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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Honorable J.C. Nicholson, Jr.
Appellate Case No. 2012-213405

State of South Carolina.....Respondent,

v.

Rakeem D. King.....Appellant.

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #33 (C.D. OF JAIL CALLS)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2011-GS-10-1793
	)	2011-GS-10-1794
	)	2011-GS-10-1795
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
RAKEEM D. KING	)	
	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on November 5, 2012, Commencing at 11:30 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

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1 THE COURT: Okay. Thank you, very much. I'll be
2 glad to hear you on your motion.

3 MOTION TO SUPPRESS

4 MR. KING: Thank you, Your Honor. We did have a --
5 I don't think it will take too long -- there was a motion
6 on the search warrant. The police in this case got a
7 search warrant for some records from Cricket, phone
8 records. Those phone records came back to a certain name
9 and a certain date of birth. The name was Kevin King.
10 And it had the same date of birth on the phone records as
11 my client.

12 Evidently when you get these Cricket phones you can
13 get whatever information -- it's not verified in any way.
14 And also the street number was given that matches the
15 street number on Mr. King's driver's license record; a
16 different street but the same street number. Using that
17 Mr. King was put into a lineup and he was identified from
18 that.

19 So I'm moving to suppress those based on I think a
20 faulty affidavit and search warrant to suppress those
21 records -- because that's the reason he was put into the
22 lineup to suppress that as well. The grounds, Your
23 Honor, I'm challenging this under the statute, South
24 Carolina Statute 17-13-140. And that's just our statute
25 that says a warrant shall be issued only on affidavits

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1 sworn before a magistrate or judge of a court of record
2 establishing the grounds for the warrant.

3 THE COURT: Do you have a copy of the warrant --
4 the affidavit and the warrant itself I may look at?

5 MR. KING: I do, Your Honor. And there were
6 actually two search warrants but from what I can see the
7 affidavits are identical if I may approach?

8 THE COURT: If you would hand me the search warrant
9 I would appreciate it.

10 [Whereupon, Mr. King proffers documents to the
11 court]

12 THE COURT: Thank you, sir. Now this is the search
13 warrant that you are referring to by Detective M. Evans,
14 is that correct?

15 MR. KING: Yes, Your Honor. But there are actually
16 two search warrants. I've given you one. They are
17 pretty much identical I believe with a little bit more
18 detail in the second search warrant.

19 THE COURT: All right. So you are referring to
20 search warrant I thinks it's an O-C-A number the last
21 four is 9791, is that correct?

22 MR. KING: That's correct, Your Honor.

23 THE COURT: Okay. And the affidavit -- there is a
24 description of property and an affidavit attached to that
25 search warrant, is that correct?

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1 MR. KING: Right, Your Honor.

2 THE COURT: Okay.

3 MR. KING: This would be the reason for affiant's
4 belief that the property they sought was on the premises.
5 It begins with on November 26th, 2010.

6 THE COURT: Okay ---

7 MR. KING: --- at approximately 4:19.

8 THE COURT: All right. Now if you would since I
9 have a copy of the search warrant can you point out to me
10 in the affidavit where you think it's ineffective to --
11 let me see what they are asking for first, okay. Let me
12 see, they are asking for subscriber's name, billing
13 address, phone number concerning local and long distance
14 calls.

15 [Whereupon, the court reviews documents]

16 THE COURT: Tell me in the affidavit what you think
17 is insufficient about the affidavit since I have it in
18 front of me.

19 MR. KING: Your Honor, I'm referring to the case
20 State v Reginald Smith, which is ---

21 THE COURT: --- you got a site?

22 MR. KING: 301 S.C. 371.

23 THE COURT: You got a copy of it or am I going to
24 have to pull it up?

25 MR. KING: I do have a copy, Your Honor, it's a

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1 very brief case.

2 THE COURT: --- if you'll pass it up I would
3 appreciate it.

4 MR. KING: I'll go ahead and give three cases, Your
5 Honor that I'm referencing here.

6 THE COURT: Okay.

7 [Whereupon, Mr. King proffers documents to the
8 court]

9 THE COURT: Thank you, sir. Are you looking at
10 State v Reginald Smith, State v Arenzo Jones [ph], is
11 that right?

12 MR. KING: That's correct, Your Honor.

13 THE COURT: And State v Clifton McKnight, et al and
14 also et al on Jones is that correct?

15 MR. KING: That's right, Your Honor.

16 THE COURT: Okay.

17 MR. KING: McKnight that -- the issue there just
18 says that the defendant doesn't have to have standing or
19 a right of privacy in the area searched if you are
20 challenging it under the South Carolina statute. Any
21 defendant where evidence is being admitted against them
22 can challenge the ---

23 THE COURT: --- can challenge, right ---

24 MR. KING: --- under that statute.

25 THE COURT: That's McKenzie [ph] right?

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1 MR. KING: That's the only reason I put that case
2 in there, Your Honor.

3 THE COURT: Okay.

4 MR. KING: State v Smith is a very short case
5 which just makes the holding that conclusory statements
6 do not give the magistrate basis to make a judgment on
7 probable cause. I believe that there were conclusory
8 statements in the affidavit here; November 26 at 4:19
9 while at 1808 [REDACTED] Street a yellow taxi cab driver was
10 summoned to the aforementioned residence.

11 I think that's a conclusory -- I believe they are
12 supposed to put more facts that they have and the reasons
13 why they would come to that conclusion. They also --
14 they basically summarized what the victim had told them
15 but again I think those are conclusory as well. They
16 don't put where they got that information from.

17 And there is one sentence that I believe is
18 misleading and that is during the course of the
19 investigation the aforementioned telephone number was
20 determined to be a Cricket wireless number, which
21 belonged to the defendant ---

22 THE COURT: --- this was the informant case, right?

23 MR. KING: No.

24 THE COURT: Pardon?

25 MR. KING: No, Your Honor. This was the taxi cab

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1 company ---

2 THE COURT: --- no, I'm talking about the Smith
3 case.

4 MR. KING: Yes, Your Honor, the State v Smith. I
5 believe that is a burglary and a robbery case with a
6 search warrant. And the case held that the affidavit put
7 no reasons as why police believed Smith robbed the Master
8 Post Inn. In that case I think they basically just
9 conclude that ---

10 THE COURT: --- they said it was all conclusions.
11 There was no factual basis, right?

12 MR. KING: That's correct, Your Honor.

13 THE COURT: What about the Jones case?

14 MR. KING: That is discussed as a Franks issue,
15 Your Honor. There is a United States Supreme court
16 Franks v Delaware, which allows you to challenge
17 misstatements in a search warrant affidavit. I don't
18 believe they were purposely false, but there is a
19 standard of reckless disregard for the truth.
20 The statement specifically is during the course of
21 the investigation the informant's telephone number was
22 determined to be a Cricket wireless number, which
23 belonged to the defendant. And that's what this whole
24 case is about. That's what the State is trying to prove.
25 At that point they had this number that called in, but

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1 they didn't have evidence at that point that that was Mr.
2 King's phone number. And I think that is a false and
3 misleading statement put into the warrant. I'd say based
4 on a combination of the conclusory statements and that
5 misleading statement we would ask to ---

6 THE COURT: --- which statement do you think is
7 misleading in the affidavit?

8 MR. KING: The statement -- it's about in the
9 middle of the paragraph. During the course of the
10 investigation the aforementioned telephone number was
11 determined to be a Cricket wireless number which belonged
12 to the defendant.

13 THE COURT: Okay.

14 MR. KING: Your Honor, at the time the police
15 didn't know it belonged to the defendant. That was the
16 whole point in trying to get these records to determine
17 that. And that is going to be an issue in this case.

18 [Whereupon, the court reviews documents]

19 THE COURT: Okay. Anything else?

20 MR. KING: That's it, Your Honor.

21 THE COURT: Okay. I'll be glad to hear from the
22 State.

23 MR. DURANT: Thank you, Your Honor ---

24 THE COURT: --- I'm going to mark this search
25 warrant as State's Exhibit -- excuse me, as court's

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1 exhibit number 1. And I think that includes the return
2 as well as the warrant and the affidavit and all the
3 information concerning the record. I'm going to mark it
4 as court's exhibit number 1.

5 MR. DURANT: Thank you, Your Honor.

6 THE COURT: I'll be glad to hear you.

7 MR. DURANT: Obviously the State contends, and
8 actually its plain as day there is probable cause to go
9 and look into the subscriber's information for this
10 Cricket wireless number XXX-XXX-4849. All that was
11 required in this affidavit, which goes into things that
12 it didn't need to go into, I'll admit; there is more in
13 this affidavit than needs to be here.

14 And there is an conclusory statement in there;
15 that's true. But that's more than needs to even be in
16 there. All that needed to be in there is exactly what is
17 in there; and that's that a crime occurred because a cab
18 driver from the Yellow Cab Company was shot while on duty
19 on November 26th, 2010 at 4:19 in the morning after
20 responding to 1808 [REDACTED] Street.

21 And the number that had contacted the cab company to
22 have that driver go out there was the XXX-XXX-4849
23 number. Therefore it was reasonable to believe this
24 number may be connected with the crime. And there was
25 probable cause based on that to go and find out who that

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1 subscriber was, whether it led to this defendant or not.
2 At that point there is probable cause to go look into
3 that number. And yes, it did eventually lead to this
4 defendant. So probable cause is there. It was there
5 back on the 26th of November. It's there today and these
6 other statements that are in there don't need to be in
7 there. There is probably more than is required.

8 But the fact of the matter is that at the time this
9 affidavit was served to the magistrate it was February
10 the 10th of 2012 and the investigation had already
11 uncovered the fact that the subscriber was a man named
12 Kevin King with a date of birth of X/X/91 who
13 lived at 3440 Elliott Street. And that is the ---

14 THE COURT: --- was the photo lineup given before
15 this affidavit or after this affidavit?

16 MR. DURANT: Yes it was, Your Honor.

17 THE COURT: Pardon?

18 MR. DURANT: Before.

19 THE COURT: So the alleged defendant -- the
20 defendant in this case had already been picked out of a
21 lineup prior to this affidavit.

22 MR. DURANT: And Your Honor this is because
23 procedurally the police went to the Cricket Wireless
24 store and just asked them who is the subscriber for this
25 information. It wasn't a search warrant. It was just

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1 information that was given from Cricket willingly,
2 freely. But information that which would not have been
3 admissible in court, unless we got the search warrant so
4 we went back and got the search warrant. So that's why
5 we are here.

6 THE COURT: Anything else?

7 MR. DURANT: I think that's all, Your Honor.

8 THE COURT: Okay, I'll be glad to hear you. Mr.
9 King, anything you would like to offer in rebuttal?

10 MR. KING: No, Your Honor.

11 THE COURT: Okay. Give me a chance to look at the
12 -- read the affidavit and the warrant itself please, sir.

13 [Whereupon, the court reviews documents]

14 THE COURT: Mr. King, all this information here
15 about the guidelines by Cricket on responding to a legal
16 process do you need that attached?

17 MR. KING: Not necessarily, Your Honor. I think
18 that was all the results of the search warrant.

19 THE COURT: That was all -- do you want that
20 attached to the court's exhibit? I don't have a problem
21 attaching it all if you want me to.

22 MR. KING: Yes, Your Honor. I believe its part of
23 the ---

24 THE COURT: --- under the search warrant. You want
25 it all attached?

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1 MR. KING: Yes, Your Honor.

2 THE COURT: Okay. Now there is a duplication in
3 here. It appears there is a duplication, apparently the
4 copy had two copies -- let me find it. Apparently two of
5 the custodian records from Detective Evans to the company
6 dated it looks like February the 14th 2012 [Reading]
7 Attached is a search warrant. Could you please fax the
8 results. And it's in here twice. I'm going to give you
9 one copy back; we don't need two copies.

10 [Whereupon, the court returns documents to Mr. King]

11 THE COURT: Thank you so very much. I'm going to
12 give that to Mia. Mia, if you will mark that as court's
13 exhibit number 1.

14 [Whereupon, court's exhibit number 1 is marked by
15 the court reporter]

16 THE COURT: All right. Having reviewed the case,
17 listened to the arguments, and reviewed the affidavit and
18 the search warrant I think there is probable cause to
19 have issued the search warrant and the motion to suppress
20 is denied.

21 MR. KING: Your Honor, Mr. King has asked me if he
22 can have a moment to talk to me about something important
23 dealing with the case.

24 THE COURT: As soon as we finish these motion
25 hearings I'll give you as much time as you need, okay.

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- 1 Q. Did you know anything about any suspect in the case?
- 2 A. Not at all.
- 3 Q. How did you find out that in fact you were even
- 4 involved in this case in relaying a number? Is that how
- 5 you would do supplemental reports?
- 6 A. Repeat the question again.
- 7 Q. I'm sorry. I'm having trouble with my voice. How
- 8 did you know you were involved before you administered a
- 9 photo lineup?
- 10 A. Just from supplemental reports.
- 11 Q. What I'm getting at here is did you have an
- 12 opportunity to show an individual a photo lineup or photo
- 13 array on December the 3rd, 2010?
- 14 A. I did.
- 15 Q. Who did you administer a photo array to?
- 16 A. The victim of the case.
- 17 Q. That's Dario Brown?
- 18 A. Dario Brown; correct.
- 19 Q. Who contacted you to do that?
- 20 A. Detective Evans.
- 21 Q. Do you know why you were contacted?
- 22 A. I guess because I was sitting outside in the
- 23 headquarters. I was the one available I guess.
- 24 Q. Did it also have anything to do with the fact that
- 25 you were an independent administrator ---

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1 THE COURT: Would you please call him?

2 MR. DURANT: The State calls Dario Brown.

3 [Whereupon, Mr. Brown comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court as follows: do you swear or affirm your
6 testimony will be the truth, the whole truth, and nothing
7 but the truth so help you God]

8 CLERK OF COURT: State your full name and spell
9 your last name.

10 THE WITNESS: Dario Antoine Brown, B-R-O-W-N.

11 - - - - -

12 DARIO BROWN,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Dario, good afternoon.

18 A. How are you doing?

19 Q. We are going to have a pretrial hearing first on an
20 identification you made in this case, okay?

21 A. Yes, sir.

22 Q. If you will please tell the Judge where you were
23 employed on November 26th, 2010?

24 A. Yellow Taxi.

25 Q. And that's here in Charleston?

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- 1 A. Yes, sir.
- 2 Q. What did you do for them?
- 3 A. Drive a taxi.
- 4 Q. How long had you been doing that at this time?
- 5 A. At the time of the incident?
- 6 Q. Yes?
- 7 A. A little over a year.
- 8 Q. Did you respond to a call to pick up somebody at
- 9 1808 [REDACTED] Street?
- 10 A. Yes, sir.
- 11 Q. That was about 4:10 in the morning?
- 12 A. Yes, sir.
- 13 Q. And that's the morning right after Thanksgiving --
- 14 that was early Friday morning, right?
- 15 A. Yes, sir.
- 16 Q. Did you go to that address?
- 17 A. Yes, I did.
- 18 Q. What happened when you got there?
- 19 A. This gentleman here [indicates] entered the taxi and
- 20 robbed me and shot me; chased me down.
- 21 Q. You say this guy here in the courtroom?
- 22 A. Yes, sir right there [indicates].
- 23 Q. Do you see him?
- 24 A. Yes, I do.
- 25 Q. What is he wearing?

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- 1 A. A striped shirt and a dark colored tie and some
2 khaki pants.
- 3 Q. Is there any doubt in your mind that this is the guy
4 who approached you?
- 5 A. No, sir.
- 6 Q. Let's talk about what happened there. You go to
7 pick up a fare at 1808 [REDACTED] Did you go to 1808
8 [REDACTED]
- 9 A. I pulled up in front of 1809, which is right across
10 the street from 1808.
- 11 Q. Are you familiar with that area?
- 12 A. Yes, sir.
- 13 Q. Why is that?
- 14 A. My aunt used to live in that house.
- 15 Q. What house?
- 16 A. She is deceased now; 1809 [REDACTED]
- 17 Q. So what happened when you pulled up that night?
- 18 A. I pulled up. I saw a gentleman coming out of the
19 yard coming to my cab. The dome light was on. When I
20 looked back I noticed that it wasn't the person who I
21 thought I was picking up so I asked him what is he doing
22 coming out of that yard.
- 23 Q. You thought you were picking up a specific person?
- 24 A. Yes sir, by the address.
- 25 Q. Who did you think you were picking up?

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- 1 A. A family member of mine.
- 2 Q. Why did you think you were picking up a family
3 member?
- 4 A. Because that's his house, him and his mother's
5 house.
- 6 Q. They live on [REDACTED] Street?
- 7 A. Yes, sir.
- 8 Q. But somebody else got in your cab?
- 9 A. Yes sir, a gentleman ---
- 10 Q. --- what door did they get in?
- 11 A. My back passenger door.
- 12 Q. You said something about your dome light.
- 13 A. Yes, that's the light that comes on every time the
14 door opens or it has a manual switch you can cut it on
15 too.
- 16 Q. Could you tell where the person was coming from?
- 17 A. Yes, sir.
- 18 Q. Where were they coming from?
- 19 A. Out of the yard at 1809 [REDACTED].
- 20 Q. Did that strike you in any way?
- 21 A. Yes.
- 22 Q. How so?
- 23 A. Because the house was abandoned and it's been
24 abandoned for a certain amount of time now.
- 25 Q. Well based on that did you say anything?

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- 1 A. Yes. I asked him what is he doing coming out of
2 that yard.
- 3 Q. Why did you ask him that?
- 4 A. Because it was 4 in the morning and they have been
5 having problems with people vandalizing the house.
- 6 Q. Did you see the man's face who got in your cab?
- 7 A. Yes, sir.
- 8 Q. What were the lighting conditions like when you saw
9 his face?
- 10 A. Well it was dark outside but inside the cab we have
11 a dome light which projects pretty bright like clear as
12 day.
- 13 Q. Why was your dome light on?
- 14 A. Because the door was open.
- 15 Q. Which door?
- 16 A. The back passenger door.
- 17 Q. Did you see this man's face in your mirror or did
18 you turn around and see it?
- 19 A. No, I was turned around.
- 20 Q. Did you look the man in the face?
- 21 A. Yes.
- 22 Q. Did you look him in the eye?
- 23 A. Yes, I did.
- 24 Q. Not the person you were expecting to pickup?
- 25 A. No, sir.

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- 1 Q. So what did you start to do?
- 2 A. Question him about why is he coming out of the yard.
- 3 Q. Did you put the cab in park?
- 4 A. No, we still was -- it still was in drive.
- 5 Q. Were you driving?
- 6 A. No, not when he entered the cab.
- 7 Q. Not when he entered the cab?
- 8 A. No.
- 9 Q. He just stood -- he just stayed right there?
- 10 A. Yes, when he got in yes I stayed right there.
- 11 Q. Tell me what happened next.
- 12 A. I still was questioning him about what is he doing
- 13 coming out of the yard and he's telling me he came out of
- 14 the yard next door. So I proceeded to go down to the
- 15 next house and turn around back into the yard to turn
- 16 around.
- 17 And as soon as I turned around a complete turn
- 18 facing back toward the front of the street that's when
- 19 the subject told me to shut the F up and cocked a small
- 20 firearm.
- 21 Q. How do you know it was a small firearm?
- 22 A. I looked right at it. I looked right at it in his
- 23 hand.
- 24 Q. Did you turn back around?
- 25 A. To the front?

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- 1 Q. Did you turn around to see him behind you ---
- 2 A. --- oh yes, I was looking at him the whole time.
- 3 Q. Did you see the gun?
- 4 A. Yes, sir.
- 5 Q. Did he say anything else?
- 6 A. Yes. He told me to give me all the fucking money.
- 7 Q. Did you give him any money?
- 8 A. Yes approximately -- a little over 20 dollars.
- 9 Q. Why did you have a little over 20 dollars?
- 10 A. That time of morning I had done spent some money on
- 11 gas and we don't really carry large amounts of money like
- 12 that.
- 13 Q. What time did you get on that night? What time did
- 14 you start picking up fares?
- 15 A. Approximately after 12 o'clock.
- 16 Q. Did you have other people in your cab that night?
- 17 A. Yes, sir.
- 18 Q. Approximately how many?
- 19 A. Maybe 9 or 10.
- 20 Q. What happens -- what happened when he put the gun to
- 21 your head?
- 22 A. I threw the money in the back and had my hands up to
- 23 the ceiling of the cab such as this [indicates] looking
- 24 back at him telling him he doesn't have to do this, you
- 25 don't have to go through with; I already gave you the

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- 1 money and so forth.
- 2 Q. And what did he say?
- 3 A. Give me money and told me to back the cab up down
4 the street, which he was saying calling it a cut, back
5 the car up on the cut.
- 6 Q. Did you do that?
- 7 A. No, sir. I was too afraid to move.
- 8 Q. So what did you do?
- 9 A. I kept my hands up and attempted to move the gun
10 away from the back of my head because he had the gun
11 pointed right here [indicates].
- 12 Q. How did you do that?
- 13 A. My forearm here [indicates] I tried to move it over.
- 14 Q. If you could demonstrate. If I'm behind you is this
15 about where he was right here [indicates]?
- 16 A. Yes, sir.
- 17 Q. Was it to your head?
- 18 A. Yes, sir.
- 19 Q. What were you doing?
- 20 A. Saying you don't have to do this. You don't have to
21 rob me. And he moved my arm back and I attempted to do
22 it two more times.
- 23 Q. Did he keep putting the gun back?
- 24 A. Yes, sir.
- 25 Q. What happened?

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1 A. By this time the look in his eyes it looked like he
2 didn't have anything to lose so I made an attempt to exit
3 the cab and he shot me.

4 Q. The look in his eye. Did you see the look in his
5 eye again?

6 A. Yes, sir. Yes, sir.

7 Q. You were able to look this man in the face when he
8 had a gun at your head?

9 A. Yes.

10 Q. And you asked him not to do this?

11 A. Yes, sir.

12 Q. Would you say you got a good look at him?

13 A. Oh, yes sir. I'll never forget that face.

14 Q. So you're trying to get the gun away from your head
15 and you said what happened?

16 A. By this time I believe that -- I don't know if I
17 made a move out of the cab first or he shot me first.
18 But I know I jumped out and started running.

19 Q. Did you hear a shot?

20 A. Yes, sir.

21 Q. What did you do when you heard a shot?

22 A. Kind of flinching and started running.

23 Q. Where were you when you heard a shot?

24 A. In the cab.

25 Q. Where you still trying to get the gun away from you

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- 1 when you heard a shot?
- 2 A. I can't be sure. I can't be sure.
- 3 Q. It happened pretty fast?
- 4 A. Yes. My hands were still over my head when I heard
- 5 the shot.
- 6 Q. Show us where your hands were when you heard the
- 7 shot? Like that [indicates]?
- 8 A. Yes, sir.
- 9 Q. Now were you shot that night?
- 10 A. Yes, sir.
- 11 Q. Where were you shot?
- 12 A. Right here [indicates] it went in right here
- 13 [indicates] in my elbow and came out of my forearm up
- 14 here [indicates].
- 15 Q. Went in your front forearm? And you have a scar?
- 16 A. Yes sir, right here [indicates].
- 17 Q. Right here [indicates]?
- 18 A. Yes, sir.
- 19 Q. And came out where?
- 20 A. Right here [indicates].
- 21 Q. That was why your arm was up back this way
- 22 [indicates]?
- 23 A. Yes, sir.
- 24 Q. You ran?
- 25 A. Yes sir, I did.

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- 1 Q. Where did you run?
- 2 A. Toward the end of the street where there is a dead
3 end street.
- 4 Q. What about the man in the cab with the gun, where
5 was he?
- 6 A. Approximately two steps behind me.
- 7 Q. He was running after you?
- 8 A. Yes, sir.
- 9 Q. Where did you run?
- 10 A. To the house at the end of the street on the left
11 hand side.
- 12 Q. And eventually you were able to get away. There is
13 more to this story, right? But eventually we're going to
14 get -- and this is the part of this testimony. You went
15 to the hospital that night right?
- 16 A. Yes, sir.
- 17 Q. And you gave a statement that night?
- 18 A. Yes, sir.
- 19 Q. And I think it was a couple of days later that you
20 were shown a photo identification procedure, the first
21 one.
- 22 A. Yes, sir.
- 23 Q. You underwent 2 in this case is that right?
- 24 A. Yes, sir.
- 25 Q. That first I.D. procedure occurred about three days

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- 1 after this event, is that right?
- 2 A. Yes, sir.
- 3 Q. Do you recall where you went to do that?
- 4 A. Down to North Charleston City Hall.
- 5 Q. Did you view some photos at that time?
- 6 A. Yes, I did.
- 7 Q. Were you able to make an identification of anybody
- 8 at that time?
- 9 A. No, sir.
- 10 Q. Were you a little hopeful that maybe you would when
- 11 you went down there that day?
- 12 A. Yes.
- 13 Q. How did you feel when the person who did it wasn't
- 14 in that procedure?
- 15 A. Kind of disappointed.
- 16 Q. Okay. But that wasn't the last photo
- 17 identification procedure you underwent in this case was
- 18 it?
- 19 A. No, it wasn't.
- 20 Q. In fact you went back down to the police department
- 21 on December the 3rd.
- 22 A. Yes sir, I believe it was.
- 23 Q. To view another photo procedure?
- 24 A. Yes, sir.
- 25 Q. And where did you go to do that?

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1 A. North Charleston City Hall.
2 Q. Did you meet with a detective?
3 A. Yes, I did.
4 Q. Did he present you with some photographs?
5 A. Yes, he did.
6 Q. Did you have any conversation with this detective
7 about the case or anything before viewing the
8 photographs?
9 A. No, sir.
10 Q. Did he review the admonitions with you such as did
11 he tell you that the person may or may not be there?
12 A. Yes, he did.
13 Q. Did he tell you to pay attention to the face and not
14 facial hair because facial hair can change?
15 A. Yes, sir.
16 Q. And did you identify somebody from these six photos
17 that were shown to you?
18 A. Yes I did, sir.
19 Q. Who did you identify?
20 A. The gentleman sitting right here [indicates] in the
21 courtroom.
22 Q. All right. I'll show you what's already in evidence
23 as State's 1 for this hearing. Do you recognize that
24 page?
25 [Whereupon, the witness is shown item]

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- 1 A. Yes, sir.
- 2 Q. Is that the admonition that the officer went over
3 with you?
- 4 A. Yes, sir.
- 5 Q. And he read all these admonitions to you?
- 6 A. Yes, he did.
- 7 Q. Did you initial?
- 8 A. Yes.
- 9 Q. What kind of shape was your arm in that day?
- 10 A. At that time I didn't have any feeling in four of my
11 fingers so I wasn't able to do much with this hand
12 [indicates] at all.
- 13 Q. What about your left hand?
- 14 A. Yes. I can pretty much attempt to write and that's
15 what I used when I wrote this my initials.
- 16 Q. So you wrote your initials with your left hand?
- 17 A. Yes, sir.
- 18 Q. But you are right handed?
- 19 A. Yes, sir.
- 20 Q. I'm showing you photographs labeled one through six.
21 These are the photographs that were shown to you?
22 [Whereupon, the witness is shown photos]
- 23 A. Yes, sir.
- 24 Q. Did you write your name on all of those photographs?
- 25 A. Yes, sir.

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- 1 Q. And which picture is the picture of the person who
2 shot you on November the 26th?
3 A. Number three.
4 Q. Did you circle number three?
5 A. Yes, sir.
6 Q. How sure are you that the person pictured in number
7 three is the person who shot you that night?
8 A. I'm 100 percent sure. You don't forget a face when
9 they do something like that to you.
10 Q. No doubt in your mind?
11 A. No doubt in my mind.
12 Q. Did you ever attempt to say that you were only 90
13 percent sure?
14 A. No, sir. No, sir.
15 Q. Have you always been 100 percent sure?
16 A. Yes, sir. I told the officers that the night that I
17 was shot. I told them if you can give me a lineup that I
18 could point him out.
19 Q. You told them that the night that you gave your
20 statement?
21 A. Yes, sir.
22 Q. And then he wasn't in the lineup on the 29th of
23 November was he?
24 A. No, sir.
25 Q. But he was in the lineup on December the 3rd?

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1 A. Yes, he was.

2 Q. And on this admonition form did you tell the officer
3 to write this sentence here [indicates]?

4 A. Yes, that I am 100 percent sure that that is the guy
5 who shot me.

6 Q. And this 100 percent there is never any question
7 that that was anything other than 100 percent?

8 A. Not in my mind.

9 Q. And are you anything other than 100 percent sure
10 this man right here [indicates] with this tie on is the
11 man that shot you on that night?

12 A. 100 percent sure that's the man.

13 Q. And the officer administering this photo
14 identification procedure to you did he do anything to
15 suggest to you that you should pick out that picture?

16 A. No, sir.

17 Q. Did he tell you that you should pick out one of
18 these pictures?

19 A. No, sir. He said if the gentleman is not in there
20 then don't pick any one of them.

21 Q. So is it your testimony that you picked out this
22 picture because this is the man that shot you?

23 A. No doubt in my mind.

24 Q. Thank you. Please answer any questions the defense
25 may have.

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1 A. Yes, sir.

2 THE COURT: Before you get started I just want to
3 ask one question. What kind of description did you give
4 of the man that shot you when you first talked to the
5 police when this occurred? What was the description you
6 gave them?

7 THE WITNESS: I told them he was kind of a little
8 chubby maybe about 200 pounds 5'9 to 5'10 with a scruffy
9 beard.

10 THE COURT: Okay. Anything else?

11 THE WITNESS: Nothing that I can think of. I told
12 them that I know his face.

13 THE COURT: Okay. Cross-examination?

14 MR. KING: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q. Mr. Brown?

18 A. Yes, sir.

19 Q. You had never met Rakeem King before this date?

20 A. No, sir.

21 Q. You had never seen him before?

22 A. No, not that I know of.

23 Q. You were going there the night you were expecting to
24 pick up someone different?

25 A. Yes, sir.

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- 1 Q. Who was that?
- 2 A. Cedric Smith.
- 3 Q. To pick him up at 1809 or 1808 [REDACTED]?
- 4 A. Yes, sir.
- 5 Q. At the abandoned house or the other house where the
- 6 call came through?
- 7 A. He usually is right in that area. 1809 is his
- 8 actual house but he's frequent at my aunt's house that is
- 9 right across the street, at the 1808 address.
- 10 Q. You said this was nighttime right; this was like 4
- 11 in the morning or something?
- 12 A. Yes, sir.
- 13 Q. And it's dark outside?
- 14 A. Yes, sir.
- 15 Q. But you described the dome light in your car, right?
- 16 A. Yes, sir.
- 17 Q. That was on at some point when you were inside the
- 18 car while the suspect was inside the car?
- 19 A. Yes.
- 20 Q. So when you pull up you see someone walking from
- 21 your aunt's abandoned yard?
- 22 A. Yes, sir.
- 23 Q. Can you see their face at that point?
- 24 A. No.
- 25 Q. It's not until they are inside the cab that you see

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- 1 their face?
- 2 A. Yes, sir.
- 3 Q. And that's because when that person opened the door
- 4 the dome light came on.
- 5 A. Yes, sir.
- 6 Q. And you said -- you described that person as you
- 7 said chubby?
- 8 A. Yes, chubby face, round face.
- 9 Q. 200 pounds?
- 10 A. Yes, sir.
- 11 Q. 5'9 to 5'11?
- 12 A. Yes.
- 13 Q. Scruffy beard?
- 14 A. Yes, sir.
- 15 Q. What do you mean by scruffy beard? What do you mean
- 16 by that?
- 17 A. Like it is not full in. Scruffy meaning like it's
- 18 not a full beard but he had facial hair; kind of raggedy.
- 19 Q. What about clothes? Do you remember what kind of
- 20 clothes he was wearing?
- 21 A. Yes, sir.
- 22 Q. Could you describe those?
- 23 A. I think they were dark blue jeans with an off white
- 24 hoodie with gold letters or an emblem on it.
- 25 Q. The hoodie was pulled up over his head?

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1 A. Yes, but it wasn't over his face. It was over his
2 head; it wasn't over his face.

3 Q. Were you able to see his hair?

4 A. Yes. Like I said the hoodie wasn't -- it wasn't the
5 right size for his head so he was trying to pull it down
6 over his face but it wouldn't come down.

7 Q. Can you describe the hair?

8 A. I said it was an afro. I couldn't really see the
9 whole head to see it but I know he had hair on his head
10 thick enough to be an afro.

11 Q. And you said that after he had gotten in you pulled
12 down and turned around, is that right?

13 A. Yes, sir.

14 Q. So the doors were closed then right?

15 A. Yes, sir.

16 Q. So the dome light is now off?

17 A. No, I cut the dome light on because I have to do
18 paperwork before I leave so I had the dome light on so I
19 could write in my manifest.

20 Q. You do that before you start driving away?

21 A. I usually do that once I find out where the
22 passenger is going.

23 Q. Okay. And had you found that out?

24 A. No, not yet because I was still engaged in the
25 conversation about coming out of the yard.

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- 1 Q. And are you looking back -- you're not looking back
2 the whole time at that point are you? You're looking at
3 the road where you are driving, right?
- 4 A. Well actually there wasn't no driving. I went maybe
5 a half of house, backed in the yard and turned around and
6 the car was situated again right back to where it was
7 facing but the opposite direction.
- 8 Q. And then -- so how long do you say -- you got a look
9 at him before you saw the gun?
- 10 A. Yes, sir.
- 11 Q. But before you saw the gun can you -- how long --
12 once he got in the cab how long did that take before you
13 saw the gun?
- 14 A. I can't really say at all. It seemed like three
15 days that I was in there so I can't be sure exactly the
16 time how long it was.
- 17 Q. But it would just have been enough time for him to
18 get into the cab and you to turn around basically?
- 19 A. Yes, exactly.
- 20 Q. So maybe just a matter of seconds?
- 21 A. Like I said it seemed like an eternity to me but it
22 might be actual time...
- 23 Q. Can you describe the gun that you saw?
- 24 A. A small caliber rusted like. I believe it was a .25
25 automatic.

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- 1 Q. You mean -- what do you mean by automatic, the kind
2 with the clip in?
- 3 A. Yes, sir.
- 4 Q. Not a -- you know the difference between that and a
5 revolver?
- 6 A. Yes, sir. It wasn't a revolver. It looked it would
7 take a clip in it.
- 8 Q. And what color was it?
- 9 A. Brown; it looked rusted to me.
- 10 Q. And what happened then? You see the gun at some
11 point?
- 12 A. Yes, almost simultaneously when I hear the gun
13 cocking I see the gun and he's telling me to shut the
14 fuck up and give him the money.
- 15 Q. Okay. And is that when the gun is put to your
16 head?
- 17 A. Yes, sir.
- 18 Q. And then when that happens you had your hands up
19 like this?
- 20 A. Yes, sir.
- 21 Q. And you were moving the gun away from your head?
- 22 A. When I turned my body -- my hands were to the
23 ceiling of the cab. When I turned my body I was moving
24 the gun like that [indicates].
- 25 Q. And you did that three times?

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1 A. Yes, sir.

2 Q. And then you were shot inside the cab?

3 A. Yes, sir.

4 Q. And then I guess when the shot went off did that
5 give you enough time to maybe jump out of the cab then?
6 How did you get out of the cab?

7 A. Yes. When he cocked the gun my door was open
8 already when I heard him cock the gun and he told me to
9 shut the F up I already had my door open and he told me
10 to put my foot back in the car and back the car down the
11 street. So the door was open before I was shot.

12 Q. Okay. So then you get out of the car. Are you
13 looking back? Do you see what he does then?

14 A. When I jumped out of the car to run, yes I do look
15 back and I see he is two steps behind me.

16 Q. Let me back up a little bit. Before the shot went
17 off you said he took money from you?

18 A. Yes.

19 Q. What did you -- did you have to reach down and get
20 it from somewhere?

21 A. Yes, I have it sitting right between my legs.

22 Q. Okay.

23 A. And I also told him he could go in my pocket if he
24 wanted to.

25 Q. So which hand did you give him the money with?

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- 1 A. [Indicates left hand]
2 Q. The left hand?
3 A. Yes, sir.
4 Q. So you were still in your seat and you turned around
5 and was giving him the money?
6 A. Yes.
7 Q. And he still is holding the gun to your head?
8 A. Yes.
9 Q. Twenty dollars you said?
10 A. Approximately; I'm not sure. I know it was some
11 ones.
12 Q. So it was like 80 dollars or something on the
13 manifest.
14 A. Yes.
15 Q. Did you have money after all this was over?
16 A. Yes, I probably did. I can't really remember to be
17 honest.
18 Q. So now you get shot in the cab and you get out and
19 like I was asking before, I'm sorry; did you look back
20 then or you were just running?
21 A. I was running but I also looked back.
22 Q. What did you see when you looked back?
23 A. He was still just charging -- he was still shooting
24 at me while I was running.
25 Q. From inside of the cab or is he outside?

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1 A. No, when I jumped out the cab to take off and I look
2 back he is running behind me.

3 Q. So he got out of the cab as soon as you got out of
4 the cab?

5 A. Yes, pretty much so because while I am running I see
6 him behind me.

7 Q. Okay. How far away from you was he when you were
8 running now and looking back at him?

9 A. Two steps literally.

10 Q. Okay. So at some point you run down and you jump
11 over a fence?

12 A. Yes, sir.

13 Q. Do you fall down and hit your back at that point?

14 A. Yes, sir.

15 Q. Okay. Can you see him at that point?

16 A. Yes, sir.

17 Q. How far behind is he then?

18 A. When I hit the ground when I landed over the fence
19 when I looked up he was reaching over the fence pointed
20 the firearm at me again saying give him the money.

21 And I said I already gave you the money. He
22 discharged the firearm again. So I am laying on the
23 ground looking up so approximately 3 or 4 feet maybe the
24 fence is, how high the fence is.

25 Q. Okay. So you were laying down on the ground

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- 1 looking up at him there?
- 2 A. Yes, sir.
- 3 Q. How is the light in there? Is it darker there?
- 4 A. To be honest with you I can't really say.
- 5 Q. How did you get up, I mean how did you get away, how
- 6 did you get out of that?
- 7 A. After he shot I crawled behind the burgundy van that
- 8 was right there by the fence.
- 9 Q. Okay. Did you -- were you able to peep around and
- 10 see anything after that?
- 11 A. No, I wasn't peeking sir.
- 12 Q. Is that -- did you see him again after that?
- 13 A. No, I could hear him talking. He is talking to me
- 14 at this point saying that he won't shoot me again if I
- 15 give him the money.
- 16 Q. And then at some point he fled; he ran off?
- 17 A. Yes, sir.
- 18 Q. Did you see that? Did you see him leave or how did
- 19 you know it was safe to come out?
- 20 A. I called 911 and they informed me that an officer
- 21 was on the street and that she -- the officer was looking
- 22 for me and that I can come out now.
- 23 Q. But once you hid behind the van you didn't see him
- 24 at that point?
- 25 A. No.

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1 Q. So you didn't know whether he got into another car
2 and drove away or he ran away, fled on foot?

3 A. No.

4 Q. And then it was about seven days later that you made
5 the identification is that right?

6 A. Yes, a day in December.

7 Q. December 3rd?

8 A. Yes, sir.

9 Q. You were contacted by someone I'm assuming to have
10 you come down to the police station?

11 A. Yes, sir.

12 Q. Do you remember what you were told?

13 A. They just told me that they needed to talk to me at
14 headquarters and if I would be able to come down.

15 Q. Did they tell you why?

16 A. I can't really remember if they did or not.

17 Q. And you never said that you were 90 percent sure
18 instead of 100?

19 A. Excuse me?

20 Q. Did you ever say you were 90 percent sure?

21 A. Oh, no sir. No, sir. I told the officers that
22 night when they took my statement at the hospital as well
23 I was 100 percent sure if you just give me a picture and
24 I can identify him.

25 MR. KING: I believe that's all the questions, Your

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1 Honor.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. DURANT:

5 Q. Was your dome light ever off when this guy got in
6 your car?

7 A. Not once he entered the car it wasn't off.

8 Q. It stayed on the whole time?

9 A. Yes, sir.

10 Q. Thank you.

11 THE COURT: Any recross?

12 MR. KING: No, Your Honor.

13 THE COURT: You may step down. Thank you very much
14 Mr. Brown.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Any further witnesses?

18 MR. DURANT: No, Your Honor.

19 THE COURT: Would you hand me those pictures again,
20 please sir?

21 [Whereupon, Mr. DuRant proffers photos to the court
22 for review]

23 THE COURT: Are there any arguments?

24 MR. KING: Yes, Your Honor. I would move to
25 suppress the out of court identification and any

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1

DEVIN PARKER,

2

Having been first duly sworn,

3

Was examined and testified as follows:

4

DIRECT EXAMINATION

5

BY MR. DURANT:

6

Q. Mr. Parker, good afternoon. How old are you?

7

A. 25.

8

Q. Where were you employed in November of 2010?

9

A. Yellow Cab.

10

Q. And what kind of business is that?

11

A. It's a cab company.

12

Q. What did you do at Yellow Cab?

13

A. I was a telephone operator.

14

Q. You need to speak up.

15

A. I'm sorry. I was a telephone operator.

16

Q. And what did you do as a telephone operator with

17

Yellow Cab?

18

A. I would answer phone calls, put the information into

19

the computer, and then I would transfer it to my

20

dispatcher and my dispatcher would enter it in the

21

computer.

22

Q. And these are phone calls for cab service?

23

A. Yes, sir. They would call for a cab and I would put

24

their information in the computer.

25

Q. Okay. And what kind of information would you put

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1 into the computer?

2 A. The phone number, the name that they would give or
3 whichever would pop up, and the address of where they are
4 going and...

5 Q. And where they are currently located; where they
6 need a cab to go to?

7 A. Yes, exactly.

8 Q. And would you do that for every single call?

9 A. Yes, sir.

10 Q. And you are the first link in the chain, right?

11 A. Yes, sir.

12 Q. You receive that call and then you send that call to
13 who?

14 A. My dispatcher, which is right next door to me.

15 Q. And what is their responsibility?

16 A. Their responsibility is to dispatch a cab out to
17 that location.

18 Q. Do you recall receiving a call that night at Yellow
19 Cab at approximately 4:06 and six seconds?

20 A. I do.

21 [Whereupon, State's exhibit number 2 is marked by
22 the court reporter]

23 Q. [Mr. DuRant] I'm showing you what the State has
24 labeled as State's exhibit 2 for identification and ask
25 you to take a look at it.

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1 [Whereupon, the witness is shown item]

2 Q. Do you recognize that?

3 A. Yes, sir.

4 Q. And what is that?

5 A. This is the screen where I would -- this is a screen
6 shot it looks like of what -- I mean it's exactly what I
7 put into the computer that night.

8 Q. And you said -- did you take down this information
9 from every single call that comes in to Yellow Cab
10 requesting a cab?

11 A. Yes, sir.

12 Q. Okay. And is there a place on that screen for you
13 to put your initials in?

14 A. There is; yes sir.

15 Q. And what are your initials that appear on that
16 screen?

17 A. D-P.

18 Q. And that stands for?

19 A. Devin Parker.

20 Q. Okay. And is there a place on that screen for you
21 to put the initials of the dispatcher?

22 A. There is.

23 Q. And what is that?

24 A. S-D.

25 Q. Okay. Now according to this dispatch screen what

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1 time does it say the call came in -- that this call came
2 in?
3 A. 4:11 and 46 seconds.
4 Q. What is this number [indicates]?
5 A. 4:06 and six seconds; sorry.
6 Q. Okay. You just read off 4:11 and something
7 seconds. What is that?
8 A. That's the time that the dispatcher would have
9 dispatched the cab out.
10 Q. Okay. So what is the time that the call actually
11 came in?
12 A. The call came in at 4:06.
13 Q. Okay. Did you receive that call?
14 A. I did, yes sir.
15 Q. Did you write down the number of the call that came
16 in?
17 A. The call that was on the caller -- the number that
18 was on the caller I.D. I wrote down. The number that was
19 given to me I did not write down.
20 Q. Okay. So you asked the caller what the number was?
21 A. Exactly.
22 Q. And did that match the number on the caller I.D.?
23 A. No, sir.
24 Q. What number did you key in?
25 A. XXX-4849.

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- 1 Q. Is that the number that called in on the caller
2 I.D.?
- 3 A. That is.
- 4 Q. Did you ask the caller their name?
- 5 A. I did.
- 6 Q. What was it?
- 7 A. Kevin.
- 8 Q. Did you ask the caller where he or she needed a cab?
- 9 A. I did.
- 10 Q. Where was that?
- 11 A. At first it was The Making and I asked for a better
12 address and it was [REDACTED] Drive.
- 13 Q. Is there a specific address?
- 14 A. 1808 [REDACTED] Drive.
- 15 Q. What did you do with this information?
- 16 A. I typed it into the computer and then special
17 instructions I put The Making just as I was told on the
18 phone.
- 19 Q. Okay. What does that mean? Do you have any idea
20 what The Making means?
- 21 A. I have no idea but I'm trained to type in everything
22 that I hear on the phone onto my screen.
- 23 Q. And so you put in the special instructions The
24 Making?
- 25 A. Yes, sir.

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1 MR. DURANT: Your Honor, at this time the State
2 moves for the admission of State's number 2.

3 THE COURT: Any objection?

4 MR. KING: No objection, Your Honor.

5 THE COURT: All right. State's number 2 admitted
6 without objection.

7 [Whereupon, State's exhibit number 2 is entered into
8 evidence by the court]

9 Q. [Mr. DuRant] Are you aware of what cab driver the
10 Yellow Cab actually received the dispatch that night?

11 A. Yes, sir.

12 Q. Who was that?

13 A. Dario.

14 Q. Did you know Dario at that time?

15 A. Yes.

16 Q. How well?

17 A. I've seen him around.

18 Q. Did you know him outside of work?

19 A. No.

20 Q. Did you end up speaking with Dario that night?

21 A. I did.

22 Q. When was that?

23 A. That was right after he got shot.

24 Q. It was after you received this call?

25 A. Yes. That was after the cab was already dispatched

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1 out.

2 Q. Do you recall approximately how long after you
3 received this call; approximately?

4 A. Twenty minutes, thirty minutes maybe. I'm not sure.
5 It kind of I don't know -- it messed me up in the head a
6 lot. I still have to go see a psychiatrist and talk to
7 doctors and everything because this night still I mean
8 the flashbacks of this night ---

9 MR. KING: --- objection; relevance.

10 THE COURT: Pardon?

11 MR. KING: Objection; relevance.

12 THE COURT: Overruled. Go ahead.

13 MR. DURANT: Thank you, Your Honor.

14 Q. [Mr. DuRant] So you say it's hard to know exactly
15 the approximate time but you did end up speaking to Dario
16 after you took this call, is that right?

17 A. Yes, sir.

18 Q. How did he sound to you?

19 A. Very nervous and scared.

20 Q. Was he talking calmly or was he yelling?

21 A. No, he was yelling.

22 Q. Were you surprised by this?

23 A. I was.

24 Q. What did he say?

25 MR. KING: Objection; hearsay.

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1 MR. DURANT: Excited utterance.

2 THE COURT: Pardon?

3 MR. DURANT: Excited utterance.

4 THE COURT: Come up here both of you a second.

5 [Whereupon, an off the record bench conference is
6 held]

7 THE COURT: All right. The objection is
8 overruled. Ladies and gentlemen of the jury the
9 attorneys in representing their clients are responsible
10 to make objections to testimony that they don't think is
11 admissible under our rules of evidence.

12 My job is to make a determination as to whether they
13 are correct or incorrect. It's not to hide anything from
14 you; it's to make a determination that we conducted a
15 trial according to the rules of court and the rules of
16 evidence.

17 The rules of evidence have been involved in this
18 country since the Founders of the country were brought
19 over from England under our common law. And they are
20 designed to try to bring you the most trustworthy
21 testimony that can be brought.

22 In this case the attorney has objected to hearsay
23 and hearsay is a statement made by a party outside of
24 court except there are certain exceptions to that rule.

25 My job is to make a determination of whether the attorney

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1 is right on the objection or wrong. And if I use the
2 word sustain that means I agree with the attorney. If I
3 use the word overruled that means I disagree and you will
4 hear the answer. The objection is overruled. Please
5 proceed.

6 MR. DURANT: Thank you, Your Honor.

7 Q. [Mr. DuRant] What did Dario say to you on the phone?

8 A. He said that he was shot and to call the police.
9 And I heard a lot of screaming.

10 Q. Did that upset you; that call?

11 A. Yes, sir.

12 Q. Did you work for Yellow Cab again after that night?

13 A. No, sir.

14 Q. That was it for you?

15 A. That was it.

16 Q. Too much for you?

17 A. Yes, sir.

18 Q. Did the police come out there and talk to you that
19 night?

20 A. Yes, sir.

21 Q. They were trying to be thorough and they wanted to
22 know as much as you could tell them, right?

23 A. Yes, sir.

24 Q. Did you give them a statement that night?

25 A. I did.

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1 Q. Did you tell them what the number was that you keyed
2 in?
3 A. Yes, sir.
4 Q. For this call?
5 A. Yes, sir.
6 Q. And that was XXX-4849?
7 A. Exactly.
8 Q. Where did that caller say that he wanted to go?
9 A. To The Making; to Alabama Drive.
10 Q. Alabama Drive?
11 A. [Indicates affirmatively]
12 Q. Thank you. Please answer any questions the defense
13 may have.
14 THE COURT: Cross-examination?
15 MR. KING: I don't have any questions of this
16 witness, Your Honor.
17 THE COURT: Okay. You may step down. Thank you
18 so very much. Be careful stepping down.
19 [Whereupon, the witness is excused and exits the
20 witness stand]
21 THE COURT: Mr. DuRant would you hand that phone
22 records or the computer records whatever they are to the
23 court reporter please?
24 MR. DURANT: Certainly.
25 [Whereupon, Mr. DuRant complies]

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1 testimony will be the truth, the whole truth, and nothing
2 but the truth so help you God]

3 CLERK OF COURT: State your full name and spell
4 your last name.

5 THE WITNESS: Dario Antoine Brown, B-R-O-W-N.

6 - - - - -

7 DARIO BROWN,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q. Good morning Mr. Brown.

13 A. Good morning.

14 Q. Tell the jury how old you are.

15 A. 35 years old.

16 Q. Did you grow up in Charleston?

17 A. Yes, sir.

18 Q. Did you go to school here?

19 A. Yes, sir.

20 Q. Do you have children?

21 A. Yes, sir.

22 Q. Where are you employed right now?

23 A. Allied Moving and Storage.

24 Q. And you're a mover right now?

25 A. Right.

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- 1 Q. All right. What about back in November of 2010?
- 2 A. I was employed at Yellow Cab taxi.
- 3 Q. And what did you do for Yellow Cab?
- 4 A. I was a taxi driver. Pick up and drop off people;
- 5 passengers.
- 6 Q. About how long had you been doing that before
- 7 November 26, 2010?
- 8 A. A little over a year; about a year and a half.
- 9 Q. Did you enjoy it?
- 10 A. Yes, it paid the bills.
- 11 Q. All right. I want to talk a little bit about that
- 12 morning in the early morning hours of November 26, 2010.
- 13 Do you remember that day?
- 14 A. Yes, sir.
- 15 Q. Do you recall responding to a fare that morning a
- 16 little after 4 at 1808 [REDACTED] Street?
- 17 A. Yes, sir.
- 18 Q. Are you familiar with [REDACTED] Street?
- 19 A. Yes sir, I am.
- 20 Q. Why is that?
- 21 A. I used to live on the street for several years and I
- 22 have an aunt that lived on the street also.
- 23 Q. Does she still live on that street?
- 24 A. No sir, she doesn't.
- 25 Q. About how long -- did she move or what happened to

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- 1 her?
- 2 A. She is deceased.
- 3 Q. And was that before November 26, 2010?
- 4 A. Yes, sir.
- 5 Q. So is it fair to say you grew up around this area?
- 6 A. Yes, sir.
- 7 Q. Okay. Let me ask you this about Yellow Cab. Do
- 8 you know Devin Parker?
- 9 A. I believe he is one of the dispatchers; phone
- 10 operators.
- 11 Q. Did you know him well?
- 12 A. Not really.
- 13 Q. Just knew him from work?
- 14 A. Yes, sir.
- 15 Q. And you said you responded to 1808 [REDACTED] that
- 16 morning is that right?
- 17 A. Yes, I did.
- 18 Q. What were you expecting when you went there?
- 19 A. To pick up a passenger and by the address I thought
- 20 it was a family member.
- 21 Q. Who did you think it was?
- 22 A. Cedric Smith.
- 23 Q. Who is Cedric Smith?
- 24 A. My cousin.
- 25 Q. Have you ever picked Cedric Smith up from that area

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- 1 before?
- 2 A. Yes, sir.
- 3 Q. About that time of night before?
- 4 A. Yes, sir.
- 5 Q. So that's who you were expecting?
- 6 A. Yes, sir.
- 7 Q. About what time did you get on that night?
- 8 A. About 12 o'clock.
- 9 Q. Had you had other passengers in your vehicle before
- 10 that night?
- 11 A. Yes, sir.
- 12 Q. Approximately how many?
- 13 A. I would say about 10.
- 14 Q. If you would I want you to explain to the jury what
- 15 the process is of picking up a fare. How do you go about
- 16 picking up a fare?
- 17 A. They go by zones. They usually check us with a zone
- 18 and the closest cab to the area usually gets the call.
- 19 Q. Do you know about how many cabs Yellow Cab had that
- 20 night?
- 21 A. No, I'm not sure who they had working that night.
- 22 Q. Can you give an approximate?
- 23 A. I would say probably 25 to 30 cars.
- 24 Q. A lot of cars?
- 25 A. Yes, sir.

