

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Edgar W. Dickson, Circuit Court Judge **S.C. Supreme Court**

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THADDEUS CURRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000839

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)

IN THE COURT
OF GENERAL SESSIONS

2 COUNTY OF AIKEN)

3
4 INDICTMENT NO. 2004-GS-02-838
2004-GS-02-839

5
6 STATE OF SOUTH CAROLINA,)
7 Plaintiff)

8 VS.)

TRANSCRIPT OF RECORD

9
10 THADDEUS CURRY,)
11 Defendant)

12
13 May 10-13, 2004
14 Aiken, South Carolina

15
16 B E F O R E:

17 THE HONORABLE REGINALD I. LLOYD, JUDGE AND A JURY.

18
19 A P P E A R A N C E S:

20 Everett Chandler, Assistant Solicitor
21 Bill Weeks, Deputy Solicitor
2nd Judicial Circuit

22 Michael Chessser, Esquire
23 Attorney for the Defendant

24 Brenda W. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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PRETRIAL MOTIONS

1
2 THE COURT: Yes, sir, Mr. Chandler?

3 MR. CHANDLER: Thank you, Your Honor, this is
4 2004-GS-02-839, State of South Carolina vs. Mr. Thaddeus
5 Curry. He's charged under this indictment for murder; also
6 under '04-GS-02-838 for possession of a firearm during a --
7 possession of a firearm during a violent crime. And also
8 2004-GS-02-837, attempted armed-robbery.

9 We have a pretrial motion by the defense, Your
10 Honor, challenging the out-of-court identification.

11 THE COURT: Yes, sir?

12 MR. CHESSER: Your Honor, Michael Chesser for
13 Thaddeus Curry. First of all, if I could, I would like to
14 put on the record my motion to exclude two photos that the
15 State had intended to introduce. I don't know that they're
16 marked, but what I'd like to do is to have them ---

17 THE COURT: If they haven't marked them yet,
18 I'll be glad to -- we can go ahead and put it on the record
19 and then reference back to it if you want.

20 MR. CHESSER: Your Honor, they are marked. At
21 this time, I would think, for ID is State's No. 3 and 4 and
22 the defense -- for the record, State's No. 3 shows the
23 decedent with, really a metal rod going through his head,
24 which presumably would follow the path of a bullet. The
25 second picture marked No. 4 is a picture of the, I believe

1 it was the driver's side door with a bullet hole coming
2 into it, but there's a lot of blood on this -- it would
3 actually be your armrest.

4 These are two pictures that the State told me
5 that they intend to introduce and I would move that they be
6 excluded on the grounds that their probative value is
7 substantially outweighed by prejudicial effect.

8 THE COURT: Just for the record, we just
9 reviewed these back in chambers and I found that the -- I
10 so find on the record that the probative value does
11 outweigh the prejudicial effect. I don't think they're
12 prejudicial at all. Exhibit No. 3, though it's an
13 unpleasant picture, but it's not bloody or anything. No. 4
14 is just an armrest, it appears to be an armrest or a door
15 handle or something like that with a bullet hole and some
16 blood. But, again, I don't believe that that is more
17 prejudicial. It is probative to this case.

18 MR. CHESSER: Your Honor, secondly, in this
19 case, Ronald Coursey made -- apparently made an
20 identification out of a lineup and at this time, we would
21 challenge any potential in-court ID; and also the
22 identification, the pretrial identification from the lineup
23 as being -- the lineup as being unduly suggestive and as
24 any potential ID in the courtroom as being a product -- a
25 substantial likelihood of irreparable misidentification,

1 based on this unduly suggestive lineup. We would ask that
2 it be excluded under the principal of Neal vs Biggers.

3 Your Honor, on this, I would ask with regard to procedure,
4 Mr. Coursey is here, I know we're going to hear from Billy
5 Fleury who prepared the lineups, and I would ask that
6 Mr. Coursey wait outside the courtroom while we hear from
7 Officer Fleury.

8 THE COURT: Mr. Chandler, any response? I will
9 be glad to let them keep him outside the courtroom while
10 the officer testifies, but are you prepared to go forward?

11 MR. CHANDLER: Yes, sir, the State is prepared
12 to go forward.

13 THE COURT: All right, is the officer up first?

14 MR. CHANDLER: Yes, sir.

15 THE COURT: So we'll ask the other witness if
16 he can step outside while he testifies.

17 **NEAL VS. BIGGERS HEARING**

18 MR. CHANDLER: Your Honor, the State calls
19 Billy Fleury from the Aiken County Sheriff's Office.

20 THE COURT: All right, sir, if you would just
21 come around and be sworn.

22 THEREUPON,

23 BILLY FLEURY,
24 after being duly sworn, testified as follows:

25 THE CLERK: Take a seat in the witness box,

Billy Fleury - Direct Examination in Camera by Mr. Chandler

1 state your full name for the court, spelling your last.

2 MR. FLEURY: My full name is Billy Dean Fleury,
3 F-l-e-u-r-y.

4 DIRECT EXAMINATION - IN CAMERA

5 By Mr. Chandler:

6 Q Investigator Fleury, where are you employed?

7 A Aiken County Sheriff's Office.

8 Q And what is -- how are you employed? What is your
9 capacity?

10 A Right now, I'm lieutenant of all investigations.

11 Q And as a lieutenant over investigations, what do you
12 do?

13 A Oversee the other investigators doing their
14 investigations and administrative work.

15 Q On April 15, 2003, did you have an opportunity to
16 conduct a photo ID lineup in this case ---

17 A Yes, I did.

18 Q --- against Thaddeus Curry?

19 A Yes, I did.

20 Q And about, approximately what time was that?

21 A It was probably about 9 o'clock that morning. I went
22 to the Aiken Department of Public Safety and got with
23 their ID technician, computer technician, Eddie George
24 and he helped me prepare this lineup with their
25 equipment.

Billy Fleury - Direct Examination in Camera by Mr. Chandler

1 Q And how long after the alleged crime was this photo ID
2 taken?

3 A The shooting took place, I believe it was on March 18,
4 and the lineup was prepared, I believe on April 15,
5 almost a month.

6 Q What, if anything, did you tell the witnesses to the
7 lineup -- any witnesses that would review the lineup,
8 did you tell them anything?

9 A No, sir, the only thing I told them, I presented them
10 with the lineup. Both of them came -- I don't know
11 which one you're asking about, but Mr. Coursey came up.
12 When I called him he came up. I gave him the lineup.

13 I said, "Here's a lineup of six people, look at
14 it, take your time, I will be in the next room."

15 He was in the conference room. I presented it
16 to him, he said, "I don't need a lot of time, it's No.
17 3."

18 Q All right. Before we get back to that now, how many
19 people actually reviewed this lineup?

20 A Six.

21 Q Six reviewed it?

22 A Yes, sir.

23 Q In this particular lineup, how were they dressed?

24 A Some of them had t-shirts. I think the majority of
25 them had t-shirts.

Billy Fleury - Direct Examination in Camera by Mr. Chandler

1 Q Specifically did any of them have any clothing that was
2 distinctive from the others that would make them stand
3 out in the lineup?

4 A I wouldn't think so.

5 Q All right. Were -- with respect to age, with respect
6 to race, were they similar? The six individuals?

7 A Yes, sir. We -- Mr. George and myself, we looked at
8 all the photographs and we tried to get the same head
9 shape, same haircut, same facial features, skin tone.

10 Q Now, during the time of the lineup, when you mentioned
11 Mr. Coursey, during the time of the lineup, did you
12 have anybody else there present, who potentially
13 suggested what individual Mr. Coursey should decide who
14 the person was?

15 A No, sir. During the time that we was in the room, it
16 was just myself and Mr. Coursey.

17 Q And now, did you display any photographs of any
18 individual in the lineup prior to showing the lineup to
19 Mr. Coursey?

20 A No, sir.

21 Q And did any of the witnesses, and that's Mr. Coursey
22 and also -- who are the people that you showed the
23 lineup?

24 A That I showed it to?

25 Q Yes.

Billy Fleury - Direct Examination in Camera by Mr. Chandler

1 A Mr. Coursey and I believe it was Robby Glenn, Robert
2 Glenn.

3 Q All right. Now did any of those individuals choose
4 someone other than the defendant?

5 A No, they didn't.

6 Q Okay. Did they indicate whether the defendant was the
7 person who was participating in the crime?

8 A Yes.

9 Q Both of them?

10 A Yes, sir.

11 Q Okay. And specifically who was selected?

12 A I believe it was Photograph No. 3 and that was the
13 defendant, Mr. Curry.

14 Q Okay. Investigator Fleury, I now hand you what has
15 previously been marked for identification as State's
16 Exhibit No. 1 and State's Exhibit No. 2. With respect
17 to State's Exhibit No. 1, could you tell me what that
18 is?

19 A This is a -- what we call a photo ID statement that we
20 have the witnesses fill out.

21 Q Okay. And with respect to the State's Exhibit No. 2,
22 would you tell me what that is?

23 A That's the photo lineup that myself and Officer George
24 prepared.

25 Q Okay. Do you recognize the contents of the exhibits?

Billy Fleury - Direct Examination in Camera by Mr. Chandler

1 A Yes, sir.

2 Q And have these contents been in your care and custody
3 and control since the original identification?

4 A Yes, sir, they've been in the case file.

5 Q And are they in substantially the same condition as
6 they were when you used them?

7 A Yes, sir.

8 Q Okay. And are there any -- or did you see, as you look
9 at them now, any material alterations to that
10 particular lineup on State's Exhibit No. 2?

11 A No, sir, they're all the same, everything is the same.

12 Q All right.

13 MR. CHANDLER: Your Honor, at this time, the
14 State would like to introduce these for the purposes of
15 this pretrial motion.

16 THE COURT: Objection?

17 MR. CHESSER: No objection.

18 By Mr. Chandler:

19 Q Investigator Fleury, after Mr. Coursey identified
20 Mr. Curry in the lineup, did he indicate this
21 identification to anybody else? Did he tell anybody
22 else about them?

23 A Then it was Special Agent Wallace Owens with SLED who
24 was currently the captain of investigations at the
25 Aiken County Sheriff's Office, he was there and after

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 he picked him out, I believe it was Mr. Owens asked him
2 and he signed it along with me as a witness.

3 Q Okay. Now with respect to Mr. Robert Glenn, you said
4 he also pointed out or picked out Mr. Curry in that
5 lineup, did he have a chance or opportunity or are you
6 aware did he have an opportunity to tell Mr. Coursey
7 who the person was in the lineup?

8 A That's something I couldn't -- I think they saw it an
9 hour from each other.

10 Q Okay.

11 A Mr. Glenn saw it first and then Mr. Coursey, I believe.

12 Q And did Mr. Coursey select anybody else in that lineup
13 other than Mr. Curry as the person who was the ---

14 A No, sir.

15 Q --- in this case?

16 A No, sir.

17 MR. CHANDLER: No further questions.

18 CROSS-EXAMINATION - IN CAMERA

19 By Mr. Chesser:

20 Q Investigator Fleury, had Ronald Coursey given you,
21 previously given you a description of the person who
22 shot Heath?

23 A He tried to. Basically he was kind of jumbled up
24 during that time and he came up with the gold teeth and
25 some, the gold grills.

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

- 1 Q Okay. When was it that you talked with Ronald Coursey
2 about a description of the person who was the shooter?
- 3 A The night of the shooting.
- 4 Q Okay. You talked to him the night of the shooting?
- 5 A Yes, sir.
- 6 Q You did not talk to him between March 18, and when you
7 showed him this lineup on April 15?
- 8 A I may have talked to him on the phone a couple of
9 times.
- 10 Q Okay. But you didn't get a description of this shooter
11 during other conversations?
- 12 A Black male, one kind of short, one kind of tall. He
13 gave the best description that he could during that
14 time.
- 15 Q Okay. This -- the statement he made, this is actually
16 dated March 25, did you take that statement from
17 Mr. Coursey?
- 18 A Myself and Agent Owens.
- 19 Q That's the statement that you're talking about where he
20 tried to give a description?
- 21 A Yes.
- 22 Q Okay. And that, in fact, took place about a week after
23 this incident happened, right?
- 24 A Yes.
- 25 Q All right. Okay. Now, at that -- in that interview

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 with you, he talked about an individual with gold
2 teeth?

3 A Gold teeth and a white t-shirt. That was all.

4 Q Okay. Is the person with the gold teeth, is that
5 supposed to be Thaddeus Curry?

6 A The main one was Mr. Savage.

7 Q Anthony Savage?

8 A Yes, sir.

9 Q Okay.

10 A He was the one doing most of the talking to Mr. Coursey
11 and the deceased, Mr. Hamilton.

12 Q So it's your understanding that when Mr. Coursey was
13 referring to the person with the gold teeth, he was
14 referring to Anthony Savage?

15 A Yes.

16 Q Okay. When he referred to the guy in the white
17 t-shirt, he was referring to Thaddeus Curry?

18 A I believe so.

19 Q Okay.

20 MR. CHESSEY: I would ask that this statement
21 of Mr. Coursey be made a Court's Exhibit, Your Honor, as
22 his prior description of the suspect.

23 THE COURT: Yes, sir. Objection?

24 MR. CHANDLER: No objection, Your Honor.

25 THE COURT: Since this is all pretrial, ya'll

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 don't have to adhere so strictly to laying a foundation and
2 all.

3 By Mr. Chesser:

4 Q I'm going to paraphrase it a little bit, but in this
5 statement of March 25, referring to the -- not Anthony
6 Savage, but to the other person, basically, it's a
7 black male in a white t-shirt is the extent of his
8 description?

9 A Yes, sir, that's what I was trying to explain to you.

10 Q Okay. How did you come to have Thaddeus Curry's photo
11 in the lineup?

12 A Well, he had previously been arrested by the Aiken
13 County Sheriff's Office.

14 Q Okay. So you had prior information that he was
15 involved?

16 A At first, all we had was a guy named Thad and we didn't
17 put two and two together at that time.

18 Q Okay. Beyond that, though, apparently Anthony Savage
19 gave a statement, is that what happened?

20 A Yes, sir. A witness from -- who gave a previous
21 statement from Augusta, Georgia came over and provided
22 some more information and we went from there and soon
23 after that we obtained the lineups and invited
24 Mr. Coursey and Mr. Glenn and that's when we obtained
25 the warrants. And then after that, Mr. Savage gave us

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 a statement.

2 Q Now, the lineup that you showed Ronald Coursey, was it
3 black and white or color?

4 A Black and white.

5 Q And you actually did the lineup originally in color, is
6 that right?

7 A We printed out two. One was color and one was black
8 and white; and the black and white was more like -- all
9 six looked about the same to us, than the color one.

10 Q So you made a decision based on that, that you felt it
11 was more appropriate to use the black and white lineup?

12 A Yes, sir.

13 Q Now you said earlier that Robert Glenn apparently had
14 been shown this same lineup prior to Ronald Coursey
15 being shown it?

16 A Yes, sir.

17 Q Okay. And how long was it prior in time?

18 A May have been an hour. Something like that, an hour,
19 hour-and-a-half. I really don't know.

20 Q Okay. Did they come to the station together?

21 A No, sir.

22 Q Okay. Was Robert Glenn still there when Ronald Coursey
23 finished the lineup?

24 A No, sir, no, sir, I called them like that to have them
25 split up so -- I didn't want them all there at the same

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 time.

2 Q As far as you know then, there was no conversation
3 between Robert Glenn and Mr. Coursey?

4 A No, sir.

5 Q Okay. How many lineups -- how many arrays of six
6 photos did you prepare?

7 A I don't understand.

8 Q Okay.

9 A You mean how many lineups did I prepare? Or ---

10 Q Yes, sir.

11 A Just these two and one color, I believe, and now you're
12 just asking about Mr. Curry?

13 Q Well, let me say this, you had one lineup or one that
14 Coursey was shown with Curry in it, right?

15 A Yes, sir.

16 Q You had another lineup with Savage in it?

17 A Yes, sir.

18 Q Okay. Did you have any other lineups that ---

19 A I had one of Javon Rushon that was prepared in Augusta,
20 Georgia. That was another -- that was a guy that was
21 in the investigation at first.

22 Q Okay. And you showed that to Mr. Coursey?

23 A Yes, and he couldn't ---

24 Q But those are the only three that you prepared and
25 those were the only three that were shown to Ronald

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 Coursey?

2 A Yes, sir.

3 Q Okay. Now, it's your testimony that he was -- well,
4 let me ask you this, was he told that the suspects were
5 in this lineup? The person that you suspected of being
6 the shooter?

7 A What I told him I believe is, I handed it to him, I
8 said, "There's six photographs in here, take your
9 time."

10 And I started to walk out and he stopped me.
11 That was it. If I did, I don't remember.

12 Q Okay. After he picked a person out, what happened
13 then?

14 A He wrote this statement. First I asked him if he was
15 sure. I said, "That was awful quick." And ---

16 Q What was his response back?

17 A He said, "Man, I'll never forget him."

18 Q And then what happened?

19 A And then we filled out the statement form here.

20 Q Okay. Did you have occasion to tell him, "Ronald
21 Coursey, you picked the right one."?

22 A Yes, sir, I told him that.

23 Q What's that?

24 A I said I told him.

25 Q Yeah?

Billy Fleury - Cross-Examination in Camera by Mr. Chesser

1 A I said, "That's him."

2 Q All right. Now, in Coursey's prior description of the
3 suspect, he had indicated that it was an individual in
4 a white t-shirt, right?

5 A Yes.

6 Q Okay. Now, in this lineup that you showed him, there
7 are various individuals that don't have white t-shirts
8 on, right?

9 A Yes, sir, there's two of them.

10 Q So two of the individuals have other color shirts on,
11 right?

12 A Yes, sir.

13 Q Okay. And then one of the individuals has a ripped up
14 t-shirt on, right?

15 A Yes, sir.

16 Q Okay. And the only person who has a t-shirt on with
17 their shoulders showing, that would be Thaddeus Curry,
18 is that right?

19 A Yes, sir.

20 Q Okay.

21 MR. CHESSER: That's all the questions I have.

22 THE COURT: Thank you, sir. Anything further
23 from the State?

24 MR. CHANDLER: I just have two quick ones, Your
25 Honor.

Billy Fleury - Redirect Examination in Camera by Mr. Chandler

REDIRECT EXAMINATION - IN CAMERA

By Mr. Chandler:

Q Investigator Fleury, you indicated you changed from color to black and white because you said they looked the same with black and white?

A Some of the color photographs, one was -- the skin tones were off on every one and also the photographs were kind of -- one would be this color and the other would be one color and they just didn't look very good. One would have like a red tone to it and I just thought the black and white was a better lineup, would make it equal.

Q So you were suggesting that the reds would be suggestive?

A Yes, sir.

Q The defense pointed out the fact that Mr. Curry was the only one that had on a t-shirt that had the ---

A Tank top.

Q The tank top. In Coursey's statement did he say somebody had on a tank top?

A He said they had the t-shirt. I don't recollect. It may be a tank top, I really don't know, not now.

MR. CHANDLER: No further questions.

THE COURT: Okay. Anything further from the defense?

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 MR. CHESSEY: Not for this witness, Your Honor.

2 THE COURT: Thank you, you can step down.

3 MR. FLEURY: Thank you, sir.

4 THE COURT: If the State would call their next
5 witness.

6 MR. FLEURY: Would you like for me to step out,
7 Your Honor?

8 THE COURT: No, you're free to stay.

9 MR. CHANDLER: The State would call Mr. Ronald
10 Coursey.

11 THEREUPON,

12 RONALD COURSEY,
13 after being duly sworn, testified as follows:

14 THE CLERK: Have a seat in the witness box.
15 State your full name for the court, spelling your last.

16 MR. COURSEY: Ronald Douglas Coursey,
17 C-o-u-r-s-e-y.

18 **DIRECT EXAMINATION - IN CAMERA**

19 By Mr. Chandler:

20 Q Mr. Coursey, where do you live?

21 A [REDACTED], Beech Island.

22 Q Were you an alleged victim to a crime that occurred in
23 Beech Island regarding the shooting death of Mr. Heath
24 Hamilton?

25 A Yes, sir.

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 Q Okay. Did you have the occasion to view a lineup in
2 this particular case?

3 A Yes, sir.

4 Q What day did you have the opportunity to do that?

5 A I believe it was April 15.

6 Q About how long ago -- how long after the incident or
7 the shooting death of Mr. Heath Hamilton did this
8 occur?

9 A Around a month.

10 Q Where did this lineup take place?

11 A At Aiken County Jail.

12 Q And who conducted this lineup?

13 A Mr. Bill Fleury.

14 Q Did anybody else view it at the same time that you did?

15 A No, sir.

16 Q Okay. And in the lineup that you saw, how many people
17 were in the lineup, do you remember?

18 A Six.

19 Q Six people? Can you describe the lineup? What did it
20 include?

21 A Six black males, all around the same age.

22 Q About the same age? And what age would that be?

23 A Probably 20 to 30's.

24 Q Between 20's and 30's? Anything else about them that
25 was similar at that time?

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 A They looked like they were wearing about the same
2 thing.

3 Q You said they looked like they were wearing the same
4 thing?

5 A Yes, sir.

6 Q And how were they dressed? What was the same thing
7 that they had on?

8 A They were all white t-shirts or either jail clothing.

9 Q Okay. How, in fact, was the lineup conducted? How did
10 Mr. Fleury conduct the lineup? What did he do?

11 A Well, he got it printed out and took it, showed it to
12 me in the room and he said he would leave and let me
13 have as much time as I wanted to look at it.

14 Q He said you could have as much time as you wanted? Did
15 any of the officers -- did this officer or anybody else
16 kind of suggest to you who the person might be?

17 A No, sir, not at all.

18 Q Did you -- of the people in that lineup, did you have
19 an opportunity to look at any other pictures of anybody
20 prior to looking at that lineup?

21 A No.

22 Q So this was the first time for purposes of a photo
23 lineup that you saw these individuals?

24 A Yes, sir.

25 Q Okay. How long did it take you to look at these

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 pictures?

2 A Not long.

3 Q Not long? How long would you say?

4 A I knew right offhand.

5 Q Right offhand?

6 A Yes, sir.

7 Q How did you know right offhand?

8 A The eyes.

9 Q The eyes?

10 A Yes, sir.

11 Q Describe them for me?

12 A Just big and bold eyes, just stuck out in my memory,
13 made a image in my head.

14 Q Well at what time did you have an opportunity to
15 observe the person that committed the crime?

16 A Before -- beforehand, the murder actually happened.

17 Q What were you doing?

18 A We were trying to buy some pot.

19 Q So you were buying drugs? And how were you able to see
20 Mr. Curry during that time that you were buying pot?

21 A He was asked if he knew anybody or any way to get it.

22 Q Uh-huh. And how long did this transaction occur?

23 A We were probably around him for an hour and-a-half.

24 Q An hour and-a-half?

) 25 A On and off, yes, sir.

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 Q On and off, talking to him, trying to figure out -- and
2 during the time that you viewed Mr. Curry, how close
3 were you to him?

4 A Shaking hands distance.

5 Q Okay. What did you observe about him other than his
6 eyes? What, if anything, did you observe about him?

7 A What he was wearing? A white t-shirt.

8 Q Did you select that person in the lineup?

9 A Yes, sir.

10 Q And is that person responsible for the crime in
11 question? Did that person shoot Mr. Heath Hamilton?

12 A Yes, sir.

13 Q Who did you select?

14 A The gentleman seated on the right, in the orange suit.

15 Q That's Mr. Thaddeus Curry?

16 A Yes, sir.

17 Q Okay. I'm showing you what has been marked for the
18 purposes of this pretrial motion, State's Exhibit No.
19 2. Would you tell me what that is?

20 A It's the lineup.

21 Q And describe that lineup. Is that a lineup that you've
22 seen previously?

23 A Yes, sir.

24 Q Okay. And what other than the lineup is included on
25 this? What, if anything?

Ronald Coursey - Direct Examination In Camera by Mr. Chandler

1 A My initials.

2 Q Your initials. And where did you put your initials?

3 A Under No. 3.

4 Q On No. 3? And who's photograph is located at the No. 3
5 spot?

6 A Mr. Thaddeus Curry.

7 Q Okay. How certain were you that, in fact, that was
8 Mr. Curry?

9 A Absolutely positive.

10 Q Absolutely positive. And after you selected him, did
11 you communicate how positive you were to Investigator
12 Fleury?

13 A Yes, sir.

14 Q Did you select -- ever look at in that lineup, did you
15 ever select anybody else as being somebody ---

16 A No, sir.

17 Q --- that participated in the crime?

18 A No, sir.

19 Q Was your identification of Mr. Curry in that lineup
20 based on anything else other than you looking at these
21 pictures in your memory?

22 A No, sir.

23 Q Okay.

24 MR. CHANDLER: No other questions.

25 THE COURT: Cross?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 MR. CHANDLER: One more question, Your Honor.

2 THE COURT: Okay.

3 By Mr. Chandler:

4 Q Do you know Robert Glenn?

5 A Yes, sir.

6 Q And were you aware that Robert Glenn had a chance to
7 look at the photo lineup?

8 A Yes, sir.

9 Q Did he tell you who it was?

10 A No, sir.

11 Q Did he tell you where Thaddeus Curry was?

12 A I didn't hear from him until after I had already seen
13 it.

14 Q Okay.

15 MR. CHANDLER: No further questions.

16 THE COURT: Thank you, sir. Yes, sir, Counsel?

17 **CROSS-EXAMINATION - IN CAMERA**

18 By Mr. Chesser:

19 Q You and Robert Glenn, are ya'll friends?

20 A Yes, sir.

21 Q On this day, April 15, did you know that Robert Glenn
22 was going up there to look at a lineup?

23 A No, sir.

24 Q Okay. When did you talk to him after the lineup?

25 A I'm not sure, it was a couple of days afterward.

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 Q Okay. And ya'll talked about picking people out?

2 A Yes, afterwards.

3 Q Sure. And did you tell him you had picked somebody out
4 as the shooter in this case?

5 A Yes, sir.

6 Q All right. And did he tell you he picked somebody out
7 as a shooter?

8 A Yes, sir.

9 Q Or as a person he had seen in the car? And did ya'll
10 talk about, that you picked out the same person?

11 A No, sir.

12 Q Okay. When did you first hear the name Thaddeus Curry?

13 A I can't -- I can't say. It's probably close to the
14 date that I looked at this.

15 Q Okay.

16 A I didn't know his name at the time of the incident.

17 Q Did you know his name prior to looking at that lineup?

18 A I knew it was a possibility, yes, sir.

19 Q Okay. So you had heard some discussion naming Thaddeus
20 Curry as being the shooter in this case?

21 A No, sir, I don't believe I had at that time.

22 Q Okay. Now, you were shown several lineups on that day,
23 April 15, right?

24 A No, sir.

25 Q Okay. How many -- when I say lineup, I'm talking about

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 this array of six photos. How many different arrays of
2 six photos were you shown that day, April 15?

3 A Just this one.

4 Q Okay. Their was an individual -- At the gas station
5 where this happened, there was an individual who fired
6 the shots, right?

7 A Yes, sir.

8 Q And there was an individual that was with him at the
9 gas station, right?

10 A Yes, sir.

11 Q Were you shown a lineup in an attempt to pick out this
12 other individual?

13 A At a later date.

14 Q Okay. At a later date, it was a separate time?

15 A Yes, sir.

16 Q Okay. Do you recall how much after April 15?

17 A No, sir.

18 Q So on April 15, you were just shown this one lineup?

19 A Yes, sir.

20 Q Okay. Now, when you made that -- when you picked that
21 photo out, Investigator Fleury told you that you'd made
22 the right choice, is that right?

23 A He said that was the one that they were thinking about.

24 Q All right. The lineup you were shown, was it black and
25 white or color?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A Black and white.

2 Q Okay. Now, you had previously met with Investigator
3 Fleury in an attempt to give him a description of the
4 shooter is that right?

5 A Yes, sir.

6 Q Okay. Now, you gave a statement on March 25, of 2003
7 to Investigator Fleury, is that right?

8 A Yes, sir.

9 Q Is that -- as far as you know is that the day where you
10 tried to give a description of the shooter?

11 A I can't really -- it's been so long ago, I can't
12 recall.

13 Q What I mean is, was this the primary occasion where you
14 tried to give a description of the shooter?

15 A Like I said, I can't remember.

16 Q Okay. This date -- the date on this, of course, is
17 March 25; I'm looking at Court's Exhibit No. 1. March
18 25, would have been about a week after this happened,
19 right?

20 A Yes, sir.

21 Q Okay. Now, at that time when you were talking about
22 the shooter, all you said was it was a black male in a
23 white t-shirt, is that right?

24 A A white -- yes, sir.

25 Q Okay. Mr. Coursey, you weren't able to give any other

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 details of how this guy looked when you were
2 interviewed on March 25, were you?

3 A That's all I put down at the time.

4 Q Uh-huh, but I mean you were being interviewed and the
5 description of the person who fired the gun, you would
6 agree it was important, right?

7 A Yes, sir.

8 Q And that's the best you can do, isn't it?

9 A Well I gave more information, I just didn't write it
10 all down.

11 Q Okay. Let me ask you something, this day, on March 17,
12 was St. Patrick's Day, right? And this event happened
13 in -- late at night on -- actually after midnight, so
14 technically it was the 18th, of March of 2003, right?

15 A Yes, sir.

16 Q So that basically was the extension of St. Patrick's
17 Day festivities, right?

18 A Right.

19 Q Okay. Now, I guess my point is, on this day, you had
20 had something, some alcoholic beverages to drink, is
21 that right?

22 A Yes, sir.

23 Q Okay. Let me go back to something else. What time did
24 you arrive at the apartments of Jeremy Simuel on March
25 17th?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A I couldn't give you an exact time, I'd say around
2 12:00, 11:00, 12:00 somewhere around that.

3 Q At night.

4 A Yes, sir.

5 Q Okay. So, if you were celebrating St. Patrick's Day,
6 you would admit to drinking prior to your arrival at
7 the apartments, is that right?

8 A Yes, sir.

9 Q Okay. In addition, you had smoked some marijuana on
10 that evening, is that correct?

11 A Yes, sir.

12 Q Okay. Now, prior to going to the apartments, let me
13 see if I've got this right, you go by Mr. Hamilton's
14 brother's apartment in Augusta?

15 A Yes, sir.

16 Q Okay. And where is his apartment located?

17 A I ---

18 Q You don't know?

19 A I know where it's at, I just couldn't tell you.

20 Q Okay. What is his name?

21 A Henry Hamilton.

22 Q Henry?

23 A Yes, sir.

24 Q Okay. How many hours did you spend at the apartment of
25 Henry Hamilton?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A I'm not sure.

2 Q Okay. At that apartment you were drinking, weren't
3 you?

4 A I had a couple, yes, sir.

5 Q You had a couple of what?

6 A Beers.

7 Q Okay. A couple of beers. And you had some beers prior
8 to going to that apartment, right?

9 A I can't recall.

10 Q Okay. And at the apartment you had a couple of beers
11 and you smoked marijuana, is that right?

12 A Yes, sir.

13 Q Okay. Did you smoke -- you smoked what are called
14 boles of marijuana, right?

15 A Yes, sir.

16 Q And a bole is where you use what they call a bong to
17 smoke marijuana, is that right?

18 A Yes, sir.

19 Q Okay. So how many boles of marijuana did you smoke?

20 A I can't recall.

21 Q Okay. So you had a few beers and you smoked some
22 marijuana at Henry Hamilton's apartment and you left
23 that apartment and went to the apartment of Jeremy
24 Simuel, right?

25 A We were stopping to talk to somebody else and they were

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 just outside drinking.

2 Q Okay. And you had more to drink while you were at the
3 apartment of Jeremy Simuel, is that right?

4 A I can't recall.

5 Q Okay. Now, so when you got to the apartment of Jeremy
6 Simuel, it was 11:00 or 12:00 at night on the night of
7 March 17, right?

8 A I'm not sure.

9 Q Okay. But you, and I'm not trying to put words in your
10 mouth, but you think it was about that time?

11 A It was around, I mean, I can't say for sure.

12 Q Sure. But suffice it to say it was dark, right?

13 A Yes.

14 Q Right? So, you're out there in the apartment and tell
15 me what happened. Who -- you were talking with some
16 individuals?

17 A Yes, sir, first of all it was a lighted apartment, it
18 was lighted outside and we were talking to them and
19 they were drinking beers, sitting on their car and came
20 up and asked about pot because I was looking to score
21 some pot and they said, "Yeah, it will be a little
22 while." And went upstairs and talked to the ---

23 Q Now, who went upstairs?

24 A This gentlemen right here and his buddy.

25 Q Okay. And you were -- obviously you were with Heath

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 Hamilton?

2 A Yes, sir.

3 Q Okay. And so at that time, you're saying that you saw
4 the defendant, Thaddeus Curry and his friend drinking
5 beers in the parking lot of those apartments, is that
6 right?

7 A Yes, sir.

8 Q Okay. Now, how long was it that you conversed with the
9 two individuals who were in that parking lot?

10 A Probably 30, 45 minutes.

11 Q Okay. What was -- the individual that you identified
12 as Thaddeus Curry, what was he wearing at that time?

13 A A white shirt, a wife beater.

14 Q So it's your testimony, he was wearing the same thing
15 there that you say he was wearing at the gas station
16 later on that evening?

17 A Yes, sir.

18 Q Okay. A white shirt and what else?

19 A Just jean shorts, I'm not sure.

20 Q Okay. One of the individuals had gold teeth?

21 A Yes, sir.

22 Q And was that individual, was that Mr. Curry or was that
23 the other individual?

24 A It's been so long, I'm not sure now.

25 Q You're not sure?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A Yes, sir.

2 Q Okay. You recall an individual wearing a blue starter
3 jacket?

4 A Yes, sir.

5 Q Okay. Which individual was that?

6 A His friend that he was with.

7 Q Okay. All right. Now, you stated that you talked to
8 these two individuals for about 45 minutes?

9 A Yes, sir.

10 Q At some point, the two individuals went upstairs to
11 Mr. Simuel's apartment?

12 A Yes, sir.

13 Q Okay. How long did ya'll converse prior to them going
14 up to the apartment?

15 A I'm not sure.

16 Q Okay. The 45 minutes, let me ask you, is that 45
17 minutes the total time that you were there?

18 A No, we were there an hour and-a-half, two hours
19 probably.

20 Q Okay.

21 A On and off. We left and then came back.

22 Q Okay. You left to go get some money?

23 A Yes, sir.

24 Q Okay. And then you came back. And at that point what
25 happened?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A They had left themselves and pulled up about 5 minutes
2 after we got there. For what, I don't know.

3 Q Were they in the same vehicle that you saw sitting on
4 the road?

5 A Yes, sir.

6 Q And what color was that vehicle?

7 A It was a dark color vehicle, I believe.

8 Q Do you know what kind of vehicle it was?

9 A Crown Vic, I believe.

10 Q Okay. So when you came back and then they showed up,
11 what happened then?

12 A They went in and talked to the guy again upstairs.

13 Q Who talked to him upstairs?

14 A I'm not sure.

15 Q Okay. Did you talk to the guy upstairs?

16 A No.

17 Q Did you ever go up the stairs?

18 A I went up the stairs, but I wasn't invited in.

19 Q Okay. When did you go up the stairs?

20 A The first time, after the guy who lived in the
21 apartment came out on his balcony and then they walked
22 upstairs. And we followed them up, but then they just
23 shut the door kind of.

24 Q All right. So was that prior to going and getting the
25 money?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A Yes, that was before.

2 Q Okay. So you came back with the money, they pulled up
3 5 minutes later and they said, meet us at the gas
4 station?

5 A They said, went and talked with the guy upstairs again
6 I believe and said, "It will be an hour or so, we'll
7 give you a call."

8 And Heath wrote the cell phone number on his
9 hand.

10 Q Okay. Who gave Heath the cell phone number?

11 A I'm not sure.

12 Q Okay. And then what did you do?

13 A We went home.

14 Q You went home and waited for a phone call?

15 A (Witness nodded head.)

16 Q Did you have anything to drink when you went to get the
17 money?

18 A No.

19 Q Did you have anything to drink while you were at the
20 apartment during this hour and-a-half period?

21 A No -- I don't -- I'm not sure.

22 Q Okay. You may have?

23 A I'm not sure, I can't remember.

24 Q Did you smoke any marijuana during that hour and-a-half
25 period?

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 A No.

2 Q Okay. Now, your testimony is that this apartment area,
3 there was a light?

4 A Yes, there's a lighted parking -- the parking was
5 lighted.

6 Q Lighted parking. Okay. So what kind of light is it?

7 A A parking lot light, I don't know.

8 Q Parking lot light. How close was it to you?

9 A Either -- on the buildings.

10 Q On the buildings?

11 A Yeah.

12 Q Okay. Now, is your -- picking out that picture, is
13 that based on what you saw in the parking lot or is it
14 based on what you saw at the gas station?

15 A At the gas station, both.

16 Q All right. Well tell me about what you saw at the gas
17 station. I know this is probably difficult for you,
18 but tell me what happened at the gas station.

19 A Well, the guy gave the phone number. We went there
20 waiting for a while, then we decided to call. So we
21 were there probably about 15 minutes and right when
22 Heath went to call, he got out to use the pay phone and
23 as he dialed the number, a gentlemen walked around the
24 side of the gas station in front and he went and talked
25 to him for a minute. I was still in the truck. And he

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 said to meet us on the other side of the gas station.
2 We pulled over there and I saw another gentleman and
3 they started asking him for pot and had the scales and
4 going to weigh it and then all of a sudden started
5 threatening, "Give me the money, let me see it, give me
6 the money." Cussing at us.

7 And at that time Heath started to leave and we
8 didn't get two foot and they pulled out the gun. It
9 was an automatic or semi-automatic gun, about two foot
10 and started shooting. I heard three shots. I saw the
11 first one, Heath just sunk forward.

12 Q Mr. Coursey, when ya'll initially pulled up there, that
13 gas station is alongside a street?

14 A Yes, sir.

15 Q Okay. When you first parked, you parked alongside of
16 that street that comes off the main highway?

17 A We were facing it. The front of the car was facing
18 that street.

19 Q Was facing that street. And then Mr. Hamilton decided
20 or was asked to pull the vehicle around to the side
21 with the garbage can?

22 A No, on the opposite side of the garbage can.

23 Q There's a phone there in the parking lot, right?

24 A Yes, sir.

25 Q Okay. Where ya'll pulled the vehicle and where this

Ronald Coursey - Cross- Examination In Camera by Mr. Chesser

1 shooting happened, was it near the telephone?

2 A It was on the other side of the building.

3 Q Okay. So was it behind the building is that what
4 you're saying?

5 A No. One side, the phones on and we parked there and
6 the other side is where they told us to come after
7 Heath used the telephone to call.

8 Q Okay.

9 A When they showed up.

10 Q On that other side that's the side that would have the
11 street on it?

12 A There's a main street and then there's another street.
13 There's two streets, you weren't specific.

14 Q All right. Okay. Now, that area where you were pulled
15 off to is a darkened area?

16 A Yes, sir.

17 Q Okay. Now, you stated that they started shooting, was
18 an individual there wearing a blue starter jacket?

19 A Yes, sir.

20 Q Was that the individual who fired the shots?

21 A No, sir.

22 Q What was the individual wearing who fired the shots?

23 A The white t-shirt.

24 Q Mr. Coursey, isn't the primary focus of your ID on this
25 white t-shirt? That's what it is, right?

Ronald Coursey - Redirect Examination In Camera by Mr. Chandler

1 A I believe so.

2 Q All right. Thank you.

3 THE COURT: Mr. Chandler?

4 MR. CHANDLER: Just briefly, Your Honor.

5 REDIRECT EXAMINATION - IN CAMERA

6 By Mr. Chandler:

7 Q Mr. Coursey, with respect to the shooting that
8 occurred, how many people did you see with a weapon?

9 A One.

10 Q How many people fired a shot?

11 A Just one, I believe.

12 Q And who was that person?

13 A This man right here.

14 Q And that's Thaddeus Curry?

15 A Yes, sir.

16 Q And with respect to that, at the time when he was
17 firing that shot were you afraid?

18 A Yes, sir.

19 Q Were you fearful of immediate ---

20 A I covered down, covered my head after ---

21 Q But before you put your head down, did you see who was
22 holding the gun?

23 A Yes, sir.

24 Q And again, you were afraid?

25 A Yes, sir, after they started threatening us.

Ronald Coursey - Redirect Examination In Camera by Mr. Chandler

1 Q Did you feel like your life was being threatened?

2 A Yes, sir.

3 Q Okay.

4 MR. CHANDLER: No further questions, Your
5 Honor.

6 MR. CHESSER: No more questions, Your Honor.

7 THE COURT: Okay. Sir, you may step down.
8 Anything further from the State?

9 MR. CHANDLER: Nothing from the State, Your
10 Honor.

11 THE COURT: Okay. Anything further from the
12 defense?

13 MR. CHESSER: I'd like to make a brief
14 argument, Your Honor.

15 THE COURT: Yes, sir, I will be glad to hear
16 from you.

17 MR. CHESSER: Thank you, Your Honor. Your
18 Honor, the -- there are, the case law identifies five
19 factors among others, that should be taken into account,
20 under this Neal vs. Biggers standard, the opportunity to
21 view at the time of the crime, the degree of attention, the
22 accuracy of the prior description, the level of certainty
23 demonstrated at the time of the identification and the
24 amount of time. In this case, the amount of time was March
25 18 to April 15.

1 What I would focus on is this accuracy of the
2 prior description. Essentially there was no prior
3 description with the exception of a black male who was
4 wearing a white t-shirt. In addition, Mr. Coursey's
5 perception was affected by alcohol and marijuana use. In
6 addition, you have a viewing which is in a parking lot with
7 lights, just like any apartment and not in the light and
8 then at the scene you have a darkened area. You have his
9 lack of a prior description and then you have a suggestive
10 lineup where you have Mr. Curry in this white tank top
11 t-shirt, and the only one in a tank top. There are two
12 people there that have on different color shirts
13 altogether. It's essentially a lineup with -- that
14 suggests Mr. Curry.

15 And in addition, you have an unduly suggestive
16 lineup, you have an irreparable misidentification because
17 Investigator Fleury has told Mr. Coursey, "You picked the
18 right guy." And then Mr. Coursey has talked with the other
19 witness and they discussed this, that they both picked out
20 this person. So you have this as being compounded. It's
21 suggestive. There was virtually no prior description. The
22 identification on April 15, was a product of this
23 suggestion and it was compounded even worse than that by
24 this confirmation of this identification.

25 Therefore, Your Honor, defense submits that the

1 identification should be excluded under the principles
2 under Neals vs. Biggers.

3 THE COURT: Yes, sir. Mr. Chandler?

4 MR. CHANDLER: Thank you, Your Honor, with
5 respect to Neals vs. Biggers, the defense failed to
6 indicate that prior to the court reviewing the factors, the
7 five factors, that first the court would have to make a
8 finding first of all that the identification was unduly
9 suggestive. So with respect to that, it's the State's
10 position that it wasn't. You heard from Investigator
11 Fleury. With respect to not telling Mr. Coursey anything
12 about the photographs, Mr. Coursey not seeing the
13 photographs before, there not being anyone present or any
14 officers present and you received that from both
15 Mr. Coursey and Mr. Fleury to suggest which one to pick.

16 The very fact that they hadn't seen these
17 pictures before. As Mr. Coursey -- based on Mr. Coursey's
18 memory, all of these guys were wearing t-shirts and that's
19 how he remembered them. Regardless of how his description
20 was, even based on his memorable description of it, all of
21 them were wearing t-shirts. And also with respect to
22 someone else reviewing that, any discussion that he had
23 with Robert Glenn who looked at the lineup only happened
24 after -- based on Mr. Coursey's testimony, only after he
25 had completed the identification and, in fact, identified

1 Mr. Curry. Now, in fact, Your Honor, if, in fact, you do
2 find that procedure unduly suggestive, with respect to ---

3 THE COURT: May I look at the exhibit?

4 MR. CHANDLER: Sir?

5 THE COURT: Ya'll still have the exhibits?

6 MR. CHANDLER: Yes, sir. With respect to the
7 five factors that the defense has laid out, the State would
8 like to address each one of them and the defense has
9 already made mention of them, but the first one talked
10 about the witness's opportunity to view the subject at the
11 time of the crime. Clearly Mr. Coursey's laid out the hour
12 and-a-half that they were negotiating the sale of
13 marijuana. He laid out the fact that the interior lights
14 were on, that he was able to see the defendant, Mr. Curry,
15 throughout the transaction.

16 He also indicated the fact that at the time
17 that Mr. Curry pulled the gun out that he was able to see
18 him point it at him and actually pull the trigger and kill
19 his friend before he was able to put his head down to
20 protect himself. So certainly the witness did have
21 opportunity to view the subject at the time of the crime.
22 The second, we'll talk about the witness's degree of
23 attention and specifically State vs. Brown indicates that a
24 person in fear of his life presumably has a more accurate
25 degree of attention to his surroundings than a mere

1 passerby. In this case Mr. Coursey was not a mere
2 passerby. He was, as he said, in fear of his life because
3 he was within the fire of the gun. His friend who was
4 sitting right next to him in that truck was actually killed
5 and certainly based on State vs. Brown, he would definitely
6 have a higher degree of attention.

7 As to the third factor, it says the accuracy of
8 the witness's prior description of the criminal, certainly
9 he has described him as someone who was wearing a t-shirt,
10 but more specifically he talked about the focus on the eyes
11 and, of course, we would say that that would, again, go to
12 the totality of the circumstances that would indicate that
13 this identification is reliable. Also the witness's level
14 of certainty at the confrontation.

15 Mr. Coursey indicated that with respect --
16 well, first of all, Mr. Fleury said that he handed
17 Mr. Coursey the photo lineup and as he was about to walk
18 away and said he was going to leave the room, it was at
19 that time that Mr. Coursey immediately identified him.
20 When we asked Mr. Coursey how positive he was, he said
21 absolutely positive.

22 So I would say with respect to that fourth
23 level of the witness's level of certainty, absolutely
24 positive would certainly be a high level of certainty with
25 respect to the identification and certainly the length of

1 time between the crime and confrontation, which was the
2 fifth factor, although it was a month, certainly was a
3 month, again, he was able to clearly identify him.

4 Your Honor, further, it's the State's position,
5 that, first of all, it's not unduly suggestive, but even if
6 you find that it's unduly suggestive, we would say that
7 certainly the State has clearly met all five factors, based
8 on the totality of the circumstances that would indicate
9 that Mr. Coursey's identification of Mr. Thaddeus Curry
10 was, in fact, reliable.

11 THE COURT: Anything further from the defense?

12 MR. CHESSER: I just make clear for the record
13 I've moved to suppress both the out-of-court as well as the
14 in-court identification.

15 THE COURT: Yes, sir. All right. Looking at
16 the exhibit and hearing the testimony, I don't believe that
17 the photo lineup was unduly suggestive. And further, for
18 the record, find that even if it could be construed as
19 such, I find based on the testimony and the exhibits that I
20 have reviewed, I think the State has more than shown, under
21 the totality of the circumstances that the identification
22 in this case is certainly very reliable. He's made
23 statements relating to facial features, particularly the
24 eyes of this defendant. He certainly had, I think under
25 the testimony, a sufficient opportunity to view both

1 individuals including this defendant. And so under the
2 Biggers and totality of the circumstances, factors I think
3 it was reliable identification, so I'm going to allow it in
4 under every theory. But certainly I don't believe it was
5 unduly suggestive.

6 Anything further?

7 MR. CHANDLER: Nothing from the State, Your
8 Honor.

9 MR. CHESSER: Nothing further, Your Honor.

10 THE COURT: Let me ask counsel if they have
11 already prepared any requests for voir dire for tomorrow or
12 if they have any special requests.

13 MR. CHESSER: Well for the defense I haven't
14 prepared it. I don't anticipate that there would be
15 anything special or out of the ordinary, but I'll submit it
16 tomorrow, Your Honor, if that's okay.

17 THE COURT: Sure. Anything from the State
18 other than the standard.

19 MR. CHANDLER: Nothing other than the standard.

20 THE COURT: Okay. If ya'll get a chance if
21 ya'll can review any of the defense's request to voir dire
22 for tomorrow and when we get ready to get started we'll
23 have an opportunity to hear any objections or anything at
24 that point.

25 (WHEREUPON this case was in recess until the

1 following day.)

2 JURY VOIR DIRE

3 THE COURT: All right. Ladies and gentlemen,
4 we're ready to pull a jury in this case. It's The State of
5 South Carolina vs. Thaddeus Curry. I'll explain to you all
6 the indictments in a moment, and the charges against him.
7 But, basically, ladies and gentlemen, much like
8 qualification, we have to ask some specific questions
9 related to selecting a jury for this particular case.
10 Again, these aren't as long a set of questions as during
11 qualification, but, again, much like this morning, if you
12 will listen to the questions, if one of these questions
13 does apply to you, if you'll just stand and give your name,
14 and if you remember, your juror number. And we'll ask you
15 probably a few followup questions to that and we'll make
16 our way down my set of questions and then begin the process
17 of striking a jury.

18 Let me ask counsel before we begin that if
19 there's anything we need to take up as to the submitted
20 voir dire.

21 MR. CHANDLER: Nothing else from the State
22 other than the standard.

23 THE COURT: You've seen a copy of his?

24 MR. CHANDLER: Yes, sir.

25 THE COURT: All right. Ladies and gentlemen,

1 these initial questions basically relate to your knowledge
2 and relationship with any of the individuals who are
3 associated with this case including the defendant, as well
4 as the lawyers and potential witnesses involved in the
5 case. All right. Ladies and gentlemen, if you'll bear
6 with me, I may have moved the sheet that I need to ask you
7 about.

8 Let me ask counsel if they have another list of
9 the State's voir dire? Or your witness list, actually?

10 MR. CHANDLER: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen,
12 let me first tell you that the defendant, Mr. Curry, is
13 present in the courtroom. Let me remind you, and I will go
14 over this as I charge you all on the law at the conclusion
15 of the case, but the fact that somebody's been indicted,
16 actually arrested, charged and indicted, is not evidence in
17 a case. It is the process by which these cases are brought
18 to court. And I will charge you all who are actually
19 selected on this jury with the law that you are to consider
20 and what evidence you are to consider at the conclusion of
21 the case.

22 But let me introduce you to Mr. Thaddeus Curry.

23 And I will ask if he will please stand and face
24 the jury panel.

25 Ladies and gentlemen, Mr. Curry is standing in

1 front of you all with a white shirt and tie on. First, I
2 ask if any member of the jury panel is related by blood,
3 marriage or otherwise has any personal relationship with
4 Mr. Curry? By relationship with him I mean if you're
5 related to him in any way or used to be related to him in
6 any way. Sometimes through divorce or some other
7 circumstance people's relationship may change, but if you
8 either are related to him or used to be related to
9 Mr. Curry, please stand. Also, if you know Mr. Curry in
10 any social, work or otherwise capacity if you would please
11 stand as well.

12 (WHEREUPON there was no response from the jury
13 venire.)

14 THE COURT: Thank you, sir, you may have a
15 seat.

16 Ladies and gentlemen, Mr. Curry is represented
17 by Mr. Michael Chessser. And he is standing in front of you
18 as well. And I would ask if any member of the jury panel
19 is, again, related by blood or marriage or otherwise has
20 any relationship with Mr. Chessser, either current or former
21 relationship.

22 (WHEREUPON there was no response from the jury
23 venire.)

24 THE COURT: Okay. Ladies and gentlemen the
25 State of South Carolina is represented by Mr. Everett

1 Chandler and Mr. Bill Weeks. They are standing in front of
2 you. And, ladies and gentlemen, I would ask again if any
3 member of the jury panel is related by blood or marriage or
4 otherwise has any personal relationship, current or former
5 with either Mr. Chandler or Mr. Weeks; if you would, please
6 stand.

7 Yes, ma'am, your name?

8 MS. JAMES: I'm related to Chandler.

9 THE COURT: Okay. Your name, ma'am?

10 MS. JAMES: Janice James, 063.

11 THE COURT: Okay. How are you related to him?

12 MS. JAMES: Just a distant cousin I think.

13 THE COURT: Okay. Nothing you would want to
14 claim?

15 MS. JAMES: No.

16 THE COURT: I'm just kidding, ma'am. Let me
17 ask you, ma'am, do you see him regularly?

18 MS. JAMES: No.

19 THE COURT: You believe it's a distant cousin?

20 MS. JAMES: Yeah.

21 THE COURT: Okay. Would the fact that you all
22 are distant cousins, I take it's past like second or third
23 cousins or something like that? Would that fact, ma'am, in
24 any way influence you or cause you to be more prone to view
25 the evidence from the State's perspective versus the

1 defendant?

2 MS. JAMES: No.

3 THE COURT: Would it cause you in any way to
4 favor the State over the defendant at all?

5 MS. JAMES: You'd be able to give both the
6 State and the defendant a fair trial in this case?

7 MS. JAMES: Yes.

8 THE COURT: Okay. Thank you, ma'am.
9 Yes, sir?

10 MR. HOSHELL: Yes, sir, I've had a past
11 professional relationship with Mr. Weeks.

12 THE COURT: Okay. How long ago was that?

13 MR. HOSHELL: Probably 5 or 6 years ago.

14 THE COURT: Okay. It was a work relationship?

15 MR. HOSHELL: Yes, sir.

16 THE COURT: You worked for him or with him?

17 MR. HOSHELL: Yes, sir.

18 THE COURT: Okay. Let me ask you, based on
19 your former work relationship with Mr. Weeks, do you
20 believe you would be in any way influenced to view the
21 evidence more favorably towards the State than the
22 defendant in this case?

23 MR. HOSHELL: No, no bias.

24 THE COURT: You would be able to be fair to
25 both Mr. Curry, as well as the State in this case?

1 MR. HOSHELL: Yes, sir.

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

3 THE CLERK: What was his name, Your Honor?

4 THE COURT: I'm sorry, your name, again, sir?

5 MR. HOSHELL: George Hoshell.

6 THE CLERK: Thank you.

7 THE COURT: Thank you.

8 All right. Ladies and gentlemen, let me read
9 to you all a list of potential witnesses in this case and
10 let me tell you these are potential witnesses. They may
11 all be called and just some of them may be called. But, I
12 again, need to know if any you have any relationship with
13 these potential witnesses. Again, I'm going to read to you
14 all the names on this list. If I come to a name and you're
15 either related to that person or you know that person in
16 some capacity, if you would go ahead and stand up and when
17 I get to the end of the list, I will come back and follow
18 up with each one of you.

19 Billy Fleury, F-l-e-u-r-y, of the Aiken County
20 Sheriff's Office. He is standing, facing you all. Again,
21 thank you, sir.

22 If I call out a witness's name and they're
23 present if you would please go ahead and stand and face the
24 jury.

25 Lynn Gbant, of the Aiken County Sheriff's

1 Department; Clay Adams, again, with the Aiken County
2 Sheriff's Office; Daniel Gainey with Aiken County Sheriff's
3 Office; Kimberly Black, with the State Law Enforcement
4 Division; F. Dan DeFreese, with the State Law Enforcement
5 Division; Tim Carlton, with the Aiken County Coroner's
6 Office; Dr. Inas -- is it Yacoub?

7 MR. WEEKS: Yacoub.

8 THE COURT: Yacoub, of Newberry Pathology;
9 William McGowan; Riley Hammond; Ronald D. Coursey.

10 Mr. Coursey, thank you, sir.

11 Rosa Ready; Winfred Javon Rushon; Anthony
12 Savage; and Jeremy Simuel.

13 Okay. If any member of the jury panel is
14 related by blood or marriage or otherwise knows any of
15 those individuals, if you will, please stand.

16 (WHEREUPON there was no response from the jury
17 venire.)

18 THE COURT: Okay. Ladies and gentlemen, let
19 me -- I've explained to you that the indictments are not
20 evidence, but let me tell you the defendant, Mr. Curry, is
21 charged under the indictments with murder and possession of
22 a firearm or knife during the commission of or attempt to
23 commit a violent crime. Those are what the two indictments
24 are in this case. I would ask if any member of the jury
25 panel is acquainted or related to the victim in this

1 alleged crime, Mr. Heath Hamilton, his brother Henry
2 Hamilton or his father, Rick Hamilton; and they all are
3 residents of North Augusta. If any member of the jury
4 panel is related by blood or marriage or otherwise knows in
5 any capacity, the victim of the alleged crime, his name is
6 Heath Hamilton, his brother Henry Hamilton, or his father,
7 Rick Hamilton, if you would, please stand.

8 Okay. Yes, ma'am, your name, please?

9 MS. SMITH: Sarah Smith.

10 THE COURT: I'm sorry?

11 MS. SMITH: Sarah Smith.

12 THE COURT: Yes, ma'am?

13 MS. SMITH: I graduated with Heath. I was
14 close friends with him.

15 THE COURT: You were very close friends with
16 him?

17 MS. SMITH: He was in the band with me also.

18 THE COURT: Okay. Did you graduate from high
19 school with him?

20 MS. SMITH: Silver Bluff.

21 THE COURT: Okay. How long ago was that? It
22 must have been, what? Last year?

23 MS. SMITH: It was 2, 3 years ago. He
24 graduated the year after I did.

25 THE COURT: I know you're a student now, is

1 that right?

2 MS. SMITH: Yeah.

3 THE COURT: Okay. Let me ask you, ma'am, you
4 say you were close friends with him, were you close enough
5 you saw each other every day other than in school?

6 MS. SMITH: We were in the band together and we
7 would go out often after football games together.

8 THE COURT: Okay.

9 MS. SMITH: And he also worked at Applebee's in
10 Augusta and I would go visit with him there.

11 THE COURT: Okay. Let me ask you further,
12 ma'am, I take it then based on your relationship, have you
13 heard any facts regarding this case prior to today.

14 MS. SMITH: Yes, sir.

15 THE COURT: All right. Ma'am, I'm going to
16 excuse you from the trial of this case today. Thank you.

17 All right. Anyone else? Okay.

18 (WHEREUPON there was no response from the jury
19 venire.)

20 THE COURT: Okay. Is there any member of the
21 jury panel who is related or otherwise has a personal
22 relationship either through work or social environment with
23 anyone else who works in the Aiken County Solicitor's
24 Office whether, it may not be Mr. Weeks or Mr. Chandler,
25 but anyone else who works in the Aiken County Solicitor's

1 Office?

2 Okay. Yes, sir?

3 MR. BOHMAN: Terre Bohman.

4 THE COURT: Yes, sir?

5 MR. BOHMAN: I'm friends with Grant Gibbons.

6 He's with the Solicitor's Office.

7 THE COURT: My apologies to you, sir.

8 Let me ask you, you have a social relationship
9 with him.

10 MR. BOHMAN: Yes, sir.

11 THE COURT: And have you heard anything
12 regarding the facts of this particular case?

13 MR. BOHMAN: No, sir.

14 THE COURT: Okay. Based on your relationship
15 with Mr. Gibbons, do you believe that that would in any way
16 influence your ability to be fair to both the State and the
17 defendant in this particular case?

18 MR. BOHMAN: No.

19 THE COURT: Okay. You don't attribute more
20 weight to anything that's put up by the State versus
21 anything that may be questioned or put up by the defense,
22 for example?

23 MR. BOHMAN: No, sir.

24 THE COURT: Okay. You feel like there's no
25 bias one way or the other?

1 MR. BOHMAN: No.

2 THE COURT: Okay. Thank you, sir.

3 All right. Let me ask if any member of the
4 jury panel has been, themselves, the victim of a violent
5 crime or who has a family member or a very close friend who
6 has been the victim of very violent crime. If so, please
7 stand. I don't need to necessarily know the details at
8 this point. Let me find out if anybody -- that question
9 applies to anyone.

10 MR. CHESSER: Your Honor, excuse me ---

11 THE COURT: Yes, sir?

12 (WHEREUPON there was a bench conference out of
13 the hearing of the jury and the court reporter.)

14 THE COURT: Okay. Anyone else? All right.
15 Let me get your names at this point. What I'm probably
16 going to do is come back to you all.

17 Let me start with you, sir. Your name?

18 MR. HOSHELL: George Hoshell.

19 THE COURT: Roshell?

20 MR. HOSHELL: Hoshell.

21 THE CLERK: Juror No. 58.

22 THE COURT: Okay. If you will just have a seat
23 right now, sir, we'll come back and have you all come up
24 one at a time. We'll start down here. Yes, sir?

25 MR. BURKETT: William Henry Burkett, Jr., juror

1 No. 20.

2 THE COURT: 20, that's Mr. Burkett?

3 MR. BURKETT: BURKETT.

4 THE COURT: Okay. Thank you, sir.

5 MR. SMELSER: Don Smelser, Juror No. 122.

6 THE COURT: Okay. Thank you, sir. If you will
7 have a seat right now.

8 Yes, ma'am?

9 MS. MCKANE: Marie McKane, 154

10 THE COURT: Thank you, ma'am.

11 Yes, ma'am?

12 MS. ESTES: Ruth Estes, No. 39.

13 THE COURT: Thank you.

14 Yes, ma'am?

15 MS. BRYANT: Katena Bryant, No. 18.

16 THE COURT: Okay. Yes, sir?

17 MR. VALENTINE: Walter Valentine, I can't
18 recall my number.

19 THE COURT: Valentine?

20 MR. VALENTINE: Yes, sir.

21 THE CLERK: Juror No. 138, Your Honor.

22 THE COURT: Okay. Thank you, ma'am.

23 Okay. Folks, what I'm going to do is rather
24 than have you all answer questions about that right now in
25 front of the entire panel I will bring you all up at the

1 end of my all my questions one at a time and I'll talk to
2 you on the record, but privately up here at the bench.

3 Next question, ladies and gentlemen, is there
4 any member of the jury panel who is related to or very
5 close personal friends with anyone who is employed with the
6 Aiken County Sheriff's Department? If so, please stand.

7 Yes, sir?

8 MR. SCOTT: My name is Nathaniel Scott, Juror
9 No. 113.

10 THE COURT: 113, yes, sir?

11 MR. SCOTT: Mr. Chandler and I went to school
12 together.

13 THE COURT: Okay. Mr. Chandler up here?

14 MR. SCOTT: Yes, sir.

15 THE COURT: Okay. You went to high school or
16 college together?

17 MR. SCOTT: Just high school.

18 THE COURT: High school. Okay. Let me ask you
19 sir, I'm not quite sure how long ago that was. You look
20 like that might have been last year, Mr. Chandler, that
21 could have been 20 or 25 years ago. How long ago was that,
22 sir?

23 MR. SCOTT: Maybe 13, 14 years ago.

24 THE COURT: Were ya'll close friends in high
25 school?

1 MR. SCOTT: We played football together, that's
2 all.

3 THE COURT: Well, you would have been out on
4 the field, probably waved to Mr. Chandler as he sat on the
5 bench. But let me ask you, sir, would that have caused you
6 in any way, in any form or fashion, whatsoever, to be more
7 bias for a case that Mr. Chandler is handling for the
8 State?

9 MR. SCOTT: No.

10 THE COURT: You'd be able to be fair to this
11 defendant, who is entitled to, under our constitution, to a
12 fair and impartial jury, you would be able to give him a
13 fair trial?

14 MR. SCOTT: Yes, sir..

15 THE COURT: Okay. Thank you, sir.

16 Yes, sir?

17 MR. HOSHELL: I worked with, professionally,
18 with Mike Hunt.

19 THE COURT: And you're Mr. Hoshell?

20 MR. HOSHELL: Yes, sir. This was many years
21 ago, 20 years ago.

22 THE COURT: Let me ask you, again, sir, the
23 same questions. It wouldn't influence you one way or the
24 other?

25 MR. HOSHELL: No, sir.

1 THE COURT: Okay. And you'd be able to be fair
2 to both sides?

3 MR. HOSHELL: Yes, sir.

4 THE COURT: Okay. Thank you, sir.

5 Yes, ma'am?

6 MS. WAGNER: Morgan Wagner, Juror No. 142. I'm
7 related to Deputy Wagner.

8 THE COURT: Okay. Immediate family or ---

9 MS. WAGNER: Just real close family.

10 THE COURT: Okay. Do you see him a lot?

11 MS. WAGNER: Once in a while, not too often.

12 THE COURT: Okay. Let me ask, ma'am. Based on
13 your relationship with somebody in the Sheriff's Office
14 would you be more inclined to give the officers' testimony
15 more weight than any other testimony from a potential
16 witness?

17 MS. WAGNER: No, sir.

18 THE COURT: You would be able to be fair to
19 both sides and weigh all the evidence fairly and
20 impartially?

21 MS. WAGNER: Yes, sir.

22 THE COURT: Thank you, ma'am.

23 MR. CHESSE: May I get that juror number, Your
24 Honor?

25 THE CLERK: Juror 142.

1 THE COURT: Okay. Anyone else?

2 Yes, ma'am?

3 MS. TAYLOR: Juror No. 157, I probably should
4 have stood up for the previous question concerning violent
5 crime.

6 THE COURT: Okay. 157?

7 MS. TAYLOR: Barbara Taylor.

8 THE COURT: Taylor. Okay. Thank you, ma'am.
9 I'll bring you up at the very end. Thank you.

10 Okay. Is there any member of the jury panel
11 who is related to anyone or very close friends with anyone
12 who works in any capacity of law enforcement, not just the
13 Aiken County Sheriff's Department, but any law enforcement
14 agency, military or private?

15 MS. BADGER: Yes, my name is Marie Badger, No.
16 3.

17 THE COURT: Okay.

18 MS. BADGER: I am friends with Joe Castle and
19 Mike Hess.

20 THE COURT: And what agencies do they work for?

21 MS. BADGER: Jackson. Joe Castle is a FBI
22 agent.

23 THE COURT: All right, ma'am. Let me ask you,
24 based on your relationship with those individuals in law
25 enforcement, are you more inclined to believe the testimony

1 or give greater weight to the testimony of law enforcement
2 simply because they're law enforcement?

3 MS. BADGER: (Juror shook her head.)

4 THE COURT: I need you to -- just for the court
5 reporter to be able to take down, verbally respond.

6 MS. BADGER: No.

7 THE COURT: Okay. Would that influence you at
8 all to believe the State's case more so than anything the
9 defense might question or put up?

