

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

AKEEM O. SMITH,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Akeem O. Smith, Appellant.

Appellate Case No. 2012-213518

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-074
Submitted January 1, 2015 – Filed February 18, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blitch, Jr., both of
Columbia, for Respondent.

PER CURIAM: Akeem Smith appeals his convictions for armed robbery, first-degree burglary, kidnapping, and attempted murder, arguing the trial court erred in refusing to charge the jury on self-defense and sentencing him to life imprisonment

without the possibility of parole (LWOP) based upon a crime he committed as a juvenile. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in refusing to charge the jury on self-defense: *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007) (stating that to establish self-defense, the defendant must have been without fault in bringing on the difficulty); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.").
2. As to whether the trial court erred in sentencing Smith to LWOP based upon a crime he committed as a juvenile: *See* S.C. Code Ann. § 17-25-45(A)(1) (2014) (stating that upon conviction of a most serious offense, a person must be sentenced to LWOP if that person has one or more prior convictions for a most serious offense); *State v. Standard*, 351 S.C. 199, 204, 569 S.E.2d 325, 328 (2002) (holding an "enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment" (emphasis omitted)); *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012) (holding mandatory LWOP sentences for those under the age of eighteen at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments); *Aiken v. Byars*, 410 S.C. 534, 548 n.13, 765 S.E.2d 572, 579 n.13 (2014) ("Neither Hunter nor Robinson is a petitioner here because the court did not sentence Hunter to LWOP, and because Robinson was an adult when he committed the crimes and is thus unaffected by *Miller's* holding." (Toal, C.J., dissenting)); *United States v. Hunter*, 735 F.3d 172, 176 (4th Cir. 2013) ("In this case, Defendant is not being punished for a crime he committed as a juvenile, because sentence enhancements do not themselves constitute punishment for the prior criminal convictions that trigger them. Instead, Defendant is being punished for the recent offense he committed at thirty-three, an age unquestionably sufficient to render him responsible for his actions. Accordingly, *Miller's* concerns about juveniles' diminished culpability and increased capacity for reform do not apply here." (internal citation omitted)); *United States v. Hoffman*, 710 F.3d 1228, 1233 (11th Cir. 2013) ("*Miller* is inapposite because it involved a juvenile offender facing punishment for a crime committed when he was a juvenile, and thus it focused on the reasons why it would be cruel and unusual for a *juvenile* to face a mandatory life sentence. Nothing in *Miller* suggests that an adult offender who has committed

prior crimes as a juvenile should not receive a mandatory life sentence *as an adult*, after committing a further crime as an adult. As we said . . . , the Supreme Court in *Miller* did not deal specifically—or even tangentially—with sentence enhancement, and it is a far different thing to prohibit sentencing a juvenile offender to a mandatory sentence of [LWOP] than it is to prohibit consideration of prior youthful offenses when sentencing criminals who continue *their illegal* activity into adulthood." (internal quotation marks and citations omitted)).

AFFIRMED.¹

WILLIAMS, GEATHERS, JJ., and CURETON, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

AKEEM O. SMITH,

APPELLANT

APPELLATE CASE NO. 2012-213518

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 2015-UP-074

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing on both issues. Respectfully, this Court's opinion overlooks points that necessitate reversal of appellant's conviction and sentence.

Issue 1

The Court cites State v. Slater, 373, S.C. 66, 644 S.E.2d 50 (2007) and State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999) for the proposition that appellant was not without fault in bringing on the difficulty. Respectfully, this conclusion arises from overlooking the correct standard of

review for failure to charge self-defense, which is that the evidence must be considered in the light most favorable to the defendant. State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012); see also State v. Larmand, 402 S.C. 184, 190, 739 S.E. 2d 898, 901 (Ct. App. 2013) (“When reviewing the denial of a directed verdict, an appellate court views the evidence and **all reasonable inferences** in the light most favorable to the State.”) (emphasis added). “If there is any evidence in the record **from which it could reasonably be inferred** that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error.” State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984) (emphasis added).

The Court's ruling means there is an appellate finding that Octavia and Tyrone's version of events must be taken as true on appeal. “A jury is free to believe a portion of the testimony of a witness and disbelieve another portion.” State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991); see also State v. Register, 323 S.C. 471, 481, 476 S.E.2d 153, 159 (1996) (stating jury is free to believe or disbelieve expert witness testimony).

The jury could have believed that the defendant was alone at the house with Octavia with her consent (as was argued by defense counsel) and Tyrone came home and opened fire (as Tyrone testified). The trial court could not have reached a conclusion that the defendant was not entitled to a self-defense instruction without making a credibility determination in the State's favor. See State v. Rogers, 405 S.C. 554, 569 n.5, 748 S.E.2d 265, 273 n.5 (Ct. App. 2013) (stating that at the directed verdict stage—which uses the same “any evidence” standard as a jury charge—the court may not weigh the credibility of witnesses). Any such credibility determination was not allowed.

Octavia and Tyrone lied about the incident from the beginning. They tried to flee the scene without letting the police in their house. R. 221, l. 11 – 222, l. 2. Neither would identify any

suspects. R. 224, ll. 21-24. Octavia gave the police a false statement. R. 89, ll. 22-24. Octavia had a pending charge for assault with intent to kill with the same solicitor's office prosecuting the case. R. 23, l. 21-24, l. 12. R. 110, ll. 11-20.

Tyrone was the first to open fire into a dark single-wide trailer even though he knew his wife was in the field of fire. R. 127, l. 8 – 128, l. 10. Not only did he shoot down what must have been a limited angle, he blindly fired through a wall. R. 127, l. 8 – 128, l. 10. An inference that can be drawn – and was made by the defense attorney in closing – was that Tyrone did not care if he hit Octavia when he fired through a wall because he believed he was catching her with another man. R. 309, ll. 6-17.

This inference is supported by the evidence that Tyrone and Octavia lied about the incident, that Tyrone admitted he fired first, and that Tyrone fired blindly through a wall without concern for his wife's safety. The Court should ignore the State's assertion that Smith would be at fault for bringing on the difficulty because he was committing adultery. Even if the 1931 case cited by the State stood for the proposition it claims, whether Smith knew Octavia was married would be a jury question. See State v. Floyd, 160 S.C. 420, 158 S.E. 809, 813 (1931) (holding that jury did not necessarily ignore trial court's instruction not to try an adulterous defendant for "immorality or adultery").

To the extent the Court's opinion relies on the State's argument that a request to charge may not be based on believing some part of the State's evidence and disbelieving other parts of it, the State's assertion significantly overstates the holding of several cases. The correct way to state this principle is that the request to charge may not be based on speculation which requires the belief of some portion of evidence and the disbelief of other evidence. In this case, the jury would not need to speculate that Octavia and Tyrone were liars. They both admitted they were liars. The police

testified that they were uncooperative immediately after the incident. The evidence that Octavia and Tyrone lied about the incident combined with the admission of shooting first provides a solid evidentiary and inferential basis for self-defense and does not invite unreasonable speculation.

A more in-depth look at the cases cited by the State betrays its overreach. In State v. Barber, 393 S.C. 232, 712 S.E. 2d 436 (2011), the question was whether there was evidence to submit accomplice liability to the jury. Four men allegedly participated in a robbery and murder. Id. at 234-36, 712 S.E.2d at 437-38. Three of the alleged participants testified for the prosecution and other witnesses' testimony indicated that more than one man was armed. Id. at 237-39, 712 S.E.2d at 438-40. Despite the testimony of these witnesses, the defendant (at PCR) argued that the evidence was insufficient to present accomplice liability to the jury. Id. at 236, 712 S.E.2d at 438. Barber is an "any evidence" case and does not stand for the proposition contended by the State.

Respondent also overstates State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). In Funchess, the court found "no conflict in the evidence" that the defendant assaulted the victim with the intent to ravish her. Id. at 429, 229 S.E.2d 332. The Court addressed the defendant's contention that the jury could disbelieve the undisputed evidence and rejected this as a "mere contention." Id. The defense theory in Funchess was alibi. Id. In the North Carolina case cited in Funchess, the defendant's theory was that he did not enter the house where the assault occurred. State v. Hicks, 84 S.E.2d 545, 547 (N.C. 1954) ("As to this, his position is simply that he did not go into the house with Abernathy.") In Funchess and Hicks, the defendants requested an instruction based on speculation that contradicted their theory of the case.

As opposed to Funchess and Hicks, the appellant admitted he was in the house. His theory was that Tyrone fired first. The evidence was in conflict because the testimony of the witnesses was itself in conflict and full of lies. Therefore, the Funchess rule barring speculative disbelief of the

State's evidence does not apply to this case and the evidence supported a self-defense charge. The Court misapprehended that it was bound to accept Octavia and Tyrone's testimony as true on appeal, and therefore should grant rehearing and reverse.

Issue 2

Respectfully, the Court erroneously held that State v. Standard, 351 S.C. 199, 569 S.E.2d 325 (2002) remains valid after Miller v. Alabama, 132 S.Ct. 2455 (2012) and Graham v. Florida, 560 U.S. 48, 75 (2010). The Court cited two federal circuit court decisions in support of its conclusion. United States v. Hunter, 735 F.3d 172 (4th Cir. 2013); United States v. Hoffman, 710 F.3d 1228 (11th Cir. 2013). Neither case applies. Hunter does not deal with a mandatory life sentence based on a juvenile conviction. Hunter, 735 F.3d at 173. Hunter only dealt with the imposition of a mandatory minimum sentence under the federal Armed Career Criminal Act. Id.

In Hoffman, the Eleventh Circuit was constrained to disregard the Miller argument because of its standard of review. Hoffman, 710 F.3d at 1231-32. The court analyzed the Miller claim under its plain error standard. Id. Under this standard, an "error is not plain unless it is contrary to explicit statutory provisions or on-point precedent in this Court or the Supreme Court." Id. The Eleventh Circuit then held that because Miller was not directly on-point, the defendant had "not met his burden of showing plain error." Id. at 1232.

South Carolina already holds that a juvenile adjudication may not be used as a "strike." State v. Ellis 345 S.C. 175, 179-80, 547 S.E.2d 490, 492 (2001). In 2002, the South Carolina Supreme Court considered the exact question presented by this case. State v. Standard, 351 S.C. 199, 204-07, 569 S.E.2d 325, 328-30 (2002). In Standard, the Court held that if a juvenile had been tried and adjudicated as an adult, that conviction could be used as a strike. Id. Standard relied on now-invalid reasoning in older United States Supreme Court and federal appellate cases to reach

that conclusion. Id. For example, Standard held that “lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment.” Id. at 205, 569 S.E.2d at 329. This holding is no longer good law after Miller and Graham.

Since Miller and Graham have overruled the principles underlying Standard, it is time to correct this practice in South Carolina. While this Court cannot overrule state Supreme Court precedent, it can recognize when such precedent has been rendered invalid by decisions of the United States Supreme Court. The Court should do so in this case and overturn Smith’s LWOP sentence.

Respectfully submitted,



David Alexander
Appellate Defender

This 4th day of March, 2015.

The South Carolina Court of Appeals

The State, Respondent,

v.

Akeem O. Smith, Appellant.

Appellate Case No. 2012-213518

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams

J.

John D. Smith

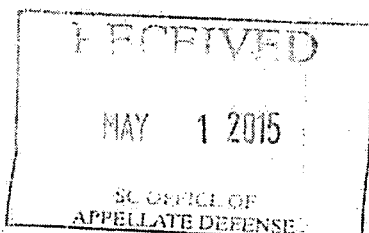
J.

Joseph W. Crotton

A.J.

Columbia, South Carolina

cc: David Alexander, Esquire
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FILED

May 1, 2015

21116

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM O. SMITH,

APPELLANT

APPELLATE CASE NO. 2012-213518

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5 through 2011-GS-10-4647
6 AKEEM OMAR SMITH,)
7 Defendant.)

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State versus Akeem Smith
Pretrial Hearing November 13, 2012

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Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

State versus Akeem Smith
Pretrial Hearing November 13, 2012
Direct Examination by Mr. Finch of Octavia Ancrum

1 MR. BUTLER: That's all I have. Thank you.

2 THE COURT: Redirect, Mr. Finch?

3 MR. FINCH: Nothing, your Honor.

4 THE COURT: Thank you. You may come down,
5 sir.

6 MR. FINCH: State calls Octavia Ancrum.

7 THE DEPUTY CLERK OF COURT: Please raise your
8 right hand.

9 (The oath is administered by the Deputy Clerk
10 of Court, and the witness answers as follows:)

11 THE WITNESS: Yes.

12 THE DEPUTY CLERK OF COURT: Please be seated.
13 Can you state your full name, spelling your last name
14 for the record, please.

15 THE WITNESS: Octavia Ancrum, spelled
16 O-c-t-a-v-i-a, last name is spelled A-n-c-r-u-m.

17 OCTAVIA ANCRUM,
18 having been first duly sworn by the Deputy Clerk of
19 Court to tell the truth, the whole truth, and nothing
20 but the truth, was examined and testified upon her oath
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. FINCH:

24 Q Good afternoon, Mrs. Ancrum.

25 A Good afternoon.

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State versus Akeem Smith
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Direct Examination by Mr. Finch of Octavia Ancrum

1 Q If you could, could you briefly explain for the
2 Court just briefly the events of October 2nd, 2010, that
3 occurred at Road in Ravenel.

4 A Okay. On that night, I came home. As I
5 arrived in my yard, I got out of my vehicle and was
6 ambushed by two men, one of them being the Defendant
7 here, and another unknown suspect. And I was assaulted,
8 forced to open my door. And then after that, it was
9 -- I was forced to get money and held at gunpoint by the
10 Defendant and another unknown suspect.

11 After being forced into the house at gunpoint,
12 and kind of going back and forth with one of the -- the
13 other guy that was there, the other -- the Defendant
14 went into the house and went to get -- I guess, look or
15 rumble through the house for whatever they were looking
16 for. So the other guy has me held up in the room, and
17 I'm, like, crying, upset, and he tells me to take my
18 shirt off, to take my clothes off. And at this point,
19 I'm just shaking, kind of scared, and I hear my
20 husband's car outside. Once I heard the car outside, he
21 kind of -- I had some items in my hands that were kind
22 of sprawled out in the yard because of getting out of
23 the car with the stuff in my hands, being ambushed with
24 the guys, those items fell out. So he immediately knew
25 that something was not right because those items were in

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Direct Examination by Mr. Finch of Octavia Ancrum

1 the yard.

2 When he came to the door, I just kind of
3 faintly said, Don't come in. And as soon as I said
4 that, the -- the guy that held me starting firing, and
5 the other guy, the Defendant, sitting here today,
6 started firing from the opposite side of the house.

7 Q And during that time -- about how long did it
8 take from the time you got home and you said you were
9 ambushed until the parties left your house?

10 A It was -- it was maybe 10 to 15 minutes. I'm
11 not exactly sure of the approximate time. It felt like
12 forever.

13 Q Can you describe or do you remember what the
14 Defendant was wearing at that time?

15 A All black.

16 Q Did he have anything covering his face or a
17 mask or anything?

18 A Yes, he did. He had a mask partially covering
19 his face.

20 Q What part of his face was covered?

21 A Just the lower portion.

22 Q Above the nose?

23 A Just right -- below the eyes, the bridge of the
24 nose was slightly visible, but --

25 Q And when you got home, do you know what time it

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1 was when you got home?

2 A It was -- it had to have been after 4:00. It
3 was really late.

4 Q 4:00 a.m.?

5 A Yes, 4:00 a.m.

6 Q Was it dark out?

7 A Yes, it was.

8 Q Was there any lighting outside?

9 A Yes, there was.

10 Q Were you able to get a look at the Defendant,
11 even though he had a mask?

12 A Yes, I did.

13 Q Were you able to make any note of any features
14 about him?

15 A One of things that I noticed that when
16 -- during the attack, was that he would -- he didn't
17 have hair. He appeared to be clean-cut. So those
18 were -- I was kind of looking for, like, descriptive
19 things that I could maybe use to possibly identify him
20 at a later point. But he was -- his skin tone was
21 something that I remembered. His eyes. Just the look
22 in his eyes was something that really stuck out to me.
23 He seemed afraid.

24 Q And at some point, did you relay that
25 information to police, the description?

Reported By:
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Official Court Reporter for the State of South Carolina

State versus Akeem Smith
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Direct Examination by Mr. Finch of Octavia Ancrum

1 A Yes.

2 Q Do you remember when you did that?

3 A I'm not sure of the -- it all happened so fast.
4 I'm not sure if it was immediately following the attack,
5 once we made initial contact with the police, or if it
6 was after -- I'm not sure. It was two years ago. I'm
7 not sure when the exact statement was made, but it was
8 relayed to police.

9 Q And at some point, did you learn that the
10 police may have a suspect in the case?

11 A Yes.

12 Q And did they ask you to try to make an
13 identification?

14 A They did.

15 Q Do you remember how they tried to do -- or
16 how they tried to get you -- help you identify the
17 Defendant?

18 A Yes. They provided me with a lineup.

19 Q Was it a photographic lineup?

20 A Photographic lineup.

21 Q Do you remember how many pictures were in that
22 lineup?

23 A I'm not sure.

24 Q I'm going to show you what's been admitted as
25 State's Exhibit Number 1. You take a look at that. Can

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1 you identify that?

2 (Document is handed to the witness.)

3 A Yes. This was the lineup.

4 Q I'm sorry?

5 A This was the lineup that I was given.

6 Q Is that your signature on the top page?

7 A Yes, it is.

8 Q Are those your initials down the side?

9 A Yes, it is.

10 Q Indicating that you understood all the
11 instructions?

12 A Yes.

13 Q And when you looked at that photographic
14 lineup, were you able to identify anybody from that
15 lineup?

16 A Are you asking if I had known any of the people
17 that --

18 Q Were you able to pick anybody out that you
19 thought was the perpetrator?

20 A Yes.

21 Q The person that did the crime?

22 A The one that I have circled, which is
23 Mr. Smith.

24 Q What number on --

25 A Four.

State versus Akeem Smith
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Direct Examination by Mr. Finch of Octavia Ancrum

1 Q And did you make any comments or notes about
2 your selection on the front page there?

3 A Yes, I did.

4 Q What was that?

5 A That I was 80 percent certain.

6 Q Had you ever seen Mr. Smith, or the Defendant,
7 prior to -- prior to that night, to your knowledge?

8 A No.

9 Q When you're shown those pictures, did you know
10 any of the people in those photographs?

11 A No.

12 Q To your recollection, did the detective who
13 showed you that lineup indicate in any way who you
14 should pick?

15 A No.

16 (Mr. Finch speaks with his co-counsel off the
17 record.)

18 Q I asked you about the lighting outside the
19 house. How was the lighting inside the house once you
20 got inside?

21 A There was a light over the stove that we
22 usually kept on.

23 Q And how close was the Defendant to that light
24 source?

25 A Maybe six to seven feet away from that light.

State versus Akeem Smith
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Direct Examination by Mr. Finch of Octavia Ancrum

1 Q Did it illuminate his face area?

2 A Well, once we had gotten into the home, the
3 lights were turned on, because there's a light that is
4 right by the door. So there was a light that was
5 flashed on. But coming into the house, there was only
6 one light that was on, that was in the kitchen.

7 Q Once he was in inside, the lights were on?

8 A Yes.

9 Q Pretty much full --

10 A Right.

11 Q -- effect?

12 A Fully illuminated.

13 Q And, again, just to quickly do the -- do you
14 recall if the police indicated that a suspect was
15 definitely in that lineup of those six people?

16 A No. They just gave me the sheet and asked me
17 if any of these people looked familiar, or was the guy
18 that could have been any of the people that were at my
19 home.

20 MR. FINCH: Thank you. No further questions at
21 this time, your Honor.

22 Please answer any questions the Defense may
23 have.

24 THE COURT: Cross-examination.

25 MR. BUTLER: Thank you, Judge.

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CROSS-EXAMINATION

1

2 BY MR. BUTLER:

3 Q Good afternoon, Ms. Ancrum. I just have a few
4 questions for you. You viewed the photo lineup, roughly
5 seven months after the incident; isn't that right? It
6 was in May; right?

7 A Yes. So it was about seven months, yes.

8 Q And the incident was October; right?

9 A Right.

10 Q Do you recall telling the detectives shortly
11 after the incident that you wouldn't be able to make an
12 identification of anybody?

13 A No, I don't recall.

14 Q Okay. You gave us a length of time that the
15 event occurred, but you said that at some point the
16 person you identified as Mr. Smith, goes to the back of
17 the house; is that right?

18 A Yes.

19 Q How soon after coming into the house did that
20 person go to the back of the house?

21 A I can't give you an exact time frame. I don't
22 know as far as the duration of minutes, but at some
23 point, at least halfway through -- through the attack,
24 he went.

25 Q How long were you in his presence? Maybe

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1 that's easier. In just his presence?

2 A I'm not really exact on the amount of time that
3 we had this interaction. It could have been 20 minutes.
4 I'm not sure of the exact amount of time.

5 Q In the entire time that you were in his
6 presence, there was a shirt that -- or something
7 covering up his -- up into his eyes? So covering up his
8 nose and his mouth and his chin? Isn't that --

9 A Yeah. Part of his nose.

10 Q Okay. What about -- did he have anything above
11 his eyes, on his head? Like a hat or anything?

12 A He didn't have anything on his head.

13 Q Okay. You said to Mr. Finch that at first we
14 were forced back into the house, that you and the other
15 person were going back and forth, or you were going back
16 and forth with the other guy. I didn't know what that
17 meant. Can you tell me what that means.

18 A The -- his friend or -- I'm not -- whoever he
19 came with; that's when I said the other guy.

20 Q Right. But I don't know what going back and
21 forth means.

22 A Going -- as far as arguing.

23 Q Okay.

24 A Him being aggressive and telling me
25 -- demanding what he wanted from me.

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1 Q Okay. You knew -- at the time that they had
2 now developed a suspect, did you know it was from a DNA
3 match when you go to view the lineup?

4 A No.

5 Q So they didn't tell you how they had identified
6 somebody?

7 A No. They asked me to come down and look at a
8 lineup.

9 Q Now, you said that when your husband pulled up,
10 that one's in the back, and one is still with you, and
11 that they both start firing; is that right?

12 A To be clearer on what I said when I said back,
13 not to the far interior portion of the home, but as far
14 as -- towards that direction. There's a hallway here,
15 so there's one guy on one side. That was him as to
16 which -- as to what I'm referring to when I say back,
17 not as far as back -- all the way back in the home, but
18 towards the back.

19 Q Okay.

20 A To where they ended ultimately leaving out of
21 the home.

22 Q Okay. And did they both start firing weapons?
23 Is that what you said?

24 A Yes.

25 Q All right. Now, at some point, you disarm the

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1 person that's with you; is that right?

2 A At one point -- could you repeat that?

3 Q You get a gun away from the person that's
4 holding you?

5 A I don't take -- I didn't take the gun away from
6 that person, no.

7 Q How did you get it?

8 A How did I get what?

9 Q The gun.

10 MR. FINCH: I'm going to object.

11 THE COURT: What's the objection?

12 MR. FINCH: As to the relevancy of this portion
13 of the hearing.

14 THE COURT: I'm going to allow it.

15 Q (By Mr. Butler) How did you get the gun away
16 from him?

17 A I never claimed to have taken the gun away from
18 that guy.

19 Q Did you come into possession of a gun that was
20 brought into the house?

21 A I did come into possession of a firearm.

22 Q And how?

23 A I do not recall.

24 Q So the person who brought the gun into the
25 house, right, that's not your gun, and you don't recall

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1 how you came to possess it?

2 A I'm not sure. When I said I don't know,
3 I'm not sure, if I picked it up, where. Off of the
4 floor -- all I know is that I grabbed it -- I grabbed
5 the gun. I wasn't thinking about where the gun was
6 located when I picked it up. I saw it; I picked it up
7 and tried to defend myself.

8 Q Do you know how the gun got there?

9 A My assumption was that it was their gun. That
10 was just my assumption.

11 Q Well, it wasn't your gun; is that right?

12 A I'm not sure.

13 Q So the gun that you found in the house, you're
14 not sure whether it is yours or not? This is important.

15 A It's the gun that I found in the house. Was --

16 Q You just said you're not sure if --

17 A I'm not sure if the gun that I fired was mine.
18 I fired a gun.

19 Q So if you don't know where it came from, you
20 wouldn't know which suspects' gun that was, because it
21 might have been yours?

22 A Repeat the question so that I have clarity on
23 that.

24 Q You wouldn't know whether it came from a
25 suspect, or which suspect it came from, because it could

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1 have been yours; the gun?

2 A To the best of my knowledge, I don't believe
3 that it was my firearm.

4 Q Okay. Whose was it? Which of the two, if it
5 wasn't yours?

6 A Maybe it was -- it was his. I'm not sure.
7 They were both in the area, so I'm not -- I have no
8 way of positively identifying if it belonged to either
9 that -- Mr. Smith or the other guy that was present.

10 Q When you viewed the photo lineup, how long did
11 it take you before you made a selection?

12 A I don't recall.

13 Q And you don't know Mr. Smith at all?

14 A No, I don't.

15 MR. BUTLER: Beg the Court's indulgence?

16 THE COURT: Yes, sir.

17 (Respite.)

18 MR. BUTLER: I don't have any further
19 questions.

20 THE COURT: Redirect?

21 MR. FINCH: Nothing, your Honor.

22 THE COURT: You may come down. Thank you.

23 (The witness steps down from the witness
24 stand.)

25 THE COURT: Any additional witnesses?

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1 MR. FINCH: None from the State, your Honor.

2 THE COURT: Anything from the Defendant at this
3 point?

4 MR. BUTLER: No, sir.

5 THE COURT: Any argument? I'll be happy to
6 hear it.

7 MR. BUTLER: I have none.

8 THE COURT: Thank you. I'm going to allow the
9 testimony on identification. It's a jury issue. Thank
10 you. Thank you very much. Okay.

11 Any other motions?

12 MR. FINCH: None from the State, your Honor.

13 THE COURT: Anything else, Mr. Butler?

14 MR. BUTLER: No, sir.

15 THE COURT: Okay. We will be at ease, then,
16 and this case will resume at 9:30. See you all in the
17 morning at 9:30. I believe the jury is coming in at
18 10:00, so we can talk about anything that may come up.

19 MR. FINCH: Thank you, Judge.

20 MR. BUTLER: Thank you.

21 THE COURT: Thank you, all. Have a good
22 afternoon.

23 (The hearing of this cause adjourned
24 at 3:49 p.m., on November 13, 2012.)

25 (End of Volume I of III.)

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,)
4 vs.) Case Nos.: 2011-GS-10-4644
5) through 2011-GS-10-4647
6 AKEEM OMAR SMITH,)
7 Defendant.)

ORIGINAL

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TRANSCRIPT OF PROCEEDINGS

11

JURY TRIAL

HEARD BEFORE JUDGE R. MARKLEY DENNIS

12

ON NOVEMBER 14, 2012

13

VOLUME II OF III

14

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1 thought process, I think some persons are better
2 facilitators than others, and I think that's what a
3 presiding juror does, facilitates the discussion. It
4 doesn't have to be done right away, but at some point if
5 you will select your presiding juror, let the bailiffs
6 know who that person is. Then after that person has
7 been selected, I would ask that that individual occupy
8 that first chair on the first row. But until then, you
9 are free to occupy any seat you want on the first two
10 rows.

11 We'll be with you as quickly as we can. It
12 shouldn't take very long. The bailiffs will show you
13 where the jury room is. Thank you. If you'll follow
14 him. Do not discuss the case, and do not begin your
15 deliberations, of course. Thank you.

16 (The jury is escorted from the courtroom at
17 11:10 a.m.)

18 THE COURT: All right. There's a matter that
19 we need to take up concerning the first witness; is that
20 correct?

21 MR. BUTLER: Yes, sir. Judge, while these
22 charges were pending, Mrs. Ancrum was charged with
23 assault with intent to kill, and it's pending, for most
24 of this case's history -- a pending charge with the same
25 office I would be able to ask her about because it would

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1 go to bias.

2 In the meantime, that charge was reduced from a
3 felony to a misdemeanor, that was handled in transfer
4 court, a conviction that I would not be able to impeach
5 her on. However, my position is, because the matter was
6 resolved most favorably to her while this other matter
7 was pending, that it goes to her bias, under 60- -- I
8 believe it's 608. And I think I can ask her about it,
9 and the State has no objection. All I'm going to ask
10 her is, you were charged with this, it worked out to
11 this, and that is what you pled to, and that would be
12 it.

13 THE COURT: Be happy to hear from you.

14 MR. FINCH: Thank you, your Honor. That
15 charge -- Mrs. Ancrum picked up that charge, I believe,
16 February of 2010. So that would be almost eight
17 months exactly before this incident happened. I
18 discussed that --

19 THE COURT: Before this incident?

20 MR. FINCH: Right. She picked this up before
21 this incident occurred. It was pending up until, I
22 believe, April of this -- end of April of this year in
23 transfer court. I -- I only found out about that as I
24 was just running her name through our system a couple of
25 months ago. I never discussed that matter with the

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1 -- the assistant solicitor. There was no offer made.
2 There was no *quid pro quo* regarding any testimony,
3 reduction of charges. It was based solely on the
4 charges of that case. And I discussed it with -- it
5 was the nature -- a shot was fired from a car that
6 Mrs. Ancrum was driving. And the facts, as it beared
7 out, it just wasn't enough to charge -- a pistol was
8 found in the car, but that was about it. And so she and
9 the co-defendant pled guilty to unlawful carrying in
10 transfer court.

11 It's the State's position that absent any
12 evidence of any sort of deal making or any sort of --
13 any sort of favorable treatment as it relates to this
14 trial is that the probative value -- the prejudice is
15 going to outweigh the probative value of getting into
16 what may or may not have happened with the disposition
17 of that case because it had nothing to do with this
18 case.

19 THE COURT: Well, isn't that wonderful redirect
20 questions that you have the right to ask?

21 MR. FINCH: I'm sorry, sir?

22 THE COURT: I'm just saying on the face of it,
23 people don't know that. We all know that. We deal with
24 it every day. The proper charge was -- heaven forbid,
25 that it was -- that it was overcharged, but that -- we

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1 know that doesn't ever happen, but occasionally it slips
2 through. And so as a result, we ended up -- what you're
3 saying is, that was the appropriate charge for this
4 particular action, and that's fine.

5 But on the surface, to drop from one charge,
6 which it would be a felony, to a misdemeanor, I can't
7 say that pretty much indicates some sort of deal. It
8 doesn't happen to everybody; right?

9 MR. FINCH: Those charges don't always
10 happen --

11 THE COURT: Well, it doesn't -- people don't
12 normally get charged and then suddenly they plea without
13 something else happening. I'm just saying there's
14 enough there, I think, to allow the question. Certainly
15 allows the follow-up for you to explain it. And the
16 jury then weighs -- makes the determination. If it had
17 happened after it -- I don't think it matters whether it
18 happened before or after. It's a pending charge for
19 which she may have gotten -- I mean, the inference is,
20 she got a benefit. The jury has got to believe
21 somebody, and she can testify to that. That's fine.

22 That's okay. I'm going to allow the question,
23 and I'll certainly allow you to ask questions on
24 redirect concerning that. Thank you.

25 MR. FINCH: Thank you, your Honor.

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1 THE COURT: You bet. And that's primarily
2 under 608. I think it goes to the credibility.
3 Obviously, that witness, from what I heard yesterday,
4 she's a pretty important witness, and her credibility is
5 pretty essential in this case, as I understand, from
6 what I have heard thus far.

7 MR. FINCH: That's correct, your Honor.

8 THE COURT: All right. Thank you. So for
9 those reasons, I would allow it. Okay.

10 MR. FINCH: Thank you.

11 THE COURT: Are there any other issues that we
12 need to address?

13 MR. BUTLER: None from the Defense.

14 THE COURT: All right.

15 MR. FINCH: Not at this time, your Honor.

16 THE COURT: Anybody need a break? Including
17 the Clerk?

18 MR. BUTLER: Mr. Smith indicates he would like
19 a break.

20 THE COURT: Let's take a five-minute break.

21 MR. BUTLER: Thank you, Judge.

22 THE COURT: That's no problem.

23 (The Judge steps off the bench at 11:16 a.m.)

24 (A break is taken from 11:16 a.m. until
25 11:21 a.m.; at which time, the proceedings continue as

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1 follows:)

2 THE COURT: Be seated.

3 MR. BUTLER: Judge, at the conclusion of
4 yesterday, Mr. Finch had a meeting with his victims and
5 then called me in, pursuant to Brady, disclosed some
6 information to me, and I wanted to ask the State to
7 please put that on the record, because it's not
8 memorialized anywhere else.

9 THE COURT: Okay. That will be fine. We'll do
10 that as soon as Mr. Smith returns.

11 MR. BUTLER: Thank you.

12 (The Defendant is escorted into the courtroom
13 at 11:23 a.m.)

14 THE COURT: All right. Let the record reflect
15 Mr. Smith is present. We had a conference that there
16 was a matter that was disclosed by the State, and
17 Mr. Butler you wanted -- be happy to hear from you.

18 MR. BUTLER: I just ask the State to put on the
19 record the content of the phone conversation that we had
20 yesterday after his meeting with the victims.

21 THE COURT: Mr. Finch.

22 MR. FINCH: Thank you, your Honor. It's my
23 understanding, after talking to Mr. Butler, the relevant
24 portion of that phone conversation, for the record, is
25 that after yesterday's testimony by Octavia Ancrum, as

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1 part of the Neil V. Biggers hearing, we did adjourn to
2 my office to -- for more trial prep. And I asked her a
3 question about an answer to Mr. Butler's question about
4 guns at the time of the -- of the alleged incident on
5 October 2nd, 2010.