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1 Q. And as a cab driver where all do fares take you over
2 the Charleston area; pretty far and wide?

3 A. Yes, sir.

4 Q. Do you have a thing called a taxi cab manifest?

5 A. Yes, I do.

6 Q. What is that?

7 A. Its required by law that we log in every passenger
8 the time we picked them up, where we dropped them off and
9 the time that we dropped them off and the address where
10 we dropped them off at.

11 Q. And do you do that for every single fare?

12 A. Yes, sir.

13 [Whereupon, State's exhibit number 24 is marked by
14 the court reporter]

15 Q. I'm showing you what the State has labeled as 24 for
16 identification and ask that you take a look at it.

17 [Whereupon, the witness is shown item]

18 Q. Do you recognize it?

19 A. Yes, sir.

20 Q. What is that?

21 A. My manifest from 11-26-2010.

22 Q. And does it show all the fares that you had that
23 night before you got to [REDACTED] Street?

24 A. Yes, sir.

25 Q. What time was the first fare that you had that

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1 night?

2 A. 12:33.

3 Q. And how many fares does this manifest show that you
4 had?

5 A. Nine.

6 MR. DURANT: Your Honor, at this time the State
7 moves for admission of State's 24 into evidence.

8 MR. KING: Without objection, Your Honor.

9 THE COURT: All right. State's 24 admitted
10 without objection.

11 [Whereupon, State's exhibit number 24 is entered
12 into evidence by the court]

13 Q. [Mr. DuRant] It says nine?

14 A. Yes, sir.

15 Q. Does it also account for how many passengers?

16 A. Yes, it does.

17 Q. And how many passengers did you have in your cab?

18 A. Eleven.

19 Q. So is that a fairly busy night for you?

20 A. Yes, for that period of time.

21 Q. Eleven people in your cab before you went to [REDACTED]
22 Street that night. Where was the address of the last
23 fare you had before you went to [REDACTED] Street? Where
24 did you take that fare?

25 A. Jacksonville Avenue.

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1 Q. And what time did you drop that fare off at
2 Jacksonville Avenue.
3 A. 4:07.
4 Q. 4:07 in the morning?
5 A. Yes.
6 Q. And how far is Jacksonville Avenue from [REDACTED]
7 Street?
8 A. Maybe ten streets.
9 Q. Ten streets?
10 A. Yes, sir.
11 Q. What about in the amount of time? How far is that?
12 A. A minute, two minutes.
13 Q. A minute or two minutes?
14 A. Depending on the light.
15 Q. So you just happened to be in this area when this
16 call for a cab at [REDACTED] Street came in?
17 A. Yes, sir.
18 Q. And you said you thought that you were going to pick
19 up a cousin?
20 A. Yes, sir.
21 Q. At 1808 [REDACTED]?
22 A. [Indicates affirmatively]
23 Q. I'm going to show you a few pictures from the course
24 of your testimony here and they are going to come up on
25 this screen [indicates]. I'm going to ask you to just

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1 tell us what we are looking at. This is State's number
2 3. This is State's number 3. Do you recognize State's
3 3?
4 [Whereupon, the witness is shown photo]
5 A. Yes sir, I do.
6 Q. And what is it?
7 A. This is the 1800 block of [REDACTED] Street.
8 Q. Is this where you went that night to pick up the
9 fare?
10 A. Yes, sir.
11 Q. And approximately what time did you go to pick up
12 this fare?
13 A. Like 4:12 or 4:14; somewhere in that area.
14 Q. All right. You said you had an aunt who lived on
15 Carlton Street?
16 A. Yes, sir.
17 Q. I'm showing you State's 8.
18 [Whereupon, the witness is shown photo]
19 Q. Do you recognize State's 8?
20 A. Yes sir, I do.
21 Q. And what is State's 8?
22 A. That's my aunt's house.
23 Q. Okay. And as you are heading down [REDACTED] Street
24 towards that dead end that house is on the right, is that
25 correct?

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1 A. Yes sir, it is.

2 Q. And that's 1809 [REDACTED] Street?

3 A. Yes, sir.

4 Q. But you were dispatched to 1808?

5 A. [Indicates affirmatively]

6 Q. All right. So tell the jury what happened when you
7 responded to [REDACTED] Street; from the first thing.

8 A. I arrived on [REDACTED]. I pulled up in front of the
9 address of 1808 and 1809, which is directly across the
10 street from each other, and I saw a gentleman walking out
11 of the 1809 yard, which I assumed was my cousin at that
12 time.

13 But as he approached the cab and entered the cab
14 when the dome light came on I noticed it wasn't. So I
15 began questioning him about what are you doing coming out
16 of that yard because you could see the house is abandoned
17 and has ---

18 Q. --- was it abandoned at that time?

19 A. Yes sir, it was.

20 Q. And you knew that nobody lived there?

21 A. Yes, sir.

22 Q. And you said that the man was coming out of that
23 yard?

24 A. Yes, sir.

25 Q. Okay.

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1 A. He was right on the other side of that bush right
2 there [indicates]. And as he approached and he got in
3 the cab the light came on and I noticed that it wasn't my
4 cousin and I asked him what is he doing coming out of
5 that yard.

6 And he replied that's his yard. I asked him again
7 and he said that's my mother fucking yard. At that time
8 I said it couldn't be your yard because that house has
9 been abandoned for a couple of years now.

10 Q. Okay. Let me slow you down now just a little bit.
11 You said your dome light was on.

12 A. Yes, sir.

13 Q. And you said the man got in the back of your cab.

14 A. [Indicates affirmatively]

15 Q. Which side?

16 A. On the right passenger side; the driver's side --
17 the passenger side, I apologize; backseat.

18 Q. Did you look at this man?

19 A. Yes, sir.

20 Q. Did you see his face?

21 A. Yes, sir.

22 Q. When you were talking to him were you talking to him
23 looking at his face?

24 A. Yes, sir.

25 Q. What was he wearing?

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1 A. Dark blue jeans and off white hoodie with gold
2 letters or lettering on it.

3 Q. Was his hoodie on top of his head or was it down?

4 A. It was on his head but it didn't cover his face. It
5 wasn't a big enough hood for his head so it stopped
6 approximately around here [indicates].

7 Q. Were you driving while you were having this
8 conversation or were you still sitting out there in front
9 of 1809?

10 A. We were still sitting in front of the house.

11 Q. And what happens next?

12 A. We continued a dialog about the yard and he
13 proclaimed that he lived at that house. And once again I
14 said that's not your house. And he said not this one but
15 the one next to it.

16 Then when I looked at the other address that's when
17 I began to drive forward and make a U-turn pulling back
18 in front of 1808 and 1809. And at that time that's when
19 he was -- I heard his cocking a pistol. When I looked
20 back he had raised the gun to my face and told me to give
21 him the money.

22 Q. Were all the doors closed?

23 A. Yes, at this time.

24 Q. Had you begun to write anything on your manifest?

25 A. Not yet. I had the dome light on to write but I had

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- 1 to get the address where he was going.
- 2 Q. So all the doors are closed. Your dome light is
- 3 still on and you said you began to drive. And looking
- 4 again at State's number 3 does this mean you were driving
- 5 towards the end of this street [indicates]?
- 6 A. Yes, sir.
- 7 Q. Is that so you were eventually going to turn around?
- 8 A. Yes. I turned around in ---
- 9 Q. --- this is a dead end up here [indicates] is that
- 10 right?
- 11 A. Yes, sir.
- 12 Q. So you are driving down that street towards the dead
- 13 end, your dome light is still on, you're talking to this
- 14 man and you said you heard a gun cock?
- 15 A. [Indicates affirmatively]
- 16 Q. Did the gun cock before or after you turned in the
- 17 dead end?
- 18 A. After. I didn't even go all the way to the dead
- 19 end. I went to the very next house like right where that
- 20 gentleman [indicates] is standing and backed into that
- 21 driveway [indicates] and came back out.
- 22 Q. You said the gun cocked?
- 23 A. [Indicates affirmatively]
- 24 Q. What were you thinking at that point?
- 25 A. A lot of things. I hope I don't get shoot, I hope I

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1 don't get killed. A lot of things were running through
2 my head at that time.

3 Q. How did you react?

4 A. I thought pretty good. I told him he can -- I gave
5 him some change I had; we call it give away money. Cab
6 drivers have like approximately a stack of one or
7 something they have right under their seat or sitting on
8 top of it just in case of situations like that. That's
9 what we would give to them if it was to happen; a robber
10 or would be robber.

11 Q. Is that because being a cab driver is a pretty
12 dangerous job?

13 A. Yes, sir.

14 Q. Did you give him money?

15 A. Yes, sir.

16 Q. Was that enough for him?

17 A. No sir, it wasn't.

18 Q. Where was this gun?

19 A. Placed right here [indicates] to the back of my
20 head.

21 Q. What did you do when it was placed at the back of
22 your head?

23 A. I made an attempt to move it with my elbow and my
24 forearm trying to move it out of the way telling him he
25 doesn't have to rob me, he doesn't have to do this.

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1 Q. What did he say?
2 A. Fuck that; give me the money.
3 Q. He wanted more money?
4 A. [Indicates affirmatively]
5 Q. What did you do?
6 A. I told him I didn't have any more money. I told him
7 I gave him everything I had. If he wanted to he could
8 check my pockets himself.
9 Q. So what happens? He's got this gun to your head and
10 you say you were kind of moving your arm away from ---
11 A. --- yes ---
12 Q. --- to get the gun away from you?
13 A. To get the gun away from my head telling him he
14 doesn't have to do this; basically begging for my life at
15 this time.
16 Q. Are you having any success getting this gun away and
17 getting him out of your cab?
18 A. No, sir.
19 Q. What happens?
20 A. At this time I'm so scared my door is open, I have
21 one foot on the ground and my other foot on the brake and
22 I want to get out of the cab but he is telling me to
23 close the door and back up to the end of the street. But
24 at this time I'm so scared I can't move; my legs won't
25 move.

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1 Q. He's telling you to close the door and back up to
2 that dead end part of the street?
3 A. Yes, sir.
4 Q. You didn't do that?
5 A. No, I wasn't able to.
6 Q. Why not?
7 A. Fear; I was too scared.
8 Q. Where is the gun?
9 A. Still placed at the back of my neck.
10 Q. So what happens?
11 A. I gave him a look in his eye and I could -- he
12 looked as if he was going to shoot me.
13 Q. And where are your hands at this point?
14 A. My hands are still over my head.
15 Q. You said you looked him in the eye?
16 A. Yes. When I looked he was like right there
17 [indicates].
18 Q. And he's got the gun to you?
19 A. Yes, sir.
20 Q. Am I about where he was?
21 A. Yes, sir.
22 Q. And you were looking him in the eye?
23 A. Just like this right here.
24 Q. Because he's sitting about in the middle of the back
25 passenger seat?

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- 1 A. Yes, sir.
- 2 Q. Did you take a good look at him?
- 3 A. Yes, sir.
- 4 Q. Have you ever seen this guy before?
- 5 A. No, never.
- 6 Q. Are you pretty scared at this point?
- 7 A. Yes.
- 8 Q. And what do you keep doing with your arm?
- 9 A. Trying to move the gun away from my face telling him
- 10 you don't have to shoot me and then I go like this
- 11 [indicates].
- 12 Q. It's not happening though is it?
- 13 A. No.
- 14 Q. What does happen?
- 15 A. He ended up shooting me.
- 16 Q. Where?
- 17 A. Right here [indicates] in the elbow.
- 18 Q. This is while your arm is back here [indicates]?
- 19 A. Yes, sir.
- 20 Q. And this is an entrance wound for a bullet right
- 21 here [indicates]?
- 22 A. Yes, sir.
- 23 Q. Did it come out?
- 24 A. Yes, sir.
- 25 Q. Where?

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- 1 A. Right here [indicates] in my forearm.
- 2 Q. Show the jury.
- 3 [Whereupon, the witness complies]
- 4 Q. So there is an entrance wound right here [indicates]
- 5 and you said an exit wound right here [indicates] while
- 6 you arm is right there [indicates] and while a gun is
- 7 pointed at you?
- 8 A. Yes, sir.
- 9 Q. Held against you head?
- 10 A. [Indicates affirmatively]
- 11 Q. You were shot while in your cab?
- 12 A. Yes, sir.
- 13 Q. What did you do at that point?
- 14 A. I ran. I exited the vehicle and ran towards the
- 15 dead end street.
- 16 Q. It was a kind of a fight or flight kind of thing at
- 17 this point?
- 18 A. Yes, sir.
- 19 Q. And so you ran?
- 20 A. Yes, sir.
- 21 Q. Do you know what the other guy is doing?
- 22 A. Not until I look back and I see him in pursuit
- 23 behind me.
- 24 Q. He's chasing you?
- 25 A. Yes, maybe two steps behind me.

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- 1 Q. Approximately, using State's 3, where was this cab
2 when you ran?
- 3 A. Still in front of 1809 [REDACTED].
- 4 Q. Because you had come back up to approximately right
5 where you picked the guy up?
- 6 A. Yes, sir.
- 7 Q. And that's where that cab [indicates] was?
- 8 A. Yes, sir.
- 9 Q. And it was a dark night out there at this point
10 right?
- 11 A. Yes, sir.
- 12 Q. Four in the morning. Which way did you run?
- 13 A. Straight down the street towards the end of the
14 street right there [indicates].
- 15 Q. You ran towards the dead end?
- 16 A. [Indicates affirmatively]
- 17 Q. And he's running after you?
- 18 A. Yes, sir.
- 19 Q. Where did you go?
- 20 A. I'm running and screaming for help and when I get to
21 the dead end of the street I realized that fence is going
22 to be too big to try to get over so I cut over to the
23 left.
- 24 Q. You went left on this photo?
- 25 A. Yes sir, the last house on the street.

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1 Q. And what -- what does that yard look like?

2 A. It's a fenced in yard; I think about a three or four
3 foot fence. I attempted to jump the fence but my arm
4 gave out so I kind of flipped head first over and landed
5 on my back.

6 Q. Where was the man from the cab? Where was the
7 gunman?

8 A. Right there [indicates].

9 Q. He was right there with you?

10 A. Yes, sir. When I hit the ground and he was like
11 holding the gate with one hand and reaching over with his
12 other hand with the gun in it.

13 Q. Okay. What happens?

14 A. He shot again. But the bullet missed me. I crawled
15 and got behind a burgundy van in the yard.

16 Q. Do you know about how many times he tried to shoot
17 you again at that point?

18 A. I want to say in all I heard maybe six or seven
19 shots but I can't be exact.

20 Q. Did time seem to be going pretty slow at this point?

21 A. Yes, sir.

22 Q. How are you feeling?

23 A. Scared, frantic.

24 Q. You say you jumped the fence?

25 A. Yes, sir.

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1 Q. All the way down the end of the street the last
2 house on the left?
3 A. Yes, sir.
4 Q. This is State's number 6.
5 [Whereupon, a photo is shown]
6 Q. This was taken after the fact in the daytime but do
7 you recognize that?
8 A. Yes, sir.
9 Q. What are we looking at?
10 A. This is the yard where I tried to seek shelter after
11 jumping the fence.
12 Q. What fence did you jump?
13 A. Right here [indicates] on that left hand corner.
14 Q. And you said your arm gave out when you went over
15 that fence?
16 A. Yes, sir.
17 Q. And you fell on your back?
18 A. [Indicates affirmatively]
19 Q. This is State's 19
20 [Whereupon, a photo is shown]
21 Q. Do you recognize that?
22 A. Yes, sir.
23 Q. What is that?
24 A. That's where I flipped over the fence right here
25 [indicates] where the bend is in the fence.

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1 Q. And that's where you landed on your back?

2 A. Yes, sir.

3 Q. And so you're on your back on the other side of that
4 fence. Where is the gunman?

5 A. Standing on this side of the fence [indicates]
6 outside the yard.

7 Q. You said at this point that he is shooting at you
8 more?

9 A. Yes.

10 Q. Did you think you had been shot?

11 A. Yes.

12 Q. Where?

13 A. I thought I was shot in my back.

14 Q. Was your back hurting?

15 A. Yes.

16 Q. Did you know whether or not you had been shot in
17 your back?

18 A. No, I didn't.

19 Q. So what happens here? What's the next thing that
20 happens?

21 A. At this point when I was laying on the ground
22 looking up and he reaches over and shoots I roll and like
23 I say crawled behind this burgundy van right here
24 [indicates] that's in the yard.

25 Q. This burgundy van right there [indicates]?

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1 A. Yes, sir.

2 Q. All right. Where is the shooter?

3 A. Still standing outside the gate.

4 Q. Here's State's 18.

5 [Whereupon, a photo is shown]

6 Q. Does that show the burgundy van a little bit better?

7 A. Yes, sir.

8 Q. You went under that van?

9 A. Not under but behind it near the bumper down on my

10 knees.

11 Q. Where is the shooter?

12 A. Still outside the gate saying that he is not going

13 to shoot me anymore if I just give him the money.

14 Q. He's still out there?

15 A. Yes.

16 Q. What did you do?

17 A. I tried to be as quiet as possible and reach to try

18 and find my cell phone.

19 Q. Now it's pretty dark in that area right now, right?

20 A. Yes, sir.

21 Q. Do you think he would have known where you were back

22 there?

23 A. No, not really. Not -- because he didn't come in

24 the yard so he knew I went behind the van but he didn't

25 know exactly where I was.

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1 Q. You wanted him to at least think you were gone,
2 right?
3 A. Yes.
4 Q. Did he eventually leave?
5 A. Yes, sir.
6 Q. Seemed like forever didn't it?
7 A. Yes, it did.
8 Q. Probably didn't take that long at all.
9 A. [Indicates negatively]
10 Q. Is there a time that you felt like it might be safe
11 now; he's not here anymore?
12 A. After I called the police and the dispatcher called
13 my cell phone back and told me that the officer was on
14 the scene and was looking for me and I could come out of
15 the area where I was hiding.
16 Q. So you had your cell phone on you?
17 A. Yes, sir.
18 Q. And you called the police from behind that van?
19 A. Yes, sir.
20 Q. The police show up pretty quickly?
21 A. Yes. It seemed like forever, but they showed up
22 pretty quickly.
23 Q. I'll show you a couple of quick photos. When you
24 jumped out of that cab was it in park or was it in drive
25 or do you even remember?

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- 1 A. It would have to still been in drive.
- 2 Q. I'm showing you State's 20. It's already in
- 3 evidence.
- 4 [Whereupon, a photo is shown]
- 5 Q. Do you know what that is?
- 6 A. Yes, that's my taxi cab.
- 7 Q. That's your taxi cab?
- 8 A. [Indicates affirmatively]
- 9 Q. Here is State's 21.
- 10 [Whereupon, a photo is shown]
- 11 Q. Do you recognize that?
- 12 A. Yes, sir.
- 13 Q. How?
- 14 A. Number 12; that's the taxi that I drive.
- 15 Q. Okay. You don't see number 12 on this photo
- 16 [indicates] do you or maybe...
- 17 A. To the front.
- 18 Q. It's over the front right there [indicates]?
- 19 A. Yes.
- 20 Q. So the number 12 taxi is you?
- 21 A. Yes, sir.
- 22 Q. Did you get a good look at that shooter's face that
- 23 night?
- 24 A. Yes, sir.
- 25 Q. You got a good look at his face when he first got

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- 1 in?
- 2 A. Yes sir, I did.
- 3 Q. And you said your dome light was on the whole time
- 4 this man is in your cab?
- 5 A. Yes, sir.
- 6 Q. You told the jury that you looked this man right in
- 7 the face?
- 8 A. Yes, I did.
- 9 Q. Not once, more than a few times isn't that right?
- 10 A. Yes, I did.
- 11 Q. The police showed up that night out there didn't
- 12 they?
- 13 A. Yes, they did.
- 14 Q. Did you think you were hurt?
- 15 A. I didn't hear you.
- 16 Q. Did you think you were hurt?
- 17 A. Yes, sir. Yes, sir.
- 18 Q. Did you want to go to the hospital?
- 19 A. Yes, I did.
- 20 Q. Were you telling them that?
- 21 A. Yes, I did.
- 22 Q. Did you see an officer shortly after coming out of
- 23 behind that burgundy van?
- 24 A. Yes, I did.
- 25 Q. Did you try to tell the police what you knew about

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1 what happened that night?

2 A. Yes, I did.

3 Q. Did you give them a description?

4 A. Yes sir, I did.

5 Q. Approximately how many officers were asking you for
6 a description at the scene that night?

7 A. Four to five.

8 Q. A lot of officers?

9 A. Yes, sir.

10 Q. Were you trying to tell them everything you knew?

11 A. Yes, sir.

12 Q. How would you describe the man who did this to you?

13 A. Brown skin, kind of heavy set with a round face,
14 scruffy beard and an afro, a little afro.

15 Q. Were you able to see his whole head?

16 A. No, not the whole head; just the face.

17 Q. Why not?

18 A. Because he had the hood that covered his hair but
19 not his face.

20 Q. You could tell it looked like maybe a small afro?

21 A. Yes, by where the hoodie was sitting on top of the
22 head.

23 Q. Did you get a good opportunity to look at this man's
24 eyes?

25 A. Yes, sir.

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- 1 Q. Did you look at this man's nose?
- 2 A. Yes, sir.
- 3 Q. Look at this man's face?
- 4 A. Yes, sir.
- 5 Q. Look at this man's lips?
- 6 A. Yes, sir.
- 7 Q. Is there any doubt in your mind that if you would
- 8 have seen this man again you would have recognized him?
- 9 A. No doubt in my mind.
- 10 Q. Did you tell the police that that night?
- 11 A. Yes sir, I told them if they gave me a photo lineup
- 12 that I could pick him out of a lineup.
- 13 Q. No question?
- 14 A. No question asked.
- 15 Q. Did you go to the hospital that night?
- 16 A. Yes sir, I did.
- 17 Q. Where did you go?
- 18 A. M-U-S-C.
- 19 Q. Did the doctors look at your wounds?
- 20 A. Yes sir, they did.
- 21 Q. What was your condition?
- 22 A. Gunshot wound to the right forearm and fractured
- 23 vertebrae in the lower left back.
- 24 Q. Had you actually been shot in your back?
- 25 A. No, I wasn't.

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1 Q. So the only shot that you actually received was in
2 your arm?

3 A. Yes, sir.

4 Q. The other wound was fired at you in the cab?

5 A. Yes, sir.

6 Q. How long did you stay in the hospital that night?

7 A. I think it was like 14 hours.

8 Q. Was that the extent of your treatment for these
9 injuries?

10 A. No, sir.

11 Q. What did they do for your injuries?

12 A. Well, I still have to go right now I've got nerve
13 damage so I have to have surgery so they can find out
14 which nerve was damaged because I have numbness in three
15 of my fingers.

16 Q. What is that that you are wearing on your hand?

17 A. A brace.

18 Q. Why do you wear that?

19 A. Because my hand has muscle spasms and this kind of
20 helps keep my hand from cramping up.

21 Q. Did you have muscle spasms before being shot?

22 A. No, sir.

23 Q. So you are wearing this because you were shot in
24 your arm?

25 A. Yes, sir.

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1 Q. Did the police come and talk to you in the hospital
2 that night?

3 A. Yes. As soon as I got to the hospital a detective
4 was there.

5 Q. And you spoke to a detective at the hospital?

6 A. Yes, sir.

7 Q. Did you provide him with a written statement?

8 A. Well a verbal; I couldn't write at the time but he
9 translated everything that I was saying.

10 Q. So he wrote it in his words -- or he wrote your
11 words on a written statement?

12 A. Yes, sir.

13 Q. And you signed I believe with your left hand that
14 this was your statement?

15 A. Yes, sir.

16 Q. Did you tell the officer in that statement that you
17 would be able to identify this guy again?

18 A. Yes sir, I did.

19 Q. And I believe you said I will never that damn face.

20 A. Yes, that ---

21 MR. KING: --- Your Honor, I'm going to object.
22 This is leading.

23 THE COURT: Okay. Don't lead the witness. I'll
24 sustain the objection. Don't lead your witness.

25 Q. [Mr. DuRant] But you told the officer everything

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1 you could that night?

2 A. Yes, that I could think of.

3 Q. Now that was on the 26th of November. Did there come
4 another time when the detectives wanted you to come down
5 to City Hall to view a photo identification procedure?

6 A. Yes, sir.

7 Q. Do you recall roughly how long that was after that
8 night that you first came down there?

9 A. It was within a week. I can't be exactly sure how
10 many days.

11 Q. How did you feel about that opportunity when they
12 told you they wanted you to come down and view some
13 photos?

14 A. I felt pretty good that they might have already
15 caught the person or had someone they were looking at it
16 for.

17 Q. And did you go down there and talk to the
18 detectives?

19 A. Yes sir, I did.

20 Q. And did they present you with some photos?

21 A. Yes, they did.

22 Q. And in that first initial lineup, those six photos
23 that day did you see the person who had shot you?

24 A. No sir, I didn't.

25 Q. He wasn't in there?

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- 1 A. No, he wasn't.
- 2 Q. How did you feel about that?
- 3 A. Kind of frustrated, disappointed.
- 4 Q. Did you ever think they would find the guy?
- 5 A. No, I didn't at that point.
- 6 Q. And then after that time, that first time, were you
7 again called down to view some photos?
- 8 A. Yes, sir.
- 9 Q. I'm showing you what is labeled as State's exhibit 1
10 for identification and ask that you take a look at it.
- 11 [Whereupon, the witness is shown item]
- 12 Q. Let me know if you recognize that?
- 13 A. Yes, I believe this is a paper they gave me right
14 before we did the photo lineup.
- 15 Q. What is the date on that paper?
- 16 A. 12/3/2010.
- 17 Q. December 3rd, 2010?
- 18 A. Yes, sir.
- 19 Q. And what's the top of that report labeled?
- 20 A. North Charleston Police Department Report of
21 Photographic Lineup.
- 22 Q. Did you meet with the detective that you had ever
23 seen before when going over these photos?
- 24 A. No, I haven't seen him before.
- 25 Q. The detective?

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- 1 A. Yes.
- 2 Q. And did he go over the admonitions with you?
- 3 A. Yes sir, he did.
- 4 Q. And to be clear what is the first admonition on this
- 5 lineup?
- 6 A. [Reading] I'm going to show you a series of
- 7 photographs of individuals or an array of six photographs
- 8 of individuals. Circle the appropriate one.
- 9 Q. And what did you do next to that?
- 10 A. Initialed my name.
- 11 Q. And was there another admonition after that?
- 12 A. Yes, sir.
- 13 Q. And what was that?
- 14 A. [Reading] These photographs may or may not be the
- 15 person who committed the crime. It is just as important
- 16 to clear innocent people as it is to identify possible
- 17 suspects. Whether or not you identify someone the police
- 18 will continue to investigate.
- 19 Q. And there are a few more admonitions on this form,
- 20 is that correct?
- 21 A. Yes, sir.
- 22 Q. And did you initial beside all these admonitions?
- 23 A. Yes sir, I did.
- 24 Q. And just on this admonition page this is the first
- 25 part of going over this photo identification procedure,

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1 right?

2 A. Yes.

3 Q. Meaning you went over this admonition form before
4 looking at any photos?

5 A. Yes sir, I did.

6 Q. After going over these admonitions and initialing
7 next to all of them were you then shown some photos?

8 A. Yes sir, I was.

9 Q. And was this procedure conducted just like the first
10 one of these you underwent where you didn't pick out
11 anybody?

12 A. Yes, up until the point of showing me the pictures?

13 Q. Right?

14 A. Yes, sir.

15 Q. And then were you shown these pictures?

16 A. Yes sir, I was.

17 Q. Did you recognize anybody from those pictures?

18 A. Yes sir, I did.

19 Q. Who did you recognize in those pictures?

20 MR. KING: Your Honor, I'd like to place an
21 objection based on our pretrial motion.

22 THE COURT: Yes sir, objection overruled.

23 MR. DURANT: Thank you, Your Honor.

24 Q. [Mr. DuRant] Who did you recognize from these
25 pictures?

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1 A. The defendant. The gentleman sitting in the middle
2 with the white shirt.

3 Q. This man over here [indicates]?

4 A. Yes, sir.

5 Q. Who did you recognize this man as?

6 A. Number three in the lineup.

7 Q. What were you recognizing him as?

8 A. As the gentleman who shot me, shot and robbed me.

9 Q. Any question in your mind?

10 A. No, sir. No, sir.

11 MR. DURANT: Your Honor, the State moves for
12 admission of State's 1 at this time.

13 MR. KING: Without objection.

14 THE COURT: What number?

15 MR. DURANT: One.

16 THE COURT: Okay. State's number 1 admitted with
17 objection is that correct? Without objection?

18 MR. KING: I'm sorry. Just my pretrial objection.

19 THE COURT: Right. So State's number 1 admitted
20 with objection.

21 [Whereupon, State's exhibit number 1 is entered into
22 evidence by the court]

23 Q. [Mr. DuRant] All right. So you've got six photos
24 at this point in front of you. Were they handed all to
25 you at the same time or individually?

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- 1 A. I believe he gave them to me all at one time but
2 they were in a stack.
- 3 Q. Okay. And they were labeled with numbers?
- 4 A. Yes, sir.
- 5 Q. Did the officer have you circle the one that you
6 recognized as being the person who shot you?
- 7 A. Yes sir, he did.
- 8 Q. And you picked out number three?
- 9 A. Yes sir, I did.
- 10 Q. This one right here [indicates]?
- 11 A. Yes, sir.
- 12 Q. Is there any doubt in your mind whether this is the
13 man that got in your cab that night and shot you in the
14 arm?
- 15 A. No sir, there is no doubt in my mind whatsoever.
- 16 Q. Are you 100 percent sure?
- 17 A. Yes, I'm 100 percent sure. I'll never forget that
18 face.
- 19 Q. Look at the jury and tell them that.
- 20 A. I mean this was the longest five minutes of my life.
21 I can sleep; I have nightmares; I take medicine. I see
22 him all the time regardless in the courtroom or the
23 picture. I see that face. That's etched in my brain for
24 the rest of my life.
- 25 Q. Did the officer have you sign these photos, these

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- 1 other photos?
- 2 A. Yes sir, he did.
- 3 Q. And they were dated on the date that you saw them?
- 4 A. Yes, sir.
- 5 Q. You didn't recognize any of these photos?
- 6 A. No, sir.
- 7 Q. You didn't recognize number one?
- 8 A. No, sir.
- 9 Q. You didn't recognize number two?
- 10 A. No, sir.
- 11 Q. Number four?
- 12 A. No, sir.
- 13 Q. Number five?
- 14 A. No, sir.
- 15 Q. Number six?
- 16 A. No, sir.
- 17 Q. But you knew it was number three?
- 18 A. Yes, sir.
- 19 Q. How did you feel at that moment when you saw that
- 20 guy in that photo?
- 21 A. Kind of scared and kind of happy thinking that he
- 22 would be caught.
- 23 Q. Kind of stopped you in your tracks?
- 24 A. Yes.
- 25 Q. Do you have any idea why this guy ended up in the

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1 photo lineup?

2 A. No, sir.

3 Q. Is there any doubt in your mind that this man
4 sitting right here [indicates] at this desk is the man
5 who shot you in your cab?

6 A. No, no doubt in my mind whatsoever. No doubt;
7 that's him.

8 [Whereupon, Mr. Durant and Mr. Ferguson confer]

9 Q. [Mr. DuRant] Maybe a question or two more. Is
10 there anything different about this man today as he sits
11 here in this courtroom than was different when he got in
12 your cab that night?

13 A. Yes, sir.

14 Q. What's different?

15 A. His hair. His hair looks to be a little different.
16 His complexion looks to be a little different from then.

17 Q. How so?

18 A. He looks to be a little more fair skin than he did
19 at the time.

20 Q. He seemed a little darker than night?

21 A. Yes.

22 Q. His hair seems a little longer now?

23 A. Yes.

24 Q. You need to tell this jury if there is any doubt in
25 your mind, if there is any doubt whatsoever that this is

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1 the man who did this to you?

2 A. There is no doubt in my mind. The last thing I want
3 is for some innocent person to pay for a crime committed
4 against me. I'm 100 percent sure that is the gentleman
5 who shot me and robbed me and chased me down; 100 percent
6 sure.

7 Q. Thank you, Dario. Answer any questions the defense
8 may have.

9 THE COURT: Cross-examination.

10 MR. KING: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q. Hello Mr. Brown.

14 A. How you doing?

15 Q. Mr. Brown, you had a manifest that night, right?

16 A. Yes, sir.

17 Q. It was discussed just a minute ago. And you had
18 made 83 dollars so far that night?

19 A. Yes, that was the amount.

20 Q. So that night about 4 a.m. or so you got a call to
21 go to 1808 [REDACTED] Street.

22 A. Yes, sir.

23 Q. And you went there expecting to pick up a certain
24 person Cedric Smith, right?

25 A. Yes, sir.

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1 Q. Because that's not unusual. Other times before you
2 have picked up Cedric Smith that time of night in the
3 early morning hours 4 a.m. right?

4 A. Yes, sir.

5 Q. At that same area the abandoned residence?

6 A. Yes, across the street which is 1808.

7 Q. Do you know the person who lives at 1808?

8 A. Yes, I know the person who lives at 1808 and 1809.

9 Q. And 1809 is an abandoned residence.

10 A. Yes sir, it is.

11 Q. So you go there that night and you're surprised
12 because it's not Cedric Smith?

13 A. Yes, sir.

14 Q. Someone else coming from your aunt's abandoned
15 residence?

16 A. I didn't know that it wasn't Cedric until he entered
17 the taxi.

18 Q. So that wouldn't be unusual for Cedric to come from
19 the abandoned residence?

20 A. Yes.

21 Q. You've picked him up from there before?

22 A. Yes, sir.

23 Q. Then it's a big coincidence that you get there and
24 there is some other guy coming and gets in the cab that

25 just happens to be your aunt's abandoned residence.

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- 1 A. Yes, sir.
- 2 Q. A coincidence.
- 3 A. You're saying a coincidence? Yes, I would guess so.
- 4 Q. So you see a man in a hoodie, right, get into your
- 5 cab?
- 6 A. Yes, sir.
- 7 Q. With an off white hoodie with gold designs you said?
- 8 A. [Indicates affirmatively].
- 9 Q. The hood pulled up?
- 10 A. Yes, sir.
- 11 Q. Did you say it wasn't big enough so it didn't cover
- 12 his face?
- 13 A. Yes, sir.
- 14 Q. That he didn't have the hood pulled up?
- 15 A. Yes, sir.
- 16 Q. You described him as 5'9 to 5'10?
- 17 A. Yes.
- 18 Q. And the person that got in the cab that night was
- 19 light skinned, right?
- 20 A. No, not at all. On the statement they have they put
- 21 down light skin but I didn't tell them light skin.
- 22 Q. Yes, that's what I was going to ask. Let's talk
- 23 about that. You gave a written statement in this case,
- 24 right?
- 25 A. Yes, like I said I wasn't able to write so the

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1 detective was writing.
2 Q. You signed it?
3 A. Yes, sir.
4 Q. And you're able to read?
5 A. Yes, sir.
6 Q. So you read it?
7 A. While in the hospital.
8 MR. KING: May I approach, Your Honor?
9 THE COURT: Yes, sir.
10 [Whereupon, defendant's exhibit number 2 is marked
11 by the court reporter]
12 Q. [Mr. King] I'm going to hand you this statement,
13 it's defendant's exhibit number 2. In this witness
14 statement it does say that the person has light skin,
15 right?
16 [Whereupon, the witness is shown item]
17 A. Where is that on here?
18 Q. It would be the 2nd page the very bottom line. He
19 was light skinned 5'9 to 5'10.
20 A. Yes, sir.
21 Q. And you signed this statement?
22 A. Yes, sir.
23 Q. And you were trying to tell the police everything
24 that you could think of at that time, right?
25 A. Yes, sir.

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- 1 Q. Because you wanted them to catch whoever did this?
- 2 A. Yes, sir.
- 3 Q. And this was about an hour maybe after it happened;
- 4 5 a.m.?
- 5 A. Yes, sir.
- 6 Q. So things are still fresh in your mind?
- 7 A. Yes, sir.
- 8 Q. And now today two years later you're saying that he
- 9 didn't have light skin?
- 10 A. Well, maybe the detective took it down wrong but I
- 11 also said that I would never forget that face, too.
- 12 Q. And you didn't tell the first responding officer
- 13 Jennifer Butler, that the person had light skin?
- 14 A. Sir, I can't remember. I talked to like five or six
- 15 officers that night so I can't be sure if I told her
- 16 that.
- 17 Q. And you didn't say anything about Cedric Smith to
- 18 the police either?
- 19 A. Like saying anything like what?
- 20 Q. Did you tell the police that you were expecting to
- 21 pick up Cedric Smith that night ---
- 22 A. --- no, it was never --- I was never asked about who
- 23 I was picking up or anything like that.
- 24 Q. And you didn't offer to tell them anything like
- 25 that, right?

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1 A. No, because they didn't ask. I was just trying to
2 give them what they were asking. Mind you I had just
3 been shot and chased and ran down so I was still kind of
4 nervous, jittery at this time.

5 Q. So you're saying because of all that that would have
6 affected your memory?

7 A. No, not my memory. Maybe they didn't perceive what
8 I said the right way.

9 Q. Okay. So you think the police officer wrote it
10 down wrong?

11 A. Yes, maybe.

12 Q. Because Rakeem doesn't have light skin does he?

13 A. He is brown skin. He is not what we would call --
14 what I would call dark skin.

15 Q. Is he what you would call light skin?

16 A. Brown skin.

17 Q. Light skin?

18 A. Brown skin; there is a difference.

19 Q. I'm asking you ---

20 A. --- that's what I'm saying light skin, brown skin,
21 dark skin.

22 Q. And would you say Rakeem King is light skin?

23 A. I would say he is brown skin.

24 Q. But not light skin?

25 A. [No response]

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1 Q. In the photograph you picked out it's not -- doesn't
2 show someone with light skin anywhere right?

3 A. No.

4 Q. So then this person gets in the cab you said.

5 A. Yes, sir.

6 Q. And you had a discussion with him about your aunt's
7 yard.

8 A. Yes, sir.

9 Q. And then you turned the car around.

10 A. Yes, sir.

11 Q. And you heard the gun cock?

12 A. Yes, sir.

13 Q. And at that point you turned around and looked?

14 A. Yes.

15 Q. And you saw the gun?

16 A. Yes sir, I did.

17 Q. Are you familiar with guns some?

18 A. Yes, I've seen a few.

19 Q. So you knew what kind of gun it was?

20 A. Yes. By looking at it it seemed to be a .25
21 automatic.

22 Q. .25 automatic. Not a revolver like with the round
23 barrel right? You're talking about -- you knew -- you
24 even knew the caliber, a .25 caliber?

25 A. Yes.

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- 1 Q. And the kind with the clip in it?
- 2 A. Yes, sir.
- 3 Q. The kind that shoots the shells out when you shoot
- 4 it?
- 5 A. Yes.
- 6 Q. Like a revolver the shells stay inside that little
- 7 barrel, right you have to dump the shells out, you know
- 8 what I'm talking about?
- 9 A. Yes, sir.
- 10 Q. It wasn't that kind?
- 11 A. No.
- 12 Q. And he said give me the money?
- 13 A. He said give me your mother fucking money.
- 14 Q. And you had your hands up right?
- 15 A. Yes, sir.
- 16 Q. And you said that you were moving the gun with --
- 17 moved the gun on your forearm?
- 18 A. Moving -- his hand was at my forearm, yes sir.
- 19 Q. And you did that three times?
- 20 A. Yes, sir.
- 21 Q. And the gun went off and it went through your
- 22 forearm right here [indicates] you said earlier.
- 23 A. You said the gun went off?
- 24 Q. [Indicates affirmatively]
- 25 A. Yes, by him pulling the trigger.

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1 Q. And it went through your arm here [indicates].

2 A. Yes, sir.

3 Q. It came out of here [indicates]?

4 A. Yes, sir.

5 Q. Inside the cab.

6 A. Yes, sir.

7 Q. Now today you're saying that you had some money up
8 under the seat?

9 A. No. I said I had -- I sit -- we call it dummy money
10 and it's usually some ones maybe 20 to 15 ones that we
11 carry for change and also just in case you are approached
12 by a robber you can have quick access and just hand it to
13 them.

14 Q. And where did you have -- where was that money?

15 A. Right here [indicates].

16 Q. Between your legs?

17 A. Yes.

18 Q. So today you're saying you had money between your
19 legs and that you gave him some of that money inside the
20 cab?

21 A. I gave him all that money.

22 Q. You gave him all that money inside the cab? You
23 didn't tell the initial responding officers that this was
24 an attempt to rob?

25 A. I told them there was an attempt to rob me?

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1 Q. Yes, when the police -- those -- you're talking
2 about those 5 hours?

3 A. Yes, sir.

4 Q. You didn't tell them? You didn't tell them any
5 money was taken did you?

6 A. Yes, I did. Yes I did. I told them it was
7 approximately 20 dollars.

8 Q. It would have been an hour later you gave that
9 written statement at the hospital right?

10 A. [Indicates affirmatively]

11 Q. And let's go through now what you said happened.
12 Now if you look at the first page.

13 [Whereupon, the witness reviews document]

14 A. Yes, sir.

15 Q. And you talked about how you pulled up. You said a
16 black male got in the car, right?

17 A. Yes, sir.

18 Q. And you asked him what he is doing in that yard,
19 right --

20 A. Yes, sir.

21 Q. And then you said -- this is what you said back
22 then. Today you're saying that you gave him money inside
23 the cab right, that dummy money?

24 A. [No response]

25 Q. Back then an hour after this happened you wrote or

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1 you signed in this written statement I had my door open
2 with -- that's when I looked back and I saw him cocking
3 the gun. He was pulling the sweatshirt over his arm.
4 He said give me the money and I said I'm trying to.

5 I had my door open and my seat belt off. He said
6 give me the money again. That's when I tried to move the
7 gun away from my head; I did that three times.

8 The third time is when I jumped out and I heard a
9 shot and felt the burning in my arm. Then I ran towards
10 the end of [REDACTED] Street, right?

11 A. Yes, sir.

12 Q. You didn't say anything in here in the statement
13 about giving him money in the cab.

14 A. At this point like I said I am an hour away from
15 just being shot and chased down the street so I'm sure
16 there were some things that I've forgotten.

17 Q. It affected your memory because you were so upset by
18 this.

19 A. Yes.

20 Q. So you forgot some things ---

21 A. --- and at this time I'm not getting treatment until
22 I finish the statement. So I'm really trying to get this
23 statement over with so I can seek medical treatment. So
24 it might be a few things that I left out; yes sir.

25 Q. But then there was a point later in the statement if

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1 you look at the last page.
2 A. That's page three?
3 Q. Yes.
4 [Whereupon, the witness reviews documents]
5 Q. You did say the police officer after you write out
6 your name and what happens the police officer asked you
7 was he able to take anything from you and you say maybe
8 20 dollars -- maybe 20 dollars at the most.
9 A. Yes, sir.
10 Q. Do you know Detective Evans sitting at this table
11 here [indicates]?
12 A. No, I don't know him but I've seen him.
13 Q. You've met with him?
14 A. Yes, sir.
15 Q. Talked with him?
16 A. Yes, sir.
17 Q. About the case?
18 A. Yes, sir.
19 Q. Now at some point when you were meeting with
20 Detective Evans didn't you tell him that the person
21 returned to the cab after he had chased you down the
22 street and you hid behind the van that he then returned
23 to the cab and took some money?
24 A. I said maybe he did. I don't know what he did when
25 I was behind that van. I didn't come out until the

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- 1 officer was on the street and she called dispatch for me
2 to come out from where I was.
- 3 Q. You told Detective Evans that he returned to the cab
4 where he took approximately 20 dollars, right?
- 5 A. No. If I did -- the question I believe he asked me
6 was he said what did you do with the money? I said I
7 threw it at him. He said did he get the money before he
8 exited the cab? I said sir, I don't know maybe he went
9 back to the cab and got it. I never said that I
10 witnessed him go back and get it; no I didn't.
- 11 Q. Now you jumped out of the cab and you'd been shot in
12 the arm.
- 13 A. Yes, sir.
- 14 Q. And you're running down the street.
- 15 A. Yes, sir.
- 16 Q. He's two steps behind you.
- 17 A. Yes, sir.
- 18 Q. He's right behind you.
- 19 A. Yes.
- 20 Q. And did he fire a shot then when he was running down
21 the street?
- 22 A. Yes, he did.
- 23 Q. Okay. And then you run down the street and you
24 jumped a fence.
- 25 A. Yes, sir.

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- 1 Q. A chain link fence.
- 2 A. Yes, it was.
- 3 Q. And you fell on your back.
- 4 A. Yes, sir.
- 5 Q. And he stood at the gate and he shot a third time,
- 6 is that right?
- 7 A. Yes, sir.
- 8 Q. And he didn't jump the fence.
- 9 A. No he didn't, sir.
- 10 Q. And today you're saying that he said at the fence I
- 11 won't shoot you if you give me the rest of your money.
- 12 A. I won't shoot you anymore if you give me the money.
- 13 Q. Okay. That's what you're saying today.
- 14 A. Yes, sir.
- 15 Q. Let's go back two years ago on your written
- 16 statement again. Your written statement you don't
- 17 mention anything about him taking money inside the cab.
- 18 And you say when I landed he stood to the gate. He fired
- 19 another shot and that's when I jumped the fence ---
- 20 A. --- where are you reading this off the first page?
- 21 Q. The very bottom; the very bottom of the first page.
- 22 A. Yes, sir.
- 23 Q. He fired another shot and that's when I jumped the
- 24 fence. When I landed -- so you're saying that you jumped
- 25 the fence and when you landed he stood to the gate, shot

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1 again, and said give me the money, right?

2 A. Yes, sir.

3 Q. You didn't put in your statement that he said I
4 won't shoot you again if you give me the rest of the
5 money, right? That's not what you said back then.

6 A. Yes, sir. Once again like I said I was just shot
7 not even an hour ago when I was giving this statement.
8 And I was trying to give them as much information as
9 possible at the time under the stress of the situation,
10 yes sir.

11 Q. Right, an hour after this happened?

12 A. Yes, sir.

13 Q. And your statement he's still asking you for the
14 money when he's standing at the gate. It doesn't say in
15 your statement give me the rest of the money or I won't
16 shoot you again.

17 It just says in the cab he said give me the money,
18 he chased you down the street stood at the fence and said
19 give me the money. That's what your written statement
20 says.

21 A. Yes, sir. He might have not been satisfied with
22 what he got.

23 Q. And then you're on the ground and you said you
24 crawled behind the van?

25 A. [Indicates affirmatively]

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- 1 Q. So you would have had -- you would have to crawl
2 from the fence the van was how far away?
- 3 A. I couldn't really -- I couldn't tell you -- maybe
4 five, ten feet away from the fence.
- 5 Q. You had to crawl five or ten feet and get behind the
6 van, right?
- 7 A. Yes, sir.
- 8 Q. And then you said there were -- he cut loose four
9 more shots.
- 10 A. What sounded like four more shots, yes sir.
- 11 Q. And you called 911?
- 12 A. Yes, sir.
- 13 Q. Did you see him anymore that night?
- 14 A. No, I didn't.
- 15 Q. You didn't see where he went.
- 16 A. It wasn't behind me; that's what I was concerned
17 about.
- 18 Q. And the police got there in 60 seconds?
- 19 A. Yes, I found that out later; yes sir.
- 20 Q. Seven total shots fired?
- 21 A. Sounded like it.
- 22 Q. Now after this was over you don't remember how much
23 money you had?
- 24 A. The next day?
- 25 Q. Yes?

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1 A. I still had money in my pocket.

2 Q. You don't remember how -- you said yesterday you
3 don't remember how much.

4 A. Yes, I don't remember how much but I did have ---

5 Q. --- but you had money.

6 A. Yes, sir.

7 Q. Don't remember how much?

8 A. No.

9 Q. And then later at some point you go down and make
10 that identification. And --

11 MR. KING: If I may I approach, Your Honor?

12 THE COURT: Yes, sir.

13 Q. [Mr. King] You have that exhibit here, State's
14 exhibit 1 and down there at the bottom you never said at
15 any point that you were 90 percent sure?

16 A. No, sir.

17 Q. It looks like there is a nine written there with a
18 zero written over it.

19 A. No, no I didn't write anything. Like I said the
20 only thing I did was initial the paper and sign my name
21 to the bottom. But I told the officer that I was 100
22 percent sure as I told them that night when I was shot I
23 was 100 percent sure that I would recognize the face if
24 was shown to me again.

25 MR. KING: I have no further questions, Your Honor.

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1 THE COURT: Okay. Any redirect?

2 MR. DURANT: Yes, Your Honor. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. DURANT:

5 Q. Okay, your statement has been gone over extensively.

6 In truth your statement does say light skin in the
7 statement right?

8 A. Yes, sir.

9 Q. In fairness you also said at the bottom of that I
10 will never forget that damn face, isn't that right?

11 A. Yes, sir.

12 Q. It's also true that asked if I showed you a picture
13 of him would you be able to identify him. At the
14 hospital that night in your written statement you said
15 yes, sir.

16 A. Yes, sir.

17 [Whereupon, State's exhibit number 25 is marked by
18 the court reporter]

19 Q. Now obviously this statement wasn't taken before a
20 jury under cross-examination with all the details.

21 You're not coming into this courtroom concerned that
22 you may be shot in the back, that you may be injured in
23 your back in some other way and that you had been shot in
24 the arm, is that correct?

25 A. Yes, sir.

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1 Q. Are you here to tell this jury the truth?

2 A. Yes, sir.

3 Q. Are you telling this jury the truth?

4 A. The absolute truth.

5 MR. DURANT: Your Honor, I think at this time the
6 State would move to enter Dario's statement into evidence
7 under Rule 106.

