And what does that message say?
- 15 A "What's up. I'm sorry my cousin done that like that. I
- 16 tried to stop him from shooting. I hope you will be
- 17 okay. You look good and I would like to talk to you."
- 18 Q Let me ask you this, do you know Charles Edwards?
- 19 A I know of him.
- 20 Q And how do you know him?
- 21 A Through Keelee.
- 22 Q Is he one of the Homeland Park boys that they all hang
- 23 out together?
- 24 A Yes, sir.
- 25 Q And you've met him before. Is that right?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 239

- 1 A Yes, sir.
- 2 Q Does he have a brother?
- 3 A No, sir. Not ---
- 4 Q Ma'am?
- 5 A Not that I know of.
- 6 Q Do you know if he's kin to LaJames Glass?
- 7 A No, sir.
- 8 Q Do you know if he's kin to Devon Thomas?
- 9 A Yes, sir.
- 10 Q And how do you know that?
- 11 A Through Keelee.
- 12 Q And do you know family relationship?
- 13 A Cousins.
- 14 Q And when you received that text, who did you think he
- 15 was talking about when he said cousin?
- 16 A Devon Thomas.
- 17 Q At any point, did you think he was referring to LaJames
- 18 Glass?
- 19 A No, sir.
- 20 Q At any point did you think he was referring to any of
- 21 the Homeland Park boys?
- 22 A Yes, sir.
- 23 Q Who was that?
- 24 A Devon Thomas.
- 25 Q And that's it?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 240

- 1 A Yes, sir.
- 2 Q Now, did you think that was odd when you got that text?
- 3 A Yes, sir.
- 4 Q And did y'all show that to law enforcement?
- 5 A Yes, sir.
- 6 Q Now, at some point, did you ever hear from LaJames
- 7 Glass?
- 8 A Yes.
- 9 Q And when was that?
- 10 A I would say, like, a month after the incident.
- 11 Q And what was said or what was it in reference to?
- 12 A He was just saying that, he was asking me how I was
- 13 doing.
- 14 Q Did you respond back to him?
- 15 A No, sir. And he said he hoped I would be okay.
- 16 Q Now, you know, you know LaJames Glass. Is that right?
- 17 A Yes, sir.
- 18 Q Now, is he a personal friend of yours?
- 19 A No, sir.
- 20 Q He was in a car wreck. Is that right?
- 21 A Yes, sir.
- 22 Q Did you know about that?
- 23 A Yes, sir.
- 24 Q And I want to show you State's Exhibit #36. Can you
- 25 please identify what that is, ma'am?

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 241

1 A His picture he posted on Facebook.

2 Q Now, are you Facebook friends with LaJames Glass?

3 A Yes, sir.

4 Q How about Devon Thomas?

5 A No, sir.

6 Q Were you Facebook friends with him?

7 A Not that I remember.

8 Q Okay. Prior to the shooting, were you?

9 A Not that I remember.

10 Q Now, in this you state, "There's no hard feelings. I'm
11 glad to see you're okay."

12 A Yes, sir.

13 Q Can you tell the ladies and gentlemen of the jury what
14 you meant by "no hard feelings".

15 A Like, I don't have anything against him and I wish that
16 he will be okay.

17 Q And what did you not have anything against me about?

18 A About shooting me because he didn't do it.

19 Q And when you're saying, "I hope you're okay," what are
20 you referring to?

21 A His wreck.

22 Q Because he was injured in that, was he not?

23 A Yes, sir.

24 Q Now, I'm going to show you what's been marked State's
25 Exhibit Number #6. Can you please identify what this

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 242

1 is, ma'am.

2 A Charles Lindsey's truck.

3 Q And what position or view is it showing?

4 A The side I was on.

5 Q And that's the door you were seated next to when you
6 were shot?

7 A Yes, the passenger seat.

8 Q And I'm also going to show you what's been marked as
9 State's Exhibits #5 and -- #4 and #5. Can you please
10 identify what these are, ma'am.

11 A Me and where I got shot.

12 Q Do these pictures accurately and correctly reflect the
13 injury you received on or about the morning of March
14 25th, 2012?

15 A Yes, sir.

16 Q And where were these pictures taken?

17 A In the hospital.

18 Q In fact, are your hands bagged in this picture?

19 A Yes, sir.

20 Q And does this show the injury that you have?

21 A Yes, sir.

22 MR. CAMPBELL: Your Honor, I would like to publish these
23 to the jury.

24 THE COURT: Yes, sir.

25 Q Now, Ms. Smith, do you feel that Mr. Thomas was actually

DIRECT EXAMINATION OF ANQUAVIOUS SMITH BY MR. CAMPBELL 243

1 shooting at you?

2 A No, sir.

3 Q So you were an innocent target?

4 A Yes, sir.

5 Q Now, you were in the hospital. Do you remember
6 Detective Wayne Mills coming up there?

7 A Yes, sir.

8 Q And how many days after this shooting incident was it?
9 Do you recall?

10 A No, sir.

11 Q But he did come up there and talk to you?

12 A Yes, sir.

13 Q And when he did, did you identify who had shot you?

14 A Yes, sir.

15 Q And who was that?

16 A Devon Thomas.

17 Q And he came back the next day, did he not?

18 A Yes, sir.

19 Q And what was the purpose of him coming back to see you?

20 A A photo lineup, I guess, is what you call it.

21 Q And did you do a photo lineup?

22 A Yes, sir.

23 Q And what was this in relation or reference to?

24 A Who shot me.

25 Q And who did you pick out?

CROSS EXAMINATION OF ANQUAVIOUS SMITH BY MR. MCELHANNON 244

1 A Devon Thomas.

2 Q Now, were you able, actually, to sign this photo lineup?

3 A No, sir.

4 Q Why not?

5 A I was in pain.

6 Q Who did it for you?

7 A My grandmother.

8 Q And who is that?

9 A Mary Lindsey.

10 Q Now, Ms. Smith, the night you were injured, after you
11 were shot and you called law enforcement and they came
12 and saw you, do you remember every single detail up and
13 to that point?

14 A No.

15 Q Did you remember more as time passed?

16 A Yes, sir.

17 Q I have no further questions. Please answer any
18 questions Mr. McElhannon may have.

19 THE COURT: Cross examination.

20 CROSS-EXAMINATION

21 BY MR. MCELHANNON:

22 Q Ms. Smith. I just want to say I'm sorry for your
23 injury. Nobody needs to go through this. You testified
24 that you knew Devon Thomas prior to this party, correct?

25 A Yes, sir.

CROSS EXAMINATION OF ANQUAVIOUS SMITH BY MR. MCELHANNON 245

1 Q So, you knew what he looked like prior to this party.

2 A Yes, sir.

3 Q You knew what LaJames Glass looked like, as well?

4 A Yes, sir.

5 Q So, when Detective Mills showed you a photo lineup, and
6 typically it's a page with six different pictures on it,
7 correct?

8 A Correct.

9 Q And when he showed you that, you already had in your
10 mind that Devon Thomas was the shooter, right?

11 A Yes, sir.

12 Q So, I mean, you knew what he looked like, so ---

13 A Yes.

14 Q So, you just said, "That's Devon Thomas".

15 A Yes, because he was the one who shot me.

16 Q But it wasn't like six random pictures where they were
17 trying to get you to say, do you recognize any of these
18 people. You knew Devon Thomas prior to the photo lineup,
19 is what I'm saying. Correct?

20 A I mean they showed me the pictures. I knew Devon Thomas
21 before the party. I knew Devon Thomas after the party.
22 They showed me the six picture lineup. Devon Thomas was
23 number six. I did not know the rest of those five
24 people.

25 Q That's what I'm saying. You knew Devon Thomas ---

CROSS EXAMINATION OF ANQUAVIOUS SMITH BY MR. MCELHANNON 246

- 1 A Correct.
- 2 Q --- prior to that lineup?
- 3 A Correct.
- 4 Q Okay. Now, in your statement that you gave March 25th,
- 5 you said, "I do not know the guy who shot me".
- 6 A At that time, I was in pain. I was hurting. I was
- 7 shocked.
- 8 Q But you didn't know it was Devon Thomas at that time?
- 9 A I actually don't remember writing my statement.
- 10 Q Okay. You put a good bit of detail in this as far as
- 11 remembering stuff. I mean, you say, "As we were driving
- 12 off, I saw a black male who was wearing a black shirt".
- 13 And you talk about how big he was, six feet tall and
- 14 medium build.
- 15 A Yes, sir.
- 16 Q You talk about, "He took one shot in our direction. It
- 17 went through the truck door and into my leg." And then
- 18 you go on to say where you went, [REDACTED],
- 19 called 9-1-1. I do not know the guy who shot me.
- 20 A Well, at the time, I really was worried about getting to
- 21 the hospital. I was in pain. I was hurting. I was
- 22 under many medications.
- 23 Q But what I'm saying is, you say you don't remember ---
- 24 A I know what you're saying.
- 25 Q You don't remember, but ---

CROSS EXAMINATION OF ANQUAVIOUS SMITH BY MR. MCELHANNON 247

1 A I'm telling you, I was in pain. I was hurting.

2 Q I appreciate that.

3 A Anybody's been shot, you're not going to be focused on
4 writing no statement after you are at the hospital.

5 Q I appreciate that, but that's not ---

6 A Sure.

7 Q That's not what I'm asking you. I'm saying you went
8 into great detail in this statement, yet you didn't name
9 the person who shot you.

10 A Sir, I don't remember writing the statement.

11 Q You signed it, didn't you?

12 A I don't remember signing the statement.

13 Q And you actually have to say or you went on to say about
14 where -- they had been fighting behind us. They went to
15 the wood line on the right-hand side of the building and
16 the right something -- in view from the road. The guy,
17 the subject he was shooting at was wearing an orange
18 shirt. You knew all of that, you told all of that to
19 the investigator, but yet, you did not know the guy who
20 shot you?

21 A At the time, I was in pain. I was hurting. I don't
22 think I would be worried about anything else going on.

23 Q And there was a rumor at this party, somebody told Ms.
24 Taylor that somebody had a gun inside there. Correct?

25 A Correct.

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- 1 Q Inside the party?
- 2 A Yes. They heard that they had a gun.
- 3 Q Right. And she turned the lights on and said, "We're
- 4 shutting this party down."
- 5 A Correct.
- 6 Q And then y'all all got together and said we're having
- 7 such a good time, let's let the party go on.
- 8 A Yes, sir.
- 9 Q Was there anybody in that building searched for weapons?
- 10 A Yes, sir.
- 11 Q And who searched them?
- 12 A We had her uncle at the door. They was searching
- 13 everybody down before they came in the party.
- 14 Q I'm saying when she was going to shut the party down.
- 15 A Nobody could walk in the party with a weapon. They had
- 16 already searched them.
- 17 Q Do you know why someone would have said somebody's got a
- 18 gun here?
- 19 A I don't know.
- 20 Q And Homeland Park, what you call the Homeland Park boys
- 21 or crew or whatever, they always come to these parties
- 22 in a van?
- 23 A Yes, sir. They call it the party van.
- 24 Q A green van?
- 25 A Green. A green, dirty-looking van.

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1 Q Okay. And do you know -- did you see Devon Thomas come
2 in or out of that van that night?

3 A No, sir.

4 Q Oh. Also, something you came up with today was, you say
5 you heard Devon say, "I'm going to get my gun."

6 A I was right behind him.

7 Q That's nowhere in the statement either.

8 A Sir, listen, at the time, I wasn't even writing the
9 statement. I don't remember whoever gave me or came to
10 take the statement. I don't remember that. I wasn't
11 focused on writing the statement. I was focused on me.
12 I wasn't worried about that then.

13 Q So, when you went outside you said you were right behind
14 him?

15 A I was right behind him. Like you right here in front of
16 me, I was right here, running out the door. He ran
17 right. I ran left.

18 Q Where did he run to?

19 A Right.

20 Q No, I mean to where?

21 A To the van.

22 Q You saw him go to a van?

23 A Yes, sir. He ran right. They parked to the right.

24 That's commonsense. He ran right, to the van.

25 Q Was there more than one vehicle over there parked on the

CROSS EXAMINATION OF ANQUAVIOUS SMITH BY MR. MCELHANNON 250

1 right?

2 A Yes.

3 Q Okay. So, it wasn't just a green van sitting over
4 there, was it?

5 A Because usually when you see them, the Homeland Park,
6 everybody knows they come in a group. It's just not --
7 you not going to see one person and not see the others.

8 Q So, are you saying Devon Thomas came in that green van?

9 A I did not say that, sir. You are re-wording me. I did
10 not say that, yes.

11 THE COURT: Y'all stop for a second. I want both of you
12 -- let him finish his question before you give him your
13 answer, okay?

14 MS. SMITH: Yes, sir.

15 THE COURT: Okay. And let her finish before you begin
16 another question, okay? Now, go ahead and repeat it.

17 Q What you're saying is, you're lumping Devon Thomas in
18 with this whole group that always comes to parties in a
19 green van. I'm asking you, do you know if Devon Thomas
20 came to the party in that green van or not?

21 A I said, no, once again.

22 Q Okay.

23 A. Correct.

24 Q And you don't know if he was running toward the green
25 van when he left out of the building either, did you?

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1 A He ran to the right and the van was -- let me finish
2 talking. The van was on the right. He ran out the door
3 to the right. The van was on the right. That's just
4 commonsense they was running to the van. Because when
5 they ran out, it was the whole Homeland Park. It wasn't
6 just going somewhere else, not to the van.

7 Q Well, what if he didn't come in the van?

8 A Sir, we know he didn't come in the van. I didn't say he
9 came in the van.

10 Q You know he didn't come in the van?

11 A I said that. I'm sure. I'm one hundred percent sure
12 that he did not come in that van.

13 Q Well, what did he come in?

14 A I mean, I really don't remember what he came in.

15 Q Well, how do you know he didn't come in the van?

16 A Because wasn't in the van. I know who all got out the
17 van. It was Cornelius Jones, Tyrell Pulliam, Keydarius
18 Edwards, and LaJames Grass, which they call Kool-aid.

19 Q Did you ---

20 A That's who got out the van.

21 Q You saw them when they got there?

22 A I seen them when they got there.

23 Q So, you're confirming that Devon Thomas did not come to
24 the party in that van?

25 A I'm confirming that he didn't come to the party in that

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1 van.

2 Q Thank you. And you say when you saw Mr. Thomas when
3 y'all were in the truck, nobody else was around him?

4 A No, sir.

5 Q You didn't see LaJames Glass around him?

6 A No, sir.

7 Q LaJames Glass didn't hand him bullets or a clip?

8 A I didn't see that.

9 Q But you saw everything else?

10 A I did. They had it before the fact, not when he was
11 pointing the gun towards the truck. I'm sure the clip
12 was already in for him to have to point the gun toward
13 the truck to shoot it.

14 Q You're sure of that?

15 A I'm one hundred percent sure.

16 Q How were you sure that that all happened before you got
17 in the truck?

18 A Because it did. He shot the gun. I heard the shot. He
19 give him the clip. The bullet had to be in the clip,
20 right? They put the clip in. He shot that gun. The
21 shot I heard was the shot of the bullet I got hit with.
22 So, I'm a hundred percent sure that I didn't see nobody
23 give him no clip to shoot that gun. That all had
24 happened before he shot it. I mean, that was
25 commonsense.

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1 Q But a lot of things aren't commonsense in this case, are
2 they?

3 A Obviously. Yeah. You would be the one to say it,
4 right?

5 Q But ---

6 THE COURT: No, stop. You may not make those extraneous
7 statements like that. That's stricken from the record. Go
8 ahead.

9 MR. MCELHANNON: Thank you, Your Honor.

10 Q And this text message you got at 3:58 on the morning you
11 got shot from Charles Edwards, you don't know,
12 personally, that Charles Edwards and Devon Thomas are
13 cousins, do you?

14 A I mean, they are friends with Keelee Haley, so they have
15 been together for, what, years?

16 Q But you're getting that second-hand from Keelee Haley?

17 A Yes.

18 Q Okay. So you don't know that they're cousins, do you?

19 A I mean, I know that Keelee said they're cousins, but not
20 how ---

21 Q You don't know if their moms are sisters or dads are
22 brothers or anything like that, do you?

23 A No.

24 MR. MCELHANNON: That's all the questions I have, Your
25 Honor.

1 THE COURT: Redirect?

2 MR. CAMPBELL: No, Your Honor.

3 THE COURT: Thank you. You may step down. Any reason --
4 I don't know -- is there any reason why this witness can't be
5 excused?

6 MR. CAMPBELL: No, sir.

7 MR. MCELHANNON: No objection.

8 THE COURT: Okay.

9 MR. CAMPBELL: Judge, may we approach?

10 THE COURT: Yes, sir.

11 (Bench Conference Off the Record)

12 THE COURT: Call your next witness, please, sir.

13 MR. CAMPBELL: Your Honor, the State calls Ann Jones.

14 (After being duly sworn by the Clerk of Court, **ANN**
15 **JONES** testified as follows:)

16 CLERK OF COURT: If you would take the witness stand and
17 state your name and spell your last name for the record,
18 please?

19 MS. JONES: Ann Jones, J-O-N-E-S.

20 DIRECT EXAMINATION

21 BY MR. CAMPBELL:

22 Q Ms. Jones, how are you related to Anquavious Smith?

23 A That's my daughter.

24 Q And does she currently live with you?

25 A Yes.

DIRECT EXAMINATION OF ANN JONES BY MR. CAMPBELL

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1 Q And where do y'all live?

2 A We live in Honea Path.

3 Q Now, you were not present the night or early morning
4 hours of March 25th, 2012, in which your daughter was
5 shot at the party.

6 A No, sir.

7 Q When did you first learn that she had been wounded or
8 injured?

9 A I got a call like at fifteen 'till one, I think, and it
10 was Mijelica, my other daughter, saying Quay's been
11 shot. Quay's been shot.

12 Q And when you learned that, what, if anything, did you
13 do?

14 A I called 9-1-1.

15 Q And where did you ask them to send medical help to?

16 A At the time, to our address of [REDACTED].

17 Q And were you present when she arrived?

18 A Yes.

19 Q And what was going on in the little red truck? How were
20 all of the kids acting?

21 A They was all over the place. They was crying, screaming
22 and yelling and nobody -- I don't even actually think
23 they knew where she was shot. They just knew that she
24 was bleeding.

25 Q And did you see her bleeding?

- 1 A Yes.
- 2 Q And which leg was that?
- 3 A I think the left.
- 4 Q Now, when you saw her, the medical personnel had not
- 5 showed up yet. Is that correct?
- 6 A Right.
- 7 Q Did you try to do anything for her to comfort her?
- 8 A I was so shocked. Actually, my sister-in-law came,
- 9 because she's a nurse, and I asked her to help out
- 10 because I couldn't look. I was just in a state of
- 11 shock. I just couldn't move. Really, I couldn't move.
- 12 So, at that time, she applied pressure to the area,
- 13 which I didn't know where she was bleeding. Somebody
- 14 told me the chest and somebody also told me it was in
- 15 her abdomen.
- 16 Q And did EMS arrive?
- 17 A Yes.
- 18 Q And she went to the hospital?
- 19 A Yes.
- 20 Q Did you go to the hospital with her?
- 21 A I did. I rode in the back of the ambulance with her.
- 22 Q Now, when she got into the hospital, did law enforcement
- 23 show up?
- 24 A Yes.
- 25 Q Do you recall them speaking to her?

DIRECT EXAMINATION OF ANN JONES BY MR. CAMPBELL

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1 A They did, but it was so much going on. It was the
2 nurses coming in and they was coming in. It was a whole
3 lot going on.

4 Q And in what state was Anquavious at this point in time?

5 A She was yelling.

6 Q Did, eventually, she go back to the operating room?

7 A Yes.

8 Q And how long was she back there?

9 A About five hours.

10 Q And were you at the hospital this entire time?

11 A Yes.

12 Q Were they able to actually remove the bullet from her
13 leg?

14 A No. They couldn't remove it, because it would cause
15 more damage for them to remove it. So, actually, they
16 have to leave it in.

17 Q Now, did you speak to the doctors after the surgery?

18 A Yes.

19 Q And at some point did they show you the injuries she
20 received?

21 A Yes, they did.

22 Q And how did they do that?

23 A By the x-rays.

24 Q Now, I'm going to show you what's been marked State's
25 Exhibits #25 through #30. If you could please identify

1 these.

2 A These are x-rays of the bullet in her femur bone,
3 because it broke her femur bone. It shattered it,
4 actually. And it's showing where they put the screw in
5 the top of her knee, it's from her knee up to her hip,
6 and where it's still shattered and this is where the
7 bullet's still located at.

8 Q And do these x-rays accurately reflect the x-rays the
9 doctors showed you that night ---

10 A Yes.

11 Q --- or the morning?

12 A Yes.

13 Q Is her name on these?

14 A Yes.

15 MR. CAMPBELL: Your Honor, at this time, I'd like to
16 publish these to the jury.

17 THE COURT: Yes, sir.

18 Q Now, how long was she in the hospital for?

19 A Nine days.

20 Q And did she eventually come home?

21 A Yes.

22 Q To your house?

23 A Yes.

24 Q Now, what type of special provisions or what did you
25 have to do extra when she came home?

DIRECT EXAMINATION OF ANN JONES BY MR. CAMPBELL

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1 A We had to move everything around; the bed, she had to
2 have a bedpan, a walker. She basically had to do
3 everything over again.

4 Q And did you have to care for her?

5 A I did.

6 Q And how long did you have to care for her?

7 A About a year.

8 Q And when you say "care for her," what were you actually
9 having to do for her?

10 A I had to bathe her, had to take her back and forth to
11 the bathroom. I had to clothe her. I had to do her
12 exercises. I had to do everything.

13 Q Like she was a baby again?

14 A All over.

15 Q And did y'all have any type of physical therapy for her?

16 A Yeah. Me and her father did some things because she had
17 some real bad cramps coming from the blood flow in her
18 leg.

19 Q And was this at the requests of the doctors?

20 A Yes.

21 Q And how often did y'all have to do the physical therapy
22 to her?

23 A Every day to keep her from getting blood clots.

24 Q Now, during this time, is she in school?

25 A Yes.

1 Q What did you do in regards to her school since she was
2 missing so much school?

3 A We got her a tutor and got somebody to come over and
4 help her with her assignments.

5 Q Did you arrange this through the school district?

6 A Yes.

7 Q And was she able to keep her grades up and finish the
8 year?

9 A Yes.

10 Q And she's graduating on time?

11 A Yes.

12 Q Now, how was this, from your perspective as a mother
13 since you've seen her this entire time, how has this
14 affected her?

15 A It affected her mentally real bad. It depressed her for
16 a long time. It affected my whole family.

17 Q How about physically?

18 A It was real bad physically because she knew she couldn't
19 walk, but she still tried to get up and do things by
20 herself, which, she ended up falling one day, and it was
21 very sad.

22 Q Ms. Jones, I have no further questions. Please answer
23 any questions Mr. McElhannon may have.

24 MR. MCELHANNON: No questions.

25 THE COURT: Thank you, ma'am. You may step down. All

1 right. Counsel both of you agree this would be a good time
2 to take a break?

3 MR. CAMPBELL: Yes, sir.

4 MR. MCELHANNON: Yes, Your Honor.

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen of the jury, I'm going to go ahead and call a break
7 now for lunch. I'm going to ask that you go on your own and
8 be back in your jury room at twenty until two o'clock. I
9 intend to resume at 1:45. Let me remind you that you're not
10 to speak amongst yourselves or with anyone about this case
11 during your break.

12 (Jury out at 12:10 PM)

13 THE COURT: All right. Anything from the State before
14 we recess?

15 MR. CAMPBELL: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. MCELHANNON: No, sir.

18 THE COURT: All right. We'll be in recess until a
19 quarter 'till two.

20 (Lunch Break)

21 AFTERNOON - FEBRUARY 25, 2014

22 THE COURT: All right. Anything from the State before
23 we get started?

24 MR. CAMPBELL: No, Your Honor.

25 THE COURT: From the Defense?

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

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1 MR. MCELHANNON: No, Your Honor.

2 THE COURT: Will you bring the jury in please, Buck?

3 (Jury in at 1:51 PM)

4 THE COURT: Is the State ready to proceed?

5 MR. CAMPBELL: The State's ready, Your Honor.

6 THE COURT: Is the Defense ready?

7 MR. MCELHANNON: We're ready, Your Honor.

8 THE COURT: Would you call your next witness, please?

9 MR. CAMPBELL: Your Honor, the State calls Detective
10 Wayne Mills to the stand.

11 (After being duly sworn by the Clerk of Court,
12 **WAYNE MILLS** testified as follows:)

13 CLERK OF COURT: If you would take the witness stand and
14 state your name and spell your last name for the record,
15 please?

16 MR. MILLS: My name is Wayne Mills. Last name,
17 M-I-L-L-S.

18 DIRECT EXAMINATION

19 BY MR. CAMPBELL:

20 Q Detective Mills, where are you employed?

21 A Anderson County Sheriff's Office.

22 Q And what position do you currently hold?

23 A Currently, I'm a lieutenant over the Criminal
24 Investigative Division at Anderson County Sheriff's
25 office.

DIRECT EXAMINATION OF DET. WAYNE MILLS BY MR. CAMPBELL 263

1 Q And how long have you been in law enforcement?

2 A Thirteen years.

3 Q In what positions or what capacity have you been
4 employed in law enforcement?

5 A My entire time in law enforcement has been here in
6 Anderson County. I started back in '02. Since then, I
7 did five years working road patrol. Since that time, I
8 was promoted to the CID Division, which I worked as a
9 property detective. I worked property for about two
10 years. At that point, I started working auto theft.
11 From auto theft, I went to crimes against persons and
12 I've been a detective since then. Eighteen months ago,
13 I was promoted to the rank of lieutenant, at which
14 point, I took over the Criminal Investigative Division.

15 Q And have you been on any other type of teams or
16 positions with the Sheriff's office?

17 A Yes, sir.

18 Q Besides, CID.

19 A Yes, sir. I was also a member of the SWAT team with
20 Anderson County and also, the K-9 bloodhound tracking
21 team.

22 Q And what exactly is a SWAT team?

23 A A SWAT team is a Specialized Weapons and Tactics Team.
24 We're utilized for everywhere from high-risk search
25 warrants to arrests to multiple barricaded subjects or

1 situations where it would require more tacticals and
2 more advanced tactics.

3 Q And are you originally from Anderson County?

4 A Yes, sir, I am.

5 Q And prior to coming to the Sheriff's office what, if
6 anything, did you do?

7 A I went to -- actually I graduated high school in 1995
8 from Belton Honea Path High School. After that, I then
9 enlisted in the United States Marine Corp, where I
10 served five years in the United States Marine Corp.
11 Once I got out from the Marine Corp, I then came back to
12 Anderson County and I've been with the Anderson County
13 Sheriff's office ever since.

14 Q Now, are you the case officer in this case regarding the
15 shooting of Anquavious Smith that occurred on or about
16 March 25th, 2012?

17 A Yes, sir, I am.

18 Q And are you also the detective in this case that took
19 out warrants on Mr. Thomas for four counts of attempted
20 murder?

21 A Yes, sir, I am.

22 Q Now, I want to talk to you about what lead up to that
23 and how and why you took out the warrants. Now, when
24 did you first learn that Ms. Smith had been shot?

25 A That would be Monday morning. The shooting took place

DIRECT EXAMINATION OF DET. WAYNE MILLS BY MR. CAMPBELL 265

1 on the 25th, which was Saturday, into the midnight to
2 2:00 area, through Sunday. Then I came in Monday
3 morning and checked my case list, as I always did Monday
4 morning, and I had been assigned the case.

5 Q So, you did not go out to the crime scene that night ---

6 A No, sir, I did not.

7 Q ---or Sunday morning?

8 A No, sir. I apologize. No, sir, I did not.

9 Q And how were y'all set up back then regarding the
10 handling of cases?

11 A When a case comes in over the weekend, at that
12 particular time, we had two detectives on an on-call
13 rotation, and one detective for a homicide call. These
14 on-call detectives handle everything that may come in
15 over the weekend or during the nighttime hours that
16 requires additional or immediate action at that
17 particular time. Most of the time they're a more high-
18 level cases or more serious in nature. The on-call
19 investigator goes out, does preliminary investigation,
20 crime scene, those kind of things and does his best to
21 prepare a case to be turned over, at that time, to a
22 case officer who may come in and may specialize a little
23 more in that field.

24 Q Now, you said "at that time." Have y'all changed the
25 way you handle cases and assign cases?

1 A Yes, sir, as a matter of fact, we have.

2 Q Now, when you came in on Monday morning, you were
3 assigned this case. Would you tell the ladies and
4 gentlemen of the jury what steps you initially took in
5 your starting this investigation.

6 A The first thing I would have done was read the report.
7 Obviously, I wanted to familiarize myself. I didn't go
8 to the scene. I didn't meet with the witnesses. I
9 didn't meet with the victim. So, I need to start
10 familiarizing myself with the case. I would have went
11 over all case notes, any and all statements that had
12 been taken then, the case report, supplemental reports,
13 starting to observe evidence, pulling evidence from the
14 evidence locker to view it and start seeing which
15 direction I needed to go in at that time.

16 Q Well, on this morning when you got the case, had anybody
17 been arrested at that point in time on Monday morning?

18 A No, sir.

19 Q And did you, actually, go to the hospital that Monday
20 morning to see Ms. Smith?

21 A That Monday morning, no, sir.

22 Q Now, you stated you went over to forensics. Did you
23 have an opportunity -- or were the photographs that were
24 taken that night already in, already been submitted by
25 the forensic officers into your system?

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1 A Yes, sir, they were. They had been downloaded which
2 gave me an opportunity to view them as well.

3 Q And did you also speak to Detective Matthew Voigt?

4 A Yes, sir, I did.

5 Q And you also reviewed the report?

6 A Yes, sir, I did.

7 Q Now, at this point in time, based upon your preliminary
8 investigation of evidence and talking to Detective
9 Voigt, had a suspect's name or a couple of suspects'
10 names come up at that point in time?

11 A Yes, sir. There were a couple of names that had
12 already been generated by early Monday morning.

13 Q And what names were those?

14 A Devon Thomas, LaJames Glass and Cornelius Jones.

15 Q Now, at this point, what was your next step in your
16 investigation after you'd done what we just described?

17 A Well, once I had sat down and read through the
18 information that I had in front of me, it was time to
19 develop a game plan as far as where I needed to go with
20 the investigation from there. You analyze everything
21 from the evidence to time of day, to the different kind
22 of things and information that I had in front of me.
23 When breaking that down, you start seeing who your
24 witnesses are, who they're not, who may be potential
25 suspects, and try to look at it from a common sense

1 approach of exactly who are these people we're talking
2 to. Do I know any of them? Does anybody ring a bell
3 that I've dealt with in the past? Going through this
4 particular case, it did not take long to realize I was
5 dealing with a bunch of children. Looking at the
6 information from the people that were on the scene, the
7 runoff of that, it was a sweet sixteen party. You know,
8 one would assume that there's going to be children
9 there. Going through the statements, you know, you look
10 at the date of birth and you start realizing you're
11 dealing with thirteen, fourteen, fifteen, sixteen-year-
12 olds.

13 Q Now, at this point, did you also determine whether or
14 not Ms. Smith, the victim, or one of the victims, who
15 was actually shot in this case, did y'all test her for
16 GSR?

17 A She was tested for GSR, yes, sir.

18 Q And, what exactly is GSR?

19 A GSR is gunshot residue. In any situation when we have a
20 shooting, we try our best to get to that scene, get to
21 that location, and bag anybody's hands that we can at
22 that time for testing as soon as possible. And it's
23 called a GSR test for gunshot residue where they're
24 actually looking for the residue on the palms that could
25 say that somebody has fired or not fired a weapon.

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1 Q And was that done in this case?

2 A It was, sir.

3 Q And why was it done on her if she's the victim?

4 A Well, in this particular case, for one -- or any case,
5 you know, you want to, you go as far and see as many
6 things as you possibly can, look at all aspects. Just
7 because somebody tells me that somebody shot her, or got
8 shot, you need to double-check. You know, I need to
9 make sure that everything lines up right. So, yes, in
10 this case where she is the victim, you know, make sure
11 that she didn't fire a firearm, as well.

12 Q And did you have her hands tested?

13 A Yes, sir, we did.

14 Q And what were the results of that?

15 A They were negative.

16 Q Now, did you also get an opportunity to review the
17 statements that were taken that night?

18 A Yes, sir, I did. I read all the statements. Once
19 again, I read every piece of information I had at that
20 time, including all statements.

21 Q At that point, did you actually go out to the scene?

22 A I did go to the scene, yes, sir.

23 Q And where exactly, what's the address there?

24 A I believe it is [REDACTED] in Honea Path
25 Anderson County.

1 Q And where exactly is that located in Honea Path?

2 A It's right on the outskirts of Honea Path. It is right
3 at the Anderson/Abbeville County line, but it is inside
4 Anderson County jurisdiction.

5 Q Now, at this point, did you take a look at the scene and
6 get some ideas of what -- how they cooperated and what
7 the witnesses and your officers had told you?