6 I asked her, in reference to Mr. Butler asking
7 about which gun she picked up and fired, why she didn't
8 -- why she didn't say it was her gun. Her response to
9 me was, she didn't understand his question. There were
10 multiple guns being talked about. She didn't understand
11 which gun he was referring to, and that's why she didn't
12 have a good answer for him, as far as, was it her gun or
13 not. I then showed her a picture of the gun that was
14 fired, and she recognized that gun.

15 I said, you know that's -- that is your gun,
16 and that's what's taken. She said, Well, yes, but I
17 didn't understand his question at the time. I said,
18 Let's clarify this. We were talking about the gun you
19 picked up and fired. It was that gun. And I was
20 pointing to the photograph of the gun that was taken by
21 the sheriff's office. And she said, Yes.

22 I believe that's --

23 MR. BUTLER: Which is her gun?

24 MR. FINCH: Which is her gun, yes.

25 THE COURT: Okay. Does that conform with the

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1 conversation?

2 MR. BUTLER: Yes, sir.

3 THE COURT: Thank you. Anything else before we
4 bring in our jury?

5 From the State, Mr. Finch?

6 MR. FINCH: No, your Honor. I don't have
7 anything else.

8 THE COURT: Anything else from the Defendant?

9 MR. BUTLER: No, sir.

10 THE COURT: Let's invite the jury to return,
11 Mr. Rivers.

12 (The jury is escorted into the courtroom at
13 11:27 a.m.)

14 THE BAILIFF: All right. All are seated, your
15 Honor.

16 THE COURT: Thank you very much. Thank
17 you, ladies and gentlemen. I appreciate that. As I
18 mentioned to you when we were qualifying you, the first
19 act would be to take an oath similar to my oath, and I
20 now ask you to give your attention to the Clerk as she
21 administers your oath.

22 THE DEPUTY CLERK OF COURT: Ladies and
23 gentlemen of the jury, please stand and raise your right
24 hand to be sworn.

25 (The oath is administered by the Deputy Clerk

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OPENING STATEMENTS

1
2 MS. ELLIOTT: Ladies and gentlemen, good
3 morning. In the process of this trial, you're going to
4 hear the story of Octavia and Tyrone Ancrum. They
5 lived, in October of 2010, a rural part of Ravenel.
6 They lived with their three children, and, truthfully,
7 just a few yards away, Tyrone Ancrum's mother lived.
8 They lived in a single-wide trailer. And their
9 description of this home becomes important to this
10 story. There are two doors. There is what I would
11 consider the front door, and a back door that leads into
12 kind of a laundry room.

13 For security reasons, the Ancrums kept a
14 doorjamb on that front door and had a bolt lock that
15 only was opened by a key, and they didn't keep the key
16 in that door. It really wasn't a functional door for
17 them. So the only way to enter this house was really
18 through the laundry room door. When you would enter
19 through this door, to the right was the master bedroom,
20 and then to the left was the rest of the house.
21 There was a kitchen, a living room, and then bedrooms on
22 beyond that.

23 Well, in October of 2010, the Ancrums, as I
24 said, had three children. They had just had their third
25 in June. And Octavia, she had been staying home with

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1 the baby all that time. She truthfully earned a mom's
2 night out. So on October 1st, she made plans to meet up
3 with her mother, her sister, and some of her cousins at
4 her sister's house, just to enjoy some company with each
5 other, to play some games, and just to have a little bit
6 of a break from being a stay-at-home mom.

7 That night, Tyrone was supposed to stay home
8 with the children, but after Octavia had left, he got a
9 phone call from his business partner. Tyrone works in
10 promoting acts at local clubs. And his partner had
11 called him and said that they were having an issue at
12 one of the clubs, and he needed his help. Well, instead
13 of calling Octavia back from her family's home, Tyrone
14 decided that he'd drop the kids off with his mother and
15 go to work. So that's what he did.

16 On October 2nd, 2010, in the early morning
17 hours, Octavia decided it was time to go home and check
18 on the kids. She also had a box of diapers in the back,
19 which she picked up, because they running low. She
20 arrived home at about 4:30. Now, remember, the kids are
21 over at their grandmother's house, and Tyrone is still
22 not home. So she's getting out. She expects to just
23 let herself in, but she's not the only person there.
24 She steps out of the vehicle, she sees two men in dark
25 clothes approaching her from either side of the trailer.

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1 One of them is obscuring his face, the lower portion of
2 it. What she really notices is what the other man had
3 in his hand, a gun. She drops the diapers and takes off
4 for the door. She's not fast enough. She feels
5 something hard hit her on the back of the head, and she
6 falls. This day, she believes it's the butt of the gun.

7 These two men then force her to stand up and
8 let her into her home. At first, they're in the kitchen
9 demanding money. She gives them her purse, but that's
10 not all they want. They want more. So the men decide
11 to separate. The man, who's wearing a mask, at this
12 point, Octavia's guy also has a gun, he stays in the
13 kitchen area, towards the left side of the house. The
14 other man, the man without a mask, he takes her in the
15 back bedroom, demanding more money. He starts searching
16 her, and he finds some. And then he turns to Octavia
17 and demands she takes off her shirt. She's terrified.

18 During this time, Tyrone is heading home from
19 work. As he's pulling up to his driveway, he sees a man
20 outside of his house. Now, he knows how far out he
21 lives. He knows something's wrong. So he demands to
22 know, What are you doing here? The guy takes off
23 running. Now, Tyrone is no saint, and you will hear
24 about that here.

25 He has a criminal record, but with that record,

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1 comes the knowledge, a sense, if you will, of when
2 something bad is going down. He knew something was
3 wrong. So he grabs his phone to call 911. And he also
4 runs over to his mother's house and says, Tell 911
5 what's going on. Goes back to the cars. Now, he's seen
6 that Octavia's car is already there. He's seen the
7 diapers in the driveway. He knows or thinks that she
8 must be inside. So he grabs the gun from his car, and
9 goes to that one doorway that works, the laundry room
10 door. He knows it's the only way in and out, and if
11 someone's going to come out, they're going to come to
12 him and his gun.

13 So he goes to the door, opens, and yells out to
14 Octavia. She tells him she's in the bedroom, that they
15 have her back there. But he can also see something. He
16 can see the refrigerator, and he can see a reflection --
17 maybe a better description would be a shadow of another
18 man. So he makes a choice. He takes the gun he's
19 holding, points it at the wall, and as best he can guess
20 where that man is standing, and he starts firing.

21 The wall erupts in return fire, and he pulls
22 back. When that dies down a little bit, he steps up and
23 takes a few more shots. Now, while this is going on,
24 the man who's holding Octavia in the bedroom, he decides
25 to make a run for it, to join up with his friend, who's

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1 at the left side of the house. Around this time, Tyrone
2 sees a hand come into the hallway and fires shots. He
3 flinches, he pulls back, but it's too late, and he's
4 struck in the right hip.

5 So we've got Octavia in the master bedroom,
6 Tyrone standing outside the only door that any of these
7 assailants can exit, and he notices these two men run
8 down the house. About that time, they hear a shattering
9 sound, the sound of the bay window being knocked out.
10 Octavia makes a run out to Tyrone, but Tyrone runs in
11 the house and gets one more gun. He's going to take one
12 more shot at these guys who have come in his house. He
13 comes around and shoots into the darkness.

14 The men are gone. The two men that forced
15 Octavia in the house are gone. The lookout is gone. So
16 their attention then turns to the injury that Tyrone is
17 suffering. He's been shot. He's bleeding. They're
18 scared. You know, they've lived out in Ravenel long
19 enough that it usually takes emergency personnel a while
20 to get out there. They know people who died waiting for
21 EMS. So they just want to get him to the hospital.

22 So as they're loading him into the car, the
23 police arrive, but they don't want to talk to the police
24 at that point. They don't want to answer questions;
25 they just want to get him help. But they subsequently

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1 make an appointment with officers and say, You know
2 what, we'll talk to you later. And they do, and they
3 come in and give a statement. They didn't tell the
4 whole story in that first statement, though, and you're
5 going to hear about that in this trial.

6 I've already told you that Tyrone was no saint.
7 He has a criminal record. And because of that criminal
8 record, he didn't tell the police at first about those
9 guns. He was worried what that would mean. But as the
10 investigation went on, he told the whole story, and
11 you're going to hear all about that in this trial.

12 Now, while EMS is taking the Ancrums to the
13 hospital, the police begin the long procedure of
14 processing this crime scene. There's shattered glass
15 at the bay window. There are bullets and casings
16 everywhere. They start logging them. And then just
17 outside of the bay window, next to the fence that any
18 assailants would have had to climb to get out and away
19 from the trailer, they find a drop of blood. That blood
20 is collected, sent up to SLED, and processed for DNA.
21 When the results came back, the results pointed to that
22 man, Akeem Omar Smith.

23 Because of that result, officers created a
24 six-pack lineup, and they showed it to Octavia. She was
25 able to point out the Defendant, with 80 percent

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1 certainty, as the man who forced her into her house that
2 night.

3 Ladies and gentlemen, that's why we're here
4 today. The Defendant is charged with kidnapping,
5 burglary in the first degree, armed robbery, and
6 attempted murder. You're going to hear a lot of
7 evidence in this case. At this trial, you'll hear about
8 how the evidence points that the Defendant was one of
9 the assailants who seized Octavia Ancrum, forced her to
10 let them in their house, robbed her at gunpoint, and
11 then participated in the attempted murder of her
12 husband.

13 During this trial, you will get to hear the
14 who, the what, and the where from the Ancrums. And then
15 you will also get to hear the who, the what, and the
16 where from the forensics. And once you have heard both
17 of those stories, I'm confident that you will return a
18 verdict of guilty on all four of the charges the
19 Defendant is accused of.

20 THE COURT: Mr. Butler.

21 MR. BUTLER: Please the Court?

22 THE COURT: Yes, sir.

23 OPENING STATEMENTS

24 MR. BUTLER: I stopped counting the number of
25 times Ms. Elliott used the word story in her opening

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1 statement to you. Interesting to me that she used that
2 word. It's appropriate because it's exactly that. It's
3 a story, fabricated and fictionalized. And let me make
4 one thing clear from the very beginning, as far as the
5 forensics that you are going to hear, tons of evidence
6 that you are going to hear. This is not a who-done-it
7 case. It's a what-happened case. Let me repeat that.
8 This is not a who-done-it case. It's a what-happened
9 case.

10 The DNA places Akeem at the scene. It does,
11 because he was there. Octavia picks him out of the
12 lineup. She does, because she knows him, and not just
13 from that night. It's not a who-done-it case. It's a
14 what-happened case.

15 When the officers arrived at the Ancrums'
16 residence a little past four-something that morning,
17 Octavia didn't want to talk to them. She didn't want to
18 cooperate. Couldn't or wouldn't describe her supposed
19 abductors, assailants, would-be murderers of her
20 husband. The officer said the ambulance is on the way,
21 you can talk. No talk.

22 She didn't want law enforcement to go into her
23 trailer. They wanted to go, for all obvious reasons,
24 make sure there were no more suspects inside, look for
25 evidence, clues as to who might have done this horrible

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1 thing. Very important. She said, No, you can't go in.
2 They stole the keys, and the door is locked. Well,
3 turned out, that they had the keys, and deputies took
4 them and went in anyway. She didn't want to talk. She
5 didn't want them going in.

6 And it wasn't just that night. The next
7 morning, after Tyrone is released from the emergency
8 room, they don't go to law enforcement. Lead detective
9 has to track them down. Can't find them. Finally gets
10 in touch through word-of-mouth from Tyrone's mother.
11 They still don't want to talk, and they refuse to
12 cooperate. Case temporarily had to be closed because
13 they wouldn't cooperate.

14 And days later, when Octavia and Tyrone did
15 decide to talk, they lied. Uncontradicted, undisputed
16 lies about what happened. They blamed suspects for
17 bringing a gun into their home, which was, in fact,
18 their gun. They allowed the police to believe, for two
19 years, that shell casings found outside the house was
20 the result of suspects firing weapons at them. And, in
21 fact, that's not true. It's that those shell casings
22 were from an AK-47 assault rifle that Tyrone had been
23 shooting. Didn't tell the police about that. Signed a
24 statement that said this is the truth, the whole truth,
25 and it wasn't.

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1 And let me be clear about something else. It's
2 not as if he says, at some point, hey, to the members of
3 law enforcement or prosecutor's office, there's
4 something I've got to get off my chest. There's
5 something I've got to clear up. No. It's only when the
6 solicitor's office, the prosecutors, start preparing
7 this case for trial and something's not adding up, and
8 they confront them. And then and only then does he say,
9 Okay, let me come clean about the AK-47 assault rifle.

10 He still doesn't volunteer that, no, we haven't
11 been telling the truth about the guns in the house. I'm
12 not going to bother trying to explain how complicated
13 that is, because at the end of it, I'd tell you, Well,
14 we'll clear this all up. But I'm afraid that we won't.
15 But suffice it to say at this point, they were not
16 telling the truth about the guns, and they still didn't
17 until yesterday.

18 They let these lies sit for two years, and only
19 on the verge of this trial, when confronted, some by me,
20 others by the prosecutors, did they come clean. But
21 even when Octavia did talk, she couldn't or wouldn't
22 describe the person that she would later identify as her
23 abductor -- supposed abductor, almost murderer of her
24 husband. Didn't tell the police anything about this
25 person's height, his weight, his build, his hair, his

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1 skin tone, his age, and she certainly didn't tell you
2 anything about his eyes, that will later prove to be so
3 critical. And it made sense that she wouldn't be able
4 to describe that person in any detail, because as
5 Ms. Elliott told you, the person was wearing a mask that
6 covered everything but his eyes. She said she couldn't
7 identify the person.

8 Nevertheless, months later, she manages to pick
9 Akeem from a lineup, because she knows him. His DNA is
10 there because he was there. And it's because she knows
11 him that she didn't want to cooperate. And why does
12 that matter? Why do these untruths matter? Untruths
13 clung to for two years, falsehoods repeatedly
14 maintained, why does that matter? Because this is a
15 what-happened case, and the only two people who know
16 what happened and can tell you what happened don't tell
17 the truth when they're asked about it.

18 Yet you will be asked to believe them and only
19 them, in a matter that is not without consequence. In a
20 matter that is not trivial. The decision that you're
21 going to be asked to make -- and it's probably sooner
22 than you would expect. Probably sometime tomorrow,
23 because there is no mountain of evidence as to what
24 happened. Don't blink. This is going to be quick. The
25 decision that you will be asked to render tomorrow is

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1 one of the most important decisions you will ever be
2 asked to make in your life. It's definitely the most
3 important decision that anybody is going to be asked to
4 make in Akeem Smith's life. So when the only people who
5 know what happened in a what-happened case can't tell
6 you the truth about what happened, you are going to have
7 no choice but to render a verdict. And a verdict means
8 -- it's Latin -- based in Latin, to speak the truth.
9 And when the only people who know what happened in a
10 what-happened case can't speak the truth, you can't
11 render a verdict to anything other than not guilty. And
12 that's what I'm going to ask you to do tomorrow.
13 Thank you.

14 THE COURT: Thank you, Mr. Butler.

15 All right, ladies and gentlemen, given the
16 time, rather than start with our first witness, I think
17 we'll take our recess now for lunch. Do not begin your
18 deliberations. Of course, you've heard no evidence at
19 this point. And don't permit anyone to talk with you
20 about the case or talk about it in your presence.

21 I'd ask you to be -- return to your jury room,
22 please, by 1:30 this afternoon. We will bring you back
23 and resume the trial at that time. Have a nice lunch.

24 (The jury is escorted from the courtroom
25 at 11:57 a.m.)

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1 THE COURT: All right. Anything from the State
2 before we recess?

3 MR. FINCH: No, your Honor.

4 THE COURT: Anything from the Defendant?

5 MR. BUTLER: No, sir.

6 THE COURT: We will be at ease until 1:30.

7 Thank you.

8 (The Judge steps off the bench at 11:57 a.m.)

9 (A break is taken from 11:57 a.m. until
10 1:37 p.m.; at which time, the proceedings continue as
11 follows:)

12 (The State's Exhibits are premarked.)

13 THE COURT: All right. State ready to proceed?

14 MR. FINCH: We are, your Honor.

15 THE COURT: Let the record reflect Mr. Smith is
16 present. Defendant ready to proceed?

17 MR. BUTLER: Yes, sir.

18 THE COURT: Okay. Bring in our jury.

19 We had a side-bar concerning the sequestration
20 of witnesses. The Court has made a ruling concerning
21 the victim's right to remain in the courtroom. We will
22 place that on the record at the first break. Thank you.

23 (The jury is escorted into the courtroom at
24 1:38 p.m.)

25 THE COURT: Thank you, ladies and gentlemen. I

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1 hope you had a good lunch; you're ready to continue. As
2 I understand, Mr. Reisinger, you've been selected as the
3 presiding juror; is that correct, sir?

4 THE JUROR: Yes, sir.

5 THE COURT: And your number is 216?

6 THE JUROR: Yes, sir.

7 THE COURT: Thank you very much. And thank
8 you, ladies and gentlemen. And that will, of course, be
9 your seat for the balance of the trial.

10 Thank you. When we took our recess, we were
11 beginning -- about to commence the evidentiary portion
12 of this proceeding.

13 Solicitor, you may call your first witness.

14 MR. FINCH: Thank you, your Honor. State calls
15 Octavia Ancrum.

16 THE DEPUTY CLERK OF COURT: Raise your right
17 hand and place your left hand on the Bible, please.

18 (The oath is administered by the Deputy Clerk
19 of Court, and the witness answers as follows:)

20 THE WITNESS: Yes.

21 THE DEPUTY CLERK OF COURT: Please be seated.
22 State your full name, spelling your last name for the
23 record, please.

24 THE WITNESS: Octavia Ancrum, spelled
25 O-c-t-a-v-i-a, last name spelled A-n-c-r-u-m.

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1 OCTAVIA ANCRUM,
2 having been first duly sworn by the Deputy Clerk of
3 Court to tell the truth, the whole truth, and nothing
4 but the truth, was examined and testified upon her oath
5 as follows:

6 DIRECT EXAMINATION

7 **BY MR. FINCH:**

8 Q Good afternoon, Mrs. Ancrum.

9 A Good afternoon.

10 Q If you would, tell the Court how old you are.

11 A Twenty-seven.

12 Q And where did you grow up?

13 A Hollywood, South Carolina.

14 Q And do you have any children?

15 A Yes. I have two children -- biological
16 children and one stepson.

17 Q And you're married?

18 A Yes, I am.

19 Q To?

20 A To Tyrone Ancrum.

21 Q How long have you guys been married?

22 A We were married July 14th, 2009, so about three
23 and a half years.

24 Q And you guys always resided in the Charleston
25 area?

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1 A Yes.

2 Q And in 2010 -- October, 2010, where did you
3 live then?

4 A At -- 2010, I lived in Charlotte, North
5 Carolina.

6 Q In October, 2010. The day of the incident.

7 A Yeah. At Road, Ravenel, South
8 Carolina.

9 Q And that's Charleston County?

10 A Yes.

11 Q You had a child born in 2010?

12 A Yes.

13 Q And what date was that child born?

14 A July th.

15 Q And after your child was born, did you work?

16 A No.

17 Q What did you do?

18 A Well, I was enrolled in school, taking online
19 courses. So at -- an at-home mom for the most part,
20 part-time student, which was an at-home student.
21 So. . .

22 Q Stay-at-home mom?

23 A Yes.

24 Q On the night of October 1st, 2010, did you make
25 any plans to go out?

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1 A Yes.

2 Q What were the plans?

3 A The plans were for myself and some family
4 members to get together and play cards, have drinks, and
5 just hang out.

6 Q And where was that going to happen?

7 A It was happening at -- my sister lived with
8 someone -- a family member, at their house.

9 Q Okay. And did you go -- did you make -- follow
10 through with those plans?

11 A Yes, I did.

12 Q Where did -- about what time did you leave your
13 house to go to their house?

14 A It would -- it would have been before 11:00. I
15 went to the grocery store to buy a box of diapers, and
16 the grocery store closed at 11:00. So it was between
17 10:00 and 11:00 when I went out. So somewhere between
18 that time.

19 Q And who was taking care of the kids?

20 A Tyrone was.

21 Q And where was that happening?

22 A At my home.

23 Q Davidson Road?

24 A At our home, yes.

25 Q After you got to your sister's, what did y'all

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1 do?

2 A Can't tell you the exact line of events, but
3 just -- we were hanging out. We started playing cards
4 and drinking and just hanging out and stuff.

5 Q Okay. Do you remember how late you stayed
6 there?

7 A Yes. It was until about almost 4:00.

8 Q And did you speak to Tyrone at all during that
9 time?

10 A Yes.

11 Q What was the nature of the conversation?

12 A The nature of the conversation, just was:
13 Calling to let you know that the kids are -- to Julie's.
14 And when are you coming home? You know, just the normal
15 stuff. Are you okay? Make sure you're okay.

16 Q Who is Julie?

17 A That's Tyrone's mother.

18 Q Where is her house relative to your house?

19 A Maybe about 30 feet behind us. Approximately
20 40 feet behind us.

21 Q And you guys lived in a trailer?

22 A Yes.

23 Q Single-wide?

24 A Yes.

25 Q Was Julie's house also a trailer?

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1 A Yes.

2 Q Okay.

3 (Exhibits shown to Mr. Butler by Mr. Finch.)

4 Q (By Mr. Finch) I'm going to show you what's
5 been previously marked, for I.D. purposes only, as State
6 Exhibits 2 through 12, and ask if you could identify
7 these items. Please take a moment to look through them.

8 (Exhibits handed to the witness.)

9 Q Can you identify those items?

10 A Yes. This is the inside of my home. Or what
11 used to be our home.

12 Q Photographs?

13 A Yes.

14 Q And is -- those photographs fairly and
15 accurately represent the condition of the home at the
16 time --

17 A Yes, they are.

18 Q -- we are discussing?

19 MR. FINCH: Your Honor, at this time, the State
20 would move for the admission of State's 2 through 12.

21 THE COURT: Any objection?

22 MR. BUTLER: No objection.

23 THE COURT: Without objection, State's 2
24 through 12, each being photographic, are admitted.

25 (Photographs admitted into evidence as State's

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1 Exhibits 2 through 12.)

2 Q (By Mr. Finch) What car were you driving that
3 night, Mrs. Ancrum?

4 A I was driving the Lexus that's pictured in the
5 picture there.

6 Q And whose car is that?

7 A That car belongs to Tyrone. Primarily driven
8 by Tyrone.

9 Q If you can take a look behind you, is that the
10 car you're referring to?

11 A Yes.

12 Q You said that's typically driven by your
13 husband?

14 A Yes.

15 THE COURT: This is State's what?

16 MR. FINCH: I'm sorry. This is State's
17 Number 2.

18 THE COURT: Thank you.

19 Q (By Mr. Finch) So you drove -- you drove that
20 car to your sister's and cousin's house?

21 A Yes.

22 Q And drove it back?

23 A And drove it back home.

24 Q And do you recall what time you got home?

25 A Not exactly. It was around about 4:00 a.m.

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1 -- a little bit after 4:00, maybe. I'm not exactly
2 sure.

3 Q Did you know at that time whether Ty was home?

4 A When I pulled into the yard, the car wasn't
5 there, so I assumed he was not there.

6 Q Did you stop anywhere when you traveled from
7 the house that you were at previously to your residence?

8 A No.

9 Q About how long is that journey?

10 A Ten minutes, if that.

11 Q And when you got to your residence, what did
12 you do?

13 A Once I had got into my residence, I sat in the
14 car for a couple of minutes. I had heard a song I had
15 never heard before, so I sat in the car and listened to
16 that, until I got -- went to get out of the car -- well,
17 I grabbed for the items that I had on the passenger
18 seat, and went to get out of the car --

19 Q What were those items?

20 A It was a box of diapers and something else. I
21 think it was some feminine products or something.

22 Q And then you got out of the car?

23 A Yes.

24 Q And tell us what happened once you got out of
25 the car.

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1 A Once I got out of the car, got the stuff, and I
2 had my purse in my hand to go to the door, and as I'm
3 going across the front of the car, I see like a shadowy
4 figure come running from the front part of the car. And
5 as I try to run, I turn around, and there's a second
6 person coming from the back part of the cars. There's
7 another vehicle that's -- I guess they were hiding
8 behind, I couldn't see when I drove into the yard, until
9 the second person came and ambushed me at that time.

10 Q I'm going to show you what's been admitted in
11 evidence as State's Exhibit Number 5. Can you identify
12 that vehicle?

13 A Yes. That is my husband's brother's car.

14 Q Is that the vehicle you are referring to?

15 A Yes.

16 Q On the end of the house?

17 A Yes.

18 Q You're saying somebody came from that
19 direction?

20 A Yes.

21 Q What did you do when -- when you encountered
22 these two individuals?

23 A I tried to run, and the first person that I
24 turned my back to hit me with something very hard, and I
25 fell to the ground. And then the second person also --

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1 they were kind of, like, going back and forth, like,
2 just be quiet, don't scream, open the door. Just, you
3 know, kind of trying to force me into the house.

4 Q What happened to the items that were in your
5 hand?

6 A They were on the ground.

7 Q Let me show you what's been admitted into
8 evidence as State's Exhibit Number 3. Is that the box
9 of diapers you were referring to?

10 A Yes.

11 Q And is that where you think you dropped them?

12 A Yes, because that would have been the path that
13 I would have taken to go to open the door.

14 Q And is that the door you would use for entry
15 into your house?

16 A Yes.

17 Q After you went inside the house, if you would,
18 tell the Court what happened.

19 A After I had gotten inside the house, there
20 was -- the guy that did not have anything on his face
21 was just kind of, like, doing really all of the
22 demanding and guiding the whole thing, I guess, and he
23 kind of took -- he took me into the room and was like --

24 Q Which room?

25 A Into my master bedroom -- was like, give me

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1 whatever you've got. Give me the money. Give me
2 everything that you've got. And kept asking me where my
3 husband was at. And initially I told him I didn't have
4 any money. I was just begging for my life because they
5 had a gun. And so I asking him, Please don't kill me.
6 Just don't kill me. And the other -- the -- Mr. Smith
7 walked towards the end portion of the home. I don't
8 know what he did after going to -- going to the back.

9 Q Let me show you what's been admitted into
10 evidence as State's Exhibit Number 8. Tell us what
11 we're looking at in this photograph.

12 A That is the master bedroom. That was where I
13 was held at initially.

14 Q And State's Number 7? Can you identify that?

15 A Yes. That is another view of the bedroom there
16 as well.

17 Q Going back to State's Number 8, can you tell us
18 where it is that you were standing here inside with the
19 unmasked individual?

20 A In front of that dresser there. Directly --

21 Q Can you use that one?

22 A From right by the dresser.

23 Q And you stated that that individual was asking
24 for money and things?

25 A Uh-huh.

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1 Q Did you give him anything?

2 A Yes.

3 Q What did you give him?

4 A Initially they took -- they had my purse, and I
5 had some money in there. And I guess it wasn't enough,
6 because they -- I don't know if they didn't see it or
7 what. They kept asking for money. So we did have some
8 money in the house at that time. I went and got the
9 money and gave it to them, hoping that that would be
10 enough.

11 Q. And where did you keep money in the house?

12 A In that bottom drawer to the bottom of the
13 drawer -- you would have to pull the drawer out
14 and. . .

15 Q Bottom drawer of the dresser --

16 A Yes, right there.

17 Q -- in this photograph?

18 A Yes.

19 Q What else is kept in that dresser?

20 A There's also a gun that was kept in the dresser
21 as well.

22 Q Is that all that's kept in there, or do you
23 keep clothes?

24 A Yes, clothes, of course.

25 Q And I think you said it was -- the bottom

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1 drawer was the money. Or where was the money?

2 A It was in the bottom drawer. Not in the drawer
3 physically, but underneath that drawer. There's a
4 sliding portion, where the drawer kind of slides onto,
5 then there's like a portion between the sliding part and
6 the dress- -- the actual drawer that sits in there,
7 where the money was like sitting -- laying flat on the
8 bottom. So once I took the drawer out, I could just
9 pick the money up and --

10 Q Do you know how much money you gave him?

11 A No. I didn't know how much it was.. I just
12 knew it was there, and I gave it to him.

13 Q Was it all cash?

14 A Yes.

15 Q Do you know if they took anything else; items
16 of value?

17 A Like I said, they had -- they took my purse, so
18 I -- at that time, I didn't know -- I thought they had
19 everything that was in my purse as well.

20 Q After they -- you gave them the money, what
21 happened next?

22 A After that, the guy -- the one -- the guy that
23 did not have -- the unmasked person told me to take my
24 clothes off, to put the pillowcase over my head, and
25 that's when I lost it. I started crying hysterically

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1 and begging for him -- because I thought he was going to
2 rape me. And I kept asking, you know, what -- what else
3 do you want? What can I do to just make this go away?
4 Because in my mind, I still felt that I could make it
5 through that situation.

6 Q Where was the other man that was in -- was in
7 the house?

8 A He was standing across from the doorway, my
9 master bedroom doorway, but he was standing on the
10 opposite side of that door, which was like -- if you
11 show the picture. There's a narrow hallway that -- and
12 then leads to the back doorway. So he was on the
13 opposite side of that hall.

14 Q Let me show you what's been marked as --
15 admitted as State's Exhibit 6. Can you identify that
16 photograph?

17 A That is the laundry room, back door entry area.

18 Q Okay. So you go in the door, and this is what
19 you would see first?

20 A Yes.

21 Q And which way -- if you look at the photograph,
22 can you indicate to us which way is the bedroom from
23 that entrance?

24 A The bedroom is to the right.

25 Q And what's to the left?

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1 A To the left is the rest of the home: the
2 kitchen area, the living room, and an additional bedroom
3 and bathroom.

4 (Mr. Finch is showing more exhibits to
5 Mr. Butler.)

6 Q (By Mr. Finch) Mrs. Ancrum, I'm going to show
7 you what's been marked for I.D. purposes only is State's
8 Exhibit 30, 31, and 44. If you can take a look at
9 those. If you can identify those items.

10 (Photographs marked for identification as
11 State's Exhibits 30, 31, and 44.)

12 (Photographs are handed to the witness.)

13 Q (By Mr. Finch) First items, 30 and 31, can you
14 identify those?

15 A Item 30 is a picture of the kitchen and the
16 living room area, and 31 is just a picture of the --
17 well, it does include a picture of the living room area
18 and kitchen as well. And the third, Exhibit 44, is a
19 picture of my wallet. Looks -- appears to be on the
20 floor.

21 Q And is that -- do those photographs fairly and
22 accurately represent the condition of your house and
23 your wallet at the time?

24 A Yes.

25 MR. FINCH: Your Honor, at this time, the State

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1 would move for the admission of State's 30, 31, and 44.

2 THE COURT: Any objections?

3 MR. BUTLER: No objection.

4 THE COURT: Without objection, 30, 31, and 44,
5 each being photographic, admitted.

6 (Photographs admitted into evidence as State's
7 Exhibit Numbers 30, 31, and 44.)

8 Q (By Mr. Finch) Looking at State's 31, is this
9 the area you're referring to as the kitchen --

10 A Yes.

11 Q -- where the other man was?

12 A Yes.

13 Q As we look at that photograph, what's -- what's
14 beyond that shelf area? What's further beyond that in
15 the house?

16 A The living room and the bedroom and a bathroom.

17 Q And what kind of window do you have at the end
18 of that -- at the far end of the house, looking at that
19 photograph?

20 A It's -- I don't know how to describe it. It's
21 one of the larger windows that -- it's like in threes.
22 It was like one of those large windows. So it's from
23 about here to here.

24 Q Okay. And that was for the -- in the bedroom
25 at the far end?

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1 A Well, the bedroom -- I'm referring to that as a
2 bedroom, but it was not a bedroom. It was converted
3 into a den.

4 Q All right. But that was -- so in that area,
5 you refer to the far end of the house?

6 A Yes.

7 Q So while the other man is in the kitchen area
8 and you're with the unmasked man in your bedroom, after
9 you are in hysterics, by your account, tell us what
10 happens next.

11 A After that, a few more moments pass, and then
12 we hear a car outside -- well, I didn't hear it. I
13 heard -- overheard the guy saying: That's him. That's
14 him. And one of the -- the unmasked guy said: And when
15 he comes in here, don't say anything, and you won't get
16 hurt. And the other guy was saying: You know, just do
17 what we say.

18 And my husband came up on the porch -- I don't
19 know if the -- I didn't hear the door open. He just
20 kind of came to the doorway, and was like -- he just
21 said my name faintly. And I just told him not to come
22 in. And as soon as I said that, that's when the
23 gunshots erupted.

24 Q Who -- at this time, who did you see with a
25 gun?

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1 A The unmasked guy did not have a gun -- did have
2 a gun, I'm sorry. And the guy that was masked had a gun
3 as well.

4 Q So both men that were inside your house had
5 guns?

6 A Yes.

7 Q At the time your husband came into the house,
8 or you think he came in the house, did you have a gun?

9 A No.

10 Q Were you -- was there a gun in the house?

11 A There was a gun in the house.

12 Q At that time, what guns did you know about, of
13 your own, that were in the house?

14 A At that time, I knew that we usually have
15 a -- I have a registered .380 handgun that would
16 normally be in the house, and also an AK-47.

17 Q Where were those weapons normally kept?

18 A The AK-47 was kept behind the bed, under the
19 mattress. That was something that I was not really
20 familiar with, the placement of that. So it was
21 somewhere around that area. It was not easily
22 accessible.

23 Q What about the handgun?

24 A The handgun was kept in the top dresser drawer.

25 Q Same dresser where the money was?

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1 A Yes.