10 MS. BADGER: No.

11 THE COURT: Okay. You'd be able to be fair to
12 both sides?

13 MS. BADGER: Yes.

14 THE COURT: Okay. Thank you, ma'am.

15 Yes, sir?

16 MR. HOSHELL: I worked with several officers of
17 Aiken City and North Augusta.

18 THE COURT: Okay. And, Mr. Hoshell, the same
19 questions previously ---

20 MR. HOSHELL: There would be no bias, no, sir.

21 THE COURT: Okay. Thank you, sir.

22 Yes, sir?

23 MR. LEE: Juror 153, Phillip Lee. My brother
24 is Secret Service Agent in the Columbia field office and my
25 best friend is a special agent, Wes Holbrook with the FBI.

1 THE COURT: Okay. Let me ask you, sir, again,
2 would that influence you at all to be more inclined to
3 believe the State's case?

4 MR. LEE: No, sir.

5 THE COURT: Okay. You have no problem being
6 fair to the defendant, as well as the State?

7 MR. LEE: No, sir.

8 THE COURT: Okay. Thank you, sir.

9 Yes, sir?

10 MR. CHAPMAN: Yes, sir. I'm Juror No. 54,
11 Wallace Chapman, I'm good friends with Clark Smith of the
12 Aiken Public Safety. He's a K-9 Officer. Me and Clark
13 coached baseball together for 4 years.

14 THE COURT: All right, sir. Let me ask you the
15 same questions. Would that influence you in any way to be
16 more likely to believe the State than the defendant in this
17 case or questions should they put up any?

18 MR. CHAPMAN: No, sir.

19 THE COURT: You would be able to be fair to
20 both sides?

21 MR. CHAPMAN: Yes, sir.

22 THE COURT: Okay. Any bias or hesitation at
23 all, being able to be fair to both the defense and the
24 State?

25 MR. CHAPMAN: No, sir.

1 THE COURT: Thank you, sir.

2 Yes, ma'am?

3 MS. JAMES: Janice James, Juror No. 63. My
4 nephew is chief of Public Safety in Orangeburg.

5 THE COURT: Okay. Let me ask you the same
6 questions, ma'am, would that influence you at all to
7 believe the State versus the defendant's case, should the
8 defendant put up anything?

9 MS. JAMES: No.

10 THE COURT: And you wouldn't be inclined to
11 believe that just because the State puts up the case by
12 itself then, based on your relationship to law enforcement
13 that that would carry any greater weight and then fairly
14 and impartially weighing all the evidence?

15 MS. JAMES: No.

16 THE COURT: Thank you, ma'am.

17 Yes, sir?

18 MR. TOWNSEND: I'm Juror 135, Lawrence
19 Townsend, I have a son-in-law and two brothers in law, who
20 are in law enforcement.

21 THE COURT: Okay. Based on that relationship,
22 sir, again, would that cause you to in any way be more
23 prone to believe the State's case versus being fair and
24 impartial to both sides?

25 MR. TOWNSEND: There's no bias.

1 THE COURT: Okay. Thank you, sir.

2 Yes, sir?

3 MR. OLSEN: Neils Olsen, Juror No. 155. I have
4 a cousin and his wife who are both deputy Sheriffs and they
5 served in the national guard in law enforcement.

6 THE COURT: Okay. And, again, sir, your
7 relationship with those involved in law enforcement
8 wouldn't cause you to be biased towards the State and
9 against the defendant in any way?

10 MR. OLSEN: No, sir.

11 THE COURT: Thank you, sir.

12 Yes, sir?

13 MR. ANTLEY: Barry Antley, Juror No. 2. I have
14 a first cousin who is the assistant chief of police in the
15 city of Orangeburg.

16 THE COURT: Okay. Would that cause you in any
17 way to be unable to be fair and impartial to both sides?

18 MR. ANTLEY: No, sir.

19 THE COURT: Okay. Thank you, sir.

20 Yes, ma'am?

21 MS. SPIVEY: My name is Angel Spivey, and I'm
22 Juror No. 130. My brother-in-law is the captain for the
23 North Augusta Police Department.

24 THE COURT: Okay. Would that cause you any
25 hesitation to be able to be fair to both sides, ma'am?

1 MS. SPIVEY: No, sir.

2 THE COURT: Okay. Thank you.

3 Yes, ma'am?

4 MS. CARROLL: Denise Carroll, No. 22, my
5 ex-husband was in law enforcement.

6 THE COURT: Okay. Would that cause you in any
7 way, ma'am, to be more prone to believe the State or be
8 more prone to weigh evidence more heavily for the State
9 than the defendant.

10 MS. CARROLL: No.

11 THE COURT: You'd be able to be fair to both
12 sides?

13 MS. CARROLL: Yes.

14 THE COURT: Okay. Thank you, ma'am.

15 Okay. Is there any member of the jury panel
16 who either belongs to or has belonged to or contributes to
17 any group that has as its primary purpose the promotion of
18 law enforcement or victims' rights? And by that I mean
19 such groups as MADD or SADD or Citizens Against Violent
20 Crime, CAVE, or any other such group? Is there any member
21 of the jury panel who has either contributed to such groups
22 or belongs to such groups?

23 (WHEREUPON there was no response by the jury
24 venire.)

25 THE COURT: Okay. Is any member of the jury

1 panel -- let me give you a little bit of the allegations in
2 the indictment. The allegations in the indictment alleges
3 that Mr. Curry did in Aiken County, on or about March 18,
4 of 2003, commit the crime of murder against Mr. Heath A.
5 Hamilton. Is any member of the jury panel familiar with in
6 any way any facts, or believe that they are familiar with
7 any facts related to this case?

8 (WHEREUPON there was no response from the jury
9 venire.)

10 THE COURT: Okay. Anybody who -- I went
11 through earlier on the question of whether they or a member
12 of their family has been the victim of a violent crime. If
13 you all will line up here on the end I will bring you down
14 one at a time and talk with you all at the sidebar.

15 Yes, sir?

16 MR. BURKETT: Juror No. 20. My sister was
17 raped. And I had a good friend I worked with that was
18 murdered.

19 THE COURT: How long ago was this?

20 MR. BURKETT: About 10 years ago and the friend
21 was about 5.

22 THE COURT: Was that in Aiken County?

23 MR. BURKETT: Yeah.

24 THE COURT: Let me ask you, based on your
25 experiences would that cause you to in any way believe the

1 state more than the defense in this case?

2 MR. BURKETT: No.

3 THE COURT: Does it cause you to believe that
4 anyone accused of a crime as Mr. Curry is, is guilty?

5 MR. BURKETT: No.

6 THE COURT: You would be able to be fair and
7 weigh evidence in this case and be able to render a fair.
8 and just verdict in this case?

9 MR. BURKETT: Yes, sir.

10 THE COURT: You feel any hesitation at all
11 about sitting on this case? It's a murder case.

12 MR. BURKETT: No.

13 THE COURT: Okay. Thank you, sir.

14 Yes, sir?

15 MR. HOSHELL: About 10 years ago ---

16 THE COURT: We need to put your name on the
17 record.

18 MR. HOSHELL:

19 George Hoshell, Juror 58.

20 About 10 years ago, with the Mexico State
21 Department I was involved in a robbery.

22 THE COURT: Okay. Based on your experience,
23 sir, would that cause you in any way to be more prone to
24 believe the State in this case?

25 MR. HOSHELL: No.

1 THE COURT: You believe you'd be able to weigh
2 the evidence and take the charge on the law and render what
3 you believe to be a fair and just verdict?

4 MR. HOSHELL: Yes, sir.

5 THE COURT: The fact that that happened in your
6 past wouldn't play into this at all?

7 MR. HOSHELL: No.

8 THE COURT: Thank you, sir.

9 Yes, sir?

10 MR. SMELSER: My name is Don Smelser, No. 122.
11 I have a nephew that was murdered in Yazoo City. This was
12 about 5 years. He was a college student at the time.

13 THE COURT: Let me ask you, sir, does that give
14 you any hesitation about sitting on the jury on this murder
15 trial?

16 MR. SMELSER: I'm not sure.

17 THE COURT: Okay. When you say you're not
18 sure, you believe that's because you're emotionally
19 involved?

20 MR. SMELSER: Yes, it hit my sister very hard.

21 THE COURT: Do you believe your emotions would
22 affect your ability to weigh the evidence in this case?

23 MR. SMELSER: Yes, I do. It did hit my sister
24 very hard.

25 THE COURT: You believe that you wouldn't be

1 able to be fair at all?

2 MR. SMELSER: It's hard for me to say.

3 THE COURT: Well, I'm going to excuse you then
4 from the trial of this particular case. You may be called
5 for something else this week.

6 All right.

7 Yes, ma'am?

8 MS. ESTES: Ruth Estes, Juror No. 39. I was a
9 victim of attempted rape 10 years ago.

10 THE COURT: Was that in Aiken County?

11 MS. ESTES: No.

12 THE COURT: Let me ask you, based on your
13 experience in a violent crime would that in any way affect
14 your ability to weigh the evidence in this case at all?

15 MS. ESTES: No, sir.

16 THE COURT: You feel you can be fair to both
17 the State and the defendant in this case?

18 MS. ESTES: Yes, sir.

19 THE COURT: Okay. Thank you, ma'am.

20 Yes, sir your name?

21 MR. VALENTINE: Walter Valentine, Juror No.
22 138. I had a cousin murdered in 1988. We were close.

23 THE COURT: Let me ask you, sir, based on your
24 personal experience would that in any way influence your
25 ability to fairly and impartially weigh the evidence in

1 this case for both the State and the defendant?

2 MR. VALENTINE: It would be kind or hard after
3 what happened.

4 THE COURT: And, again I just need to know if
5 you believe that that would influence your ability to sit
6 as a juror in this case. Do you believe it would carry
7 over into your ability to be fair in the case?

8 MR. VALENTINE: I think so. I would think so.

9 THE COURT: I appreciate it. I am going to
10 excuse you in the trial of this particular case, you may be
11 able to sit on another one later in the week.

12 Yes, ma'am?

13 MS. MCKANE: Marie McKane, 154. Two crimes,
14 one against my daughter, she was raped on a train in New
15 York City and my son was murdered. I can't talk about
16 this. Do you need to -- just need to know the nature of
17 the crimes?

18 THE COURT: No, ma'am. Based on those would
19 you be able to be fair in evidence in the case.

20 MS. MCKANE: No, it's murder it's different,
21 but no, I don't know. In both instances there were black
22 young males and I mean it's been more than 6 weeks trying
23 to get my daughter through this.

24 THE COURT: So you don't believe you could
25 listen ---

1 MS. MCKANE: I don't know.

2 THE COURT: I'm going to excuse you from the
3 trial of this case. You can have a seat back there.

4 MS. MCKANE: Okay.

5 THE COURT: Thank you.

6 Okay?

7 MS. BRYANT: Katena Bryant, Juror No. 18.

8 THE COURT: Yes, ma'am.

9 MS. BRYANT: My husband was convicted of a
10 gambling addiction and it was suspended to probation.

11 THE COURT: Let me ask you, based on your
12 experience with the criminal justice system would that in
13 any way influence you in any way in listening to the
14 evidence and weighing the evidence in this case and be fair
15 to both the State as well as the defendant.

16 MS. BRYANT: I have no biases.

17 THE COURT: Okay. Thank you ma'am.

18 Yes, ma'am, your name again?

19 MS. TAYLOR: Barbara Taylor. Would rape be
20 considered a violent crime? I was raped.

21 THE COURT: Okay. How long ago was this?

22 MS. TAYLOR: 35 years ago.

23 THE COURT: Okay. Let me ask you, ma'am, based
24 on your experience, would you be able to listen to this
25 defendant's case and charged on the law and would you be

1 able to listen to the evidence and fairly and impartially
2 weigh the evidence for both the State and the defense?

3 MS. TAYLOR: As long there's not something
4 similar to it -- no -- no, then I wouldn't I feel I could
5 be fair.

6 THE COURT: I'm going to excuse you from the
7 trial of this case, ma'am. Thank you.

8 (WHEREUPON there was a bench conference out of
9 the hearing of the jury venire and the court reporter.)

10 THE COURT: Okay. Ladies and gentlemen of the
11 jury panel, has any member of the jury panel currently or
12 formerly worked with or belonged to -- and I asked you
13 about any victims' advocacy groups. Let me ask
14 specifically about any groups associated with the
15 solicitor's office here or with, for example the victim and
16 witness assistance program? Has any member of the jury
17 panel worked with any such group with the solicitor's
18 office or with the victims' witness assistance program?

19 (WHEREUPON there was no response from the jury
20 venire.)

21 THE COURT: All right. Is there any member of
22 the jury panel who's aware of any reason whatsoever, and it
23 my be related to a question I've asked you or something
24 that just came into your mind why they could not fairly and
25 impartially sit and view the evidence in this case and

1 render a fair and unbiased verdict in this case whether,
2 it's based on something I've asked or something that has
3 just come to your mind?

4 (WHEREUPON there was no response from the jury
5 venire.)

6 THE COURT: Okay. Thank you, ladies and
7 gentlemen. I appreciate your patience and attention during
8 the questions I've had for you.

9 Let me ask if we have anything further from
10 counsel before we begin the strikes?

11 MR. CHANDLER: None from the State, Your Honor.

12 MR. CHESSER: Nothing further.

13 THE COURT: Okay. Thank you, Counsel.

14 Ladies and gentlemen, if you'll just listen to
15 the clerk, we're going to begin the process of actually
16 selecting a jury in this particular case. If you listen to
17 her carefully she will explain to you what to do as we go
18 through this process and then we'll get this jury seated
19 and be prepared to begin. Thank you.

20 **JURY SELECTION**

21 THE CLERK: Your Honor, the strikes are five
22 and ten, correct?

23 THE COURT: Yes, ma'am.

24 THE CLERK: Thank you.

25 THE COURT: Ladies and gentlemen, as I call

1 your name if you would be so kind to come forward. Come
2 down the closest aisle to you. Come forward, stand in
3 front of the bench and face the back of the courtroom.

4 THE CLERK: Juror No. 36, Teresa Ekre.

5 What say for the State, Mr. Solicitor?

6 MR. CHANDLER: Please present Ms. Ekre.

7 THE CLERK: What say for the defense?

8 MR. CHESSER: Please seat Ms. Ekre.

9 THE CLERK: You may have a seat, ma'am, in the
10 jury box to your left.

11 Juror No. 58, George Hoshell.

12 What say for the State, Mr. Solicitor?

13 MR. CHANDLER: Please present Mr. Hoshell.

14 THE CLERK: What say for the State?

15 MR. CHESSER: Please excuse Mr. Hoshell.

16 THE CLERK: I'm sorry, the defense. You may
17 return to your seat, sir.

18 Juror No. 137, Scott Turner.

19 What say for the State, Mr. Solicitor?

20 MR. CHANDLER: Please present Mr. Turner.

21 THE CLERK: What say for the defense?

22 MR. CHESSER: Please seat Mr. Turner.

23 THE CLERK: You may have a seat, sir, in the
24 jury box to your left.

25 Juror No. 20, William Burkett.

1 What say for the State, Mr. Solicitor?

2 MR. CHANDLER: Please present Mr. Burkett.

3 THE CLERK: What say for the defense?

4 MR. CHESSER: Please excuse Mr. Burkett.

5 THE CLERK: You may return to your seat, sir,

6 thank you.

7 Juror No. 107, Shirley Rivers.

8 What say for the State, Mr. Solicitor?

9 MR. CHANDLER: Please present Ms. Rivers.

10 THE CLERK: What say for the defense?

11 MR. CHESSER: Please seat Ms. Rivers.

12 THE CLERK: You may have a seat, ma'am, in the

13 jury box to your left.

14 Juror No. 39, Ruth Estes.

15 What say for the State, Mr. Solicitor?

16 MR. CHANDLER: Please present Ms. Estes.

17 THE CLERK: What say for the defense?

18 MR. CHESSER: Please excuse Ms. Estes.

19 THE CLERK: You may return to your seat, ma'am,

20 thank you.

21 State has exhausted no strikes, Defense three.

22 Juror No. 146, Thomas Williams.

23 What say for the State, Mr. Solicitor?

24 MR. CHANDLER: Please present Mr. Williams.

25 THE CLERK: What say for the defense?

1 MR. CHESSER: Please seat Mr. Williams.

2 THE CLERK: You may have a seat, sir, in the
3 jury box to your left.

4 Juror No. 110, Angela Salley.

5 What say for the State, Mr. Solicitor?

6 MR. CHANDLER: Please present Ms. Salley.

7 THE CLERK: What say for the defense?

8 MR. CHESSER: Please seat Ms. Salley.

9 THE CLERK: You may have a seat, ma'am, in the
10 jury box to your left.

11 Juror No. 2, Barry Antley.

12 What say for the State, Mr. Solicitor?

13 MR. CHANDLER: Please present Mr. Antley.

14 THE CLERK: What say for the defense?

15 MR. CHESSER: Please excuse Mr. Antley.

16 THE CLERK: You may return to your seat, sir,
17 thank you.

18 Juror No. 61, Richard Hines.

19 What say for the State, Mr. Solicitor?

20 MR. CHANDLER: Please present Mr. Hines.

21 THE CLERK: What say for the defense?

22 MR. CHESSER: Please seat Mr. Hines.

23 THE CLERK: You may have a seat, sir, in the
24 jury box to your left.

25 Juror No. 11, Terre Bohman.

1 What say for the State, Mr. Solicitor?

2 MR. CHANDLER: Please present Mr. Bohman.

3 THE CLERK: What say for the defense?

4 MR. CHESSER: Please excuse Mr. Bohman.

5 THE CLERK: You may return to your seat, sir,
6 thank you.

7 Juror No. 63, Janice James.

8 What say for the State, Mr. Solicitor?

9 MR. CHANDLER: Please present Ms. James.

10 THE CLERK: What say for the defense?

11 MR. CHESSER: Please excuse Ms. James.

12 THE CLERK: You may return to your seat, ma'am,
13 thank you.

14 THE CLERK: State has exhausted no strikes,
15 Defense, six.

16 Juror No. 158, Laura Thornsberry.

17 What say for the State, Mr. Solicitor?

18 MR. CHANDLER: Please present Ms. Thornsberry.

19 THE CLERK: What say for the defense?

20 MR. CHESSER: Please seat Ms. Thornsberry.

21 THE CLERK: You may have a seat, ma'am, in the
22 jury box to your left.

23 Juror No. 51, Leroy Green.

24 What say for the State, Mr. Solicitor?

25 MR. CHANDLER: Please present Mr. Green.

1 THE CLERK: What say for the defense?

2 MR. CHESSER: Please seat Mr. Green.

3 THE CLERK: You may have a seat, sir, in the
4 jury box to your left.

5 Juror No. 62, Carla Jackson

6 What say for the State, Mr. Solicitor?

7 MR. CHANDLER: Please present Ms. Jackson.

8 THE CLERK: What say for the defense?

9 MR. CHESSER: Please seat Ms. Jackson.

10 THE CLERK: You may have a seat in the jury box
11 to your left.

12 Juror No. 17, Michael Browers.

13 What say for the State, Mr. Solicitor?

14 MR. CHANDLER: Please present Mr. Browers.

15 THE CLERK: What say for the defense?

16 MR. CHESSER: Please seat Mr. Browers.

17 THE CLERK: You may have a seat in the jury box
18 to your left.

19 Juror No. 133, Martha Thomas

20 What say for the State, Mr. Solicitor?

21 MR. CHANDLER: Please present Ms. Thomas.

22 THE CLERK: What say for the defense?

23 MR. CHESSER: Please excuse Ms. Thomas.

24 THE CLERK: You may return to your seat, ma'am,
25 thank you.

1 Juror No. 151 Carlos Dorthalina.
2 What say for the State, Mr. Solicitor?
3 MR. CHANDLER: Please present Mr. Dorthalina.
4 THE CLERK: What say for the defense?
5 MR. CHESSER: Please seat this gentleman.
6 THE CLERK: You may have a seat in the jury box
7 to your left.
8 Juror No. 99, Sharon Phillips.
9 What say for the State, Mr. Solicitor?
10 MR. CHANDLER: Please present Ms. Phillips.
11 THE CLERK: What say for the defense?
12 MR. CHESSER: Please seat Ms. Phillips.
13 THE CLERK: You may have a seat in the jury box
14 to your left.
15 Alternates, Your Honor?
16 THE COURT: We'll do two alternates.
17 THE CLERK: Juror No. 32, Janet Day.
18 What say for the State, Mr. Solicitor?
19 MR. CHANDLER: Please present Ms. Day.
20 THE CLERK: What say for the defense?
21 MR. CHESSER: Please seat Ms. Day.
22 THE CLERK: You may have a seat in the jury box
23 to your left.
24 I'm drawing the second alternate.
25 Juror No. 6, Sonja Beachum.

1 What say for the State, Mr. Solicitor?
2 MR. CHANDLER: Please present Ms. Beachum.
3 THE CLERK: What say for the defense?
4 MR. CHESSER: Please excuse Ms. Beachum.
5 THE CLERK: You may return to your seat, ma'am,
6 thank you.
7 Juror No. 113, Nathaniel Scott.
8 What say for the State, Mr. Solicitor?
9 MR. CHANDLER: Please present Mr. Scott.
10 THE CLERK: What say for the defense?
11 MR. CHESSER: Please excuse Mr. Scott.
12 THE CLERK: You may return to your seat, sir,
13 thank you.
14 State has exhausted no strikes, Defense, two.
15 Juror No. 45, Christopher Garnett.
16 What say for the State, Mr. Solicitor?
17 MR. CHANDLER: Please present Mr. Garnett.
18 THE CLERK: What say for the defense?
19 MR. CHESSER: Please seat Mr. Garnett.
20 THE CLERK: You may have a seat in the jury box
21 to your left.
22 THE COURT: Okay. Counsel, any matters we need
23 to take up as to jury selection.
24 MR. CHANDLER: None from the State, Your Honor.
25 MR. CHESSER: Nothing from the defense, Your

1 Honor.

2 THE COURT: Okay. Great, thank you.

3 All right. Ladies and gentlemen, who have been
4 selected on the jury, I'm going to send you all out to the
5 jury room. The bailiffs will show you which room you all
6 will occupy. When we take breaks, and, of course, when you
7 all begin your deliberations in this case, that's the jury
8 room you'll use.

9 We're going to take a short break and allow
10 both sides to get set up and then we'll come back out and
11 begin the case. But for right now, I know you all haven't
12 heard any evidence or testimony in this case. I just ask
13 that you not talk about the case and talk about what we
14 discussed during voir dire related to the case at this
15 point. When we bring you back out, we'll actually swear
16 you in as jurors in this case and be prepared to get
17 started at that point.

18 For now, if you all will wait in the jury room,
19 we'll bring you back out shortly. Thank you.

20 (WHEREUPON the jury left the courtroom at 12:08
21 p.m.)

22 THE COURT: Okay. Let me ask counsel if
23 they're Prepared to start with opening statements or do
24 ya'll want to break for lunch and then start or how do you
25 want to do that?

1 MR. WEEKS: May we approach?

2 THE COURT: Yes, sir.

3 (WHEREUPON there was a bench conference out of
4 the hearing of the court reporter.)

5 THE COURT: All right. We're going to do this,
6 I'm going to bring the jury back out and let them -- does
7 anybody have an objection to ---

8 MR. CHESSER: Excuse me just a second. Mr.
9 Curry went to the bathroom I think.

10 THE COURT: Okay. Well, let me address this
11 first while he's coming back. Does anybody have any
12 problem with the jury going out to lunch?

13 MR. CHESSER: Defense has no objection to that,
14 Your Honor.

15 MR. CHANDLER: State has no objection.

16 THE COURT: So instruct them not to let anybody
17 talk to them about the case or anything. And we'll swear
18 them in after lunch.

19 (WHEREUPON Mr. Curry returned to the
20 courtroom.)

21 THE COURT: Okay. He's back. Will you bring
22 in the jury.

23 (WHEREUPON the jury entered the courtroom at
24 12:14 p.m.)

25 THE COURT: All right. Ladies and gentlemen of

1 the jury, we're going to break for lunch now rather than
2 start in the opening statements and starting the witnesses.
3 We were trying to get that in before we break for lunch.
4 My law clerk here, Ms. Walker is going to take ya'll out to
5 lunch and pick up the tab. I'm just kidding. She's used
6 to me. I don't think she's ever paid for anything in her
7 life.

8 Ladies and gentlemen, I'm going to let ya'll
9 go. I just ask that over the lunch period that you not let
10 anyone talk to you about the case or try to talk to you
11 about the case. If somebody does approach you about this
12 case, if you will, just let them know you're a juror. If
13 you overhear somebody talking about it, just let them know
14 you're a juror in this case. If they persist, if you all
15 would just let the Clerk's Office office know or come back
16 and let us know, trust me, we'll take care of that
17 situation.

18 In the meantime, ya'll enjoy lunch, and we'll
19 see you back here, if you can be back in the jury room that
20 you just came out of, we'll be ready to go at 2 o'clock.
21 We'll see you all then. Thank you.

22 (WHEREUPON the jury left the courtroom at 12:16
23 p.m.)

24 THE COURT: All right. Counsel, if there's
25 nothing further, we'll be ready to start at 2 o'clock.

1 There was nothing else pretrial we needed to take up?

2 MR. CHANDLER: Nothing from the State.

3 THE COURT: We can just go straight into
4 openings ---

5 MR. CHESSER: Your Honor, if we start at 2:00,
6 I suspect we'll get through a lot. At some point, it may
7 be a little early, but at some point we want to go over the
8 prior records of these -- it's going to be three, sort of
9 co-defendant's witnesses. One of them is not actually a
10 defendant. But we'll need to go over those, whenever a
11 good time is for the prosecution. I don't know if they're
12 going to call Anthony Savage today. I don't know if
13 they're going to call Jeremy Simuel today or Mr. Rushon,
14 but that is one thing we could get out of the way.

15 THE COURT: Was there any -- have ya'll already
16 talked about that? Is there any agreement on prior records
17 or dispute still about that.

18 MR. CHANDLER: We haven't discussed them. He
19 has the records. We did submit the prior records, Your
20 Honor, and those would be the number two, three and four
21 witnesses for today. So we'll cover that during the lunch
22 break.

23 THE COURT: Okay. If there's something that we
24 need to take up and hear, we'll do that when we first come
25 back. If nothing else then we'll see ya'll at 2 o'clock.

1 Thank ya'll.

2 MR. CHESSER: Thank you, Your Honor.

3 (WHEREUPON a lunch break was observed.)

4 THE COURT: All right. Mr. Chesser, do you
5 need to put anything on the record related to our
6 discussions in chambers?

7 MR. CHESSER: Yes, Your Honor. Would the
8 defendant need to be in here?

9 THE COURT: Yes, sir.

10 (WHEREUPON Mr. Curry entered the courtroom.)

11 MR. CHESSER: May it please the court?

12 THE COURT: Yes, sir.

13 MR. CHESSER: The State, today I assume, is
14 going to call various, well two co-defendants and then a
15 third party that is associated with these co-defendants and
16 the co-defendants are Antonio Savage and Jeremy Simuel and
17 the third person is Winfred Juvan Rushon. With respect
18 to -- I've been provided with some rap sheets. With
19 respect to impeachment on Antonio Savage, his rap sheet
20 seems to show a '96 escape, he got 12 months for and theft
21 by taking in '96, January of '96 that he got 3 years with
22 probation for 7 years.

23 And the State's represented to me that that's
24 all the prior convictions that he has and what I propose to
25 do is to impeach him with these two prior convictions,

1 according to the rules of evidence. And I understand the
2 State had no objection to using those two convictions.

3 THE COURT: Yes, sir, I think they indicated
4 that those were proper under the rule to use.

5 MR. CHESSER: Your Honor, in addition, Antonio
6 Savage has, of course, he's got charges that arise out of
7 this incident, a murder, possession of a weapon in the
8 commission of a violent crime and attempted armed-robbery.
9 Those I intend to ask him about, the idea of showing
10 possible bias. And then finally, Your Honor, he has
11 pending charges for possession with intent to distribute
12 marijuana and possession with intent to distribute
13 marijuana within proximity. He was arrested for that, I
14 understand, it was in April of 2003.

15 And he also has, from October of 2003 a pending
16 charge of armed-robbery. It's my position that the
17 armed-robbery from October of 2002 and the PWID marijuana
18 and the proximity charge from April of 2003, that I should
19 be allowed to impeach him with those under the rule for
20 admissibility of uncharged bad acts that reflect on
21 credibility under Rule 608(B) or the rules of evidence.

22 So I would ask for a ruling with respect to my
23 proposed use for impeachment of these arrests that have not
24 resulted in a conviction for PWID marijuana, PWID proximity
25 and armed-robbery.

1 THE COURT: All right. I don't think the
2 State, if they have any response, they can certainly add it
3 to the record. I had indicated back in chambers and will
4 rule now that I'm not going allow questioning regarding
5 those. I don't believe that that prejudices your client in
6 any way. I know we had some discussion about the level of
7 proof, the standard that should apply to getting into those
8 matters and I still think, when you're dealing with arrests
9 and allegations of actual criminal offenses, I still think
10 the standard is a little higher, although there's probably
11 nothing on point, I think it does still approach as under
12 609, there's nothing clear and convincing. At this point,
13 those charges are pending, and much like this defendant
14 they're presumed innocent of those.

15 And so I did rule that I don't believe he is
16 prejudiced at all. He's allowed to get into for
17 impeachment purposes the two convictions and certainly he's
18 allowed -- you're allowed, rather, to get into the pending
19 charges from this crime as to whether or not that colors
20 his testimony at all or makes him potentially coloring it
21 to help himself out. So I don't think your client is
22 prejudiced by excluding those and so I'm going to leave
23 those out, those pending charges out.

24 MR. CHESSE: Your Honor, with respect to
25 Winfred Juvan Rushon, the State's furnished me with rap

1 sheets and according to these rap sheets, he doesn't have a
2 prior record. Now, the State has represented that to me
3 that he has no prior record and that would include a
4 juvenile record and that's with respect to Mr. Rushon and
5 also Mr. Savage and also Jeremy Simuel. But they've
6 represented to me he has no record and therefore, there
7 would be no prior convictions coming in with respect to
8 him.

9 Finally, there's Jeremy Simuel. With respect
10 to him, what I would propose to use at this time would be,
11 he has a March 16, of 2000, a theft by taking conviction
12 that resulted in a 5 year sentence. From November of '99,
13 he's got a false information to police officer which
14 resulted in a 12 month suspended sentence. He has, again,
15 a March 16, of 2000, theft by receiving stolen property, he
16 got 12 months for. He's got an April of '99 conviction for
17 possession with intent to distribute marijuana, 5 years he
18 got an on April 21st, of 2000, another theft by receiving
19 stolen property, he got 5 years for.

20 So those would be the convictions that I would
21 propose to use to impeachment him with.

22 THE COURT: Okay. Anything the State needs to
23 add to any of those?

24 MR. CHANDLER: No, Your Honor, nothing from the
25 State.

1 THE COURT: All right. Are we ready for the
2 jury?

3 MR. CHESSER: Defense is ready, Your Honor.

4 MR. WEEKS: Judge, may we approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON there was a bench conference out of
7 the hearing of the court reporter.)

8 THE COURT: Okay. Bring them out.

9 (WHEREUPON the jury entered the courtroom at
10 2:27 p.m.)

11 THE COURT: Thank you, ladies and gentlemen. I
12 appreciate your patience. We are ready to go at this time.
13 I hope you all had a good lunch during the break. The
14 first thing I'm going to have to ask you to do is ask you
15 to stand and raise your right hand and be sworn in as
16 jurors in this particular case. So if you all would do
17 that at this time, we're going to swear you in.

18 (WHEREUPON the jury was sworn at 2:28 p.m.)

19 THE COURT: Thank you all. Ladies and
20 gentlemen, at this point in time you will first hear from
21 the attorneys from both sides. Both the State and the
22 defendant will give you opening statements. I tell you
23 opening statements are not evidence. What the attorneys
24 tell you in opening statements is not evidence but they
25 will tell you basically what they believe the evidence will

1 show you throughout the course of this trial. I tell you
2 that and I'll tell you all at the end of the case when I
3 actually charge you what evidence actually is and what
4 evidence you can consider. But just for the time being
5 just know that statements, like opening statements and
6 closing arguments by the attorneys, that's not evidence for
7 you to consider, nor are questions from the attorneys
8 evidence for you to consider.

9 Responses by witnesses and exhibits, for
10 example, that are let into evidence by the court is
11 evidence and you'll have any exhibits back in the jury room
12 with you when you do your deliberations. Having told you
13 that, though, I do ask to you pay very close attention to
14 the attorneys' opening statements. It's a chance, like I
15 said, for them to tell you what happened here, and why this
16 case is here and what they believe the evidence will show
17 you during the course of this trial.

18 So, with that, is the State prepared to go
19 forward?

20 MR. CHANDLER: Yes, sir.

21 THE COURT: Okay. Mr. Chandler, Ladies and
22 gentlemen, the State attorney will start off with opening
23 statements to you. Thank you.

24 MR. CHANDLER: May it please the court?

25 THE COURT: Yes, sir.

OPENING STATEMENTS

1
2 MR. CHANDLER: Thank you, Your Honor, Mr.
3 Chesser, Members of the jury panel, my name is Everett
4 Chandler and I'm an assistant solicitor with the Aiken
5 County Solicitor's Office. I join the court as he did this
6 morning in thanking you for coming here and serving. This
7 case is very important to the State of South Carolina, as
8 well as Mr. Thaddeus Curry. And certainly your service
9 today is important, simply because it is the constitution
10 in action as the Court has mentioned before.

11 Over the next couple of days, we will be giving
12 you an accurate account of a very tragic situation or
13 tragic action that occurred in Aiken County over, over a
14 year ago. Before we take you to that action, before we
15 take you to that action, you're going to have to come with
16 us. You're going to have to follow us to Beech Island and
17 then to Augusta and then back the Beech Island.

18 On or about March 17 or 18, of 2003 the victim
19 in the case, Mr. Heath Hamilton, and Mr. Ronald Coursey
20 went to Augusta for the purposes of buying marijuana to
21 sell and they went to Savannah West Apartments in Augusta.
22 And there, when they were in the Savannah West Apartments,
23 they met up with the defendant, Mr. Thaddeus Curry, as well
24 as Anthony Savage. When they met up with Mr. Savage, they
25 arranged a dope deal to go on back in Beech Island. So

1 they went back to Beech Island and they waited on the call
2 from Mr. Curry and Mr. Savage.

3 The evidence will show that while Mr. Savage
4 and Mr. Thaddeus Curry were on their way from Augusta to
5 Aiken, they were planning on robbing Mr. Heath Hamilton as
6 well as Mr. Ronald Coursey. The evidence will show that
7 Jeremy Simuel drove them there and that Mr. Thaddeus Curry
8 actually carried a gun with him while he was on his way
9 here to Aiken County. The evidence will also show that
10 once they got to Beech Island that during the course of the
11 drug transaction, Mr. Thaddeus Curry pulled out the gun,
12 presented the gun, shot the gun at -- into the car at Heath
13 Hamilton, killing him and also causing damage to the truck.

14 Now, although the victims, Mr. Heath Hamilton
15 and Mr. Ronald Coursey were in the process of doing that
16 illegal transaction, while they were doing a bad act, they
17 were not asking for the chain of events that happened on
18 this day. They were looking for a dope deal not a death
19 sentence. Throughout the course of this trial, we're going
20 to ask that you listen very carefully to all of the
21 evidence that's presented. As we said, this case is very
22 important to the State, as well as Mr. Curry.

23 We also ask that you use your common sense,
24 your every day experiences in looking at the information
25 that's going to be presented on the jury stand and the

1 individuals that will be presenting the evidence to you
2 because you are the sole determiners, you make the sole
3 determination as to what the truth is that comes from the
4 jury stand and we ask that you listen very carefully and
5 use your every day experiences in deciding what, in fact,
6 what was true. When you use your every day experiences, we
7 ask that you look at what the State has to prove beyond a
8 reasonable doubt.

9 Now in this case the State has to prove that
10 Thaddeus Curry murdered Heath Hamilton. And murder, as the
11 judge will tell you, is the unlawful killing of a person
12 with malice aforethought. That is a legal terminology
13 which the judge will explain at the end of this trial. And
14 he also has been charged with possession of a firearm, that
15 weapon that he pulled out during the commission of a
16 violent crime. Of course, the violent crime is the murder
17 of Heath Hamilton.

18 We ask that you listen carefully to all of the
19 evidence that's presented. We ask that you use your common
20 sense in looking at what is true because you were chosen by
21 both sides to do that and we have every confidence that you
22 will.

23 Thank you so much.

24 THE COURT: Thank you, sir. Mr. Chesser?

25 MR. CHESSER: May it please the court?

1 THE COURT: Yes, sir.

2 MR. CHESSER: Thank you. I'm Michael Chesser
3 and I represent Thaddeus Curry. I'm from Aiken, born here
4 in '57 and always lived here. It's a pleasure to be with
5 ya'll today. I think that this is a sad case when somebody
6 dies. And we are not diminishing the tragedy that
7 underlies this case. The issue here is, who pulled the
8 trigger out there at Bryant's Gas Station just on this side
9 of the line from Augusta on Sand Bar Ferry Road in the
10 early morning hours. It would be Monday night, Tuesday
11 morning of March 18, of last year, 2003.

12 This was the night of St. Patrick's Day
13 celebration. Heath Hamilton and Ronald Coursey had made
14 arrangements to buy some marijuana, and they met somebody
15 out at Bryant's Gas Station just on this side of the line.
16 Now again the issue in this case is who pulled the trigger.
17 The State contends that Thaddeus Curry pulled the trigger.
18 They have to prove this beyond a reasonable doubt.

19 Ladies and gentlemen, there is more than a
20 reasonable doubt in this case. I would ask you to listen
21 to all of the evidence in the case and wait until all the
22 evidence is in and then weigh the evidence, applying the
23 principles of proof beyond a reasonable doubt as a
24 requirement on the State. And in addition, the presumption
25 of innocence, and the presumption of innocence has been

1 described as like a robe that cloaks the defendant
2 throughout the trial and back on into the jury room while
3 you do your deliberations. So you look at this evidence
4 from all angles.

5 And at the end of this, you'll find that there
6 is a reasonable doubt and you'll find Thaddeus Curry not
7 guilty. Thank you.

8 THE COURT: Thank you, sir.

9 Okay. Mr. Chandler, is the State ready to call
10 the first witness?

11 MR. CHANDLER: Yes, it is.

12 THE COURT: Yes, sir.

13 MR. CHANDLER: Your Honor, the State calls Mr.
14 Ronald Coursey.

15 THE COURT: Please come around and be sworn.
16 Thank you.

17 THEREUPON,

18 RONALD COURSEY,
19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box,
21 stating your full name, spelling your last for the court,
22 please.

23 MR. COURSEY: Ronald Douglas Coursey,
24 C-o-u-r-s-e-y.

25 ///

Ronald Coursey - Direct Examination by Mr. Chandler

DIRECT EXAMINATION

By Mr. Chandler:

Q Mr. Coursey, where do you live?

A Beech Island, South Carolina.

Q And how long have you lived in Beech Island?

A Approximately 5 years.

Q 5 years. Do you know Heath Hamilton.

A Yes, sir.

Q How do you know Heath Hamilton?

A We were roommates for a while and through school. We went to high school together.

Q Do you know the defendant, Mr. Thaddeus Curry?

A Only through this tragic action.

Q Is there a way that you -- could you please describe the events that led up to your interaction with Mr. Thaddeus Curry?

A Well we went out. We had, Heath and my other buddy, Robby, we went out to Augusta to meet Henry, Heath's older brother.

Q Okay. Prior to going to meet Henry, what were you doing?

A Sitting around the house, talking.

Q What else were you doing?

A Probably smoking a little bit of pot.

Q Smoking pot; what else? Maybe drinking a little bit?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A Drinking a little bit.

2 Q Okay. What happened after that?

3 A We went on out to Henry's apartment and stayed there
4 for a couple of hours. Probably smoked a little more,
5 drank a couple of beers. And then we decided to leave.
6 And on the way back, Heath said he might know somebody
7 in the apartment complex, Savannah West that could get
8 some pot for us. I mean ---

9 Q What were you going to do with this pot?

10 A We were going to sell it.

11 Q You were going to sell it. Do you sell marijuana or
12 did you sell marijuana at that time?

13 A I used to, yes, sir.

14 Q You used to sell marijuana. And so Heath was going to
15 help you, said he knew somebody over there?

16 A Yeah.

17 Q Okay. So what happened after that?

18 A Well we pulled in and he saw somebody that worked with
19 his brother at Applebees and he talked to him for a
20 minute. I really didn't talk to that guy. And while
21 we were in the parking lot, we saw Mr. Thaddeus Curry
22 over there.

23 Q Okay.

24 A And Anthony, another black male.

25 Q So you saw two black males, one being Mr. Curry?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A Yes, sir.

2 Q All right. And is Mr. Curry in the courtroom?

3 A Yes, sir, he's right there.

4 MR. CHANDLER: Your Honor, please let the
5 record reflect that Mr. Coursey pointed to Mr. Curry as the
6 person he saw.

7 THE COURT: Yes, sir.

8 By Mr. Chandler:

9 A All right.

10 Q What happened after this?

11 A They were sitting on their car. It was a Chevy
12 Caprice, drinking some beer. And after Heath got done
13 talking to them, we were just being friendly talking to
14 them, just sitting around. Then they came up asking if
15 they knew where we could get any pot.

16 Q How much pot were you looking for?

17 A A quarter pound.

18 Q You were looking for a quarter pound. How much do you
19 normally get for a quarter pound, or how much is a
20 quarter pound of marijuana?

21 A That depends on the quality and however -- usually
22 \$250.

23 Q \$250?

24 A Yes, sir.

25 Q And how much were you looking to pay for some at

Ronald Coursey - Direct Examination by Mr. Chandler

1 Savannah West Apartments?

2 A Well they said \$220.

3 Q Okay. And they being who?

4 A Mr. Thaddeus Curry and this other man.

5 Q Okay. So Mr. Thaddeus Curry and another gentleman
6 agreed that they could get you a deal on some
7 marijuana?

8 A Yes, sir.

9 Q Okay. And so what did you do after that?

10 A They said -- we waited around for a little bit and they
11 said to go on and get the money. So we went to the
12 ATM, drove down the road and came back and the car
13 wasn't there when we got back. And we'd been there for
14 a minute or so and they pulled up. I don't know where
15 they went. They didn't say they were leaving. So we
16 waited and talked to them again and they said their
17 buddy up in the apartment, they were waiting to talk to
18 him. After we waited for a little bit longer, he came
19 out on the porch and then they went -- I don't remember
20 what he said. And they went up to his apartment and we
21 followed them and they kind of shut the door in our
22 face. They didn't invite us in. So we just waited
23 there for a minute and then they opened the door after
24 maybe 5 minutes or so and said they couldn't do it
25 right now, but they could do it later.

Ronald Coursey - Direct Examination by Mr. Chandler

1 Q Okay. So what -- how long later were they going to
2 hook up? Do you know?

3 A Well they gave us a phone number. Heath wrote it on
4 his hand and the name, a cell phone.

5 Q Heath wrote a name -- one of the guys that was there?

6 A I believe so. I know the number was on his hand.

7 Q Okay. And you guys left Savannah West?

8 A Yes, sir.

9 Q Where did you go?

10 A We went back the Beech Island, to Heath's house.

11 Q Okay. And what happened after that?

12 A I think we smoked another bole of pot, getting ready to
13 go to bed. We didn't know if they were going to call
14 or not. Right before they called the house and said to
15 come on and meet us at the Four Seasons, Bryant's Gas
16 Station.

17 Q Where is that?

18 A On Sand Bar Ferry and Curry Drive, I believe.

19 Q Is that in Beech Island?

20 A Yes, sir.

21 Q Is that in Aiken County?

22 A Yes, sir.

23 Q All right. And did you, in fact, go to the Four
24 Seasons?

25 A Yes, sir, we did go.

Ronald Coursey - Direct Examination by Mr. Chandler

1 Q Where did you go?

2 A We went to the Four Seasons and we parked and waited.

3 Didn't see anybody. We waited for about 5 or 10

4 minutes and then Heath decided to call their cell

5 phone. So he pulled up to the pay phone and they -- he

6 dialed the number and right after he dialed the number

7 the guy was walking around the side of the truck, so he

8 was like -- must have walked around right when we was

9 calling them. So they talked and he jumped back in the

10 truck and said, "It's all good" and "we're going to go

11 meet them over on the other side of the gas station."

12 Q So was it Heath's idea that they go to the other side

13 of the gas station?

14 A No, it was their idea.

15 Q So they told you to meet on the other side of gas

16 station?

17 A Yes, sir.

18 Q What happened after that?

19 A We pulled to the other side and I pulled my scales out

20 and put them on the console to weigh the ---

21 Q What scales? What are the scales for?

22 A To weigh the pot, digital scales.

23 Q Okay.

24 A To make sure it was a right amount. And they started

25 getting aggressive, talking to us. "We got the stuff,

Ronald Coursey - Direct Examination by Mr. Chandler

- 1 you need to show us the money."
- 2 Q Before we go there, you pulled out your digital scales?
- 3 A Yes, sir.
- 4 Q How is it that that parking lot, that alley next to the
- 5 Four Seasons, was it well lit?
- 6 A No, it was very dark.
- 7 Q It was very dark?
- 8 A Yes, sir.
- 9 Q So you pulled into a dark alley and you pulled out your
- 10 scales, can you see your scales there in that light?
- 11 A Yes, sir, we had the lights on.
- 12 Q So you had the interior lights of the vehicle on?
- 13 A Yes, sir.
- 14 Q Okay.
- 15 A And they both came up to the door where I could see
- 16 them.
- 17 Q And these would be the two black males ---
- 18 A Same gentlemen from Savannah West
- 19 Q From Savannah West?
- 20 A Yes, sir.
- 21 Q And you mentioned the same gentlemen. Was it -- was
- 22 one of those guys the defendant, Mr. Thaddeus Curry?
- 23 A Yes, sir.
- 24 Q Okay. And how long did you guys negotiate or at least
- 25 attempt to negotiate this drug deal?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A Maybe a minute or two.

2 Q A minute. You talked about selling the drugs?

3 A Yes, sir.

4 Q What else?

5 A We wanted to weigh it before we got it and then they
6 said -- started getting aggressive, "Give us fucking
7 money."

8 Q Okay. So Mr. Curry is one of them saying, "Give me the
9 money"?

10 A Yes, sir. He was the one that said it I believe.

11 Q Okay. And what happened after that?

12 A They said, "I got your stuff." And walked back to the
13 bushes.

14 Q Uh-huh?

15 A And then the next I knew, he came up, Mr. Curry, over
16 there, had the gun.

17 Q You saw Mr. Curry with the gun?

18 A Yes, sir, he had the gun the whole time.

19 Q He had the gun the whole time? What did he do with the
20 gun?

21 A Well as soon as I saw it, it was a split second, he
22 started shooting.

23 Q What -- did you see him -- could you see him -- you
24 said that the alley was dark?

) 25 A Yes, sir, the lights were -- I could see the interior

Ronald Coursey - Direct Examination by Mr. Chandler

1 lights. I could see. He had on a white t-shirt, a
2 wife beater or tank top t-shirt.

3 Q Tank top t-shirt, a wife beater or something?

4 A Yes, sir.

5 Q Okay. Well ---

6 A The other gentleman had on a completely different -- he
7 had on a black and blue jacket.

8 Q Okay. And how are you certain that this was, in fact,
9 Mr. Curry?

10 A Because I saw him walk to pick it up and he had it
11 underneath his shirt and pulled it out. It was him.

12 Q Could you describe the gun?

13 A I'm not much up on guns, but it about this. And when
14 it went off it was either automatic or semi-automatic.
15 It went off real fast.

16 Q And how was he holding it?

17 A In one hand.

18 Q Okay. And so what did he say when he pulled the gun
19 out?

20 A I don't think he said anything, it just happened too
21 fast and he shot and hit Heath in the head.

22 Q First shot?

23 A Yes, sir, I believe so.

24 Q And what ---

25 A And I saw him kind of just slump down and the only

Ronald Coursey - Direct Examination by Mr. Chandler

1 thing I could to is lean over and cover my head.

2 Q But the shot happened before you leaned over and
3 covered your head?

4 A Yes, sir.

5 Q Did you see who pulled the trigger?

6 A Yes, sir. It was Mr. Curry over there.

7 Q At any other time did you see Mr. Savage with a gun?

8 A No, sir.

9 Q Who was the person who had the gun?

10 A This gentleman right here.

11 Q What happened -- how many shots did you hear?

12 A I heard three.

13 Q And what happened or what, if anything, happened at
14 that point?

15 A Well I did the only thing I could do, cover my head.

16 Q Okay. Mr. Coursey, what -- prior to -- you had
17 indicated that they were arguing, "Give us the money."
18 Did it look as if Mr. Hamilton -- did it look as if
19 Heath was threatening them? Did Heath have a weapon?

20 A No, sir.

21 Q Did Heath produce a weapon?

22 A No, sir.

23 Q What was he trying to do during the time?

24 A Leave, drive off.

25 Q How do you know he was trying to leave?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A Because right before it happened he was driving. He
2 didn't get 2 feet.

3 Q What you mean he was driving? Help me out now.

4 A He put it into drive and it started rolling forward and
5 just stopped.

6 Q Just stopped why did it stop?

7 A Because he was shot. Either his foot hit the brake...

8 Q What did you do after that Ronald?

9 A I was leaned over for a while, then I got up and went
10 to the other side of the car and I was asking Heath,
11 "Are you all right?" And he wasn't responding. So I
12 opened the driver's door and he kind of sunk toward me.

13 Q When you opened up the door?

14 A (Witness nodded head.) So I pushed him to the other
15 side and drove to the other gas station and called the
16 police.

17 Q You called the police? Okay. When -- during -- back
18 to the drug transaction, during the drug transaction
19 was the window up or down?

20 A I'm not really sure. I believe it was down because we
21 were talking to them.

22 Q Ya'll were talking to them?

23 A Yes, sir.

24 Q How was it -- was it cold? Was it wet? What was the
25 weather like?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A The weapon -- it was about 2 maybe 3 foot, I'm not
2 sure.

3 Q I'm sorry, what was the weather like?

4 A Oh, it must've have been cold I can't really recall I
5 was wearing a jacket, so it must've been because I left
6 it there.

7 Q Ronald, I'm now handing you what has been previously
8 marked as State's Exhibit No. 7.

9 A Okay.

10 Q Can you tell me what that is?

11 A It is the truck we were riding in that night.

12 Q Okay. Now, how do you know that truck?

13 A Because that's his father's truck.

14 Q That's his father's truck?

15 A Yes, sir.

16 Q And that was the one you were riding in that night?

17 A Yes, sir.

18 Q Okay. I'm now handing you what has been marked as
19 State's Exhibit No. 5 and 6. Can you tell me what
20 those exhibits are?

21 A That's where the shooting occurred in the dark alley.

22 Q A dark alley? How do you recognize that?

23 A I will never forget it.

24 Q You'll never forget it? Describe what you see in the
25 video -- I mean, describe what you see in the picture?

Ronald Coursey - Direct Examination by Mr. Chandler

1 A It's dark. I see cones marking evidence. I do see
2 lights a little bit off to the side.

3 Q Now, those cones marking evidence -- they were not
4 there during the time that you were there?

5 A No, sir.

6 Q Okay, what other features -- what, if anything else, do
7 you recognize in the pictures?

8 A It's kind of foggy.

9 Q You mentioned before that Mr. Curry went in the bushes
10 and retrieved a gun?

11 A Yes, sir.

12 Q Do you see those in that picture?

13 A Right on the left side.

14 Q Do the picture of the scene of the incident and the
15 picture of the truck fairly and accurately represent
16 the scene of the incident as you know it on that night,
17 with the exception of the cones? They were not there?

18 A Yes, sir.

19 MR. CHANDLER: At this time, Your Honor, the
20 State would like to offer into evidence State's Exhibit 7,
21 6 and also 5.

22 THE COURT: Objection?

23 MR. CHESSER: No objection.

24 THE COURT: Okay. Without objection they're
25 admitted.

Ronald Coursey - Direct Examination by Mr. Chandler

1 MR. CHANDLER: The State would like to publish
2 this to the jury.

3 THE COURT: Yes, sir.

4 By Mr. Chandler:

5 Q You said you jumped in the car and left. Were you
6 able -- but you said that Heath was in the driver's
7 seat at the time?

8 A Yes, sir.

9 Q So how did you get control of the vehicle?

10 A I had to move him over to the passenger side.

11 Q And where did you go after that?

12 A To the nearest gas station that was opened, Mean
13 Gene's.

14 MR. CHANDLER: Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 By Mr. Chandler:

17 Q Ronald, you indicated that once the shooting started,
18 or after you saw Heath slump over that you bent over
19 and hid. What happened after that?

20 A I don't know.

21 Q How many shots did you hear?

22 A I heard three shots.

23 Q You heard three shots? Do you know where Mr. Curry or
24 the other guy that was with him were?

25 A No, sir, I never saw a car that they came in or

Ronald Coursey - Direct Examination by Mr. Chandler

1 anything, unless they hid it down the road or something
2 and ran to it.

3 Q When you got out of the vehicle were they still there
4 or were they gone?

5 A No, they were gone, I didn't see them anywhere.

6 Q So you had no idea where they went?

7 A No, sir.

8 Q We've been talking about this incident. We talked
9 about the things that happened to your friend. Do you
10 remember the date that it happened?

11 A March 18.

12 Q How do you remember this?

13 A Because that's the day it happened.

14 Q The day it happened?

15 A Yes, sir, in the morning.

16 Q It was in the morning? Now when you first went to
17 Savannah West was that still around March 18 or was
18 that earlier on March 17.

19 A It was close, I'm not sure.

20 Q It was between or on or about March 17 or 18?

21 A Yes, sir.

22 Q Okay. All right. No further questions. Please answer
23 any questions Mr. Chesser has.

24 A Yes, sir.

25 THE COURT: Mr. Chesser?

Ronald Coursey - Cross-Examination by Mr. Chesser

CROSS-EXAMINATION

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By Mr. Chesser:

Q Mr. Coursey, may I ask how old you are?

A I'm 20.

Q On that day, March 17, of 2003, that was Monday, St.

Patrick's Day, right?

A Yes.

Q Okay. Now, you were with your friend Heath Hamilton

and also another young fellow, Robby Glenn, is that

right?

A Yes, sir.

Q Now, you stated that you spent time at Heath's older

brother's apartment in Augusta, is that right?

A Yes.

Q Okay. And that's Henry Hamilton?

A Yes.

Q Okay. And you were celebrating St. Patrick's Day,

right?

A We were treating it as any other day.

Q Okay. But you were drinking?

A Yes, sir.

Q And you were smoking marijuana?

A Yes, sir.

Q Now, Heath had the idea of buying some marijuana,

right?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A No, sir, it was my idea.

2 Q It was your idea?

3 A (Witness nodded head.)

4 Q Okay. And Heath told you he knew where to buy some, is
5 that right?

6 A He said he might.

7 Q He said he might know?

8 A Yes.

9 Q It was his idea to go to Savannah West Apartments?

10 A Yes, sir.

11 Q He said he had an acquaintance there that he thought he
12 could get some marijuana from?

13 A Yes, sir.

14 Q Now, you actually got to the Savannah West Apartments
15 about 12:00, midnight, isn't that right?

16 A Yes, sir, somewhere around there.

17 Q All right. And had you ever been to the Savannah West
18 Apartments before?

19 A Yes, I have.

20 Q You have?

21 A Yes, sir.

22 Q You've never been there to buy marijuana before?

23 A No, sir.

24 Q Okay. Had you ever been to this particular apartment
25 where ya'll were that night before?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A No, sir.

2 Q Now, getting there at 12:00, Heath handled the
3 negotiations to buy marijuana, is that right?

4 A Yes, sir.

5 Q Okay. And at some point, Heath was told that it would
6 be some time before a deal could be done to sell you
7 the marijuana?

8 A Yes, sir.

9 Q Okay. And so ya'll left. First you left to go get
10 some money from an ATM machine, right?

11 A Yes, sir.

12 Q And then you came back and you were told it would still
13 be more time before you could do the deal, right?

14 A Yes, sir.

15 Q So you left then and did you go back to Henry
16 Hamilton's apartment at that time?

17 A No, sir.

18 Q Where did you go at that time?

19 A To Beech Island, to Heath's house.

20 Q So you actually went to Heath's house in Beech Island
21 and you waited there about an hour?

22 A I couldn't say.

23 Q Okay. Can you say if it was more than an hour?

24 A I don't know.

25 Q Can you say if it was less than an hour?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A I said I don't know.

2 Q Now, at that time at Heath's apartment was it just you
3 and Heath Hamilton?

4 A At Heath's apartment?

5 Q At Heath's place in Beech Island?

6 A His father was sleeping.

7 Q So it was actually his house where he stayed with his
8 father?

9 A Yes, sir.

10 Q Okay. Robby Glenn was no longer with ya'll?

11 A No, sir.

12 Q Okay. At that time, you smoked more marijuana, is that
13 right?

14 A Yes, sir, one more bole.

15 Q Okay. And then you had a phone conversation, or Heath
16 did with somebody and you understood that ya'll had a
17 deal to buy some marijuana at this gas station in Beech
18 Island, right?

19 A Yes, sir, we were supposed to meet them there.

20 Q Okay. Now, you got to the gas station and this gas
21 station is called Bryant's is that right?

22 A Yes, sir.

23 Q Okay. That gas station is on Sand Bar Ferry Road,
24 right?

25 A Yes, sir.

Ronald Coursey - Cross-Examination by Mr. Chesser

1 Q Okay. And it's near the intersection with a little
2 drive called Cary Street, is that right?

3 A Yes, sir.

4 Q Okay. Now, you -- or Heath Hamilton -- he was driving,
5 right?

6 A Yes.

7 Q Okay. And that's his vehicle, right?

8 A It's his father's truck.

9 Q All right. So Heath drove up there to the corner of
10 Cary Drive and Sand Bar Ferry Road and initially ya'll
11 pulled the truck over just off of Cary Street, is that
12 right?

13 A It was on the other side of the gas station.

14 Q Okay. When you say the other side you mean the
15 side ---

16 A Where the incident happened, the other side where the
17 shooting happened.

18 Q Okay. In other words, that's where you initially
19 parked?

20 A Yes, sir.

21 Q And that is next to Cary Street, isn't that right?

22 A No, sir.

23 Q All right.

24 A It's on the other side of the gas station.

25 Q All right. Now -- so you were initially there in the

Ronald Coursey - Cross-Examination by Mr. Chesser

1 dark, right?

2 A It was dark but it was light in front of the gas
3 station.

4 Q Okay. You testified earlier that where the shooting
5 happened was a darkened area?

6 A Yes, sir, but we were on the other side.

7 Q At first.

8 A In the front where there was light.

9 Q Right, where there was light.

10 A (Witness nodded head.)

11 Q Okay. Now, you waited and Heath decided to make a
12 phone call?

13 A Yes.

14 Q So he moved the vehicle toward the pay phone, is that
15 right?

16 A Yes, sir.

17 Q Okay. And then he made that call and then one
18 individual showed up, right?

19 A It was the same individual that was with Mr. Curry over
20 there.

21 Q One person showed up, right?

22 A (Witness nodded head.)

23 Q And then Heath had a conversation with this person and
24 he told you the deal was on, right?

25 A Yes, sir.

Ronald Coursey - Cross-Examination by Mr. Chesser

1 Q Okay. Now Heath is the one who had a conversation with
2 the first individual to show up, right?

3 A Yes, sir.

4 Q Okay. And Heath was in the driver's seat and you were
5 in the front passenger's side, right?

6 A Yes, sir.

7 Q Okay. Now, at that point, Heath drove the vehicle to a
8 dark area beside the gas station, right?

9 A Yes, sir.

10 Q Okay. And you didn't have your car lights on or truck
11 lights on because there was this transaction that ya'll
12 were doing, right?

13 A We did have the inside interior lights on.

14 Q Had the inside lights on, but not the outside lights
15 on?

16 A Yeah, the lights were on.

17 Q Now, in this area, this is the first time that you saw
18 an individual in a white t-shirt at that gas station,
19 right?

20 A Yes, sir, he was in the truck -- I mean right on the
21 driver's side of the truck.

22 Q He came up and talked to Heath Hamilton?

23 A Yes, sir, both of them did.

24 Q Okay. But that was the first time at that gas station
25 that you'd seen the individual in the white t-shirt,

Ronald Coursey - Cross-Examination by Mr. Chesser

1 right?

2 A No, we saw him at Savannah West.

3 Q At the gas station, that was the first time you saw the
4 individual in the white t-shirt, right.

5 A Yes.

6 Q And your testimony is that the individual in the white
7 t-shirt is the individual who had the gun, right?

8 A Yes, sir, he went and picked the gun up out of the
9 bushes.

10 Q Okay. And he's the who shot Heath Hamilton, right?

11 A Yes, sir.

12 Q Now, you've talked a lot about or said the name a lot
13 of Thaddeus Curry today, but in fact, on March the 17th
14 and 18th, you didn't know the name, Thaddeus Curry did
15 you?

16 A No, sir.

17 Q Okay. The individuals that you saw at the Savannah
18 West Apartments when you got there at 12:00 midnight on
19 March 17, it was the first time you'd ever seen those
20 individuals, right?

21 A Yes, sir.

22 Q Okay. And suffice it to say, it was nighttime, right?

23 A Yes, sir.

24 Q Okay. And you had a conversation with the individuals
25 in the parking lot of the Savannah West Apartments,

Ronald Coursey - Cross-Examination by Mr. Chesser

1 right?

2 A Yes, sir.

3 Q Now, when this happened, and I know that this event
4 must have been very extremely upsetting to you. I'm
5 sure you understand, I mean it literally when I say I
6 can't know how you felt in that situation, but
7 immediately after this, Mr. Coursey, you made a call to
8 the authorities from that Mean Gene's, that sort of big
9 gas station down the street from Bryant's, right?

10 A Yes.

11 Q Okay. Now, your purpose in making that call was,
12 obviously, to report what had just happened, right?

13 A (Witness nodded head.)

14 Q Okay. Now, they asked you at that time in this 911
15 call about details of what had just happened to you,
16 right?

17 A I don't know.

18 Q You don't remember?

19 A I'm sure they did.

20 Q Let me show you this document and see if it refreshes
21 your memory about that conversation. You can take a
22 look at that.

23 THE COURT: Mr. Chesser, how many pages is it?

24 MR. CHESSEY: Your Honor, it is a total of 8
25 pages.

Ronald Coursey - Cross-Examination by Mr. Chesser

1 By Mr. Chesser:

2 A I got it.

3 Q Okay. That's the conversation you had with the
4 dispatcher that night, right?

5 A Yes.

6 Q Okay. Let me refer you to Page 5 just about 4 lines
7 down, the dispatcher asked you, "Did you see what they
8 looked like or what they were wearing? Dark clothes,
9 light clothes, hats, anything? Take a deep breath for
10 me. All right. The first one? Tall or short?" And
11 what's your response?

12 A "He had a bald head, I think."

13 Q And she asked or he asked, "He was bald?" And what was
14 your response?

15 A "Baseball cap or either a sweatband, sweat thing."

16 Q And the dispatcher asked, "He was wearing a sweatband?"

17 A Yeah, like a sweatband across his forehead.

18 Q Okay. Now, down a little more about the last fourth of
19 the page, the dispatcher asked, "Okay. He's wearing a
20 sweatband, what color shirt was he wearing?" And
21 what's your response?

22 A "I don't know, it's dark, man, I just don't know."

23 Q Okay. Let me refer your attention to the bottom of
24 Page 6. The dispatcher asked you, "The best way you
25 can help me out is tell me everything you know about

Ronald Coursey - Cross-Examination by Mr. Chesser

1 them people, what they look like, where they were
2 walking to, everything." And what is your response?

3 A "I don't know much about them. I ain't never seen them
4 before we stopped."

5 Q The dispatcher says, "Okay. All right. The first guy,
6 the first black guy was bald wearing a sweatband?" And
7 Your response?

8 THE COURT: Hold on just a moment, Mr. Chesser,
9 I know you used this to refresh his memory, but it hasn't
10 been admitted into evidence. If you want to ask him
11 questions about it, I don't have problems with you doing
12 that using it for him to testify to it, unless you're going
13 to it for some other purpose.

14 MR. CHESSER: Your Honor, this -- these
15 statements here -- can we take this up outside the presence
16 of the jury.

17 THE COURT: Why don't ya'll approach on this
18 side.

19 (WHEREUPON there was a bench conference out of
20 the hearing of the jury and the court reporter.)

21 THE COURT: All right. Ladies and gentlemen of
22 the jury, if you'll give us about 5 minutes or so, I need
23 to take up a matter on the record with the attorneys. And
24 so I just ask that you return to the jury room. Do not
25 discuss the evidence or testimony you've heard thus far. I

Ronald Coursey - Cross-Examination by Mr. Chesser

1 will bring you back out shortly. Thank you.

2 (WHEREUPON the jury left the courtroom at 3:19
3 p.m.)

4 THE COURT: All right. Mr. Coursey, you may
5 step down for the moment I just remind you, you're still on
6 the witness stand, still under oath. Do not discuss your
7 testimony thus far or discuss your testimony at all while
8 you're off the witness stand.

9 Mr. Chesser?

10 MR. CHESSER: Thank you, Your Honor. Your
11 Honor has taken a position that it's improper for me to
12 question this witness using this transcript and asking him
13 to read ---

14 THE COURT: My ---

15 MR. CHESSER: Sir?

16 THE COURT: The reason I called you up is you
17 originally handed him that transcript and said you were
18 using it to refresh his memory of his conversation. Then
19 you were having him publish from the transcript to the
20 jury. The transcript is not in evidence.

21 MR. CHESSER: Okay.

22 THE COURT: There may be some other reason it
23 can be put in evidence, but as we talked about at sidebar,
24 the transcript itself is not in evidence and the witness is
25 publishing from the transcript.

Ronald Coursey - Cross-Examination by Mr. Chesser

1 MR. CHESSER: With respect to the statements
2 themselves, really in terms of getting those in, one way to
3 do it is to ask Mr. Coursey if he was asked this and what
4 his response was. The -- another way would be for the
5 State to agree that this is an accurate representation or
6 accurate, you know, typed version of his 911 call. And
7 now, these statements are inconsistent with Mr. Coursey's
8 present testimony that he knows what these guys look like
9 because at the time ---

10 THE COURT: I understand that's what you're
11 trying to use it for and that some of those statements may
12 be inconsistent with his current testimony, I don't know.
13 There's got to be an inconsistent statement and he's got to
14 be confronted with whatever the inconsistency is to begin
15 with and allow him to respond to that before you go into
16 anything related to his statements in the transcript.