8 THE COURT: Any objections? What number would that
9 be? 25? Any objection?

10 MR. KING: No objection, Your Honor.

11 THE COURT: All right. State's exhibit number 25
12 admitted without objection.

13 [Whereupon, State's exhibit number 25 is entered
14 into evidence by the court]

15 Q. [Mr. DuRant] Now the jury will actually be able to
16 see your statement. Is that a copy of your statement you
17 gave to the police that night in the hospital?

18 [Whereupon, the witness is shown item]

19 A. Yes, sir.

20 Q. Was that statement written by you?

21 A. No, sir. I wasn't able to write.

22 Q. Did you sign stating that this was your statement,
23 though?

24 A. Yes I did, with my left hand.

25 Q. And did you tell that detective in that statement in

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1 no uncertain terms that you would be able to identify the
2 man who did this to you?

3 A. Yes, I did.

4 Q. Thank you.

5 THE COURT: Any re-cross?

6 MR. KING: No, Your Honor.

7 THE COURT: Pardon?

8 MR. KING: No, Your Honor.

9 THE COURT: Okay. All right Mr. Brown, you may
10 step down. Thank you very much.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: If you will call your next witness
14 please?

15 MR. FERGUSON: The State calls Jennifer Butler.

16 [Whereupon, Ms. Butler comes forward]

17 [Whereupon, the witness is duly sworn by the Clerk
18 of Court as follows: do you swear or affirm your
19 testimony will be the truth, the whole truth, and nothing
20 but the truth so help you God]

21 THE WITNESS: Yes, ma'am.

22 CLERK OF COURT: State your full name and spell
23 your last name?

24 THE WITNESS: Jennifer Butler, last name
25 B-U-T-L-E-R.

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1 JENNIFER BUTLER,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FERGUSON:

6 Q. Good morning Ms. Butler.

7 A. Good morning.

8 Q. I understand you really have two careers is that
9 right?

10 A. Yes, sir.

11 Q. Tell the jury what those careers are.

12 A. I'm employed with North Charleston Police
13 Department; however I'm currently on active duty orders
14 with the South Carolina Army National Guard.

15 Q. And how long have you been with the South Carolina
16 Army National Guard?

17 A. Since 2006.

18 Q. And how long have you been with the North Charleston
19 Police Department?

20 A. Since 2008.

21 Q. 2008? So it's safe to say you were working for the
22 North Charleston Police Department in November of 2010?

23 A. Yes, sir.

24 Q. What were your duties as a member of the North
25 Charleston Police Department back in 2010?

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- 1 A. I was a patrolman on midnight shift.
- 2 Q. What does a patrolman generally do?
- 3 A. Answer calls; respond to calls for service is the
- 4 normal duty.
- 5 Q. And those were your duties on November 2010?
- 6 A. Yes, sir.
- 7 Q. Now were you dispatched to [REDACTED] Street on
- 8 November 26, 2010 in reference to a robbery and shooting?
- 9 A. Yes, sir.
- 10 Q. Is [REDACTED] Street in Charleston County?
- 11 A. Yes, sir.
- 12 Q. Okay. Do you remember at what time you were called
- 13 and dispatched to [REDACTED] Street?
- 14 A. Approximately 4:20 a.m.
- 15 Q. All right. What time did you actually arrive at
- 16 [REDACTED] Street?
- 17 A. Approximately 4:21 a.m.
- 18 Q. So one minute?
- 19 A. Yes, sir.
- 20 Q. Okay. You were right there I guess.
- 21 A. Yes, sir.
- 22 Q. I mean in the approximate area. Now when you got to
- 23 the scene, when you got to 1808 [REDACTED] Street what did
- 24 you observe? What did you see?
- 25 A. The first thing I observed was the Yellow Cab that

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1 had run into a pole on the side of the road. And I went
2 to the vehicle and did not observe anyone in the vehicle
3 and the victim flagged me down.

4 Q. All right. When this projection here warms up I'm
5 going to show you what has been marked as -- it's been
6 entered into evidence as State exhibit 22.

7 [Whereupon, a photo is shown]

8 Q. Do you recognize that photo?

9 A. Yes, sir.

10 Q. Is that what it looked like when you first arrived
11 on the scene?

12 A. Yes, sir.

13 Q. Same with that photo?

14 [Whereupon, a photo is shown]

15 A. Yes, sir.

16 Q. And this one as well?

17 [Whereupon, a photo is shown]

18 A. Yes, sir.

19 Q. What are we looking at here [indicates]?

20 A. The cab that the victim was driving to pick up the
21 fare that he had. When he fled from the vehicle the
22 vehicle was still in drive and it ran into the pole.

23 Q. Ran into the pole. And same there [indicates]?

24 A. Yes, sir.

25 Q. So that was what you first observed when you got to

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- 1 [REDACTED] Street?
- 2 A. Yes, sir.
- 3 Q. Okay. And continue what happened after you saw the
- 4 cab you were saying.
- 5 A. I observed the cab. I went to the cab to see if
- 6 anyone was inside the vehicle. No one was inside the
- 7 vehicle. At that time the victim flagged me down on the
- 8 opposite side of the street.
- 9 Q. So he was further down the street?
- 10 A. Yes, sir.
- 11 Q. And that's a dead end street right?
- 12 A. Yes, sir.
- 13 Q. And when he flagged you down did you make contact
- 14 with him?
- 15 A. Yes, sir.
- 16 Q. How did he appear?
- 17 A. He was very distraught. He appeared shaken up.
- 18 Q. Distraught, you said he was a little scared?
- 19 A. Yes sir, in shock.
- 20 Q. Okay. And you were the first officer on the scene
- 21 is that right?
- 22 A. Yes, sir.
- 23 Q. And you knew from your dispatch call that it was a
- 24 robbery or a shooting?
- 25 A. Yes, sir.

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- 1 Q. Who else -- was anyone else in those surroundings?
2 Were you familiar with the surroundings?
- 3 A. I had worked the area for a couple of months so I
4 knew where I was at, however I didn't know if anyone else
5 was in the area until I was able to talk to the victim.
- 6 Q. So you didn't know where the shooter was?
- 7 A. No, sir.
- 8 Q. Okay. Now what was your main concern? What was
9 Dario's main concern when you first approached and made
10 contact with him?
- 11 A. He wanted an E-M-S medical attention.
- 12 Q. He wanted E-M-S. Did you know why?
- 13 A. He was shot. He had a white cloth or shirt or
14 something on his arm. I asked him to see it. I observed
15 the gunshot wound and he said something about his back.
16 I checked there and I immediately requested E-M-S.
- 17 Q. So you saw the gunshot wound on his arm?
- 18 A. Yes, sir.
- 19 Q. Did you see blood?
- 20 A. Yes, sir.
- 21 Q. Did you see the entry wound?
- 22 A. Yes, sir.
- 23 Q. And when you saw that you immediately called E-M-S,
24 you tried to get E-M-S over there?
- 25 A. Yes, sir.

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1 Q. All right. In speaking with Dario or when making
2 contact with Dario what did you learn?

3 A. I learned that he had been shot. He went to [REDACTED]
4 Street to pick up a fare. When he did the fare that he
5 went to pick up robbed him and shot him in the arm. He
6 didn't know where else he was shot at the time.

7 Q. Did anyone else respond after you did?

8 A. My sergeant requested crime scene respond and canine
9 responded in addition to detectives and other officers.

10 Q. Okay. So you weren't the detective assigned to
11 this case, you were just the responding officer?

12 A. Correct.

13 Q. It wasn't really -- you were there to secure the
14 scene?

15 A. Yes.

16 Q. To make sure Dario was safe?

17 A. Yes, sir.

18 Q. After Dario got sent to E-M-S and got sent on his
19 way what was the next thing you did?

20 A. My sergeant responded like I said and he requested
21 crime scene and canine responded to attempt to track the
22 suspect. Then myself and Detective Johnson did knock and
23 talks in the area.

24 Q. What is a knock and talk?

25 A. We went to the houses in the immediate area and

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1 knocked on the doors to speak with the people to see if
2 they heard anything or happened to see anything.
3 Q. Did you make contact with anyone in the area?
4 A. Yes sir, we were able to speak to I believe it was
5 two people and they were able to confirm ---
6 MR. KING: --- objection, Your Honor. Hearsay.
7 MR. FERGUSON: I'll rephrase the question, Your
8 Honor.
9 THE COURT: Okay, please do. I'll sustain the
10 objection.
11 Q. [Mr. Ferguson] What did you learn as you did those
12 knock and talks?
13 A. I learned that there was more than one ---
14 MR. KING: --- objection, Your Honor. Hearsay.
15 THE COURT: I'll -- she can testify to what she
16 learned. Go ahead; I'll overrule the objection.
17 A. I learned there was more than one shot?
18 Q. [Mr. Ferguson] You learned there was more than one
19 shot?
20 A. Yes, sir.
21 Q. That was fired that night?
22 A. Approximately three or four shots.
23 Q. Okay. Did you ever go back to the cab?
24 A. Yes, sir.
25 Q. What did you do -- did you do anything regarding

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1 that cab?

2 A. I assisted crime scene in lifting latent prints in
3 the -- we found a shell casing in the vehicle which crime
4 scene collected.

5 Q. You found a shell casing and you lifted some prints
6 you said?

7 A. Yes, sir.

8 Q. And none of those prints were able to be linked to
9 the defendant were they?

10 A. As far as I know they were insufficient.

11 Q. They were insufficient?

12 A. No ridge detail.

13 Q. Meaning they couldn't...

14 A. They couldn't process them.

15 Q. They couldn't process the prints at all?

16 A. Yes, sir.

17 Q. Thank you very much. Please answer any questions
18 the defense may have.

19 THE COURT: Cross-examination.

20 MR. KING: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. KING:

23 Q. Good morning.

24 A. Good morning.

25 Q. Officer Butler, you wrote an incident report in this

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1 case?
2 A. Yes, sir.
3 Q. And that's part of being the first responding
4 officer?
5 A. Yes, sir.
6 Q. You really write the initial original incident
7 report?
8 A. The initial report; yes sir.
9 Q. Right. And you responded to an attempted armed
10 robbery, is that right?
11 A. The call that was put out on the radio was put out
12 as a shooting.
13 Q. At the top of your report ---
14 A. --- yes sir.
15 Q. You wrote attempted armed robbery?
16 A. Correct. I labeled it as an attempted armed robbery
17 at the time due to the victim's state I was unable to
18 confirm or deny if any money was taken at that time.
19 Detectives followed up at the hospital with the victim
20 once he's --
21 Q. So he never told you on the scene that money was
22 taken?
23 A. Not that I recall.
24 Q. And that's nowhere in your report?
25 A. No, sir.

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1 Q. Did he tell you anything about that he was -- he
2 thought he was going to be picking up a Cedric Smith but
3 was surprised it was someone else?

4 A. No, sir.

5 Q. You asked him because you're looking for a suspect
6 so you asked him for a description?

7 A. Yes, sir.

8 Q. He described the person as light skinned?

9 A. Yes, sir.

10 Q. And would you have written down anything incorrectly
11 in your report?

12 A. At the time of taking the report I take it with a
13 pen and paper and I'm trying to get as much information
14 as I can to put out to other officers in the area for my
15 safety, the victim's safety, and other responding
16 officers.

17 Q. You're trained to write reports?

18 A. Yes, sir.

19 Q. And you're trained that when you respond you get the
20 description of a suspect?

21 A. Yes, sir.

22 Q. Because that way you can put that description out
23 and they can look for him, right?

24 A. Yes, sir.

25 Q. So every detail of a description is something really

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1 important?
2 A. Yes, sir.
3 Q. That's really important to put in the report?
4 A. Yes, sir.
5 Q. And you put in your report that Mr. Brown described
6 him as light skin?
7 A. Yes, sir.
8 Q. And you got this call and you were there in 60
9 seconds, is that right?
10 A. Approximately a minute, yes sir.
11 Q. Did you see anyone else there?
12 A. No, sir.
13 Q. Anybody running away?
14 A. No, sir.
15 Q. Anybody in the cab?
16 A. No, sir.
17 Q. Anybody picking up bullet shells off the ground?
18 A. No, sir.
19 Q. I have no further questions.
20 THE COURT: Any redirect?
21 MR. FERGUSON: Very brief, Your Honor.
22 REDIRECT EXAMINATION
23 BY MR. FERGUSON:
24 Q. You said it was nighttime when this happened right?
25 A. Yes, sir.

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- 1 Q. It was dark outside?
- 2 A. Early morning hours, yes sir.
- 3 Q. And you were the first responder.
- 4 A. Yes, sir.
- 5 Q. And you didn't know where the shooter was.
- 6 A. Correct.
- 7 Q. Did Dario seem to want to stay in that spot and talk
8 about what happened that night?
- 9 A. No sir, he was more concerned with getting medical
10 attention.
- 11 Q. More concerned with getting medical attention ---
- 12 A. --- yes, sir ---
- 13 Q. --- giving a statement wasn't what was on his mind.
- 14 A. Correct.
- 15 Q. And you're not the detective in this case right?
- 16 A. Correct. I'm the first responding officer.
- 17 Q. First responding officer. So you don't bring the
18 charges.
- 19 A. Correct.
- 20 Q. You don't decide whether it was an attempted armed
21 robbery or armed robbery.
- 22 A. Correct. I just write the initial reports.
- 23 Q. The initial reports?
- 24 A. Yes, sir.
- 25 Q. No further questions. Thank you.

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1 THE COURT: Any recross?

2 MR. KING: No, Your Honor.

3 THE COURT: You may step down. Thank you very
4 much.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: Let me see the attorneys up here just a
8 second.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: All right. Ladies and gentlemen of
12 the jury does anybody need to take a break at this time.
13 I've got another short witness I'm going to try to call.
14 If not if anybody needs a break I'll take it at this
15 time.

16 THE JURY: [No response]

17 THE COURT: Al right. Call your next witness.

18 MR. DURANT: The State calls Kelly Murphy.

19 [Whereupon, Ms. Murphy comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court as follows: do you swear or affirm your
22 testimony will be the truth, the whole truth, and nothing
23 but the truth so help you God]

24 THE WITNESS: I do.

25 CLERK OF COURT: State your full name and spell

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1 your last name.

2 THE WITNESS: Kelly Murphy, M-U-R-P-H-Y.

3

4

KELLY MURPHY,

5

Having been first duly sworn,

6

Was examined and testified as follows:

7

DIRECT EXAMINATION

8

BY MR. DURANT:

9

Q. Good morning Ms. Murphy.

10

A. Good morning.

11

Q. Will you tell the jury where you are employed right now?

12

13

A. Right now I am a teacher at Trident Technical College.

14

15

Q. And where were you employed in November of 2010?

16

A. For the North Charleston Police Department Crime Scene Unit.

17

18

Q. And what were your duties and responsibilities in the crime scene unit?

19

20

A. I was a crime scene technician. It was my job to respond to any crime scene, photograph the scene, search for any items of evidentiary value, secure those items and then perform further analysis on them later.

23

24

Q. And in processing a crime scene what types of things did you normally do to process a scene?

25

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1 A. Generally D-N-A swabs are taken from crime scenes as
2 well as fingerprints. If there is a case where there a
3 firearm involved obviously shell casings or any
4 projectiles; anything of that nature.

5 Q. And how long were you employed with the crime scene
6 unit at North Charleston Police Department?

7 A. Just under five years.

8 Q. Approximately how many times did you have the
9 opportunity to respond to a crime scene and process it?

10 A. Over the course of five years a thousand or more
11 than that.

12 Q. And in those crime scenes how many times did you
13 have the opportunity to lift latent fingerprints?

14 A. Latent fingerprints are taken at almost every single
15 crime scene.

16 Q. And what about the processing of a scene for D-N-A?

17 A. D-N-A swabs are also generally taken at most crime
18 scenes. So 90 percent of the time you will process --

19 Q. Can you tell the jury how you go about processing or
20 lifting a latent fingerprint?

21 A. In order to lift a latent fingerprint you first have
22 to dust the print with fingerprint powder and depending
23 on the surface it depends on what type of pattern you
24 use. Once the fingerprint is visible you use tape to
25 lift it and put it on a what we call a backer card, and

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1 it's either white or black, and that way the fingerprint
2 is visible and secure so it can be analyzed later.

3 Q. Now have you been educated on how to lift a latent
4 fingerprint?

5 A. Yes.

6 Q. And you also work under the tutelage of others at
7 North Charleston Police Department Crime Scene in
8 learning how to do that?

9 A. Yes.

10 Q. So are there some surfaces that are more conducive
11 than others to leaving behind a latent fingerprint?

12 A. Yes. Most latent fingerprints can be found more
13 easily on a smooth surface. Rougher texture surfaces
14 fingerprints can be left behind but they are a lot more
15 difficult to be able to lift and analyze.

16 Q. Is it possible to touch a surface and not leave a
17 fingerprint?

18 A. It is.

19 Q. And why might that be?

20 A. The fingerprint is left due to sweat coming off.
21 All your sweat glands are on the palms of your hands and
22 the ridges on the palms of your hands. And if your skin
23 is dry sometimes you won't leave the oils behind because
24 the oil is the residual that is left behind as the latent
25 fingerprint.

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1 Q. So is it possible to be in the area of an object or
2 something and not leave a fingerprint on it?

3 A. It is.

4 Q. Such as if I'm next to this microphone and don't
5 touch it I'm not going to leave my fingerprint there am
6 I?

7 A. That's correct.

8 Q. Now swabs for D-N-A. You said this is a common
9 method that you use to process a crime scene? How do
10 you go about doing that?

11 A. To take a swab for D-N-A you use a sterile swab and
12 distilled water then you gently rub the swab across
13 whatever surface might have been touched by someone.

14 Q. Okay. In your capacity as crime scene officer did
15 you respond to the crime scene at 1808 [REDACTED] Street on
16 November 26th 2010?

17 A. I did.

18 Q. And was that approximately 4:20 in the morning?

19 A. I believe I got a call around 4:30 a.m.

20 Q. Okay. What did you observe upon arrival?

21 A. Upon my arrival I noticed a taxi was up against a
22 metal fence and still running. And I was informed by the
23 supervisor on the scene that the vehicle had been left in
24 drive and had run into that position.

25 Q. How did you begin to process this scene?

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1 A. This scene the first thing I did was take
2 photographs of the vehicle as it was upon my arrival; the
3 way it was when I found it. I then put the vehicle into
4 park for safety measures and then quit processing the
5 scene because I was informed that a canine officer was in
6 route to begin a search.

7 Q. And why was it important for you to quit processing
8 the scene while the canine was in route?

9 A. When a canine is in route you definitely don't want
10 to contaminate the scene so the canine will be able to
11 pick up on the scene of the last person near the vehicle.

12 Q. And what we've got up here on the screen up here is
13 State's 17. Do you recognize that?

14 A. I do.

15 Q. And what is that?

16 A. That is the vehicle as it was upon my arrival.

17 Q. And you took several other pictures of this vehicle
18 as well.

19 A. I did.

20 Q. Did you process that vehicle for prints?

21 A. I did once the canine officer arrived and started to
22 track.

23 Q. Where did you process for prints?

24 A. The exterior rear passenger door and the interior
25 rear passenger door.

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1 Q. And to your knowledge did any of those prints ever
2 come back to this guy [indicates]?

3 A. No, sir.

4 Q. Did you -- you said you also processed the cab for
5 D-N-A.

6 A. I did.

7 Q. Are you aware of whether -- how many swabs of D-N-A
8 did you retrieve from this cab?

9 A. I collected five.

10 Q. Are you aware whether any of those swabs, the D-N-A
11 profiles ever came back to this guy [indicates]?

12 A. They did not.

13 Q. In fact did you find evidence that this was a
14 business that several people had been in that cab?

15 A. I did.

16 Q. Did you retrieve anything significant from the cab
17 itself?

18 A. The only items that I retrieved from the cab were
19 the five D-N-A swabs and a .25 auto shell casing.

20 [Whereupon, State's exhibit number 26 is marked by
21 the court reporter]

22 Q. Now I'm showing you what the State has labeled as
23 State's 14; it's already into evidence. It actually
24 comes up kind of clear. Can you tell the jury what we
25 are looking at here [indicates]?

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1 A. In the middle of that seatbelt that small gold item
2 is a shell casing; it's a .25 auto.
3 Q. Did you collect that shell casing?
4 A. I did.
5 Q. I'm showing you what the State --
6 MR. DURANT: Actually I think the State would move
7 for the admission of State's 26 which is a shell casing
8 without objection.
9 MR. KING: Your Honor, I have no objection to the
10 shell casing, Your Honor.
11 THE COURT: State's number 26 admitted without
12 objection.
13 [Whereupon, State's exhibit number 26 is entered
14 into evidence by the court]
15 Q. [Mr. DuRant] There is State's 26. Would you like a
16 glove?
17 A. Please.
18 [Whereupon, witness is shown item]
19 Q. Is that what you retrieved from that vehicle?
20 A. It is.
21 Q. And could you hold it up and show it to the jury?
22 [Whereupon, the witness complies]
23 Q. It kind of a small caliber isn't it?
24 A. It is.
25 Q. .25 caliber?

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- 1 A. Uh huh.
- 2 Q. And that's what you found in the backseat?
- 3 A. Yes, sir.
- 4 Q. You collected that and stored it in fact at the
5 North Charleston Police Department?
- 6 A. I did.
- 7 Q. Now you talked about fingerprints and you said that
8 you looked for oils that are conducive for leaving what
9 you called ridge detail. Now in your experience as a
10 crime scene technician would it -- would you likely find
11 a fingerprint on a fired shell casing?
- 12 A. It's possible but not generally due to the fact that
13 once the casing has gone through the firearm as it's been
14 fired the heat generally evaporates any of the oils that
15 would show us a fingerprint.
- 16 Q. That's because it gets really hot when it fires.
- 17 A. Correct.
- 18 Q. After the canine did his track were you aware
19 whether there was any success with that?
- 20 A. As far as I know there was not any success. I
21 believe the trail ended.
- 22 Q. And did you write a report in this case?
- 23 A. I did.
- 24 Q. Did you list all the items in evidence that you
25 collected?

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1 A. I did.

2 Q. And that included the photographs, the shell casing,
3 the swabs and the attempt to lift fingerprints?

4 A. Yes.

5 Q. Did you do anything else to process this scene?

6 A. Once the canine track finished I began to walk down
7 [REDACTED] Street along with the supervisor on the scene and
8 we noticed a blood trail through a yard at the end of
9 [REDACTED] Street.

10 Q. And what did you do about that?

11 A. With that blood trail I photographed the blood trail
12 and again collected more D-N-A swabs from the blood to
13 determine whose blood it possibly could have been.

14 Q. So you said you walked down to the end of [REDACTED]
15 Street, which is down this way [indicates]?

16 A. Yes.

17 Q. And you came over this way?

18 A. Yes.

19 Q. And I believe the 1800 block of [REDACTED]

20 A. That's correct.

21 Q. And is that where you saw the fence in that
22 condition in State's 19 [indicates]?

23 A. Yes.

24 Q. And you said that there was a blood trail going that
25 way.

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- 1 A. There was.
- 2 Q. Your understanding is that the victim was shot in
3 this case?
- 4 A. I was informed that he was shot in the arm.
- 5 Q. Was there an attempt to try to find more shell
6 casings?
- 7 A. There was. Once the canine had completed their
8 trail myself and the sergeant on scene began walking down
9 ██████████ looking for any more possible shell casings.
- 10 Q. Could you show the jury how big that shell casing is
11 again -- I'll do it. You were looking for more of these
12 [indicates]?
- 13 A. Yes.
- 14 Q. Out there at the scene a pretty small item?
- 15 A. Yes, sir.
- 16 Q. And did the ground look like that [indicates]?
- 17 A. It did.
- 18 Q. In State's 13?
- 19 A. [No response]
- 20 Q. Pretty much everywhere?
- 21 A. Yes, sir.
- 22 Q. Late at night?
- 23 A. Yes, sir.
- 24 Q. Makes it kind of difficult doesn't it?
- 25 A. It does.

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1 Q. But this one was clearly found in the backseat of
2 that cab?

3 A. Yes, sir.

4 [Whereupon, Mr. Durant and Mr. Ferguson confer]

5 Q. Thank you. Please answer any questions the defense
6 may have.

7 THE COURT: Cross-examination.

8 MR. KING: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KING:

11 Q. You're the crime scene technician, right?

12 A. Yes, sir.

13 Q. So what are your duties again?

14 A. To respond to any crime scene, photograph it,
15 collect any items of evidentiary value, do any analysis
16 that is needed.

17 Q. Your job involves science?

18 A. It does.

19 Q. And you have different tools at your disposal.

20 A. Yes.

21 Q. For example gunshot residue?

22 A. Yes.

23 Q. You familiar with that?

24 A. Yes.

25 Q. That's where someone who may have been arrested that

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1 night you're able to swab that person's hand?
2 A. It's a combination of swabs and the magnetic -- pick
3 up traces of metal.
4 Q. And you're able to determine whether someone has
5 fired a gun within a certain period of time?
6 A. It helps determine so, yes.
7 Q. And there is no evidence of this in this case,
8 that's not anything -- no evidence that you have been
9 presented based on that, right?
10 A. No.
11 Q. And you did look for D-N-A, right?
12 A. Yes.
13 Q. You said you took five swabs?
14 A. Five swabs inside the cab, yes.
15 Q. And that's where -- is that touch D-N-A?
16 A. Yes. Inside of the cab was touch D-N-A, yes.
17 Q. So if someone touches something not only could they
18 leave a fingerprint but you can also leave some D-N-A?
19 A. Yes, little cells slough off your hands or any part
20 of your body as you touch a surface.
21 Q. So you took a -- was it like a big Q-tip or
22 something?
23 A. It looks like a big Q-tip, yes sir.
24 Q. And you took that and you swabbed the outside back
25 passenger door handle, right?

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- 1 A. Yes.
- 2 Q. And then the inside rear passenger door handle,
3 right? You're checking places where the person who got
4 in the back rear would have touched?
- 5 A. Yes.
- 6 Q. You swabbed around the interior rear passenger door,
7 not just the handle but I guess around the door?
- 8 A. Yes, sir.
- 9 Q. And you took two swabs from the passenger seat.
- 10 A. Yes, sir.
- 11 Q. Where they were sitting.
- 12 A. Yes, sir.
- 13 Q. And they also took a swab from Rakeem King's mouth;
14 right, to get his D-N-A?
- 15 A. I am not aware of that. I was not there when that
16 took place.
- 17 Q. But you were aware there was eventually a comparison
18 done?
- 19 A. Eventually yes, there was a comparison done.
- 20 Q. With Rakeem King's D-N-A?
- 21 A. Yes, I believe so.
- 22 Q. And D-N-A was found on the exterior door handle.
23 Are you aware of that?
- 24 A. Yes.
- 25 Q. And also more D-N-A was found on the rear seat swab,

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1 one of those.
2 A. Yes, sir.
3 Q. But that D-N-A was not Rakeem King's D-N-A.
4 A. No.
5 Q. And you said you processed for fingerprints?
6 A. Correct.
7 Q. You processed outside of the rear passenger door and
8 also the interior of the window.
9 A. That's correct.
10 Q. And a print was found, right? You found one latent
11 print.
12 A. A partial latent print was found, yes.
13 Q. Okay. But that print was not Rakeem King's.
14 A. No, sir.
15 Q. That was somebody named Sequon Watson [ph].
16 A. I believe that was the name. I don't have that
17 report in front of me.
18 Q. Does that sound right Sequon Joshua Watson?
19 A. Something like that.
20 Q. But not Rakeem King's fingerprint?
21 A. No.
22 Q. And you also have in your tools ballistics, right?
23 A. Yes.
24 Q. Like if you have a weapon, if you have a gun you
25 have like a projectile that has been shot into something

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1 you can test that to see if it matches that particular
2 gun.

3 A. All of those items would be sent to SLED and SLED
4 would do all that testing.

5 Q. But that's one of the things that you're involved
6 with ---

7 A. --- it can be done, yes.

8 Q. It can be done. So in this case if you had had a
9 gun and you'd had a projectile you could have sent that
10 to SLED to be tested.

11 A. Yes.

12 Q. But there is no gun that you are aware of?

13 A. No.

14 Q. No projectiles.

15 A. No.

16 Q. And let me explain that a little bit. The bullet
17 has parts to it, right?

18 A. Correct.

19 Q. And there is the tip, the projectile that shoots out
20 and that's what actually hits someone.

21 A. Correct.

22 Q. And then what's left is the shell casing. That's
23 what was shown to the jury just a minute ago.

24 A. That's correct.

25 Q. That's what is left -- it's called a spent shell

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1 sometimes?
2 A. Yes.
3 Q. But you -- when you arrived there you saw the car
4 had rolled and hit a pole.
5 A. Yes.
6 Q. It had even kind of bent the pole.
7 A. Yes, it had come to stop resting on the pole.
8 Q. But it bent the pole too, right?
9 A. Uh huh.
10 Q. And you searched that car.
11 A. I did.
12 Q. And you found that one shell casing.
13 A. That's correct.
14 Q. It was just kind of laying there on the rear seat.
15 A. Uh huh.
16 Q. It wasn't hidden or anything. It was right there
17 easy to see?
18 A. Yes.
19 Q. And that tells you that the gun that was shot was
20 not a revolver.
21 A. That's correct.
22 Q. Right. There are two types of guns.
23 A. Correct.
24 Q. A revolver the shells stay inside the little barrel
25 so you would have to actually open and dump those shells

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- 1 out.
- 2 A. That's correct.
- 3 Q. But an automatic or a semi-automatic kind of gun
- 4 that has the clip it shoots those shells out when you
- 5 fire it, right?
- 6 A. That's correct.
- 7 Q. So that's how the shell would have gotten in the car
- 8 when the shot happened in the car the bullet shell shot
- 9 out and landed on the seat.
- 10 A. That's correct.
- 11 Q. And it was a .25 caliber.
- 12 A. Yes.
- 13 Q. You said that's a small caliber?
- 14 A. It is.
- 15 Q. So that is a small shell?
- 16 A. Uh huh.
- 17 Q. Maybe only like a .22 or something would be smaller.
- 18 A. Yes.
- 19 Q. And you said you were experienced in crime scene
- 20 investigation.
- 21 A. Yes.
- 22 Q. You've done it over like a thousand times.
- 23 A. Yes.
- 24 Q. So you know what you are doing.
- 25 A. Yes.

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- 1 Q. And this was a serious case because somebody had
2 been shot right?
3 A. Yes.
4 Q. So you took it seriously and you took your job
5 seriously that day.
6 A. As I always do.
7 Q. You searched that area thoroughly.
8 A. We did.
9 Q. You said we. So it wasn't just you.
10 A. It was not just me.
11 Q. There were other officers out there that helped them
12 search the area?
13 A. There were.
14 Q. And if there were shells there you needed to find
15 them, right?
16 A. That's correct.
17 Q. Because you need to collect those and those could be
18 evidence in the case.
19 A. That's correct.
20 Q. You said could possibly have fingerprints?
21 A. They could be a possibility ---
22 Q. --- the heat could burn them off but it's possible
23 they could have fingerprints.
24 A. It's possible.
25 Q. The projectiles that shoot out of the gun if there

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1 were any of those anywhere you would have collected those
2 too, right?

3 A. We would have, yes.

4 Q. So you probably spent a while out there looking
5 right. You didn't just walk around a look for a second
6 and quit did you?

7 A. I was outside there for a little over two hours.

8 Q. So for two hours you and other officers -- how many
9 more officers?

10 A. Probably three or four.

11 Q. In addition to you?

12 A. Uh huh.

13 Q. So maybe up to five officers including you for two
14 hours searched up and down the street, right, because it
15 was your understanding there were shots fired running
16 down the street.

17 A. That's correct.

18 Q. And there were also shots fired at that fence that
19 was bent.

20 A. Correct.

21 Q. So up to five officers spent over two hours
22 searching that whole area and you didn't find a single
23 shell.

24 A. Just the one that was in the rear of the vehicle.

25 Q. The one inside the cab.

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1 A. Yes.

2 Q. And you didn't find any projectiles.

3 A. No.

4 Q. And you also looked for other things like money,
5 right? Sometimes in robberies people drop money?

6 A. That's correct.

7 Q. So you want to look around and make sure nobody
8 dropped any money and you didn't find that right?

9 A. No.

10 MR. KING: I have no further questions, Your Honor.

11 THE COURT: Okay. Any redirect?

12 MR. DURANT: No. No further questions. Thank you.

13 THE COURT: Okay. You may step down. Thank you
14 very much.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: All right Madame Forelady and ladies
18 and gentlemen of the jury, we are going to take a break
19 at this time. If you need anything let the Bailiff know.
20 If we have any smokers let the Bailiff know and they will
21 take you to the appropriate place to smoke. Please don't
22 discuss the case amongst yourselves. See you in about 20
23 to 25 minutes.

24 [Whereupon, the jury exits the courtroom at 11:58
25 a.m.]

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1 is M-I-T-C-H-E-L-L.

2

- - - - -

3

SHAWN MITCHELL,

4

Having been first duly sworn,

5

Was examined and testified as follows:

6

DIRECT EXAMINATION

7

BY MR. DURANT:

8

Q. Mr. Mitchell, where are you employed?

9

A. New Star.

10

Q. What is New Star?

11

A. We are a records production company. One of the

12

companies we deal with is Cricket Communications.

13

Q. How long have you been employed with New Star?

14

A. About six months.

15

Q. And what is your position with New Star?

16

A. I'm a legal compliance analyst.

17

Q. Is there a business arrangement between New Star and

18

Cricket Wireless?

19

A. Yes, sir.

20

Q. And what is that?

21

A. To deal with their criminal and civil requests and

22

production of records for them.

23

Q. Does New Star maintain the phone records including

24

subscriber information and call logs for Cricket Wireless

25

subscribers?

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- 1 A. Yes.
- 2 Q. Are the records kept for every single customer?
- 3 A. Yes.
- 4 Q. Are these records maintained in the ordinary course
5 of business?
- 6 A. Yes.
- 7 Q. In your position with New Star are you also the
8 custodian of these business records?
- 9 A. Yes.
- 10 Q. Is a subscriber record created at or near the time a
11 subscriber subscribes to a Cricket Wireless account?
- 12 A. Yes.
- 13 Q. What kind of information is kept on the subscriber
14 record?
- 15 A. Generally when they start the account they take down
16 the name, address, city, state; basically the residence
17 of this person, the individual.
- 18 Q. Does Cricket Wireless verify the information on its
19 Cricket Wireless subscribers?
- 20 A. No, they do not.
- 21 Q. Why not?
- 22 A. Cricket is a flat rate billing party so they don't
23 technically bill their customers directly so there is no
24 need to really verify that information.
- 25 Q. So it's prepaid?

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- 1 A. Yes, it's a prepaid service.
- 2 Q. So if I said my name was Barak Obama or Mitt Romney
3 they would write that down and accept it?
- 4 A. Yes, they would.
- 5 Q. And the same is true for the date of birth or the
6 address?
- 7 A. Yes.
- 8 Q. How are these records maintained? Are they stored?
- 9 A. Yes, they are stored on a database system through
10 Cricket.
- 11 Q. There at New Star?
- 12 A. Well, not technically at New Star. New Star has the
13 direct ability to pull these records from Cricket.
- 14 Q. How long are subscriber records maintained?
- 15 A. Generally after an account -- as long as an account
16 is active then it's always maintained otherwise after a
17 disconnected account it's usually maintained from
18 anywhere from a couple of years to no longer than seven
19 years.
- 20 Q. Pursuant to a subpoena from my office did you bring
21 with you today the subscriber records for the phone
22 number XXV-XX-4849 for the period including November the
23 25th through the 27th of 2010?
- 24 A. Yes, I did.
- 25 [Whereupon, State's exhibit number 27 is marked by

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1 the court reporter]

2 Q. We've labeled it State's 27. And what is State's
3 27?

4 [Whereupon, the witness is shown item]

5 A. This is a copy of the subscriber information printed
6 from the Cricket system.

7 Q. Is it a true and exact copy of the official record
8 maintained by you at New Star of the Cricket Wireless
9 subscriber information for the phone number XXX-XXX-4849
10 for the time period of November the 25th through the 27th
11 of 2010?

12 A. Yes, it is.

13 MR. DURANT: Your Honor, at this time the State
14 moves for the --

15 THE COURT: Any objection?

16 MR. KING: Yes, Your Honor, I would object under my
17 pretrial motion I made and hearsay.

18 THE COURT: Okay. Objection overruled. State's
19 exhibit number 27 admitted with objection.

20 [Whereupon, State's exhibit number 27 is entered
21 into evidence by the court]

22 Q. [Mr. DuRant] Mr. Mitchell if you would would you
23 please tell the jury who -- what the name of the
24 subscriber is?

25 A. Kevin King.

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1 Q. And would you please tell the jury what address was
2 given for this subscriber?

3 A. 3440 Elliott Street, Charleston, South Carolina
4 29405-7332.

5 Q. And would you please tell the jury what date of
6 birth was given for this subscriber?

7 A. X/X/91 .

8 Q. Now pursuant to the subpoena based on a search
9 warrant to Cricket Wireless from my office did you bring
10 with you the call logs for the XXX-XXX-4849 number from
11 the time period of November 25th to the 27th, 2010?

12 A. Yes, I did.

13 Q. Now is this a complete listing of all the calls that
14 were made from this phone number during that time period?

15 A. No, it is not.

16 Q. Why is that?

17 A. During this timeframe during 2010 Cricket only
18 maintained information for billable calls that were made
19 during that time, which would be any type of roaming
20 calls, out of country calls, data transfers, ringtone
21 downloads, information that you choose.

22 Q. And so is it based on the timeframe upon when these
23 records were requested that they would not show the
24 complete listing of every single call?

25 A. Yes. Prior to May of 2011 this type of system was

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1 used to maintain information.

2 Q. What calls will be listed as of today?

3 A. Any billable calls basically international calls --
4 you mean calls as of today because we pulled records
5 for...

6 Q. From the records that you have right there. What
7 kind of calls would appear on the record that you have
8 there?

9 A. Any call that would incur a charge, anything outside
10 of the regular data plan that wouldn't cover normal
11 calls, wouldn't cover local calls; information like that.

12 Q. So it wouldn't cover local calls?

13 A. It would not.

14 Q. So if a local call is made on there it's not going
15 to appear on that record?

16 A. As long as it wasn't a billable call, yes.

17 [Whereupon, State's exhibit number 28 is marked by
18 the court reporter]

19 Q. Now we've marked this State's 28. Is that the true
20 and exact copy of the official record of call logs
21 maintained at this time by New Star for Cricket Wireless
22 for the subscriber with the phone number ~~XXY-XX~~-4849?

23 A. That's correct.

24 MR. DURANT: Your Honor, at this time the State
25 moves for the admittance of State's 28 ---

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1 THE COURT: --- any objection?

2 MR. KING: Yes, Your Honor, my objection based on
3 the previous ---

4 THE COURT: --- the previous objections?

5 MR. KING: Yes, Your Honor.

6 THE COURT: All right. State's exhibit number 28
7 admitted with objection.

8 [Whereupon, State's exhibit number 28 is entered
9 into evidence by the court]

10 MR. DURANT: Thank you, Your Honor.

11 Q. [Mr. DuRant] Now State's 28 Mr. Mitchell you
12 testified is not going to show every call that was made
13 during that time frame and that's because the request for
14 these records requested in February of 2012, is that
15 correct?

16 A. Yes, that's correct.

17 Q. And if we wanted to know all of the records, all of
18 the phone calls that were made during that time period we
19 would have had to have requested them when?

20 A. Six months prior -- I guess for this time frame
21 technically all the calls wouldn't have shown up prior to
22 May of 2011. So for that time frame it wouldn't have
23 been kept. All the calls would not have been kept during
24 that...

25 Q. All the calls would not have been kept. So what

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1 you're saying is it's possible that there were calls made
2 from this phone and they are not going to be on that
3 record?
4 A. Exactly.
5 Q. Does New Star also maintain the records of notes
6 taken on the subscriber account?
7 A. Yes, they do.
8 Q. Are these records kept for every single subscriber?
9 A. As long as there was a comment to be made they would
10 be kept.
11 Q. And if there was a comment made it would be kept for
12 every single subscriber?
13 A. Yes.
14 Q. Did you bring with you the records of the notes
15 taken from the subscriber for this phone ;~~XX~~-~~XXX~~-4849?
16 A. Yes, I did.
17 Q. Is this record maintained in the ordinary course of
18 business?
19 A. Yes.
20 [Whereupon, State's exhibit number 29 is marked by
21 the court reporter]
22 Q. [Mr. DuRant] This is labeled as State's 29. Can you
23 tell the jury what that is?
24 [Whereupon, the witness is shown item]
25 A. That's a list of any type of comments that were made

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1 by a Cricket retail person who might have handled
2 interactions with a caller for this number or any other
3 type of changes to an account.

4 Q. Does it also list a note that was taken by the
5 alleged subscriber on December the 3rd, 2010?

6 A. Yes, there was a note that was placed for that date.

7 MR. DURANT: Your Honor, at this time the State
8 moves for the admission of State's 29.

9 THE COURT: Any objection?

10 MR. KING: Your Honor, I would object based on
11 previous objections and the confrontation clause.

12 THE COURT: What's your legal objection?

13 MR. KING: By my previous objections in my pretrial
14 motion, hearsay, confrontation clause ---

15 THE COURT: --- let me see what -- let me look at
16 it. I haven't seen this particular document. Let me
17 look at it.

18 [Whereupon, documents are proffered to the court]

19 [Whereupon, Mr. Durant and Mr. King confer with the
20 court]

21 THE COURT: All right. Madame Forelady and ladies
22 and gentlemen of the jury I'm going to have to -- I want
23 to listen to the attorneys concerning whether this is
24 admissible or not admissible. And the reason I send you
25 out of the courtroom is I'm not permitted to comment on

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1 facts during a trial of a case. And when I'm trying to
2 make up my mind on whether something is admissible or not
3 I want to be free to comment on the facts. So I'm going
4 to ask you to go to the jury room. Please don't discuss
5 the case amongst yourselves. I'll get you back just as
6 soon as I finish.

7 [Whereupon, the jury exits the courtroom at 12:45
8 p.m.]

9 THE COURT: First of all is there any way to darken
10 it up where somebody can read it?

11 MR. KING: I can read it. I can read it on the
12 record, Your Honor. I asked to send the jury out because
13 I was afraid if we were reading it up there they might be
14 able to hear what we're saying.

15 THE COURT: What's your -- what's the pertinent
16 point from -- what make it relevant, Solicitor because I
17 couldn't read it. Y'all don't have a better copy than
18 this to bring to court?

19 MR. DURANT: I think this might be actually a
20 better copy.

21 THE COURT: Huh?

22 MR. DURANT: Can you read this? He provided a few
23 different copies and that one is probably a little
24 better.

25 THE COURT: Well how about using that one.

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1 MR. DURANT: We'll use this one.
2 THE COURT: Use that one.
3 MR. DURANT: We will just switch the number on
4 this. This one is darker.
5 THE COURT: Is this the copy they provided you?
6 MR. DURANT: He brought them today.
7 THE COURT: He brought them today. Did you try to
8 read it?
9 THE WITNESS: I read it.
10 THE COURT: That one that is so light you can
11 hardly read so unless you got a magnifying glass you
12 brought to court for this jury to read?
13 THE WITNESS: [No response]
14 THE COURT: Why didn't you bring something somebody
15 could read?
16 THE WITNESS: I'm sorry, Your Honor.
17 THE COURT: Pardon?
18 THE WITNESS: I said I'm sorry, Your Honor.
19 THE COURT: Well next time you come to court bring
20 something that you can read, okay.
21 THE WITNESS: Okay.
22 THE COURT: This is ridiculous to bring something
23 like this in the courtroom and expect 12 jurors to read
24 it. Do you understand?
25 THE WITNESS: Yes, sir.

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1 THE COURT: Thank you. All right go ahead with
2 your argument.

3 MR. DURANT: What is says on December 3rd is that
4 B-R-P called and wanted to change the address on the
5 account but the customer hung up saying profanity words
6 and keeps on laughing.

7 Now, in order to notate that in the system they have
8 to provide the information that was given for the
9 subscriber. It's got to be verified; the date of birth,
10 the address, the name. And only then can they attempt to
11 make a change.

12 So B-R-P means that this is verifiable information
13 and that there was an attempt to change an address on the
14 day he was arrested. So we want to show that he's
15 attempting to cover up his tracks.

16 THE COURT: What's the significance of changing the
17 address? Was that address of 3440 Elliott Drive his
18 address?

19 MR. DURANT: 3440 Elliott is the address provided
20 to Cricket.

21 THE COURT: Right.

22 MR. DURANT: He actually lived at that time at 3440
23 Osceola so...

24 THE COURT: What was he changing? From what to
25 what?

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1 MR. DURANT: We don't know. He just got excited
2 and said he wanted to change his address and the notation
3 says that he just started using profanity and laughing
4 and hung up. And this just happens coincidentally to be
5 ---

6 THE COURT: --- but we don't know who this is.

7 MR. DURANT: It's the subscriber for the account.

8 THE COURT: I understand that.

9 MR. DURANT: And our argument ---

10 THE COURT: --- at this point in time nobody knows
11 who the subscriber -- do you have -- as far as testimony
12 so far nobody knows who the subscriber is at this point
13 in time.

14 MR. DURANT: Well actually the subscriber is a man
15 named Kevin King with a date of birth of : X/X/91 .
16 You just have to link it up circumstantially and
17 substantial circumstantial evidence that this Kevin King
18 is actually this Rakeem King because when you add it all
19 together, and you can't take it in just one piece, you
20 have to take the subscriber information, the D-M-V
21 information on actual verifiable information from this
22 guy and then you add it with Dario Brown's identification
23 of this guy and only then can it all make sense. You
24 can't just piecemeal it and so it's very relevant.

25 THE COURT: All right. Go ahead, Mr. King, it's

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1 your objection.

2 MR. KING: Yes, Your Honor. I was objecting just
3 based on my previous objections to phone records in
4 general in the search warrant -- I mean pretrial.
5 Hearsay, the confrontation clause, I don't know who
6 received this call and who keyed this in.

7 And finally if Your Honor did let it in I would ask
8 to redact out about the customer hang up and saying
9 profanity words and keeps on laughing. I don't think
10 that's relevant and is improper character reference.

11 THE COURT: Solicitor, I understand later on your
12 detective is going to testify and tie all these loose
13 ends together, correct?

14 MR. DURANT: [No response]

15 THE COURT: But at this point in time Kevin King
16 doesn't have anything to do with this King.

17 MR. DURANT: Well, no this is actually a part of
18 this investigation. This is the number that called him.
19 Without a doubt this is the number that called him.

20 THE COURT: I understand that.

21 MR. DURANT: That's how they linked it up. If you
22 don't let it in you can't actually follow the trail. You
23 can't follow the clues; it's like Scooby Doo here. I
24 mean it's like here's another clue ---

25 THE COURT: --- I understand. My problem is you

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1 haven't tied it together from a relevancy standpoint
2 until your detective testifies on this particular item;
3 probably the other two items also.

4 MR. DURANT: Well Your Honor, I just fundamentally
5 disagree. It's -- I think it's clearly relevant to what
6 the information is on an unverifiable subscriber account.
7 It's not just a coincidence that the numerical address of
8 the street matches the verifiable information on a D-M-V
9 record.

10 3440 Elliott is no longer -- in fact that address
11 doesn't even exist in Charleston. 3440 Osceola does.
12 3440 Osceola is on his D-M-V record for this exact time
13 period; X/X/91 subscriber information on an
14 unverifiable account at Cricket. And a fellow named
15 Kevin King here just so happened to be a fellow named
16 Rakeem King, X/X/91 .

17 THE COURT: What's the birth date? The same as
18 his?

19 MR. DURANT: Same exact birthday.

20 THE COURT: Okay.

21 MR. DURANT: Who is this person? Detective Boone
22 did some pretty good police work ---

23 THE COURT: --- I understand that. And you know
24 all that but that hasn't come out at this point in time
25 at the trial is my point to you.

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1 MR. DURANT: There's got to be an initiation point.
2 I mean at some point information has to hit the floor in
3 the beginning. It can't all come at once.

4 THE COURT: I understand.

5 MR. DURANT: So we're trying to get the information
6 in first and it will all be linked up because it's
7 relevant.

8 THE COURT: I'm going to allow you to mark it.
9 Authentication is not a problem. He has an objection of
10 the basis of authentication. I think he's properly
11 identified it as a business record.

12 My difficulty with it at this point in time is
13 relevancy and I am going to let it in for identification
14 subject to -- I'll let it in but I'm not going to let you
15 view it to the jury and talk to the jury about it until
16 it's tied up with the detectives; just tying it in with
17 the detectives as to some relevancy as to this defendant,
18 okay.

19 MR. DURANT: Thank you, Your Honor.

20 MR. KING: What about the language of the customer
21 hung up saying ---

22 THE COURT: --- well, I'll just have to decide that
23 when I hear the officer's testimony, okay. I'll take
24 your motion under advisement.

25 MR. KING: Thank you, Your Honor.

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1 THE COURT: Okay. And I want you to make clear
2 Mr. King I'm not -- the court is satisfied that this
3 gentleman has properly identified it and it is
4 authenticated properly. My concern right now is purely
5 relevancy.
6 MR. KING: Yes, Your Honor.
7 THE COURT: Okay. Anything else while the jury is
8 out?
9 MR. DURANT: No, Your Honor.
10 THE COURT: Okay. Bring us the jury.
11 MR. DURANT: Well, for scheduling do we want to go
12 much past this witness?
13 THE COURT: I think when we finish with this him he
14 will -- where are you from?
15 THE WITNESS: Washington, D.C.
16 THE COURT: Washington?
17 THE WITNESS: Yes, sir.
18 THE COURT: Next time bring better copies.
19 THE WITNESS: Yes, sir.
20 THE COURT: Did you try to read that copy?
21 THE WITNESS: I did, sir.
22 THE COURT: Pardon?
23 THE WITNESS: I did, yes Your Honor.
24 THE COURT: Okay.
25 MR. DURANT: Thank you, Your Honor.

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1 THE COURT: Bring us the jury please? We'll finish
2 with this witness and then...

3 THE COURT: I'm going to admit it subject to it
4 being tied in with the detective. If it doesn't tie it
5 in, I will take it out. But it is not going to be
6 published to the jury.

7 [Whereupon, the jury enters the courtroom at 12:54
8 p.m.]

9 THE BAILIFF: All seated, Your Honor.

10 THE COURT: Okay. Please proceed.

11 MR. DURANT: And so here is State's 29 and the
12 State is moving to admit it into evidence at this time.

13 THE COURT: Subject to further testimony I'll admit
14 it.

15 MR. DURANT: Thank you, Your Honor.

16 [Whereupon, State's exhibit number 29 is entered
17 into evidence by the court]

18 Q. [Mr. DuRant] Now Mr. Mitchell one last question I
19 have for you is when was this account activated?

20 A. The account was activated on November 19th 2010.

21 Q. Thank you. Please answer any questions the defense
22 may have.

23 THE COURT: Cross-examination.

24 MR. KING: Just briefly, Your Honor.

25

- - -

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1 CROSS-EXAMINATION

2 BY MR. KING:

3 Q. You testified before that anyone could call up
4 Cricket and get one of their phones, right?

5 A. Yes.

6 Q. And provide any information that they wanted to as
7 far as name, address, and date of birth and none of that
8 is verified in any way?

9 A. Correct.

10 Q. I have no further questions.

11 THE COURT: Any redirect?

12 MR. DURANT: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. When a caller calls back in, a subscriber, and they
16 want to do anything different with their phone do they
17 have to provide the information that was originally given
18 in the subscriber information?