8 A Yes, sir. Anytime you start a case like this, like I
9 said before, I did not respond to the scene that night.
10 So you kind of take the pictures and the statements and
11 the information that you have and then you want to go to
12 the scene and see if you can start placing things to see
13 if things line up. So, yes, I like to see things for
14 myself.

15 Q Now, at that point in time, what was your next step in
16 your investigation?

17 A Once I left the scene, I decided that there was several
18 people that I would like to speak to again, do a follow-
19 up interview with and at that point, I proceeded to do
20 just that.

21 Q And what is the purpose of doing a follow-up interview
22 if they've already been interviewed one time?

23 A Well, several reasons. For one the age group that I was
24 dealing with. Another is, this is also my case. I'm
25 not saying that I disagree with anybody else doing

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1 interviews, by any means, it's just like I like to hear
2 things for myself as well. Not to mention, there is
3 certain recall, you know, things that you remember,
4 things that come back, things that you may remember a
5 day later. I go off prior experience. I've been
6 involved in three shootings in Anderson County myself,
7 where I've been shot at and shot. I know my first day
8 and my third day was completely -- I had a lot of
9 recall, a lot of things that came back. So, yes, there
10 was some other things that I wanted to touch on and that
11 I wanted to clear up as well.

12 Q Is it common for witnesses to not only remember, but
13 leave things out when they're initially interviewed
14 after viewing a crime take place?

15 A Yes, sir, especially any kind of situation where it's
16 very stressful. Once again, it didn't take long to
17 realize I was dealing with children. You know, I
18 understand the time of day, the night time, the
19 situation that took place and just seeing a heinous act,
20 it being their first time being a part of any kind of
21 violence of that magnitude, you know, so, yes, it is
22 common.

23 Q Now, at this point, did you actually go re-interview
24 everybody?

25 A Not everybody in the situation, no, sir, but I did re-

1 interview several individuals from that scene.

2 Q And who did you re-interview?

3 A I re-interviewed Josselyn Posey. Now, these are re-
4 interviews. I re-interviewed Josselyn Posey, a Terry
5 Jackson, Keyaija Smith, Anquavious Smith, Coretta Woody,
6 Charles Lindsey, and I believe, Nalshia Martin.

7 Q And when you interviewed these individuals this time,
8 did you take any recorded statement or did you take a
9 written statement from them?

10 A I took a recorded statement on this particular day, yes,
11 sir.

12 Q And did you go back at any point and compare the
13 recorded statement to the written statement they had
14 previously written?

15 A I did.

16 Q And what, if anything, did you see or find?

17 A Well, when I went back and compared the recorded
18 statements to the written statements, it was apparent
19 that there were some things that were a little
20 different. Going through the recorded statements, just
21 to give you an idea of the way that the statements went
22 on most of the kids that I went to, the -- I
23 specifically went to a specific age group. I was trying
24 my best to stay away from thirteen and under when I was
25 going to go back and try to re-interview. There's a lot

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1 of different other parameters you're looking at when
2 you're doing that and when you're going to a school or
3 those kind of things. You're talking to a thirteen-
4 year-old with her parents and things like that as far as
5 coming into play and I had re-interviewed a select group
6 there that met my criteria as far as an age group and I
7 had to set up a classroom to do this and it was myself,
8 the SRO, at the time, and a school administrator.

9 Q Where did these interviews take place?

10 A At BHP High School.

11 Q And what exactly is an SRO?

12 A I apologize. The SRO is a School Resource Officer. He
13 is a uniformed deputy that's placed inside the school.

14 Q Okay. Continue?

15 A And these interviews were done inside a classroom with
16 myself, the SRO and the administrator, along with the
17 student. And the reason I did that was to pull them out
18 of the -- I was in the classroom setting. And it did
19 not take long to realize they were a little worried,
20 they were nervous. They were extremely nervous to speak
21 with me in that setting. I attempted to make it as
22 comfortable as possible being in a classroom. I even
23 had several looking over their shoulder, out the door,
24 during bell changes to see who was looking at them
25 inside talking to the police. So, yes, at that time, we

1 tried our best to isolate and have somewhat of a casual
2 conversation.

3 Q These individuals, these students that you were
4 interviewing, they're not professional witnesses, are
5 they?

6 A No, sir. As a matter of fact, they were very, very
7 intimidated. Once again, there's certain rules as far
8 as interviewing inside a school. You want an
9 administrator at that particular time. You don't want
10 to be one-on-one, so you want that kind of thing. So we
11 even try to set the room up so the SRO and administrator
12 was on the far side of the room while I could engage the
13 student, trying to ease them a little bit because they
14 were just so nervous. They would come in and it would
15 take a while, you know, you're trying to have casual
16 conversation, kind of break the ice, try to get them to
17 relax a little bit, to start, while having this
18 interview.

19 Q Now, you conduct your interviews. Have you gone back
20 through your interviews, your recorded interviews?

21 A Yes, sir, I have.

22 Q And have you gone back through the written statements?

23 A Yes, sir, I have.

24 Q Now, between the two of those, the recorded statements
25 and your written statements, what names kept appearing

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1 to you as possible suspects and a shooter or person who
2 held a gun?

3 A Well, it was very clear, through the written statements
4 and our recorded statements, early on, that the name
5 Devon Thomas kept popping up over and over again
6 throughout the interviews. I have interviews of
7 multiple students that were in several different
8 locations, several different perspectives of the party.
9 From people that were inside the building to the people
10 that were outside the building, to people that had seen
11 the start of the fight to seeing the shooting.
12 Throughout the entire concept, there was always one
13 thing that was kind of the common denominator, either
14 with a gun, holding a gun or firing a gun, was always
15 Devon Thomas. There was, at no time, where anybody told
16 me that there was anybody else that had displayed or
17 fired a firearm during any of those interviews. That
18 was the common consistent theme that kept coming up over
19 and over again regardless it be before the shooting or
20 after the shooting or during the shooting. The one name
21 that always was a constant was Devon Thomas.

22 Q Now at that point did you rush right out and take out
23 warrants for Mr. Thomas?

24 A No, sir, I did not.

25 Q Okay, why not? If you already these people identifying

1 him as the person with the gun, holding the gun, or
2 shooting the gun?

3 A Well, there was still some other work that needed to be
4 done.

5 Q Well, what would that be?

6 A Well, you know, this is an interview process and it does
7 take a little while. The first day was going through
8 evidence and going through the written statements that I
9 had, and the pictures and the documents and then was
10 interviewing the kids and that's not a short process.
11 You know, each interview can take from fifteen minutes
12 to forty-five to an hour-and-a-half. It just depends on
13 who you're talking to or how it goes. That period, that
14 took a while to get those, not to mention that there
15 were still some people that I hadn't spoke to and that
16 was people that was actually inside the vehicle.

17 Q And were you able to track down the individuals who were
18 inside the vehicle?

19 A Yes, sir, I was. There was four individuals inside the
20 vehicle.

21 Q And did you go speak to these people?

22 A I didn't reach -- I did speak with two of them, yes.
23 Well, I spoke with -- I spoke with Charles Lindsey,
24 Anquavious Smith, and Chrislacia Slappy. I apologize, I
25 mentioned her a while ago.

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1 Q And did you talked to Mijelica Smith, also?

2 A I did not speak with Mijelica again, no, sir.

3 Q And she was how old at that time?

4 A I believe she was either thirteen or fourteen years old.
5 She was in HPMS, Honea Path Middle School. She was a
6 seventh or eighth grader at the time and I did not go
7 down to the middle school, no, sir.

8 Q Now, when and where did you speak to Anquavious Smith
9 and Charles Lindsey?

10 A Okay. I went to the hospital. The shooting was on
11 Saturday. I got the case on Monday morning. Monday was
12 reviewing statements and going to the high school, which
13 I re-interviewed several students at that time. The
14 first time I met with Anquavious Smith was on a Tuesday
15 morning. I went to the hospital to meet with her. I
16 believe it was room 385 at the hospital. I attempted to
17 engage in conversation with her and it was very obvious
18 that she was in a tremendous amount of pain. I also
19 carried an audio recorder with me during that exchange,
20 as well. It did not take long that I realized that I
21 needed to come back at a later date. I gave her a very
22 quick questioning. You know, do you know who shot you?
23 She told me then it was a Devon Thomas. But like I said
24 before, you could tell she was in a lot of pain. I had
25 considered showing her a photo lineup at that time. It

1 was hard for her to even communicate with me at that
2 particular time and I advised her and her mother that I
3 would come back at a later date.

4 Q Her mother being Ann Jones?

5 A Yes, sir.

6 Q Now, did you also look at her previous statement that
7 she gave Matthew Voigt?

8 A Yes, sir, I did.

9 Q And in that statement she didn't mention the name of the
10 shooter, did she?

11 A No, sir, she did not.

12 Q Did Matthew Voigt put anything in his investigation that
13 you reviewed that indicated a potential suspect?

14 A Yes, sir. In Matthew's supplemental report, he advised
15 before he left the hospital that she gave him the name
16 Devon and he typed that in his supplemental, which was
17 passed on to me that I read, but that was not in the
18 handwritten statement that was written by the officer at
19 the hospital.

20 Q And do you know why that is?

21 A I'm sorry?

22 Q Do you know why that was or is, why he didn't put Devon
23 in the statement?

24 A I'm sorry?

25 Q Do you know why Detective Voigt did not put the name

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1 Devon in the statement?

2 MR. MCELHANNON: Objection, Your Honor. I think that
3 would be speculation on what another officer did.

4 THE COURT: Sustain that objection.

5 Q But it's in his report. Is that right?

6 A Yes, sir. It was in his report. This could have been
7 -- I know there was a lot of things going on that night.
8 I've been in multiple emergency rooms in the middle of
9 the night trying to get as much information as you can.
10 You're trying not to impede the doctors. There's nurses
11 flying around all over the place. I know at that time,
12 just like I would do, I try to get as much information
13 as I can, but it could be one of those things where
14 someone leaves or is getting taken off to surgery. You
15 get a final bit of information after you've already
16 given a statement or wrote anything down or anything
17 like that. There's multiple things that's taking place
18 inside an emergency room. It's a very chaotic scene.

19 Q Was his report the first mention of the suspect for you?

20 A Yes, sir, that was the first time. The first time I
21 read the name Devon was through Matthew Voigt's
22 supplemental on Monday morning.

23 Q Now, you interviewed her, Ms. Smith, at the hospital and
24 she gave you a recorded statement and you stated she was
25 in a lot of pain. Did you go back and see her at a

1 later date?

2 A Yes, sir, about twenty-four hours later. I went back.
3 I believe it was a Wednesday morning. I went back mid-
4 morning and met with her, again, at the hospital.

5 Q And what was your purpose of going back this time?

6 A I carried a photo array of six photos. In that photo
7 array, it did have Devon Thomas on it. At that time,
8 she was still in a lot of pain but she was cognizant and
9 able to have a, somewhat, conversation with me. I knew
10 that she wasn't going to be able to -- I wasn't going to
11 hand her my metal clipboard. Heaven forbid I laid that
12 on her thigh for her to sign or anything like that. So,
13 I had her grandmother stand by with me. I also audio
14 recorded that entire event from the start to finish of
15 doing the photo lineup where she identified Devon Thomas
16 in the lineup as being the person who shot her. I
17 presented the photo lineup as I always do. I present it
18 and I say, "Is there anybody on here that you recognize,
19 and if so, why? And at that time, she said, "Yes, I
20 recognize number six. He's the person." I said, "How
21 do you know number six?" She says, "That's the person
22 who shot me."

23 Q Now, was she the only that you showed the photo lineup
24 to?

25 A No, sir. There were several people, and including,

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1 there was one other on that day at the hospital.

2 Q And who would that have been.

3 A That was Charles Lindsey. When we went to do the photo
4 lineup inside the room, I had him removed from the room
5 inside the hospital. So, it was just myself; Ms. Smith,
6 and her grandmother, to do the photo lineup. Once that
7 photo lineup was done, I met Charles Lindsey down the
8 hall at the nurse's station and I presented him with
9 three photo lineups there.

10 Q Now, let me ask you about these photo lineups. Were you
11 showing -- these individuals, these young children, when
12 you would show them the photo lineups, were you showing
13 them the same lineup over and over or did you vary the
14 way the pictures were?

15 A Yes, sir. I would vary it. I will take and move people
16 around at different slots inside the one. I would do my
17 best not to show six of the same repeated way of doing a
18 lineup. So, in one lineup, you may be number three. In
19 the next one you may be number four and so on and so on.
20 We try our best to swap that around as much as possible
21 to keep anything from -- you don't want anybody to come
22 out of a room and say, "Hey, I've just seen him and he's
23 number so and so." So, we try our best to swap that up
24 as best we can and I did that in this case.

25 Q Now, at this point in time, Ms. Smith has identified

1 Devon Thomas through a photo lineup as her shooter.

2 A Yes, sir.

3 Q And how many days after the shooting did she do this?

4 A This would be on a Wednesday and that was on a Saturday.
5 So, approximately, four days later.

6 Q At that point in time, did you take out warrants?

7 A I did sign warrants after that, yes, sir.

8 Q Now, did you -- after you took out the warrants, what
9 was the next step that you took?

10 A After taking out the warrants, the next step would have
11 been to contact the members of our warrants division,
12 advising them that I have signed arrest warrants for a
13 certain individuals and I go ahead and have them put on
14 the list as far as being located and seeing if we can
15 have those individuals picked up.

16 Q Now, detective, getting back to the scene, did you
17 actually go out to the crime scene at night ---

18 A Yes, sir.

19 Q --- after this incident took place to see what type of
20 lighting that was there?

21 A Yes, sir, I did.

22 Q And what, if anything, did you observe?

23 A There's a large street light in the middle of the area
24 out there. There was plenty of ambient light for me.

25 Q Now, when you took out the warrants on Devon Thomas, did

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1 you take out any more warrants on anybody else?

2 A Yes, sir. I did sign warrants on a LaJames Glass.

3 Q And if he was not the shooter in the case, why did you
4 take out warrants on him?

5 A Because I believed that I had enough evidence in the
6 interviews and the investigation that I'd done, that he
7 had a culpable part in the event. Also, while I was at
8 the high school, I also showed several different photo
9 lineups at the BHP high school, as well, that included
10 three other individuals. I showed lineups with
11 Cornelius Jones, LaJames Glass and Devon Thomas.

12 Q At any point, did any of these individuals identify
13 anybody but Devon Thomas as the shooter?

14 A Only -- as far as the shooter, the only time anybody was
15 identified was Devon Thomas, but I did have Cornelius
16 Jones and LaJames Glass identified in several photo
17 lineups as well, just not as the shooter, but as being
18 involved in a fight and being at the club that night.

19 Q Were they identified as having possession of a pistol
20 that night?

21 A No, sir.

22 Q Now, at some point in time, when did you make first
23 contact with Mr. Thomas?

24 A First contact with Mr. Thomas, I believe, would have
25 been on March 30th.

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1 Q And do you know what day of the week that was?

2 A I believe it was a Friday.

3 MR. CAMPBELL: Your Honor, may I approach for a second?

4 THE COURT: Yes, sir.

5 (Brief Bench Conference Off the Record)

6 Q Now, Detective, when -- you say you saw him March 30th.

7 Is that right?

8 A Yes, sir, I believe it was March 30th. Yes, sir.

9 Q And where did you see him or meet him at?

10 A The Anderson County Sheriff's office.

11 Q And was he already in custody at that point in time?

12 A He was in custody when I spoke to him, yes, sir.

13 Q And when you refer to custody, does that mean you're in
14 handcuffs?

15 A Yes, sir, he was in handcuffs.

16 Q Did you see him at the detention center or did you bring
17 him over to the law enforcement center?

18 A No, sir. I spoke with him in my office at the time at
19 the Anderson County Sheriff's office.

20 Q Now, when you brought him, tell these ladies and
21 gentlemen of the jury what steps and procedures you went
22 in before -- did you speak to him first, well, first of
23 all?

24 A Yes, sir. I did speak with Devon Thomas, yes, sir.

25 Q And did you take a written and a audio statement from

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1 him?

2 A Yes, sir, I did both. Myself and Detective Gene
3 Culbertson, I believe were in the same room together
4 with Mr. Thomas.

5 Q Would you please tell the ladies and gentlemen of the
6 jury -- well, first, how do you go about taking a
7 statement from an individual who's in custody?

8 A Well, the first thing I do is advise them of their
9 Miranda Rights and their Miranda Rights are simply, you
10 have the right to remain silent, and everybody's heard
11 those before, particularly if you've watched any movie.
12 But that's the first thing that I do is advise them of
13 their Miranda Rights and you're just kind of feeling and
14 talking to them, making sure they're cognizant, they
15 know where they're at, what's going on. I'm asking
16 generalized questions, what's your name, date of birth,
17 just have a conversation and just kind of get a feel to
18 make sure somebody is in their right mind to speak with
19 me when I'm interviewing them in custody.

20 Q Are you also trying to -- are you trying to observe them
21 to see whether or not they're under the influence of any
22 type of drugs, alcohol, prescription medication,
23 anything like that that would affect their ability to
24 understand what was going on?

25 A Most definitely. And that's part of the process when

1 I'm a doing an interview anyway. At that particular
2 time, in my corner office at the Sheriff's office, I had
3 the luxury of being able to turn my desk so I could face
4 knee-to-knee with the individual so they were not
5 behind a desk from me or anything like that. I observed
6 them head to toe.

7 Q And in this case, did you go through an advisory of
8 rights with him?

9 A Yes, sir, I did.

10 Q I want to show you what's been marked State's Exhibit
11 #31. If you could please identify what this is, sir.

12 A This will be the Advisory of Rights signed by myself and
13 Detective Gene Culbertson, along with Devon Thomas on
14 3/30/12 at 11:08 AM in the morning.

15 Q And when you did that, what steps and procedures did you
16 go through with him?

17 A Well, I do it the exact same way every single time. I
18 explain to them what their, what I'm about to do, that
19 I'm going to show them their Advisory of Rights. I
20 always explain that this is not -- I'm not here to
21 insult their intelligence in any type or way, but I'm
22 asking them to read the first two lines of the
23 Advisement for me. Once again, that's not to embarrass
24 anybody. I want to make sure they can read and write
25 the English language and to make sure that there's

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1 nothing I can put in front of them that they can't read
2 and understand. Once they read the first two, I then
3 finish out the last three. I read them to them while
4 they follow along. At that time, I do get them to sign,
5 myself to sign, and in this case, Detective Culbertson
6 signed. Once we did that, I then go through their
7 waiver of rights, at which I read their waiver of rights
8 to them. At one point on the Waiver of Rights where it
9 mentions the word "coercion". I do this the same way
10 every single time; I circle the word coercion, I advise
11 them why I'm circling the word coercion, and ask them do
12 they know what the word coercion means. Even if they
13 tell me they do, I'm still going to go through my same
14 spiel of explaining good coercion/bad coercion. I use
15 the same example every time of trying to get them -- in
16 other words, I say if you would like a steak dinner, I'm
17 going to have that waiting for you or I'm here to beat
18 you with a rubber hose and neither one of those is going
19 to happen and it's not going to happen and that's just
20 my way of explaining what is good coercion and bad
21 coercion. At that time, the Advisement of Rights is
22 signed and I continue with the interview.

23 Q And did he agree to speak to you without the presence of
24 a lawyer?

25 A Yes, sir, he did.

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1 Q And did he sign this form?

2 A Yes, sir, he did.

3 Q Both places?

4 A Yes, sir.

5 MR. CAMPBELL: Your Honor, at this time, I'd like to
6 publish State's Exhibit #31 to the jury.

7 THE COURT: Yes, sir.

8 Q Now, Detective, at this point, was LaJames Glass already
9 arrested, also?

10 A I do not believe that he was in custody at this time.

11 Q When did that come about?

12 A It was on the same day. He actually turned himself in
13 to his probation officer on the 30th, as well.

14 Q And did -- and you had already had prior dealings with
15 Mr., with LaJames Glass. Is that right?

16 A Yes, sir. I know both of them. I've met LaJames and
17 Devon.

18 Q And when did you meet LaJames Glass?

19 A The first time I met LaJames Glass was an incident that
20 took place at Hanna High School. I want to say it was
21 probably two years before this or maybe a litter shorter
22 than that. A incident took place where I ended up
23 actually interviewing him and Mr. Thomas and ended up
24 charging LaJames Glass in that case.

25 Q So, you already had familiarity with Mr. Thomas at this

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1 point in time?

2 A Yes, sir.

3 MR. MCELHANNON: Objection, Your Honor. I'm not exactly
4 -- may we approach?

5 THE COURT: Yes, you may.

6 (Brief Bench Conference Off the Record)

7 Q Now, Detective Mills, regarding what you were talking
8 about, that you had met Mr. Thomas before, when you met
9 him, he was not involved or a suspect with the crime you
10 charged Mr. LaJames Glass, was he?

11 A No, sir. He was just there. I interviewed him, because
12 of his involvement with LaJames.

13 Q But he wasn't involved at all?

14 A He was not charged. He was not a suspect. He was not,
15 in any form or fashion, of me looking at him as a
16 suspect in that case.

17 MR. CAMPBELL: The Court's indulgence, please?

18 THE COURT: Yes, sir.

19 Q Now, at this point, did you continue conducting a
20 interview with Mr. Thomas?

21 A Yes, sir, I did.

22 Q And did you record this interview?

23 A I did.

24 Q And, eventually, did you reduce it down to writing?

25 A Yes, sir, I did.

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1 Q And have you had an opportunity to look at these prior
2 to coming to court today?

3 A Yes, sir, I did.

4 Q And our State's Exhibit #35, is that going to be a copy
5 of the audio recording that you took?

6 A Yes, sir.

7 Q And, also, State's Exhibit #32, I'll show you what this
8 is.

9 A That's the typed statement I did on my computer at my
10 desk, signed by myself and Devon Thomas and Detective
11 Gene Culbertson.

12 Q And this was after you took the recorded statement?

13 A Yes, sir. This is, actually, me typing that statement
14 and, actually, the recording, as well.

15 MR. CAMPBELL: Your Honor, at this time, I would like to
16 publish the actual statement.

17 THE COURT: Is this the point where you and counsel
18 suggest we take another break?

19 MR. CAMPBELL: Yes, sir. It's going to be fairly long.

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury, let me tell you this, according to the
22 attorneys, this next bit of testimony is going to be about an
23 hour or so and I didn't want to get into the middle of it and
24 then take a break and break up the flow of it. So, I'm going
25 to go ahead and take an early break this afternoon. Mr.

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1 Foreman, if you need anything back there, please make your
2 needs known to our bailiff, but otherwise, we're going to
3 take about a fifteen minute break now. Okay?

4 (Jury out at 2:29 PM)

5 THE COURT: All right. You know the drill, you can't
6 speak with anybody about your testimony.

7 DETECTIVE MILLS: Yes, Your Honor.

8 THE COURT: Thank you. We'll be in recess for fifteen
9 minutes.

10 (Brief Break)

11 THE COURT: All right, are you ready to bring the jury
12 in, from the State?

13 MR. CAMPBELL: Yes, sir.

14 THE COURT: From the Defense?

15 MR. MCELHANNON: Yes, sir.

16 THE COURT: All right. Bring the jury in, please, Buck.

17 (Jury in at 2:49 PM)

18 THE COURT: All right. Mr. Campbell.

19 MR. CAMPBELL: Thank you, Your Honor.

20 CONT. DIRECT EXAMINATION OF DET. WAYNE MILLS BY MR. CAMPBELL

21 Q Detective Mills, I think, prior to our break, we went
22 through and you had seen, I believe, State's Exhibit
23 #30, which is a copy of the audio recording.

24 MR. CAMPBELL: Or is it #35, Jo?

25 COURT REPORTER: Yes, sir.

1 Q Number 35, a copy of the audio recording.

2 A Yes, sir.

3 Q And that's a fair and accurate representation of the
4 audio statement that you took of Mr. Devon Thomas on
5 March 30th, 2012?

6 A Yes, sir, it is.

7 Q And was this also transcribed?

8 A Yes, sir, it was.

9 Q And have you received a copy of that?

10 A I have, sir.

11 MR. CAMPBELL: Your Honor, at this time -- Mr.
12 McElhannon and I have already discussed this and he has a
13 copy of it. I'm going to hand them out to the jury and then
14 we will go ahead and play the audio of the interview.

15 THE COURT: The Defense has no objection to the jury
16 reading along?

17 MR. MCELHANNON: No, sir.

18 THE COURT: Very good.

19 MR. CAMPBELL: Does everyone have one? (Jurors nod
20 heads) Your Honor, I guess I'll move this in as State's
21 Exhibit #36.

22 MADAM COURT REPORTER: #37.

23 MR. CAMPBELL: #37?

24 MADAM COURT REPORTER: Yes, sir.

25 THE COURT: Any objection to 36 coming in?

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1 MR. MCELHANNON: No, Your Honor.

2 MADAM COURT REPORTER: Or Court's #2.

3 MR. CAMPBELL: Court's #2? Okay.

4 THE COURT: What number is that Madam Court Reporter?

5 MADAM COURT REPORTER: Well, do you want it a Court's
6 Exhibit or a State's?

7 THE COURT: Either way.

8 MADAM COURT REPORTER: Okay. We'll do #37 State.

9 THE COURT: Okay.

10 (Whereupon, a DVD and transcript is entered into
11 evidence as State's Exhibit #37, without objection)

12 MR. CAMPBELL: Your Honor, as I'm playing this, if
13 anybody on the jury can't hear it, if they will indicate and
14 I will turn it up.

15 THE COURT: Did you understand that Mr. Foreman, ladies
16 and gentlemen? If somebody's having a difficult time
17 hearing, just raise your hand or if it's too distorted
18 because it's too loud, ask us to cut it down, okay?

19 (Whereupon, State's Exhibit #37 is published for the
20 jury.)

21 Q Detective Mills, I'm going to hand you State's Exhibits
22 #32, #33, and #34. Can you please identify what these
23 are, sir, and where they came from.

24 A Thirty-three would be the affidavit of photo
25 identification on 3/30/12 that I showed Devon Thomas.

1 This would be where he signed that he identified
2 photograph #4. State's Exhibit #34 would be a copy of
3 the actual photo lineup that I presented him on that
4 date, which goes with the affidavit of photo
5 identification.

6 Q And what was the identification on this one for?

7 A Number four is where he had identified LaJames Glass as
8 being the person he knew as Kool-aid and had shot the
9 red truck on 3/25/12 at the Shrine Club in Honea Path.
10 And State's Exhibit #32 would be a copy of the typed
11 statement that y'all just heard, the typed statement
12 that I typed up for Devon Thomas.

13 Q And 33 and 34, the photo affidavit and the lineup, that
14 was also heard on the tape?

15 A Yes, sir, they were.

16 MR. CAMPBELL: Your Honor, at this time, I will publish
17 these to the jury?

18 THE COURT: Yes, sir.

19 Q Now, how long did this -- was that the total amount of
20 time it took to do this interview?

21 A Yes, sir.

22 Q That was start to finish?

23 A Yes, sir.

24 Q Okay. And was Mr. Thomas up front with you from the
25 start?

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1 A No, sir, he was not.

2 Q And after this, did you also interview LaJames Glass?

3 A Yes, sir, on the same day, I did.

4 Q And you also took a recorded statement?

5 A I did, sir.

6 Q And did you have a chance, afterwards, to compare the
7 two statements?

8 A Yes, sir, I have.

9 Q And just tell the ladies and gentlemen of the jury what
10 you saw and observed between the two statements.

11 A In both statements, the preliminary, the first twenty-
12 five, thirty minutes, is runaround and that's consistent
13 with both statements. They start off with trying to
14 kind of feel me out, see what I know, and I had to go
15 into a little bit of the evidence and some of the case
16 to get through to both of them and they are very close.
17 In both statements, there's a time during the interview
18 where it's kind of the buck stops here. This is what
19 I've got and this is kind of what I know and then at
20 that point, some things change and the statements change
21 and the cooperation levels change at that time. In both
22 statements, the scenarios are basically the same, but
23 the players are interchanged. It still comes out that
24 they're shooting at a red truck. It still comes out
25 there's one or two shots being fired. In one statement,

1 it's LaJames and the other statement it's Devon. In
2 LaJames Statement he says Devon and in Devon's statement
3 he says LaJames. The only time Cornelius Jones comes in
4 is also in Devon's statement where he is saying that he
5 heard that Cornelius Jones was the one who handed
6 LaJames Glass the rounds and that's pretty much the gist
7 of those two statements. They're almost identical. It
8 just it takes a while, the interview process, to go
9 through the lies and then they change their statements
10 and come up to a certain degree of truth.

11 Q So, Mr. Thomas pinned the shooting on Mr. Glass and Mr.
12 Glass pinned the shooting on Mr. Thomas?

13 A Yes. After some deliberation. Both denied having any
14 involvement in the beginning of their interviews.

15 Q Now, after you took these statements, what was your next
16 step in this investigation?

17 A Right after this, I believe I had -- LaJames Glass was
18 downstairs in a holding cell. I'd had him in a holding
19 cell for quite some time at that point and I believe
20 right after that I interviewed Mr. Glass.

21 Q So, Mr. Thomas was first?

22 A Yes.

23 Q And then Mr. Glass?

24 A Yes. Also, there were several other peoples' names that
25 had been brought out throughout the week. At different

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1 interviews, from BHP to my speaking with Mr. Thomas and
2 Mr. Glass, different names of individuals had been
3 brought up. I started to identify those individuals;
4 Tyrone, Keydarius, those individuals. I tried to figure
5 out who was in high school, who was not. There was some
6 that may have been showing up in Westside, others may
7 have shown up at Hanna. I decided at that time,
8 considering we were dealing with a shooting incident
9 also involving a BHP student, that I did not want to do
10 an interview of a possible suspect or somebody that may
11 have been involved in that at school. So, I did not
12 respond to those schools. I got as many addresses as I
13 could. I went around and left business cards at
14 peoples' residences and their houses. My business card
15 has my name, who I work for, my email address, my best
16 number, my address. I left those in several different
17 locations and that was also throughout the course of the
18 week there.

19 Q And has your telephone number changed in the last couple
20 of years?

21 A No, sir. Since I was promoted to the CID Division, I've
22 had the same exact desk number, 231-1935, for eight
23 years. It has not changed. My address has not changed.
24 My email address has not changed and that's been on my
25 card every since.

1 Q And since that time, March, late March, early April,
2 2012, has anybody else responded to you regarding this
3 investigation?

4 A No, sir. The only individuals that contacted me in this
5 case was the Smith family. They called on occasion to
6 see how the case was going, see if anything else had
7 changed. No further witnesses from either side have
8 contacted me in any way. I had not received any
9 complaints or any other individuals to come forward. I
10 mean, we're in a situation where multiple people are
11 fighting inside of this club, but to my knowledge, to
12 this date, I don't have a complaint over any of the
13 fights or anything like that. Nobody's ever come
14 forward and said, "Hey, I'm a victim. I've got, you
15 know, something happened to me at that club," or there
16 was a fight or something like that. So, since then, no,
17 sir, nobody has reached out to me in any fashion, other
18 than in my investigation.

19 Q Now, since that time has any -- since you made these
20 arrests of Mr. Thomas and Mr. Glass, at any point in the
21 last twenty-three months has any other names surfaced as
22 who did the shooting of Ms. Anquavious Smith?

23 A Not as in who had done the shooting. Like I said
24 before, in the investigations and from, I think there
25 are eleven or twelve statements that are in here, and we

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1 followed the investigations. Several names have come up
2 to be involved in a fight. Names have come up as to
3 their level of involvement as far as passing off
4 ammunition or fighting at the club or driving or
5 transporting to and from, but in this twenty-three
6 months, nobody has ever come to me, other than Devon
7 Thomas, to provide me another name, other than Devon
8 Thomas as the one who did the shooting. At no point in
9 this has any came up. Since then, I have been to other
10 peoples' addresses since then. This is not a one and
11 done kind of thing. I have left other business cards
12 since then and attempted to make contact. As a matter
13 of fact, I was given information last fall that some of
14 these individuals may come forward and come to me and
15 give me some information and I have yet to hear from
16 anyone.

17 Q Did you speak to anybody that Mr. Thomas referred you to
18 in his statement?

19 A Yes. I have been able to locate a Chris Smith. He was
20 the one who actually -- you heard in his statement from
21 the interview he was driving the white Camry.

22 Q And when did you locate him?

23 A Oh, this was in the past week. It's in the last seven
24 days. I can't remember the exact date, but late in the
25 day last week. I actually met him at the Honea Path

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1 Police Department and interviewed him for about an hour
2 and forty-five minutes there.

3 Q And did he come forward here or did you have to go to
4 him?

5 A No, I had to go to him. I attempted to make contact
6 when he was first named and was unsuccessful. I then
7 learned of a, as many do, an officer that knew him
8 outside law enforcement. I was able to make contact
9 with him. A phone call to his mother and then his
10 mother then brought him to me.