2 Q Okay. So after the gunshots erupted, tell us
3 what happened.

4 A After the gunshots erupted, the guy that's
5 unmasked, at this time -- he's dragging me, physically
6 trying to drag me, to use me as a body shield, into the
7 -- while they were shooting. At some point, I broke
8 free from him, and then the unmasked person bolts for
9 the back, along with the guy that has the mask on his
10 face. They -- eventually, I guess, they -- the one that
11 didn't have anything on his face went to the door that
12 had the doorstopper on it and told the other guy, who
13 said an explicit -- can I say what he said? He was just
14 like, F, like -- because I think they were kind of
15 nervous about how they were going to get out of the
16 house. And then ended up hearing, like, the glass
17 break.

18 And after hearing that, at some point, I ended
19 up getting the gun, the .380, and firing it in the
20 direction that I had seen them run off into.

21 (Photographs are shown to Mr. Butler.)

22 Q (By Mr. Finch) I'm going to show you what's
23 been marked for I.D. purposes as State's Exhibit 33.
24 Can you identify that?

25 A Yes.

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1 Q What's that?

2 A It's a picture of the living room.

3 Q And State's 34, marked for I.D. purposes?

4 A This is a picture of the hallway that's leading
5 to the anterior portion of the home.

6 Q Okay. And State's 35, for I.D. purposes?

7 A This is a picture of the bedroom that was
8 converted into a den.

9 Q Those all fairly and accurately represent the
10 condition of the home at the time of this incident?

11 A Yes.

12 Q Thank you.

13 MR. FINCH: At this time, the State would move
14 for the admissions of State's 34 -- 33, 34, and 35, your
15 Honor.

16 THE COURT: Any objection?

17 MR. BUTLER: No objection.

18 THE COURT: Without objection, each are
19 admitted, each being a photograph.

20 (Photographs are admitted into evidence as
21 State's Exhibit Numbers 33, 34, and 35.)

22 Q (By Mr. Finch) Can you indicate the door you
23 were referring to that you said the men were trying to
24 get out of?

25 A It is that door right there.

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1 Q What is --
2 MR. FINCH: Your Honor, that's State's 33.
3 Q (By Mr. Finch) Referencing State's 34, can you
4 identify the item that's in front of that door?
5 A That's the doorstopper.
6 Q And what is that used for?
7 A That's used for -- like preventing somebody
8 from kicking your door in or like trying to. . . .
9 Q And is that a condition -- the area you would
10 normally leave it, the condition you would leave it in,
11 or would it be in a different position?
12 A No. It would be in an upright position. It's
13 placed underneath the doorknob so that the -- you can't
14 turn it. So it would have been in an upright position.
15 Q And referencing State's 35, and you said that
16 was the photo of the den?
17 A Yes.
18 Q And what's -- what are we looking at there, in
19 the middle of that photograph?
20 A That is the window -- that's the window that
21 the guys apparently went through.
22 Q Okay.
23 A The larger window I first described.
24 Q When those guys, your description, took off
25 towards that end of the house there, what did you do?

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1 A After them taking off?

2 Q Uh-huh.

3 A I heard Ty say that he was hit, that he
4 had -- he said: They hit me. That he was shot. And in
5 between that, I ran -- I went and got the gun, and I
6 shot back in that direction.

7 Q Where did you get the gun from?

8 A It's really unclear where I -- where I would
9 -- I got it. It may have been out of the drawer that it
10 was in. But I don't consciously remember going in the
11 drawer to get it, but that was where it was kept, so it
12 may have been in there.

13 Q Okay. Now, is -- what did you tell police
14 about the gun that you fired that night, in your
15 statement?

16 A Well, I told them -- I never -- I just told
17 them that I fired the gun, and I found it on the floor
18 -- or I picked it up off of the floor or something.

19 Q Did you tell them whose gun it was?

20 A No, I did not tell them whose gun it was. In
21 my initial statement, I think I said I thought it was
22 one of the guys' gun that was in the room with me.

23 (Written Statement of Mrs. Ancrum is marked for
24 identification as Stat's Exhibit Number 80.)

25 Q (By Mr. Finch) State's Exhibit 80. And if you

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1 can, just -- can you identify that?

2 A Yes, it was a written statement.

3 Q Okay. And you just take a look over it.

4 Don't read it allowed. But does that refresh your
5 recollection as to what you told the police with regard
6 to the gun that you fired?

7 A Can you repeat the question? I'm sorry. I was
8 reading.

9 Q After you take a look at that, does that
10 refresh your recollection as to what you told the police
11 about the gun that you fired --

12 A Yes.

13 Q -- that night?

14 What did you tell the police about the gun you
15 fired that night?

16 A The statement -- the initial statement, I did
17 say that I picked the gun up -- I found the gun on the
18 floor, that I picked it up from one of the assailants
19 there.

20 Q And was that true?

21 A No, it was not true.

22 Q Why did you write that?

23 A Because my husband is a convicted felon, and
24 he's not supposed to be around guns, and I did not want
25 him to get caught up in all of this because somebody

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1 else had came to my house to kill us. And I -- I lied.
2 I did lie about who the gun -- it was for, because I
3 figured that the police would see the bigger picture,
4 that someone had came to my house to kill us, and that
5 that wasn't going to be a big deal.

6 Q Have you -- is what you told us today regarding
7 that handgun the truth?

8 A Yes, it is.

9 Q What were you thinking about when you made that
10 decision to write what you wrote in your statement?

11 A My children.

12 Q What do you mean by that?

13 A I was thinking about my children and the fact
14 that I was unemployed, would be a single mom, and I
15 would not have anybody to support us or help me to get
16 him out of the situation. So I lied to make sure that
17 he was here with me to support me and to protect me,
18 because there was an unmasked person that was there that
19 was still on the loose that could kill me, or us, at any
20 time, if the police had not arrested anyone. So when I
21 made that statement, I lied to protect my husband and
22 also my family.

23 Q And do you recall when you gave that statement
24 to the police; about how long after the incident?

25 A I don't -- I don't -- it wasn't very long. It

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1 was a couple of days after the incident occurred that I
2 ended up giving the statement to the police.

3 Q Did you know -- at that time, did you know any
4 of the individuals that were in your house, masked or
5 unmasked?

6 A No.

7 Q What was -- how -- after you picked up that
8 gun, what did you do with it?

9 A I fired it.

10 Q In which direction did you fire it?

11 A The direction that I saw them running.

12 Q How many times did you fire that gun?

13 A I don't even remember. I just turned my head
14 to the side and started firing.

15 Q Can you show us how you say you were holding
16 the gun and turned your head?

17 A And I just kind of like -- turned my head and
18 pulled the trigger.

19 Q What did you do after you fired that gun?

20 A After I fired the gun, I dropped it, I tossed
21 it, and I ran immediately to get Tyrone and put him in
22 the car so that I could take him to the hospital.

23 Q Do you remember where you threw the gun?

24 A Somewhere in the room. Somewhere in the room.

25 Q Let me show you what's been admitted into

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1 evidence as State's Exhibit Number 10. Can you identify
2 what's in this photo?

3 A Yes. That is the .380 gun -- the firearm that
4 I used.

5 Q Whose .380 is it?

6 A It's mine.

7 Q And looking at State's Exhibit Number 9, does
8 that help you figure out where that gun is?

9 A Yes.

10 Q Where is it?

11 A It's on the bed.

12 Q In which bedroom?

13 A In the master bedroom, where we were.

14 Q Is that where you were standing when you fired
15 the weapon?

16 A I was standing in the doorway --

17 Q And then --

18 A -- of that master bedroom.

19 Q Okay. After you fired the weapon, did you go
20 outside?

21 A Yes.

22 Q And what did you do once you were outside?

23 A I helped -- I helped Ty into the car, and we
24 started on our way to the hospital.

25 Q And what happened during that?

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1 A As I got to the -- the head of the driveway,
2 midway, I saw the police in a -- the emergent -- I don't
3 think it was the ambulance yet. It was just like some
4 emergency people coming, just police, and they were kind
5 of like: Where are you going? They stopped us.

6 Q What was Ty doing when you came outside the
7 house?

8 A Ty was limping.

9 Q I'm sorry?

10 A He was limping. He was kind of -- coming from
11 the other side of the house.

12 Q Did you see if he was holding anything?

13 A No. He -- he didn't have anything in his hands
14 when I saw him.

15 Q Which side of the house was he coming from?

16 A He was coming from the front part of the house.
17 It would have been where the black car was, on the other
18 photo.

19 Q State's Exhibit 5, is that the area you're
20 describing?

21 A Yes.

22 Q And if you could just point up there which
23 direction he was coming from when you saw him, when you
24 left the house.

25 A When I saw him?

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1 Q When you came out of the house.

2 A He was standing -- he was coming from this
3 direction.

4 Q And which way was he traveling?

5 A He was coming back towards the door.

6 Q And did you guys get into a car?

7 A Yes.

8 Q Which car did you get into?

9 A We got into my car.

10 Q And which car is that?

11 A And that is not on any of the exhibits, but
12 it's a 2010 Buick LaCrosse.

13 (Photograph shown to Mr. Butler.)

14 Q (By Mr. Finch) Let me show you what's been
15 marked for I.D. purpose as State's 16. Is that a photo
16 of the car?

17 A Yes.

18 Q Is that a fair and accurate representation?

19 A Yes.

20 MR. FINCH: Your Honor, at this time, the State
21 would move for the admission of State 16, I believe,
22 without objection.

23 MR. BUTLER: No objection.

24 THE COURT: Without objection, State 16,
25 photographic, is admitted.

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1 (Photograph is admitted into evidence as
2 State's Exhibit 16.)

3 Q (By Mr. Finch) That's the car that you got
4 into with Ty?

5 A Yes.

6 Q Who was driving?

7 A I was driving.

8 Q Why was that?

9 A I don't know. Why? Because he was shot.

10 Q Because he was shot, you said?

11 A Yes.

12 Q Do you know where he was shot?

13 A Not at the time.

14 Q Have you come to find out where he was shot?

15 A Yes.

16 Q Where was that?

17 A In the hip.

18 Q Can you stand up and show us where he was hit.

19 A He was hit -- like about here.

20 Q Okay. And you said a bunch of personnel
21 started to arrive?

22 A Uh-huh.

23 Q Did you speak with officers at the scene?

24 A Yes, I did.

25 Q And what did they -- what did they want from

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1 you at the time?

2 A They wanted -- when I spoke with the officers
3 initially, I briefly told them what had happened:
4 someone came into our house; they ran off into the
5 woods; they had on all black. I gave them what I could
6 give them. They wanted more specific details. At that
7 time, I was not concerned with all of the details. I
8 was concerned about my husband getting medical
9 attention.

10 Q When -- at that point in time, was the EMS
11 there; do you recall?

12 A Not initially. When the first people came, the
13 ambulance came -- probably a couple of minutes after the
14 officers arrived.

15 Q And did you want to wait for the ambulance?

16 A No, I did not want to wait for the ambulance.

17 Q Why not?

18 A Because I had been in a previous incident,
19 where someone was shot in the area that we live in and
20 died outside because it took the ambulance about 22
21 minutes to get to them.

22 Q What was going through your head when you were
23 trying to get to the hospital with your husband?

24 A Just get a doctor. Let's make sure he doesn't
25 have any internal bleeding going on. I just wanted to

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1 make sure he is fine.

2 Q Did you want to talk to police at that time?

3 A No. I did not want to talk to the police until
4 I knew that -- what was going on with my husband.

5 Q Did -- do you recall if the police asked to get
6 inside your house?

7 A They did ask to get inside the house. And I
8 told them at that time, as they could see, that my
9 wallet was on the floor, that they had taken my purse.
10 I didn't have a key for the door. But the window was
11 busted out. I told them that they were more than
12 welcome to go through the window, but. . .

13 Q Were there keys on the key ring for that car?

14 A No. It's not a key -- there wasn't a key ring
15 on it. When we purchased the car, we were told by the
16 dealer, because of the chip that's in the key, that you
17 don't have -- you want to place it on a larger key ring,
18 where it could [sic] damage the chip that's inside of
19 that key. So that key was separate from any other keys
20 that would have been -- that we would normally have on,
21 all at one time.

22 Q I want to ask you about --

23 MR. FINCH: Beg the Court's indulgence?

24 (Mr. Finch speaks with Ms. Elliott off the
25 record.)

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1 THE COURT: Ma'am, you're going to need to pull
2 up closer to that mic -- pull the mic closer to you so
3 you can speak into it.

4 Q (By Mr. Finch) I want to go back to the man in
5 the house who was slightly covered up. Were you able to
6 make any note of anything about his appearance?

7 A Yes. He didn't have hair. He had a little
8 cut -- looked clean, his eyes. Those were all things
9 that I kind of kept looking at, along with the other guy
10 that was not masked. I was trying to look for
11 identifying things that -- features that would help
12 later on.

13 Q After the initial police responded and --
14 would you say that you were cooperative with them or
15 uncooperative with the police?

16 A Initially, I would say that it would be
17 perceived that I was uncooperative.

18 Q And what was your reason for the way that you
19 were acting?

20 A Two reasons. One of the reasons was, as I
21 stated earlier, that my husband is a convicted felon,
22 and he was not supposed to be around guns. And the
23 second one being that the -- the person that had
24 actually took me into the room did not have anything on
25 his face, and I did not want to be a victim of that,

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1 being -- knowing that it was going to be in the news,
2 the police already knew about it. And if I felt at that
3 time that I -- if I had given them a description, that
4 someone would try to retaliate or kill me or do
5 something to my family because they knew where I lived
6 at. Certainly they knew that that was my mother-in-law
7 that was behind me, and that it was all family around
8 where we lived, and I didn't want to have to put anybody
9 else through that.

10 Q Did the EMS eventually arrive?

11 A Yes, they did.

12 Q And what happened once they arrived?

13 A Once they arrived, we got into the EMS, and we
14 left for the hospital.

15 Q When you say "we," do you mean you and your
16 husband?

17 A My husband, yes.

18 Q And do you recall where you were transported?

19 A MUSC Hospital.

20 Q And who was treated at MUSC?

21 A Tyrone was.

22 Q And what was that for?

23 A That was for the gunshot wound.

24 Q Were you also treated?

25 A No. I -- in the vehicle -- in the ambulance,

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1 they kind of looked at everything. It wasn't an open
2 wound. I had some abrasions on the arm from where I
3 fell outside, didn't require any immediate attention.
4 At that time, our attention was just for Tyrone.

5 Q You said -- was there any injury to any other
6 part of your body other than your arm?

7 A There was a knot in the back of my head.

8 Q And did anybody look at that?

9 A Yes.

10 Q Who did that?

11 A In the EMS vehicle.

12 Q And after you guys went to the hospital, did
13 you talk to the police there?

14 A I don't remember talking to the police at the
15 hospital.

16 Q Okay. Did you -- how long did you stay there
17 at the hospital; do you recall?

18 A I don't recall how long it was. Maybe five
19 hours -- four or five hours, maybe.

20 Q After you got discharged from the hospital,
21 where did y'all go?

22 A After we were discharged from the hospital, we
23 went to Tyrone's aunt's house.

24 Q And what part of the area or the town is
25 Tyrone's aunt's house?

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1 A That was in Charleston, which we later left.

2 Once we had gotten some sleep, we later left.

3 Q Where did you go?

4 A And we went to Savannah.

5 Q Why did you go the Savannah?

6 A We were afraid.

7 Q Of what?

8 A Of the guy that was -- the guy not having
9 anything on his face.

10 Q What was it about the fact that he didn't have
11 something on his face that made you more afraid?

12 A Because to me that's an indication that they
13 don't care. That you don't care that I can I.D. you,
14 because either you're going to kill me, once this is all
15 done, or you're going to come back to kill me so that I
16 can't tell.

17 Q Did you see Ty with the AK-47 that night?

18 A No, I didn't.

19 Q After you got -- you were in Savannah, did you
20 meet with the police?

21 A The next day, that Monday. I believe it was
22 Monday or a couple -- maybe -- at some point we spoke
23 with them and arranged for us to come in. I'm not exact
24 on the date that it was, but we spoke with the detective
25 and arranged to come down and talk.

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1 Q And where did that take place?

2 A It happened at the police station.

3 Q During that time, did -- were you able to
4 provide them any description of the suspect?

5 A During that time, I did give them a brief
6 description of the suspect. It was -- the guy that was
7 unmasked, I didn't know who he was. I couldn't even
8 begin to tell them, when they were asking, well, what
9 does he look like, and I'm trying to describe to them,
10 and it was very difficult. And I told them what I knew
11 about the guy that had the thing on his face and things
12 about that, but as far as the other guy, it was kind of
13 difficult to describe him, because I never had to I.D.
14 anybody before, so I told them what I thought was
15 helpful.

16 Q Did you -- during that meeting with the police,
17 did they show you any lineups or offer any ideas as to
18 -- as to suspects?

19 A I believe in the first meeting, I wasn't shown
20 any lineups. I don't believe.

21 THE COURT: You have to keep close to that mic.
22 You're pulling -- thank you.

23 THE WITNESS: In the first meeting, I don't
24 recall being shown a lineup.

25 Q (By Mr. Finch) Were you -- later on, did you

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1 meet with police again in the investigation of this
2 case?

3 A Yes.

4 Q What was the nature of that meeting?

5 A That they wanted me to come down and see if I
6 could identify any of the suspects.

7 Q And where did that take place?

8 A That also took place at the police precinct.

9 Q And when you went down to meet with the
10 officers, did you -- did you know what you were going
11 there for?

12 A They told us on the phone that I was coming
13 there for -- to I.D. -- see if I could pick someone out
14 of the lineup or if any of the -- that they had some
15 -- you know, something for me to look at, is what I was
16 told, so. . .

17 Q Did they tell you anything else about this
18 lineup?

19 A No.

20 Q And when you got there, do you recall who you
21 met with?

22 A I want to say it was Detective Colson. I think
23 that might be his name. I'm not sure.

24 Q And do you recall who showed you the lineup?

25 A It was another one of his co-workers that

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1 brought the lineup to me.

2 Q And do you recall how this lineup took place?

3 Was it a physical lineup or a photographic lineup?

4 A Photographic lineup.

5 Q Do you remember how many pictures were on the
6 page?

7 A I don't recall.

8 Q When you met -- when you met with
9 Mr. -- Detective Colson's co-workers, do you recall if
10 he gave you any instruction as to the -- the process for
11 looking at this lineup?

12 A They just told me to -- to look at it and
13 see -- they said it may be -- it may not be someone, it
14 may be. Just look, and to the best of your ability see
15 if you recognize any of the people.

16 Q Did they go through some instructions with you?

17 A They -- they could have. I'm not quite --

18 Q I'm going to show you what's been previously
19 admitted as State's Exhibit Number 1. If you can take a
20 look at that and see if that refreshes your memory.

21 (Document is handed to the witness.)

22 A Yes.

23 Q Okay. So tell us what happened when you went
24 in there.

25 A When I went in there and I saw the lineup,

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1 everybody on -- on the lineup did not look like the
2 people that were in my home. I sat there for some
3 time and kept looking and looking and looking to see
4 if maybe -- because I knew that one of the guys had
5 something partially covering his face. So I went back
6 and I kind of just took my hand and covered up the
7 bottom portion of the face to see if any of the people
8 reminded me of the people that were there. And once I
9 did that -- it was like a last-ditch effort, because
10 before that, I was just about to say that, you know, I
11 couldn't do it, but after I thought about doing that, I
12 saw that that was -- he looked like the guy that was
13 there.

14 Q And did you -- did you identify somebody in
15 that lineup?

16 A Yes, I did.

17 Q How did you do that?

18 A I circled the number and wrote that I was 80
19 percent certain that that was the guy that was there
20 that night.

21 Q Okay. And during that process, did the police
22 tell you who to pick out?

23 A No.

24 Q Indicate in any way whether or not the
25 Defendant -- or the suspect was definitely in that set

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1 of pictures or not?

2 A No, they never said anything about that.

3 Q Mrs. Ancrum --

4 (Mr. Finch speaks with Ms. Elliott off the
5 record.)

6 Q -- is that the lineup that you were shown by
7 the police --

8 A Yes.

9 Q -- in front of you?

10 A Yes.

11 Q What's been marked as State's Exhibit 1?

12 A Yes.

13 MR. FINCH: Your Honor, at this time, the State
14 would move for admission of State's 1 into evidence, as
15 far as this hearing.

16 THE COURT: Any objection?

17 MR. BUTLER: No, sir.

18 THE COURT: Without objection, it is admitted
19 State's Exhibit 1.

20 (Report of Photographic Physical Lineup form is
21 admitted as State's Exhibit Number 1.)

22 (Mr. Finch speaks with Ms. Elliott off the
23 record.)

24 Q (By Mr. Finch) Had you ever seen this
25 individual that you identified -- previously to him

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1 being in your house, had you ever seen him before?

2 A Never.

3 Q Had you seen him since then?

4 A No.

5 Q Did you have any idea who that individual was?

6 A No.

7 Q I want to ask you now: You previously had
8 charges in our office --

9 A Yes.

10 Q -- is that correct? And you pled guilty to the
11 charge; is that correct?

12 A That's correct.

13 Q What was the original charge that you pled
14 guilty to -- or -- I'm sorry -- the original charge you
15 were charged with, the crime you were charged with?

16 A Assault with intent to kill.

17 Q And what did you plead guilty to?

18 A Unlawful carrying of a firearm.

19 Q And did anybody at any time discuss with
20 you -- does that plea have anything in relation to your
21 testimony here today?

22 A No.

23 Q Did anybody make you any offers or promise you
24 anything as part of that plea?

25 A No.

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1 Q We discussed earlier your dishonesty with the
2 police. Have you been truthful with this Court today?

3 A Yes.

4 MR. FINCH: Thank you, your Honor. I have no
5 further questions at this time.

6 THE COURT: Cross-Examination.

7 MR. BUTLER: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. BUTLER: Do you mind if I conduct my
10 Cross-Examination from here?

11 THE DEPUTY CLERK OF COURT: That's fine.

12 MR. BUTLER: Okay. Thank you. I don't want to
13 go back and forth, and I don't want to yell at you
14 either.

15 **CROSS-EXAMINATION**

16 **BY MR. BUTLER:**

17 Q Well, let me ask you, first. Today, as I
18 understand your testimony, it's that the gun that you
19 fired was your gun; right?

20 A Yes.

21 Q Was not brought in by someone else; right?

22 A Right.

23 Q And you're pretty sure you went and got it out
24 of the drawer?

25 A I'm not sure that I got it out of the drawer.

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1 Wrong.

2 Q Okay. What did you say on Direct about getting
3 it out of the drawer?

4 A That it could have come from the drawer, but I
5 did not consciously remember physically pulling it out
6 of the drawer. It was very busy, and a lot of things
7 were going on that night.

8 Q I understand. And you've now admitted that
9 your initial statement to police was not true in that
10 respect; correct?

11 A Correct.

12 Q I'm showing you State's 80 for identification.
13 That's your statement?

14 A Yes.

15 Q And what you told police then, the men tried to
16 make an exit and dropped one of the --

17 MR. FINCH: Your Honor, objection.

18 THE COURT: What's the objection?

19 MR. FINCH: It's hearsay. And if he wants to
20 publish it, we'd ask that it be admitted.

21 THE COURT: You asked her questions about it.
22 If she's reviewed it, he's entitled to -- it's there,
23 he's entitled to ask her questions. --

24 Rephrase your question. Don't publish from it.
25 You can ask her: Did she say something else? She's

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1 already testified; therefore, under 801(d) -- (d)(2) --
2 actually (d)(1), it's not -- not hearsay. So I overrule
3 the objection as to hearsay. It's her statement. Thank
4 you.

5 MR. FINCH: Your Honor --

6 THE COURT: Sir?

7 MR. FINCH: I was just going to make an
8 additional --

9 THE COURT: No, sir. If you want to supplement
10 your argument, if you want to state succinctly, the
11 basis.

12 MR. FINCH: Just improper impeachment, your
13 Honor.

14 THE COURT: Overruled.

15 MR. FINCH: Thank you, your Honor.

16 THE COURT: Thank you, sir.

17 Q (By Mr. Butler) You told them that one of the
18 suspects dropped the gun, you picked it up, and shot it?

19 A Yes, right.

20 Q And that it was their gun that they brought in,
21 not yours?

22 A Initially, yes, that's what I said.

23 Q And the statement that you gave -- this is nine
24 days later, right, on the 11th? Because it's dated --

25 A Uh-huh.

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1 Q -- and it's signed. And when you sign it, you
2 say: I have read this, and to the best of my knowledge,
3 it's true and correct, right, and you signed it?

4 A Yes.

5 Q And so when you signed it, that's not true
6 either?

7 A That's correct.

8 Q And it's not a mistake. You knew it wasn't
9 true when you signed it?

10 A I knew it was not true. You're correct.

11 Q And I understand your reasons for why you say
12 you had to lie about the description, the features. But
13 you had no reason to lie about what happened, did you?

14 A I had no reason to lie about what happened, and
15 I didn't. I lied about the gun, the possession of the
16 gun.

17 Q You understand that when you take an oath to
18 tell the truth, it's the whole truth; right?

19 A You're correct.

20 Q Because the truth in parts can be misleading;
21 right?

22 A Absolutely correct.

23 Q Nothing in your statement do you say anything
24 about them taking you to a drawer to get money out;
25 right?

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1 A (Moves head up and down.)

2 Q That's not in there?

3 A (Moves head up and down.)

4 THE COURT: You need to answer, ma'am. Was
5 that a yes?

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 THE WITNESS: It's not in the statement.
9 You're correct.

10 Q (By Mr. Finch) And there's nothing in there
11 about one of the suspect's telling you to take your
12 clothes off. That's not in there; right?

13 A No, that's not in there.

14 Q Or telling you to put a pillowcase over your
15 head; that's not in there?

16 A I think the pillowcase and empty pillow is in
17 the exhibit.

18 Q But take your time to look over that and tell
19 me --

20 A No, it's not in -- you're correct. That is not
21 in the initial statement.

22 Q And this is -- this is nine days later, after
23 you've had a chance to meet with Tyrone; right?

24 A Yes.

25 Q And as I understand it, your testimony is

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1 because Tyrone is a convicted felon and not to possess a
2 weapon, you lied about the weapon?

3 A Yes.

4 Q It's obvious he's your husband; right?

5 A Yes.

6 Q You spoke about this incident in the
7 intervening nine days before you gave this statement;
8 right?

9 A Yes.

10 Q You knew he had gone to police; right?

11 A I knew that --

12 Q He had given a statement to police. By the
13 time you give your statement, he's already given them a
14 statement. You knew that?

15 A No, I didn't know that.

16 Q You did not know that. Okay. So you're
17 husband and wife. You live together. This has happened
18 nine days ago. He didn't tell you that he had gone to
19 the police on October 5th and given a statement?

20 A I -- no, he didn't, honestly, actually.

21 Q Okay. And there's nothing to prevent you from
22 possessing a weapon; right?

23 A Right.

24 Q And the .380 was registered to you?

25 A Right.

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1 Q And it's perfectly legal for you to have --

2 A Yes, it is perfectly legal for him [sic] to be
3 around a gun.

4 Q Okay. And so at the time that -- well, never
5 mind. I'll ask that later.

6 So -- but this isn't the only time -- in your
7 written statement, that's not the only time you've been
8 asked specifically about the weapon, is it?

9 A No, that's not. You're right.

10 Q We talked about it just yesterday, didn't we?

11 A Yes.

12 Q And you took that same witness stand?

13 A Yes.

14 Q Yep. And outside the presence of the jury, but
15 in front of the same lawyers and the Judge; right?

16 A Uh-huh.

17 Q You put your hand on that same Bible, did you
18 not?

19 A Yes.

20 Q And you raised your right hand?

21 A Correct.

22 Q And you swore to tell the truth?

23 A Yes.

24 Q The whole truth?

25 A Yes.

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1 Q And nothing but the truth?

2 A You're right.

3 Q And you still said that you got the -- that the
4 weapon that you fired was brought in the house by one of
5 the suspects; didn't you?

6 A No, I did not.

7 Q Okay. And I guess then you're going to tell us
8 that you did not say that it was not your gun that you
9 fired; right?

10 A When you asked me about that question
11 yesterday, I was unsure about which gun you were talking
12 about.

13 Q Well, let's go over it.

14 (Document shown to Mr. Finch.)

15 (Document is handed to the witness.)

16 THE COURT: If you're going to ask her about
17 that document that you have, do you want to let us mark
18 that document?

19 MR. BUTLER: Yes, sir.

20 THE COURT: Be Court's Exhibit 1. Assume it's
21 a transcript of the hearing?

22 MR. BUTLER: Yes, sir.

23 THE COURT: It's an excerpt that was ordered
24 from the transcript of the hearing conducted by this
25 Court on November the 13th, 2012. Portions may be

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1 published pursuant to the Rules of Evidence. Court's
2 Exhibit 1. Thank you.

3 (Transcript Excerpt of the Neil V. Biggers
4 Hearing, November 13, 2012, is marked as Court's Exhibit
5 Number 1.)

6 Q (By Mr. Butler) So your testimony now is that
7 you did not testify yesterday under oath, that you just
8 assumed that it was the suspect's gun? You did not
9 testify to that?

10 A I assumed -- yes, I did say that.

11 Q You did say that?

12 A Yes.

13 Q A moment ago I thought you told me you didn't
14 say that.

15 A No. You said something else, not in that
16 wording. That's why I was unsure what you were
17 referring to when you said that.

18 Q Yesterday you testified, my assumption was
19 that --

20 A Can you ask the question -- can you repeat the
21 question that you asked?

22 Q I asked you: Do you know how the gun got
23 there?

24 A The gun?

25 Q And you said: My assumption was that it was

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1 their gun. That was just my assumption.

2 That was your testimony?

3 A Yes.

4 Q And earlier I asked you: You came into
5 possession of a gun; right?

6 A Yes.

7 Q Okay. So we're talking about the gun that you
8 had possession of.

9 A When you said, the gun, there was -- a .357 was
10 also recovered. I thought you were talking about that
11 gun.

12 Q Okay. We'll --

13 MR. BUTLER: May I approach, Judge?

14 THE COURT: You may.

15 Why don't you read the question and let her
16 read the answer, if you want to publish it.

17 Q (By Mr. Butler) On Page 8, earlier, I'm asking
18 you --

19 THE COURT: Is there a line reference?

20 MR. BUTLER: I'm sorry. Line 2.

21 Q (By Mr. Butler) -- how did you get the gun
22 away from him?

23 And your answer?

24 A I never claimed to have taken the gun away from
25 that guy.

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1 Q And then I asked you: Did you come into
2 possession of a gun that was brought into the house?

3 And your answer?

4 A I did come into the possession of a firearm.

5 Q And I asked you: And how?

6 And your answer?

7 A I do not recall.

8 Q And then I asked you: So the person who
9 brought the gun into the house, right, that's not your
10 gun, and you don't recall how you came to possess it?

11 And your answer?

12 A I'm sorry?

13 Q Line 13.

14 MR. BUTLER: I'm sorry, Judge.

15 THE WITNESS: I'm not sure. When I said, I
16 don't know, I'm -- I'm not sure, if I picked it up,
17 where. Off of the floor -- all I know is that I grabbed
18 it -- I grabbed the gun. I wasn't thinking about where
19 the gun was located when I picked it up. I saw it; I
20 picked it up and tried to defend myself.

21 Q (By Mr. Butler) Tried to defend yourself.
22 You're talking about the gun you shot; right?

23 A Yes.

24 Q Okay. Do you know how the gun got there?

25 And your answer?

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1 A My assumption was, it was their gun. That was
2 just my assumption.

3 Q And then my question: Well, it wasn't your
4 gun; right?

5 A And I said: I'm not sure.

6 Q Okay. That's not what you've testified to
7 today. You've testified today that the gun you shot was
8 your gun; right?

9 A Right.

10 Q You lied about it to the police; right?

11 A Right.

12 Q And you told us the same thing here yesterday
13 under oath?

14 A No, I didn't.

15 Q Well, how am I misreading that?

16 A Because when you asked those questions about
17 the gun, I said it was my assumption that it was their
18 gun. You asked a lot of questions, and to the best of
19 my knowledge, I gave you truthful answers.

20 Q Okay. But you -- you agree with me that what
21 we're talking about is the gun you fired, because you
22 said you defended yourself with the gun?

23 A Right, but --

24 Q I asked how it got there, and you said: I
25 assumed that it was theirs.

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1 A Right. But there's another gun that was found.
2 So there's more than one gun that -- when -- you said
3 "the gun." That could have meant the gun Tyrone had,
4 the gun I had. There was a bunch of guns there. So you
5 were not specific with what gun. You said -- that's why
6 I made that response.

7 Q How many guns did you use to defend yourself?

8 A One.

9 Q One; right?

10 A Yes.

11 Q Your answer: I picked up the gun and tried to
12 defend myself. And my question right after that: Do
13 you know how the gun got there?

14 Are you telling us that when I say "the gun,"
15 you're confused and not sure I'm talking about the gun
16 that you used to defend yourself?

17 A Yes. We're talking about a trial of events
18 that occurred.

19 Q Okay. So when I asked you -- when you say: I
20 saw it; I picked it up and tried defend myself. And
21 then I immediately say: Do you know how the gun got
22 there? you don't know that I'm talking about the same
23 gun that you used to defend yourself?

24 A No, I don't know that, because you're a defense
25 lawyer. That's your job to trip me up on those types of

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1 questions.

2 Q Okay. And your answer: My assumption was that
3 it was their gun. You're telling us now, you were
4 talking about a different gun?

5 A Yes.

6 Q Possibly the .357?

7 A Yes.

8 Q Okay. Well, the .357 is whose gun?

9 A That was our gun.

10 Q That's your gun too, isn't it?

11 A Yes.

12 Q So when you say: Well, I don't know. You
13 could be talking -- Mr. Slick defense lawyer, you could
14 be talking about the -- the .357, when you said how the
15 gun got there, and my assumption was that it was their
16 gun. The .357 isn't their gun either.