17 MR. CHESSER: I guess the point is this, if I
18 can't do it this way, if the State doesn't allow me to do
19 it, then it seems to me the only thing I could do is to,
20 you know, have the dispatcher come in with regard to, you
21 know, this was is substance of our conversation. You know
22 what I would ask is, at this time if the State will
23 stipulate that this is an accurate version of the 911
24 conversation.

25 THE COURT: The State had some position as to

Ronald Coursey - Cross-Examination by Mr. Chesser

1 that at sidebar. I'll be glad to hear from Mr. Chandler.

2 MR. CHANDLER: Yes, Your Honor. In the
3 interest of judicial economy and also in fairness, the
4 State would like to at least make a request based on Rule
5 106 and that is related to writings or statements.
6 Basically, the rule, as you already know, Your Honor, but
7 for the record, when a writing, recorded statement, or part
8 thereof is introduced by a party, an adverse party, you may
9 require the introduction of that -- at that time of any
10 part or other rightly recorded statements which are, in
11 fairness, to be considered contemporaneously with it.

12 It's the position of the State that we'd be
13 happy to stipulate to what -- what our position is the best
14 evidence, and that is actually the recording of the actual
15 911 recording. Because this line of questioning by the
16 defense, it's the position of the State, is unfair as to
17 what we don't have upon the reading of this transcript, is
18 the heavy breathing, the crying, the interruptions between
19 the dispatcher that clearly shows that Mr. Coursey is in a
20 distraught manner and certainly not sitting down before a
21 investigator actually recounting what actually went on.
22 Because otherwise, we think it's deceptive to the jury. In
23 the interest of fairness and also in judicial economy so
24 that we don't have to bring in the dispatcher, we think
25 that the best evidence would be a playing as already

Ronald Coursey - Cross-Examination by Mr. Chesser

1 attempted by the defense and under Rule 106, the best
2 evidence would actually be the replay of the 911 tape,
3 which the State would, in fact, stipulate too, Your Honor.

4 THE COURT: Mr. Chesser, what about that? The
5 last few times I've done this, I've actually let the tape,
6 obviously, come in either through stipulation or through
7 the witness authenticating it. And I've let lawyers pass
8 out copies of the transcripts, some foundation laid to the
9 jury and they can follow along as the tape is played, but
10 taking those back up and not sending those back to the jury
11 when they deliberated. If either side has no objection, I
12 will be happy to let the transcripts go back, along with
13 the tape. But what's your response to stipulating to the
14 tape?

15 MR. CHESSER: Your Honor, my opinion on the
16 tape is that it is extremely prejudicial, it is 95 percent
17 emotion. The issue that I'm addressing is a lack of a
18 description of really either one of the individuals, but
19 particularly the shooter. And on this, the 911 tape, I
20 would object to under Rule 403 as being substantially more
21 prejudicial than probative. And that's my position, Your
22 Honor.

23 THE COURT: Why is that? Why would it be more
24 prejudicial than probative?

25 MR. CHESSER: Why?

Ronald Coursey - Cross-Examination by Mr. Chessser

1 THE COURT: Yes, sir.

2 MR. CHESSER: Well, as I stated, it is just it
3 is all about the emotion. Your Honor, we're not here and
4 again, I told the jury we're not disputing that a tragedy
5 happened. But to have them to be influenced by them, to
6 have them to be -- to have this, like I say, 95 percent
7 emotional tape played which is, it's going to be
8 prejudicial in it's effect on them because the danger is
9 that they will decide this case without regard to the
10 facts, which is the accuracy of identification and be
11 overly swayed by the tragedy that a young man died
12 needlessly that night, which we know happened.

13 The point is, who did it. This is what the
14 transcript that I was provided with by the State addresses,
15 is the accuracy of his recollection and --

16 THE COURT: And that leaves you stuck with
17 authenticating the transcript.

18 MR. CHESSER: Well I will ---

19 THE COURT: Until it's in evidence ---

20 MR. CHESSER: I will deal with that then. I
21 will just ask him about his description then, I will just
22 deal with that if that's the State's position.

23 THE COURT: Okay. All right. Both sides ready
24 for the jury to come back out?

25 MR. CHESSER: Yes, Your Honor.

Ronald Coursey - Cross-Examination by Mr. Chesser

1 THE COURT: Let me just bring to both your
2 attention, the Augusta Chronicle wishes to enter the
3 courtroom and use still cameras. Either side object to
4 their presence here?

5 MR. CHANDLER: No objection from the State,
6 Your Honor.

7 MR. CHESSER: Your Honor, the defense objects
8 to the admission of newspapers. It is something that, you
9 know, we're here in pursuit of the truth and justice and a
10 newspaper is just going to add the possibility of injecting
11 an influence that won't carry us anywhere near where we
12 want to go and we would ask they not be admitted.

13 THE COURT: I note your exception to the
14 record. Under the rule, I think -- you know we deal with
15 this all the time with charging the juries not to pay any
16 attention to that and not be swayed one way or the other by
17 the presence of media, as well as, we can deal with having
18 them not read any coverage or watch any coverage of the
19 trial. I think under the rule, they're entitled to unless
20 there was some great prejudice to the defendant. Here, I
21 don't know of any that can't be dealt with as we normally
22 do in these situations.

23 So I'm going to grant the request, note your
24 exception to the record, and we'll bring the jury out.

25 (WHEREUPON the jury entered the courtroom at

Ronald Coursey - Cross-Examination by Mr. Chesser

1 3:31 p.m.)

2 THE COURT: Thank you, ladies and gentlemen, I
3 appreciate your patience with us. We're ready to continue
4 at this point in time. Ladies and gentlemen, let me just
5 go ahead and tell you up front, you may notice the press
6 here occasionally or during the course of this trial. That
7 should in no way influence your consideration of the
8 evidence in this trial. As I told you all in the beginning
9 or at least alluded to, courtrooms are public places,
10 folks, and certainly the press and the public are welcome
11 to come up here and see what we do every day.

12 And you may occasionally see the press here
13 during the course of this trial. That should not in any
14 way factor into your consideration of the evidence or sway
15 you as to the consideration of some testimony or some
16 evidence or my charge on the law. You're to consider this
17 case based solely on the evidence, and the charge on the
18 law that I give it to you at the end of this case.

19 Having told you that though, I will caution you
20 that there may, in fact, be some media coverage of this
21 trial at some point this week. I would ask you all as we
22 go through these few days to avoid any articles or
23 newspaper coverage or television coverage or radio coverage
24 of this trial. You are the jurors in this case and that
25 means that you are sworn under your oath to consider only

Ronald Coursey - Cross-Examination by Mr. Chesser

1 the evidence that's properly admitted before you and you
2 should consider nothing else. That means any outside
3 stories, any outside conversations or anything like that.
4 You're to consider only what's admitted before you in
5 evidence in the case. So I would just caution you all of
6 that and ask for you to, under your oath, avoid any media
7 coverage of this particular case.

8 Ladies and gentlemen, at this point, we are
9 ready to continue.

10 Mr. Coursey, if you would return to the stand
11 please, thank you. I just remind you, sir, you're still
12 under oath and we'll continue with your testimony.

13 Mr. Chesser?

14 MR. CHESSER: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 By Mr. Chesser:

17 Q Mr. Coursey, that night, when you were talking to the
18 dispatcher, you told them that you had stopped at
19 Bryant's to use the phone, didn't you?

20 A Yes, sir.

21 Q Okay. And that wasn't true, was it?

22 A No, sir, not completely.

23 Q Okay. So you left out that ya'll were doing a ---

24 A Yes.

25 Q Buy some marijuana?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A Yes.

2 Q Okay. Now, the fact is, you couldn't give the
3 dispatcher any description of the first individual
4 other than he was bald wearing a sweatband, isn't that
5 right?

6 A Well I was more concerned getting my friend to a
7 hospital and helped than doing that at this time?

8 Q Let me ask you to answer the question. That is all the
9 description you gave them was a bald guy with a
10 sweatband, that's the first guy, right?

11 A That what I told them at the time.

12 Q Okay. And the dispatcher asked you for a description
13 of the second individual, the shooter, right?

14 A Yes, sir.

15 Q And you couldn't tell anything about the shooter, could
16 you?

17 A Like I said I was more concerned about getting my
18 friend help than worrying about talking about that
19 right at the moment. I had somebody in the car that
20 needed help.

21 Q Mr. Coursey, the dispatcher asked you for a description
22 of the shooter, right?

23 A Yes.

24 Q And you couldn't tell them anything at that time, could
25 you?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A I did not tell them anything.

2 Q Okay.

3 A It's not that I could not.

4 Q Now, on -- a little while later, law enforcement
5 arrived at Mean Gene's where you had gone to make that
6 911 call, right?

7 A Yes.

8 Q Okay. Now, you recall, among other people, a Deputy
9 Gainey that arrived at Mean Gene's to try to help,
10 right?

11 A I believe so.

12 Q Okay. Now, there was a lot of people there making
13 pictures of the scene, right?

14 A Yes, I'm not very sure.

15 Q You don't remember?

16 A No.

17 Q That's fine. But law enforcement responded?

18 A Yes.

19 Q To your call?

20 A Yes.

21 Q Okay. And you were at Mean Gene's in that white truck
22 and they came to help you, right?

23 A Yes, sir.

24 Q And the fact is that Heath Hamilton was dead at that
25 time, is that right?

Ronald Coursey - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q Okay. Now, in addition to processing the scene and so
3 forth, law enforcement again asked you questions about
4 the perpetrators, right?

5 A I believe so.

6 Q Okay. In response to the questions of Deputy Gainey on
7 the night that this happened, you could give him
8 absolutely no description of the shooter, could you?

9 A I had just found out my friend was dead, I'm not sure
10 what I told him. I can't remember the conversation at
11 all.

12 Q Let me again if this refreshes your memory. If you
13 would tell me yes or no, there at the end, that part
14 that's highlighted?

15 MR. WEEKS: Your Honor, could we see what he's
16 handing the witness?

17 THE COURT: Mr. Chesser, could you show them?

18 MR. CHESSER: I've got another copy here.

19 By Mr. Chesser:

20 Q Have you looked at that?

21 A Yes, sir, I see it here.

22 Q Does it refresh your memory?

23 A No, sir, I really don't remember.

24 Q Okay. Thank you. Mr. Coursey, at that time after law
25 enforcement got there, you were trying to help law

Ronald Coursey - Cross-Examination by Mr. Chesser

1 enforcement, weren't you?

2 A Yes, sir.

3 Q Okay. If you could give them a description of the
4 shooter you would have done that, wouldn't you?

5 A I was in shock. I did everything I could at the time.

6 Q So you would have, right?

7 A Yes, sir.

8 Q Okay. Now, you also had a conversation with
9 Investigator Fleury on March 18, in the those early
10 morning hours didn't you?

11 A Yes, sir.

12 Q Okay. And you recall that all you could tell him was
13 that the shooter had a white t-shirt on?

14 A I reckon.

15 Q You don't recall?

16 A I'm not really sure.

17 Q Okay. Now, on March 25th, and this would be a week
18 after this event, at that time, you actually gave
19 Investigator Fleury a 3 page written statement didn't
20 you?

21 A Yes, sir.

22 Q Okay. A week after the event, the only description you
23 can give of the shooter was that he was a black male
24 with a white t-shirt on, isn't that right?

25 A That's what I have in my statement.

Ronald Coursey - Redirect Examination by Mr. Chandler

1 Q Okay. And you're trying to help law enforcement at
2 that time, right?

3 A Yes, sir.

4 Q Okay. Now, Mr. Coursey, you will agree that on that
5 day you were drinking and smoking marijuana, right?

6 A Yes, sir, I was.

7 Q You were dealing with individuals that you had never
8 seen before March 17, right?

9 A Yes.

10 Q The first time you saw them was about close to midnight
11 on the night of St. Patrick's Day, March 17, 2003,
12 right?

13 A Yes.

14 Q The only time that you saw the shooter at Bryant's gas
15 station was after you had pulled off to the dark side
16 of the gas station, isn't that right?

17 A Yes, sir.

18 Q That's all the questions I have. Thank you.

19 THE COURT: Thank you, sir.

20 Anything on redirect?

21 MR. CHANDLER: Just briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 By Mr. Chandler:

24 Q Mr. Coursey, do you think that your use of marijuana on
25 that night that you admitted to affected your memory or

Ronald Coursey - Redirect Examination by Mr. Chandler

1 your recollection of Thaddeus Curry as the murderer of
2 your friend?

3 A No, sir.

4 Q How was the light -- how long did that drug transaction
5 last?

6 A Probably 2, 3, 4 minutes.

7 Q Okay. And how long did you have, how much of an
8 opportunity did you have to interact with Mr. Curry in
9 Augusta when you guys were arranging the drug deal.

10 A An hour or 2.

11 Q You had an hour or 2 to interact with Mr. Curry?

12 A Yes, sir, we were talking.

13 Q Okay. Now in that alley on Cary Drive, in fact, Four
14 Seasons, where was that located?

15 A In Beech Island.

16 Q Beech Island, is that in Aiken County?

17 A Yes, sir.

18 Q Okay. Now in that alley you indicated that it was not
19 well lit. How were you able to see Mr. Curry?

20 A The interior lights, and the outside lights were on.

21 Q Mr. Coursey, who shot your friend, Heath Hamilton?

22 A This man right here.

23 Q And how do you know? How sure are you?

24 A Because I saw him.

25 Q You saw him? How sure are you that he was the one who

Ronald Coursey - Redirect Examination by Mr. Chandler

1 shot?

2 A He had the gun in his hand.

3 Q And how sure are you about that?

4 A I'm positive, absolutely positive.

5 Q No further questions. Thank you.

6 THE COURT: Thank you, sir.

7 Mr. Chesser, anything further on recross?

8 MR. CHESSER: No, Your Honor.

9 Mr. Coursey, you may step down, sir. Thank
10 you.

11 MR. WEEKS: Your Honor, can we talk some
12 arrangements here?

13 THE COURT: Yes, sir.

14 (WHEREUPON there was a bench conference out of
15 the hearing of the jury and the court reporter.)

16 THE COURT: Okay. Ladies and gentlemen, before
17 we call our next witness, I'm going to go ahead and let
18 ya'll take your afternoon break. We usually try to go
19 about an hour and a half, hour a little over sometimes a
20 little less times, but after a while I know you all get
21 tired of sitting. So we'll go ahead and take our afternoon
22 break and then come back and call the next witness.

23 Obviously ya'll are going to get sick of
24 hearing me say this, but it's important that you not start
25 discussing the case or any of the evidence or testimony

Ronald Coursey - Redirect Examination by Mr. Chandler

1 before you get the case, after all the evidence is in and
2 after you've been charged on the law. So I just ask,
3 during the break if you all would not discuss the evidence
4 or testimony you've heard or seen thus far. We'll take
5 about 15 minutes and then bring you back out and continue
6 with the trial. So enjoy your break and we'll see you
7 shortly.

8 (WHEREUPON the jury left the courtroom at 3:47
9 p.m.)

10 THE COURT: All right. Counsel, we'll take
11 about 15 minutes and see ya'll shortly.

12 MR. CHANDLER: Thank you.

13 (WHEREUPON a short recess was observed.)

14 THE COURT: Is counsel ready for the jury?

15 MR. CHANDLER: Yes, sir.

16 MR. CHESSER: Your Honor?

17 THE COURT: Yes, sir?

18 MR. CHESSER: I think through this witness the
19 State is going to introduce one of the photos you that you
20 may recall prior to trial we discussed and I objected to
21 it. So I would just ---

22 THE COURT: And I think -- I'm not sure we -- I
23 thought we did identify the two that you objected to
24 yesterday, Exhibit No ---

25 MR. CHESSER: I just wanted to renew that. I

Ronald Coursey - Redirect Examination by Mr. Chandler

1 guess I will just renew it at that time, you know, on the
2 basis that we previously argued.

3 THE COURT: You're free to do that. Same basis
4 I assume?

5 MR. CHESSER: Yes, sir.

6 THE COURT: We'll keep the prior ruling. I
7 believe it's more prejudicial than probative in this
8 particular case after having reviewed the photos.

9 We're ready for the jury then.

10 (WHEREUPON the jury entered the courtroom at
11 4:10 p.m.)

12 THE COURT: The two alternates, if ya'll would
13 sit on those two last seats and at some point I will
14 appoint a foreperson and they'll actually sit in that
15 chair, unless you want to volunteer now.

16 THE JUROR: No, sir.

17 THE COURT: I will probably appoint a
18 foreperson tomorrow and the foreperson and the two
19 alternates will have those three assigned seats. The rest
20 of ya'll are free to sit anywhere you want every time you
21 come in and out.

22 Ladies and gentlemen, we're ready to continue
23 at this point.

24 Mr. Chandler, is the State ready to call their
25 next witness?

Inas Yacoub - Direct Examination by Mr. Chandler

1 MR. CHANDLER: Yes, sir.

2 THE COURT: You may.

3 MR. CHANDLER: Thank you, Your Honor. The
4 State calls Dr. Inas Yacoub.

5 THE COURT: Doctor, if you'll just come around
6 and be sworn, please, ma'am.

7 THEREUPON,

8 INAS YACOUB,
9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box,
11 stating your full name, spelling your last for the court,
12 please.

13 DR. YACOUB: My name is Inas Yacoub, last name
14 is spelled Y-a-c-o-u-b.

15 THE COURT: Thank you.

16 Mr. Chandler?

17 **DIRECT EXAMINATION**

18 By Mr. Chandler:

19 Q Dr. Yacoub, are you dually licensed physician and/or
20 surgeon?

21 A I'm a licensed physician in the State of South
22 Carolina, yes, sir.

23 Q Are you licensed in any other state other than the
24 State of South Carolina?

25 A Yes, sir, I'm licensed in the State of Alabama and in

Inas Yacoub - Direct Examination by Mr. Chandler

1 the State of West Virginia.

2 Q And how long have you been licensed to practice your
3 profession?

4 A I want to say from 1989, in the United States. I
5 graduated from Cairo, Egypt in 1980, and I've been
6 licensed over there.

7 Q Are you presently engaged in the practice of your
8 profession?

9 A Yes, sir.

10 Q And where did you receive your medical training?

11 A From Ain Shams University in Cairo, Egypt.

12 Q What exactly is your profession?

13 A I graduated from medical school, from Ain Shams
14 University in Cairo, Egypt in 1980, I did an
15 internship, which is different disciplines for one
16 year. I came to the United States and I had to take
17 all the exams to be able to practice medicine in the
18 United States and I passed those. In 1989 I started
19 pathology training at the University of Alabama at
20 Birmingham. That's a combined pathology training for
21 both anatomic pathology and clinical pathology. During
22 that training I did a whole year of fellowship in
23 surgical pathology. And following that I did a whole
24 year of fellowship in forensic pathology, which is what
25 I'm mainly practicing in now, forensic pathology and

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1 surgical pathology. I'm board certified in both
2 anatomic and clinical pathology and I'm board certified
3 in forensic pathology. And I've been practicing in
4 that field for about 9 years with Newberry Pathology
5 Associates in Newberry, South Carolina.

6 Q Now, does your work require the performance of
7 autopsies?

8 A Yes, sir. My work in forensic pathology basically
9 involves examination of people who have passed away to
10 determine the cause of death, the manner of death, the
11 presence or absence of evidence or disease that may
12 shed light as to why this person has passed away. It
13 also entails the recognition and collection of
14 evidence, be it body fluids or trace evidence or
15 bullets or foreign objects. It also entails
16 documenting the findings by photographs, by diagrams,
17 by written reports. It also entails requesting X-rays
18 or additional studies if need be. It also entails
19 preparation of a report that's offered to the court or
20 interested parties to help them in their decisions.

21 Q During your experiences as a medical examiner, how many
22 autopsies have you performed?

23 A At least 2000 autopsies, I would say.

24 Q Okay. Do you specialize in any particular branch of
25 medicine?

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1 A Pathology is a branch of medicine and forensic
2 pathology is a specialty in pathology. So, yes,
3 surgical pathology and forensic pathology and pathology
4 are my specialties.

5 Q Now, are you certified on any boards related to the
6 field pathology?

7 A Yes, sir, I'm board certified in anatomic pathology,
8 clinical pathology and forensic pathology.

9 Q Now, you mentioned forensic pathology, what exactly
10 does that term mean?

11 A Pathology is the study of disease, why is a person sick
12 and how does that sickness affect his body and the body
13 functions and how does this reflect in the, say the lab
14 results that we do on that person or how does that
15 disease affect the appearance of his lungs, for
16 example, or heart or different tissues. So it
17 basically studies why a person is sick.

18 And it entails the lab. It entails the surgical
19 pathology; it entails different studies that are done
20 that based on those results we are able to provide to
21 the clinician to give him insight as to why this person
22 is sick and maybe give him insight to the treatment.
23 In surgical pathology we deal with anything that comes
24 out of the patient after surgery, be it little fine
25 needle biopsies or bigger samples or some body parts

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1 that are removed, for example, appendix or gall bladder
2 or breast lumps or what have you, to document that,
3 yes this is the tissue that was supposed to be removed;
4 two, does it have disease or not; three, what disease
5 does this person have? Is it inflammatory or benign or
6 malignant. And from these results, the clinician is
7 able to benefit to how to tailor the treatment further.
8 This is pathology generally.

9 Forensic pathology is a specialty of that and it
10 entails mainly why a person is deceased, why is he
11 dead. Did he die from natural disease; did he die from
12 trauma; did he die from a combination of both; could we
13 determine, sometimes we could not determine based on
14 what we have available to us. So forensic pathology
15 mainly entails why a person is deceased and -- be it
16 from trauma or natural disease or a combination and
17 providing a comprehensive exam as to what was there on
18 that decedent and what was not there in order to be
19 able to provide the court or interested parties
20 corroboration as to other witness' statements -- who we
21 can verify that his statement is true and who we can
22 say that the findings are not consistent with that and
23 that this person was not reflecting what was found. So
24 that's in a nutshell, forensic pathology.

) 25 Q Okay. Now during your 9 or so years at the Newberry

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1 Pathological Associates, how many -- have you had
2 occasion or how many opportunities have you had
3 occasion to do an autopsy on someone where the cause of
4 death was the result of a shooting?

5 A Numerous, numerous, numerous times and I don't remember
6 a number, but we have -- we serve coroners from about
7 two-thirds of the State of South Carolina. And most of
8 the cases that we deal with are either violent deaths
9 from shootings or strangulations or motor vehicle
10 collisions or sudden, unexpected deaths or suspicious
11 deaths or that's on the job or deaths in prison or
12 institutions. A good number of our cases entail
13 violent deaths and gunshot wounds. So I've done many
14 of those and I'm sorry I could not give you exact
15 number.

16 Q Have you ever -- have you qualified in a court of law
17 as an expert in pathology?

18 A Yes, sir, and as an expert in forensic pathology.

19 Q And how many times, roughly?

20 A I have, according to my records, this is my 81st time.
21 And in all those testimonies, I have been a licensed
22 physician in South Carolina; I've had my anatomical and
23 clinical pathology training and forensic pathology
24 training.

25 MR. CHANDLER: Your Honor, at this time the

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1 State would like to submit Dr. Inas Yacoub as an expert in
2 forensic pathology.

3 THE COURT: Mr. Chesser, any objection or
4 requested voir dire?

5 MR. CHESSER: No, objection.

6 THE COURT: Okay. Without objection, she is
7 qualified and may testify as such.

8 MR. CHANDLER: Thank you.

9 THE COURT: Ladies and gentlemen, just let me
10 explain this to you just so you know what's going on.
11 Normally witnesses aren't allowed to give their opinions or
12 their conclusions. There are some exceptions for that and
13 one of those is for those folks who are qualified as an
14 expert in some field, and in this case, the doctor is
15 qualified as an expert in the field of pathology and so may
16 testify and, therefore, give some opinions thereto.

17 Mr. Chandler?

18 MR. CHANDLER: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 By Mr. Chandler:

21 Q Dr. Yacoub, during the month of March, 2003, and
22 specifically March 18, do you recall how you were
23 employed at the time -- where you were employed at that
24 time?

25 A At that time, I was employed at the Newberry Pathology

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1 Associates in Newberry, South Carolina.

2 Q And during that month and specifically that date, did
3 you have an opportunity to perform at least one or
4 maybe even more autopsies?

5 A I had the opportunity to do at least one autopsy. I
6 don't recall what other cases we had that day.

7 Q Well did you have the opportunity to do an autopsy on
8 Mr. Heath Hamilton?

9 A Yes, sir, I have.

10 Q And where did that take place?

11 A In Newberry County Memorial Hospital Morgue in
12 Newberry, South Carolina.

13 Q Okay. Dr. Yacoub, I am now handing you what has been
14 previously marked as State's Exhibit No. 3. Could you
15 describe that photograph?

16 A This is ---

17 MR. CHESSER: Your Honor -- excuse me, Doctor.

18 THE COURT: Yes, sir?

19 MR. CHESSER: Let me just -- I object on the
20 grounds previously stated under Rule 403, Your Honor.

21 THE COURT: Yes, sir. The objection is
22 overruled.

23 By Mr. Chandler:

24 Q Could you describe what you see in the picture.

25 A This is a picture of the head of Mr. Heath Hamilton

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1 while he was lying on the table and it's taken from the
2 back so it shows the back of the head and it shows the
3 direction of the bullet as it entered the left side of
4 the head and came out the right side of the head.

5 During this examination, being it a gunshot wound, did
6 an x-ray to determine, is there any bullet or bullet
7 fragments inside or in the vicinity of the body. And
8 that x-ray showed that there was a fragment of bullet
9 close to the head and turned out to be just in the hood
10 of his jacket that he was wearing. Also there were
11 little tiny fragments along the path of that gunshot
12 wound.

13 Before I did anything I documented what I had
14 and there was a gunshot wound entrance to the left side
15 of the head; and with all gunshot wounds we try to
16 determine how far that gun was from the person or
17 target. And in order to determine that, we look
18 specifically if there is any soot or charring around
19 the entrance wound. He did not have that. We look for
20 any gun powder particles. I did not observe that
21 either. So, not seeing soot or gun powder particles
22 makes me classify this wound as a distant gunshot
23 wound, meaning simply that this gun was far away from
24 this person that it was unable to deposit either soot
25 or gun powder particles. The only thing ---

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1 Q About how far would that be, Doctor?

2 A This is something that the firearm expert would be able
3 to determine, based on his test firing the gun with the
4 same ammunition at various distances and at the certain
5 distance when he does not see any soot or gun powder
6 particles, it would be at that distance, about that
7 distance or further away.

8 Q So basically what you're saying it was a point blank,
9 meaning that the gun was not at the head of
10 Mr. Hamilton?

11 A That's correct. The gun had to be further away to not
12 leave any deposits of soot or gun powder particles.
13 That's why it's classified as distant.

14 Q Distant meaning not at the entrance?

15 A Not close enough to deposit these particles. But how
16 far, I cannot tell as a forensic pathologist. I,
17 personally, could not tell as a forensic pathologist.

18 Q Dr. Yacoub, with respect to the picture that you have
19 in front of you, what else -- what, if anything else
20 could you describe that's located on the picture?

21 A Right. So having done this examination and documenting
22 that there's no soot or gun powder particles and we
23 took pictures with nothing that was introduced on the
24 body from us. Then we do -- clean up the wound and
25 take pictures of it and then we find the path, if

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1 possible, because sometimes the bullets are so tiny and
2 we're not able to determine with certainty, but with
3 with Mr. Heath Hamilton the entrance wound was wide
4 enough to allow a probe that we pass through, following
5 the track of the bullet that had already caused. So
6 that probe shows where the bullet entered, the path of
7 the bullet and where it came out and that's what this
8 picture is showing.

9 Q Okay. Now, Dr. Yacoub, with respect to that probe in
10 the picture that you have, does this fairly and
11 accurately represent Mr. Heath Hamilton as when you
12 were performing your autopsy on him on March 18, 2003?

13 A Yes, sir.

14 Q Okay.

15 MR. CHANDLER: Your Honor, at this time, the
16 State would move to enter into evidence State's Exhibit No.
17 3.

18 THE COURT: Over the previously discussed
19 objection, it's admitted.

20 MR. CHANDLER: And, Your Honor, at this time
21 the State also would like to publish it to the jury.

22 THE COURT: Okay. Yes, sir.

23 By Mr. Chandler:

24 Q What, if anything else, did you observe during the
25 autopsy?

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1 A The main -- the main finding of the autopsy was the
2 gunshot wound to the left side of the head. The bullet
3 came out from the right side of the head. The path was
4 from left to right, slightly upward, slightly backward.
5 We collected a fragment from the jacket of the bullet
6 that was just in the hood of the decedent's jacket. We
7 collected fragments of the bullet from the path of the
8 bullet. We did an internal examination to document
9 what damage this bullet has caused, and it did result
10 in extensive lacerations of the brain and brain stem.
11 This, this wound would render a person unconscious very
12 quickly and result in death very quickly. This wound
13 would not be the wound that a surgeon could come and
14 repair or -- that person could not survive a wound like
15 this.

16 I did observe that he was clothed. I did
17 observe that he had five \$20 bills in his left pants
18 pocket and had a dime or so; did have a match box. He
19 did have writing on the palm of his left hand that I
20 could, I could read T-o-n-y, and I could read numbers
21 and I've documented that on the report. And I took
22 pictures of that. I did not -- I could not identify
23 natural disease in him, just based on my examination.
24 Now, people can have disease and they need specific
25 tests, but just doing the examination, I could not find

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1 any natural disease to cause his death, just the trauma
2 that caused the death.

3 Q So, Dr. Yacoub, within the bounds of reasonable medical
4 certainty, do you, in fact, or have you formed an
5 expert opinion regarding the death of Mr. Heath
6 Hamilton?

7 A Yes, sir. Based on my training and experience in
8 examining the body of Mr. Heath Hamilton, it is my
9 opinion within a reason degree of medical certainty
10 that the cause of death of Mr. Heath Hamilton is a
11 gunshot wound to the left side of the head that had
12 resulted in brain lacerations and bleeding and skull
13 fractures. It was also my opinion based on information
14 I knew about this case at the time and up until now and
15 based on my examination and my training, that the
16 manner of death of Mr. Heath Hamilton is homicide.
17 It's not a natural manner, it is not a suicide, it is
18 not an accident. It's not an undetermined. These are
19 the five basic manners of death.

20 Q Okay. Dr. Yacoub would you step down for a moment.
21 You had mentioned the probes from the laying down
22 position.

23 A Right.

24 Q If we offer a diagram with a person standing, would you
25 be in a better position to show the track of the bullet

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1 and of the gunshot wound?

2 A Yes, sir.

3 Q Would that assist you? Would a diagram assist you in
4 presenting that information?

5 A Yes, sir.

6 Q If you could just step down.

7 A This is four views of the body. This the face and
8 back, left side and right side. The bullet entered the
9 left side of the head through the ear, came through the
10 ear and entered the head and then came out the right
11 side of the head just above and behind the right ear.
12 The picture with the probe would show the bullet
13 entering the left ear, facing from left to right
14 slightly upwards, slightly backwards. The exit would
15 be about here. And we take measurements as to -- from
16 top of the head and from the midline to be accurate as
17 to exact location of that wound and give a direction of
18 downward, forward, backward.

19 Q And you indicated that you placed the probe at what
20 point? Could you show that?

21 A The probe was placed after the documentation of the
22 gunshot wound initially as the body was received with
23 everything intact, with -- just as we received it
24 before any cleaning or any introduction of any objects
25 or probes or anything. So photographs are done

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1 initially and then after documenting what was there and
2 what was not there then we do the cleaning and then we
3 introduce probes.

4 Q You indicated that there were some fragments inside
5 Mr. Hamilton. During -- the fragments and the track of
6 the bullet would have caused the bullet to be
7 fragmented?

8 A The bullet hit bone. It entered the ear, but it
9 entered the skull also. It hit bone and when a bullet
10 hits bone, it can fragment. And so part of those
11 fragments were from hitting bone.

12 Q Okay. Dr. Yacoub, you had mentioned that on Mr. Heath
13 Hamilton's hands there was some writings?

14 A Yes, sir.

15 Q And a number, could you please indicate what writings
16 you were able to make out in your examination?

17 A Yes, sir. On his left hand, on the palm of his left
18 hand there was blood, but when we tried to gently clean
19 that blood off, we could -- I could see a T-o-n-y,
20 letters and I could see a 4660385. The 8 and the 5 of
21 those numbers, they were not very clear. I think they
22 were an 8 and a 5, but I'm not certain if they were an
23 8 and a 5, but I could see the previous letters better.

24 Q Thank you, Dr. Yacoub. Please answer any questions
25 Mr. Chesser might have for you.

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1 THE COURT: Thank you, Counsel.

2 Mr. Chesser.

3 MR. CHESSER: I don't have any questions for
4 Dr. Yacoub, thank you.

5 THE COURT: Okay. Doctor, you may step down at
6 this time. Thank you.

7 MR. CHANDLER: Your Honor, the State calls Mr.
8 Jeremy Simuel.

9 MR. WEEKS: Your Honor, may the doctor be
10 excused. We got her down here from Newberry on short
11 notice most of the time.

12 THE COURT: Any reason not to excuse her?

13 MR. CHESSER: Okay. Doctor, you're free to
14 come and go as you please. I'm sure you want to take
15 advantage of some of this fine food down here before you go
16 back to Newberry though.

17 DR. YACOUB: Thank you.

18 THE COURT: Mr. Simuel, if you will just come
19 on around, sir and be sworn, please. Thank you.

20 THEREUPON,

21 JEREMY SIMUEL,
22 after being duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box,
24 stating your full name, spelling your last for the court.

25 MR. SIMUEL: First name is Jeremy Simuel. Last

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1 name is Simuel. My last name is spelled S-i-m-u-e-l.

2 **DIRECT EXAMINATION**

3 By Mr. Chandler:

4 Q Jeremy, did you know Heath Hamilton?

5 A Yes, sir.

6 Q How did you know him?

7 A Through Wendy Burns.

8 Q Who's Wendy Burns?

9 A She's down -- she stays directly downstairs from me.

10 Q How do you know him through her?

11 A He used to come over and he used to buy marijuana from
12 my next door neighbor, Anthony Holoman.

13 Q He purchased marijuana from your next door neighbor?

14 A Yes, Anthony Holoman.

15 Q Okay. And so you would see him with Anthony Holoman?

16 A Yes, over at Anthony Holoman's house.

17 Q Did you have an opportunity to observe or see or
18 immediately speak with Heath Hamilton on March 18, of
19 2003?

20 A On the day that he came to my house, Anthony brought
21 him to my house and ---

22 Q Anthony who?

23 A Anthony Savage.

24 Q Anthony Savage?

25 A Yes, he brought him to my house.

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1 Q What other -- what if any other names do you use for
2 Mr. Savage?

3 A Tony.

4 Q Tony? You call him Tony?

5 A Yes, sir.

6 Q Okay.

7 A Now, he brought him to my house and he said there was
8 two guys out there wanted to talk to me. And I went on
9 to my balcony and saw two guys standing downstairs and
10 they did like this. That's meaning do you have any
11 marijuana. And I did like this, meaning no. So
12 they -- after I told them that, I went back into my
13 house from my balcony. Tony went downstairs, I guess
14 to proceed to talk to them about getting them some
15 marijuana.

16 Q Okay. Now, you said there were two guys downstairs.
17 Was one of them Heath Hamilton?

18 A Yes, sir.

19 Q And how did you know it to be Heath Hamilton?

20 A We used to go look for jobs together. He has a pit
21 bull, I have a pit bull also. We used to, you know
22 what I'm saying, play around, run around in the field
23 in front of Savannah West Apartments.

24 Q Okay. Now you mentioned that Mr. Hamilton talked to,
25 or was talking to Tony Savage. How do you know Tony

Jeremy Simuel - Direct Examination by Mr. Chandler

1 Savage?

2 A He stays in the back of Savannah West, which is in the
3 back of my apartment.

4 Q Okay. Do you hang out with him occasionally?

5 A Every now and then, yeah, yes, sir.

6 Q Prior to March 18, of 2003, how long did you know
7 Anthony Savage?

8 A About 3, 4 months.

9 Q What happened that night or shortly afterwards, after
10 you saw him when you were on your balcony?

11 A Well we went upstairs, we sat around and chit chat for
12 a little while, me and my fiance, Javon and Tenesha, we
13 sit around and chit chat for a minute.

14 Q Who is Javon?

15 A Javon, that's my fiance's brother.

16 Q Okay.

17 A And sat around and chit chat for a while, until before
18 Anthony Savage left, he said he had to go pick his
19 girlfriend up, Latoya, at work. So he said he would be
20 back. So when he returned, it was him -- him, Marcus
21 which we call NooNoo and Thaddeus Curry in the car, in
22 NooNoo's 325 BMW.

23 Q Now, you mentioned Thaddeus Curry. How do you know
24 Thaddeus Curry?

25 A I worked with him for like 8 months and at Wal-Mart in

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1 Evans, Georgia.

2 Q Is Thaddeus Curry in the courtroom today?

3 A Yes, sir.

4 Q Where is he?

5 A Right there.

6 MR. CHANDLER: Your Honor, please let the
7 record reflect that the witness, Mr. Jeremy Simuel,
8 recognized Mr. Thaddeus Curry.

9 THE COURT: Yes, sir.

10 By Mr. Chandler:

11 Q So what did you guys do after that?

12 A They asked, they asked NoonNoo to take them down to the
13 bottom, which is the bottom of Augusta, Sand Bar Ferry,
14 Underwood Apartments, take them down there. NoonNoo
15 said that he had somewhere to go and he couldn't do it.
16 So I was like, "I got a car, you know what I'm saying,
17 I'll will take you down there, where you got to go."

18 So they got out of the -- he got outside, Tony,
19 which is Anthony Savage, Thaddeus Curry got out of the
20 car, Thaddeus carrying a black bag. I went upstairs,
21 dropped my old lady off her Sky Blue, came back out
22 with my keys for my car.

23 Q What's a Sky Blue?

24 A Sky Blue is like a mix -- somewhat like a ---

25 Q A Wine Cooler?

Jeremy Simuel - Direct Examination by Mr. Chandler

1 A Like wine cooler, yeah, yeah.

2 Q So you go to the store and you buy your lady a wine
3 cooler and then what happens?

4 A We returned to Savannah West.

5 Q So you're at Savannah West and what happens after that?

6 A We asked -- they, well, Thaddeus Curry asks NooNoo
7 whether he can take him, you know what I'm saying, down
8 Sand Bar Ferry, which is the bottom of Augusta.

9 Q Okay. So Thaddeus Curry asks ---

10 A NooNoo.

11 Q --- asks NooNoo -- and what's NooNoo's real name?

12 A Marcus.

13 Q Marcus. So he asked Marcus, "Can you take me down to
14 Sand Bar Ferry Road."

15 A Yes.

16 Q At the bottom and he says he has somewhere to go?

17 A Yes.

18 Q What happens after that?

19 A Well I got -- I said, "I got a car, I'll take you where
20 you got to go."

21 Q So you agreed to take Thaddeus Curry?

22 A Yes, sir.

23 Q To Sand Bar Ferry Road?

24 A Yes, sir.

25 Q Okay. What happened?

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1 A I went upstairs to get the keys, come back out. When I
2 come back out he gets out with a black bag, puts it in
3 my back seat. I gets in the car, crank up and we take
4 off.

5 Q You said Mr. Curry had a black bag?

6 A Yes, sir.

7 Q Have you ever seen Mr. Curry with a black bag before?

8 A Yes, sir.

9 Q How about that particular black bag?

10 A Yes, sir.

11 Q What, if anything, has he ever carried in the black
12 bag?

13 MR. CHESSER: Objection.

14 THE COURT: Yes, sir?

15 MR. CHESSER: I don't know where the solicitor
16 is going, talking about some occasion of when, I don't know
17 what he's referring to. But if, you know, I don't think
18 Mr. Simuel is here to guess about what's in there. If he
19 knows, it would seem he could testify to it. If he saw
20 something in it.

21 THE COURT: Mr. Chandler, any response?

22 MR. CHANDLER: We'll rephrase the question.

23 THE COURT: Okay.

24 By Mr. Chandler:

25 Q Mr. Simuel, did you know what was in the bag?

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1 A No, sir, not at the time.

2 MR. CHESSER: Objection, lack of foundation.

3 THE COURT: Foundation for that question?

4 MR. CHESSER: There's no showing of a basis of
5 knowledge, Your Honor. He can testify if he has -- if he
6 saw or heard something, he can testify to that. But what
7 it sounds to me like this is just a disguise to ask him to
8 speculate. If he saw something in there, then it seems Mr.
9 Chandler can ask him what he saw, but otherwise, there's no
10 showing that he has any knowledge of what Mr. Chandler is
11 asking him to testify to.

12 THE COURT: All right. I think it's a proper
13 question. What I'll do is I'll let you lay a foundation as
14 to what basis of his knowledge may be ---

15 MR. CHANDLER: Okay.

16 By Mr. Chandler:

17 Q How long have you known Mr. Curry?

18 A 8 months working at Wal-Mart and after me leaving
19 Wal-Mart, like 2 of 3 months after that.

20 Q Okay. Now in your knowledge of Mr. Curry have you ever
21 seen him with that black bag?

22 MR. CHESSER: Objection. I would object to
23 this. He's asking about some type of customary or habitual
24 type of activity apparently. Whatever he's referring to,
25 it doesn't rise to the level of a habit under Rule either

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1 405 or 406. And it doesn't come in under Rule 404. So
2 there is no basis for admission of this as some type of
3 custom or habit. And I object.

4 THE COURT: I'm not sure that he was trying to
5 admit it under that.

6 Mr. Chandler, any response?

7 MR. CHANDLER: No response, Your Honor, we'll
8 go ahead and rephrase the question.

9 THE COURT: Okay.

10 By Mr. Chandler:

11 Q Do you know what was in the black bag?

12 MR. CHESSEY: Objection, Your Honor. This is
13 ridiculous. Can he ask him what he saw, Your Honor.

14 THE COURT: Hold on. Ya'll come around to the
15 side.

16 (WHEREUPON there was a bench conference out of
17 the hearing of the jury and the court reporter.)

18 THE COURT: Before counsel goes back, let me
19 ask Mr. Weeks if he can approach. Mr. Chessy, you can
20 approach as well. This is about a separate matter.

21 (WHEREUPON there was another bench conference
22 out of the hearing of the jury and the court reporter.)

23 THE COURT: Thank you, Counsel.

24 Mr. Chandler?

25 By Mr. Chandler:

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1 Q Mr. Simuel, did Thaddeus Curry indicate -- who else
2 rode with you to the bottom, to Sand Bar Ferry Road?

3 A Tony Savage was in the passenger seat and Thaddeus
4 Curry was in the back seat.

5 Q In the back seat?

6 A Yes, sir.

7 Q Okay. Did Mr. Curry say what he was doing or what his
8 purpose of riding down to the bottom was?

9 A Anthony Savage said that, you know what I'm saying,
10 that ---

11 MR. CHESSER: Your Honor?

12 THE COURT: Yes, sir.

13 MR. CHESSER: I object to what Anthony Savage
14 says.

15 THE COURT: Okay. It's hearsay.

16 By Mr. Chandler:

17 Q We're focusing on Mr. Curry. Did Mr. Curry mention or
18 say anything that would reflect any of the reasons why
19 you guys were going down to the bottom or Sand Bar
20 Ferry Road?

21 A Yes, sir. He said that to get, you know what I'm
22 saying, get that money.

23 Q Get that money?

24 A Yes.

25 Q Did he indicate where he was going to get the money

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1 from?

2 A Get the money from Ronald Coursey.

3 Q And anyone else?

4 A Heath.

5 Q Heath?

6 A Yes, sir.

7 Q Heath who?

8 A Heath Hamilton.

9 Q So Thaddeus Curry indicated he needed to get that money
10 from Ronald Coursey and Heath Hamilton?

11 A Yes, sir.

12 Q What, if anything else, did Mr. Curry say in reference
13 to that?

14 A He asked whether, did they call yet. He just kept
15 asking Anthony Savage, "Did they call yet, did they
16 call yet, did they call yet."

17 Q Anything else?

18 A As far as?

19 Q Mr. Curry?

20 A No, sir.

21 Q So what happened after that? Did you make it to the
22 bottom?

23 A Yes, sir.

24 Q And where did you go? Where did you go after that?

25 A We get to the bottom, we were riding around for a

Jeremy Simuel - Direct Examination by Mr. Chandler

1 while, riding around I guess just waiting on this phone
2 call to, you know what I'm saying, take place. So a
3 phone call -- we were just riding around waiting and
4 waiting and waiting on this phone call to take place.
5 We get the phone call; I guess, you know what I'm
6 saying, they go to see the guys that they're supposed
7 to meet or whatever and say, "There they go."

8 They tell me to pull into ---

9 Q Who says, "There they go"? Mr. Curry said, "There they
10 go?"

11 A Yeah, Thaddeus and Tony said, "There they go." So I
12 pulled into a place where there's three trailers and
13 right across from it is a fire department. I pulled in
14 there.

15 Q About how far was this from Bryant's?

16 A I don't know Bryant's. I'm not familiar with Bryant's.

17 Q About how far from where -- you said they pointed out,
18 "There they go." How far away from those guys were you
19 parked?

20 A I guess they had passed by or was passing by as we was,
21 assuming, you know what I'm saying, going to where the
22 three trailers are.

23 Q And so what happened after this?

24 A They tell me to pull into this little lot where the
25 trailers are. They get out with the black bag. They

Jeremy Simuel - Direct Examination by Mr. Chandler

1 go. And I in there fiddling with the radio and the
2 next thing I know, they come running back to the car
3 and ---

4 Q About how long were they gone?

5 A About 3 minutes, 3 minutes tops. Running back to the
6 car. Thaddeus is saying, "I done told, I done told him
7 I ain't no joke, I ain't no joke, you know what I'm
8 saying, I ain't no joke." Dah dah dah, you know what
9 I'm saying. Saying stuff like, "Let the KKK march
10 this." Because it was during Masters time and they had
11 said something on the news about the Ku Klux Klan was
12 supposed to march in front of Savannah West Apartments
13 and so they were like, "Tell the KKK to march on this.
14 I ain't no joke, I ain't no joke."

15 Q Now, who said this?

16 A Thaddeus Curry.

17 Q So Thaddeus Curry said, "I ain't no joke, I ain't no
18 joke?"

19 A Yes, sir.

20 Q Did you hear him say anything else?

21 A He said that, he said, "You should have seen that
22 Mother Sucker." You know what I'm saying. "He was
23 like this" and was demonstrating on, I guess how Heath
24 Hamilton was in position after he shot him.

25 Q So now you're saying that Thaddeus Curry also

Jeremy Simuel - Direct Examination by Mr. Chandler

1 demonstrated how he died once he shot him?

2 A Yes, sir.

3 Q What happened after that?

4 A After that, they tell me to turn left, then turn right
5 and jump on the highway. I turned jump on the -- I
6 turned left, I turned right, we're back on Sand Bar
7 Ferry, go up and hit the highway, and I ride straight
8 up until I get to Bobby Jones as far as going up to the
9 Highway 20 exit to Atlanta, get off on the Belair exit,
10 I mean the 20 exit, the exit to highway 20. Get off
11 on -- once I get on 20, I get off on Belair Road, right
12 on straight on down. They tell me, he give me
13 directions to get to a place where it's supposedly is
14 his girlfriend's dad's work ---

15 Q Who's girlfriend's dad?

16 A --- to pick up her car. Thaddeus Curry's.

17 Q So you take them to some place where his girlfriend's
18 dad works?

19 A Yes.

20 Q What happened after that?

21 A We sits, he tells -- we go park by his girlfriend's car
22 and he goes and supposedly goes talk to his
23 girlfriend's dad.

24 Q Okay.

25 A I guess to get the keys and get the bags out of the car

Jeremy Simuel - Direct Examination by Mr. Chandler

1 and after that he said, "After tonight ya'll don't know
2 me." You know what I'm saying. "Ya'll don't know
3 nothing about me."

4 Q What about, was he saying about what happened ---

5 A Yes, sir.

6 Q On Sand Bar Ferry?

7 A Yes, sir.

8 Q Now, you mentioned earlier in your testimony that when
9 he got out of the vehicle, he took the black bag with
10 him?

11 A Yes, sir.

12 Q Okay. And he said, "Ya'll don't know me." Is that
13 what he told you?

14 A Yeah, "After tonight, ya'll don't know me."

15 Q After tonight.

16 MR. CHANDLER: Beg the court's indulgence.

17 THE COURT: Yes, sir.

18 By Mr. Chandler:

19 Q During that night, Jeremy, what was Thaddeus wearing?

20 A A pair of blue pants and like a jersey, like a jersey,
21 but before we left the apartments he had on a jacket, a
22 starter jacket, brown, like a brown starter jacket.

23 Q And what, if anything, did he have underneath his
24 jersey?

25 A Nothing that I can remember.

Jeremy Simuel - Direct Examination by Mr. Chandler

1 Q That you could remember?

2 A Yes, sir.

3 Q He had a jacket on, you said?

4 A Yes, sir.

5 Q Okay. Mr. Simuel, isn't it true, you are, in fact,
6 charged with the murder of Mr. Heath Hamilton?

7 A Yes, sir.

8 Q And also armed robbery?

9 A Yes, sir.

10 Q And possession of a firearm during the commission of a
11 violent crime?

12 A Yes, sir.

13 Q This same offense?

14 A Yes, sir.

15 Q For this testimony today, have you been promised
16 anything by the State or anyone?

17 A No, sir.

18 Q Anybody promised you to help you out with the charges
19 or anything based on your testimony?

20 A No, sir.

21 Q So what you're presenting is what happened that night?

22 A Yes, sir.

23 Q Did you have an opportunity to speak to Mr. Thaddeus
24 Curry after you dropped him off at the place where his
25 girlfriend's father works?

Jeremy Simuel - Direct Examination by Mr. Chandler

1 A Well, the next day he called and I informed him, you
2 know what I'm saying, what was going on. The police
3 came to my house, questioned me, questioned me about
4 the murder of Heath Hamilton. He asked what I did. I
5 told him, no, I didn't mention his name or anything
6 like that.

7 Q How about when the police came did you tell him the
8 truth?

9 A No, sir.

10 Q Why not?

11 A Because I really, I didn't want to be involved with it,
12 you know what I'm saying, as far as what, you know what
13 I'm saying, what took place.

14 Q Were you part of a plan to rob Mr. Heath Hamilton?

15 A No, sir. It wasn't no plan to rob Heath Hamilton. It
16 was just a plan, I guess, to get the money and go play
17 like they were going to purchase some weed and then
18 take off, I guess. Take off with it and never return.

19 Q So you didn't know about the plan to rob Heath
20 Hamilton?

21 A No, sir.

22 Q So when you came down there did you have any idea that
23 Thaddeus Curry was going to shoot Heath Hamilton?

24 A No, sir. I would have known that, he would have never
25 been inside my car.

Jeremy Simuel - Direct Examination by Mr. Chandler

1 MR. CHESSER: Your Honor?

2 THE COURT: Yes, sir?

3 MR. CHESSER: I object to that question and the
4 answer. It presumes something that hasn't been testified.
5 This witness hasn't testified to any knowledge of that and
6 I would ask that the question and answer be stricken.

7 THE COURT: Mr. Chandler?

8 MR. CHANDLER: Your Honor, based on the
9 witness's testimony, he's indicated Mr. Curry talked about
10 shooting Mr. Hamilton, so we just asked him did they talk
11 about any plan to kill him before he drove him around.

12 THE COURT: I will allow -- I'm going to allow
13 it. Ask more questions about -- he's already stated it
14 there's no point just to go more into that. You can
15 continue.

16 By Mr. Chandler:

17 Q Did you have an opportunity to see Mr. Curry after
18 that?

19 A Yes, sir. We met at the car wash next to Waffle House
20 where I was employed?

21 Q And when was that?

22 A This was like the next day.

23 Q Still March 18?

24 A Still March 18, yes, sir.

25 Q Okay. And you were at the car wash and did Mr. Curry

Jeremy Simuel - Direct Examination by Mr. Chandler

1 say anything?

2 A He asked Anthony Savage whether, did he -- did he get
3 rid of the jacket, and, in return, Anthony Savage asked
4 him well did he get rid of the gun and he was like,
5 "Yeah, you know, I took care of that." He was like,
6 "What you did with it?" He was like, "I put it in some
7 kind of lake out there in Clarks Hill." Some kind of
8 lake where supposedly his girlfriend lives.

9 Q So Mr. Curry says he put the gun in Clarks Hill?

10 A Yeah.

11 Q Okay.

12 A So after I was interviewed by the detectives I went to
13 his house and, you know what I'm saying, I told him,
14 "They know you, they know what you did or whatever."
15 And he was like, "Let me make a phone call." So he
16 made a phone call, supposedly to his girlfriend.

17 MR. CHESSER: I object to this, Your Honor, I
18 don't think this witness knows who he was talking to and he
19 can't testify to this conversation.

20 By Mr. Chandler:

21 Q Did he mentioned his girlfriend's name?

22 THE COURT: Objection is sustained. You can
23 rephrase the question.

24 By Mr. Chandler:

25 Q What with to the phone call did Mr. Curry indicate that

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 he was talking to his girlfriend?

2 MR. CHESSER: Objection. I just object to the
3 leading, Your Honor.

4 THE COURT: Sustained. You can ask him --
5 rephrase your question.

6 By Mr. Chandler:

7 Q Who, if anyone, did Mr. Curry indicate that he was
8 talking to?

9 A No, sir.

10 Q He did not indicate he was talking to anyone?

11 A No, sir.

12 Q Okay. And so you say that the last opportunity that
13 you had to talk with Mr. Curry?

14 A As far as before my incarceration or?

15 MR. CHANDLER: Beg the court's indulgence.

16 THE COURT: Yes, sir.

17 By Mr. Chandler:

18 Q No further questions. Please answer any questions
19 Mr. Chesser may have.

20 THE COURT: Mr. Chesser?

21 **CROSS-EXAMINATION**

22 By Mr. Chesser:

23 Q Mr. Simuel, you've got charges currently of murder and
24 possession of a weapon during commission of a violent
25 crime, is that right?

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 A Yes, sir, and attempted armed-robbery.

2 Q Attempted armed-robbery. And those three charges arise
3 out of the events of that night, March 17, and the
4 morning of March 18, of 2003, right?

5 A Yes, sir.

6 Q Now, on the murder charge, your exposure is a sentence
7 of life in prison, is that right?

8 A Not that I know of.

9 Q You're not aware of it?

10 A No, sir.

11 Q The possibility that you could get life for murder?

12 A No, sir.

13 Q Okay. Your exposure on the attempted armed-robbery is
14 20 years, you're aware of that?

15 A No, sir.

16 MR. CHANDLER: Objection, Your Honor, no
17 foundation laid.

18 THE COURT: Sustained. For the jury, ladies
19 and gentlemen of the jury, you're to disregard anything
20 regarding potential sentences for any of the offenses that
21 are charged. It's not in the jury's purview, it's in the
22 court's purview and you all should not consider in any way
23 in the course of your consideration of the evidence, any
24 potential sentences for any crimes that are charged in this
25 particular case. Thank you.

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 Mr. Chesser?

2 By Mr. Chesser:

3 Q Mr. Simuel, you stated you're aware of the maximum
4 sentences that you're facing, is that right?

5 A No, sir.

6 Q But you're aware that you're facing the possibility of
7 a long time in prison, right?

8 A Yes, sir.

9 Q All right. Now, you're in pretty hot water, isn't that
10 right, Mr. Simuel?

11 A For what?

12 Q For what?

13 A Yes, sir.

14 Q Well, maybe for ---

15 MR. CHANDLER: Objection, Your Honor, he's
16 testifying.

17 THE COURT: I don't know about that. Let him
18 get his question out.

19 By Mr. Chesser:

20 Q Maybe for your participation in the events of March 17,
21 March 18, of 2003, don't you think you have -- you're
22 in hot water for that?

23 A Yes, sir.

24 Q Okay. Don't you call being charged with murder and
25 attempted armed-robbery and possession of a weapon in

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 the commission of a violent crime, don't you call that
2 hot water?

3 A Yes, sir.

4 Q Okay. Now, Mr. Simuel, this is not your first brush
5 with the law is it?

6 A No, sir.

7 Q Okay. How old are you?

8 A 23.

9 Q Okay. Now, in March of 2000, in Georgia, you were
10 convicted of theft by taking, isn't that right?

11 A Theft by receiving.

12 Q Theft by receiving. You got a 5 year sentence for
13 that, right?

14 A Yes, sir.

15 Q All right. Okay. In November of '99, you were
16 convicted of obstruction of justice by way of giving
17 false information to a police officer and you caught 12
18 months for that, right?

19 A Yes, sir, by giving a false name.

20 Q You have another conviction in March of 2000, for theft
21 by receiving and you got a 12 month sentence on that,
22 right?

23 A Yes, sir, ran concurrent, all ran concurrent. All the
24 sentences ran concurrent.

25 Q You got a conviction in April of '99, for possession

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 with intent to distribute marijuana, right?

2 A Yes, sir.

3 Q You caught 5 years on that charge, right?

4 A Yes, sir.

5 Q And you've got another theft by receiving stolen
6 property in April of 2000, you caught 5 years on that,
7 right?

8 A No, sir.

9 Q Now, Mr. Simuel, you were -- you were interviewed by
10 law enforcement on March 18, of 2003, right?

11 A Yes, sir.

12 Q Okay. You remember, really, technically, it's the same
13 day this happened, right?

14 A Yes.

15 Q Okay.

16 A Later that day.

17 Q Now, at that time, you gave a statement to law
18 enforcement, didn't you?

19 A Yes, sir.

20 Q Okay. Is this your statement?

21 A Yes, sir.

22 Q Now, in this statement, you don't mention anything
23 about going to Beech Island, do you?

24 A No, sir.

25 Q Okay. And in this statement you do talk about Tony,

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 Antonio Savage, don't you?

2 A Yes, sir.

3 Q Okay. In this statement you gave on March 18, you
4 never mentioned Thaddeus Curry, do you?

5 A No, sir.

6 MR. CHESSER: I'd ask this statement be
7 admitted into evidence.

8 MR. CHANDLER: No objection.

9 THE COURT: Without objection, it's admitted.

10 (WHEREUPON Defense Exhibit 1 is marked and
11 admitted into evidence.)

12 By Mr. Chesser:

13 Q Now, your testimony is that Thaddeus Curry that evening
14 wore a sort of brown bomber jacket, is that right?

15 A Yes, sir. Starter.

16 Q A starter jacket?

17 A Yes, sir.

18 Q In addition, Thaddeus Curry has gold teeth that he
19 wears?

20 A 12, 12 to be exact.

21 Q 12 gold teeth?

22 A Yes.

23 Q Okay. So if he opened his mouth, they would be on his
24 top row of teeth?

25 A Yes, if he don't pull them out, yes.

Jeremy Simuel - Cross-Examination by Mr. Chesser

1 Q Okay. Finally, Mr. Simuel, are you married or just
2 engaged?

3 A Just engaged, common law married, but common law is no
4 longer in Georgia, so, yes, I'm engaged.

5 Q Okay. And what is your fiance's name?

6 A Olettrice.

7 Q Olettrice? What's her last name?

8 A Rushon

9 Q Okay. And she is the sister of Winfred Javon?

10 A Yes, sir.

11 Q Rushon?

12 A Yes, sir.

13 Q How long have you been with her?

14 A 7 years.

15 Q Okay. Mr. Simuel, isn't it true that you hope that the
16 State will recommend a light sentence for you in
17 respect to these pending charges of murder, attempted
18 armed-robbery, and possession of a weapon during the
19 commission of a violent crime?

20 A No, sir, I'm not hoping that -- I'm just hoping that
21 justice is served.

22 Q You're telling this jury that you're facing this long
23 time, but you don't have an expectation that you're
24 going to benefit or receive any benefit for coming in
25 here?

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 A No, sir.

2 Q That makes sense to you, that you're facing this long
3 time, but you're just doing this because you're a good
4 citizen, is that right?

5 A I'm doing it because that was my friend and I was wrong
6 from the jump for not telling them what really took
7 place on the night of March 18. And being that -- that
8 I'm charged with murder for something I didn't do, for
9 attempted armed-robbery for something I didn't do, it's
10 best that the truth come out and the truth be heard and
11 maybe something will be done about it.

12 Q You didn't see what happened at Bryant's gas station on
13 that night, did you?

14 A No, sir.

15 Q You weren't there?

16 A Yes, sir.

17 Q You weren't at the gas station, were you?

18 A No, sir.

19 Q All right.

20 MR. CHESSER: That's all the questions I have.

21 THE COURT: Mr. Chandler, anything on redirect?

22 MR. CHANDLER: Just briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 By Mr. Chandler:

) 25 Q Jeremy, when you wrote this statement to the police,

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 were you lying?

2 A Yes, sir.

3 Q About your involvement?

4 A Yes, sir.

5 Q In the death of Heath Hamilton?

6 A Yes, sir.

7 Q Why were you lying?

8 A Because I have a family and I didn't really want to be
9 involved with a serious case like this.

10 Q And when the police talked to you, in fact, were you
11 lying then?

12 A Yes, sir.

13 Q Okay. With reference to your involvement on ---

14 MR. CHESSER: Your Honor, I object to the
15 leading. If he could ask the witness a question and let
16 the witness answer.

17 THE COURT: It's fine. Just try not the lead.

18 By Mr. Chandler:

19 Q When the police questioned you on the night of March
20 18, regarding your ---

21 MR. CHESSER: Let me -- your Honor?

22 THE COURT: Yes, sir?

23 MR. CHESSER: How many times is the prosecutor
24 going to ask the same question? He's been over this. He
25 went over it on direct.

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 THE COURT: I haven't heard the question.

2 Yes, sir?

3 By Mr. Chandler:

4 Q Were you lying when the police asked you about your
5 involvement in the case?

6 A Yes, sir.

7 Q Okay.

8 MR. CHANDLER: Beg the court's indulgence.

9 THE COURT: Yes, sir.

10 By Mr. Chandler:

11 Q Did you hear Thaddeus Curry brag about shooting Heath
12 Hamilton?

13 A Yes, sir.

14 MR. CHESSER: Your Honor, objection.

15 THE COURT: Yes, sir.

16 MR. CHESSER: This is something he went over on
17 direct and I didn't visit this and he wants to go over the
18 same things he went over on direct on this redirect, Your
19 Honor, and he's done it, he's not entitled to go over the
20 same things.

21 THE COURT: There is no scope to redirect and
22 recross, except according to the court's discretion, but
23 you went into some matters and tried to raise some matters
24 that I think it's fair for him to go back into that.

25 You can ask the question.

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 MR. CHANDLER: Okay.

2 By Mr. Chandler:

3 Q So did, in fact, you hear Thaddeus Curry ---

4 MR. CHESSER: Again, Your Honor, if he's going
5 to do this, he can't lead him, I would submit. I would ask
6 him to ask an open-ended question, Your Honor, not leading.

7 THE COURT: I understand the objection. It's
8 overruled.

9 By Mr. Chandler:

10 Q When Thaddeus Curry came back or ran back to the car,
11 what, if anything, did he say?

12 A He said that, "I'm going to teach these mothers about
13 playing with me, you know what I'm saying, I ain't no
14 joke, I ain't no joke. You know what I'm saying. I'm
15 going to tell --- the KKK can march on this, the KKK
16 can march on this.

17 Q And what, if anything, did he demonstrate with respect
18 to Mr. Heath Hamilton?

19 A He said that, he said, "Did you -- You should have seen
20 that, you should have seen that." He was like this,
21 demonstrating on how he, you know what I'm saying, had
22 his head after being shot.

23 MR. CHANDLER: No further questions.

24 THE COURT: Anything on recross?

25 MR. CHESSER: No, Your Honor.

1 THE COURT: Sir, you may step down off the
2 stand. Thank you.

3 Okay. Mr. Chandler, does the State have
4 another witness they would like to try?

5 MR. CHANDLER: Your Honor, we'd like to
6 approach.

7 THE COURT: Okay.

8 (WHEREUPON there was a bench conference out of
9 the hearing of the jury and the court reporter.)

10 THE COURT: Okay. Ladies and gentlemen of the
11 jury, we're going to break for the day and pick back up
12 with testimony in the morning. Overnight I ask that you
13 not discuss the evidence or the testimony you have heard or
14 seen thus far. We always tell you all that and don't tell
15 you why, but to actually begin discussing the case or any
16 of the evidence or any part of it that you have seen or
17 heard thus far would actually constitute the beginning of
18 deliberations and you would start making up your mind about
19 the evidence, by just the fact that you were discussing it
20 and going over it again in your mind.

21 You all cannot begin your deliberations until
22 after the close of all the evidence, you've heard all the
23 evidence and had a charge on the law from the court as to
24 how you're going to apply the facts as you find them to the
25 law. So I ask that you if you would, not to discuss the

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 evidence and testimony you've heard or seen thus far. I
2 would also remind you again not to view any news account
3 or read any news articles about this case should any be in
4 the local media.

5 We'll be ready to get started at 9:30 in the
6 morning, so if you all can be in the jury room, we'll be
7 ready to go at that point in time and we'll pick up with a
8 new witness. We should be ready by 9:30. If you'll be
9 there by 9:30, we'll be ready to go. Ya'll have a good
10 night and we'll see you in the morning. Thank you.

11 (WHEREUPON the jury left the courtroom at 5:16
12 p.m.)

13 THE COURT: Anything else we need the take up
14 before we break?

15 MR. CHESSER: Not from this side, Your Honor.

16 MR. CHANDLER: Nothing from the State.

17 THE COURT: Thank you. All right. We'll be
18 ready to go. We've got motions at 9:00?

19 THE CLERK: Yes, sir.

20 THE COURT: We'll continue with you all at
21 9:30. We will re adjourn at 9:00 in the morning with some
22 other motions we need to deal with. We'll see you all
23 then.

24 (WHEREUPON this case was in recess for the
25 day.)