11 Q And what, if anything, did you learn from him?

12 A It was kind of typical. The first part of our
13 conversation was a lie. He wanted to put himself aside
14 or as far away as possible. It's typical in the
15 beginnings of an investigation or even an interview. A
16 lot of times, people will put theirselves or separate
17 theirselves as far as they can from the scene. Nobody
18 wants to be that guy that tells on somebody or gets
19 labeled a snitch because he gave up some vital
20 information or something like that. So, the first part
21 of the interview was unsuccessful. He lied about his,
22 who all he took to the party. He lied about who he
23 carried away from the party. He lied about his actions
24 after the party. Once, about an hour-and-a-half into
25 this of speaking with him and confronting him on a

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1 couple of different levels -- and this interview was in
2 front his mother. His mother was in the interview the
3 entire time. This was not an aggressive interview or
4 anything like that. It was a casual conversation. I
5 confronted him on a couple of different levels about
6 things that were seen and things that were said. He
7 then advised that he had transported Devon Thomas. I
8 believe a Mikel Blackwell, a Chris Roebuck. I want to
9 say Keydarius Edwards -- maybe not Keydarius. It was
10 Chris Roebuck, Chris Smith, Mikel Blackwell and Devon
11 Thomas, I know were in the car. He advised he
12 transported them to the party that night at the Shrine
13 Club. He advised that after everything had taken place,
14 he advised that a fight had taken place inside a club.
15 He advised that somebody was out in the parking lot
16 shooting. At that time, he ran back to his car. When
17 he got back to his car, his car was filled with
18 approximately seven people. I believe four guys and two
19 girls, but that's not what he told me the first time we
20 went through the story. Once we got through all of
21 that, he advised, yes, there were four guys and two
22 girls in the car. The first time he lied to me about
23 where he went to. After that, he advised he went back
24 to his mama's house by his self and then he admitted he
25 -- he told me he couldn't remember. He said he was

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1 entirely too drunk and high to remember what took place.
2 A little more into the conversation, he then advised
3 that, yes, he did transport those seven individuals to
4 the Spinx Station in Honea Path, which is three-quarters
5 of a mile from the Shrine Club. He advised, after that,
6 the two girls had gotten out and then he went back home
7 and then he changed his story again. And where we
8 finally ended up is, that after the shooting had taken
9 place, several individuals had got into his car,
10 approximately seven people. He was able to name four or
11 five but he couldn't name the two girls. They
12 transported them to the Spinx Station where the two
13 girls exited the vehicle and left and then at that time,
14 they paid him money to drive from Honea Path to a
15 location in Anderson that he was not familiar, to drop
16 them off. He advised that everybody was inside the car.
17 They were on phones. He cranked up the music real loud
18 and couldn't hear any of the conversations that were
19 going on between Honea Path and Anderson.

20 Q And what kind of car was he in?

21 A That was the white Camry. He advised that belonged to
22 his mother. After that -- that first part of the
23 conversation was an hour-and-a-half long. I then asked
24 him would he be willing to make a statement and he said
25 yes, and at that time he provided an audio statement, at

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1 that time.

2 Q Now, I'm going to show you what's been marked State's
3 Exhibits #1, #2, and #3. First of all, have you had an
4 opportunity to review these photographs?

5 A I have, sir.

6 Q And when did you do that?

7 A This was the first morning, this was the 25th and going
8 to the 26th or 27th of March of 2012.

9 Q When you got the case?

10 A Yes, sir. As soon as I got the case I pulled up the
11 crime scene photos for review at that time.

12 Q And what do those pictures show you?

13 A State's Exhibit #1 is placard number one and it was a
14 unspent .45 shell casing and the ammo is intact inside
15 the shell casing. State's Exhibit #2, placard number
16 two, is a spent .45 shell casing of the same make and
17 model of the unspent casing. And State's Exhibit #3
18 would be a picture from the front of the building going
19 out toward the incident that took place showing placard
20 number one and then it looks like, after fifteen to
21 twenty feet past that, would be placard number two.

22 Q And does this signify or was this significant, in any
23 shape, way, or form, to you during your investigation?

24 A Yes, sir, it was for me. Going through the statements
25 one thing that kept coming up was the fact that a gun

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1 was being pulled but nothing was coming out. And then
2 you have some statements and some information of
3 possibly a magazine being introduced at that time. What
4 this tells me is when I look at this line, and I think
5 from the front of the club, or from the Shrine Club, the
6 placard number one, which will be where the unspent
7 shell casing is, to me that's significant because if
8 there is an event where a gun is malfunctioning and not
9 firing, at any point where you attempt to clear or cycle
10 that weapon you would think that it would eject the top
11 round or the round that was chambered at the time, or
12 feeding off the top of a magazine. So that, to me,
13 would explain where the unspent shell casing came from,
14 laying on the ground. From that, once you go out
15 another fifteen or twenty feet, then you run into
16 placard number two, which would be the spent shell
17 casing, which, once again, listening to the evidence and
18 the statements being told to me of someone running
19 across the parking lot attempting to shoot, nothing
20 happening and at some point, something's introduced
21 where you're allowed to make the firearm function again.
22 And then on further down, in the same line, then you
23 have a spent shell casing, which to me is significant
24 when you hear the stories of running, messing with the
25 gun because it won't fire, to the point where they're

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1 actually able to discharge toward the red pickup truck.

2 So that to me backed up that sequence of events.

3 There's not much terribly physical evidence in this
4 particular case. But for me, that's very significant
5 that those were in a line like that. It kind of backed
6 up what I was hearing.

7 Q And I'll show you what's been marked State's Exhibit
8 #23. Can you please identify what these are and how
9 they relate to your investigation.

10 A The first one here is what is represented in placard
11 number one here. This would be the unspent .45 shell
12 casing, which the strike plate reads .45 auto, CBC. And
13 that would be the unspent shell casing, which is in
14 placard number one. And then placard number two, would
15 be the spent shell casing, with the strike plate reading
16 .45 auto, CBC and appears to have a fire pin strike on
17 the end.

18 Q Now, did you also have in State's Exhibit #23, did you
19 have those fingerprinted?

20 A I did have these fingerprinted.

21 Q And what was the purpose of doing that?

22 A Hoping for a shot in the dark. I would like to -- I
23 would love to think that I would be able to get
24 fingerprints off of anything, but I'm always going to
25 take a shot and see if I can get fingerprints off a

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1 spent shell casing or an unspent. I would like to think
2 that the higher probability would be on an unspent,
3 because it hasn't had the powder being a hundred degrees
4 like in the chamber of a firearm that's fired. In this
5 case, I was not -- I would, first of all, say that in
6 thirteen years I've personally never had a case where
7 I've been able to match a fingerprint off a firearm, a
8 shell casing, or a spent shell casing.

9 Q But you attempted to do this?

10 A I did attempt.

11 Q Now, I want to show you what's been marked State's
12 Exhibits #6 through #14. If you could please identify
13 what these are, sir.

14 A These are the pictures of the V2200, red two-door pickup
15 truck that was driven by Charles Lindsey at the time.
16 This was the truck that was located at, I believe, 106
17 Brock Street. I did not respond to this location, but
18 these are the pictures from that particular scene that I
19 went through with Investigator Voigt the following
20 morning to walk me through. They show the passenger's
21 seat that appeared to have a blood stain on it. It also
22 shows a two-centimeter hole, which is a very large hole,
23 in the outside of the passenger's side door. The
24 pictures further depict what would appear to be the
25 entry point inside the passenger door, coming in, and

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1 once again, the blood stain that will be on the left
2 side seat of the passenger seat as they're sitting in
3 the truck.

4 Q And did you, personally, have an opportunity to observe
5 this red truck yourself?

6 A I have been able to observe this truck.

7 Q And these photographs indicate the damage that was
8 caused that's shown in these pictures of the truck?

9 A Yes, sir.

10 Q Now, I'm also going to show you what's been marked
11 State's Exhibits #15 through #22. If you could identify
12 what these are, sir.

13 A Fifteen through 22 would be, these are pictures that I
14 took myself. These are pictures of the Shrine Club
15 parking lot from different points of view from the
16 parking lot. Some showing from the left side, the right
17 side, the front, the field, those kind of things. I was
18 just trying to show an overview. These were done during
19 the daytime hours. It was not done at night. This is
20 so I can show the actual grounds.

21 Q And this was done two years later?

22 A Yes, sir, it was.

23 Q Last week?

24 A Yes, sir, it was.

25 Q Now, does that still fairly and accurately represent

1 what the Shrine Club look's like, today?

2 A Yes, sir.

3 Q Or what it looked like then?

4 A Yes, sir.

5 Q And looking at -- in looking at State's Exhibit #16,
6 what is this depicting, sir?

7 A Number 16 would be, if you were looking or coming to the
8 Shrine Club from the Ware Shoals area, heading toward
9 Honea Path, this would be the first drive. The Shrine
10 Club has a large U-shaped driveway. This will be the
11 first drive. So, this point of view would be from the
12 right side of the building, as if you were facing it,
13 showing the front side of the building and where the
14 cars were parked, where the red truck was actually fired
15 upon.

16 Q So this is -- the witnesses indicated they all came out
17 the building and went to the left. Is this showing if
18 you're coming out of the Shrine Club to the left side?

19 A Yes, sir. That would be this view just from that way,
20 looking towards the left side.

21 Q And also, let me show you what's State's Exhibit #19.
22 Can you identify what that is, sir.

23 A This would be on the opposite side of the building, this
24 part. If you look at both pictures, the reason I have I
25 have the flagpole in there is kind of like a reference

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1 point to show the front of the building. In front of
2 the building is a large streetlight that's in the middle
3 of the parking area.

4 Q Is that the light that the individuals who were
5 witnesses testified was lighting up the area?

6 A Yes, sir, that's the one that's been marked.

7 MR. CAMPBELL: Your Honor, at this time I'd like to
8 publish #16 and #19 to the jury.

9 THE COURT: Sure.

10 Q Now, Detective, you went in and spoke to Ms. Smith in
11 the hospital?

12 A Yes, sir, I did.

13 Q And did you also speak with the doctors?

14 A I did speak with one of the doctors that were there.

15 Q And did they have an opportunity to show you her
16 injuries?

17 A Yes, sir, they showed me the x-rays they'd run.

18 Q And I'm going to show you what's been marked State's
19 Exhibits #25 through #30. If you could identify what
20 these are, sir.

21 A These are the x-rays that I viewed of Anquavious Smith's
22 left thigh area. It's a large caliber round that's up
23 against the bone there in the leg and looks like her
24 femur.

25 Q And these are accurate representations of what the

1 doctor showed you when you got to the hospital?

2 A Yes, sir.

3 Q And as a result of your investigation, you received a
4 copy of these?

5 A Yes, sir, I did.

6 Q Now, Ms. Smith or somebody, maybe one of the members of
7 her family, indicated that an individual had sent her a
8 message while she was in the hospital. Do you know
9 anything about that?

10 A Yes, sir. I want to say it was the first day that I
11 went over there. I can't remember if was the first day
12 or the second day I was over there, but I believe it was
13 the first day, saying that they had been, that they had
14 found a message on Anquavious' phone where somebody had
15 in-boxed her on facebook apologizing for the actions
16 that took place at the club that night.

17 Q I'm going to show you what's been marked as State's
18 Exhibit #24. Would you please describe and identify
19 what this is, sir?

20 A This would be a photograph that I took inside the
21 hospital room. I actually took this picture of the
22 phone. I was able to view her Facebook page on her
23 smart phone there in the room and I actually took this
24 picture and it would be a snippet, basically, of a
25 screen shot of what was on the front of her phone of her

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1 Facebook page where she had been in-boxed by or sent an
2 inside message from Charles Edwards.

3 Q And what is the date on that time stamp?

4 A This says March 25th at 3:58 AM.

5 Q And did you attempt to figure out who Charles Edwards
6 was?

7 A Yes, sir, I did. I was attempting to find out who
8 Charles Edwards was, along with several other
9 individuals.

10 Q And were you able to successfully locate Mr. Edwards?

11 A I was not able to locate Charles Edwards, no, sir.

12 Q Did you attempt to?

13 A Yes, sir. I did.

14 Q And were you able to figure out through some source who
15 he would refer to as his cousin?

16 A Well, I had been out and about talking and speaking with
17 different individuals. When this came out, I was asking
18 what the relationship would be and I was advised at that
19 time that Charles Edwards and Devon were cousins, Devon
20 Thomas. I do not have a family tree or anything like
21 that. That's just what I was advised at the time.

22 Q Now, Detective, you've been present today and yesterday
23 in the courtroom. Is that right?

24 A Yes, sir, I have.

25 Q And you've heard all -- you've seen the witnesses that

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1 have come forward and said, "That's him," from the
2 witness stand, where you are sitting now.

3 A Yes, sir.

4 Q And you were present when Mr. McElhannon was cross-
5 examining them regarding their written statements.

6 A Yes, sir.

7 Q And, in your opinion, were each of the witnesses'
8 statements, were they the same? Did they all have the
9 same story?

10 A The gist of the same story. There were also some
11 differences.

12 MR. MCELHANNON: Your Honor, I'm going to object, at
13 this point. The statements were read as the testimony was
14 taken by the witnesses themselves. I don't know where the
15 Investigator can -- if he is trying to bolster their witness
16 testimony, I would object to that.

17 THE COURT: What's the purpose of this testimony?

18 MR. CAMPBELL: The purpose of his testimony is to go
19 into the fact of whether or not ---

20 THE COURT: Let me stop you. Mr. Foreman, would you
21 take your jury to the jury room, please. Mr. Foreman, would
22 you make sure your jurors leave their transcripts in the
23 courtroom, please?

24 MR. FOREMAN: The transcripts?

25 THE COURT: Yes, sir.

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(Jury out at 4:03 PM)

1
2 MR. MCELHANNON: Your Honor, just to make my objection
3 plainer or clearer for the record. The jury, as the finders
4 of fact, they've already heard the statements and the, you
5 know, cross-examination and the actual testimony from the
6 witnesses. Now, to ask Detective Mills if he thinks that all
7 those statements are true, that's just trying to bolster the
8 State's case. I think their statements as the jury heard
9 them is what they need to deliberate on, not Detective Mills'
10 opinion as to whether he thinks that they're true or not or
11 all lined up together. I mean, it is what it is. They heard
12 it.

13 THE COURT: I have a tendency to agree with you. And
14 furthermore, opinion testimony without any qualification as
15 an expert is limited to those areas that would be set forth
16 under the rule.

17 MR. CAMPBELL: What I was getting at, Your Honor, in
18 this, is that he's the one that took out the warrant and to
19 take out a warrant, he had to look at all of these statements
20 and during the cross-examination by Mr. McElhannon of all
21 these witnesses, he basically insinuated they're all lying
22 and that they're making up stuff as they go and what I'm
23 working on with him is asking him did he take all of this
24 into consideration when he took out the warrants and that's
25 where I was getting with that, not whether he ---

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1 THE COURT: Well, let me say that if you re-phrase it to
2 that extent, then I would overrule the objection, but if
3 you're asking him to stack up the witnesses' testimony one
4 over several, several over one, or to bolster, then I would
5 sustain it. Plus, it would be improper opinion testimony.
6 If you're going to say, phrase it as such, did you take into
7 consideration the discrepancies of the statements when you
8 went out and got your warrants, that's not opinion, that's
9 not objectionable. Do you have an objection to him phrasing
10 it such as that?

11 MR. MCELHANNON: No, Your Honor.

12 THE COURT: Okay. Anything further from defense counsel
13 at this stage?

14 MR. MCELHANNON: No, Your Honor. I was just wondering
15 when we might be taking a break.

16 THE COURT: All right. Let's take a five-minute break.
17 Just go for a quick personal break. Same rules (to Mr.
18 Mills).

19 (Brief Break)

20 THE COURT: Just a follow-up to what we were discussing
21 earlier, that's pitting the witnesses, not bolstering.
22 That's what I was trying to say.

23 MR. MCELHANNON: I apologize.

24 THE COURT: That's all right. I couldn't think of it,
25 either.

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1 MR. CAMPBELL: Your Honor, for planning purposes, I am
2 just about done here.

3 (Jury in at 4:15 PM)

4 THE COURT: Mr. Campbell.

5 MR. CAMPBELL: Thank you, Your Honor.

6 CONT. DIRECT EXAMINATION OF DET. WAYNE MILLS BY MR. CAMPBELL

7 Q Detective, now you're the officer that took out the
8 warrants in this case. Is that correct?

9 A Yes, sir, I am.

10 Q And you took out four counts of attempted murder
11 warrants on Mr. Devon Thomas.

12 A Yes, sir, I did.

13 Q And when you did that, and you've been present in the
14 courtroom today, did you take into consideration the
15 discrepancies in the written statements that the
16 witnesses had given?

17 A Yes, sir, I did. I took into account all statements
18 that I had read, all further interviews and re-
19 interviews that I'd done after that, all the evidence
20 and all the information that I had at that time.

21 Q And did you make a rush to judgment when you took out
22 these warrants?

23 A No, sir, I did not.

24 Q Let me ask you this, if you brought four counts of
25 attempted murder on Mr. Devon Thomas, why did you bring

1 out four counts when only one person was injured?

2 A There were four people inside that truck. There were
3 four people within a two-foot strike zone of a bullet.
4 It could have easily hit four people. That small pickup
5 truck had Charles Lindsey and, in my opinion, three kids
6 in it. They were stacked on top of each other. That
7 bullet doesn't have a name on it. It went through that
8 door. It purposely went through that door. Yes, there
9 was four victims inside that vehicle, four individuals.
10 One person was hit, but it could have just as easily
11 have been all four, two, none. Once that bullet went
12 through the door, who knew which way it was going to go.
13 So, yes, I charged him with four counts for the four
14 people inside that vehicle.

15 MR. CAMPBELL: I have no further questions of this
16 witness, Your Honor.

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury. During the break, I spoke to the
19 attorneys, looking at the logistics of this afternoon and at
20 this point, as much as I don't like to break this early in
21 the afternoon, cross-examination will probably be a little
22 bit lengthy. I don't like to break up cross-examinations or
23 any direct examinations. So I'm going to go ahead and call
24 recess today. I'm going to ask that you be back in your jury
25 room about 9:25 in the morning. And let me remind you,

1 you're not to speak amongst yourselves or with anyone else
2 about this case. I'll ask you about that in the morning. I
3 hope you have a nice evening. We're in recess for the rest
4 of the day.

5 MR. FOREMAN: Here or on the fourth floor? On the third
6 floor?

7 THE COURT: Yes, sir. Thank you. And if you would,
8 leave your books in the jury rooms and the transcripts out in
9 the courtroom.

10 (Jury out at 4:18 PM)

11 THE COURT: All right. Detective Mills, you may step
12 down. You can't speak with anyone about your testimony.

13 DETECTIVE MILLS: Yes, sir.

14 THE COURT: All right. Anything from the State before
15 we recess this afternoon?

16 MR. CAMPBELL: Nothing, Your Honor, I don't know if, at
17 this time or you want to do it tomorrow, advise him of his
18 rights to take the stand. I didn't know if you wanted to use
19 this time to do that or not.

20 THE COURT: All right. I'll be glad to at this time.
21 Mr. Thomas, would you stand up, please, sir.

22 MR. THOMAS: (Complies)

23 THE COURT: Would you raise your right hand. Okay, I
24 need you -- I could tell earlier that you're somewhat soft
25 spoken, so I need you to speak loud enough for me to hear,

1 okay?

2 MR. THOMAS: Yes, sir.

3 THE COURT: Okay. That's not loud enough. I need you
4 to speak loud enough for me to hear you. Do you understand?

5 MR. THOMAS: Yes, sir.

6 THE COURT: Okay.

7 (Judge McIntosh administers the oath to Mr. Thomas)

8 THE COURT: Now, Mr. Thomas, you have the right under
9 the Fifth Amendment not to take the stand, in other words,
10 the right to remain silent. Have your rights under the Fifth
11 Amendment been explained to you?

12 MR. THOMAS: (No reply)

13 THE COURT: Come around here, up here to the front.

14 MR. THOMAS: (Complies)

15 THE COURT: Let me explain something to you. What
16 you're not going to do is stand there and not answer my
17 questions. You will answer my questions. You'll answer loud
18 enough for it to be on the record. Do you understand me?

19 MR. THOMAS: Yes, sir.

20 THE COURT: Okay. Now, the first thing I asked you,
21 have your rights under the Fifth Amendment been explained to
22 you. Now, if you don't understand what I'm asking you, you
23 let me know and I'll be glad to explain it so that you do.

24 MR. THOMAS: Okay.

25 THE COURT: Have your rights under the Fifth Amendment

1 been explained to you?

2 MR. THOMAS: Yes, sir.

3 THE COURT: Do you understand those rights?

4 MR. THOMAS: Yes, sir.

5 THE COURT: Okay. What I'm going to do is go back over
6 those rights to make sure that you do understand them, okay?

7 MR. THOMAS: Yes, sir.

8 THE COURT: All right. Now, we're about to reach that
9 point in the trial where you have a right to present your
10 defense, okay?

11 MR. THOMAS: Yes, sir.

12 THE COURT: After your attorney cross-examines the
13 State's last witness, they're going to close their case,
14 which I'm advised they are close at this juncture, but either
15 way, you're coming close to that point. You have a right to
16 put up a defense or you have a right to claim your
17 protections given you under the Fifth Amendment to the United
18 States Constitution. Do you understand that?

19 MR. THOMAS: No, sir.

20 THE COURT: Okay. Under the Fifth Amendment to the
21 United State's Constitution, you and every other citizen in
22 the United States, have the following rights in a criminal
23 trial, it says this; that no person shall be compelled in any
24 criminal case to be a witness against himself. Do you
25 understand that?

1 MR. THOMAS: Yes, sir.

2 THE COURT: You have to speak up.

3 MR. THOMAS: Yes, sir.

4 THE COURT: In other words, it's commonly referred to on
5 the street as the right to remain silent. Do you understand
6 that?

7 MR. THOMAS: Yes, sir.

8 THE COURT: What that means is, Mr. Thomas, you cannot
9 be required to get on the stand and testify in this case,
10 okay? Do you understand that?

11 MR. THOMAS: Yes, sir.

12 THE COURT: Do you understand that you cannot be
13 compelled by your attorney, by me, by the State or anyone to
14 take the stand and testify. Do you understand that?

15 MR. THOMAS: Yes, sir.

16 THE COURT: Now, if you want to, if you desire to, if
17 you feel like it's advisable to, you have a Constitutional
18 Right to take the stand. Do you understand that?

19 MR. THOMAS: Yes, sir.

20 THE COURT: Okay. Now, regardless of whomever you seek
21 your advice from; your fine attorney, family members or
22 friends, ultimately the decision as to whether or not you
23 will testify or claim your Fifth Amendment Rights, that is a
24 personal decision only you can make. Do you understand that?

25 MR. THOMAS: Yes, sir.

1 THE COURT: Sir?

2 MR. THOMAS: Yes, sir.

3 THE COURT: Now, if you decide that you are going to
4 testify, you will be subject to the same rules as any other
5 witness. In other words, you will be subject to direct
6 examination by your attorney and cross-examination by the
7 State. Do you understand that?

8 MR. THOMAS: Yes, sir.

9 THE COURT: You understand that?

10 MR. THOMAS: Yes, sir.

11 THE COURT: Do you also understand that if you have a
12 prior criminal record, if you have any convictions that
13 involve dishonesty, false statements, or for crimes that
14 would be punishable by imprisonment for more than one year
15 and I find that the probative value of those prior
16 convictions outweighs any prejudice to you, that the State
17 can bring up your prior record. Do you understand that?

18 MR. THOMAS: Yes, sir.

19 THE COURT: The obvious reason they would want to do
20 that would be to impeach your credibility. Do you
21 understand?

22 MR. THOMAS: Yes, sir.

23 THE COURT: Okay. Now, do you understand everything
24 I've gone over with you thus far?

25 MR. THOMAS: A little bit.

1 THE COURT: Okay. Well, tell me what part you do not
2 understand. I'm not going to let you get out of here today
3 until you understand.

4 MR. THOMAS: I don't got to take the stand if I don't
5 want to?

6 THE COURT: No, sir, you do not.

7 MR. THOMAS: Okay.

8 THE COURT: Mr. McElhannon can't make you take the
9 stand, I can't make you take the stand, the State cannot make
10 you take the stand, Detective Mills cannot make you take the
11 stand. That is your choice to take the stand or not.

12 MR. THOMAS: Okay.

13 THE COURT: Do you understand that?

14 MR. THOMAS: Yes, sir.

15 THE COURT: Now, what I've been telling you is, the
16 decision as to whether or not you want to take the stand or
17 to testify or not testify is your own personal decision.

18 MR. THOMAS: Yes, sir.

19 THE COURT: Now, you have a right and you should consult
20 with your attorney as to whether or not it's advisable for
21 you to take the stand or it's not advisable for you. I can't
22 advise you, because I don't know.

23 MR. THOMAS: Yes, sir.

24 THE COURT: But ultimately the decision, regardless of
25 what your attorney tells you, has to be made by you, okay?

1 MR. THOMAS: Yes, sir.

2 THE COURT: Also, you have a right to consult with
3 whomever else you reasonably want to talk to. In other
4 words, if you have friends or family members who are
5 reasonably accessible to you and you want to get their
6 advice, you have the right to talk with them as well. Do you
7 understand that?

8 MR. THOMAS: Yes, sir.

9 THE COURT: But the ultimate decision, regardless
10 whether it be your attorney, regardless it be family or
11 friends or whoever, you have to make the decision as to
12 whether you will testify or whether you will not testify. Do
13 you understand that?

14 MR. THOMAS: Yes, sir.

15 THE COURT: And, again, if you take the stand, you're
16 subject to the same rules of examination and cross-
17 examination of any other witnesses. If you have crimes
18 involving dishonesty in a statement that are punishable by
19 more than a year in prison and I find that they are more
20 probative than prejudicial, then they can cross-examine you
21 on any prior criminal record you may have. I don't even know
22 if you have one. Do you understand that?

23 MR. THOMAS: Yes, sir.

24 THE COURT: Okay. Do you have any questions from me?

25 MR. THOMAS: No, sir.

1 THE COURT: Do you have any questions of your attorney
2 at this juncture?

3 MR. THOMAS: No, sir.

4 THE COURT: Okay. I'm not going to ask you at this
5 point to make your decision, but you will be required to make
6 it shortly. In other words, by tomorrow you will have to
7 make that decision, okay?

8 MR. THOMAS: Yes, sir.

9 THE COURT: So, I want you to think long and hard about
10 it, all right?

11 MR. THOMAS: Yes, sir.

12 THE COURT: All right. Anything else, Mr. McElhannon?

13 MR. MCELHANNON: No, Your Honor.

14 THE COURT: Thank you, Mr. Thomas.

15 MR. THOMAS: Yes, sir.

16 THE COURT: All right. Anything else from the State
17 before we break for the afternoon?

18 MR. CAMPBELL: No, sir. I think if Mr. McElhannon and I
19 can approach about planning purposes, other than that.

20 THE COURT: Okay. Mr. McElhannon, anything else?

21 MR. MCELHANNON: No, Your Honor.

22 THE COURT: Okay. Let's go ahead and step back in my
23 chambers for planning purposes.

24 MORNING - FEBRUARY 26, 2014

25 THE COURT: Mr. McElhannon, are you ready to proceed

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1 with cross-examination?

2 MR. MCELHANNON: Yes, Your Honor.

3 THE COURT: Is the State ready to proceed?

4 MR. CAMPBELL: Yes, Your Honor.

5 THE COURT: All right. Anything we need to deal with
6 before we bring the jury out?

7 MR. CAMPBELL: No, Your Honor.

8 THE COURT: All right. Mr. McElhannon, do you have
9 anything?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: All right. Bring the jury in, please, sir.

12 (Jury in at 9:35 AM)

13 THE COURT: Good morning, Mr. Foreman, ladies and
14 gentlemen of the jury. Before we get started, let me ask
15 each and everyone of you if anyone has heard, seen, or read
16 anything about this case during the break? Let the record
17 reflect that no one responded in the affirmative. And the
18 same question, has anyone spoken to anyone about this case or
19 has anyone spoken to you about it? Same response. Okay.
20 Mr. McElhannon, are ready to proceed with cross-examination?

21 MR. MCELHANNON: Yes, Your Honor.

22 THE COURT: Are you ready to proceed?

23 MR. CAMPBELL: Yes, Your Honor.

24 THE COURT: Very good. Mr. McElhannon. The witness
25 will resume the stand, please.

CROSS EXAMINATION OF DET. WAYNE MILLS BY MR. MCELHANNON 326

1 MR. MILLS: Yes, sir.

2 THE COURT: You're still under oath, Detective Mills.

3 CROSS-EXAMINATION

4 BY MR. MCELHANNON:

5 Q Detective Mills, you were the lead investigator on this
6 case?

7 A Good morning, sir. Yes, sir.

8 Q Good morning. And one constant, I think, about this
9 case that you would agree with me on is, in all of your
10 interviews and witness statements that you got, one
11 constant would be this was a chaotic scene. Would you
12 agree with that?

13 A Yes, sir, I would agree it was a chaotic scene. Yes,
14 sir.

15 Q I mean, the testimony was that people were throwing
16 chairs, running to cars, trying to take off. Is that
17 what you learned in your investigation?

18 A Yes, sir, there was an altercation. A fight took place
19 inside that involved chairs being thrown, then
20 subsequently, a continuation of events carry out to the
21 parking lot where other people were outside and cars
22 were leaving, those kind of things, yes, sir.

23 Q And you were here when Officer Matthew Voigt testified,
24 correct?

25 A Yes, sir, I was.

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1 Q And he said he actually went to the scene that night,
2 correct?

3 A Yes, sir, he did.

4 Q About a couple of hours after it happened, I believe?

5 A Two or three in the morning, I believe, sir.

6 Q And you heard him testify during cross-examination that
7 he said he characterized the scene as very dark?

8 A Yes, sir.

9 Q Was the gun that was used, the gun or guns that were
10 used in this incident, found or located?

11 A No, sir. I never located a firearm, no, sir.

12 Q And so you have no way of matching the shell casing that
13 was found on the scene with any weapon?

14 A No, sir. There's no firearm for me to put those bullets
15 with that weapon. No, sir.

16 Q And the bullet, itself, that is in the victim in this
17 case, Ms. Smith, of course, it hasn't been matched to
18 that shell casing either, has it?

19 A No, sir.

20 Q So, you cannot tell the Court or the jury that the
21 bullet that was actually fired into the victim came from
22 that shell casing?

23 A I cannot say beyond a certain doubt that that projectile
24 came from that shell casing, no, sir.

25 Q Would you agree with me that virtually every witness

1 that testified said they heard two shots?

2 A No, sir, I wouldn't agree that everyone said two shots.

3 One, two, two shots.

4 Q The majority. Would you agree the majority said two
5 shots?

6 A Once again, this -- you hear one or two. Even speaking
7 with Devon Thomas, he even advised himself, one or two.
8 Which, once again, in a scene like that, you're out in a
9 field, cars are everywhere, there's no telling what you
10 could have heard. The sound going through a parking lot
11 with multiple cars, I don't know if it's an echo. I
12 don't know.

13 Q Well, if there were two shots, shouldn't there be
14 another shell casing on the ground somewhere?

15 A If there were two shots fired, there should be another
16 shell casing somewhere. It doesn't necessarily mean it
17 would be there. There are several vehicles leaving that
18 location, something could have gotten caught in a tire.
19 You know, there's no way for me to describe or assume
20 how evidence left that scene.

21 Q Now, isn't it a possibility, too, that there could have
22 been two guns on the scene, one being a revolver?

23 A There's always a possibility. I just don't have any
24 evidence showing that or any other testimony or
25 statements or witnesses that I interviewed personally

CROSS EXAMINATION OF DET. WAYNE MILLS BY MR. MCELHANNON 329

1 advising of any other guns that they had seen at that
2 time.

3 Q That they saw?

4 A That's right, sir.

5 Q What would be the significance if there was a .45
6 caliber revolver, granted -- let me back up. We have no
7 actual -- you have no actual proof that the projectile,
8 the bullet that's in Ms. Smith's leg, is a .45. Do you?
9 It's just a large caliber.

10 A It is a very large caliber. There is no way until I
11 actually -- if the projectile had been extracted, then
12 it could have been measured to a pretty good certainty
13 of what the caliber is.

14 Q But you haven't done that. You can't do that, so we
15 don't know if it's a .45 or not?

16 A No, sir. No, sir. I look at the x-rays and make a
17 determination the best I can from the size of the round
18 I could see there.

19 Q Now, my next question, I guess, then would be, what
20 would be the significance if there was a revolver on the
21 scene, as far as shell casings go?

22 A A .45 caliber revolver?

23 Q Yes, sir.

24 A Well, I've personally never heard of a .45 caliber
25 revolver. But once again, if there was a revolver on

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1 scene, then the shell casing would have stayed in the
2 cylinder, unless manually removed by breaking the weapon
3 down.

4 Q And I didn't mean a .45. I meant a large caliber
5 revolver is more of what I think I was going towards.

6 A Yes, sir.

7 Q So, the shell casing would not have ejected
8 automatically from a revolver?

9 A That is correct, sir.

10 Q And then if that gun -- if it was a second gun, third
11 gun, whatever, was taken from the scene, of course, you
12 wouldn't have any evidence of that, correct?