19 A. I'm not sure about that. This was in 2010 so I'm
20 not sure exactly what procedures were back then so...

21 Q. Can I call in -- can I just say look I want to call
22 in on XXX-XXX-4849 and do anything, say anything, change
23 anything?

24 A. I would assume they would need some type of
25 identifier. I'm not sure about the process of that...

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1 Q. So you would just assume?

2 A. Correct.

3 Q. Would I have to have the subscriber information? I
4 mean if I wanted to change my street address is the
5 person on the other end of the phone going to say what
6 are you changing it from?

7 A. I --

8 Q. We have here in our records -- or you don't know.

9 A. I'm not sure. I ---

10 Q. --- because that's not your job.

11 A. Exactly. I'm not in the retail aspect of this.

12 Q. Okay. So if we wanted to know that we would have
13 to ask somebody else?

14 A. Correct.

15 Q. What we can ask you is what the record actually
16 shows, is that right?

17 A. Correct.

18 Q. Thank you.

19 THE COURT: Any recross?

20 MR. KING: No, Your Honor.

21 THE COURT: Okay. You may step down. Thank you
22 very much. You may be excused. Have a safe trip back to
23 Washington.

24 THE WITNESS: Thank you.

25 [Whereupon, the witness is excused and exits the

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1 THE COURT: Thank you very much. Call your next
2 witness please.

3 MR. FERGUSON: The State calls Marie Wearing.

4 [Whereupon, Ms. Wearing comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court as follows: do you swear or affirm your
7 testimony will be the truth, the whole truth, and nothing
8 but the truth so help you God]

9 THE WITNESS: I do.

10 CLERK OF COURT: State your full name and spell
11 your last name please.

12 THE WITNESS: Marie Wearing, W-E-A-R-I-N-G.

13 - - - - -

14 MARIE WEARING,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FERGUSON:

19 Q. Hi, Ms. Wearing. Where are you employed?

20 A. At South Carolina Department of Motor Vehicles.

21 Q. And how long have you been there?

22 A. Twenty four years.

23 Q. What is your current position at S-C-D-M-V?

24 A. A custodian of driver's records.

25 Q. What kind of records does D-M-V keep?

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- 1 A. Driver's license and identification cards for the
2 State of South Carolina.
- 3 Q. Now how are driver's records or State issued I.D.
4 created?
- 5 A. You come in to the D-M-V office, you fill out an
6 application, have proof of date of birth, address history
7 and name.
- 8 Q. You said they have to have proof of date of birth?
- 9 A. Yes.
- 10 Q. Like a birth certificate ---
- 11 A. --- yes.
- 12 Q. Are these records created at or near the time a
13 person registers for a driver's license or State I.D.?
- 14 A. Yes.
- 15 Q. Are these -- of these records such as updated
16 addresses created at or during the time the person comes
17 into the D-M-V to change an address?
- 18 A. Yes.
- 19 Q. Are these records kept in the ordinary course of
20 business?
- 21 A. Yes.
- 22 Q. Are they kept for every single person registered to
23 drive and every single person registered -- registered
24 will take the State issued identification card?
- 25 A. Yes.

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1 Q. How are these records maintained?

2 A. They are kept on a database -- well a hard drive
3 system at the D-M-V.

4 Q. And how long are they kept?

5 A. For ten years.

6 Q. Ten years, okay. Pursuant to a subpoena from my
7 office did you bring with your today certified a driver's
8 license, and photograph and address history information
9 for an individual named Rakeem Deon King?

10 A. Yes.

11 Q. Can I see it please?

12 [Whereupon, Mr. Ferguson is provided documents from
13 the witness]

14 [Whereupon, State's exhibit number 30 is marked by
15 the court reporter]

16 Q. Now I'm handing you what has been marked as State's
17 exhibit 30 for identification purposes. Do you recognize
18 that?

19 [Whereupon, the witness is shown item]

20 A. Yes.

21 Q. What is it?

22 A. It's an official driver's license photograph.

23 MR. FERGUSON: Your Honor, at this time I would like
24 to move the official driver's license photograph and
25 information into evidence.

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1 THE COURT: What number is that?

2 MR. FERGUSON: 30.

3 THE COURT: 30? Any objection?

4 MR. KING: No objection, Your Honor.

5 THE COURT: State's exhibit 30 admitted without
6 objection.

7 [Whereupon, State's exhibit number 30 is entered
8 into evidence by the court]

9 Q. [Mr. Ferguson] Now according to that document what
10 is the most up to date address listed for Rakeem King on
11 that document?

12 A. 3440-B Osceola Street, North Charleston, South
13 Carolina, 29405.

14 Q. You said 3440?

15 A. Yes, B.

16 Q. And what -- was there a previous address also listed
17 on there?

18 A. In the address history, yes.

19 Q. Okay. And what was that previous address?

20 A. It was 2922 Alabama Drive, North Charleston, South
21 Carolina, 29405.

22 Q. Now when does it show the address was changed with
23 the S-C-D-M-V from the Alabama Drive address to the 3440
24 address?

25 A. October the 12, 2010.

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- 1 Q. October 12, 2010?
- 2 A. Yes.
- 3 Q. What is the birth date that is listed for Rakeem
- 4 King?
- 5 A. X/X/91 .
- 6 Q. X/X/91 . Is there a photo also on that
- 7 document?
- 8 A. Yes.
- 9 Q. Would you be able to tell the jury the date at which
- 10 that photo on that document was taken?
- 11 A. October 12, 2010.
- 12 Q. October 12, 2010?
- 13 A. Yes.
- 14 Q. Is this the document to which you were just
- 15 referring?
- 16 [Whereupon, the witness is shown item]
- 17 A. Yes.
- 18 Q. And that's the photograph that you said was taken on
- 19 October 12, 2010?
- 20 A. Yes.
- 21 Q. And how can you tell it was taken on October 12,
- 22 2010?
- 23 A. That's the issue date.
- 24 Q. The issue date is listed right there [indicates]?
- 25 A. Yes.

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1 Q. Thank you, ma'am. Please answer any questions the
2 defense may have.

3 THE COURT: Cross-examination?

4 MR. KING: I have no questions for this witness,
5 Your Honor.

6 THE COURT: Thank you very much. You may step
7 down.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Call your next witness.

11 MR. DURANT: The State calls Patricia Jourdan.

12 [Whereupon, Ms. Jourdan comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court as follows: do you swear or affirm your
15 testimony will be the truth, the whole truth, and nothing
16 but the truth so help you God]

17 THE WITNESS: I do.

18 THE COURT: State your full name and spell your
19 last for the record.

20 THE WITNESS: Patricia Harley Jourdan, the last
21 name is J-O-U-R-D-A-N.

22

- - - - -

23

PATRICIA JOURDAN,

24

Having been first duly sworn,

25

Was examined and testified as follows:

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DIRECT EXAMINATION

1
2 BY MR. DURANT:

3 Q. Good afternoon Detective Jourdan. Could you please
4 the jury where you are employed?

5 A. With the North Charleston Police Department.

6 Q. How long have you been with the North Charleston
7 Police Department?

8 A. Since June 4, 2007.

9 Q. And what is your current position?

10 A. I am currently assigned to uniform patrol.

11 Q. Was that your position in November of 2010?

12 A. No, sir.

13 Q. What was your position at that time?

14 A. I was assigned to the Detective's Bureau Person's
15 Crimes division.

16 Q. If you would tell the jury a little bit about your
17 responsibilities and duties in the Person's Crimes
18 Detective Bureau.

19 A. As a person's crime detective we handle homicides,
20 armed robberies, attempted armed robberies, shootings;
21 any crime that would deal with an actual person when a
22 person is violated.

23 Q. And in that capacity did you have the occasion to
24 become involved in the investigation and the shooting
25 that occurred at 1808 [REDACTED] Street on November the 26th

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- 1 of 2010?
- 2 A. Yes, sir.
- 3 Q. How were you brought into this case?
- 4 A. I was brought in to show a sequential photo lineup
5 to the victim in this case.
- 6 Q. Had you had any other knowledge or contact with
7 anyone about this case before you were brought in to show
8 a sequential photo lineup?
- 9 A. No, sir.
- 10 Q. Did you know what the case was even about?
- 11 A. No sir, I didn't.
- 12 Q. Did you know who a possible suspect was?
- 13 A. No, sir.
- 14 Q. And do you recall what date that was that you were
15 brought in to show a sequential photo lineup?
- 16 A. I believe it was the 29th of November.
- 17 Q. And who asked you to perform this sequential photo
18 lineup?
- 19 A. Sergeant Akeem Johnson [ph].
- 20 Q. And who is that?
- 21 A. She -- at the time she was the sergeant over
22 property crimes but when this particular call went out on
23 the night of the incident she was the supervisor that was
24 on duty that responded.
- 25 Q. And she asked you to administer a photo lineup?

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1 A. Yes, sir.

2 Q. Why wouldn't she just do it herself?

3 A. Because our policy states that it has to be done by
4 an independent administrator; someone who is not familiar
5 with who the suspect would be in the photo lineup.

6 Q. And so that's why you did it?

7 A. Correct.

8 Q. Did you actually administer a photo lineup in this
9 case?

10 A. Yes, sir.

11 Q. Do you recall who you administered it to?

12 A. Yes sir, to the victim.

13 Q. And that's Dario Brown?

14 A. Correct.

15 [Whereupon, State's exhibit number 31 is marked by
16 the court reporter]

17 Q. I'm showing you what the State has labeled as
18 State's 31 for identification and ask you to take a look
19 at that and let me know if you recognize it?

20 [Whereupon, the witness is shown item]

21 A. Yes sir, I do.

22 Q. What is it?

23 A. It's our departmental form photographic lineup we
24 review with the witness or victim in a case prior to
25 showing them the lineup, the photo lineup.

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1 Q. And how did you begin to administer this lineup?

2 A. Mr. Brown came into the detective bureau on the 29th
3 about 1:15. I met with him in our interview room at the
4 detective bureau.

5 As with Mr. Brown or any other case we go over the
6 photographic lineup form that -- that I'm basically going
7 to show him photographs of individuals and that the
8 person that committed this crime may or may not be in the
9 photo lineup.

10 I wouldn't be able to provide any feedback because I
11 didn't know who the suspect was in this case and that I
12 wouldn't be able to discuss any identification
13 procedures.

14 Another part of it is to focus on the event, the
15 light, the view, the frame of mind and to take as much
16 time -- and also to keep in mind the people may not
17 appear in photos as they did at the time of the event
18 because clothing style, hair color, hair style may change
19 even over a short period of time.

20 And as the individual looks at the photographs they
21 tell me if they recognize a person and if so how they
22 know the person and how sure they are of that
23 identification.

24 Q. And did Dario Brown understand these admonitions
25 that you read to him?

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1 A. Yes. We reviewed that and the fact that -- the
2 seven individual statements there is a place for initials
3 and he understood it and initialed where appropriate.

4 Q. Okay. After advising him of these admonitions did
5 you then show him some photographs?

6 A. I did.

7 Q. And how many photographs did you show him?

8 A. There were six sequential in number photographs.

9 Q. And does that mean -- how did you give them to him?

10 A. They were in a stack numbered one through six
11 individual pictures.

12 Q. Okay. Just so we are clear was one on top of two
13 and two on top of three, three on top of four or were
14 they all just spread out on the table?

15 A. No. They were one, two, three, four, five, and six.

16 Q. All right. And did Dario Brown look at these
17 photographs that you showed him?

18 A. Yes. Once we reviewed the form and he initialed I
19 handed him the six photographs and allowed him to take
20 his time and go over each individual photo to see if he
21 recognized any one of them.

22 Q. Are these six photos that he was shown contained in
23 State's number 30?

24 A. 31.

25 Q. 31?

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1 A. Yes, sir.

2 MR. DURANT: Your Honor, at this time the State
3 moves for the admission of State's 31?

4 THE COURT: Any objection?

5 MR. KING: No objection, Your Honor.

6 THE COURT: All right. State's number 31 admitted
7 without objection.

8 [Whereupon, State's exhibit number 31 is entered
9 into evidence by the court]

10 Q. [Mr. DuRant] Are these photos right here [indicates]
11 these are the photos that you showed to Dario during this
12 administration?

13 A. Yes, sir.

14 Q. It looks like they are now kind of taped onto a
15 page. Is that how you presented them to him?

16 A. No, sir. They were individually one stacked on top
17 of each other; one through six.

18 Q. Okay. And did he look through these photos?

19 A. Yes.

20 Q. Did he recognize anybody?

21 A. No, he did not.

22 Q. Did he make any identification?

23 A. No, sir.

24 Q. Okay. And as a result of that what did you do?

25 A. I checked -- there is a spot on our form

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1 identification made yes or no. I checked no. I had Mr.
2 Brown sign as the witness and I signed it as independent
3 administrator.

4 Q. Okay. And then Mr. Brown just left?

5 A. Correct.

6 Q. Thank you. Please answer any questions the defense
7 may have.

8 THE COURT: Cross-examination?

9 MR. KING: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. KING:

12 Q. Officer, you said that you are the independent
13 administrator right?

14 A. Yes, sir.

15 Q. You didn't have any involvement at all in
16 investigating this case?

17 A. No, sir.

18 Q. You didn't know anything at all about it?

19 A. No, sir.

20 Q. After you showed that lineup and filled out that
21 report -- the photographic lineup you also wrote a
22 supplemental report too, right?

23 A. Correct.

24 Q. Just documenting the procedures and what happened?

25 A. Correct.

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1 Q. I have no further questions.

2 THE COURT: Any redirect?

3 MR. DURANT: No, Your Honor.

4 THE COURT: Okay. You may step down. Thank you
5 very much.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness.

9 MR. DURANT: The State calls Detective Greg Boone.

10 [Whereupon, Mr. Boone comes forward]

11 [Whereupon, the witness is duly sworn by the Clerk
12 of Court as follows: do you swear or affirm your
13 testimony will be the truth, the whole truth, and nothing
14 but the truth so help you God]

15 THE WITNESS: Yes, I do.

16 CLERK OF COURT: State your full name and spell
17 your last name for the record.

18 THE WITNESS: Walter Gregory Boone, B-O-O-N-E.

19 - - - - -

20 WALTER BOONE,

21 Having been first duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DURANT:

25 Q. Good afternoon Detective Boone.

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- 1 A. Good afternoon.
- 2 Q. Will you please tell the jury where you are
3 employed?
- 4 A. At the North Charleston Police Department.
- 5 Q. How long have you been employed with North
6 Charleston?
- 7 A. A little less than eight years.
- 8 Q. And what do you currently -- what is your current
9 position?
- 10 A. I'm a school resource officer at Stall High School.
- 11 Q. How long has that been your position?
- 12 A. About a year and a half.
- 13 Q. Things going well there?
- 14 A. Going well.
- 15 Q. What was your position in November and December of
16 2010?
- 17 A. I was assigned to the detective division in North
18 Charleston.
- 19 Q. Was there a specific area of the detective division
20 at that time?
- 21 A. It was comprehensive. We were assigned to the
22 Person's unit at that time and that was our main focus.
- 23 Q. And what were your duties and responsibilities in
24 that position?
- 25 A. Do reactive investigations to crimes that are

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1 controlled usually in the areas of shootings, armed
2 robberies; crimes against persons.

3 Q. Okay. And in that capacity did you become involved
4 in the investigation that occurred at 1808 [REDACTED] Street
5 in the early morning hours of November the 26th, 2010?

6 A. I did assist with that investigation.

7 Q. When did you first become involved in the case?

8 A. Shortly I guess after the crime Detective Evans
9 approached me and asked me to relay a phone number to
10 Detective Talbert. At that time I wasn't sure which case
11 it was for but I was given the phone number to give to
12 him.

13 Q. And that was your first involvement in this case?

14 A. That's correct.

15 Q. Was to just take a number to Detective Talbert?

16 A. That's it.

17 Q. And ask Detective Talbert to look into the number?

18 A. Correct.

19 Q. Did you know anything about the case at this time?

20 A. Nothing at all.

21 Q. Did you even know that it was a shooting at this
22 time?

23 A. I didn't know.

24 Q. Did you know that there were any suspects involved
25 in this case at the time?

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- 1 A. I did not.
- 2 Q. Did you know anything other than the fact that you
3 were asked to give a number to Detective Talbert?
- 4 A. Nothing at all.
- 5 Q. Okay. After getting in touch with Detective
6 Talbert about this number did you again become involved
7 in the investigation of this case?
- 8 A. Afterwards, yes sir.
- 9 Q. And when was that?
- 10 A. I don't recollect the date but I was approached by
11 Detective Evans to show a lineup; a photo lineup.
- 12 Q. I'm showing you what is already in evidence as
13 State's 1 and ask you to take a look at that.
- 14 [Whereupon, the witness is shown item]
- 15 Q. Do you recognize that?
- 16 A. I do. That's the photo lineup form that I showed
17 the victim.
- 18 Q. And why didn't Detective Evans show this lineup?
- 19 A. Because it is standard procedure with him having
20 knowledge of the case and him having knowledge of the
21 suspect he could give a bias lineup. So he gets somebody
22 who is independent ---
- 23 Q. --- or at least it's possible to show a bias?
- 24 A. Sure.
- 25 Q. So is it fair to say this is a measure that you try

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- 1 to exclude as much bias as possible?
- 2 A. That is correct.
- 3 Q. And you didn't know who the suspect was, is that
- 4 right?
- 5 A. That's correct, I did not.
- 6 Q. How many photos were you given to show this witness?
- 7 A. Six.
- 8 Q. And looking at State's number 1 do you know who that
- 9 witness was?
- 10 A. Dario Brown.
- 11 Q. Had you ever seen him before that day?
- 12 A. No.
- 13 Q. Do you recall what he appeared like that day?
- 14 A. I can't remember exactly what he was wearing but
- 15 what I remember the most is he was kind of in a sling and
- 16 had bandages and that kind of thing on his right arm.
- 17 Q. And where did you meet Dario Brown that day to
- 18 administer this lineup?
- 19 A. At City Hall, our police headquarters at our
- 20 detective bureau.
- 21 Q. How did you begin to administer the lineup?
- 22 A. At first we went to the interview room, he and I,
- 23 and then I went over the photo lineup form with him.
- 24 Q. And how did you do that?
- 25 A. I read each statement and you kind of see right

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- 1 there at the very top [indicates] under name and date of
2 birth we have a set up statements that I went through,
3 which was common procedure.
- 4 Q. All right. Let's start right up at the very top.
- 5 A. Okay.
- 6 Q. Looks like there is some stuff that is filled in up
7 here [indicates] right?
- 8 A. That's correct.
- 9 Q. Now did you fill that in?
- 10 A. The only thing I filled in was the time.
- 11 Q. Which is right here [indicates]?
- 12 A. Correct. 10:02 a.m.
- 13 Q. 10:02 a.m. Who filled in the O-C-A and the date?
- 14 A. Detective Evans.
- 15 Q. Detective Evans?
- 16 A. Correct.
- 17 Q. And that was given to you before you administered
18 this lineup?
- 19 A. Correct.
- 20 Q. And so right here [indicates] listed on this
21 admonition looks like seven sentences.
- 22 A. Correct.
- 23 Q. And those are the admonitions?
- 24 A. That is correct.
- 25 Q. And the first one says, I'm going to show you a

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1 series of photographs of individuals of an array of six
2 photographs of individuals and you circled the
3 appropriate one there [indicates] and so on and so forth.

4 And down here it says; do not discuss the
5 identification procedures or the results with other
6 witnesses in this case. Focus on the event, the place,
7 the view, lighting, your frame of mind, etcetera. Take
8 as much time as you need.

9 Did you go over all of those with Dario Brown?

10 A. Each one of them.

11 Q. And did he initial that he understood those?

12 A. He did on each one.

13 Q. All right. Now after going over this with him did
14 you present him with the photos?

15 A. Yes.

16 Q. And how did you present the photos?

17 A. One on top of the other numbered one through six.

18 Q. Okay. So one on top of two, two on top of three,
19 three on top of four. Did you give them to him all at
20 one time?

21 A. I did.

22 Q. What was his reaction upon viewing the photos?

23 A. He went through one, he went through two, he got to
24 number three and he said that's the guy; that's the guy
25 that shot me.

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1 Q. At that time did you even know that he had been
2 shot?

3 A. No, not at all.

4 Q. Was he certain?

5 A. Yes. I had to make him go through the rest of them
6 because he only went through the first three. He -- as
7 soon as he saw him he was like that's the guy. And I
8 said go ahead and look at the rest and he did. He looked
9 at four, five, and six and he said that's the guy; number
10 three.

11 Q. All right. And just so we knew what pictures he
12 looked at did you have him sign each picture?

13 A. I had him sign each one to confirm that he did look
14 at all of them.

15 Q. And was this the first picture [indicates] where he
16 signed?

17 A. Yes, and dated.

18 Q. And dated. Was he signing with his left arm -- left
19 hand?

20 A. He kind of struggled with his right arm to my
21 recollection. He was in obvious pain at the time.

22 Q. How about number two?

23 A. That is number two [indicates].

24 Q. And you said he stopped at number three?

25 A. Correct.

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- 1 Q. And I see that number three is circled.
2 A. Correct.
3 Q. Number one and number two were not circled.
4 A. That's correct.
5 Q. Why obviously is number three circled?
6 A. If you remember during the first statement it says
7 at the very top by number one to circle if you recognize
8 someone.
9 Q. And that's the one he recognized?
10 A. That is correct.
11 Q. And this is the fourth one [indicates].
12 A. It is.
13 Q. And this is the fifth one [indicates].
14 A. Yes, sir.
15 Q. And this was the sixth one [indicates].
16 A. It was.
17 Q. All right. And so back to the admonition. Witness
18 identification statements; what was written down?
19 A. I am 100 percent sure this is the guy who shot me.
20 Q. All right. Was he ever anything less than 100
21 percent sure?
22 A. No.
23 Q. Was he positive immediately when he saw number
24 three?
25 A. As soon as he looked at it.

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1 Q. And you didn't know who number three was?

2 A. No.

3 Q. Did you do anything to influence him to choose
4 number three?

5 A. No.

6 Q. It's your testimony he chose number three on his
7 own?

8 A. I didn't hear the question.

9 Q. It's your testimony that he chose number three on
10 his own?

11 A. He did.

12 [Whereupon, Mr. Durant and Mr. Ferguson confer]

13 Q. Thank you, sir. Please answer any questions the
14 defense may have.

15 THE COURT: Cross-examination?

16 MR. KING: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. Looking at that up there [indicates].

20 A. Yes, sir.

21 Q. Where it says 100 percent?

22 A. Yes, sir.

23 Q. And you see that zero [indicates] or the second zero
24 [indicates]?

25 A. I do.

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1 Q. I'm sorry, the first zero after one. Are you sure.
2 he didn't say 90 percent?
3 A. I'm positive.
4 Q. And then that's not a nine written up under that
5 zero [indicates]?
6 A. It is not.
7 Q. And you were the independent administrator?
8 A. I was.
9 Q. And that's part of the procedures for presenting
10 lineups at North Charleston Police Department right?
11 A. Yes, sir.
12 Q. The person presenting the lineup is not supposed to
13 know who the suspect is because it's possible they could
14 communicate to the person identifying the lineup who to
15 pick?
16 A. That's right.
17 Q. And not even necessarily on purpose but maybe even
18 sub-conscientiously could maybe through body language
19 indicate who to pick.
20 A. Sure.
21 Q. So they want to pick somebody who doesn't know who
22 the suspect was?
23 A. Correct.
24 Q. But you were involved in investigating this case
25 before this lineup weren't you?

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- 1 A. No.
- 2 Q. You had some involvement. You were mentioned in
3 Officer Talbert's report.
- 4 A. It's really relaying the cell phone number; that's
5 what I did.
- 6 Q. So you were involved to some extent in the
7 investigation of this case before you presented the
8 lineup?
- 9 A. I guess with that, yes.
- 10 Q. And the policies for presenting photo lineups at
11 North Charleston it recommends a minimum of six photos
12 right?
- 13 A. Correct.
- 14 Q. That's just the minimum.
- 15 A. Yes, sir.
- 16 Q. You can show more photos.
- 17 A. Sure.
- 18 Q. It's possible you can show ten, fifteen, twenty
19 photos but you showed the minimum recommended by the
20 policies and procedures, right?
- 21 A. Correct. We go by the procedures, sure.
- 22 Q. Well, the minimum recommended by the procedures.
- 23 A. Right; six.
- 24 Q. And another policy is that in addition to that
25 report there on the photographic lineup you're supposed

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1 to write a supplemental report documenting all
2 procedures, source of the photos used things like that,
3 right?

4 A. It says do a supplemental report and I used that as
5 my supplemental.

6 Q. But you didn't write a separate supplemental report?

7 A. I didn't do a separate report than this.

8 Q. And the policies also mention that the
9 identification lineup may be videotaped right?

10 A. Correct.

11 Q. That way you can videotape and we can watch exactly
12 what happened right?

13 A. It could.

14 Q. And we could see Mr. Brown's actual reactions and
15 how everything happened. But in this case it wasn't
16 videotaped.

17 A. We didn't have the video capabilities.

18 Q. I have no further questions.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. DURANT:

22 Q. And of course there are other ways of going about
23 conducting an identification procedure aren't there?

24 A. Yes.

25 Q. Have you been involved in other ways?

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1 A. Like a show up?
2 Q. Like a show up is one way, right?
3 A. Yes.
4 Q. And sometimes you present the pictures all on one
5 page right?
6 A. You could. I haven't done that but you could.
7 Q. What's the show up I.D.?
8 A. Show up I.D. happens when a crime has just occurred
9 and a suspect is located in a very short period of time.
10 With the victim on scene we could bring the person that
11 could possibly be the suspect and let them view them from
12 a police car to say, hey this guy or girl or not.
13 Q. So just one person?
14 A. Correct.
15 Q. Just to confirm or deny?
16 A. That's correct.
17 Q. This person?
18 A. Exactly.
19 Q. That wasn't done in this case was it?
20 A. No, sir.
21 Q. Thank you.
22 THE COURT: Any re-cross?
23 MR. KING: No, Your Honor.
24 THE COURT: You may step down. Thank you very
25 much.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness please, sir.

4 MR. DURANT: The State calls Detective Evans.

5 [Whereupon, Mr. Evans comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court as follows: do you swear or affirm your
8 testimony will be the truth, the whole truth, and nothing
9 but the truth so help you God]

10 THE WITNESS: I do.

11 CLERK OF COURT: State your full name and spell
12 your last name.

13 THE WITNESS: Mark Lane Evans, Jr., E-V-A-N-S.

14 - - - - -

15 MARK EVANS,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DURANT:

20 Q. Good afternoon, Detective.

21 A. Good afternoon.

22 Q. Would you please tell the jury where you are
23 employed?

24 A. North Charleston Police Department.

25 Q. And how long have you been employed with the North

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- 1 Charleston Police Department?
- 2 A. It will be four years in January.
- 3 Q. What's your current position?
- 4 A. I am currently assigned to the Detective's Division
- 5 Person's Crime Unit.
- 6 Q. Was that your position November of 2010?
- 7 A. It was.
- 8 Q. And what are your duties and responsibilities as a
- 9 detective?
- 10 A. As a detective in the Person's Crime Unit we respond
- 11 to violent crimes if we are on duty. We are assigned to
- 12 violent crimes, shootings, robberies; any crime that
- 13 involves firearms and things of that nature.
- 14 Q. And in that capacity did you become involved in the
- 15 investigation of a shooting that occurred at 1808 [REDACTED]
- 16 Street in the early morning hours of November 26, 2010?
- 17 A. I did.
- 18 Q. How were you brought into this case?
- 19 A. I was assigned as the case agent.
- 20 Q. What is a case agent?
- 21 A. The case agent is basically the manager of the case.
- 22 He is handed -- issued the case by the supervisor. He
- 23 then takes the case, reviews the information, and tries
- 24 to determine what, if any, leads or what other
- 25 information can be followed up on.

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- 1 Q. How many case agents are typically on a case?
- 2 A. There is only one case agent. Other detectives will
- 3 work on a case but only one case agent.
- 4 Q. So one person who manages the case?
- 5 A. Yes.
- 6 Q. And in this case it's you?
- 7 A. Yes.
- 8 Q. Now as a case agent does this mean you are the only
- 9 detective who works the case?
- 10 A. No.
- 11 Q. Did other detectives assist you in this case?
- 12 A. Several other investigators were involved.
- 13 Q. And so just so we have a little working knowledge of
- 14 how things work at the North Charleston Police Department
- 15 when you are a case agent you have other detectives who
- 16 are assisting you on a particular case and sometimes you
- 17 are a detective assisting another detective who is a case
- 18 agent on another case?
- 19 A. That is correct.
- 20 Q. It just so happens you have more managerial and
- 21 responsibilities in regard to the case that you are the
- 22 case agent on, is that right?
- 23 A. Yes.
- 24 Q. You mentioned that there were other detectives who
- 25 were involved in this investigation.

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1 A. Several others.

2 Q. How did your investigation begin?

3 A. I was assigned as case agent on December 1, 2010. I
4 then took all the information that was obtained and
5 reviewed that; that being the incident report, all
6 management notes placed by the responding detectives,
7 crime scene reports, and any additional information that
8 was collected as far as statements and things of that
9 nature.

10 Q. So this became your case essentially right after the
11 Thanksgiving Day weekend.

12 A. Right of.

13 Q. Based on your review of the reports and the witness
14 statements gathered from the scene how did your
15 investigation proceed?

16 A. Well at the beginning I first began to research the
17 main thing that we saw that we had was the cell phone;
18 the cell phone number that contacted the cab company.
19 That was the key piece we began to look into.

20 Q. What number was that?

21 A. ~~XXX-XXX~~-4849.

22 Q. And where did you get that number from again?

23 A. That number was retrieved by Detective Ware who
24 responded to the cab company and that number was provided
25 to him by the cab company.

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1 Q. There was an initial photo identification procedure
2 in this case, is that correct?

3 A. Yes, sir.

4 Q. No leads were determined from that?

5 A. No, sir. The gentleman was developed based on
6 information obtained during a canvass. His photograph --
7 the photographic lineup was presented to the victim who
8 advised that he was not a part of the -- nobody in that
9 lineup was a part of the crime.

10 Q. What did you do to investigate this number that
11 called in to Yellow Cab?

12 A. We first had to determine what cell phone company it
13 was from. We did that using Internet sources. Once we
14 obtained what Internet provider belonged to the number I
15 contacted Detective Talbert who was able to locate the
16 information for the cell phone.

17 Q. And what information did you find out about that
18 cell phone?

19 A. Detective Talbert was able to learn that the cell
20 phone was registered to a Kevin King with a date of birth
21 ~~X/X/91~~ with the address of 3340 Elliott Street.

22 Q. 33 or 3440?

23 A. It may have been 3440. I'd have to...

24 Q. Do you need to refer to your notes?

25 A. If I can, please.

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- 1 Q. Sure.
- 2 [Whereupon, the witness reviews his documents]
- 3 A. 3440, excuse me. 3440 Elliott Street.
- 4 Q. Based on this information what did you do?
- 5 A. We began to research Kevin King with a date of birth
- 6 X/X/91.
- 7 Q. Well, did you intend to go to the address that Kevin
- 8 King lived at?
- 9 A. We researched the address of 3440 Elliott Street,
- 10 but that street does not -- the street exists; the
- 11 address does not.
- 12 Q. Do you know where in relation to us right now that
- 13 street actually exists?
- 14 A. Elliott Street is approximately a block away and it
- 15 runs parallel with Broad Street.
- 16 Q. One block off of Broad?
- 17 A. Yes, sir.
- 18 Q. And that zip code is actually 29401?
- 19 A. I believe so, yes.
- 20 Q. The zip code provided to Cricket was 29405 is that
- 21 correct?
- 22 A. That is correct.
- 23 Q. So you couldn't find Kevin King at the address of
- 24 3440 Elliott Street?
- 25 A. We could not.

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- 1 Q. How did you proceed at that point?
- 2 A. With the information Kevin King and the date of
3 birth we began to research King mixing it up with the
4 date of birth, which at a point we located Rakeem King
5 with a date of birth X/X/91.
- 6 Q. Did it seem to be a coincidence to you?
- 7 A. A strong coincidence.
- 8 Q. Did you find anything out about his address at that
9 time?
- 10 A. Upon looking at his driver's license his driver's
11 license showed that he lived at 3440 Osceola Street
12 located in the city of North Charleston.
- 13 Q. So not 3440 Elliott Street?
- 14 A. Not 3440 Elliott Street.
- 15 Q. But 3440 Osceola?
- 16 A. Correct.
- 17 Q. Zip code 29405?
- 18 A. Correct.
- 19 Q. Date of birth X/X/91 ?
- 20 A. Correct.
- 21 Q. So what, if anything, did you do with that
22 information?
- 23 A. With that information we then put together a
24 photographic lineup using Mr. King's photograph.
- 25 Q. And who did you want to present that to?

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1 A. To the victim Dario Brown.
2 Q. And was that done?
3 A. It was.
4 Q. Did you instruct that to be done?
5 A. I did.
6 Q. Did you perform that procedure yourself?
7 A. I did not.
8 Q. Why not?
9 A. Based on the North Charleston policy and procedures
10 I was not allowed to do that.
11 Q. So what did you do?
12 A. I located Detective Boone who I knew had no
13 knowledge of this case who had not participated in the
14 investigation and had him present the lineup.
15 Q. And did Detective Boone conduct the lineup?
16 A. He did.
17 Q. Did he bring you the results of that lineup?
18 A. I was notified of the results.
19 Q. And based on the results of that lineup procedure
20 what did you do?
21 A. Based on the information when Mr. Brown selected
22 Rakeem King as being the party who robbed and shot him at
23 that point affidavits for Mr. King were completed.
24 Q. Was it important to you to understand the level of
25 certainty that Dario Brown was in viewing Rakeem King's

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- 1 picture?
- 2 A. Of course.
- 3 Q. What was his level of certainty?
- 4 A. 100 percent. Detective Boone advised me that as
- 5 soon as he observed the photograph he selected Mr. King.
- 6 Q. Did this make sense to you in conjunction with what
- 7 Dario Brown had originally told the police and it was
- 8 given in his written statement on the night that he was
- 9 shot?
- 10 A. Could you repeat that question, I apologize?
- 11 Q. Sorry; it might have been long winded. Did it make
- 12 sense to you that Dario Brown would have picked somebody
- 13 out in light of what he said in his written statement the
- 14 night he was shot?
- 15 A. Yes. When I was reading the supplements and reading
- 16 the report and the officers speaking with Mr. Brown it
- 17 was quite clear that Mr. Brown knew -- would know who
- 18 shot him.
- 19 Q. At that point were you comfortable taking out the
- 20 warrants?
- 21 A. Yes.
- 22 Q. What warrants did you take out?
- 23 A. Armed Robbery, Possession of a Firearm during the
- 24 Commission of a Violent Crime, and Attempted Murder.
- 25 Q. Was that the end of your investigation at that

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1 point?

2 A. At that point, yes.

3 Q. What about the results of the D-N-A or the
4 fingerprints?

5 A. Fingerprints came back. They -- one fingerprint was
6 located. It was to an individual from the neighborhood
7 in which Mr. Brown was driving a cab. I was familiar
8 with that young man and he was eliminated as being a
9 suspect. The D-N-A results came back to be inconclusive
10 or multiple contributors.

11 Q. Is D-N-A and fingerprint evidence -- something you
12 look for as a detective?

13 A. As a detective that is always a key piece of
14 evidence. We go out there to try to locate those things.
15 Those things are indisputable evidence. That piece of
16 evidence most people can't deny that.

17 Q. Well none of the D-N-A or fingerprints came back for
18 this defendant did they?

19 A. That is correct.

20 Q. Does that surprise you?

21 A. No, the cab was a business much like a gas station,
22 a convenience store, this building where people come in
23 and out at all hours of the day all the time. They are
24 constantly in and out so it's not surprising that there
25 was -- Mr. King's D-N-A was not present.

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1 Q. In being thorough though you want to look for that
2 don't you?
3 A. Of course.
4 Q. That's not something you want to just leave alone.
5 A. No, sir.
6 Q. What day was Mr. King arrested for this?
7 A. December 4, 2010.
8 Q. The very next day after...
9 A. Yes sir, after Mr. Brown ---
10 Q. --- Dario Brown picked him out of the lineup?
11 A. Yes, sir.
12 [Whereupon, State's exhibit number 32 is marked by
13 the court reporter]
14 Q. I'm showing you what the State has labeled as
15 State's 32 for identification and ask you to take a look
16 at it.
17 [Whereupon, the witness is shown item]
18 A. Yes, sir.
19 Q. Do you recognize it?
20 A. Yes, sir.
21 Q. What is it?
22 A. This is a photograph printed off from the Al Cannon
23 Detention Center on December -- well from a booking date
24 of December 4, 2010.
25 Q. Does that -- who does it depict?

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1 A. Rakeem King.

2 Q. Does that fairly and accurately depict the way that
3 Rakeem King looked on December 4, 2010?

4 A. It does.

5 MR. DURANT: Your Honor, the State moves into
6 evidence State's 32 at this time.

7 THE COURT: Any objection.

8 MR. KING: No objection, Your Honor.

9 THE COURT: All right. State's number 32 admitted
10 without objection.

11 [Whereupon, State's exhibit number 32 is entered
12 into evidence by the court]

13 Q. [Mr. DuRant] That's what he looked like that day?

14 A. Yes, sir.

15 Q. Thank you. Please answer any questions the defense
16 may have.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. You said you were the case agent.

20 A. Yes, sir.

21 Q. This is your case.

22 A. Yes, sir.

23 Q. So you said you are familiar with all police
24 reports, crime scene and scientific results?

25 A. I believe so, yes.

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- 1 Q. Arrest warrants, you mentioned those.
- 2 A. Yes.
- 3 Q. So in this case your job is to try to collect as
4 much evidence as possible.
- 5 A. Yes.
- 6 Q. With this case there is no gun to present into
7 evidence, right?
- 8 A. There is not.
- 9 Q. There is no physical phone to present in evidence.
- 10 A. There is not.
- 11 Q. You said no fingerprints on the cab that matched Mr.
12 King?
- 13 A. No fingerprints.
- 14 Q. No D-N-A in the cab that matched Mr. King.
- 15 A. No, sir.
- 16 Q. No other witnesses out there on that street that
17 night who saw anything that happened; just Dario Brown.
- 18 A. Correct.
- 19 Q. Now from what you knew -- tell me if this is right
20 that this was just a random call, a random passenger who
21 just happened to be at Mr. Brown's aunt's residence
22 right?
- 23 A. Yes, sir.
- 24 Q. Did that seem suspicious to you at all that it
25 happened to be at -- coincidentally at Mr. Brown's aunt's

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1 abandoned house?

2 A. Coincidence.

3 Q. Dario Brown didn't tell you that he normally picks
4 up his cousin Cedric Smith at that abandoned house around
5 4 a.m. in the morning?

6 A. That question wasn't relevant and it was never
7 asked.

8 Q. That wouldn't have been a lead if you knew that he
9 normally picks up a guy named Cedric Smith at this
10 abandoned house.

11 And then he goes there the night in question here
12 expecting to pick up Cedric Smith at the abandoned house
13 but it's somebody else. You don't think that would be a
14 lead to try and investigate Cedric Smith?

15 A. I don't believe so. I believe the people -- if Mr.
16 Brown thought that it was Cedric Smith who had committed
17 the crime as adamant as Mr. Brown was of identifying the
18 suspect he would have told us that it was Cedric Smith.
19 So that would have not been of any value.

20 Q. The suspect was described as 5'9 to 5'10 is that
21 right?

22 A. In the incident report yes, sir.

23 Q. And Mr. King is 6 foot tall?

24 A. Yes, sir.

25 Q. The suspect was described as having light skin?

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1 A. Yes, sir.

2 Q. That's in Mr. Brown's written statement in addition
3 to Officer Butler's, the first responding officer, her
4 report too.

5 A. It is.

6 Q. And you said you're familiar with the warrants in
7 this case right?

8 A. I reviewed them after they were signed.

9 Q. And you're aware the language in there says the
10 person who attempted to rob him and who shot him?

11 A. I'd have to read it. I can't tell you right off
12 hand exactly word for word what it says.

13 MR. KING: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 [Whereupon, defendant's exhibit number 3 is marked
16 by the court reporter]

17 THE COURT: Is that the statement?

18 MR. KING: This is the arrest warrant, Your Honor.

19 THE COURT: Okay, the arrest warrant. Okay.

20 MR. KING: Defendant's exhibit number 3.

21 [Whereupon, the witness is shown item]

22 Q. [Mr. King] So in the language in that affidavit it
23 says the victim positively and without hesitation
24 identified the defendant as the person who attempted to
25 rob him and who shot him.

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1 A. Yes sir, that's exactly what it says in the
2 affidavit.

3 Q. And you trust that's the same language that is also
4 in the Armed Robbery affidavit?

5 A. If you say so.

6 Q. The same language that is in the Attempted Murder
7 affidavit and the same language that is in the Possession
8 of a Firearm during the Commission of a Violent Crime
9 affidavit?

10 A. Yes.

11 Q. Now Mr. Brown testified today that he gave the
12 suspect money inside the cab before he was shot.

13 A. Yes.

14 Q. Dario Brown told you that after he was chased down
15 the street and jumped the fence and hid behind the van
16 that the suspect ran back to the cab and that's when he
17 took the money, right?

18 A. I believe -- and I don't recall right off hand but I
19 believe Mr. Brown stated that he kind of handed the money
20 back and he doesn't know when or how the suspect got the
21 money because it came up that where the money was.

22 Q. You wrote North Charleston Police Department
23 Prosecutor's summary report?

24 A. Yes, sir.

25 MR. KING: May I approach, Your Honor?

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1 THE COURT: Yes, sir.
2 [Whereupon, defendant's exhibit number 4 is marked
3 by the court reporter]
4 Q. [Mr. King] I'm going to show you what has been
5 marked as defendant's exhibit 4.
6 [Whereupon, the witness is shown item]
7 A. Yes, sir.
8 Q. That's your report that you wrote?
9 A. It is.
10 Q. And you put in that report that the defendant then
11 returned to the cab where he took approximately 20
12 dollars in U.S. currency.
13 A. Yes, that's right.
14 Q. So in that report you are saying -- he told you the
15 money was taken after he had already been chased down the
16 street and hit behind the van and that the suspect then
17 as you put in your report returned to the cab where he
18 took approximately 20 dollars.
19 A. Yes, sir.
20 Q. That's what you put in the report.
21 A. That's what is in the prosecutor's statement.
22 Q. And that's what Mr. Brown told you.
23 A. Yes.
24 Q. Because that's what you would have put in the
25 report.

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1 A. Well, this is a short concise version of the entire
2 investigation. This is used just to put the simple facts
3 out. It doesn't have all the detailed description of the
4 investigation that was completed. It's short concise for
5 the Grand Jury.

6 Q. But when -- money being taken is an element of the
7 Armed Robbery, right?

8 A. Of course.

9 Q. That is one of the most important facts that you
10 would be investigating?

11 A. Yes.

12 Q. So that would be something that would be included
13 and that's why you put it in there.

14 A. Yes.

15 Q. And you didn't put anything in there about the
16 suspect taking the money while he was still in the cab
17 before he was shot, right?

18 A. I did not put that in here, no.

19 Q. You didn't put anything in there about Mr. Brown
20 being unsure of when the money was taken?

21 A. I did not, no.

22 Q. I have no further questions.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MR. DURANT:

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1 Q. This prosecutor's summary here like you said it
2 doesn't contain everything does it?

3 A. No, sir.

4 Q. And the way your investigation centered was really a
5 -- this was a who done it at that time isn't that right?

6 A. 100 percent.

7 Q. I mean it was pretty understandable from the given
8 situation somebody had been shot -- the cab driver had
9 been shot so the groundwork that you're working with is
10 not a what happened here, that's pretty clear isn't it?

11 MR. KING: Objection, leading.

12 MR. DURANT: I'm getting at what he is going for
13 here.

14 THE COURT: I'm going to overrule the objection.
15 Go ahead.

16 MR. DURANT: Thank you, Your Honor.

17 Q. [Mr. DuRant] Your investigation is a who did this
18 isn't it?

19 A. Correct.

20 Q. And through the course of your investigation did you
21 find out whether or not Dario had been robbed of money?

22 A. Yes.

23 Q. Did he tell you that?

24 A. Yes.

25 Q. And is it in his statement?

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1 A. Yes.
2 Q. Thank you.
3 THE COURT: Any recross?
4 MR. KING: No, Your Honor.
5 THE COURT: You may step down. Thank you very
6 much.
7 [Whereupon, the witness is excused and exits the
8 witness stand]
9 MR. DURANT: Your Honor, may we approach?
10 THE COURT: Yes, sir.
11 [Whereupon, an off the record bench conference is
12 held]
13 THE COURT: Madame Forelady and ladies and
14 gentlemen of the jury we are going to take the afternoon
15 break at this time. Please don't discuss the case
16 amongst yourselves. I understand there is one smoker.
17 If you need to smoke let the bailiff know and they will
18 take you to the appropriate place. If you need anything
19 else let the bailiff know. I'll see you back in 15 or 20
20 minutes.
21 [Whereupon, the jury exits the courtroom at 3:35
22 p.m.]
23 THE COURT: Anything from the State before we
24 break?
25 MR. DURANT: No, Your Honor.

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1 THE COURT: Anything from the defense?

2 MR. KING: I may have some objections related to
3 these calls. I don't know if you want to take it up now
4 or after the break.

5 THE COURT: It doesn't matter, whenever you want to
6 take it up. What do you want to do?

7 MR. KING: These are like maybe 15 minute -- I
8 think the State intends to introduce at least one ---

9 THE COURT: --- the witness is Heyward with
10 Charleston County Detention Center?

11 MR. KING: Yes, these are telephone calls from the
12 jail that are recorded.

13 THE COURT: Okay. Those calls I assume are the
14 defendant talking to someone?

15 MR. KING: That's what is alleged, Your Honor.
16 There are about -- the first one is 15 minutes. I know
17 that the State plans to introduce that. There is a lot
18 of stuff discussed in the phone call; I don't think all
19 of it is relevant. There is language used in there that
20 I think would be unfairly prejudicial to Mr. King.

21 THE COURT: Well, what are you asking me to do
22 suppress it or are you asking me to edit it or what are
23 you asking me to do?

24 MR. KING: Number one I ask you to suppress it.
25 Also it's difficult to understand sometimes what is being

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1 said. I think that -- and also there is another person
2 on there who is going to be making statements that I'm
3 not aware of who it is. I think that would be hearsay
4 and the confrontation clause indicated in this unknown
5 third person who is on the other end of the phone call
6 who makes some statements as well.

7 And I would say that based on that I would move to
8 exclude the whole -- all of the conversation. If you do
9 let it in I would ask that maybe you redact some ---

10 THE COURT: --- what's in it -- what's being said
11 on the -- on the phone call?

12 MR. KING: The State wants to introduce statements
13 where number one that he is calling the phone number ---

14 THE COURT: --- was he talking about the weather or
15 what is he talking about?

16 MR. KING: The State is going to present that he is
17 talking about -- I guess the -- is better but he is
18 calling the phone number one. From the conversations it
19 could be inferred that it is his phone when he is talking
20 to ---

21 THE COURT: --- so he called this particular phone
22 number, whatever the number was.

23 MR. KING: XXX-4849.

24 THE COURT: So he called that number from the jail?

25 MR. KING: That's correct, Your Honor.

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1 THE COURT: Well, what was he talking about? Was
2 it impertinent as to what he was talking about?

3 MR. DURANT: It's mostly to connect him with this
4 phone. It's his first call from jail and it runs the
5 gamut really. It runs from putting this phone in his
6 possession where he is talking about it being his phone.

7 THE COURT: Okay.

8 MR. DURANT: And they need to put more money on it.
9 Given a pass code actually to his phone and heard him
10 talking about a story about how he can possibly explain
11 this away. He doesn't know the investigation he says on
12 the phone. He doesn't know why Dario picked him out.

13 And his friend even says to him you could have left
14 a hair in there. You can just say you took a cab from
15 your house to my house. They are trying to get his story
16 straight. But it's most important to connect him with
17 that number. And that's something that is important to
18 this case.

19 THE COURT: How long does it take?

20 MR. DURANT: Fifteen minutes per call and we've got
21 two calls that we are interested in playing.

22 THE COURT: The third party?

23 MR. DURANT: The third party. Well, Your Honor
24 that is -- it's not a confrontation clause issue. The
25 guy is not giving testimony against this guy. He's the

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1 only guy who knows who the third party is first of all.
2 And I don't know if he's even told his attorney. But we
3 don't know who he is, only he knows who it is. Its res
4 gestae. It comes in just for the same reason it comes in
5 under a 911 call where the caller is asking -- or the
6 dispatcher is asking the caller what is going on. You
7 can't get a complete total understanding of what the
8 conversation is about without that caller. And there is
9 no way to redact that.

10 THE COURT: All right. Mr. King, I cut you off,
11 but go ahead. I'll listen to you. Number one, I'm not
12 going to suppress it. Now if you want to talk about
13 redacting some of it I guess we can do that.

14 MR. KING: Yes, Your Honor. There are -- not all
15 of the conversations ---

16 THE COURT: --- let me ask one more question,
17 Solicitor Durant. How do you know it was this number?

18 MR. DURANT: Well, that's why we have the jail
19 record custodian. We requested two subpoenas from the
20 jail. We wanted to know all of his calls first of all.
21 This first call we are going to play was his first call
22 he made a connection with to XXX-4849 ---

23 THE COURT: --- so the records show who the call
24 went to?

25 MR. DURANT: Absolutely. Well, the record will

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1 show who called from the jail because he's got a specific
2 pin number that is issued to him ---

3 THE COURT: --- okay ---

4 MR. DURANT: --- when he checks into the jail. So
5 they record that. It's under his name. It does to ~~XXX~~
6 4849 and we've got the call. The next thing we did was
7 because it's sometimes a common practice in the jail is
8 these inmates will use each other's pins to try to have a
9 little bit of cover on what they are going to say over
10 the phone.

11 So we requested all the calls made from the jail to
12 the number ~~XXX~~-4849 and we listened to some of those.
13 And again, it's him on there as well. And he's saying
14 specific identifying information such as they even
15 spelled my name with an H like on the indictment and his
16 name is really spelled with a K.

17 THE COURT: All right. Mr. King, I'm not going to
18 suppress it. Now if there is something on there that we
19 need to redact I'll be glad to listen to you. I haven't
20 heard the tape. What do you think you want to redact?

21 MR. KING: Well...

22 THE COURT: And then the third issue, Mr. Durant
23 are we going to be able to hear it in this courtroom?

24 MR. DURANT: I've got technical help in the
25 courtroom ready to get it going right now. I think so.

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1 THE COURT: My experience is it's extremely
2 difficult to hear tapes in this courtroom.

3 THE CLERK: It's coming straight through our
4 speakers in just a minute, sir.

5 THE COURT: Pardon?

6 THE CLERK: It's coming directly through our system
7 now.

8 THE COURT: It is?

9 THE CLERK: Yes, sir.

10 THE COURT: Okay. You think they can hear it
11 okay?

12 THE CLERK: Yes, sir. I mean I don't know what the
13 quality of their sound is but...

14 THE COURT: I know. That's what I was worried
15 about. Is the quality any good?

16 MR. DURANT: The quality is pretty good. The
17 actual people talking might leave a little something to
18 desire but the quality is pretty good.

19 THE COURT: So you think you can understand it
20 better than that copy from D.C.

21 MR. DURANT: I would think so, yes.

22 THE COURT: Okay. All right Mr. King, what do you
23 want to redact? Do you have a transcript of it -- has
24 it been transcribed?

25 MR. KING: I tried to make my own transcription the

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1 best that I could. I think even Mr. Durant will concede
2 there are some parts of it that it's hard to tell what is
3 being said.