17 A I found that out after the arrest.

18 Q Did you find it out before yesterday, when I
19 asked you about it?

20 A No.

21 Q Again, State's -- or Court's 1. My question to
22 you, page 9, line 10: You wouldn't know whether it came
23 from a suspect or which suspect it came from, because it
24 could have been yours; the gun?

25 Your answer?

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1 A To the best of my knowledge, I don't believe
2 that it was my firearm.

3 Q Okay. And so I guess your testimony is, you
4 still don't know what gun I'm talking about when you
5 say: I don't think it was mine?

6 A If you're -- the question [sic] was: Can you
7 repeat the question for clarity.

8 I was clearly unsure about what you were asking
9 me.

10 Q Neither the .357 or the .380 were brought into
11 that house by anybody else. Those are your guns, you or
12 Ty's guns; correct?

13 A Correct.

14 Q All right. So there's no gun I could be asking
15 you about where you could say, I don't think that that
16 was mine or that they brought it in here?

17 A If I didn't have prior knowledge of something,
18 sir.

19 Q My question to you: Okay, whose was it -- line
20 15, page 9 -- whose was it? Which of the two, if it
21 wasn't yours?

22 And preceding that, you said: I don't believe
23 it was my firearm.

24 I say: Whose was it? Which of the two, if it
25 wasn't yours?

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1 And you said what?

2 A Maybe it was -- maybe it was his. I'm not
3 sure. They were both in the area, so I -- I'm not -- I
4 have no way of positively identifying it, if it belonged
5 to either that Mr. Smith or the other guy that was
6 present.

7 Q Okay. But now your testimony is that you know
8 that any gun I could have been talking about did not
9 belong to Mr. Smith or anybody else but you or Ty?

10 A Yes. Today.

11 Q After that hearing yesterday, you didn't leave
12 the courthouse and go home, did you?

13 A After the hearing yesterday, I went to my
14 children's day care.

15 Q You went to Mr. Finch's office. Mr. Finch, the
16 prosecutor; right?

17 A Yes.

18 Q After that hearing. And he wanted to know,
19 What's going on with the guns? Right?

20 A No.

21 Q You didn't have a discussion with Mr. Finch in
22 his office about the guns?

23 A Yesterday?

24 Q Yesterday.

25 A No.

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1 Q After the hearing?

2 A No. The only thing we had a discussion about
3 was, tell the truth.

4 Q And he told you to tell the truth. Well,
5 wouldn't you know to do that anyway?

6 A Well, he said, just tell the truth, be honest,
7 and forthcoming, and --

8 Q And there was no discussion about: Why are you
9 telling the Court under oath that you don't know where
10 that gun came from? That wasn't discussed?

11 A We discussed a -- a few things. I -- I don't
12 recall him asking me directly.

13 Q Well, if that wasn't -- if that conversation
14 didn't occur, where someone on behalf of the State says,
15 Hey, what's going on with this testimony about the gun?
16 Why did you testify one way yesterday under oath, before
17 the Court, in this same matter, and differently today?

18 A I spoke with my husband on the way home, and he
19 said: Do what Mr. Finch tells you to do. Tell the
20 truth. Just tell the truth.

21 Q Okay. When the officers arrived, I understand
22 you're saying that you were concerned about your
23 husband. I appreciate that. But they told you to wait
24 for the ambulance; right?

25 A Yes.

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1 Q And so you knew you were going to wait for the
2 ambulance --
3 A Yes.
4 Q -- right? You weren't going to leave?
5 A We could not leave.
6 Q And you gave them some information?
7 A Yes.
8 Q Black men?
9 A Uh-huh.
10 Q Dark clothes?
11 A Yes.
12 Q Nothing else?
13 A Nothing else.
14 Q And as I understand it, the person that you are
15 saying that you know is Mr. Smith, he had a mask on?
16 A Yes.
17 Q Okay. And he was not the one that was with you
18 all the time, or most of the time?
19 A No.
20 Q That was the other person?
21 A Yes. That I believe was his friend or
22 something.
23 Q Okay. But at this time, from your testimony
24 today, you're saying that two or three people with guns
25 wearing disguises were out there in your neighborhood;

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1 right?
2 A Yes.
3 Q Okay. And presumably they still had guns;
4 right?
5 A Yes.
6 Q And they had tried to kidnap you, according to
7 your testimony?
8 A Yes.
9 Q They assaulted you?
10 A Yes.
11 Q And tried to kill your husband?
12 A Yes.
13 Q And you know that the police are there to put
14 that information out over the radio; right?
15 A Yes.
16 Q All right. And to apprehend the person?
17 A Uh-huh.
18 Q But you still didn't tell them anything about
19 height; did you?
20 A No.
21 Q Weight?
22 A I -- I wasn't sure how much they weighed. I
23 told them -- I said he was taller than I was. I didn't
24 say five-eleven or a specific --
25 Q Nothing about his eyes; right?

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1 A No. They didn't ask me about his eyes.
2 Q They wanted to know what he looked like,
3 though; right?
4 A Right, but I couldn't give a description of
5 somebody's eyes --
6 Q Well, if I understand you, it's the eyes that
7 are allowing you to make the identification --
8 A Yes.
9 Q -- seven months later; right?
10 A Right. When I -- a look you don't forget.
11 Q You didn't tell them anything about skin tone;
12 right?
13 A Right.
14 Q Or age?
15 A I told them they were dark-skinned, black men.
16 Q Then nine days later, that same statement that
17 we've already referenced, State's 80, you still don't
18 tell them, nine days later, anything about what the
19 suspects looked like, did you?
20 A You're correct. The statement does not have
21 a -- a full description of the assailants.
22 Q It doesn't have any description. They were
23 dressed in all black. That's it; right?
24 A Yes. And it says, one guy was unmasked, while
25 the other guy was masked.

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1 Q And did you not tell one of the detectives, I
2 can't identify either person?

3 A I don't recall.

4 Q And after this initial meeting, you never
5 followed up, Oh, you know what? Now that he's been
6 released from the hospital, let me tell you -- let me
7 give you some more details. You never did that, did
8 you?

9 A I had not secured my family, so I did not.
10 You're correct.

11 Q Okay. Well, in the seven months until Akeem
12 was arrested, you didn't call them and say: Let me tell
13 you this information. I now have remembered, and now I
14 want to tell you, did you?

15 A Yes. We were in contact with the police.

16 Q You never initiated contact, let me tell you
17 the physical description --

18 A No, I didn't. You're right. I did not
19 initiate. The police called me.

20 Q You testified on Direct that you were hit in
21 the back of the head with something that knocked you
22 down to the ground; right?

23 A Yes.

24 Q When you went to the emergency room, they
25 didn't treat you for that, did they?

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1 A They wanted to, but against medical advice, I
2 left, so I did not get treatment.

3 Q They didn't put any sutures or bandages or
4 anything on it?

5 A No.

6 Q They gave you some ibuprofen and sent you home?

7 A They didn't give me anything.

8 Q Okay.

9 A Because I did not take their medical advice and
10 become admitted and get a CAT scan to see if I had a
11 concussion or any injuries -- supplemental injuries
12 after the assault.

13 Q And when officers arrived, you testified on
14 Direct, that you didn't have keys because you thought
15 the suspect had taken your keys?

16 A Yes. Initially my purse was taken, so that's
17 how the -- the initial picture we had, where the wallet
18 was laying on the floor, the purse -- that was inside
19 the purse, so the keys were along with that wallet, and
20 I didn't know where they were.

21 Q But the purse with the money and the credit
22 cards and your I.D.s, those were all found in the
23 kitchen; right?

24 A The wallet is what I saw on the floor.

25 MR. BUTLER: Beg the Court's indulgence?

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1 THE COURT: Yes, sir.

2 (Mr. Butler and Mr. Finch speak off the
3 record.)

4 (Respite.)

5 MR. BUTLER: Sorry, Judge. Beg the Court's
6 indulgence?

7 THE COURT: Okay.

8 Q (By Mr. Butler) Showing you State's 44.
9 That's your wallet; right?

10 A Yes.

11 Q And it's found with your credit cards; right?

12 A Yes.

13 Q And the cash?

14 A Some cash.

15 Q And the I.D.?

16 A Yes.

17 Q And your testimony is that you thought that the
18 keys were still in your -- your car keys and house keys
19 were in this wallet?

20 A No. There's a purse, a bag, that that was
21 contained in.

22 Q So I guess you're testifying that you never
23 told them they couldn't go in the house?

24 A I never told them that they couldn't go in the
25 house.

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1 Q Okay. And -- but they somehow got the keys to
2 the house; didn't they?

3 A They got a -- from my understanding, they got a
4 search warrant, and they ended up going through the
5 window that was broken out of. But I was told that they
6 weren't able to just go into the house, because it was
7 locked, without having a search warrant.

8 (Respite.)

9 (Document shown to Mr. Butler.)

10 Q (By Mr. Butler) So the next day, when
11 Detective Colson through -- I guess, your mother-in-law
12 -- finally tracked you down, you still don't want to
13 give a statement; correct?

14 A I had already -- I did speak with them over
15 the phone. They wanted me to physically come and write
16 -- and write a statement.

17 Q Okay. So you refused to talk to them on the
18 phone?

19 A No. I spoke with them on the phone.

20 Q You wouldn't give them a statement over the
21 phone?

22 A I did give them a statement over the phone.

23 Q All right. Your testimony is that you were at
24 your sister's playing cards until 4:00 in the morning;
25 is that right?

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1 A Yes.

2 Q You haven't testified to -- about either of
3 these people that you're describing, wearing gloves?
4 Did you notice?

5 A I didn't notice.

6 Q Okay. And when they -- your testimony, that
7 you took them to the drawers, opened the drawers. Did
8 you open the drawers, or did the unmasked guy open the
9 drawer?

10 A I believe I did. I'm not sure.

11 Q The door that you -- that you go in is
12 obviously not the same door that you're saying has got
13 the thing that blocks it; right?

14 A Right.

15 Q The door that you routinely go in and out of;
16 right?

17 A That back door.

18 Q Why was it locked after you left?

19 A Why was the door locked?

20 Q Right.

21 A I'm not sure why it was locked. Maybe it was
22 the -- it locks after it's closed.

23 Q Because you're obviously understandably
24 concerned about your husband; right?

25 A Yes.

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1 Q So much so that you can't be bothered by the
2 police; right?

3 A Right.

4 Q Okay. You want to get him to the hospital.
5 And you think you'd go to the trouble to go back and
6 lock the door?

7 A I didn't lock the door.

8 Q Okay. But it was locked, because the police
9 couldn't get in there without a key?

10 A Well, I did not lock the door.

11 Q All right. I gotcha. The charge that you had
12 pending, assault with intent to kill, that was a felony
13 that carries up to ten years; is that right?

14 A No, that's not correct. It's not a felony. It
15 is a misdemeanor.

16 Q It carries zero to ten years?

17 A Yes.

18 Q And instead, you pled for unlawful firearm for
19 a fine?

20 A Yes.

21 MR. BUTLER: Beg the Court's indulgence?

22 THE COURT: All right.

23 Do you have Court's Exhibit 1 in that stuff?

24 (Mr. Butler hands up Court's Exhibit Number 1.)

25 THE COURT: Thank you.

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1 MR. BUTLER: Bad habit of finding these in my
2 house later. So thank you.

3 THE COURT: You're welcome.

4 (Mr. Butler and Mr. Cooper are speaking off the
5 record.)

6 Q (By Mr. Butler) You testified that you don't
7 know Akeem at all; right?

8 A That's correct.

9 Q The statement that you told police about --
10 that one of the suspects dropped the gun and you picked
11 it up and shot it, did you tell Ty that too?

12 A Did I tell Ty that?

13 Q That that happened.

14 A That I picked the gun up and -- Ty and I never
15 discussed who -- the gun or why -- how I came in
16 possession of the gun or anything.

17 MR. BUTLER: Got it. That's all I have. Thank
18 you.

19 THE COURT: Redirect, Mr. Finch?

20 MR. FINCH: Thank you, your Honor.

21 THE COURT: Yes, sir.

22 **REDIRECT EXAMINATION**

23 **BY MR. FINCH:**

24 Q Just one question, Mrs. Ancrum. When you
25 walked -- when you got out of the car, you had those

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1 diapers in your hand -- box of diapers in your hand?
2 A Correct.
3 Q And do you know why you dropped them?
4 A I was running for my life.
5 MR. FINCH: No further questions.
6 THE COURT: Recross?
7 MR. BUTLER: No, sir.
8 THE COURT: All right. Mrs. Ancrum, you may
9 step down.
10 THE WITNESS: Thank you.
11 (The witness steps down from the stand.)
12 THE COURT: Ladies and gentlemen, at this
13 point, we'll take a recess. Do not begin your
14 deliberations; don't discuss the case. We'll be with
15 you in about 10 or 15 minutes. All right.
16 (The jury is escorted from the courtroom at
17 3:07 p.m.)
18 THE COURT: Anything from the State before we
19 recess? You have made -- do you want to supplement your
20 argument anymore, Mr. Finch?
21 MR. FINCH: No. I just -- that was my other
22 legal basis. I apologize to your Honor.
23 THE COURT: Not a problem.
24 MR. FINCH: I would just ask, the only other
25 thing is scheduling-wise, how late you thought we might

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1 be going?

2 THE COURT: We'll go -- see where it fits. I'd

3 just be -- have your witnesses ready.

4 MR. FINCH: Yes. I was just trying to figure

5 out --

6 THE COURT: I don't know. Just have your

7 witnesses ready.

8 MR. FINCH: Will do. Thanks so much.

9 THE COURT: You bet. Anything from the

10 Defendant before we recess?

11 MR. BUTLER: No, sir.

12 THE COURT: Y'all approach for a second.

13 (The Judge speaks with the attorneys off the

14 record.)

15 (The Judge steps off the bench at 3:10 p.m.,

16 and we are in recess.)

17 (A recess is taken from 3:10 p.m until

18 3:23 p.m.; at which time, the proceedings continue as

19 follows:)

20 THE COURT: Next witness. Similar in length?

21 MR. FINCH: Similar in length, your Honor. Oh,

22 I'm sorry. There's a quick one in between.

23 THE COURT: Okay. That's fine. And then do

24 you have -- what's the length of the next after that?

25 MR. FINCH: The next after that would be -- I

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1 could either -- I'm thinking -- the crime scene guy, I
2 think, maybe 45 minutes.

3 THE COURT: How much?

4 MR. FINCH: Forty-five minutes or so.

5 THE COURT: All right. Well, let's see where
6 we are when we finish the next two, and then we'll make
7 the call. Okay?

8 MR. FINCH: Yes, sir.

9 THE COURT: Thank you. Appreciate it. And I
10 hope that's not creating a problem with any of the
11 witnesses. If you need to release some, I don't mind
12 letting you do that after maybe those -- the next two
13 and then the crime scene guy, the rest can probably go,
14 if that helps any.

15 MR. FINCH: It does. Thank you.

16 THE COURT: All right. Let the record reflect
17 Mr. Smith is present. The State is ready to continue?

18 MR. FINCH: We are, your Honor.

19 THE COURT: Is the Defendant ready?

20 MR. BUTLER: Yes, sir.

21 THE COURT: All right. Let's bring in our
22 jury, please.

23 (The jury is escorted into the courtroom
24 at 3:25 p.m.)

25 THE BAILIFF: The jury is seated, your

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1 Honor.

2 THE COURT: Thank you, Mr. Rivers.

3 Thank you, ladies and gentlemen. We're ready
4 to continue. Give your attention, please, to the next
5 witness.

6 State may call their next witness.

7 MR. FINCH: Thank you, your Honor. The State
8 calls Tyrone Ancrum. I'm sorry. I misspoke. The State
9 calls Ashley Johnson. I'm sorry.

10 THE DEPUTY CLERK OF COURT: Can you raise your
11 right hand, placing your left on the Bible, please.

12 (The oath is administered by the Deputy Clerk
13 of Court, and the witness answers as follows:)

14 THE WITNESS: Yes.

15 THE DEPUTY CLERK OF COURT: Okay. Please be
16 seated. Make sure you're speaking into the microphone.
17 Can you just state your full name and spell your last
18 name for the record, please?

19 THE WITNESS: Ashley Shawnece (phonetic)
20 Johnson, J-o-h-n-s-o-n.

21 **ASHLEY JOHNSON,**

22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon her oath
25 as follows:

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DIRECT EXAMINATION

1

2 BY MR. FINCH:

3 Q Good afternoon, Ms. Johnson. If you would,
4 tell the Court where it is you're employed.

5 A With Roper St. Francis.

6 Q And what do you do there?

7 A IT technician.

8 Q And about how old are you?

9 A Twenty-four.

10 Q And are you related to Octavia Ancrum?

11 A Yes, I am.

12 Q How are you related to her?

13 A I'm her sister.

14 Q And are you familiar with your activities and
15 her activities back in October of 2010?

16 A Yes.

17 Q I'm going to take you back to October 1st --
18 the night of October 1st and October 2nd, 2010. Do you
19 know where you were at that time?

20 A Yes.

21 Q Where --

22 A That was a Friday night. I was over to my
23 cousin's home. We were having a get-together, like a
24 girls' night, wine, you know, playing cards, music, just
25 having a good time.

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1 Q And who was in attendance?

2 A It was me, my sister, and the rest were just
3 family members.

4 Q Was it all females?

5 A Majority females. Like a ladies' night, same
6 thing.

7 Q Do you recall how late Octavia stayed at the
8 house at that time?

9 A Yeah. We were out there pretty late, to almost
10 4:00 in the morning.

11 Q Is that a common occurrence for that kind of a
12 gathering?

13 A Well, we don't all get together that often, so
14 when we do get together, it is common for us to hang for
15 a while. But we didn't normally get together like a
16 weekly thing, you know, or anything like that.

17 Q How long had it been since you had hung out
18 with your sister in that capacity?

19 A Probably a month. But she just had a baby, so
20 she hadn't been out. I think this might have been her
21 first outing. Like I said, she just had her son at that
22 point, so it had been a while since me and her had a
23 chance to really hang.

24 Q Do you know if she spoke to her husband while
25 she was at the house?

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1 A Yes. At some point he did call her, because
2 she had to go home. So that's when her party ended.

3 Q Do you remember about what time that was?

4 A I would say it would have to have been around
5 that time. I guess around 4:00, or somewhere in that
6 time frame, because that's when we left. And that's why
7 she left, because he was like -- you know, he's on his
8 way home, so she had to leave. So I left behind her at
9 that point. I don't know exactly what time that call
10 may have come in, but we left around --

11 Q And you understand this is a trial about events
12 that happened at their house that night?

13 A Yes, I do.

14 Q But you don't have any knowledge -- any
15 personal knowledge of what happened at the house?

16 A No, I was not at the home.

17 MR. FINCH: No further questions. Please
18 answer any questions Defense may have.

19 MR. BUTLER: No questions.

20 THE COURT: Very well. You may come down.

21 Thank you, Ms. Johnson.

22 (Witness steps down from the witness stand.)

23 THE COURT: Call your next witness.

24 MR. FINCH: Now the State calls Tyrone Ancrum.

25 THE COURT: Okay.

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1 THE DEPUTY CLERK OF COURT: Can you raise your
2 right hand, placing your left on the Bible.

3 (The oath is administered by the Deputy Clerk
4 of Court, and the witness answers as follows:)

5 THE WITNESS: Yes, ma'am.

6 THE DEPUTY CLERK OF COURT: Please be seated.
7 State your full name, spelling your last name for the
8 record, please.

9 THE WITNESS: My name is Tyrone Ancrum. Last
10 name, A-n-c-r-u-m.

11 TYRONE ANCRUM,
12 having been first duly sworn by the Deputy Clerk of
13 Court to tell the truth, the whole truth, and nothing
14 but the truth, was examined and testified upon his oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. FINCH:

18 Q Good afternoon, Mr. Ancrum. If you would, tell
19 the Court how old you are.

20 A I'm 46.

21 Q And what do you do for a living?

22 A I own a production company called Behind Closed
23 Doors Production.

24 Q And what kind of stuff do you promote, produce?

25 A I do a lot of artists, performances, stuff like

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1 that, at the various clubs.

2 Q And various clubs around the Charleston area or
3 where else?

4 A I do clubs in Walterboro, Sumter, Kings Tree,
5 South Carolina, and here are, like, my circumference,
6 where I normally travel to do shows.

7 Q And regarding -- when you're doing that kind of
8 work, is that -- how do people normally pay for those
9 tickets?

10 A Well, I lot of times you don't do tickets. A
11 lot of it's done -- like, you charge at the door.

12 Q So cash?

13 A It's cash, yes, sir. A lot of it is cash.

14 Q And how often do you promote those shows?

15 A I probably do at least two or three shows a
16 month.

17 Q And they get promoted through the clubs and how
18 else?

19 A I do advertisement on 99.7 and 293, radio
20 stations. I also do fliers, Facebook, things of that
21 nature.

22 Q Okay. And there was earlier testimony that you
23 have a felony conviction.

24 A Yes, sir.

25 Q What's that for?

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1 A I have an armed robbery, stolen car -- I have
2 various charges.

3 Q But as far as the felony conviction, you have
4 the armed robbery conviction?

5 A Yes, sir. Yes, sir.

6 Q And when did that take place? 1996?

7 A Yes, sir. January of '96.

8 Q Okay. So because of that, are you allowed to
9 have a gun?

10 A No, sir.

11 Q Okay. I want to take you back to the night of
12 October 1st into October 2nd of 2010.

13 A Yes, sir.

14 Q Where were you living at that time?

15 A Road.

16 Q Is that in Ravenel?

17 A Yes, sir, Ravenel, South Carolina.

18 Q In Charleston County?

19 A Yes, sir.

20 Q What were you doing that night on October 1st?

21 A Well, I was supposed to be baby-sitting,
22 originally.

23 Q Okay.

24 A My wife wanted to go out with her family
25 members. I had a show, but my partner said he thought

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1 he could handle it. So I wasn't going to go that night.
2 It was actually my first night baby-sitting the kids.
3 So. . .

4 Q How many kids were with you that night?

5 A I have a son that's not with my wife, and then
6 I have two kids with my wife.

7 Q So all three of those kids were there?

8 A Three, yes, sir.

9 Q And what happened while you were baby-sitting
10 that made you change plans?

11 A Well, my partner called me, and he was, like,
12 it's really busy out here, like, it's a lot going on.
13 Like, if you could come, I really need you to come help
14 me out here tonight.

15 Q So what did you do?

16 A I called my mother, who lives directly behind
17 me, and I asked her if she would keep the kids for me
18 while I ran out and took care of my business.

19 Q All right. And did you take the kids over
20 there?

21 A Yes, sir.

22 Q And then what did you do?

23 A Then I got in my car, and I went to the night
24 club.

25 Q And whose car were you driving that night?

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1 A I was driving Octavia's car, the Buick
2 LaCrosse.

3 (Document is shown to Mr. Butler.)

4 Q (By Mr. Finch) Let me show you what's been
5 marked and admitted as State's Exhibit 16. Can you
6 identify that? Was that the car that you were driving?

7 A Yes, sir, that's the vehicle.

8 Q And how long did you stay at the club that
9 night?

10 A I think I got there about 12:30, one o'clock.
11 This particular club, it stays open until 3:30. So
12 normally about another 30 minutes to get everything
13 situated. So I probably left there about ten to 4:00,
14 something like that, somewhere in there.

15 Q And what are you doing as a promoter when
16 you're at the club? What are your activities there?

17 A A lot of times I make sure that the security
18 are doing security. I make sure that the artist goes on
19 at the time he's supposed -- I'm more responsible for
20 the show, to make sure that it goes well.

21 Q What about the tickets or the receipts for the
22 money?

23 A No. I have someone at the door. And like
24 about -- depending on what time the club closes, like
25 probably 30 minutes before it closes down, we remove the

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1 money from the drawer.

2 Q Where does it go?

3 A It goes home with me at the end of the night.

4 Q What's the kind of range of how much money you
5 might make in one night promoting these shows?

6 A It really depends on the investment, but it's
7 between --

8 Q As far as the money you are taking home with
9 you, that is?

10 A It's probably about -- between 5- and 8-,
11 \$9,000? It's been up to 14. There's been times when
12 I've taken, like, \$14,000 home.

13 Q Do you recall how much money you would have
14 been taking home that night?

15 A I can't quite remember exactly what it was, but
16 I think it was like 6- or \$7,000. I'm not sure.

17 Q That was all in cash?

18 A Yes, sir.

19 Q So after you left the club, you had the money
20 with you that night?

21 A Yes, sir.

22 Q And about how far away was the club you were
23 working at that night from where you live?

24 A It's on Dorchester Road, probably about 20
25 minutes, I think. Somewhere in there.

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1 Q And did you drive straight home?

2 A Yes, sir.

3 Q Tell us what happened when you got close to
4 your home.

5 A Well, I went home. When I got on Davidson
6 Road -- I had a friend that was having a party at a club
7 farther down the road, so instead of turning into my
8 gap, I went to keep straight. As I passed my gate, I
9 saw a guy standing in -- like, a gate or two up from my
10 house. So I slammed on my brakes -- at first I wasn't
11 sure who it was. I slammed on the brakes, and I backed
12 up. And I'm like, Yo, what's up, man? What you doing
13 around here? And he just takes off running through the
14 field. So I'm thinking, like, this is crazy, like, this
15 -- like, nothing but family lives on this highway.
16 Like, I'm related to practically everyone on that road.
17 So it's kind of obvious to see, like, what is he doing
18 here, and why would he run? So I turned around, and I
19 went back to my house.

20 When I pulled up, I saw the box of Pampers on
21 the ground. At this point, I knew something was wrong.
22 I didn't know exactly what it was, but I knew something
23 was wrong. I -- when I turned my doorknob, the door
24 wasn't locked -- the back door was open. That just
25 totally confirmed that something was wrong. I kind of

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1 eased the door open, and I went, Octavia. Like, I
2 called her name out. And she responded to me, but I
3 could hear in her voice that -- you know, that's my
4 wife. I know that something's wrong.

5 So I'm like looking in the house and trying to
6 see, like, what's going on in the house.

7 Q Let's take a step back. When you pull up to
8 the house and you realize something was wrong --

9 A (Moves head up and down.)

10 Q -- what did you do?

11 A I went to the door and cracked the door and
12 called out to her, first.

13 Q Did you get any weapons?

14 A Yeah. I had a gun in the glove compartment. I
15 grabbed the gun out of the glove compartment, went up to
16 the door, I cracked the door, and I called out to her.
17 At this time is when she responded to me. So I kind of
18 heard her. I knew she was, like, on this side of the
19 house.

20 Q Okay. Let's slow down just for a sec. I'm
21 going to show you what has been admitted as State's
22 Exhibit Number 6. Is that the area where you would have
23 been?

24 A Yes, sir.

25 Q Look over here, it might be easier to see.

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1 A Yes, sir.

2 Q What is that one looking at?

3 A This is the -- this is the door, this is the
4 washing machine, and that's the dryer. This is the door
5 frame. I was, like, kind of here on this side, because
6 the door swings out, kind of trying to peek into the
7 house to see exactly --

8 Q And what, if anything, were you able to see
9 when you peeked into the house?

10 A As I peeked into the house, there's a
11 refrigerator right on the other side of this wall right
12 here. And as I'm peeping, like, around the corner,
13 like this, I see a shadow that's moving off of the
14 refrigerator. And I know it's not my wife, because I
15 just -- I heard her voice come from this side of the
16 house. So at this point, I shoot through the wall.

17 Q What did you think you were shooting at when
18 you shot through the wall?

19 A I knew someone was in my house. It wasn't a
20 question. Because why would she answer me and not come
21 out? Like, it was just -- and I knew she was on this
22 side, so who's moving around on the opposite side of the
23 house?

24 Q What happened after you shot and --

25 A They returned fire. So they're, like, shooting

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1 up in the hallway, and I'm backing out of the hallway.
2 Because, like, I could hear the bullets coming by me.
3 So I start -- I backed out of the hallway and backed
4 down the steps for a second, and I'm standing, like, at
5 the bottom of the steps in front of the door. I go back
6 up the steps again, and as I'm trying to get in the
7 house, I shoot again, and -- and I'm just shooting
8 blindly. I don't see nothing, but I'm shooting. I
9 start to shoot through that wall again, through the same
10 side over by the -- where I saw the shadow.

11 Q Let me stop you for a sec. I just want to show
12 you. This has already been admitted as State's Exhibit
13 Number 3. Is that the doorway you're referring to?

14 A Yes, sir. And that's the steps where I stepped
15 down.

16 Q So you would fire into the wall, and then you
17 would step down?

18 A Right. And, like, they were just shooting,
19 shooting, shooting, shooting. So when the shooting
20 stopped again, as I was walking back, trying to get back
21 up about to -- head back up the steps again, that's when
22 I saw the hand come around the corner, and that's when I
23 was like -- like, I knew I couldn't move, because I was
24 kind of like -- it kind of shocked me. So what I did
25 was, I turned like this -- I tried to turn, and I got

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1 shot here. But, like, from my adrenaline, I wasn't
2 really sure if I was shot or not, but it was like -- I
3 knew it was impossible for him to miss me, because I
4 saw the gun, like, straight at me. So at this point,
5 I shuffle back down the steps, and I hear the windowpane
6 bust out.

7 Q Which windowpane are you referring to?

8 A I just hear a big -- like, something like a
9 window bust out. At this point, I didn't know which
10 window it was, but I heard a window bust out. So I'm
11 standing right there where the Pampers is, and I'm,
12 like, trying to see, like, where I'm shot. At this
13 point, my wife comes running out of the house. She runs
14 down the steps and fall right here on the side of the
15 car. Like, I know a lot of this stuff she probably
16 don't remember, but I remember it.

17 Q What did you do after she came out of the
18 house?

19 A When she fell down right here on the side of
20 the car, I ran in the house.

21 Q Why did you run in the house?

22 A I ran in the house to get my assault rifle.

23 Q Where did you have that?

24 A Between the mattress.

25 Q Is that where you normally keep it?

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1 A No. I normally keep it on the wall.

2 Q I'm going to show you what's been admitted as
3 State's 12. Does that help you with the area of the
4 bedroom?

5 A Yes, sir. I normally lean it up here. Right
6 here on this wall right here is where I normally lean
7 it.

8 Q Why was it in between the mattress?

9 A Because when I left, I put it up. I never,
10 like, leave it out in the open. Like, when I left, I
11 put it up between the mattresses.

12 Q And why did you go back in the house if people
13 were in there shooting?

14 A Well, when -- like -- my biggest concern was my
15 wife. And like, when she came out of the house, like, I
16 was just angry, man. Like, I'm assuming they're not in
17 there, but it really don't matter. Like, I'm at the
18 point where it is what is it, man. Like, if they in
19 here, it is what it is. So when I run into the room --

20 Q What do you mean, "it is what it is"?

21 A I mean, either they going to shoot me, or I'm
22 going to shoot them. I felt violated, man. I felt
23 violated.

24 Q When you went in, what did you do after
25 you -- was anybody inside when you went in?

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1 A Well, I didn't look that way. Like, I went in
2 going into the room, because the only thing that was on
3 my mind was, I'm going to get my assault -- I want to
4 get to the assault rifle. So when I got to the assault
5 rifle and ran back outside, my wife, she was, like,
6 holding her head, screaming. And I just ran straight
7 around the car and ran around the front of the building
8 -- the front of the house.

9 Now, I'm running across the front of the yard,
10 and I'm shooting the gun, but my leg gives out on me.
11 At this point, I -- this is when I realized where
12 I'm really shot, that I'm really shot. I kind of limp
13 back. I went, like, behind my mom's house, hid the
14 assault rifle. I locked the door. I told my wife, Get
15 in the car. She got in the car. I said, Crank the car.
16 You got to take me to the hospital. I'm -- you know,
17 I'm -- I'm -- I've been shot.

18 I lock the door. I got in the car. As we're
19 pulling out of the driveway, the cops block the car in.
20 So I throw the pistol in the glove compartment of the
21 car, and, you know, there -- I don't know -- they're
22 trying to sort out who is who or whatever. So they're
23 like, you know, put your hands where I can see them.
24 Shut the car off. Get out of the car or whatever. So
25 at this point, we're explaining to the cops that we were

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1 the tenants there, and that what had happened, was that
2 we were the ones victimized.

3 Q Okay. I'm going to stop you for a second.
4 I'm going to show you what has been marked for exhibit
5 only -- I.D. only, at this point, as State's 13, 14, 15,
6 17, and 18. I'm going to start with 13 and 14. Can you
7 identify those items -- those photographs?

8 A Yes. This is my -- this is the front yard.
9 Both of them are the front yard.

10 Q And that's of your house at ?

11 A Yes, sir.

12 Q And then State's 15?

13 A That's the back door.

14 Q Okay. And State's 17?

15 A That's the Buick, and those are the fliers that
16 someone must have put on my car before I left the night
17 club.

18 Q And State's 18?

19 A That's the gun that I threw in the glove
20 compartment.

21 Q Okay.

22 MR. FINCH: Your Honor, at this time, the State
23 would --

24 Q Are these pictures accurately -- accurately
25 reflect the items --

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1 A Yes.

2 Q -- at that time?

3 A Yes, sir.

4 MR. FINCH: The State, at this time, would move
5 for the admission of State's 13, 14, 15, 17, and 18.

6 THE COURT: Any objection?

7 MR. BUTLER: No, sir.

8 THE COURT: Without objections, State's 13, 14,
9 15, 17, and 18 are admitted, each being photographic.

10 (Photographs are marked and admitted into
11 evidence as State's Exhibit Numbers 13, 14, 15, 17,
12 and 18.)