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 THE COURT: Good morning, Counsel.

2 MR. CHANDLER: Good morning, Judge.

3 MR. CHESSER: Good morning, Your honor.

4 THE COURT: Mr. Chesser, anything we need to
5 take up before we bring the jury in?

6 MR. CHESSER: Your Honor, let's see ---

7 MR. WEEKS: You want to get him out here, Mike?

8 MR. CHESSER: What's that?

9 MR. WEEKS: You want to get your guy out here?

10 MR. CHESSER: Yes, sir. Your Honor, Mr. Curry
11 will be out in a second.

12 THE COURT: Okay.

13 MR. CHESSER: If we could wait on him.

14 THE COURT: That will be fine.

15 (WHEREUPON the defendant entered the courtroom
16 a few minutes later.)

17 THE COURT: Yes, sir.

18 MR. CHESSER: May it please the court, Your
19 Honor?

20 THE COURT: Yes, sir?

21 MR. CHESSER: Mr. Curry is in court now. I
22 understand that the first witness for the State is going to
23 be Anthony Savage and so I wanted to just revisit for the
24 record the issue of his prior record. The State has
25 provided me with some juvenile convictions that I wasn't

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 aware of earlier and I believe it's their position that
2 these prior convictions would properly be subject of
3 impeachment. In '94 he was convicted of a burglary,
4 second, a grand larceny, a grand larceny auto and
5 possession of a stolen vehicle and was committed to DJJ as
6 a juvenile. Those are the new -- that's the new material.

7 He's also got an escape in 1996 and a theft by
8 taking in '96. Those are the prior convictions. At this
9 point, I would ask the court to rule for the record. What
10 I would like to do is to impeach him, that is to show
11 motive to lie and bias by asking him about his pending
12 charges for -- in the first place an armed-robbery from
13 October of 2002; and secondly for a PWID marijuana and a
14 PWID proximity marijuana from April of '03. So I would ask
15 that I be allowed to ask him about that. Again for
16 purposes of bias and motive to lie as well as under 608(B).

17 THE COURT: Okay. Well we talked about this, I
18 think, it was yesterday or the day before. There is no, as
19 I understand it, negotiations or deals or anything on the
20 table from the State as to those charges at all, is that
21 right?

22 MR. CHANDLER: That is correct, Your Honor.

23 THE COURT: The prior ruling still stands. You
24 can obviously question him about the pending charges that
25 relate to this particular crime that arose out of this

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 incident, but those other pending charges, we're not going
2 to get into. As I understand it, you're not going to use
3 the escape conviction, is that right, Mr. Chesser?

4 MR. CHESSER: I'm sorry, what was that, Your
5 Honor?

6 THE COURT: You're not -- you agree -- I
7 believe the other day that you agreed that you could not
8 use the escape conviction.

9 MR. CHESSER: Yeah, I had forgotten that this
10 morning and I would move to use that escape from '96, in
11 that I think it is the attempt to evade law enforcement, I
12 would submit constitutes a crime of dishonesty in itself
13 and is admissible without regard to the length of possible
14 punishment. So I would move to have that escape from '96
15 to be able to impeach him with that, Your Honor.

16 THE COURT: I don't know that I view that as a
17 crime of dishonesty, unless you have some authority that
18 would support using an escape or evading the police as a
19 crime of dishonesty; I'd rule to keep that out as well.
20 I'll let you use, obviously, the theft by taking and the --
21 sounds like all of his juvenile convictions would satisfy
22 the rule and be allowed to be used for impeachment. So
23 we'll go with those and the theft by taking.

24 MR. CHESSER: Okay. Do I understand the Court
25 has ruled that with regard to the pending charges, that are

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1 not the subject of conviction, the Court's ruling that they
2 are inadmissible under either 608(B) or 608(C).

3 THE COURT: Right, except as to, you're
4 obviously allowed to question him as to the pending charges
5 that arose out of this particular crime.

6 MR. CHESSER: Finally, Your Honor, I know the
7 State has touched on this. This being the final thing, but
8 my understanding is the State is representing that they
9 have not had any plea negotiations either with the
10 defendant or with the defendant's attorney in this case. I
11 believe that's with Gina Poteat, is that the State's
12 representation?

13 MR. CHANDLER: Your Honor, it is the State's
14 representation.

15 THE COURT: Yes, sir.

16 MR. CHESSER: That's all we have prior to
17 trial, Your Honor.

18 MR. WEEKS: Your Honor, just as a matter of
19 limine, yesterday during questioning about one of the
20 defendant's prior record, counsel for the defendant made
21 the statement, "Now, you've been in trouble before."
22 That's not a proper question to ask somebody about their
23 prior record. The proper questioning is, "Were you
24 convicted on such and such a date of grand larceny, grand
25 larceny of an auto, possession of a stolen vehicle and

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1 burglary second;" not a fishing expedition about whether he
2 had been in trouble before. And I bring that out because
3 it's hard to un ring that bell when they go into it. So I
4 would just ask a cautionary instruction to ask specifically
5 the date and time of the conviction and not any of the
6 details of the conviction.

7 THE COURT: That's a good point because,
8 obviously the witnesses have no idea as to what they can
9 and cannot get into, or what this Court's rulings are,
10 generally, so we will -- I will ask counsel to limit their
11 questions to the specific crimes that are committed.

12 MR. WEEKS: We also had issue about testimony
13 during the questioning about what the possible sentence was
14 on pending charges before him and I would ask for a
15 cautionary instruction on that, as well as where he went
16 further on that same witness, I realize we didn't object,
17 he said, "You're looking at a lot of time," when we
18 objected to the sentence and after your curative
19 instruction about that. I still think any reference to
20 time is improper questioning of a witness.

21 THE COURT: I meant to get into that at the
22 break of yesterday and we didn't. I do think it is
23 improper to raise in front of the jury anything regarding
24 sentencing. There are so many factors that play into that
25 and they have no idea as to what the maximum, minimums or

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1 anything else are. And I would caution counsel not to
2 bring up anything related to possible sentences on any kind
3 of convictions.

4 All right.

5 MR. CHESSER: Your Honor, on that point ---

6 THE COURT: Yes, sir?

7 MR. CHESSER: I respectfully disagree. And I
8 just want to do whatever necessary to preserve it.

9 THE COURT: Yes, sir. I will be glad to hear
10 from you as to why you disagree.

11 MR. CHESSER: If the court will bear with me.

12 THE COURT: Yes, sir.

13 MR. CHESSER: I believe I've got some case law
14 I can cite to it and it won't be long.

15 THE COURT: I'll be glad to hear and review
16 that. I don't know if -- anything that would support the
17 jury needing to know what potential is.

18 Your Honor, the cases that deal with the
19 authorization to ask about potential penalties, it looks
20 like the primary case is called The State vs. Castineria.
21 It's a Court of Appeals decision from the year 2000 and
22 another case is State vs. Mizzell, which is a Supreme Court
23 case from 2002. And it says to preserve the issue, I need
24 to ask this defendant about it out of the presence of the
25 jury. So, but those are the cases that I would rely on.

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1 THE COURT: All right. I note you're position
2 on that for the record, but we're not going to have any
3 more references to the sentences on any of these charges.

4 MR. CHESSER: That being the case, when this
5 witness comes in, before bringing in the jury, could I ask
6 him about these things prior to bringing in the jury so
7 that I can preserve the record, Your Honor? Ask him about,
8 specifically, about the potential sentences he's facing on
9 these charges.

10 THE COURT: Ask him if he knows what the
11 potential sentences are?

12 MR. CHESSER: I want to ask him all about the
13 potential penalties he's facing for this murder charge, for
14 the attempted armed-robbery charge, for the possession of a
15 weapon during the commission of a violent crime charge.
16 You know, if he says he doesn't know about them, he can
17 state that, whatever, but outside the presence of the jury
18 just so I can preserve this issue.

19 THE COURT: I'm not quite sure what issue your
20 preserving.

21 MR. CHESSER: The issue would be my right to
22 ask him about the potential penalties that he is facing on
23 these charges so that -- which goes to his bias and motive
24 to misrepresent and that is the right that I assert, it's
25 my position that I have and I just want to preserve that

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1 issue.

2 THE COURT: What are the cites on your cases?

3 MR. CHESSER: Yes, sir, I would just note that
4 it's based on this showing bias and also the right of
5 confrontation.

6 Your Honor, on that State vs. Mizzell case,
7 it's 349 SC 326. It's 563 SE 2nd 315 from the year 2002.

8 THE COURT: That's your court of appeals case?

9 MR. CHESSER: No, sir. This particular one,
10 State vs. Mizzell is a Supreme Court case from 2002.

11 THE COURT: Mr. Chesser, I'm looking at your
12 case. Under those circumstances, sir, part of the problem
13 I think in that case was that, as I read it the witness was
14 given an offer to plead to one particular charge versus the
15 potential sentence, the maximum sentence on the other
16 charges that the defendant would have faced had she been
17 convicted or tried on the original charges, and we don't
18 have that here. There's no deal between the State at all.

19 MR. CHESSER: Well, again, I just want to make
20 a proffer and the jury won't hear it and then I will be
21 through.

22 THE COURT: I don't know that you need to make
23 a proffer. I will be glad to let you do it. Here the
24 sentences are what they are. Potential maximum sentences
25 for these charges are what they are. You want the Court of

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1 Appeals or the Supreme Court to review that somewhere down
2 the road, they can take notice of what the potential
3 sentences are.

4 MR. CHESSER: Well, again, as I understand it,
5 I have to make a proffer to preserve this issue. If the
6 court is ruling that I cannot make a proffer, then I will
7 sit down.

8 THE COURT: Well, I think you would make a
9 proffer under the case that you cited because of the
10 situation that that witness was in. That witness was
11 facing, looks like 3 charges she was being allowed to plead
12 to one count. And there the court was saying that there
13 was -- it did go to the issue bias because it was a big
14 difference between potential sentences there and whether
15 that witness knew about that. Here it's ---

16 MR. CHESSER: You know, again, I'm requesting
17 to make a proffer. You know I would ask the Court to rule,
18 may I make a proffer or am I prohibited from making the
19 proffer.

20 THE COURT: We're not going to bring him out
21 here to elicit whether or not he knows what his potential
22 sentences are. As I understand it there's no negotiations
23 or deals between the State and this particular witness. As
24 he would sit on that witness stand, he's facing those
25 charges. What is it three charges pending against him?

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 MR. CHANDLER: Yes, Your Honor.

2 THE COURT: He's facing those three charges,
3 that's a vastly different situation than your Mizzell case.
4 I don't think you even need to make a proffer on that.

5 MR. CHESSER: I understand the Court. I mean
6 as I understand the Court's ruling, you're ruling that I am
7 not going to be allowed to make a proffer and in addition
8 not going to be allowed to ask him about it in front of the
9 jury.

10 THE COURT: That's right.

11 MR. CHESSER: Is that the court's ruling?

12 THE COURT: That's right.

13 MR. CHESSER: Thank you.

14 THE COURT: You can certainly ask him what
15 those are, if he's got those charges pending against him,
16 as I ruled before, but if I thought it was going to
17 prejudice your client in any way, I'd certainly let you
18 make that proffer for the record. I'm at a loss for
19 understanding in this case why you would even need to make
20 a proffer.

21 MR. WEEKS: Your Honor, if I may, if the
22 witness gets on the stand and says that he's been promised
23 something ---

24 THE COURT: Certainly, he would open the
25 door ---

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 MR. WEEKS: Then that's the situation

2 Mr. Chesser is referring to. Until he says that though,
3 then the State's position is how Your Honor has ruled. But
4 I just wanted -- I understand and I think what you're
5 saying is the reason no proffer is necessary until he gets
6 up there and says that he's been promised something or
7 expects something, then ---

8 THE COURT: Which is, I think, the situation
9 under Mizzell that counsel is siting. She was promised
10 something that was vastly different than the original
11 charges pending.

12 MR. CHESSER: You know, I know, Judge, that you
13 said that if he says -- again, I'm trying to understand
14 this ruling, if the witness says that ---

15 THE COURT: If he says I've got deal on the
16 table, they've talked to me about a deal and that he could
17 plead to one charge, he could plead to a lesser or
18 something like that, then, yeah, I think Mizzell says you
19 can get into that. There's no deal on the table. So the
20 charges that he is facing, any reviewing court, Court of
21 Appeals or Supreme Court can figure out what the potential
22 sentences there are.

23 MR. CHESSER: So the Court is ruling that if he
24 says he has no deal, then I am prohibited from asking about
25 these penalties that he's facing, is that correct?

Jeremy Simuel - Redirect Examination by Mr. Chandler

1 THE COURT: That's right. That's absolutely no
2 need too.

3 MR. CHESSER: We are ready to proceed, Your
4 Honor.

5 THE COURT: The State ready?

6 MR. CHANDLER: State's ready.

7 THE COURT: All right. We're ready to bring
8 them out.

9 (WHEREUPON the jury entered the courtroom at
10 9:56 a.m.)

11 THE BAILIFF: Jury is present, Your Honor.

12 THE COURT: Thank you, sir.

13 Thank you, ladies and gentlemen, we're ready to
14 continue at this point with the testimony. Before we break
15 for our mid-morning break or at that time, I will appoint a
16 foreperson and you'll actually take that seat on the end
17 where this young lady is sitting on the front row. And
18 that will be your assigned seat throughout.

19 But at this point we're ready to continue.

20 The State's ready to proceed?

21 MR. CHANDLER: Yes, Your Honor.

22 THE COURT: Okay. The State may call their
23 next witness.

24 MR. CHANDLER: Your Honor, the State calls Tony
25 Savage.

Anthony Savage - Direct Examination by Mr. Chandler

1 THE COURT: Mr. Savage, could you come on
2 around, sir, and be sworn.

3 THEREUPON,

4 ANTHONY SAVAGE,
5 after being duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness box,
7 stating your full name, spelling your last.

8 MR. SAVAGE: Savage, Anthony.

9 DIRECT EXAMINATION

10 By Mr. Chandler:

11 Q Anthony, are you sometimes called Tony?

12 A Yes, sir.

13 Q Okay. Where do you live?

14 A Beech Island, South Carolina.

15 Q You live in Beech Island?

16 A Yes, sir, that's where my parents live.

17 Q Do you spend any time at the Savannah West Apartments?

18 A Yes, sir, I used to stay out there.

19 Q You used to live there?

20 A Yes, sir.

21 Q Were you living out there on March 18, 2003 or on
22 about ---

23 A Right, on and off.

24 Q On and off?

25 A Yes, sir.

Anthony Savage - Direct Examination by Mr. Chandler

1 Q Were you happen -- did you happen to be there on March
2 17 and 18, of 2003?

3 A Yes, sir.

4 Q And on that date, did you have an opportunity to meet
5 with, speak with or talk to Heath Hamilton?

6 A Yes, sir.

7 Q Now, how do you know Heath Hamilton?

8 A I met him a couple of times just coming out there. He
9 came to Savannah West a couple of times to talk to
10 another dude about a dog. I used to see him
11 occasionally.

12 Q Were you friends with him?

13 A I talked to him probably twice, probably twice.
14 Because I knew he had a dog and this other dude that
15 stayed out there, he had a dog too. So their dogs used
16 to be playing around, fighting each other and whatever.

17 Q Tony, have you -- on March 17 or 18, did you have an
18 opportunity to see Heath Hamilton?

19 A Yes, sir.

20 Q All right. Could you describe the events that led you
21 to interaction with Heath?

22 A Well him and -- Heath and two other dudes came out
23 there. They was wanting to buy some marijuana.

24 Q Uh huh.

25 A And me, Thaddeus Curry and Jeremy Simuel, we were

Anthony Savage - Direct Examination by Mr. Chandler

1 sitting outside so they asked us did we know anybody
2 that have any marijuana. We told them not right then
3 and then. So Heath went upstairs and talked to Jeremy
4 Simuel and asked him did he know anybody that had
5 marijuana because there used to be a dude named Anthony
6 stayed out there -- excuse me, used to sell him some
7 marijuana, but Anthony had moved.

8 Q Now, what's Anthony's name?

9 A Anthony Harden.

10 Q And your name is?

11 A Anthony Savage.

12 Q Okay. And what do your friends call you?

13 A Some people call me Tony, some people call me Anthony.

14 Q But the Anthony that Heath was looking for was a guy
15 named Anthony ---

16 A Anthony Harden.

17 Q Okay. Go ahead.

18 A Well he went up and talked to him and then they came --
19 they came back outside. He asked us did we have any.
20 We told him not right off-hand. So I gave him my cell
21 phone number and told him if we were to be able to get
22 anymore, to get any, to call us back.

23 Q So when you were negotiating this marijuana, you gave
24 him your cell number?

25 A Yes, sir.

Anthony Savage - Direct Examination by Mr. Chandler

1 Q And did you see him put the number down at all?

2 A I think I remember seen him writing it on his hand.

3 Q All right. He wrote your cell phone number down?

4 A Right.

5 Q What happened after that?

6 A Well, they left. They left then and we stayed out
7 there a little while longer just talking, I mean just
8 talking and everything. And probably around like
9 around 12:00 I had to go pick my girlfriend up from
10 work. So Thaddeus Curry rode with me to Kendrick out
11 on Old Savannah Road on 56 and I went and picked Toya
12 up and we came back to Savannah West. You know, I
13 parked -- when we came back in, I parked at our house
14 and me and Thaddeus walked back up to Jeremy's house
15 and we stayed there for a while.

16 Q And did ya'll ever discuss Heath Hamilton and the fact
17 that he wanted to get some marijuana from you?

18 A Well the subject came up, was he going to call back,
19 was he going to call back or whatever, so, you know we
20 was waiting on him to call back, so we got in the car
21 and, you know, rode around for a while, looking for
22 some marijuana.

23 Q You mentioned we, who is we?

24 A Me, Thaddeus Curry and Jeremy Simuel.

25 Q You mentioned Thaddeus Curry?

Anthony Savage - Direct Examination by Mr. Chandler

1 A Right.

2 Q Is Thaddeus Curry in this room?

3 A Yes, sir.

4 Q Where exactly is Mr. Curry?

5 A That's him right there.

6 THE COURT: All right. Your Honor, please let
7 the record reflect that Mr. Anthony Savage has recognized
8 Thaddeus Curry as one riding with them on that night.

9 THE COURT: Yes, sir.

10 By Mr. Chandler:

11 A We rode around in the bottom, downtown Augusta for a
12 while, waiting on them to call us. So probably around,
13 I don't know exactly what time, but it had to be around
14 an hour, hour after we left Savannah West he called.
15 And I don't remember exactly what we talked about, but
16 we told him that we was going the be able to come up
17 with some marijuana.

18 Q All right. And so did you have some marijuana on you
19 at that time?

20 A No, sir. We ain't had none on us at the time.

21 Q So what was the plan, if there was one?

22 A Well the plan was to go over there and meet with them
23 and see if I could holler at somebody in Beech Island
24 that I know that had any marijuana.

25 Q Uh-huh.

Anthony Savage - Direct Examination by Mr. Chandler

1 A You know, go get the money, go holler at them and come
2 back and give them some marijuana, you know, that was
3 the plan.

4 Q So prior to you leaving for Beech Island, what were you
5 wearing?

6 A I was wearing a pair of black blue jeans, black blue
7 jeans and a blue button-up shirt with a tank top on up
8 under it.

9 Q And what was Jeremy Simuel wearing? Do you remember
10 what Jeremy Simuel was wearing?

11 A I can't -- I think he was wearing some sweat pants. I
12 can't really remember that clear what he was wearing.

13 Q Okay. And what was Thaddeus Curry wearing?

14 A Well, when they first came out there, Mr. Curry had on
15 a brown, like starter jacket with a blue New York
16 Yankees, all white with blue Yankees right here on the
17 side of it, like jersey shirt with some blue jeans and
18 he had on some gray Air Max, Nike Air Max.

19 Q Okay. And when you guys left for Augusta what, if
20 anything did you guys bring with you?

21 A When we left, Mr. Thaddeus Curry had his black bag. He
22 always takes it with him and that's what he had his gun
23 in.

24 Q And so you -- what happened after that?

25 A After we left Augusta?

Anthony Savage - Direct Examination by Mr. Chandler

1 Q Yes.

2 A We went to Beech Island for a while. They called us
3 back and told us where they was at, so that's when we
4 turned around and went to the area where they was at.
5 What we did, we parked, well Jeremy Simuel parked his
6 car on Cary Drive, like in front of -- I think it was
7 like a trailer, a mobile home, he parked right there
8 and Mr. Curry got out the car first with his black bag
9 and he started walking. And Jeremy Simuel told me
10 something, so I said, "I'm going to get out the car
11 too."

12 So I got out of the car behind him. I got out
13 the car behind him. While we was walking, I seen him,
14 he dropped his black bag on the side, on the side of
15 the road, on the side right beside the store. He
16 dropped his black bag right there.

17 Q You mentioned that this black bag Mr. Curry always
18 keeps his gun in, could you describe his gun?

19 A Yes, sir.

20 Q Go ahead?

21 A It was about, probably about this long. Probably about
22 this long and he carried a clip and it was black.

23 Q Do you know what kind of clip he carried?

24 A I think it was a 10 round clip.

25 Q All right.

Anthony Savage - Direct Examination by Mr. Chandler

1 A I think it was a 10 round clip.

2 Q Mr. Savage, I'm now handing what has been previously
3 marked and entered into evidence as State's Exhibit No.
4 5 and 6. Could you tell me what the first one, State's
5 Exhibit 5 is? Do you recognize that photo?

6 A Yes, sir.

7 Q What are those two pictures of?

8 A This picture -- both of these pictures, this is Cary
9 Drive right here. This is Cary Drive.

10 Q Cary Drive? Okay. And tell me, tell me about it.
11 Describe it.

12 A Right here on the side, on the side of the road, right
13 here is where he dropped his bag at. And Heath was
14 parked like in the middle of the road like in the
15 middle of this road right here, Cary Drive.

16 Q What happened after that?

17 A Okay. I walked -- I walked down there and I picked up
18 his bag and threwed it on the side, like in these
19 bushes on the side.

20 Q Uh-huh.

21 A I throwed it like on the other side of the bushes.

22 Q Why did you throw his bag in the bushes.

23 A I ain't really want him to see. I ain't really want
24 him to be able to get access to it.

25 Q Him being who?

Anthony Savage - Direct Examination by Mr. Chandler

1 A Thaddeus Curry get access to it, because I know how he
2 acts.

3 MR. CHESSER: Objection, Your Honor.

4 THE COURT: What's the objection.

5 MR. CHESSER: I'd ask that that be stricken
6 under 404(B). Can I get a ruling?

7 THE COURT: You can't go beyond that. I
8 overrule the objection and ask counsel just to move on.

9 MR. CHANDLER: Thank you, Your Honor.

10 By Mr. Chandler:

11 Q All right. So what happened after you threw the bag?

12 A I threw the bag on the side of the shrub, the bushes
13 and that's when Heath -- Mr. Curry led them around to
14 the side of the building.

15 Q Mr. Curry led who to the side of the building?

16 A Heath to the side of the building.

17 Q Uh-huh.

18 A On Cary Drive.

19 Q Is that the side where his gun was?

20 A Right. Right here, in the road right here. In Cary
21 Drive.

22 Q I'm now handing you what has been marked and entered in
23 as evidence, State's Exhibit No. 7. Can you tell me
24 what that is?

25 A That's the truck. That's the truck that Heath was

Anthony Savage - Direct Examination by Mr. Chandler

1 driving.

2 Q That's the truck that Heath was driving?

3 A Yes, sir.

4 Q Okay. And you said there Mr. Curry -- you said Mr.
5 Curry led them around Cary Drive from the front of
6 the ---

7 A Right. Right.

8 Q What happened after that?

9 A After he led them around to the side, I talked to
10 Heath. He asked was we going to be able to come up
11 with the marijuana. I told him, I asked him did he
12 have the money. He said they had the money. I told
13 him we ain't have the marijuana right then and there.
14 He asked us were we going to be able to get it. I told
15 him we was going to be able to get it, but we was going
16 to need a while. But I said I need to make sure you
17 got the money. You know what I mean. He said well we
18 got the money and everything. At first I know he was
19 asking to weigh the marijuana. I told him we ain't
20 have it right then and there. And the other dude ---

21 Q You said they asked to weigh the marijuana.

22 A Right, he had a scale.

23 Q And you could see the scale?

24 A Yes, sir, it was in like the console in the middle.

25 Q Well how was the lighting in that alley?

Anthony Savage - Direct Examination by Mr. Chandler

1 A He might -- I think he had on the inside light of the
2 truck. I think the interior lights was on.

3 Q So the interior light in the truck was on, so you could
4 see inside ---

5 A Yes, sir, I could see plain view inside the truck.

6 Q You could see plain view inside the truck?

7 A Right.

8 Q Did you see any weapon? Did you see any type of
9 weapon?

10 A I didn't see no weapon and I ain't really have no
11 reason to think they have a weapon, you know what I
12 mean.

13 Q All right. Okay.

14 A You know we talked about that for a while and the other
15 dude on the other side was saying something. So right
16 when I was getting ready to go on the other side, like
17 when I got like probably up in front of the truck, on
18 the side, I noticed Thaddeus Curry walked off.

19 Q Where did he go?

20 A He went behind me.

21 Q Uh-huh.

22 A He walked behind me. I'm standing like -- he's
23 standing right beside me at first, you know, and he
24 walked off.

25 Q Did he walk in the direction of the bushes?

Anthony Savage - Direct Examination by Mr. Chandler

1 A Yeah, that was right behind us.

2 Q And ---

3 A That was right behind us.

4 Q What happened after that?

5 A I went over on the other side to try to talk to the
6 other dude. The next thing you know, the truck, it was
7 like it jumped a little bit, like the truck -- like he
8 tried to take off or something. The truck jumped a
9 little bit. And I kind of jumped back because, you
10 know, I thought the truck was going to hit me or
11 something. I turned and looked and I seen Mr. Curry
12 with the gun. He just started shooting.

13 Q You saw Mr. Curry with the gun, shooting?

14 A Yes, sir, yeah, yes, sir.

15 Q You saw him actually pull the trigger.

16 A I seen him with the gun in his -- I seen him shooting
17 like on the side of the truck.

18 Q How many -- do you remember how many shots you heard?

19 A Probably it was like 3 or 4 shots. It was like 3 or 4
20 shots. And like, when I seen that I'm like, I just, I
21 got scared and ran, you know. I'm trying to really
22 move out the way because I don't know where these
23 bullets flying at. You know, I could get hit by one of
24 those bullets. So I just -- we just ran then. I ran.

25 Q You ran?

Anthony Savage - Direct Examination by Mr. Chandler

- 1 A Yes, sir.
- 2 Q And where did you run to?
- 3 A I ran down to the car where Mr. Simuel was.
- 4 Q So Mr. Simuel was sitting in the car ---
- 5 A Yes, sir.
- 6 Q He never went to the scene at all?
- 7 A No, Mr. Simuel never got out of the vehicle.
- 8 Q Okay. And so what happened when you got to the -- what
- 9 happened when you got to the car?
- 10 A When I got to the car, I got to the car first. I got
- 11 in the passenger side and Mr. Simuel -- I mean, well
- 12 Thaddeus Curry ran and jumped in the back seat. He had
- 13 the bag and the gun and everything. It was like he was
- 14 real hyped, you know what I mean.
- 15 Q What do you mean real hyped?
- 16 A He -- he kept saying, "I think I dome capped him." You
- 17 know, he was hollering and stuff.
- 18 Q What does dome capped mean?
- 19 A Dome capped means shooting somebody in the head.
- 20 Q Okay.
- 21 A And that's what that means. And he kept saying, "I
- 22 think I dome capped him." And he was hollering and
- 23 everything.
- 24 Q What you mean hollering, like excited?
- 25 A Like he was happy, and you know, we like, me and Simuel

Anthony Savage - Direct Examination by Mr. Chandler

1 we looking at each other, you know, I'm saying to
2 myself, like I hope he ain't shot this dude. You know,
3 that's the only thing I'm thinking about. And then he
4 said, he said something else. He said, "The KKK can
5 march on this." You know, and I'm like, that's what
6 Mr. Curry said.

7 Q Does that have any meaning to you?

8 A Well the only thing we could get of it, me and
9 Mr. Simuel is like I know they was protesting about the
10 Masters on Washington Road and the KKK supposed to have
11 been marching around there. So that's the only thing I
12 could think of when he said that, you know. And we
13 just left. We left then. You know, he was telling
14 Simuel, "Why you driving so slow?" "Why you driving so
15 slow?"

16 You know, I'm looking back and trying to see
17 what's going on, see if the truck, Heath's truck did
18 move, but I still see the truck in the middle of the
19 road, so, you know, I get bad vibes off that right
20 there. You know, I'm just saying to myself, I hope he
21 didn't shoot him, you know. We went on back to
22 Augusta, you know we riding. He back -- Thaddeus in
23 the back seat, started fumbling with the gun. He's
24 saying something went wrong with the gun or something.

25 Q What you mean something went wrong with the gun?

Anthony Savage - Direct Examination by Mr. Chandler

1 A That's what he kept saying, something went wrong with
2 the gun. He was saying something went wrong with the
3 gun. I don't know exactly, I know he know in the back
4 seat doing something to it. And we took -- we took
5 Mr. Curry and dropped him off at World of Color, World
6 of Color is where one of his friend's work at, a dude
7 named Chris Broadwater. We took him and we dropped him
8 off out there.

9 Q Did he say anything to you or do you recall him saying
10 anything to anybody?

11 A Right then?

12 Q Yes.

13 A Well we sat -- once we got out there and everything, we
14 sat out there for a while and waited for the dude to
15 come out. And you know, he kept saying, "Well, I know
16 Chris at work."

17 Then he seen his girlfriend's car. He seen his
18 girlfriend's car because Chris is his girlfriend's
19 father. So he seen his girlfriend's car and he was
20 like, "Well, Chris' truck is in the shop." So probably
21 about 10, 15 minutes later Chris came down a little
22 breezeway and they talked. Chris gave him the car
23 keys. He got out, he got the bag out the car with the
24 gun in it and he went to the girlfriend's car. We left
25 him right there. Me and Jeremy Simuel left. And we

Anthony Savage - Direct Examination by Mr. Chandler

1 didn't see him anymore that night.

2 Q You said you went out there that morning of March 18.

3 A Right.

4 Q What happened after that? After this did you have the
5 opportunity to meet up with Mr. Curry?

6 A Well, the next day -- the next day I got up early and I
7 went to Jeremy's house, Jeremy Simuel's house, you know
8 and that's when we found out -- well this lady that
9 stayed downstairs, Heath be coming over to her house,
10 so she came up, that's when she told us that Heath was
11 dead and, you know, now we know. You know, and we
12 said, sitting up, we like -- then we left, we left and
13 went to the store to get some beers and by the time we
14 come back, the police was in the neighborhood. And
15 that's when they questioned us.

16 Q All right. Now, when they questioned you,
17 specifically, did you tell the police about your
18 involvement?

19 A I didn't even talk to them.

20 Q You didn't talk to them?

21 A I didn't make no statement.

22 Q You didn't make a statement?

23 A No, sir. I told him I don't know what they're talking
24 about.

) 25 Q So you just denied you knew about it?

Anthony Savage - Direct Examination by Mr. Chandler

1 A Yes, sir. Yeah, I can't make no statement, right.

2 Q Okay. So after that, did you ever have an opportunity
3 to run into Mr. Curry again?

4 A Mr. Curry called -- he called me the next day. We
5 talked on the phone the next day. And me, Javon ---

6 Q What if anything did he say during that telephone call?

7 A He asked us what was the police talking about. Did we
8 say anything about him or whatever, you know what I
9 mean, we told him, we said, "Man, you don't need to
10 come around here. You don't need to come to Savannah
11 West."

12 You know, he was like, "Ya'll going to come over
13 here and talk to us, talk to me?" So we was like,
14 "Yeah, we'll be over later."

15 So me and Jeremy Simuel and his brother-in-law,
16 Javon, we rode to go to Mr. Curry's house. Well, while
17 we was riding to his house we seen him walking on the
18 side of the road, so we stopped and he got in the car
19 with us. And we went on down the road and we went to a
20 car wash. We went to a car wash and everybody got out
21 of the car and he asked us what the investigators asked
22 us and everything. Did we said anything about him and
23 whatever. We told him, you know what I mean and
24 everything. He asked me what I had did with his jacket
25 because when I had took Toya to work he rode with me

Anthony Savage - Direct Examination by Mr. Chandler

1 and he had his starter jacket.

2 I said, "Man, it's in the car." You know what I
3 mean. He told me, he said, "Well throw that jacket
4 away." I told him, I said, "Yeah, Man."

5 So I throwed it away and I asked him, I said,
6 "Now you still got that gun?" He said, "They ain't
7 never going to find that gun, Man. I throwed it in the
8 river," or something, you know. That's when he went to
9 Clark's Hill and he went to Clark's Hill that night He
10 had to go to Clark's Hill that night, you know.

11 And he said he throwed the gun in the river and
12 that was it on that end there.

13 Q All right. Tony, from these charges, you've been
14 charged from this incident, you have been personally
15 charged with murder, is that right?

16 A Right.

17 Q You also been charged with what else?

18 A Possession of a firearm, robbery, yes, sir.

19 Q Okay. Now, for your testimony today have you been
20 promised anything by the State?

21 A No, sir, no, sir I haven't been promised anything.

22 Q So everything that you've said is the truth?

23 A That's right. It's the same thing I said when ---

24 MR. CHESSE: Objection, Your Honor.

25 THE COURT: Yes, sir?

Anthony Savage - Direct Examination by Mr. Chandler

1 MR. CHESSER: Hearsay.

2 THE COURT: He said the same thing he said.

3 MR. CHESSER: That's correct, Your Honor. He
4 didn't say it here on stand. It's hearsay, Your Honor.

5 THE COURT: The objection is overruled.

6 You may continue.

7 MR. CHANDLER: Thank you.

8 By Mr. Chandler:

9 A That's the same thing I said when I did the audio,
10 video statement, the same thing I'm saying today.
11 Ain't nothing changed, the truth.

12 Q Who did you make the statement to?

13 MR. CHESSER: I just ask my objection be noted,
14 it's continuing, Your Honor.

15 THE COURT: Yes, sir.

16 By Mr. Chandler:

17 Q Who did you make the statement to?

18 A Mr. Billy Fleury, and I don't remember the other two
19 investigators' names.

20 Q Do you remember when this was?

21 A I know it was probably -- I got locked up on the 9th,
22 April the 9th, it was probably around -- I know it had
23 to be a couple of days later on or it might have -- it
24 could have been a week later.

25 Q Okay.

Anthony Savage - Direct Examination by Mr. Chandler

1 A I got locked up a couple of days.

2 Q So at least a little less than a month after ---

3 A Yes, sir.

4 Q A month after the incident and a couple of days after
5 you were arrested?

6 A Right, right.

7 Q And this is the same story that you've given the
8 police?

9 A Right, right.

10 MR. CHANDLER: Beg the court's indulgence.

11 THE COURT: Yes, sir.

12 By Mr. Chandler:

13 Q You mentioned before about the gun, you described it
14 and you said it had a clip. What kind of bullets did
15 it shoot?

16 A It was 9mm.

17 Q It shoots 9mm?

18 A Yes, sir.

19 Q And so on that night, March 18, Thaddeus Curry was
20 shooting a 9mm pistol?

21 A Yes, sir.

22 Q And on that night, you had mentioned that you guys,
23 what you were wearing.

24 A Right.

25 Q At the time was -- at the time Mr. Curry shot Mr. Heath

Anthony Savage - Direct Examination by Mr. Chandler

1 Hamilton, was he wearing ---

2 THE COURT: As to leading, Your Honor. If he
3 can ask the question in a non leading form.

4 THE COURT: I ask counsel not to lead, but he's
5 already testified to that, so it's already in evidence.
6 But you can rephrase the question.

7 MR. CHANDLER: Thank you, Your Honor.

8 By Mr. Chandler:

9 Q What, if anything, was Mr. Curry wearing the night of
10 the shooting incident?

11 A What else was he wearing?

12 Q I mean what was he wearing?

13 A He was wearing a pair of blue jeans, a white shirt with
14 New York right, like, on the side right here and a pair
15 of gray Air Max. At the time, that's what he had on.
16 That's what he had on at the time.

17 Q Do you have gold teeth?

18 A Yes, sir.

19 Q You wearing them now?

20 A No, I don't have them in right now, but I wear four at
21 the bottom.

22 Q What do you call those?

23 A Fronts.

24 Q Fronts?

25 A Yes, sir.

Anthony Savage - Cross-Examination by Mr. Chesser

1 Q So you can just slide them on and off?

2 A Yeah, I can put them in and put them back on.

3 Q And what about Mr. Curry, does he have any?

4 A Mr. Curry got six at the top and six at the bottom.

5 Q He can to take them out and ---

6 A He can take them out and put them in.

7 Q So do you recall whether you were wearing your fronts
8 that night?

9 A I had my four in. I wear four at the bottom.

10 Q Do you remember if Mr. Curry had on his?

11 A He had all of them in. He had all twelve in.

12 Q He could just put them in and take them out?

13 A Yeah, he had all twelve of them in at the time.

14 MR. CHANDLER: Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 By Mr. Chandler:

17 Q No further questions. Please answer any questions
18 Mr. Chesser has for you.

19 THE COURT: Mr. Chesser?

20 MR. CHESSER: Please the Court?

21 THE COURT: Yes, sir.

22 **CROSS-EXAMINATION**

23 By Mr. Chesser:

24 Q Mr. Savage, are you housed in the jail with Jeremy
25 Simuel?

Anthony Savage - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q Okay. And you've been there -- well, how long have
3 ya'll been housed together?

4 A Probably about -- probably 4 or 5 months.

5 Q Okay. At the Savannah West Apartments on March 17, you
6 were there, at some time Heath Hamilton and his friends
7 arrived at Savannah West Apartments, right?

8 A Right.

9 Q And that was at night, right?

10 A Yes, sir.

11 Q Okay. Did you spend -- talking to Heath Hamilton and
12 his friends, did you spend about 15 minutes?

13 A Could have been.

14 Q Could have been shorter?

15 A Could have been around 15, 20 minutes.

16 Q Okay. All right. Now, Mr. Savage, in 1994, when you
17 were a juvenile, you were convicted of burglary in the
18 second-degree, is that correct?

19 A Yes, sir.

20 Q Okay. And you were convicted of, at that same time of
21 grand larceny?

22 A Yes, sir.

23 Q You were convicted of another charge of grand larceny
24 auto?

25 A Yes, sir.

Anthony Savage - Cross-Examination by Mr. Chesser

1 Q And at that time in '94, you were also convicted of
2 possession of a stolen vehicle, is that correct?

3 A Yes, sir.

4 Q And for those charges as a juvenile, you were committed
5 to the custody of the Department of Juvenile Justice,
6 is that correct?

7 A Yes, sir. I pleaded guilty to all of them.

8 Q Now, in 1996 you were convicted of theft by taking.

9 A Yes, sir.

10 Q Is that right?

11 A Yes, sir.

12 Q And at that time you were given a 3 year sentence and
13 also 7 years of probation.

14 A Yes, sir.

15 Q Is that right?

16 A Yes, sir.

17 Q I'd ask you to answer yes or no for the court reporter?

18 A Yes, sir.

19 Q Now, currently you have charges pending of murder, is
20 that right?

21 A Right.

22 Q Attempted armed-robbery?

23 A Right.

24 Q And possession of a weapon during the commission of a
25 violent crime?

Anthony Savage - Cross-Examination by Mr. Chesser

1 A Right.

2 Q Now, you've been incarcerated since April of 2003, is
3 that right?

4 A Right.

5 Q And you are interested in getting a deal on your
6 charges, right?

7 A No, sir, ain't nobody -- nobody has promised me a deal.

8 Q But you want to get a deal, don't you?

9 A Sir, I'm just telling the truth. It really doesn't
10 matter.

11 Q You're saying that to you it doesn't matter how these
12 criminal charges pending against you are resolved? Is
13 that your testimony here today?

14 A Sir, one thing I'm saying, I know I didn't murder
15 nobody. I don't want to be charged with murder.

16 Q But you are charged with murder, aren't you?

17 A Right.

18 Q And you want to get the best resolution of that charge
19 as you can?

20 A Not by telling lies. I'll tell the truth.

21 Q So your moral code prohibits you from telling a lie, is
22 that what you're saying?

23 A Sir, what I'm really saying is, I'm in this courtroom
24 to tell the truth to let everybody in this courtroom
25 know what really happened on March 18.

Anthony Savage - Cross-Examination by Mr. Chesser

1 Q What I'm asking you, is are you interested in getting
2 the best outcome you can on these very serious charges
3 you're facing?

4 A Well, sir, I don't want to get tried for murder and I
5 didn't kill anybody.

6 Q Now, when you were at Bryant's Gas Station in the early
7 morning hours of May 18 (sic), you had the bag with a
8 gun in it, you had that bag in your hand, didn't you?

9 A Sir, Mr. Curry put the bag on the side of the road.
10 When I walked up I picked the bag up and throwed it on
11 the other side of the shrubs, so he wouldn't see it. I
12 didn't want him to get it in his possession.

13 Q So you had the bag in your hands that night, right?

14 A I picked it up and throwed it on the other side of the
15 bushes.

16 Q Now you testified that when Heath Hamilton and Ronald
17 Coursey were in their vehicle at Bryant's, that
18 Thaddeus Curry commenced talking to Heath Hamilton,
19 right?

20 A While -- at one -- at what point in time?

21 Q I'm talking about the first contact -- the first
22 conversation that Heath Hamilton had with an individual
23 at the gas station, your testimony is that that was
24 with Thaddeus Curry?

25 A Right.

Anthony Savage - Cross-Examination by Mr. Chesser

1 Q It wasn't until the car pulled over to the dark area of
2 the gas station that you approached the vehicle, right?

3 A Right.

4 Q Now, do you recall being interviewed by Investigator
5 Billy Fleury on April 16, of 2003?

6 A Yes, sir.

7 Q Now, at that time, you told Investigator Fleury that at
8 Bryant's Gas Station in the early morning hours of May
9 18 (sic), that you had a white tank top t-shirt, isn't
10 that right?

11 A I had on a white tank top t-shirt up under my blue
12 shirt.

13 Q And you told him that Thaddeus Curry had on -- had a
14 brown starter jacket on, right?

15 A No, he did not have no brown starter jacket on at that
16 time.

17 Q But I'm asking you about what you told Investigator
18 Fleury?

19 A I don't remember saying that he had a brown starter
20 jacket on at that time. I know what he had on at that
21 time.

22 Q But you told him you had on a white tank top t-shirt at
23 that time, right?

24 A I had on one up under my blue shirt. I had a
25 button-up, blue shirt on and I had a white tank top on

Anthony Savage - Redirect Examination by Mr. Chandler

1 up under it.

2 MR. CHESSER: That's all the questions I have.

3 THE COURT: Thank you, sir.

4 Anything further from the State?

5 MR. CHANDLER: Just one question, Your Honor.

6 **REDIRECT EXAMINATION**

7 By Mr. Chandler:

8 Q Mr. Chesser indicated that you stated that you were
9 housed with Jeremy Simuel. Were you guys in the same
10 cell?

11 A In the same cell block, but not the same room.

12 Q So you weren't roommates?

13 A No, sir.

14 Q So when you say that you were housed, you mean that
15 both of you are actually at the detention center

16 A Right, in the same ---

17 Q Just like Mr. Curry was out there?

18 A Yes, sir.

19 Q So you were housed with Mr. Curry as well?

20 A Well, we're ---

21 MR. CHESSER: Objection, Your Honor.

22 THE COURT: Yes, sir?

23 MR. CHESSER: I object under Rule 404(B), Your
24 Honor. He's not entitled to go into this.

25 THE COURT: I understand your objection, it's

Anthony Savage - Recross-Examination by Mr. Chesser

1 overruled.

2 MR. CHESSER: Sir?

3 THE COURT: It's overruled.

4 By Mr. Chandler:

5 A Well ---

6 Q Were you and Mr. Curry housed at the Aiken County
7 Detention Center?

8 A Yes, sir.

9 Q Okay.

10 MR. CHANDLER: No further questions -- well,
11 beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 By Mr. Chandler:

14 Q Mr. Savage, what is your cell phone -- you indicated --
15 what's your cell phone number?

16 A 466-0365.

17 Q 466 ---

18 A 0365.

19 Q 0365.

20 MR. CHANDLER: No further questions.

21 THE COURT: Anything further?

22 **RECROSS EXAMINATION**

23 By Mr. Chesser:

24 Q Mr. Savage, on this housing issue, you're housed in the
25 same cell block with Jeremy Simuel, right?

Anthony Savage - Recross-Examination by Mr. Chesser

1 A Right

2 Q That means that when you have breaks, when you have
3 lunch and so forth, get out and you can socialize with
4 the other people in your cell block, right?

5 A Yes, sir.

6 Q Okay. Thank you, that's all I have.

7 THE COURT: Thank you, sir.

8 Mr. Savage, sir, you can step down, thank you,
9 sir.

10 MR. SAVAGE: Thank you.

11 THE COURT: Mr. Chandler, the State may call
12 their next witness.

13 MR. CHANDLER: Your Honor, the State calls
14 Investigator Clay Adams, with the Aiken County Sheriff's
15 Office.

16 THE COURT: Investigator, if you'll just come
17 around and be sworn.

18 THEREUPON,

19 CLAY ADAMS,
20 after being duly sworn, testified as follows:

21 THE CLERK: Have a seat in the witness box,
22 stating your full name, spelling your last, please.

23 MR. ADAMS: My name is Martin Clay Adams,
24 A-d-a-m-s.

25 ///

Clay Adams - Direct Examination by Mr. Chandler

DIRECT EXAMINATION

By Mr. Chandler:

Q Investigator Adams, where are you employed?

A Aiken County Sheriff's Office.

Q And what are your duties at Aiken County Sheriff's Office?

A I'm a forensic crime scene investigator for the Sheriff.

Q Were you employed by a March 18, 2003?

A Yes, sir, I was.

Q All right. And on or about March 18, 2003, what were you doing?

A I had a call -- a forensic call for the Criminal Investigations Division of the Sheriff's office.

Q And what was that call?

A The call was down to the gas station on Sand Bar Ferry road in Beech Island.

Q And what -- and what, if anything, did you observe when you made it to that location?

A When I arrived on the scene, I observed white Dodge pick-up truck parked kind of caddie corner to the front door of the building.

Q Okay. Investigator Adams, I'm now handing you what has been marked entered into as evidence State's Exhibit No. 7, is that the truck you're referring to?

Clay Adams - Direct Examination by Mr. Chandler

1 A Yes, sir.

2 Q Okay.

3 A When I arrived, I spoke with, I believe it was Sergeant
4 Robert Parsons of the road patrol. He advised me that
5 they had secured the scene. They had crime scene tape
6 stretched around the gas station. I approached the
7 vehicle, observed a white male in the truck. I began
8 to take digital photographs of the scene until my
9 lieutenant arrived and we determined that the other
10 crime scene was -- the actual shooting did not occur at
11 this location, that it had occurred on Cary Drive.

12 Q So what did you do after that?

13 A I turned the scene with the truck at the gas station
14 over to my lieutenant and then I proceeded to Cary
15 Drive.

16 Q Investigator Adams, I'm now handing you what has been
17 marked and entered into evidence as State's Exhibit No.
18 5 and No. 6. Could you describe what you see in those
19 photographs. Do you recognize that real quick?

20 A Yes, sir, this Cary Drive, looking from Sand Bar Ferry
21 Road, right next to the, I believe it's the Bryant's
22 Four Seasons Gas Station.

23 Q And what else do you notice?

24 A In these photographs, I have placed marking cones, each
25 cone to the building side, marks a shell casing that I

Clay Adams - Direct Examination by Mr. Chandler

1 found, a 9mm shell casing. And to reference this
2 photo, I also placed a cone to some blood markings on
3 the actual asphalt so I could have some reference as to
4 where everything is.

5 Q So you placed -- you placed cones at each shell casing?

6 A Yes, I did.

7 Q Okay. How many shell casings did you find?

8 A Five.

9 Q You found five?

10 A Right.

11 Q I'm now handing you what has been marked as State's
12 Exhibit No. 13, would you tell me what that is?

13 A It's a photograph that I took of one of the 9mm shell
14 casings.

15 Q Okay. And how do you know it was a 9mm shell casing?

16 A It's clearly marked 9mm on the shell casing head.

17 Q Okay. And does that picture fairly and accurately
18 represent that shell casing on that night that you took
19 that picture?

20 A Yes, sir.

21 Q Okay.

22 MR. CHANDLER: At this time, Your Honor, the
23 State would like to enter State's Exhibit No. 13 into
24 evidence.

25 THE COURT: Any objection, Mr. Chesser?

Clay Adams - Direct Examination by Mr. Chandler

1 MR. CHESSER: May I take a look at it briefly?

2 No objection.

3 THE COURT: Without objection, it's admitted.

4 By Mr. Chandler:

5 Q Investigator Adams, what, if anything else did you
6 notice or discover around the scene?

7 A Around the scene, to the side of the Four Seasons
8 building, the front corner of the building, I observed
9 a beer can and a paper bag, like a little paper sack
10 that been placed to the side of -- like it had just
11 been placed down. I photographed it and I collected it
12 as evidence.

13 Within -- upon -- as the investigation went on
14 at the other scene we were informed that the telephone
15 was possibly used and there was a pay phone on the same
16 premises right there in front of the gas station. We
17 processed the phone for any latent fingerprints, but we
18 weren't able to process any. However, there was
19 another a beer can, a Budweiser beer can right next to
20 the phone, so we collected it as well.

21 Q Okay. Now what did you do with the shell casings after
22 you collected them?

23 A The shell casings, I collected each individual one in
24 an individual envelope and secured them into evidence.

25 Q Okay.

Clay Adams - Direct Examination by Mr. Chandler

1 MR. CHANDLER: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 By Mr. Chandler:

4 Q Investigator Adams, I'm now handing you what has been
5 marked as State's Exhibit 14 and 15, packages marked
6 State's Exhibit No. 14 and 15. Could you tell me the
7 contents of those packages?

8 A These packages, this package contains bar codes
9 A0015576, consecutive through A0015580.

10 Q And which packet is that?

11 A This one right here.

12 Q And that's State's Exhibit No. 15?

13 A Yes, it is.

14 Q Now, based on your records, what is located in those
15 packages?

16 A I believe these -- I can tell you right quick.

17 Q Mr. Adams if you could just open them up.

18 A Okay. Two projectiles from the truck.

19 Q Prior to discussing the contents of State's Exhibit No.
20 15, could you open up State's Exhibit No. 14. Open
21 that one.

22 A These are the individual shell casings that I collected
23 at the scene.

24 Q Those are in State's Exhibit ---

25 A 14.

Clay Adams - Direct Examination by Mr. Chandler

1 Q State's Exhibit 14, indicates individual shell casings
2 that you collected at the scene? And you indicated
3 that those shell casings, they clearly indicated 9mm?

4 A Yes, they do. They're clearly marked 9mm, Luger, plus
5 P.

6 Q Okay. All right. And does the contents -- could you
7 go ahead and check each content of the bag?

8 A Sure. This would be the same 9mm, Luger plus P. They
9 also have the word, Speer on the head of it, S-p-e-e-r.
10 This one, also is the same 9mm, Luger Plus P Speer.

11 Q Okay.

12 A And this one is also the same 9mm, Luger Plus P Speer.
13 And this one is the same. So, yes, sir, all five of
14 them are clearly marked 9mm.

15 Q And are those shell casings in substantially the same
16 condition they were when you picked them up?

17 A Yes, they are -- the only difference, of course, is
18 that they were completely wet when we picked them up.
19 We had just had a heavy rain. In fact, I believe that
20 most of them were in mud puddles at the scene. So
21 other than them being dry, yes, they're the same.

22 MR. CHANDLER: At this time, Your Honor,
23 State's Exhibit No. 14 into evidence.

24 THE COURT: Any objections, Mr. Chessser?

25 MR. CHESSER: No objection.

William McGowan - Direct Examination by Mr. Chandler

1 THE COURT: Without objection.

2 MR. CHANDLER: Now, at this time, Your Honor,
3 no further questions for Mr. Adams.

4 THE COURT: Okay. Mr. Chesser?

5 MR. CHESSER: Your Honor, I don't have any
6 questions for Mr. Adams.

7 THE COURT: Thank you, sir.

8 Investigator, you may step down. Thank you,
9 sir.

10 Mr. Chandler, the State may call their next
11 witness.

12 MR. CHANDLER: Your Honor, the State calls
13 Investigator, or former investigator with Aiken County
14 Sheriff's Office, Bill McGowan.

15 THEREUPON,

16 WILLIAM MCGOWAN,
17 after being duly sworn, testified as follows:

18 THE CLERK: Have a set in the witness box,
19 stating your full name, spelling your last, please.

20 MR. MCGOWAN: William Joseph McGowan,
21 M-c-G-o-w-a-n.

22 **DIRECT EXAMINATION**

23 By Mr. Chandler:

24 Q Mr. McGowan, On March 18, or on about March 17, March
25 18, 2003, where were you employed?

William McGowan - Direct Examination by Mr. Chandler

1 A Aiken County Sheriff's Office.

2 Q And what was your rank there at the Aiken County
3 Sheriff's Office?

4 A I was a Lieutenant II, Lieutenant in charge of the
5 forensic section.

6 Q Okay. And what were your duties as lieutenant in
7 charge of the forensics section?

8 A I supervised the entire forensic section and my main
9 duty was crime scene examinations.

10 Q With respect to crime scene examinations, did you have
11 any specific training?

12 A Yes. I graduated from the Department of Defense
13 Criminal Investigation School, which included 80 hours
14 of crime scene examination in 1983. Since then I've
15 had approximately 40 professional, certified schools,
16 to include advance crime scene, homicide, advance
17 homicide investigation, body retrieval, skeleton
18 remains retrieval, advanced officer training. Again
19 approximately 40 advanced schools.

20 Q In any of these advance schools, did any of them
21 specialize with respect to gunshots or gunshot
22 training?

23 A Almost every single homicide school touched on gunshot
24 and specifically the advance homicide and special
25 agents laboratory training, which I spent in the

William McGowan - Direct Examination by Mr. Chandler

1 laboratory working with weapons and projectiles and
2 crime scene technician school, which is in Florida,
3 yes. I worked with gunshot wounds.

4 Q Have you ever been qualified in court as a crime scene
5 technician?

6 A Yes, I have.

7 Q And how many times?

8 A Just once as an expert, but I've testified, probably
9 over 100 times.

10 Q Okay.

11 A I was a senior instructor for the Department of Defense
12 Investigation School for 4 years and assisted in
13 publishing a book at that school.

14 Q What was the name of the book?

15 A It's a criminalistics book for the Department of
16 Defense.

17 MR. CHANDLER: Your Honor, at this time, the
18 State would like to have Mr. McGowan certified as a --
19 qualified as a crime scene technician.

20 THE COURT: As an expert in crime scene
21 technology? Is that a field?

22 MR. CHANDLER: That's a field, Your Honor.

23 THE COURT: Mr. Chesser, any objection?

24 MR. CHESSER: Your Honor, I don't -- I would
25 object based on, I don't really know what this is, an

William McGowan - Direct Examination by Mr. Chandler

1 expert in crime scene technology. I mean, I myself I don't
2 think that's a field or enough definition to be acceptable
3 to this classification or qualification as an expert, so I
4 would object.

5 THE COURT: I'm not quite sure that the phrase
6 crime scene technology is ---

7 MR. MCGOWAN: I believe the correct phrase
8 would be crime scene technician and it is a field as a
9 crime scene technician.

10 THE COURT: I will let you voir dire him if you
11 want to, Mr. Chesser.

12 MR. CHESSER: I don't have any questions for
13 him.

14 THE COURT: Investigator, I assume this is the
15 science of analyzing crime scenes and that sort of stuff?

16 MR. MCGOWAN: Yes, sir.

17 THE COURT: He's so qualified.

18 MR. CHESSER: Thank you, Your Honor.

19 THE COURT: He can testify as an expert.

20 MR. CHANDLER: Thank you, Your Honor.

21 By Mr. Chandler:

22 Q Investigator McGowan, I now hand you what has been
23 previously marked as State's Exhibit No. 14. Could you
24 describe the contents of State's Exhibit No. 14 --
25 excuse me, State's Exhibit No. 15. I apologize.

William McGowan - Direct Examination by Mr. Chandler

1 A I'm holding State's Exhibit 14, the bar codes match,
2 A0015584, A0015590 and that's marked State's Exhibit
3 14.

4 Q What are the contents?

5 A I believe these were put in the wrong envelope. These
6 are the bar codes that match the shell casings.

7 Q So this is contents of State's Exhibit No ---

8 A These bar codes are matching -- the two items that I'm
9 holding, the bar codes match as State's Exhibit 14.

10 Q And what are the contents of State's Exhibit 14.

11 THE COURT: Mr. Chandler, I'm a little bit off.
12 14 was just admitted. Are we referring to 15 or 14 now?

13 MR. CHANDLER: Your Honor, it's my
14 understanding that the bar codes for State's Exhibit --
15 what has been marked as State's Exhibit 15 were incorrect
16 and so the actual contents that were actually entered into
17 evidence should have been properly labeled as State's
18 Exhibit 15 as opposed to 14.

19 THE COURT: Were they just mixed up by the last
20 witness or?

21 MR. CHANDLER: By the last witness all right.

22 THE COURT: Okay. So it's -- if he just put
23 them back in the wrong pouch. So 14 is what you introduced
24 by the last witness?

25 MR. CHESSER: It was 15 but it was noted as 14.

William McGowan - Direct Examination by Mr. Chandler

1 THE COURT: Let Mr. Chesser see if ya'll can
2 agree on what's 14 and what's 15.

3 MR. CHANDLER: Request a sidebar, Your Honor?

4 THE COURT: Yes, sir.

5 (WHEREUPON there was a bench conference out of
6 the hearing of the jury and the court reporter.)

7 THE COURT: Okay. By agreement between the
8 State and Defense, both 14 and 15 are in and at some point
9 before those exhibits go back to the jury, we'll make sure
10 they're sorted out properly.

11 By Mr. Chandler:

12 Q Now, Mr. McGowan, on March 18, did you have an
13 opportunity to -- were you working or were you employed
14 with Aiken County Sheriff's Office?

15 A Yes, sir, I was.

16 Q Okay. And what exactly were you doing for them?

17 A On March 18, and the 17?

18 Q Yes, 2003?

19 A I was the lieutenant in charge of the forensics section
20 of the Aiken County Sheriff's Office?

21 Q And were you called to a location in Beech Island?

22 A Yes, late that evening, early morning I was dispatched.
23 Dispatch called me and dispatched to a shooting
24 incident at Beech Island and I responded and arrived at
25 the gas station off of Sand Bar Ferry Road.

William McGowan - Direct Examination by Mr. Chandler

1 Q All right. When you arrived at the station, what, if
2 anything did you notice?

3 A I met up with several deputies that were there, Bob
4 Parsons was one of the deputies there; Clay Adams, who
5 worked for me; and several other deputies that were
6 there already at the scene. The scene was secured by
7 crime scene tape and there was a white pick-up truck in
8 the middle of the gas station, parked in front of the
9 service part of the gas station. I was quickly briefed
10 and walked up to the truck and observed the truck and I
11 observed a white male, apparently deceased, in the
12 passenger side of the white pick-up truck.

13 Q Was he sitting in the passenger seat?

14 A He was slumped more on the floor board, leaning up on
15 the passenger seat.

16 Q All right. What, if anything else, did you notice?

17 A There were two holes, one in the of the middle of the
18 driver's door and one on the right hand corner of the
19 driver's door above where the window would be. The
20 window was over half way down and had been shattered
21 and there was blood around the passenger area, along
22 with the blood that was on the passenger side from the
23 victim who was laying there.

24 Q Investigator McGowan, I'm now going to hand you what
25 has been previously marked as State's Exhibit 10,

William McGowan - Direct Examination by Mr. Chandler

1 State's Exhibit No. 11, State's Exhibit No. 9 and
2 State's Exhibit No.8. Could you describe what you see
3 in the pictures and if you could just make reference to
4 the exhibit number in the background?

5 A State's Exhibit No. 8 is a photograph as you're looking
6 in the driver's door, it's a photograph of the
7 deceased ---

8 THE COURT: Hold on, Investigator, those
9 haven't been put into evidence yet, unless there's some
10 agreement.

11 By Mr. Chandler:

12 Q I just need you to describe it.

13 MR. CHESSE: Well what I would ask is that
14 they just lay a foundation for their admission prior to
15 describing them to the jury. In other words, if he would
16 move them in.

17 By Mr. Chandler:

18 Q In looking at all the exhibits, do you recognize them?

19 A They're photographs of the crime scene.

20 Q And do those photographs fairly and accurately
21 represent the crime scene when you approached on March
22 18, 2003?

23 A Yes, they do.

24 MR. CHANDLER: Your Honor, at this time the
25 State would like to enter those exhibits into evidence.

William McGowan - Direct Examination by Mr. Chandler

1 MR. CHESSER: No objection.

2 THE COURT: Without objection they're all four
3 admitted.

4 By Mr. Chandler:

5 Q Now, can you describe the exhibits, making reference to
6 the exhibit number?

7 A State's Exhibit No. 8 is a photograph as you're looking
8 as the driver's door would be open, looking inside the
9 truck, looking at the seat of the truck. There's a
10 tear in the fabric of the seat on the left-hand corner.
11 And in my opinion that would've been an entrance
12 wound -- an entrance of a projectile torn in the
13 fabric, so in my opinion that was an entrance from a
14 projectile into the seat.

15 Q And when you mean entrance of a projectile, what do you
16 mean by that?

17 A Well, there's obviously, there was a shooting and if
18 you close the door there is a entrance hole into the
19 door, a very obvious gunshot entrance from a
20 projectile.

21 Q I'm now handing you what has been marked as State's
22 Exhibit No. 7. What is that? Do you recognize it?

23 A State's Exhibit No. 7 is the truck in question at the
24 crime scene. It's what we're referring to as the truck
25 with the deceased body in the passenger seat and there

William McGowan - Direct Examination by Mr. Chandler

1 is a hole in the center of the driver's door, which if
2 you close the door, it goes through the driver's door,
3 exits the driver's door and into the seat where the
4 driver would have been sitting right below. And that's
5 what I'm referring to on State's Exhibit No. 8, is in
6 my opinion and the trajectory path follows that of the
7 hole in the door into the seat.

8 Q And the other exhibits that you have?

9 A State Exhibit No. 9 is a photograph of the seat on the
10 passenger side, the front seat, and you're still
11 looking in the driver's door and you can see the
12 deceased, part of the body, the foot and the shoe right
13 there. But that is an exit where, in my opinion, the
14 projectile exited that seat and entered the previous
15 photograph, State Exhibit No. 8 and exited this part of
16 the seat State Exhibit No. 9.

17 Q Okay. And the next -- the next exhibit?

18 A State's Exhibit No. 10 is a photograph from the
19 passenger side as the door opened and it is a
20 photograph of a projectile sitting on the carpet area
21 by the seat.

22 Q And what do you mean by projectile?

23 A It's a bullet that's been fired, minus the shell
24 casing, and that's what we call a projectile.

25 Q And what, if anything, did you do with that projectile?

William McGowan - Direct Examination by Mr. Chandler

1 A I collected it shortly after these photographs.

2 Q Okay.

3 A And State Exhibit No. 11 is just a close up of that
4 same projectile on the carpet area of that -- the
5 interior of the truck.

6 Q And were you responsible for processing the truck?

7 A Yes, sir, I was.

8 Q What did that process include?

9 A The first thing we do is photograph. We don't touch
10 anything until it's photographed. We photograph the
11 entire scene, photograph the truck, observe anything
12 that could be fragile at the time that needed to be
13 collected that would be destroyed by either processing
14 latents, whatever. I do recall processing the truck
15 for latent prints, using volcanic powder around the
16 doors and the interior of the truck. So we processed,
17 I processed the truck for latents and then myself and
18 Tim Carlton, once we felt safe, it was -- we removed
19 the body from the truck and took care of the body,
20 packaged the body up safely so no evidence would fall
21 from the body using appropriate material. Packaged the
22 body up, released the body to the Deputy Coroner, Tim
23 Carlton at the time. And I continued processing the
24 truck, collecting evidence out of the truck.

) 25 Q What exactly did you collect from the truck?

William McGowan - Direct Examination by Mr. Chandler

1 A I collected, I collected some latent prints from the
2 truck and collected two projectiles from the truck one
3 from the transmission hump and one from, it was under
4 the carpet of the transmission hump.

5 Q Is that reflected in the exhibits there?

6 A Yes, sir, this projectile right here, it's marked and I
7 marked it as I collected it, transmission hump, under
8 carpet. And that would have been this projectile right
9 here. And that's still State's Exhibit No. 14.

10 And the other projectile was the one depicted in
11 the photograph and that actually fell out as we moved
12 the body out of the truck. That actually fell out on
13 the ground and I actually collected this from the
14 ground, but that would have been the picture inside the
15 truck.

16 Q Okay. You collected it from the ground?

17 A Yes, sir. It actually -- when I actually picked it up
18 for the first time, it actually fell on the ground from
19 the truck.

20 MR. CHANDLER: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 By Mr. Chandler:

23 Q Now, Investigator McGowan, did you find any latent
24 prints connected with anybody in this case.

25 A I didn't do the latent print examination. I turned

William McGowan - Direct Examination by Mr. Chandler

1 those into evidence and our latent print examiner, we
2 would have either sent them over to Ray Drayer or sent
3 them up to SLED for examination, depending on what
4 other evidence we had from the scene.

5 Q With respect to the Budweiser beer cans that
6 Investigator Adams mentioned that he collected were you
7 able to find some on those?

8 A Yes, sir, I did process that using cyanoacrylate
9 fuming, which is commonly known as super glue fuming,
10 and there was no latents prints developed on those
11 cans.

12 Q All right.

13 MR. CHANDLER: No further questions.

14 THE COURT: Mr. Chesser?

15 MR. CHESSER: Your Honor, I have no questions
16 for this witness.

17 THE COURT: Thank you, sir.

18 Investigator, you may step down, thank you,
19 sir.

20 MR. CHANDLER: May we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON there was a bench conference out of
23 the hearing of the jury and the court reporter.)