4 THE COURT: Has the State transcribed it?

5 MR. DURANT: No, we have not transcribed it, but
6 you can get a general understanding of what was said ---

7 THE COURT: --- okay.

8 MR. KING: I guess really I want you to suppress
9 the whole thing, Your Honor. I think -- I agree with Mr.
10 Durant it is difficult -- the conversation is all over
11 the place. There is some talks about him being in the
12 old jail and the guy on the other end said people with
13 them big charges go to the old jail.

14 He's talking about where he is at in the jail, about
15 his upcoming preliminary hearing, about his bond; just
16 things like that that are all tied up into other
17 statements that Mr. Durant wants to admit. That's why I
18 guess I am moving to suppress the whole conversation.

19 THE COURT: All right. Mr. -- Solicitor Durant,
20 is there any way if he will stipulate that the calls were
21 made to this number without having to listen to 30
22 minutes of the tape?

23 MR. DURANT: Your Honor, I really think it is so
24 probative of his guilt and tying him to that phone and
25 him talking about the circumstances of this crime and

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1 talking about his cousin, the one who talked to Dario,
2 get Dario to say that Dario picked out the wrong person.
3 That's just big impact testimony stuff; it's huge.

4 THE COURT: All right. What do you want to
5 redact? I've denied your motion to suppress the whole
6 tape. If there is something that you really think needs
7 to be redacted I'll listen to you. The problem I have is
8 it hadn't been transcribed and I'm not going to sit here
9 and listen to 30 minutes of it.

10 MR. KING: Yes, Your Honor.

11 THE COURT: I'm going to have to hear it one time
12 in the courtroom with the jury. I don't want to listen
13 to it twice.

14 MR. KING: Yes, Your Honor. I guess if you're
15 going to let it in then I guess you may as well hear the
16 whole thing.

17 THE COURT: So you are withdrawing your motion to
18 redact it?

19 MR. KING: Yes, Your Honor. I would just preserve
20 on the record about my motion ---

21 THE COURT: --- that's fine ---

22 MR. KING: --- to suppress. And also under Rule
23 403 that the probative value is outweighed by the unfair
24 prejudice from difficulty to understand what is being
25 said and the language that is being used.

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1 THE COURT: Anything else you want to put on the
2 record?

3 MR. KING: No, Your Honor.

4 THE COURT: All right. Thank you so very much.
5 We'll take our afternoon break.

6 MR. DURANT: Thank you, Your Honor.

7 [Whereupon, a recess is held from 3:45 p.m. to 4:01
8 p.m.]

9 THE COURT: May I see the attorneys up here for a
10 moment.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: Is the State ready to proceed?

14 MR. DURANT: Yes sir, Your Honor.

15 MR. KING: The defense is ready, Your Honor ---

16 MR. DURANT: --- yes sir, Your Honor.

17 THE COURT: Is the defense ready?

18 MR. KING: Yes, Your Honor.

19 THE COURT: All right. Bring us the jury, please.

20 [Whereupon, the jury enters the courtroom at 4:05
21 p.m.]

22 THE BAILIFF: The jury is present, Your Honor.

23 THE COURT: Okay. Call your next witness please?

24 MR. DURANT: Thank you, Your Honor. May it please
25 the court? The State calls Sergeant Kevia Heyward.

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1 [Whereupon, Ms. Heyward comes forward]

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court as follows: do you swear or affirm your
4 testimony will be the truth, the whole truth, and nothing
5 but the truth so help you God]

6 THE WITNESS: I do.

7 CLERK OF COURT: State your full name and spell
8 your last for the record, please.

9 THE WITNESS: My name is Kevia Heyward and its
10 spelled H-E-Y-W-A-R-D.

11 - - - - -

12 KEVIA HEYWARD,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Good afternoon, Sergeant.

18 A. How you doing?

19 Q. Could you please tell the jury where you are
20 employed?

21 A. Sheriff Al Cannon Detention Center.

22 Q. How long have you been with the Detention Center?

23 A. Ten years.

24 Q. What is your current position?

25 A. Security and administrative supervisor in the lobby.

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- 1 Q. Security and administrative?
- 2 A. Supervisor.
- 3 Q. In the lobby?
- 4 A. Uh huh.
- 5 Q. And what are your current duties as it relates to
- 6 that?
- 7 A. We take bonds and fines. We do phone records. We
- 8 process lineups, various; I mean we do a lot of things.
- 9 Q. You got a lot going on there?
- 10 A. Yes.
- 11 Q. How long has that been your position?
- 12 A. Two years.
- 13 Q. And in that capacity are you also in charge of
- 14 inmate telephone records?
- 15 A. I am.
- 16 Q. As part of the record system at the Detention Center
- 17 does the Detention Center have a recording system in
- 18 place which records all of the calls made by inmates out
- 19 of the Detention Center?
- 20 A. We do.
- 21 Q. Could you explain to the jury how that recording
- 22 system works?
- 23 A. When inmates come into the facility they are booked
- 24 in. After they are booked in the inmates will get a PIN
- 25 number once they are fingerprinted. The PIN number for

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- 1 that inmate is for that inmate and no other inmate is
2 supposed to use it. Once they go to the telephones to
3 use the phones they have to enter that PIN number in
4 order to be able to process their phone call.
- 5 Q. So each inmate receives an individual PIN number?
- 6 A. Correct.
- 7 Q. Are inmates advised that their calls will be
8 recorded?
- 9 A. They are.
- 10 Q. Does the Detention Center maintain those recordings
11 in the ordinary course of business?
- 12 A. They do.
- 13 Q. Are the recordings made at or near the time the
14 conversations actually take place?
- 15 A. They are.
- 16 Q. Among your other duties are you the custodian of
17 those records?
- 18 A. I am.
- 19 Q. In that capacity did you receive a subpoena from my
20 office requesting a copy of the telephone conversations
21 of the defendant Rakeem King for the time period of
22 December 4th, 2010 through January 4th, 2011?
- 23 A. I did.
- 24 Q. Did you comply with that subpoena?
- 25 A. I did.

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1 Q. On what type of storage media did you record these
2 calls?

3 A. Compact disk.

4 Q. Once transferred to a compact disk can those
5 recordings be altered or tampered with?

6 A. They cannot.

7 [Whereupon, State's exhibit numbers 33 and 34 are
8 marked by the court reporter]

9 Q. [Mr. Durant] I'm showing you what the State has
10 labeled State's 33 and 34 for identification and I'd ask
11 that you take a look at that.

12 [Whereupon, the witness is shown items]

13 A. Okay.

14 Q. Do you recognize it?

15 A. I do.

16 Q. What is it?

17 A. It's the disk that was made by the facility and the
18 phone call log to go with the disk.

19 Q. Are the conversations recorded on that C.D. a true
20 and exact copy of the original recordings maintained at
21 the Detention Center?

22 A. They are.

23 Q. Did you alter or edit the recordings in any manner
24 before recording them onto a C.D.?

25 A. I did not.

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1 MR. DURANT: Your Honor, at this time the State
2 moves for the admission of 33 and 34.

3 THE COURT: All right. Subject to your in camera
4 objection Mr. King I'm going to admit State's exhibits 33
5 and 34.

6 MR. KING: Yes, Your Honor.

7 THE COURT: All right. Thank you very much.

8 [Whereupon, State's exhibit numbers 33 and 34 are
9 entered into evidence by the court]

10 MR. DURANT: Thank you, Your Honor. At this time I
11 would ask permission to publish.

12 THE COURT: Yes, sir. Ladies and gentlemen of the
13 jury this is going to be a recording. And I'm hoping
14 it's going to come through the speakers over your head
15 there where you can hear it.

16 If you can't hear it please raise your hand and we
17 will try to get it adjusted where you can. I don't know
18 about what quality of the recording will be but we'll
19 find out here in a minute.

20 Q. [Mr. Durant] Let me ask you just a couple of
21 questions first of all on State's 34. Explain to the
22 jury what we are looking at here [indicates] in 34.

23 A. You're looking at a phone log. What it does is
24 after a phone -- when we pull a recording each call that
25 is made on it also will show the inmate's name, the

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1 inmate's I.D. which is the inmate number he is booked in
2 with, the time of the call, the call number, and it will
3 tell you whether there was an answer to that call or not
4 or the duration of how long the call was.
5 Q. All right. And who is the name on that?
6 A. It says King, Rakeem Deon.
7 Q. And what is the inmate I.D.?
8 A. Inmate I.D. is 1-3-9-2-0-3-8.
9 Q. All right. Now for the time period between
10 December the 4th 2010 and January the 4th 2011 can you tell
11 this jury approximately how many times Rakeem King called
12 the number ~~XXX-XX~~-4849?
13 A. Sixty three times.
14 Q. Sixty three times in one month. Thank you.
15 [Whereupon, the C.D. plays from 4:12 p.m. until 4:28
16 p.m.]
17 [C.D. not transcribed]
18 THE COURT: Can you stop it for a second.
19 [Whereupon, the C.D. recording is paused]
20 THE COURT: Yes sir? You can't hear it? Or you
21 want to turn it down?
22 UNIDENTIFIED JUROR: Just a tad.
23 THE COURT: All right. Turn it down a little bit
24 please?
25 [Whereupon, the C.D. recording resumes]

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1 THE COURT: Is that better? Is that okay?
2 UNIDENTIFIED JUROR: Yes.
3 THE COURT: Okay. Go ahead.
4 [Whereupon, the C.D. recording resumes]
5 [Whereupon, the C.D. recording concludes]
6 Q. [Mr. Durant] Okay. That was the first call that
7 was connected by the defendant to an outgoing person, is
8 that correct?
9 A. That's correct.
10 Q. And that is according to State's 34 -- what is the
11 date and time for that call?
12 A. December the 5th, 2010 at 8:28 a.m.
13 Q. And the call was made to what number?
14 A. 843-642-4849.
15 Q. And the call was made from who?
16 A. Rakeem King.
17 Q. And that was the first of you said 63 attempts to
18 dial that number?
19 A. Correct.
20 Q. During that month?
21 A. Correct.
22 Q. Please answer any questions the defense may have.
23 THE COURT: Cross-examination?
24 MR. KING: I have no questions, Your Honor.
25 THE COURT: Okay. You may step down. Thank you

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1 PROCEEDINGS

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: We had an informal charge conference
5 and attorneys are aware of what the court is going to
6 charge in this particular case. And I believe there is
7 an issue concerning State's exhibit number what?

8 MR. DURANT: Number 29.

9 THE COURT: 29? I understand the State is going to
10 withdraw that and not offer it is that correct?

11 MR. DURANT: That's correct.

12 THE COURT: All right. 29 we need to withdraw and
13 not send back to the jury room. Is there anything else
14 from the State before we bring the jury for closing
15 arguments and the charge?

16 MR. DURANT: Nothing from the State, Your Honor.

17 THE COURT: Anything else from the defendant before
18 we bring the jury and closing ---

19 MR. KING: --- Yes, Your Honor. May I move the
20 podium? It's awkward to do that when the jury is out
21 here to turn it and face the jury.

22 THE COURT: You can move it -- is it anchored or
23 can they move it?

24 CLERK OF COURT: No, they can move it.

25 THE COURT: If it's not anchored you're not going

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1 the court?

2 THE COURT: Before you start -- Madame Forelady you
3 wrote a question yesterday about the transcript of the
4 recorded conversation you heard in the courtroom. We do
5 not have a transcript, however we have set it up where if
6 you want to listen to it we will provide you with a
7 computer and you can listen to it off the computer which
8 I understand is easier to listen to and easier to
9 understand. So when you want to listen to it let us know
10 and we will bring the computer into the jury room. All
11 right, please proceed.

12 MR. DURANT: Thank you, Your Honor.

13 CLOSING ARGUMENTS

14 BY MR. DURANT:

15 At the very beginning of this investigation you had
16 a taxi cab driver who went to the hospital on the night
17 of November 26th, 2010 sitting in the back of the
18 courtroom right now, Dario Brown, is the whole reason we
19 are here.

20 And at that time at the hospital and at the scene
21 that night there was one thing that was unmistakable, it
22 was unequivocal, one thing was absolutely known by Dario
23 Brown; and that was that he would never forget that damn
24 face. It's in his statement, you will have it; at the
25 very bottom. When not much was known about this person

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1 and the leads hadn't gotten there when it was
2 questionable whether it would ever be linked up at all
3 there was one thing that was known by Dario; I will never
4 forget that damn face, at the hospital that night.
5 Another thing that was unequivocal the question and
6 answer part of this statement if I showed you a picture
7 of him would you be able to identify him. Yes, sir. He
8 didn't say I might be able to identify the guy, it's
9 possible, maybe. He was certain and he told the police
10 that. And he told you that.

11 And the police worked with that information. They
12 knew they had a victim, a man who was just simply doing
13 his job, taxi cab driver; dangerous job but a man who is
14 working hard for himself, working hard for his family, a
15 citizen of Charleston County who responded like he was
16 supposed to in his line of work and he was shot. He was
17 shot violently. There is no mistake about this; this was
18 bad. I'm not playing it up for you. I'm trying to tell
19 you just exactly as I think you already know it.

20 When the police respond they see the taxi cab is
21 still running with the doors wide open. It had only
22 stopped because it had hit a pole. And in the backseat
23 of this cab there is a small little shell casing that is
24 in this bag right here [indicates]. Horribly misplaced;
25 no bullet inside of it anymore. Something terribly wrong

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1 had happened; and it was Attempted Murder. To call it
2 anything less is to demean what happened out there that
3 night, to tell Dario that it wasn't that scary, it wasn't
4 that bad. He didn't almost die. He most certainly did.
5 The fact of the matter is this is essentially a Murder
6 case. It's exactly like a Murder case except for the
7 fact that the victim survived.

8 And unlike a Murder case the victim is here to tell
9 us what they know. And he happens to know a whole heck
10 of a lot because if he hadn't survived we wouldn't be
11 here. There would be a dead taxi cab driver and somebody
12 would have gotten away with this--

13 This case rests on Dario's shoulders. You have to
14 decide whether you can believe him. And there is plenty
15 of reason to do that. So let's talk about what happened
16 in this case. We know what happened and the only person
17 who can provide us with the details of what happened
18 actually that night is this man sitting over here
19 [indicates] and this man right here [indicates].

20 And he told you everything. And it begins when the
21 call came in. You have the printout, the computer
22 printout from Yellow Cab Company that shows that a call
23 came in at 4:06 in the morning and the dispatch went to
24 Dario, one of about 40 taxi cab drivers working that
25 night who randomly was selected to go to 1808 [REDACTED]

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1 Street and pick up a murderer. This call came in at 4:06
2 and this is where the investigation began. Now the
3 police responded to the scene that night and they did
4 everything that you would expect that that would do.
5 They swabbed for D-N-A, they looked for shell casings,
6 they looked for fingerprints, they did all of that.

7 The D-N-A and the fingerprints didn't come back to
8 him and that's not totally unexpected. It was a short
9 amount of time being in that cab, a cab that is a
10 business, a cab according to the manifest that Dario had
11 with him that night had already eleven people in it just
12 that night.

13 So the call comes in at 4:06 and it comes from a
14 specific number. It comes from ~~XXX-XXX~~ 4849. Devin
15 Parker answered that call that night and took down the
16 information that night. He sent that to the dispatcher
17 who sent it on to Dario. And that call was good police
18 work to look into this. It wasn't much of a lead
19 anywhere other than Dario saying that he could pick the
20 guy out if he saw him again.

21 So what could this number possibly tell us?
22 ~~XXX-XXX~~ 4849; where is that registered to? The police
23 look into it. They do a good job looking into it. It
24 belongs to a Cricket Wireless subscriber. They find out
25 that the Cricket Wireless subscriber is a man named Kevin

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1 King with a date of birth, X/X/91 who lives at
2 3440 Elliott Street, 29405. This is good information;
3 what are we going to do with it? We obviously going to
4 see if we can go to 3440 Elliott Street and ask this
5 Kevin King person if they know anything about this call
6 that came in that night.

7 The problem is right up from the beginning there is
8 no 3440 Elliott Street in Charleston; it does not exist.
9 There is an Elliott Street; it's a block over from where
10 we are right now. It's one street parallel to Broad,
11 only one block off. The zip code there is 29401 and it
12 doesn't go all the way to 3440. That address does not
13 exist.

14 They do a diligent job looking for a man named Kevin
15 King; Kevin King with a date of birth of X/X/91.
16 A good place to search for that might be the D-M-V. They
17 come up short again. To their credit they stick with it.
18 Is there something from this? They find a guy named
19 Rakeem King who has a date of birth of X/X/91.

20 There are 365 days in the year; it's pretty
21 coincidental. His last name is King. Things are
22 starting to build at this point. Who knows what this is
23 going to lead to. We have a victim who says he is
24 positive he could identify the person if he saw him
25 again; no doubt in his mind. And we have an address at

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1 that time. Not 3440 Elliott Street; that doesn't exist.
2 We've got an actual address that is verifiable through
3 the D-M-V. Not any other number; 3440 Osceola. You're
4 hitting on three big clues. It's not enough at that
5 point. Do you go immediately and take out a warrant for
6 Rakeem King? Of course not. But this is good police
7 work. This is good; we'll look into this. There seems
8 to be somebody who might fit this profile.

9 Did Dario pick him out? Is that his phone? The
10 police had previously gone to Dario with a photographic
11 lineup identification. They wanted to see if he could
12 rule out somebody. Dario went there three days later
13 after this armed robbery to the police department. He
14 viewed six pictures. The guy is not there. Dario didn't
15 know if they would ever find this guy. But he wasn't
16 going to just pick somebody.

17 And you have to judge that creditability. You have
18 to judge all that evidence. You have to judge Dario who
19 has been in this court from day 1 and who has lived with
20 this nightmare scenario since that day. It's important
21 for him to tell you that he sure. Is he? Is he 100
22 percent or does he flinch just the smallest amount? If
23 so he needed to tell you. He has not flinched. The
24 caller wanted to go to Alabama Drive. That's another
25 thing. His previous address history is Alabama Drive.

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1 He used to live there. That's where the caller said he
2 wanted to go to. You are hitting on some very
3 significant information but the heart of this case is
4 Dario's identification and nothing more. And the fact of
5 the matter is we could come to this jury, we could be
6 before you on an identification alone that Dario says
7 this is the man that did this to me; I am 100 percent
8 sure. There is no doubt in my mind.

9 I've come here with a bullet wound through my arm
10 telling you exactly what happened in my cab, that this
11 man that I picked up held a gun to my head, made me think
12 I was going to lose my life right there in the cab the
13 day after Thanksgiving that I would see no more, walk no
14 more, talk no more, not be here anymore, I can come to
15 court and tell them that and tell this jury that is the
16 man that did this to me and nothing more.

17 But the fact of the matter is we have more than
18 that. We do have these phone records and they do speak
19 volumes because they corroborate all of this. There is no
20 mistaking the fact that he was put into the lineup
21 because he just happened to be matching on some very
22 significant information. And that can't be denied.
23 And it's been hard for him to live with this. And he
24 wants to see justice and he wants you to believe him. He
25 doesn't know if you will or not; he sure wants you to.

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1 We played a jail call for you. I'm not sure what you
2 were expecting to hear, thinking you were going to hear a
3 flat out confession or not. That's not why we played it.
4 We played it because we wanted to show ownership of this
5 phone. We wanted to further tie him to this phone and we
6 thought this since the beginning that not only did he
7 call this phone because the first calls he made we played
8 for you.

9 But he called this phone 63 times from the
10 Charleston County jail. Did he have connections with
11 this phone? Was this his phone? Did he call in that
12 night? Was all this just coincidental? Was all this
13 just put together as a big conspiracy with the police
14 working with Dario to just set this man [indicates] up?
15 That's absolutely ridiculous when you think about it.

16 We played this call because on it he talks -- the
17 first thing out of his mouth is -- at one minute the very
18 first thing you gotta keep this phone on. He tells that
19 to the person he called. And at two minutes and ten
20 seconds the caller tells him I can't even use your F-ing
21 phone because it says enter a code. And so he tells the
22 person he called 4849. He even knows the code.

23 I don't get to address you again. And I don't know
24 exactly what the defense is going to say here but I think
25 I have a pretty good idea. And it's essentially they

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1 have to say, they have to try to poke a hole in any and
2 everything that they can. And it will come out
3 eventually I think more like my guy didn't do it. But if
4 you think he did it he didn't do the crimes that the
5 State has him charged with; he did some lesser crimes.

6 But somewhere out there is a man who deserves to be
7 charged by the State for these lesser crimes because it
8 really wasn't as bad as the State is telling you it was.
9 And they will try to say the D-N-A didn't come back to
10 him and you can stick to that. The fingerprints didn't
11 come back to him and you need to hang your hat on that.

12 Well, that's just not the case. That's not
13 something to hang your hat on. That's done in every
14 single case or at least you would want it to me. It
15 should be done as part of a thorough investigation. What
16 was collected out there was that shell casing. They
17 collected swabs from the cab. They collected the
18 fingerprints and they went searching for more bullets.
19 And there were other witnesses at the scene that said
20 they heard three, four or more shots.

21 MR. KING: Your Honor, we're going to object to --

22 THE COURT: Pardon?

23 MR. KING: I'm just renewing an objection I made
24 earlier to that statement for the hearsay.

25 THE COURT: Overruled. Go ahead.

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1 MR. DURANT: So the defense may try say well
2 there's only one bullet. You saw how tiny that thing
3 was. You saw what that landscape looked like out there
4 that night. You heard Dario tell you what happened.
5 It's in the statement from the very beginning that he was
6 shot in the cab, ran towards the end of [REDACTED] Street
7 and the shooter is continuously coming after him.

8 And he climbs over that fence. His arm gives away,
9 he falls on his back. He has a broken vertebra. He saw
10 the bullet wound through the front of his forearm out the
11 back. Just like he told you it happened inside the cab.
12 And he said on this stand when I'm behind him -- he's got
13 his arm like this [indicates]. Remember I had my hand up
14 against him and he said he looked back and if you want to
15 hear it again ask to replay the testimony. He said it
16 looked like the guy was going to shoot me.

17 Not only did he have a gun, not only was it a very
18 real and terrifying situation but when he is looking at
19 him in the face to actually feel the realness of it
20 looked like the guy was going to shoot me. He wasn't
21 just trying to rob me. He was going to shoot me. There
22 is no mistaking that that bullet was in the back of that
23 cab. That that gun went off in that cab. Dario was shot
24 here [indicates] through here [indicates] while holding
25 his arm back is what he has told you. That was a head

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1 shot. That was a kill shot. So Dario told you the rest
2 of the story. They want to try to make Dario look like a
3 liar, like he's got something to hide for some reason.
4 Did he give you any reason to think that he's not telling
5 you absolutely what happened that night? They want to
6 try to pin him down on oh; you're telling us a little bit
7 more now that we are in court than you did in your
8 statement that you gave while you waited for medical
9 treatment.

10 Think about that. There is no effort without error
11 or shortcoming. If he had more time, if they wanted to
12 ask him something maybe the next day; let's go over it
13 again and get another statement. You may get more
14 information there. And then you could ask him the third
15 day he might be able to tell you that the grass was
16 brownish and not so green and you'll get more detail.

17 And that's exactly how testimony evolves. Not that
18 he's got something to hide or he's telling anything less
19 than the truth but because he is trying to tell you the
20 whole story. And the more times that you sit down and
21 try to recount how this story goes, what the facts of
22 this are, the better you are able to convey it. It's
23 just like me telling my kids the three bears at night.
24 One night the three bears are eating porridge. The next
25 night I added a whole lot of other stuff to it. They've

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1 now got banana pudding. They've got eggs and toast and
2 grits; and it just keeps growing. I want my son to go to
3 sleep while I'm telling it and so I drag it out. And I
4 think I've got to where I can tell a very effective story
5 to him and then I can go back to bed myself.

6 But the fact of the matter is Dario is not lying to
7 you when he tells you he went down this street
8 [indicates]. You've got a broken fence in these
9 pictures that he showed you was where he went over this
10 fence, where it collapsed underneath him, where he said
11 the assault continued. He broke that fence getting over
12 that fence trying to get away.

13 Look at that ground out there [indicates]. Look at
14 those leaves out there [indicates]. He says he was shot
15 at right there [indicates] three or four more times.
16 Because they didn't find any more of those teeny tiny
17 little shell casings does that mean that didn't happen?
18 Absolutely not. They could be there today.

19 You have to make creditability determination. I
20 think you know all of that. I think you already know how
21 you feel about this case. My burden is beyond a
22 reasonable doubt. Probably known that is the burden of
23 the prosecution since we were teeny tiny ourselves. It's
24 a pretty big burden. We've got to prove this happened.
25 But it doesn't mean with absolute certainty I don't have

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1 to prove this with absolute certainty. There is no video
2 camera out there that night that is going to capture all
3 this. You weren't there that night. I suppose there are
4 a few things you can know in this world with absolute
5 certainty. And if you knew with absolute certainty what
6 happened out there that night you wouldn't be sitting
7 where you are. You would have taken this witness stand
8 and told the jury what you knew. You have more than
9 enough to convict him of every single one of these
10 charges.

11 Let me go over these charges with you. The State
12 has charged Rakeem King with three counts, Attempted
13 Murder, Assault and Battery of a High and Aggravated
14 Nature; excuse me, Armed Robbery, and Possession of a
15 Pistol during a Violent Crime. Attempted Murder: a
16 person who with intent to kill attempts to kill another
17 person with Malice Aforethought either expressed or
18 implied commits the offense of Attempted Murder.

19 The Judge will tell you you do not have to intend to
20 kill in order to be guilty of this offense. You must
21 have the requisite Malice. The Judge will tell you that;
22 don't just take it from me. It says with the intent to
23 kill. But I will tell you this absolutely did he intend
24 to kill this man [indicates] ---

25 MR. KING: --- Your Honor, I'd just place another

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1 objection based on our charge conference.

2 THE COURT: Pardon?

3 MR. KING: I'll just place another objection on the
4 record based on our charge conference.

5 THE COURT: Okay. Overruled. Go ahead.

6 MR. DURANT: Thank you, Your Honor. Did he intend
7 to kill him? Can you ever really know what somebody's
8 intending to do? Can I know what your intentions are
9 right now? Do I know how you are going to vote in this
10 case? Absolutely not. You have to look at their
11 actions. These actions speak pretty clearly.

12 When a man takes out a gun or when anybody takes out
13 a gun and points it to someone's head, a stranger's head,
14 somebody who is just working trying to earn his own money
15 and tries to rob them, but even if you are responsible
16 for the inevitable and foreseeable consequences of your
17 actions, the inevitable, foreseeable, and likely
18 consequence of your actions is somebody is going to be
19 killed.

20 And to take a gun out and put it to his head is
21 malicious, it is evil, it is mean, and it is violent. It
22 is against everything we stand for as a civilized society
23 because we stand for the rule of law. And this is where
24 we uphold it. This is why we come and tell a jury and
25 this is why we count on you. You're going to be charged

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1 on lesser included offenses. The law says you have to
2 be. Attempted Murder is at the very top. Attempted
3 Murder is what this is. To call it anything less is to
4 demean the very meaning of what happened to Dario. This
5 man has been living with the fact that his life had been
6 attempted to have been taken away, that he almost lost
7 it. And if you say it's anything less you are telling
8 him that he didn't almost lose his life that night. That
9 he really shouldn't have been that scared; that this
10 really wasn't that bad.

11 But I don't think you are going to do that because I
12 think you've studied this case, you've all paid fairly
13 good attention to all the witnesses, and I think you
14 listened to Dario very intently. And you're going to
15 have a lot to talk about when you go back there. And I
16 don't know it usually doesn't hit you just right off that
17 we've got our answer and we're going to come back and
18 deliver our verdict.

19 That's why they call it a deliberation so everybody
20 can share what they are thinking, what they are talking
21 about. And I think after you do that you will reach the
22 right decision here. And you will be firmly convinced
23 the State has charged him to the letter of the law for
24 exactly what he did. He tried to kill a man. He tried
25 to kill a stranger. He tried to kill a father. He tried

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1 to kill a man who was out doing his job. And that is
2 unfair to that man [indicates] and it is wrong under our
3 law. And we've proven that under our law. So you're
4 going to have some lesser included to talk about. They
5 do not apply. I urge you not to come back with a verdict
6 of guilty for them. I urge you to come back with a
7 verdict of guilty for exactly what this is; Attempted
8 Murder.

9 The lesser included he will be charged with are
10 Assault and Battery of a High and Aggravated Nature.
11 This crime fits that as well, but it's more than that. A
12 person who commits the offense of Assault and Battery of
13 a High and Aggravated Nature if the person unlawfully
14 injures another person and great bodily injury to another
15 person results or the act is accomplished by means likely
16 to produce great bodily injury. Certainly that applies
17 here as well. That fits, too. But he tried to kill
18 Dario.

19 The next lesser included that you are going to be
20 charged with you have to be charged with it statutorily,
21 Assault and Battery in the 1st Degree. A person who
22 commits the offense of Assault and Battery in the 1st
23 Degree if the person unlawfully injures another person
24 and the act occurred during the commission of a robbery,
25 burglary, kidnapping, or theft or offers or attempts to

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1 injure another person with the present ability to do so
2 and the act is accomplished by means likely to produce
3 death or great bodily injury or occurred during the
4 commission of a robbery, burglary, kidnapping, or theft.
5 Yes, it fits. This was more than that. They all fit.
6 What happened here is Murder; but the victim survived.

7 Now you're going to have two more charges to
8 resolve, the Armed Robbery charge, the Possession of a
9 Pistol during a Violent Crime charge. Armed Robbery is
10 fairly simple. It's an easy crime to commit; it doesn't
11 take much thought or planning. You just take out a gun
12 and point it at somebody and rob them for whatever you
13 want. It's a pretty senseless act; easy to commit.

14 He did it in this case when he put that gun to
15 Dario's head, when Dario was shot. There is a gun
16 involved and Dario is the person and the only person who
17 can tell you that money was taken from him. And he said
18 it in his statement. Was he able to take anything from
19 him? Maybe 20 dollars at the most.

20 Maybe the phrasing of it wasn't just perfectly oh;
21 he took 15 dollars and 25 cents. He said he took the
22 money. He didn't know exactly how much money. He told
23 you this money was the dummy money that he keeps between
24 his legs because being a taxi cab driver is inherently
25 dangerous. This is protection money and he threw it at

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1 the guy. But he was unequivocal was anything taken from
2 you? Maybe 20 dollars. He told you he gave the guy
3 money when he demanded it. He told you this guy stalked
4 him down the street shooting at him over the fence and
5 that he hid behind a burgundy van; still breathing and
6 fearing for his life. A random gunman was coming after
7 him. This is no small or insignificant event. This was
8 very real. This matters a great deal to Dario back there
9 [indicates]. He lived through this; he's been living
10 through this. This isn't something that I think you take
11 lightly.

12 When it comes down to it there is just too much --
13 there is just too much to consider. There is just too
14 much that points to him [indicates]. That call came in
15 from ~~XX-XX~~-4849. He wanted to go to Alabama Drive.
16 They looked into that call; Cricket subscriber info Kevin
17 King, date of birth X/X/91 living at 3440 Elliott
18 Street. 3440 Elliott doesn't exist. Who does have any
19 of this information? Rakeem King does. Date of birth
20 X/X/91. He doesn't live at 3440 Elliott; lives
21 at 3440 Osceola. Previous address Alabama Drive. Just
22 like where the caller wanted to go. The description that
23 Dario gave that night 5'9 to 5'10, he's actually 6 feet
24 tall; that's a pretty good ballpark figure for sitting in
25 the back of a cab and chasing down a road. Now there is

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1 a difference between describing somebody and recognizing
2 somebody. I'm been working with Emmanuel for quite some
3 time right now I'd say maybe 6'2, 6'1; I don't know. But
4 if he walked through that door I would know exactly who
5 he was.

6 We got a first photo identification from Dario.
7 There is no I.D. It's not even seeming like this is
8 going to happen. And he's calling it like he sees it.
9 He told you he's not about to testify against somebody
10 that didn't do it. He's not interested in putting
11 somebody through all this if they didn't do it. He told
12 you that. And he needed to tell you in light of that if
13 he had any, any whatsoever, any thought that this wasn't
14 the guy at the very least -- and there was none.

15 And so we get a circle on number three December the
16 3rd out of a sequential photo lineup. He didn't mince his
17 words. And on this lineup I am 100 percent sure this is
18 the guy that shot me. Not could have shot me, might have
19 shot me, could be the guy; go look into it. This is
20 something we need to look into. This is the guy.

21 So were they his calls? We wanted to know so we
22 pulled his jail calls. And we found out that 63 times in
23 the first month of incarceration he called that number
24 ~~XX~~-4849. There is too much here. It all adds up. It
25 all corroborates Dario there was a reason he was in that

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1 photo identification. There was a reason Dario picked
2 him out. Dario always said he would be able to do it if
3 he just saw the guy. And the police did their work and
4 it enabled Dario to do his. And it was a perfect
5 marriage to bring before you. And all of these things
6 point to guilt. And that's the only way to look at that
7 --

8 At the beginning of this case you all raised your
9 hand and you took an oath; an oath to find the truth.
10 I ask you to fulfill your oath and find the truth in this
11 case and find Rakeem King guilty of attempting to Murder
12 Dario, Armed Robbing Dario, and possessing that gun
13 during those crimes. Thank you.

14 THE COURT: Mr. King?

15 MR. KING: Thank you.

16 CLOSING ARGUMENT

17 BY MR. KING:

18 The State wants to bang on the podium and run around
19 and point to everybody trying to get you worked up, make
20 you emotional, make you sympathetic with Dario Brown.
21 But that's not what we're in here for. This is about
22 facts and evidence. And the evidence is clear you don't
23 have to try so hard. It's not about banging the podium,
24 pointing fingers; nobody is going to dispute that Dario
25 Brown got shot in the arm and that that was a terrible

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1 ground in the dark; I'll get to that in a minute, the
2 bullet shells. But that should be easy. That should be
3 the easy thing. We know he had 83 dollars from the
4 manifest. How much money did he have after all this was
5 over; that's how much money was taken. He doesn't know.
6 He doesn't know how much money he had when all this was
7 over. That would be really easy to know the exact amount
8 of what was taken but he doesn't know. Why wouldn't he
9 know that?

10 I don't know, maybe he believes Rakeem King is
11 responsible for this so he wants to make it as bad as
12 possible, to make this sound as bad as possible. So do
13 you believe what he says about being chased down the
14 street? You know if this was an attempted murder he
15 wouldn't be here. It wouldn't have happened like that.
16 He says he's moving the gun with his forearm three times.
17 He's moving the gun and then is shot right here
18 [indicates].

19 Is that intentional? Someone is hitting the gun
20 with their forearm and the gun goes off and hits their
21 forearm; that makes sense. It's hard to miss somebody
22 from two feet away. Remember the opening statement two
23 feet away. That's what the State said. Then he says the
24 person asked him for money. Then Dario says he is chased
25 two steps behind me he says but he's not shot. Jumps a

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1 fence and falls down on his back on the ground he says
2 that the guy stood over the fence and shot. He's not
3 shot. Crawls five to ten feet behind the van. Shooting;
4 he's not shot. The van is not shot up. Did any
5 witnesses take the stand and say it was more than one
6 shot? Any neighbors, neighbors up and down the street;
7 where are they? Why didn't they take the witness stand?
8 Did you hear from any witness other than Dario Brown who
9 said there was more than one shot?

10 And the crime scene just doesn't match what he says
11 happened. Five police officers are searching out there.
12 Kelly Murphy, the crime scene officer said she's
13 processed a thousand crime scenes. So five police
14 officers at least one of who has experienced a thousand
15 crime scenes searched for over two hours and they
16 couldn't find a single shell outside of that cab.

17 Now maybe they wouldn't find all of them. It's a
18 small shell and it was dark out there. I'm sure the
19 police had flash lights. Maybe they wouldn't find all of
20 them but they would have found one shell outside of that
21 cab if there were any more shots. And I seriously doubt
22 this guy picked up all six shells off the dark ground at
23 night before the police got there in sixty seconds. So
24 it doesn't add up. So I don't know if he is lying.
25 Maybe he -- this is what he thinks really happened. How

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1 can we know what is in his head. But the fact is that
2 the evidence doesn't match up with what he is saying.
3 That's clear. And he's in shock. If he was shot in the
4 arm I understand why he would be afraid. I don't blame
5 him a bit. I would have ran down the street and hid
6 anywhere I could find as well.

7 Crime scene didn't find any projectiles. They
8 didn't find any of these bullets that were supposed to be
9 flying all around outside. There are no houses that were
10 shot up. The van is not shot up, no trees, no bullets
11 there because that is something they would collect. They
12 collect any evidence like that and take photographs of
13 it. But he's adding things that didn't happen. So if
14 you can't trust what he says happened because the
15 evidence in the case doesn't support that how can you
16 trust that it happened that way. And how can you trust
17 that he has identified the right person.

18 Like I said before if the evidence is there beyond a
19 reasonable doubt then it should be easy; and it's not.
20 So this is not about the fact that something bad happened
21 to Dario Brown. This courtroom is not a place for
22 sympathy. That doesn't factor in here. This is about
23 what evidence there is and what the law is. So I ask you
24 don't be swayed by emotion, by the fact that he
25 [indicates] was injured; nobody is arguing that and that

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1 it was a painful experience. But that's not a substitute
2 for evidence; emotion, sympathy, and banging on the
3 podium. That's not a substitute for evidence. They have
4 to have the evidence and you have the duty to follow the
5 law and to look at what the evidence shows and to render
6 a verdict. In this case it should be not guilty.

7 THE COURT: Thank you, sir.

8 CHARGE OF THE COURT

9 Madame Forelady and ladies and gentlemen of the
10 jury, I will give you a copy of these instructions in
11 written form. During your deliberations you may refer to
12 instructions to guide your decision making. You must
13 consider the instructions as a whole and not follow some
14 nor others. Madame Forelady, after you have reached a
15 verdict please return the instructions to the court.

16 I instruct you and emphasize the fact that the
17 defendant did not elect to testify in his own behalf is
18 not a factor to be considered by you in any way in your
19 deliberations and your consideration on the question of
20 guilt or innocence of the defendant.

21 It must not be considered by you in any manner
22 whatsoever. A defendant has the constitutional right to
23 remain silent and the assertion of this right must not be
24 considered by you in your deliberations. I repeat under
25 your oath you are to draw no conclusion whatsoever from

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1 the fact that the defendant in this case did not testify.
2 The fact that this defendant did not testify should not
3 even be discussed in the jury room. The burden of proof
4 as I have stated to you is on the State. The State is
5 not required to prove his -- the defendant is not
6 required to prove his innocence. The burden of proof
7 remains on the State to prove the guilt beyond a
8 reasonable doubt.

9 The defendant has pled not guilty to these
10 indictments, which places the burden on the State to
11 prove the defendant guilty. A person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove himself innocent. I charge you as a
14 vital important rule of the law that the defendant in a
15 criminal trial, no matter what the seriousness of the
16 charge may be, must always be presumed innocent until his
17 guilt has been proven beyond a reasonable doubt.

18 His presumption of innocence remains with the
19 defendant at all times from the moment he appears in
20 court throughout the trial and until you, the jury, reach
21 a verdict of guilty beyond a reasonable doubt based on
22 the testimony and evidence presented.

23 The presumption of innocence is a substantial doubt
24 to which every defendant is entitled unless and until you
25 reach a verdict of guilty beyond a reasonable doubt. If

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1 you, the jury do not find the defendant guilty beyond a
2 reasonable doubt it is your duty to acquit the defendant.
3 Now what is reasonable doubt? A reasonable doubt is the
4 kind of doubt that would cause a reasonable person to
5 hesitate to act.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told it's
9 only necessary to prove that a fact is more likely true
10 than not true, such as by the greater weight of
11 preponderance of the evidence.

12 In a criminal case the State's proof must be more
13 powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt.

16 There are very few things in this world that we know
17 with absolute certainty. And in criminal cases the law
18 does not require proof that overcomes every possible
19 doubt. If based on your consideration of the evidence
20 you are firmly convinced the defendant is guilty of the
21 crime charged you must find the defendant guilty.

22 If on the other hand you think there is a real
23 possibility the defendant is not guilty you must give the
24 defendant the benefit of the doubt and find the defendant
25 not guilty. Now there are two types of evidence which is

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1 generally presented during a trial. Direct evidence: the
2 testimony of a person who claims to have actual knowledge
3 of a fact such as an eyewitness. It is evidence which
4 immediately establishes the main fact to be proved.

5 Circumstantial evidence is proof of a chain of facts
6 and circumstances indicating the existence of a fact. It
7 is evidence which immediately establishes collateral
8 facts from which a main fact may be inferred.
9 Circumstantial evidence is based on inference and not on
10 personal knowledge or observation.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence and of
15 direct evidence. You should weigh all the evidence in
16 the case. After weighing all the evidence you're not
17 convinced of the guilt of the defendant beyond a
18 reasonable doubt you must find the defendant not guilty.

19 The evidence or lack of evidence on which you are to
20 decide the facts include the following: the sworn
21 testimony of a witness both on direct and cross
22 examination regardless of which side called the witness,
23 the exhibits that have been received into evidence by the
24 court, and any facts agreed or stipulated to by the
25 lawyers. The following things are not evidence and you

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1 may not consider them in deciding the facts: arguments
2 and statements made by the lawyers are not evidence. The
3 lawyers are not witnesses. Their opening statements,
4 closing arguments or other statements are intended to
5 help you interpret the evidence, but are not evidence.
6 If the facts as you remember them differ from the
7 lawyer's statement, your memory controls.

8 Questions and objections by the lawyers are not
9 evidence. Lawyers have a duty to their client to make
10 objections when they believe a question is improper under
11 the rules of evidence. You should not allow any
12 objections, or the court's ruling on the objections to
13 influence you.

14 Testimony that has been stricken that you may be
15 instructed to disregard is not evidence and must not be
16 considered. Anything you may have seen on television,
17 read in the paper or on the Internet or heard from others
18 when court is not in session is not evidence. You should
19 base your decisions solely on the sworn testimony of
20 witnesses, exhibits received into evidence by the court,
21 and any facts agreed or stipulated to by all parties.

22 The fact that the defendant was arrested, charged,
23 and indicted in this case is not evidence and cannot be
24 considered as evidence of guilt, nor does it create any
25 presumption or inference of guilt. The indictment is

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1 simply the formal written instrument which contains the
2 charges made against the defendant. Under our
3 Constitution and Code of Laws only you the jury can make
4 findings of facts in this case. I'm not permitted to
5 indicate to you how I may feel about the testimony or
6 evidence which has been presented throughout the trial.
7 It's been my intention to be fair and impartial towards
8 each of the parties involved.

9 Necessarily you must determine the creditability of
10 the witnesses who have testified in this case.
11 Creditability simply means believability. It's your duty
12 as jurors to analyze and evaluate the evidence and
13 determine which evidence convinces you of the truth.

14 As you decide whether or not to believe a witness's
15 testimony about a particular matter you may consider the
16 following: the manner and appearance of the witness while
17 on the witness stand. Was he or she straight forward or
18 hesitant in answering?

19 The testimony of a witness: was it consistent or
20 inconsistent? How the witness came to know the facts
21 which he or she testified to, was the witness present
22 during the incident, or did the witness happen on the
23 scene after the incident occurred, the reason the witness
24 would want to give testimony which would help or hurt one
25 side or the other, has the witness exhibited to you any

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1 interest, bias, prejudice or other motive in the case
2 that you may consider whether a particular witness may
3 gain some reward, payment, personal advantage, or
4 vindication through his or her testimony, the strength of
5 the testimony of the witness. Was the testimony of the
6 witness strengthened or weakened by other testimony or
7 evidence, the duration and length of time between the
8 incident and when they were reported. Would the duration
9 or length of the time weaken or strengthen the witness's
10 memory of the incident. All prior statements: were prior
11 statements made by the witness consistent or inconsistent
12 with the witness's testimony.

13 In determining the believability of a witness who
14 has testified in this case you may believe one witness
15 over several or several over one. You may believe a part
16 of the testimony of a witness and reject the remaining
17 part of the testimony of the same witness. You may
18 believe the testimony of a witness in its entirety or
19 reject the testimony of a witness in its entirety.

20 Of course you do not determine the truth by merely
21 counting the number of witnesses presented by each side.
22 Throughout the process you have but one objective; to
23 seek the truth regardless of its source. The same
24 Constitution which designate and make you the finders of
25 fact make me the sole instructor of the law. It's my

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1 duty to charge you on the law applicable to this case and
2 it's your duty as jurors to accept and apply the law as I
3 state it to you. The lawyers are not the instructors of
4 the law. You must accept the law and apply the law
5 exactly as I state it to you. You must not base your
6 decision making on your idea of what the law is or what
7 you think the law should be.

8 And issue in this case is the identification of the
9 defendant as the person who committed the crimes charged.
10 The State has the burden of proving identity beyond a
11 reasonable doubt. You must be satisfied beyond a
12 reasonable doubt of the accuracy of the identification of
13 the defendant before you may convict the defendant.

14 Identification testimony is an expression of belief
15 or impression by a witness. You must determine the
16 accuracy of the identification of the defendant. You
17 must consider the believability of each identification
18 witness in the same manner as any other witness.

19 You may consider whether a witness had an adequate
20 opportunity to observe the offender, the time of the
21 offense. This could be affected by things like how long
22 or short a time was available. How far or close the
23 witness was. The lighting conditions and whether the
24 witness had the chance to see or know the person in the
25 past. Once again, I instruct you the burden of proof on

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1 the State extends to every element of the crime charged
2 and specifically includes the burden of proving beyond a
3 reasonable doubt the identity of the defendant as the
4 person who committed the crime. If after examining the
5 testimony you have reasonable doubt as to accuracy or
6 identification, you must find the defendant not guilty.

7 Armed Robbery: the defendant is charged with Armed
8 Robbery. In order to prove this offense the State must
9 prove beyond a reasonable doubt that the defendant took
10 personal property from the person or presence of another
11 person.

12 Property is in the presence of a person if it is
13 within the person's reach, inspection, observation, or
14 control so that the person could, if not overcome with
15 violence or prevented by fear, keep possession of the
16 property. The State must also prove beyond a reasonable
17 doubt the defendant carried the property away, intended
18 to permanently deprive the owner of the property and keep
19 the property for the defendant's own use.

20 The slightest removal of the property, the complete
21 possession of the property even for an instant by the
22 defendant is sufficient to show a taking and carrying
23 away of the property. The taking and carrying away of
24 the property must have been done with violence or by
25 putting the owner of the property in fear of violence.

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1 Finally the State must prove beyond a reasonable doubt
2 that the defendant was armed with a deadly weapon during
3 a robbery. A deadly weapon is any article or instrument
4 or substance which is likely to cause death or great
5 bodily harm. Whether an instrument has been used as a
6 deadly weapon depends on the facts and circumstances of
7 each case.

8 The following examples of instruments which may be
9 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
10 dagger, a knife, a slingshot, metal knuckles, a razor,
11 gasoline, a firebomb, Molotov cocktail, and lighter
12 fluid. A gun may be a deadly weapon even if it is not
13 operating.

14 Now the lesser included charge of Armed Robbery is
15 Attempted Armed Robbery. I am going to charge you on
16 Attempt and everything I said about Armed Robbery also
17 applies to the Attempted Armed Robbery. An attempt is an
18 effort to accomplish a crime which does not succeed.

19 An attempt includes a specific intent to do a
20 particular criminal act along with that act falling short
21 of the act intended. The State must show more than mere
22 preparation and intent. It must be some overt act
23 committed and the effort to commit the crime. Intent
24 means intending the results which actually occurred not
25 accidentally or involuntarily. Intent may be shown by

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1 acts and conduct of the defendant in other circumstances
2 from which you may naturally and reasonably infer intent.
3 Attempted Murder: a person with the intent to kill
4 attempts to kill another person with Malice Aforethought
5 either expressed or implied commits the offense of
6 Attempted Murder. Malice is a hatred, ill will, or
7 hostility towards another person is the intentional doing
8 of a wrongful act without just cause or excuse with an
9 intent to inflict an injury under circumstances that the
10 law will infer as evil intent.

11 Malice Aforethought does not require that malice
12 exists at a particular time before the act is committed
13 but malice must exist in the mind of the defendant just
14 before and at the time the act is committed. Therefore
15 there must be a combination of a previous evil intent and
16 the act.

17 Malice Aforethought may be expressed or inferred.
18 These terms expressed and inferred do not mean different
19 kinds of malice but merely a manner in which malice may
20 be shown to exist. It is either by direct evidence or by
21 inference from the facts and circumstances which are
22 proved. Expressed Malice is shown when a person speaks
23 words which express hatred or ill will for another or
24 when a person prepared beforehand to act which was later
25 accomplished. For example, lying in wait of another or

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1 any other acts of preparation going to show that the deed
2 was within the defendant's mind would be Expressed
3 Malice. Malice may be inferred from conduct showing a
4 total disregard for human life. Inferred Malice may also
5 arise when the deed is done with a deadly weapon.

6 A deadly weapon is any article, instrument, or
7 substance which is likely to cause death or great bodily
8 harm. Whether an instrument has been used as the deadly
9 weapon depends on the facts and circumstances of each
10 case. The following are examples of instruments which
11 may be deadly weapons: a pistol, a shotgun, a rifle, a
12 dirk, a dagger, a knife, a slingshot, metal knuckles, a
13 razor, gasoline, a firebomb, Molotov cocktail, and
14 lighter fluid. A gun may be a deadly weapon even if it
15 is not operating.

16 If facts are proved beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction it's inference would be simply an
19 evidentiary fact to be considered by you, the jury, along
20 with the other evidence in the case. You may give it the
21 weight you decide you should receive.

22 A specific intent to kill is not an element of
23 Attempted Murder but it must be a general intent to
24 commit serious bodily harm. Intent means intending the
25 results which actually occurs, not accidentally or

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1 involuntarily. Intent may be shown by acts and conduct
2 of the defendant when other circumstances in which you
3 may naturally and reasonably infer intent: evidence of
4 the character of the act, the character of the instrument
5 used, the manner in which it was used, the purpose to be
6 accomplished and result of wounds or injury may be
7 considered in determining intent with which the act was
8 committed. Intent may also be inferred when it is
9 demonstrated the defendant voluntarily and willfully
10 commits an act in a natural tendency which is to destroy
11 another's life.

12 A lesser included of Attempted Murder is Assault and
13 Battery of a High and Aggravated Nature. A person
14 commits the offense of Assault and Battery of a High and
15 Aggravated Nature if the person unlawfully injures
16 another and great bodily injury to another person results
17 when the act is accomplished by means likely to produce
18 death or great bodily injury.

19 Great bodily injury means bodily injury which causes
20 a substantial risk of death which causes serious
21 permanent disfigurement or protracted loss or impairment
22 of the function of a body member or organ. Assault and
23 Battery as I said is a lesser included offense of
24 Attempted Murder. Assault and Battery 1st Degree also is
25 lesser included of Attempted Murder. A person commits

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1 the offense of Assault and Battery in the 1st Degree if
2 the person unlawfully injures another person, the act
3 occurred during the commission of a robbery, burglary,
4 kidnapping, or theft.

5 A person may also commit the offense of Assault and
6 Battery in the 1st Degree if a person unlawfully offers or
7 attempts to injure another person with the present
8 ability to do so and the act either is accomplished by
9 means likely to produce death or great bodily injury or
10 occurred during the commission of a robbery, burglary,
11 kidnapping, or theft. Great bodily injury means bodily
12 injury which causes substantial risk of death or which
13 causes serious permanent disfigurement, protracted loss
14 or impairment of a function of a bodily member or organ.

15 Possession of a Weapon during the Commission of a
16 Crime. The defendant is charged with Possession of a
17 Weapon during the Commission of or Attempt to Commit a
18 Violent Crime. The State must prove beyond a reasonable
19 doubt that the defendant was in possession of a firearm
20 or visibly displayed what appeared to be a firearm during
21 the commission of a violent crime.