13 Q (By Mr. Finch) Mr. Ancrum, you said you put
14 the gun back in -- or you put the gun in the glove
15 compartment. Is that the gun you're referring to?

16 A Yeah. I put it in there once the cops blocked
17 us in.

18 Q Where was it before?

19 A In my hand.

20 Q And is that the same gun that you took out of
21 the car before you went into the house?

22 A Yes, sir.

23 Q Before you went to the house?

24 A Yes, sir.

25 Q Whose gun is that?

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1 A That's mine.

2 Q What kind of gun is that?

3 A It's a .357 Magnum with a built-in laser scope.

4 Q Okay. And after the police arrived, and they
5 blocked you in, tell us again what happened there.

6 A They were just like, you know, hold up, put
7 your hands where we can see them, shut the car off,
8 stuff like that. Like, basically, I guess, trying to
9 secure everyone that's on the premises, I guess. And,
10 you know, we were, like, you know, we're the victims.
11 Like, he's shot. Like, we need an ambulance. Like,
12 stuff like that. And then they kind of, like, calmed
13 down and started to assist us versus trying to arrest
14 us, I guess, for the situation.

15 Q Did you want to stop and talk to the police at
16 that time?

17 A Of course, not.

18 Q Why not?

19 A Well, really at that point, I don't think,
20 like, the guns were really on my mind. I was just -- I
21 just wanted to get to the hospital, man. Like, I've
22 never been shot before. I don't know if I'm dying or
23 what. Like, one of my biggest concerns was, like,
24 trying to get to the hospital.

25 Q And did you give the police -- did you give

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1 them a written statement at that time about what had
2 transpired, what had happened at your house?

3 A I really can't recall if I spoke to them about
4 it or not, but I'm almost certain that I didn't.

5 Q Were you eventually transported by EMS?

6 A Yes, sir.

7 Q Okay. And where did they take you?

8 A They took me and my wife to MUSC hospital.

9 Q Were you treated there?

10 A Yes, sir.

11 Q For what?

12 A Gunshot wound.

13 Q And what was the treatment they gave you?

14 A They -- they couldn't get the bullet out,
15 because they said it didn't hit any arteries or nothing,
16 and that they were going to just leave it in. So they
17 gave me some antibiotics and some pain meds, basically.

18 Q Do you remember how long you were at the
19 hospital?

20 A Probably about two hours, three hours,
21 something like that. Everything was going so fast, man.

22 Q Did you speak to the police at the hospital?

23 A No cops were there. Like, no cops ever came to
24 the hospital.

25 Q Where did you go after you were discharged from

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1 the hospital?

2 A After they discharged me, I went to my aunt's
3 house. I'm trying to find someplace to gather my
4 thoughts. While we're there, I'm looking at my wife,
5 and she's a wreck. Like, she's shaking, she's like,
6 crying, and I'm, like, come on, let's lay down and get
7 some rest. She don't want to lay down. Like, she don't
8 even want to be there. So I'm thinking, like, where is
9 someplace close that I can get her out of here, and
10 she'll be fine? You understand? Where she can, like,
11 know that no one is coming here to harm her or anything.
12 So I grab her and the kids, I put them in the car, and
13 we drove to Savannah.

14 Q And where were the kids at that -- when you
15 picked them up?

16 A I had to go to my mom's house and get them back
17 from my mom's house.

18 Q And that's on Davidson Road?

19 A Yes, sir.

20 Q And how long did you stay in Savannah?

21 A Well, we came right back Monday. I had spoken
22 to the detective, and they were, like -- they wanted us
23 to come in and make a statement or whatever. So we came
24 back that Monday morning. And we both went to the
25 detective office.

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1 Q At that time, did you give a statement?

2 A I can't really recall. I heard the solicitor
3 say something about I wrote a statement and my wife
4 didn't, but I can't really recall if I gave a statement
5 or not.

6 (Document is shown to Mr. Butler.)

7 (Tyrone Ancrum's Statement, 10-5, is marked
8 State's Exhibit Number 81, for identification.)

9 Q (By Mr. Finch) Does that refresh your
10 recollection regarding whether or not you gave a
11 statement?

12 A Yes, sir. This is my handwriting.

13 Q Okay. If you just take a -- just a moment to
14 read it. Don't read it out loud, but just take a moment
15 to refresh your recollection with that.

16 (Respite.)

17 A Okay.

18 Q Okay. Do you recall whether or not you gave a
19 written statement?

20 A Yes, sir. That's my handwriting, and that's my
21 statement.

22 Q Okay. Do you recall what you told the police
23 about the weapons involved in this incident?

24 A Excuse me? I didn't hear you.

25 Q Do you recall what you told the -- or what you

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1 wrote or told the police regarding what guns were used
2 in this incident?

3 A Yes, sir.

4 Q What did you tell the police?

5 A I told them that I had the .380 initially.

6 Q And what gun did you really have?

7 A The .357.

8 Q Why did you tell the police you had the .380?

9 A Because the .380 is registered in my wife's
10 name. I felt like I stood a better chance saying I had
11 a gun that's registered to her, in case I had to prepare
12 a legal defense for being in possession of a firearm.

13 Q And regarding anything else in that statement,
14 except for which gun you were using, did you -- did you
15 fabricate any of the other items in that statement?

16 A No, sir.

17 Q Did you mention the AK-47 in that statement?

18 A No, sir.

19 Q Why not?

20 A It's an assault rifle. Like, I knew I could
21 get probably 20 years for that gun, or more, had I
22 gotten caught with that assault rifle, so I lied about
23 it.

24 Q And when did you -- when did you tell anybody
25 about the assault rifle?

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1 A I didn't. When I came to your office, I think
2 it was, like, three days ago, and me and your detective
3 got into it. He was saying, Your story ain't right.
4 What's up with these guns? Like, nothing that you are
5 saying is matching up with these guns. Your story is
6 okay, but when we get to these guns, it's not making
7 sense.

8 Q Is he referring to forensics?

9 A Yes, sir, I think that's what he was --

10 Q Shell casings?

11 A Yes, sir. And he was saying that, but this
12 AK-47, if someone else was shooting it, they would be
13 behind you instead of in front you. So it's not making
14 sense. And I told him that I didn't want to go to jail
15 for the gun, so I lied about it.

16 Q Previous to that conversation you're saying you
17 lied about it?

18 A Yes, sir.

19 Q And you then -- what did you do then?

20 A I told them that I would confess to the
21 guns and the handling of the weapons, but I wasn't
22 going to do it and go to jail for it. Before I would
23 admit to it, I would just deny it. At that point, he
24 was, like, you know, you're not the criminal. You're
25 the victim here. And, like, we just need the truth so

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1 we can get this guy off of the streets. And if you're
2 willing to tell us the truth, then we're willing to --
3 I think it was a -- give me some type of prefer, or
4 something -- I can't remember exactly what it was. But
5 the stipulations was, that if you felt that I was lying
6 at any point, that you would have to give me a lie
7 detector test to prove that I was telling the truth
8 about the assault rifle. At this point, I agreed to
9 hand the gun over to the prosecution.

10 Q And did you -- have you told the truth today
11 about the guns that you handled?

12 A Yes, sir, I have.

13 Q And that gun you're looking at on the screen,
14 that's the .357 you referred to?

15 A Yes, sir.

16 Q And that's the gun you took out of your wife's
17 car?

18 A Yes, sir.

19 Q Let me ask you -- let me go back to when you
20 came back to your house. When you first drove up, do
21 you recall if you made a call to 911 or not?

22 A Well, after the first shooting, when I was
23 definitely sure, when I ran back down the steps the
24 first time -- I'm not sure if it was previous to the
25 door, or after the shooting, but I remember calling the

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1 cops, beating on my mom's trailer door, and I gave the
2 phone to her. And she was like, What are you doing?
3 And I'm like, My wife's in there, and I got to go back
4 in there. So that's how she ended up on the phone, and
5 me attempting to get in the house is how I got shot.

6 (Respite.)

7 Q Now, how do you feel about that initial lie?

8 A I mean, I know that it was wrong, but, you
9 know, it was -- to me it was a form of self-reservation
10 [sic]. Like, I did 11 years, man. Like, I don't want
11 to go back to jail. Like, I'm not saying that I'm
12 perfect, but I've chosen the right path now. And to
13 think that everything I've worked for could be lost, I
14 just wasn't accepting it, man.

15 MR. FINCH: Beg the Court's indulgence?

16 THE COURT: Certainly.

17 (Mr. Finch speaks with Ms. Elliott off the
18 record.)

19 MR. FINCH: Your Honor, may we approach?

20 THE COURT: Okay.

21 (A discussion is held off the record.)

22 Q (By Mr. Finch) Mr. Ancrum, you had -- you had
23 stated that you've chosen the right path now and that
24 you had criminal convictions in the past.

25 A Yes, sir.

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1 Q Was one of those also, in the past, regarding
2 cocaine, trafficking cocaine?

3 A Yes, sir.

4 Q But you --

5 A And I think it was in '89, or something.

6 MR. FINCH: Thank you. Your Honor, I have no
7 further questions at this time. Please answer any
8 questions the Defense has.

9 THE WITNESS: Yes, sir.

10 THE COURT: You may cross-examine.

11 MR. BUTLER: Thank you, Judge.

12 (Mr. Butler speaks with Mr. Finch off the
13 record.)

14 MR. BUTLER: I'm sorry, Judge. Beg the Court's
15 indulgence?

16 THE COURT: Sure.

17 **CROSS-EXAMINATION**

18 **BY MR. BUTLER:**

19 Q Afternoon, Mr. Ancrum.

20 A Good afternoon.

21 Q Some things I want to ask you about, your
22 testimony on Direct, just so I'm clear. After you had
23 been shot in the hip, you ran back inside to get your
24 AK-47?

25 A Yes, sir.

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1 Q And you still had the .357 with you?

2 A Yes, sir.

3 Q Okay. And you were going back in the house,
4 after being shot, to get the AK-47?

5 A Yes, sir.

6 Q Which is an assault rifle?

7 A Yes, sir.

8 Q And at that time, your wife is outside the
9 trailer?

10 A Yes, sir.

11 Q And you run back out of the trailer; is that
12 right?

13 A Yes, sir.

14 Q With the AK-47 and .357?

15 A Yes, sir.

16 Q After having been shot?

17 A Yes, sir.

18 Q And you go around to the front of the trailer?

19 A Yes, sir.

20 Q And you're shooting in the direction where you
21 think the suspects had gone?

22 A Yes, sir.

23 Q So they're running away from the house, and
24 you're shooting?

25 A Yes, sir.

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1 Q And at some point, you said you really wanted
2 to get to the hospital, which is understandable; right?

3 A Yes, sir.

4 Q And you were -- prior to and probably still
5 then worried about your wife; right?

6 A Yes, sir.

7 Q You had to get rid of the AK-47, because you
8 can't very well ride up to the emergency room with that;
9 right?

10 A Yes, sir.

11 Q So you threw that in the bushes somewhere; is
12 that right?

13 A I took it behind my mother's house, yes, sir.

14 Q You put the .357 in the glove compartment?

15 A No, sir. I had it in my hand.

16 Q You had it in your hand?

17 A Yes, sir.

18 Q And at some point you put it in the glove
19 compartment?

20 A Yeah, when the cops blocked me in.

21 Q Okay. Of the car that you were trying to take
22 to the emergency room?

23 A Yes, sir.

24 Q And during all this, at some point, you locked
25 the door to the trailer?

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1 A Yeah, I locked the door to the trailer. Before
2 we left, I locked the door to the trailer.

3 Q Were you there when the police officers wanted
4 to go back in the house and were wanting the keys to the
5 house?

6 A Yeah, I had to be there. Yeah. But I don't
7 remember that situation. I didn't even care about that
8 stuff. I just wanted to get to the hospital. So I'm
9 answering the question, no, I don't remember them asking
10 me about, Open the door, or Let me in the house. Like,
11 I just want to go. Like, I'm shot.

12 Q That's fair enough. Thank you. Understand
13 your testimony, the statement that you gave, that was
14 October 5th; right?

15 A I can't recollect the date.

16 Q We've got State's 81 for I.D. Is it dated?

17 A Yes, sir. 10-5-10.

18 Q And so that would be about a week before -- six
19 days before your wife gives a written statement, if she
20 gives a statement on the 11th?

21 A Yeah. Did I give one on the 11th as well?

22 Q I don't think that you did, but I can only -- I
23 can only ask you questions. I'm sorry.

24 A Yeah, I'm pretty sure I gave another one on the
25 11th as well.

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1 Q When you give that statement on October 5th,
2 you admit to having a gun; right?

3 A Yeah.

4 Q Okay. I understand what you are saying is
5 that you switched the .357 and the .380, but it would be
6 illegal for you to possess a .380 as well?

7 A Yeah.

8 Q Okay.

9 A But I don't know if you remember my statement.
10 I felt like it -- they knew I was shooting a gun. Like,
11 it's not that complicated to realize that, okay, I had a
12 gun. I'd rather claim a legal gun than an illegal gun.
13 That was my point.

14 Q I understand.

15 A All right.

16 Q And you started -- when you were outside the
17 house with the .357, you shoot first, before you're shot
18 at?

19 A Yes, sir.

20 Q Okay. And as you said, it would be obvious to
21 anybody that you were shooting; right?

22 A Excuse me?

23 Q You're saying it was obvious to anybody that
24 you were shooting. Cops had to know you were shooting,
25 so you weren't telling them anything that they shouldn't

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1 have already known when you said, I have a gun, right,
2 on the 5th?

3 A Yes, sir.

4 Q Okay. But you also told them that -- that your
5 wife said that she got the gun from the suspects when
6 they dropped it, and she was able to pick it up; right?

7 A Uh-huh.

8 Q Did she tell you that?

9 A No. I told her that, because that's the gun I
10 couldn't explain having. The only gun I was trying to
11 own up to at that point, of that situation, was the
12 legal gun.

13 Q I gotcha. But that part of your statement's
14 not true also?

15 A Which part? About the gun? Well, I --

16 Q Just hold on. Let me point it to you, okay?
17 Right here.

18 A There's nothing I said about the guns that's
19 the truth, in the beginning.

20 Q Okay. So not only that it was the .357 and not
21 the .380 that you had, but when you said, My wife said
22 that when she snatched away from the guy, he ran. And
23 when she got up, she saw the gun on the floor and picked
24 it up and started to shoot it. That wasn't true either?

25 A Nothing about the guns are true.

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1 Q Okay. And so when you signed that statement,
2 saying that it was true and correct, that too wasn't
3 true?

4 A Yeah.

5 Q Okay. And in the -- it's been two years and a
6 month. When you came forward about the AK-47, that was
7 after the Solicitor's Office investigator confronted you
8 about it?

9 A He never confronted me about it. Didn't give
10 him a chance to.

11 Q Okay. I thought your testimony on Direct was
12 he said: Look, this doesn't make sense.

13 A I said me and him got into it in the lobby
14 because I knew where he was about to go.

15 Q Okay.

16 A And he was -- he was, like, we're taking you
17 in. We've got to ask you some questions. And I refused
18 and left.

19 Q Did you come in that day planning to say:
20 Listen, I need to clear something up. I had an AK-47.

21 A The next day.

22 Q That was your plan?

23 A When I came -- when they called me to come back
24 in, I sat in front of Finch and I told him. He was,
25 like, Well, what happened yesterday? I was like, I know

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1 y'all still on the gun issue, and I don't want to talk
2 about it.

3 Q Okay. I understand. You still didn't want to
4 talk about it because it wasn't the truth? What you had
5 said before was not the truth; correct?

6 A What I said when?

7 Q My only point is that it wasn't like you came
8 forward and said, Look, I need to get this off my chest.
9 For two years y'all have thought one certain set of
10 facts, and I want to correct it. That's not what
11 happened?

12 A No, I didn't say, Oh, yeah, I'm ready to go to
13 prison. I have an AK-47. You're right. That's not
14 what I said.

15 Q Okay. Okay. And you said you wanted
16 assurances before you would talk; right?

17 A No. I told them that -- he was like, the
18 ballistics is matching up, this, that, and the other.
19 And I said, I'm not going to commit myself and go to
20 prison for no gun.

21 Q So you entered into what's called a proffer
22 agreement; right?

23 A Yes, sir.

24 Q Where you sign an agreement that says, I will
25 talk, and you won't use this against me; right?

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1 A Yes, sir.

2 Q Except that they tell you, if we catch you
3 lying, all bets are off, and we will use it?

4 A Right.

5 Q So you're locked into that version right then
6 and there; right?

7 A Yeah, because I know I'm not about to lie, so I
8 wasn't intimidated by it.

9 Q You wouldn't do that? Lying would be just
10 wrong. But you know that's part of the agreement;
11 right?

12 A What is?

13 Q That they say, we won't use what you say
14 against us [sic], but if we decide you're lying, we
15 will; right?

16 A Right.

17 Q So you're locked into that?

18 A Yeah.

19 Q And you mentioned something about the
20 polygraph. They never gave you one, though, did they?

21 A They didn't have to.

22 Q I gotcha.

23 A Because what he asked me was, Where is the
24 rifle? I said, I threw it away. And he said, Let me
25 explain something to you before you enter into this

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1 agreement. If you're lying about that rifle, we're
2 going to give you a polygraph, and if we find out that
3 you know where that gun is or you still have it, then
4 we're going to indict you for it. That was the
5 statement.

6 Q I got it.

7 (Respite.)

8 Q When you met with them, the time about the AK,
9 you didn't come clean about the .357, though, did you?
10 That doesn't happen until yesterday?

11 A We talked about everything.

12 Q Okay. You had a cell phone with you; right?

13 A Yes, sir.

14 Q Okay.

15 A My mother had the cell phone.

16 MR. BUTLER: Beg the Court's indulgence?

17 THE COURT: All right.

18 (Mr. Butler reviews his notes.)

19 MR. BUTLER: That's all I have. Thank you,

20 sir.

21 THE COURT: Redirect.

22 MR. FINCH: Thank you, your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. FINCH:**

25 Q Mr. Ancrum --

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1 A Yes, sir.

2 Q -- did any of the lies about the guns change
3 anything about the facts of where people were in your
4 house when you came home?

5 A No, sir.

6 Q Did any of those -- I'm sorry.

7 A No, sir. Like I said, man, like, my whole
8 statement about the gun situation -- and, basically, as
9 you probably can see, it's all he can really attack me
10 for, because that's all I lied about. And like I said,
11 man, I've done 11 years in prison. My whole life has
12 been in shambles. I finally got it right, man. I
13 wasn't about to let them take that from me, man.

14 MR. FINCH: No further questions, your Honor.

15 THE COURT: Recross?

16 MR. BUTLER: No, sir.

17 THE COURT: You may come down.

18 (The witness steps down from the witness
19 stand.)

20 THE COURT: Call your next witness, please.

21 MR. FINCH: Thank you, your Honor. The State
22 calls James Milz.

23 MR. FINCH: Your Honor, may we approach?

24 THE COURT: Sure.

25 (A discussion is held off the record.)

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1 THE DEPUTY CLERK OF COURT: Can you raise your
2 right hand, placing your left on the Bible.

3 (The oath is administered by the Deputy Clerk
4 of Court, and the witness answers as follows:)

5 THE WITNESS: Yes, ma'am.

6 THE DEPUTY CLERK OF COURT: Please be seated.
7 State your full name, spelling your last name for the
8 record, please.

9 THE WITNESS: My name is James Thomas Milz,
10 M-i-l-z.

11 JAMES THOMAS MILZ,
12 having been first duly sworn by the Deputy Clerk of
13 Court to tell the truth, the whole truth, and nothing
14 but the truth, was examined and testified upon his oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. FINCH:

18 Q Good afternoon, Mr. Milz.

19 A Good afternoon, sir.

20 Q If you would, please tell the Court where
21 you're employed.

22 A I'm employed at the Charleston County Sheriff's
23 Office.

24 Q And what is your position at the Sheriff's
25 Office?

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1 A I'm a forensic investigator employed by the
2 Sheriff's Office.

3 Q And what are some of the duties and
4 responsibilities of the forensic investigator?

5 A I respond to scenes to gather evidence, look at
6 evidence, try to read what the evidence tells me, bring
7 the evidence in, log it in, process the evidence for any
8 other kind of clues that I can find.

9 Q And were you employed in that capacity on
10 October 2nd, 2010?

11 A I was, sir.

12 Q Do you recall responding to a call or being
13 directed to service at Road, Ravenel?

14 A I do remember, sir.

15 Q And what role did you play in the investigation
16 of the incident at that location that day?

17 A I was called in, sir, for a report of a
18 possible home invasion shooting at that location. Once
19 I responded to the location, talked to the responding
20 deputies, and I started my investigation of the evidence
21 that I found at the residence.

22 Q And, if you would, walk us through how you did
23 that in this case.

24 A The very first thing I always do at a scene is
25 actually talk to the responding deputies. After that, I

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1 will do a visual walk-through of what I have in front of
2 me, trying to formulate a plan, the best way to attack
3 this scene. After that, I usually start taking
4 photographs of the scene, and then go from there,
5 gathering evidence, trying to see what other testing I
6 have to do on-site.

7 (Photographs are shown to Mr. Butler.)

8 Q (By Mr. Finch) Let me show you what's been
9 marked, for I.D. purposes only, as State's Exhibits 19
10 through 29 and 32 through 43. If you will take a look
11 at those. Tell me if you can identify those
12 photographs.

13 A State's 19 is the side door of the residence,
14 the trailer, going into the trailer, into the laundry
15 room of the residence.

16 Q In general, as a collection of photographs, are
17 those the photographs that you took of the scene?

18 A They are, sir.

19 Q And do those fairly and accurately represent
20 the scene as you came upon it that morning?

21 A Yes, sir.

22 MR. FINCH: At this time, the State would move
23 for the admission of State's 19 through 29 and 33 [sic]
24 through -- I believe it's 43.

25 THE COURT: Any objection?

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1 MR. BUTLER: No, sir.

2 THE COURT: Without objection, State's 19
3 through 29 and 33 through 43 are admitted.

4 MR. FINCH: Your Honor --

5 THE COURT REPORTER: Judge, just for
6 clarification for the court reporter.

7 At first you said 32 through 43.

8 MR. FINCH: I misspoke. That's correct, your
9 Honor.

10 THE COURT: Thank you very much.

11 (Photographs, State's Exhibit Numbers 19
12 through 29 and 32 through 43 are admitted into
13 evidence.)

14 Q (By Mr. Finch) And these are some of the
15 photos you took at the scene when you arrived?

16 A Yes, sir, they are.

17 Q That's the first thing you do, is photograph
18 the scene?

19 A After a walk-through, yes, sir.

20 Q And what's the purpose of photographing it
21 after walk-through?

22 A To preserve the evidence, to see what -- show
23 what I saw, show also what was at the location when I
24 was there.

25 Q And did you search this home in the area

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1 pursuant to a search warrant?

2 A After the search warrant was signed, sir, then
3 I started my investigation.

4 Q Okay. And take us through the investigation.
5 You walk around the outside, the inside? How does that
6 go?

7 A I always walk around the incident location and
8 then work my way in. Since this was a big yard, and
9 there was a trailer in the center of it and vehicles, I
10 started walking the yard and then just slowly worked my
11 way in, trying to find any evidence, and then finally
12 going into the actual residence and looking.

13 Q What were your observations when you walked
14 into the residence?

15 A Well, just walking in the residence, I could
16 see what appeared to be projectile holes exiting the
17 residence, broken glass, windows, also projectile holes
18 in the side of the aluminum. Going into the laundry
19 room, the side door, I could observe projectiles on the
20 floor, also what appeared to be projectile holes exiting
21 and also entering into the laundry room, striking the
22 appliances in the laundry room itself.

23 Q And you may be able to tell by looking at those
24 bullet holes whether they're entrance or exit as you
25 look at them?

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- 1 A Yes, sir, I usually can.
- 2 Q And how does that occur?
- 3 A A projectile striking something, let's say a
4 washer and dryer, you're going to have an inward slope,
5 something exiting something, like a piece of a washer
6 and dryer sheet metal like that, you're going to have,
7 for lack of a better word, puckering on the metal.
8 Wood, a projectile going into, say, a piece of plywood,
9 will have a round hole exiting. You'll have splintering
10 on that opposite side.
- 11 Q I'm going to show you what's been marked and
12 admitted as State's Exhibit 20. What are we looking at
13 there?
- 14 A That appears to me, sir, to be exiting
15 projectiles in the residence.
- 16 Q And State's 21?
- 17 A Also the same, sir, just a little bit closer.
- 18 Q And State's 24, what area of the house are we
19 looking at there?
- 20 A Sir, that is the laundry room, right when we're
21 coming into the residence from the side door.
- 22 Q And a closer view of that, what does that show
23 you?
- 24 A Sir, projectile going out.
- 25 Q Would be going which way in towards that --

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1 towards that door frame?

2 A Out -- out of the residence, sir.

3 Q Okay. And you continued your walk through the
4 house looking for evidence?

5 A Yes, sir.

6 Q What else did you encounter?

7 A In the laundry room, like I stated, that it
8 appeared to me that there was a gunfight with
9 projectiles coming in and out of that laundry room.
10 Also, striking, like I said earlier, the appliances in
11 there. Walking through, taking a left out of the
12 laundry room into a short hallway going into the
13 kitchen, in the kitchen area, finding shell casings
14 littered on the floor; into the dining room, going down
15 a short hallway, also more projectiles -- excuse me --
16 casings; and also projectile holes in the various parts
17 of the house, all the way into a back bedroom, going
18 down a hallway, finding more casings. And then finally
19 a broken bay window in the very last bedroom of the
20 residence at the far end.

21 Q I'm going to take you through a couple of these
22 photographs, not all of them. If you can show us --

23 A Sure.

24 Q -- what we're looking at here.

25 A To the left, sir, that would be the doorway

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1 that we just came into. This part right here, is the
2 short hallway, when I said you take a left going into
3 the kitchen and living room. These are also projectile
4 holes in the short hallway wall.

5 Q And this is State's -- that was State's 28.
6 I'll show you State's 32.

7 A This is the wall that I was just talking about
8 that you saw the projectile holes. Now you're coming
9 into the kitchen, living room area, finding shell
10 casings also in this small dining room. The kitchen, to
11 that, would be to this side, behind me. Also, there was
12 a projectile hole going into this plate cabinet, I would
13 call this.

14 Q And you said you walked down to the end of the
15 structure?

16 A Yes, sir. Leaving from this, you go down --
17 you go through the kitchen through the -- into a
18 hallway, leading to the bedrooms.

19 Q And what did you notice when you got to that
20 area of the house?

21 A Going into the hallway, there was a -- more
22 casings in the hallway itself, leading into the back
23 bedroom. The back bedroom bay window was shattered.

24 Q Let me show you what has been marked and
25 admitted as State's 35. Is this the condition of the

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1 den that you are referring to?

2 A It is, sir. It is.

3 Q And now State's 36, closer?

4 A The bay window, yes, sir.

5 Q State's 38?

6 A The outside view of the same window, sir, of
7 that back bedroom.

8 Q And after you inspect the inside of the house,
9 do you -- are you making notes as you go?

10 A Yes, sir, I am making small handwritten notes.

11 Q And then did you proceed to the outside?

12 A I did, sir.

13 Q Where did you start your investigation on the
14 outside of the house?

15 A Looking out through that bay window, I noticed
16 on the ground, right underneath that window what
17 appeared to be blood droplets.

18 Q Let me show you what has been admitted as
19 State's 39. Does that help give you some -- you -- show
20 us on there whereabouts you saw -- recall seeing blood.

21 A To the left of the photograph, to the rear of
22 the bicycle, that is a fertilizer spreader -- plastic
23 fertilizer spreader. There appeared to be blood
24 droplets on there. Also, on the ground, there was a
25 shard of glass that had a blood droplet on it as well.

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1 Q Let me show you a close-up. This is State's
2 40. What are we looking at there?

3 A That is the plastic fertilizer spreader, sir.

4 Q And State's 42?

5 A The shard of glass, sir, with the blood droplet
6 on it.

7 Q And did you make -- what did you do with
8 the -- with that blood that you saw and photographed?

9 A I dawned fresh latent gloves -- I went to my
10 vehicle, dawned fresh latent gloves, secured a sterile
11 swab with packaging and took a swab sample of that
12 blood.

13 Q And what do you do when you take a swab sample
14 of that blood? How does that process work?

15 A That swab sample is taken back to our evidence
16 compound, secured in a refrigerator to preserve the
17 freshness, and then it was sent to SLED, the state lab,
18 in Columbia for possible identification and CODIS.

19 Q DNA --

20 A Yes, sir.

21 Q -- identification?

22 A DNA identification, yes, sir.

23 (Swabs, State's Exhibit Number 82 is marked for
24 identification.)

25 Q (By Mr. Finch) Let me show you what's marked

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1 for I.D. purposes only as State's Exhibit 82. Can you
2 identify those items?

3 A The blood swabs from the glass and also the
4 fertilizer spreader, sir.

5 Q And is that the packaging you would have put it
6 in?

7 A Yes, sir, it would have been.

8 Q And what's this packaging on the outside?

9 A Once it's taken, actually, to the SLED
10 laboratory headquarters, that is the package that they
11 package it in, the plastic bag.

12 Q And these are the swabs that you took up there?

13 A Yes.

14 Q For this case?

15 A In the manila envelopes, yes, sir.

16 MR. FINCH: Your Honor, at this time, the State
17 would move for the admission of State's 82.

18 THE COURT: Any objection?

19 MR. BUTLER: No, sir.

20 THE COURT: State's 82 is admitted without
21 objection, bag containing swabs.

22 (Swabs are admitted as State's Exhibit
23 Number 82.)

24 Q (By Mr. Finch) Did you then place markers on
25 the scene?

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1 A I did, sir.

2 Q And what's the purpose of the markers on the
3 scene?

4 A To help me identify at a later time the
5 evidence that I was looking at.

6 (Photographs, State's Exhibit Number 49 though
7 79 are marked for identification.)

8 Q Mr. Milz, I'm going to show you what's been
9 marked for I.D. purposes only as State's Exhibits 49
10 through 79. And as a group, if you can just briefly
11 explain what those photographs are.

12 A These are photographs of the placards that I
13 place by the evidence and then take photos to record the
14 evidence as I saw it and collected.

15 Q Okay. And then you use that to correspond to
16 your report?

17 A Correct, sir.

18 Q Or you refer to the placards?

19 A Correct, sir.

20 Q And those photographs are a true and accurate
21 representation of the scene as you found it and recorded
22 it?

23 A Yes, sir.

24 MR. FINCH: Your Honor, at this time, the State
25 would move for the admission of State's 49 through 79.

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1 THE COURT: Any objection?

2 MR. BUTLER: No, sir, no objection.

3 THE COURT: 49 through 79 are admitted, each
4 being a photograph.

5 (Photographs are admitted as State's Exhibit
6 Numbers 49 through 79.)

7 Q (By Mr. Finch) Mr. Milz, after you looked
8 through the scene and photographed the scene and
9 identified different items, if you would, sort of walk
10 us through the house and tell us where you found what
11 items.

12 A May I refer to my notes, sir?

13 Q Yes, you may.

14 A Coming into the laundry room itself, I
15 found -- let me just start outside of the driveway of
16 the residence -- the driveway leading up to the
17 residence. On the driveway itself, I found two 7.62 by
18 39 shell casings.

19 Q What kind of weapon fires those?

20 A Predominately it's going to be a rifle-type
21 weapon. Usually in this area, it's going to be
22 something like a Russian or Chinese SKS-, AK-47-type
23 assault rifle. Possibly some American brands also shoot
24 that caliber.

25 Q And where did you find those?

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1 A That was on the driveway leading up to the
2 residence.

3 Q Did you also find --

4 Okay. If you would, please continue through
5 your report. I'm sorry.

6 A On the driveway leading up where I found the
7 shell casings, looking at the yard to the rear of the
8 residence, going -- facing toward Davidson Road, during
9 the walk -- walkway around, I noticed what appeared to
10 be -- lack of a better word -- gouge marks, which may
11 possibly suggest where someone was firing a weapon, and
12 it was skipping in the grass, maybe shooting low, and it
13 was making gouge marks in the grass itself.

14 Q Let me show what's been admitted as State's
15 Exhibit 51. Is this the gouge marks you're talking
16 about?

17 A Yes, they are.

18 Q And this is State's 50. Does that give you a
19 perspective of what you are talking about?

20 A Correct. That is the residence to the left.
21 That is the yard. To the far right of the picture
22 itself would be Davidson Road. That picture was taken
23 with my back to the driveway itself. Pretty much where
24 I found the two shell casings, 7.62 by 39.

25 Q And then you photographed those and collected

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1 those?

2 A Yes, sir, they were.

3 (Shell casings, AK-47, State's Exhibit Number
4 83 is marked for identification.)

5 Q For I.D. purpose, it's State's 83. Can you
6 identify those items?

7 A These are the cardboard matchbox covers I would
8 use for storing cartridge cases or projectiles.

9 Q (By Mr. Finch) Are those the projectiles from
10 the --

11 A They're marked 7.62 by 39.

12 MR. FINCH: Your Honor, at this time, the State
13 would move for the admission of State's 83 into
14 evidence.

15 THE COURT: Is there any objection?

16 MR. BUTLER: No, sir.

17 THE COURT: State's 83 is admitted without
18 objection.

19 (Shell casings, AK-47, State's Exhibit
20 Number 83 is admitted into evidence.)

21 Q (By Mr. Finch) And following -- after you had
22 photographed and collected those items, where did you go
23 next in your investigation at the scene?

24 A Went into the laundry room, started the
25 investigation in the laundry room itself, sir.

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1 Q And what were your findings in the laundry
2 room?