13 A No, sir. The only thing I would have at that point, if
14 a firearm was located, was possibly matching up the fire
15 pin striking.

16 Q Okay. Let's go to the transcript for the statement that
17 you got from Devon Thomas that they heard, the jury
18 heard yesterday. Page 25 of that transcript ---

19 THE COURT: Just one second. Do you want the jury to
20 have that transcript?

21 MR. MCELHANNON: Your Honor, I think if they -- if they
22 take notes, I'm going to say what page I'm reading from and
23 they can take a look at it.

24 THE COURT: Okay. Excuse me for interrupting.

25 Q Go to page 25 of that transcript, Detective Mills.

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1 A (Complies)

2 Q The part where you're questioning Mr. Thomas on the
3 fingerprints. Can you just read that first part of that
4 first paragraph where you're questioning him about that?

5 A Lines 1 through 6?

6 Q Yes.

7 A "Because you realize if your prints are on that bullet,
8 you're fucked. You know what I'm saying? Because
9 everything you've said is bullshit at that point and
10 that's why I'm asking. I'm being straight up. If
11 there's a reason why you loaded a bullet or something
12 like that, I need to know it, okay?"

13 Q Okay. And then it says "inaudible". So, apparently,
14 the transcriber didn't understand what was said then.
15 Read lines 8 through 11.

16 A "Because if your print is on there, it's going to look
17 real bad, especially after what you just said' -- excuse
18 me. Real bad, especially after what you just said --
19 'Okay? Is there any chance you loaded a magazine or
20 anything like that?" That's lines 8 to 11.

21 Q And what was his answer to that?

22 A "I did not load that gun, sir."

23 Q Okay. So, even after you were, and this is my word,
24 intimidating, Mr. Thomas into trying to confess to
25 loading the gun or having the gun, he still denied it.

1 Correct?

2 A He did deny that he had loaded that weapon, which he had
3 denied from walking into the door, to even being --
4 having any information about the fight or a shooting or
5 anything to that point.

6 Q And so did LaJames Glass. Correct?

7 A Yes, sir, he did.

8 Q And in testimony, it has already come out, there were no
9 fingerprints on any bullets, shell casings, or anything.
10 Correct?

11 A No, sir. And once again, as I testified yesterday, in
12 thirteen years, I've never seen a match on a spent shell
13 casing or a unspent shell casing. Love to have it, but
14 I've never seen it.

15 Q In, let's get to that, thirteen years you've testified a
16 lot in court. Correct?

17 A I have testified some, sir.

18 Q Have you ever testified that the most reliable statement
19 would be the one that's given shortly after an incident?

20 A I've never testified to that that I can recall, sir.

21 Q You've never testified that the most reliable evidence
22 would be right after an incident happened rather than
23 later?

24 A That I've actually said that in testimony?

25 Q Yes.

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1 A Not that I can recall. I mean, I've testified several
2 times. I can't remember if I've ever said that in open
3 court.

4 Q And when you interviewed -- and I think you said you
5 interviewed LaJames Glass this same day that you
6 interviewed Devon Thomas. Correct?

7 A Yes, sir. I believe both were interviewed on the 30th.

8 Q And it was after Devon Thomas' interview. Correct?

9 A I believe so, yes, sir.

10 Q You were, of course, present throughout this trial and
11 you heard LaJames Glass testify. Correct?

12 A Yes, sir, I did.

13 Q On cross-examination, did you hear him testify that he
14 did not say that Devon Thomas got a gun out of a white
15 car?

16 A I'm sorry. Say that again, sir?

17 Q Did you hear LaJames Glass testify on cross-examination
18 where he denied that he said that Devon Thomas got a gun
19 out of a white car?

20 A He did say that he -- he told me that he had gotten a
21 gun out of a white car, but I believe on the first day
22 of testimony he advised he did not get it out of a white
23 car.

24 Q So, he changed his testimony from when you interviewed
25 him until he testified in court?

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- 1 A Yes, sir.
- 2 Q In fact, his testimony or his statement to you has been
- 3 transcribed as well. Correct?
- 4 A Yes, sir, it has.
- 5 Q Do you have that? I have a copy of it. Do you have a
- 6 copy of that?
- 7 A I don't have it up here with me, no, sir. I have one in
- 8 my folder somewhere.
- 9 MR. CAMPBELL: Where's your folder?
- 10 DETECTIVE MILLS: Can I come down and get it?
- 11 THE COURT: Yes, sir.
- 12 (Witness leaves stand to retrieve folder)
- 13 Q Detective Mills, if you would please, go to page 22 of
- 14 LaJames Glass' statement.
- 15 A I found my copy. I had it up here. I apologize.
- 16 Page 22?
- 17 Q Yes.
- 18 A (Complies)
- 19 Q If you would read lines 2 to 9?
- 20 A Line 2 through 9?
- 21 Q Yes, sir.
- 22 A "Devon pulled the gun out. Where did he pull the gun
- 23 out of? A white car. A white car? Okay. All right.
- 24 All right. So, he pulls the gun out. You see Devon
- 25 pull the gun out? Yeah. Okay. You seen Devon pull the

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1 gun out, then what? Out of a white car."

2 Q Okay. Did you, throughout this trial, have you heard
3 anyone else testify that they saw Devon Thomas pull the
4 gun out of a white car?

5 A Not during this trial, no, sir. I don't think anybody's
6 testified they saw him withdrew a gun from a white car,
7 no, sir.

8 Q And you heard LaJames Glass, again on the stand under
9 oath, that the gun, the gun that apparently was seen,
10 was his?

11 A Yes, sir. He did.

12 Q And he testified he's on probation. He was on probation
13 before this incident happened, correct?

14 A Yes, sir. He was on probation, yes, sir.

15 Q Would LaJames Glass having a firearm be a violation of
16 probation?

17 A Most definitely. A firearm, ammunition.

18 Q And would it be -- he was convicted of what, stalking?
19 Is that correct? Is that what he was on probation for?
20 I think he testified to that.

21 A I believe that's what he's on probation for. I believe
22 it's from the charges that I placed on him. I believe
23 so, sir.

24 Q And that was -- I mean, that's a felony. Correct?

25 A Yes, sir.

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1 Q Do you know what the offense for a felony possession of
2 a firearm would be?

3 A Well, I mean, there's the violation of the probation,
4 not to mention the -- having the possession of a
5 firearm. I don't know what the time carries on that,
6 sir.

7 Q You wouldn't know if it carries five years?

8 A I would not know that sir, no, sir.

9 Q Also in LaJames Glass' testimony, he changed from the
10 beginning of another part, from the statement that he
11 gave you, didn't he? He never mentioned handing a clip
12 to Devon Thomas in his statement, did he?

13 A No, sir, he did not. And I'm actually not surprised by
14 that. He is on probation, you know. That would have
15 put himself in a bad light. I see that and I understand
16 that.

17 Q So, he ---

18 A It's just as if, you know, Devon did the exact same
19 thing when I was talking to him. He started with his
20 initial statement of not knowing who the guy was, not
21 knowing what took place and then changed his statement
22 again, as well. So, both of them have done the exact
23 same thing.

24 Q But LaJames Glass didn't tell you anything until or
25 didn't finger Devon Thomas until you told him that Devon

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1 had given a statement against him. Did he?

2 A Not only that, but I'd also just went through all of the
3 photo lineups where he had been identified. I've dealt
4 with LaJames before. The first time I ever dealt with
5 LaJames, it was the same way. We had to get to a point
6 where I had to show him, basically, look, I know what
7 I'm talking about and we've gotten to a certain point.
8 So, I had to push him to that point and show him that,
9 yes, I do have things. I'm not just here just
10 questioning you randomly. I have spoken with several
11 individuals and have statements that have built up.
12 Yes, sir.

13 Q And do you remember LaJames Glass, in court, testifying
14 that he remembers seeing Devon Thomas run to the blue
15 van and retrieving the gun?

16 A I don't remember him saying that, sir, no.

17 Q LaJames Glass being on probation, who would have more to
18 gain or lose from lying about this case?

19 A From what perspective, sir?

20 Q From being violated on probation and even being involved
21 in it? Who would have more to gain?

22 A I don't think that's up to me to decide who has more to
23 gain as far as violation of probation or even carrying
24 four counts of attempted murder. Four counts of
25 attempted murder can carry a lot of weight in either

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1 capacity. I think the probation is almost irrelevant
2 when it comes to those four individuals that were inside
3 that vehicle and who's going to pay the consequence for
4 such.

5 Q Now, this party for the birthday girl, did you find out
6 through your investigation that some of her relatives
7 were invited from Greenwood County?

8 A I had heard a little bit that it might have been some
9 relatives from Greenwood County, but I could not confirm
10 that. I do know that there were several individuals
11 that came from different parts of, from Greenwood, Ware
12 Shoals, Homeland Park, those kind of areas. But once
13 again, I never was able to confirm it was a family
14 member from Greenwood or anything like that that came
15 in.

16 Q Were you able to locate or talk to any of the guys from
17 Greenwood?

18 A No, sir. Matter of fact, the individual that was very
19 standard throughout the entire thing was an individual
20 with a orange shirt and dreads. I went to Laurens
21 County, Greenwood, Abbeville. I went though the Gang
22 Units. I went through the hospitals, the ERs, the
23 coroner's office, trying to locate someone that could
24 have been on that side of the fight or the incident and
25 I did not locate them, no, sir.

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1 Q Now, you did have names of people, individuals, from the
2 beginning, who were in either a blue van or a white
3 Toyota Camry. Correct?

4 A Yes, sir, along with many other names from the people
5 who had made it into the party or in the parking lot at
6 that time. Yes, sir.

7 Q Have you talked -- and this case happened almost two
8 years ago. Have you talked to Keydarius Edwards?

9 A No, sir. I've been to his house several times, even in
10 the last fourteen days, I've been by there once. I sent
11 another officer by there twice. Mr. Edwards currently
12 has a warrant for his arrest. I would imagine that's
13 why he won't come speak with me at this particular time.

14 Q And he was in the blue van. Correct?

15 A From testimony and from what I'm hearing, yes, sir. But
16 I did not stand and confirm that he was in that blue
17 van, no, sir.

18 Q Well, I mean, LaJames Glass who has admitted having a
19 blue van, says Keydarius Edwards was in the van.

20 A Yes. Through his testimony and through their
21 statements, yes, he was in the van, according to LaJames
22 Glass.

23 Q Have you talked to Cornelius Jones ---

24 A No, sir.

25 Q --- about that?

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- 1 A No, sir. I've not located Cornelius Jones. I have been
2 to his house and left a business card on his door, but
3 I've not heard from Mr. Jones, no, sir.
- 4 Q Did you ever speak with Tyrell Pulliam?
- 5 A The last time I spoke with Mr. Pulliam was before this
6 trial, or excuse me, before this case. It was involving
7 a Hanna thing. But, no, I've not been able to locate
8 Mr. Pulliam, as well.
- 9 Q And he was also, by testimony, in the blue van?
- 10 A Yes, sir.
- 11 Q So, Keydarius Edwards, Cornelius Jones and Tyrell
12 Pulliam, as well as LaJames Glass, according to Mr.
13 Glass' testimony, were all in that blue van?
- 14 A According to his testimony, yes, sir.
- 15 Q And according to your investigation in the white Camry
16 was Devon Thomas, correct?
- 17 A Yes, sir.
- 18 Q Chris Smith?
- 19 A Yes, sir.
- 20 Q Chris Roebuck?
- 21 A Yes, sir.
- 22 Q And Mikel Blackwell?.
- 23 A And, also, two unknown females.
- 24 Q I mean, going to the party.
- 25 A Going to the party? According to Chris Smith, it was

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1 Chris Smith. And even Devon, when I interviewed him,
2 that he referred to as his cousin, his cousin Mikel
3 Blackwell, his cousin, Chris Roebuck and Chris Smith in
4 the Camry, yes, sir. Yes, sir.

5 Q So, those four were in the white car?

6 A Those four were in the white car, from what I have
7 understood, going to the party. Yes, sir.

8 Q And you heard Ms. Smith, Anquavious Smith, actually say
9 she was one hundred percent sure Devon Thomas did not
10 arrive at the party in the blue van?

11 A I do believe she said that, yes, sir.

12 Q Have you spoken with Charles Edwards?

13 A I have not spoken with Charles Edwards, no, sir.

14 Q Have you spoken with Mikel Blackwell?

15 A No, sir. I have left business cards on both their
16 doors.

17 Q Have you spoken with Chris Roebuck?

18 A I have not spoken with Chris Roebuck.

19 Q So, for ---

20 A With that same thing, my door has been open for two
21 years. At any point, I will entertain any new piece of
22 evidence. I will entertain anyone who wants to come in
23 and tell me their version or from their side or from
24 what they saw or what information they may have. I'll
25 be glad to listen to it.

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1 Q But in you experience as an officer, how likely is it
2 that people just come forth, voluntarily?

3 A To be quite honest with you, I wish it was a whole lot
4 more, but it's not. Even when you locate someone the
5 interview process itself, trying to get someone to
6 provide you with a name or what they've seen is
7 difficult.

8 Q And is that because -- and this is my opinion only, but
9 is it yours, that they think they may get in trouble, as
10 well?

11 A Well, there's several different reasons. People don't
12 want to get involved. I wish the whole community would
13 have got more involved, but people don't. You know, I
14 constantly go to scenes and ERs and bars and clubs and
15 those kind of things where acts of violence have
16 happened in the parking lot, and I know there's two
17 hundred people there, but imagine two hundred people and
18 one hundred and ninety-nine of them are in the
19 background. Nobody wants to come out. Nobody wants to
20 get involved. You almost have to -- you try to
21 investigate what you can.

22 Q And those -- would you agree that those six people who
23 were either in the blue van or the white Toyota Camry
24 could possibly be material witnesses in this crime?

25 A I would love to have their version of events from what

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1 they seen, from whatever vehicle they were at. The blue
2 van, it would have been interesting to see who came to
3 that blue van, but it was not on the same side where the
4 shooting took place. But I would love to know their
5 view and their vision of what they saw at that
6 particular side of the club. Right now, what I have is
7 the people that are on the side of the shooting and what
8 took place on that side of the club or excuse me, the
9 Shrine Club.

10 Q Were you aware that last year Keydarius Edwards was
11 actually in the Anderson County Detention Center for
12 ninety days on a child support rule for non-support?

13 A I am now. I did not know at that time. Our jail houses
14 almost five hundred people at a time. I do not have a
15 report that comes in daily to let me know who's there.
16 I do not have email or something that comes in and tells
17 me that, hey, you know, these people have been arrested.
18 So, I do not know who is housed at any given moment.

19 Q Do you know if any law enforcement officer ever told
20 Keydarius Edwards that they were going to come and talk
21 to him while he was out there?

22 A I'm sorry. Say that again, sir?

23 Q Do you have knowledge that any law enforcement knew
24 Keydarius was there and said, we're going to send
25 somebody over here to talk to you about what happened

1 March 25th, 2012?

2 A I'm not aware of anybody telling him they were coming to
3 speak to Keydarius Edwards. When Investigator Voigt got
4 on the scene, you touched on earlier about him talking
5 about the parking lot being dark, once he got on the
6 scene, the parking lot was abandoned. There wasn't all
7 those cars with headlights and dome lights and all the
8 traffic that was taking place, which is usually the case
9 when investigators arrive on the scene. The scene has
10 somewhat started to calm down at that point. There's
11 law enforcement present at the time and the scene is
12 starting to get secure. So, you don't have all that
13 activity. Most people are separated at that time
14 waiting to be interviewed, of the people that you can
15 still find on scene.

16 Q And you re-interviewed several of the -- numerous
17 people. Correct? Most of them at BHP?

18 A Most of them, yes, sir.

19 Q Do you recall in any of those re-interviews with these
20 students, that you stated to them, "You know Devon
21 Thomas did this"?

22 A I'm sorry?

23 Q That you knew Devon Thomas did this and they needed to
24 come clean on what they knew?

25 A I don't remember ever mentioning Devon Thomas' name

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1 before anybody mentioned it to me. I don't remember
2 anytime where I said, "Hey, I know this person did
3 this," at BHP High School. Now, every one of those
4 audios are, they're here. If I did, I'd love to hear
5 it. I've spent the last two days going back through
6 those interviews again, listening to them again, and I
7 have not located any such thing.

8 Q So, just to wrap up, Detective. There is no physical
9 evidence in this case really, is there? None to speak
10 of, other than the shell casing and an unfired bullet.

11 A The physical evidence in this particular case would be -
12 - well, obviously the photographs of the scene. But the
13 actual physical evidence on the scene would be the red
14 pickup truck that has the hole through the passenger
15 side door, the blood inside the vehicle, the vehicle
16 itself. At the scene would be the unspent shell casing,
17 which was the same make and model of the spent shell
18 casing there on the scene, and obviously, the projectile
19 that Ms. Smith still carries today.

20 Q But nothing that can tie it all together as far as the
21 projectile with a shell casing with a gun?

22 A Nothing that I can testify to that I can tell you that
23 that shell casing came from any particular gun that I
24 have in my possession. I do not have anything that ties
25 those together, other than looking at the totality of

1 the evidence and the witness accounts from their
2 perspective, from what they've seen, and then try our
3 best to tie that together.

4 Q And there are the witness statements that the majority,
5 if not all of them, changed from the time they gave the
6 first statements until the time they came to court?

7 A I'm sorry?

8 Q The statements you're talking about, the eyewitness
9 statements are the ones that we've already gone over
10 that are changed now from when it happened to the time
11 they came to court and testified. They've changed.

12 A What I believe you're referring to now is the written
13 statements that were taken that night at the scene,
14 which was another reason why I go back and re-interview.
15 And go back in and actually sit down with them and go
16 into an audio recording, so there is no qualm as to
17 what's said. You know, what's said. And what I say.
18 What they say. It's there for the record. But once
19 again, that's why I go back and shore those up to go
20 back in and re-interview those, to see if there has been
21 any re-accounts of what take place or any new evidence
22 or anything that may have come to light.

23 Q And there again, the one thing that's remained
24 throughout this case, throughout the trial and testimony
25 is LaJames Glass still hasn't been honest from the time

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1 he started giving information until the time he
2 testified, has he?

3 A To a degree. There was -- and I find this a lot
4 interviewing most individuals, especially if I'm in any
5 of a -- you know, there's different ways of doing
6 interviews. You try to interview everybody the same way
7 when you first start out, but obviously, you're going to
8 take a different tactic to possibly a suspect or a
9 witness. So, when you start any interview it is what do
10 I know compared to what do you know. What information
11 do I have, what information that you have. And in both
12 those cases, Devon and LaJames both started off as you
13 would expect, or at least I expect in my experience, is
14 trying to feel me out, seeing what information I have.
15 Both were dishonest. They were dishonest from the very
16 beginning and not until we reached that pivotal point in
17 the interview where basically the rubber meets the road,
18 is where a degree of honesty starts to come out.

19 Q I think LaJames Glass in his testimony, or in the
20 transcription of his statement that he gave, he says
21 that in the days following the incident that he called
22 Devon on the phone. Do you remember that?

23 A Can you show that -- show me where it is?

24 Q It's on page 36, line 13.

25 A Yes, sir. I do recall that, yes, sir.

1 Q Did you check his phone records?

2 A I did not, sir.

3 Q You did not?

4 A No, sir. I did not pull any phone records or anything
5 like that in this case, no.

6 MR. MCELHANNON: That's all the questions I have.

7 THE COURT: Any redirect?

8 MR. CAMPBELL: No, Your Honor.

9 THE COURT: All right, sir. You may step down. Thank
10 you, sir. Would you call your next witness, please, sir?

11 MR. CAMPBELL: Your Honor, that's the State case. The
12 State rests.

13 THE COURT: Very good. Mr. Foreman, ladies and
14 gentlemen of the jury, the State informs me that they have
15 rested, which means they have presented their case in chief.
16 And at this time I have some administrative matters I need to
17 go into. It will take a little bit. So just go back and
18 make yourself comfortable in your jury room. If you need
19 anything from our bailiffs, we'll make sure they provide
20 that.

21 (Jury out at 10:08 AM)

22 THE COURT: All right. Any motions?

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

24 THE COURT: Yes, sir.

25 MR. MCELHANNON: At this time, I would like to make a

1 motion for a directed verdict on the attempted murder charges
2 based on the fact that I don't think there's been any
3 testimony that actually saw Devon Thomas fire the weapon that
4 went into the truck.

5 THE COURT: Okay, sir. I'm denying your motion.
6 There's certainly evidence the jury can reasonably infer
7 that, circumstantial evidence. There's evidence in the
8 record and so that's my ruling.

9 All right. At this point, Mr. McElhannon, have you had
10 the opportunity to discuss with your client whether or not he
11 wishes to testify?

12 MR. MCELHANNON: Yes, Your Honor.

13 THE COURT: And what is his response?

14 MR. MCELHANNON: He will not testify, Your Honor.

15 THE COURT: He will not testify. Okay. Mr. Thomas,
16 would you please stand?

17 MR. THOMAS: (Complies)

18 THE COURT: You're still under oath from yesterday. Do
19 you feel like you've had sufficient opportunity to speak with
20 your attorney or anyone else whether or not you wish to
21 exercise your rights under the Fifth Amendment to the United
22 States Constitution to testify or not to testify?

23 MR. THOMAS: Not to testify.

24 THE COURT: Sir?

25 MR. THOMAS: Not to testify.

1 THE COURT: I understand that your attorney's telling me
2 that you're not. My question is, do you feel like you've had
3 enough time to discuss with whomever whether or not you wish
4 to?

5 MR. THOMAS: No, sir.

6 MR. MCELHANNON: I don't think he understands.

7 THE COURT: I don't think so either.

8 MR. MCELHANNON: He's asking you if you've had enough
9 time to talk to me or your family and enough to decide ---

10 MR. THOMAS: Yes, sir.

11 THE COURT: And you are freely and voluntarily
12 exercising that right?

13 MR. MCELHANNON: He's saying are you doing that on your
14 own free will?

15 MR. THOMAS: Oh, yes, sir.

16 THE COURT: Okay. Very good. Thank you. Mr.
17 McElhannon, does the Defense wish to present a defense in
18 this matter?

19 MR. MCELHANNON: Yes, Your Honor.

20 THE COURT: Let's take about a five-minute break. We'll
21 come back and we'll start with the Defense's side. Let's
22 take a ten-minute break.

23 (Brief Break)

24 THE COURT: All right. Mr. McElhannon, are you ready to
25 proceed?

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1 MR. MCELHANNON: I'm ready, Your Honor.

2 THE COURT: Is the State ready?

3 MR. CAMPBELL: The State's ready, Your Honor.

4 Would you bring the jury in.

5 (Jury in at 10:30 AM)

6 THE COURT: All right. Mr. McElhannon, I understand the
7 Defense intends to present a defense. Is that correct?

8 MR. MCELHANNON: That's correct, Your Honor.

9 THE COURT: Would you call your first witness.

10 MR. MCELHANNON: Your Honor, the Defense would call
11 Nalshia Martin.

12 (After being duly sworn by the Clerk of Court,
13 **NALSHIA MARTIN** testified as follows:)

14 CLERK OF COURT: If you would take the witness stand and
15 state your name and spell your last name for the record,
16 please.

17 MS. MARTIN: My name is Nalshia Martin. My last name is
18 spelled, M-A-R-T-I-N.

19 DIRECT EXAMINATION

20 BY MR. MCELHANNON:

21 Q Ms. Martin, how old are you at the present time?

22 A I was twenty-one at the time.

23 Q Okay. So, you're twenty-three now?

24 A Twenty-three.

25 Q You were twenty-one on March 25th of 2012?

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- 1 A Yes, sir.
- 2 Q And were you at a party that night at the Shrine Club
- 3 that night in Honea Path?
- 4 A Yes, sir, I was.
- 5 Q And whose party was that?
- 6 A That was my little sister's sweet sixteen birthday
- 7 party.
- 8 Q So, Natia Tatum is your little sister?
- 9 A Uh-huh.
- 10 Q Can you tell us what happened inside the club that
- 11 night?
- 12 A Before the fight broke out?
- 13 Q Well, there was a party going on. Correct?
- 14 A There was a party going on. Everything was fine. When
- 15 I first got there, it wasn't a lot of hype. It was a
- 16 lot of kids outside and they was a bunch inside and when
- 17 I got there, my sister was worried. She was kind of
- 18 upset. She was like nobody's really dancing, can you
- 19 help me get them, you know, get started. Okay. So, I
- 20 went to my mom and talked to them and asked how
- 21 everything was going. Everything was going fine. I
- 22 went to the DJ and started asking him to play some more
- 23 up-to-date music. He started playing music. I got some
- 24 of the kids to come inside. And after that, everything
- 25 started. All the kids come in, they were dancing.

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1 Having a great time.

2 Q Let me stop you there. Can you estimate how many kids
3 there were?

4 A I want to say, maybe, about fifty.

5 Q About fifty? Okay.

6 A It was a crowd. And I want to say at maybe around
7 eleven or twelve, we noticed some activity going on and
8 my mom wanted to shut the party down then. And my
9 sister's like, no, we just starting to have fun.
10 Everybody's having fun. Don't, you know, don't shut it
11 down, everything's going to be okay. And I noticed --
12 well, someone, a mom, well, some parents had come and
13 picked their kids up. Some. Not a few, well, a few.
14 And a lady came in from outside and she looked upset
15 and she said, "Are there any parents here who's, you
16 know, over the party?" I said, "Well, it's my sister's
17 party. You want to talk to an adult, me, or my mom's
18 here." She said, "Okay. Point me to her." She walked
19 to the back. That's when my mom walked up to the front
20 and was, like, we are fixing to shut this party down
21 now.

22 Q And why did she say that?

23 A She said that the mother came in and said that she seen
24 a young guy with a gun.

25 Q Where? Out in the parking lot?

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1 A Out in the parking lot.

2 Q Okay.

3 A And she went to the -- she was going, on her way to the
4 DJ booth and she talked to Natia and she said, "I don't
5 feel safe with all these kids in here. A mom just came
6 and told me that she saw a young boy with a gun. We're
7 going to end it now because we don't want nothing bad to
8 happen."

9 Q Okay.

10 A So, we cut the lights on and she announced that, "I
11 don't know which one of you fellows, who it is, that has
12 a gun, but you need to leave now, because this is a
13 sweet sixteen-year-old party and we not here for any
14 drama. So, if you have a gun, you know you're not
15 welcome, you need to leave."

16 Q Okay.

17 A It cleared. Everybody went outside. We pushed
18 everybody outside and before we let anybody back in --
19 because Natia was upset. She was like, "No. We think
20 the person left who had the gun." That's what she
21 thought. But it was me and my older brother. We were
22 all outside and we was like, "Well, if you still want
23 the party to go on, we're going to pat everyone down
24 that comes back inside before, you know, anything
25 continues to go on."

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- 1 Q Okay.
- 2 A So, everybody that came through the door, my older
3 brother and my cousin patted them down.
- 4 Q Okay. So, then the party resumed?
- 5 A It resumed.
- 6 Q And at some point later than that, did a fight break out
7 inside?
- 8 A Yes, it did. A bunch of fights.
- 9 Q A bunch of fights?
- 10 A Yes. Chairs ---
- 11 Q What happened then?
- 12 A Chairs were thrown, we cut the lights on and as the
13 fight was going on, we was breaking people up and
14 pushing everybody outside and when we were pushing
15 everybody outside, everybody -- some people had already
16 started to leave. And as we're pushing everybody
17 outside, my mom goes out the side door with the DJ guy,
18 helping him get his equipment. And I came out the front
19 door. As soon as I came out the front door of the --
20 because this is the parking lot. I come out the front
21 door. I see, as I look to my right, because everybody
22 just scattered everywhere. I look to my right ---
- 23 Q Let me stop you there. So, by everybody you mean every
24 person that was inside is now outside?
- 25 A Uh-huh.

- 1 Q Okay. Continue.
- 2 A I looked to the right and I see a van. And I see a guy
3 come from that van with a gun. As he's running across
4 my vision, running across the parking lot to the left,
5 over here to the field. It's a field over in this area
6 and as he's going, he's shooting in that direction.
- 7 Q He's shooting already?
- 8 A He's -- as he's going across -- he's running across me
9 and he's shooting in the area. Like he started
10 shooting. And as the car drives off, he's shooting at
11 the car.
- 12 Q At a car or a truck?
- 13 A Truck. He's shooting at this truck.
- 14 Q Okay. So, your statement said -- well, let me ask you
15 this. Can you describe what that male individual was
16 wearing?
- 17 A I remember him having no shirt on and khaki shorts.
- 18 Q No shirt and khaki shorts. And he came from the van and
19 shot how many times? Do you remember?
- 20 A As he was going across me, I know he shot once. And
21 once he got within that field and the truck was driving
22 off, he was shooting. I heard two shots.
- 23 Q So, the second shot was directed at the truck. Is that
24 what you are saying?
- 25 A Yes, sir.

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1 Q Okay. And your statement says you saw a taller black
2 male. Can you characterize what you meant by taller?

3 A Taller, meaning he was taller than me. I'm 5'3".

4 Q So, can you estimate how tall he was?

5 A I'd say he was about five six.

6 Q Five foot six. Okay. And with Khaki shorts and no
7 shirt?

8 A Uh-huh.

9 Q After you saw him shoot at the truck, the second shot at
10 the truck that was leaving, did you see him after that?

11 A I mean, I seen him coming from that -- I just seen him
12 coming back and getting in the van and taking off.

13 Q So he got back in the van that he came from?

14 A Uh-huh.

15 Q And then they left?

16 A Yes, sir.

17 Q Could you see his face at all?

18 A At that moment when he was -- Because this is the
19 parking lot. (Indicating) This is the door. I'm right,
20 standing in the doorway. He's coming this way, so when
21 I saw him, I didn't see his face. I saw the side and,
22 basically, what he had on and a gun.

23 Q So, you were fairly close to him when he ran by you?

24 A Not that close.

25 Q Okay. But close enough to see that he had on Khaki

1 shorts and ---

2 A Uh-huh.

3 Q --- no shirt and was about five five or six?

4 A Yes, sir.

5 Q And two shots went into the crowd of people running?

6 A Yes, sir.

7 Q And the second shot toward the truck?

8 A Yes, sir.

9 MR. MCELHANNON: That's all the questions I have.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. CAMPBELL:

13 Q Ms. Martin, just a few questions regarding this
14 incident. So, what you're saying is that someone on the
15 inside of the club is alleged to have had a gun. Is
16 that right?

17 A Yes, sir. From the knowledge of the lady coming in,
18 that's what she said.

19 Q But you didn't actually see anybody with a weapon or
20 anything?

21 A I didn't see anybody with a weapon at that time.

22 Q And when -- were you on the inside of the club when the
23 fight started or took place?

24 A Yes, sir, I was.

25 Q Could you tell who was fighting? Did you know anybody?

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1 A One fight that I knew of Keydarius Edwards was one of
2 the guys that was fighting. I remember him, because we
3 actually pulled him off and pushed him outside. I can't
4 remember none of the other guys, because it was a bunch
5 of them.

6 Q It was a lot of guys fighting?

7 A Yes, a lot of them.

8 Q And is it safe to say that it scared a lot of the girls
9 and the people that were on the inside?

10 A Yes, sir.

11 Q And then everybody started running outside?

12 A Yes, sir.

13 Q And you ran to the outside also. Is that correct?

14 A Yes, sir.

15 Q And I believe you stated that when you got to the
16 outside, that people were just scattered everywhere?

17 A Yes, sir.

18 Q Now, you said you saw an individual run from your right
19 to your left. And when you mean your left, when you're
20 coming out of the Shrine Club, you went to this
21 direction over here?

22 A To the right.

23 Q If you're coming out the front door, which way did he
24 run first?

25 A When he ran first, he ran to the left.'

- 1 Q Did you see him come out of the club?
- 2 A No, I didn't seen him come out the club, because I
- 3 didn't come out until everybody else was outside.
- 4 Q But you saw somebody run across your vision ---
- 5 A Uh-huh.
- 6 Q --- from your right to your left with a gun?
- 7 A Yes, sir.
- 8 Q And what color was this gun?
- 9 A It was black.
- 10 Q And do you know the difference between a semi-automatic
- 11 and revolver?
- 12 A A revolver is the -- how do I put it?
- 13 Q Has a wheel in it?
- 14 A Yeah.
- 15 Q Cylinder?
- 16 A Okay. I remember it being black. I'm not sure if I saw
- 17 a revolver or not.
- 18 Q And was it a big gun or a little gun?
- 19 A It was a little gun.
- 20 Q Is it fair to say, at that point in time when you saw
- 21 the gun, you were concentrating on what he was doing
- 22 with that gun and that's what your main focus was on?
- 23 A Yes, sir.
- 24 Q Where you scared for your safety at that point in time?
- 25 A Yes, sir.