22 A firearm means any machine gun, automatic rifle,
23 revolver, pistol or any weapon which while it's designed
24 to or may be readily converted to expel a projectile.
25 In order to find the defendant guilty of Possession of a

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1 Weapon during the Commission of a Violent Crime you must
2 first find the defendant guilty of either committing a
3 violent crime or attempt to commit a violent crime. All
4 charges pending are considered violent crimes in South
5 Carolina except the lesser included offense of Assault
6 and Battery 1st Degree.

7 You've been selected as fair and impartial jurors
8 sworn to impartiality to try and determine the facts of
9 the case. And when you comply with your oath to do so no
10 one will have the right to criticize your verdict and you
11 have fully discharged your duties as jurors. You will
12 decide this case according to testimony that you've heard
13 from the sworn witnesses along with the other evidence
14 introduced.

15 I charge you that as jurors you must make your
16 decision in this case without bias and without prejudice
17 to any party. You cannot allow yourself to be governed
18 by sympathy, prejudice, passion, public opinion, or any
19 other arbitrary factor.

20 Both the State and the defendant have the right to
21 expect that each one of you will carefully and
22 impartially consider all the evidence in this case and
23 that you will follow the law as I have explained it to
24 you. Nothing I may have said or done during the course
25 of this trial has been in any way intended to express or

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1 suggest the view of this case or an opinion as to the
2 facts, the weight of the evidence or creditability of the
3 witnesses. If you believe any of my actions or words
4 have indicated otherwise you must disregard such and form
5 your own view of this case or your own opinion as to the
6 facts, the weight of the evidence, or creditability of
7 the witnesses.

8 Madame Forelady and ladies and gentlemen of the jury
9 at the beginning of the trial the original arrest warrant
10 on Mr. King the first name was spelled R-A-H-E-E-M
11 whereas the correct spelling is R-A-K-E-E-M. The
12 indictment was amended. There are some pieces of
13 evidence that refer to R-A-H-E-E-M. That was based upon
14 the original error in the arrest warrant and the original
15 error in the indictment, which has been corrected. In no
16 way was it done by the defendant, Mr. King.

17 Now, ladies and gentlemen of the jury your verdict
18 has to be unanimous. All 12 of you have to agree. I
19 will tell you it is a collective reasoning process. I
20 would ask you to respect each other's opinions, listen to
21 each other's opinions, discuss the facts and arrive at a
22 true and just verdict.

23 Madame Forelady and ladies and gentlemen of the jury
24 I have prepared three verdict forms. The verdict form --
25 the first one lists the indictment number and it says:

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1 As to Attempted Murder we the jury by unanimous consent
2 find the defendant guilty of Attempted Murder, not
3 guilty. If you do not find that the defendant is guilty
4 of Attempted Murder you can go to the lesser included
5 offense of Assault and Battery of a High and Aggravated
6 Nature.

7 We the jury by unanimous consent find the defendant
8 guilty of Assault and Battery of a High and Aggravated
9 Nature or not guilty. Or to the lesser included offense
10 of Assault and Battery 1st Degree: we the jury by
11 unanimous consent find the defendant guilty of Assault
12 and Battery 1st Degree or not guilty.

13 Now, you can't find him on all three. Basically if
14 you follow the verdict form if you find him guilty of
15 Attempted Murder or not guilty then you don't go to the
16 included offense. If you don't believe the State has
17 proven the Attempted Murder then you can go to the lesser
18 included of High and Aggravated.

19 If you find him guilty of that or not guilty you
20 don't go to the third lesser included. If for some
21 reason you believe the State has not proven High and
22 Aggravated then you can go to the third lesser included
23 which is Assault and Battery 1st Degree and that has
24 guilty or not guilty. Now the second verdict form is
25 concerning the Armed Robbery: we the jury by unanimous

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1 consent find the defendant guilty of Armed Robbery or not
2 guilty. The lesser included is Attempted Armed Robbery.
3 The same thing applies. If you find him guilty or not
4 guilty of Armed Robbery then you don't go to the lesser
5 included. If you don't think the State has proven Armed
6 Robbery then you can go to the lesser included of
7 Attempted Armed Robbery.

8 The last verdict form is Possession of a Firearm
9 during the Commission of a Violent Crime: we the jury by
10 unanimous consent find the defendant guilty of Possession
11 of a Firearm during the Commission of a Violent Crime or
12 not guilty. So you have three verdict forms. You are to
13 evaluate the evidence as you determine the evidence to
14 be.

15 And I would emphasize I think I told you in the
16 charge on the Possession of a Firearm during the
17 Commission of a Violent Crime all the crimes, the major
18 crimes and the lesser included are violent except for
19 Assault and Battery in the 1st Degree. If you should
20 find him guilty only of that charge then you cannot find
21 him guilty of the Possession of a Pistol during the
22 Violent Crime because that is not a violent crime. The
23 other crimes are violent.

24 All right. Madame Forelady, what I am going to do
25 is ask you to go to the jury room but please don't begin

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1 your deliberations until I have had an opportunity to
2 take up my charge with the lawyers. I may have to bring
3 you back and correct something I've said wrong or add
4 something that I left out. Please don't begin your
5 deliberations until the jury -- until the Bailiff brings
6 you the verdict forms as well as this charge book and all
7 the evidence that has been presented.

8 As I told you at the beginning the tapes that were
9 heard yesterday in the courtroom you will have the D-V-D.
10 If you want to listen to them let the Bailiff know and we
11 will bring a computer into the jury room that you can
12 listen to those D-V-D's off of that computer.

13 Hopefully it will be a little clearer than what you
14 heard yesterday in the courtroom. There is no
15 transcript. It has not been prepared of that D-V-D or
16 those tapes. If you will follow the Bailiff to the jury
17 room please?

18 [Whereupon, the jury exits the courtroom at 12:40
19 p.m.]

20 THE COURT: All right. The alternates I will keep
21 in the hall. They will not go into the jury room. Any
22 exceptions to the charge from the State?

23 MR. DURANT: No, Your Honor.

24 THE COURT: Any exceptions to the charge from the
25 defendant?

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1 MR. KING: Yes, Your Honor. First, I made two
2 objections during Mr. Durant's closing argument. I
3 apologize to Mr. Durant but I didn't want to waive any
4 issues. He mentioned that people had heard three or four
5 shots outside and I made an objection during Jennifer
6 Butler's testimony of that being hearsay. I just wanted
7 to preserve that.

8 And I objected when the Solicitor made the comment
9 about the intent to kill; Attempted Murder not having a
10 specific intent to kill. And I am also making an
11 objection to that on the charge. I believe the jury
12 should be charged that there is a specific intent to
13 kill.

14 THE COURT: You think 16-3-29 is a specific intent
15 crime?

16 MR. KING: Attempted Murder.

17 THE COURT: Attempted Murder?

18 MR. KING: Attempt itself I believe is a specific
19 intent crime but in the statute for Attempted Murder it
20 explicitly says with intent to kill. So I believe that
21 -- and although it does include Malice as well I think
22 that is confusing but I would argue that we do the
23 opposite. They should be charged that there is a
24 specific intent to kill and not define Malice which I
25 think would be -- is confusing to the jury.

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1 THE COURT: Okay. Anything else on the charge?

2 MR. KING: I would also object, Your Honor, -- I'm
3 sorry I've got a few more.

4 THE COURT: Okay.

5 MR. KING: I would ask that you also charge the
6 jury on Assault and Battery in the 2nd Degree. We talked
7 about that in the charge conference. I think its
8 possible the jury could find that there was only moderate
9 bodily injury inflicted and could find him guilty of just
10 Assault and Battery in the 2nd Degree.

11 I would object to the inference of Malice from a
12 deadly weapon based on the State v Belcher that's 385
13 S.C. 597 and in that case it holds that that charge is
14 not proper at least -- this is a murder case when death
15 may have been something less Murder that is mitigated,
16 excused, or justified. I think its possible the jury
17 could find that the fact that the victim was hitting the
18 gun with his forearm the gun could have gone off and that
19 that could mitigate, excuse, or justify and would object
20 to the inference of Malice with a deadly weapon.

21 And finally there was missing -- I'm sorry I missed
22 this looking through before about the jurors finding the
23 truth. I would object to that. I don't think -- the
24 jury's job is not to find the truth. It's to test the
25 State's case. And if the State hasn't met the burden of

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1 proof they must find him not guilty.

2 THE COURT: I think the truth would determine which
3 witness was telling the truth but that's neither here nor
4 there. Go ahead.

5 MR. KING: That's all, Your Honor.

6 THE COURT: Okay. As to the Assault and Battery
7 -- unless the State wants to say something?

8 MR. DURANT: I'd rather not, Your Honor.

9 THE COURT: All right. As to the Assault and
10 Battery 2nd I do not think that a gunshot wound is
11 moderate injury therefore the State is not going -- the
12 court is not going to charge Assault and Battery 2nd.

13 As far as the Attempted Murder charge the statute
14 basically says a person who with intent to kill attempts
15 to kill another person with Malice Aforethought, either
16 expressed or implied, commits the offense of Attempted
17 Murder. I think the intent of the statute and
18 interpretation of the statute with the words Malice
19 Aforethought does not establish a specific intended
20 crime, the intent of the legislature to make it the same
21 intent as to Murder.

22 If the court took the position the Attempted Murder
23 was a specific intent crime then I think it would be a
24 higher standard for an attempt than it would be murder
25 and I don't think that was in any stretch of the

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1 imagination that was the legislative intent. So that is
2 denied as well as the 2nd. Now what else did you address?
3 I want to make sure I put on the record what I am denying
4 so...

5 MR. KING: The inference of Malice from a deadly
6 weapon based on the statements ---

7 THE COURT: --- all right, as far as Belcher is
8 concerned?

9 MR. KING: Yes, Your Honor.

10 THE COURT: I don't think there were any facts that
11 would justify the charge under Belcher or either use of a
12 deadly weapon. I don't think there is any evidence for
13 accident, voluntarily, manslaughter, or self defense or
14 any other facts that would justify imposing Belcher in
15 this case. Anything else?

16 MR. KING: That's it, Your Honor. Thank you.

17 THE COURT: Thank y'all very much. Now if y'all
18 could come up and make sure all the exhibits are present
19 and put on the record that the exhibits are present.
20 Make sure that number 29 is out. We'll give it to the
21 jury and let them begin their deliberations.

22 [Whereupon, the attorneys comply]

23 MR. DURANT: The exhibits are all --

24 MR. KING: Yes, the exhibits are all there.

25 [Whereupon, the evidence went out to the jury at

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1 12:50 p.m.]

2 [Whereupon, court is in recess from 12:50 p.m. until
3 3:30 p.m.]

4 THE COURT: The juror Forelady sent out a note that
5 I am going to mark as Court's exhibit number 1 [sic].

6 [Whereupon, Court's exhibit number 2 is marked by
7 the court reporter]

8 THE COURT: We've had an in camera hearing in my
9 chambers concerning the note. And I'm going to bring the
10 jury out and hopefully explain to them the difference
11 between Attempted Murder and Assault and Battery of a
12 High and Aggravated Nature and ask them to continue their
13 deliberations. If either party has any exceptions to
14 that charge that I am getting ready to give to the jury
15 I'll be glad to hear you after I deliver the charge.
16 Will you bring us the jury, please?

17 THE COURT REPORTER: Its number 2.

18 THE COURT: Number 2? All right.

19 [Whereupon, the jury enters the courtroom at 3:33
20 p.m.]

21 SUPPLEMENTAL CHARGE

22 THE COURT: Thank you very much. Madame Forelady
23 and ladies and gentlemen of the jury I've read your note.
24 And the first thing I would like to tell you is some of
25 the questions you have asked would require the court to

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1 be commenting on some facts even though some of them are
2 hypothetical. And I cannot comment on the facts either
3 hypothetical or actual facts in this case.

4 Therefore in an effort to try to answer your
5 questions I am going to explain to you the difference
6 between Attempted Murder and Assault and Battery of a
7 High and Aggravated Nature. And however you interpret
8 the facts and apply them to the law as I'm getting ready
9 to tell you will be your decision on a factual basis.

10 The basic difference between Attempted Murder and
11 Assault and Battery of a High and Aggravated Nature is
12 Assault and Battery of a High and Aggravated Nature does
13 not require Malice. Malice is a hatred, ill will or
14 hostility towards another person and is the intentional
15 doing of a wrongful act without just cause or excuse and
16 with the intent to inflict injury or under circumstances
17 that the law would infer as evil intent.

18 Now some of your question -- part of your question
19 was talking about expressed and inferred Malice in the
20 charge book is approximately a page and a half or two
21 pages about expressed and inferred Malice. I'll allow
22 you to read it rather than me sitting here reading it to
23 you. And as I said earlier you'll have to interpret the
24 facts as whether or not the facts -- and apply them to
25 the law as I just explained to you. And I'm going to

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1 give you the charge book and if you have any further
2 questions please write them and I will make an attempt to
3 answer the questions. You may continue deliberations.
4 If I decide to bring you back and talk about the subject
5 matter some more the Bailiff will bring you back. You
6 may go to the jury room.

7 [Whereupon, the jury exits the courtroom at 3:37
8 p.m.]

9 THE COURT: Any exceptions to the charge from the
10 State?

11 MR. DURANT: No, Your Honor.

12 THE COURT: Any exceptions to the supplemental
13 charge from the defendant?

14 MR. KING: Yes, Your Honor. Just renew my previous
15 objections I made specifically I believe that the
16 Attempted Murder requires the specific intent to kill and
17 that would be the difference between Attempted Murder and
18 Assault and Battery of a High and Aggravated Nature.

19 THE COURT: Other than that is there anything else
20 that you would like for me to tell the jury concerning
21 the questions they proposed to the court?

22 MR. KING: No, Your Honor.

23 THE COURT: Okay. Just other than your other
24 objections about the Attempted Murder and the specific
25 intent which I've already ruled that I didn't think it

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1 was specific intent statute?

2 MR. KING: That's right.

3 THE COURT: Okay. Thank y'all so very much.

4 MR. KING: Thank you, Your Honor.

5 MR. DURANT: And Your Honor, just so I was clear.

6 Have they had the charge book the whole time?

7 THE COURT: Yes.

8 MR. DURANT: Okay.

9 THE COURT: Yes, they've had it the whole time.

10 Anything else?

11 MR. DURANT: No, Your Honor.

12 THE COURT: All right. We'll await a jury

13 verdict.

14 [Whereupon, court is in recess from 3:38 p.m. until
15 3:41 p.m.]

16 VERDICT

17 THE COURT: Anything from the State before we bring
18 in the jury?

19 MR. DURANT: No, Your Honor.

20 THE COURT: Anything from the defendant?

21 MR. KING: No, sir.

22 THE COURT: Bring us the jury, please.

23 [Whereupon, the jury enters the courtroom at 3:43
24 p.m.]

25 THE COURT: Thank you very much. If you would hand

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1 the verdict forms to the Bailiff, please ma'am.

2 [Whereupon, the court views the documents]

3 THE COURT: Madame Forelady, I have written the
4 verdict forms on the indictments to the jury's verdict.
5 I'm going to ask the Bailiff to take them to the Forelady
6 for her to sign if you would please, ma'am. I've already
7 dated them today November the 7th.

8 [Whereupon, the Foreperson complies]

9 THE COURT: Publish the verdict.

10 CLERK OF COURT: The State of South Carolina, County
11 of Charleston, Indictment number 2011-GS-10-1795 State of
12 South Carolina verses Rakeem Deon King. We the jury by
13 unanimous consent find the defendant guilty of Attempted
14 Murder.

15 The State of South Carolina verses Rakeem Deon King,
16 Indictment number 2011-GS-10-1794 we the jury by
17 unanimous consent find the defendant guilty of Armed
18 Robbery.

19 Indictment number 2011-GS-10-1793 we the jury by
20 unanimous consent find the defendant guilty of Possession
21 of a Firearm during the Commission of a Violent Crime.
22 Signed by Madame Forelady Kimberly Porter on November 7th,
23 2012.

24 Ladies and gentlemen if this is your verdict will
25 you please raise your right hand.

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1 JUROR 4: Yes.
2 CLERK OF COURT: Juror number 164.
3 JUROR 164: Yes.
4 CLERK OF COURT: Is this your verdict?
5 JUROR 164: Yes.
6 CLERK OF COURT: Is this still your verdict?
7 JUROR 164: Yes.
8 CLERK OF COURT: Your Honor, the jury has been
9 polled and the verdict stands.
10 THE COURT: Okay. Thank you very much. Do you
11 have a sentence sheet?
12 MR. DURANT: Your Honor, I don't have one right
13 now. I can go get one.
14 THE COURT: All right. Will you get me a
15 sentencing sheet please on all three of them?
16 MR. DURANT: Yes, sir.
17 THE COURT: Before you go is there any -- do you
18 want ten days for your motions Mr. King or do you want to
19 make them today? I'll be happy to give you time for your
20 motions if you want them. If you don't I'll listen to
21 them today.
22 MR. KING: I think we've argued everything. I
23 would just renew the previous motions that I've made and
24 make a motion for a new trial.
25 THE COURT: All right. Any new motions you want to

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1 THE COURT: Yes. I'm sorry. I'll be glad to hear
2 what he has to say. Yes sir, Mr. Brown I'll be glad to
3 hear you. Speak up so I can hear you.

4 MR. BROWN: Yes, sir. My name is Dario Brown. I'm
5 also a father of six kids.

6 THE COURT: Also a what?

7 MR. BROWN: A father of six kids.

8 THE COURT: Okay.

9 MR. BROWN: I volunteer my time through youth and
10 sports in the neighborhood and coach two different teams
11 for the youth and also an adult team. I'm no perfect
12 person but on the day in question I was on my job working
13 when I was attacked and robbed and ran down.

14 I can't tell you how much time to give him. But I
15 would just ask that you use your discretion and do what
16 you think is right, Your Honor.

17 THE COURT: Okay Mr. Brown. Anything else?

18 MR. BROWN: No, sir.

19 THE COURT: Thank you so very much. I'm sorry it
20 happened to you.

21 [Whereupon, the court reviews documents]

22 SENTENCING

23 THE COURT: All right Mr. King. Indictment number
24 1794, that's the Robbery with a deadly weapon. I
25 sentence you to the State Department of Corrections for a

State v Rakeem D. King (2011-GS-10-01793)
November 7, 2012
Volume 3

1 period of thirty years, that's consecutive with the
2 Possession of a Weapon. On the Possession of a Weapon,
3 Indictment number 1793, I sentence you to the State
4 Department of Corrections for a period of five years.
5 Indictment number 1795, that's the Attempted Murder I
6 sentence you to the State Department of Corrections for a
7 period of ten years and that's concurrent with the Armed
8 Robbery and Possession of a Weapon. Thank you very much.
9 Anything else?

10 MR. DURANT: Not from the State, Your Honor.

11 THE COURT: All right. Thank y'all very much.

12 MR. DURANT: Thank you, Your Honor.

13 MR. KING: Thank you, Your Honor.

14 [Whereupon, the jury trial concludes at 4:25 p.m.]
15
16
17
18
19
20
21
22
23
24
25

GRD20101206336

WITNESSES

S. PATRICK
North Charleston Police Department

AGENCY CASE NUMBER

2010049791

ARREST WARRANT NUMBER

M725608

DATE OF ARREST

December 4, 2010

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury
Date:

MAR 08 2011

VERDICT

Guilty

Forfeiture of Petit Jury
Date:

11/7/12

INDICT.DOT

DOCKET NO. 2011GS1001795

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

VS.

RAHEEM DEON KING
DOB: 1991-03-12
B/M

Indictment for
Attempted Murder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

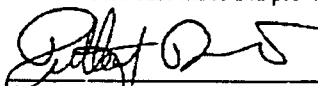
INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about November 26, 2010, the Defendant, RAHEEM DEON KING, did, with intent to kill and malice aforethought, attempt to kill Dario Brown. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

GRD20101206136

WITNESSES

S. PATRICK

North Charleston Police Department

AGENCY CASE NUMBER

2010049791

ARREST WARRANT NUMBER

M725607

DATE OF ARREST

December 4, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 08 2011

VERDICT

Guilty

Foreperson of Petit Jury

11/2/12
Date:

INDICT.DOT

DOCKET NO. 2011GS1001794

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

vs.

RAHEEM DEON KING

DOB: 1991-03-12

B/M

Indictment for

Armed Robbery

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

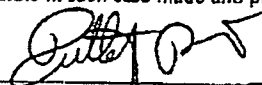
INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about November 26, 2010, in Charleston County, South Carolina, at 1808 [REDACTED] Street, N. Charleston, South Carolina by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, RAHEEM DEON KING, did take and carry away goods and/or monies from the person or immediate presence of Dario Brown with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

GRD20101206336

WITNESSES

S. PATRICK

North Charleston Police Department

AGENCY CASE NUMBER

2010049791

ARREST WARRANT NUMBER

M725606

DATE OF ARREST

December 4, 2010

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date

MAR 08 2011

VERDICT

Foreperson of Petit Jury

Date

INDICT DOT

DOCKET NO. 2011GS1001793

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

Murch Term 2011

THE STATE

vs.

RAHEEM DEON KING

DOB: 1991-03-12

B/M

Indictment for

Possession Of A Firearm During The
Commission Of A Violent Crime**FILED**

3/29/2011 9:04:25 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

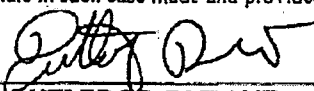
INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about November 26, 2010, the Defendant, RAHEEM DEON KING, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Armed Robbery and Attempted Murder, a violent crime This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

ARREST WARRANT

M-725608

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

2010049791 THE STATE
 against

Raheem Deon King

Address: 2926 Alabama Drive
 North Charleston, SC 29406

Phone: BSN: 6 Weight: 235
 Sex: M Race: B Height: 6
 DL State: or DL #: Agency ORI #: 418191
 Prosecuting Agency: North Charleston Police Department
 Prosecuting Officer: Shawn Patrick #194
 Offense: Attempted Murder 16-3-29
 Offense Code: 00116
 Code/Ordinance Sec: 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant Raheem D. King
 on 12-4-2010
Beckman H 294
 Signature of Court/Clerk/Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
 2500 City Hall Lane
 North Charleston, SC 29406

Beckman H 294

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

AFFIDAVIT

Personally appeared before me the affiant Shawn Patrick #194
 being duly sworn deposes and says that defendant Raheem Deon King
 did within this county and state on 11/26/2010 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)
 in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Murder 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT
 OCA#2010049791 RQ

Signature of Affiant DA 136

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

Affiant's Address 2500 City Hall Lane
North Charleston, SC 29406
 Affiant's Telephone (843) 534-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/26/2010 defendant Raheem Deon King
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of North Charleston) as set forth below:
 DESCRIPTION OF OFFENSE: Attempted Murder 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.

Sworn to and subscribed before me
 on 12/3/2010
Jack J. Douglas (L.S.)

Signature of Issuing Judge

Judge's Address 2500 City Hall Lane
North Charleston, SC 29406
 Judge's Telephone (843) 740-2601

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

CITY OF NORTH CHARLESTON

OCA#2010049791
Inv. M. Evans

Personally appeared before me, a magistrate of this County, Det. S. Patrick one who, first being duly sworn, deposes and says that

RAHEEM DEON KING

did within this County and State on the 26th day of November 2010 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
ATTEMPTED MURDER
VIOLATION OF SECTION
16-3-29

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 26, 2010 at approximately 4:19 AM while at 1808 ~~██████~~ St. which is located in the City of North Charleston, County of Charleston and State of South Carolina, the defendant one **RAHEEM DEON KING**, did commit the offense of **ATTEMPTED MURDER**, in violation of section 16-3-29 of the South Carolina Code of Laws of 1976, as amended. In that the defendant while armed with a handgun did shoot the victim, Dario Brown, several times striking him once in the arm causing the victim to fear for his life.

Facts to establish the above are that the victim, a cab driver for Yellow Cab Co., was summoned to the above address to pick up a fare. Upon his arrival the defendant entered the rear seat, placed a handgun to the victims head and demanded the victim's money. The victim pushed the gun away from his head and exited the vehicle in an attempt to flee from the defendant. The defendant shot the victim once in the arm. The victim continued to flee as the defendant pursued him on foot firing several more shots at him. The defendant then fled the scene leaving the victim to parish. The victim was able summons help and later received emergency medical treatment for his injuries.

Further facts are that on December 3, 2010 the victim was presented a photograph array which contained a photograph of the defendant. The victim, positively and without hesitation, identified the defendant as the person who attempted to rob him and who shot him.

Detective M. Evans, the victim and witnesses are witnesses to prove same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 3rd day of December
2010.

Thad D. Doughty

Signature of Judge

DLT 124
(AFFIANT)

Address: 2500 City Hall Lane
N. Charleston, SC 29406
Phone: 554-5700

ARREST WARRANT

M-725607

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2010049791 THE STATE
against

Raheem Deon King

Address: 2926 Alabama Drive
North Charleston, SC 29406-

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 Weight: 235
DL State: SC DL #: _____
DOB: 11/26/91 Agency ORI #: _____
Prosecuting Agency: North Charleston Police Department
Prosecuting Officer: Shawn Patrick #194
Offense: Armed Robbery 16-11-0330(A)
Offense Code: 00139
Code/Ordinance Sec: 16-11-0330A

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge _____

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on Raheem D King
12-4-2010

Beckman #294
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

RECEIVED

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
North Charleston)

AFFIDAVIT

Personally appeared before me the affiant Shawn Patrick #194 who
being duly sworn deposes and says that defendant Raheem Deon King
did within this county and state on 11/26/2010 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery 16-11-0330(A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT
OCA#2010049791 RQ

Signature of Affiant Dea 134

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
North Charleston)

Affiant's Address 2500 City Hall Lane
North Charleston, SC 29406-
Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/26/2010 defendant Raheem Deon King
did violate the criminal laws of the State of South Carolina (or ordinance of _____)
☐ County/ ☒ Municipality of North Charleston) as set forth below:
DESCRIPTION OF OFFENSE: Armed Robbery 16-11-0330(A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me)
on 12/04/2010)
Shad P. Doughty (L.S.))
Signature of Judge _____)
Judge Code: 006)

Judge's Address 2500 City Hall Lane
North Charleston, SC 29406-
Judge's Telephone (843)740-2601

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 CITY OF NORTH CHARLESTON

ORIGINAL
 AFFIDAVIT

OCA#2010049791
 Inv. M. Evans

Personally appeared before me, a magistrate of this County, Det. S. Patrick one who, first being duly sworn, deposes and says that

RAHEEM DEON KING

did within this County and State on the 26th day of November 2010 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
ARMED ROBBERY
 VIOLATION OF SECTION
 16-11-330

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 26, 2010 at approximately 4:19 AM while at 1808 [REDACTED] which is located in the City of North Charleston, County of Charleston and State of South Carolina, the defendant one **RAHEEM DEON KING**, did commit the offense of **ARMED ROBBERY**, in violation of section 16-11-330 of the South Carolina Code of Laws of 1976, as amended. In that the defendant while armed with a handgun did take, steal and carry away from the victim approximately \$20.00 in US currency.

Facts to establish the above are that the victim, a cab driver for Yellow Cab Co., was summoned to the above address to pick up a fare. Upon his arrival the defendant entered the rear seat, placed a handgun to the victims head and demanded the victim's money. The victim pushed the gun away from his head and exited the vehicle in an attempt to flee from the defendant. The defendant shot the victim once in the arm. The victim continued to flee as the defendant pursued him on foot firing several more shots at him. The defendant then fled the scene leaving the victim to parish. The victim was able summons help and later received emergency medical treatment for his injuries. It was later determined by the victim that the defendant returned to the victims cab and retrieved approximately \$20.00 dollars prior to fleeing.

Further facts are that on December 3, 2010 the victim was presented a photograph array which contained a photograph of the defendant. The victim, positively and without hesitation, identified the defendant as the person who attempted to rob him and who shot him.

Detective M. Evans, the victim and witnesses are witnesses to prove same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this 27 day of December
 2010.

Thad J. Doughty

Signature of Judge

Det. S. Patrick
 (AFFIANT)

Address: 2500 City Hall Lane
N. Charleston, SC 29406
 Phone: 554-5700

ARREST WARRANT

M-725606

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

2010049791 THE STATE
 against

Raheem Deon King

Address: 2926 Alabama Drive
 North Charleston, SC 29406-

Phone: SSN:
 Sex: M Race: B Height: 6 Weight: 235
 DL State: DL #:
 DOB: 1/18/91 Agency ORI #:
 Prosecuting Agency: North Charleston Police Department
 Prosecuting Officer: Shawn Patrick #194
 Offense: Possession of Firearm during the Commission of a
 Offense Code: 00549
 Code/Ordinance Sec: 16-23-490

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

 Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant Raheem D King
 on 12-4-2010
Beltran #294
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
 2500 City Hall Lane
 North Charleston, SC 29406

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

AFFIDAVIT

Personally appeared before me the affiant Shawn Patrick #194 who
 being duly sworn deposes and says that defendant Raheem Deon King
 did within this county and state on 11/26/2010 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)
 in the following particulars:

DESCRIPTION OF OFFENSE: Possession of Firearm during the Commission of a Violent Charge 16-23-490

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT
 OCA#2010049791 RQ

Signature of Affiant DW

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 North Charleston

Affiant's Address 2500 City Hall Lane
North Charleston, SC 29406-
 Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/26/2010 defendant Raheem Deon King
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of North Charleston) as set forth below:
 DESCRIPTION OF OFFENSE: Possession of Firearm during the Commission of a Violent Charge 16-23-490
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.

Sworn to and subscribed before me
 on 12/03/2010
Thad J. Doughy (L.S.)

Signature of Issuing Judge

Judge's Address 2500 City Hall Lane
North Charleston, SC 29406-
 Judge's Telephone (843)740-2601

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Priscilla B. Baldwin

Judge
on DEC 05 2010
Type and Amount: 50,000
Main of Surety

PRELIMINARY HEARING held by

Judge
on
Defendant Attorney
Decision:

DISPOSITION before

Judge
on
by
(indicate jury trial, bench trial, plea, nol. prosc., etc.)

Disposition:
Sentence:

JURORS

CHECKLIST

SUM. CRT. CASE # 9497
OR CASE # 6299
REPORT GROUP 0649
CRIP. CODE 7902

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

FILED
2010 DEC -7 PM 4:25
JULIE J. ARISTROING
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

ORIGINAL
AFFIDAVIT

OCA#2010049791
Inv. M. Evans

Personally appeared before me, a magistrate of this County, Det. S. Patrick one who, first being duly sworn, deposes and says that

RAHEEM DEON KING

did within this County and State on the 26th day of November 2010 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.
VIOLATION OF SECTION
16-23-490

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 26, 2010 at approximately 4:19 AM while at 1808 [REDACTED] St. which is located in the City of North Charleston, County of Charleston and State of South Carolina, the defendant one **RAHEEM DEON KING**, did commit the offense of **POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**, in violation of section 16-23-490 of the South Carolina Code of Laws of 1976, as amended. In that the defendant while armed with a handgun did take, steal and carry away from the victim approximately \$20.00 in US currency.

Facts to establish the above are that the victim, a cab driver for Yellow Cab Co., was summoned to the above address to pick up a fare. Upon his arrival the defendant entered the rear seat, placed a handgun to the victims head and demanded the victim's money. The victim pushed the gun away from his head and exited the vehicle in an attempt to flee from the defendant. The defendant shot the victim once in the arm. The victim continued to flee as the defendant pursued him on foot firing several more shots at him. The defendant then fled the scene leaving the victim to parish. The victim was able summons help and later received emergency medical treatment for his injuries. It was later determined that the defendant returned to the victims cab to retrieve the money prior to fleeing.

Further facts are that on December 3, 2010 the victim was presented a photograph array which contained a photograph of the defendant. The victim, positively and without hesitation, identified the defendant as the person who attempted to rob him and who shot him.

Detective M. Evans, the victim and witnesses are witnesses to prove same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 26th day of November
2010.

Thad J. Doughty
Signature of Judge

Det. S. Patrick 136
(AFFIANT)

Address: 2500 City Hall Lane
N. Charleston, SC 29406
Phone: 554-5700

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 OF THE NINTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 2011-GS-10-1795

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

RAKEEM DEON KING)

Defendant.)

As to Attempted Murder;

We, the jury, by unanimous consent, find the Defendant

☒ Guilty of Attempted Murder.

☐ Not Guilty.

OR AS TO THE LESSER INCLUDED OFFENSE

We, the jury, by unanimous consent find the Defendant

☐ Guilty of Assault and Battery of a High and Aggravated Nature.

☐ Not Guilty.

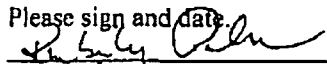
OR AS TO THE LESSER INCLUDED OFFENSE

We, the jury, by unanimous consent find the Defendant

☐ Guilty of Assault and Battery, First Degree.

☐ Not Guilty.

Please sign and date.



Foreperson

November 7, 2012

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 OF THE NINTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 2011-GS-10-1794

STATE OF SOUTH CAROLINA)
 vs.)

VERDICT FORM

RAKEEM DEON KING)

Defendant.)

As to Armed Robbery;

We, the jury, by unanimous consent, find the Defendant

X Guilty of Armed Robbery.

____ Not Guilty.

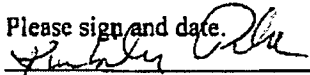
OR AS TO THE LESSER INCLUDED OFFENSE

We, the jury, by unanimous consent find the Defendant

____ Guilty of Attempted Armed Robbery.

____ Not Guilty.

Please sign and date.



Foreperson

November 7, 2012

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 OF THE NINTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 2011-GS-10-1793

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

RAKEEM DEON KING)

Defendant.)

As to Possession Of A Firearm During The Commission Of A Violent Crime;

We, the jury, by unanimous consent, find the Defendant

☒ Guilty of Possession Of A Firearm During The Commission Of A Violent Crime.

☐ Not Guilty.

Please sign and date.

[Signature] 7 Nov 2012

Foreperson

November 7, 2012

Please let the bailiffs know when you have finished your deliberations.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

J. C. Nicholson, Jr., Circuit Court Judge

INDICTMENT NOS.: 2011GS1001793 to 2011GS1001795
WARRANT NOS.: M725606 to M725608FILED
2012 NOV 15 PM 1:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

THE STATE, ... RESPONDENT,

v.

RAHEEM D. KING, ... APPELLANT.

NOTICE OF APPEAL

Raheem D. King appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. C. Nicholson, Jr., on November 7, 2012.

November 15, 2012

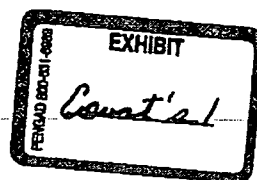
[Signature]
Jason T. King
Attorney for Appellant
O. T. Wallace County Office Building
101 Meeting Street
5th Floor
Charleston, SC 29401
(843) 958-1850

Other counsel of record are:
Rutledge DuRant
Assistant Solicitor
O.T. Wallace County Office Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 958-1900
Attorney for Respondent

STATE OF SOUTH CAROLINA**County of Charleston**

SEARCH WARRANT

OCA # 2010049791
Phone number 843-642-4849
Det. M. Evans



I received the attached Search Warrant 2 / 10, 2012, and have executed it as follows:

I left a copy of the warrant with AT PLACE OF SEARCH
(Name of person searched or "at the place of search") with. Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of Det M. Evans

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

(Signature of Officer Executing Warrant)

Form Approved by
S. C. Attorney General
Section 17-13-160

OCA# 2010049791

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF NORTH CHARLESTON.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)

TO BE SEARCHED

The phone records concerning phone number ~~XXX-XXX~~ 4849 from: Custodian of Record for Cricket Communications Inc. 5887 Coakly Dr. San Diego, California 92121; phone number: 505-872-7741 fax number 858-882-9237

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

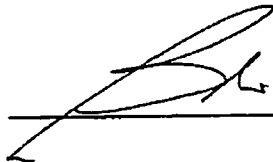
Subscriber name and mailing/billing address of the phone number concerning ~~XXX-XXX~~ 4849. Local and long distance telephone connection records, records of session times and durations including numbers dialed (a/k/a "punch list"), incoming and outgoing call detail, to include both direct connect and push to talk features; Length of service (including start date) and types of services utilized; Telephone or instrument number (IMSI/MIN/IMEI/MSID/ESN) or other subscriber number or identity, including any temporarily assigned network addresses for all numbers assigned to the account. All calls made, received// missed and all texts messages from the following dates November 25, 2010 to November 27, 2010. Active cell site addresses and current cell phone location. Further if any of the phones listed as dialed, received and missed are a Wireless request the subscriber name and mailing/billing address.

This Search Warrant shall not be valid for more than ten days from date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to _____
Issuing Judge / Magistrate within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identify of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

Charleston, S. C.
February 10, 2012


 _____ (L.S.)
 Signature of Judge

OCA# 2010049791

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON****AFFIDAVIT**

Personally appeared before me, one _____ who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT**SEE PREVIOUS PAGE****DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)****TO BE SEARCHED****SEE PREVIOUS PAGE****REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

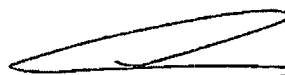
On November 26, 2010 at approximately 0419 hours while at 1808 [REDACTED] St the victim, a yellow cab taxi driver, was summoned to the aforementioned address. The phone number which contacted the cab company was XXX-XXX-4849. Upon the victim's arrival the defendant entered the rear seat of the vehicle, placed a firearm to the victim's head, and demanded the victim's money. The victim proceeded to push the firearm away from his head and then exited the vehicle in an attempt to flee. At that time the defendant then discharged the firearm striking the victim in the arm. The victim continued to flee the scene and was pursued by the defendant who continued to discharge the firearm at the victim. During the course of the investigation the aforementioned phone number was determined to be a Cricket Wireless number which belonged to the defendant. The victim was presented a sequential photo line up of the defendant during which he was able to positively identify the defendant as the party who shot him. After a thorough investigation it has been determined that the aforementioned defendant was present and has been implicated in the commission of the crime. In balancing the seriousness of the crime, the importance of the evidence clearing or linking Rakeem Dion King to the crime warrant the necessity for Detectives to obtain the information contained within the cell phone records needed in the prosecution of this case.

Sworn to and Subscribed before me

this 10th day of February, 2012

Signature of Judge

(L.S.)



Affiant

Address 2500 City Hall LaneNorth Charleston, SC 29406Phone 843-740-2859

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR

FAX COVER SHEET • POLICE DEPARTMENT JON ZUMALT, CHIEF OF POLICE

TO: CUSTODIAN of RECORDS FM: DET M. EVANS
 COMPANY: CRICKET COMMUNICATION COMPANY: NORTH CHARLESTON P.
 PHONE: 505-872-7741 PHONE: 843-740-2888
 FAX: 858-882-9237 FAX: 843-745-1052
 DATE: 3/14/2012 # OF PGS: 5 w/COVER

COMMENTS:

ATTACHED IS A SEARCH WARRANT FOR
 XXX-XXX-4849. CAN YOU PLEASE FAX
 THE RESULTS TO 843-745-1052 OR EMAIL
 THE RESULTS TO ~~MEANS~~ MEANS@NORTHCHARL
 OL9



At the request of the law enforcement agency receiving the following Subpoena Compliance information, Cricket Communications ("Cricket") provides the following information electronically in a searchable, manipulable form. Although Cricket verifies the authenticity of the information attached to this e-mail as sent, Cricket cannot and will not testify to the authenticity of this information after it is received by the recipient law enforcement agency. This is because the attached information electronically sent by Cricket is manipulable. Consequently, were a Cricket representative called to testify in court, at a deposition, or by an affidavit about the authenticity of the attached information, Cricket could not do so. The recipient law enforcement agency is therefore notified that if called to testify, a Cricket representative would bring a hard copy of the attached information as an authentic Cricket record. Alternatively, upon sufficient notice, Cricket will also provide certified/authenticated hard copies of these records in lieu of a witness, to be introduced into evidence should the underlying matter go to trial.



Another Leap Innovation™

Updated Guidelines for Response to Legal Process

CATEGORIES OF CRICKET INFORMATION:	APPLICABLE ECPA PROVISION	ACCEPTABLE LEGAL PROCESS	
		LAW ENFORCEMENT	CV/CRMNL DEFENSE
"Basic" subscriber information (or similar reference to user identity or account information): • name • account name • account number • home address • business address • phone number • MDN, MIN, and ESN/MEID • date of account creation and account end • current account status • types/features of service • credit card or bank account number used to pay for service	Records specifically enumerated in 18 USC § 2703(c)(2)	Minimum process: • Criminal grand jury or trial subpoena • Administrative subpoena Other acceptable process: • Search warrant • 2703(d) court order	Minimum process: subpoena duces tecum (Note California exception) Other acceptable process: court order
"Telephone/Call Records" (includes requests for "phone records", "toll records", "local and long distance calls", "call records", "dialed numbers", "all calls to and from", "call detail", "call history", "call activity", etc.): • All incoming/outgoing calls • Call Detail Records • "Toll" (billed call) records • Plus Basic Subscriber info	Records specifically enumerated in 18 USC § 2703(c)(2) (includes "local and long distance telephone connection records, or records of session times and durations")	Minimum process: • Criminal grand jury or trial subpoena • Administrative subpoena Other acceptable process: • Search warrant • 2703(d) court order	Minimum process: subpoena duces tecum Other acceptable process: court order

cricket

Another Leap Innovation™

CATEGORIES OF CRICKET INFORMATION PROVIDED:	APPLICABLE ECPA PROVISION	ACCEPTABLE LEGAL PROCESS	
		LAW ENFORCEMENT	CV/CRMNL DEFENSE
"Other" available non-content subscriber records where <u>specifically requested and authorized</u>, including: • Date of birth • Social security number • Driver's License Number • Header ("data") fields for text messages and voice mail messages, including IP address for web messages and to and from numbers and date/time for SMS • Cell tower/site data	"Records or other information pertaining to a subscriber or customer" under 18 USC § 2703(c)(1), not including contents of electronic communications	Minimum process: • 2703(d) court order Other acceptable process: • Search warrant	Minimum process: subpoena duces tecum Other acceptable process: court order
Content of voice mail messages stored for 180 days or less	Contents of a wire or electronic communication in electronic storage less than 180 days (18 USC § 2703(a))	Process required: • Search Warrant	Unavailable absent subscriber consent
Content of voice mail messages stored for more than 180 days	Contents of a wire or electronic communication while in electronic storage in an electronic communications system for more than 180 days (18 USC § 2703(a))	Minimum process: • Criminal grand jury or trial subpoena • Administrative subpoena Other acceptable process: • Search warrant • 2703(d) court order	Unavailable absent subscriber consent



**Subpoena Compliance
Law Enforcement Hotline: (858) 882-9301**

To obtain records/information or provision an interception, serve:

Cricket Communications, Inc., or on behalf of Leap Wireless International, Inc.,
Youghioghny Communications, Pocket Communications, or STX Wireless on our
Registered Agent for Service of Process in the applicable state.

Transmittal Options to Subpoena Compliance:

Mailing Address:

Custodian of Records
Cricket Communications, Inc.
5887 Copley Drive
San Diego, CA 92111

General Subpoenas, Orders, or Search Warrants, email (.pdf or .tif) to:
compliance@cricketcommunications.com

Pen Register/Trap & Trace or Wiretap, email (.pdf or .tif) to:
intercept@cricketcommunications.com

Any of the above may be faxed to:

(858) 882-9237

Response time is APPROXIMATELY 2-3 weeks. A fee may be assessed for production of certain information. PLEASE INCLUDE A SECURE (NON-PUBLIC DOMAIN) RETURN EMAIL ADDRESS FOR RESPONSE.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL TO WHOM IT IS ADDRESSED AND CONTAINS INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately. Thank you!



Subpoena Compliance
Law Enforcement Hotline: (858) 882-9301

TO: North Charleston Police Department
Juvenile Division
ATTN: M. Evans

FROM: Subpoena Compliance Group

Fax: 858-882-9237

Tel: 858-882-9301

SUBJECT: REF: 2010049791

OUR REF.: 248227RLQ

DATE: 2/15/12

WE ARE IN RECEIPT OF YOUR: SUBPOENA/COURT ORDER/Written REQUEST/SEARCH WARRANT
FOR THE FOLLOWING: ☒ SUBSCRIBER INFORMATION ☒ CALL DETAIL RECORDS (BOTH NON-BILLED AND BILLED CALLS)
☐ TOLL RECORDS (BILLED CALLS ONLY) ☐ VOICEMAIL(S) ☒ TEXT MESSAGE(S) ☒ OTHER: CELL SITES/TOWER LOCATION

WE ARE UNABLE TO FULLY COMPLY FOR THE FOLLOWING REASON(S):

- ☐ RECORD REQUEST DOES NOT SPECIFY BEGINNING OR ENDING DATE.
- ☐ TARGET NUMBER(S) IS/ARE NOT CRICKET SUBSCRIBER NUMBER(S).
- ☐ TARGET NUMBER(S) WAS/WERE NOT CRICKET SUBSCRIBER NUMBER(S) FOR DATE RANGE GIVEN.
- ☐ SUBSCRIBER ID INFORMATION DOES NOT MATCH CRICKET SUBSCRIBER RECORDS.
- ☐ WE REQUIRE A COURT ORDER OR SEARCH WARRANT PURSUANT TO 18 U.S.C. 2703(c) & (d) IN ORDER TO PROVIDE CELL SITE INFORMATION FOR CALLS, SUBSCRIBER DOB/DLN/SSN, OR TEXT MESSAGE DATA (NON-CONTENT).
- ☐ CRICKET DOES NOT RETAIN TEXT MESSAGE (SMS) CONTENT FOR PHONE-TO-PHONE OR MOBILE PHONE-TO-MOBILE DEVICE MESSAGES. NON-CONTENT SMS DATA IS RETAINED FOR APPROXIMATELY 6 MONTHS. WITH RESPECT TO MMS (PICTURE/VIDEO) MESSAGES, EMAILS, OR INSTANT MESSAGES, CRICKET RETAINS NEITHER DATA NOR CONTENT FOR THESE TYPES OF COMMUNICATIONS.

UPON RECEIPT OF TEXT MESSAGE (SMS) DATA RECORDS, IF YOU DETERMINE THAT A MESSAGE WAS SENT THROUGH THE CRICKET WEBSITE RATHER THAN FROM A MOBILE PHONE/MOBILE DEVICES, CRICKET MAY BE ABLE TO RETRIEVE CONTENT AND THE SENDER'S IP ADDRESSES FOR UP TO 3 MONTHS FROM THE DATE OF THE MESSAGE, PURSUANT TO A FOLLOW-UP REQUEST.

- ☐ REFERENCED COURT ORDER(S) MUST ACCOMPANY ANY RELATED REQUEST.
- ☐ TARGET NUMBER(S) HAS/HAVE BEEN PORTED OUT TO ANOTHER CARRIER; SEE ATTACHED FORM TO DETERMINE NEW CARRIER.
- ☐ FULL CALL DETAIL SWITCH DATA IS PURGED AFTER APPROXIMATELY SIX MONTHS, SO THE FULL CALL DETAIL RECORDS (CDR'S) REQUESTED ARE NOT AVAILABLE FOR THE TIME FRAME DESIGNATED 11/25/10 - 11/27/10.

RATED TOLL RECORDS (INDIVIDUALLY BILLED TRANSACTIONS ONLY) ARE CURRENTLY AVAILABLE FROM 4/30/11 GOING BACK APPROXIMATELY 7 YEARS.

EFFECTIVE 5/1/11, CRICKET BEGAN UTILIZING A NEW BILLING SYSTEM, AND AS A RESULT, RATED TOLL RECORDS ARE NO LONGER KEPT AND USED IN THE ORDINARY COURSE OF BUSINESS AND ARE NO LONGER AVAILABLE.

- ☐ NO VOICEMAILS ARE AVAILABLE FOR THIS TELEPHONE NUMBER FOR SPECIFIED DATE RANGE. VOICEMAIL RECORDINGS MAY BE PERMANENTLY DELETED AT ANY TIME BY ANYONE WITH THE VOICEMAIL PASSWORD. UNHEARD VOICEMAILS ARE AUTOMATICALLY DELETED AFTER 7 DAYS. VOICEMAILS CAN BE SAVED IN THE MAILBOX FOR UP TO 30 DAYS BY ANYONE WITH THE VOICEMAIL PASSWORD. ALL VOICEMAILS ARE DELETED UPON ACCOUNT DISCONNECTION.
- ☐ THE SIGNATURE OR DATE OF ISSUE IS MISSING OR INVALID.
- ☐ CRICKET IS UNABLE TO ACCESS FILES/DATA/MESSAGES/COMMUNICATIONS/IMAGES/LISTS/LOGS/ADDRESS BOOKS STORED WITHIN A TELEPHONE HANDSET WITHOUT PHYSICAL POSSESSION OF THE DEVICE.
- ☒ THERE ARE TOLL RECORDS FOR THIS TELEPHONE NUMBER ~~XXXXXXXXXX~~ 149 FOR 11/25/10 - 11/27/10.
- ☐ UNDER CA PUC 2891, WE ARE PROHIBITED FROM DISCLOSING THE REQUESTED RECORDS WITHOUT WRITTEN CONSENT OF THE SUBSCRIBER OR AN ORDER SIGNED BY THE JUDGE.
- ☐ OTHER.

cricket
 Subpoena Compliance
 Law Enforcement Hotline: (858) 882-9301

TO: North Charleston Police Department
 Juvenile Division
 ATTN: M. Evans

FROM: Subpoena Compliance Group

Fax: 858-882-9237

Tel: 858-882-9301

SUBJECT: REF: 2010049791

OUR REF.: 248227RLQ

DATE: 2/15/12

WE ARE IN RECEIPT OF YOUR: SUBPOENA/COURT ORDER/WRITTEN REQUEST/SEARCH WARRANT
 FOR THE FOLLOWING: ☒ SUBSCRIBER INFORMATION ☒ CALL DETAIL RECORDS (BOTH NON-BILLED AND BILLED CALLS)
☐ TOLL RECORDS (BILLED CALLS ONLY) ☐ VOICEMAIL(S) ☒ TEXT MESSAGE(S) ☒ OTHER: CELL SITES/TOWER LOCATION

WE ARE UNABLE TO FULLY COMPLY FOR THE FOLLOWING REASON(S):

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- ☐ TARGET NUMBER(S) IS/ARE NOT CRICKET SUBSCRIBER NUMBER(S).
- ☐ TARGET NUMBER(S) WAS/WERE NOT CRICKET SUBSCRIBER NUMBER(S) FOR DATE RANGE GIVEN.
- ☐ SUBSCRIBER ID INFORMATION DOES NOT MATCH CRICKET SUBSCRIBER RECORDS.
- ☐ WE REQUIRE A COURT ORDER OR SEARCH WARRANT PURSUANT TO 18 U.S.C. 2703(c) & (d) IN ORDER TO PROVIDE CELL SITE INFORMATION FOR CALLS, SUBSCRIBER DOB/DLN/SSN, OR TEXT MESSAGE DATA (NON-CONTENT).
- ☐ CRICKET DOES NOT RETAIN TEXT MESSAGE (SMS) CONTENT FOR PHONE-TO-PHONE OR MOBILE PHONE-TO-MOBILE DEVICE MESSAGES. NON-CONTENT SMS DATA IS RETAINED FOR APPROXIMATELY 6 MONTHS. WITH RESPECT TO MMS (PICTURE/VIDEO) MESSAGES, EMAILS, OR INSTANT MESSAGES, CRICKET RETAINS NEITHER DATA NOR CONTENT FOR THESE TYPES OF COMMUNICATIONS.