24 THE COURT: All right. Ladies and gentlemen,
25 before we start with our next witness, we're going to go

William McGowan - Direct Examination by Mr. Chandler

1 ahead and take our midmorning break. I ask that you return
2 to the jury room. Do not discuss the evidence or testimony
3 that you have heard or seen thus far. We'll take about 15
4 minutes or so and we'll bring you back out. Thank you.

5 Oh, by the way, Ms. Rivers?

6 MS. RIVERS: Yes, sir?

7 THE COURT: You're jury foreperson. I will
8 collect a little stipend from you later for giving you that
9 privilege, but it won't be much, I promise.

10 (WHEREUPON the jury left the courtroom at 11:13
11 a.m.)

12 THE COURT: Thank you, sir. All right. We'll
13 take about 15 minutes.

14 (WHEREUPON a brief recess was observed.)

15 THE COURT: All right. Is counsel ready for
16 the jury?

17 MR. CHANDLER: The State's ready, Your Honor.

18 MR. CHESSE: The defense is ready.

19 THE COURT: Thank you, Counsel.

20 Bring them out.

21 (WHEREUPON the jury entered the courtroom at
22 11:36 a.m.)

23 THE COURT: Thank you, sir.

24 Thank you, ladies and gentlemen, we are ready
25 to continue.

Javon Rushon - Direct Examination by Mr. Chandler

1 At this time, Mr. Chandler, is the State ready
2 to call their next witness?

3 MR. CHANDLER: Yes, Your Honor. The State
4 calls Mr. Winfred Javon Rushon, or Rushon.

5 THEREUPON,

6 WINFRED JAVON RUSHON,
7 after being duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box,
9 stating your full name, spelling your last.

10 MR. RUSHON: My name is Winfred Javon Rushon.
11 Rushon, R-u-s-h-o-n.

12 **DIRECT EXAMINATION**

13 By Mr. Chandler:

14 Q Mr. Rushon, what do your friends call you?

15 A Javon.

16 Q Javon?

17 A Yes.

18 Q Javon, where do you live?

19 A I stay in Hephzibah, Georgia.

20 Q Do you know anyone who lives at the Savannah West
21 Apartments?

22 A I did back then when my sister stayed there.

23 Q On March 18, 2003, on or about March 18, 2003, did you
24 live there?

25 A I didn't stay there then. Like I said, my sister

Javon Rushon - Direct Examination by Mr. Chandler

1 stayed there and I used to go around there and hang
2 out.

3 Q Who's your sister?

4 A Qualistrus Rushon.

5 Q Okay. Do you know Jeremy Simuel.

6 A That's my sister's boyfriend.

7 Q Okay. So when you go visit with your sister, you're
8 visiting with her and Mr. Simuel as well?

9 A Uh-huh, and my nephew and my niece. That's my family.

10 MR. CHESSER: Excuse me. I'm having trouble
11 hearing.

12 THE COURT: Yes, sir. Mr. Rushon, would you --
13 you may have to lean up a little bit closer to that
14 microphone and speak up a little bit for me.

15 MR. RUSHON: Yes, sir.

16 By Mr. Chandler:

17 Q How did you know Jeremy?

18 A Through my sister. You know, that's my sister's
19 fiance.

20 Q Did you hang out with him, much?

21 A Yeah, all the time.

22 Q Did you know Thaddeus Curry?

23 A I mean, I didn't know him that well, I just met him
24 through Jeremy, you know. I mean, I met Thaddeus Curry
25 through Jeremy.

Javon Rushon - Direct Examination by Mr. Chandler

1 Q Did you know Anthony Savage?

2 A I met both of them through Jeremy. I mean I really
3 wasn't, had no acquaintance with them.

4 Q On March 18, 2003, did you have an opportunity to meet
5 up with the defendant, Mr. Thaddeus Curry?

6 A Kind of later on that night. I didn't meet him, you
7 know, when he ---

8 Q Just tell me what you know. On March 18, did you have
9 a chance to meet him?

10 A Later on that night.

11 Q Okay.

12 A I didn't see them when they came -- when they was ---

) 13 Q Could you describe the events that led up to that
14 night?

15 A Yeah.

16 Q You remember the night of March 18?

17 A Yeah.

18 Q Okay.

19 A Me my sister, Jeremy, my girlfriend was upstairs at the
20 house in Savannah West playing cards. Heath showed up,
21 I ain't ever seen Heath before, you know. Like I say I
22 was just over there. He asked for some marijuana. You
23 know what I'm saying, everybody said no. Tony came to
24 the door. He pulled -- Tony came to the door. He
) 25 pulled, you know, Heath, told him, said "I probably

Javon Rushon - Direct Examination by Mr. Chandler

1 take you somewhere," or whatever.

2 They left. Tony left. Him and Heath left
3 together. They came back and got -- Tony came back and
4 got Jeremy probably about 10, 15 minutes later, you
5 know. They stayed gone, I stayed to the house with the
6 females, you know, you know what I'm saying, they was
7 gone. So I went home. Me and my girl went home, like
8 it was like 2 o'clock in the morning when I left.

9 Something like that, probably 12:00 to 2:00. I don't
10 know, really.

11 Q After that what was the next thing?

12 A It was the 18th though.

13 Q Okay. That was early -- late night, 17th, early
14 morning the 18th?

15 A Yeah.

16 Q Okay. And what was -- when was the next time that you
17 ran into Jeremy?

18 A I said, Jeremy called me. Like I say, I stay in
19 Hephzibah. Jeremy called me, he was like your car has
20 been seen at a scene, at a murder or something.

21 Because, like I say, when they -- I was upstairs
22 playing cards and when they came, they was sitting on
23 my Chevy outside. That was my car outside they were
24 sitting on. So I was like, why would my name be
25 mention in something I ain't got nothing to do with or

Javon Rushon - Direct Examination by Mr. Chandler

1 whatever. So I rushed over there to see what was going
2 on. He was like, you know, the white boy, Heath, you
3 know, somebody came over, you know what I'm saying, he
4 had been killed or whatever. So I was like, "Dang."
5 You know, I ain't got nothing to do with it.

6 So later on that night, like I say, I went over,
7 as I'm trying to recall everything that happened. He
8 told me what happened was, Jeremy called me, he showed
9 me a statement, you know what I'm saying. Tony was in
10 the back or whatever. They called me over there,
11 showed me a statement. They were like, "Stick to it."
12 You know what I'm saying. I'm thinking, like, I ain't
13 got nothing to do with it. Actually I'm trying to stay
14 out of this situation. You know what I'm saying, keep
15 me and Jeremy out, because I don't understand why or
16 whatever.

17 But they showed me a statement and said, "Stick
18 to it." The detective, you know what I'm saying, the
19 detectives wanted to question me about it, you know,
20 since I was one of the males in the house or whatever.
21 So, you know, he asked me to meet him that day, but I
22 couldn't meet him, so I said, I can just come and meet
23 with you that morning because my name shouldn't even be
24 in this, you know.

25 Q Okay. When the investigator State met with you, did

Javon Rushon - Direct Examination by Mr. Chandler

1 you tell him the truth?

2 A No, to be honest, when I went up there, I said what was
3 in the statement, you know.

4 Q Okay. All right. After being with the investigator
5 after sticking to the statement, did you have
6 opportunity to meet with Thaddeus Curry?

7 A Later on that day. You know, like I say, Tony called
8 Thad or whatever and, you know, like I say, I took me
9 and Jeremy and Tony, you know what I'm saying, I drove
10 there because they were going to meet up with him or
11 whatever, later on that night, you know. Like I say I
12 still don't know what's going on. I'm lost to all of
13 this. I go to school, you know. I have a part-time
14 job. I ain't really got time for all that. So, you
15 know what I'm saying, we drove over there. I ain't
16 even familiar where we took him, but we picked him up
17 on the side of the road somewhere.

18 Q Picked up who on the side of the road?

19 A Thaddeus.

20 Q Thaddeus Curry?

21 A Yes.

22 THE COURT: Mr. Rushon, let me ask you to
23 something. Can you slow down a little bit for me and
24 listen to Mr. Chandler's questions and answer his questions
25 directly and just slow down a little bit. Okay?

Javon Rushon - Direct Examination by Mr. Chandler .

1 MR. RUSHON: Okay.

2 By Mr. Chandler:

3 Q So you picked up, you said you picked up Thaddeus,
4 where did you pick him up?

5 A I ain't familiar. I mean, I don't even know. They
6 were pointing directions.

7 Q Who's in the vehicle with you?

8 A Me, Jeremy, Tony and Thad..

9 Q Okay. Where did you guys go?

10 A I'm not -- we picked him up, we went to a car wash. We
11 stopped at car wash, you know what I'm saying.

12 Q Okay. What did you do at the car wash?

13 A To be honest, you know, they got out, Tony got out,
14 Thad got out, you know what I'm saying. I probably got
15 out once or twice and smoked me a cigarette. I was
16 just sitting in and out the car, whatever, you know
17 what I'm saying, him, Tony, you know what I'm saying,
18 having a discussion or whatever. Like I say, they
19 ain't talking to me or Jeremy or whatever. They doing,
20 they talking, Tony and -- Thaddeus telling Tony, you
21 know what I'm saying, something about a jacket, "Get
22 rid of it," you know what I'm saying, like a bug in my
23 ear, you know what I'm saying.

24 Q Did you hear Mr. Curry say anything specific?

25 A "The hammer came off the gun." "They'll never find

Javon Rushon - Direct Examination by Mr. Chandler

1 it." Like I say, it was just a bug in my ear, you know
2 what I'm saying. They asking me questions because I
3 heard that or whatever, so when I went up there to take
4 the polygraph test, I failed it because I had
5 information.

6 Q Going back to ---

7 MR. CHESSER: Your Honor, I just ask that, ask
8 that response stricken.

9 THE COURT: Ladies and gentlemen, disregard the
10 witness's last statement regarding the polygraph test. It
11 has no bearing in your consideration on the evidence in the
12 case.

13 And Mr. Rushon, we, I promise you we'll take
14 all the time needed to hear your testimony, so just, don't
15 be nervous, slow down and listen to the question and try to
16 answer that question that's posed to and I promise you,
17 we'll listen to all of your response, sir.

18 MR. RUSHON: All right.

19 By Mr. Chandler:

20 Q What specifically did you hear Mr. Curry -- what, if
21 anything, did you hear Mr. Curry mention about the gun?

22 A "They would never find it." "The hammer came off of
23 it." You know, "It was chopped up." I just told them
24 what I heard. I mean, like I say, I ain't got nothing
25 to do with it. You know what I'm saying, I didn't know

Javon Rushon - Cross-Examination by Mr. Chesser

1 what was going on then, I still don't know what's going
2 on. Like I say, I mean I feel like he mentioned it, I
3 told them what I know. Like I say, I don't know too
4 much about the situation. I just told what I heard.

5 MR. CHANDLER: Beg the court's indulgence.

6 THE COURT: Yes, sir.

7 By Mr. Chandler:

8 Q No further questions. Please answer any questions
9 Mr. Chesser has for you?

10 THE COURT: Mr. Chesser?

11 **CROSS-EXAMINATION**

12 By Mr. Chesser:

13 Q Mr. Rushon, with respect to this conversation that you
14 overheard, you really couldn't tell whether Tony was
15 saying something or whether Thaddeus Curry was saying
16 something, could you?

17 A I'm telling you -- I'm saying, we was all there
18 together. I mean I could see who was talking to who.

19 Q Right. I mean, isn't it a fact, you don't know whether
20 Tony was talking about this gun or whether it was
21 somebody else, do you?

22 A I'm telling you who was talking about the gun.
23 Thaddeus Curry said that the clip came off the hammer I
24 guess when it happened or whatever; asked them, asking
25 Tony did he get rid of a jacket or something. Like I

Javon Rushon - Cross-Examination by Mr. Chesser

1 say, it was chopped up, but Thaddeus Curry was talking
2 to Tony about it.

3 Q You remember a conversation that you had with
4 Investigator David Kuneman on June 20th, or excuse me,
5 June 30th, of 2003?

6 A In Aiken? Talking about the detective?

7 Q I believe it was at your apartment?

8 A Yeah, he did come down and he spoke to me and my
9 sister. I forgot.

10 Q Okay. At that time, didn't you tell him that you
11 weren't in the conversation and you were just catching
12 it a little word by word?

13 A I mean, basically, you know, I mean they told me when
14 we was there -- I wasn't -- I wasn't in a discussion,
15 see but before we left they were like man, whatever you
16 heard is between us four. And I was like, you know,
17 whatever.

18 Q Didn't he ask you whether you heard Thaddeus say that
19 the hammer came off and you said, "I didn't say
20 Thaddeus said that." Isn't that what you told him
21 then?

22 A I don't recall saying that.

23 Q Okay. And that they mentioned the starter jacket, but
24 you didn't know who had said what, isn't that what you
25 told David Kuneman on June the 30th, of 2003?

Javon Rushon - Cross-Examination by Mr. Chesser

1 A I told you I don't recall that.

2 MR. CHESSER: That is all the questions I have.

3 THE COURT: Thank you, sir.

4 Anything further, Mr. Chandler?

5 MR. RUSHON: Because, like I say, when the
6 statement, when I first ---

7 THE COURT: Mr. Rushon, there's nothing --
8 there's no question.

9 MR. CHANDLER: No further questions, Your
10 Honor. The State would like just a few minutes break.

11 THE COURT: Yes, sir.

12 Mr. Rushon, you may step down, sir. Thank you,
13 sir.

14 MR. RUSHON: All right.

15 THE COURT: All right. Ladies and Gentlemen of
16 the Jury, we need to get set up for the next testimony, so
17 it's going to take about 5 minutes, if you all would return
18 to the jury room. Do not discuss the evidence or testimony
19 you've heard or seen thus far, we'll bring you back out
20 very shortly. Thank you.

21 (WHEREUPON the jury left the courtroom at 11:49
22 a.m.)

23 THE COURT: All right. We'll take a 5 minute
24 recess.

25 (WHEREUPON a brief recess was observed.)

Javon Rushon - Cross-Examination by Mr. Chesser

1 THE COURT: Mr. Chandler, the State ready to
2 proceed?

3 MR. CHANDLER: Yes, Your Honor, but prior to
4 bringing the jury in, the State and the defense has
5 stipulated to the chain on the projectiles, gun fragments,
6 as well as the gunshot residue kit that's going to be
7 submitted and the State is going to bring in the testimony
8 of experts in the firearms identification, as well as trace
9 evidence.

10 THE COURT: Okay. Very well. Thank you.

11 All right. We're ready to bring them out.

12 (WHEREUPON the jury entered the courtroom at
13 12:02 p.m.)

14 THE COURT: Okay. Thank you, sir.

15 Ladies and gentlemen, we appreciate your
16 patience. We are ready to continue.

17 Mr. Chandler?

18 MR. CHANDLER: Thank you, Your Honor. The
19 State calls Ms. Kimberly Black with the State Law
20 Enforcement Division.

21 THEREUPON,

22 KIMBERLY BLACK,
23 after being duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box,
25 stating your full name, spelling your last, please.

Kimberly Black - Direct Examination by Mr. Chandler

1 MS. BLACK: Kimberly Thigpen Black, B-l-a-c-k.

2 DIRECT EXAMINATION

3 By Mr. Chandler:

4 Q Ms. Black, where do you work?

5 A I'm employed with the Law Enforcement Division, also
6 known as SLED, located in Columbia.

7 Q And what are your duties at the South Carolina Law
8 Enforcement Division?

9 A I am a forensic chemist, assigned to the trace evidence
10 department. In the trace evidence department we
11 routinely receive items of evidence that are collected
12 at a crime scene that usually is found very small
13 amounts. Typically, it would not be visible to the
14 naked eye. The work that I perform in the trace
15 evidence department almost always requires some sort of
16 microscopic technique for analysis.

17 Q Okay. And what is your specific training in reference
18 to your ability to analyze these findings?

19 A I received a Bachelors of Science Degree chemistry from
20 Frances Marion College in Florence, South Carolina. I
21 taught under graduate organic chemistry laboratory at
22 the University of South Carolina in Columbia for a
23 year. I worked for a private company in an organic
24 analytical laboratory for a year and-a-half. I was
25 hired by SLED in 1992, at that particular time assigned

Kimberly Black - Direct Examination by Mr. Chandler

1 to the drug analysis department. I transferred to the
2 trace evidence department in 1995 where I am currently
3 employed. Throughout my 12 years with the division, I
4 have attended numerous courses, classes and work shops,
5 both in the fields of analytical chemistry, as well as
6 forensic chemistry. Part of the trace evidence
7 training program also included 3 years of in-house
8 training, where I learned specific techniques that are
9 used in the identification and analysis of trace
10 evidence.

11 Q Okay. Ms. Black, have you ever -- have you ever been
12 qualified as an expert in trace evidence before?

13 A Yes, I have.

14 Q How many times?

15 A Approximately 35 times.

16 MR. CHANDLER: At this time, Your Honor, the
17 State would like to submit Ms. Black as qualified as an
18 expert in trace evidence?

19 THE COURT: Any objection, Mr. Chesser?

20 MR. CHESSER: No objection, Your Honor.

21 THE COURT: Okay. Without objection, she's so
22 qualified.

23 By Mr. Chandler:

24 Q Ms. Black, I'm now handing you what has been marked as
25 State's Exhibit No. 16. Could you describe the

Kimberly Black - Direct Examination by Mr. Chandler

1 contents of the exhibit.

2 A Yes, State's Exhibit 16 which bears a lab number that
3 corresponds to the particular case involving Heath
4 Hamilton as the victim is a brown envelope which
5 contains a gunshot residue kit, which you see here. I
6 received this gunshot residue kit in association with
7 this particular case in April of last year.

8 Q And what did they ask you to do?

9 A A gunshot residue kit is typically submitted to me and
10 the other analysts in our department for us to take a
11 look at the materials or items of evidence to determine
12 whether or not there's an indication that a particular
13 person may have come into contact with a firearm, a
14 discharged firearm or maybe handled a gun. Gunshot
15 residue kits are samples that are collected from an
16 individual's hands. A kit typically is composed of
17 cotton swabs and metal disks. Both are designed to
18 collect the materials that are on a person's hands.

19 We collect or recommend that the officers
20 collect samples from both palms, as well as the backs
21 of both hands. What I am looking for when I receive a
22 gunshot residue kit in the laboratory, I'm looking for
23 metals that would be characteristic of the ammunition
24 that's fired in a handgun or in a gun. To kind of
25 understand what I'm looking for, you'd kind of need to

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1 understand the gunshot residue cloud and how it evolves
2 or how it is created by the handgun.

3 When a gun is fired there is a cloud of material
4 which is expelled from that gun. The cloud is mostly
5 expelled from the muzzle end of the gun. However,
6 material can be expelled from any opening that may be
7 in the gun. For instance, when you have a revolver you
8 have a cylinder gap. The cloud will also be expelled
9 from the cylinder gap, as well as the muzzle end of the
10 gun. With a semiautomatic handgun, you have an
11 ejection port, as well as, obviously, the cloud is
12 created at the ejection port, as well as from the
13 muzzle end of the gun.

14 What you have is, you have a huge cloud of
15 material which travels a short distance away from the
16 gun toward the target. It will then curve back around
17 the gun and will encircle or engulf the gun itself as
18 well as the area which is in close proximity to the
19 gun.

20 The particles that are found in this particular
21 cloud are composed of metals that are found in the
22 ammunition which is fired in the gun. These particles
23 are microscopic. They are not visible to the naked eye
24 and as I mentioned earlier, do require some sort of
25 microscopic technique for analysis back in the

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1 laboratory. The metals that I'm looking for are found,
2 as I mentioned in the ammunition, but specifically in
3 the gun primer formulation that's used in the
4 ammunition. This cloud of material and these particles
5 are deposited on any object which is located in that
6 cloud.

7 For instance, I would expect to find gunshot
8 residue particles on the gun itself, on the hands of
9 the shooter, on the victim if the victim is in close
10 enough proximity to the gun when the gun is fired and I
11 may also find the materials on anyone standing perhaps
12 right next to the victim or right next to the shooter
13 at the time the gun is fired.

14 This gunshot residue kit was submitted to me
15 from the victim, Heath Hamilton. It was my
16 responsibility to look at those samples to see if I had
17 any materials on those samples that were indicative of
18 Mr. Hamilton being exposed to the gunshot residue
19 cloud.

20 Q And what were your findings?

21 A After analyzing the samples in the kit I found round
22 lead particle on the left palm and the back of Mr.
23 Hamilton's left hand. Round lead particles are one of
24 the components found in gunshot residue. Lead is one
25 of the metals used in the gun primer formulation. It's

Kimberly Black - Direct Examination by Mr. Chandler

1 also found in the bullet itself. Round lead particles
2 would be an indication to that Mr. Hamilton did -- was
3 exposed to the gunshot residue cloud or perhaps even
4 handled a gun, which would serve to deposit this
5 material on his hands.

6 Q Now based on your findings was the particles found on
7 Mr. Hamilton consistent with the gunshot residue cloud
8 or a shooting of the gun.

9 A It could be from the cloud itself. It could also be
10 from material found on the gun itself. The test is
11 designed simply to give us an indication or to give me
12 an indication if this person could have been exposed to
13 these materials. That material could have been
14 deposited from the shooting, it also could have been
15 deposited from Mr. Hamilton handling a gun, maybe
16 loading or unloading a gun.

17 However, it is very common in our laboratory to
18 find materials on the hands of gunshot victims simply
19 because we know that they've been exposed to a cloud
20 because they have a gunshot wound. Because Mr.
21 Hamilton did have a gunshot wound in this particular
22 case, most likely this material did come from the shot
23 that resulted in the gunshot wound.

24 Q Okay.

25 MR. CHANDLER: Beg the Court's indulgence.

Kimberly Black - Cross-Examination by Mr. Chesser

1 THE COURT: Certainly.

2 By Mr. Chandler:

3 Q You indicated that the particles were located, at least
4 one particle was located on the back of the hand. How
5 could he potentially get it on the back of his hand?

6 A There can be a transfer of material if someone has
7 handled a gun and perhaps they touched the back of
8 their hand. It could be deposited that way.
9 Typically, however, in situations where we do know that
10 someone has simply picked up a gun and moved it, the
11 majority of the particles are going to be on the palms
12 of the hands, however, we can't totally rule out the
13 possibility of the transfer.

14 Q But with the cloud, could it potentially be on the hand
15 if it was just a result of the cloud?

16 A Yes, absolutely.

17 Q Okay. No further questions.

18 THE COURT: Thank you, sir.

19 Mr. Chesser?

20 MR. CHESSER: A couple of questions.

21 **CROSS-EXAMINATION**

22 By Mr. Chesser:

23 Q Ms. Black, in addition to lead particles, do you test
24 for the presence of other metals?

25 A We do. We look for antimony and barium, as well as

Kimberly Black - Cross-Examination by Mr. Chesser

1 lead, yes.

2 Q Okay. Is that a different kind of test, or was that
3 test performed in this case?

4 A It's a part of the same test. When I do the analysis,
5 I'm looking for all three of those materials.

6 Q Okay. With respect to barium and antimony, what were
7 the results?

8 A I did not find any barium particles of significance in
9 the samples that I analyzed. I did, however -- I'm
10 sorry, let me correct that. I did find a non-round
11 residue particle on the back of the left hand which was
12 composed of barium, antimony and lead. In addition to
13 the round lead particles that I found on the back of
14 the left hand as well as the left palm.

15 Q What is the significance of round versus not round?

16 A When a gun is fired as I mentioned earlier and you have
17 that cloud, which travels away from the gun and then
18 curves back around and engulfs the gun, the action that
19 you have with the pressure or the force behind the
20 particles, as well as the heat that you have in the
21 gun, once those particles are exposed to cooler
22 temperatures, with the tremendous amount of pressure
23 behind them and they curve back around to engulf the
24 gun, that serves to actually cause the particles to
25 have rounded edges or to have more of a roundish shape.

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1 Non-round particles can also be seen as a part of that
2 cloud. They're just simply not exposed to the exact
3 same conditions to form the roundish shape. Non-round
4 gunshot residue particles are still indicative of the
5 gunshot residue cloud, however, they are not as
6 specific as a round particle would be containing those
7 materials.

8 Q Well, if I understand what you're saying, a round
9 particle would be more consistent with the cloud coming
10 back and enveloping the individual who fired the
11 weapon, is that right?

12 A Yes, but not all of the particles are going to undergo
13 the exact same conditions, so you could have some
14 non-round particles that would still be a part of that
15 cloud as well. The round particles are just defective
16 by that actual motion as well as the pressure and the
17 super cooling that you have occurring when the gun's
18 fired.

19 Q What is the source of the antimony and the barium?

20 A The antimony and barium, as well as the lead, all
21 originate in the gun primer that is found in the
22 ammunition. The lead is also contributed by the bullet
23 itself. So you have two sources for the lead, as
24 opposed to one source for the barium and the antimony.

25 Q Okay. Thank you, that's all the questions I have.

Kimberly Black - Redirect Examination by Mr. Chandler

1 THE COURT: Thank you.

2 Mr. Chandler, anything?

3 MR. CHANDLER: Just one question.

4 **REDIRECT EXAMINATION**

5 By Mr. Chandler:

6 Q Ms. Black, with reference to the gunshot residue, how
7 long would it stay on the hands of a particular
8 shooter?

9 A When we are talking about a living individual ---

10 Q Yes.

11 A We do not expect to find that material after about 6
12 hours after a shooting. With a deceased individual,
13 however, that time window is opened a little more. The
14 reason for that, this material is very fragile
15 material, which is just lightly deposited on the
16 surface of the skin. Normal activities can serve to
17 remove it, washing of the hands, rubbing the hands
18 together and so forth; also perspiration. We don't
19 have to worry about those factors when we're talking
20 about a deceased individual, simply because there's no
21 activity.

22 Q Thank you. Nothing further.

23 THE COURT: Anything further?

24 MR. CHESSER: Nothing further, thank you.

25 THE COURT: Thank you.

Dan DeFreese - Direct Examination by Mr. Chandler

1 You may step down, thank you.

2 If the State would call their next witness.

3 MR. CHANDLER: Thank you, Your Honor. The
4 State calls Mr. Dan DeFreese, of the State Law Enforcement
5 Division.

6 THEREUPON,

7 DAN DEFREESE,

8 after being duly sworn, testified as follows:

9 THE CLERK: Have a seat in the witness box,
10 stating your full name, spelling your last, please.

11 MR. DEFREESE: My name is Frank Dan Defreese.
12 D-e-F-r-e-e-s-e.

13 **DIRECT EXAMINATION**

14 By Mr. Chandler:

15 Q Mr. DeFreese, where are you employed?

16 A I work for the South Carolina Law Enforcement Division,
17 also. But I'm assigned to the laboratory, to the unit
18 where we do the identification of firearm and tool mark
19 evidence.

20 Q And what are your duties there?

21 A It's principally the analysis of firearm evidence,
22 including bullets, cartridge cases shotgun pellets and
23 other ammunition components; and the guns themselves.
24 And also the analysis of various tools and usually
25 physical security devices like locks or safes or some

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1 other thing that has been attacked by those tools for
2 the purpose of identifying bullets and cartridge cases
3 with the guns that fired them and the tools with the
4 tool marks that they made.

5 Q Have you ever been qualified in court as a firearms
6 expert?

7 A Yes, sir, I have.

8 Q What is your educational background, first of all?

9 A Well, I'm a graduate of the University of South
10 Carolina in Columbia. And my principle training in the
11 field of firearms and tool mark identification, I
12 received at SLED. After my employment with SLED, I was
13 first assigned to the firearms laboratory and I
14 undertook a period of instruction that lasted about 2
15 and-a-half years.

16 I studied the technique of firearm and tool mark
17 identification from Lieutenant Millard Cate, who
18 established the SLED lab when SLED itself was
19 established in 1947. I also studied the techniques
20 under Lieutenant Karl Stokes, who was assigned there at
21 that time.

22 And I've received classes of instruction
23 relating to firearm and tool mark related items from
24 both the Criminal Justice Academy, the FBI National
25 Academy and other specialized courses, but my principle

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1 was at SLED. After I completed that period of
2 training, I began accepting cases on my own and
3 testifying as to my results. I've been doing that
4 since 1969. I've probably testified more than 600
5 times.

6 MR. CHANDLER: Your Honor, at this time the
7 State would like the ask that Mr. Dan DeFreese be qualified
8 as an expert in the firearms identification.

9 THE COURT: Any objection, Mr. Chesser?

10 MR. CHESSER: No objection, Your Honor.

11 THE COURT: Without objection, he is so
12 qualified and may testify as such.

13 By Mr. Chandler:

14 Q Mr. DeFreese, I am now handing you what has been
15 previously marked as State's Exhibit No. 15. Could you
16 please tell me what the contents are.

17 A Yes, sir, State's Exhibit 15 contains five fired 9mm,
18 Luger caliber cartridge cases.

19 Q Did you have an opportunity to evaluate or do some
20 analyzing of those particular shell casings?

21 A I did.

22 Q And what did you find in reference to those?

23 A I was asked to analyze these cartridge cases to see
24 whether they were fired by one firearm or by more than
25 one firearm. They are all, obviously, 9mm, Luger

Dan DeFreese - Direct Examination by Mr. Chandler

1 caliber. They all bear the same manufacturer's head
2 stamp and when I microscopically compared them with
3 each other, I found matching breach face impressions
4 which were left on these cartridge cases by the gun in
5 which they were fired.

6 When a cartridge is fired inside a firearm, a
7 number of things happens. One of them is at the base
8 of the cartridge, there's what we call a primer. The
9 primer is struck by the firing pin. The firing pin
10 sometimes can leave an identifiable mark on the primer.
11 This causes the primer to detonate or causes the primer
12 to start burning and makes the flash go through a small
13 hole in the base of the cartridge case and initiate the
14 powder that was inside the cartridge to burn.

15 The powder creates a high pressure inside the
16 cartridge case that seeks to normalize and it does that
17 by taking the path of least resistance, which is to
18 drive the bullet out of the gun. When -- as it's doing
19 this, it's also making pressure in all directions at
20 the same time. This pressure causes the back of the
21 cartridge case to be placed very very firmly against
22 the breech face of the firearm and the imperfections
23 that are on the breech face are transferred to the back
24 of the cartridge.

25 And as I said, I found the same matching

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1 individual characteristics on the bases or on the
2 primers of all five of these cartridge cases. From
3 that I was able to conclude that all five of these
4 cartridge cases were fired by the same gun.

5 Q Okay. With reference to State's Exhibit No. 15, did
6 you have any other findings?

7 A Well, I did in a sense, because there were other things
8 submitted, which you haven't given me yet.

9 Q I'm now handing you what has been previously marked as
10 State's Exhibit 14. Can you describe the contents of
11 that?

12 A Yes, sir, I can identify State's Exhibit 14. State's
13 Exhibit 14 contains two fired bullets and a number of
14 fired bullet fragments. The two fired bullets were
15 marked as being found on the ground when the victim was
16 removed from the passenger side of the truck and the
17 transmission hump under the carpet. The bullet
18 fragments were marked as bullet fragments, Heath
19 Hamilton. Now the largest fragment is a copper alloyed
20 bullet jacket fragment which is consistent with that of
21 a 9mm, Luger caliber bullet. And the two bullets are
22 also consistent with being 9mm, Luger caliber bullets.

23 And these are bullets that are constructed in
24 the way that the Spear Company constructs some of its
25 9mm, Luger caliber bullets. And the cartridge cases in

Dan DeFreese - Direct Examination by Mr. Chandler

1 Item 15 were all Spear brand cartridge cases. So while
2 I can't say that these three bullet or bullet fragment
3 specimens came from those cartridge cases, I can say
4 that they were consistent in their construction with
5 that of bullets that the Spear Company does put into
6 those the 9mm, Luger caliber cartridge cases.

7 Q Mr. DeFreese, with reference to the large copper
8 fragment that was taken, indicating Heath Hamilton,
9 where, in fact, was that taken from?

10 A Well it has an autopsy number on it and it has the
11 name, Heath Hamilton on it. I assume these are or were
12 removed from the body of the victim. They are
13 consistent with the kind of things I've seen removed
14 from the body of a victim. The -- when a bullet's
15 fired down the barrel of a gun, it comes into contact
16 with rifling. Rifling is on the interior surface of
17 the barrel of a rifled firearm, which includes pistols
18 and revolvers and rifles and carbines. It doesn't
19 usually include shotguns, although now there are even
20 some rifled shotguns. Rifling is there for the purpose
21 of gripping a bullet and imparting a spin on the bullet
22 to make the bullet stable in flight. Much in the same
23 way that a quarterback puts a spin on a football to
24 keep it from tumbling end over end, rifling is in the
25 barrel of a rifled firearm to grip the bullet and put a

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1 spin on it to keep it accurate in flight.

2 But we found by analyzing bullets that the
3 individual markings that are placed on bullets
4 represent a unique signature on a bullet from the
5 firearm in which it was fired. And where the bullets
6 are recovered in sufficiently undamaged condition it's
7 possible to identify a bullet back to the firearm
8 barrel in which it was fired or as in this case to
9 identify or attempt to identify bullets with each other
10 to see if they were fired from the same barrel.

11 And I attempted to do that with the three bullet
12 or bullet fragment specimens in Item 14. I observed
13 the same land and groove class characteristic, what we
14 refer to as the general rifling characteristics. That
15 is all three of them were 9mm, Luger diameter. All
16 three of them had land and groove spacing, consistent
17 with eight lands and grooves with right-hand twists.
18 All of them had the same width of lands and grooves.
19 But because of the damage that had been sustained by
20 these three bullets or bullet fragments, I was not able
21 to find sufficient individual matching markings to
22 conclude they were all fired by the same barrel, but
23 they could have been fired by the same barrel.

24 And because of their construction, all of these
25 specimens, bullet and cartridge case could have been

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1 fired by one gun but I can't say that they could not
2 have been fired by more than one gun, just based on
3 what I'm able to see.

4 Q Okay. What, if anything, with respect to the type of
5 gun did you find by examining the fragments?

6 A We have a data base that has numerical values for the
7 widths of lands and grooves for a great many firearm
8 manufacturers. When we have a case such as this where
9 there are bullets recovered but no firearm, we will
10 check that data base with the dimensions that we have
11 found on bullets to come up with a list of possible
12 manufacturers of firearms to tell the investigators
13 what they need to be looking for.

14 In this case, the -- given the dimensions of
15 eight land and groove, right-hand twists, 9mm, Luger
16 caliber, there were only two firearms in the data base
17 that have this general rifling characteristic. One of
18 them was a High Point Model C, 9mm, Luger caliber
19 pistol and the other was a High Point, it's a Model
20 995, 9mm caliber carbine. The pistol is about that
21 long and the carbine is about that long.

22 Q Can you describe the carbine?

23 A The carbine is a -- it has a plastic stock and it has a
24 metal, a sheet steel receiver cover. It has a hand
25 guard that's a ventilated sheet steel hand guard and

Dan DeFreese - Cross-Examination by Mr. Chesser

1 has a very tall front site. And it has -- most of them
2 have an adjustable rear site on the top of the receiver
3 cover. The magazine, just as in the pistol, loads into
4 the grip of the pistol. It has a grip that comes down
5 with a pronounced grip, as opposed to having the grip
6 built into the butt stock.

7 Q Okay. And could you describe a High Point pistol just
8 to ---

9 A It's a fairly typical looking semi-automatic pistol.
10 It's sort of blocky looking and has a very large slide.
11 And some of them are made with plastic frames and some
12 with metal frames.

13 Q Okay.

14 MR. CHANDLER: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. CHANDLER: No further questions.

17 THE COURT: Thank you, sir.

18 Mr. Chesser?

19 **CROSS-EXAMINATION**

20 By Mr. Chesser:

21 Q Mr. DeFreese, when you talk about a 9mm, Luger caliber,
22 what is the significance of the term Luger?

23 A It's just a caliber designation. The 9mm, Luger
24 caliber is known by, many names. It's popularly
25 known -- it's most popularly known as 9mm, Luger and

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1 that's why we refer to it as that. In fact, on the
2 High Point pistols and the carbines, they're just
3 marked 9mm with nothing else on it than that. Some
4 guns are called 9mm, Luger; some 9mm, Parabellum; some
5 are marked 9mm, Nato and some of them will just be like
6 9x19, which is the cartridge case length. But it's
7 just the name of the cartridge.

8 Q Does it refer to the diameter of the bullet?

9 A It does.

10 Q Okay. So not all 9mm bullets are the same diameter?

11 A Most of them are the same diameter, all but one. Most
12 of them have a diameter, a bullet diameter of about 35
13 and-a-half caliber. It's just very slightly smaller
14 than the diameter of a .38 Special.

15 Q And this Luger again is a -- has a unique diameter when
16 you're talking about a 9mm, Luger?

17 A Well, for instance a 9mm, Luger and a number of other
18 European 9mm calibers all use that same 9mm diameter.
19 There are other 9mm caliber firearms other than 9mm,
20 Luger.

21 Q Today you've testified that the lands and grooves and
22 diameter of the lands and grooves fit two pistols or
23 two weapons in your data base, is that right?

24 A Correct.

25 Q I was -- in your report, you talk about possible

Dan DeFreese - Cross-Examination by Mr. Chesser

1 firearms include but are not limited to, you talk about
2 the High Point pistol and the High Point carbine.

3 A Exactly.

4 Q If your testimony is that those are the only two in
5 your data base, is this -- in your report it is not
6 limited to that, that just means that your data base is
7 not complete or what is that? How do you explain that?

8 A What it means is, we can't be sure that no one else at
9 some other time, that we are just not aware of didn't
10 make an eight land and groove, right-hand twist, 9mm,
11 Luger caliber firearm that we haven't yet found. So
12 we're not so presumptuous as to say that it can't
13 possibly be anything else, it's just that our list
14 includes, but isn't limited to what we know of, which
15 were the two High Points.

16 Q All right.

17 A We're just unaware of any other gun that has that
18 dimension, but we are not saying that there isn't one.

19 Q Yes, sir, thank you.

20 MR. CHESSER: No further questions.

21 THE COURT: Thank you, sir.

22 Mr. Chandler, anything further?

23 MR. CHANDLER: No questions, your Honor.

24 THE COURT: Thank you, sir. You may step down.

25 MR. DEFREESE: Thank you.

1 (WHEREUPON the witness is giving the exhibits
2 to the court reporter.)

3 THE COURT: Let me ask while the witness is
4 doing that, does counsel want to break for lunch now, or
5 are you prepared to call your next ---

6 MR. CHANDLER: The State rests.

7 THE COURT: Break now?

8 MR. CHESSE: We can take a lunch break.

9 THE COURT: Yes, sir.

10 MR. CHESSE: Your Honor, may we approach?

11 THE COURT: Yes, sir.

12 (WHEREUPON there was a bench conference out of
13 the hearing of the jury and the court reporter.)

14 THE COURT: Thank you, Counsel.

15 All right. Ladies and gentlemen, we're going
16 to break now for lunch. I remind you again not to discuss
17 the case or any testimony or evidence. Obviously, don't
18 let anybody try to discuss it with you as well during the
19 lunch break. I know that yesterday there was a reporter
20 here in the courtroom and I'm not quite sure whether there
21 was any local media coverage, so I just remind you again
22 not to read anything or watch any news accounts of this
23 particular trial until it's all over with and you all have
24 been dismissed. We'll get started again in about, I will
25 say 2 o'clock. If you can be back in the jury room about 5

1 after 2:00 or so, we'll be ready to get started shortly
2 after that. That will give you a full hour and-a-half to
3 get some place and eat and get back. So we'll say about 5
4 or so after 2 o'clock, be ready to get started.

5 Thank you, ya'll enjoy your lunch.

6 (WHEREUPON the jury left the courtroom at 12:38
7 p.m.)

8 THE COURT: Thank you, sir.

9 Okay. I understand the State is likely to rest
10 when we come back from lunch?

11 MR. CHANDLER: Likely, Your Honor.

12 THE COURT: Okay. Well, obviously, over lunch
13 if you all think of something else you need to do, then
14 we'll continue on.

15 Mr. Chesser, at that point I'd say we would
16 take up your motions at that point and I will also go ahead
17 at that point and discuss with Mr. Curry his rights to
18 testify or not testify. But I'll give you a chance over
19 lunch to talk about all those things as well.

20 MR. CHESSER: Thank you, Your Honor.

21 THE COURT: Thank ya'll. All right. We'll see
22 ya'll a little bit after 2 o'clock, about 5 after 2:00.

23 MR. WEEKS: Your Honor?

24 THE COURT: Yes, sir?

25 MR. WEEKS: Before we leave, you probably want

1 us to discuss at some point requests to charge.

2 THE COURT: Yes, sir.

3 MR. WEEKS: I didn't know whether you wanted to
4 talk about that before lunch or after we rest and see where
5 we're at that point.

6 THE COURT: Why don't we -- I know you still
7 have, assuming I don't grant your motions, Mr. Chessser,
8 there was some discussion at sidebar regarding any case the
9 defense might put on. If the defense does go forward do
10 you anticipate the majority of the afternoon being taken
11 up?

12 MR. CHESSER: Your Honor, I don't think that
13 our case would take over 45 minutes.

14 THE COURT: Okay. Why don't we do this, when
15 we come back from lunch, we'll meet back in chambers and I
16 will be glad to look over anything you all have in terms of
17 request to charge. And we can sort of talk about those a
18 little bit and then after the defense, if they, obviously,
19 with the caveat that I'll hear the motion and should I deny
20 the motions, after the defense's case is put up, we'll take
21 another break and finalize anything. I'd like for ya'll to
22 have a copy or at least to go over any charge I give before
23 your closing arguments. I'll give you that chance.

24 Okay. We'll see ya'll shortly after 2:00.

25 MR. CHESSER: Thank you, Your Honor.

1 (WHEREUPON a lunch recess was observed.)

2 THE COURT: I understand the State is going to
3 rest when we bring the jury back in.

4 MR. CHANDLER: That's correct, Your Honor.

5 THE COURT: Rather than bringing them in and
6 have you rest, we'll go ahead and take up the motions and
7 let ya'll rest in front of the jury when we bring them out.

8 Mr. Chesser, I will be glad the hear from you,
9 sir.

10 **MIDTRIAL MOTIONS**

11 MR. CHESSER: Thank you, Your Honor. Your
12 Honor, the defendant here is charged with murder and
13 possession of a weapon in the commission of a violent
14 crime. At this time, the defendant would move for a
15 directed verdict on the murder charge, on the basis that
16 there is no direct evidence or substantial circumstantial
17 evidence that would show that he actually participated or
18 caused the injury to the decedent in this case. And based
19 on the lack of any evidence, we would move for a directed
20 verdict of not guilty on the murder charge, Your Honor.

21 THE COURT: Mr. Chandler, any reply?

22 MR. CHANDLER: Thank you, Your Honor. Given
23 the evidence in the light most favorable to the State in
24 the case, of course, the State has to prove the killing of
25 another murder, the killing of another with malice

1 aforethought. In addition to proving that, the State
2 provided evidence to the fact that this actually occurred
3 in Aiken County, being in Beech Island. The State did
4 provide evidence through the testimonies of Ronald Coursey
5 and also Anthony Savage that, in fact, Mr. Thaddeus Curry
6 was the trigger man who shot the gun. We also provided
7 evidence by way of Dr. Inas Yacoub, of the Newberry
8 Pathological Associates in reference to that gunshot being
9 the proximate cause of the death of Mr. Hamilton.

10 In addition, in addition to that, the evidence
11 indicated that, in fact, Mr. Curry was participating, or
12 Mr. Curry and also Mr Savage were participating in a drug
13 deal. They were coming to a drug deal with no drugs, but a
14 gun. That would -- the plan, there's enough evidence, at
15 least to give to a jury in reference to some level of
16 malice aforethought based on their actions that led up to
17 the shooting of Mr. Heath Hamilton.

18 Also, along those same lines, it was a black
19 bag that Mr. Curry carried with him to the shooting
20 location and that black bag, based on the testimony of Mr.
21 Anthony Savage contained a rifle, 9mm rifle type carbine,
22 carbine weapon. And it was also described and consistent
23 with the testimony of Dan DeFreese as a weapon that could
24 fire the shots that ended up being fatal to Mr. Heath
25 Hamilton.

1 And based on that and given all the evidence in
2 the light most favorable to the State, we ask that you
3 respectfully deny the motion given by the defense.

4 THE COURT: Anything further, Mr. Chesser?

5 MR. CHESSER: No, Your Honor.

6 THE COURT: Okay. I respectfully deny the
7 motion for a directed verdict on the murder count. It's
8 clearly in the light most favorable to the State, but just
9 clearly on the evidence that was presented there's direct
10 eyewitness testimony. Whether the jury believes that or
11 not is for them to weigh and not this court. And I
12 respectfully deny the motion for a directed verdict.

13 As I understand, are you making separate
14 motions as to the other charge as well?

15 MR. CHESSER: On the same grounds, Your Honor.

16 THE COURT: You are? Okay. Unless there is
17 something else you needed to add as to that ---

18 MR. CHESSER: I just stand, basically, on the
19 same basis as the motion I made with respect to the murder
20 charge, Your Honor. And I would move for a directed
21 verdict on the possession of a weapon during the commission
22 of a violent crime charge.

23 THE COURT: Thank you, sir. Likewise, I would
24 respectfully deny that motion as well.

25 ///

Thaddeus Curry - Examination by the Court

EXAMINATION OF THE DEFENDANT

By the Court:

Q Mr. Curry, if you'll stand up, sir. I know you and Mr. Chesser had a chance over the lunch break, and I'm sure the proceeding of the trial and you discussed your rights at trial. Among your rights, sir, is your right to testify or not testify at trial on your own behalf, you understand that right, sir?

A Yes, sir.

Q That is your right and yours alone, sir. You ultimately are the one who has to make the decision as to whether or not you want to testify. You understand that?

A Yes, sir.

Q Have you had an adequate opportunity to discuss your decision?

A Yes, sir.

Q Or consideration with Mr. Chesser?

A Yes, sir.

Q You've had a time to talk to him about that?

A Yes, sir.

Q You do understand, sir, that you don't have to do anything, to present any evidence or testimony at trial on your own behalf. The State has the burden of proving you guilty at all times throughout this trial,

Thaddeus Curry - Examination by the Court

1 you understand that?

2 A Yes, sir.

3 Q And I don't need to know whether you -- I understand
4 that you may have already come to a decision, I don't
5 necessarily need to know what that decision is, but I
6 just need to make sure that you do understand your
7 rights to testify or not testify and that you've had an
8 adequate opportunity to meet with Mr. Chesser and
9 discuss that specific right. Do you have any questions
10 at all before going forward, sir, about that right?

11 A No, sir.

12 Q Okay. Thank you, sir.

13 THE COURT: All right. If nothing else
14 further, we'll bring the jury back in, we'll let the State
15 rest on the record and Mr. Chesser, has, I believe a couple
16 of witnesses to call.

17 (WHEREUPON the jury entered the courtroom at
18 2:32 p.m.)

19 THE COURT: Thank you, ma'am.

20 Thank you, ladies and gentlemen, I appreciate
21 your patience back in the jury room. We're ready to
22 continue at this point.

23 Mr. Chandler?

24 MR. CHANDLER: Your Honor, the State rests.

25 THE COURT: Okay. Thank you, sir.

David Kuneman - Direct Examination by Mr. Chesser

1 Ladies and gentlemen, that is all the evidence
2 and testimony you're going to hear from the State at this
3 point in the case. At this point let me see if the defense
4 has anything they wish to present.

5 Mr. Chesser?

6 MR. CHESSEY: Thank you, Your Honor. We do.
7 The defense would call David Kuneman to the stand.

8 THEREUPON,

9 DAVID KUNEMAN,
10 after being duly sworn, testified as follows:

11 THE CLERK: Have a seat in the witness box,
12 stating your full name, spelling your last for the court,
13 please.

14 MR. KUNEMAN: My name is Christopher David
15 Kuneman, K-u-n-e-m-a-n.

16 **DIRECT EXAMINATION**

17 By Mr. Chesser:

18 Q Mr. Kuneman, where do you live?

19 A I live in North Augusta, South Carolina.

20 Q And where do you work?

21 A I'm a private investigator with Gene Staucup and
22 Associates in Augusta.

23 Q How long have you worked as a private investigator?

24 A Approximately 7 years.

25 Q Is there a licensing or registration procedure to be a

David Kuneman - Direct Examination by Mr. Chesser

1 private investigator?

2 A Yes, sir, there is.

3 Q And what does that consist of?

4 A Actually to get a license in the State of South
5 Carolina you have to have a clean criminal background,
6 and be of up-standing moral turpitude. And you must
7 maintain a certain amount of hours of continuing
8 education issued by SLED.

9 Q Okay. So -- and you've been doing that for 7 years?

10 A Yes, sir.

11 Q Did you have an occasion to interview Winfred Javon
12 Rushon on June 30, 2003?

13 A Yes, sir, I did.

14 Q Okay. And you were working on this case at my behest
15 is that right?

16 A That's correct.

17 Q Okay. Now, Mr. Rushon, he talked with you about -- let
18 me ask you this, you understand that what we're talking
19 about here is the death of Heath Hamilton on May 17, of
20 2003, right?

21 A Was it May 17, or March.

22 Q Well, excuse me, March -- actually the morning of March
23 18, of 2003?

24 A Yes, sir.

25 Q Okay. Now, so you discussed with Mr. Rushon a

David Kuneman - Direct Examination by Mr. Chesser

1 conversation that he -- I mean he was?

2 MR. WEEKS: Your Honor, I object to the leading
3 of this witness.

4 THE COURT: Yes, sir, I will let you set up
5 your question, but I'll sustain the objection to the
6 leading.

7 By Mr. Chesser:

8 Q Now, did you talk with him about a conversation between
9 Mr. Curry and Anthony Savage and Mr. Rushon and Jeremy
10 Simuel?

11 A Yes, sir, I did.

12 Q Okay. You recall about when this conversation took
13 place?

14 A To the best of my recollection the conversation took
15 place -- the, I believe it was a day or two after the
16 shooting had taken place.

17 Q Okay. So, now, what did Mr. Rushon tell you about that
18 conversation a day or two after the shooting took
19 place?

20 A Like I said, to the best of my recollection without
21 looking at the interview transcript ---

22 MR. WEEKS: Your Honor, we would interpose a
23 hearsay objection at this point, without a proper
24 foundation being laid for the question.

25 THE COURT: Sustained.

David Kuneman - Direct Examination by Mr. Chesser

1 MR. CHESSER: Your Honor, what we're doing
2 here, the basis for this is a prior inconsistent statement
3 by this witness. He's testified to certain things here
4 today, previously and ---

5 THE COURT: Well ya'll come around, please.

6 (WHEREUPON there was a bench conference out of
7 the hearing of the jury and the court reporter.)

8 THE COURT: Thank you, counsel.

9 Mr. Chesser?

10 MR. CHESSER: Thank you, Your Honor.

11 By Mr. Chesser:

12 Q Mr. Kuneman, Mr. Rushon talked with you about a
13 conversation that he overheard between Antonio Savage
14 and Thaddeus Curry, is that right.

15 A That's correct.

16 Q And there was a mention of a gun?

17 A That's correct.

18 Q Okay. With respect to this gun, did Mr. Rushon tell
19 you who was talking about the gun?

20 A He stated that the discussion was taking place between
21 Thaddeus Curry and Tony Savage, but, you know, he did
22 not specifically say when asked directly who was
23 talking about the gun. He said that he was not sure,
24 that he was trying to stay out of the conversation as
25 much as possible.

David Kuneman - Direct Examination by Mr. Chesser

1 Q Okay. You asked him specifically did Thaddeus talk
2 about the hammer coming off, right?

3 A That's correct.

4 Q And what was his response?

5 A That he did not know.

6 Q Okay. Who did he say was doing the talking?

7 A He said that Tony Savage and Thaddeus Curry were both
8 discussing the incident in the back seat.

9 Q Okay. As far as who said what particular thing, could
10 he tell you that?

11 A No, sir, he could not.

12 Q Okay. That's all the questions I have.

13 THE COURT: Thank you.

14 Mr. Chandler?

15 MR. CHANDLER: No questions.

16 THE COURT: Sir, you may step down.

17 MR. KUNEMAN: Thank you.

18 THE COURT: Thank you.

19 MR. CHESSER: Your Honor, the defense calls

20 Investigator Billy Fleury.

21 THE COURT: Yes, sir.

22 Investigator, if you would come around, please.

23 THEREUPON,

24 BILLY FLEURY,

25 after being duly sworn, testified as follows:

Billy Fleury - Direct Examination by Mr. Chesser

1 THE CLERK: Have a seat in the witness box,
2 stating your full name, spelling your last.

3 MR. FLEURY: Billy Fleury, F-l-e-u-r-y.

4 DIRECT EXAMINATION

5 By Mr. Chesser:

6 Q Investigator Fleury, you investigated this case in a
7 lot of different ways, isn't that right?

8 A Yes.

9 Q All right. Now, on April 16, of 2003, you had occasion
10 to interview Antonio Savage, right?

11 A Yes.

12 Q Okay. Now, in that interview, did he tell you what
13 kind of shirt he was wearing on -- in the early morning
14 hours of March 18, 2003?

15 A I believe it was a t-shirt.

16 Q Okay.

17 A I'm not ---

18 Q I'm sure it's hard to remember these things.

19 A From a year ago -- it says, "I had a tank top on."

20 Q Does it say what color the tank top was?

21 A I'm not sure. It says, "I had a tank top on, white."

22 Q Okay. So on April, on that day when you interviewed
23 him he told you that he was wearing a white tank top
24 t-shirt in the morning hours of March 18, 2003?

25 A That's what I wrote down.

Billy Fleury - Direct Examination by Mr. Chesser

1 Q Okay. That's all the questions I have, thank you.

2 THE COURT: Thank you, sir.

3 Mr. Chandler, anything?

4 MR. CHANDLER: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. CHANDLER: No questions, Your Honor.

7 THE COURT: Okay. Thank you, sir.

8 Investigator, you may step down. Thank you,
9 sir.

10 Mr. Chesser?

11 MR. CHESSER: The defense rests, Your Honor.

12 THE COURT: Okay. Thank you, sir.

13 Anything further from the State?

14 MR. CHANDLER: Nothing from the State, Your
15 Honor.

16 THE COURT: Okay. All right. Ladies and
17 gentlemen of the jury, you've heard all the evidence and
18 testimony you're going to receive in this case. By the
19 time we do closing arguments and I charge you on the law,
20 it will probably be after 4 o'clock. There's no point in
21 sending you out at that point.

22 So what we'll do is we'll get started again in
23 the morning. In the morning, what you will hear is closing
24 arguments from both sides, ladies and gentlemen. I told
25 ya'll at the beginning of this trial that closing

1 arguments, like the opening statements are not evidence.

2 But I do ask that all jurors pay very close attention to
3 both openings and closing arguments. Closing arguments are
4 a chance for the attorneys, ladies and gentlemen, to argue
5 to you what they believe you should find based on the facts
6 in the case and the testimony and evidence that was
7 presented and how you should apply that to the law. It's a
8 chance for them to argue to you and persuade you one last
9 time of their particular side of the case.

10 After you hear closing arguments, ladies and
11 gentlemen, I will charge you on the law that you're to
12 apply to the facts as you find them and as only you the
13 jury find those facts. After that, ladies and gentlemen,
14 you all begin your deliberations. We'll send back with you
15 to begin your deliberations all of the exhibits and
16 physical evidence that's been admitted into this trial.
17 You should have the indictments as well back there with
18 you. You'll have the verdict form.

19 I will explain the verdict form to you
20 tomorrow, as to how you, Madame Forelady, will fill that
21 verdict form out.

22 Ladies and gentlemen, you all enjoy the rest of
23 your afternoon and we'll get started, I believe we have
24 motions and stuff at 9:00. Ladies and gentlemen, why don't
25 you all report back to the jury room that you have been

1 using at 10 o'clock in the morning. That will give us
2 plenty of time to get everything else out of the way before
3 you all come in, and then we'll have closings and charge
4 after that.

5 Again, ya'll have a good rest of the afternoon
6 and good night and we'll see ya'll again in the morning.
7 Thank you.

8 (WHEREUPON the jury left the courtroom at 2:47
9 p.m.)

10 THE COURT: Thank you, ma'am.

11 All right. Mr. Chesser, anything?

12 MR. CHESSER: Your Honor, there is something I
13 would like to address with you. I know that Mr. Curry told
14 me that he didn't want to testify and everything. I just
15 note that we haven't put that on the record. I recall you
16 asking him before and he told you he had made a decision
17 and he had. Did ya'll actually go over this?

18 THE COURT: I asked him and I didn't specially
19 ask him whether he had chosen to testify or not testify.

20 Mr. Curry, your case at this point has rested.
21 If you choose that you want to testify, sir, obviously,
22 we'll protect your rights and reopen it so that you can
23 testify in front of the jury. You understand that?

24 MR. CURRY: Yes, sir. I don't want to testify.

25 THE COURT: You don't want to testify?

1 MR. CURRY: No, sir.

2 THE COURT: Thank you, sir. Do you want to
3 renew your motions, Mr. Chessser, for the record?

4 **POST-TRIAL MOTIONS**

5 MR. CHESSER: Yes, sir. At this point I would
6 just renew my motions for a directed verdict on the grounds
7 previously stated, but based this time on all the evidence,
8 Your Honor.

9 THE COURT: For the same reasons as stated
10 before, I respectfully deny those motions.

11 We'll be ready to go in the morning. I
12 appreciate your work and patience today, Counsel, and we'll
13 see ya'll at -- well, we'll resume this at 10 o'clock. I
14 guess we've got some other matters at 9:00.

15 All right. We'll see ya'll in the morning,
16 then. Thank you.

17 MR. CHESSER: Thank you, sir.

18 (WHEREUPON this case was in recess until 10:00
19 the following morning.)

20 THE COURT: Mr. Chandler, Mr. Chessser, I
21 understand we have all our jurors. And I also understand
22 there may be a couple of things Mr. Chessser needs to put on
23 the record before we get started.

24 MR. CHESSER: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 MR. CHESSE: May it please the Court. Your
2 Honor, I would like to revisit an issue with the court's
3 permission, that the court has ruled on previously. And
4 this is the -- what I would like to do in closing is to
5 argue that the co-defendants, Jeremy Simuel and Antonio
6 Savage, are biased as a result of facing life in prison on
7 the murder charge and up to 20 years on their pending
8 attempting armed-robbery and 5 years on the possession of a
9 weapon during the commission of a violent crime. .

10 So I would like to argue that and at this
11 point -- when Jeremy Simuel testified, I asked him about
12 the sentences for these crimes, specifically the maximum
13 sentences, and he responded and then subsequent to that,
14 the court gave a limiting instruction or a corrective
15 instruction with respect to this testimony concerning the
16 maximum sentences.

17 And what I would ask, number one, the jury
18 hasn't started deliberating anything at this point and so
19 at this point I would object to this limitation on their
20 consideration of this testimony and I would ask that the
21 court basically retract that instruction that the jury
22 should disregard such testimony and that they should -- and
23 then I would respectfully request that the court, in
24 addition to that, that the court give an instruction at
25 this time to the effect that evidence regarding maximum

1 sentences, facing a co-defendant may be considered by you,
2 the jury with respect to the issue of bias. That is any
3 motive which the witness may have to misrepresent.
4 However, this testimony is admitted only for this limited
5 purpose and apart from evaluating the credibility of a
6 witness's testimony concerning the maximum sentences for
7 charges which the defendant is on trial should not be
8 considered by you in determining the guilt or innocence of
9 the defendant.

10 So in short, I'm arguing -- I'm requesting
11 permission to argue bias on this basis to the jury and,
12 secondly, that the judge would -- I'm objecting to that
13 limiting instruction or corrective instruction given
14 previously in the testimony of Jeremy Simuel.

15 And finally I'm requesting a retraction of that
16 prior instruction and this new instruction. Thank you,
17 Your Honor.

18 THE COURT: Thank you, sir. Any response from
19 the State?

20 MR. WEEKS: Your Honor, I believe you
21 accurately instructed the jury concerning sentencing. I
22 would point out the record reflects that both of these
23 defendants, under cross-examination, indicated they hadn't
24 been promised anything on their pending charges. And had
25 there been any crack in that armor, then possibly the

1 defense would have been allowed to visit the issue or
2 potential sentences, but both defendants didn't provide
3 that crack and I believe your instruction to the jury was
4 proper and I believe arguing as to sentence would be
5 improper.

6 THE COURT: Thank you, sir. I agree. Even
7 revealing the authority that, Mr. Chesser, you handed up to
8 the court, I think it's improper to argue anything to the
9 jury regarding sentencing unless it went to some issue of
10 bias. And in the cases that you pointed the court to, I
11 think under those cases it may have been relevant from the
12 standpoint of there was a vast reduction in the amount of
13 sentence or time that those defendants, or witnesses,
14 rather, might have served and it would go to the issue of
15 bias. Here, it boils down to the charges against them;
16 still the charges against them with no deal on the table
17 and no discussion about a deal from the State with them.

18 As far as the jury is concerned they're facing
19 prosecution at some point for those charges that are
20 pending. What is -- added to what I think would make it
21 even more improper to argue that to the jury is that those
22 charges are the same thing that the defendant is facing.

23 So for that reason, I'm going to continue with
24 the prior ruling and request that you not argue that
25 particular issue to the jury and I'm going to leave in

1 place my previous instruction to them not to take into
2 consideration any regard to the potential sentences that
3 might be handed out against those individuals or the
4 defendant in this case.

5 MR. CHESSER: Your Honor, with respect to the
6 jury instructions, the court -- I understand the court
7 intends to charge the hand of one is the hand of all and,
8 Your Honor has been good enough to give me a copy of the
9 proposed instruction. The -- it's a little technical, Your
10 Honor, but I have a proposed instruction on the hand of one
11 and the hand of all.

12 It's from case law State vs. Dickman, and I
13 would ask at the end of this just to make this a court's
14 exhibit, but it says that if two or more combine together
15 to commit an unlawful act and a crime is committed by one
16 of the actors as a probable and natural consequence of the
17 acts done in pursuance of the common design, all present
18 and participating in the unlawful undertaking are as guilty
19 as the one who committed the act.

20 The significance, frankly, Your Honor, the
21 difference between the proposed charge and this language is
22 the emphasis on the -- and this case, just referring to the
23 facts here, the killing -- there would be an issue as to
24 whether it was a natural or probable consequence of a plan
25 to take the money from the decedent. So the emphasis here,

1 you know, the advantage of this charge that I'm proposing
2 is that, you know it has it's emphasis on probable or
3 natural consequences. In other words, it's this thing
4 that, you know, this extra crime so to speak, in this case
5 the homicide, wasn't a natural and probable consequence of
6 the -- what the State alleges is a plan to rob these
7 individuals.

8 So the instruction that the court has is, to
9 me, does not have the sufficient emphasis on the issue of
10 probable or natural consequence and that in a nutshell is
11 my primary objection. Specifically a couple of other
12 points, I believe that -- and again, I thank the court for
13 providing us with a copy, I believe that this example here
14 in this proposed instruction is too close to the facts of
15 the case and may constitute a charge on the facts. I think
16 for purposes of illustrating principle, I would
17 respectfully request the court to consider some other
18 example that doesn't involve a killing where two people and
19 there was only one gun and so forth.

20 And finally, specifically with respect to the
21 court's charge, in the middle of the second paragraph there
22 is a sentence that says guilt as a principle as is shown by
23 actual or constructive presence at the scene as a result of
24 prior arrangement; and this to me can be construed as
25 saying that if he's present, you know, therefore, he's

1 guilty as a principle. And I think that is in the nature
2 of a prohibited presumption and so I object to that
3 specific language.

4 So what I'm asking and sort of to make it in a
5 nutshell, is if the court's going to use this proposed
6 instruction, I would ask that the first sentence be amended
7 to emphasize or put in this language about probable or
8 natural consequences and that these two other sentences,
9 the one being an example and the other one being guilt as
10 principle is shown by actual, constructive presence at the
11 scene, those be deleted. Alternatively, I just request the
12 judge use my proposed charge on mere presence and prior
13 knowledge.

14 Thank you, Your Honor.

15 THE COURT: Thank you, sir. Mr. Chessser, I
16 will need to get that copy back from you on the hand of one
17 charge.

18 Any response from the State? Anything, Mr.
19 Chandler?

20 MR. WEEKS: Your Honor, we feel that your
21 charge is proper and ask that that's what you do.

22 MR. CHESSER: Your Honor, may me and
23 Mr. Chandler approach for just one second.

24 THE COURT: Yes, sir.

25 (WHEREUPON there was a bench conference out he

1 of the hearing of the court reporter.)

2 (WHEREUPON the defendant was brought into the
3 courtroom.)

4 THE COURT: Yes, sir, Mr. Chesser, anything
5 further?

6 MR. CHESSER: Your Honor, I've explained to my
7 client, he was out of the room up to this point, that we've
8 been going over these proposed jury instructions and
9 that -- and also I tell him now that I re-raise the issue
10 of me being able to argue bias based on the maximum
11 sentences. He indicates that he doesn't have a problem
12 having been out, missed that. The court may want to ask
13 him about that, or else we can go over everything again.

14 THE COURT: Okay. Why don't you restate your
15 issue and I will let you say anything else or get any input
16 from your client that you need to. You wanted the
17 opportunity to re-argue or have the court revisit its
18 ruling regarding the potential sentences facing, I believe
19 it was Mr. Savage and Mr. ---

20 MR. CHESSER: Simuel.

21 THE COURT: --- Simuel. The court decided to
22 adhere to the previous rulings that that is in my opinion
23 an improper argument to make to the jury. There is no deal
24 on the table from the State and those two individuals, as
25 they testified to. There's been no offer of any reduction

1 in charges or potential sentences that they are facing and,
2 therefore, I don't think it's proper under case authority
3 to argue to the jury potential sentences for murder or any
4 other charge to them. I think that the potential prejudice
5 in this case is heightened by the fact that the charges
6 that they are facing are the exact same charges that the
7 defendant is on trial for. And, therefore, I decline to
8 allow the defense to argue that to the jury.

9 MR. CHESSE: Your Honor, the second issue
10 we're addressing is this proposed instruction the hand of
11 one is the hand of all, and what I stated is that, the
12 instruction as proposed by the court doesn't -- to me, it
13 doesn't have sufficient emphasis on the theory that this,
14 in this case, again using as an example homicide was the
15 natural or probable consequence of an intended, as the
16 State alleges, an intended robbery or perhaps a -- just
17 keeping the money from these individuals.