CROSS EXAMINATION OF NALSHIA MARTIN BY MR. CAMPBELL 361

1 Q And you saw him go to the left and shortly after that,
2 you heard a couple of gunshots?

3 A Yes, sir.

4 Q And this individual with this gun, did -- you saw this
5 person shoot into a truck?

6 A I saw him shoot at the truck.

7 Q And what kind of truck was it?

8 A I'm not sure. I want to say a GMC. And it was dark
9 because there's no lights over in that field.

10 Q Was it a big truck or a little truck?

11 A I'd say big.

12 Q And after this individual shot into the truck, were you
13 completely watching it or at this time you were turned
14 around and getting out of the way?

15 A At this point, I was watching it because I -- when he
16 ran across me, shots were fired. I looked directly into
17 that field and when he shot again, the truck was pulling
18 off.

19 Q And do you know if he hit this truck at all?

20 A I'm not sure if he hit it but from how he was aiming
21 directly at it, he had to hit something.

22 Q And you say this individual was about five six?

23 A Yes, sir.

24 Q Was it a black guy or a white guy?

25 A It was a black male.

1 Q And did you see this black male actually get out of this
2 van?

3 A Yes, sir, I did.

4 Q With the gun?

5 A Well, he came from the van with the gun.

6 Q He came from the direction of the van?

7 A Yes. Of the van.

8 Q But you didn't actually see him jump out of it?

9 A I didn't actually see him jump out, because when I came
10 out the door, that's when he was coming from the
11 direction of the van and running across the field
12 shooting.

13 Q Had you seen this van before?

14 A No.

15 Q And after the shots took place, what did you do?

16 A As the shots took place, I was still at the doorway. At
17 that moment, I was looking for my mom. The shots was
18 fired. I was looking for my mom. I was looking for my
19 family members to make sure they were okay.

20 Q Did it surprise you that gunshots were being fired?

21 A Yes.

22 Q Did it scare you?

23 A Yes.

24 MR. CAMPBELL: I have no further questions.

25 THE COURT: Redirect?

REDIRECT EXAMINATION OF NALSHIA MARTIN BY MR. MCELHANNON 363

REDIRECT EXAMINATION

BY MR. MCELHANNON:

Q Ms. Martin, you say you saw him come from that van with the gun, but you did see him get back in that van and the van drove off?

A Yes, sir.

MR. MCELHANNON: No further questions, Your Honor.

THE COURT: May this witness be excused, Mr. McElhannon?

MR. MCELHANNON: Yes, Your Honor.

THE COURT: Okay. Thank you, ma'am. You may be excused.

MS. MARTIN: Thank you.

THE COURT: Call your next witness, please, sir?

MR. MCELHANNON: The Defense calls Charles Edwards, Your Honor.

(After being duly sworn by the Clerk of Court,

CHARLES EDWARDS testified as follows:

CLERK OF COURT: If you would take the witness stand state your name and spell your last name for the record, please.

MR. EDWARDS: My name is Charles Edwards, E-D-W-A-R-D-S.

DIRECT EXAMINATION

BY MR. MCELHANNON:

Q Mr. Edwards, how old are you?

A Nineteen.

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 364

1 Q Back on March 25th, 2012, how old were you then?

2 A Seventeen.

3 Q Seventeen. Were you present at a party at the Shrine
4 Club in Honea Path on that date?

5 A Yes, sir.

6 Q How did you get to the party?

7 A My best friend, Cody.

8 Q Pardon?

9 A Cody, my best friend.

10 Q What's his real name?

11 A Tyshon.

12 Q Do you know his last name?

13 A Suber.

14 Q Suber? Okay. Who came to the party with y'all?

15 A It was just me and him.

16 Q And what did y'all drive?

17 A A gray Nissan, dark gray.

18 Q So, you were at the party inside?

19 A Yes, sir.

20 Q And were you in there when the fight broke out?

21 A Yes, sir.

22 Q Can you tell what happened? How did the fight start
23 inside, first?

24 A They, some of the boys got into it and they began to
25 fight.

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 365

- 1 Q And who was fighting?
- 2 A LaJames, Mikel, a lot of people.
- 3 Q Okay. And who were they fighting?
- 4 A Some Greenville boys and some more people.
- 5 Q Greenville or Greenwood?
- 6 A Greenwood.
- 7 Q Greenwood. Did you see Devon Thomas?
- 8 A Yes, sir.
- 9 Q And what was going on with him inside?
- 10 A He was getting jumped on.
- 11 Q By how many people?
- 12 A Two dudes.
- 13 Q You saw two of them on him?
- 14 A Yes, sir.
- 15 Q And what did you do?
- 16 A Me and Chris Roebuck ran over there to help him.
- 17 Q To help Devon out?
- 18 A Yes, sir.
- 19 Q Well, what did he do after you helped him out? Tell me
- 20 what was he up, standing up or laying down?
- 21 A He was down.
- 22 Q He was on the ground?
- 23 A Yes, sir.
- 24 Q What did y'all do, you and Chris Roebuck?
- 25 A We helped him out and then got him up.

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 366

- 1 Q And then what did y'all do?
- 2 A Went outside.
- 3 Q And when you ran outside did everybody run outside at
- 4 this point?
- 5 A Yes, sir.
- 6 Q Basically everybody that was inside ran outside?
- 7 A Yes, sir.
- 8 Q And when you ran outside what did you see?
- 9 A LaJames shooting a gun into the crowd.
- 10 Q LaJames Glass?
- 11 A Yes, sir.
- 12 Q You saw him with a gun?
- 13 A Yes, sir.
- 14 Q Did you do anything as far as with, was Kool-aid LaJames
- 15 Glass?
- 16 A Trying to stop him from shooting.
- 17 Q Okay. And did you stop him?
- 18 A No, sir.
- 19 Q Where was he shooting at?
- 20 A Into the crowd.
- 21 Q Did you see a truck that night, a small truck?
- 22 A No, sir.
- 23 Q You didn't see a small truck? Was Devon there that
- 24 night outside then?
- 25 A Yes, sir, he was beside me.

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 367

1 Q He was beside you? What was he doing?

2 A He had stopped LaJames from shooting.

3 Q He was trying to stop him from shooting, too?

4 A Yeah, he stopped him.

5 Q He did stop him?

6 A Yes, sir.

7 Q Now, when did you find out that Ms. Smith had been shot
8 in the leg?

9 A Later on that night.

10 Q All right. How long after it happened?

11 A About an hour or so.

12 Q Okay. And did you know Ms. Smith, Anquavious Smith?

13 A No, sir.

14 Q You didn't know her until that night?

15 A Yes, sir.

16 Q Did you talk to her at all that night?

17 A No, sir. I messaged her on Facebook. I told her I was
18 sorry about the shooting.

19 Q Let me show you what's been marked already as State's
20 Exhibit #24. Can you identify this?

21 A Yes, sir.

22 Q What is that?

23 A A message about the shooting.

24 Q That you sent to who?

25 A Anquavious Smith.

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 368

1 Q Is that off of your of your Facebook page?

2 A Yes, sir.

3 Q And you sent it to her phone or do you know how you sent
4 it?

5 A Through a message on Facebook.

6 Q Through a message on Facebook, okay. Can you read that?

7 A What's up? I'm sorry my cousin and them got like that.

8 I tried to stop him from shooting. I hope you will be
9 okay.

10 Q Okay. Let me ask you something, Charles. You said, I'm
11 sorry my cousin and them got like that. Who did you
12 mean by cousin?

13 A LaJames.

14 Q LaJames Glass?

15 A Yes, sir.

16 Q And why -- is he actually related to you?

17 A No, sir. I see him like my cousin like I see Devon as
18 my big brother.

19 Q So, you see Devon as your big brother, but LaJames is
20 like a cousin?

21 A Yes, sir.

22 Q Are y'all related at all, really?

23 A No, sir.

24 Q You're not really related to LaJames Glass or Devon
25 Thomas, are you?

DIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 369

1 A No, sir.

2 Q And when you said on this text message, I tried to stop
3 him from shooting, who did you mean by "stop him?"

4 A LaJames.

5 Q LaJames Glass?

6 A Yes, sir.

7 Q What did you do after the shooting? Where did you text
8 this from?

9 A My phone.

10 Q I mean, where were you at the time, you remember?

11 A Probably -- I was at Tyshon's house.

12 Q Suber?

13 A Yes, sir.

14 Q The guy you came with?

15 A Yes, sir.

16 Q Okay. Did you have any more conversation or anymore
17 texting with Ms. Smith after this?

18 A No, sir.

19 Q Did she text you back at all?

20 A No, sir.

21 Q Did you ever see Devon Thomas shooting at a truck that
22 night?

23 A No, sir.

24 MR. MCELHANNON: I believe that's all the questions I
25 have.

1 THE COURT: Cross-examination.

2 CROSS EXAMINATION

3 BY MR. CAMPBELL:

4 Q Mr. Edwards, this incident, the shooting that took
5 place, occurred back on March 25th, 2012. Do you agree
6 with that?

7 A Yes, sir.

8 Q And that was twenty-three months ago, was it not?

9 A Yes, sir.

10 Q And in that time, have you said this story to anybody?

11 A No, sir.

12 Q So, today is the first day that this information that
13 LaJames Glass was the shooter, has come from you on this
14 stand?

15 A Yes, sir.

16 Q And you knew that Anquavious Smith had been hurt, shot
17 with that gun?

18 A Yeah, about an hour later. Yeah.

19 Q And didn't you think it was important that you tell the
20 police what you knew?

21 A They didn't come for me.

22 Q Say that again?

23 A They didn't come for me.

24 Q They didn't come ---

25 A To ask me any questions.

CROSS EXAMINATION OF NALSHIA MARTIN BY MR. CAMPBELL 371

1 Q Well, let me ask you this. You have a phone, right?

2 A Yes, sir.

3 Q Well, at any point, did you pick up your telephone and
4 dial 9-1-1?

5 A No, sir.

6 Q At any point during that week, did you call the police
7 station, the Sheriff's office, to tell them what you
8 knew and you wanted to talk someone?

9 A No, sir.

10 Q And you're good friends with Devon Thomas. Is that
11 right?

12 A Yes, sir.

13 Q I mean, I think you testified on direct you consider him
14 a big brother, right?

15 A Yes, sir.

16 Q I mean, you consider him being kin folk?

17 A Yes, sir.

18 Q He's not directly blood related, is he?

19 A No, sir.

20 Q And LaJames Glass you say is your kin also, right?

21 A I said I see him as a cousin.

22 Q Does he claim you as a cousin?

23 A I don't know.

24 Q And you knew that the person you consider a big brother,
25 Devon Thomas, had been charged with four counts of

1 attempted murder?

2 A See, I only knew that she had got shot. I ain't know it
3 was three more people that was in the car with her or
4 not.

5 Q But nobody said anything about three more people in the
6 car.

7 A I thought you said -- oh.

8 Q Well, let me get this straight here. When did you find
9 out that the person you consider a big brother got
10 charged with shooting into that truck?

11 A Like a couple of months later.

12 Q Say that again?

13 A Like a couple of months later.

14 Q A couple of months later?

15 A About, yeah.

16 Q And at any point when -- he got arrested for this,
17 didn't he?

18 A Yes, sir.

19 Q Well, at that point in time, did you go down to try to
20 contact someone and say, "Hey, I want to talk to law
21 enforcement, you've got the wrong person."?

22 A No, sir.

23 Q You didn't make any attempt or steps to try to set the
24 record straight and say LaJames Glass was the shooter?

25 A Yes, sir.

CROSS EXAMINATION OF NALSHIA MARTIN BY MR. CAMPBELL

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1 Q What did you do?

2 A Try to stop him.

3 Q You tried to stop him. The truth is, you actually tried
4 to stop Devon from shooting. Didn't you?

5 A No. I tried to stop LaJames from shooting.

6 Q Did you see Devon that night with a gun?

7 A He took it from him and pointed it out.

8 Q Say that again?

9 A He took it from him. He stopped LaJames from shooting.

10 Q So at some point in time, Devon Thomas had a gun in his
11 hand?

12 A Yes, sir, but he didn't shoot it.

13 Q What kind of gun was it?

14 A I don't know what kind of gun it was.

15 Q But you're saying, on the stand, that he did have a gun
16 in his hand?

17 A Yes, sir, but he didn't shoot it.

18 Q That's what you're saying?

19 A Yes, sir.

20 Q But you didn't go to -- did you get business cards from
21 Detective Mills that were left at your house?

22 A He didn't leave none.

23 Q He didn't leave any?

24 A No, sir.

25 Q But at no point, you tried to go see law enforcement.

- 1 Where do you live?
- 2 A On the north side.
- 3 Q You live in Anderson?
- 4 A Yes, sir.
- 5 Q Let me ask you this. Did you contact Anderson Police
- 6 Department?
- 7 A No, sir.
- 8 Q Were you in school at the time?
- 9 A I don't think so.
- 10 Q Did you graduate?
- 11 A No, sir.
- 12 Q Were you at the alternative school?
- 13 A No, sir.
- 14 Q So, at no point you went to Anderson Police Department.
- 15 Is that right?
- 16 A No, sir.
- 17 Q And at no point did you go to the Sheriff's office. Is
- 18 that right?
- 19 A No, sir.
- 20 Q Let me ask you this. You said Devon was also in the
- 21 fight on the inside?
- 22 A Yes, sir.
- 23 Q And you witnessed him. He got jumped on.
- 24 A Yes, sir.
- 25 Q And he was fighting some dudes from Greenwood.

CROSS EXAMINATION OF NALSHIA MARTIN BY MR. CAMPBELL

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1 A Yes, sir.

2 Q It's fair to say that once you got him up, you and Chris
3 Roebuck, he was upset, wasn't he?

4 A Yes. I would be mad if I got jumped on, too.

5 Q He was mad, wasn't he?

6 A Yes, sir.

7 Q He was angry.

8 A Yes, sir.

9 Q And after that, he went outside like everybody else?

10 A Yes, sir.

11 Q Let me ask you this, you went back, you said, to
12 Tyshon's house?

13 A Yes, sir.

14 Q Was he at Tyshon's house when you got there?

15 A No, sir.

16 Q When did you see him later?

17 A I didn't see him later on after that.

18 Q When's the next time you saw him?

19 A Probably when he got out of jail.

20 Q Well, let me ask you this: So, you send a text to a girl
21 you don't even know?

22 A I didn't know she was the one that got hit with the
23 bullet.

24 Q And you just happened to hear within an hour she got
25 hit?

REDIRECT EXAMINATION OF CHARLES EDWARDS BY MR. MCELHANNON 376

1 A Yes, sir.

2 Q And so you sent a message to her at 3:58 in the morning?

3 A Yes, sir.

4 Q How did you get this girl's number or Facebook page?

5 A I'm a friend on Facebook.

6 Q You're a friend of hers on Facebook?

7 A Yes, sir.

8 Q And she doesn't even know you, does she?

9 A No, sir. I agree.

10 Q The truth is, when you said, "I'm sorry, my cousin them
11 got like that. I tried to stop him from shooting,"

12 you're actually referring to Devon Thomas.

13 A No, I'm actually referring about LaJames Glass.

14 Q But you took no steps to try to bring LaJames Glass to
15 justice, did you?

16 MR. MCELHANNON: Asked and answered, Your Honor.

17 THE COURT: Sustained.

18 MR. CAMPBELL: I have no further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. MCELHANNON:

22 Q Mr. Edwards, you say no police ever came to your home to
23 ask you any questions?

24 A Yes, sir.

25 MR. MCELHANNON: That's all the questions I have, Your

1 Honor.

2 THE COURT: Any reason why this witness can't be
3 excused?

4 MR. MCELHANNON: No, Your Honor.

5 THE COURT: All right. Thank you, sir. You may be
6 excused.

7 Call your next witness, please?

8 MR. MCELHANNON: That's the Defense's case, Your Honor.

9 THE COURT: All right. Mr. Foreman, ladies and
10 gentlemen of the jury, the Defense has stated that's his
11 case. So, the State has presented its case and the Defense
12 has presented its defense. I have some more administrative
13 matters to take up. I'm going to ask you to go back to your
14 jury room, then we'll summon you back out as soon as we can.

15 (Jury out at 11:00 AM)

16 THE COURT: Any new motions from the Defense?

17 MR. MCELHANNON: No, Your Honor.

18 THE COURT: You just renew your prior motions?

19 MR. MCELHANNON: Yes, sir, we renew the prior.

20 THE COURT: All right. Does the State intend to call
21 any reply witnesses?

22 MR. CAMPBELL: No, Your Honor.

23 CHARGE CONFERENCE

24 THE COURT: What I'm going to do is have my clerk print
25 out those charges. One thing that I was thinking about last

1 night after you left my chambers was the lesser included.
2 The concern I was having was, if we look at the charge on
3 attempted murder, you look at the statutory language of
4 assault and battery of a high and aggravated nature that says
5 that it is a lesser included, but it requires an injury that
6 is credited to those other factors to determine whether or
7 not that crime has been committed and then it defines a
8 severe injury and a moderate injury, but it doesn't define
9 injury and so my concern was under the lesser included, you
10 have a victim in this matter that was actually hit and in her
11 instance, having attempted murder, ABHAN, would be first and
12 you have other victims in the car who were not hit by any
13 projectile. Anyway, I went back and looked at it and I
14 wanted to run this by you. It seems to me that because
15 injury is not defined in the statute or any of the statutory
16 sections and you go back to Webster's and you look at the
17 regular definition in Webster's as to what an injury is, it
18 would include emotional injuries and not just physical
19 injuries. Each one of the victims testified that they were
20 scared, they were frightened, they were crying, et cetera, et
21 cetera. So, it seems to me, in all instances, you would have
22 the charge of attempted murder, assault and battery high and
23 aggravated, and assault and battery first. Do you agree or
24 disagree with me?

25 MR. CAMPBELL: I agree. One of the things it comes down

1 to is, the only thing with injury is, the statute is not
2 very well written, in my opinion. But it just goes to injury
3 and moderate bodily so I do agree with what the Court has
4 said.

5 MR. MCELHANNON: I agree, Your Honor.

6 THE COURT: So, then, I was proposing with my law
7 clerk in setting this thing up on the verdict form and you
8 have the pointing and presenting, which is not a lesser
9 included. It is a free standing charge. What I first
10 thought when I was putting everything together, for each
11 victim -- I'll let you see it. She's running it out now.
12 But you have the choices being under I, attempted murder. If
13 they don't find that, they go to assault and battery of a
14 high and aggravated nature and if they don't find that, they
15 go down and consider assault and battery first. After that,
16 they must consider pointing and presenting. They do that
17 each time for each separate victim and I'll have a separate
18 sheet for each, but all stapled together. Do y'all agree
19 with that?

20 MR. CAMPBELL: I agree with that, Your Honor.

21 MR. MCELHANNON: Yes, Your Honor.

22 THE COURT: Okay. Let me hand you the proposed verdict
23 form and have you look at it, please.

24 (Both attorneys look at document)

25 For the record, guys, from page two of the charge, when

1 you go down to the second paragraph, malice may be inferred,
2 from Belcher, and the facts of this case are such that I will
3 not charge inference of a deadly weapon. So, starting with
4 the second sentence, "Inferred malice may also arise when
5 done with a deadly weapon," that will be stricken for the
6 rest of that page through the next page ending with, "even if
7 it is not operating".

8 MR. CAMPBELL: So you're crossing out from, "Inferred
9 malice may also arise," all the way down to the second
10 paragraph on the third page?

11 THE COURT: It ends with, "A gun may be a deadly weapon
12 even if it is not operating".

13 MR. CAMPBELL: So, everything above that, you are
14 crossing out?

15 THE COURT: Yes, sir. I'm looking at page four. I think
16 something needs to be stricken there, too. The sentence,
17 "The character of the instrument used," should also be
18 stricken, unless y'all disagree with that. Let's go over
19 this. Page one is good.

20 MR. CAMPBELL: Page one looks good.

21 THE COURT: Page two ---

22 MR. CAMPBELL: I've got that, stricken all the way
23 through to page three to...

24 THE COURT: The first full paragraph is stricken.

25 MR. CAMPBELL: Right.

1 THE COURT: The rest of page three stays in.

2 MR. CAMPBELL: Right.

3 THE COURT: Unless y'all tell me I'm wrong. Then I go to
4 page four, "Evidence of the character of the act," will be
5 in. "The character of the instrument used, the manner in
6 which it was used," will be out.

7 MR. CAMPBELL: All right.

8 THE COURT: Then, we go to "The purpose to be
9 accomplished".

10 MR. CAMPBELL: I did have a question on five.

11 THE COURT: Okay.

12 MR. CAMPBELL: It won't be "assault and battery with
13 intent to kill," because we don't do that anymore.

14 THE COURT: Attempted murder. Do you agree with that,
15 Scott?

16 Mr. MCELHANNON: I do.

17 THE COURT: So, we'll go back and put "attempted murder".
18 Right?

19 MR. MCELHANNON: Where is that?

20 THE COURT: On the second to the last line. "Just as if
21 the attempt had resulted in death or injury." So, we'll take
22 out "or injury".

23 MR. CAMPBELL: I don't think that matters. I think
24 "injury" can stay in there.

25 THE COURT: You think it can? I mean, it would be fine

1 with me.

2 MR. CAMPBELL: I think it can be left in.

3 THE COURT: Okay.

4 COURT REPORTER: What was that last?

5 THE COURT: I'll put it on the record.

6 COURT REPORTER: Okay. (Discussion, off the record,
7 concerning the charge)

8 THE COURT: We'll be in recess for about ten minutes.

9 (Brief Break)

10 (Jury in at 12:01 PM)

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen of the jury, as I told you at the beginning of this
13 trial, there are five phases to every case: You have opening
14 statements, you have presentation of the evidence, closing
15 arguments, the charge on the law, and then your
16 deliberations. We have completed the presentation of the
17 evidence phase with the attorneys. We are going to change
18 things around a little bit. I'm going to charge you on the
19 law now. We'll take a brief break and the attorneys will
20 come back and do their closing arguments and then we'll go
21 over a few matters. I'll come down, Mr. Foreman, and go over
22 the verdict form with you and then we'll send word back, with
23 the exhibits, that you are to begin your deliberations.
24 Okay? For each of you, while you're sitting there, so your
25 mind doesn't wander, the clerk has ordered lunch for you so

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

1 it should be available for you when you begin your
2 deliberations or shortly thereafter. Let me say this in
3 advance: Some of this will be read to you, because the
4 elements are very important and I'm not articulate enough to
5 just give them to you without reading them to you. I
6 apologize in advance.

7 CHARGE ON THE LAW

8 Now, ladies and gentlemen, you've heard the evidence in
9 this case. In just a minute, you will hear the arguments of
10 the attorneys. It's my job to instruct you on the law.

11 (Juror indicates) Is that better? (Affirmative response).

12 It's my job to instruct you on the law. My instructions
13 will be in three segments. So, the first segment will be the
14 general rules that define and control your duties as jurors.
15 Then, the second segment will be the substantive law which
16 you must apply in this case, i.e., what the State must make
17 out in order to prove its charge or charges against this
18 Defendant and then third, some considerations for your
19 deliberations.

20 Now, as I told you at the beginning of this case, it is
21 your duty to determine what the facts are from the evidence
22 that you've heard in this case. To those facts you must
23 apply the law as I give it to you. You are required to
24 follow the law as I charge it to you now. You shall not be
25 concerned with what you'd like the law to be or what you wish

1 it was like, but what it is and you must not be influenced by
2 any personal likes or dislikes, opinions, prejudice or undue
3 sympathy that you may have for one side or the other in this
4 case. What that simply means, ladies and gentlemen, is that
5 you decide this case solely on the evidence that's been
6 presented to you and according to the law as I give it to you
7 now. If you will recall at the beginning of this case, you,
8 in your oath, said that you'd do just that.

9 Now, in following these instructions, it is important
10 that you follow all of them, including the substantive law
11 and the other aspects of this charge. You can't single out
12 certain things in my charge that you like and apply those and
13 disregard the others. They're all equally important. And,
14 again, you must not read into my instructions now, or
15 anything that I might have done during the course of this
16 trial, how you are to find the facts, any suggestion. Our
17 Constitution of South Carolina does not allow Circuit Court
18 Judges to have an opinion or make a comment on the facts and
19 I have not made one to my knowledge and if I have done
20 anything to make you think I have, I'm going to ask you and
21 instruct you to disregard that, because you, and you alone,
22 are the judges of the facts in this case, i.e., what verdict
23 that you intend to bring back, and you decide what the facts
24 are by evaluating and weighing the evidence that was
25 presented during this case.

1 There's no way for me to give you a set of scales for
2 you to weigh the evidence in the literal sense. It is a
3 mental process and you are to use and evaluate the evidence
4 by using your good commonsense and sound judgment that you
5 brought with you when you became jurors in this case.

6 Now, the evidence that you are to decide in this case is
7 this: It is the sworn testimony from witnesses, either on
8 direct examination or cross-examination, regardless of who
9 might have called that witness. Also, any evidence that has
10 been received into evidence in this case -- excuse me. Any
11 exhibits that might have been received into evidence, is
12 evidence for you to consider. There are certain things,
13 however, that may not be considered by you as evidence.
14 First, the arguments that the attorneys have made so far,
15 their statements during this case, and their closing
16 statements to you in just a minute, is helpful, but it is not
17 evidence. They have not been sworn. They have not been put
18 through direct or cross examination and, therefore, what they
19 tell you is helpful, but it is not evidence. Therefore, when
20 you begin your deliberations in just a few, if you remember
21 facts differently than is told to you by either or both of
22 these attorneys, then your memory will control. Also, I
23 remind you that just because something may appear in a
24 juror's notes during this trial versus a juror's collective
25 memory, the notes do not trump. Mr. Foreman, that's what

1 deliberations are for and it will be necessary for the jury
2 to hash those differences out to come to a finding of fact.

3 Also, I told you that in each case there will be
4 objections and questions by the attorneys. In any case,
5 there are always objections. That is simply the process that
6 goes on in any trial. A lawyer has an ethical duty to object
7 anytime he or she feels like the process is not properly
8 being followed. Mr. Foreman, ladies and gentlemen of the
9 jury, you may not and you shall not consider the fact that an
10 objection was made during this case during your deliberations
11 and you may not consider and discuss my rulings on those
12 objections. Mr. Foreman, if any of your jurors attempt to do
13 so, it will be your job to make sure that does not happen.
14 I'll just put to you that that's simply the process that goes
15 on in any given trial.

16 Also, ladies and gentlemen, any testimony or evidence
17 that I have stricken from the record may not and shall not be
18 considered by you in your deliberations as being evidence.
19 Finally, anything that you may have seen or heard while court
20 was not in session, whether it be lunch or during breaks or
21 overnight, shall not and may not be considered by you as
22 evidence.

23 Now, there are two types of evidence which are generally
24 presented during trial. You have direct evidence and you
25 have circumstantial evidence. Direct evidence directly

1 proves the existence of a fact and does not require
2 deduction. For example, if I testify that, as a person on
3 the street corner I saw a car run a red light, that would be
4 direct evidence of the issue of whether or not the red light
5 was run. That is direct evidence. Also, we recognize
6 circumstantial evidence. Circumstantial evidence is proof of
7 a chain of facts and circumstances indicating the existence
8 of a fact. Let me give you an example. If each of you went
9 to bed at night and there was a fresh or virgin sheet of snow
10 in your front yard, if you were to wake up in the morning and
11 see that there were tracks through that snow, you may
12 reasonably infer that someone or something walked through
13 your yard during the night, although you did not actually see
14 that person or thing walk through the yard. That is
15 circumstantial evidence.

16 Now, crimes may be proved by circumstantial evidence,
17 just like they may be by direct evidence. The law makes
18 absolutely no distinction between the weight or value to be
19 given either direct evidence or circumstantial evidence.
20 However, to the extent the State relies on circumstantial
21 evidence, all of the circumstances must be consistent with
22 each other and when taken together, point conclusively to the
23 guilt of the accused beyond a reasonable doubt. If these
24 circumstances merely portray the Defendant's behavior as
25 suspicious, the proof has failed.

1 The State has the burden of proving the Defendant guilty
2 beyond a reasonable doubt. This burden rests with the State
3 regardless of whether the state relies on direct evidence,
4 circumstantial evidence or a combination of the two.

5 Ladies and gentlemen, in deciding what the facts of this
6 case are, it will be necessary for you to determine the
7 credibility of the witnesses. In doing this, you must decide
8 which testimony you want to believe and which testimony you
9 wish not to believe. You, as the jury, have a right to
10 disbelieve all or part of any witness' testimony. You may
11 believe all of the witness' testimony. In making this
12 decision you, they jury, have a right to take into
13 consideration a number of factors, but you do not have to
14 take into consideration all of these factors. These are just
15 helpful things for you to consider. You may ask yourself,
16 ladies and gentlemen, was the witness able to see or hear the
17 things about which the witness testified. You may ask
18 yourself how well was the witness able to recall and describe
19 the things about which they testified, what was the witnesses
20 manner while they were testifying. In other words, what was
21 their demeanor while they're on the stand. You may ask
22 yourself whether there's some reason the witness would want
23 to help or give testimony that would help or hurt one side or
24 the other. Did they have interests in the outcome of the
25 case, any bias or prejudice concerning any issue in the case

1 or any party in the case. You can consider just how
2 reasonable the witnesses testimony was in light of all the
3 evidence in this case and whether the witness' testimony was
4 contradicted by what that witness had said or done at another
5 time or by the testimony of other witnesses or other evidence
6 in this case. Now, ladies and gentlemen, those are some, but
7 certainly not all the factors that you may consider in making
8 this determination of witness credibility. And, of course,
9 as jurors, you do not check your common sense when you're
10 sworn in as jurors and you should use those things that, in
11 your day-to-day lives you find indicative of truthfulness or
12 indicative of lack of truthfulness when you make this
13 determination of credibility of the witnesses.

14 In deciding this issue of credibility, or believability,
15 again, you can believe as much or as little of any witness'
16 testimony as you wish. You can believe one over many or many
17 over one, but one thing that you may not do is add up the
18 number of witnesses who may have appeared for one side or the
19 other in making this decision, because to you, it does not
20 matter where the truth comes from, from a witness for the
21 State, witness for the Defense or a combination. Your sole
22 truth is to try to find the truth from the evidence presented
23 during this trial.

24 Now, in this case, there are four indictments. I want
25 to remind you that the fact that the Defendant was arrested,

1 charged and indicted is not evidence of his guilt nor does it
2 raise a presumption of his guilt. These indictments are
3 simply the documents that the State uses to bring a
4 defendant, such as this Defendant, before a jury such as
5 yourselves, for a trial and a determination of their guilt or
6 innocence.

7 Also, each indictment stands alone. And I will go over
8 that more fully with you, Mr. Foreman, when I go over the
9 verdict form, but you must consider each indictment
10 independently of each other and you must do so uninfluenced
11 by your decision as to the other indictments. What that
12 simply means is, the Defendant can be convicted on an
13 indictment and acquitted of the others or acquitted of all
14 indictments or convicted of all indictments, but they are
15 separately to be considered by you, the jury, unaffected by
16 your decision as to the other indictments.

17 In this case, the Defendant has pled not guilty to all
18 four indictments. A person charged with committing a
19 criminal offense in South Carolina, ladies and gentlemen, is
20 never required to prove himself innocent. Therefore, the
21 burden is upon the State of South Carolina to prove his guilt
22 by proof beyond a reasonable doubt. And I charge you that is
23 an important rule of law, that a defendant in a criminal
24 trial, no matter how serious or not serious the crime may be,
25 will always be presumed to be innocent of the crime or crimes

1 for which he has been indicted, unless guilt has been proven
2 by evidence satisfying you of that guilt beyond a reasonable
3 doubt. This presumption of innocence does not end when you
4 begin your deliberations, but it accompanies the Defendant
5 throughout this trial until you, the jury, unanimously find
6 the verdict of guilt, based on the evidence satisfying you of
7 guilt beyond a reasonable doubt.

8 Now, it's been said that the presumption of innocence is
9 like a robe righteousness which stays upon the Defendant's
10 shoulders until it has been stripped from his shoulders by
11 evidence satisfying you of his guilt beyond a reasonable
12 doubt. Ladies and gentlemen, the presumption of innocence is
13 not just a mere legal theory. It's not just a legal phrase.
14 It is a substantial right to which every defendant is
15 entitled unless you, the jury, are satisfied from the
16 evidence of his guilt, beyond a reasonable doubt.

17 Now, this is the definition of reasonable doubt. A
18 reasonable doubt is the kind of doubt that would cause a
19 reasonable, sincere, honest and conscientious person to
20 hesitate to act in an important matter in their own affairs.
21 Proof beyond a reasonable doubt is proof that leaves you
22 firmly convinced of the Defendant's guilt. Now, there are
23 very few things in this world that we know with absolute
24 certainty and in criminal cases, the law does not require
25 proof that overcomes every possible doubt. If, based on your

1 consideration of the evidence, you are firmly convinced that
2 the Defendant is guilty of the crime or crimes for which he
3 has been charged, you must find the Defendant guilty. On the
4 other hand, if you think there is a real possibility that the
5 Defendant is not guilty, you must give the Defendant the
6 benefit of the doubt and find him not guilty. A reasonable
7 doubt may arise from the evidence or from lack of evidence.
8 And I further instruct you that a Defendant is entitled to
9 every reasonable doubt that may arise in a case. Now, what
10 that means is simply this. If, upon any issue of fact
11 essential to a conviction and a verdict of guilty of an
12 offense for which the Defendant has been charged, if you have
13 any reasonable doubt as to how that issue should be resolved,
14 it is your duty to resolve that doubt in favor of the
15 Defendant.