3 A One of the first things I observed right from
4 walking into the laundry room was a projectile -- spent
5 projectile lying on the floor. This was marked. I also
6 observed a projectile strike to the dryer and numerous
7 projectile holes leading into and out of the laundry
8 room. I then entered a short hallway leading from the
9 laundry room into the kitchen. In the kitchen, I
10 observed and counted seven spent .45 ACP cartridge cases
11 scattered on the floor. These are photographed and --
12 these are photograph of placards H, J, K, L, M, N, S.

13 Again, it appears that participants were
14 shooting from the kitchen area into the laundry room,
15 through the wall and vice versa.

16 MR. BUTLER: Judge, I'm sorry. I'm going to
17 have to object to that testimony. It's beyond -- lack
18 of foundation and beyond the scope of --

19 THE COURT: I'll allow it based on his -- the
20 totality of his testimony thus far. Overruled.

21 Q (By Mr. Finch) You may continue.

22 A I then started down the main hallway leading
23 into the computer room. This was the back bedroom that
24 I mentioned earlier with the broken out window. In that
25 hallway leading up to that room, I observed two more .45

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1 ACP cartridge cases. These are marked with placards N
2 and O. In the computer room, back bedroom, I observed
3 one more .45 ACP cartridge case on the floor. This is
4 marked with placard P.

5 Q And what kind of a weapon can fire a -- that
6 kind of shell?

7 A A .45 ACP?

8 Q Yes, sir.

9 A Predominately it's going to be a pistol, sir.
10 There are certain rifles that shoot that or some machine
11 guns, but mainly it's going to be a pistol.

12 Q Can you tell by that brand of ammunition what
13 kind of gun it was necessarily?

14 A What kind of gun would --

15 Q Which brand or model that fired that, just by
16 looking at the casings?

17 A On some, on a primer strike, I can tell if it
18 was possibly like a Glock-type weapon. That leaves a
19 very distinct primer strike. But usually I cannot just
20 look at the back of the cartridge case and tell which
21 kind of weapon fired it, no, sir.

22 Q And in your experience, it's most commonly a
23 pistol?

24 A It is, sir.

25 (Shell casings, .45 caliber, State's Exhibit

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1 Number 84 is marked for identification.)

2 Q Let me show you, for I.D. purposes, State's 84.
3 It's a collection of items. Can you identify those
4 items?

5 A The .45 caliber shell casings I found in the
6 residence.

7 Q And then you collected those?

8 A Yes, sir, I did.

9 Q And after you collected them, you labeled them?

10 A And they were secured in my vehicle until I
11 could bring them back to the evidence compound to secure
12 them.

13 Q And those are the ones you collected from the
14 scene?

15 A They are, sir.

16 MR. FINCH: Your Honor, at this time, the State
17 would move for the admission of State's 84 into
18 evidence.

19 THE COURT: Any objection?

20 MR. BUTLER: No, sir.

21 THE COURT: Without objection, they are
22 admitted.

23 (Shell casings, .45 caliber, State's Exhibit
24 Number 84 is admitted into evidence.)

25 Q (By Mr. Finch) What was -- did you have a

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1 continuing role -- after you collected those shells,
2 what other shells did you find or collect at the scene?

3 A As far as .45 caliber shell casings, I believe
4 that was -- found .45 caliber shell casings in the
5 kitchen, dining room, the hallway area predominately.
6 Coming out of the laundry room, taking a right instead
7 of a left, you'll go into the master bedroom. At the
8 threshold of the master bedroom, on the floor, was a
9 single .380 ACP shell casing.

10 (Shell casing, .380 caliber, State's Exhibit
11 Number 85 is marked for identification.)

12 Q (By Mr. Finch) Let me show you what's been
13 marked for I.D. purpose as State's 85. Can you identify
14 that item?

15 A It's marked as a .380 ACP shell casing, yes,
16 sir.

17 Q Did you find any weapons that corresponded to
18 that?

19 A In that bedroom itself, in plain view, on top
20 of the bed, was a -- was a Accu-tek model, HC 380, .380
21 caliber pistol.

22 Q And this is the shell you collected from right
23 in that area?

24 A From the doorway, yes, sir.

25 MR. FINCH: Your Honor, at this time, the State

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1 would move for the admission of State's 85.

2 THE COURT: Any objection?

3 MR. BUTLER: No, sir.

4 THE COURT: Without objection, State's 85 is
5 admitted.

6 (Shell casing, .380 caliber, State's Exhibit
7 Number 85 is admitted into evidence.)

8 Q (By Mr. Finch) What was the condition of the
9 .380 pistol as you found it on the bed in plain view?

10 A Looking at the pistol itself, it looked like
11 it -- it appeared to have what a -- a failure to feed.
12 The slide on the weapon itself was not fully in battery.
13 What I'm trying to say is, the shell -- a live shell was
14 trying to go into the chamber of the weapon, and it got
15 jammed in there. It did not fully go into the chamber
16 of the weapon.

17 Q I'm going to show you what's been previously
18 admitted as State's Exhibit 10. Is that the .380 as you
19 found it on the bed?

20 A It is, sir.

21 Q And if you -- just by briefly looking at it and
22 pointing that out to you, can you explain the failure to
23 feed there?

24 A You can see a glint of the shell casing as it
25 was feeding from the magazine into the chamber of the

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1 weapon. That small glint there is a live shell. You
2 can see that it is not in battery. What I mean by that
3 is the slide here is not fully forward. When it is
4 fully forward, you will not see this section of barrel.

5 Q And what -- what causes that to happen with the
6 gun?

7 A It could be numerous things. It could be a
8 dirty weapon; it could be what -- a term that's called
9 limp-wristing, that you're not fully holding the weapon
10 secure as it's firing; incorrect ammo sometimes do that.
11 It's not incorrect caliber, but maybe incorrect -- it --
12 some guns prefer a hard ball ammo, and you're shooting
13 lead -- lead nose ammo; things to that effect.

14 Q Okay. And you collected that weapon?

15 A It was -- it was rendered safe and collected.

16 Q And then placed into evidence at --

17 A It was, sir.

18 Q -- SLED?

19 And what items did you collect -- if you could,
20 just continue with your report.

21 A In that back bedroom -- also, in that back
22 bedroom, the -- after I secured that .380, I located
23 some green plant material that tested to be marijuana,
24 in a jewelry box in there. In a chest of drawers in the
25 same room, I located 22 more rounds of .380 ACP ammo and

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1 a box also of .22 long rifle ammunition. And in that
2 same chest of drawers, I located the owner's manual and
3 a receipt for the .380 ACP in the name of Octavia
4 Ancrum. And that's pretty much it for the evidence in
5 the back bedroom.

6 Q Okay.

7 (Owner's Manual and Sales Receipt for Accu-tek
8 .380 caliber, State's Exhibit Number 86 is marked or
9 identification.)

10 Q I'm showing you what has been marked for I.D.
11 purposes State's Exhibit 86. Can you identify that?

12 A This is the owner's manual and also the sales
13 receipt for the Accu-tek .380 ACP pistol.

14 Q And is that the condition it was in when you
15 collected it at the house?

16 A It is, sir.

17 MR. FINCH: Your Honor, at this time, the State
18 would move for the admission of State's 86.

19 THE COURT: Any objection?

20 MR. BUTLER: No objection.

21 THE COURT: Without objection, it's admitted as
22 State's 86.

23 (Owner's Manual and Sales Receipt for .380
24 caliber, State's Exhibit Number 86 is admitted into
25 evidence.)

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1 Q (By Mr. Finch) Did you retrieve any other
2 firearms?

3 A Outside of the residence, there was a 2010
4 Buick LaCrosse. Inside of the glove box of that
5 vehicle, I recovered a five-shot Smith & Wesson .357
6 caliber weapon.

7 Q And did you exam the weapon after you --

8 A Yes, sir. The weapon was made safe. I noticed
9 -- like I said, it was a five-shot revolver. There was
10 four spent rounds in the cylinder and one live round.

11 Q And did you collect those rounds?

12 A Yes. The weapon and the rounds were collected.

13 Q Regarding those rounds, with that type of
14 weapon, revolver, do the casings stay in the wheel of
15 the gun?

16 A Yes. They are not ejected, unlike a
17 semiautomatic weapon.

18 (Smith & Wesson shell casings, .357 caliber,
19 State's Exhibit Number 87 is marked for identification.)

20 Q (By Mr. Finch) I am showing you what's marked
21 for I.D. purposes as State's 87. Can you identify that
22 item?

23 A The .357 caliber casings -- casing.

24 Q Did you also recover some projectiles from the
25 laundry room?

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1 A Yes, sir.

2 Q I'm sorry?

3 A Yes, sir, I did.

4 Q Where did you collect the projectiles from?

5 A There was one, I believe, right on the floor

6 itself of the laundry room right where I walked in.

7 (Projectiles from kitchen and laundry area,

8 State's Exhibit Number 88 is marked for identification.)

9 Q (By Mr. Finch) I'm showing you what has

10 been marked for I.D. purposes as State's 88. Can you

11 identify that item?

12 A The projectiles that I recovered from the

13 scene, sir.

14 Q Were you able to determine which -- what kind

15 of weapon those projectiles came from?

16 A No, sir.

17 Q What's the reason for that?

18 A They were too badly damaged, sir.

19 Q But those are the condition that you found them

20 in at the house?

21 A Yes, sir.

22 MR. FINCH: At this time, the State would move

23 for the admission of State's 88 into evidence, your

24 Honor.

25 THE COURT: State's 88 admitted without

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1 objection?

2 MR. BUTLER: No objection.

3 (Projectiles from the kitchen and laundry area,
4 State's Exhibit Number 88 is admitted into evidence.)

5 Q (By Mr. Finch) And when you collected that
6 .380, could you determine by examining the weapon how
7 many times it had been fired?

8 A The weapon itself is a 13-shot pistol. We had
9 one live -- as I stated earlier, there was one live
10 cartridge halfway into the chamber that was cleared, and
11 there were seven more cartridges in the magazine of the
12 weapon.

13 Q You collected those?

14 A They were.

15 Q So from that information, can you tell how many
16 times that weapon had been fired?

17 A Just as a guess, sir, the one shell -- the one
18 empty .380 caliber casing, so possibly one time, sir.

19 (Live round ammunition, .380 caliber, State's
20 Exhibit Number 89 is marked for identification.)

21 Q (By Mr. Finch) I'm showing you what's been
22 marked for I.D. purposes as State's 89. Can you
23 identify that item?

24 A The seven live rounds from the Accu-tek .380.

25 MR. FINCH: Your Honor, at this time, the State

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1 would move for admission of State's 89.

2 MR. BUTLER: No objection.

3 THE COURT: Without objection, State's 89 is
4 admitted.

5 MR. FINCH: Thank you, your Honor.

6 (Live round ammunition, .380 caliber, State's
7 Exhibit Number 89 is admitted into evidence.)

8 Q (By Mr. Finch) And there was just one live
9 round in the .357?

10 A One live round, yes, sir. Four spent.

11 Q And with those types -- with those types of
12 weapons, you can tell just by looking inside how many
13 rounds have been fired because the shell casings are all
14 there, correct, with a revolver?

15 A Say that question again, sir.

16 Q When you examine the revolver, the shell
17 casings are all still inside the gun?

18 A Correct.

19 Q So you can tell just by examining how many
20 times it's been fired?

21 A Yes, sir.

22 Q Or at least the -- of the bullets that are in
23 there?

24 A Correct.

25 Q So that would have been fired four times?

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1 A Four empty cartridge casings, one live, yes,
2 sir.

3 Q And that was found in the Buick?

4 A The glove box, yes, sir, of the vehicle.

5 Q Did you find a box of diapers at the scene?

6 A Yes, sir.

7 Q Where were those located?

8 A Those were near another vehicle that was
9 -- that I was told belonged to one of the residents of
10 the -- of the house.

11 Q Show you what's been admitted as State's
12 Exhibit Number 2. Is that a photograph of the diapers
13 as you found them?

14 A Yes, sir. Just to the front left of that
15 vehicle.

16 MR. FINCH: Beg the Court's indulgence?

17 THE COURT: Certainly.

18 MR. FINCH: Just for clarification, is 87 --

19 THE COURT: No.

20 Q (By Mr. Finch) Mr. Milz, you identified
21 State's Exhibit 87 as -- if you could identify this
22 again for us, please.

23 A May I remove this sticker here a little bit? I
24 can read a little bit better, if I may.

25 Q Yes.

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1 A .357 shell casings.

2 Q So those are the fired shell casings from

3 the .357?

4 A Without opening it, it should be, sir, yes,

5 sir.

6 MR. FINCH: Okay. At this time, the State

7 would move for the admission of State's 87 into

8 evidence.

9 THE COURT: Without objection?

10 MR. BUTLER: No objection.

11 THE COURT: Without objection, State's 87 is

12 admitted.

13 (Shell casings, .357 caliber, State's Exhibit

14 Number 87 is admitted into evidence.)

15 Q (By Mr. Finch) And State's 85?

16 A .380 ACP shell casing, sir.

17 Q The one you found?

18 A Yes, sir.

19 Q Is that the only .380 shell casing you found at

20 the scene?

21 A It is, sir.

22 Q And that corresponds to -- it's the same

23 caliber as the weapon you found in the master bedroom?

24 A The Accu-tek .380, yes, sir.

25 Q And this was found?

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1 A : On the entry to the -- to the back bedroom, on
2 the floor.

3 MR. FINCH: Okay. At this time, the State
4 would move for the admission of State's 85.

5 THE COURT: I think it has already been
6 admitted, but if it hasn't, it's admitted without
7 objection.

8 MR. FINCH: Thank you, your Honor.

9 (State's Exhibit Number 85 has been previously
10 admitted into evidence on page 233.)

11 MR. FINCH: Beg the Court's indulgence?

12 (Mr. Finch speaks with Ms. Elliott off the
13 record.)

14 MR. FINCH: No further questions at this time,
15 your Honor.

16 THE COURT: Cross-Examination?

17 MR. BUTLER: (Moves head up and down.)

18 **CROSS-EXAMINATION**

19 **BY MR. BUTLER:**

20 Q Good afternoon, Officer.

21 A How are you doing, sir?

22 Q I'm fine. So just in sum, only two calibers of
23 casings inside the residence, .45 ACPs; correct?

24 A Correct.

25 Q Ten of those; right?

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1 A Let me count.
2 Q (Moves head up and down.)
3 A I have nine.
4 Q Okay. We'll go with nine.
5 A Okay.
6 Q And those were -- a .45 -- ACP is a brand of
7 bullet?
8 A No, sir.
9 Q It's not?
10 A ACP means Automatic Colt Pistol. It's just a
11 designation.
12 Q So it doesn't say ACP on the butt end of the
13 shell?
14 A Sometimes it does; sometimes it does not.
15 Q Okay.
16 A Sometimes it will just say .45 auto.
17 Q Okay. And obviously you know it's an automatic
18 because you find the casings?
19 A Correct, sir.
20 Q And the .45 automatic will hold, what, between
21 10 and 14 rounds?
22 A That's a broad question, sir. Most pistols --
23 like a government .45, that will be holding eight
24 rounds. Some pistols you can have an extended magazine
25 all the way up to 30 rounds.

State versus Akeem Smith
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1 Q This isn't your old revolver six-shooter where
2 six and you're done?

3 A No, sir.

4 Q And the only other shell casing found was the
5 one .380, and then there's -- is that right?

6 A The one .380, sir.

7 Q And the .380 is found inside, in the bedroom,
8 on the bed; right?

9 A The .380 pistol, yes, sir, the Accu-tek.

10 Q And it's jammed, is the reason you said, it
11 looked like it was fired one time?

12 A From what I could observe, from the evidence
13 supporting, one round.

14 Q Okay. And your job as a crime scene technician
15 is you're concerned with the collection of physical
16 evidence; right?

17 A Correct, sir.

18 Q And with advances in technology and forensic
19 science, very small minute particles of evidence can be
20 very significant to you; right?

21 A Correct, sir.

22 Q And for that reason, you're careful; right?

23 A I try my best, sir.

24 Q And meticulous?

25 A I try my best, sir.

State versus Akeem Smith
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1 Q And sometimes you can, as you did in this case,
2 find just a drop of blood; right?

3 A Yes, sir.

4 Q All right. And so you did that. You looked
5 all through this trailer looking for things that would
6 have been important to you; right?

7 A Yes, sir.

8 Q Including drops of blood?

9 A Yes, sir.

10 Q And you found drops of blood on the outside;
11 right?

12 A Correct, sir.

13 Q And all drops of blood that you found, you had
14 collected; right?

15 A What I observed, I collected, yes, sir.

16 Q And on the outside, you looked carefully too?

17 A Yes, sir.

18 Q Especially once you see blood, then there's all
19 the more reason to keep looking for more; right?

20 A Correct, sir.

21 Q Inside the trailer there were no drops of blood
22 anywhere, were there?

23 A None that I observed.

24 Q But you were looking; right?

25 A Yes, sir.

State versus Akeem Smith
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1 Q You have to be -- you found the -- you
2 testified the purse was still in the kitchen; right?
3 You documented that?
4 A Yes, sir.
5 Q With the money and the credit cards and I.D. in
6 it?
7 A Correct, sir.
8 Q And part of your job, you've got -- you
9 testified to some of it already -- you've got to be
10 familiar -- some of it -- with firearms, ballistics;
11 right?
12 A Yes, sir.
13 Q And a .45 is a larger caliber bullet?
14 A It is a large caliber.
15 Q And the larger the bullet -- you've got to bear
16 with me because I was raised on paper dolls. I don't
17 know anything about guns.
18 A No, that's cool.
19 Q The .45 -- the bigger the bullet, the more
20 trauma or damage it causes; right?
21 A I'll agree to that.
22 Q Okay. And there's a .50 caliber weapon too,
23 but people don't usually have .50 caliber handguns, do
24 they?
25 A No, sir.

State versus Akeem Smith
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1 Q And what I know is all from movies. .45 is
2 what Dirty Harry would carry; right? Do you remember
3 Dirty Harry, the original one? He said this is the
4 largest handgun. It will blow your head clean off;
5 right?

6 A .44 Magnum.

7 Q Oh, close. So this is even bigger?

8 A .45 -- the .44 is --

9 Q The .44 is bigger?

10 A -- a more powerful weapon.

11 Q See, I told you I don't know anything about
12 guns. But a .45 is a powerful weapon?

13 A It is.

14 Q And if you were to, for example, shoot a
15 pumpkin with a .45, and went in and out, where it went
16 out, it would blow a hole straight through the pumpkin,
17 what, the size of a softball, or would there even be any
18 pumpkin left?

19 A I'll go with the first statement.

20 Q All right. About the size of a softball. It
21 does some serious damage?

22 A (Moves head up and down.)

23 Q Okay. Good. And do you recall that on the
24 dresser, you documented several cell phones, maybe like
25 four cell phones on the dresser in the bedroom?

State versus Akeem Smith
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1 A Yes, sir. I took a picture of those cell
2 phones.
3 Q Okay. Good.
4 MR. BUTLER: Beg the Court's indulgence?
5 THE COURT: Certainly.
6 Q (By Mr. Butler) You're meticulous. You took
7 like 200 photos; right?
8 A I believe so, sir.
9 Q Good. Good.
10 MR. BUTLER: Beg the Court's indulgence?
11 THE COURT: Certainly.
12 MR. BUTLER: That's all I have. Thank you.
13 THE COURT: Redirect, Mr. Finch?
14 MR. FINCH: Beg the Court's indulgence?
15 THE COURT: Sure.
16 (Mr. Finch and Ms. Elliott speak off the
17 record.)

REDIRECT EXAMINATION

18
19 BY MR. FINCH:
20 Q Mr. Milz --
21 A Yes, sir.
22 Q -- you're not trained in medicine, are you?
23 A No, sir, I am not.
24 Q Have you been trained in -- would you agree
25 that bullets in bodies affect different people in

State versus Akeem Smith
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1 different bodies in different ways?

2 MR. BUTLER: Objection.

3 THE COURT: You've already -- you asked a
4 question. He says he's not trained, so he's speculating
5 now. Move on, Mr. Finch. There's no need to go into
6 that. This witness is not qualified to answer the
7 question, sir.

8 MR. FINCH: Withdraw the question.

9 THE COURT: If you want to qualify him, please
10 feel free to do so. I won't allow it.

11 MR. FINCH: Okay. Withdraw the question.

12 THE COURT: Thank you, sir.

13 Anything further, Mr. Butler?

14 MR. BUTLER: No, sir.

15 THE COURT: Mr. Milz, you may step down, sir.
16 Thank you, sir.

17 Do you wish the witness to be excused?

18 MR. FINCH: Yes, your Honor.

19 THE COURT: Any objection?

20 MR. BUTLER: No, sir.

21 THE COURT: You are also free to leave, sir.

22 THE WITNESS: Thank you, sir.

23 (Witness steps down from the witness stand.)

24 THE COURT: Ladies and gentlemen, at this
25 point, we'll take our recess for the evening. Please

State versus Akeem Smith
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1 remember that you are not at liberty to talk about this
2 case among yourselves or with anyone else. You're not
3 allowed or permitted to begin your deliberations
4 individually or collectively in any fashion.

5 Tonight, when you go home, if there's someone
6 there, I imagine the first question is going to be, What
7 are you doing? And what's the case about? Great
8 temptation to talk and answer the question. If you do,
9 you will have started your deliberations and then
10 violated the oath. So please refrain from doing that.
11 Don't discuss it with anyone, including anyone at home.

12 Do not -- I don't anticipate, but if there
13 should be any newspaper articles about it or news
14 accounts, do not watch those. And the reason is not
15 that you wouldn't -- that you would change your
16 position; it's the appearance of something, because you
17 are going to decide this case based on what happens in
18 this courtroom. And that's the main reason for all of
19 that.

20 So I look forward to seeing you in the morning.
21 Please do not call the number. That doesn't apply to
22 you. Have a good evening. If you will return to your
23 jury room by 9:30 in the morning, we will resume the
24 trial at that time. Thank you so much. You're free to
25 leave.

State versus Akeem Smith
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1 (The jury is escorted from the courtroom at
2 5:09 p.m.)

3 THE COURT: All right. Anything from the State
4 before recessing?

5 MR. FINCH: No, your Honor.

6 THE COURT: Anything from the Defendant?

7 MR. BUTLER: No, sir.

8 THE COURT: Thank you. We will be at ease
9 until 9:30. Thank you so much.

10 (The hearing of this cause adjourned
11 at 5:10 p.m., on November 14, 2012.)

12 (End of Volume II of III.)
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State versus Akeem Smith
Jury Trial, November 14, 2012

REPORTER'S CERTIFICATE

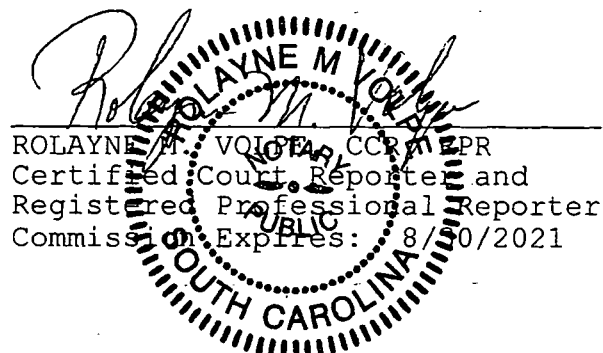
STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter,
CCR, and Registered Professional Reporter, RPR, do
hereby certify that the transcript of the foregoing
proceedings, **Volume II of III**, accurately reflects the
events that occurred before me to the best of my ability
at the time and place set out on the caption hereto, the
witnesses having been duly cautioned and sworn, or
affirmed, to tell the truth, the whole truth, and
nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 27th day of April,
2013.

ORIGINAL



Reported by:
ROLAYNE M. VOLPE, CCR, RPR
Official Court Reporter for the State of South Carolina

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT

2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,)

4 vs.)

5) Case Nos.: 2011-GS-10-4644.

6) through 2011-GS-10-4647

7 AKEEM OMAR SMITH,)

8 Defendant.)

ORIGINAL

9

10 TRANSCRIPT OF PROCEEDINGS

11 JURY TRIAL

12 HEARD BEFORE JUDGE R. MARKLEY DENNIS

13 ON NOVEMBER 15, 2012

14 VOLUME III OF III

15

16

17

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25 ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large

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State versus Akeem Smith
Jury Trial, November 15, 2012

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State versus Akeem Smith
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Reported by:
ROLAYNE M. VOLPE, CCR, RPR
Official Court Reporter for the State of South Carolina

State versus Akeem Smith
Jury Trial, November 15, 2012

1 The above-styled cause came on for hearing on
2 the 15th day of November, 2012, at 9:34 a.m., before
3 Judge R. Markley Dennis, Judge At Large, presiding over
4 the Ninth Judicial Circuit Court for the County of
5 Charleston, General Sessions, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL, VOLUME III OF III

9 THE COURT: The foreman wants to talk to me, so
10 I need him here so we can find out how -- I won't
11 propose how we proceed, but I'll defer to you and
12 Mr. Smith first.

13 MR. BUTLER: And you don't know what about?

14 THE COURT: All he mentions was -- he mentioned
15 to my law clerk, I need to talk to the Judge. I don't
16 know what it means.

17 (The Defendant is escorted into the courtroom
18 at 9:34 a.m.)

19 THE COURT: Good morning, Mr. Smith.

20 THE DEFENDANT: Good morning.

21 THE COURT: Let the record reflect the
22 Defendant is present. As we were talking before, I've
23 been advised, my clerk, the foreperson, Mr. Reisinger,
24 indicated to her this morning that he needed to speak to
25 me. I don't know what it's about; don't have any idea.

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1 What I typically do in this situation is, I bring him
2 into my chambers and find out what it is he wants to
3 talk about. Once I understand what it is, I will report
4 back to you, and then we can decide whether we want to
5 go back in chambers and hear it, or I'll bring him into
6 the courtroom. It depends on what the nature of it is.
7 But I can -- I'll do it either way. If you want me to
8 bring him into the courtroom and have my conversation in
9 your presence, I'll do that too, but whichever you --

10 MR. BUTLER: No. I prefer your method, because
11 I want him to feel as comfortable talking to you as
12 possible. And I worry that this environment isn't
13 conducive to that.

14 THE COURT: All right. I'll find out what it
15 is he needs to do, and then I'll make the call as to
16 whether we'll have this further conversation in chambers
17 or in the courtroom.

18 MR. BUTLER: Yes, sir.

19 THE COURT: Is that okay with the State?

20 MR. FINCH: That's fine with the State. Thank
21 you, Judge.

22 (Mr. Butler is speaking with the Defendant off
23 the record.)

24 THE COURT: Is that still agreeable?

25 MR. BUTLER: Yes, sir.

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1 THE COURT: Okay. That's fine.

2 (The Judge steps off the bench at 9:37 a.m.)

3 (Juror Number 216 is escorted into the
4 courtroom at 9:42 a.m.; at which time, the proceedings
5 continue as follows:)

6 THE COURT: For the record, if you would state
7 your name and your juror room.

8 THE JUROR: Juror Number 216, Thomas Reisinger.

9 THE COURT: All right. Mr. Reisinger
10 approached me because he was concerned as foreperson --
11 and he's here, and he can correct what I'm summarizing
12 -- and whether the attention being paid by all the
13 jurors. And his concern is that they may not take it,
14 because he takes it seriously, and he believes -- and my
15 response to him was, at this point, he really doesn't
16 need to be concerned about that, other than for himself.
17 And I -- it's my duty to make sure the jurors are
18 attentive. I will instruct the jury, based on your
19 observations, and give an instruction about the
20 importance of paying attention and sort of the thing --
21 not accuse anybody of sleeping or not paying attention,
22 but -- but make them understand that it's appearance of
23 things as well that sometimes affects what people -- the
24 conclusions people reach, and we have to look like -- I
25 mean we have to make sure, just like outside, that we

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1 can't have conversations, not because it -- it would
2 necessarily influence you or could. It's the appearance
3 that it could, and that's what we have to guard against.

4 But insofar as the concerns that you express
5 about jurors wanting to end it quickly, I think that's
6 premature, because there's no discussion yet. And that
7 would be something that you may have to talk to me about
8 later, and I hope you don't. But if that's a concern
9 later, then I would certainly suggest that you ask that
10 it be brought into the courtroom, and we'll have this
11 further conversation.

12 Anything else -- any other concerns from the
13 State? I intend to instruct. Any objection to my --
14 giving a brief instruction about making sure you are
15 attentive at this point?

16 MR. FINCH: Nothing else from the State.

17 THE COURT: Anything from Mr. Smith?

18 MR. BUTLER: No, sir. And no objection.

19 THE COURT: Thank you very much. And thank you
20 so much, Mr. Reisinger. I appreciate that very much.
21 And we will be with you shortly. Thank y'all. Be at
22 ease again.

23 (A recess is taken from 9:44 a.m. until
24 9:52 a.m.; at which time, the proceedings continue as
25 follows:)

State versus Akeem Smith
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1 THE COURT: We have all the jurors. State
2 ready to proceed?

3 MR. FINCH: We are. The victims are just on
4 their way. They got stuck in traffic. I don't know if
5 the Court wants to wait for them.

6 THE COURT: We can wait a minute.

7 MR. FINCH: Okay.

8 THE COURT: A minute.

9 MR. FINCH: A few minutes ago they were on
10 Calhoun Street, coming down this way, passing Calhoun
11 several minutes ago.

12 THE COURT: Is the Defendant ready to go once
13 they come? Is there any matters that need to be
14 resolved?

15 MR. BUTLER: Yes, sir. We don't have anything.

16 THE COURT: Very good.

17 Who's the next witness?

18 MR. FINCH: Next witness -- excuse me --
19 Detective Colson is in the courtroom right now, and
20 after that, the DNA analyst, who is in the hallway.

21 THE COURT: Probably need to be here for the
22 chief investigator. If it were another witness, I would
23 go ahead and start, but I'm not going to wait too much
24 longer.

25 MR. FINCH: The last I heard, they were in the

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1 garage, the Queen and King Garage, parking.

2 THE COURT: Okay.

3 MR. BUTLER: As long as we are waiting, can we
4 approach?

5 THE COURT: Sure. Anytime.

6 (A discussion is held off the record.)

7 MR. FINCH: The victims are here, your Honor.

8 THE COURT: All right. Let's bring in our
9 jury.

10 (The jury is escorted into the courtroom at
11 10:02 a.m.)

12 THE COURT: Thank you very much. And thank
13 you, ladies and gentlemen. I hope you've had an
14 uneventful trip in. Again, in the morning, with the
15 water, finding all kinds of new ways to get to this
16 courthouse. But, anyway, we make due, and I thank you
17 for your patience with us as well. Hope you had a
18 restful evening.

19 We're ready to continue. And one of the things
20 that -- and since I didn't qualify, I'm sure Judge
21 Harrington probably addressed this, and so if I'm
22 repeating anything she said, please forgive me. It's
23 not to say that you didn't retain it, but as I mentioned
24 to you, I think, when I started, briefly, you know,
25 this system that we've had in this country is quite

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1 impressive. In fact, every time I have the pleasure of
2 working with folks like you, I leave that week feeling
3 positive about what we do and how we do it. And I'd
4 love to say it's because of what I do and the lawyers
5 that appear here all the time do, but I can't do that
6 because it wouldn't be right, and it wouldn't be fair.
7 It's because of you and people like you.

8 Several years ago I happened to be in a program
9 where the mayor -- then mayor of Richmond, who had also
10 been the president of the American Bar Association, and
11 in that capacity, was called to go to -- when these --
12 when the Soviet Union dissolved and all the spin-off
13 countries were formed, they were looking at establishing
14 a system of jurisprudence. How do we deal with this
15 thing? The Courts? How do we approach that? He said
16 -- he didn't say all, but he said about 95 percent -- he
17 went as the president, as a part of a team, because they
18 were interested in what we do in this country.

19 Says something. Doesn't say we're perfect.
20 And I'm sure there may be a system that may be as good
21 or might even be better, but I haven't seen it yet. And
22 this -- the system we have now is so far superior to the
23 next best system, there's no question about it. And it
24 is because of people like you. Because you make a
25 sacrifice. You're doing something that -- you know, I

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1 bet you if I were to ask each one of you last week, give
2 me the top ten things that you would like to do next
3 week, I bet you being on a jury wouldn't be one of them.
4 I'm just kind of going out on a limb, I'd say that
5 probably isn't what you want to do. But you do it. Why
6 do you do it? You do it because -- and I think I was in
7 this courtroom, and I will -- no need for me to tell you
8 his name, but he was an interesting gentleman. He was
9 84. And as you heard from Judge Harrington -- and I'm
10 about to join that marvelous group December the 2nd --
11 but if you each 65, you don't have to serve on a jury
12 unless you want to.

13 And this gentleman was 84, had some problems.
14 And I met him -- found out about him because when they
15 called his name, as you were, in the jury room, and
16 nobody stood. And I looked. It had his age. And so I
17 said, maybe you need to speak a little louder. So she
18 did. Didn't -- no response. And called it a third
19 time, and I heard, Come on legs. And he had some
20 problems with his legs, with his feet. And he stood and
21 he gave the information. Well, lo and behold, he was
22 selected and served on a jury. In fact, he had to sit
23 in the chair right next to where Mr. Sullivan is
24 sitting, right there next to the alternate. And that
25 was because -- so he could stretch his legs out.

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1 And, anyway, the case lasted about two and a
2 half days, I think, and the jury made its decision, and
3 we received the verdict. And I excused the jury, and
4 because of his problems with his legs, he was always the
5 last person to leave. And I just said -- I'll just use
6 this. I said, Mr. Smith, it was a true pleasure and
7 honor to serve with you, and I thank you for your ,
8 willingness to do that. And he looked -- his immediate
9 response, You don't thank me. Said, There are men and
10 women that are dying for you and me, and this is the
11 least that I can do for my country.