18 So to me, I would request this increased
19 emphasis on this natural and probable consequence. And
20 secondly I specifically objected to two sentences in the
21 proposed instruction, one is an example that its to the
22 facts of this case in my opinion and the second one is a
23 sentence that seems to imply that if you're present, then
24 you're guilty, which is in the nature of a presumption, a
25 prohibitive presumption.

1 THE COURT: Yes, sir, I don't intend to use
2 that particular example in our standard charge. As to the
3 other part of your argument, really the standard charge as
4 a whole, I think it makes it clear that just being present
5 is not sufficient for them to make that kind of an
6 inference, plus I also intend to charge separately the mere
7 presence charge. But I think the hand of one charge as a
8 whole covers all the points that you wish to bring out to
9 the jury.

10 MR. CHESSER: Your Honor ---

11 THE COURT: --- which would be natural and
12 probable consequence.

13 MR. CHESSER: Your Honor, I understand that the
14 court intends to argue -- or excuse me, intends to instruct
15 regarding an inference arising from the use of a deadly
16 weapon. And in that respect, I would -- I've got some
17 language that I submitted to the court and respectfully
18 requested language to be used on that permissive inference.
19 And again, it's from a case, State v. Wilds, from the
20 Appellate Courts in 2003. So, I would request the court to
21 use that language.

22 THE COURT: I don't think that's much different
23 from our standard charge. I've got no problem adding that.
24 I don't know if there's any objection from the State. I've
25 got no problem adding it to the murder charge.

1 MR. CHANDLER: No objection.

2 THE COURT: Okay. Without objection I will add
3 your language, Mr. Chesser.

4 MR. CHESSER: Your Honor, finally with respect
5 to the fact the defendant did not testify in this case, we
6 would ask an instruction as set forth in these written
7 requested instructions based on State vs. Adkins, which is
8 an Appellate Court decision from 2003.

9 THE COURT: I always charge that.

10 MR. CHESSER: And I respectfully request that
11 the court accept, I believe it would be Court's Exhibit No.
12 2, is my proposed instruction.

13 THE COURT: Yes, sir.

14 All right. If nothing further we'll bring the
15 jury out and you all can make final arguments. Does the
16 State intend to divide their argument or ---

17 MR. CHANDLER: Just one argument, Your Honor.

18 THE COURT: Just one.

19 MR. CHANDLER: Yes, sir.

20 THE COURT: All right. We are ready to bring
21 them out.

22 (WHEREUPON the jury entered the courtroom at
23 10:22 a.m.)

24 THE COURT: Thank you, sir.

25 Thank you, ladies and gentlemen, I appreciate

1 your patience with us this morning, we're ready to
2 continue. As I told you yesterday at the close before we
3 broke, you've heard all the evidence and testimony in the
4 case that you're going to hear. At this point the lawyers
5 have an opportunity to argue the facts to you and argue
6 what they believe you should find from those facts.

7 After you hear arguments from both sides,
8 ladies and gentlemen, I will charge you on the law that
9 you're to apply. You all will find the facts as you all
10 come to that conclusion and during the course of your
11 deliberations and I will give you the law that you are to
12 apply to the facts as you find them to -- in reaching a
13 verdict.

14 I will then explain to you all the verdict form
15 and how you will mark your verdict. The verdict must be
16 unanimous, all 12 of you will have to agree. But I ask at
17 this time if you will pay very close attention to the
18 attorneys as they give you their closing arguments. Thank
19 you.

20 Mr. Chesser?

21 **CLOSING ARGUMENTS**

22 MR. CHESSER: Please the court.

23 THE COURT: Yes, sir.

24 MR. CHESSER: Counsel. I hope ya'll are doing
25 good this morning. Well we've reached this final stage.

1 Ya'll have all the evidence, and at such time the judge
2 gives you permission to deliberate, you will begin.

3 Now at this time, I would like to talk to you
4 about various aspects of this case. The most significant
5 thing is that the evidence would tend to show that Antonio
6 Savage shot Heath Hamilton in the early morning hours of
7 March 18, of 2003. I want to talk about the testimony of
8 Ronald Coursey and also about the testimony of Antonio
9 Savage and Jeremy Simuel.

10 Jeremy Simuel said that he parked the vehicle
11 and whatever happened at Bryant's Gas Station took place
12 within the span of about 3 minutes. That was what Jeremy
13 Simuel said. It was very fast. It was 2 o'clock in the
14 morning. And as Ronald Coursey testified, the shooting
15 took place in a dark area.

16 I want to talk about what Mr. Coursey said
17 happened. He said that initially, as you recall, Heath
18 Hamilton was driving this truck. Initially they pulled up
19 at this Bryant's, which is at the corner of Cary Drive and
20 Sand Bar Ferry Road. They pulled up near Cary Drive and
21 waited.

22 And then finally Heath Hamilton said, "Well,
23 you know, I'm going to go use the phone." So he goes over
24 to the phone. At that point an individual walks up to him.
25 Heath Hamilton talks with this individual and then he tells

1 Ronald Coursey, "We're good to go." And they drive to this
2 darkened area and Mr. Coursey testified repeatedly.

3 Now at that point Mr. Coursey said that an
4 individual, a second individual approached and Mr. Coursey
5 was consistent in his statements, really here and
6 previously, that this individual had on a white t-shirt,
7 tank top t-shirt. He had a white t-shirt. This was the
8 second individual that came up to the vehicle. And this
9 was the person who fired the weapon.

10 Now, in this regard Antonio Savage, when he was
11 interviewed by Investigator Billy Fleury, about April 15,
12 of 2003, Antonio Savage, Investigator Fleury, as he
13 testified yesterday, he says, "What were you wearing?"

14 Antonio Savage said, "I was wearing a white
15 tank top t-shirt."

16 Now he testified differently yesterday on the
17 stand, Antonio Savage. Yesterday, it behooved him to say
18 that he had on some other clothing that night. But when he
19 was interviewed on April 15th, with Investigator Fleury, he
20 says, "I'm wearing a white tank top t-shirt."

21 Now, also you'll recall that Mr. Chandler asked
22 Jeremy Simuel, he said, "What did you see Thaddeus Curry
23 wearing on the night of March 17?" And he said, "I saw him
24 wearing a starter jacket, blue-lined starter jacket."

25 That's what Jeremy Simuel says that Thaddeus

1 Curry had on. The shooter, though, had on a white t-shirt,
2 exactly what Antonio Savage had.

3 Now, Ronald Coursey got on the stand the first
4 day and he said that the person who fired the shots was
5 Thaddeus Curry. But the first time that he ever met
6 anybody was March the 17th, late in the night on St.
7 Patricks Day. Mr. Coursey said he had been drinking and
8 had been smoking marijuana, which affects a person's
9 perception and a person's memory. The first time he sees
10 these people, it's say 11:00 or later in Savannah West and
11 the people that he talks to, he sees here in the parking
12 lot of the Savannah West Apartments at this late hour of
13 the night after he had been drinking and smoking marijuana.

14 Now Antonio Savage, and the question gets more
15 interesting. He was asked how long were those individuals
16 there, the white individuals. He said, "Maybe 15 minutes."
17 This period of time, of course, is a lot different than
18 what Coursey testified to. Mr. Coursey, he said, "I was
19 there for an hour and-a-half."

20 Well think about one reason why Heath Hamilton
21 wanted to go there. He was, you know, seeking to make a
22 deal for this marijuana. This is not something that takes
23 a long time. Basically what Mr. Coursey testified to is
24 they went and Mr. Hamilton asked various people about this.
25 At one point Mr. Hamilton went up to the apartment door and

1 came back. And basically, there was no deal -- well at
2 that point, actually they went to the ATM to get some
3 money. So they drive to the ATM to get the money. They
4 come back and nobody is there. And then a vehicle arrives
5 and Mr. Hamilton makes a deal, says basically, "We'll get
6 in touch later." "It's going to be later tonight."

7 None of this takes very much time. Okay. Just
8 think about it, what they were going to do and why they
9 were there. It was nothing where -- involved that extended
10 period of time. It's much more consistent with a period
11 of, say 15 minutes.

12 Now, you're talking about Mr. Coursey seeing
13 individuals he's never seen before for a period of 15
14 minutes at around midnight in a parking lot of these
15 apartments. Obviously, it's dark. And the only chance he
16 has to see this individual is during something that
17 according to Jeremy Simuel, lasted no more than 3 minutes.

18 Now at that time Mr. Coursey is at Bryant's Gas
19 Station. It's about 2:00 a.m. on the morning of March the
20 18th. And the only time he sees the shooter is in this
21 dark area when this person in the white t-shirt approaches
22 and fires the weapon. That is his opportunity to see. In
23 addition, I would point out, and you can sort of evaluate
24 this, we talk about what you call a cross-racial
25 identification, which presumably may be harder than

1 identification of someone of your own race.

2 So those are the things that you have to take
3 into account when you're thinking, how credible is this
4 identification. In addition, you're talking about when
5 Mr. Coursey was asked even a week after this, in other
6 words, about March the 25th, when he was asked, you know,
7 what is the description, he says, "Well the guy that
8 initially we talked to wasn't wearing a jacket, he had a
9 mouth full of gold teeth."

10 Now, and he had on this jacket, blue or brown
11 jacket. This is consistent with what Mr. Curry is
12 testified to by Jeremy Simuel, is what Mr. Curry was
13 wearing. It's also consistent with the idea somebody had
14 top and bottom gold teeth as opposed to just some gold
15 teeth on the bottom. So this description of the person who
16 Mr. Coursey says, this is not the person who shot Heath
17 Hamilton is consistent with Thaddeus Curry, more so, much
18 more so than it is with Antonio Savage. That's the person
19 who did the shooting. The person who did the shooting in a
20 white t-shirt is consistent with Antonio Savage, exactly
21 how he said, this is how I was dressed on the morning hours
22 of March the 18th, and, of course, Jeremy Simuel said that
23 was how Thaddeus Curry was dressed.

24 Now, let's talk about the credibility of
25 Antonio Savage. First of all, he has an enormous interest,

1 so to speak. He's facing murder and armed-robbery charges
2 in this attempted armed-robbery. As well as possession of
3 a weapon in the commission of a violent crime. He's facing
4 these charges and he's trying to get up out from under
5 these charges and, really, in his position, he has got to
6 be a desperate man.

7 In addition, the evidence would indicate that
8 Antonio Savage is the shooter. He has enormous motivation
9 to lie, to not tell the truth. He has enormous motivation
10 to say somebody else did this. I didn't do it. In
11 addition, when you are evaluating his credibility you're
12 entitled to look at his prior record.

13 In that regard, he has convictions, prior
14 convictions for burglary and auto theft back in '94; and
15 convictions for theft by taking in 1996 where he had 3
16 years with 7 years probation. Consider his prior criminal
17 history as it was asked of him yesterday on the stand when
18 you're evaluating his credibility and reliability apart
19 from the fact that he has this enormous interest in the
20 case. He cannot be reliable. He is the only person who
21 was there besides Mr. Coursey, who is with us here.

22 Now, Jeremy Simuel was asked, Well what was the
23 plan prior to their going to Bryant's Gas Station. The
24 plan was just to get the money. Now, that's what he says
25 the plan was. Does that mean that maybe they would --

1 Heath Hamilton would give them the money and they would
2 keep it? Was that the plan? That sounds like it. That's
3 the interpretation of what Jeremy Simuel said. You had a
4 plan, Simuel says, that didn't involve killing anybody,
5 just to get the money. This killing, which evidence
6 indicated was perpetrated by Antonio Savage was beyond
7 anything that was in any plan that had been contemplated.

8 According to Mr. Coursey, the individual in the
9 white t-shirt got the gun and right when they started
10 firing, in fact, so rapid, what he did that Heath Hamilton
11 only had time to barely put the car or the truck in gear.
12 He might have moved a couple of feet. Here he is, he is
13 trying to move, but from the time he sees the gun and the
14 shots were fired, boom. It happened just like that. That
15 was beyond the scope of any agreement, any plan that had
16 been contemplated. This action, I submit to you, by
17 Antonio Savage, boom. He gets the gun, boom. And before
18 anybody reacted, literally, Heath Hamilton could barely get
19 his truck moved 2 feet. That is not something that was
20 contemplated by any means.

21 You are going to be considering whether this
22 killing was a natural or probable consequence of a prior
23 plan. Ladies and gentlemen, this killing was instant. It
24 was done by Antonio Savage. It was beyond anything
25 contemplated.

1 I talked to you before and you're aware of the
2 concept of the presumption of innocence and the fact that
3 the State has to prove all the elements of the offense, in
4 this case, murder, possession of a weapon during the
5 commission of a violent crime, beyond a reasonable doubt.
6 The presumption of innocence is not just a fiction. It is
7 a precept that is held to be very valuable in our justice
8 system, but it's something that must be made real by you.
9 And the judge will instruct to make it real, to apply that
10 presumption.

11 And that presumption continues even in your
12 deliberations, even back in the jury room. When you are
13 looking at the evidence, this presumption requires that you
14 look at it from the vantage of the defendant, is there --
15 what is in here that was -- had a reasonable doubt? And if
16 reasonable doubt still exists, look at it and look for
17 that -- there is a truck load of a reasonable doubt in this
18 case.

19 Ladies and gentlemen, you have a duty to decide
20 this case in accordance with these principles, proof beyond
21 a reasonable doubt and the presumption of innocence. And I
22 know you'll discharge your duty conscientiously and
23 faithfully.

24 The prosecutor will speak now and then the
25 judge will give you the charge. Ladies and gentlemen, I

1 ask that the Lord will be with you in your deliberations.

2 THE COURT: Mr. Chandler?

3 MR. CHANDLER: Thank you, Your Honor, may it
4 please the Court.

5 THE COURT: Yes, sir.

6 MR. CHANDLER: Mr. Chesser. "I dome capped
7 him." "I ain't no joke." "I don't play." "I told him."
8 "Tell the KKK to march on this." "They will never find the
9 gun." These are the words of a cold-blooded murderer.
10 These are the words of Thaddeus Curry.

11 Ladies and gentlemen, at the beginning of this
12 trial, we told you that we would give you an accurate
13 account of tragic events that happened in Aiken County. If
14 you remember, when we talked to you, we told you that you
15 were going to have to travel with us, you were going to
16 have to come with us to Beech Island, then we were going to
17 go to Augusta and then we were going to go back to Beech
18 Island. And the evidence has already shown that on March
19 18, 2003, Ronald Coursey and Heath Hamilton went to
20 Savannah West Apartments in Augusta, from Beech Island.
21 And there they arranged a drug deal with Thaddeus Curry,
22 Anthony Savage and Jeremy Simuel.

23 And when Thaddeus Curry, Anthony Savage and
24 Jeremy Simuel came from Georgia to Beech Island, here in
25 Aiken County, they came to a dope deal without any dope,

1 they brought a gun. What happens when you bring a gun and
2 not dope to a dope deal?

3 Heath Hamilton was looking for dope, not a
4 death sentence. If there could be anything positive that
5 we could glean or gather from this tragic event, it's the
6 work of our law enforcement. We ought to be very proud of
7 them.

8 MR. CHESSER: Your Honor, I object.

9 THE COURT: Yes, sir?

10 MR. CHESSER: Your Honor, to make this
11 objection on the record, we either need to approach and
12 make it here, I can put it on the record later or I could
13 ask that the jury be taken out.

14 THE COURT: I assume your objection relates to
15 his reference to law enforcement?

16 MR. CHESSER: Yes, sir.

17 THE COURT: The context of his reference to law
18 enforcement -- I will ask counsel to rephrase that. It's
19 also improper to refer to, make religious references in
20 closing arguments as well. The jury should disregard any
21 references to such or to any play on your sympathy or
22 affiliation or affirmation of anything other than the facts
23 of this case. I would just ask counsel to rephrase.

24 MR. CHANDLER: Thank you, Your Honor. In this
25 case the officers who worked on this case were faced with

1 dealing with a dope deal gone bad. And with that challenge
2 every witness that they talked to initially was, at the
3 time, trying to minimize their involvement. At the time
4 they were trying to minimize at least their culpability in
5 any type of criminal activity. That is a major challenge.
6 And as a result, what happened was that through their hard
7 work they were able to bring us, not only the victims of
8 the crime, in this case Mr. Ronald Coursey, but they were
9 also able to bring to us a perpetrator, Anthony Savage and
10 also Jeremy Simuel.

11 So for the State, we have for the first time,
12 actors on both sides of this criminal activity telling the
13 truth, telling what happened. Ladies and gentlemen, no
14 matter how low you go, there is still right and wrong. And
15 at some point you may have to make a decision. And
16 although they were reluctant initially, the witnesses for
17 the State came this week and they told the truth. They
18 made the decision to do what was right.

19 So what did they talk about? What did the
20 witnesses talk about in the presentation of this case? We
21 have Ronald Coursey who was there with his friend, Heath
22 Hamilton, trying to buy some dope. And we have Anthony
23 Savage who was there with his friend, Thaddeus Curry and
24 Jeremy Simuel, trying to rob some individuals, bringing a
25 gun, not dope to a dope deal.

1 What does Ronald Coursey, what does Anthony
2 Savage, what does Jeremy Simuel have to say about what
3 happened on March 18, 2003? Well, first of all, Ronald
4 Coursey identifies Thaddeus Curry as the person who pulled
5 the trigger and shot his friend, Heath Hamilton. He
6 indicated that while they were at Savannah West Apartments
7 he had an hour or two, an hour and-a-half, almost 2 hours
8 to discuss and work out this dope deal, with not only
9 Thaddeus Curry, but also Anthony Savage. He knows the
10 difference between those two guys. He was organizing a
11 drug deal.

12 And even on Cary Drive, once they got to Beech
13 Island, they were sitting there negotiating and they were
14 arguing about who had the money. "Show me the money."
15 "Show me the dope." "Show me the money." "Show me the
16 dope." And the dome light was on, although it was dark in
17 the alley.

18 Ronald Coursey saw Thaddeus Curry. And you
19 heard him. He said he saw him pull out that gun and he saw
20 him point it at his friend and he shot him. And after he
21 shot his friend, it was at that time that Ronald Coursey
22 ducked his head. There's no confusion about the ID. Don't
23 be confused by the defense, they want to focus on the white
24 t-shirt. T-shirts don't kill people. People kill people.
25 And Ronald Coursey, when we asked him, "Who shot your

1 friend?" He said, Thaddeus Curry. And when we asked him,
2 "How sure are you?" He said, "Absolutely, positive."

3 And Anthony Savage who was acting, was in the
4 plan, he was part of that scheme to rob Heath Hamilton and
5 Ronald Coursey. When he was asked, he was right there by
6 him, he also saw Thaddeus Curry pull that trigger. He saw
7 it. He saw Thaddeus Curry. You remember he said, I saw
8 Thaddeus Curry drop that bag and I took that bag and I
9 threw it over to the bushes because I know, I know and I
10 was keeping that gun away from him." But before he could
11 look around, he saw Thaddeus Curry go and retrieve that gun
12 and shoot Heath Hamilton in the head.

13 No matter how low you go, there's still right
14 and there's still wrong. The State's witnesses decided to
15 the right thing, to tell the truth this week.

16 What else did they talk about? Ronald Coursey
17 indicated that Heath Hamilton did not have any weapon. Of
18 course, he would know that because he was with him the
19 entire time. He was with him and they had negotiated this
20 drug deal. He realized his friend didn't have a weapon.

21 And also, Anthony Savage, was looking there,
22 and he said, "Hey, look Heath Hamilton didn't have a
23 weapon." What else do they say? They both describe this
24 gun. This gun that Thaddeus Curry always keeps in his bag.
25 Thaddeus Curry's weapon, they described it as a

1 semi-automatic weapon. Anthony Savage described it as
2 taking 9mm clips because he already knows Thaddeus Curry.
3 He describes it as taking 9mm clips and describing about
4 this -- of course, you know all that. He saw it. And who
5 did he say he saw hold that gun? He saw Thaddeus Curry
6 holding that gun. And that same gun, that same description
7 of the gun was consistent with those fragments or
8 projectiles that killed Heath Hamilton, that were tested by
9 Dan DeFreese from State Law Enforcement Division, our
10 firearms expert who narrowed this type of gun to only two
11 that is in the entire State Law Enforcement Division data
12 base. One of two, one of two guns. It is consistent and
13 it is true.

14 Remember, they did the right thing, they told
15 the truth. Well, what else did they describe? What else
16 do they talk about? Well, we have the defendant,
17 Mr. Thaddeus Curry, and we have Mr. Ronald Coursey who
18 described how his friend slumped over after he was shot and
19 killed.

20 Now, of course, as you heard on the witness
21 stand, Mr. Curry was bragging about it. He was all hepped
22 up, he was all excited. That's why he said those words.
23 "I ain't no joke." "I don't play." But you also saw
24 Ronald Coursey and how sad he was as he described the death
25 of his friend. And he described how he was slumped over.

1 Who would know how someone was slumped over.

2 You heard Anthony Savage. He was running. He
3 didn't know anything about it. He didn't say anything
4 about it, so when Jeremy Simuel heard him, who was the one
5 bragging about how he slumped over? The shooter, the
6 trigger man, Thaddeus Curry.

7 And the fact that he slumped over is consistent
8 with what Dr. Yacoub, the forensic pathologist indicated
9 when she said that that bullet, that the moment that it
10 passed through the head of Heath Hamilton, that it would
11 have done, sustained such damage that he would have
12 immediately been made unconscious or dead at the time. No
13 matter how low you go, there's still right and wrong. Well
14 they did the right thing and they told the truth.

15 The judge is going to talk to you about murder,
16 and is going to instruct you on the law and I ask that you
17 listen to his instructions on the law with respect to
18 murder, possession of a firearm during the commission of a
19 violent crime. Murder is the unlawful killing of another
20 with malice aforethought. And with the possession of the
21 firearm during the commission of a violent crime is exactly
22 what it was. It's that possession of that firearm that
23 Thaddeus Curry had when he shot and killed Heath Hamilton.

24 Don't be confused by the defense, by the
25 t-shirt descriptions. He had time, he knew the difference

1 between those gentlemen and he saw the person that killed
2 his friend and he said he was absolutely positive.

3 Now although there's overwhelming evidence that
4 points to Thaddeus Curry as the shooter in this case, we
5 don't even have to prove that he was actually the shooter.
6 The fact of the matter is that there were three murderers
7 that you saw this week, Thaddeus Curry, the trigger man,
8 Anthony Savage and also Jeremy Simuel who was hiding out in
9 the car. And the judge is going to instruct you on hand of
10 one, hand of all. And he's going to talk about common
11 schemes and natural consequences that come from common
12 schemes and that common schemes are a common plan.

13 So let's talk about the plan that Anthony
14 Savage and Thaddeus Curry and Jeremy Simuel had to rob.
15 See today, Thaddeus Curry is on trial. Anthony Savage and
16 Jeremy Simuel, they're going to have their day in court.
17 They made the arrangements with Ronald Coursey, they made
18 the arrangements with Heath Hamilton to get drugs. But
19 what do they do as they come from Augusta? You heard,
20 Thaddeus Curry said, "I got to get that, I got to get that
21 money." "They call yet? They call yet?"

22 They know what the plan is. Thaddeus Curry
23 brings his gun with him. They know what's going on. They
24 know what the plan is. Tell me what happens when you bring
25 a gun instead of dope to a dope deal? What happens when

1 they figure out that you don't have what you're supposed to
2 have. If you bring a gun instead of the dope to a dope
3 deal, somebody's going to get shot and the natural
4 consequences, ladies and gentlemen, is that somebody is
5 going to get killed. And that's what happened. That's
6 what happened.

7 In fact, there's no doubt in my mind that there
8 are three murderers in this case. But, we have the trigger
9 man, Thaddeus Curry. But you know what, Jeremy Simuel is
10 just as guilty as Thaddeus Curry, as he was sitting out in
11 the car because he was part of the same scheme, he was part
12 of the same plan, he knew that they were going to rob them.
13 And he knew that they did not have the dope that they were
14 supposed to have. And he also knew that he had a gun.

15 And so as a result, no matter how you look at
16 it, Thaddeus Curry is a cold-blooded murderer. So after he
17 shoots, lets talk about this common scheme, after he shoots
18 and kills Heath Hamilton he runs to the car and he brags
19 about it. "I ain't no joke." "I don't play." "I dome
20 capped him." Meaning he shot him in the head, consistent.

21 "I dome capped him," shot him in the head. He
22 said, "They'll never find the gun," later on when they met
23 at the car wash. The same people, the same common scheme.
24 They were trying -- he said, "What did you do with the
25 jacket?" "What did you do with the gun?" "They'll never

1 find the gun." "Stick to the statement," that they were
2 trying to tell Javon. They were all part of the same
3 scheme. They knew what they had done. And they're all
4 guilty of murder.

5 And Thaddeus Curry is the trigger man.
6 Thaddeus Curry is guilty of murder. Thaddeus Curry is
7 guilty of possession of a firearm during the commission of
8 a violent crime. When the judge sends you back to come
9 back with a verdict, he's going to ask that you come back
10 with a verdict that speaks the truth. Please, please come
11 back with a verdict that indicates Thaddeus Curry guilty of
12 murder, Thaddeus Curry guilty of possession of a firearm
13 during the commission of a violent crime.

14 Thank you.

15 THE COURT: Thank you, Mr. Chandler.

16 **JURY CHARGE**

17 THE COURT: All right. Ladies and gentlemen of
18 the jury, you've heard closing arguments, as well all the
19 evidence you're going to receive in the case and now it
20 becomes incumbent upon me to charge you the law that you
21 are to apply to the facts as you find them. Let me first
22 tell you, ladies and gentlemen, and remind you as I told
23 you at the very beginning, I believe when we selected you
24 all as jurors, that the fact that a defendant is arrested,
25 charged and even indicted in a case is not evidence before

1 you.

2 You will have the indictments back in the jury
3 room with you, but the fact that a person is indicted,
4 charged and indicted is not evidence. Nor is it any
5 presumption or inference of guilt that you are to make
6 during the course of your deliberations. The indictments
7 are merely the formal documents that actually bring a case
8 to court.

9 Ladies and gentlemen, as you know, at this
10 point, the defendant is charged, Mr. Curry is charged under
11 those indictments, one with possession of a firearm or
12 knife during the commission of or attempt to commit a
13 violent crime; and number two with the crime of murder.

14 Now the defendant has pled not guilty to these
15 indictments, ladies and gentlemen. And that plea puts the
16 burden on the State of South Carolina to prove the
17 defendant guilty. I tell you that a person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove him or herself innocent. I further
20 charge you that it is an important rule of the law that the
21 defendant in a criminal trial, no matter what the
22 seriousness of the charge may be will always be presumed to
23 be innocent of the crimes for which the indictments were
24 issued, unless and until guilt has been proven to you as
25 the jury by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 Now this presumption of innocence, ladies and
3 gentlemen, does not begin -- does not end rather, when you
4 begin your deliberations, but rather accompanies the
5 defendant throughout the trial, unless and until you reach
6 a verdict of guilt, based on evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt.

8 Now, ladies and gentlemen, you may have heard
9 the presumption of innocence before as being described like
10 a robe of righteousness that has been placed about the
11 shoulders of the defendant and which remains with the
12 defendant until it is removed from him or her by evidence
13 satisfying you, as the jury, of the defendant's guilt
14 beyond a reasonable doubt.

15 Now, ladies and gentlemen, I charge you that
16 the presumption of innocence is not just a mere legal
17 theory. It is not just a legal phrase. It is a
18 substantial right to which every defendant is entitled
19 unless and until you as the jury are satisfied from the
20 evidence of the defendant's guilt beyond a reasonable
21 doubt.

22 What is reasonable doubt under the law? Ladies
23 and gentlemen, a reasonable doubt simply is the kind of
24 doubt that would cause a reasonable person to hesitate to
25 act. Ladies and gentlemen, I remind you and I tell you at

1 this point, you and I during the course of this trial have
2 had different duties to perform. As the trial judge, it
3 has been my responsibility to preside over the trial of
4 this case and also have the additional duty to rule on the
5 admissibility of evidence offered during the course of this
6 trial. You are to consider only the competent evidence
7 before you. If there was any testimony ordered stricken
8 from the record in this case during the trial, you must
9 disregard that testimony. You are to consider only the
10 testimony which has been presented from the witness stand
11 and the exhibits which have been made a part of the record
12 in this case and any other matters which I tell you and
13 send back to you as evidence.

14 I have the additional duties, ladies and
15 gentlemen, to charge you the law applicable to this case.
16 As the presiding judge, I am the sole judge of the law of
17 this case and it is your duty as jurors to accept and apply
18 the law as I state it to you during the course of this
19 charge. If you already have any ideas as to what the law
20 is or what the law ought to be and it does not agree with
21 what I tell you during the course of this charge the law
22 is, you must abandon your idea of what the law is or should
23 be because under your oath as jurors in this case you are
24 sworn to apply the law and accept the law exactly as I
25 state it to you.

1 Now, ladies and gentlemen, in every case tried
2 in this court before a jury, the jury becomes the sole and
3 exclusive judges of the facts. I tell you, ladies and
4 gentlemen, that a trial judge cannot intimate, state,
5 comment on or make any statement to a trial jury about the
6 facts in a case. Since you as the jury are the sole and
7 exclusive judges of the facts in this case, you are not to
8 infer from anything that I have said during the progress of
9 this trial and ruling upon the admissibility of evidence or
10 otherwise or from anything that I say to you during the
11 course of these instructions that I have any opinion about
12 the facts in this case.

13 I tell you, ladies and gentlemen, simply the
14 law does allow a judge to have opinions about the facts in
15 a case and I do not have an opinion about the facts in this
16 case. That is a matter solely for you as the jury to
17 determine and as jurors, it is your duty to determine the
18 effect, value, weight and the truth of the evidence
19 presented during the course of the trial.

20 Generally, ladies and gentlemen, there are two
21 types of evidence which are generally presented during a
22 trial, direct evidence and circumstantial evidence. Direct
23 evidence is simply the testimony of a person who claims to
24 have actual knowledge of a fact, such as an eye witness.
25 It is evidence which immediately establishes the main fact

1 to be proved.

2 Circumstantial evidence, on the other hand, is
3 proof of a chain of facts and circumstances indicating the
4 existence of a fact. It is evidence which immediately
5 establishes collateral facts from which the main fact may
6 be inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or observation.

8 Now, the law, ladies and gentlemen, makes
9 absolutely no distinction between the weight or value to be
10 given to either direct or circumstantial evidence. Nor is
11 a greater degree of certainty required of circumstantial
12 evidence than of direct evidence. You should weigh all of
13 the evidence in this case, and as the jury, after weighing
14 all of the evidence if you are not convinced of the guilt
15 of the defendant beyond a reasonable doubt, you must find
16 the defendant not guilty.

17 And necessarily, ladies and gentlemen, you must
18 determine the credibility of witnesses who have testified
19 in this case. Credibility simply means believability. It
20 becomes your duty as jurors to analyze and to evaluate the
21 evidence and determine which evidence convinces you it is
22 true. In determining the believability of witnesses who
23 have testified in this case, you may believe one witness
24 over several witnesses or several witnesses over one
25 witness. You as the jury may believe a part of the

1 testimony of a witness and reject the remaining part of the
2 testimony of the same witness. You may believe the
3 testimony of a witness in its entirety or reject the
4 testimony of a witness in it's entirety. You may consider
5 whether any witness has exhibited to you any interest,
6 bias, prejudice or other motive in this case. You may also
7 consider the appearance and manner of a witness while on
8 the witness stand.

9 Now, ladies and gentlemen, as I explained to
10 you during the course of this trial, ordinarily the rules
11 of evidence do not permit witnesses to testify to opinions
12 or conclusions. One of the exceptions to this rule exists
13 for witnesses that we call expert witnesses. I tell you
14 that a witness who by education and experience has become
15 an expert in some art, science, profession or calling may
16 state an opinion as to relevant and material matter in
17 which the witness claims to be an expert, and may also
18 state the reasons for that opinion.

19 You should consider any expert opinion received
20 in evidence in this case and like any other evidence give
21 it the weight you think it deserves. If you decide that
22 the opinion of an expert witness is not based on sufficient
23 education and experience or if you conclude that the
24 reasons given in support of the opinion are not sound or
25 that the opinion is outweighed by other evidence, you may

1 disregard the opinion entirely.

2 An expert witness's testimony is to be given no
3 greater weight than that of any other witness simply
4 because the witness is an expert. Further, you as the
5 jury, are not required to accept an expert's opinion even
6 if it is not contradicted.

7 Ladies and gentlemen, now, you've heard during
8 the course of this trial testimony regarding the prior
9 records a witness or more than one witness. I tell you
10 that under the law, a person who has a past criminal record
11 is competent to testify during a trial. A past record does
12 not affect the ability of that witness to testify. The
13 past record may only be considered by you as the jury, if
14 at all, in determining the witness's believability.

15 Remember, ladies and gentlemen, you as the jury are the
16 sole judges of the facts in this case and the believability
17 of any and all of the witnesses who have testified.

18 Now, ladies and gentlemen, further I instruct
19 you and emphasize to you that the fact that the defendant
20 in this case did not testify during this trial is not a
21 factor to be considered by you in any way during the course
22 of your deliberations and in your consideration of the
23 question of the guilt or innocence of this defendant. It
24 must not be considered by you in any manner whatsoever. I
25 tell you and charge to you that a defendant has a

1 constitutional right to remain silent, and the assertion of
2 that right must not be considered by you in the course of
3 your deliberations.

4 Under your oath, ladies and gentlemen, you are
5 to draw no conclusion, whatsoever, from the fact that the
6 defendant in this case did not testify. The fact that this
7 defendant did not testify should not even be discussed in
8 the jury room. The burden of proof, as I've to you is on
9 the State of South Carolina. The defendant is not required
10 to prove his or her innocence. The burden remains on the
11 State to prove guilt beyond a reasonable doubt.

12 Now, ladies and gentlemen, you've heard during
13 the course of closing arguments a concept called the hand
14 of one. I will explain that concept to you in a moment.
15 Let me first tell though that in order to establish
16 criminal liability, criminal intent is required. For
17 example the mental state required to be proven by the State
18 for a particular crime might be purpose, intent, knowledge,
19 recklessness or criminal negligence. Criminal intent must
20 be proven by the State beyond a reasonable doubt. Criminal
21 intent is always a matter that must be determined by the
22 jury upon the circumstances surrounding the situation.

23 Now, ladies and gentlemen, there's no way to
24 prove intent to any mathematical certainty. There's no
25 medical science that will dissect a person's brain and

1 determine what the person had in mind. So the law says,
2 simply that the criminal intent may be inferred from the
3 circumstances shown to have existed. It is how you as a
4 jury make a determination of whether or not the element
5 requiring intent was present.

6 It is not necessary to establish intent by
7 direct and positive evidence. An intent, rather may be
8 established by inference in the same way as any other fact
9 by taking into consideration the acts of the parties and
10 all of the facts and circumstances of the case. Criminal
11 intent is a mental state, a conscious wrongdoing and it is
12 up to you, as the jury, to determine what the defendant
13 intended to do based on the circumstances shown to have
14 existed.

15 Criminal intent can arise from an action or a
16 failure to act. It may arise from negligence, recklessness
17 or an indifference to duty or to consequences that are
18 considered by the law to be the equivalent of criminal
19 intent.

20 Ladies and gentlemen, as I said, you all have
21 heard the concept under the law called the hand of one. It
22 is my duty to charge you now that if a crime is committed
23 by two or more people who are acting together in committing
24 a crime, the act of one is the act of all. If a person
25 joins with another to accomplish an illegal purpose, he is

1 criminally responsible for everything done by the other
2 person which occurs as a natural consequence of the acts
3 done in carrying out the common plan and purpose.

4 When two or more people are together, acting
5 together, assisting each other in committing the offense,
6 the act of one is the act of all or as it is sometimes
7 said, the hand of one is the hand of all. I tell you
8 further, ladies and gentlemen of the jury, that prior
9 knowledge that a crime is going to be committed without
10 more is not sufficient to make a person guilty of that
11 crime. Mere knowledge that another person is going to
12 commit a crime, even if the defendant is present when the
13 crime is committed is not sufficient to convict the
14 defendant as a principle. Guilt as a principle is shown by
15 actual or constructive presence at the scene as a result of
16 prior arrangement. Therefore, a finding of a prior
17 arranged plan or common scheme is necessary for a finding
18 of guilt as a principle. The State must prove beyond a
19 reasonable doubt by competent evidence the theory of the
20 hand of one is the hand of all.

21 The principle in a crime is one who either
22 actually commits the crime or who is present, aiding
23 abetting or assisting in committing the crime.
24 When the person does an act in the presence of and with the
25 assistance of another, the act is done by both. Where two

1 or more, acting with a common plan or intent are present at
2 the commission of a crime it does not matter who actually
3 commits the crime, all are guilty. The hand of one, ladies
4 and gentlemen, is the hand of all.

5 Present at the commission of a crime means to
6 be sufficiently near to aid and abet and assist in the
7 commission of the crime. However, mere presence, as I
8 said, is at the scene of a crime, is not sufficient to
9 convict one as a principle on the theory of aiding and
10 abetting. Intent is also a necessary element. For there
11 must have been a common design or intent to commit the
12 crime and the crime must have been pursuant, thereto, with
13 a person aiding and abetting by some overt act.

14 Intent means intending the result which
15 actually occurs, not accidentally or involuntarily. Intent
16 may be shown by acts and conduct of the defendant and other
17 circumstances from which you may naturally and reasonably
18 infer intent. The State must prove these elements beyond a
19 reasonable doubt.

20 Ladies and gentlemen, during the course of this
21 trial you have also heard some evidence presented that
22 witnesses may have made prior statements which are not
23 consistent with the witness's present testimony. I tell
24 you that you may use this evidence to decide whether to
25 believe the witness. You may also use the evidence of the

1 earlier contradictory statements to determine the truth of
2 those statements. It is up to you as the jury to decide
3 whether to believe the earlier statements or the testimony
4 given at trial. If a witness is shown to have knowingly
5 testified untruthfully concerning any material matter, you
6 may consider this in determining whether to trust the
7 witness's testimony as to other matters. You may reject
8 all testimony of that witness or give all or part of the
9 testimony the weight that you as the jury think it
10 deserves.

11 Further, ladies and gentlemen, you have heard
12 some testimony and remarks concerning the penalty that a
13 person might serve for the crimes alleged in the
14 indictment. I tell you, ladies and gentlemen, that in
15 determining the guilt or innocence of the defendant, you
16 cannot and must not consider any possible penalty for any
17 particular crime. The punishment for the crime charged in
18 the indictments is a matter for me as the court to
19 determine, should you find to convict the defendant of
20 those charges. It should never be considered by you in any
21 way, whatsoever, in arriving at a fair and impartial
22 verdict as to guilt or innocence of the defendant.

23 Ladies and gentlemen, as you know, and it's
24 been stated many times, the defendant is charged under one
25 indictment with murder. I tell you that the State must

1 prove beyond a reasonable doubt to you as the jury that the
2 defendant killed another person with malice aforethought.
3 Malice is hatred, ill will or hostility towards another
4 person. It is the intentional wrongdoing of a wrongful act
5 without just cause or excuse and with an intent to inflict
6 an injury or under the circumstances that the law will
7 infer an evil intent.

8 Malice aforethought does not require that
9 malice exist for any particular time before the act is
10 committed, but malice must exist in the mind of the
11 defendant just before and at the time that the act is
12 committed. Therefore, there must be a combination of the
13 previous evil intent and the act. Malice aforethought may
14 be expressed or inferred. These terms expressed and
15 inferred, ladies and gentlemen, do not mean different kinds
16 of malice, but merely the manner in which malice may be
17 shown to have existed. That is either by direct evidence
18 or by inference from the facts and circumstances which are
19 proven.

20 Express malice is simply shown when a person
21 speaks words which expresses hatred or ill will for another
22 or when the person prepared beforehand to do the act which
23 was later accomplished. For example, lying in wait for a
24 person or any other acts of preparation going to show that
25 the deed was within the defendant's mind would be express

malice.

Malice may also be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon, depends on the facts and circumstance of each case.

Ladies and gentlemen, I tell you again that the law says that when one intentionally kills another with a deadly weapon, an inference of malice may arise. I tell you further that if facts are proven beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you as the jury, along with other evidence in the case. And you may give it such weight as you determine it should receive.

Now, ladies and gentlemen, further, the defendant is charged in the other indictment with possession of a firearm or knife during the commission or an attempt to commit a violent crime. I tell you, ladies and gentlemen, that South Carolina law, specifically South Carolina code section 16-23-490, makes it a crime if a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife

1 during the commission of a violent crime. Again the State
2 must show that beyond a reasonable doubt to you.

3 Madame Forelady, during the course of your
4 deliberations as a jury, it will be your job to make sure
5 that all the jurors have a say in the course of
6 deliberations. Also your job, Madame Forelady to make sure
7 that your verdict is unanimous, that all 12 jurors agree
8 whether it's a finding of guilty or not guilty.

9 It will also be your responsibility, Madame
10 Forelady, should any questions arise during the course of
11 your deliberations to write those questions down, knock on
12 the door and let the bailiff know that you have questions
13 as a jury and we'll return to deal with those questions.

14 Madame Forelady, I'm going to show you a copy
15 of the verdict form. As I said, it is rather simple and
16 you all must agree unanimously. It will be your job,
17 Madame Forelady to actually mark the verdict form and to
18 sign and date it once you all reach a verdict. The first
19 question, Madame Forelady, is simply, it simply says, We
20 the jury, as to the defendant, Thaddeus Lorenzo Curry, on
21 the charge of possession of a firearm or knife during the
22 commission of or attempt to commit a violent crime; and
23 there's a place for you to mark either guilty or not
24 guilty.

25 You all are to make no inference, whatsoever,

1 from the fact that one is in front of the other, simply
2 guilty or not guilty has to go somewhere on the form and
3 that's simply the random order that this one is generated
4 in.

5 The second question, ladies and gentlemen of
6 the jury, refers to the charge of murder. And it again
7 leaves a spot, Madame forelady, for you to mark guilty or
8 not guilty.

9 Ladies and gentlemen, there are more than one
10 verdict that you all can reach on each indictment. You all
11 must consider each indictment separately and come to a
12 verdict separately on each indictment. You can find the
13 defendant guilty on both or not guilty on both or find the
14 defendant guilty of one and not guilty of the other. That
15 is simply a matter for you as the jury to determine based
16 upon the evidence and the law as I have given it to you.

17 Madame Forelady, and members of the jury, I'm
18 going to check with the attorneys and see if there's
19 anything that I have not covered or left out inadvertently
20 in this charge and then after that, we'll send you back to
21 the jury room to begin your deliberations. When I first
22 send you to the jury room, do not begin discussing the case
23 at that time. We want to make sure that we have all the
24 exhibits together for you and all the evidence together,
25 and I'll send the evidence, the verdict form, as well as

1 the indictments back shortly to you and at that point, the
2 bailiff will let you know you can begin your deliberations.

3 The two alternates, at that point, once the
4 jury does begin their deliberations, at that point I'm
5 going to bring you back out. Actually, I will have to
6 bring you out because only 12 people can deliberate on a
7 jury and you all will, obviously, not have to continue
8 through deliberations. But I will bring you back out
9 shortly. Let me check first with the attorneys.

10 Anything else we need the cover, Counsel?

11 MR. CHESSER: I have a matter to put on the
12 record, Your Honor.

13 THE COURT: What we discussed earlier? Or
14 something else?

15 MR. CHESSER: It was one of the matters that we
16 discussed earlier, yes, sir.

17 THE COURT: Okay. All right. Anything from
18 the State?

19 MR. WEEKS: Can we approach, Your Honor?

20 THE COURT: Yes, sir.

21 (WHEREUPON there was a bench conference out of
22 the hearing of the jury and the court reporter.)

23 THE COURT: Okay. Ladies and gentlemen, and
24 Madame Forelady, if you'll leave the verdict form right
25 there, we'll send them back with all the exhibits once

1 we've had a chance to check them all and make sure they're
2 all together. If you all will return to the jury room now.
3 Do not begin your deliberations or discussing the case at
4 this point and we will send all that back to you shortly
5 and let you get started. Thank you all.

6 (WHEREUPON the jury left the courtroom at 11:20
7 a.m.)

8 THE COURT: Thank you, sir.

9 Mr. Chesser, I know there's a matter you wanted
10 to put on the record, let me also put on the record because
11 I don't want you to waive this in any way, at the side bar
12 we did discuss the issue could they find him not guilty on
13 one indictment and guilty on the other, particularly as it
14 related to the possession of a firearm. My reading of the
15 cases is that it is a must that I charge them on that, if
16 there are multiple indictments since we no longer have
17 inconsistent verdicts in the criminal context that
18 technically they could find him guilty and not guilty of
19 the indictments separately. But I note your exception to
20 that charge just for the record.

21 Mr. Chesser?

22 MR. CHESSER: Thank you, Your Honor. On the
23 hand of one, hand of all charge, I want it noted at this
24 time and we did go over this earlier, but I do object to
25 that charge and I, particularly, to me there was language

1 in it that implied that presence on the scene meant that
2 you were guilty and so to the extent that is presumption or
3 necessary inference, I think it's contrary to the law, a
4 violation of the law. And in addition, I believe that the
5 instruction as given did not convey to the jury that the
6 act in this case, a homicide, must be a natural or probable
7 consequence of the preexisting plan in order for guilt of
8 another to accrue in this case, the defendant, that is for
9 the theory of the hand of one, hand of all to apply, so I
10 would object on that basis, Your Honor.

11 THE COURT: I note your exceptions for the
12 record. I think the charge overall on the murder charge,
13 taken with the intent as well as the hand of one charge
14 makes it clear to the jury the inferences that they may
15 draw and particularly the fact that mere presence is not
16 simply enough. I think that charge makes it clear to them.

17 MR. CHESSER: Your Honor, one other thing that,
18 you know, I don't know that I made this explicit earlier
19 and I don't know that I can now, but I object to the
20 limitation on my to argument in closing, I couldn't argue
21 this bias as a result of these maximum sentences.

22 THE COURT: I think we've covered that enough
23 from the standing of the basis of my ruling. On that I
24 don't believe it's proper to argue that unless there's some
25 reduction in the potential sentences that the witness may

1 have received.

2 MR. CHESSER: That's all I have, Your Honor,
3 thank you.

4 THE COURT: Have you all had a chance to check
5 the exhibits? If ya'll could do that, we'll send them all
6 back. The indictments are up here.

7 (WHEREUPON the attorneys and the court reporter
8 reviewed all the exhibits to be taken to the jury room.)

9 (WHEREUPON the jury began deliberations at
10 11:27 a.m.)

11 THE COURT: If you'll bring the alternates out,
12 please.

13 (WHEREUPON the alternate jurors were returned
14 to the courtroom.)

15 THE COURT: Ladies and gentlemen, our two
16 alternates, I appreciate your service. The jury obviously
17 has the case now and so we'll dismiss you from that jury.

18 I believe the panel is coming back at 12:00,
19 Mr. Weeks?

20 MR. WEEKS: Sir?

21 THE COURT: Is it 12 o'clock?

22 MR. WEEKS: Yes, sir.

23 THE COURT: You all have about half an hour of
24 your own time and then you need to be back in the jury
25 assembly room that you all started out in Monday at 12

1 o'clock and there will be some instructions there as to
2 what will happen the rest of the day, but I can at least
3 give you half an hour to get your wind and everything.
4 Folks again, thanks and we'll see you all in a little bit,
5 thank you.

6 All right. We'll be in recess for a few
7 minutes.

8 (WHEREUPON this case was in recess while the
9 jury was in deliberation.)

10 (WHEREUPON a note was received by the court
11 from the jury.)

12 JURY QUESTION

13 THE COURT: Counsel, I understand we have a
14 question from the jury. They wanted a re-charge on the
15 hand of one, hand of all and they say they have a question
16 regarding the second charge, but I'm not quite sure what
17 the questions is because they don't indicate it.

18 I'm sorry, ya'll be seated.

19 If you would ask the forelady if she'll write
20 out the question they have on the second charge and we'll
21 bring them out and re-charge them.

22 (WHEREUPON there was a discussion between the
23 court and the bailiff.)

24 THE COURT: Counsel, are you ready for the jury
25 to come back out?

1 MR. CHANDLER: The State's ready, Your Honor.

2 MR. CHESSER: We're ready, Your Honor.

3 THE COURT: Okay. I understand, we'll bring
4 them back out. I understand that the jury wishes to just
5 have the recharge on the hand of one.

6 (WHEREUPON the jury entered the courtroom at
7 12:26 p.m.)

8 THE COURT: Okay. Madame Forelady, I
9 understand, we have a note from the jury that you wish to
10 be re-charged on the portion of the law that I gave you
11 earlier on the hand of one is the hand of all, is that
12 right?

13 MS. RIVERS: Yes, sir.

14 THE COURT: As to the second charge, I
15 understand that the jury has indicated they do not need
16 further instruction on that, is that right?

17 MS. RIVERS: Right.

18 THE COURT: All right. Ladies and gentlemen,
19 I'm going to repeat to you the charges that I gave you
20 relating to hand of one and certainly the other parts I
21 gave to you as to intent and the burden of proof and all of
22 that certainly still applies. But let me tell you that if
23 a crime is committed by two or more people who are acting
24 together in committing a crime, the act of one is the act
25 of all.

1 I tell you further that a person who joins with
2 another to accomplish an illegal purpose is criminally
3 responsible for everything done by the other person which
4 occurs as a natural consequence of the acts done in
5 carrying out the common plan or purpose. When two or more
6 people are acting together, excuse me, if two or more
7 people are together, acting together, assisting each other
8 in committing the offense the act of one is the act of all,
9 or as is sometimes said, the hand of one is the hand of
10 all.

11 Prior knowledge that a crime is going to be
12 committed without more is not sufficient to make a person
13 guilty of that crime. Mere knowledge that another person
14 is going to commit a crime, even if the defendant is
15 present when the crime is committed is not sufficient to
16 convict the defendant as a principle. Guilt as a principle
17 is shown by actual or constructive presence at the scene as
18 a result of prior arrangement. Therefore, a finding of a
19 prior arranged plan or common scheme is necessary for a
20 finding of guilt as a principle.

21 The State must prove beyond a reasonable doubt
22 by competent evidence the theory of the hand of one is the
23 hand of all. A principle in a crime is one who either
24 actually commits the crime or who is present, aiding,
25 abetting or assisting the committing of the crime. When a

1 person does an act in the presence of and with the
2 assistance of another, the act is done by both. Where two
3 or more, acting with a common plan or intent are present at
4 the commission of a crime, it does not matter who actually
5 commits the crime, all are guilty. The hand of one is the
6 hand of all.

7 Present at the commission of a crime means to
8 be sufficiently near to aid and abet and assist in the
9 commission of the crime. However, mere presence at the
10 scene of a crime is not sufficient to convict one as a
11 principle on the theory of aiding and abetting. Intent is
12 also a necessary element. For there must have been a
13 common design or intent to commit the crime and the crime
14 must have been committed pursuant thereto with the person
15 aiding and abetting by some overt action. Intent means
16 intending the result which actually occurs, not
17 accidentally involuntarily. Intent may be shown by acts
18 and conduct of the defendant and other circumstances from
19 which you may naturally and reasonably infer intent. The
20 State must prove these elements beyond a reasonable doubt.

21 Madame Forelady, that was the portion of the
22 charge that I gave you regarding hand of one. I hope that
23 answers your questions.

24 Let me check with Counsel, is there anything
25 further as to that?

1 MR. CHANDLER: Nothing from the State, Your
2 Honor.

3 MR. CHESSER: No, Your Honor.

4 THE COURT: All right, sir. All right. Ladies
5 and gentlemen, we'll let you all continue in your
6 deliberations. Certainly if there are more questions, do
7 what you've been doing, Madame forelady, and write those
8 out and we'll bring you back in and deal with those. Thank
9 you.

10 (WHEREUPON the jury left the courtroom at 12:30
11 p.m.)

12 THE COURT: Yes, sir, Mr. Chesser, I note your
13 continuing objection to the charge on hand of one as stated
14 earlier.

15 MR. CHESSER: Thank you, Your Honor.

16 THE COURT: All right. Thank you, Counsel.

17 MR. CHESSER: Your Honor, on that first
18 question, do we want to put anything on the record the fact
19 that it was asked and so forth and that they asked for the
20 transcript and so on?

21 THE COURT: Yes, it's part of the Court's
22 Exhibit to the record, but we'll put on the record, the
23 jury did ask about a statement, as well as a transcript of
24 the 911 call and neither of those items were actually
25 introduced into evidence and the jury was instructed that

1 those were items were not in evidence without being brought
2 back out.

3 Thank you, sir. All right. Counsel, we'll
4 stand down in this case until we have a verdict or another
5 question.

6 (WHEREUPON this case was in recess while the
7 jury continued their deliberations.)

8 (WHEREUPON it was reported to the Court that
9 the jury had reached a verdict at 12:52 p.m.)

10 THE COURT: All right. Counsel, I understand
11 the jury has reached a verdict in Mr. Curry's case. Are
12 both sides ready to receive the jury?

13 MR. CHANDLER: The State's ready, Your Honor.

14 MR. CHESSER: The defense is ready.

15 THE COURT: Okay. Thank you, Counsel.

16 Go ahead and bring them out.

17 (WHEREUPON the jury entered the courtroom at
18 1:03 p.m.)

19 **VERDICT**

20 THE COURT: Thank you sir.

21 Thank you, ladies and gentlemen of the jury,
22 Madame forelady, I understand that the jury has reached a
23 verdict? Is that correct?

24 MS. RIVERS: It has.

25 THE COURT: If you'll pass the verdict form to

1 the bailiff.

2 Okay. Counsel, the verdict form appears to be
3 in proper order. I'd ask that the defendant please rise,
4 and ask the clerk if she will please publish the verdict.

5 THE CLERK: State of South Carolina, County of
6 Aiken vs. Thaddeus Lorenzo Curry, verdict form,
7 2004-GS-02-838, charging him with possession of a firearm
8 or knife during the commission of a crime, We the jury
9 find, as to the defendant, Thaddeus Lorenzo Curry, on the
10 charge of possession of a firearm or knife during the
11 commission or attempt to commit a violent crime, guilty.

12 State of South Carolina, County of Aiken vs.
13 Thaddeus Lorenzo Curry, 2004-GS-02-839, We the jury find,
14 as to the defendant, Thaddeus Lorenzo Curry, on the charge
15 of murder, guilty, May 13, 2004, signed by Forelady,
16 Shirley A. Rivers.

17 Madame forelady, ladies and gentlemen of the
18 jury, if this is your verdict, please indicate by raising
19 your right hand.

20 All hands are raised, Your Honor.

21 THE COURT: Thank you. All right.

22 Ladies and gentlemen, I appreciate your service
23 through the course of this trial, your attention and your
24 diligence in considering everything. I've watched you all
25 and you were very attentive to everything throughout the

1 course of this trial and I appreciate that. I believe you
2 all are -- let me ask the State, there's no need for them
3 to come back this afternoon?

4 MR. WEEKS: No, Your Honor.

5 THE COURT: You all are done.

6 MR. WEEKS: Except for the forelady.

7 THE COURT: We'll bring her back she's got to
8 settle up with us later on for being forelady. I'm just
9 kidding, ma'am. You all are free to go for the week and
10 you go with my appreciation and thanks for your hard work.
11 I know it's not an easy matter to consider and you all were
12 very attentive of everything, both the evidence and the
13 charge and I appreciate that. Ya'll have a good rest of
14 the day and good rest of the week and God bless you. Thank
15 you.

16 All right. Counsel, anything further,
17 Mr. Chesser, before we move forward?

18 **POST-TRIAL MOTIONS**

19 MR. CHESSER: Well, with respect to the
20 verdict, Your Honor, I'd renew my prior objections and move
21 for a new trial on the basis of any errors of law.

22 THE COURT: I respectfully deny the motions.

23 Counsel, I will do this, we'll take a quick 5
24 minutes before we proceed with sentencing. At that
25 point -- are both sides ready to proceed in sentencing?

1 MR. CHESSER: Yes, Your Honor.

2 MR. CHANDLER: The State's ready.

3 THE COURT: All right. We'll take about 5
4 minutes.

5 MR. CHANDLER: Thank you, Your Honor.

6 (WHEREUPON a brief recess was observed.)

7 THE COURT: All right. Is counsel ready to
8 proceed with sentencing?

9 MR. CHESSER: Yes, we are, Your Honor.

10 MR. CHANDLER: Yes, Your Honor.

11 THE COURT: I don't know if we're going to have
12 any family on both sides to address the court or anything,
13 but let me just give a caution, there's probably a lot of
14 emotion involved on both sides. Let me give a caution not
15 to have any disruptions or do anything that may necessitate
16 the court having to address the situation, but I anticipate
17 there will be no problems.

18 Counsel, we're ready to proceed whenever you
19 are.

20 MR. CHESSER: Yes, sir, Your Honor.

21 THE COURT: Yes, sir?

22 MR. CHANDLER: Your Honor, you've heard the
23 facts of the case. The State did, in fact, have family
24 members who did want to be heard.

25 THE COURT: Yes, sir.

1 MR. CHANDLER: At whatever time you deem
2 appropriate.

3 THE COURT: I will be glad -- Mr. Chesser, is
4 there anything you need to raise before we get into
5 receiving any testimony from family on either side or from
6 the defendant?

7 MR. CHESSER: Your Honor, as far as the defense
8 goes, Mr. Curry has no prior record as an adult. He's age
9 25. Prior to this he worked at the Wal-Mart. He's got a
10 9th grade education, he's unmarried with no kids. His
11 fiance, Charlotte Broadwater is here today. In his
12 defense, I would just emphasize that as an adult he doesn't
13 have a prior record.

14 THE COURT: I'm going to come back to that.

15 MR. CHESSER: All right.

16 THE COURT: I just wanted to make sure there
17 was no issue you needed to take up before we ---

18 MR. CHESSER: Nothing else I need to take up at
19 this time, Your Honor.

20 THE COURT: Thank you, sir.

21 Mr. Chandler?

22 **VICTIMS' STATEMENTS**

23 MR. CHANDLER: First, Your Honor, the State
24 would like to submit a -- based on the request of the
25 mother, I'd like to read a statement that she wrote. She

1 has not been present, this is the mother of the victim, Mr.
2 Heath Hamilton. She asked that we read this to you.

3 THE COURT: Certainly.

4 MR. CHANDLER: I hope and pray that you, the
5 judge, attorneys, the jury understand the reasons for my
6 not attending this trial for the murder of my son, Heath
7 Hamilton, just as I hope and pray that none of you will
8 ever have to experience the murder of your child.

9 The impact of my loss has been too great for me
10 to discuss in the amount of time that has been allowed, so
11 I will keep this as brief and as concise as I can. Heath
12 has been shot and murdered. Those words play over and over
13 in my mind. When I held Heath in my arms for the first
14 time looking at that red head and those blue eyes, I
15 thought only of his life's potential, not that he would end
16 up as a murder victim, just as Thaddeus Curry's mother may
17 have held him as a newborn. I am certain that she would
18 have never thought that he would end up murdering a young
19 man.

20 An irresponsible act took the life of my
21 youngest son. Thaddeus Curry had no respect for Heath's
22 life, but tragically he has no respect for even his own
23 life. I pity Thaddeus Curry. I have feelings of
24 resentment towards Thaddeus Curry. He not only murdered my
25 son, he murdered my son's future. Heath's life impacted

1 many people. His tragic and unnecessary death, the same.

2 Because of Thaddeus Curry's irresponsible,
3 senseless act of pulling the trigger, Heath's brother,
4 Henry is now an only child. All those that grieve, family
5 members, friends and people in the community are dealing
6 with the loss of Heath. The flip side is that all those
7 that know Thaddeus Curry are dealing with a man that has
8 been charged with murder. He is labeled a murderer and a
9 label he will carry for the rest of his life.

10 At times it's hard to smile or laugh. When I
11 do, I think of Heath's infectious laugh and wonderful
12 smile. I become sad because I know that I will never hear
13 his laugh or see his smile again. However, then I realize
14 that Heath would not want me to never smile or laugh again.
15 If that were to occur, then Thaddeus Curry not only
16 murdered Heath, in a sense he will have murdered me.

17 I fight each and every day not to let that
18 happen. I feel cheated. Even though Thaddeus Curry and
19 the others responsible for Heath's murder have been placed
20 behind bars, they are still alive. Their lives weren't
21 ended abruptly like Heath's. It angers me that Thaddeus
22 Curry chose to kill my son.

23 No penalty paid by any of the individuals
24 involved in Heath's murder will bring Heath back. I feel
25 waves of desire when I think about never being able to see

1 Heath again or hear his voice. We will miss him. I
2 realize that I will never be able to physically hold or hug
3 Heath and tell him that I love him.

4 I loved him very, very much. So much that
5 given the choice as his mother, I would've taken that
6 bullet for him, rather than to lose him. I plead with the
7 Court and the jury that Thaddeus Curry be given a life
8 sentence without any possibility of parole. It is the only
9 way to prevent him from pulling the trigger again, thereby
10 inflicting the same deep severe pain on others. Nobody
11 should have to go through what I've gone through as a
12 mother of a son who was murdered. Thank you for an
13 opportunity to express myself. Carol A. Blunt.

14 THE COURT: Thank you, Mr. Chandler.

15 MR. CHANDLER: We have Heath's father, who is
16 here and Mr. Henry Hamilton, Your Honor.

17 THE COURT: Yes, sir.

18 MR. HAMILTON: Your Honor ---

19 THE COURT: Mr. Hamilton if you would just come
20 forward, sir, so the court reporter can hear you. Thank
21 you, sir.

22 MR. HAMILTON: Not many men in their lives have
23 the opportunity to deliver both their children like I did
24 and be the first one to ever hold them. Each and everyone
25 of us who are parents expect to outlive our children. I

1 cannot condone Heath's actions. As a parent we always do
2 not know everything that our children do. I work with
3 children everyday, I'm a teacher and a coach, and I see
4 kids turn around, some I do not see turn around.

5 Heath was never given that opportunity to reach
6 his prime, to grow into the young man he could have been.
7 He never had an opportunity to reach his potential. If you
8 would have known Heath, like his mother said, his smile --
9 if you would have been at his memorial service and see over
10 600 and something people there, you would have known how
11 much this young man had touched so many lives.

12 He was a joy to be around, so full of life.
13 You just can't imagine. And this man over here took his
14 life. To go through this is a nightmare, to have that
15 knock on your door in the morning and have a coroner tell
16 you that your son has been murdered is something I wish no
17 parent ever has to go through. I will hear that knock the
18 rest of my life. But it still won't bring back my son.
19 And like his mother said, I would have gladly taken that
20 bullet for him, to where he could have lived a full life.

21 He didn't. And there's nothing that will ever
22 bring that back. This man needs to pay the price and he
23 needs to pay the full price. I don't care if he's got a
24 record or not. What I heard in the court, this man did not
25 have a conscience and to brag about taking a young man's

1 life, I have no words for that. I couldn't imagine someone
2 ever even doing that. I would ask the court to please take
3 all this into consideration when you give sentence.

4 THE COURT: Thank you, Mr. Hamilton.

5 MR. CHANDLER: Your Honor, it was the wish of
6 Heath's mother in addition to having the statement read to
7 have certain pictures of Heath for you to look at, Your
8 Honor.

9 THE COURT: Thank you, Mr. Chandler.

10 MR. CHANDLER: Your Honor, we have Mr. Ronald
11 Coursey who was present at the scene of the crime, who also
12 wanted to speak.

13 THE COURT: Yes, sir. Mr. Coursey ---

14 MR. CHANDLER: He doesn't. Your Honor, just
15 finally, we have discussed this before in reference to
16 Mr. Curry, through one of the -- through one of the
17 witnesses we had, we discussed this before that there were
18 a number of letters that were submitted as written by
19 Mr. Thaddeus Curry where he laid out a particular knowledge
20 of who some of the witnesses were from discovery, knowing
21 particular information that he would use that in the event
22 that he would be able to get out, that he would have them
23 murdered, with respect to Mr. Anthony Savage for turning
24 evidence against him or owning up to their responsibility
25 in this crime. Your Honor, because of those statements, we

1 would ask for the maximum penalty because of the fact that
2 Mr. Curry is a danger to society and should not be out as
3 Heath's mother said to cause this horrific crime again.

4 THE COURT: Thank you, sir.

5 All right. Mr. Chesser?

6 MR. CHESSER: Your Honor, as I stated, no prior
7 adult record, age 25, he worked at Wal-Mart, he's got a 9th
8 grade education. He's got no children. His fiance is here
9 today and his mother was here earlier.

10 I've had this case for just a year and
11 initially, of course, I've talked with his family, but then
12 that communication broke off. His mother did manage to
13 make it here today, but neither his mother nor his sister
14 were here yesterday. I wonder, you know, when Thaddeus was
15 younger how much support that he had from his family, maybe
16 they weren't there for him then. I know he hasn't been
17 able to call them for a year. They haven't been accepting
18 calls. But, you know, Thaddeus has not had any advantage
19 that somebody would want to have, a 9th grade education.

20 That's all we have, Your Honor.

21 THE COURT: Thank you, sir. Mr. Chesser, does
22 Mr. Curry wish to address the court prior to sentencing?

23 (WHEREUPON the defendant was in discussion with
24 his Counsel.)

25 MR. CHESSER: No, Your Honor.

SENTENCING

THE COURT: All right. He knows as part of sentencing, we consider a bunch of stuff, beyond just the evidence that was presented, one of the things we discussed back in chambers, obviously, as part of the discussion about the admissibility of evidence that with correspondence -- Mr. Curry is responsible for sending. As Mr. Chandler indicated. I find that correspondence particularly disturbing. This particular case was, apparently although they were all involved in something they shouldn't have been, as young people they were all some place they shouldn't have been doing what they shouldn't have been doing. Apparently this was a very senseless murder. Beyond that, though, subsequent to that, Mr. Curry, through that correspondence seems to have indicated some propensity to believe that that's the way he deals with his problems.

I'm a little curious as to hear -- Mr. Curry, you're under no obligation to address this court. You do understand that?

MR. CURRY: Yes, sir.