16 Now, in order to establish criminal liability, criminal
17 intent is required to be established. For example, the
18 mental state required to be proven by the State for a
19 particular crime might be purpose, intent, knowledge,
20 recklessness or criminal negligence. Criminal intent must be
21 proven by the State beyond a reasonable doubt. Criminal
22 intent is always a matter that must be determined by the jury
23 based on the circumstances surrounding the situation. Now,
24 there's no way to prove intent to a mathematical certainty.
25 There's no way that medical science can dissect a person's

1 brain and determine what that person had in mind. So, the
2 law says that criminal intent may be inferred from the
3 circumstances shown to have existed and this is how you make
4 the determination of whether or not the element requiring
5 intent was present. It is not necessary to establish intent
6 by direct and positive evidence, but intent may be
7 established by inference in the same way as any other fact,
8 by taking into consideration the acts of the parties and all
9 the facts and circumstances of the case. Criminal intent is
10 a mental state, a conscious wrongdoing. It is up to you, the
11 jury, to determine what the Defendant intended to do based on
12 the circumstances show to have existed. Criminal intent can
13 arise from action or a failure to act. It may arise from
14 negligence, recklessness, or an indifference to duty or to
15 consequences that is considered by the law to be equivalent
16 of criminal intent.

17 Now, ladies and gentlemen of the jury, I also instruct
18 you and emphasize that the fact that the Defendant did not
19 testify is not and shall not be a factor to be considered by
20 you in any way in your deliberations and Mr. Foreperson, if
21 anyone persists in trying to discuss the fact the Defendant
22 did not testify, it will be your job to make sure that is not
23 done.

24 Also, this is the law of identification, which is at
25 issue in this case. An issue in this case is the

1 identification of the Defendant as the person who committed
2 the crime charged. The State has the burden of proving
3 identity beyond a reasonable doubt. You must be satisfied,
4 beyond a reasonable doubt, of the accuracy of the
5 identification of the Defendant before you may convict the
6 Defendant. Identification testimony is an expression of
7 belief or impression by a witness. You must determine the
8 accuracy of that identification of the Defendant. You must
9 consider the believability of each identification witness in
10 the same way as any other witness. You may consider whether
11 the witness had adequate opportunity to observe the offender
12 at the time of the offense. This will be affected by things
13 like: how long or short of a time was available, how far or
14 close the witness was, the lighting conditions and whether
15 the witness had the chance to see or know the person in the
16 past. It is not essential that the witness himself or herself
17 be free from doubt as to the correctness of his or her
18 statement. Once again, I instruct you the burden of proof
19 for the State extends to every element of the crime charged
20 and this specifically includes the burden of proving, beyond
21 a reasonable doubt, the identity of the Defendant as the
22 person who committed the crime. If, after examining the
23 testimony, you have a reasonable doubt as to the accuracy of
24 the identification, you must find the Defendant not guilty.

25 Mr. Foreman, ladies and gentlemen of the jury, that is

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1 the first aspect of my charge that has to do with the rules
2 that define and control your duties as jurors and it is the
3 longest aspect. I probably have another ten or fifteen
4 minutes to charge you and then we'll take a break.

5 The next aspect of my charge is the substantive law of
6 this case, i.e., what the State must prove in order to make
7 out this case against this Defendant.

8 The first is the law of attempted murder as set forth in
9 our Code, §16-3-29. The Defendant is charged with attempted
10 murder. In order to prove this crime, the State must prove
11 the Defendant attempted to kill another person with malice
12 aforethought, either expressed or implied. Malice is hatred,
13 ill will, or hostility towards another person. It is the
14 intentional doing of a wrongful act without just cause or
15 excuse and with the intent to inflict an injury or under
16 circumstances that the law will infer an evil intent. Malice
17 aforethought does not require that malice exists for any
18 particular time before the act is committed, but malice must
19 exist, in and by the Defendant, just before and at the time
20 the act is committed. Therefore, there must be a combination
21 of previous evil intent and the act.

22 Malice aforethought may be expressed or inferred. These
23 terms expressed and inferred do not mean different kinds of
24 malice, but merely the manner in which malice may be shown to
25 exist. That is either by direct evidence or by inference

1 from the facts and circumstances which are proved. Expressed
2 malice is shown when a person speaks words, which express
3 hatred or ill will for another or when the person prepared
4 beforehand to do the act, which was later accomplished. For
5 example, laying in wait for a person or any other acts of
6 preparation going to show that the deed was within the
7 Defendant's mind would be expressed malice. Malice may also
8 be inferred from conduct showing a total disregard for human
9 life. If facts are proved, beyond a reasonable doubt,
10 sufficient to raise the inference of malice to your
11 satisfaction, this inference would simply be an evidentiary
12 fact to be considered by you, the jury, along with the other
13 evidence in this case and you may give it the weight you
14 decide it should receive.

15 A specific intent to kill is not an element of attempted
16 murder, but there must be a general intent to commit serious
17 bodily injury. Intent means intending the result which
18 actually occurs, not accidentally or involuntarily. Intent
19 may be shown by acts and conduct of the Defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent. Evidence of the character of the act, the
22 purpose to be accomplished, and the resulting wounds or
23 injuries, may be considered in determining the intent with
24 which the act was committed. Intent may also be inferred
25 when it is demonstrated that the Defendant voluntarily and

1 willfully commits an act, the natural tendency which is to
2 destroy the life of another.

3 Ladies and gentlemen, if the Defendant, with malice
4 aforethought, attempts to kill another person, but by mistake
5 injures or kills a different person, the Defendant still has
6 the intent to kill. The intent to kill is merely transferred
7 from the original person the Defendant attempted to kill to
8 the actual person killed or injured. The Defendant would be
9 guilty of attempted murder just as if the attempt had
10 resulted in death or injury of the person the Defendant
11 attempted to kill. Ladies and gentlemen, that is the law of
12 attempted murder.

13 The following two charges will be on lesser included
14 charges and I'll tell you more about that, Mr. Foreman. The
15 first lesser included charge would be assault and battery of
16 a high and aggravated nature, which is located in our Code
17 §16-3-600(b). A person commits the offense of assault and
18 battery of a high and aggravated nature if the person
19 unlawfully injures another and great bodily injury to another
20 person results or the act is accomplished by means likely to
21 produce death or great bodily injury. Great bodily injury
22 means bodily injury which causes a substantial risk of death
23 or which causes serious permanent disfigurement or protracted
24 loss or impairment of the function of the bodily member or
25 organ. Therefore, ladies and gentlemen, in order to prove

1 the charge, the lesser included charge of assault and battery
2 of a high and aggravated nature, the State must prove, beyond
3 a reasonable doubt, that the Defendant unlawfully injured
4 another and great bodily injury occurred to another person or
5 the act was accomplished by means likely to produce death or
6 great bodily injury.

7 The next lesser included charge would be assault and
8 battery first degree. A person may commit the offense of
9 assault and battery in the first degree if the person
10 unlawfully offers or attempts to injure another person with
11 the present ability to do so and the act either is
12 accomplished by means likely to produce death or great bodily
13 injury. Let me do that again, because I need to correct that
14 counsel. A person may commit the offense of assault and
15 battery in the first degree if a person unlawfully offers or
16 attempts to injure another person with the present ability to
17 do so and the act is accomplished by means likely to produce
18 death or great bodily injury. Great bodily injury means
19 bodily injury, which causes a substantial risk of death or
20 which causes serious permanent disfigurement or protracted
21 loss or impairment of the function of a bodily member or
22 organ.

23 Therefore, ladies and gentlemen, in order to prove the
24 charge of assault and battery in the first degree, the State
25 must prove, beyond a reasonable doubt, that the Defendant

1 offered or attempted to injure another person with the
2 present ability to do so and the State must prove, beyond a
3 reasonable doubt, that Defendant's act was accomplished by
4 means likely to produce death or great bodily injury.

5 Ladies and gentlemen, by lesser included, if you cannot
6 find the person guilty of all the charges -- and I will tell
7 you about this more, Mr. Foreman, in just a minute -- you
8 first consider the charge of attempted murder. Depending on
9 your finding of that, you may next consider the lesser
10 included of assault and battery of a high and aggravated. If
11 you do not find the Defendant guilty of attempted murder, if
12 you do not find the Defendant guilty of assault and battery
13 of a high and aggravated nature, you may consider the charge
14 of assault and battery first. However, the Defendant may not
15 be found guilty to all three charges. I'll tell you more of
16 that in just a minute.

17 Also, the Defendant is charged with pointing and
18 presenting a firearm. The Defendant is charged with pointing
19 and presenting a firearm. In order to prove their case, the
20 State must prove, beyond a reasonable doubt, that the
21 Defendant presented or pointed at another person a loaded or
22 unloaded firearm. Those are the substantive charges in this
23 case, which leads me up to my final few points about your
24 deliberations.

25 Ladies and gentlemen, you don't serve as jurors to be

1 partisans or advocates for one side or the other. You were
2 chosen because both sides believed that you could be fair and
3 impartial and base your decision solely on the evidence and
4 in accordance with the law as I give it to you. That means
5 at the beginning of deliberations you are to use your
6 experiences in life, your good commonsense and your sense of
7 logic and good judgment in making your determination of what
8 the facts in this case will be. Deliberation is defined as
9 this, it is a careful consideration weighing up with a view
10 to a decision. Now, regardless of what you may think about
11 the criminal justice system, I would submit to you that the
12 genius of our jury system is that it allows twelve men and
13 women, just like yourselves who come from different
14 backgrounds, who have different life experiences and
15 perspectives, to listen to the testimony, to listen to the
16 evidence, to listen to the law that you must apply, to talk
17 about that evidence and to ultimately reach a verdict in this
18 case. They're called deliberations for a reason. You are to
19 consider all of the evidence very carefully and deliberately
20 and discuss it in a calm, thorough, and courteous manner.
21 Now, you're not partisans, again. You're judges of the facts
22 and your sole interest in this case is to try to find the
23 truth from the evidence that you've heard in this trial. I'm
24 going to ask you, and also instruct you, to listen to your
25 fellow jurors, discuss their points and their points of view,

1 walk through and discuss all of the evidence very carefully
2 and if you're doing something deliberately, you should not be
3 in a big hurry and you should not be in one today. I will
4 tell you that this is the State and the Defendant's only day
5 in court.

6 Now, in order for your verdict to stand, it would
7 necessarily have to be unanimous. In other words, all twelve
8 jurors will have to agree to the verdict or verdicts. On
9 that being said, each of you must decide this case yourself,
10 but you should only do so after you have impartially
11 considered all of the evidence and discussed it fully with
12 your fellow jurors and listened to their points and their
13 points of view. Don't be afraid to change your opinion as to
14 what the facts are if the discussion persuades you that is
15 the thing to do, but do not come to a decision simply because
16 your other jurors think it's the right thing to do. And,
17 again, it's important for you to attempt to reach a unanimous
18 verdict, but you can only do after you have made your own
19 decision. Do not change a honest belief about the weight and
20 the effect of the evidence simply to reach a verdict, in
21 other words, simply to appease your fellow jurors.

22 Now, Mr. Foreman, if at any time after you begin you
23 deliberations the jury has a question, I'm going to ask that
24 you follow the same process that you used at the beginning of
25 this trial: write your question down, sign it, knock on the

1 door and give it to the bailiff, and I will receive it here
2 in open court with the parties here and we will respond
3 accordingly. But one thing that I do not want you to do is
4 at any time tell me where the jury stands numerically or
5 otherwise about its verdict. Okay, sir? In just a minute
6 I'm going to let the attorneys do their closing argument, but
7 before I do that, I'm going to ask that you go back to your
8 jury room, take a quick moment, and then we'll bring you back
9 in for that.

10 (Jury out at 12:33 PM)

11 THE COURT: Any additions or exceptions from the State?

12 MR. CAMPBELL: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. MCELHANNON: No, Your Honor.

15 THE COURT: Okay. Y'all want to take a couple of
16 minutes get ready? All right. Five minutes?

17 MR. CAMPBELL: Five.

18 MR. MCELHANNON: Five will be fine.

19 THE COURT: Five. We'll be in recess for five minutes.

20 (Brief Break)

21 THE COURT: These indictments are right here if anybody
22 wants to use them. Do we have a bailiff for the back door?

23 CLERK OF COURT: She's back with the jury.

24 THE COURT: Okay. Let's just make sure she knows not to
25 let anybody in or out of the courtroom during closings. The

1 same for this side, too.

2 BAILIFF: I'll let her know, Your Honor.

3 THE COURT: Okay. All right. Is the State ready?

4 MR. CAMPBELL: Yes, Your Honor.

5 THE COURT: I guess since y'all agreed that you would go
6 first, are you ready?

7 MR. MCELHANNON: Yes, sir.

8 THE COURT: Very good. Would you bring the jury in?

9 (Jury in at 12:41 PM)

10 THE COURT: Is the Defense ready to proceed?

11 MR. MCELHANNON: Yes, Your Honor.

12 THE COURT: Is the State ready to proceed?

13 MR. CAMPBELL: Yes, Your Honor.

14 THE COURT: Mr. McElhannon.

15 MR. MCELHANNON: Thank you, Your Honor. May it please
16 the Court.

17 THE COURT: Yes, sir.

18 CLOSING ARGUMENT BY MR. MCELHANNON:

19 Ladies and gentlemen, I'm going to apologize. I have a
20 cough drop in my mouth just so that I can get through this
21 without coughing and I hope you can understand me, hopefully.

22 I told y'all on Monday that this was a case of whodunit.
23 I don't think anything's changed from Monday to today. This
24 is still a case of whodunit. What you have to remember here,
25 as I was trying to bring out through Detective Mills, is who

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1 had the most to gain or lose by lying in this case. I'm
2 going to submit to you it was LaJames Glass, Kool-aid.
3 Already on probation, not supposed to be around guns, not
4 supposed to have guns, but yet he testified, under oath, that
5 that gun was his. He brought it in that blue van. I'll
6 submit to you he's the one who got it out of the van and I
7 would submit to you, also, that he's the one who fired the
8 shot that went into that truck. He knew everything about
9 that gun. He knew it was a .45. He knew it was loaded. He
10 knew about the clip. He knew everything about it.

11 He also, LaJames Glass, lied about what -- where the gun
12 came from. He says that he saw Devon Thomas go to a white
13 car, retrieve the gun, come back down there and start
14 shooting. That's his testimony. Although yesterday on the
15 stand he denied saying that, but that was brought out today
16 in that transcript of his statement to Detective Mills. He
17 said it came from a white Camry. So, LaJames Glass has lied
18 throughout this case. He's lied to law enforcement.

19 I know they say Devon Thomas has lied to law
20 enforcement. He didn't lie. He wasn't totally honest at the
21 beginning. He started finding out that people were throwing
22 his name around. And you've got to remember, we live in,
23 even two years ago, and I hate to say this, I'm old
24 fashioned, but we live in an age of social media. Once
25 somebody's name gets out there, be it on Facebook or in a

1 text or whatever, it goes to who knows how many people.

2 Devon Thomas heard his name and then it was thrown around at
3 school.

4 Now, remember all of these kids that were at this party,
5 I think the majority of them were at BHP or, you know, middle
6 school or high school and when I was in high school, if
7 something happened on the weekend, that was the talk on
8 Monday morning and that's what happened in this case. Devon
9 Thomas' name got thrown out and everybody then started
10 saying, "Well, then it must have been Devon. It must have
11 been Devon." And I'm going to actually submit to you that's
12 why a lot of these statements, the majority of them, changed
13 between the time they were given, right after the incident,
14 which, in my opinion, is more reliable than waiting a little
15 while and seeing if somebody comes up with something else.--
16 The power of suggestion is a powerful thing. And once you
17 get in your mind, well, so and so said that so and so did it,
18 then you might start thinking well, maybe I'll just say that,
19 too.

20 The reasonable doubt in this case is very strong. Even
21 the State's own witnesses have the shooter wearing different
22 clothes. Charles Lindsey says the shooter had on blue jeans,
23 the driver of the truck. Well, Keyaija Smith and Nalshia
24 Martin, who you heard from today, have the shooter wearing
25 khaki shorts. That's not even close. You've got on long

1 blue jeans and you've got on khaki shorts. So, that tells
2 you right there that either there was, either somebody is not
3 being truthful or they didn't know what they saw or there was
4 more than one shooter, more than one gun and that's a very
5 real possibility. You have one shell casing on the ground.
6 Most of the people, as I heard the testimony, and I tried to
7 ask Detective Mills this and he wouldn't come across and say
8 this, but my remembrance of the testimony was the majority of
9 the people say they heard two shots and we only have one
10 shell casing.

11 There's also no real forensic evidence in this case,
12 other than what's been presented, I mean. But we don't have
13 anything that ties the projectile that actually hit Ms. Smith
14 with the shell casing that was found on the ground and you
15 don't have the weapon. So, regardless, if you tie that
16 projectile with the shell casing, you don't have a weapon to
17 say it came from this weapon. So, there's nothing tying all
18 of this together. It's just the police found, they went and
19 looked and found the shell casing and an unspent bullet, as
20 well.

21 And remember, there's been a lot made out of this light
22 pole. It was dark out there. Make no mistake about that.
23 Matthew Voigt, the detective, the officer who went out there
24 that night, his testimony was, it was very dark. So, now
25 they're trying to make it seem like this one street light lit

1 up this entire place. Nalshia Martin, on the stand today
2 also said, oh, it was dark. It was dark out there. So, I'm
3 suspicious, I guess, about what these witnesses who are so
4 clear about seeing Devon Thomas, actually saw him and if they
5 actually saw him, what they actually saw him do.

6 Now, I told you this was a rush to judgment from the
7 beginning. I still think it is. The State disputes that and
8 I understand why they do, but this case has been twenty-three
9 months in the making to get to this point today. Law
10 enforcement has an incredible amount of resources, human
11 resources, computer resources, they can get it in touch with
12 anything on anybody. Pull up driver's licenses and find out
13 where people are. That was not done in this case and, as a
14 matter of fact, there's six people who probably could have
15 told you more about this case than anybody, who were never
16 even talked to by police. And Detective Mills would want you
17 to believe that, well, people are just supposed to call or
18 come in and give them information. That's not the real
19 world. That's not how it happens.

20 Charles Edwards, today, who testified, he testified
21 about what he meant when he sent this (indicating) to Ms.
22 Smith. He's the only one who knows. To be honest, he's the
23 only one who knows who he's talking about, his cousin, and
24 also the word "him". Stop him from shooting. No one else
25 knows, other than the person who sent this text, what he

1 meant. He testified under oath today he meant LaJames Glass.
2 But the six people that could have shed light on this that
3 were not even spoken to by the police or interviewed by the
4 police is Charles Edwards, Keydarius Edwards, Cornelius
5 Jones, Mikel Blackwell, Tyrell Pulliam, and Chris Roebuck.
6 And these names were given either after the incident or right
7 shortly thereafter, because everybody was asking who was in
8 what car, the ones in the blue van that came and the ones in
9 the white Toyota Camry. And, there again, I believe that
10 they could have shed a lot of light on what actually happened
11 here, who actually did the shooting.

12 There's no dispute that the gun -- I think even Mr.
13 Glass testified that the gun came from the blue van. He
14 said, he actually testified, too, that Devon Thomas didn't
15 ride in that blue van and didn't leave in it. He didn't come
16 in there and he never went to that blue van. He was in -- as
17 a matter of fact, like I said, he states that Devon Thomas
18 went to the white Camry and got the gun. So, he never puts
19 Devon Thomas at that blue van. Now, Nalshia Martin, today,
20 testified that the shooter, she is 5'3", was a short black
21 male, 5'5" to 5'6", wearing khaki shorts, she saw him running
22 from the van with a gun. She saw him shoot once into where
23 the people were, the crowd, and she specifically said she saw
24 him shoot the second shot at a truck that was leaving. And
25 then, and this is very important, she saw him go back and get

1 in that van and leave. There's no doubt about that. She saw
2 the shooter shoot at the truck and when she was questioned,
3 "Well, did it hit the truck?" She said, "Well, the way he
4 was pointing it, it almost had to." And she actually watched
5 him go get in the van and leave. That's the shooter. And if
6 you observed, as I'm sure y'all did, you've been attentive
7 this week and Mr. Thomas and I appreciate that very much,
8 Mr. Glass, LaJames Glass, is a short black guy. He's not
9 tall. He's about 5'6". So, ladies and gentlemen, I'm
10 telling you, LaJames Glass is the one that shot into that
11 truck and then tried to pin it on Devon Thomas.

12 Now, I'm going to do this very briefly. Y'all have
13 heard this. You've heard this over and over the last two
14 days, but I just want to briefly read this. These are the
15 statements that were given immediately after or shortly after
16 the incident. Charles Lindsey, who was driving the truck,
17 heard a gunshot, did not see him shoot the gun. There again,
18 says he's wearing blue jeans. And remember now, of course,
19 their stories changed on the witness stand. You know, we
20 brought that out. Tyrane Jackson says that somebody was
21 shooting in the air, but there were no bullets. She never
22 saw Devon Thomas shoot. Josselyn Posey just states that she
23 thought Devon was running out to get his pistol and she
24 basically testified she doesn't know how, when I questioned
25 her, how do you know that's what he was going to do, she

1 couldn't answer that. She just said, "Well, that's what,
2 apparently, everyone does when they run outside, they are
3 going to get a gun. Chrislacia Slappy said in her written
4 statement, "I did not, didn't see who was doing the
5 shooting." Anquavious Smith, the victim in this case, there
6 again, her original statement that was given was that, "I do
7 not know the guy who shot me." And I know that she testified
8 yesterday, yeah, I'm sure it was Devon Thomas. On cross-
9 examination she admitted that she knew Devon Thomas before
10 this party ever started. She knew him prior to the party
11 happening. So, she knew him. If she knew it was Devon
12 Thomas that shot her, she knew right after she'd been shot
13 that it was Devon Thomas, because she could identify him.
14 She knew him by name. She said she did. Mijelica Smith, she
15 says that at least five people had guns, but she didn't see
16 who was shooting, but a whole van full of boys had guns.
17 Coretta Woody said that she had her back turned and was
18 running. She heard two shots but she did not see who was
19 shooting and at the end of her statement, again, very
20 telling, the guy that had the gun came to the party in a van.
21 Savion Richard, he says in his statement that LaJames said
22 somebody's about to get shot, went outside to a green van and
23 got a gun. Of course, when I questioned him about that
24 yesterday, he said he never said that. Now, why it's in his
25 statement signed by him, but he never said it is beyond me.

1 He did say that. To be honest, that is the only part of the
2 statement that he was truthful about, that LaJames Glass said
3 somebody's about to get shot and went outside to a green van
4 and got a gun. Then apparently he, at the end of the whole
5 thing, he said his whole statement was a lie and so, you can
6 believe whatever, from him. And then, today, Ms. Martin says
7 that she saw a tall black male, which she said was five five
8 or five six wearing khaki shorts, running to the van on the
9 lefthand side of the building. She saw him come back with a
10 black semi-automatic handgun and as he ran past he shot in
11 the direction of the wood line on the right-hand side of the
12 building at a group of people and then a second shot at a
13 truck as it was leaving. After that, everybody was leaving
14 and she saw him run back to the van and leave. And there
15 again, she says that the shooter she saw had on khaki shorts
16 and was a short black male.

17 Ladies and gentlemen, I'm going to submit to you that
18 the State has not proven, not even come close in my mind, to
19 proving this case beyond a reasonable doubt. And if you
20 cannot honestly, as the Judge has already instructed you,
21 believe that he did, that Devon Thomas did this, beyond a
22 reasonable doubt, then it is your duty to find him not
23 guilty. Somebody was injured in this. We're sorry about
24 that. Nobody needs to be shot, certainly not an innocent
25 bystander, but you must be sure that the right person is

1 being tried for this crime. I'm going to submit to you that
2 he's not.

3 When you go back in that jury room to deliberate, and
4 I've been through these before, I know it's going to be, you
5 know, a lot of time and a lot of effort on your part. We
6 appreciate that. But I believe when you come back out,
7 you're going to speak the truth and that's what the word
8 "verdict" means. Thank you very much.

9 THE COURT: Mr. Campbell.

10 MR. CAMPBELL: May it please the Court. Mr. McElhannon.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENT BY MR. CAMPBELL:

13 Ladies and gentlemen of the jury, turning sixteen is a
14 special time in most peoples' lives. It's an age in which a
15 young person is transitioning from their childhood to
16 becoming a young adult. You tend to think most people at the
17 age of sixteen have no responsibility, no worries. Their
18 whole life typically revolves around school, their family,
19 their friends, sporting events, the opposite sex. This sweet
20 sixteen birthday party that occurred beginning on March 24,
21 2012, was supposed to be a happy time, a fun time. But for
22 Anquavious Smith, that night, the early-morning hours of
23 March 25, 2012, her childhood ended. The fun ended. On that
24 day, the harsh reality of the cold cruel world came crashing
25 down by the actions of this man right here, Devon Thomas.

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1 Devon let his emotions, his anger get the best of him. He
2 let that control what he did. It clouded his judgment. He
3 took matters into his own hands in ways he should not have
4 and for that he is responsible for it. He is accountable for
5 his actions and now he's in court trying to put the blame on
6 someone else. Ms. Smith, in this entire case, from the time
7 of that party until today, she has been a completely innocent
8 victim. And what did she say on the stand when the fight
9 took place? What was her major concern? Her concern was for
10 her little sister Mijelica Smith, trying to get her out of
11 the door to get her to safety. It's what an older sibling, a
12 loving sister should do. Trying to get her out of harms way.
13 She wasn't involved in this fight. She didn't start it, she
14 didn't participate in it, but yet, she is the one who paid
15 the ultimate price for the action of this crowd of boys,
16 Greenwood boys and Homeland Park boys, and this is not a case
17 of well, boys will just be boys. It's a lot more serious
18 than that. She got caught in the middle and everyday she
19 dresses, she takes a bath, she sees those scars. Every time
20 something comes on TV, basketball, something she would like
21 to play like she used to do, she used to participate in, it
22 affects her. This has affected her mentally and physically
23 and she still carries the bullet in her.

24 And yes, there are discrepancies in this case. There
25 always is. (Drops something) Now, what did I just do? Did

1 y'all see that, what just happened? If I asked each of you
2 in here, all fourteen of you, to sit down and write a
3 statement and I asked you, first of all, what that object was
4 that I just dropped, if I asked you what color it was, this
5 side over here may have said it was a dark color. This side
6 over here may say, "Well, I saw something white." Back in
7 the back row, "Well, it looked black to me." "It looked dark
8 brown." If I asked you if I did it on purpose or was it an
9 accident, could you answer that and write it down in your
10 statement? And you know what, each of you would have a
11 different version of what just took place, from this side to
12 this side, from the front to the back, because of your angle,
13 your perspective, and how you were viewing it. So, you may
14 have been looking down and you heard a thud and you looked up
15 and you saw me pick it up. But do you know the one constant
16 in this entire scenario here? It's me. You saw me. You saw
17 me walk up to the table. You saw me standing in front of
18 you. You saw me picking it up. I am the one constant and
19 that's exactly what this case is. We're not dealing with
20 professional witnesses here, we're dealing with young
21 children from middle school, high school, early high school.
22 And, yes, to these witnesses, it was a traumatic and tragic
23 event and the Defense wants them to get every fact straight,
24 right, when they are interviewed at 4:00 to 6:00 in the
25 morning. Some of them probably still have blood on their

1 hands, on their clothing, from their sister just being shot
2 as they cradled her in their arms as they're going home, as
3 she was screaming her head off. Do you think she's worried
4 about what he was wearing or who he was at that point in
5 time? No.

6 You know, the one consistent in this case is Devon
7 Thomas. These statements may not be a hundred percent
8 accurate and I cannot expect them to be one hundred accurate.
9 I do not expect them to each mirror one another, because you
10 know what the Defense would do with that? They would flip
11 it. They would say, "Well, if they're all the same, it's
12 rehearsed, it's fabricated, they all got together and got
13 their stories straight. I want inconsistencies, because it
14 shows that that person saw from their advantage point and
15 their view point. Furthermore, Detective Mills told you he
16 went back and re-interviewed them, because a person does not
17 remember everything when an event takes place. In this case,
18 my little scenario, it's not traumatic. In the case of Ms.
19 Smith, Ms. Slappy, Mr. Lindsey, and that other Ms. Smith,
20 Mijelica Smith, you're looking at a loss of life and limb.
21 You're looking at being hurt seriously and that is kind of
22 where we are going with this. And that's why Detective Mills
23 told you, "I followed back up with audio recordings." It's
24 not just these written statements that the Defense was up
25 here showing you a while ago, reading from. They didn't take

1 into account the follow-up interviews that were recorded.
2 And in each of those, the constant in that case, is Devon
3 Thomas. Everybody says Devon Thomas. Whether he had the gun
4 before the shooting, whether he was loading this gun, whether
5 he was pointing this gun, or whether he was pulling the
6 trigger. It's always him. The only person who says it's not
7 him is Devon Thomas. The only person that pins it on LaJames
8 Glass is Devon Thomas or he gets his best friend to come in
9 here and say, "Oh, yes, it's LaJames Glass." And you heard
10 him on cross-examination, what did he say? "Oh, yeah, he did
11 have a gun." His own witness even put a gun in his hand.
12 You think about it. Who had the motive to lie? The person
13 who actually shot. Mr. Thomas didn't -- he made his
14 statement. You heard his recording when Detective Mills
15 talked to him. He spent the first thirty minutes denying
16 everything, didn't know who the boy was, never mentioned
17 LaJames Glass. In fact, in that statement he said over and
18 over and over, "I didn't have a gun, I didn't load a gun, I
19 didn't possess a gun." And now his own buddy, the one who
20 called him his big brother says, "Yeah, oh, yeah, he did have
21 a gun." Who has the motive to lie? The person who pulled
22 the trigger. And the fact that Mr. Thomas does not have a
23 record, does that mean he can't pull a trigger and harm
24 someone? Absolutely not.

25 What could be more convenient than the boy he's used to

1 hanging out with, his old homeboy here, LaJames Glass, Kool-
2 aid? "Well he's always been in trouble. Everybody will
3 believe it's him. I guarantee you he was expecting it to be
4 him. He'd already locked him up once before. (Indicating
5 Investigator Mills) And the thing is, you got to hear from
6 LaJames Glass and there's a reason why I put him on the
7 stand. You know, when cases come along, I don't get to pick
8 who I want as a victim. I don't get to choose them. I don't
9 get to choose their backgrounds, their criminal history,
10 their involvement with law enforcement. I have to take them
11 as I find them and as I get them, good, bad, or indifferent.
12 Now LaJames Glass took the stand. And why? Because you're
13 the fact finders. It's your decision to determine the guilt
14 in this case and I want you to have everything. You get to
15 listen to them. You need to hear them for yourself and you
16 need to decide whether you think he's telling the truth or
17 not. And now Devon Thomas is trying to blame LaJames Glass
18 as the one who's completely lying in this case. They want
19 you to forget that, oh yeah, he was lying also. Both of them
20 have something to gain. Yes, LaJames Glass was on probation,
21 but the fact that he was on probation at the time this
22 incident occurred is not indicative of his conduct that night
23 and the early morning hours of March 25th, 2012. And the
24 fact that he didn't have a record at the time, that's not
25 indicative of his conduct. You want me to tell you what his

1 conduct was? He was mad. I just got my butt whipped by
2 these guys from Greenwood. What's consistent here with that
3 is they all say there was some guy in an orange shirt and
4 dreadlocks. This guy ran behind the van, the truck, that the
5 victims were in. This little small red tin can of a truck.
6 Devon Thomas was mad. He was angry. His own witness said he
7 was mad and angry. He just got his butt whipped. And
8 instead of just brushing it off, he was going to take matters
9 into his own hands and he was the one who went to that van
10 and he knew that gun was there. And why does he know it's
11 there? Because he typically hangs out with LaJames Glass,
12 Cornelius, Keydarius Edwards, Tyrell Pulliam, all them boys.
13 They run together. As you heard some of the witnesses say,
14 "Well, I didn't actually see him get out of the van or in the
15 van or arrive in the van, but he's always in that van with
16 everybody else, the party van." And he'd been friends with
17 Devon Thomas for a while, or with LaJames Glass, and he knew
18 LaJames Glass had that gun and he went to get it.

19 And I don't think he meant to harm any of these kids. I
20 think he meant to do harm to that guy behind them, behind the
21 truck, the guy that ran around the truck, because they said,
22 the witnesses said, "We couldn't pull off because this guy
23 was right there." And the one consistent that they also have
24 is that he had a black shirt on. They all say that. He had
25 a black shirt. And the fact that they want you to believe

1 that they fabricated, these kids fabricated this story, in
2 fact, Detective Mills hadn't even gone to see Anquavious
3 Smith in the hospital. She didn't mention Devon Thomas' name
4 to him until three days later, but she did mention it to
5 Detective Voigt. He just didn't put it in that statement.
6 That's how that Monday when he got there, he already had that
7 name, Devon Thomas.