12 I'm going to tell you it causes tears to come
13 to my eyes right now. It says it all. That's what you
14 do. You're rendering a service to your state and
15 country. And more important, even than that, you're
16 rendering a service to those persons and to Mr. Smith.
17 So I appreciate people like you that take it seriously
18 and give your attention to this, and I thank you for
19 that. And I know that each one of you will fulfill the
20 commitment that you made to everyone in this courtroom.
21 And, again, it's an honor to serve with each one of you.

22 I'm sorry to bore you with that, but I just --
23 I think sometimes when we come, and we've given up a
24 lot, it's -- you need to hear, at least for what it's
25 worth, my feeling about that. I'm proud to be here with

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1 you guys, and thank you very much for it.

2 Solicitor, thank you very much. I apologize to
3 you and Mr. Smith and Mr. Butler, but we are ready to
4 continue. You may call your next witness, sir.

5 MR. FINCH: Thank you, your Honor. The State
6 calls Detective Robert Colson.

7 THE DEPUTY CLERK OF COURT: If you will raise
8 your right hand, please, sir.

9 (The oath is administered by the Deputy Clerk
10 of Court and the witness answers as follows:)

11 THE WITNESS: I do.

12 THE DEPUTY CLERK OF COURT: Please be seated.
13 State your full name, spelling your last name for the
14 record.

15 THE WITNESS: Robert Colson. Last name is
16 C-o-l-s-o-n.

17 ROBERT COLSON,
18 having been first duly sworn by the Deputy Clerk of
19 Court to tell the truth, the whole truth, and nothing
20 but the truth, was examined and testified upon his oath
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. FINCH:

24 Q Good morning, Mr. Colson.

25 A Good morning.

State versus Akeem Smith
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1 Q If you would, please tell the jury where it is
2 that you are employed.

3 A Employed with the Charleston County Sheriff's
4 Office.

5 Q And what's your position with the Sheriff's
6 Office?

7 A I'm an investigator, upstairs.

8 Q And how long have you been with the Sheriff's
9 Office?

10 A I've been with them eight years.

11 Q And when you say you're an investigator,
12 upstairs, what does that mean?

13 A Well, everybody is on the first floor. The
14 only people on the second floor are investigators. We
15 only have two floors. So I'm upstairs with everybody.

16 Q And as an investigator, what are some of the
17 duties and responsibilities you have, as opposed to the
18 people on the first floor?

19 A People on the first floor all command staff.
20 Everybody upstairs works. So that includes -- I mean, I
21 do, basically, investigations, general investigations,
22 call-outs, some of your call-out and catch everything at
23 two, three o'clock in the morning. We rotate those once
24 every four weeks, a team comes on. So just like
25 military duty sections, we just rotate every fourth

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1 week, we're on call. And everybody is assigned cases
2 through your supervisors.

3 Q And were you called out to a case on October
4 2nd, 2010?

5 A Yes, I was.

6 Q Out on Davidson Road?

7 A That's correct.

8 Q In Charleston County?

9 A Yes, I was.

10 Q And what was the nature of that call-out?

11 A That call-out was a shooting at a residence on
12 Davidson Road, inside. Supervisor calls you, wakes you
13 up at two o'clock in the morning, tells you you've got a
14 shooting. Pretty much knew. You just kind of crawl out
15 of the bed and get dressed. And I called dispatcher to
16 tell me where it's at, and I drive out to the scene and
17 start figuring things out.

18 Q And as part of your investigative
19 responsibilities, what are some of the things that you
20 do for every case?

21 A For every case, you get there, the first thing
22 you do is you find the first deputy who got there and
23 start asking them questions: Who, what, where, when,
24 and how, what's going on, get their impressions, where's
25 everybody at, what's everybody doing? Because when you

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1 get there, it's kind of chaotic. They all are. So
2 you've got to start pretty much cracking the whip,
3 getting everybody what they're supposed to do, and
4 getting the people out of the way that are in the way,
5 because a lot of deputies that show up and get in the
6 way, so I get rid of them.

7 Make sure your crime scene is coming in, who's
8 your backup going to be, detective that might come and
9 give you a hand and start cleaning things up, getting
10 paperwork done, and pretty much generally getting
11 everything in order and slowing everything down.

12 Q And when you interview or you meet with the
13 responding deputies, what do they do? Do they give you
14 information --

15 A Just a general brief on what's going on, what
16 they've got, what they did, what their holding pattern
17 is. Because everybody freezes until we kind of get
18 there.

19 Q And what do you do with that information?

20 A I just jot it down on notes and start trying to
21 figure it out, ask questions.

22 Q And regarding this incident out on Davidson
23 Road, do you recall what time you got there?

24 A Wee hours in the morning. Three, four o'clock,
25 somewhere in there.

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1 Q And when you got to the scene, do you recall
2 who was there?

3 A Shift supervisor was there, bunch of cars. It
4 was dark and steamy that night, so it was kind of cold.
5 I think Robberson was the reporting deputy -- or
6 Robertson was his name.

7 Q And --

8 A Sheldon was there, a couple of other guys.
9 Just basically district units that were there.

10 Q And those are control deputies?

11 A Yes, they're all uniform guys.

12 Q So you're the first detective there?

13 A Pretty much, I'm it.

14 Q Were the victims present when you arrived?

15 A No, sir.

16 Q Do you know where they were?

17 A They told me they were going to be transported
18 by EMS to the hospital.

19 Q So when you got there, what was the nature of
20 your investigation once you arrived?

21 A I pretty much held everything. It's not
22 uncommon for us to get search warrants on houses. So I
23 know -- my partner was getting the search warrant typed
24 up for us to go in the house. Investigator Milz was
25 either right behind or close with me getting there, and

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1 we all just kind of hang out until this paperwork gets
2 signed from the judge.

3 Q Do you know -- when that search warrant was
4 served, do you know how officers got in the house?

5 A I don't remember that. Generally, Milz does
6 that, pretty much. I let him do his thing. I don't
7 interfere with much of the crime scene stuff.

8 Q Okay. While that crime scene investigation was
9 happening, did you make any effort to meet with the
10 victims?

11 A No. I basically found out where they were
12 being transported, and I really wasn't -- they were down
13 at the hospital. That's fine with me. I'll clean up
14 this. Because there wasn't but one of me, so I'm going
15 to stay here and figure out what to do here. And then
16 when I clear up or get at a stopping point, I'll go down
17 to the hospital and talk to them. It was busy that
18 night, and, basically, Mitch showed up and helped me for
19 a second, then he took off to go do something else. So
20 I was pretty much by myself after that.

21 Q And Mitch is?

22 A I'm sorry. Detective Wilson got the search
23 warrant signed. So he was only there for a little bit.
24 He dropped the paperwork off and took off himself.

25 Q So you stayed on scene?

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1 A That's right.

2 Q Did you at any point go to the hospital or make
3 an effort to meet with the victims --

4 A I called down there --

5 Q -- at the hospital?

6 A -- later on, and they had already been checked
7 out and gone. They didn't keep them very long.

8 Q Did you -- what did you do next to try to
9 communicate with the victims?

10 A I went, basically, to Octavia's mom's house on
11 Mitchell and talked to her. She got in contact with
12 them for me, and I talked to them on her mom's cell
13 phone, I believe.

14 Q And what -- what information did you get about
15 the victims, though, when you first arrived, from
16 reporting deputies?

17 A That he was shot, that he was going down -- and
18 she had gotten injured somehow in the altercation there,
19 and they were all being taken down to the hospital.

20 Q And once you got in touch with them by phone,
21 were you able to get any information from them after
22 that?

23 A Basically -- just the basic same information
24 that they had given the road units, you know, about
25 individual out -- Mr. Ancrum was coming home, saw the

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1 subject in front of his house, he stopped, the guy ran,
2 and then she -- then he went to the house, found her
3 inside the house with other suspects. The same scenario
4 as before.

5 Q Did you want to meet with them in person?

6 A I did. I have to. To continue the case, I do.

7 Q And at some point did you close the case?

8 A I called them and told them that I had to have
9 them come in and give me a statement. Then they were
10 okay with that. They were, like, Well, we're going to
11 be gone for a couple days. And I was, like, All right.
12 Believe me, it's like Saturday and Sunday. I can do
13 this Monday and Tuesday. Everybody is fine, everybody
14 is okay, everything is calmed down. I'm not going to
15 rush it. And they said, Fine. So they came in when I
16 asked. They gave me statements when I asked. They've
17 always been cooperative with me.

18 Q And when you met with them -- so you set up an
19 appointment, you said, for a couple days later?

20 A (Moves head up and down.)

21 Q And they came in on that date?

22 A That's correct.

23 Q Okay. And at some point in time, as part of --
24 part of the job is just regular footwork, getting out
25 there and trying to chase down leads?

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1 A Usually.

2 Q In this case, did you have any suspects, or did
3 you have any rumors, or --

4 A A lot of rumors. Situations like this happen,
5 everybody is going to start throwing names out, and
6 you've got to kind of decipher. You can chase all these
7 rumors -- and basically sewer talk, is what it is. And
8 people just grumbling underneath, don't know anything.
9 You can chase them and work yourself to death, end up
10 with nothing, except a lot of bad people. Or you can
11 just let things calm down and rely on what's going to
12 come back in. So I didn't chase down much.

13 We had one rumor of an individual --

14 MR. BUTLER: Judge, I'm sorry, I have to object
15 at this point. Hearsay, repeating a rumor.

16 THE COURT: Don't repeat what is said. You
17 have rumors. Sustain the objection of telling him what
18 the rumors were.

19 Q (By Mr. Finch) With the information you got,
20 what did you do with that information?

21 A I did have a name and a suspect -- another
22 suspect named, popped up, and did give a photo lineup to
23 Ms. Mitchell [sic], and she did not pick anybody out of
24 that lineup. That was the initial information.

25 Q And do you remember how close in time that was

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1 to October 2nd?

2 A Within a week or so. The dates are on the
3 paperwork.

4 Q And you said at one point you were going to
5 wait for other things to calm down and then wait for
6 other things that might come in. What information had
7 been gathered from the scene that you were waiting on?

8 A I was waiting on the blood samples to return.

9 Q Where were those blood samples collected from?

10 A They were collected by Mr. Milz on a window.

11 Q And as the investigator and case agent, do you
12 request what gets done with those?

13 A No. Mr. Milz does it all in the lab.

14 Q Okay. He sends -- he makes a request, then,
15 that they be analyzed?

16 A Yes.

17 Q Okay. What happens to those DNA samples --

18 A Basically, I'll slow the case down and pretty
19 much inactivate it. It depends. Everybody does it a
20 little differently. Sometimes I will inactivate it to
21 get it off my stack, and it goes to a file cabinet for a
22 while. And then when the information returns -- because
23 it takes some time to get that stuff back. When it
24 comes back either positive or negative, and you reopen
25 the case again, and you make your notes. In this case,

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1 the results came back.

2 Q And --

3 MR. FINCH: Beg the Court's indulgence?

4 THE COURT: Certainly.

5 (Mr. Finch speaks with Mr. Butler off the
6 record.)

7 Q (By Mr. Finch) And in this situation, you got
8 some information from SLED; is that correct?

9 A That's correct.

10 Q And it came back that there was a match from
11 the DNA profile on the blood, that was taken, to a
12 database?

13 A That's correct.

14 Q Okay. And with that information, were you able
15 to then develop a suspect in this case?

16 A Yes, I did.

17 Q And who was that suspect?

18 A Akeem Omar Smith.

19 Q And what did you do with that information?

20 A After that, I take the information, once it
21 comes in, and pretty much, you do a background check
22 through our systems, get the paperwork together, and
23 then I'll send it off. We'll get a photo lineup built
24 up with Mr. Smith. Then I contacted the victims and
25 asked them to come in.

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1 Q Do you recall about how much time had gone by?

2 A About six months.

3 Q And as part of that, then you said you
4 developed a -- who puts together the lineup?

5 A SLED does.

6 Q You just give them some particulars, and
7 they --

8 A We give them just -- it's like a one-sheet
9 information, date of birth, name, DL number, and they do
10 it up there, and E-mail -- we E-mail the form to them,
11 and they E-mail it right back to us.

12 Q And then you put that together and show it to
13 the victim.

14 I'm going to show you what's been marked and
15 admitted as State's Exhibit 1. Is that the lineup that
16 was shown to Mrs. Ancrum?

17 A That's correct.

18 Q And who showed that to her?

19 A Mr. Downing did.

20 Q And that's standard, you have a different agent
21 do that?

22 A That's correct.

23 Q What's the reason for that?

24 A Just nonbias. That way we get -- I'm the only
25 case agent involved in it, and then I usually grab

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1 whoever is in the office who's not involved and ask them
2 to show the lineup. That way I'm not tainting anything.

3 Q Okay. And was she able to pick out anybody in
4 that lineup?

5 A Yes, she did.

6 Q Who did she pick out?

7 A She picked out Suspect Number 4, which is Akeem
8 Omar Smith.

9 Q And did she give any sort of comment about
10 that?

11 A Yeah. We actually ask on our witness
12 identification statement. She says, I'm 80 percent
13 certain this is the person -- Number 4 in the lineup is
14 the person that committed the crime against my family.

15 Q Okay. And after that, did you get what's known
16 as a buccal swab, DNA sample, from the victim -- I mean
17 the Defendant?

18 A Yes.

19 Q Let me show you what's been marked as State's
20 Exhibit 90. Is that the buccal swab you're referring
21 to?

22 A That would be the one.

23 Q Okay. And then you submit that to SLED?

24 A The lab. Yes, that's correct.

25 MR. FINCH: Your Honor, at this time, the State

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1 would move for the admission of State's 90.

2 MR. BUTLER: No objection.

3 THE COURT: Without objection, it's admitted.

4 (Buccal swab, State's Exhibit Number 90 is
5 admitted into evidence.)

6 MR. FINCH: Thank you, your Honor.

7 Q (By Mr. Finch) And then that goes up for
8 further analysis?

9 A That's correct.

10 Q And do you know the purpose of that?

11 A It goes up to basically verify that the -- the
12 way it works is, when you get arrested, your
13 fingerprints get the charge, basically. In this case --

14 Q Let me ask you this: You're just going to make
15 sure that the sample that's collected is the same --

16 A The same sample -- the date of the arrest for
17 the charge is the same sample that was -- that was
18 entered -- that was ran against it. So pretty much.

19 MR. FINCH: Thank you, Detective Colson.
20 Please answer any questions that the Defense has.

21 THE WITNESS: Yes, sir.

22 THE COURT: Cross-Examination.

23 **CROSS-EXAMINATION**

24 **BY MR. BUTLER:**

25 Q Good morning, Detective.

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1 A Good morning, sir.

2 Q When you spoke to Octavia on the phone, she

3 didn't want to talk to you; right?

4 A No, she talked to me.

5 Q Well, about the incident?

6 A She talked to me.

7 Q Do you have your report with you?

8 A I do in my bag on the table back there.

9 MR. BUTLER: Beg the Court's indulgence?

10 THE COURT: Certainly.

11 MR. BUTLER: Sorry, Judge. Beg the Court's

12 indulgence?

13 THE COURT: Certainly.

14 (Mr. Butler and Mr. Finch speak off the

15 record.)

16 MR. BUTLER: Mark this for I.D. only.

17 (Incident Supplement, Detective Colson's

18 Report, is marked for identification as Defendant's

19 Exhibit No. 1.)

20 Q (By Mr. Butler) Report writing is just a basic

21 part of police work, is it not?

22 A That's correct.

23 Q You're trained in it at the academy?

24 A Correct.

25 Q Okay. And you've been in law enforcement how

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1 long?

2 A Eighteen years.

3 Q Okay. And what it means to be an investigator
4 is, you go out and collect information; right?

5 A That's correct.

6 Q And you work on more than one case at a time?

7 A That's correct.

8 Q And there's often a substantial lapse of time
9 in between the time you collect the information in this
10 case, talking to somebody, and the time that you're
11 asked to recall it, testify; right?

12 A That's correct.

13 Q In this case, two years and a month; right?

14 A That's correct.

15 Q So part of police work is to document the
16 information you collect; right?

17 A That's correct.

18 Q So you learn how to write reports?

19 A That's correct.

20 Q And so that prior to testifying, if you need
21 to, you can review your report; right?

22 A Correct.

23 Q And the report goes into the case jacket, which
24 is a file; right?

25 A That's correct.

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1 Q If anybody else needs to know what information
2 you've collected, who you talked to, you can look at the
3 report; right?

4 A That's correct.

5 Q Copy of the report goes to the prosecutor, so
6 they know what information you've collected, who you've
7 talked to?

8 A That's correct.

9 Q Copy goes to me; right?

10 A Hope so.

11 Q All right. And you know that -- that you can
12 be cross-examined on your report; right?

13 A That's correct.

14 Q And so you want to make sure that the report is
15 accurate; right?

16 A That's correct.

17 Q Complete?

18 A The best I can.

19 Q And truthful; right?

20 A That's correct.

21 Q Showing you Defense 1 for identification and
22 ask you if you recognize that as your report?

23 A That's correct.

24 Q This reporting detective --

25 That's you; right?

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1 A Yes.

2 Q -- spoke to the victims, who would not
3 meet with this reporting detective, and give me any
4 statements.

5 A That's correct.

6 Q Right? That's what you wrote?

7 A Uh-huh.

8 THE COURT: Was that a yes?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 Q (By Mr. Butler) And throughout your report,
12 you've documented how they wouldn't -- they wouldn't
13 cooperate. The victims were not very helpful and were
14 reluctant to give any information to assist in the
15 investigation; right?

16 A That's correct.

17 Q That's in your report?

18 A What they stated.

19 Q Okay. The deputies were finally able to get
20 the keys to the house from the victim, who was trying to
21 get away without letting the deputies into the house.

22 A That's correct.

23 Q Right? Finally able to get the keys to the
24 house from the victim, who was trying to get away
25 without letting deputies into the house. You wrote that

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1 in your report; right?

2 A Yes, I did.

3 Q And you closed the case because they wouldn't
4 cooperate?

5 A No. I closed it because it was pending DNA
6 evidence.

7 Q Okay. Because -- surely that's what the policy
8 is at the Sheriff's Department, is every time there's
9 biological evidence, you close the case? you close the
10 file?

11 A It's not the policy.

12 Q Say that again.

13 A It's not the policy. Every detective can do it
14 differently. You can leave it on your desk for months
15 if you want.

16 Q Right after you detail how they've been
17 uncooperative, you say, I'm closing this file.

18 A They came in and gave me statements.

19 Q They came in and gave you statements on October
20 5th and October 11th; right?

21 A That's correct.

22 Q And Tyrone gave you his statement first,
23 October 5th?

24 A That's correct.

25 Q And Octavia comes in on the 11th and gives you

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1 a statement?

2 A If that's when the statement is, correct.

3 MR. BUTLER: Beg the Court's indulgence?

4 THE COURT: Yes, sir.

5 (Mr. Butler speaks with Mr. Finch off the
6 record.)

7 Q (By Mr. Butler) You, that morning, went to the
8 crime scene; right?

9 A I was at the residence, correct.

10 Q You said you got a search warrant; right?

11 A I didn't. Detective Milz did.

12 Q Okay. You don't have to get a search warrant
13 if the owner of the premises consents; right?

14 A That's correct.

15 Q Okay. Consent, is to let you go in. There is
16 no need for the search warrant?

17 A Not necessarily.

18 Q If a person says, you can go in my house, you
19 don't need a search warrant? I'm not saying you can't
20 get one anyway. My question is: You don't need a
21 search warrant if there's consent? You know that?

22 A That's correct.

23 MR. BUTLER: Beg the Court's indulgence?

24 THE COURT: Certainly.

25 Q (By Mr. Butler) And when you did speak

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1 to them, they told you they couldn't make an
2 identification; is that right?

3 A On the first one?

4 Q No. In general, before you showed them any
5 lineups?

6 MR. BUTLER: Mark this for identification,
7 please.

8 (Incident Supplement, Detective Colson's
9 Report, Page 2, Defendant's Exhibit Number 2 is marked
10 for identification.)

11 (By Mr. Butler) Show you Defendant's 2, for
12 identification.

13 THE COURT: What is that?

14 MR. BUTLER: Defendant's Number 2, for
15 identification.

16 Q (By Mr. Butler) Do you recognize this as your
17 report?

18 A That's correct.

19 Q This is our -- our reporting?

20 A That's correct.

21 Q This reporting detective -- that's you -- spoke
22 with both victims, and both cannot identify any
23 suspects --

24 A That's correct.

25 Q -- correct?

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1 Part of being an investigator, you interview
2 people?

3 A That's correct.

4 Q And when you interview people, you want to find
5 out what they know --

6 A That's correct.

7 Q -- right?

8 And because of that, you don't tell people
9 necessarily what you know. You want to find out what
10 they know; right?

11 A In the proper way.

12 Q Right. So you wouldn't want to feed them
13 information. You want to make sure you're getting
14 information that they know from somewhere other than
15 you?

16 A I'm sorry?

17 Q When you get a statement from anybody, an
18 account of events, what happened, you want to make sure
19 that that all comes from them and not from you; right?

20 A That's correct.

21 Q So you're careful not to intentionally or
22 unintentionally plant information that they might then
23 give back to you as if it came from them?

24 A That would be a good thing.

25 Q Right. When you met with Akeem, he knew

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1 Octavia's name?
2 A From the affidavit.
3 MR. FINCH: Objection, your Honor.
4 THE COURT: Objection?
5 MR. FINCH: Hearsay.
6 MR. BUTLER: Knowledge. Offered for knowledge.
7 THE COURT: The item is not offered for the
8 truth of the matter asserted. I'm going to overrule the
9 objection.
10 Q (By Mr. Butler) You get somebody to write out
11 a statement in their own handwriting so they can't say,
12 Well, he wrote that for me. You have them write it out
13 in their own hand; right?
14 A That's correct, I do.
15 Q I'm not asking you what he said. When he wrote
16 out his statement, he referred to her as Octavia. He
17 did, didn't he?
18 A Yes.
19 Q Okay. And you were at the -- you responded to
20 the trailer that morning?
21 A I did.
22 Q And you're familiar with the layout?
23 A (Moves head up and down.)
24 MR. BUTLER: Beg the Court's indulgence?
25 (Respite.)

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1 Q (By Mr. Butler) Detective, showing you --

2 If you need to look behind you, you can look
3 over this way.

4 -- State's 4. You recognize that as the rear
5 of the trailer?

6 A That's correct.

7 Q And this is the door that is -- that goes into
8 the laundry area?

9 A That's correct.

10 Q If I show you State's 24, it goes into the
11 laundry area?

12 A That's correct.

13 Q And this would be the -- the primary door that
14 the residents were using, because the other door was
15 blocked; right?

16 A That's correct.

17 Q And goes into the laundry area. This is the
18 laundry area; right?

19 A That's correct.

20 Q If you go into the laundry area, then to the
21 right is the master bedroom?

22 A I believe so.

23 Q Let me see if I can -- I thought there was a
24 photograph of it, but I couldn't -- let me see if I can
25 diagram it, if it helps.

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1 So if this is the trailer and this is that
2 entryway, the landing here, the door, if there's a
3 way --

4 Laundry room here; right? Master bedroom off
5 this way; right?

6 A I believe so.

7 Q Okay. And --

8 MR. BUTLER: Beg the Court's indulgence?

9 That's the one I'm looking for. That's the
10 one. Okay.

11 Q (By Mr. Butler) State's 12, that shows going
12 in from the laundry room into the master bedroom?

13 THE COURT: You need to close that. Thank you.

14 MR. BUTLER: I'm sorry. I get ahead of myself.

15 Q (By Mr. Butler) State's 12 shows the entryway
16 from the laundry room into the master bedroom?

17 A That's correct.

18 Q Okay. And I don't know if you can see -- and
19 there's probably a close-up -- a shell casing that was
20 found right there, a .380; is that correct?

21 A I guess so. I didn't do the crime lab.

22 Q That's fine. That's fine.

23 MR. BUTLER: Beg the Court's indulgence?

24 That's all I have. Thank you, Detective.

25 THE COURT: Redirect, Mr. Finch.

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1 MR. FINCH: Thank you, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FINCH:

4 Q Detective Colson, as part of this
5 investigation, and you collected evidence, and then you
6 come up with a suspect, and then he's charged with a
7 crime. Is that how it works, in general?

8 A Short term, yes, correct.

9 Q And how does -- what does the -- the document
10 that you use, to charge someone, let them know that they
11 are being charged with a crime?

12 A An affidavit with a warrant.

13 Q And on that, you put the information that
14 -- that what?

15 A On the affidavit, would be the charge, brief
16 incident, the victims' names, suspects' names, date and
17 times --

18 Q And do you recall --

19 A -- elements.

20 Q I apologize. Do you recall the date that you
21 -- and then somebody has to swear that warrant out? Go
22 before a judge, and --

23 A We swear the warrant out in front of a judge.

24 Q And do you recall the date that you swore out
25 the warrant in this case? The warrants?

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1 A I don't -- I don't know the exact dates.

2 Q If I showed you something that would refresh
3 your recollection, would that help?

4 A Yes.

5 THE COURT: Do you need to mark it?

6 MR. FINCH: It will be State's 91.

7 (Affidavit, State's Exhibit Number 91 is marked
8 for identification.)

9 Q (By Mr. Finch) Let me show you what's been
10 marked for I.D. purposes as State's 91 --

11 MR. BUTLER: Wait a minute. Timmy?

12 MR. FINCH: Yeah.

13 (Document is shown to Mr. Butler.)

14 Q (BY Mr. Finch) -- for I.D. purposes only. If
15 you'll just take a look at that and see if it refreshes
16 your recollection as to when you swore out the warrant.

17 A 3rd of May 2011.

18 Q Okay. And do you recall the date that
19 Mr. Smith was arrested on these charges?

20 A I didn't arrest him. North Charleston picked
21 him up on a car stop.

22 Q And you put these warrants into a system and --

23 A I put them on file -- after I signed him out
24 from the judge and all that, I put him on file with --

25 THE COURT REPORTER: I'm sorry. After you --

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1 THE COURT: Slow down.

2 THE WITNESS: I'm sorry. After they're signed
3 from the judge the warrant's on, we take them back to
4 our warrants division, and they enter them into the
5 system, NCIC. That's what the cops do when they have a
6 car stop. They run a. . .

7 (Supplement Report, T. Buckhannon, State's
8 Exhibit Number 92 is marked for identification.)

9 Q (By Mr. Finch) Let me show you what's marked
10 for I.D. purposes as State's 92, to refresh -- see if
11 that document refreshes your recollection as to the date
12 Mr. Smith was arrested.

13 A 5-5-11, by Deputy Buckhannon.

14 Q And during that process, are the warrants
15 served on him?

16 A That's correct. We'll sign them -- or the
17 serving him -- officer, he'll sign the warrants and
18 serving them, and you'll give them a copy of the warrant
19 and a copy of the affidavit.

20 Q And what's the purpose of serving them with
21 that warrant?

22 A They have their copies. They know what they
23 are being charged with, they have their documents, and
24 we have our documents. It's all exact same.
25 Triplicates of all.

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1 Q And do you recall the date you got a statement
2 from Mr. Smith in this case?

3 A It was either the next day or the day after. I
4 don't know exact date. If you show me a document.

5 (A document is shown to Mr. Butler.)

6 Q (By Mr. Finch If I show you a document to
7 refresh your recollection, would that help?

8 A That's correct.

9 (Statement by Defendant, State's Exhibit
10 Number 93 is marked for identification.)

11 Q (By Mr. Finch) I'm going to show you what's
12 been marked for I.D. purposes only, State's Exhibit 93.
13 If you take a look at that document, does that refresh
14 your recollection as to when the Defendant made this
15 statement?

16 A That's correct. On the 6th. May 6th.

17 Q So three days after you swore out the warrant,
18 the information?

19 A That's correct.

20 Q One day after he was served with that
21 information?

22 A That's correct.

23 Q I want to ask you a question about the case
24 administration you referred to earlier. Is there a
25 difference between an inactive case and a closed case?

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1 A Inactive is basically pending information, more
2 information coming in, any developing leads, we'll just
3 reactivate to it. Just administrationally, it slows it
4 and gets it off your -- you've got what's in progress
5 and what's being held. And it's just basically moving
6 it from in progress to being held to a later -- until
7 pending information.

8 Q And Mr. Beattie asked you about consents and
9 search warrants and things like that.

10 A That's correct.

11 Q Does someone need to be present to consent?

12 A That's correct.

13 MR. FINCH: Beg the Court's indulgence?

14 THE COURT: Yes, sir.

15 (Mr. Finch speaks with Ms. Elliott off the
16 record.)

17 MR. FINCH: And just want to know if you
18 can clarify something in your report about those two
19 warrants.

20 (Mr. Finch speaks with Mr. Butler off the
21 record.)

22 Q (By Mr. Finch) Detective Colson, I'm going to
23 direct your attention to Defense Exhibits 1 and 2 that
24 were marked for I.D. purposes. If you can look at
25 the -- near the top of one and near the bottom of two,

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1 you use those case terms. You talked about, "closed"
2 and "inactive." If you could, just help the Court
3 understand what -- how those terms operate.

4 A Closed and inactive?

5 Q Yes, sir.

6 A Closed is when, basically -- it's just
7 verbiage. When I close the case -- there's different
8 ways of closing them. You can close -- you can clear it
9 by arrest, you can close it through administrative
10 purposes, no other suspects, you can close it different
11 ways.

12 In this case, I basically inactivated the case.
13 This case is inactive pending return of DNA from SLED.
14 That's kind of how I inactivated this case at this
15 particular time.

16 Q At -- in the beginning, you referred to it as
17 closed. Why was that?

18 A Just how I usually type them. We'll close a
19 case, doesn't mean we can't always reopen them.
20 Different reasons for closing them. It's not anything.
21 They're all still checked active, so --

22 Q When you say "checked active," what does that
23 mean?

24 A Down at the bottom. There's different ways to
25 close cases. And this is just one of them. We checked

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1 it active.

2 Q So that's an administrative thing for you?

3 A It's just administrative, yes. It's all about
4 numbers and how to keep charge of all that stuff.

5 THE COURT: They need to be left there, anyway.

6 MR. BUTLER: I'll use them.

7 THE COURT: Thank you.

8 MR. FINCH: Thank you, your Honor. Thank you
9 for the Court's indulgence.

10 THE COURT: Certainly.

11 MR. FINCH: Thank you. That's all I have right
12 now.

13 THE COURT: Recross.

14 RECROSS-EXAMINATION

15 BY MR. BUTLER:

16 Q Showing you Defendant's 1 for identification.
17 We've asked you about this before. I want to get the
18 sequence right. Asked you previously about the
19 documentation of their noncooperation. Asked you about
20 that on Cross; right? Would not meet or give me any
21 statements; right? Earlier, deputies were finally able
22 to get the keys to the house from the victim who was
23 trying to get away without letting deputies into the
24 house; right?

25 A That's right.

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1 Q Then, you're not talking about the collection
2 of evidence, because you haven't collected it at this
3 point. On this date, reporting detective is closing the
4 case; right?

5 A Right.

6 Q Not inactive. You say you're closing it.
7 That's before you've talked to either of the victims,
8 closed it. They hadn't been cooperating, then closed;
9 correct?

10 A Well --

11 Q I'm going to get to that. I know --

12 THE COURT: Wait a minute, Mr. Butler. He can
13 answer the question, then he can give an explanation.

14 MR. BUTLER: Yes, sir.

15 THE COURT: So allow him the opportunity to
16 explain it. You may explain your answer, Mr. Colson.

17 THE WITNESS: I always say that, the very first
18 one. Every report I ever type, I always say, I'm
19 closing this case. I then explain what went on. At the
20 very end, I'll tell you what I did with the case and the
21 disposition of the case.

22 THE COURT: But you're going to need to speak
23 into that mic. When you're turning to talk to him, it's
24 a nightmare for me and the court reporter.

25 THE WITNESS: I apologize. Anyway, what it is,

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1 I always start off every report the same exact way.
2 That's how Robin types them. I don't change them. I
3 explained to you what I did. And at the very end of my
4 report, I will tell you the disposition of the case,
5 because that's what my supervisor wants. And in that
6 particular case, this is the same report, two pieces of
7 paper. I'm saying closing. At the very end, after I
8 write my exposé -- I'm going to tell you at the end what
9 I do with it. I'm marking this case pending DNA results
10 from SLED.

11 THE COURT: Slow down, Mr. Colson, please, sir.

12 THE WITNESS: Okay.

13 THE COURT: Thank you. You're talking for
14 their benefit. I can't hear that fast. They might can.

15 Q (By Mr. Butler) Mr. Finch asked you that
16 somebody has to be present to consent to a search of a
17 residence; correct?

18 A That's correct.

19 Q When you arrived, they were gone?

20 A That's correct.

21 Q But when the first officers arrived, victims
22 were present?

23 A That's correct.

24 Q And they can consent to a search to those
25 officers; correct?

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1 **A** If they asked us, correct.

2 **Q** In your own report, They were trying to get the
3 keys. What do you think that means? I mean, they want
4 to go in; right?

5 **A** For their safety, correct. For their safety,
6 they to do a sweep.

7 MR. BUTLER: That's all I have.

8 THE COURT: Mr. Colson, you may step down.
9 Thank you, sir.

10 (The witness steps down from the witness
11 stand.)

12 (The Judge speaks to the Deputy Clerk of Court
13 off the record.)

14 THE COURT: You may call your next witness.

15 MR. FINCH: Thank you, your Honor. The State
16 calls Jennifer Clayton.

17 THE DEPUTY CLERK OF COURT: Can you raise your
18 right hand and place your left hand on the Bible.

19 (The oath is administered by the Deputy Clerk
20 of Court, and the witness answers as follows:)

21 THE WITNESS: I do.

22 THE DEPUTY CLERK OF COURT: Please be seated.
23 State your full name, spelling your last name for the
24 record, please.