THE COURT: I would like to have heard some explanation for that attitude that was displayed in those letters. It doesn't give me a lot of comfort to believe that we can put you back out on the street anytime soon and

1 not expect that you might do this again.

2 Therefore, sir, on your murder indictment, your
3 sentence is life. On possession of a firearm, during the
4 commission of a violent crime sir, your sentence is 5 years
5 to run consecutive to your life sentence.

6 I wish you all the luck in the world, sir, in
7 terms of coming to grips with this, but I hope you
8 understand the sentence that you've received and the effect
9 of that sentence.

10 Thank you, sir.

11 MR. CHANDLER: Thank you, Your Honor.

12 THE COURT: We'll stand adjourned until 2:30,
13 2:45.

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17 * * * * * END OF TRANSCRIPT * * * * *

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Voir Dire

Case No.: 2004-GS-02-838, 839 Judge: Reginald L. Lloyd
 Date: May 11, 2004 County: Aiken
 Plaintiff/State: State of South Carolina Attorney: Everett Chandler
Bill Weeks
 Defendant: Thaddeus Lorenzo Curry Defense Attorney: Michael Chesser

Brenda W. Sigwald, Circuit Court Reporter

Juror #	Name	Sex	Race	Strikes			Accept
				*Court	Plaintiff	Defendant	
036	Teresa F. Ekre	F	W				1
058	George E. Hoshell	M	W			1	
137	Scott Turner	M	W				2
020	William Burkett	M	W			2	
107	Shirley Rivers	F	W				3
039	Ruth Estes	F	W			3	
146	Thomas Williams	M	W				4
110	Angela Salley	F	W				5
002	Barry Antley	M	W			4	
061	Richard Hines	M	B				6
011	Terre Bohman	M	W			5	
063	Janice James	F	B			6	
158	Laura Thornsberry	F	W				7
051	Leroy Green	M	B				8
062	Carla Jackson	F	W				9
017	Michael Browsers	M	W				10
133	Martha Thomas	F	W			7	
151	Carlos Dorthalina	M	W				11

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN)

CERTIFICATE OF REPORTER

3
4
5
6 I, THE UNDERSIGNED, Brenda W. Sigwald, Official
7 Court Reporter for the Second Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the
11 10th, 11th, 12th and 13th days of May, 2004.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 371, constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin,
16 counsel, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and seal at Aiken County, this 8th day of September, 2004.
19
20
21

22 Brenda W. Sigwald
23 Brenda W. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
February 25, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Reginald L. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THADDEUS CURRY,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

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4.

The court erred by allowing the solicitor to elicit on cross-examination that appellant was in jail with Anthony Savage. This testimony was also impermissible under Rule 404 (b), SCRE 14

5.

The Court erred by twice instructing the jury that guilt as a "principal is shown by actual or constructive presence at the scene as a result of a prior arrangement." This instruction amounted to a presumption of guilt by presence at the crime scene. Further, the Court erred by refusing to instruct the jury that the crime must be the "probable and natural consequence" of the acts agreed upon for appellant to be guilty under the theory of the "hand of one is the hand of all." (Issues 5 and 6)..... 17

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by refusing to allow the defense to cross-examine accomplices Jeremy Simuel and Anthony Savage about their sentencing exposure for murder and the other charges involved in this case, since this cross-examination was probative of bias and was permissible under State v. Mizzell?

2.

Whether the court erred by refusing to allow accomplice Savage to be cross-examined about the sentencing exposure he faced on outstanding drug and armed robbery charges since this cross-examination was also permissible under Rule 608, SCRE to show Savage's possible bias?

3.

Whether the court erred by allowing Savage to testify he did not want appellant to get access to a black bag containing a gun "because I know how he acts" since this evidence was inadmissible under Rule 404 (b), SCRE, because it indicated past wrongs by appellant, and it also insinuated appellant would again act in conformity with his bad character traits?

4.

Whether the court erred by allowing the solicitor to elicit from witness Savage that appellant was in jail with him since this evidence was not admissible under Rule 404 (b), SCRE, and it was highly prejudicial bad character evidence?

5.

Whether the court erred by instructing the jury that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" since this

instruction was confusing and amounted to a presumption of guilt by presence at the crime scene under the "hand of one is the hand of all"?

6.

Whether the court erred by refusing to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all?"

STATEMENT OF THE CASE

Appellant was indicted at the May, 2004 term of the Aiken County grand jury for the offenses of murder and possession of a firearm during the commission of a violent crime. R. 255 - 256. His case came on for trial on May 10, 2004 before the Honorable Reginald Lloyd, and a jury. Michael Chesser represented appellant. Everett Chandler and Bill Weaks were the solicitors. R. 1.

On May 13, 2004 the jury found appellant guilty as charged. R. 250, ll. 5-16. Judge Lloyd sentenced appellant to life imprisonment for murder and five years consecutive for possession for a firearm during the commission of a violent crime. R. 252, ll. 2-10.

This appeal follows.

ARGUMENT

1.

The court erred by refusing to allow defense counsel to cross-examine accomplices Simuel and Savage about the potential sentences they faced for murder and other charges involved in this case. The potential sentences these witnesses faced went directly to their bias, and this cross-examination was permissible under applicable case law.

Relevant Facts

This case involves an attempt by the decedent and his friend to purchase marijuana from Anthony Savage, Jeremy Simuel and appellant. The major jury issues were the foreseeability that a murder would occur during a drug deal or an attempt to "rip off" the decedent and his friend. The jury also had to decide whether it believed accomplices Savage and Simuel, or determine whether Savage and Simuel were just attempting to save themselves by alleging appellant was the shooter.

Ronald Coursey lived on Beech Island, South Carolina. He had known the decedent five years. They were roommates. R. 6, ll. 3-13. Coursey and the decedent did not know the appellant. R. 6, ll. 12-13.

Coursey and the decedent were smoking marijuana and drinking on March 18, 2003. Other evidence would show it was St. Patrick's Day. Coursey testified they wanted to purchase some marijuana. They planned to turn around and sell the purchased marijuana for a profit. R. 6, l. 13- 7, l. 16.

Coursey and the decedent saw appellant and Anthony Savage that day. They inquired about purchasing a quarter pound of marijuana from them. Coursey offered that a

quarter pound of marijuana usually costs two hundred and fifty dollars depending "on the quality." R. 7, l. 17- 8, l. 13.

Coursey went with the descendant to an ATM to withdraw the agreed upon price—two hundred and twenty dollars – so that they could purchase the marijuana. R. 8, l. 25- 9, l. 25 When Coursey and the decedent returned they were informed "they couldn't do it right now, but they could do it later." R. 9, ll. 22-25.

Coursey acquired a cell phone number from Savage, and he later called him from a pay phone at a gas station.¹ R. 10, l. 10- 11, l. 9. The decedent returned from the pay phone and told Coursey the deal "was on." "We're going to meet them on the other side of the gas station." R. 11, ll. 2-11.

Once they got to the other side of the gas station, Coursey pulled out his scales to weigh the marijuana. However, Coursey recalled, "they started getting aggressive, talking to us." "We got the stuff, you need to show us the money." R. 11, l. 24- 12, l. 3.

Coursey remembered appellant and possibly Savage saying, "give us the fucking money." R. 13, ll. 5-7. Coursey said appellant walked back into the bushes, returned with a gun, and "started shooting." R. 13, ll. 1-12. The decedent was shot in the head. R. 14, ll. 18-23. Coursey called the police. R. 16, ll. 8-16.

Coursey admitted he could not give the 911 dispatcher a description of the shooter following the shooting. R. 40, l. 12- 41, l. 7. Coursey testified a week later the only description he could give the police was that the shooter was a black male wearing a white

¹ The decedent wrote the cell phone number down on his hand. R. 61, ll. 15-23. The fact the phone belonged to Savage was revealed during his testimony. R. 134, ll. 14-19.

tee-shirt. R. 43 ll. 12-25. As will be seen infra, the defense would attempt to show that the shooter was in reality either Savage or Simuel.

Jeremy Simuel testified he worked with appellant for a while at the Wal-Mart. R. 65, l. 23-66, l. 5. Simuel testified on the day of the purposed drug deal appellant was carrying a black bag. R. 66, ll. 18-22. Defense counsel would object to any testimony about any prior occasions involving appellant and the black bag. R. 68, l. 15- 70, l. 13.

Simuel claimed during the incident at the gas station that he stayed inside the vehicle while Savage and appellant went to get the money for the marijuana. R. 73, l. 9- 74, l. 2. Simuel testified that about three minutes passed before appellant and Savage came running back to the car. Simuel claimed appellant was saying "I done told you I ain't no joke... let the KKK march this."² R. 74 ll. 4-14.

On cross-examination, Simuel admitted appellant was wearing a brown jacket on the evening of the drug deal. The significant of that testimony was that the shooter was said to be wearing a white tee-shirt. R. 86 ll. 13-17.

Defense counsel asked Simuel on cross-examination if he was hoping the state would recommend a light sentence for him given his testimony and his pending charges for murder, attempted armed robbery and possession of a weapon. Simuel denied he wanted a lenient sentence -- "I'm just hoping that justice is served." R. 87 ll. 15-21.

When appellant earlier attempted to cross-examine Simuel about the potential life sentence he faced for murder and twenty-year sentence for armed robbery, the solicitor objected. The judge sustained the objection. The judge told the jury to disregard anything

² The KKK reference apparently was to the Ku Klux Klan marching at the Masters in Augusta at the time.

regarding potential sentences for any of the offenses that are charged. "It's not in the jury's purview..." R. 81, l. 23- 82, l. 25.

Defense counsel took strong exception to the judge's ruling. He cited the Supreme Court's decision in State v. Mizzell 349 S.C. 326, 563 S.E.2d 315 (2002) in support of his right to this cross-examination. Defense counsel argued the potential penalties the accomplices faced went to their bias and motive to misrepresent their testimony. This made this perfectly permissible cross-examination. R. 99, l. 15-103 l. 10.

The judge stated he was not going to allow the defense to proffer the evidence. He ruled the issue was preserved for appeal as the record stood. R. 102, l. 4- 104, l. 22.

The judge reasoned this cross-examination was only deemed admissible in State v. Mizzell because it involved a plea bargain. The judge stated that since there was no evidence of a plea agreement with Simuel in this case, that cross-examination about his sentencing exposure was therefore improper. R. 104, l. 15-105, l. 8.

Anthony Savage then testified and he also blamed the shooting on appellant. R. 117, l. 5- 118, l. 23. Savage claimed he said to himself after the shooting -- "I hope he ain't shot this dude." R. 119, ll. 1-24.

On cross-examination Savage denied he wanted to make a deal with the state. Savage proclaimed: "I'm just telling the truth. It really doesn't matter." R. 130, ll. 5-10.

Following the testimony, defense counsel asked the judge to revisit the issue of Simuel's and Savage's bias due to their sentencing exposure. Defense counsel argued that he should not be prohibited from arguing to the jury about sentencing exposure and bias. The solicitor argued the judge had ruled correctly and that he should not alter his ruling.

The judge then ruled it would be improper for the defense to argue anything regarding sentencing to the jury. R. 195, l. 1-198, l. 4.

In his closing argument, the solicitor told the jury, "There's no doubt in my mind that there are three murderers in this case." R. 222, ll. 7-14. "They know what's going on. . . They know what the plan is." R. 221, ll. 22-24.

Discussion

The trial judge incorrectly ruled that State v. Mizzell 349 S.C. 326, 563 S.E.2d 315 (2002) only allowed a co-defendant or accomplice to be cross-examined about his sentencing exposure if a plea bargain was involved. In State v. Mizzell the Supreme Court held that the sentencing exposure of a co-defendant or an accomplice goes to his bias and was permissible to explore on cross-examination.

The Court also noted, "The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency." State v. Mizzell 563 S.E.2d 318.

The Court in Mizzell further wrote that a defendant's right to permissible cross-examination outweighed the state's right to keep potential sentencing issues from the jury's consideration. Cf. Illinois v. Brewer 245 Ill. App. 3rd 890, 615 N.E.2d 787, 790 (1993); State v. Brown 303 S.C. 169, 399 S.E.2d 593 (1991).

The Court in Mizzell ruled a defendant's constitutional right to such cross-examination was guaranteed under the Confrontation Clause. See Davis v. Alaska 415 U.S. 308, 94 S.Ct. 1105 (1974). Further, any fact may be elicited on cross-examination that is probative of interest, bias or partiality. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976); Rule 608 (c), SCRE.

The judge's ruling prohibiting this cross-examination was patently erroneous. The error was also not harmless.

Courtney was unable to give the 911 operator a description of the shooter. Appellant's investigator also testified that another witness who claimed appellant later bragged about disposing of the gun told him he could not specifically remember which man --- appellant, Savage or Simuel -- actually bragged about disposing of the gun. R. 191, l. 18-192, l. 12.

Further, police investigator Billy Fleury testified Anthony Savage told him during an interview that he was wearing a white tank top or tee-shirt on the night of the shooting. R. 193, ll. 9-21. As seen, there was evidence a robber or the shooter was wearing a white tee-shirt.

Finally, Savage and Simuel both had an obvious interest in blaming the murder on appellant, and currying favor with the state. In fact, this Court can take judicial notice from the South Carolina Department of Corrections inmate locator dated March 15, 2005 that Jeremy Simuel is only serving a five year sentence for accessory to a felony. See Alphaa report of the Department of Corrections at p. 463.

Appellant was denied his fundamental right to meaningful cross-examination and the error in this case was not harmless. Given the bias of the witnesses, and the seemingly conflicting identification evidence, this Court respectfully should not conclude beyond a reasonable doubt that the error did not contribute to the verdict. See Arnold v. State 309 S.C. 157, 420 S.E.2d 834 (1992); Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct 1431 (1986). Appellant should be granted a new trial.

2.

The court erred by refusing to allow defense counsel to cross-examine Anthony Savage about his pending armed robbery and possession with intent to distribute marijuana charges since this cross examination was also probative of Savage's bias.

Relevant Facts

Defense counsel told the judge that in addition to the murder, possession of a weapon during the commission of a violent crime, and attempted armed robbery charges in this case, Savage also had an October, 2003 pending charge for armed robbery. In addition, Savage had a pending possession with intent to distribute marijuana in the proximity charge from April 2003. Counsel argued these charges were permissible areas of cross-examination since they raised a credibility issue under Rule 608 (b), SCRE. R. 3, ll. 5-25.

The judge ruled, "I'm not going to allow questioning regarding those." The judge said he did not think appellant would be prejudiced by his refusal to allow this cross-examination about Savage's pending charges. R. 4, ll. 1-23.

Discussion

Appellant need not reiterate all the arguments made above about a witness's bias and motive to represent where the state has charges pending against him. Suffice it to say that it was clear that Savage had obvious reasons to testify in as highly a favorable manner for the state as possible.

These pending charges went directly to Savage's credibility under Rule 608 (c), SCRE. This evidence was probative of Savage's credibility and bias. As such it was admissible under State v. Brewington, *supra*. See, also, State v. Gillian, 360 S.C. 433, 602 S.E.2d 62, 72 (Ct.App. 2004); State v. Sims 348 S.C. 16, 558 S.E.2d 518 (2002).

All of the pending charges against Savage were relevant to his bias and credibility. The more charges, and the more sentencing exposure Savage faced, the more incentive he had to make his testimony more favorable to the state. Appellant should be granted a new trial.

3.

The judge erred by allowing Anthony Savage to testify he did not want appellant to get access to his black bag that contained his gun during the drug deal or attempted robbery because he knew how appellant acted. This testimony was clearly intended to imply appellant had committed other bad acts or crimes in the past. Defense counsel correctly argued this was improper testimony under Rule 404 (b), SCRE.

Related Facts

The solicitor began the "black bag" testimony with witness Simuel. Defense counsel objected because the solicitor was attempting to get into prior events involving appellant, and attempting to get improper character or improper habit evidence before the jury. R. 68, 1.1– 70, 1. 13.

However, the solicitor was relentless in his efforts to get this prejudicial evidence before the jury. The solicitor asked Savage why he threw appellant's black bag in the bushes at the gas station. Savage answered that he did not want appellant to get access to it because he knew how appellant acted. R. 113, 1. 21– 114 1. 2. Defense counsel asked that Savage's answer be stricken under Rule 404 (b), SCRE. The judge not only refused to strike this testimony as improper, he overruled appellant's objection. R 113, 1. 22– 114 1. 8.

Evidence of other wrongs or acts or crimes is not admissible to prove the character of a person in order to show he acted in conformity therewith. See Rule 404 (b), SCRE; State v. Gamble 247 S.C. 214, 146 S.E.2d 709 (1966). There are a variety of reasons for not allowing prejudicial propensity or character evidence such as the solicitor was eliciting about appellant and the black bag in this case.

First, other wrongs or crimes or bad acts testimony has a tendency to raise a variety of collateral issues and divert the jury's attention from the issue immediately before it – the defendant's guilt of innocence in the crime for which he is on trial. Second, this evidence also has a tendency to strip the defendant of the presumption of innocence, and it compels him to meet charges or acts for which the indictment did not put him on notice. Finally, it also tends to confuse the defense to the real charge for which the defendant is on trial. See Collins, South Carolina Evidence, §11.1 at page 312 (2000 Ed). This type of propensity bad character evidence is not admissible to show the defendant was acting in conformity with a character trait. See State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998)

Here, Savage's testimony about the black bag was obviously elicited to show that appellant's past actions presented the jury with a "loose cannon" as a defendant. It made appellant out to be a person of bad character.

This evidence was inadmissible under Rule 404 (b), SCRE, and it was highly prejudicial where Savage and Simuel had strong motives to misrepresent their testimony, and where the identification evidence was questionable. Appellant should be granted a new trial.

4.

The court erred by allowing the solicitor to elicit on cross-examination that appellant was in jail with Anthony Savage. This testimony was also impermissible under Rule 404 (b), SCRE.

Defense counsel attempted to show the jury in appellant's defense that Savage and Simuel were positioning themselves for future favors, and that Savage and Simuel had the opportunity to converse while in jail about their joint interest in blaming appellant for the murder. R. 127, l. 24- 128, l. 4. On redirect examination the solicitor asked Savage if he also was in jail with appellant. Defense counsel objected under Rule 404 (b), SCRE. He argued the solicitor was not entitled to place this improper evidence before the jury. R. 133 l. 19 - 134 l. 3.

The judge overruled the objection, and Savage then testified that he was housed with appellant in the Aiken County Detention Center. R. 134, l. 6-9.

Discussion

Courts go to great lengths to prevent jurors from learning a defendant is still incarcerated and not out on bond. They instruct court personnel and police officers to do everything possible to assure the jury does not see the defendant in handcuffs or in prison garb. Courts do so because evidence a defendant is in jail on any charge or unable to make bail or remain free on bond raises the issue of his bad character under Rule 404 (b), SCRE. It diminishes the defendant in the eyes of the jury.

The United States Supreme Court in Estelle v. Williams 425 U.S. 501, 96 S.Ct. 1691 (1976), held that the state cannot, consistent with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes. The right to

a fair trial is a fundamental liberty secured by the Fourteenth Amendment. See Drope v. Missouri 420 U.S. 162, 172, 95 S.Ct. 896, 904 (1975).

Courts must carefully guard against the dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. Consequently, factors that undermine fairness in the jury's fact finding process must be eliminated. See, In re Winship 397 U.S. 358, 364, 90 S.Ct. 1068 (1970).

In Estelle v. Williams, the Court noted that an accused presented in prison garb signals to the jury that he has been unable to secure his release on bond prior to trial. This is repugnant to our concept of equal justice as embodied in the Fourteenth Amendment to the United State Constitution. See Griffin v. Illinois 351 U.S. 12, 76 S. Ct. 585 (1956).

Similarly, in Deck v. Missouri ___ U.S. ___, 125 S.Ct. 2007 (2005) the Supreme Court held that due process prohibits the routine use of physical restraints on a defendant while before the jury during the guilt phase of a capital trial. Such restraints upon an accused must be justified by objective circumstances. See, also, Humbert v. State 345 S.C. 332, 548 S.E.2d 862 (2001).

Defense counsel would have been ineffective if he did not cross-examine Savage and Simuel about their ability to prepare their stories because they were housed together in the same jail. Any argument the state may present that appellant opened the door to testimony that he was also in jail at the time should be rejected. The right of a *defendant* to stand before the jury presumed innocent, and a free man is, as seen, of Constitutional dimensions.

As stated, the trial court goes to great lengths to insure that a jury does not see the defendant handcuffed or in prison garb. Therefore, any suggested dichotomy between the

right to effective counsel and effective cross-examination, and opening the door to the fundamental unfairness of the jury knowing the defendant is in jail, and unable to make or get bond set, should be rejected as a false dichotomy.

The fact defense counsel had the duty and the right to cross-examine Savage and Simuel about their opportunity to plan their testimony against appellant while in jail did not open the door to the jury knowing that appellant was incarcerated. Evidence a defendant is incarcerated at the time of trial or was in jail on another charge is evidence of bad character – fair or unfair – that is the reality. Appellant should be granted a new trial.

5.

The Court erred by twice instructing the jury that guilt as a "principal is shown by actual or constructive presence at the scene as a result of a prior arrangement." This instruction amounted to a presumption of guilt by presence at the crime scene. Further, the Court erred by refusing to instruct the jury that the crime must be the "probable and natural consequence" of the acts agreed upon for appellant to be guilty under the theory of the "hand of one is the hand of all." (Issues 5 and 6).

Relevant Facts

Defense counsel was provided with a copy of the judge's purposed jury instructions. Defense counsel requested an instruction that "if two or more combined together to commit an unlawful act and a crime is committed by one of the actors *"as a probable and natural consequence of the acts done in pursuance of the common design*, all present and participating in the unlawful undertaking are as guilty as the one who committed the act." R. 198 l. 5-199 l. 19. (emphasis added).

Defense counsel also took exception to the judge's instruction that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a [prior arrangement]." Counsel argued that this instruction could be construed to mean that if the defendant were present at the crime scene he was guilty as a principal. Counsel argued this amounted to a prohibited presumption, and should not be charged. R. 199 ll. 20- 200, ll. 13; R. 202 ll. 9- 203 l. 9.

Over objection, the judge charged that "guilt as a principal is shown by actual or constructive presence at the scene as a result of [a] prior arrangement. Therefore, a finding

of a prior arranged plan or a common scheme is necessary for finding of guilt as a principal." R. 233 ll. 14-18.

Defense counsel took exception to the judge's hand of one hand of all charge -- as he had previously -- and he renewed his objection to not charging that the homicide had to be a probable or natural consequence of the preexisting plan. R. 241 ll. 22- 242 ll. 10.

To exacerbate the error, the jury requested another instruction on the hand of one is the hand of all. R. 244 ll. 13-17. The judge again repeated the objectionable language and refused to give the "probable or natural consequence" instruction requested by the defense. R. 245 ll. 18- 247 ll. 25. The judge again noted defense counsel's continuing objection to this instruction. R. 248 ll. 12-14.

Discussion

"The hand of one is the hand of all" is a "dynamite" instruction. The very real danger is its natural tendency is to lead the jury to believe that by presence at the scene of a crime or by agreement to commit a much lesser crime, the defendant is always guilty of the greater crime regardless of its foreseeability. For this reason, respectfully, the "hand of one is the hand of all" instruction should be approached by the trial judge with the caution urged by defense counsel.

The requested instruction came from State v. Dickman 341 S.C. 293, 534 S.E.2d 268 (2000). The Supreme Court approved it as a correct instruction on the law.

Further, defense counsel was correct in arguing that the "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" amounted to a presumption of guilt by presence at the crime scene. Presumptions, which essentially

place a burden on the defendant to overcome them, are unconstitutional. See Tate v. State 351 S.C. 418, 570 S.E.2d 522 (2002).

Further, any argument that giving a "mere presence" charge cured the deficiency in the instruction should be rejected. The purpose of a jury instruction is to enlighten the jury, and assist it in arriving at a correct verdict. Confusing instructions obviously frustrate that purpose. Confusing jury instructions should be avoided. See State v. Leonard 292 S.C. 133, 355 S.E.2d 270 (1987).

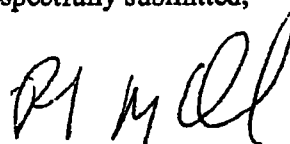
Moreover merely superimposing a correct statement of law (mere presence) over an erroneous statement of law (presence amounts to guilty as a principal if there was a prior arrangement) only fosters prejudice and confusion. State v. Patrick 289 S.C. 301, 345 S.E.2d 481 (1986); State v. Peterson 287 S.C. 244, 355 S.E.2d 800 (1985).

The court erred by giving the constructive or actual presence at the scene amounts to guilt as a principal instruction. The court also erred by refusing to give the instruction that the homicide had to have been the probable or natural consequence of the agreed upon action. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed, and this case remanded to the Aiken County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

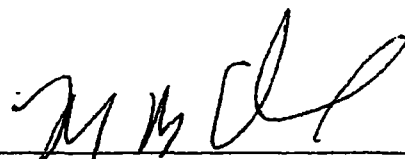
ATTORNEY FOR APPELLANT.

February 9, 2006

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 9, 2006

A handwritten signature in black ink, appearing to read 'R. M. Dudek', is written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

S.C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

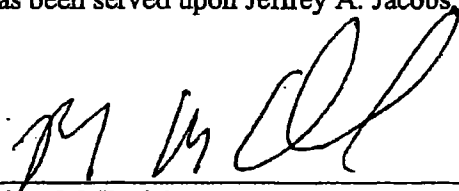
V.

THADDEUS CURRY,

APPELLANT

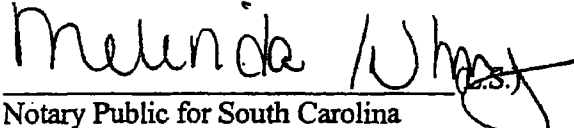
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jeffrey A. Jacobs, Esquire, this 9th day of February, 2006.


Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2006.


Notary Public for South Carolina
My Commission Expires: November 16, 2008

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM THE
CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT**

**CASE NO. 82-1000
FILED OCTOBER 1, 1982**

THE STATE

Respondent

THOMAS J. CURRY

Appellant

FINAL BRIEF OF RESPONDENT

HARRY DINGMAN, JR., Esq.
Attorney General

JOHN W. MCINTOSH, Esq.
Chief Deputy Attorney General

DONALD S. ZELTZER, Esq.
Assistant Deputy Attorney General

ETHEL E. JACOBSON, Esq.
Assistant Deputy Attorney General

Post Office Box 11-200
Columbia, SC 29201
(803) 734-3316

BARBARA E. MORGAN
Solicitor General Judicial Circuit
Post Office Drawer 1364
Aiken, South Carolina 29801
(803) 642-1457

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

A. Appellant's Statement of Issues on Appeal

- I. Whether the court erred by refusing to allow the defense to cross-examine accomplices Jeremy Simuel and Anthony Savage about their sentencing exposure for murder and the other charges involved in this case, since this cross-examination was probative of bias and was permissible under *State v. Mizzell*?
- II. Whether the court erred by refusing to allow accomplice Savage to be cross-examined about the sentencing exposure he faced on outstanding drug and armed robbery charges since this cross-examination was also permissible under Rule 608, SCR to show Savage's possible bias?
- III. Whether the court erred by allowing Savage to testify he did not want appellant to get access to a black bag containing a gun "because I know how he acts" since this evidence was inadmissible under Rule 404(b), SCRE, because it indicated past wrongs by appellant, and it also insinuated appellant would again act in conformity with his bad character traits?
- IV. Whether the court erred by allowing the solicitor to elicit from witness Savage that appellant was in jail with him since this evidence was not admissible under Rule 404(b), SCRE, and it was highly prejudicial bad character evidence?
- V. Whether the court erred by instructing the jury that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" since this instruction was confusing and amounted to a presumption of guilt by presence at the crime scene under the "hand of one is the hand of all"?
- VI. Whether the court erred by refusing to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all"?

B. Respondent's Statement of Issues on Appeal

- I. Did the trial court err by permitting cross-examination of Curry's accomplices concerning their potential sentences, when there was ample evidence that Curry was present at the scene of the murder and when Curry was identified as the shooter?
- II. Did the trial court err by refusing to allow Curry's attorney to cross-examine Anthony Savage concerning his pending armed robbery and possession charges, when Savage's testimony was merely cumulative to that of Ronald Coursey?

- III. Did the trial court's admission of testimony that Savage knew "how [Curry] acts" violate Rule 404(b), when that testimony contained no reference to specific prior bad acts?
- IV. Is Curry's argument that the admission of testimony that he was incarcerated properly before this Court, when his trial counsel objected to that testimony only on the ground that its admission violated Rule 404(b)?
- V. Did the trial court properly charge the law of South Carolina in its hand-of-one, hand-of-all charge, when that charge recited substantially the same language as that approved by this Court?
- VI. Did the trial court properly refuse to charge the specific verbiage requested by Curry, when it charged the jury in words that conveyed the substance of the requested charge?

STATEMENT OF THE CASE

The Appellant, Thaddeus Curry, was indicted at the May 2004 term of the Aiken County Grand Jury for murder and possession of a firearm during the commission of a violent crime. He was tried from May 10-13, 2004 before the Honorable Reginald I. Lloyd and a jury. The jury convicted Curry of both crimes and Judge Lloyd sentenced him to life for murder and five years, consecutive, for possession of a firearm. This appeal followed.

STATEMENT OF FACTS

On March 18, 2003, after a night of smoking marijuana and drinking, Heath Hamilton and Ronald Coursey drove to the Savannah West apartment complex in Augusta, in search of more marijuana. R.p. 6-7, Tr. 100, l. 23 - p. 101, l. 8. When they pulled into the parking lot of the apartment complex, they saw Thaddeus Curry and Anthony Savage. R.p. 7, Tr. p. 101, ll. 17-24. Curry and Savage offered to sell a quarter pound of marijuana to Hamilton and Coursey for \$220. R.p. 8-9, Tr. p. 102, l. 16 - p. 103, l. 8. Curry and Savage told Hamilton and Coursey to "go on and get the money." R.p. 9, Tr. 103, ll. 9-11.

Hamilton and Coursey went to an ATM, withdrew money, and returned to the apartment complex. R.p. 9, Tr. 103, ll. 11-13. Curry and Savage went up to Jeremy Simuel's apartment, and told Hamilton and Coursey that "they couldn't do it right now, but they could do it later." Savage gave Hamilton his cell phone number, which Hamilton wrote on his hand. R.p. 9-10; 108-109, l. 4, Tr. 103, l. 20 - p. 104, l. 6; p. 204, l. 17 - p. 205, l. 4.

Hamilton and Coursey return to Hamilton's house and smoked some more marijuana. R.p. 10, Tr. 104, ll. 11-14. Curry, Savage, and Simuel, meanwhile, drove around downtown Augusta. R.p. 110, Tr. 206, ll. 12. Hamilton called Savage's cell phone. R.p. 110, Tr. 206, ll.

13-14. Savage told Hamilton that they would meet him at a gas station on Sand Bar Ferry Road, in Aiken County. R.p. 10, Tr. 104, ll. 9-22. Hamilton and Coursey went to the gas station, parked, and waited. R.p. 10-11, Tr. 104, l. 23 - p. 105, l. 2.

Jeremy Simuel drove Curry and Savage to Sand Bar Ferry Road. R.p. 66, 67-68, Tr. 162, ll. 11-22,; p. 163, l. 18-p. 164, l. 4. Curry had a black bag with him; he "always takes it with him and that's what he had his gun in." R.p. 66, 68, 111, Tr. p. 162, ll. 18-20; p. 164, ll. 5-10; p. 207, ll. 19-23. The weapon was a nine-millimeter pistol. R.p. 125, Tr. 221, ll. 13-21. Hamilton called the cell phone number again, and then Hamilton and Coursey went to the other side of the gas station to meet curry and his accomplices. Tr. 208, ll. 2-3.

Simuel parked the car. Curry got out of the car with his black bag. R.p. 74, Tr. 170, ll. 9-25. He dropped the bag on the side of the road, and Savage threw it on the other side of some bushes. Tr. 208, ll. 12-16; p. 209, ll. 15-24. Coursey pulled out his digital scales to weigh the marijuana, but Curry and Savage insisted upon seeing the money before they produced the marijuana. R.p. 11-12, 115, Tr. 105, l. 3 - p. 106, l. 10; p. 211, ll. 8-24.

Curry then walked toward the bushes, retrieved the pistol, and shot Heath Hamilton in the head. R.p. 13-14, 117; Tr. 107, l. 15 - p. 108, l. 23; p. 212, l. 13 - p. 213, l. 24.

Curry and Savage ran back to Simuel's car. R.p. 74, Tr. 170, ll. 1-6. In the car, Curry said, "I think I dome capped him", which meant that he had shot him in the head. Tr. 214, ll. 8-23. Curry said, "I done told, I done told him I ain't no joke, I ain't no joke, you know what I'm saying, I ain't no joke" and "Let the KKK march this." Because it was Masters time and they said something on the new about the Ku Klux Klan was supposed to march in front of Savannah West Apartments and so they were like, "Tell the KKK to march on this. I ain't no joke, I ain't

no joke." R.p. 74, Tr. 170, ll. 6-14. Curry said, "You should have seen that Mother Sucker... He was like this and was demonstrating on, I guess how Heath Hamilton was in position after shot him." Tr. 20-24.

Curry, Savage, and Simuel drove away. Curry said to Savage and Simuel, "After tonight ya'll don't know me... Ya'll don't know nothing about me." R.p. 75-76, Tr. 171, l. 3 - p. 172, l. 15.

Later that day, Javon Rushon picked up Curry. Simuel and Savage were also in the vehicle. R.p. 161, Tr. 258, ll. 3-8. Rushon heard Curry saying "something about a jacket, 'Get rid of it.'" R.p. 161, Tr. 258, ll. 12-23. He also heard Curry talking about the murder weapon, saying, "They'll never find it." R.p. 161, Tr. 258, l. 24 - p. 259, ll. 2, 20-24.

Forensic examination determined that Heath Hamilton was killed by a high point Model C nine-millimeter Luger pistol. R.p. 183, Tr. 281, ll. 4-21. Ronald Coursey unequivocally identified Curry as the man who shot his friend.

ARGUMENT

I. Any Error in the Trial Court's Refusal to Allow Curry's Attorney to Cross-Examine Simuel Concerning Their Potential Sentences was Harmless.

Curry argues that the trial court erred in refusing to allow his attorney to cross-examine his accomplices regarding the potential sentences they faced. Any error in the trial judge's refusal to allow Curry to cross-examine Simuel concerning their potential sentences, however, was harmless beyond a reasonable doubt.¹

On cross-examination, Curry's attorney elicited from Simuel that he was charged with murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime as a result of the events that led to the killing of Heath Hamilton. He then asked Simuel whether he was aware that he was facing a potential life sentence for murder; Simuel testified that he was not. R.p. 81-82, Tr. 177, l. 23 - p. 178, l. 12. When Curry's attorney asked Simuel about his potential sentence on the attempted armed robbery charge, the solicitor objected. The court sustained the objection and instructed the jury to disregard any testimony concerning potential sentences. R.p. 82, Tr. p. 178, ll. 13-25. The trial court ruled that State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) was inapplicable because "[t]here's no deal on the table." R.p. 104, Tr. p. 200, ll. 15-22.

This case is unlike *Mizzell*. In that case, the witness whose potential sentence was at issue was "the only witness to testify as an eyewitness to petitioners' burglary of the home. The

¹ Curry argues that he should have been allowed to cross-examine both Simuel and Savage concerning potential sentences. At trial, however, he did not attempt to cross-examine Savage on this issue, and therefore the admissibility of Savage's potential sentences are not before this Court.

lack of physical evidence placing petitioners at the scene enhanced the importance of [that] testimony." In contrast, the only issue in this case was whether Curry or Savage fired the shot that killed Heath Hamilton. It was undisputed that both Curry and Savage were present at the shooting, and that one of them fired the shot. Simuel's testimony did not address this issue.

Savage testified that Curry was the shooter. Savage's testimony was merely cumulative to that of Ronald Coursey, who unequivocally identified Curry as the shooter. Coursey also corroborated the testimony that Curry retrieved the gun from the bushes. R.p. 13, Tr. p. 107, ll. 11-16. Further, a third witness, Javon Rushon, testified that Curry was talking about the murder weapon. *Mizzell* is not controlling.

Moreover, Curry's attorney amply attacked Simuel's credibility. Curry's attorney established that Simuel was charged with murder, attempted armed robbery, and possession of a firearm during the commission of a violent crime. He also established that he was thrice convicted of theft by receiving, and was also convicted of obstruction of justice by way of giving false information to a police officer and of possession of marijuana with intent to distribute. Curry's lawyer established that Simuel was sentenced to imprisonment on at least some of those charges. R.p. 84-85, Tr. 180, l. 4 - p. 181, l. 3.

More significantly, given that the hand-of-one-hand-of-all doctrine applied, the identity of the trigger puller had little relevance to the case. There was no dispute that Curry was present at the killing. The evidence overwhelmingly established his guilt, whether or not he pulled the trigger. That fact was established even without the testimony of Simuel and Savage. Any error with respect to the cross-examination of those witnesses, therefore, was harmless beyond a reasonable doubt.

II. Any Error in the Trial Court's Refusal to Allow Cross-Examination of Anthony Savage Regarding Pending Charges is Not Properly Before This Court and was Harmless.

Curry argues that the trial court erred by refusing to allow his attorney to cross-examine Anthony Savage concerning his pending charges for armed robbery and possession with intent to distribute. Curry's attorney raised this issue in a motion in limine. He argues that he should be allowed to impeach Savage by cross-examining him on the pending charges "under the rule of admissibility of uncharged bad acts that reflect on credibility under Rule 608(b)" of the South Carolina Rules of Evidence. R.p. 3, Tr. p. 90, ll. 15-21.

This ground is not preserved for appeal. Curry made no objection during the trial, nor did he attempt to introduce the evidence he claims the court did not allow. Rather, this ground is the result only of a motion in limine. Curry did not proffer the evidence or otherwise raise the issue in any form during the trial. Accordingly, it is not properly before this Court. See, S.C. Dep't of Pub. Transp. v. Galbreath, 315 S.C. 82, 82 n.2, 431 S.E.2d 625, 626 n.2 (Ct.App. 1993) ("We note that Galbreath did not subsequently proffer Alford's testimony during the trial, but merely relied upon the *in limine* is granted, it is not the final ruling on the admissibility of the evidence.... 'We caution the Bench and Bar that these pretrial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence.'" (quoting State v. Floyd, 295 S.C. 5518, 521, 369 S.E.2d 842, 843 (1988))).

Moreover, Curry here argues a ground different from the ground he argued in his motion in limine in the trial court. In the trial court, Curry argued that he should be allowed to cross-

examine Savage under Rule 608(b), which provides that “[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be prove by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness a to which character the witness being cross-examined has testified.” S.C.R.Evid. 608(b). In this Court, however, Curry claims that the trial court’s exclusion of this testimony violates Rule 608©, which provides that “[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” S.C.R.Evid. 608©. This argument is therefore not properly before this Court. See, State v. Richardson, 358 S.C. 586, 595 S.E.2d 858 (Ct. App. 2004)(“Because Richardson objected to the testimony on a different ground at trial than what he argues on appeal, this argument is not properly before this Court.”).

Even were the pending charges relevant to Savage’s “character for truthfulness or untruthfulness”, see United States v. Reed, 700 F.2d 638, 643 (11th Cir. 1983)(“Suffice it to say, we are unable to perceive that a person’s possession of a small amount of marijuana sheds any light whatsoever on his ‘character for...untruthfulness.’ Though the commission of any crime may in fact cast doubt on the broad question of one’s ‘credibility’, the drafters of the Rules were careful to limit inquiry under Rule 608 to a witness’ propensity for honesty”), the rule itself expressly leaves the admission of such evidence to the ample discretion of the trial judge. In this case, he did not abuse his discretion by refusing to admit it.

Finally, any error in the trial court's refusal to allow Curry's attorney to cross-examine Savage concerning his pending charges was harmless, for the same reasons elucidated in Section I above. "In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." State v. McLeod, 362 S.C. 73, 83, 606 S.E.2d 215, 220 (Ct.App. 2004).

As noted above, Savage's testimony was cumulative to that of Ronald Coursey, and it was not contradicted. The state's case was overwhelming; undisputedly, Curry was present at the shooting and the hand-of-one, hand-of-all doctrine applied to the case.

Further, the extent of cross-examination that the trial court permitted was broad. Curry's attorney attacked Savage's credibility thoroughly. Curry's counsel was permitted to elicit from Savage that he was pending trial for murder, armed robbery, and possession of a weapon during the commission of a violent crime and had been incarcerated since April of 2003. R.p. 129, Tr. p. 225, l. 19 - p. 226, l. 4. Curry's attorney also established that Savage had been convicted previously on unrelated charges of second-degree burglary, grand larceny, possession of a stolen vehicle, and theft by taking. R.p. 129, Tr. 224, l. 16 - p. 225, l. 16. After the recitation of Savage's entire criminal history, the addition of two more pending charges could not have diminished his credibility any further.

The trial court's ruling is not properly before this Court and, if it is error, it is harmless. Curry's argument fails.

III. Testimony that Savage Knew "How [Curry] Acts" Was not Excludable Under Rule 404(b)

Curry argues that Anthony Savage's testimony that "I know how he acts" was inadmissible under Rule 404(b) of the South Carolina Rules of Evidence. Curry's argument fails.

On direct examination, the solicitor asked Savage why he threw Curry's bag in the bushes. Savage replied that he did not want Curry "to get access to it, because I know how he acts." Curry's attorney objected, and asked that Savage's answer be stricken. The court overruled the objection, but told the solicitor that he could not "go beyond that" and directed him "just to move on." R.p. 113, Tr. 209, l. 22 - p. 210, l. 8.

Rule 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." S.C.R.Evid. 404(b). Curry argues that Savage's testimony was "intended to imply" that Curry "had committed other bad acts or crimes in the past." Such evidence, however, is not within the ambit of Rule 404(b).

Rule 404(b) applies to *specific* instances of prior bad acts. Rule 404(b) codifies the rule in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). See State v. Gagum, 328 S.C. 560, 564 n.2, 492 S.E.2d 822, 823 n.2 (Ct. App. 1997) ("Thus, Rule 404(b) codifies the limitations on the admissibility of evidence of prior bad acts set forth in State v. Lyle"). In Lyle, the Supreme Court stated that "[w]hether evidence of other *distinct crimes* properly falls within any of the recognized exceptions noted is often a difficult matter to determine." State v. Tutton, 354 S.C.

319, 327, 580 S.E.2d 186, 190 (Ct. App. 2003)(quoting State v. Lyle, 125 S.C. at 416, 118 S.E. at 807)(emphasis added).

Curry's argument extends Rule 404(b) beyond credibility. Curry argues that if testimony "intends to imply" that a defendant committed other acts, crimes or offenses, then Rule 404(b) applies. Rule 404(b) applies, however, to the acts, crimes, or offenses themselves, not to any intent to imply or to any implication of such acts, crimes or offenses without enumeration.

The admission of the testimony of which Curry complains did not violate Rule 404(b) because it was not testimony of discrete prior bad acts.

IV. The Argument that Curry's Federal Constitutional Right to Due Process was Violated by Evidence that He was Incarcerated with Savage is not Preserved for Review Because Curry's Objection was Based Solely on Rule 404 of the South Carolina Rules of Evidence

Curry argues that the admission of Savage's testimony that the two murderers were incarcerated together violates his federal constitutional rights. This argument is not preserved for review.

On cross-examination, Curry's attorney established that Savage and Simuel were housed in jail together. R.p. 127, Tr. 223, l. 24 - p. 224, l. 1. On redirect examination, the solicitor asked, "So you were housed with Mr. Curry as well?" R.p. 133, Tr. p. 229, l. 19. Curry's attorney objected, citing Rule 404(b) of the South Carolina Rules of Evidence. The trial court overruled the objection. R.p. 133, Tr. 229, l. 19 - p. 230, l. 3.

Although the title of the section of Curry's brief containing this argument invokes Rule 404(b), Curry in fact argues that the trial court erred in allowing the solicitor to cross-examine Anthony Savage concerning the fact that he was incarcerated with Curry because that cross-

examination violated his right to due process of law under the Fourteenth Amendment to the United States Constitution. Curry cites cases involving clothing defendants in prison garb and shackling defendants, theorizing that a defendant's right to due process is violated if the jury learns that the defendant is incarcerated during the trial.² (Appellant's Br. at 14-15). Curry's trial counsel, however, never invoked these constitutional grounds in objecting to that evidence. As Curry's own brief notes, his trial attorney objected solely on Rule 404(b) grounds, stating only, "I object under Rule 404(b), Your Honor. He's not entitled to go into this." R.p. 133, Tr. 229, ll. 23-24; Appellant's Br. at 14. Curry cannot assert a different ground for this alleged error on appeal. See State v. Richardson, 358 S.C. 586, 595, 595 S.E.2d 858, 862 (Ct.App. 2004)("Because Richardson objected to the testimony on a different ground at trial than what he argues on appeal, this argument is not properly before this Court.").

Even so, Curry's argument fails. Curry argues that Savage's testimony showed that he was incarcerated *during the trial*. Savage, however, testified that the two felons "were housed" together. R.p. 133, Tr. 229, l. 8 - p. 230, l. 8. He did not state, even elliptically, that Curry was in jail during the trial. Curry's argument, convoluted as it is, addresses evidence that is made up from whole cloth.

Curry's argument is not properly before this Court.

² Curry cites no direct support for this theory, instead analogizing to cases involving the *appearance* of a defendant. In those cases, the courts held that the defendants' *appearance* in prison garb or in shackles creates a presumption of prejudice. "This is a recognition that the *constant reminder* of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." Estelle v. Williams, 425 U.S. 501-504-05, 96 S.Ct. 1691, 1693 (1970)(emphasis added). That reasoning is inapplicable to one sentence of testimony on redirect examination, in response to testimony elicited on cross-examination, that the defendant was incarcerated with one of the witnesses.

V. The Trial Court's "Hand-of-One, Hand-of-All" Charge was Proper

Curry contends that the trial court's "hand-of-one, hand-of-all" charge to the jury was erroneous. The trial judge charged:

When two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or as it is sometimes said, the hand of one is the hand of all. I tell you further, ladies and gentlemen of the jury, that prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed[,] is not sufficient to convict the defendant as a princip[al]. Guilt as a princip[al] is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a princip[al]. The state must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

The princip[al] in a crime is one who either actually commits the crime or who is present, aiding[,] abetting or assisting in committing the crime. When the person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent[,] are present at the commission of a crime it does not matter who actually commits the crime, all are guilty. The hand of one, ladies and gentlemen, is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence, as I said, is at the scene of a crime, is not sufficient to convict one as a princip[al] on the theory of aiding and abetting. Intent is also a necessary element. For there must have been a common design or intent to commit the crime and the crime must have been pursuant, thereto, with a person

aiding and abetting by some overt act.

R.p. 234, Tr. p. 341, l. 3 - p. 342, l. 13.

It is difficult to ascertain precisely the portion of the jury charge that Curry finds objectionable. In State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005), this Court approved the following charge as a correct statement of the law:

The mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed is not sufficient to convict the defendant as a principal. Guilt is shown by active or constructive presence at the scene, and the State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting or assisting in the commission of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent [are] present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present means to be sufficiently near to aid and abet and assist in the commission of the crime. Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant to that plan, with the person aiding and abetting by some overt act.

The charge in the case *sub judice* adequately apprises the jury as to the law regarding mere presence. The charge contains the correct definition for mere presence and adequately covers the law.

Id. at 107, 610 S.E.2d 866 (quoting the trial court's charge).

The charge in this case is substantially the same as that approved in Zeigler, with the exception of the language requiring a "prior arrangement" and "prior arranged plan or common scheme." Far from a presumption, this additional language creates an additional element of

proof for the state. It was in fact helpful to Curry.

Moreover, that language substantially reflects the requirement, enunciated in and approved by Zeigler, that there must have been a "common design or intent to commit the crime."

"The substance of the law is what must be charged to the jury, not any particular verbiage." Zeigler, 364 S.C. at 107, 610 S.E.2d 866. The trial court's charge to the jury was a correct statement of the law of South Carolina.

**VI. The Trial Court Properly Refused the Precise Charge
Requested by Curry Because Curry Received the
Substance of the Charge**

As a corollary to Curry's previous argument, he apparently contends that the trial court's failure to charge that the crime must be a natural and probable consequence of the common plan created a presumption of guilt by mere presence at the crime scene. Curry's argument fails to account for the entire jury charge.

The trial court charged the jury that the crime must have been committed "pursuant" to the common design or intent. Further, the court charged that "[i]ntent means intending the result that actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt." R.p. 234, Tr. 342, ll. 14-19.

"When reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial." Pittman v. Stevens, 384 S.C. 337, ___, 613 S.E.2d 378, 379 (2005). Curry received, in substance if not in precise

verbiage, the charge he requested. The charge adequately instructed the jury that the murder must have been the result of the common scheme, and that the murderers must have intended to kill their victim. See State v. Zeigler, 364 S.C. at 107, 610 S.E.2d 866 ("The substance of the law is what must be charged to the jury, not any particular verbiage."). The charge complied with South Carolina law and Curry's argument fails.

CONCLUSION

Curry's arguments fail. This Court should affirm the judgment of the trial court.

HENRY DARGAN McMASTER
Attorney General

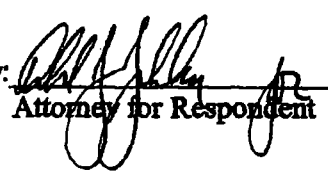
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BARBARA R. MORGAN
Solicitor, Second Judicial Circuit

Post Office Drawer 3368
Aiken, South Carolina 29802
(803) 642-1557

By:  Jeffrey Jants
Attorney for Respondent

January 30, 2006

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Aiken County
Reginald I. Lloyd, Circuit Judge**

**Case No. 04-GS-02-838
Case No. 04-GS-02-839**

THE STATE,

Respondent,

v.

THADDEUS CURRY,

Appellant

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with
SCACR 211(b).

This 30th day of January, 2006.


DONALD J. ZELENKA
Assistant Deputy Attorney General
ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Aiken County
Reginald I. Lloyd, Circuit Judge**

Case No. 04-GS-02-838

Case No. 04-GS-02-839

THE STATE,

Respondent,

v.

THADDEUS CURRY,

Appellant

CERTIFICATE OF SERVICE

I certify that a true copy of the Final Brief of Respondent in the above-referenced case has been served upon Robert M. Dudek, Assistant Appellate Defender, South Carolina Office of Appellate Defense, 1205 Pendleton Street, Room 306, Columbia, South Carolina 29201 by depositing two (2) copies in the Interagency Mail this 30th day of January, 2006.



DONALD J. ZELENKA

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THADDEUS CURRY,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

ROBERT M. DUDEK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

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ARGUMENT IN REPLY

The court erred by refusing to allow appellant to cross-examine accomplices Savage and Simuel about the potential sentences they faced for murder and other charges in this case. The sentences went directly to their bias, and their reasons to blame appellant for the crime, and help themselves with the state. Further, Anthony Savage's pending charges were also probative of his bias, and his reason to slant his testimony for the state. (Issues 1 and 2).

Defense counsel argued that under State v. Mizzell, 349 S.C. 326, 563 S.E.2d (2002) he had the right to cross-examine the accomplices about the potential penalties they faced in this case since it went to their bias and motive to misrepresent their testimony for the state. Defense counsel was correct in making that argument. R. 99, l. 15 – 103, l. 10.

The state now attempts to argue that State v. Mizzell is “unlike this case because Curry and Savage were present at the shooting,” and one of them fired the shot. Brief of Respondent at 6. This argument, at a minimum, misunderstands the countless ways Savage and Simuel could misrepresent their testimony to help the state and thereby help themselves by convicting appellant. Savage, for example, could have been attributing his own shooting of the victims to appellant, where appellant may have been merely present or only an accessory to Savage.

The trial judge gave Savage a “pass” in this case where Savage's actions were definitely suspect. The jury had a right to know the extent of the *extreme trouble* – the extreme sentencing exposure -- Savage faced for it to understand his motive to misrepresent and his bias.

Despite the state's contention at State v. Mizzell is not controlling, a fair reading of this record shows that the trial judge stubbornly refused to change his ruling that Mizzell did not control this issue despite defense counsel's best efforts to change his mind.

Further, defense counsel also correctly argued he had the right to cross-examine Savage about a October 2003 pending charge for armed-robbery, and a pending possession with intent to distribute in the proximity charge from April 2003. The judge ruled "I'm not going to allow questions regarding those." The judge then added that he did not think appellant would be prejudiced by his refusal to allow this cross-examination about Savage's pending charges. R.3, l. 5 - 4, l. 23.

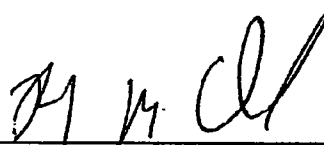
If ever anyone had a bias to slant his testimony for the state, it was Anthony Savage in this case. Savage was facing murder charges in this case, and other pending charges in other cases, and he had very great reason to curry favor with the state to appellant's detriment. The state's position that not allowing this cross-examination was not error flies the face of long standing South Carolina precedent on cross-examination that existed even before the adoption of the Rules of Evidence. See State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976).

The judge committed clear error in this case.

CONCLUSION

By reason of the arguments in appellant's brief, and in this reply brief, appellant's conviction should be reversed and this case remanded to the Aiken County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

February 9, 2006

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

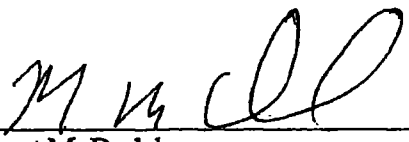
V.

THADDEUS CURRY,

APPELLANT

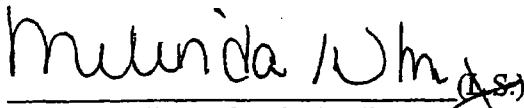
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Jeffrey A. Jacobs, Esquire, this 9th day of February, 2006.


Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2006.


Notary Public for South Carolina

My Commission Expires: November 16, 2008.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Thaddeus Curry,

Appellant.

Appeal From Aiken County
Reginald I. Lloyd, Circuit Court Judge

Opinion No. 4159
Heard June 15, 2006 – Filed October 9, 2006

AFFIRMED

Assistant Appellate Defender Robert M. Dudek,
Office of Appellate Defense, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, Assistant Attorney General Jeffery A.
Jacobs, Office of the Attorney General, of Columbia;

and Solicitor Barbara R. Morgan, of Aiken, for Respondent.

HEARN, C.J.: Thaddeus Curry appeals his convictions for murder and possession of a firearm during the commission of a violent crime in connection with the death of Heath Hamilton. On appeal, Curry argues (1) the trial court erred in limiting the scope of his cross-examination of two co-defendants on sentencing exposure they faced for murder and other charges related to Hamilton's death, and (2) the trial court erred in charging the jury on "the hand of one is the hand of all" theory. We affirm.

FACTS

Shortly after midnight on March 18, 2003, Hamilton and Ronald Coursey drove to an apartment complex in Augusta, Georgia, to purchase marijuana. In the apartment complex's parking lot, they encountered Anthony Savage and Curry and asked if they had any marijuana to sell. Curry and Savage said they had no marijuana, but agreed to procure some and sell a quarter pound's worth to Hamilton and Coursey for \$220.

Hamilton and Coursey drove to an ATM and withdrew money to pay for the drugs. Meanwhile, Curry, Savage, and Jeremy Simuel drove around Augusta looking for marijuana to sell to Hamilton and Coursey. They were unsuccessful. When they all returned to the apartment complex, Hamilton and Coursey followed Curry, Savage, and Simuel to Simuel's apartment. Hamilton and Coursey waited outside the apartment while the others went inside and closed the door. They were soon informed the transaction would occur later.

Hamilton and Coursey left the apartment complex and went to Hamilton's home in Beech Island in Aiken County, where they smoked marijuana and waited until Curry and Savage called. The parties spoke by phone and agreed to meet at a gas station in Beech Island. Although Curry, Savage, and Simuel failed to procure marijuana to sell Hamilton and Coursey, they apparently intended to meet under the guise of a drug sale in order to rob Hamilton and Coursey.

Hamilton and Coursey met Curry and Savage in a dark area behind the gas station. Curry and Savage exited their car, where Simuel remained seated. They approached the car in which Hamilton and Coursey waited. Savage told Hamilton they did not have any marijuana, but demanded to see the money. Within minutes, Hamilton was shot and killed while still seated in his vehicle with Coursey. Curry and Savage fled in the waiting car driven by Simuel.

Curry, Savage, and Simuel were charged in connection with the robbery and Hamilton's murder. At Curry's trial, Coursey, Savage, and Simuel implicated Curry in Hamilton's murder. Coursey testified he had not met Curry, Savage, or Simuel before the night of the murder. He stated they first met around midnight in the dark parking lot of the apartment complex, a short time later at the apartment complex, and finally in the dark parking lot of the gas station where Hamilton was killed. He testified he called 911 after the shooting but was unable to provide many details about the perpetrators, telling the 911 dispatcher, "I don't know, it's dark[,] man, I just don't know." However, at trial Coursey testified Curry had the gun in his hand and that Savage never had possession of the gun. Moreover, he unequivocally identified Curry as the shooter.

Savage testified Curry carried a gun with him on the night of the murder and claimed he saw Curry fire the gun three or four times at the murder scene. Savage further testified that after the shooting, Curry and he fled in a car driven by Simuel. According to Savage, Curry exclaimed, "I think I dome capped him," implying he shot Hamilton in the head. Savage testified Curry later told him he had disposed of the murder weapon. Simuel largely corroborated Savage's testimony but did not provide an eyewitness account of Curry firing the gun.

Curry sought to question the motives and biases of Simuel and Savage by cross-examining them on the possible sentences they faced in connection with Hamilton's murder. When Curry questioned Simuel about the possible sentences he faced, the trial court sustained the State's objection and instructed the jury to disregard the testimony.

Prior to Savage's testimony, Curry asked the trial court in limine to allow impeachment of Savage on bias and motive by questioning him about the possible sentences he faced for charges related to Hamilton's death. The trial court denied his request. In reaching its decision, the trial court considered Curry's request in light of State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), and stated:

Under [the circumstances in Mizzell], sir, part of the problem I think in that case was that, as I read it, the witness was given an offer to plead to one particular charge versus the potential sentence, the maximum sentence on the other charges that the defendant would have faced had she been convicted or tried on the original charges, and we don't have that here. There's no deal between the State at all.

Curry later sought clarification, asking, "So the Court is ruling that he says he has no deal, then I am prohibited from asking about these penalties that he's facing, is that correct?" The trial court responded affirmatively. The trial court elaborated, "We're not going to bring him out here to elicit whether or not he knows what his potential sentences are. As I understand it there's no negotiations or deals between the State and this particular witness."

The jury convicted Curry on both charges. He received concurrent prison sentences of five years for the firearms charge and life in prison for the murder charge. This appeal followed.

LAW/ANALYSIS

I. Scope of Cross-examination

Curry argues the trial court committed reversible error in denying his request to cross-examine Simuel and Savage concerning possible sentences he faced in connection with Hamilton's death.¹ We disagree.

To constitute error, a ruling to admit or exclude evidence must affect a substantial right. Rule 103(a), SCRE; State v. Johnson, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). However, error is harmless where it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

. . . the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-

¹ Curry also argues the trial court erred in refusing to allow him to cross-examine Savage about pending criminal charges unrelated to Hamilton's murder. Curry never proffered the evidence or even attempted to proffer it. The evidence is not part of the record. Thus, the issue is not preserved. See State v. Hawkins, 310 S.C. 50, 54, 425 S.E.2d 50, 57 (Ct. App. 1991) (declining to rule on alleged error in exclusion of evidence, where no proffer was made and excluded evidence was not part of record). Lastly, Curry argues the trial court erred in admitting evidence that he was incarcerated. This issue is not preserved for appellate review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

State v. Clark, 315 S.C. 478, 482, 445 S.E.2d 633, 637 (1994). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). A violation of a defendant's Sixth Amendment right to confront a witness is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994).

In this case, Curry relied on State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), in support of his argument that he should be allowed to cross-examine his co-defendants as to any possible sentences they faced in connection with Hamilton's death. In Mizzell, our Supreme Court found error in the trial court's decision to exclude evidence of possible sentences faced by Mizzell's co-defendant where the parties faced the same charges and the co-defendant had not yet pled guilty or reached a plea agreement with the State. The court found:

The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Id. at 333, 563 S.E.2d at 318.

Similar to the scenario in Mizzell, Curry's co-defendants faced the same charges as Curry and had not pled guilty or reached a plea agreement. The trial court refused to allow Curry to cross-examine his co-defendants on the possible sentences they faced because Savage and Simuel had not pled guilty or reached a plea agreement with the State. We find this ruling contradicts the settled law established in Mizzell. Accordingly, we find the

trial court erred in barring the cross-examination of Simuel and Savage on the possible sentences they faced.

However, the refusal to allow Curry to cross-examine his co-defendants on any possible sentences they faced in connection with Hamilton's death was harmless. At trial, the testimony given by the co-defendants was not the only evidence of Curry's involvement in the shooting of Hamilton. Ronald Coursey, the other victim of the robbery, unequivocally identified Curry as the shooter. He testified:

Coursey: And then the next I knew, he came up, Mr. Curry, over there had the gun.

Q: You saw Mr. Curry with the gun?

A: Yes, sir, he had the gun the whole time.

Q: What did he do with the gun?

A: ... he started shooting.

...

Q: Could you describe the gun?

A: ...it was either automatic or semi-automatic. It went off real fast.

Q: And how was [Curry] holding it?

A: In one hand.

Q: Okay. And so what did he say when he pulled the gun out?

A: I don't think he said anything, it just happened too fast and he shot and hit [Hamilton] in the head.

...

Q: Did you see who pulled the trigger?

A: Yes, sir. It was Mr. Curry over there.

Moreover, in addition to Coursey, Javon Rushon provided the following testimony regarding a conversation he overheard between Curry and Savage regarding the murder weapon:

Q: What specifically did you hear Mr. Curry—what if anything, did you hear Mr. Curry mention about the gun?

A: “They would never find it.” “The hammer came off of it.” You know, “It was chopped up.”

On cross-examination, Rushon further clarified that it was in fact Curry who was talking about the gun, stating “Thaddeus Curry was talking to [Savage] about it.”

The testimony of the co-defendants, Simuel and Savage, was merely cumulative to that given by Coursey and Rushon. As a result, Curry’s guilt or innocence did not hinge solely on the testimony of his co-defendants; the testimony of Coursey and Rushon provided other competent evidence upon which a rational verdict of guilty could be based. Therefore, as the error on the part of the trial judge in limiting the scope of cross-examination could not have reasonably affected the outcome of the trial, it was harmless.

II. Jury Charge

Curry next argues the trial court erred in its charge on “the hand of one is the hand of all” theory. We disagree.

“A charge is sufficient if, when considered as a whole, it covers the law applicable to the case.” State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). “The substance of the law is what must be charged to the jury, not any particular verbiage.” State v. Adkins, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003). “Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions

which might be misleading do not constitute reversible error.” State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

At trial, Curry argued the court’s proposed charge on “the hand of one is the hand of all” theory lacked “sufficient emphasis on the issue of probable or natural consequence” Based on language drawn from State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000), Curry suggested the following charge:

[I]f two or more combine together to commit an unlawful act and a crime is committed by one of the actors as a **probable and natural consequence** of the acts done in pursuance of the common design, all present and participating in the unlawful undertaking are as guilty as the one who committed the act.

(emphasis added).

The trial judge rejected Curry’s proposed charge. He subsequently charged the jury twice on “the hand of one is the hand of all” theory. The first charge, which he gave along with the other charges prior to jury deliberations, stated:

It is my duty to charge you now that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. If a person joins with another to accomplish an illegal purpose, he is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan and purpose.

After the jury left to deliberate, Curry renewed his objection to the charge on the basis that “the instruction as given did not convey to the jury that the act in this case, a homicide, must be a **natural or probable consequence** of the

preexisting plan in order . . . for the theory of the hand of one, hand of all to apply. . . ." (emphasis added). The trial judge noted Curry's exception.

During its deliberation, the jury asked the court to re-charge "the hand of one is the hand of all." The court brought the jury out and charged accomplice liability as follows, in pertinent part:

[I]f a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. I tell you further that a person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan or purpose. When two or more people are acting together ... assisting each other in committing the offense the act of one is the act of all, or as is sometimes said, the hand of one is the hand of all.

(emphasis added).

South Carolina courts frequently approve accomplice liability charges that lack language stating an accomplice's criminal act must be "a probable and natural consequence" of the accomplice's common plan. For instance, in State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), our supreme court stated that under "the hand of one is the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." In State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998), the supreme court approved a broader accomplice liability charge that stated, "... if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both." Moreover, in State v. Crowe our Supreme Court approved the following charge for accomplice liability:

[T]wo or more combine together to commit an unlawful act, such as robbery, and, in the execution of that criminal act, a homicide is committed by one of the actors, as a **probable or natural consequence** of the acts done in pursuance of the common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. This principle was stated in State v. Cannon, 49 S.C. 550, 27 S.E. 526: "The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in and steal, and in the execution of this common purpose a homicide is committed by one, as a **probable or natural consequence** of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer."

258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972) (emphases added). Therefore, the approval of this charge demonstrates that the "natural and probable consequence" language need not be included in the charge, as requested by Curry, if the charge as a whole adequately conveys the law. Additionally, with the approval of the disjunctive "or" in the "probable or natural consequence" language of State v. Crowe, the trial court's charge arguably benefited Curry as it only included the "natural consequences" rather than the "natural or probable" language.

Therefore, when viewing the challenged portion of the jury charge as a whole with the rest of the trial court's instruction, we find the trial court adequately charged the law regarding "hand of one hand of all."

CONCLUSION

For the forgoing reasons, Curry's conviction is hereby

AFFIRMED.

GOOLSBY, J. concurs.

ANDERSON, J. dissents in a separate opinion.

ANDERSON, J. (dissenting in a separate opinion): I disagree with majority's reasoning and analysis. In my view, the trial court erred in (1) limiting his cross-examination of two co-defendants on sentencing exposure they faced for murder and other charges related to Hamilton's death; and (2) giving an erroneous charge on accomplice liability. I **VOTE** to **REVERSE**.