8 And the thing is, when Mr. Thomas, when he gave his
9 statement, you heard him, not once did he mention there was a
10 struggle with Kool-aid for a gun, that he was trying to
11 fight. Not once did he mention that Charles Edwards was
12 there. Not once did he mention Charles Edwards and claim the
13 hero part and trying to snatch the gun away. None of that
14 was there. The first time you heard it was the first time I
15 heard it, as he was sitting right there. That's called
16 fabricating a story. In twenty-three months, he hasn't said
17 a word. In twenty-three months, when he knows that his best
18 friend, his big brother, as he calls him, got locked up for
19 this, not once did he go forward and say, "Hey, you got the
20 wrong person." And I beg to differ with the Defense on the
21 version, I'm sorry my cousin, he's actually referring to
22 Devon Thomas. And if he's not, then at some point in time,
23 he and Devon Thomas are trying to make up something so when
24 he comes to court, they have a leg to stand on.

25 And the fact that these little girls, they come here and

1 they're not one hundred percent with their statements to
2 begin with. You've all been there. You've all had something
3 good or bad that has happened and then you think about it and
4 you don't remember all the details. You've all been there.
5 You wake up in the middle of the night. It hits you about a
6 week later. You're like, "Oh, yeah. That's right. This
7 part, I remember that now." People just don't remember
8 everything that happens right after it happens. You just
9 have to sit down, you have to slow down, especially something
10 very traumatic, and think about it.

11 Devon's biggest mistake in this case was doing it in
12 front of people who knew who he was. He was not even
13 invited. He's not any of these girls' best friend. He's not
14 a person they hang out with. If anybody, he's a homey with
15 these other people. But the fact is, the fact that they're
16 not best friends with them doesn't mean they don't know who
17 he is and that was his big mistake is that they all knew who
18 he was. They may not be on a first name basis, but they know
19 someone walking down the street, if he's walking down the
20 street, they can identify them. Y'all have people like that.
21 You know that. And these girls, they don't have an axe to
22 grind. There's not a mass conflict with them or any problems
23 that they're, you know, they're trying to stick it to him.
24 No.

25 Now, the difference between Mr. Thomas and Mr. Glass is

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1 this: LaJames Glass accepted responsibility for his role, his
2 actions. He said, "I handed him the bullets." And, yes,
3 like Detective Mills said, that he tried to distance himself
4 from that because, yes, he's on probation. You can't be
5 around a gun or firearms. But he did accept that
6 responsibility.

7 The thing in this case, ladies and gentlemen, is Devon
8 Thomas went and got a gun and I doubt he'd had a bunch of
9 experience with a gun because he dropped the clip out of it.
10 He got that clip and reloaded it. Some of the witnesses said
11 he was popping the bottom of that gun, racking a magazine in
12 it. The fact that he fired and a shell casing ejected out or
13 a bullet, you then have him racking it back. And as the
14 Detective said, everything's in a straight line. I first
15 find the bullet, the next one's a spent cartridge. Someone
16 yells, he's got a gun and he starts cracking rounds off.

17 And the fact that he didn't hit his intended target
18 doesn't matter, because as the Judge has talked to you about,
19 it was transfer of intent. He was trying to kill that guy
20 from Greenwood. The fact that he got the gun, loaded it,
21 pointed it and pulled the trigger is intent. It shows
22 malice. It shows malice, it shows malice aforethought, that
23 he intended to do bodily harm to that person who was behind
24 the truck. He just didn't aim right and, unfortunately, Ms.
25 Smith paid the price. He's very fortunate. At a different

1 angle, different trajectory, it wouldn't be attempted murder.
2 You can take out the attempt.

3 His actions speak louder than anything else. His
4 conduct speaks loudly. Ladies and gentlemen, your job is to
5 determine guilt. Y'all determine who did it. That's why we
6 have this court system, why you get two versions of it; we
7 say Devon Thomas did it, the Defense says LaJames Glass and
8 that's what your decision comes down to. Y'all determine
9 who's responsible, who is culpable for their actions and that
10 goes to the reasonable doubt. And as the Judge charged you,
11 it is a doubt that would cause a reasonable person to
12 hesitate to act.

13 I say this to you, if you think that we did our job and
14 we proved that he is the one who pulled that trigger of that
15 gun, you find him guilty. And I'll tell you likewise, if we
16 didn't do our job, it's your duty to find him not guilty.

17 Mr. Thomas is guilty on four counts of attempted murder.
18 The fact that he didn't hit the other three individual does
19 not matter. It's the fact that he took a weapon with total
20 disregard for anybody else's life and shot into that truck.
21 And when you go back and deliberate -- and you can look at
22 everything, talk about what the witnesses said, and you will
23 come back with a verdict that speaks the truth and justice
24 demands and that is that Devon Thomas is guilty of four
25 counts of attempted murder on Anquavious Smith, Mijelica

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1 Smith, Charles Lindsey and Chrislacia Slappy and I thank you
2 for your time.

3 VERDICT FORM EXPLANATION FOR THE JURY

4 THE COURT: Mr. Foreman, I'm going to come down and go
5 over this verdict form with you and then we will excuse you
6 in just one second.

7 MR. FOREMAN: Yes, sir.

8 THE COURT: Let me tell you this, the order of the
9 alleged victims and the order of the options is of no
10 consequence. I've got to put them in some order and so don't
11 pay that any consequence.

12 Mr. Foreman, the jury goes through the items on each
13 indictment. Consider each one separately, okay? The lesser
14 included means that the higher charge is found not guilty.
15 So, you've got attempted murder, assault and battery of a
16 high and aggravated nature, assault and battery first. Go
17 down the line. If you cannot find him guilty on the first,
18 you will go through each one.

19 The first one will be as to Anquavious Smith. It says,
20 "We, the jury, unanimously find as to Anquavious Smith,
21 indictment number 2012-GS-04-1478, the Defendant is, and you
22 will check whatever the jury determines, unanimously, not
23 guilty of attempted murder or guilty. If your decision is
24 guilty, then you'll go to Number Two, as to Anquavious Smith,
25 pointing and presenting. Okay? You follow me?

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1 MR. FOREMAN: (Nods head)

2 THE COURT: If, on the other hand, you say, "Not guilty
3 of attempted murder," then you'll go look at the lesser
4 included charge of assault and battery of a high and
5 aggravated nature. The same exercise. If you find the
6 Defendant guilty of assault and battery of a high and
7 aggravated nature, you would go to Number Two, pointing and
8 presenting. If you find not guilty, then you'll go to the
9 third lesser included, or second lesser included, and that's
10 assault and battery first. Once you have marked it
11 accordingly with just a checkmark, you will go through and
12 make all those decisions based on the victim and I just put
13 the victim's name just like Anquavious Smith's here. You'll
14 go through the same exercise for each different alleged
15 victim until you have made the decision on each of these. At
16 the very end, I'm going to ask you to sign your name. You
17 don't have to put the date. I can fill that in for you.
18 Knock on the door and we'll receive you back here with the
19 evidence. Okay?

20 What I'm going to do now, I'll ask that you go back to
21 your jury room. Let me check with these lawyers if I said
22 something that I shouldn't have said or I forgot to tell you
23 something that I should. If we don't bring you back, then
24 we'll send in the verdict form and the exhibits back with
25 word from the bailiff that you may begin your deliberations.

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1 The two alternates, I'm going to ask that when the exhibits
2 come in, you come out, okay? There should be lunch for you
3 back there. Okay, sir? All right. If you'd go back to your
4 jury room.

5 (Jury out at 1:18 PM)

6 THE COURT: Any additions or exceptions to the
7 instructions as to the filling out of the verdict form, from
8 the State?

9 MR. CAMPBELL: No, sir.

10 THE COURT: From the Defense?

11 MR. MCELHANNON: Your Honor, the only thing that I
12 would, that I have a question about ---

13 THE COURT: Okay.

14 MR. MCELHANNON: --- is if the jury felt that Mr. Thomas
15 at some point had a gun but did not fire the shot, would they
16 actually find him guilty of pointing and presenting or
17 presenting a firearm without one of the other three,
18 attempted murder ---

19 THE COURT: I'll be glad to clarify that with them. I
20 gave each one of the options, attempted murder, ABHAN, A&B
21 first, has a not guilty provision. But if you want me to
22 tell the jury that they can find the Defendant not guilty of
23 all three or all the above charges ---

24 MR. MCELHANNON: Yes, sir, that's what I need. Because
25 I think the way it was read in my mind it was if you find him

1 not guilty of attempted murder, then you go to the next one
2 and then it's almost like they have to find him guilty of one
3 of the other three ---

4 THE COURT: Okay.

5 MR. MCELHANNON: --- and then find him guilty, also, of
6 pointing and presenting.

7 THE COURT: Any objection to me clarifying that as
8 requested by Mr. McElhannon?

9 MR. CAMPBELL: No, sir.

10 THE COURT: All right. Would you bring the jury back
11 in, please.

12 (Jury in' at 1:20 PM)

13 THE COURT: All right. Mr. Foreman, ladies and
14 gentlemen of the jury, I want to clarify what may be some
15 confusion about the verdict form. Under -- if you would, Mr.
16 Foreman, you can pick that up and when you go over it with
17 the jury, I want to clarify that the jury has the option of
18 finding as to the attempted murder or the lesser included of
19 assault battery of a high and aggravated nature, or assault
20 and battery first, you have the option to find the Defendant
21 not guilty of those charges, but guilty or not guilty of the
22 pointing and presenting. In other words, your pointing and
23 presenting determination is not dependent upon your
24 determination of guilt or innocence for the other charges.
25 Do you understand that?

1 MR. FOREMAN: I do.

2 THE COURT: Okay. I'm going to ask that you carry that
3 form with you. Go back to your jury room. Let me make sure
4 I clarified that properly and then we'll send the exhibits
5 and word back for you to begin your deliberations, okay?

6 (Jury out at 1:22 PM)

7 THE COURT: All right. Any additions or exceptions from
8 the State?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. MCELHANNON: I'm satisfied.

12 THE COURT: All right. Very good. Thank you. Let me
13 do this. I'll ask y'all to go over the exhibits and then Mr.
14 Bailiff, once they give those to you, bring the alternates
15 out with their dinners and tell them to begin their
16 deliberations. But before you do this, let me say something
17 mainly to the Defendant and to the witnesses and the parties
18 for the State. I travel all over South Carolina. I see
19 trials in every county that I'm in, civil or criminal, and we
20 have fine attorneys who are prepared and professional and
21 that makes my job easier. So, I want to congratulate and
22 thank the attorneys on your preparation in this matter. Both
23 of you did a fine -- all three of you, Mr. McLain, did a fine
24 job preparing yourself and acted according to your norm.
25 Thank you very much. That being said, would you let me know

1 when the alternates are out?

2 THE BAILIFF: Yes, sir.

3 THE COURT: All right. We are in recess. Stick around,
4 okay?

5 (Exhibits to jury at 1:24 PM)

6 (Alternates are dismissed)

7 FIRST QUESTION FROM THE JURY

8 THE COURT: I can tell you we have a jury question, but
9 what it is, I have no idea. I can't read his writing. But
10 it says, can you something clarify the decision, triage. It
11 looks like they want to see the criteria for going from
12 attempted murder to assault and battery high and aggravated
13 to assault first. I'll ask him to clarify that, but if
14 that's, in fact, what he's doing, it seems to me that the
15 criteria simply is that if you found him not guilty of the --
16 what if I say that the lesser includeds are all contained in
17 the greater, so if you find him not guilty, then you consider
18 the lesser included, but if you don't and you find the
19 greater, then you don't consider the lesser included?

20 MR. CAMPBELL: Right. Just start at the top and work
21 your way down.

22 THE COURT: Does that sound reasonable to you?

23 MR. MCELHANNON: Yes, sir.

24 MR. CAMPBELL: Yes, sir.

25 THE COURT: All right. Would you bring the jury in?

1 (Jury in at 2:13 PM)

2 THE COURT: Mr. Foreman, first, I would suspect that
3 you're in the medical field, because I can't read a thing
4 that you wrote.

5 MR. FOREMAN: That was my good attempt, too.

6 THE COURT: But it seems to me -- let me ask you ---

7 MR. FOREMAN: Okay.

8 THE COURT: It says, would you please, something
9 clarified.

10 MR. FOREMAN: Summarize, clarify.

11 THE COURT: Okay. Summarize, clarify the ---

12 MR. FOREMAN: The decision triage of attempted murder
13 versus assault and battery high and aggravated versus assault
14 and battery one.

15 THE COURT: Okay. And then it says criteria needed to
16 be met for greater to lesser?

17 MR. FOREMAN: Correct. I'm having a hard time
18 explaining or understanding, myself, what graduates down the
19 chain.

20 THE COURT: Okay. Two things. Number one, the greater
21 in this charge would be attempted murder. Okay? A lesser
22 included by its term means that the elements of the lesser is
23 included in the greater. Okay? What that simply means for
24 you the jury is this: that if you find the Defendant is
25 guilty of the greater charge, okay, in this case the greatest

1 charge would be attempted murder, you stop. Okay? Then you'd
2 go on to pointing and presenting, because that's a separate
3 charge.

4 MR. FOREMAN: As a point of law, though, what would be
5 missing from the charge to get from A to B, your attempted
6 murder, what criteria would not be met to bump it. That's
7 what is causing us the problem.

8 THE COURT: Gotcha. It seems to me, and let me clarify
9 this with counsel so y'all won't be running out right quick,
10 let me -- I would think that probably if I just charge you on
11 the law of those three, slowly, so you can hear them and
12 understand them again, that will probably answer your
13 question, okay?

14 MR. FOREMAN: That would be helpful.

15 THE COURT: Let me get you to go back to your jury room
16 and make sure everybody's in agreement. Are you okay?

17 MR. CAMPBELL: Yes, sir.

18 THE COURT: You okay?

19 MR. MCELHANNON: Yes, sir.

20 THE COURT: Okay. Then you stay right there.

21 MR. FOREMAN: It was a lot. I think I personally missed
22 some of it during those.

23 THE COURT: Okay. And listen, I watched you during the
24 charges and it goes on and on, so I understand completely.

25 This will be the second part of my charge where I charge you

1 the actual law that you must apply of what the State must
2 meet in order to prove its case against the Defendant.

3 The first is the law of attempted murder. Okay? The
4 Defendant is charged with attempted murder. In order to
5 prove this crime, the State must prove the Defendant
6 attempted to kill another person with malice aforethought,
7 either expressed or implied. Malice is hatred, ill will, or
8 hostility towards another person. It is the intentional
9 doing of a wrongful act without just cause or excuse and with
10 intent to inflict an injury or under circumstances that the
11 law will infer an evil intent. Malice aforethought does not
12 require that malice exist for any particular time before the
13 act is committed, but malice must exist in the mind of the
14 Defendant just before and at the time the act is committed.
15 Therefore, there must be a combination of the previous evil
16 intent and the act.

17 Malice aforethought may be expressed or inferred. These
18 terms, expressed and inferred, do not mean different kinds of
19 malice, but merely the manner in which malice may be shown to
20 exist. That is, either by direct evidence or by inference
21 from the facts and circumstances which are proved. Expressed
22 malice is shown when a person speaks words which express
23 hatred or ill will for another or when the person prepared
24 beforehand to do the act, which was later accomplished. For
25 example, laying in wait for a person or any other acts of

1 preparation going to show that the deed was within the
2 Defendant's mind would be expressed malice. Malice may be
3 inferred from conduct showing a total disregard for human
4 life. If facts are proved beyond a reasonable doubt
5 sufficient to raise an inference of malice to your
6 satisfaction, this inference would simply be an evidentiary
7 fact to be considered by you, the jury, along with the other
8 evidence in the case and you may give it the weight you
9 decide it should receive. A specific intent to kill is not
10 an element of attempted murder, but there must be a general
11 intent to commit serious bodily injury. Intent means
12 intending the result which actually occurs, not accidentally
13 or involuntarily. Intent may be shown by acts and conduct of
14 the Defendant and other circumstances from which you may
15 naturally and reasonably infer intent. Evidence of the
16 character of the act, the purpose to be accomplished and the
17 resulting wounds or injuries, may be considered in
18 determining the intent with which the act was committed.
19 Intent may also be inferred when it is demonstrated that the
20 Defendant voluntarily and willfully commits an act, the
21 natural tendency of which is to destroy another's life.

22 Along with the law, that would be the law of transferred
23 intent. If the Defendant, with malice aforethought, attempts
24 to kill another person but by mistake injures or kills a
25 different person, the Defendant still has the intent to kill.

1 The intent to kill is merely transferred from the original
2 person the Defendant attempted to kill, to the actual person
3 killed or injured. The Defendant would be guilty of
4 attempted murder just as if the attempt had resulted in the
5 death or injury of the person the Defendant attempted to
6 kill. Now, that is the law of attempted murder.

7 Next, the lesser included would be the law of assault
8 and battery of a high and aggravated nature. A person
9 commits the offense of assault and battery of a high and
10 aggravated nature if the person unlawfully injures another
11 person and great bodily injury to another person results or
12 the act is accomplished by means likely to produce death or
13 great bodily injury. Great bodily injury means bodily injury
14 which causes a substantial risk of death or which causes
15 serious permanent disfigurement or protracted loss or
16 impairment of the function of a bodily member or organ.
17 Therefore, in order to prove the charge of assault and
18 battery of a high and aggravated nature, the State must prove
19 beyond a reasonable doubt that, one, the Defendant unlawfully
20 injured another and a great bodily injury occurred to another
21 person or the act was accomplished by means likely to produce
22 death or great bodily injury. That is the law of assault and
23 battery of a high and aggravated nature.

24 Next would be the law of assault and battery first
25 degree. So, you would have attempted murder, assault and

1 battery of a high and aggravated nature, assault and battery
2 in the first degree.

3 A person may commit the offense of assault and battery
4 in the first degree if the person unlawfully offers or
5 attempts to injure another person with the present ability to
6 do so and the act is accomplished by means likely to produce
7 death or great bodily injury. Great bodily injury means
8 bodily injury which causes a substantial risk of death or
9 which causes serious or permanent disfigurement or protracted
10 loss or impairment of the function of a bodily member or
11 organ. Therefore, in order to prove the charge of assault
12 and battery first degree, the State must prove, beyond a
13 reasonable doubt, that the Defendant offered or attempted to
14 injure another person with the present ability to do so and
15 the act was accomplished by means likely to produce death or
16 great bodily injury.

17 Okay. Two things, Mr. Foreman. I'm going to ask that
18 you go back to the jury room to ask your jury whether that
19 explains to you the differences between the charges. I'm
20 going to confer with these attorneys as to whether or not I
21 need to explain something further or omit something that I
22 said, but remember this, the greater charge, if it's found in
23 the positive for the State, i.e., it's guilty, then you stop.
24 Then you go to the next lesser included, if it's found in
25 favor of the State, you stop. Then you go to the last or the

1 lowest lesser included and consider that. Those charges are
2 separate and distinct from the charge of pointing and
3 presenting. It stands on its own, okay? With that being
4 said, would you go back to your jury room, please. Do not
5 begin your deliberations yet.

6 (Jury out at 2:24 PM)

7 THE COURT: Any additions or exceptions from the State?

8 MR. CAMPBELL: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. MCELHANNON: No, sir.

11 THE COURT: I'll let them talk to each other for a minute
12 and then I'm going to bring them out here and see if that
13 answers their question.

14 (Jury in at 2:27 PM)

15 THE COURT: All right. First, let me apologize for
16 running you in and out, but that's necessary in order to
17 adhere to the protocols that we have. Mr. Foreman, did my
18 response to your question answer the jury's needs at this
19 present stage?

20 MR. FOREMAN: Yes.

21 THE COURT: Okay. Then I'm going to ask you to go back
22 and resume your deliberations and let us know when you have a
23 verdict, please, if you have a verdict.

24 (Jury out at 2:28 PM)

25 THE COURT: All right. Unless there's any additions or

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1 exceptions from either side, we'll be back in recess.

2 MR. CAMPBELL: Okay.

3 MR. MCELHANNON: Thank you, Your Honor.

4 THE COURT: All right. Thank you guys. I will make
5 this a Court Exhibit, please, Madam Court Reporter.

6 (Whereupon, the first question from the jury is marked
7 as Court's Exhibit #2)

8 SECOND QUESTION FROM THE JURY

9 THE COURT: All right. We have a jury question.
10 Question number one. Were the statements available for
11 review? That's pretty simple. If it's in evidence they can
12 look at it. If it's not, it's not unless somebody has some
13 other ideas. The other one, what time was Officer Voigt's
14 supplement report acquired?

15 MR. MCELHANNON: There again, Your Honor, I think that
16 that's something they're going to have to -- it's not in
17 evidence. That was the incident.

18 THE COURT: If somebody testified to it, they're just
19 going to have to just go back and think about the testimony.
20 I think somebody did testify.

21 MR. CAMPBELL: Officer Mills did testify on Monday
22 morning he had the ????. That's something that's in the
23 record. They would have to use their collective memory.

24 THE COURT: Here's my proposal just do as we always do
25 in these situations, you know. Ladies and gentlemen, you're

1 going to have to make your decision based on what you have
2 and I can't comment on the facts. The law doesn't allow me
3 to. And so, therefore, you're going to have to go back and
4 check your notes and collective memories and see what you can
5 do. I cannot add to the record beyond what you've got. Is
6 that okay? Would you bring the jury in.

7 (Jury in at 4:21 PM)

8 THE COURT: All right. Mr. Foreman, you did a better
9 job this time with your writing. I appreciate that. The
10 jury has the following questions, though: Are witness
11 statements available for review and, number two, what time
12 was Officer Voigt's supplemental report acquired. Correct?

13 MR. FOREMAN: Correct.

14 THE COURT: And to answer your questions, number one,
15 all the evidence that's going to be admitted has been
16 admitted so we're not allowed to supplement the record. If
17 it's not there, it's not there. But whatever is there is
18 there. So, I'm not allowed to supplement the record beyond
19 that.

20 As far as Officer Voigt's supplemental report, as I told
21 you a couple of times, the Constitution doesn't allow me to
22 comment on the facts or the evidence. What that simply means
23 is, you're going to have to go back and search your
24 collective memories and your notes to see if that
25 information's in your file. Otherwise, I'm not allowed to

1 comment on that, either. Okay? I hate to not -- I hate to
2 send you out without any further direction than that, but
3 that's the rule and what I'm going to have to do. If you
4 would -- do you have what you need back there, drinks, eats,
5 that kind of thing?

6 MR. FOREMAN: Yes, sir.

7 THE COURT: Okay. Well, good. What I'm going to do is
8 send you back to your jury room, stop your deliberations for
9 a moment to make sure that I don't need to add or supplement
10 what I've stated, then we'll send word back to bring you back
11 in here or to resume your deliberations. Okay, sir?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: Thank you very much.

14 (Jury out at 4:23 PM)

15 THE COURT: All right. Any additions or exceptions from
16 the State?

17 MR. CAMPBELL: No, sir.

18 THE COURT: Any additions from the Defense?

19 MR. MCELHANNON: No, sir.

20 THE COURT: All right. We're back in recess. I'll make
21 that a Court's Exhibit. Thank you for coming here so
22 quickly.

23 (Whereupon, a note from the jury is marked as Court's
24 Exhibit #3)

25 VERDICT

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1 THE COURT: All right. My understanding is the jury has
2 reached a verdict. I know the lawyers and parties don't need
3 to hear this, but to the gallery, regardless of the verdict,
4 we don't know what it is, but there's not going to be any
5 outbursts in the courtroom, please. All right. Would you
6 bring the jury in, please.

7 (Jury in at 5:55 PM)

8 THE COURT: All right, Mr. Foreman, ladies and
9 gentlemen, my understand is that the jury's reached a
10 verdict. Is that correct?

11 MR. FOREMAN: Yes, sir.

12 THE COURT: Is it unanimous amongst all twelve of you?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Would you pass that verdict to the bailiff,
15 please, sir. (Judge looks at document) Would you publish the
16 verdict, please, Mr. Clerk.

17 CLERK OF COURT: May it please the Court.

18 THE COURT: Yes, sir.

19 CLERK OF COURT: This is the verdict form in the Court
20 of General Sessions, Tenth Judicial Circuit, case number
21 2012-GS-04-01478, The State of South Carolina, County of
22 Anderson. The State of South Carolina, Plaintiff, versus
23 Devon Shermayne Thomas, Defendant. Verdict for attempted
24 murder as to Anquavious Smith, attempted murder and lesser
25 charges. We, the jury, unanimously find as to Anquavious

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1 Smith, indictment number 01478, the Defendant guilty of
2 attempted murder.

3 In terms of pointing and presenting. We, the jury, find
4 as to Anquavious Smith, indictment number 01478, guilty of
5 pointing and presenting a firearm.

6 In the indictment number 2012-GS-04-01479, State of
7 South Carolina versus Devon Thomas, the verdict form,
8 attempted murder as to Chrislacia Slappy. Attempted murder
9 and lesser charges, we the jury, unanimously find as to
10 Chrislacia Slappy, indictment 01479, guilty of attempted
11 murder.

12 In pointing and presenting, we, the jury, unanimously
13 find as to Chrislacia Slappy, indictment 01479, the Defendant
14 guilty of pointing and presenting a firearm.

15 As to indictment 012-GS-04-01480, the State of South
16 Carolina, plaintiff, versus Devon Shermayne Thomas, attempted
17 murder and lesser charges. We, the jury, unanimously find as
18 to Charles Lindsey, indictment 01480, the Defendant guilty of
19 attempted murder.

20 On pointing and presenting, we, the jury, unanimously
21 find as to Charles Lindsey, indictment 01480, the Defendant
22 guilty of pointing and presenting a firearm.

23 As to case number 2012-GS-04-01481, State of South
24 Carolina, plaintiff versus Devon Shermayne Thomas, Defendant.
25 This is the verdict form as to Mijelica Smith. We, the jury,

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1 unanimously find as to Mijelica Smith, indictment 01481,
2 Defendant guilty of attempted murder.

3 And pointing and presenting, we, the jury unanimously
4 find as to Mijelica Smith, indictment 01481, the Defendant
5 guilty of pointing and presenting a firearm. This is dated
6 February 26, 2014, in Anderson South Carolina and it is
7 signed by the foreperson of the jury.

8 THE COURT: All right. Ladies and gentlemen of the jury
9 if that is your verdict or if that was your verdict in the
10 jury room and if that is your verdict now, would you raise
11 your right hand.

12 THE COURT: Let the record reflect all twelve jurors
13 raised their hand. All right. Ladies and gentlemen, I want
14 to thank you for your service this week, not thank you for
15 your verdict. The Court is never concerned about the
16 verdict, but I am concerned with the process and seeing that
17 it's followed. I've watched you throughout the trial and
18 some of it's been somewhat tedious but you've stayed engaged
19 and you paid attention and you've followed instruction. So
20 for that, we appreciate you performing your civic duty.
21 Before we excuse you for the night, we would let you know
22 that you're done for the week and you can't be called back
23 for three more years, so that's the good part of this. If
24 anybody needs a statement for their employer, Clerk, you have
25 those here. Is that correct?

1 CLERK OF COURT: Yes, sir.

2 THE COURT: Very good. Before everybody leaves, I know
3 you're probably tired. I will not keep you but for a second,
4 but may I speak with you for about two minutes in your jury
5 room before we excuse you for the day? If you'd go back to
6 your jury room, we'll be back around there in just a minute.

7 (Brief bench conference off the record)

8 (Brief Break)

9 THE COURT: Did you check, Officer Lewis, whether or not
10 any jurors are wanting to come in and watch the sentencing?

11 OFFICER LEWIS: No, sir, they left. All of them.

12 THE COURT: They all left?

13 OFFICER LEWIS: Yes, sir.

14 THE COURT: Okay. All right.

15 SENTENCING

16 MR. CAMPBELL: Your Honor, we handed up the pointing and
17 presenting sheets. Mr. McElhannon has seen them.

18 THE COURT: And for the record, the pointing and
19 presenting was made a part of the charge in this case after
20 consulting with counsel and at their request. Is that a
21 correct statement, Mr. McElhannon?

22 MR. MCELHANNON: It is, sir.

23 THE COURT: Okay. Now, let me ask Officer Mills
24 something, if I may.

25 DETECTIVE MILLS: Yes, sir.

1 THE COURT: Something that came up to me, I do
2 understand that Mr. Thomas does not have a criminal record?

3 DETECTIVE MILLS: No, sir.

4 THE COURT: . Okay. But looking at the transcript of your
5 conversations with him on page 18, I saw somebody mentioned
6 the term, colors, i.e., I took that to mean there was some
7 kind of gang, potentially, related activity.

8 DETECTIVE MILLS: That was the question. Was there any
9 type of colors or was -- I was trying to find the source of
10 the fight. I know they were arguing over which side of town
11 they live on, but there was nothing to indicate that there
12 was any type of gang activity or anything like that, other
13 than being from the specific side of town.

14 THE COURT: All right. That was my next question.
15 Anything to indicate that this Defendant's ever been involved
16 in gang-related activities at all ---

17 DETECTIVE MILLS: No, sir.

18 THE COURT: --- based on your exposure to him during
19 this trial or otherwise?

20 DETECTIVE MILLS: Not at all, sir.

21 THE COURT: Thank you very much.

22 MR. CAMPBELL: Your Honor, on that aspect, I did call
23 the gang investigator last night. His name has not popped
24 up.

25 THE COURT: Okay. Very good. I know that we heard from

1 any victims or several victims throughout the trial. If
2 there's any victim that would like to add to what their prior
3 testimony is, now's the time for you to come around. If you
4 do not want to speak, do not feel like you have to, because I
5 wrote down and listened to all of your testimony. Would
6 anybody like to speak from the victim's side?

7 MR. CAMPBELL: Your Honor, if you'll give me just a
8 second.

9 THE COURT: Yes, sir.

10 MR. CAMPBELL: Your Honor, I have spoken with all of the
11 victims. They indicated they did not wish to speak.
12 However, Ms. Jones, two of the victims' mother, would like to
13 speak on their behalf.

14 THE COURT: And I'm going to give you free rein to a
15 certain extent, I don't want you to go back into what I've
16 already heard, because since I've heard it, we don't have a
17 need for that. I'll be glad to hear from you. Would you
18 identify your name for the record again, please, ma'am.

19 MS. JONES: Ann Jones.

20 THE COURT: Okay. Ms. Jones, I'll be glad to listen to
21 you and hear you.

22 MS. JONES: I just want to say that this has been a long
23 process. Unfortunately, it not only concerns my daughters
24 and other people, but it also concerns the Defendant. It's
25 sad, but at the end of the day, I'm just blessed to still

1 have my girls with me and all I ask of the Court is just be
2 considerate of that fact, because we didn't have to be here
3 for attempted murder. It could have been otherwise coming
4 March the 25th. I don't believe I will never, ever forget
5 it. So, I just want to put that out there how bad it is and
6 how sad it is, not just for my kids but even for the
7 Defendant, unfortunately.

8 THE COURT: Thank you very much.

9 MS. JONES: You're welcome.

10 THE COURT: Anyone else from the victims' side?

11 MR. CAMPBELL: No, sir.

12 THE COURT: Mr. McElhannon, would you bring your client
13 around. Also, if your client has anyone he'd like to bring
14 around to speak, bring them, please, sir.

15 MR. MCELHANNON: His mother's here, Your Honor.

16 MR. CAMPBELL: Your Honor, I just wanted to say he has
17 no record.

18 THE COURT: All right. All right. Mr. McElhannon, I'll
19 be glad to hear anything you or your client would like to
20 say. Before we do, let me tell you that you have ten days to
21 appeal the jury's verdict and the sentence that I will hand
22 down. Okay, sir?

23 MR. THOMAS: Yes, sir.

24 THE COURT: And your attorney will explain more about
25 that to you in just a few minutes. All right.

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1 MR. MCELHANNON: Thank you, Your Honor. May it please
2 the Court. As, basically, has been stated, Devon has just
3 turned twenty-one years old. He was nineteen when this
4 happened. He still maintains, of course, that he's not the
5 shooter today as he has throughout. He has no prior record,
6 Your Honor. And as you've seen, he's soft spoken. He's been
7 that way with me from the beginning. He's not a boisterous,
8 outgoing guy. The fight that took place inside the club, I
9 don't think it's indicative of his behavior at all.
10 Apparently, he actually got jumped on and then, you know,
11 went outside, but he's not a bad guy. He really isn't. I
12 appreciate what Ms. Jones stated. It is a loss for the
13 Defendant, as well, because at this point he's going to lose
14 his freedom for an amount of time. Your Honor, what I would
15 ask is for some leniency, certainly because he does not have
16 a prior record. The co-defendant in this case, LaJames
17 Glass, was allowed to plead to assault and battery of a high
18 and aggravated nature and actually received a probationary
19 sentence. If the facts are correct, as Mr. Glass states,
20 then he's the one that handed ---

21 THE COURT: I put no credibility on Mr. Glass
22 whatsoever, okay?

23 MR. MCELHANNON: Your Honor, so I would ask for leniency
24 on Devon. It would be a different matter if he was up here
25 and been in trouble since he was a juvenile and got in

1 trouble when he turned eighteen, nineteen, twenty. As you
2 have stated, I think it's key and very important, that
3 Detective Mills and also Mr. Campbell say they've checked and
4 he has no gang relations, whatsoever. He's not involved in
5 gangs. Your Honor, so I would ask for leniency. What I
6 would actually ask for in this instance, because of the way
7 this case turned out, is a YOA sentence. He never finished
8 high school because of this charge. So, he got kicked out of
9 Hanna. He needs to get his GED. I just think a YOA would
10 serve the Defendant as well as the victim. He will do time.
11 He's done five months. He did five months in jail already,
12 so we would ask for credit of five months. But if there ever
13 was a case for a YOA sentence, Mr. Thomas is the poster boy
14 for that, with no prior record. I've seen people with prior
15 records get a YOA sentence on things like this. So, I would
16 think that he would, you know, he's never been in trouble, at
17 all, since March ---

18 THE COURT: I've got that. Let me ask you this, though.
19 I've heard that he hasn't been in trouble. What I haven't
20 heard is anything about him. I hear he dropped out of
21 school. Does he work? Does he do anything?