UPON RECEIPT OF TEXT MESSAGE (SMS) DATA RECORDS, IF YOU DETERMINE THAT A MESSAGE WAS SENT THROUGH THE CRICKET WEBSITE RATHER THAN FROM A MOBILE PHONE/MOBILE DEVICES, CRICKET MAY BE ABLE TO RETRIEVE CONTENT AND THE SENDER'S IP ADDRESSES FOR UP TO 3 MONTHS FROM THE DATE OF THE MESSAGE, PURSUANT TO A FOLLOW-UP REQUEST.

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- ☐ TARGET NUMBER(S) HAS/HAVE BEEN PORTED OUT TO ANOTHER CARRIER; SEE ATTACHED FORM TO DETERMINE NEW CARRIER.
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EFFECTIVE 5/1/11, CRICKET BEGAN UTILIZING A NEW BILLING SYSTEM, AND AS A RESULT, RATED TOLL RECORDS ARE NO LONGER KEPT AND USED IN THE ORDINARY COURSE OF BUSINESS AND ARE NO LONGER AVAILABLE.

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- ☐ THE SIGNATURE OR DATE OF ISSUE IS MISSING OR INVALID.
- ☐ CRICKET IS UNABLE TO ACCESS FILES/DATA/MESSAGES/COMMUNICATIONS/IMAGES/LISTS/LOGS/ADDRESS BOOKS STORED WITHIN A TELEPHONE HANDSET WITHOUT PHYSICAL POSSESSION OF THE DEVICE.
- ☒ THERE ARE TOLL RECORDS FOR THIS TELEPHONE NUMBER ~~xxx-xxx-4849~~ FOR 11/25/10 - 11/27/10
- ☐ UNDER CA PUC 2891, WE ARE PROHIBITED FROM DISCLOSING THE REQUESTED RECORDS WITHOUT WRITTEN CONSENT OF THE SUBSCRIBER OR AN ORDER SIGNED BY THE JUDGE.
- ☐ OTHER:

MDN Search Results:
8436424849

Account	Name	Acct Name
19095123536	KING, KEVIN	
	MDN	MIN
	XXX-XX-4849	
		Features: Toll C

Address	Home Phone	Business Phone	C Type	Status
1440 ELLIOTT ST, CHARLESTON, SC 29405-7302	9999999999	9999999999	70	DISC
ESN/MEID	Start	End	Status	Hotlined?
268435456413004663	11/19/2010	6/22/2011	DISC	N

calls Default-TOL,VM,Call ID,3 Way Bundle-PGF,DAT Default-DAP

Hotlined?	

Toll Records

Report for Cricket Phone Number: ~~XXXX~~ 4849 on 2/15/2012

Date Range: 11/25/10 to 11/27/10.

Called/Calling Number	Origination: (Incoming/ Outgoing)	Market: (Home/ Roaming)	Call Date	Call Time	Mins.	Status
[REDACTED]	Outgoing	Home	11/25/2010	0:36	1	Other
[REDACTED]	Outgoing	Home	11/25/2010	0:36	1	Other
[REDACTED]	Outgoing	Home	11/25/2010	0:37	1	Other
[REDACTED]	Outgoing	Home	11/25/2010	0:37	1	Other
[REDACTED]	Incoming	Home	11/25/2010	1:45	1	Incomplete
[REDACTED]	Incoming	Home	11/25/2010	1:45	1	Incomplete
[REDACTED]	Outgoing	Home	11/25/2010	5:17	1	Other
[REDACTED]	Outgoing	Home	11/25/2010	5:17	1	Other
[REDACTED]	Outgoing	N/A	11/25/2010	5:17	0	Other
[REDACTED]	Outgoing	N/A	11/25/2010	5:17	0	Other
[REDACTED]	Outgoing	N/A	11/26/2010	2:05	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	2:05	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	2:05	2	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	2:05	2	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:02	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:02	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:02	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:02	1	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:11	3	Incomplete
[REDACTED]	Outgoing	N/A	11/26/2010	16:11	3	Incomplete
[REDACTED]	Outgoing	Home	11/26/2010	16:16	2	Other
[REDACTED]	Outgoing	Home	11/26/2010	16:16	2	Other
[REDACTED]	Outgoing	N/A	11/26/2010	16:17	0	Other
[REDACTED]	Outgoing	N/A	11/26/2010	16:17	0	Other
[REDACTED]	Outgoing	Home	11/26/2010	16:19	0	Complete
[REDACTED]	Outgoing	Home	11/26/2010	16:19	0	Complete
[REDACTED]	Outgoing	N/A	11/27/2010	5:51	1	Incomplete
[REDACTED]	Outgoing	N/A	11/27/2010	5:51	1	Incomplete
[REDACTED]	Outgoing	N/A	11/27/2010	7:00	1	Incomplete
[REDACTED]	Outgoing	N/A	11/27/2010	7:00	1	Incomplete
[REDACTED]	Outgoing	N/A	11/27/2010	7:00	1	Incomplete
[REDACTED]	Outgoing	N/A	11/27/2010	7:00	1	Incomplete

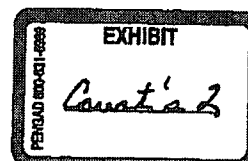
The following questions are intended to help us better understand the difference
~~between attempted murder & aggravated assault~~
 if someone points a gun at a person's head
 but does not fire, does that fulfill the definition
 of attempted murder? "imply or express"
 "either or"
 "either express or implied commits the offense" } the
 of attempted murder" } definition

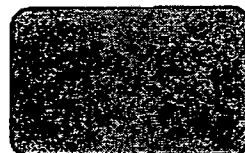
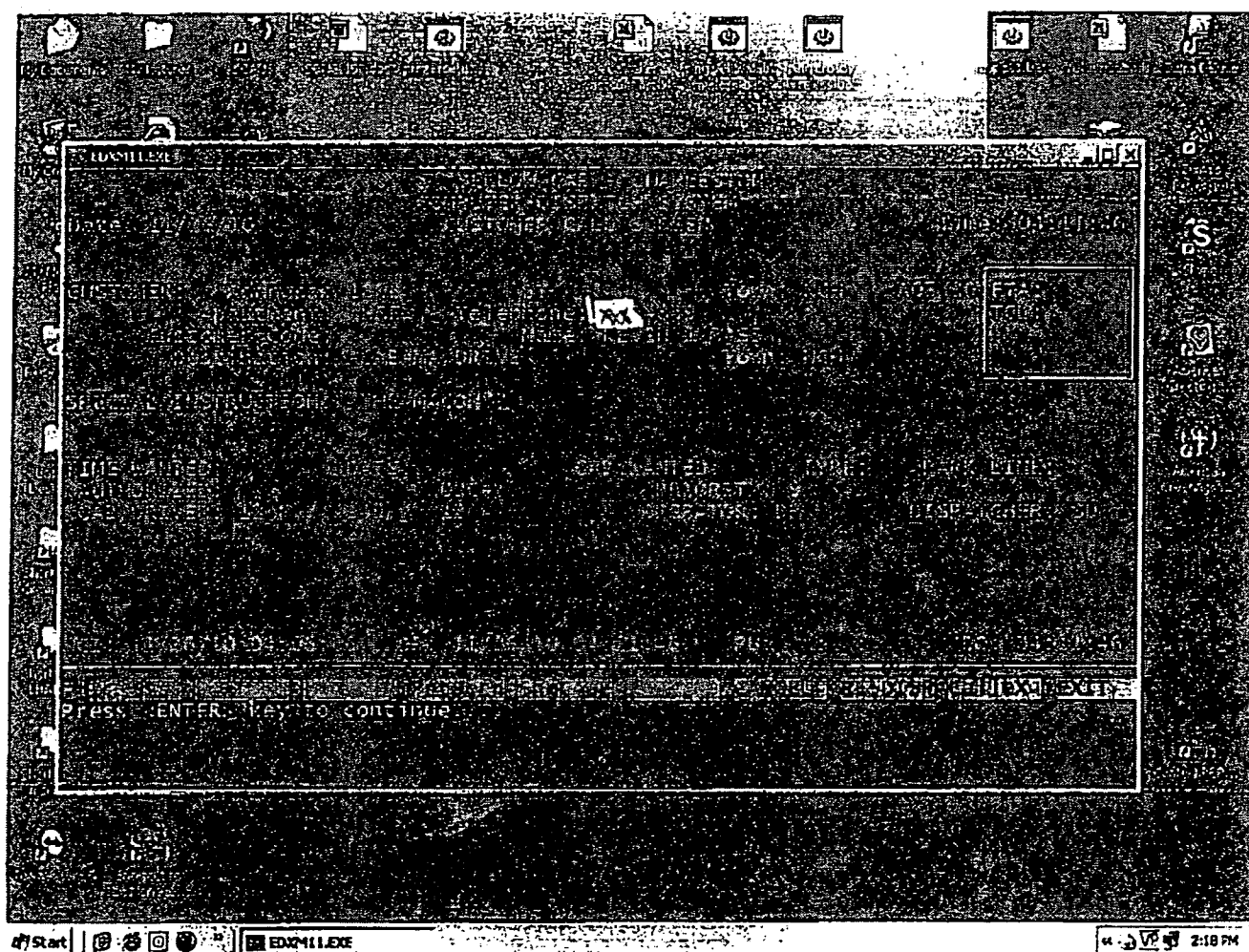
Furthermore, if a gun is not loaded but
 aimed at a ^{person's} head this also seems to fulfill
 the definition of attempted murder. Does it?

We'd like further clarification of the difference
 between attempted murder and
 assault & battery of a high and aggravated
 nature

not relevant
 to the case but
 helpful in understanding
 the definition of attempted murder

Thank you
 Kimberly Parker





*** SENSITIVE-LIMITED OFFICIAL USE ***

Run Date: 09/14/2012

Inmate Telephone System

Run Time: 09:58:08

Inmate Call Records

Page 1 of 4

Terminal Making Request: SCEM3540DC

User ID: mtice

Inmate Name	Inmate ID	Start Date/Time	Duration	Number Called	Call Status	Completion Code
KING, RAHEEM DEON	0001392038	1/3/2011 9:59:10 AM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	1/1/2011 9:51:25 PM	0		SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	1/1/2011 9:50:54 PM	0		SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/22/2010 10:48:37 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/22/2010 10:48:14 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/22/2010 10:48:01 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 9:26:11 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 9:24:30 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/21/2010 8:34:34 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:34:13 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:34:02 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:33:44 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:33:21 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:32:11 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:29:24 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/21/2010 8:29:08 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/20/2010 9:24:31 AM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/19/2010 9:22:45 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/19/2010 8:59:03 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/18/2010 10:58:11 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/18/2010 10:52:40 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/18/2010 9:50:59 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/18/2010 2:57:25 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/18/2010 2:56:52 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/18/2010 2:56:40 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/18/2010 2:55:30 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/17/2010 8:10:17 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/17/2010 8:09:50 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/17/2010 3:47:43 PM	0	4849	SCEM	Completed Call
KING, RAHEEM DEON	0001392038	12/17/2010 3:47:22 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/17/2010 3:46:41 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/17/2010 2:53:43 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/17/2010 2:50:53 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/17/2010 2:47:24 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/17/2010 2:47:11 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/17/2010 2:46:16 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/17/2010 2:45:29 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/17/2010 2:44:56 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/16/2010 10:29:39 PM	0		SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/16/2010 10:29:18 PM	0	4849	SCEM	Trunk type was busy
KING, RAHEEM DEON	0001392038	12/16/2010 10:26:32 PM	0	4849	SCEM	Trunk type was busy
KING, RAHEEM DEON	0001392038	12/16/2010 10:28:08 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/16/2010 10:26:47 PM	0	4849	SCEM	Ring no answer or busy

*** SENSITIVE-LIMITED OFFICIAL USE ***

Run Date : 09/14/2012

Inmate Telephone System

Run Time: 09:58:03

Inmate Call Records

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Terminal Making Request: SCEM3540DC

User ID: mtlcc

Inmate Name	Inmate ID	Start Date/Time	Duration	Number Called	Jail Facility	Completion Code
KING, RAHEEM DEON	0001392038	12/16/2010 2:19:20 PM	15	4849	SCEM	Completed Call
KING, RAHEEM DEON	0001392038	12/16/2010 2:18:03 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/16/2010 2:17:04 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/16/2010 2:16:13 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/15/2010 9:50:16 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/15/2010 8:46:20 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/15/2010 8:45:21 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/15/2010 8:43:41 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/14/2010 2:17:09 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/13/2010 2:45:41 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/13/2010 2:35:07 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/13/2010 2:34:30 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/13/2010 2:34:13 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/13/2010 2:14:03 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/12/2010 11:09:12 PM	15	4849	SCEM	Completed Call
KING, RAHEEM DEON	0001392038	12/12/2010 11:06:46 PM	0	4849	SCEM	Trunk type was busy
KING, RAHEEM DEON	0001392038	12/12/2010 11:05:50 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/12/2010 10:13:43 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/12/2010 9:51:30 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/12/2010 9:51:22 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/12/2010 9:50:03 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/11/2010 9:39:31 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/11/2010 9:17:14 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/10/2010 11:13:12 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/10/2010 11:08:47 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/10/2010 10:46:06 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/10/2010 10:22:47 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/10/2010 9:53:12 AM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/9/2010 8:38:32 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/9/2010 8:36:45 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/9/2010 3:54:20 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/9/2010 3:43:21 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/9/2010 3:43:05 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/9/2010 3:27:24 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/9/2010 3:17:03 PM	0	4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/8/2010 10:47:54 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:47:40 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:47:30 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:47:18 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:47:03 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:46:52 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:44:54 PM	0	4849	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/8/2010 10:10:54 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:10:31 PM	0	4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:10:03 PM	0	4849	SCEM	Carrier Blocked Called

*** SENSITIVE-LIMITED OFFICIAL USE ***

Run Date : 09/14/2012

Inmate Telephone System

Run Time: 09:58:08

Inmate Call Records

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Terminal Making Request: SCEM3540DC

User ID: mlice

Inmate Name	Inmate ID	Start Date/Time	Duration	Number Called	Jail Facility	Completion Code
KING, RAHEEM DEON	0001392038	12/8/2010 10:04:39 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/8/2010 10:01:44 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 9:33:29 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 9:32:48 PM	0	[REDACTED]	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/7/2010 9:31:19 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 8:37:46 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 8:37:25 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 8:37:02 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 8:36:36 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 8:36:16 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 2:18:18 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 2:17:52 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/7/2010 2:16:48 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 2:15:17 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 2:14:37 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/7/2010 2:13:01 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/6/2010 10:59:12 PM	0	[REDACTED]	SCEM	Trunk type was busy
KING, RAHEEM DEON	0001392038	12/6/2010 10:58:47 PM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/6/2010 10:57:58 PM	0	[REDACTED]	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/6/2010 10:17:39 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/6/2010 10:13:44 PM	0	[REDACTED]	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/6/2010 10:37:40 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/6/2010 10:37:09 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/6/2010 10:30:41 AM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 10:07:33 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 9:55:11 PM	10	[REDACTED]	SCEM	Completed Call
KING, RAHEEM DEON	0001392038	12/5/2010 3:28:35 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:21:18 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:43:20 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:42:56 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:42:24 PM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 10:02:05 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 10:01:47 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 8:28:26 AM	15	[REDACTED]	SCEM	Completed Call
KING, RAHEEM DEON	0001392038	12/5/2010 8:10:52 AM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 8:10:21 AM	0	[REDACTED]	SCEM	Ring no answer or busy
KING, RAHEEM DEON	0001392038	12/5/2010 6:18:47 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 6:18:24 AM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 3:11:32 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:10:16 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:09:16 AM	0	[REDACTED]	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 3:03:37 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:03:17 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:02:57 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 3:02:34 AM	0	[REDACTED]	SCEM	Carrier Blocked Called

*** SENSITIVE-LIMITED OFFICIAL USE ***

Run Date: 09/14/2012

Inmate Telephone System

Run Time: 09:58:08

Inmate Call Records

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Terminal Making Request: SCEM3540DC

User ID: mtice

Inmate Name	Inmate ID	Start Date/Time	Duration	Number Called	Jail Facility	Completion Code
KING, RAHEEM DEON	0001392038	12/5/2010 2:54:40 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:54:22 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:53:58 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:53:15 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:52:40 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:52:19 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:52:04 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:51:09 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:50:35 AM	0	[REDACTED] 4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 2:49:36 AM	0	[REDACTED] 4849	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:49:12 AM	0	[REDACTED] 4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 2:48:10 AM	0	[REDACTED] 4849	SCEM	Call not accepted
KING, RAHEEM DEON	0001392038	12/5/2010 2:46:46 AM	0	[REDACTED]	SCEM	Carrier Blocked Called
KING, RAHEEM DEON	0001392038	12/5/2010 2:46:25 AM	0	[REDACTED]	SCEM	Carrier Blocked Called

Total Calls: 147

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY CHARLESTON
STATE OF SOUTH CAROLINA V.		CASE NO.: GRD 20101206336 Indictment Number(s): 2011GS101793; 1794; 1795 Warrant(s): M725606; M725607; M725608
RAHEEM DEON KING		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
TO: Charleston County Detention Center ATTN: Sgt Hayward FAX #529-7317 (w) 529-7457 shayward@charlestoncountytv.org (Ms. Singleton; (fax) 529-7406 (w) 529-7381 msingleton@charlestoncountytv.org		OCA#: 2010049791
☒ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Charleston County Judicial Center 100 Broad Street Charleston, South Carolina 29401	COURTROOM General Sessions Courtrooms DATE AND TIME Upon Receipt or October 1, 2012 at 9 a.m. each day this term of court or until disposition of case	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s). LIST DOCUMENT(S) OR OBJECT(S): <i>See special instructions on reverse side.</i> Please provide this Office a copy of <u>one printed telephone log</u> and a <u>compact disc</u> of telephone recordings placed by Inmate <u>Raheem Deon King</u> , Inmate#: 1392038, from <u>12-4-10 to 1-4-11</u> , to all parties other than his attorney(s). The defendant has been, or is currently represented by <u>Jason King</u> . Please omit all calls made to the defendant's attorney(s), to include but not limited to the following phone number(s): <u>958-1850</u> . Please call Deputy Chief Inv. Matt Casey at 958-1974 when records are available to pick up. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT	DATE	
(BY) DEPUTY CLERK	September 13, 2012	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☒ SOLICITOR ☐ DEFENDANT	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED) Rutledge DuRant, Assistant Solicitor Ninth Judicial Circuit, Charleston County O.T. Wallace County Office Building 101 Meeting Street, Suite 400 Charleston, South Carolina 29401	

PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.	
Executed on _____, 201____	SIGNATURE OF SERVER
ADDRESS OF SERVER	

ADDITIONAL INSTRUCTIONS:

Upon arrival at the Charleston County Judicial Center, please report to the courtroom assigned for general sessions trials, which will be displayed on a monitor by the courthouse elevators. Please wait outside the specified courtroom until notified by the Investigator referenced in this subpoena or by an officer acting on behalf of the Court.

IF YOU PROMPTLY FURNISH THIS OFFICE with your contact information, it may not be necessary for you to attend court on each day of the entire term set forth in this subpoena. If you contact our Office and supply us with all of your pertinent information we may be able to give you a more specific date and time to appear in Court for the disposition of this case.

IF YOU DO NOT CONTACT THIS OFFICE upon receipt of this subpoena and provide the requested information, *you must appear in Court at the time and place set forth in this subpoena.*

IF THE "DOCUMENT(S) or OBJECT(S)" BOX IS CHECKED, and you promptly furnish this Office with the requested item(s) listed below, it may not be necessary for you to appear in court. *If the requested item(s) are not provided, you must appear in Court at the time and place set forth in this subpoena.*

Failure to appear in court pursuant to this subpoena constitutes contempt of court.

SPECIAL INSTRUCTIONS:

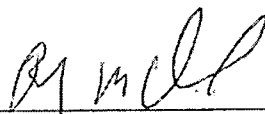
Please provide this Office a copy of one printed telephone log and a compact disc of telephone recordings placed by Inmate Rabeem Deon King, Inmate#: 1392038, from 12-4-10 to 1-4-11, to all parties other than his attorney(s).

The defendant has been, or is currently represented by Jason King. Please omit all calls made to the defendant's attorney(s), to include but not limited to the following phone number(s): 958-1850.

Please call Deputy Chief Inv. Matt Casey at 958-1974 when records are available to pick up.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all the material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies, to the best of my ability, with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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SC Bar No.: 076128

Attorneys for Appellant

June 20, 2014

RECEIVED

JUN 16 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable J.C. Nicholson, Jr.

Appellate Case No. 2012-213405

State of South Carolina.....Respondent,

vs.

Rakeem D. King.....Appellant.

FINAL BRIEF OF APPELLANT

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Bar #: 001767

Attorneys for Appellant

RECEIVED

JUN 23 2014

ATTORNEY GENERALS
OFFICE

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Statement of Issues Presented

Question I: Did the trial court err in charging the jury that attempted murder is a general intent crime, requiring merely malicious intent, and that malice may be inferred from the use of a deadly weapon?

Question II: Did the trial court err in allowing a witness to testify as to the amount of shots non-testifying witnesses heard?

Question III: Did the trial court err in admitting phone records, which led to a photo identification, when the search warrant for those records was based on a previous warrantless search for the same information requested in the search warrant?

Question IV: Did the trial court err in allowing the State to publish detention center phone calls the appellant allegedly made, when the danger of unfair prejudice substantially outweighed any probative value?

Statement of the Case

Procedural Facts

On December 4, 2010, the State arrested Rakeem King on the charges of attempted murder in violation of S.C. Code Ann. § 16-3-29, armed robbery in violation of S.C. Code Ann. § 16-11-330(A), and possession of a firearm during the commission of a violent crime in violation of S.C. Code Ann. § 16-23-490. The appellant was tried on November 5, 2012 through November 7, 2012 before the Honorable J.C. Nicholson, Jr. and a jury. The appellant was convicted of all three crimes and sentenced to thirty years on the armed robbery, five years consecutive on the possession of a firearm during the commission of a violent crime, and ten years concurrent on the attempted murder charge. The Notice of Appeal was timely filed on November 15, 2012.

Factual History

During the early morning hours of November 26, 2010, Dario Brown, a driver for the Yellow Cab Company, responded to a dispatch call to 1808 [REDACTED] Street. (R. p. 53, lines 2-17). Mr. Brown testified that it took him between one and two minutes to arrive to that address. (R. p. 58, lines 1-12). When Mr. Brown arrived at the address, the fare came from the yard of the residence across the street, which is 1809 [REDACTED] Street. (R. p. 60, lines 8-11). Mr. Brown was familiar with the street, as he used to live on the street for several years and had an aunt that lived on the street. (R. p. 53, lines 18-24). After the fare got into the back seat and because of Mr. Brown's familiarity with the street, Mr. Brown began questioning the fare why he was coming out of the yard of an abandoned residence. (R. p. 60, lines 14-24; R. p. 61, lines 13-17). The fare responded that it was his yard. (R. p. 61, lines 6-7).

Because the street was a dead-end, Mr. Brown proceeded to make a U-turn in the road. (R. p. 62, lines 16-18; R. p. 63, lines 8-11). At this time, Mr. Brown heard a pistol cocking, turned around and saw a gun raised, and heard the fare demand money. (R. p. 62, lines 18-21). Mr. Brown gave the fare "give away money", which Mr. Brown described as a stack of ones that is carried by cab drivers just in case they are robbed. (R. p. 64, lines 4-10). Mr. Brown estimated that there were between fifteen and twenty ones. (R. p. 97, line 10). Mr. Brown had already made eighty-three dollars in fares earlier in his shift. (R. p. 89, lines 17-19).

When the fare demanded more money, Mr. Brown tried to move the gun away from the back of his head by moving the gun with his elbow and forearm, telling the fare "he doesn't have to rob me." (R. p. 64, lines 23-25; R. p. 65, lines 2-4). Mr. Brown testified that he tried to move the gun three different times and that his hands were up. (R. p. 96, lines 14-15 and 19-20). The gun went off and Mr. Brown was struck in the elbow, while his arm was back. (R. p. 67, lines 15-19). Mr. Brown described the gun as a .25 caliber automatic, with a clip, that ejects shells upon firing. (R. p. 95, line 20-p. 96, line 5).

Mr. Brown then exited the cab, ran towards the dead-end, and hopped over a three or four foot chain-link fence, landing on his back, causing a fractured vertebrae. (R. p. 69, line 15-p. 70, line 5; R. p. 78, lines 22-23; R. p. 102, lines 1-2). Mr. Brown testified that while he was running towards the dead-end, the fare was about two steps behind him and fired another shot. (R. p. 68, lines 24-25; R. p. 101, lines 20-22). Mr. Brown claimed after hopping the fence and while lying on his back, the fare fired another round. (R. p. 70, lines 10-14). Mr. Brown then claimed that he was able to crawl behind a van in the yard, at which point the fare tried to shoot Mr. Brown by firing six or seven rounds. (R. p. 70, lines 16-19). Mr. Brown estimated the van to be about five to ten feet away from the fence. (R. p. 104, lines 3-4). Mr. Brown testified that as he was

behind the van, the fare said that "he is not going to shoot me anymore if I just give him the money." (R. p. 73, lines 9-13). Mr. Brown also testified that the fare knew he went behind the van. (R. p. 73, lines 23-25). Mr. Brown then was able to use his cell phone to call law enforcement. (R. p. 74, lines 16-19). It took sixty seconds for law enforcement to arrive. (R. p. 104, lines 18-19). Mr. Brown had only been shot once, which was the shot to the arm he received while inside the cab. (R. p. 79, lines 1-3).

The Yellow Cab Company's telephone operator testified that the call came in requesting a cab at 4:06:06 a.m. and that the dispatcher dispatched the cab driver out at 4:11:46 a.m. (R. p. 44, line 5- p. 45, line 12). The operator testified that the number that showed on his caller I.D. was XXX-4849. (R. p. 45, 24-p. 46, line 3).

Jennifer Butler, a patrolman with the North Charleston Police Department, was the first responding officer. (R. p. 114, lines 10-12; R. p. 120, lines 3-4). Officer Butler testified that she was dispatched to the scene at approximately 4:20 a.m. and arrived at approximately 4:21 a.m. (R. p. 110, lines 12-17). Officer Butler did not see the shooter on scene, did not see anyone running away, and did not see anybody picking up shell casings off the ground. (R. p. 113, lines 1-7; R. p. 119, lines 11-18). However, Officer Butler testified that a shell casing was found inside the cab. (R. p. 115, line 25-p. 116, line 7).

Kelly Murphy, the crime scene technician who was called out to the scene at approximately 4:30 a.m., testified that she has responded to over a thousand crimes scenes over a course of five years. (R. p. 123, lines 8-11; R. p. 125, line 19). Officer Murphy also testified that a shell casing, which was "just kind of laying [sic] there on the rear seat" was retrieved from the cab. (R. p. 127, lines 16-19; R. p. 137, lines 14-15). Officer Murphy stated that she and her supervisor were able to follow a blood trail through a yard at the end of [REDACTED] Street, but that

despite a thorough search, which took a little over two hours, Officer Murphy and three to four other officers were unable to find any other shell casings, other than the one found in the cab. (R. p. 130, lines 6-9; R. p. 132, lines 1-2; R. p. 139, lines 7-13; R. p. 140, lines 4-23).

On November 29, 2010 Mr. Brown was presented with a photo lineup, but was unable to identify any of the photos presented as being that of his fare. (R. p. 169, lines 14-16; R. p. 173, lines 20-21).

Because no identification was made in the first photo lineup, North Charleston Police Department focused its attention on investigating the number that called the Yellow Cab Company to request a dispatch to [REDACTED] Street on the November 26, 2010. (R. p. 193, lines 1-21). Detectives used internet sources to determine the number belonged to Cricket Wireless cell phone company. (R. p. 193, lines 12-16). The detectives then were able to find out the name of the subscriber was Kevin King, that the subscriber's date of birth was X/X/91, and that the address of the subscriber was listed as 3440 Elliott Street. (R. p. 193, line 19-p. 194, line 3). The State, during the appellant's pretrial search warrant suppression hearing, explained to the trial court that detectives found out the above information when they went to Cricket Wireless store and asked for the information, which was given without a search warrant. (R. p. 10, lines 8-p.11, line 5).

The detectives were not able to find a Kevin King living at 3440 Elliott Street, but were able to research the name King with the date of birth provided by the cell phone company and came up with the name Rakeem King, date of birth X/X/91. (R. p. 194, line 23-p. 195, line 5). Detectives then looked up Rakeem King's driver's license and discovered that his listed address was 3440 Osceola Street. (R. p. 195, lines 10-12). Based on this information, detectives compiled a photo line-up and presented it to Mr. Brown on December 3, 2010. (R. p. 195, lines

23-24; R. p. 13, lines 11-14). Mr. Brown selected Rakeem King as the person who robbed and shot him. (R. p. 196, lines 21-23). That photo-lineup identification completed the investigation and warrants were taken out on Rakeem King the next day. (R. p. 197, line 25-p. 198, line 2. It is undisputed that the only evidence presented placing the appellant at the scene is Mr. Brown's photo identification. Although fingerprints and DNA were found at the scene, the fingerprints and DNA did not belong to the appellant. (R. p. 133, line 11-p. 135, line 21).

On February 10, 2012, North Charleston Police Department obtained a search warrant directed to the Custodian of Record for Cricket Communications, Inc. regarding telephone number XXX-XXX-4849 for the subscriber's name and mailing/billing address, call details, and other information. (R. pp. 297-311). The Affidavit accompanying the search warrant stated the following: "During the course of the investigation[,] the aforementioned phone number was determined to be a Cricket Wireless number which belonged to the appellant." (R. p. 300).

Argument

Question I

Did the trial court err in charging the jury that attempted murder is a general intent crime, requiring merely malicious intent, and that malice may be inferred from the use of a deadly weapon?

a. Attempted Murder is not a general intent crime, but a specific intent crime.

During its closing, the State argued to the jury the following: "The Judge will tell you[,] you do not have to intent to kill in order to be guilty of this offense [of attempted murder]. You must have the requisite [m]alice. The Judge will tell you that; don't just take it from me." (R. p. 238, lines 19-22). At this point, the defense objected based on the charge conference, and the objection was overruled. (R. p. 238, line 25-p. 239, line 5).

The trial court instructed the jury that attempted murder occurs when “a person with the intent to kill attempts to kill another person with [m]alice [a]forethought[,] whether expressed or implied[,] commits the crime of Attempted Murder. (R. p. 259, lines 3-6). The trial court went on to instruct the jury that “[a] specific intent to kill is not an element of Attempted Murder but it must be a general intent to commit serious bodily harm.” (R. p. 260, lines 22-24). The trial court went even further in instructing that “[i]ntent may also be inferred when it is demonstrated the appellant voluntarily and willfully commits and act in a natural tendency which is to destroy another’s life.” (R. p. 261, lines 8-11). The defense took exception to the charge on attempted murder, stating that it was a specific intent crime. (R. p. 268, lines 10-13 and 18-25). The trial court ruled that attempted murder is a general attempt crime requiring only a showing of malice. (R. p. 270, lines 9-21).

During deliberations, the jury came back with a question stating: “We’d like further clarification of the difference between attempted murder and assault and battery of a high and aggravated nature.” (R. p. 312). The hypotheticals presented by the jury in Court’s Exhibit 2 clearly demonstrate that the jury struggled with general intent (malice) versus specific intent (intent to kill): “If someone points a gun at a person’s head, but does not fire, does that fulfill the definition of attempted murder?”

The Court explained to the jury that “[t]he basic difference between attempted murder and assault and battery of a high and aggravated nature is assault and battery of a high and aggravated nature does not require malice. Malice is a hatred, ill will or hostility towards another person and is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict injury or under circumstances that the law would infer as evil intent.” (R. p. 273, lines 10-17). The trial court had previously instructed the jury that “[a] person

commits the offense of Assault and Battery of a High and Aggravated Nature if the person unlawfully injures another and great bodily injury to another person results when the act is accomplishe[d] by means likely to produce death or great bodily injury.” (R. p. 261, lines 13-18). The defense objected to the trial court’s answer to the jury and was again overruled. (R. p. 274, line 14-p. 275, line 4). The charge book was in the possession of the jury during the entire length of deliberations. (R. p. 275, lines 5-7).

Attempted murder is defined by statute as: “A person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (emphasis added). This statute became effective on June 2, 2010 and replaced the former common law statute of assault and battery with intent to kill, formerly S.C. Code Ann. §16-3-620 (see legislative history of S.C. Code Ann. § 16-3-29).

“To prove attempt, the State must prove that the appellant had the specific intent to commit the underlying offense, along with some overt act, beyond mere preparation, in furtherance of the intent.” *State v. Reid*, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011). “In the context of an attempt crime, specific intent means the appellant intended to complete the acts comprising the underlying offense.” *Id.* According to S.C. Code Ann. § 16-3-10, “‘Murder’ is the killing of any person with malice aforethought, either express or implied.” It follows from the logic in *State v. Reid*, that in order to attempt to kill someone, one must intend the killing of that person. One cannot accidentally attempt to commit a crime.

Also, when the trial court gave the charge for the attempted armed robbery, the court instructed the jury that “[a]n attempt includes a *specific intent* to do a particular criminal act along with the act falling short of the act intended.” (R. p. 258, lines 19-21). The trial court went further in explaining to the jury that “[i]ntent means intending the results which actually

occurred not accidentally or involuntarily.” (R. p. 258, lines 23-25). By the trial court’s own instruction on the charge of attempt, attempt is a specific intent crime where the result (death) must be intended.

In *State v. Sutton*, the appellant was convicted of assault and battery with intent to kill [ABIK], attempted murder, and possession of a firearm during the commission of a violent crime. 340 S.C. 393, 532 S.E.2d 283 (2000). The Supreme Court, in its decision, affirmed the Court of Appeals decision to vacate the appellant’s attempted murder conviction, but declined to follow the Court of Appeals reasoning that ABIK and attempted murder are the same offense. *Sutton*, 340 S.C. at 396, 532 S.E.2d at 285. The Supreme Court held that “[a]ttempted murder would require the specific intent to kill and conduct towards that end. ABIK requires an unlawful act of violence to the person of another with malice. Clearly, each offense has an element the other does not. However, simply because convictions for both offenses would not violate double jeopardy, we are not constrained to recognize the offense of attempted murder.” The Supreme Court held that the “common law offense[] of ABIK . . . adequately cover[s] the conduct which attempted murder would include.” *Sutton*, 340 S.C. at 397, 532 S.E.2d at 285 (emphasis added). Since the holding in *Sutton*, the South Carolina Legislature enacted the attempted murder statute. S.C. Code Ann. § 16-3-29 (effective June 2, 2010).

b. *The “use of a deadly weapon” implied malice instruction should not have been given when there was evidence presented that would reduce, mitigate, excuse or justify the killing.*

The trial court explained to the jury that “[m]alice is a hatred, ill will, or hostility towards another person [and] is the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury [or] under circumstances that the law will infer as evil intent.” (R. p.

259, lines 6-10). The trial court, in answering the jury's question (R. p. 312), put in the words it originally left out in its jury instruction on malice: "[m]alice is a hatred, ill will or hostility towards another person *and* is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict injury *or* under circumstances that the law would infer as evil." (R. p. 273, lines 13-17 (emphasis added)). The trial court, in its original jury instruction, went on to instruct the jury that "[i]nferred malice may also arise when the deed is done with a deadly weapon." (R. p. 260, lines 4-5). The defense objected to the "use of a deadly weapon" implied malice instruction and cited *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).

According to *State v. Belcher*, the Court held that such an instruction "has no place in a murder (or assault and battery with intent to kill) prosecution where *evidence is presented* that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill)." *Belcher*, 385 S.C. at 610, 685 S.E.2d at 809 (emphasis added). In reversing the appellant's conviction, the Court went on to state that such a charge cannot be considered harmless and that "[i]t is entirely conceivable that the only evidence of malice was [the appellant's] use of a handgun." 385 S.C. at 612, 685 S.E.2d at 810.

Mr. Brown testified that he tried to move the gun away from the back of his head by moving the gun with his elbow and forearm three different times and that Mr. Brown's hands were up. (R. p. 64, lines 23-25; R. p. 96, lines 14-15 and 19-20). The gun went off and Mr. Brown was struck in the elbow, while his arm was back. (R. p. 67, lines 15-19). The defense, in its closing argument, makes a very probable argument that the fare was merely using the gun as a scare tactic to successfully receive money from Mr. Brown, that the fare never intended the gun to fire, and that the gun only fired when Mr. Brown was trying to move the gun with his elbow

and forearm. (R. 246, lines 10-24). If the gun was accidentally fired, this certainly reduces, mitigates, excuses or justifies Mr. Brown being shot in the arm.

The argument that the error in the instruction was harmless because malice could have been inferred from multiple gun shots holds no weight. The jury could quite possibly have not believed Mr. Brown when he testified there were additional shots fired after he left the cab. Other than Mr. Brown's testimony, there is no admissible evidence that the fare fired more than the one time inside the cab (*see* Question II, *infra*, on improperly admitting a witness to testify as to the amount of shots non-testifying witnesses heard). In fact, it may be inferred from the jury's hypotheticals in its questions to the trial court regarding the difference between attempted murder and assault and battery of a high and aggravated nature that at least one member of the jury did believe any other shot was fired other than the one inside the cab: "If someone points a gun at a person's head, but does not fire, does that fulfill the definition of attempted murder?" (R. p. 312). There was evidence presented that gun was only fired once. Only one shell casing was discovered, despite a thorough search for more (two hour search with four to five trained officers searching). (R. p. 127, lines 16-19; R. p. 140, lines 4-23). The State tried to justify the absence of any shell casings by pointing out that it was dark outside during the search and the shell casings were small. (R. p. 139, lines 7-13; R. p. 140, lines 4-23). However, Officer Murphy was able to locate a blood trail under the same conditions. (R. p. 130, lines 6-9).

The argument may be attempted that the fare was able to pick up the additional seven to eight shell casings before law enforcement responded, but it very possible the jury was not convinced of this either. The Yellow Cab Company's phone operator testified that the cab driver was not dispatched until 4:11:46 a.m., Mr. Brown testified that it took him between one and two minutes to drive to the location, the first responding officer, Officer Butler, testified that she was

dispatched at approximately 4:20 a.m. and arrived at approximately 4:21 a.m. (R. p. 44, line 25- p. 45, line 12; R. p. 58, lines 1-12; R. p. 110, lines 12-17). Officer Butler testified that when she arrived, she did not see the shooter, did not see anyone running away, and did not see anyone picking up shell casings. (R. 113, lines 1-7; R. p. 119, lines 11-18). The entire incident, from the time Mr. Brown arrived on scene to the time the first responding officer was dispatched, took only seven minutes. It would be unreasonable to believe that the fare was able to locate seven to eight shell casings in the dark within mere minutes. If the fare was going to attempt to hide the shell casings, he would have went to the cab first, where the casing was “just kind of laying [sic] there on the rear seat.” (R. p. 137, line 14). Therefore, there was evidence presented that Mr. Brown was only shot at once, and that that only shot could have been accidental.

The trial court gave lesser included charges for assault and battery of a high and aggravated nature and assault and battery 1st degree. (R. p. 261, lines 12-15; R. p. 262, lines 1-14). When the defense requested that the trial court also charge on assault and battery 2nd degree, the trial court refused, reasoning that a gunshot wound is not moderate bodily injury. (R. p. 269. Lines 5-10; R. p. 270, lines 9-12). “A trial judge must charge a lesser included offense if there is any evidence from which it can be inferred that the appellant committed the lesser included of the crime charged.” *State v. Heyward*, 350 S.C. 153, 157, 564 S.E.2d 379, 381 (Ct. App. 2002). The trial court must have found evidence of the lesser included crimes of assault and battery of a high and aggravated nature and assault and battery 1st degree, otherwise the lesser included offenses would not have been charged. Therefore, the trial court must have found evidence that could reduce, mitigate, excuse, or justify the crime of attempted murder in the jurors’ minds. The appellant in *Belcher* argued that when “a jury is asked to consider a lesser included offense . . . the permissive inference charge violates our common law . . . against

charging juries on the facts.” *Belcher*, 385 S.C. at 602, 685 S.E.2d at 804. The Court, in agreeing with Belcher’s argument, stated that the “permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the appellant has committed murder (or assault and battery with intent to kill).” *Belcher*, 385 S.C. at 612, 685 S.E.2d at 810. Because lesser included charges were given, the permissive inference malice charge should not have been given, as it was a charge on the facts.

For these reasons, the Court should reverse and remand this case for a new trial.

Question II

Did the trial court err in allowing a witness to testify as to the amount of shots non-testifying witnesses heard?

When the State asked Officer Jennifer Butler, the first responding officer, whether she made contact with anyone in the area during her “knock and talks”, Officer Butler replied: “Yes sir; we were able to speak to I believe it was two people and they were able to confirm---.” (R. p. 115, lines 4-5). At this point, the defense objected on hearsay grounds and the State volunteered to rephrase the question, which the trial court permitted. (R. p. 115, lines 6-10). The State then asked: “What did you learn as you did those knock and talks?” (R. p. 115, lines 11-12). Officer Butler began to answer, again drawing a defense objection based on hearsay. (R. p. 115, line 14). The trial court ruled that “she can testify to what she learned” and overruled the objection. (R. p. 115, lines 15-16). Officer Butler testified that she learned that approximately three of four shots were fired. (R. p. 115, line 22). The State pointed out to the jury in its closing that “there were other witnesses at the scene *that said* they heard three, four or

more shots.” (R. p. 234, lines 19-20) (emphasis added). Again, the defense objected and was overruled. (R. p. 234, lines 21-25).

Under Rule 801(c) of the South Carolina Rules of Evidence, hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Hearsay is not admissible except as provided by the rules of evidence, by statute, or by ruled prescribed by the S.C. Supreme Court. Rule 802, SCRE.

Officer Butler changing her wording from “we were able to speak to . . . two people and they were able to confirm” to “I learned” from the knock and talks, does not change the fact that what was admitted into evidence was inadmissible hearsay. The only way Officer Butler was able to “learn” from her knock and talks that there were three or four gunshots was from speaking with two people during the knock and talks who told her this information. The statement was introduced to show that there was more than one gunshot, which would confirm Mr. Brown’s testimony and strengthen the State’s argument for the existence of malice. This intent to introduce statements made by non-testifying witnesses for the truth of the matter asserted was made clear in the State’s closing argument: “there were other witnesses at the scene *that said* they heard three, four or more shots.” (R. p. 234, lines 19-20) (emphasis added). “The Sixth Amendment guarantees a criminal appellant the right “to be confronted with the witnesses against him.’ 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.’” *State v. Dinkins*, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000) (citing U.S. Const. amend. VI; *State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22

(1987)). By introducing this hearsay evidence, the Appellant's right to confrontation has been violated.

Therefore, the Court should reverse and remand this case for a new trial and order that the cell phone records and photo lineup be suppressed.

Question III

Did the trial court err in admitting phone records, which led to a photo identification, when the search warrant for those records was based on a previous warrantless search for the same information requested in the search warrant?

Detectives with the North Charleston Police Department went to a Cricket Wireless store, without a search warrant, and asked for subscriber information, including the subscriber's name, date of birth, and address. (R. p. 10, line 22-p. 11, line 2; R. p. 193, line 19-p. 194, line 3). Detectives used this information to put together a photo lineup, in which Mr. Brown identified the appellant on December 3, 2010 as his assailant. (R. p. 13, lines 11-14; R. p. 14, lines 11-24; R. p. 195, lines 23-24; R. p. 196, lines 21-23). The search warrant for the subscriber's information was obtained on February 10, 2012. (R. p. 299).

In *State v. Dupree*, 319 S.C. 454, 456-57, 462 S.E.2d 279, 281 (1994), the Supreme Court stated the following: “We have long held [w]arrantless searches are *per se* unreasonable unless an exception to the warrant requirement is present. The burden is upon the State to justify the warrantless search. We have specifically recognized several exceptions to the warrant requirement. These include (1) search incident to a lawful arrest, (2) ‘hot pursuit’, (3) stop and frisk, (4) automobile exceptions, (5) the “plain view” doctrine, and (6) consent.

State v. Bailey, 276 S.C. 32, 35-36, 274 S.E.2d 913, 915 (1981) (internal citations omitted); *see*

also *State v. Peters*, 271 S.C. 498, 248 S.E.2d 475 (1978).” At trial, the State did not cite an exception to the warrant requirement or attempt to justify the warrantless search.

The South Carolina Supreme Court in *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594 (2004), a drug trafficking case, provided an outline for the appropriate circumstances when one may claim a search was conducted in violation of the U.S. Constitution: “The Fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. To claim protection under the Fourth Amendment of the U.S. Constitution, appellants must show that they have a legitimate expectation of privacy in the place searched.” *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S.Ct. 421 (1978). A legitimate expectation of privacy is both subjective and objective in nature: the appellant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable. *Oliver v. United States*, 466 U.S. 170, 177, 104 S.Ct. 1735, 1741 (1984) (citing *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 516 (1967) (Harlan, J., concurring)).”

In *Katz v. U.S.*, the U.S. Supreme Court, in deciding that “the Fourth Amendment protects people, not places” explained that “[t]o read the Constitution more narrowly is to ignore the vital role the public telephone has come to play in private communication.” *Katz v. U.S.*, 389 U.S. 347, 351-352, 88 S.Ct. 507, 511-512 (1967). In 1967, the U.S. Supreme Court recognized that the Constitution must keep up with modern times and recognize the “vital role” new technology “has come to play in private communication.” *Id.*

It is evident that the appellant had an expectation of his cell phone records not being discoverable, otherwise he would not have allegedly placed the call to the Yellow Cab Company using his own cell phone. Surely, in this day and age, the appellant was aware that most, if not

all, phones have caller identification capabilities, especially a dispatch center for a widely known cab company. The expectation of privacy in a person's cell phone records is certainly one that society recognizes as reasonable. While home telephone numbers, with subscriber names and addresses, are often listed in phone books, cell phone numbers are not listed in phone books. There is no public way for someone, to look up a cell phone number and attach it to a subscriber's name, address, and date of birth. In fact, the State, in explaining why it got a search warrant for information it already had in its possession over a year before, told the trial court the information "would not have been admissible in court, unless we got the search warrant so we went back and got the search warrant. So that's why we are here." (R. p. 11, lines 2-5).

Merely because the State went back and got a search warrant for records it had already attained more than a year previous, does not cure the illegal search and the photo line-up that was developed based solely on that illegal search. The affidavit accompanying the search warrant stated the following: "[d]uring the course of the investigation[,] the aforementioned phone number was determined to be a Cricket Wireless number which belonged to the appellant." (R. p. 300). Therefore, the probable cause stated in the affidavit to obtain a search warrant is also based on an unconstitutional search and, therefore, the search warrant itself is invalid and the phone subscriber information should not have been entered into evidence.

For these reasons, the Court should reverse and remand this case for a new trial and order that the cell phone records and photo lineup be suppressed.

Question IV

Did the trial court err in allowing the State to publish detention center phone calls the appellant allegedly made, when the danger of unfair prejudice substantially outweighed any probative value?

The State introduced into evidence a compact disc containing several phone calls that allegedly the appellant made to an unknown third party from December 4, 2010 through January 4, 2011. The entire compact disc was entered into evidence, over the appellant's objection. (R. p. 216, line 4-p. 217, line 3; State's Exhibit 33- C.C. of Jail Calls). The State told the trial court that it wanted to play two phone calls to the jury, each lasting fifteen minutes. (R. p. 211, lines 20-21). However, based on the transcript, the only portion of the compact disc that was ever published to the jury was one phone call from the detention center to XXX-XXX-4849 on December 5, 2010 at 8:28 a.m., which lasted approximately fifteen minutes. (R. p. 209, line 16; R. p. 223, lines 9-12). This is the same number that called the cab company on November 26, 2010. (R. p. 45, line 24-p. 46, line 3. However, the phone call is not reflected on State's Exhibit 34 (R. pp. 314-317), which is the detention center's phone logs for calls placed with the appellant's inmate identification number. Neither the State nor the defense transcribed the compact disc prior to trial. At trial, the court reporter did not transcribe the compact disc.

The appellant objected to the introduction of the compact disc based on relevancy and unfair prejudice. (R. p. 209, lines 17-20; R. p. 216, lines 22-25). Both the appellant and the State admitted that portions of the compact disc were difficult to understand. (R. p. 209, line 25-p. 210, line 1; R. p. 214, lines 16-18; R. p. 216, lines 24-25).

The State cited the following reasons the compact disc was relevant: (1) to connect the appellant to the XXX-XXX-4849 telephone number; (2) that the appellant gave the unknown

third party the passcode for the phone and claimed the phone was his; (3) that the appellant spoke about explaining away his involvement; (4) that the appellant stated he did not know why he was picked out of a photo lineup; (5) the unknown third party stated that the appellant could have left a hair; (6) that the unknown third party stated that the appellant could say that the appellant took a cab from the appellant's house to the third party's house; (7) that the appellant and the third party were trying to get the appellant's story straight; (8) the appellant spoke about the circumstances of the crime; and (9) that the appellant spoke about his cousin getting Mr. Brown to take back his photo identification. (R. p. 211, lines 1-16; R. p. 215, line 23-p. 216, line 2). The State told the trial court that the most important reason to admit the compact disc was to connect the appellant with the telephone number. (R. p. 211, lines 16-18). Yet, when the trial court asked the State if it would accept the appellant stipulating that the detention center calls were made to the XXX-XXX-4849 rather than admitting the compact disc, the State refused. (R. p. 215, line 19-p. 216, line 3).

The trial court refused to listen to the compact disc before the State published it to the jury. (R. p. 216, lines 4-13). Before publishing the phone call for the jury, the State introduced the detention center's phone logs for telephone calls made from the appellant's inmate number. (R. pp. 314-317). Sergeant Kevia Heyward, the person in charge of detention center phone calls, testified for the State that the appellant called XXX-XXX-4849 sixty-three times during the time period from December 4, 2010 through January 4, 2011. (R. p. 223, lines 9-13).

To address the State's argument as to the relevancy of the compact disc, it must be stated that at the time these arguments were made, the State told the trial court that it intended to publish two phone calls to the jury. However, only one phone call was actually published to the jury. It is also important to note that the phone call that was published to the jury was, for the

most part, impossible to understand, despite repeatedly listening to the compact disc and playing it a slower pace. For the sake of addressing the State's argument as to relevancy only, the Appellant will not contest that that the Appellant was the person making the phone call from the detention center.

The State's main objective in introducing the calls was to connect the appellant to the phone number XXX-XXX-4849. (R. p. 211, lines 16-18). However, this was accomplished with the phone log (R. pp. 314-317) and Sergeant Heyward's testimony. At the very beginning of the phone call, the appellant states that his phone has been turned on, but the other party is not even picking up. (State's Exhibit 33- C.D. of Jail Calls, time :16). When the third party was attempting to place a call to the appellant's mother, the third party said he could not get the appellant's phone to work and the appellant gave the third party a code. (State's Exhibit 33- C.D. of Jail Calls, time 2:07). Despite repeatedly listening to the compact disc, I was not able to hear anything giving credence to State's argument that the appellant attempted to explain away his involvement. Throughout the phone call, the appellant adamantly denied his involvement. The appellant stated that he did not know why he was picked out of a photo lineup. (State's Exhibit 33- C.D. of Jail Calls, time 3:23). The State's argument claiming that the third party stated that the appellant could have left a hair is misleading. What was actually said was: "[inaudible] find a piece of hair or shit like that [inaudible] on seat that's all it takes some boy come up with some shit like that [inaudible] that's why I take cab from my house to your house. Just like that." (State's Exhibit 33- C.D. of Jail Calls, time 4:03). The State was incorrect in stating that the third party told the appellant that the appellant could say that the appellant took a cab from the appellant's house to the third party's house. At no point did I hear anything in this phone call on which the State could surmise that the appellant and the third party were trying to

get the appellant's story straight or that the appellant spoke about his cousin getting Mr. Brown to take back the photo identification. Perhaps this is in the second phone call that the State was intending to publish for the jury, but never did. The only portions of the telephone call that could be interpreted as the appellant speaking about the circumstances of the crime is when the appellant says "they ain't even have no gun or nothing" (State's Exhibit 33- C.D. of Jails Calls, time 6:58) and when the third party says "You gotta get to the bottom of this. You gotta see how the fuck you got cut off." (State's Exhibit 33- C.D. of Jail Calls, time 7:14). The appellant replied, "I know, that's why I'm waiting for my preliminary hearing." (State's Exhibit 33- C.D. of Jail Calls, time 7:15). The phone call conversation mostly involved the appellant's bond, preliminary hearing, getting the appellant in contact with his mother, and getting the appellant money for his detention center account.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice" Rule 403, SCRE. Also, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion" Rule 404(a), SCRE. Also, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rules 404(b), SCRE.