FACTUAL/PROCEDURAL BACKGROUND

Shortly after midnight on March 18, 2003, Hamilton and Ronald Coursey drove to an apartment complex in Augusta, Georgia, to purchase marijuana. In the apartment complex parking lot, they encountered Curry and Anthony Savage and asked if they had any marijuana to sell. Curry and Savage said they had no marijuana, but agreed to procure and sell a quarter-pound to Hamilton and Coursey for \$220.

Hamilton and Coursey drove to an ATM and withdrew money to pay for the drugs. Meanwhile, Curry, Savage, and Jeremy Simuel drove around Augusta looking for marijuana. They were unsuccessful. When they returned to the apartment complex, Hamilton and Coursey followed Curry, Savage, and Simuel to Simuel's apartment. Hamilton and Coursey waited outside the apartment while the others went inside and closed the door. They were soon informed the transaction would occur later.

Hamilton and Coursey left the apartment complex and went to Hamilton's home on Beech Island in Aiken County, where they smoked more marijuana and waited until Curry and Savage called. The parties spoke by phone and agreed to meet at a gas station on Beech Island. Curry, Savage and Simuel failed to procure marijuana to sell Hamilton and Coursey, but apparently intended to meet under the auspices of a drug sale in order to rob Hamilton and Coursey of their money.

Hamilton and Coursey met Curry and Savage in a dark area behind the gas station. Curry and Savage exited their car, where Simuel remained seated. They approached the car in which Hamilton and Coursey waited. Savage told Hamilton they did not have any marijuana, but demanded to see the money. Within minutes, Hamilton was shot and killed while still seated in his vehicle. Curry and Savage fled in the waiting car driven by Simuel.

Curry, Savage and Simuel were all charged in connection with the robbery and Hamilton's murder. Curry was tried on the charges before a jury.

At trial, Coursey, Savage and Simuel implicated Curry in Hamilton's murder. Coursey attested that he saw Curry shoot Hamilton. He testified the first time he met Curry, Savage, and Simuel was the night of the murder when he saw them around midnight in the dark parking lot of the apartment complex, a short time later at the apartment complex, and finally in the dark parking lot of the gas station where Hamilton was killed. Coursey admitted he had been drinking alcohol and smoking marijuana throughout the evening. He averred he called 911 after the shooting but was unable to provide many details about the perpetrators, telling the 911 dispatcher, "I don't know, it's dark man, I just don't know." When he provided police a written statement one week later, he was only able to describe the gunman as "a black male with a white t-shirt on[.]"

Savage asseverated Curry carried a gun with him on the night of the murder, and claimed he saw Curry fire the gun three or four times at the murder scene. Savage further testified that after the shooting, Curry and he fled in a car driven by Simuel. According to Savage, Curry exclaimed, "I think I dome capped him," indicating he shot Hamilton in the head. Curry later told Savage he had disposed of the murder weapon. Simuel largely corroborated Savage's testimony, but did not provide an eyewitness account of Curry firing the gun.

Curry sought to question the motives and biases of Simuel and Savage by cross-examining them on the sentencing exposure they faced for

Hamilton's murder. When Curry questioned Simuel about the potential sentences he faced, the trial court sustained the State's objection and instructed the jury to disregard the testimony.

Prior to Savage's testimony, Curry asked that he be allowed to show motive and bias by questioning Savage on the possible sentence he faced in connection with Hamilton's death. In reaching its decision, the trial court considered Curry's request in light of State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), and stated:

Under [the circumstances in Mizzell], sir, part of the problem I think in that case was that, as I read it, the witness was given an offer to plead to one particular charge versus the potential sentence, the maximum sentence on the other charges that the defendant would have faced had she been convicted or tried on the original charges, and we don't have that here. There's no deal between the State at all.

Curry later sought clarification, asking, "So the Court is ruling that he says he has no deal, then I am prohibited from asking about these penalties that he's facing, is that correct?" The trial court responded affirmatively. Further, the trial court declined Curry's request to proffer the testimony: "We're not going to bring him out here to elicit whether or not he knows what his potential sentences are. As I understand it there's no negotiations or deals between the State and this particular witness."

The jury convicted Curry on both charges. He received concurrent prison sentences of five years for the firearms charge and life in prison for the murder charge.

LAW/ANALYSIS

I. Limitation of Cross-Examination

A. Confrontation Right

Curry argues the trial court committed reversible error in denying his request to cross-examine Savage and Simuel concerning the possible sentences they faced in connection with Hamilton's death. I agree.

"Among other protections, the Sixth Amendment assures: 'In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]' U.S. Const. amend. VI." State v. Davis, 364 S.C. 364, 372, 613 S.E.2d 760, 764 (Ct. App. 2005), cert. granted (Feb. 15, 2006). The Sixth Amendment was incorporated and made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400 (1965); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); Davis, 364 S.C. at 372, 613 S.E.2d at 764. The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149 (1970); State v. Martin, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), cert. granted (Feb. 16, 2006). The primary interest secured by the Confrontation Clause is the right to cross-examination. Gillian at 450, 602 S.E.2d at 71 (citing State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Starnes v. State, 307 S.C. 247, 414 S.E.2d 582 (1991)); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness).

The Confrontation Clause guarantees an accused the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 319-20 (1974); State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Considerable latitude is allowed in cross-examining a witness for potential bias from which jurors could draw inferences relating to the

witness's liability. State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994); Brown, 303 S.C. at 171, 399 S.E.2d at 594. However, the Confrontation Clause does not preclude the trial court from limiting a defendant's inquiry into the potential bias of a prosecution witness. Delaware v. Van Arsdall, 475 U.S. 673 (1986); Gillian, 360 S.C. at 451, 602 S.E.2d at 72. Rather, the trial court retains broad discretion to impose reasonable limits on such cross-examination based on concerns about issues including harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant. Id.

In State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), our supreme court found error in the trial court's decision to exclude evidence of possible sentences faced by the Mizzell brothers' co-defendants where all defendants faced the same charges and the co-defendants had not yet pled guilty or reached a plea agreement with the State. The Mizzell brothers were tried together on charges of first degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime for breaking into the victim's home and stealing several guns. State's witness Donald Steele had been charged with the same crimes as the Mizzells. Steele testified that he and his wife drove the Mizzells to the victim's home and watched as they kicked in the door, entered the home, and returned carrying guns. On cross-examination, Steele admitted the State had charged him with the same crimes as the Mizzells. "The trial court excluded evidence of the possible sentence Steele faced but permitted petitioners to examine Steele about the sentence in general terms." 349 S.C. at 330, 563 S.E.2d at 317.

The issue for the court was whether the trial court had violated the defendants' confrontation rights by refusing to allow evidence of Steele's potential sentence if convicted of the same crimes as the Mizzells. The Mizzell court began by juxtaposing the right of a defendant to cross-examine a witness with the discretion of a trial judge to dictate reasonable limits on the scope of cross-examination:

A criminal defendant may show a violation of the Confrontation Clause "by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and

thereby 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674, 684 (1986). The trial judge retains discretion to impose reasonable limits on the scope of cross-examination. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); accord Delaware v. Van Arsdall, *supra*. Before a trial judge may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate. State v. Graham, *supra*. If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error. State v. Brown, *supra*.

Mizzell, 349 S.C. at 331, 563 S.E.2d at 317. The court elaborated that "[t]he jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence." *Id.* at 331, 563 S.E.2d at 318. "However," the court intoned, "other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence." *Id.* at 331-32, 563 S.E.2d at 318.

The court discussed State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), a case in which a witness admitted she testified in exchange for a conspiracy charge which carried a seven and one-half year maximum sentence, rather than a trafficking in cocaine charge. The trial judge refused to allow the defense to cross-examine the witness as to the maximum punishment she would have faced under the trafficking charge. The Brown court found that evidence the witness was avoiding a mandatory prison term of "more than three times the duration she would face on her plea to conspiracy" constituted "critical evidence of potential bias that appellant should have been permitted to present to the jury." Brown, 303 S.C. at 171, 399 S.E.2d at 594. Further, the witness's testimony was the only evidence linking Brown to trafficking cocaine.

The Mizzell court noted that unlike in Brown, Steele did not have a deal with the State. However, the court concluded that the lack of an agreement with the prosecution would make the potential for witness bias even more likely:

The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318. Thus, Mizzell stands for the proposition that the lack of an agreement with the State may increase the likelihood of witness bias where the witness has been charged with the same crimes as the defendant.

Similar to the scenario in Mizzell, Curry's co-defendants faced the same charges as Curry and had not pled guilty or reached a plea agreement. Here, the trial court refused to allow Curry to cross-examine his co-defendants on their sentencing exposure because Savage and Simuel had not pled guilty or reached a plea agreement with the State. This ruling contradicts the law established in Mizzell.

State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), cert. granted (Feb. 16, 2006), likewise addressed the Confrontation Clause in the context of questioning a witness on a potential sentence. Gillian was convicted of murder. He had coordinated a burglary and recruited several teenagers, including State's witness Page, to break into the home. Among the items stolen was a .38 revolver which was later used to kill the victim, Michael Ward. At Gillian's trial, Page testified to Gillian's possession of the gun, to Gillian's statement that he was going to "do some dirt" with it, and to an altercation between Gillian and the victim on the night of the murder. "On direct examination, Page admitted he was currently charged with first-degree burglary and the Richland County Solicitor had agreed to advise his plea judge of his cooperation in Gillian's trial." 360 S.C. at 449, 602 S.E.2d at 70. Defense counsel sought to cross-examine Page on the possible sentence he faced, but the trial judge limited references to the sentence to "a lot of time"

and “serious time.” Id. Relying on Mizzell and State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002), we inculcated:

Included in the Confrontation Clause protection is the right to cross-examine any State’s witness as to possible sentences faced when there exists “a substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to [a] future [court]” how the witness cooperated in the instant case. See Sims, 348 S.C. at 25, 558 S.E.2d at 523; see also Mizzell, 349 S.C. at 332-33, 563 S.E.2d at 318.

Gillian, 360 S.C. at 454, 602 S.E.2d at 73. Accordingly, we found the trial court had erred in excluding evidence of Page’s potential sentence.

Apodictically, a defendant has a protected right under the Sixth Amendment’s Confrontation Clause to cross-examine a witness as to the possible sentence he faces where there exists a substantial possibility of bias. In the case sub judice, where the witnesses were charged with the same crimes as the co-defendant against whom they were testifying, the requisite potential for bias was present. Curry had a right to question on the possible sentences Simuel and Savage were facing, and the trial court erred by refusing this inquiry.

B. Harmless Error Analysis

A determination that the trial court committed error does not end the inquiry. A violation of a defendant’s Sixth Amendment right to confront a witness is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). In State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), cert. granted (Feb. 16, 2006), this Court stated the law of harmless error with exactitude:

No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990);

State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318-19 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

"Harmless beyond a reasonable doubt" means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). "In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict." Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (internal quotations omitted).

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003); Mitchell, 286 S.C. at 573, 336 S.E.2d at 151; State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). Thus, an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Bailey, 298 S.C. 1,

377 S.E.2d 581 (1989); Adams, 354 S.C. at 381, 580 S.E.2d at 795; see also State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (noting that when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside conviction for insubstantial errors not affecting result).

Gillian, 360 S.C. at 454-55, 602 S.E.2d at 74-75.

The Mizzell court found the erroneous limitation of the cross-examination of a witness constituted reversible error under the facts of that case. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319. The court noted the witness's testimony provided the only direct link between the defendant and the crime scene. Moreover, no physical evidence linked the defendant to the crime scene. In fact, nothing else corroborated the State's case.

Conversely, in State v. Sims, 348 S.C. 16, 26, 558 S.E.2d 518, 523 (2002), our supreme court found harmless error where the State's case was "strong" without the witness's testimony and exclusion of the testimony could not possibly have affected the trial's outcome. In considering the strength of the State's case, the Sims court noted the defendant's fingerprints were found at the crime scene, the victim's mother testified Sims threatened the victim on the date of her death, and Sims had "spontaneously confessed" to law enforcement officers investigating the incident. Id.

This Court found harmless error in Gillian, where the witness's testimony was "largely cumulative" to testimony from other witnesses and other evidence suggested Gillian's guilt. Gillian, 360 S.C. at 457-58, 602 S.E.2d at 74-75. We distinguished the facts in Gillian from those in Mizzell, noting the absence of the witness's testimony left "no material point of the State's case uncorroborated or unsupported by the testimony of other witnesses." Id. at 458, 602 S.E.2d at 75.

Here, Simuel and Savage's testimony was critical to the case's outcome. They testified to Curry's motive; to his possession of a gun similar to that used in the shooting; to his conduct before and after the shooting; and to self-incriminating statements Curry made about discarding the weapon.

Most significantly, Savage testified to seeing Curry fire the gun. Without their testimony, the only evidence linking Curry to the crime scene is Coursey's vague and unspecific testimony. Coursey provided few details of the gunman in the description he provided to the 911 dispatcher immediately after the shooting and in his written statement to police made one week later. Coursey testified the shooting occurred in a dark area, and that he met Curry and Savage for the first time hours before in another dark location. Moreover, Coursey testified he observed the shooting after spending several hours drinking alcohol and smoking marijuana. Consequently, the testimony of Simuel and Savage provided the crucial nexus establishing Curry as the gunman.

Accordingly, the trial court's error in limiting Curry's cross-examination could have reasonably affected the outcome of the trial. The error was not harmless.

II. Accomplice Liability Charge

Additionally, Curry maintains the trial court's charge on the hand of one is the hand of all theory was inadequate because it failed to specify that a crime committed by an accomplice must be a "probable or natural consequence" of the actions taken in pursuit of the accomplices' common plan. I agree. Although the court's charge included the words "natural consequence," the charge should have included both "natural" and "probable."

At trial, Curry argued the court's proposed charge on "the hand of one is the hand of all" theory lacked "sufficient emphasis on the issue of probable or natural consequence[.]" Based on language drawn from State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000), Curry suggested the following charge:

[I]f two or more combine together to commit an unlawful act and a crime is committed by one of the actors as a **probable and natural consequence** of the acts done in pursuance of the common design, all present and participating in the unlawful undertaking are as guilty as the one who committed the act.

(Emphasis added.)

The trial judge rejected Curry's proposed charge and subsequently charged the jury twice on "the hand of one is the hand of all" theory. The first charge, which the judge gave along with the other charges prior to jury deliberations, stated:

It is my duty to charge you now that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. If a person joins with another to accomplish an illegal purpose, he is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan and purpose.

(Emphasis added.) After the jury left to deliberate, Curry renewed his objection to the charge on the basis that "the instruction as given did not convey to the jury that the act in this case, a homicide, must be a **natural or probable consequence** of the preexisting plan in order . . . for the theory of the hand of one, hand of all to apply. . . ." (emphasis added). The trial judge noted Curry's exception.

During its deliberations, the jury asked the court to re-charge "the hand of one is the hand of all." The court brought the jury out and charged accomplice liability as follows:

. . . if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. I tell you further that a person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan or purpose. When two or more people are acting together . . . assisting each other in committing the offense the act of one is the act of all, or as is sometimes said, the hand of one is the hand of all.

(Emphasis added.) After re-charging the jury on additional areas of law, including mere presence, the trial judge sent the jury back for continued deliberation. The judge stated to Curry's counsel, "I note your continuing objection to the charge on hand of one as stated earlier."

Curry argues the accomplice liability charge erroneously failed to specify that an accomplice's crime must be "a probable and natural consequence" of actions taken in pursuit of the accomplices' shared plan. The language advanced by Curry limits criminal liability for an accomplice's actions that are inconsequential to the execution of their common scheme or plan. As one treatise explains:

When several persons are involved in the perpetration of one crime, and one of them goes outside the common purpose for which they combined or conspired in committing a fatal act which is not a **natural and probable consequence** of carrying out the common purpose, the others are not criminally liable for the homicide. There is a requirement of a direct causal connection between the underlying felony and the homicide which is something more than mere coincidence in time and place between the two. The actual legal relation between the killing and the crime committed or attempted must be such that the killing can be said to have occurred as a part of the perpetration of the crime, or in furtherance of an attempt to commit it; that is, the fatal act must have been the ordinary, probable, or necessary result or effect of the execution of the conspiracy, or of the concerted action, in which the defendant participated.

Whether or not the act done was in furtherance of the common design, or whether it was a **natural and probable consequence** flowing from the execution of the common design is always a question for the jury.

3 Am.Jur. Proof of Facts 2d 551, Homicide Outside of Common Design, § 6 (2005) (emphasis added).

Our courts have approved of accomplice liability charges that lack language stating an accomplice's criminal act must be "a probable and natural consequence" of the accomplices' common plan. For instance, in State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999), our supreme court stated that under "the hand of one is the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate **incidental** to the execution of the common design and purpose." (Emphasis added.) In State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998), the supreme court approved a broader accomplice liability charge that stated, "... if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both."

However, other cases present accomplice liability charges that include the language Curry requests. In State v. Crowe, 258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972), our supreme court described accomplice liability as where

... two or more combine together to commit an unlawful act, such as robbery, and, in the execution of that criminal act, a homicide is committed by one of the actors, as a **probable or natural consequence** of the acts done in pursuance of the common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. This principle was stated in State v. Cannon, 49 S.C. 550, 27 S.E. 526: "The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in and steal, and in the execution of this common purpose a homicide is committed by one, as a **probable or natural consequence** of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer."

(Emphasis added.)

In State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985), rev'd on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), our supreme court considered the necessity of the "probable or natural consequence" language in an accomplice liability charge. Peterson involved the joint appeal of two accomplices who appealed their convictions for murder, armed robbery, grand larceny of a motor vehicle, and conspiracy. The court stated:

The trial judge's charge was a correct statement of the general law of this jurisdiction concerning accomplice liability. In the present case, however, the jury reasonably could have found that the murder was not the probable or natural consequence of the larceny of a motor vehicle.

Had the jury determined that either appellant conspired only to commit an unarmed larceny of a car, and had it further concluded that the state failed to establish beyond a reasonable doubt that a homicide was the natural or probable consequence of a plan to steal the victim's car, the appellant would have been entitled to an acquittal on the charge of murder.

It was therefore essential under the facts and circumstances of this case that the jury be instructed that it had to find that the homicide was a natural or probable consequence of the acts actually agreed on by the appellants before the law would hold him responsible for such a homicide. The failure of the trial judge to so instruct was error because it permitted the jury to convict an appellant of murder merely by finding (1) that appellant had combined with another to commit the non-life threatening crime of grand larceny of a motor vehicle and (2) that appellant's accomplice thereafter took a life without appellant's prior knowledge, approval, or assistance.

Peterson, 287 S.C. at 246-47, 335 S.E.2d at 801-02 (emphasis added).

Thus, the facts and circumstances of a particular case ultimately dictate whether an accomplice liability charge must instruct the jury that an accomplice's actions be a "natural or probable consequence" of actions taken in pursuit of the accomplices' shared plan.

I would hold that here, as in Peterson, the facts and circumstances warrant the language requested by Curry. Evidence presented at trial suggested the possibility that the codefendants met Hamilton and Coursey under the pretense of selling them marijuana, but in fact had no marijuana to sell and only intended to rob them of their money. The testimony is not conclusive that the codefendants agreed to use weapons to accomplish the crime; only that one of them apparently had the intention and shot Hamilton during the commission of the crime. Had the jury determined that either codefendant conspired **only** to commit an unarmed robbery and had it further concluded that the State failed to establish beyond a reasonable doubt that a homicide was the natural or probable consequence of the robbery, the appellant would have been entitled to an acquittal on the charge of murder. Crowe and Peterson utilize both "natural" and "probable." Each word has a different meaning. Accordingly, the use of both words was necessary in the case sub judice. The court's failure to include the word "probable" here renders the charge inadequate.

Curry further alleges the trial court erred (1) by refusing to allow him to cross-examine Savage on possible sentence he faced for pending charges unrelated to Hamilton's death; (2) by allowing testimony regarding alleged bad acts; and (3) by allowing the State to elicit testimony that Curry was in jail at the time of the trial. Because I would reverse on the Confrontation Clause and accomplice liability charge issues, I decline to address these issues. I **VOTE** to **REVERSE**.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

V.

THADDEUS CURRY,

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Appeal from Aiken County

Reginald I. Lloyd, Circuit Court Judge

Opinion No. 4159

PETITION FOR REHEARING

Pursuant to Rule 221 (a), SCACR, petitioner requests rehearing because the majority of the Court may have misapprehended the importance of the "probable and natural consequence" language of the "hand of one is the hand of all" instruction in this case. The majority noted that the Supreme Court has approved "hand of one is the hand of all" instructions with and without the "probable and natural consequences of the acts done in pursuance of the common design" language. State v. Curry, 370 S.C. 674, 636 S.E.2d 649, 654 (Ct. App. 2006)

However, as the dissent noted that, *in this case*, if the jury determined that either co-defendant only conspired to commit an unarmed robbery and that the state did not prove beyond a

reasonable doubt that the murder was the "probable and natural consequence" of the robbery, then appellant would have been entitled to an acquittal on the charge of murder. The dissent further stated that whether requesting "natural and probable consequence" or "natural or probable consequence" language, "the charge should have included both "natural" and "probable." "The Court's failure to include the word 'probable' renders the charge inadequate." State v. Curry, 370 S.C. 674, 636 S.E.2d 649, 660-662 (Ct. App. 2006).

Further, the other part of the instruction objected to and raised on appeal was not addressed in the opinion. The instruction that guilt as a "principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" was also prejudicial since defense counsel correctly argued this amounted to an impermissible "presumption" since the jury could interpret the charge to mean if a defendant was present at the crime scene he was guilty as a principal. In other words, that "mere presence" at the scene was sufficient evidence of guilt as a principal R. 199 Il. 20- 200, Il. 13; R..202 Il. 9- 2031 Il. 9.

This instruction, when coupled with the refusal to give the "probable and natural consequence of acts done in pursuance of the common design" charge, was so confusing it invited a guilty verdict for the crime of murder on an improper legal basis. Appellant respectfully requests on rehearing that this Court address the effect of the two instructions together, and also reconsider its holding that because the Supreme Court has approved instructions with and without the "natural and probable consequence language" that there was not error in this case given the two objectionable instructions.

Second, appellant respectfully submits that the dissent properly concluded that the refusal to allow cross examination of accomplices Savage and Simuel about the potential sentences they faced for murder (life without parole) and other charges was reversible error. The

majority of this Court agreed the trial judge erred pursuant to State v. Mizzell 349 S.C. 326, 563 S.E.2d 315 (2002) since the Supreme Court has held that the sentencing exposure of a co-defendant or an accomplice went to his bias and was permissible to explore on cross-examination.

Moreover, the majority also agreed the trial judge erred by reasoning Mizzell only applied if there was a plea agreement or guilty plea. The lack of a plea agreement, the majority noted, means the witness is more likely to engage in biased testimony in order to obtain leniency in the future. However, the majority of this Court nonetheless concluded that the testimony of Savage and Simuel was cumulative to that of Coursey and Rushon, and therefore the error was harmless.

The fact that Rushon, who later picked up appellant, Savage and Simuel testified that appellant allegedly said to Savage "they would never find it [the gun]" could be construed to mean that appellant was guilty an accessory after the fact for assisting Savage and/or Simuel in destroying or hiding the gun. R. 161; r. 258, l. 3 – 259, l. 24.

Further, the fact that victim of the robbery, Coursey, identified appellant as the shooter should not be viewed as making this fundamental trial error under Mizzell harmless -- particularly given the circumstances of his identification and his statement to the police after the incident.

If cross-examination is the greatest single engine designed at getting to the truth, appellant and the jury were both surely denied its benefit since the jury did not have any real appreciation of Savage's and Simuel's extremely strong motive to misrepresent the truth, and make appellant the scapegoat for the murder to save themselves from life without parole sentences. Moreover, the inaccuracy of eyewitness identification is well documented. The dissent correctly noted:

Here, Simuel and Savage's testimony was critical to the case's outcome. They testified to Curry's motive; to his possession of a gun similar to that used in the shooting; to his conduct before the after the shooting; and to self-incriminating statements Curry made about discarding the weapon. Most significantly, Savage testified to seeing

Curry fire the gun. Without their testimony, the only evidence linking Curry to the crime scene is Coursey's vague and unspecific testimony. **660 Coursey provided few details of the gunman in the description he provided to the 911 dispatcher immediately after the shooting and in his written statement to police made one week later. Coursey testified the shooting occurred in a dark area, and that he met Curry and Savage for the first time hours before in another dark location. Moreover, Coursey testified he observed the shooting after spending several hours drinking alcohol and smoking marijuana. Consequently, the testimony of Simuel and Savage provided the crucial nexus establishing Curry as the gunman.*

State v. Curry, 370 S.C. 674, 636 S.E.2d 649, 659-660 (Ct. App. 2006). (emphasis added). Savage and Simuel had all the motive in the world to implicate appellant since this would result in leniency for them. Their testimony was crucial, and what Rushon and Coursey had to say, in context, did not make this fundamental trial error harmless.

The dissent declined to address the other three issues because it would have voted to reverse: (1) The refusal to allow appellant to cross-examine Savage on the possible sentences he faced for a pending armed robbery and possession with intent to distribute marijuana charges since this was probative of his bias (Issue 2 in the brief); (2) The admission of evidence that appellant was in jail (Issue 4 in the brief), and (3) The admission of Anthony Savage's testimony which was meant to inform the jury appellant had committed other crimes or bad acts, which counsel argued violated Rule 404 (b), SCRE (Issue 3 in the brief);

Appellant understands that this Court procedurally barred the first two of the issues above, but he does not see where the opinion or footnote addressed the Anthony Savage implication of appellant's prior crimes or bad acts and the Rule 404

(b), SCRE violation argument. See State v. Curry, 370 S.C. 674, 636 S.E.2d 652, n. 1 (Ct. App. 2006). Further, respondent did not attempt to invoke a procedural bar on this issue, and only argued that the "implication" of other crimes or bad acts was beyond the scope of Rule 404(b), SCRE. See Brief of Respondent at 11-12.

As this Court will recall, the solicitor began the "black bag" – where appellant allegedly kept his gun – testimony with witness Simuel. Defense counsel objected because the solicitor was attempting to get into prior events involving appellant, and attempting to get improper character or improper habit evidence before the jury. R. 68, 1.1– 70, 1. 13.

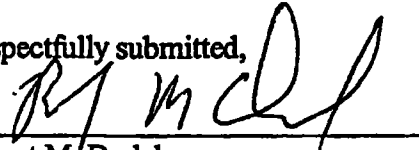
However, the solicitor was relentless in his efforts to get this prejudicial evidence before the jury. The solicitor asked Savage why he threw appellant's black bag in the bushes at the gas station. Savage answered that he did not want appellant to get access to it because he knew how appellant acted. R. 113, 1. 21– 114 l. 2. Defense counsel asked that Savage's answer be stricken under Rule 404 (b), SCRE. The judge not only refused to strike this testimony as improper, he overruled appellant's objection. R 113, 1. 22– 114 l. 8.

Appellant continues to maintain this type of propensity bad character evidence is not admissible to show the defendant was acting in conformity with a character trait. See State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). Here, Savage's testimony about the gun in the black bag – and he knew how appellant acted statement --- were obviously elicited to show that appellant's past actions presented the jury with a "loose cannon" as a defendant. It made appellant out to be a person of bad character who was probably acting in conformity with that trait on the day of the robbery.

This evidence was inadmissible under Rule 404 (b), SCRE, and it was highly prejudicial where Savage and Simuel had strong motives to misrepresent

their testimony, and where the identification evidence was questionable. Appellant would respectfully request that in granting rehearing this Court address this Rule 404(b), SCRE, Anthony Savage testimony issue also.

Respectfully submitted,



Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

This 21th day of December, 2006.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THADDEUS CURRY,

APPELLANT

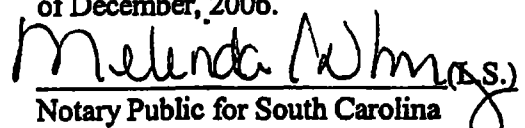
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Jeffrey A. Jacobs, Esquire, this 21th day of December, 2006.


Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 21th day
of December, 2006.


Notary Public for South Carolina

My Commission Expires: November 16, 2008.

ATTORNEY GENERAL'S OFFICE

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The South Carolina Court of Appeals

The State,

y.

Thaddeus Curry,

Appellant.

The Honorable Reginald I. Lloyd
Aiken County

**Trial Court Case No. 2004-GS-02-00838
2004-GS-02-00839**

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. However, Opinion Number 4159, filed October 9, 2006, is withdrawn and the attached opinion is substituted.

Kay G. Heam C. J.

C. F. Smith

I respectfully dissent and would grant Curry's petition for rehearing.

I adhere to my dissent and attach the original dissent.

discontinued
Ralph King Anderson

Columbia, South Carolina

February 5, 2007

cc: Assistant Appellate Defender Robert M. Dudek
Katherine Hudgins, Esq.
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Jeffrey A. Jacobs
Barbara R. Morgan, Esquire

C/m
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Thaddeus Curry,

Appellant.

Appeal From Aiken County
Reginald I. Lloyd, Circuit Court Judge

Opinion No. 4159

Heard June 15, 2006 – Filed October 9, 2006
Withdrawn, Substituted and Refiled February 5, 2007

AFFIRMED

FILED
April 7 2008
Deputy Clerk
Reginald I. Lloyd
C.C.P. & S.

Assistant Appellate Defender Robert M. Dudek,
Office of Appellate Defense, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, Assistant Attorney General Jeffery A.
Jacobs, Office of the Attorney General, of Columbia;
and Solicitor Barbara R. Morgan, of Aiken, for
Respondent.

1244 (5-02-538)

HEARN, C.J.: Thaddeus Curry appeals his convictions for murder and possession of a firearm during the commission of a violent crime in connection with the death of Heath Hamilton. On appeal, Curry argues (1) the trial court erred in limiting the scope of his cross-examination of two co-defendants on sentencing exposure they faced for murder and other charges related to Hamilton's death, and (2) the trial court erred in charging the jury on "the hand of one is the hand of all" theory. We affirm.

FACTS

Shortly after midnight on March 18, 2003, Hamilton and Ronald Coursey drove to an apartment complex in Augusta, Georgia, to purchase marijuana. In the apartment complex's parking lot, they encountered Anthony Savage and Curry and asked if they had any marijuana to sell. Curry and Savage said they had no marijuana, but agreed to procure some and sell a quarter pound's worth to Hamilton and Coursey for \$220.

Hamilton and Coursey drove to an ATM and withdrew money to pay for the drugs. Meanwhile, Curry, Savage, and Jeremy Simuel drove around Augusta looking for marijuana to sell to Hamilton and Coursey. They were unsuccessful. When they all returned to the apartment complex, Hamilton and Coursey followed Curry, Savage, and Simuel to Simuel's apartment. Hamilton and Coursey waited outside the apartment while the others went inside and closed the door. They were soon informed the transaction would occur later.

Hamilton and Coursey left the apartment complex and went to Hamilton's home in Beech Island in Aiken County, where they smoked marijuana and waited until Curry and Savage called. The parties spoke by phone and agreed to meet at a gas station in Beech Island. Although Curry, Savage, and Simuel failed to procure marijuana to sell Hamilton and Coursey, they apparently intended to meet under the guise of a drug sale in order to rob Hamilton and Coursey.

Hamilton and Coursey met Curry and Savage in a dark area behind the gas station. Curry and Savage exited their car, where Simuel remained seated. They approached the car in which Hamilton and Coursey waited. Savage told Hamilton they did not have any marijuana, but demanded to see the money. Within minutes, Hamilton was shot and killed while still seated in his vehicle with Coursey. Curry and Savage fled in the waiting car driven by Simuel.

Curry, Savage, and Simuel were charged in connection with the robbery and Hamilton's murder. At Curry's trial, Coursey, Savage, and Simuel implicated Curry in Hamilton's murder. Coursey testified he had not met Curry, Savage, or Simuel before the night of the murder. He stated they first met around midnight in the dark parking lot of the apartment complex, a short time later at the apartment complex, and finally in the dark parking lot of the gas station where Hamilton was killed. He testified he called 911 after the shooting but was unable to provide many details about the perpetrators, telling the 911 dispatcher, "I don't know, it's dark[,] man, I just don't know." However, at trial Coursey testified Curry had the gun in his hand and that Savage never had possession of the gun. Moreover, he unequivocally identified Curry as the shooter.

Savage testified Curry carried a gun with him on the night of the murder and claimed he saw Curry fire the gun three or four times at the murder scene. Savage further testified that after the shooting, Curry and he fled in a car driven by Simuel. According to Savage, Curry exclaimed, "I think I dome capped him," implying he shot Hamilton in the head. Savage testified Curry later told him he had disposed of the murder weapon. Simuel largely corroborated Savage's testimony but did not provide an eyewitness account of Curry firing the gun.

Curry sought to question the motives and biases of Simuel and Savage by cross-examining them on the possible sentences they faced in connection with Hamilton's murder. When Curry questioned Simuel about the possible sentences he faced, the trial court sustained the State's objection and instructed the jury to disregard the testimony.

Prior to Savage's testimony, Curry asked the trial court in limine to allow impeachment of Savage on bias and motive by questioning him about the possible sentences he faced for charges related to Hamilton's death. The trial court denied his request. In reaching its decision, the trial court considered Curry's request in light of State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), and stated:

Under [the circumstances in Mizzell], sir, part of the problem I think in that case was that, as I read it, the witness was given an offer to plead to one particular charge versus the potential sentence, the maximum sentence on the other charges that the defendant would have faced had she been convicted or tried on the original charges, and we don't have that here. There's no deal between the State at all.

Curry later sought clarification, asking, "So the Court is ruling that he says he has no deal, then I am prohibited from asking about these penalties that he's facing, is that correct?" The trial court responded affirmatively. The trial court elaborated, "We're not going to bring him out here to elicit whether or not he knows what his potential sentences are. As I understand it there's no negotiations or deals between the State and this particular witness."

The jury convicted Curry on both charges. He received concurrent prison sentences of five years for the firearms charge and life in prison for the murder charge. This appeal followed.

LAW/ANALYSIS

I. Scope of Cross-examination

Curry argues the trial court committed reversible error in denying his request to cross-examine Simuel and Savage concerning possible sentences

he faced in connection with Hamilton's death.¹ We disagree.

To constitute error, a ruling to admit or exclude evidence must affect a substantial right. Rule 103(a), SCRE; State v. Johnson, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). However, error is harmless where it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

State v. Clark, 315 S.C. 478, 482, 445 S.E.2d 633, 637 (1994). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). A violation of a defendant's Sixth Amendment right

¹ Curry also argues the trial court erred in refusing to allow him to cross-examine Savage about pending criminal charges unrelated to Hamilton's murder. Curry never proffered the evidence or even attempted to proffer it. The evidence is not part of the record. Thus, the issue is not preserved. See State v. Hawkins, 310 S.C. 50, 54, 425 S.E.2d 50, 57 (Ct. App. 1991) (declining to rule on alleged error in exclusion of evidence, where no proffer was made and excluded evidence was not part of record). Lastly, Curry argues the trial court erred in admitting evidence that he was incarcerated. This issue is not preserved for appellate review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

to confront a witness is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994).

In this case, Curry relied on State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), in support of his argument that he should be allowed to cross-examine his co-defendants as to any possible sentences they faced in connection with Hamilton's death. In Mizzell, our Supreme Court found error in the trial court's decision to exclude evidence of possible sentences faced by Mizzell's co-defendant where the parties faced the same charges and the co-defendant had not yet pled guilty or reached a plea agreement with the State. The court found:

The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Id. at 333, 563 S.E.2d at 318.

Similar to the scenario in Mizzell, Curry's co-defendants faced the same charges as Curry and had not pled guilty or reached a plea agreement. The trial court refused to allow Curry to cross-examine his co-defendants on the possible sentences they faced because Savage and Simuel had not pled guilty or reached a plea agreement with the State. We find this ruling contradicts the settled law established in Mizzell. Accordingly, we find the trial court erred in barring the cross-examination of Simuel and Savage on the possible sentences they faced.

However, the refusal to allow Curry to cross-examine his co-defendants on any possible sentences they faced in connection with Hamilton's death was harmless. At trial, the testimony given by the co-defendants was not the only evidence of Curry's involvement in the shooting of Hamilton. Ronald Coursey, the other victim of the robbery, unequivocally identified Curry as the shooter. He testified:

Coursey: And then the next I knew, he came up, Mr. Curry, over there had the gun.

Q: You saw Mr. Curry with the gun?

A: Yes, sir, he had the gun the whole time.

Q: What did he do with the gun?

A: ... he started shooting.

...

Q: Could you describe the gun?

A: ...it was either automatic or semi-automatic. It went off real fast.

Q: And how was [Curry] holding it?

A: In one hand.

Q: Okay. And so what did he say when he pulled the gun out?

A: I don't think he said anything, it just happened too fast and he shot and hit [Hamilton] in the head.

...

Q: Did you see who pulled the trigger?

A: Yes, sir. It was Mr. Curry over there.

Moreover, in addition to Coursey, Javon Rushon provided the following testimony regarding a conversation he overheard between Curry and Savage regarding the murder weapon:

Q: What specifically did you hear Mr. Curry—what if anything, did you hear Mr. Curry mention about the gun?

A: "They would never find it." "The hammer came off of it." You know, "It was chopped up."

On cross-examination, Rushon further clarified that it was in fact Curry who was talking about the gun, stating "Thaddeus Curry was talking to [Savage] about it."

The testimony of the co-defendants, Simuel and Savage, was merely cumulative to that given by Coursey and Rushon. As a result, Curry's guilt or innocence did not hinge solely on the testimony of his co-defendants; the testimony of Coursey and Rushon provided other competent evidence upon which a rational verdict of guilty could be based. Therefore, as the error on the part of the trial judge in limiting the scope of cross-examination could not have reasonably affected the outcome of the trial, it was harmless.²

II. Jury Charge

Curry next argues the trial court erred in its charge on "the hand of one is the hand of all" theory. We disagree.

"A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). "The substance of the law is what must be charged to the jury, not any particular verbiage." State v. Adkins, 353 S.C. 312, 318-19,

² Curry also argues the trial court erred in admitting improper character or habit evidence during Savage's testimony. Curry contends the testimony regarding "the black bag" where Curry allegedly kept his gun was inadmissible under Rule 404(b), SCRE. Any possible error by the circuit court was harmless given the other evidence admitted at trial. See State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (finding that error is harmless where it could not reasonably have affected the result of the trial).

577 S.E.2d 460, 464 (Ct. App. 2003). "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

At trial, Curry argued the court's proposed charge on "the hand of one is the hand of all" theory lacked "sufficient emphasis on the issue of probable or natural consequence" Based on language drawn from State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000), Curry suggested the following charge:

[I]f two or more combine together to commit an unlawful act and a crime is committed by one of the actors as a **probable and natural consequence** of the acts done in pursuance of the common design, all present and participating in the unlawful undertaking are as guilty as the one who committed the act.

(emphasis added).

The trial judge rejected Curry's proposed charge. He subsequently charged the jury twice on "the hand of one is the hand of all" theory. The first charge, which he gave along with the other charges prior to jury deliberations, stated:

It is my duty to charge you now that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. If a person joins with another to accomplish an illegal purpose, he is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan and purpose.

After the jury left to deliberate, Curry renewed his objection to the charge on the basis that "the instruction as given did not convey to the jury that the act

in this case, a homicide, must be a **natural or probable consequence** of the preexisting plan in order . . . for the theory of the hand of one, hand of all to apply. . . ." (emphasis added). The trial judge noted Curry's exception.

During its deliberation, the jury asked the court to re-charge "the hand of one is the hand of all." The court brought the jury out and charged accomplice liability as follows, in pertinent part:

[I]f a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. I tell you further that a person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan or purpose. When two or more people are acting together . . . assisting each other in committing the offense the act of one is the act of all, or as is sometimes said, the hand of one is the hand of all.

(emphasis added).

South Carolina courts frequently approve accomplice liability charges that lack language stating an accomplice's criminal act must be "a probable and natural consequence" of the accomplice's common plan. For instance, in State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), our supreme court stated that under "the hand of one is the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." In State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998), the supreme court approved a broader accomplice liability charge that stated, "... if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both." Moreover, in State v. Crowe our Supreme Court approved the following charge for accomplice liability:

[T]wo or more combine together to commit an unlawful act, such as robbery, and, in the execution of that criminal act, a homicide is committed by one of the actors, as a **probable or natural consequence** of the acts done in pursuance of the common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. This principle was stated in State v. Cannon, 49 S.C. 550, 27 S.E. 526: "The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in and steal, and in the execution of this common purpose a homicide is committed by one, as a **probable or natural consequence** of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer."

258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972) (emphases added). Therefore, the approval of this charge demonstrates that the "natural and probable consequence" language need not be included in the charge, as requested by Curry, if the charge as a whole adequately conveys the law. Additionally, with the approval of the disjunctive "or" in the "probable or natural consequence" language of State v. Crowe, the trial court's charge arguably benefited Curry as it only included the "natural consequences" rather than the "natural or probable" language.

Therefore, when viewing the challenged portion of the jury charge as a whole with the rest of the trial court's instruction, we find the trial court adequately charged the law regarding "hand of one hand of all."

CONCLUSION

For the forgoing reasons, Curry's conviction is hereby

AFFIRMED.

GOOLSBY, J. concurs.

ANDERSON, J. dissents in a separate opinion.

ANDERSON, J. (dissenting in a separate opinion): I disagree with majority's reasoning and analysis. In my view, the trial court erred in (1) limiting his cross-examination of two co-defendants on sentencing exposure they faced for murder and other charges related to Hamilton's death; and (2) giving an erroneous charge on accomplice liability. I VOTE to **REVERSE**.

FACTUAL/PROCEDURAL BACKGROUND

Shortly after midnight on March 18, 2003, Hamilton and Ronald Coursey drove to an apartment complex in Augusta, Georgia, to purchase marijuana. In the apartment complex parking lot, they encountered Curry and Anthony Savage and asked if they had any marijuana to sell. Curry and Savage said they had no marijuana, but agreed to procure and sell a quarter-pound to Hamilton and Coursey for \$220.

Hamilton and Coursey drove to an ATM and withdrew money to pay for the drugs. Meanwhile, Curry, Savage, and Jeremy Simuel drove around Augusta looking for marijuana. They were unsuccessful. When they returned to the apartment complex, Hamilton and Coursey followed Curry, Savage, and Simuel to Simuel's apartment. Hamilton and Coursey waited outside the apartment while the others went inside and closed the door. They were soon informed the transaction would occur later.

Hamilton and Coursey left the apartment complex and went to Hamilton's home on Beech Island in Aiken County, where they smoked more marijuana and waited until Curry and Savage called. The parties spoke by phone and agreed to meet at a gas station on Beech Island. Curry, Savage and Simuel failed to procure marijuana to sell Hamilton and Coursey, but apparently intended to meet under the auspices of a drug sale in order to rob Hamilton and Coursey of their money.

Hamilton and Coursey met Curry and Savage in a dark area behind the gas station. Curry and Savage exited their car, where Simuel remained seated. They approached the car in which Hamilton and Coursey waited. Savage told Hamilton they did not have any marijuana, but demanded to see the money. Within minutes, Hamilton was shot and killed while still seated in his vehicle. Curry and Savage fled in the waiting car driven by Simuel.

Curry, Savage and Simuel were all charged in connection with the robbery and Hamilton's murder. Curry was tried on the charges before a jury.

At trial, Coursey, Savage and Simuel implicated Curry in Hamilton's murder. Coursey attested that he saw Curry shoot Hamilton. He testified the first time he met Curry, Savage, and Simuel was the night of the murder when he saw them around midnight in the dark parking lot of the apartment complex, a short time later at the apartment complex, and finally in the dark parking lot of the gas station where Hamilton was killed. Coursey admitted he had been drinking alcohol and smoking marijuana throughout the evening. He averred he called 911 after the shooting but was unable to provide many details about the perpetrators, telling the 911 dispatcher, "I don't know, it's dark man, I just don't know." When he provided police a written statement one week later, he was only able to describe the gunman as "a black male with a white t-shirt on[.]"

Savage asseverated Curry carried a gun with him on the night of the murder, and claimed he saw Curry fire the gun three or four times at the murder scene. Savage further testified that after the shooting, Curry and he fled in a car driven by Simuel. According to Savage, Curry exclaimed, "I think I dome capped him," indicating he shot Hamilton in the head. Curry later told Savage he had disposed of the murder weapon. Simuel largely corroborated Savage's testimony, but did not provide an eyewitness account of Curry firing the gun.

Curry sought to question the motives and biases of Simuel and Savage by cross-examining them on the sentencing exposure they faced for Hamilton's murder. When Curry questioned Simuel about the potential

sentences he faced, the trial court sustained the State's objection and instructed the jury to disregard the testimony.

Prior to Savage's testimony, Curry asked that he be allowed to show motive and bias by questioning Savage on the possible sentence he faced in connection with Hamilton's death. In reaching its decision, the trial court considered Curry's request in light of State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), and stated:

Under [the circumstances in Mizzell], sir, part of the problem I think in that case was that, as I read it, the witness was given an offer to plead to one particular charge versus the potential sentence, the maximum sentence on the other charges that the defendant would have faced had she been convicted or tried on the original charges, and we don't have that here. There's no deal between the State at all.

Curry later sought clarification, asking, "So the Court is ruling that he says he has no deal, then I am prohibited from asking about these penalties that he's facing, is that correct?" The trial court responded affirmatively. Further, the trial court declined Curry's request to proffer the testimony: "We're not going to bring him out here to elicit whether or not he knows what his potential sentences are. As I understand it there's no negotiations or deals between the State and this particular witness."

The jury convicted Curry on both charges. He received concurrent prison sentences of five years for the firearms charge and life in prison for the murder charge.

LAW/ANALYSIS

I. Limitation of Cross-Examination

A. Confrontation Right

Curry argues the trial court committed reversible error in denying his request to cross-examine Savage and Simuel concerning the possible sentences they faced in connection with Hamilton's death. I agree.

"Among other protections, the Sixth Amendment assures: 'In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]' U.S. Const. amend. VI." State v. Davis, 364 S.C. 364, 372, 613 S.E.2d 760, 764 (Ct. App. 2005), cert. granted (Feb. 15, 2006). The Sixth Amendment was incorporated and made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400 (1965); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); Davis, 364 S.C. at 372, 613 S.E.2d at 764. The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149 (1970); State v. Martin, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), cert. granted (Feb. 16, 2006). The primary interest secured by the Confrontation Clause is the right to cross-examination. Gillian at 450, 602 S.E.2d at 71 (citing State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Starnes v. State, 307 S.C. 247, 414 S.E.2d 582 (1991)); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness).

The Confrontation Clause guarantees an accused the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 319-20 (1974); State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Considerable latitude is allowed in cross-examining a witness for potential bias from which jurors could draw inferences relating to the witness's liability. State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634

(1994); Brown, 303 S.C. at 171, 399 S.E.2d at 594. However, the Confrontation Clause does not preclude the trial court from limiting a defendant's inquiry into the potential bias of a prosecution witness. Delaware v. Van Arsdall, 475 U.S. 673 (1986); Gillian, 360 S.C. at 451, 602 S.E.2d at 72. Rather, the trial court retains broad discretion to impose reasonable limits on such cross-examination based on concerns about issues including harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant. Id.

In State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), our supreme court found error in the trial court's decision to exclude evidence of possible sentences faced by the Mizzell brothers' co-defendants where all defendants faced the same charges and the co-defendants had not yet pled guilty or reached a plea agreement with the State. The Mizzell brothers were tried together on charges of first degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime for breaking into the victim's home and stealing several guns. State's witness Donald Steele had been charged with the same crimes as the Mizzells. Steele testified that he and his wife drove the Mizzells to the victim's home and watched as they kicked in the door, entered the home, and returned carrying guns. On cross-examination, Steele admitted the State had charged him with the same crimes as the Mizzells. "The trial court excluded evidence of the possible sentence Steele faced but permitted petitioners to examine Steele about the sentence in general terms." 349 S.C. at 330, 563 S.E.2d at 317.

The issue for the court was whether the trial court had violated the defendants' confrontation rights by refusing to allow evidence of Steele's potential sentence if convicted of the same crimes as the Mizzells. The Mizzell court began by juxtaposing the right of a defendant to cross-examine a witness with the discretion of a trial judge to dictate reasonable limits on the scope of cross-examination:

A criminal defendant may show a violation of the Confrontation Clause "by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors . . .

could appropriately draw inferences relating to the reliability of the witness.” Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674, 684 (1986). The trial judge retains discretion to impose reasonable limits on the scope of cross-examination. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); accord Delaware v. Van Arsdall, *supra*. Before a trial judge may limit a criminal defendant’s right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate. State v. Graham, *supra*. If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error. State v. Brown, *supra*.

Mizzell, 349 S.C. at 331, 563 S.E.2d at 317. The court elaborated that “[t]he jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence.” *Id.* at 331, 563 S.E.2d at 318. “However,” the court intoned, “other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant’s right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence.” *Id.* at 331-32, 563 S.E.2d at 318.

The court discussed State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), a case in which a witness admitted she testified in exchange for a conspiracy charge which carried a seven and one-half year maximum sentence, rather than a trafficking in cocaine charge. The trial judge refused to allow the defense to cross-examine the witness as to the maximum punishment she would have faced under the trafficking charge. The Brown court found that evidence the witness was avoiding a mandatory prison term of “more than three times the duration she would face on her plea to conspiracy” constituted “critical evidence of potential bias that appellant should have been permitted to present to the jury.” Brown, 303 S.C. at 171, 399 S.E.2d at 594. Further, the witness’s testimony was the only evidence linking Brown to trafficking cocaine.

The Mizzell court noted that unlike in Brown, Steele did not have a deal with the State. However, the court concluded that the lack of an

agreement with the prosecution would make the potential for witness bias even more likely:

The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318. Thus, Mizzell stands for the proposition that the lack of an agreement with the State may increase the likelihood of witness bias where the witness has been charged with the same crimes as the defendant.

Similar to the scenario in Mizzell, Curry's co-defendants faced the same charges as Curry and had not pled guilty or reached a plea agreement. Here, the trial court refused to allow Curry to cross-examine his co-defendants on their sentencing exposure because Savage and Simuel had not pled guilty or reached a plea agreement with the State. This ruling contradicts the law established in Mizzell.

State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), cert. granted (Feb. 16, 2006), likewise addressed the Confrontation Clause in the context of questioning a witness on a potential sentence. Gillian was convicted of murder. He had coordinated a burglary and recruited several teenagers, including State's witness Page, to break into the home. Among the items stolen was a .38 revolver which was later used to kill the victim, Michael Ward. At Gillian's trial, Page testified to Gillian's possession of the gun, to Gillian's statement that he was going to "do some dirt" with it, and to an altercation between Gillian and the victim on the night of the murder. "On direct examination, Page admitted he was currently charged with first-degree burglary and the Richland County Solicitor had agreed to advise his plea judge of his cooperation in Gillian's trial." 360 S.C. at 449, 602 S.E.2d at 70. Defense counsel sought to cross-examine Page on the possible sentence he faced, but the trial judge limited references to the sentence to "a lot of time" and "serious time." Id. Relying on Mizzell and State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002), we inculcated:

Included in the Confrontation Clause protection is the right to cross-examine any State's witness as to possible sentences faced when there exists "a substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to [a] future [court]" how the witness cooperated in the instant case. See Sims, 348 S.C. at 25, 558 S.E.2d at 523; see also Mizzell, 349 S.C. at 332-33, 563 S.E.2d at 318.

Gillian, 360 S.C. at 454, 602 S.E.2d at 73. Accordingly, we found the trial court had erred in excluding evidence of Page's potential sentence.

Apodictically, a defendant has a protected right under the Sixth Amendment's Confrontation Clause to cross-examine a witness as to the possible sentence he faces where there exists a substantial possibility of bias. In the case sub judice, where the witnesses were charged with the same crimes as the co-defendant against whom they were testifying, the requisite potential for bias was present. Curry had a right to question on the possible sentences Simuel and Savage were facing, and the trial court erred by refusing this inquiry.

B. Harmless Error Analysis

A determination that the trial court committed error does not end the inquiry. A violation of a defendant's Sixth Amendment right to confront a witness is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). In State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), cert. granted (Feb. 16, 2006), this Court stated the law of harmless error with exactitude:

No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004). Whether

an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318-19 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

"Harmless beyond a reasonable doubt" means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). "In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict." Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (internal quotations omitted).

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003); Mitchell, 286 S.C. at 573, 336 S.E.2d at 151; State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). Thus, an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989); Adams, 354 S.C. at 381, 580 S.E.2d at 795; see also State v. Kelley, 319 S.C. 173, 460 S.E.2d 368

(1995) (noting that when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside conviction for insubstantial errors not affecting result).

Gillian, 360 S.C. at 454-55, 602 S.E.2d at 74-75.

The Mizzell court found the erroneous limitation of the cross-examination of a witness constituted reversible error under the facts of that case. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319. The court noted the witness's testimony provided the only direct link between the defendant and the crime scene. Moreover, no physical evidence linked the defendant to the crime scene. In fact, nothing else corroborated the State's case.

Conversely, in State v. Sims, 348 S.C. 16, 26, 558 S.E.2d 518, 523 (2002), our supreme court found harmless error where the State's case was "strong" without the witness's testimony and exclusion of the testimony could not possibly have affected the trial's outcome. In considering the strength of the State's case, the Sims court noted the defendant's fingerprints were found at the crime scene, the victim's mother testified Sims threatened the victim on the date of her death, and Sims had "spontaneously confessed" to law enforcement officers investigating the incident. Id.

This Court found harmless error in Gillian, where the witness's testimony was "largely cumulative" to testimony from other witnesses and other evidence suggested Gillian's guilt. Gillian, 360 S.C. at 457-58, 602 S.E.2d at 74-75. We distinguished the facts in Gillian from those in Mizzell, noting the absence of the witness's testimony left "no material point of the State's case uncorroborated or unsupported by the testimony of other witnesses." Id. at 458, 602 S.E.2d at 75.

Here, Simuel and Savage's testimony was critical to the case's outcome. They testified to Curry's motive; to his possession of a gun similar to that used in the shooting; to his conduct before and after the shooting; and to self-incriminating statements Curry made about discarding the weapon. Most significantly, Savage testified to seeing Curry fire the gun. Without their testimony, the only evidence linking Curry to the crime scene is

Coursey's vague and unspecific testimony. Coursey provided few details of the gunman in the description he provided to the 911 dispatcher immediately after the shooting and in his written statement to police made one week later. Coursey testified the shooting occurred in a dark area, and that he met Curry and Savage for the first time hours before in another dark location. Moreover, Coursey testified he observed the shooting after spending several hours drinking alcohol and smoking marijuana. Consequently, the testimony of Simuel and Savage provided the crucial nexus establishing Curry as the gunman.

Accordingly, the trial court's error in limiting Curry's cross-examination could have reasonably affected the outcome of the trial. The error was not harmless.

II. Accomplice Liability Charge

Additionally, Curry maintains the trial court's charge on the hand of one is the hand of all theory was inadequate because it failed to specify that a crime committed by an accomplice must be a "probable or natural consequence" of the actions taken in pursuit of the accomplices' common plan. I agree. Although the court's charge included the words "natural consequence," the charge should have included both "natural" and "probable."

At trial, Curry argued the court's proposed charge on "the hand of one is the hand of all" theory lacked "sufficient emphasis on the issue of probable or natural consequence[.]" Based on language drawn from State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000), Curry suggested the following charge:

[I]f two or more combine together to commit an unlawful act and a crime is committed by one of the actors as a **probable and natural consequence** of the acts done in pursuance of the common design, all present and participating in the unlawful undertaking are as guilty as the one who committed the act.

(Emphasis added.)

The trial judge rejected Curry's proposed charge and subsequently charged the jury twice on "the hand of one is the hand of all" theory. The first charge, which the judge gave along with the other charges prior to jury deliberations, stated:

It is my duty to charge you now that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. If a person joins with another to accomplish an illegal purpose, he is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan and purpose.

(Emphasis added.) After the jury left to deliberate, Curry renewed his objection to the charge on the basis that "the instruction as given did not convey to the jury that the act in this case, a homicide, must be a **natural or probable consequence** of the preexisting plan in order . . . for the theory of the hand of one, hand of all to apply. . . ." (emphasis added). The trial judge noted Curry's exception.

During its deliberations, the jury asked the court to re-charge "the hand of one is the hand of all." The court brought the jury out and charged accomplice liability as follows:

. . . if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. I tell you further that a person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a **natural consequence** of the acts done in carrying out the common plan or purpose. When two or more people are acting together . . . assisting each other in committing the offense the act of one is the act of all, or as is sometimes said, the hand of one is the hand of all.

(Emphasis added.) After re-charging the jury on additional areas of law, including mere presence, the trial judge sent the jury back for continued deliberation. The judge stated to Curry's counsel, "I note your continuing objection to the charge on hand of one as stated earlier."

Curry argues the accomplice liability charge erroneously failed to specify that an accomplice's crime must be "a probable and natural consequence" of actions taken in pursuit of the accomplices' shared plan. The language advanced by Curry limits criminal liability for an accomplice's actions that are inconsequential to the execution of their common scheme or plan. As one treatise explains:

When several persons are involved in the perpetration of one crime, and one of them goes outside the common purpose for which they combined or conspired in committing a fatal act which is not a **natural and probable consequence** of carrying out the common purpose, the others are not criminally liable for the homicide. There is a requirement of a direct causal connection between the underlying felony and the homicide which is something more than mere coincidence in time and place between the two. The actual legal relation between the killing and the crime committed or attempted must be such that the killing can be said to have occurred as a part of the perpetration of the crime, or in furtherance of an attempt to commit it; that is, the fatal act must have been the ordinary, probable, or necessary result or effect of the execution of the conspiracy, or of the concerted action, in which the defendant participated.

Whether or not the act done was in furtherance of the common design, or whether it was a **natural and probable consequence** flowing from the execution of the common design is always a question for the jury.

3 Am.Jur. Proof of Facts 2d 551, Homicide Outside of Common Design, § 6 (2005) (emphasis added).

Our courts have approved of accomplice liability charges that lack language stating an accomplice's criminal act must be "a probable and natural consequence" of the accomplices' common plan. For instance, in State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999), our supreme court stated that under "the hand of one is the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate **incidental** to the execution of the common design and purpose." (Emphasis added.) In State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998), the supreme court approved a broader accomplice liability charge that stated, "... if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both."

However, other cases present accomplice liability charges that include the language Curry requests. In State v. Crowe, 258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972), our supreme court described accomplice liability as where

... two or more combine together to commit an unlawful act, such as robbery, and, in the execution of that criminal act, a homicide is committed by one of the actors, as a **probable or natural consequence** of the acts done in pursuance of the common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. This principle was stated in State v. Cannon, 49 S.C. 550, 27 S.E. 526: "The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in and steal, and in the execution of this common purpose a homicide is committed by one, as a **probable or natural consequence** of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer."

(Emphasis added.)

In State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985), rev'd on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), our supreme court considered the necessity of the "probable or natural consequence" language in an accomplice liability charge. Peterson involved the joint appeal of two accomplices who appealed their convictions for murder, armed robbery, grand larceny of a motor vehicle, and conspiracy. The court stated:

The trial judge's charge was a correct statement of the general law of this jurisdiction concerning accomplice liability. In the present case, however, the jury reasonably could have found that the murder was not the probable or natural consequence of the larceny of a motor vehicle.

Had the jury determined that either appellant conspired only to commit an unarmed larceny of a car, and had it further concluded that the state failed to establish beyond a reasonable doubt that a homicide was the natural or probable consequence of a plan to steal the victim's car, the appellant would have been entitled to an acquittal on the charge of murder.

It was therefore essential under the facts and circumstances of this case that the jury be instructed that it had to find that the homicide was a natural or probable consequence of the acts actually agreed on by the appellants before the law would hold him responsible for such a homicide. The failure of the trial judge to so instruct was error because it permitted the jury to convict an appellant of murder merely by finding (1) that appellant had combined with another to commit the non-life threatening crime of grand larceny of a motor vehicle and (2) that appellant's accomplice thereafter took a life without appellant's prior knowledge, approval, or assistance.

Peterson, 287 S.C. at 246-47, 335 S.E.2d at 801-02 (emphasis added).

Thus, the facts and circumstances of a particular case ultimately dictate whether an accomplice liability charge must instruct the jury that an accomplice's actions be a "natural or probable consequence" of actions taken in pursuit of the accomplices' shared plan.

I would hold that here, as in Peterson, the facts and circumstances warrant the language requested by Curry. Evidence presented at trial suggested the possibility that the codefendants met Hamilton and Coursey under the pretense of selling them marijuana, but in fact had no marijuana to sell and only intended to rob them of their money. The testimony is not conclusive that the codefendants agreed to use weapons to accomplish the crime; only that one of them apparently had the intention and shot Hamilton during the commission of the crime. Had the jury determined that either codefendant conspired **only** to commit an unarmed robbery and had it further concluded that the State failed to establish beyond a reasonable doubt that a homicide was the natural or probable consequence of the robbery, the appellant would have been entitled to an acquittal on the charge of murder. Crowe and Peterson utilize both "natural" and "probable." Each word has a different meaning. Accordingly, the use of both words was necessary in the case sub judice. The court's failure to include the word "probable" here renders the charge inadequate.

Curry further alleges the trial court erred (1) by refusing to allow him to cross-examine Savage on possible sentence he faced for pending charges unrelated to Hamilton's death; (2) by allowing testimony regarding alleged bad acts; and (3) by allowing the State to elicit testimony that Curry was in jail at the time of the trial. Because I would reverse on the Confrontation Clause and accomplice liability charge issues, I decline to address these issues. **I VOTE to REVERSE.**

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Certiorari to Aiken County

Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THADDEUS CURRY,

PETITIONER

 PETITION FOR WRIT OF CERTIORARI
 TO THE COURT OF APPEALS

 ROBERT M. DUDEK
 Deputy Chief Attorney for Capital Appeals

 South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, S. C. 29211-1589
 (803) 734-1343

ATTORNEY FOR PETITIONER.

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1.

The Court of Appeals erred by finding it was harmless error for the trial court to refuse to allow the defense to cross-examine critical state's witnesses Jeremy Simuel and Anthony Savage about their sentencing exposure for murder and the other charges involved in this case, since this cross-examination was probative of their bias under State v. Mizzell, and the jury did not have a real appreciation of the extremely strong motive these critical and necessary state's witnesses had to misrepresent the truth and make petitioner the gunman and scapegoat for the murder.....14

2.

The Court of Appeals erred by ruling that any error in allowing Savage to testify he did not want petitioner to get access to a black bag containing a gun "because I know how he acts" was harmless since this evidence was inadmissible under Rule 404 (b), SCRE. This assertion indicated past wrongs by petitioner, and it also insinuated petitioner would again act in conformity with his bad character traits. The Court's finding of harmless error is incorrect given its cumulative effect with a jury that did not understand Savage's motive to misrepresent the truth to make petitioner the scapegoat for the murder 17

3.

The Court of Appeals erred by finding no error in the refusal to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all," particularly given the unusual facts of this alleged marijuana deal case or robbery plan without any marijuana to deal case gone awry 18

4.

The Court of Appeals also erred by implicitly finding no error in the "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" charge since this confusing instruction amounted to a presumption of guilt by presence at the crime scene given the facts of this case. It added further confusion to the "hand of one is the hand of all" instruction in this case..... 20

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 5, 2007.

ISSUES PRESENTED

1.

Whether the Court of Appeals erred by finding it was harmless error for the trial court to refuse to allow the defense to cross-examine critical state's witnesses Jeremy Simuel and Anthony Savage about their sentencing exposure for murder and the other charges involved in this case, since this cross-examination was probative of their bias under State v. Mizzell, and the jury did not have a real appreciation of the extremely strong motive these critical and necessary state's witnesses had to misrepresent the truth and make petitioner the gunman and scapegoat for the murder absent this cross-examination?

2.

Whether the Court of Appeals erred by ruling that any error in allowing Savage to testify he did not want petitioner to get access to a black bag containing a gun "because I know how he acts" was harmless since this evidence was inadmissible under Rule 404 (b), SCRE, because it indicated past wrongs by petitioner, and it also insinuated petitioner would again act in conformity with his bad character traits, and the Court's finding of harmless error was also incorrect given the cumulative effect of Savage's claim with a jury that did not understand the motive Savage had to misrepresent the truth to make petitioner the scapegoat?

3.

Whether the Court of Appeals erred by finding no error in the refusal to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all," particularly given

the unusual facts of this alleged marijuana deal case or robbery without any marijuana to deal case gone awry?

4.

Whether the Court of Appeals erred by not finding error in the trial court instructing the jury that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" since this instruction was confusing and amounted to a presumption of guilt by presence at the crime scene under the "hand of one is the hand of all" instruction?

STATEMENT OF FACTS

Procedural history

Petitioner was indicted at the May, 2004 term of the Aiken County grand jury for the offenses of murder and possession of a firearm during the commission of a violent crime. R. 255 - 256. His case came on for trial on May 10, 2004 before the Honorable Reginald Lloyd, and a jury. Michael Chesser represented petitioner. Everett Chandler and Bill Weakas were the solicitors. R. 1.

On May 13, 2004 the jury found petitioner guilty as charged. R. 250, ll. 5-16. Judge Lloyd sentenced petitioner to life imprisonment for murder and five years consecutive for possession for a firearm during the commission of a violent crime. R. 252, ll. 2-10.

The Court of Appeals, in 2-1 decision, affirmed petitioner's convictions in State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (October 9, 2006). App. 1-14. Petitioner sought rehearing. App. 15-21. The Court of Appeals denied rehearing. However, it substituted a re-filed opinion adding a footnote to address one of petitioner's complaints on rehearing that the Court had ignored an argument. State v. Thaddeus Curry, Op. No. 4159 (Refiled February 5, 2007). App. 22-49.

Introduction

This case involves an attempt by the decedent and his friend to purchase marijuana from Anthony Savage, Jeremy Simuel and petitioner. The major jury issues were the foreseeability that a murder would occur during a drug deal or an attempt to "rip off" the decedent and his friend without any marijuana to deal. The jury also had to decide whether it believed accomplices Savage and Simuel when they alleged petitioner was the shooter. The jury would never learn Savage and Simuel faced a possible sentence of life imprisonment without parole --- a most powerful motive to misrepresent the truth.