22 MR. MCELHANNON: He was kicked out ---

23 MR. THOMAS: I work with my cousin on a trash route.

24 THE COURT: Sir?

25 MR. THOMAS: I work with my cousin. He's got a

1 business, on a trash route and I work on that route.

2 MR. MCELHANNON: Working with his cousin on a trash
3 route.

4 THE COURT: On a trash route?

5 MR. MCELHANNON: Trash route, picking up trash.

6 THE COURT: How long have you been doing that?

7 MR. THOMAS: For a couple months.

8 THE COURT: What did you do before that?

9 MR. THOMAS: I wasn't doing nothing before that.

10 THE COURT: When's the last time you worked?

11 MR. THOMAS: I worked over here at Electrolux for a
12 little bit.

13 THE COURT: How long did you do that?

14 MR. THOMAS: Sir?

15 THE COURT: How long did you do that?

16 MR. THOMAS: About three or four months.

17 THE COURT: When's the last time you worked for, say, a
18 period of a year or more?

19 MR. THOMAS: Since school.

20 THE COURT: How old were you when you dropped out of
21 school?

22 MR. THOMAS: I never finished. Oh, I was nineteen.

23 THE COURT: Sir?

24 MR. THOMAS: I didn't finish school.

25 THE COURT: I know.

1 MS. THOMAS: He was in school before that. When this
2 happened, he was in school. He was in the last year of high
3 school before this happened.

4 THE COURT: Oh, he was in school?

5 MS. THOMAS: Yes, sir.

6 THE COURT: Okay. I got you. Okay.

7 MS. THOMAS: He was in school.

8 THE COURT: What's the State's position on the request
9 for a YOA?

10 MR. CAMPBELL: Your Honor, according to the statute
11 24-19---

12 THE COURT: It's violent, isn't it?

13 MR. CAMPBELL: Yes, sir, it's violent, which no YOA is
14 allowed.

15 THE COURT: That's what I was thinking.

16 MR. MCELHANNON: Your Honor, as you know, a YOA carries
17 a maximum of six years and that allows him to get out, as
18 Your Honor well knows, earlier than that. I would ask that a
19 cap of six years would be appropriate in this case.

20 THE COURT: Mr. Thomas, do you want to state anything on
21 the record? I know you have an appeal. I know that you
22 continue to deny your guilt, but do you have anything you
23 would like to state to me before I hand down sentence or Ms.
24 Thomas, your mom, or anybody?

25 MS. THOMAS: I would like to apologize to the family. I

1 would like to apologize to y'all. My son got caught up in
2 the wrong time with the wrong person, and so they put it on
3 him and I apologize to all of y'all because he was just with
4 the wrong, the wrong person at the wrong time. So, I do
5 apologize to y'all, and my daughter. He was at the wrong
6 place at the wrong time.

7 THE COURT: Thank you.

8 MS. THOMAS: He got caught up in it.

9 THE COURT: Mr. Thomas?

10 MR. THOMAS: I'm sorry it happened.

11 THE COURT: You know, this is not an easy case for me.
12 Judge Fields was the judge back when we were still in school
13 and I was clerking and he used to say, you separate the
14 wicked from the wayward. And I pay a lot of attention to the
15 fact that people have a criminal record, as your attorney
16 well knows, but at the same time, this case, it's just by the
17 grace of God you're not here on a murder charge and you'd be
18 looking at thirty years to life and serve day for day.

19 MS. THOMAS: Yes.

20 THE COURT: What was clear to me, although the testimony
21 was very conflicting, what was clear to me is that you did
22 have a gun in your hand. Your own witness put a gun in your
23 hand and I made a big note in my notes when I was taking
24 them. So, I don't know what you were thinking, what you were
25 doing, why you did that, but that's very unfortunate in this

1 case and as a result, at least based on the jury's verdict,
2 we have somebody who's going to go through life who is going
3 to have some permanent impairments. That being said, I don't
4 believe, based on your lack of a record, and what I've viewed
5 so far that you should get the maximum, either. I'm going to
6 give it a little thought for a second, if you'll just bear
7 with me and I'll announce my sentence in just one second.
8 Anything else, Mr. McElhannon?

9 MR. MCELHANNON: No, Your Honor.

10 THE COURT: Just one second, please. Am I correct,
11 Counsel, that no part of the sentence under attempted murder
12 can be suspended? Do you agree with that?

13 MR. MCELHANNON: Yes, sir, that's what the statute says.

14 THE COURT: Mother, let me ask you something. Have
15 there ever been signs of your son having used drugs or used
16 alcohol in any form or fashion, that you're aware of?

17 MS. THOMAS: No, sir. He's got asthma.

18 THE COURT: I've not seen anything that makes me believe
19 that. Okay. Is there anything further?

20 MR. MCELHANNON: No, sir.

21 THE COURT: Under indictments 2012-1480 through 1479,
22 under the charge of attempted murder, the sentence will be
23 ten years, concurrent, on all four. Under indictments 2012-
24 1478 through 1481, on the charge of pointing and presenting a
25 firearm at a person, these will all, likewise, be concurrent,

1 it will be three years suspended on five years probation.
2 Credit for time on all indictments. After thirty-six months,
3 you can PTUP or end your probation if you're employed on a
4 full-time basis with taxes withheld, and you're otherwise
5 compliant with your probation. Your period of probation does
6 not begin until your period of incarceration has ended.
7 Okay, sir? Again, you have ten days to appeal my sentence
8 and the jury's verdict, barring motions filed by counsel.
9 Anything further?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: Good luck to you, sir.

12 MR. MCELHANNON: Your Honor, on the credit for time
13 served, they don't have the exact amount of days. We need to
14 put that on there so they'll give him credit when he gets
15 down to SCDC.

16 THE COURT: Okay.

17 MR. CAMPBELL: Yeah, they won't be able to get it until
18 the morning because Detective Nelson's gone and it's an
19 automated system after hours.

20 THE COURT: Okay. Richard, do you mind if I hang onto
21 these or do you want me to just go down -- actually, I'll
22 come down and get them from you tomorrow.

23 CLERK OF COURT: I'll bring them to you.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON FEBRUARY 24-26, 2014, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

AUGUST 17, 2014

S/ *Jo Rice*
JO RICE

THE STATE OF SOUTH CAROLINA VERSUS DEVON S. THOMAS

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Devonte Shermaine Thomas,

Defendant.

2012-GS-04-01478

May 20, 2014

Transcript of Record

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Rame Campbell, Esquire
Assistant Solicitor for Tenth Judicial Circuit
Attorney for the State

M. Scott McElhannon, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 May 20, 2014

2 (WHEREUPON, court convened with all parties present,
3 and the following proceedings were had commencing at
4 approximately 2:03 p.m.)

5 THE COURT: This is the matter of State versus
6 Devonte Shermaine Thomas. Mr. Thomas went to trial and
7 was found guilty in February, on February 26th, of 2014
8 of attempted murder. This is the Defendant's motion for
9 a new trial, and it was timely filed in this matter.

10 Mr. McElhannon, I'll be glad to hear from you.

11 MR. MCELHANNON: Your Honor, if I may, I filed
12 three different motions. I'd like to take the one I
13 think is more -- that's not going to have any testimony
14 to it first, the motion to preserve evidence. And my
15 basis for that is, as Your Honor remembers, in this case
16 that the victim, Ms. Smith, actually suffered a gunshot
17 wound to the leg. And that projectile was never removed
18 from her leg.

19 Your Honor, what I'm asking for is if -- and there
20 were, by the testimony of several witnesses, more than
21 one gun on the scene of this shooting. The weapon which
22 actually fired the shot was never recovered. There was
23 one shell casing that was found in the parking lot where
24 the shooting occurred. I'm asking that in the event that
25 Ms. Smith ever has this projectile removed from her leg

1 that that be preserved for evidence because there's a
2 possibility that that could be matched up with that shell
3 casing, matched or not matched with that shell casing,
4 that was in the parking lot. And that's the only -- I'm
5 asking that Ms. Smith, if she does decide to have that
6 removed, that she instruct her physician to remove that
7 and preserve it for evidence and notify the Solicitor's
8 office.

9 THE COURT: Well, let me ask you this. I know
10 that she was the victim in this matter. But even so, she
11 wasn't a party, right?

12 MR. MCELHANNON: Correct.

13 THE COURT: And so would we not have to serve
14 the motion on her for me to obtain jurisdiction over her
15 so she could be compelled to do so?

16 MR. MCELHANNON: Well, Your Honor, I think that
17 if any evidence came forward, it would be evidence in the
18 case regardless of having to have her under an order, to
19 be honest. If that was removed, I think it would be --
20 it's probably -- it could be exculpable evidence. And I
21 don't think that I want a physician, if -- and I don't
22 know if she'll ever decide to have it removed or not.
23 But if she did, I would hate for them just to throw that
24 in the trash when it could exonerate, possibly exonerate
25 my client.

1 THE COURT: I'm glad to grant the order. I'm
2 just saying that right now the parties before me is State
3 of South Carolina and Mr. Thomas. And my concern is -- I
4 mean, I think it's an appropriate motion. My concern is
5 that she was the victim non-party. If I order something
6 that binds her, I need to have some personal jurisdiction
7 over her.

8 MR. MCELHANNON: I understand that, Your Honor.
9 And if we need to at some point actually serve her with
10 something to get her up into court to have that done,
11 that's fine with me. I can just do that and have her
12 served with this motion, and we can reschedule that
13 motion.

14 THE COURT: That might be ...

15 Mr. -- what's your name again?

16 MR. CAMPBELL: Campbell.

17 THE COURT: I'm kidding. What would be your
18 position with regard to preserving the evidence?

19 MR. CAMPBELL: Well, it's kind of one of those
20 things -- my understanding from her testimony and
21 speaking with her personally that it was going to cause
22 more damage to remove it than it would do good. One of
23 the things is if she has it removed, unless she tells us,
24 I have no idea or clue.

25 Also, in this case no guns were recovered. You're

1 not going to be able to compare a shell casing to a
2 bullet that was fired from it because there's no
3 striations or anything like that that could be compared.
4 So evidentiary value, I can't tell you what it is, what
5 kind of weight to put to it.

6 THE COURT: Right. And we can't look into the
7 future and find out what may be available at that point
8 either.

9 MR. CAMPBELL: That's right.

10 THE COURT: I think -- go ahead.

11 MR. MCELHANNON: I was just going to say, not
12 matching up the shell casing, I did say that. But more
13 importantly, there was a lot of testimony about this was
14 a large caliber bullet. And if it's removed, they may
15 actually be able to tell. And I believe there was
16 testimony as to what the witnesses, what type of weapon
17 they actually saw. I think it was a .45, if I remember
18 correctly. So ---

19 THE COURT: It may be.

20 MR. MCELHANNON: --- if they're stating that
21 it's a .45 and it comes back that that's not a .45
22 caliber bullet, then that might, again, be exculpable as
23 far as it wasn't the bullet that was fired from the gun.

24 THE COURT: And again, let's do this. I have
25 no problem with granting you the motion for whatever

1 purposes it may be worth. However, I feel like I
2 probably need to get her served and up here.

3 MR. MCELHANNON: I agree, Your Honor.

4 THE COURT: Since it's her body.

5 MR. MCELHANNON: I agree, Your Honor.

6 THE COURT: Okay.

7 MR. MCELHANNON: I'll do that. We'll do that
8 and just reschedule this motion.

9 THE COURT: So we will just continue this
10 motion without prejudice.

11 MR. MCELHANNON: Yes, sir.

12 THE COURT: Okay.

13 MR. MCELHANNON: Your Honor, my second motion
14 is for a new trial. It's based on the affidavit of the
15 Clerk of Court, Richard Shirley, which is attached to my
16 motion. And Mr. Shirley is here, Your Honor, and ready
17 to testify.

18 THE COURT: Mr. Shirley, would you come around,
19 please?

20 **RICHARD ALAN SHIRLEY,**

21 BEING FIRST DULY WORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. MCELHANNON:

24 Q. Mr. Shirley, what position do you presently hold?

25 A. I am the Clerk of Court for Anderson County.

Richard Alan Shirley - Direct Examination by Mr. McElhannon

8

1 Q. And how long have you been in that position?

2 A. I was appointed by Governor Sanford in December of
3 2010 to fill the unexpired term of Cathy Phillips. And
4 then I ran for a full term in 2012, and I'm serving that
5 term now.

6 Q. Okay. And part of your duties as Clerk of Court is
7 you're present in the courtroom during trials of cases?

8 A. Yes, sir.

9 Q. And where do you normally sit during a trial?

10 A. Well, it's very interesting. When Rena Thomason, my
11 Deputy Clerk, when she's in court, she likes the left-
12 hand computer. And when I'm in court, I like the right-
13 hand. So I usually sit right here.

14 Q. Okay. Now, you were present during the trial of Mr.
15 Thomas, correct, in February?

16 A. I was.

17 Q. And I believe it started on February the 24th and
18 ended on February the 26th?

19 A. Yes, sir.

20 Q. And what courtroom were we in during that trial?

21 A. This one.

22 Q. And when we -- did we move down to the third floor
23 at one point?

24 A. If we did, I don't remember it because the
25 observations that I made were in this courtroom.

- 1 Q. Okay. So you were sitting here?
- 2 A. Yes, sir.
- 3 Q. And I'm pointing to the right-hand chair?
- 4 A. Yes, sir.
- 5 Q. And -- well, let me get back. After the trial of
- 6 this case, I was in the courthouse the following day on
- 7 the 27th, correct?
- 8 A. Yes, sir.
- 9 Q. How did -- did you approach me?
- 10 A. I did.
- 11 Q. And what did you tell me the day after the verdict?
- 12 A. I told you that I felt like that Mr. Thomas did not
- 13 get the full benefit of the witnesses, that there was
- 14 someone in the audience, I thought, intimidating
- 15 everybody who came forward to be sworn.
- 16 Q. And who was that person? Do you remember his name?
- 17 A. I don't remember his given name. I think his
- 18 nickname is Kool-aid.
- 19 Q. Okay. And would that be LeJames Glass? Do you
- 20 remember that?
- 21 A. That's what I understand.
- 22 Q. Do you remember Mr. Glass being a witness in the
- 23 case as well?
- 24 A. No.
- 25 Q. Can you tell the Judge how you -- what brought your

1 attention to Mr. Glass, to Kool-aid?

2 A. When the trial started, there was a contingency
3 sitting about one, two, three, four rows back, sort of in
4 the middle. And then if you see Investigator Penn, Kool-
5 aid -- I guess I should call him Mr. Glass -- moved out
6 from -- there was a group. And he moved out to where his
7 head would be virtually right behind Investigator Penn's.

8 Q. So in your opinion, he had a straight shot at ---

9 A. Everybody.

10 Q. --- the witnesses?

11 A. Yeah. And just like I am right now.

12 Q. And did he virtually stay in that same spot
13 throughout the trial?

14 A. . Yes.

15 Q. What type of mannerisms or activities did you see
16 from Mr. Glass as the witnesses for the State were
17 testifying?

18 A. I never saw him nodding his head or -- but it was
19 very obvious that -- it was almost like the whole time a
20 witness was on the stand that he was glaring a hole
21 through them. And then when they completed, when they
22 were dismissed by the judge, that's when his face would
23 like register pleasant thoughts toward that witness, like
24 you've done good. And it was very obvious to me that he
25 was definitely making eye contact with everybody who took

1 the chair.

2 Q. And I believe the witnesses were sequestered in this
3 case. Do you remember that?

4 A. Yes, they were.

5 Q. But he was in here the entire time after he
6 testified?

7 A. And watched them come up the walkway and watched
8 them go out. And I made a comment of that to you the
9 following day of what I observed, and you asked me if I
10 would give you an affidavit. And that's what you have.

11 Q. Okay. How many witnesses do you estimate that he
12 actually did this glaring to? I mean, was it all the
13 witnesses that testified virtually?

14 A. It was the young people. And there was one young
15 man, who I do not know his name. But to me, he obviously
16 was under the direct influence -- in my opinion, he was
17 under the direct influence of Mr. Glass.

18 Q. Would that have been -- and again, I'm just trying
19 to help you remember because we had a lot of witnesses in
20 that case. Would that have been possibly a Savion
21 Richard?

22 A. Yes. That matches his name. That's him.

23 Q. And that was the witness, I believe, at the end of
24 his testimony, when I finally asked him how much of your
25 written statement is a lie, and he said, all of it?

Richard Alan Shirley - Cross-examination by Mr. Campbell

12

1 A. Yes, sir.

2 Q. That's the one you're talking about?

3 A. Yes, sir.

4 Q. Is there any doubt in your mind that Mr. Glass was
5 trying to intimidate these witnesses?

6 A. None whatsoever.

7 MR. MCELHANNON: That's all I have for Mr.
8 Shirley, Your Honor.

9 THE COURT: Mr. Campbell?

10 CROSS-EXAMINATION

11 BY MR. CAMPBELL:

12 Q. Mr. Shirley, as Clerk of Court, you were present
13 when the jury panel was picked that day; is that correct?

14 A. Yes, sir.

15 Q. And that was done on the fourth floor?

16 A. Yes, sir.

17 Q. And after that, due to the fact we had two courts
18 running with Judge Maddox here, our trial with Judge
19 McIntosh was moved to the third floor. You recall that?

20 A. I really don't.

21 Q. And in this -- and basically what you're testifying
22 to today is you're saying James Glass intimidated Savion
23 Richards; is that right?

24 A. Yes, sir.

25 Q. And you're saying that's the main one, in your

1 opinion, that you witnessed that he may or may not have
2 had some influence over?

3 A. He was watching the young ladies testify, but he
4 really bore down on Mr. Richards.

5 Q. And do you recall that James Glass was the second
6 witness to testify in this case?

7 A. No, sir.

8 Q. And do you recall that Savion Richards was actually
9 the witness right after him that testified?

10 A. I knew he was early.

11 Q. And this was on Monday the -- February 24th?

12 A. It was early in the trial.

13 Q. And were you present during the entire testimony of
14 Savion Richards?

15 A. Yes.

16 Q. Do you recall that he was laughing on the stand?

17 A. I recall him barely being audible. In fact, I think
18 the judge had to admonish him to speak up or to repeat
19 his testimony. I remember he was having a hard time
20 getting words out.

21 Q. In fact, he was making a joke of this and thought it
22 was funny while he was testifying?

23 A. I don't recall that, Mr. Campbell. But I do
24 remember him -- I thought it was exhibiting nervous
25 behavior as opposed to amused.

1 Q. In fact, Judge McIntosh actually had to call him
2 down for how he was acting on the stand?

3 A. I remember that, yes.

4 Q. In fact, Judge McIntosh also had to call down people
5 who were in the audience because they were laughing as
6 his testimony was going on. Do you recall that, sir?

7 A. I remember Judge McIntosh threatening to clear the
8 courtroom.

9 Q. And were you present during the entire three days of
10 the trial?

11 A. Yes.

12 Q. 24th, 25th, and 26th of February?

13 A. Yes.

14 Q. And Mr. Glass was over here that first day?

15 A. That's my recollection.

16 Q. Now, at some point -- do you know if any of the
17 jurors actually even witnessed Mr. Glass and his conduct
18 in the courtroom after his testimony?

19 A. I couldn't speak to that. I wouldn't imagine -- if
20 they were concentrating on the witness stand, I don't
21 know that they would have seen Mr. Glass.

22 Q. So you have no knowledge whether or not the
23 testimony of Savion Richards had any influence or not --
24 or how Mr. Glass was acting had any influence or not on
25 the jury's ultimate decision?

1 A. It would be my recollection, Mr. Campbell, that his
2 testimony probably didn't do a whole lot to influence the
3 jury.

4 Q. Did or did not?

5 A. Did not. I don't think they could have taken him
6 very seriously.

7 Q. And based on your observation, you don't know
8 anything that was done that would change the outcome of
9 their ultimate decision of finding him guilty?

10 A. Absolutely not.

11 Q. In fact, this jury deliberated four to five hours?

12 A. Yeah. I remember they deliberated what I consider
13 to be an ample amount of time.

14 Q. In fact, they asked several -- sent back several
15 questions that we had to come back to the courtroom to
16 respond to; is that right?

17 A. Yes, sir.

18 Q. So they considered everything. In your opinion,
19 they were considering everything that was presented to
20 them?

21 A. Yes, sir.

22 Q. And it's a fact they found him guilty not only of
23 attempted murder but of another charge that wasn't even
24 indicted; is that right?

25 A. Correct.

Richard Alan Shirley - Cross-examination by Mr. Campbell

16

1 Q. In fact, all of the -- I think it was three charges.

2 It was attempted murder. I do not remember what -- the

3 one that we added, and possession of a weapon. He was

4 found guilty of all three?

5 A. Yes.

6 Q. And we kind of dismissed the one that wasn't

7 indicted?

8 A. Yes.

9 Q. Now, were you present when Mr. McElhannon started

10 putting up a case for Mr. Thomas, when he called

11 witnesses?

12 A. Yes.

13 Q. And do you recall an individual by the name of

14 Charles Edwards testifying?

15 A. Not particularly.

16 Q. Do you recall a witness actually putting a gun to

17 Mr. Thomas' head, these other witness?

18 A. Yes.

19 MR. CAMPBELL: I have no further questions.

20 THE COURT: Redirect?

21 MR. MCELHANNON: Nothing further from this

22 witness, Your Honor. I do have one other thing to add to

23 this motion.

24 THE COURT: Sure.

25 Thank you, sir.

1 May our Clerk be excused?

2 MR. MCELHANNON: Yes, Your Honor.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, sir. Any objection to
5 him being excused?

6 MR. CAMPBELL: Yes, sir, I have some more
7 questions.

8 THE COURT: Oh, I'm sorry. Then you must stick
9 around, Mr. Clerk.

10 MR. CAMPBELL: Naw, he can go.

11 THE COURT: Call your next witness, please.

12 MR. MCELHANNON: I don't have any other
13 witnesses, Your Honor.

14 THE COURT: Okay.

15 MR. MCELHANNON: The other thing that -- and
16 Your Honor may remember this. Not only -- in my opinion,
17 not only was Mr. Glass influencing witnesses on the
18 witness stand, but Your Honor actually had to call down
19 someone in the audience. And I didn't have a chance to
20 turn around and look when you did it, but I believe it
21 was a female who was mouthing words to another witness on
22 the stand. And you instructed her not to be mouthing
23 words to that witness. I don't know -- I don't remember
24 which witness that was or, like I said, which person that
25 was, but I do remember you actually admonishing that

1 person in the audience.

2 As Your Honor remembers, there was a lot of
3 contradictory evidence and testimony in this case, Your
4 Honor. And I -- just in the light given to the
5 Defendant, because it's his freedom on the line, I
6 believe that a new trial is warranted in this case. And
7 I would respectfully ask Your Honor to grant that motion.

8 THE COURT: All right. Thank you, sir. For
9 the record, my records show that it was attempted murder
10 and possession of a weapon that he was found guilty of.
11 It may have some lesser-included that they did not ---

12 MR. CAMPBELL: Yes, sir.

13 THE COURT: And with all due respect, Mr.
14 McElhannon, you are doing the job that you're supposed to
15 be doing, zealously representing your client. But the
16 light is shining on the State at this point because the
17 jury has found the Defendant guilty. And so the hurdle,
18 although this Defendant's freedom has been taken away
19 from him, the hurdle is fairly high to overcome a jury
20 verdict that listened to the evidence, is charged on the
21 law and go ahead and deliberated appropriately from all
22 respects.

23 I listened to what you're telling me. We have --
24 there was a lot of witnesses in that case. There was a
25 lot of conflicting testimony, as you said. But there was

1 also a lot of testimony that was cumulative to one
2 another, and in some aspects to another in a lot of
3 aspects. But the record doesn't reflect in this case
4 that any witness came into this courtroom for this
5 hearing to say, look, I was intimidated. And because I
6 was intimidated by this person or anybody else during
7 this trial, my testimony would have been different and it
8 would have been this. And then further, that that
9 testimony would have such an impact as to likely change
10 the outcome of this trial or make the results of this
11 trial in serious dispute. And I think that's kind of the
12 standard we have to go by to look at it. Otherwise, we'd
13 engage in mere speculation.

14 Number one, that -- I have no doubt in my mind that
15 the Clerk saw what he saw. There's no doubt in my mind
16 that our Clerk is a good judge of character, and this
17 person likely was trying to either stare at somebody or
18 do the things that we see occur sometimes involving
19 proceedings. But that's kind of where it stops. We
20 don't know any of the rest of it which would just lead us
21 to pure speculation we don't know anything else about.

22 MR. MCELHANNON: Yes, sir.

23 THE COURT: So with that being said, I'm going
24 to deny your motion for a new trial. I'm going to let
25 you draft an order so your time to file your appeal won't

1 begin to run until after that order is drafted and it's
2 filed and signed by me.

3 MR. MCELHANNON: Yes, sir.

4 THE COURT: And I'm not going to rule on your
5 motion for the preservation of evidence until we have a
6 chance to have the victim in here and be heard on that
7 matter. Okay?

8 MR. MCELHANNON: Yes, sir.

9 THE COURT: Is there anything further on this
10 matter?

11 MR. MCELHANNON: Your Honor, there was. I had
12 filed a motion to reconsider your sentence.

13 THE COURT: Well, let me go ahead and address
14 that too. Are your grounds any different than ---

15 MR. MCELHANNON: No, Your Honor. Just that he
16 had no prior record. And as Your Honor remembers, I
17 asked -- and I understand why he couldn't get a YOA
18 because of the charges that he was convicted of. But I
19 asked for a six-year cap ---

20 THE COURT: Right.

21 MR. MCELHANNON: --- because that's what a YOA
22 can go up to. Your Honor denied that and gave him ten
23 years. Your Honor, my motion would just be renewed. Or
24 my objection to that renewed that I believe since he had
25 no prior record whatsoever that a lesser sentence than

1 ten years is more appropriate.

2 THE COURT: All right. And I respectfully
3 disagree in this case. Again, you're doing your job that
4 you're supposed to do. But just because -- I give a lot
5 of weight to prior record, but in this -- during this
6 case, the nature of the charges, the nature of the
7 conduct, the jury found him guilty. He's lucky he wasn't
8 here on a murder.

9 MR. MCELHANNON: I understand.

10 THE COURT: And so I think the sentence was
11 within the range and appropriate based on the testimony
12 and the evidence and his prior record. I certainly had a
13 lot higher that I could have sentenced him to.

14 With that being said, go ahead and add in your order
15 a provision about denying your motion for reconsideration
16 of the sentence. And is there any other matters we need
17 to join up before this thing will be ripe for appeal?

18 MR. MCELHANNON: No, Your Honor.

19 THE COURT: Okay. All right.

20 MR. MCELHANNON: Your Honor, as I understand
21 it, just for the record, my time for the ten days for the
22 notice does not run until after you sign?

23 THE COURT: Does not run until after I sign
24 that written order.

25 MR. MCELHANNON: Thank you, Judge.

1 THE COURT: Now, that doesn't mean wait for
2 about twenty years to get that done. But you know what
3 I'm saying. Get it to me within a reasonable length of
4 time.

5 MR. MCELHANNON: I'll get it within a week,
6 Your Honor.

7 THE COURT: Just a reasonable amount of time
8 will be fine.

9 MR. MCELHANNON: Thank you, Your Honor.

10 THE COURT: I know you have motivation to get
11 it done too.

12 MR. MCELHANNON: Yes, sir.

13 THE COURT: All right. Mr. Thomas, what I'm
14 telling your attorney is he's going to draft an order on
15 your behalf. The appeal time will not begin to run until
16 that order's been signed and filed with the Court, okay,
17 sir? All right.

18 Anything from the State?

19 MR. CAMPBELL: Not at this point.

20 THE COURT: Okay. All right. This hearing is
21 adjourned. Thank you, ladies and gentlemen.

22 (WHEREUPON, the hearing ended at approximately 2:28
23 p.m.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 20th day of May 2014.

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

15 *S/Renee H Tollison*

16
17

Circuit Court Reporter

477

WITNESSES

Wayne Mills, Anderson Co. Sheriff's Office

DOCKET NO. 2012-504 01478

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 19 2012

Term

ARREST WARRANT NUMBER

J894801

THE STATE

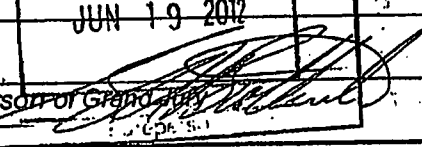
vs.

Devon Shermayne Thomas

ACTION OF GRAND JURY

TRUE BILL

JUN 19 2012

Foreperson of Grand Jury
Date: 

VERDICT

Foreperson of Petit Jury
Date:

RLC

Indictment for

Murder/Attempted Murder

SC Code: 16-03-0029
CDR Code: 3410

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on July 19 2012, the Grand Jurors of Anderson County present upon their oath:

Murder/Attempted Murder

That Devon Shermaine Thomas did in Anderson County, on or about March 25, 2012, did unlawfully with malice aforethought and with the intent to kill, attempt to kill Anquavious Smith. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ramel Campbell
ASSISTANT SOLICITOR

479

WITNESSES

Wayne Mills, Anderson Co. Sheriff's Office

DOCKET NO. 2012-304 01479

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 19 2012

Term

ARREST WARRANT NUMBER

J894809

THE STATE

vs.

Devon Shermayne Thomas

ACTION OF GRAND JURY

TRUE BILL

JUN 19 2012

Foreperson of Grand Jury

Date:

RLC

Indictment for

VERDICT

Murder/Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JUL 19 2012, the Grand Jurors of
Anderson County present upon their oath:

Murder/Attempted Murder

That Devon Shermayne Thomas did in Anderson County, on or about March 25, 2012,
did unlawfully with malice aforethought and with the intent to kill, attempt to kill Chrislacia
Slappy. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ramel Campbell
ASSISTANT SOLICITOR

481

WITNESSES

Wayne Mills, Anderson Co. Sheriff's Office

DOCKET NO. 2012 CS04 01480

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS
JUN 19 2012

Term

ARREST WARRANT NUMBER

J894810

THE STATE

vs.

Devon Shermayne Thomas

ACTION OF GRAND JURY

TRUE BILL

JUN 19 2012

Foreperson of Grand Jury
Date:

VERDICT

RLC

Indictment for

Murder/Attempted Murder

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JUL 19 2012, the Grand Jurors of Anderson County present upon their oath:

Murder/Attempted Murder

That Devon Shermayne Thomas did in Anderson County, on or about March 25, 2012, did unlawfully with malice aforethought and with the intent to kill, attempt to kill Charles Lindsey. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ronell Campbell

ASSISTANT SOLICITOR

483

WITNESSES

Wayne Mills, Anderson Co. Sheriff's Office

DOCKET NO. 2012-004 01481

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

~~JUN 19 2012~~
Term

ARREST WARRANT NUMBER

J894811

THE STATE

vs.

Devon Shermayne Thomas

ACTION OF GRAND JURY

TRUE BILL

JUN 19 2012

Foreperson of Grand Jury
Date:

VERDICT

RLC

Indictment for

Murder/Attempted Murder

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JUL 1 9 2012, the Grand Jurors of
Anderson County present upon their oath:

Murder/Attempted Murder

That Devon Shermayne Thomas did in Anderson County, on or about March 25, 2012,
did unlawfully with malice aforethought and with the intent to kill, attempt to kill Mijelica
Smith. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Rame L Campbell

ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 19, 2015



Tiffany L. Butler
Appellate Defender

RECEIVED

FEB 19 2015

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

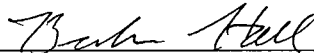
DEVON S. THOMAS,

APPELLANT

APPELLATE CASE NO. 2014-001182

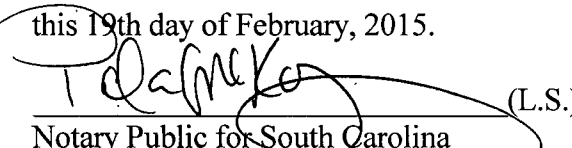
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022

ORIGINAL

RECEIVED

FEB 19 2015

SC Court of Appeals