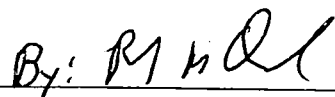
There are several portions of the telephone call that are unfairly prejudicial and present inadmissible evidence of the appellant's character to the jury. These portions are, for the most part, clear and easily audible. At the very beginning of the published phone call, the appellant stated: "My nigger, my nigger, my dog, my mother fucking nigger, my dog." The appellant also asked the third party: "Do you know what song popped up in my head?" The appellant proceeds to sing the following words to the third party: "And I've been here before. And I told myself I

wasn't gonna come back here no more." When talking about the appellant getting a bond on his current charges, the third party stated: "You just come clean off of [inaudible] and you know when you get charges like that back to back them boys be trying to charge a motherfucker with menace to society and all that bullshit and the solicitor be bringing up the shit what you do in the streets and this and that. You know?" The appellant replied in the affirmative and the third party responded: "[Inaudible] good ass lawyer." (State's Exhibit 33- C.D. of jail calls, time 13:57).

The danger that the jury would consider the appellant being in jail before, having just come off bond, having similar charges "back-to-back", and the use of racial slurs and curse words, substantially outweighs the little probative value of the information coming from the actual *content* of the phone call that was published for the jury. The probative value of the phone call is to link the appellant with the telephone number XXX-XXX-4849, which the State more than accomplished through Sgt. Heyward's testimony and the calls logs documented in State's Exhibit 34. (R. pp. 314-317).

CONCLUSION

For these reasons, this matter should be reversed and a new trial ordered.

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June 23, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable J.C. Nicholson, Jr.

Appellate Case No. 2012-213405

State of South Carolina.....Respondent,

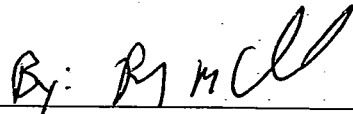
vs.

Rakeem D. King.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),
SCACR.

June 23, 2014

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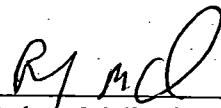
State of South Carolina.....Respondent,

vs.

Rakeem D. King.....Appellant.

AFFIDAVIT OF SERVICE

Personally appeared before me Robert M. Dudek, who, after being duly sworn, deposes and says that he is employed with the South Carolina Commission on Indigent Defense, Appellate Division. That on June 23, 2014, he did hand deliver, 10 copies of the Appellant's Final Reply Brief in the above case to Deborah R. J. Shupe, Office of the Attorney General.



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SUBSCRIBED AND SWORN TO before me
this 23th day of June, 2013.

Heather J. Jendel (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

S.C. Supreme Court

Appeal From Charleston County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

THE STATE,

Respondent,

v.

RAHEEM D. KING,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly charged the law regarding attempted murder and inference of malice from use of a deadly weapon.

II. The circuit court properly admitted a police officer's testimony regarding what she learned during the course of the investigation.

III. The circuit court properly admitted phone records revealing subscriber information for the phone number used to summon the cab because Appellant did not have a reasonable expectation of privacy regarding the information.

IV. The circuit court properly admitted the recordings of calls Appellant made from the Detention Center to the cell phone number used to summon the cab because the calls established Appellant's ownership of the phone, and the probative value outweighed the prejudice to Appellant.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On March 8, 2011, the Charleston County Grand Jury indicted Appellant Raheem D. King on one count of attempted murder, one count of armed robbery, and one count of possession of a firearm during the commission of a violent crime. The charges arose from an incident on November 26, 2010, during which Appellant lured a cab to an address in Charleston County, and then robbed and shot at the cabdriver, Dario Brown ("Mr. Brown"). The case was called for trial on November 5, 2012, before the Honorable J.C. Nicholson, Jr., Circuit Court Judge.

Prior to trial, Appellant moved to suppress records from Cricket Wireless regarding a particular cell phone number associated with the case, asserting the affidavits submitted in support of the search warrants for the records were insufficient, and contained conclusory and misleading statements. The State argued the supporting affidavits contained more than sufficient information establishing probable cause to obtain the records. After reviewing the affidavits and search warrants, the circuit court denied the motion to suppress. (Trial Transcript [TT], pp. 59-69); Court's Exhibit 1 [Search Warrant] Record on Appeal [R.], pp. 2-12; 297).

Devin Parker ("Parker"), a Yellow Cab Company telephone operator, testified a call came in at 4:06 a.m. on November 26, 2010, requesting a cab at 1808 [REDACTED] Street, and he dispatched Mr. Brown to that address at 4:11 a.m. Parker stated the caller identified himself as Kevin, and the caller ID showed the call came from the number [REDACTED] 4849. (TT, pp. 145-152; State's Exhibit 2 [Dispatch Screen Sheet] R., pp. 44-51; 313).

Mr. Brown testified he arrived at 1808 Carlton within one or two minutes. He was familiar with Carlton Street because he lived there for several years, and his aunt lived on the street. When he arrived at 1808 [REDACTED], Mr. Brown saw a man walking out

of the yard across the street at 1809 [REDACTED] Street, which he knew was abandoned. (TT, pp. 163-165, 168-171; R., pp. 53-55, 58-61).

The man entered the cab's passenger side backseat. When he opened the cab door, the dome light came on, and Mr. Brown was able to see the man's facial features and attire. Mr. Brown asked the man why he came out of the yard of an abandoned residence, and the man replied it was his yard. (TT, pp. 170-172; R., pp. 60-62).

After the man shut the door, Mr. Brown made a U-turn at the dead end of the road. He heard a pistol cocking, looked back and saw the man raise a gun to his head. The man demanded money, and Mr. Brown gave him the "give away money," or "dummy money," which was a stack of one-dollar bills drivers keep under the seat or between their legs to give to robbers, but the man demanded more money. Mr. Brown testified he was basically begging for his life at this point, and was so scared his legs would not move. (TT, pp. 172-175; R., pp. 62-65).

Mr. Brown tried to use his forearm to move the gun away from his head three times, pleading with the man not to shoot him. The third time, the man shot Mr. Brown in the elbow and the bullet passed through his forearm. Mr. Brown described the gun as a .25 caliber automatic that ejects shells when fired. (TT, pp. 175-178, 205-207; R., pp. 65-68, 95-97).

After the man shot him, Mr. Brown got out of the cab and ran toward the dead-end of the street, screaming for help. With the man chasing him, Mr. Brown flipped headfirst over a three to four foot chain-link fence, and landed on his back, fracturing a vertebrae. Mr. Brown testified the man fired a shot during the pursuit, and after he flipped over the fence, the man pointed the gun over it and fired another shot. Mr. Brown was able to maneuver himself behind a burgundy van in the yard, approximately five to

ten feet away from the fence, and the man fired six or seven more shots. The man yelled he would stop shooting if Mr. Brown gave him the money. (TT, pp. 178-182, 188-189, 211, 214; R., pp. 68-72, 78-79, 101, 104).

Mr. Brown used his cell phone to call the police, and the man fled the scene. Mr. Brown testified he clearly saw the man, and described him as having "brown skin, kind of heavy set with a round face, scruffy beard and an afro . . ." wearing a hoodie over his head, and he told law enforcement there was no doubt in his mind he could identify the man in a photo lineup. When law enforcement subsequently showed him a photo lineup of six individuals, he was able to identify Appellant as the shooter with "100 percent" certainty. (TT, pp. 183-184, 187-188, 196, 199, 214; R., pp. 73-74, 77-78, 86, 89, 104).

Officer Jennifer Butler ("Officer Butler"), with the North Charleston Police Department, was the first responding officer at the scene, arriving at approximately 4:21 a.m. She saw a cab had run into a pole on the side of the road, but no one was inside. Mr. Brown flagged her down from across the dead-end of the street, and he was very distraught, scared, and appeared to be in shock. He reported he had been dispatched to 1808 [REDACTED], and the man he picked up there robbed him and shot him in the forearm. (TT, pp. 220-224, 230, R., pp. 110-114, 120).

The responding officers did not know where the shooter went, and a canine unit came to try and track him if possible. Officer Butler and another officer canvassed houses in the area to determine if anyone saw or heard anything relating to the crime. The State asked Officer Butler if she was able to make contact with anyone in the area, and she responded they were able to speak to two people, who "were able to confirm . . ." At that point, the circuit court sustained Appellant's hearsay objection. (TT, pp. 224-225; R., pp. 114-115).

The State then asked Officer Butler what she learned during the investigation she conducted that night. The circuit court overruled Appellant's second hearsay objection, stating Officer Butler could testify to what she learned in the investigation, Officer Butler testified she learned approximately three or four shots were fired that night. (TT, p. 225; R., p. 115).

Shawn Mitchell ("Mitchell"), a legal compliance analyst at New Star ("New Star"), a records production company, testified New Star maintains the phone records, including subscriber information and call logs, for Cricket Wireless subscribers. In response to a subpoena, Mitchell pulled the records for [REDACTED]-4849, which was the number from the call requesting the cab pickup at 1808 [REDACTED]. The records revealed a Cricket Wireless subscriber named "Kevin King," with the address 3440 Elliot Street, Charleston, South Carolina 29405-7332, and a 1991 date of birth (TT, pp. 253-257; R., pp.142-146).

Mary Wearing ("Wearing"), a custodian of driver's records at the South Carolina Department of Motor Vehicles ("SCDMV"), testified Appellant's most recent address on his driver's license was 3440-B Osceola Street, North Charleston, South Carolina 29405. Also, Appellant's driver's license reflected a 1991 birthdate. (TT, p. 275, 278-279, R., p.162, 165-166).

Detective Patricia Jourdan ("Detective Jourdan") testified she showed Mr. Brown a photo lineup on November 29, 2010. There were photos of six men in the lineup, but Mr. Brown did not identify any of them as the shooter. (TT, pp. 281-287; R., pp. 168-174). Detective Mark Evans ("Detective Evans") testified the only information investigators had initially was the cell phone number from the call to the cab company. They learned it was a Cricket Wireless number, which was registered to Kevin King,

3440 Elliott Street, with a 29405 zip code and a 1991 date of birth. They determined the street address given to Cricket Wireless did not exist, and Elliott Street was in the 29401 zip code area. Using driver's license records, they then tried matching up people in the area with the last name King and the 1991 birthday. They found Rakeem King (Appellant) with the same 1991 birthday given to Cricket Wireless, and an address of 3440 Osceola Street with a 29405 zip code. (TT, pp. 305-308; R., pp. 192-195).

As a result of the information obtained from this investigation, Detective Evans recommended a second photo lineup with Appellant's photo. On December 3, 2010, Mr. Brown viewed the second photo lineup with six photos, including Appellant. Detective Walter Boone testified Mr. Brown immediately identified the third photo (Appellant), and was 100% sure Appellant was the man who robbed and shot him. (TT, pp. 289-297, 308-310; R, pp. 176-184, 195-197).

Appellant moved to suppress a compact disk containing recordings of telephone calls Appellant made while in custody at the Detention Center (the "CD"), arguing relevancy and unfair prejudice due to the language used and difficulty understanding what was said. The State argued the CD was highly relevant because it directly connected Appellant to the cell phone used to lure the cab to the scene. The circuit court denied the motion to suppress, but offered to redact portions Appellant believed were unduly prejudicial. Appellant then withdrew his request to redact portions of the CD. (TT, pp. 322-329; R., pp. 209-216).

Kevia Heyward ("Heyward"), Security and Administrative Supervisor at the Detention Center, testified the Detention Center has a recording system to record all inmate telephone calls. When booked into the Detention Center, each inmate receives a unique pin number for the system that must be used when they attempt to make a phone

call, and the system automatically records all completed calls, except those made to the inmate's attorney, into compact disk storage form. The inmate is advised all calls are recorded, and the recordings are maintained in the Detention Center's ordinary course of business. The Detention Center Call Log indicated Appellant called the cell phone at issue sixty-three times in one month. The cell phone was in the possession of an unknown third party, but Appellant and the third party made statements during the calls clearly indicating the cell phone belonged to Appellant. (TT, pp. 331-337, State's Exhibit 33 [CD], State's Exhibit 34 [Call Log]; R., pp. 218-224), 314. ¹

The circuit court charged the jury on the elements of attempted murder, the lesser included offenses of assault and battery of a high and aggravated nature ("ABHAN") and first degree assault and battery, armed robbery, attempted armed robbery, and possession of a weapon during commission of a violent crime. (TT, pp. 383-400; R., pp. 249-266). Appellant objected to the attempted murder jury charge on the ground attempted murder is a specific intent crime rather than a general intent crime. He also objected to the inference of malice from use of a deadly weapon charge. (TT, pp. 402-405; R., pp. 268-271).

The jury convicted Appellant of attempted murder, armed robbery and possession of a weapon during a crime of violence. The circuit court sentenced Appellant to concurrent prison terms of thirty years on the armed robbery conviction and ten years on the attempted murder conviction, with a consecutive five year term on the possession conviction. (TT, pp. 401, 428-429; R., pp. 267, 278-279). This appeal followed.

¹ State's Exhibit 33 has been transferred to the Court for consideration.

ARGUMENT

I. The circuit court properly charged the law regarding attempted murder and inference of malice from use of a deadly weapon.

Appellant asserts the circuit court erred in charging the jury attempted murder is a general intent crime requiring malice. He contends the circuit court should have instructed the jury attempted murder is a specific intent crime, and the charge given was confusing. In addition, Appellant argues the circuit court's jury charge that malice may be inferred from the use of a deadly weapon was reversible error under State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Appellant's arguments are meritless.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216, 220 (2006). In reviewing jury charges for error, an appellate court must consider the trial court's jury charge as a whole in light of the evidence and issues presented at trial. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 583 (2010).

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *Id.* (quoting State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 463 (Ct. App. 2003)). "A jury charge that is substantially correct and covers the law does not require reversal." *Id.* (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)), and will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *Id.* at 584.

A. Attempted Murder Instruction

The current attempted murder statute is the functional equivalent of the common law offense of assault and battery with intent to kill ("ABWIK"). In State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), the Supreme Court first addressed the issue of whether

attempted murder was an offense in South Carolina, and noted the common law essentially equated ABWIK with attempted murder. *Id.* at 285.

South Carolina case law on the requisite intent to commit ABWIK was ambiguous. Foust, 479 S.E.2d at 50; *See also* McAninch and Fairey, The Criminal Law of South Carolina, 194-197 (3rd Ed.1996). ABWIK was an unlawful act of violent nature to the person of another with malice aforethought, either expressed or implied. Foust, 479 S.E.2d at 51. A specific intent was not required to commit ABWIK. Sutton, 532 S.E.2d at 285; Foust, 479 S.E.2d at 50-51 (When South Carolina trial judges charge juries the law of ABWIK they should give a standard “intent” charge, but do not have to instruct the jury the defendant must have a specific intent to kill before being convicted of ABWIK).

In 2010, as part of an omnibus crime bill, the South Carolina Legislature enacted the attempted murder statute, which became effective June 2, 2010, which replaced the common law ABWIK offense. The statute provides “[a] person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-29 (Supp. 2013).

Attempt is generally recognized as a specific intent crime. State v. Reid, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011). “In the context of an attempt crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense.” Sutton, 532 S.E.2d at 285.

In this case, the circuit court charged the jury on the definition of attempt and attempted murder as follows:

An attempt includes a specific intent to do a particular criminal act along with that act falling short of the act intended. The State must show more than mere preparation and intent. It must be some overt act

committed and the effort to commit the crime. **Intent means intending the results which actually occurred not accidentally or involuntarily.** Intent may be shown by acts and conduct of the defendant in other circumstances from which you may naturally and reasonably infer intent. **Attempted murder: a person with the intent to kill attempts to kill another person with [m]alice [a]forethought either expressed or implied commits the offense of attempted murder.** Malice is a hatred, ill will, or hostility towards another person is the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury under circumstances that the law will infer as evil intent.

(TT, pp. 392-393; R., pp. 258-259) (emphasis added).² The court subsequently stated “a specific intent to kill is not an element of [a]ttempted murder, but it must be a general intent to commit serious bodily harm,” and correctly defined intent as “intending the results which actually occur, not accidentally or involuntarily.” (TT, pp. 394-395; R., pp. 260-261).

Appellant objected to the charge that attempted murder is a general intent crime, and requested the jury be charged it is a specific intent crime. Appellant acknowledged the attempted murder statute included “malice,” but suggested the jury be charged attempted murder requires intent to kill, without a definition of malice. The circuit court reviewed the attempted murder statute language, and found the legislature intended the same general intent requirement for attempted murder as for murder. The court reasoned that making attempted murder a specific intent crime would create a higher standard for an attempted murder than murder, which could not have been the legislative intent when enacting the attempted murder statute. (TT, p. 402-404; R., pp. 268-270).

The circuit court’s jury charge as a whole was substantially correct and adequately covered the applicable law. The mere fact the circuit court referred to

²While the court referenced the “attempt” charge in connection with attempted armed robbery, the attempted murder charge was immediately after the attempt charge.

attempted murder as a general intent crime at one point does not alter the fact the court correctly charged the statutory elements of attempted murder, including the “intent to kill” and “malice aforethought” requirements, and charged the jury an attempt requires “a specific intent to do a particular criminal act.”

Appellant’s contention the jury’s question regarding the difference between attempted murder and ABHAN reveals the jury was confused by the original charge’s general intent language is purely speculative. The re-charge indicated the basic difference between attempted murder and ABHAN is the malice requirement for attempted murder, which is a correct statement. Pursuant to the original charge, the jury still had to find the “intent to kill” element in order to convict Appellant of attempted murder. Even assuming some level of confusion on the jury’s part, it does not warrant reversal when the jury charges are considered as a whole. *See, State v. Lee-Grigg*, 374 S.C. 388, 649 S.E.2d 41, 50 (Ct. App. 2007) aff’d, 387 S.C. 310, 692 S.E.2d 895 (2010); *State v. Kerr*, 330 S.C. 132, 498 S.E.2d 212, 218 (Ct. App. 1998) *citing State v. Jefferies*, 316 S.C. 13, 446 S.E.2d 427 (1994)).

B. Inference of Malice

A jury charge instructing malice may be inferred from the use of a deadly weapon is improper when evidence is presented that would reduce, mitigate, excuse, or justify the offense. *Belcher*, 385 S.C. 597, 685 S.E.2d 802, 803-804 (2009) (holding an inferred malice instruction was improper where evidence of self-defense was sufficient to reduce, mitigate, or justify the killing). If there is no evidence to reduce, mitigate, excuse, or justify the offense, an instruction on the inference of malice from the use of a deadly weapon is permitted. *State v. Price*, 400 S.C. 110, 732 S.E.2d 652, 654 (Ct. App. 2012), *cert. granted* March 5, 2014. Even if a court errs in charging the jury on an inferred

malice instruction, the error is subject to harmless error analysis, and harmless error may arise when evidence of malice is not limited to the use of a deadly weapon. State v. Stanko, 402 S.C. 252, 741 S.E.2d 708, 714 (2013).

In Price, 400 S.C. 110, the Court of Appeals held the trial court did not err in instructing the jury malice could be inferred from the use of a deadly weapon. Price, 732 S.E.2d at 654. The defendant was charged with ABWIK, and the trial court instructed the jury “malice may be inferred from the conduct of a person if that conduct shows a total disregard for human life,” and it “may arise when the deed is done with a deadly weapon.” *Id.* The trial court also charged ABHAN as a lesser-included offense. *Id.*

On appeal, the defendant argued his theory that the shooting may have been part of a drug deal gone wrong precluded the deadly weapon inference charge. In rejecting that contention, the Court stated:

It is undisputed that someone shot Deon in the neck, causing him serious injury. The shooter raised the gun, pointed it at Deon, approached him, and shot him at close range as he stood with his hands up. There was no evidence to the contrary. There may have been conflicting evidence as to who did these things, but it is not possible to interpret the evidence to support any conclusion other than that the person who shot Deon committed ABWIK. Therefore, if the jury believed Price is the person who shot Deon, Price is necessarily guilty of ABWIK.

Id.

In Stanko, the defendant argued the trial court erred in instructing the jury it could infer malice from the use of a deadly weapon when the defendant had presented an insanity defense. 741 S.E.2d at 711. The Supreme Court held the defendant’s evidence of insanity was sufficient to preclude the deadly weapon inference charge, but found the error in giving it was harmless. *Id.* at 713-714. In reaching its harmless error conclusion, the Court distinguished Belcher:

The State presented uncontested evidence that Appellant shot the Victim, his elderly and unarmed friend, in the back using a pillow as a silencer. Appellant then robbed the Victim, and for the next several days used his automobile to travel across the state, where he engaged in social activities and drinking. Authorities apprehended Appellant in possession of the Victim's vehicle and the gun used in the murder. Thus, the evidence of malice in this case is not limited to Appellant's use of a deadly weapon. See Belcher, 385 S.C. at 612, 685 S.E.2d at 810 ("It is entirely conceivable that the only evidence of malice was Belcher's use of a handgun.").

Id.

The Court also analyzed the trial court's jury instructions as a whole and found they were consistent with the evidence presented. The court observed:

The trial court instructed the jury that inferred malice may arise when the "deed is done with a deadly weapon." **The trial court also stated that malice "can be inferred from conduct showing total disregard for human life."** Appellant only contests the "deadly weapon" language. However, if the jury rejected Appellant's insanity defense, which it did, **the jury could also find that Appellant's conduct showed a total disregard for human life.** Thus, Appellant could not have suffered prejudice from any separate inference that his use of a deadly weapon also gave rise to an inference of malice.

Id. at 715 (emphasis added).

In this case, the circuit court charged the jury malice may be inferred from conduct showing a disregard for human life, and may also arise when the deed is done with a deadly weapon. (TT, p. 394, R., p. 260). Appellant only objected to the deadly weapon inference charge based on Belcher, and argued the jury could find Mr. Brown caused the gun to fire by trying to move the gun away from his head with his forearm, which would mitigate, excuse or justify the offense. (TT, p. 403, R., p. 269). In overruling the objection, the circuit court stated: "I don't think there is any evidence for accident, voluntarily, manslaughter, or self-defense or any other facts that would justify imposing Belcher in this case." (TT, p. 405, R., p. 271).

As in Price, there was no evidence in this case that would reduce, mitigate, or justify the attempted murder offense. The evidence established Appellant pointed a loaded and cocked gun at Mr. Brown's head, and in fear for his life, Mr. Brown attempted to move the gun away from his head with his forearm. Appellant brought the gun **back** to Mr. Brown's head after his first two attempts to move it away, and on the third attempt, he shot Mr. Brown in the arm.³ (TT, pp. 172-173; R., pp. 62-63). Even if Appellant's contention Mr. Brown's movement caused the gun to fire is true, it does not obviate the fact Appellant held a loaded and cocked gun to Mr. Brown's head, which, at a minimum, shows a total disregard for human life.

Further, after the shooting Mr. Brown in the cab, Appellant fired multiple shots while chasing him down the street as he tried to get away. Appellant then shot at Mr. Brown as he lay on the ground with a fractured vertebrae. (TT, pp. 180-183; R., pp. 70-73). Thus, Appellant's use of a gun was not the only evidence of his malice.

Appellant also argues the circuit court's jury charges on the lesser included crimes of ABHAN and first degree assault and battery indicate the court necessarily found there was evidence to reduce, mitigate, excuse or justify the shooting. Appellant's argument presumes the lesser included offense charges were warranted, which the State disputes.

The charge conference was not on the record, so the State's position on the lesser included charges is not reflected in the record. In his closing argument, however, the solicitor argued the lesser included charges "do not apply," and Appellant's conduct was nothing less than attempted murder. (TT, pp. 367-370; R., pp. 239-242). The State

³ Mr. Brown's attempt to move the gun from his head probably saved his life by causing the bullet to enter his arm rather than his head.

submits the lesser included jury charges were not warranted based on the evidence presented at trial.

Appellant held a loaded and cocked gun to Mr. Brown's head, and after he shot Mr. Brown, he chased him down the street, and continued shooting at him, even after Mr. Brown was flat on his back on the ground. Appellant's contention Mr. Brown himself caused his gunshot wound by trying to knock the gun away from his head does not reduce, mitigate, excuse or justify the offense of attempted murder.⁴ See Price 732 S.E.2d at 654 (defendant's claim that shooting was result of drug deal gone bad was not sufficient to warrant lesser included offense charges in face of evidence the shooter raised the gun, pointed it at victim, approached victim and shot him in the neck at close range).

Finally, any alleged error in the circuit court's jury instructions was harmless. See Belcher, 685 S.E.2d at 809 ("Errors, including erroneous jury instructions, are subject to harmless error analysis."). The State presented ample evidence Appellant exhibited a total disregard for human life. As discussed above, Appellant pointed a loaded and cocked gun at Mr. Brown's head. After he shot Mr. Brown inside the cab, he shot at him several more times while chasing him down the street, and then again when Mr. Brown was flat on his back. Based on the evidence, the jury could easily find Appellant's conduct showed a total disregard for human life, and he "could not have suffered prejudice from any separate inference that his use of a deadly weapon also gave rise to an inference of malice." Stanko, 741 S.E.2d at 715.

⁴In essence, Appellant's theory of the case is that Mr. Brown was the author of his own misfortune, which is inherently offensive.

The circuit court charge as a whole was substantially correct and adequately covered the applicable law. Accordingly, the circuit court should be affirmed on this issue.

II. The circuit court properly admitted a police officer's testimony regarding what she learned during the course of the investigation.

Appellant contends the trial judge erred in admitting Officer Butler's testimony regarding what her investigation after the crime revealed. Officer Butler testified she canvassed the surrounding neighborhood that night and learned approximately three or four shots were fired. Officer Butler's testimony was not inadmissible hearsay, but even if this Court finds it was inadmissible, any error in admitting it was harmless.

Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 710 S.E.2d 55, 58 (2011).

A. Hearsay.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. In South Carolina, hearsay is inadmissible "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

Testimony of a police officer regarding his conclusions from an investigation is not hearsay. State v. Weaver, 361 S.C. 73, 602 S.E.2d 786, 792-93 (Ct. App. 2004), *aff'd as modified*, 374 S.C. 313, 649 S.E.2d 479 (2007) (officer's testimony that all the evidence gathered at the scene, including interviews with witnesses, led to the defendant was not inadmissible hearsay; officer never repeated statements made to him by individuals at the crime scene, or testified to any specific statements identifying the defendant). Even if an officer's testimony regarding parts of his investigation is considered "some form of indirect hearsay," admitting it is not an abuse of discretion if the officer does not repeat the out of court statements. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 498 (2013).

Similar to the police officer in Weaver, Officer Butler merely testified about what her investigation at the crime scene revealed. She did not repeat any specific statements made by the people she interviewed, and nothing she related identified Appellant as the shooter. Therefore, her testimony was not inadmissible hearsay.

B. Harmless Error.

Even if improper hearsay evidence is admitted, any error in admitting it is subject to a harmless error analysis, and reversal is warranted only if it results in actual prejudice. State v. Weston, 367 S.C. 279, 625 S.E.2d 641, 646 (2006). Appellate courts generally will not set aside a judgment based on insubstantial errors not affecting the result. State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.") State v. Sherard, 303 S.C. 172, 399 S.E.2d 595, 597 (1991).

If an error in the admission is found, the appellate court must review the evidence considered at trial other than the erroneously admitted evidence. Baccus, 625 S.E.2d at

223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”).

Even if the circuit court erred in admitting Officer Butler’s testimony in this case, any error was harmless in light of the other evidence presented during trial. As noted above, Officer Butler’s testimony regarding what she learned during her investigation did not implicate Appellant in the crime, or even mention Appellant in any context. Further, her testimony regarding the number of shots fired that night was cumulative to Mr. Brown’s testimony Appellant fired six or seven shots that night. (TT, p. 179-180; R., pp. 69-70). See State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645, 662 (2013) (“Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless.”) (quoting State v. Jennings, 394 S.C. 473, 716 S.E.2d 91, 93–94 [2011]).

Appellant contends the jury’s hypothetical question regarding whether pointing a gun at someone’s head and not pulling the trigger would be attempted murder somehow proves a juror did not believe any other shots were fired that night. While the contention is wildly speculative, even if true, it establishes the harmless nature of Officer Butler’s testimony regarding the number of shots fired. If the jury was focused on the one shot fired inside the cab, and what led up to it, it was not focused on the number of shots fired.

The circuit court did not abuse its discretion in admitting Officer Butler's testimony regarding what she learned during her investigation. Even if the testimony at issue was erroneously admitted, however, any error was harmless. Therefore, Appellant's convictions should be affirmed.

III. The circuit court properly admitted phone records revealing subscriber information for the phone number used to summon the cab because Appellant did not have a reasonable expectation of privacy regarding the information.

Appellant asserts law enforcement conducted an illegal warrantless search without an exception to the warrant requirement when they obtained his subscriber information from Cricket Wireless, which led to the inclusion of his photo in a photo lineup. As a threshold matter, this issue is not preserved for appellate review. Even if preserved, Appellant's assertion is meritless.

A. Preservation

An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118, 120 (1997). Specific ground for objection must be raised at trial to preserve issue for appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). A defendant may not argue one ground below and another on appeal. State v. Beekman, 405 S.C. 225, 746 S.E.2d 483, 489 (Ct. App.) (citing State v. Benton, 338 S.C. 151, 526 S.E.2d 228, 231 [2000]). Failure to object when evidence is offered constitutes a waiver of the right to raise the issue on appeal. State v. Burton, 326 S.C. 605, 486 S.E.2d 762, 764 (Ct. App. 1997).

Appellant's motion to suppress the Cricket Wireless information was based **solely** on alleged insufficiencies of the affidavit used to obtain a search warrant for the Cricket Wireless information two years after Appellant's arrest. Specifically, he contended the affidavit contained conclusory and misleading statements. He never asserted the investigators' original actions in obtaining the subscriber information without a warrant were unconstitutional, even after the State specifically noted the investigators "went to the Cricket Wireless store and just asked them who is the subscriber for this

information,” and “[i]t wasn’t a search warrant.”⁵ (TT, pp. 59-69; R., pp. 2-12). Further, Appellant did not object to Detective Evans’ testimony about getting the subscriber information from Cricket Wireless early in the investigation, exactly what information was received, and how that information led to the photo lineup with Appellant’s photo. (TT, pp. 306-309; R., pp. 193-196). Accordingly, he cannot challenge the constitutionality of the investigators’ actions for the first time on appeal, and the issue is not properly before this Court.

B. Merits

Even if the constitutional issue Appellant now raises was preserved, however, Appellant’s argument is meritless. Simply stated, Appellant did not have a reasonable expectation of privacy in the subscriber information he voluntarily conveyed to Cricket Wireless.⁶

The Fourth Amendment provides, in relevant part, the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. The touchstone of the Fourth Amendment is reasonableness. Katz v. United States, 389 U.S. 347, 360 (1967).

⁵As discussed below, the solicitor’s statement that the information investigators got from Cricket Wireless was inadmissible without the subsequent search warrant was inaccurate.

⁶ The State notes Appellant only argues the State conducted an unconstitutional, warrantless search under the Fourth Amendment to the United States Constitution. The only protection afforded the information at issue is provided by federal statutory law, which provides limitations on the types of electronic communication information government officials can obtain from third parties, but the standard differs from a Fourth Amendment analysis. *See*, 186 S.C.A. §§ 2701-12 (Stored Communications Act); *see also State v. Odom*, 382 S.C. 144, 676 S.E.2d 124 (2009) (discussion of federal and state law regarding obtaining electronic communication records).

Since Katz, courts have deployed a two-part test to determine whether a particular law enforcement practice constitutes a Fourth Amendment search. *Id.* at 361 (Harlan, J., concurring). Courts first determine whether an individual has a subjective expectation of privacy, and, second, whether the expectation is objectively reasonable. *Id.* In this case, the first inquiry is questionable, but the second inquiry is dispositive.

An individual assumes the risk of disclosure of information **voluntarily conveyed** to a third party. *See e.g., Smith v. Maryland*, 442 U.S. 735, 742 (1979); *United States v. Miller*, 425 U.S. 435, 443 (1976); *see also, Southern Bell Tel. & Tel. Co. v. Hamm*, 306 S.C. 70, 409 S.E.2d 775 (1991) (Caller ID device does not violate the rights of people whose names and numbers are displayed because there is no right to privacy in telephone numbers). Smith and Miller are still the prevailing law, even with technological advancements in electronic communications. *See United States v. Jones* 132 S.C. 945, 957, 962 (2012) (Sotomayer, J., concurring) (Alito, J., concurring). Thus, Appellant did not have a reasonable expectation of privacy in the cell phone records he voluntarily conveyed to Cricket Wireless when he purchased the cell phone and set up the account.

Appellant argues his expectation of privacy is evidenced by the fact he placed the call to the Yellow Cab Company using his own cell phone. This argument is belied by the fact Appellant gave **false** information to Cricket Wireless, clearly indicating some level of knowledge the information he provided was not private. In any event, the most Appellant asserts is a questionable **subjective** expectation of privacy in the information he voluntarily conveyed to Cricket Wireless, not an expectation of privacy society recognizes as reasonable.

The investigators obtained subscriber information the Appellant voluntarily gave Cricket when he purchased the pre-paid phone. Significantly, the only information they

obtained at that time was the subscriber's name, address and date of birth, which is not constitutionally protected, and they quickly determined the information provided to Cricket Wireless was false, at least in part. Thereafter, the investigators used public records to identify people in the area with the same date of birth. Based on that investigation, they identified Appellant as a possible suspect, and put his driver's license photo into a photo lineup, from which Mr. Brown positively identified him as the shooter. The investigators did not need a warrant to obtain the basic subscriber information in 2010, and Appellant's convictions should be affirmed ⁷

⁷In addition to the subscriber information, the subsequent search warrant sought communication records, session time and duration records, incoming and outgoing call detail, length of services, and types of services utilized, etc. The information sought in 2012 went far beyond the basic subscriber information obtained in 2010, and legal process was required to obtain the information for trial purposes.

IV. The circuit court properly admitted the CD with recordings of calls Appellant made from the Detention Center to the cell phone number used to summon the cab, because the calls established Appellant's ownership of the phone, and the probative value outweighed the prejudice to Appellant.

Appellant contends the circuit court erred in admitting the CD with the recordings of his calls from the Detention Center because the unfair prejudice outweighed any probative value, and it improperly called Appellant's character into question. Appellant's assertion the CD was inadmissible character evidence under Rule 404(b), SCRE, is not preserved for appellate review. Further, any prejudice to Appellant from the CD's content does not outweigh the CD's probative value in establishing Appellant's ownership of, and authority over, the cell phone.

A. Preservation of Rule 404(b) Issue

An argument not raised and ruled on by the trial court is not preserved for appeal. Nichols, 481 S.E.2d at 120. A party cannot argue one ground at trial and a different ground on appeal. Beekman, 746 S.E.2d at 489.

Appellant moved to suppress the CD "under Rule 403 that the probative value is outweighed by the unfair prejudice from difficulty to understand what is being said and the language that is being used." He did not object on the ground it improperly brought his character into question, or even mention Rule 404(b). (TT, pp. 322-329; R., pp. 209-216). Thus, the character evidence issue is not preserved for appellate review.

B. Probative Value

"The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895, 903 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. See State v. Adams, 354 S.C. 361, 580 S.E.2d 785, 794 (Ct.App.

2003) (trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances, and the appellate court is obligated to give great deference to the trial court's Rule 403 judgment); State v. Collins, 398 S.C. 197, 727 S.E.2d 751, 754 (Ct. App. 2012).

“[A]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE. “Probative” means “[t]ending to prove or disprove.” Black's Law Dictionary 1323 (9th ed. 2009). Probative value is the measure of the importance of that tendency to the outcome of a case. Collins, 727 S.E.2d at 754. Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates. *Id.*

The conversations on the CD were highly probative of Appellant's ownership of, and authority over, the cell phone from which the call to the cab company originated. Appellant agrees the State's objective in introducing the CD was to connect him to the cell phone, but contends his willingness to stipulate he made calls to the cell phone was sufficient to satisfy the State's objective. (Brief of Appellant, p. 23). Such a stipulation may have established Appellant made calls to the cell phone, but it would not establish Appellant's control over it. Rather, the conversations during the calls established his control.

When the third party Appellant called, who clearly had possession of the cell phone while Appellant was in jail, attempted to place a call from the cell phone to Appellant's mother during their conversation, Appellant gave him the cell phone's password because the third party stated he could not get the phone to work, and they talked about getting Appellant's mother to put more minutes on the cell phone. (TT, p.

324, State's Exhibit 33 [CD]; R., p. 211). These facts eliminated any possibility the cell phone actually belonged to the unidentified third party rather than Appellant. Neither Appellant's proposed stipulation, Heyward's testimony, nor the Call Log, even combined, could rule out that possibility.

C. No Unfair Prejudice to Appellant

The probative value of the CD must be balanced against the "danger of unfair prejudice" to the Appellant. "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." State v. Stephens, 398 S.C. 314, 728 S.E.2d 68, 71-72 (Ct. App. 2012) (*quoting* State v. Lyles, 379 S.C. 328, 665 S.E.2d 201, 206 [Ct.App.2008]). "All evidence is meant to be prejudicial; it is only **unfair** prejudice which must be [scrutinized under Rule 403]." State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424, 429 (Ct.App.1998) (emphasis added) (*quoting* United States v. Rodriguez-Estrada, 877 F.2d 153, 156 [1st Cir.1989]). In determining whether the danger of unfair prejudice outweighs the probative value of evidence, the court must consider the entire record, and the determination will turn on the facts of each case. Lyles, 665 S.E.2d at 206 (*citing* State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 [2007]).

Appellant argues the prejudicial impact of the CD substantially outweighed any probative value. He asserts the CD was prejudicial because he used profanity and racial slurs, and referenced his previous times in jail. Significantly, Appellant refused the circuit court's repeated offers to redact the CD, which arguably waived his claim of unfair prejudice. (TT, pp. 322-329; R., pp. 209-216).

While the language Appellant used during the conversations may have been prejudicial, it did not render the CD **unfairly** prejudicial, and the language used did not outweigh the CD's highly probative value. On the contrary, Appellant repeatedly **denied**

his involvement in the crime throughout the conversations, which was actually beneficial to him.

When the CD is viewed in light of all the evidence presented at trial, it was highly probative to the jury's determination of guilt or innocence because it established the extent of Appellant's connection with the cell phone, but it was not alone determinative of the jury verdict. Accordingly, the circuit court did not abuse its discretion in admitting the CD, and the ruling should be affirmed.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's convictions should be affirmed.

Respectfully submitted,

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July 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

THE STATE,

Respondent,

v.

RAHEEM D. KING,

Appellant.

CERTIFICATE OF COUNSEL

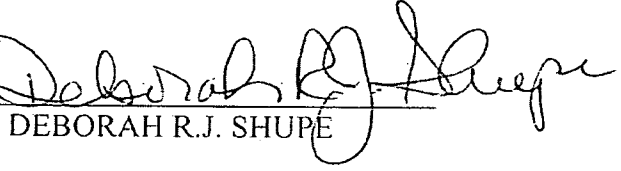
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Rulings."

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July 8, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

THE STATE,

Respondent,

v.

RAKEEM D. KING,

Appellant.

PROOF OF SERVICE

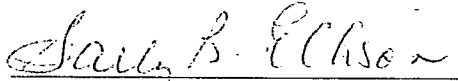
I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

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I further certify all parties required by Rule to be served have been served.

This 8th day of July, 2014.


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JUN 16 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable J.C. Nicholson, Jr.

Appellate Case No. 2012-213405

State of South Carolina.....Respondent,

vs.

Rakeem D. King.....Appellant.

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Argument in Reply

I. The trial court erred in charging the jury that attempted murder is a general intent crime, requiring merely malicious intent, and that malice may be inferred from the use of a deadly weapon.

A. Attempted Murder Instruction Improper

The Respondent asserts that the circuit court properly charged the jury on the definition of attempt and attempted murder by citing the Trial Transcript. (R. pp. 258-260). However, the definition the circuit court gave the jury for attempt was restricted to the charge on Attempted Armed Robbery. (R. p. 258, line 14-p. 259, line 2). The circuit court did not give the jury any instruction on attempt as it was related to the Attempted Murder charge. (R. p. 259, line 3-p. 261, line 11). The Respondent's argument that the court correctly charged the statutory elements of attempted murder, including the "intent to kill" and "malice aforethought" requirements, is faulty in that it places that one small portion of the jury charge in a vacuum without considering the other instructions, which completely contradicted specific intent, that were also presented to the jury both by the State in its closing arguments (against defense counsel's objection) and by the court in its charge. (R. p. 238, lines 19-22; R. p. 260, lines 22-24; R. p. 261, lines 8-11).

Clearly, the jury was confused by the court's contradictory statements, as is evident from the jury's questions listed in Court's Exhibit 2 (R. p. 312): "Furthermore, if a gun is not loaded but aimed at a person's head[,] this also seems to fulfil the definition of attempted murder. Does it?" "If someone points a gun at a person's head but does not fire, does that fulfill the definition of attempted murder?" The jury even wrote that the hypotheticals were "not relevant to the case but helpful in understanding the definition of attempted murder." In response to these questions, the court explained that it could not answer the hypotheticals without commenting on the facts. (R. p. 272, line 24-p. 273, line 3). The court also answered the jury's questions as to the

difference between Assault and Battery of a High and Aggravated Nature [ABHAN] and Attempted Murder by stating that the basic difference is ABHAN does not require malice. (R. p. 273, lines 10-13). The court did not explain that the difference is that Attempted Murder requires the intent to kill.

B. Implied Malice Instruction Improper

The Respondent cites *State v. Price*, in which the Court of Appeals held the trial court did not err in instructing the jury malice could be inferred from the use of a deadly weapon. However, in the Court of Appeal's opinion, the Court of Appeals specifically pointed out in its Factual and Procedural History section that "[t]here was no evidence the shooting was unintentional". 400 S.C. 110, 111, 732 S.E.2d 652, 652 (Ct. App. 2012). Mr. Dario Brown testified at trial that the fare was in the back seat and had the gun pointed to the back of his head. (R. p. 61, lines 13-17; R. p. 64, lines 18-20). Had the fare wanted to kill Mr. Brown, the fare could have easily shot Mr. Brown in the head. However, Mr. Brown was shot in the elbow as his arm was back, and only after the Mr. Brown moved the gun with his elbow and forearm three different times. (R. p. 64, lines 23-25; R. p. 67, lines 15-19; R. p. 96, lines 19-20). Unlike the facts in *Price*, in the present case there was evidence presented that the shooting was unintentional.

The Respondent cites *State v. Stanko* in its argument that if the deadly weapon implied malice instruction was in error, the error was harmless. 402 S.C. 252, 741 S.E.2d 708 (2013). In *Stanko*, the Court held that because there was evidence of defendant's insanity presented, which is a defense, the use of a deadly weapon implied malice instruction should not have been given to the jury. 402 S.C. at 263, 741 S.E.2d at 713-14. The trial court instructed the jury that malice could be inferred when the "deed is done with a deadly weapon" and "from conduct showing

total disregard for human life.” *Id.* at 265, 741 S.E.2d at 714-15. The Court pointed out that “if the jury rejected Appellant’s insanity defense, which it did, the jury could also find that Appellant’s conduct showed a total disregard for human life. Thus, Appellant could not have suffered prejudice from any separate inference that his use of a deadly weapon also gave rise to an inference of malice.” *Id.* at 265, 741 S.E.2d at 715. The Court in *Stanko* knew that the jury rejected Appellant’s insanity defense since the jury had the option to find the Appellant not guilty by reason of insanity, but chose not to. *Id.* at 265, 741 S.E.2d at 714. In the case at hand, because the jury was instructed that they could infer malice from the use of a deadly weapon and because the jury was instructed that attempted murder did not require the specific intent to kill, there is no way to tell if the jury believed the shooting to be an accident. Consequently, even if the jury believed the shooting to be an accident, they could have convicted on the charge of attempted murder without ever discussing and unanimously deciding whether the fare’s conduct showed a total disregard for human life. Therefore, the error cannot be deemed harmless.

II. The trial court erred in allowing a witness to testify as to the amount of shots non-testifying witnesses heard.

A. Inadmissible Hearsay Was Not Harmless Error

The State knew that Mr. Brown’s credibility as to the fare chasing him down the street while continuing to fire shots would be in question. In fact, in its closing, the State told the jury that “they (the defense) want to try to make Dario look like a liar, like he’s got something to hide for some reason.” (R. p. 236, lines 2-3). The State went on to say that “the fact of the matter is Dario is not lying to you when he tells you he went down the street. You’ve got a broken fence in these pictures that he showed you was where he went over this fence, where it collapsed underneath him, where he said the assault continued.” (R. p. 237, lines 6-11). “Look at that

ground out there. Look at those leaves out there. He says he was shot at right there three or four more times. Because they didn't find any more of those teeny tiny little shell casings does that mean that didn't happen? Absolutely not. They could still be there today." (R. p. 237, lines 13-18).

In its harmless error argument for the deadly weapon inferred malice charge, Respondent in its Brief pointed out that after shooting Mr. Brown in the cab, "Appellant fired multiple shots while chasing [Mr. Brown] down the street as [Mr. Brown] tried to get away. Appellant then shot at Mr. Brown as he lay on the ground with a fractured vertebrae. Thus, Appellant's use of a gun was not the only evidence of his malice."

Because the deadly weapon inferred malice charge was improper, the only evidence of malice was the fare chasing Mr. Brown down the street while firing at Mr. Brown. If the inadmissible hearsay had not been admitted into evidence, there is a strong likelihood that the jury would have disbelieved this portion of Mr. Brown's testimony. This portion of Mr. Brown's testimony is questionable considering no additional shell casings were found on scene despite an extensive search and Mr. Brown was only shot the one time in the cab despite Mr. Brown's claim that as he was lying on the ground on his back with the fare standing immediately above him and firing another shot. (R. p. 127, lines 16-19; R. p. 140, lines 4-23; R. p. 70, lines 2-15). This is why the State argued in its closing that "there were other witnesses at the scene that said they heard three, four or more shots." (R. p. 234, lines 19-20).

III. The trial court erred in admitting phone records, which led to a photo identification, when the search warrant for those records was based on a previous warrantless search for the same information requested in the search warrant.

A. Preservation

At trial, Appellant, in his pretrial motion, argued that the phone records should be suppressed due to “a faulty affidavit and search warrant.” (R. p. 2, lines 19-20). The Appellant pointed out that the affidavit was misleading in that it stated the following: “*During the course of the investigation* the aforementioned phone number was determined to be a Cricket Wireless number which belonged to the defendant” (emphasis added). (R. p. 6, lines 17-21; R. p. 300). This sentence is so offensively misleading that it is fair to classify it as a knowingly, intentionally, or recklessly made false statement in that it purposely leaves out how this information was obtained, which was unconstitutional per the Fourth Amendment. In fact, the State acknowledged that this information would not have been admissible without a search warrant. (R. p. 10, line 22-p. 11, line 5). The misleading language used in the affidavit was merely the prosecution’s attempt to retroactively correct the unconstitutionality of the search.

Appellant cited *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978) to the court for the proposition that it “allows you to challenge misstatements in a search warrant affidavit.” (R. p. 7, lines 15-17). The Court in *Franks v. Delaware* held:

Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. 438 U.S. 154, 155-56, 98 S.Ct. 2674, 2676.

The Appellant objected to the phone records several times throughout the trial. (R. p. 145, lines 5-19; R. p. 147, line 19-p. 148, line 7; R. p. 149, line 25-p. 150, line 11; R. p. 155, lines 2-6). Because the Appellant objected to the faulty affidavit due to a false statement within that

affidavit and because the false statement is directly related to the unconstitutionality of the original search, the Fourth Amendment issue is preserved for appeal.

IV. The trial court erred in allowing the State to publish detention center phone calls the appellant allegedly made, when the danger of unfair prejudice substantially outweighed any probative value.

A. Preservation of Rule 404(b) Issue

In Appellant's objection to the detention center phone calls, counsel states "[t]here is a lot of stuff discussed in the phone call; I don't think all of it is relevant. There is language used in there that I think would be unfairly prejudicial to Mr. King." (R. p. 209, lines 17-20). As the Respondent stated in its Brief, "[u]nfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Stephens*, 398, S.C. 314, 728 S.E.2d 48, 71-72 (Ct. App. 2012). Because Rule 404(b), SCRE, states that "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith," it is necessarily incorporated in the unfair prejudice and relevancy objections. To decide the guilt of a person based on other crimes, wrongs, or acts, would be to base that decision on an improper basis and, therefore, Rule 404(b), SCRE, is necessarily incorporated into Rule 403, SCRE.

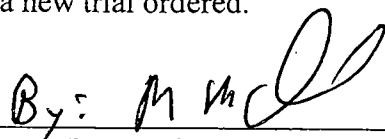
b. Unfair Prejudice to Appellant

Respondent makes the argument that the Appellant waived his claim to unfair prejudice since he refused the circuit court's offer to redact the compact disc. Both the State and the Appellant explained to the circuit court that the compact disc was difficult to understand. (R. p. 209, line 25-p. 210, line 1; R. p. 214, lines 16-18; R. p. 216, lines 24-25). The circuit court inquired if either party transcribed the compact disc, to which both parties replied in the negative. (R. p. 214, line 22-p. 215, line 6). In response to the circuit court's inquiry as to what

the Appellant wanted redacted, the Appellant's counsel responded: "I guess really I want you to suppress the whole thing, Your Honor. I think—I agree with Mr. Durant [State] it is difficult – the conversation is all over the place. There is some talks about him being in the old jail and the guy on the other end said people with them big charges go to the old jail. He's talking about where he is at in the jail, about his upcoming preliminary hearing, about his bond; just things like that are all tied up into other statements that Mr. Durant [State] wants to admit. That's why I guess I am moving to suppress the whole conversation." (R. p. 215, lines 8-18). The Appellant did not waive his claim to unfair prejudiced, he merely explained to the circuit court why redacting the compact disc would not cure the relevancy and unfair prejudice issues.

CONCLUSION

For these reasons, this matter should be reversed and a new trial ordered.

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June 23, 2014

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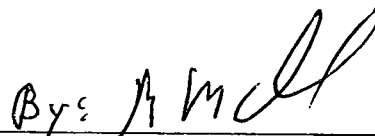
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

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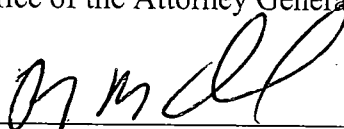
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AFFIDAVIT OF SERVICE

Personally appeared before me Robert M. Dudek, who, after being duly sworn, deposes and says that he is employed with the South Carolina Commission on Indigent Defense, Appellate Division. That on June 23, 2014, he did hand deliver, 10 copies of the Appellant's Final Reply Brief in the above case to Deborah R. J. Shupe, Office of the Attorney General.



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this 23th day of June, 2013.

Kurt Hensel (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.