25 THE WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

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1 **JENNIFER CLAYTON,**
2 having been first duly sworn by the Deputy Clerk of
3 Court to tell the truth, the whole truth, and nothing
4 but the truth, was examined and testified upon her oath
5 as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. FINCH:**

8 **Q** Good morning, Ms. Clayton.

9 **A** Good morning.

10 **Q** If you would, tell the Court where it is you're
11 employed.

12 **A** I'm currently employed by the South Carolina
13 Law Enforcement Division, also known as SLED.

14 **Q** And what do you do out there at SLED?

15 **A** I'm a DNA analyst.

16 **Q** And as a DNA analyst, what are some of the
17 duties, responsibilities, the things you do at work?

18 **A** When evidence is submitted that may contain
19 biological material, such as blood or saliva, it is sent
20 to the DNA department. As a DNA analyst, I develop DNA
21 profiles from evidence... And then if known standards are
22 compared, I compare the profile that is developed from
23 the evidence to the profile that is developed from the
24 standard.

25 **Q** And do you have -- can you tell us about some

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1 of your educational background?

2 **A** I earned a Bachelor's of Science in biology
3 from the University of North Carolina at Chapel Hill.
4 I've also taken classes at NC State and USC. My course
5 work includes molecular biology, genetics, biochemistry,
6 and statistics. I completed an internship with North
7 Carolina State Bureau of Investigations molecular
8 genetics department, which is the equivalent of the --
9 SLED's DNA department.

10 I originally hired on with SLED as a forensics
11 technician and before being hired as a forensic
12 scientist, or DNA analyst, and I completed a one-year
13 ,training program under another qualified analyst and did
14 case work under his supervision before I was allowed to
15 do case work on my own.

16 MR. FINCH: Your Honor, at this time, the State
17 would offer Ms. Clayton as an expert in DNA analysis, I
18 believe, without objection.

19 MR. BUTLER: No objection.

20 THE COURT: She will be permitted to render
21 opinions in that area. You may proceed.

22 MR. FINCH: Thank you, your Honor.

23 **Q** (By Mr. Finch) Ms. Clayton, I'm going to get
24 right to it. Your work with the DNA evidence and
25 analysis from a case that happened at

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1 Road, and your SLED lab number, I believe it's
2 L10-11853?

3 A That's correct.

4 Q And what was the work that you did with that --
5 with the items that you received?

6 A Okay. I received a standard from Akeem Smith.
7 I then compared that to evidence that had been
8 previously analyzed by another analyst and issued a
9 report.

10 Q And when you do that, when another analyst has
11 done the work, what's the process that you go through
12 to -- before you make a comparative analysis?

13 A Okay. Whenever an analyst completes a case and
14 writes a report, it's technically reviewed by an
15 analyst, and then it's administratively reviewed before
16 the report goes out. Then, if additional evidence comes
17 and the original analyst can't work the additional
18 evidence, in this case, because the analyst had left the
19 agency, the case is assigned to another analyst. That
20 analyst will look at all the paperwork and make sure
21 everything is in order, make sure there's no indication
22 of any contamination of the results that were obtained,
23 and verify that they agree with the results. Once they
24 have made that determination, they'll then adopt those
25 results for comparison to any additional evidence, if

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1 necessary.

2 Q What were the items that you compared in this
3 case? Items number -- I believe they were one, four,
4 and six?

5 A Yes. SLED Item 6 was the buccal swabs from
6 Akeem Smith, SLED Item 1 was a swab from a fertilizer
7 spreader outside, and Item 4 was a swab from glass on
8 the ground.

9 Q And was -- for the -- for Items 1 and 4, had a
10 DNA profile previously been developed from that?

11 A That's correct.

12 Q And what -- tell us just quickly about DNA.
13 With DNA, do -- how does DNA work, and how does it work
14 as an identifier for people?

15 A Okay. DNA is basically a long-chain chemical.
16 It's found in every cell in the body with the exception
17 of red blood cells. We inherit half of our DNA from our
18 mother and half of our DNA from our father. And we are
19 able to develop what's called a DNA profile from this.
20 And with the exception of identical siblings, no two
21 individuals have the same DNA profile. This is what
22 makes it useful in forensics, because a DNA profile can
23 be developed from evidence and then compared to a known
24 standard from an individual to determine if the sample
25 matches or not. A known standard is a sample that's

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1 known to have come from an individual. Typically,
2 that's either buccal swabs, which are swabs from the
3 inside of the cheeks, to collect the loose skin cells,
4 or a tube of blood. And the buccal swabs were submitted
5 for comparison.

6 Q And when you compared the profile from the
7 items taken from the scene, Items Number 1 and Number 4,
8 to your Item Number 6, which was the buccal swab from
9 Akeem Smith, what were the results?

10 A The DNA profile developed from Items 1 and 4 --
11 SLED Items 1 and 4 matches the DNA profile of
12 Akeem Smith. The probability of randomly selecting an
13 unrelated individual, having a DNA profile matching
14 these items is approximately 1 in 63 quadrillion.

15 Whenever there's a match, we determine how
16 probable it is to select an individual at random from
17 the population that would just happen to have that
18 profile. What that means is, that if you went out
19 anywhere in the world and just picked one person at
20 random and developed his profile, the probability that
21 his DNA profile would just happen to be the same as the
22 evidence is approximately 1 in 600 -- excuse me --
23 approximately 1 in 63 quadrillion.

24 Q And that's more than the population of the
25 earth?

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1 A 63 quadrillion is, correct.

2 Q And so, in your opinion, to a reasonable degree
3 of scientific certainty, would you -- you would call the
4 DNA profile from the items taken at the scene to the
5 buccal swab of Akeem Smith a match?

6 A Yes, it is a match.

7 (Mr. Finch speaks with Ms. Elliott off the
8 record.)

9 MR. FINCH: Thank you. I have no further
10 questions at this time.

11 THE COURT: Cross-examine.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q You were given two samples to analyze. Two
15 separate samples of unknown samples from the crime
16 scene?

17 A Are you referring to the two -- to the two
18 swabs that Katie analyzed, and I adopted the results,
19 Item 4 and Item 1?

20 Q Yes.

21 A Correct.

22 Q And those matched Akeem Omar Smith?

23 A The DNA profile developed from those items
24 matched Akeem Smith, correct.

25 Q And you did not analyze any results that came

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1 back to anybody other than Akeem Omar Smith?

2 A No.

3 Q If you were here, that wouldn't seem as silly a
4 question.

5 Every sample that you looked at was Akeem Omar
6 Smith, and there were no samples that were anybody
7 else's?

8 A Right. There were two samples that were used
9 for comparison, and the profile in both samples matched
10 Akeem Smith.

11 Q And they weren't mixtures?

12 A No, sir.

13 Q And there's nobody else's blood that you
14 -- that you analyzed, from the scene?

15 A From the scene, no. Those were the only two
16 samples.

17 MR. BUTLER: That's all I have. Thank you.

18 THE COURT: Redirect.

19 MR. FINCH: Nothing, your Honor.

20 THE COURT: Thank you. You may come down.

21 You wish this witness to be excused?

22 MR. FINCH: Yes, sir.

23 THE COURT: Any objection?

24 MR. BUTLER: No, sir.

25 THE COURT: You're also free to leave,

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1 Ms. Clayton. Thank you.

2 THE WITNESS: Thank you, sir.

3 (The witness is excused.)

4 THE COURT: All right. You may call your next
5 witness.

6 MR. FINCH: Your Honor, the State rests.

7 THE COURT: All right. Ladies and gentlemen,
8 at this point, there are some matters of law that we
9 need to discuss out of your presence. And I'll take a
10 little while to do that, so I'm going to let you go to
11 your jury room. What will happen, the Clerk is going to
12 come in during this break and give you menus to order
13 lunch. So we'll have lunch for you when we've completed
14 that -- the -- we'll have it at the lunchtime so we can
15 take a break at that time when it arrives, if we -- if
16 we have not completed the case. Don't -- don't know
17 whether that will be the case. Anyhow, we will bring
18 lunch to you today instead of you having to go out in
19 the messy area and deal with that. She will be taking
20 your orders, and then we'll bring you back in as quickly
21 as we can.

22 Thank you very much. Do not begin your
23 deliberations. Of course, do not discuss the case
24 amongst yourselves. Thank you.

25 (The jury is escorted from the courtroom)

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1 at 11:02 a.m.)

2 THE COURT: All right. Anything from the State
3 at this point?

4 MR. FINCH: No, your Honor.

5 THE COURT: Mr. Butler?

6 MR. BUTLER: Judge, pursuant to Rule 19, I have
7 to make a motion for a directed verdict at this stage.
8 And I won't make a specific argument because I believe
9 that rule covers everything. Except to say, to point
10 out, on the attempted murder, no one has testified that
11 the Defendant shot a gun at all. And for all we know,
12 from the testimony, the only person that we know shot a
13 gun is Mrs. Ancrum. For all we know, she shot her
14 husband by accident.

15 So in light of the fact that no one's testified
16 that the Defendant shot a weapon, I have to move --
17 that's my specific argument as to the attempted murder.

18 THE COURT: Okay. Respond.

19 MR. FINCH: Thank you, your Honor. There's
20 been testimony -- taking the evidence in the light most
21 favorable to the State, there has been testimony from
22 Mrs. Ancrum about the position of the Defendant, later
23 identified -- the individual later identified as the
24 Defendant being in the area of the house where the shots
25 came from. Additionally, there's forensic evidence that

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1 shell casings were found in that area. The testimony
2 from Mrs. Ancrum was that the other individual, the
3 unmasked individual, the one that has never been
4 identified by anyone as the Defendant, was with her at
5 that time when her husband came in, and she was -- he
6 was holding her as a human shield, prior to then making
7 an escape in the direction where the shots had been
8 fired previously.

9 Now, we've heard a lot about different guns and
10 the Ancrums' confession -- owned up to those three guns.
11 The fourth gun -- at least a fourth gun, maybe a fifth,
12 shooting those .45 rounds, all came from the area where
13 the Defendant was alleged to have been standing. So
14 there's at least circumstantial evidence and some direct
15 evidence that puts this Defendant in that position where
16 the forensics show that shots came from through the
17 wall.

18 Additionally, the State would argue that under
19 accomplice liability, his DNA places him at the scene,
20 in the house at the time, and participating in that
21 crime as well.

22 THE COURT: Do you wish to respond?

23 MR. BUTLER: No, sir, I don't.

24 THE COURT: I have -- there -- in the light
25 most favorable to the State, there probably is even some

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1 direct evidence that would say there was shots that
2 could have been attributed to the area in which he was.
3 But there's no question that they found cartridges from
4 within the house, spent cartridges that clearly indicate
5 that were fired by something other than the .380 and
6 the .357. So -- and clearly there's evidence that
7 he -- that there were individuals in the house. She
8 testified to direct knowledge of one of the participants
9 -- clearly, the hand of one is the hand of all applies
10 to him in this situation is, I think, would carry the
11 day as well -- or help to carry the day, if it's
12 necessary to get there.

13 But I think in the light most favorable to the
14 State, I must respectfully deny your motion as to each
15 of the charges.

16 Anything else from the Defendant at this time
17 by way of motion?

18 MR. BUTLER: No, sir.

19 THE COURT: Have you discussed with Mr. Smith
20 his right to testify and not to testify?

21 MR. BUTLER: We have. If I could confer with
22 him just briefly to make sure we're all on the same
23 page, and then I would like --

24 THE COURT: That's fine. Take as long as you
25 need.

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1 (The Defendant speaks with his attorneys off
2 the record.)

3 MR. BUTLER: Judge, I think we're ready for you
4 to --

5 THE COURT: Very well. Has he made a decision?

6 MR. BUTLER: Yes, sir, he has.

7 THE COURT: And what is that decision?

8 MR. BUTLER: His decision is that he will not
9 testify.

10 THE COURT: Mr. Smith, good morning, sir,
11 again. You may -- you can stand, or you can remain
12 seated if you wish. Whatever is most pleasant for you.

13 You've had an opportunity to talk with your
14 lawyer of your right to testify or not to testify; is
15 that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And they've answered any concerns
18 or questions you have concerning that issue; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You've also talked about various
22 strategies of testifying and not to testify. At this
23 point, I don't believe the Defendant has offered any
24 evidence at this point in the proceedings. There has
25 been some evidence marked for identification, but they

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1 have not been offered. And your lawyer has talked about
2 that strategy as well, which gives you the right to
3 close and have the final say of the jury. You
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: But having said all of that, and
7 you've already heard me tell them that they do not need
8 to look to you to prove or disprove anything at all,
9 that you don't have any burden to prove or present any
10 evidence, and you don't have the responsibility or a
11 duty to say anything. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: But it's still your right to
14 testify if you want to. You understand that?

15 THE DEFENDANT: (Moves head up and down.)

16 THE COURT: You need to answer that. It didn't
17 offend me that you're shaking your head, but the court
18 reporter needs a verbal response.

19 THE DEFENDANT: Yes, sir. Yes, sir.

20 THE COURT: Thank you. And you've had time to
21 think about this?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: About what you want to do or not to
24 do in this case?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Okay. And it's your decision,
2 after fully considering what your lawyers have said,
3 evaluating, accessing everything, it's your desire not
4 to take the stand; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And, of course, your lawyers have
7 told you if you took the stand, you'd be subject to
8 cross-examination. You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you under the influence of any
11 alcohol or any medication here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: And you look at me like, what in
14 the world? Don't you know I'm incarcerated? I do know
15 that. But I will tell you, somebody asked me, Are you
16 serious about answering that? And you don't need to
17 hear the whole lengthy story. But I happened to be in
18 Columbia -- and Columbia's a great place to learn. My
19 second year I was there, and I remember doing a Jackson
20 v. Denno hearing. You know what those are, don't you?

21 THE DEFENDANT: Jackson --

22 THE COURT: It's a statement of a defendant to
23 find out if it was freely and voluntarily made. And the
24 lawyer asked the defendant, Were you under the influence
25 of marijuana? And he said, Yes, I was. And did that

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1 affect your ability to think or reason? He said, No.
2 No more so than last night. And he said, What do you
3 mean last night? He said, Well, I smoked some last
4 night. And he was incarcerated. So it dawned on me,
5 you can't assume that that -- and I'm not saying that's
6 available in Sheriff Cannon's facility. I'm just
7 saying -- I ask that legitimately. But you haven't had
8 anything, have you?

9 THE DEFENDANT: No, I haven't.

10 THE COURT: You haven't had any drugs, legal or
11 otherwise?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you been treated for any
14 emotional problems, any mental illness?

15 THE DEFENDANT: No, sir.

16 THE COURT: And you feel comfortable with your
17 decision here this morning not to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Totally satisfied with your lawyer?

20 THE DEFENDANT: Yeah, I'm satisfied.

21 THE COURT: Your lawyers?

22 I find that Mr. Smith has had the benefit of
23 very competent counsel, and he's indicated he's totally
24 satisfied with the representation. I find that
25 Mr. Smith has demonstrated by his responses that he has

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1 had sufficient time to reflect and decide about his
2 -- about testifying and not testifying, and that he
3 freely, voluntarily, knowingly, and intelligently makes
4 the decision not to testify. And I will honor that
5 request and instruct the jury, of course, as your lawyer
6 has explained to you, Mr. Smith, I will again in my
7 instruction indicate that they cannot consider that
8 whatsoever. And I assume you want me to instruct that
9 to the jury as well?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Smith, if between now and when
12 I bring the jury back, I'm going to turn, and I'm going
13 to ask Mr. Butler, as I've -- because that's one of the
14 reasons I state it the way I do in my opening statement,
15 that I'm going to reiterate that you don't have any
16 burden to prove, but if you want to present evident --
17 present additional testimony for the jury's
18 consideration, this would be your opportunity. And I'm
19 going to ask Mr. Butler whether Mr. Smith wishes to
20 present any additional testimony for the jury's
21 consideration, and he's going to say, no, the Defense
22 rests, or something similar.

23 Until he does that, if you change your mind,
24 just let him know. I'll send the jury out, and we'll
25 resume this conversation. But if I don't hear from you

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1 anymore, I'll assume you stand by your decision. Is
2 that fair?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you, sir. You may be seated.
5 Thank you very much.

6 All right. Are we ready -- now, after that,
7 then we'll, of course, take some breaks, and we'll move
8 right into the closing arguments at that point.

9 Request a charge. I'm going to charge the
10 crime -- we can -- let's get this jury out and back
11 again before we do that.

12 Bring in our jury.

13 (The jury is escorted into the courtroom
14 at 11:17 a.m.)

15 THE COURT: Thank you. Thank you, ladies and
16 gentlemen. As I've mentioned to you when we -- the
17 opening, I said that, obviously, the Defendant,
18 Mr. Smith, throughout this entire process has no burden
19 to prove or disprove anything. But if the Defendant
20 did want to present any additional testimony, it would
21 -- couldn't be done until you've heard all the witnesses
22 that the State wanted to present. So now we move into
23 that second portion.

24 And, Mr. Butler, does Mr. Smith wish to present
25 any additional witnesses for the jury's consideration?

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1 MR. BUTLER: No, sir, the Defense does not.

2 THE COURT: Very well.

3 Ladies and gentlemen, that would conclude the
4 evidentiary portion of this proceeding. There still
5 remains, however, two very important parts of this
6 process. One, being the closing arguments of the
7 attorneys, and, of course, the last, being the charge of
8 the law. I know you're anxious to get started with your
9 deliberations. I told you, you are going to deliberate
10 and consider only the evidence, and that still stands.
11 And you may say, well, we're not going to hear any more
12 evidence, because you already told us your remarks and
13 the lawyers' remarks are not evidence, why can't we go
14 ahead and do that?

15 First of all, because of the oath you took,
16 that you're not going to start until you get permission
17 from the Court to do it; and, secondly, because the
18 process -- these two closing parts are very important.
19 While you don't hear any evidence, it's extremely
20 important. I think you will agree, when you do begin
21 your deliberations, they will be helpful to you in
22 analyzing the evidence and, of course, applying the law.

23 So I'm going to need to excuse you now. We'll
24 take a break, and when we come back, we'll start
25 with the closing arguments. But do not begin your

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1 deliberations at all at this time. Thank you very
2 much.

3 (The jury is escorted from the courtroom
4 at 11:20 a.m.)

5 THE COURT: All right. Anything from the State
6 or any matters of law from the State at this point?

7 MR. FINCH: No, your Honor.

8 THE COURT: Anything further from the
9 Defendant?

10 MR. BUTLER: No, sir.

11 THE COURT: Okay. The charge -- I'm going to
12 charge, of course, the crimes alleged, attempted murder,
13 burglary first. Nighttime, I think, was the only
14 element that we're dealing with as being burg first by
15 circumstance. Was there anything else?

16 MR. FINCH: Judge, the weapons -- she --

17 THE COURT: Was that alleged in the -- I didn't
18 read --

19 MR. FINCH: It wasn't alleged in the
20 Indictment, no.

21 THE COURT: It was not. So I don't think you
22 can raise that. May have been, but that was not -- they
23 are not on notice of that. So nighttime is all I'm
24 going to charged. Armed robbery, of course.
25 Kidnapping, and -- and I think that's it.

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1 MR. FINCH: The armed robbery --

2 THE COURT REPORTER: I'm sorry? I didn't hear
3 you.

4 MR. FINCH: I'm sorry. I was just --

5 THE COURT: He was just -- he was just --

6 And you're exactly right. I wanted to say --
7 and one of the things you try to tell witnesses when
8 you're preparing -- and we all do it. I just did it.
9 Mr. Colson, don't worry about that. You did a fine job.
10 But sometimes -- one of the things -- and you didn't do
11 this, but sometimes lawyers especially are bad about
12 this. They're thinking out loud, which I do, and
13 they're thinking rapidly out loud. And I wonder for
14 whose benefit they're saying this. Sometimes you think,
15 who did you want to know that? That is a perfect
16 example, because that was not for anybody's benefit but
17 Timmy's. That's all it was.

18 MR. FINCH: Mental checklist.

19 THE COURT: I understand that. I do it all the
20 time. But I think that's -- those are it. I'll charge
21 the hand of one is the hand of all. That part of it
22 which deals with the accomplice of liability.

23 Identification, that's one of the aspects of
24 my charge that I've included, since -- since we have
25 the -- the photo lineup, and the statement I couldn't

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1 identify. Anything else from the State?

2 MR. FINCH: Expert witnesses.

3 THE COURT: You know what? I do that when
4 there's dueling witnesses, when you have dueling
5 experts, that says I -- it's the same thing. I mean,
6 really and truly, you can believe all of the witness.
7 And that's exactly what the expert witness -- I don't
8 think there's a whole lot of reason to call it -- I know
9 when I was practicing law, it went to this big deal
10 about, I'm going to make him an expert. He's -- I
11 declare he's an expert. I don't do that. No need to do
12 all that. That's -- excuse me, but I think that's a
13 dog-and-pony show. Only thing that's important is
14 the person to render opinions. Because we don't have
15 any -- any other opinion, I don't really see the
16 necessity of getting into why they get to render an
17 opinion. If you want it, I'll put it in there. I just
18 think --

19 MR. FINCH: No, I'm fine with that. I just --

20 THE COURT: I think the general charge covers
21 it, because, ultimately, on an expert, I say, you don't
22 have to believe the expert, even if it's uncontradicted.
23 So that really falls right into the hands -- right into
24 what I talk about: credibility, believability,
25 believing parts of a witness's testimony, none of a

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1 witness's testimony.

2 MR. FINCH: Just following the last line of my
3 mental checklist.

4 THE COURT: No problem.

5 All right. Mr. Butler, anything?

6 MR. BUTLER: Just that -- I'm sure your
7 Honor knows this, but I just want to make sure. Our
8 new -- the attempted murder is a new statute --

9 THE COURT: Yeah.

10 MR. BUTLER: -- and it requires the intent to
11 kill, which is contrary to case law of prior ABWIK, and
12 I just want to make sure that that's going to be
13 charged, as opposed to just a malice.

14 A person who with the intent to kill attempts
15 to kill another person with malice, either express or
16 implied, commits the offense of attempted murder. I
17 read that as requiring the intent to kill. So ask the
18 statute be read just as it is.

19 THE COURT: This is the first time I've had to
20 charge it since. And I've pulled up the bar -- or the
21 bench book, and it appears that this is what -- it
22 really talks about malice aforethought. This is what
23 I'm going to charge: The Defendant is charged with
24 attempted murder. In order to prove this, the State
25 must prove beyond -- prove the Defendant attempted to

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1 kill another person with malice aforethought, either
2 expressed or implied. And then it talks about an
3 intent -- that's the malice part. Does not address the
4 specific intent. Now, I'd have it in my general charge
5 on criminal intent, which says they have to intend the
6 act.

7 MR. BUTLER: But I think it's a specific
8 intent. Why the legislature did it, I don't know. But
9 16-3-29 reads: A person who, with the intent to kill,
10 attempts to kill another person with malice aforethought
11 commits the offense of attempted murder. I read that as
12 now requiring the intent to kill. And so I'd ask that
13 the statute be charged. And --

14 THE COURT: I'll charge the statute.

15 MR. BUTLER: I have some others whenever you're
16 ready.

17 THE COURT: Okay.

18 MR. BUTLER: I'm going to object -- well, let
19 me -- I'm assuming you're going to charge the difference
20 between direct and circumstantial evidence. If you're
21 not, then I'll skip that part.

22 THE COURT: I'm going to charge the difference
23 in the sense that one is all of the -- that you prove --
24 basically, what I say, direct evidence -- and direct is
25 when you prove sensory perception, is what I use. And

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1 then I say, then you can prove facts which you link --
2 point by logical deduction or inductive or deductive
3 reasoning leads you to another conclusion. Either is
4 used.

5 MR. BUTLER: If there's a portion of your
6 charge which says they're both equal value, I'm
7 objecting to that after the line of cases Schrock,
8 Arnold, and Bostick. Bostick is the most recent case
9 where our Supreme Court has said it was error not to
10 grant a directed verdict in a murder case where all the
11 evidence is circumstantial. I'm now saying they're not
12 of equal value.

13 THE COURT: I appreciate that. The reason they
14 did, because it was not substantial circumstantial
15 evidence.

16 MR. BUTLER: Yes, sir.

17 THE COURT: And that's a level for me. But
18 when the jury is weighing it, I've already made the
19 determination. So I appreciate your objection, but I
20 decline.

21 MR. BUTLER: I understand. And as part as
22 that, I would request the old charge, which I will
23 assume that's denied.

24 THE COURT: Which is the --

25 MR. BUTLER: Must exclude all reasonable

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1 hypotheses.

2 THE COURT: Yeah. No, I do. The Court's
3 spoken to that.

4 MR. BUTLER: Yes, sir. And the Defendant's
5 failure to testify, you said you're going to charge
6 that. I hope that you will excise the word "failure."
7 I don't like what that --

8 THE COURT: I don't talk about failure. I
9 say, the fact the Defendant didn't testify can't be
10 considered. I talk about it -- I first talk -- I talk
11 in twofold. I talk about it generally. A person
12 accused is never required to prove, therefore, if a
13 person -- no jury can do it. And, specifically, in this
14 case, the fact that Mr. Smith did not testify can't even
15 be discussed. I don't say failure.

16 MR. BUTLER: Thank you, Judge. Sometimes I've
17 heard that, and I just don't like it.

18 THE COURT: Okay.

19 MR. BUTLER: And I think in light of the
20 testimony that Mr. Ancrum fired the first shots, I think
21 I have to ask for a self-defense charge just to protect
22 myself on the record.

23 THE COURT: I don't -- I appreciate that.
24 There could be some argument. I'm not sure that it did
25 or didn't. I mean, there's some evidence of that, but I

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1 would -- there's some evidence that he fired, but I
2 don't -- that's really unclear, but I don't think
3 there's a sufficient basis for the self-defense.

4 I assume you don't want me to charge
5 self-defense?

6 MR. FINCH: No, your Honor.

7 THE COURT: I tell you what I will not do,
8 though -- I'm not inclined to charge, with the dealing
9 with malice, the use of a gun, inferring that you can
10 infer that, given the circumstances I hear right now --

11 MR. BUTLER: Yes, sir.

12 THE COURT: -- in the case.

13 MR. BUTLER: Thank you. As part of your
14 hand-of-one charge, I would ask that it be included, the
15 natural and probable consequence language. Is that in
16 your --

17 THE COURT: Let me pull it up real quickly, and
18 I'll tell you. I just haven't added that yet, but I
19 will be -- and I don't see -- let me hear what you're
20 asking. It may be covered, otherwise.

21 MR. BUTLER: As part of the hand-in-one charge,
22 that a person is responsible, but only responsible for
23 the natural and probable consequences of the acts of
24 their confederates, or whatever the other word would be.
25 It's used in this example. If -- for example, I could

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1 argue that two people go in to commit one crime, and the
2 person who is not on trial, out of the blue shoots
3 somebody, and that wasn't expected, then the person can
4 argue that was not the natural and probable consequence.

5 THE COURT: I appreciate that. And I don't see
6 that in the hand of one. It is in conspiracy. No
7 question about it. And therein lies -- and I tried a
8 death penalty case in '95 where that was the -- and it
9 mixed the two. I don't think that's in the hand of one.
10 I think you're liable for anything that was done as an
11 intent. Now, I think you have to prove that you're part
12 of a plan. And whether he's part of the plan, that's a
13 different ball game you have to prove.

14 But the natural probable consequences,
15 basically, that's conspiracy and apart from it -- what
16 -- what I wanted to do. As I understand it, you can't
17 be liable if it changes direction and something that you
18 didn't contemplate. But if -- and I'll look at it. If
19 there's a case, I'll look, and I'll insert that if it's
20 a natural and probable consequence.

21 MR. BUTLER: Does your charge talk about the
22 intent needs to be shared? Because that probably covers
23 the same base.

24 THE COURT: I say this: Intent is also a
25 necessary element, for there must have been a common

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1 design or intent to commit a crime, and the crime must
2 have been committed pursuant thereto, with the person
3 aiding and abetting by some overt act. Intent means
4 intending the results which actually occurs, not
5 accidentally or involuntarily. Intent may also be
6 shown by acts of conduct of the defendant and other
7 circumstances from which you may naturally and
8 reasonably infer intent. The State must prove these
9 elements beyond a reasonable doubt.

10 MR. BUTLER: And that's within the context of
11 hand-in-one charge?

12 THE COURT: Uh-huh.

13 MR. BUTLER: I think that suffices.

14 THE COURT: Okay.

15 MR. BUTLER: And just -- I don't want to
16 belabor the point, but I've been told I need to say
17 these magic words at some point. With respect to my
18 request for the Edwards charge, I'm asking permission to
19 argue against precedence. I'm assuming that that is
20 denied.

21 THE COURT: That is denied.

22 MR. BUTLER: I have no idea whether that's
23 true.

24 THE COURT: Protecting the record.

25 MR. BUTLER: Yes, sir. Is part of your

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1 hand-in-one charge include mere presence?

2 THE COURT: Yes. Merely being present does not
3 mean you're guilty. Absolutely. Okay?

4 MR. BUTLER: Thank you, Judge.

5 THE COURT: You bet. All right. Y'all need
6 how long?

7 MR. FINCH: A break, your Honor?

8 THE COURT: (Moves head up and down.)

9 MR. FINCH: Fifteen, twenty minutes.

10 THE COURT: Fifteen? Can you do it in 15?

11 MR. FINCH: Yes, I will. It will be done.

12 THE COURT: All right.

13 MR. BUTLER: You're asking us how long our
14 arguments will be?

15 THE COURT: No. How long you need before we
16 start.

17 MR. BUTLER: Oh, I can start now, as long as
18 you let me go down the hall and come back.

19 THE COURT: I'll let you go down the hall.
20 We're going to take 15 or so.

21 MR. FINCH: Thank you.

22 THE COURT: You bet. We'll be at ease.

23 (The Judge steps off the bench at 11:33 a.m.)

24 (A recess is taken from 11:33 a.m. until

25 11:42 a.m.; at which time, the proceedings continue as

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1 follows:)

2 THE COURT: Reading the statute, as I read it
3 and giving affect to the words there, I think -- I think
4 I have to charge specific intent, because it says, a
5 person who with the intent to kill attempts to kill. I
6 mean what are -- what are they saying if it isn't that
7 you have to have specific intent to kill?

8 Now, the intent doesn't mean they have to
9 express it. I'm going to charge the general language
10 from which they can certainly get to that being
11 established, but I'm -- unlike assault and battery with
12 intent to kill, when we said specific intent to kill is
13 not required, it is required by virtue of the statute.

14 MR. BUTLER: I write it down and get that
15 backwards. Back when it was called intent to kill, you
16 didn't have that.

17 THE COURT: You didn't have it.

18 MR. BUTLER: Now it's not called that, but you
19 have to have it.

20 THE COURT: You have to have it. And I think
21 it needs to be corrected, but, I mean, I don't think
22 -- I think what they intended to do was eliminate the
23 problem with assault and battery with intent to kill,
24 but they put something -- all they needed to say was a
25 person who attempts to kill a person with malice

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1 aforethought. Because murder is a person who kills
2 another one with malice aforethought. We don't have an
3 intent to kill another kills another. They say with
4 intent to kill, attempts to kill. So it's really --
5 they just added some verbiage, and it creates a problem,
6 and I think I have to do it, since it's been requested.
7 Okay?

8 I'm just telling you that so if you want to
9 address it in your closing, you can, or you don't have
10 to.

11 MR. FINCH: I do. And, actually, your Honor,
12 I appreciate that. State was researching that, and it
13 was -- it's our understanding, and would have been our
14 position -- and I understand --

15 THE COURT: No, no. That's fine.

16 MR. FINCH: It would have been our position,
17 however, that the intent of the legislature was to
18 codify the common law, and it seems that they did --
19 like you reported, they've inserted language where --
20 and Mr. Butler highlighted as well -- and kind of
21 obfuscated the issue.

22 THE COURT: I think you're correct. I think
23 that was the intent, but the problem was, that it didn't
24 need to redraft the statute. All they said, if a person
25 attempts to kill a person. I mean, they already --

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1 murder was already defined, I think. Killing of another
2 with malice aforethought. And that's the attempt -- the
3 attempt to kill another with malice aforethought is all
4 they needed to say, but, unfortunately, they -- I don't
5 know what that means, so I'm going to have to give some
6 credence to it, and I'll acknowledge it, and I
7 understand it's over the strenuous objection of the
8 State. I appreciate that.

9 MR. FINCH: Thank you, your Honor.

10 THE COURT: And I mean that sincerely
11 and respectfully too. I don't mean that in any
12 disrespectful way.

13 So they took life off the table and first time
14 I've dealt with one. It's not a potential sentence
15 there, for attempted murder?

16 MR. BUTLER: That's right.

17 THE COURT: It's just the 30 years, but day for
18 day.

19 (Respite.)

20 THE COURT: Let me clear something up. While
21 I'm not including the weapon, about raising an inference
22 of malice, I don't think that negated -- malice may be
23 inferred for conduct showing a total disregard of human
24 life. I think that's the general aspect that could
25 raise the inference of malice. So I would include that

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1 part, just not specifically the use of a weapon.

2 MR. BUTLER: Thank you, your Honor.

3 THE COURT: Okay.

4 (Respite.)

5 MR. FINCH: I was just conferring with
6 co-counsel. The State would request a charge on the
7 lesser included of ABHAN -- statutory ABHAN to be
8 charged in addition.

9 (Attorneys speak off the record.)

10 MR. BUTLER: Beg the Court's indulgence?

11 THE COURT: Is it a lesser included offense?

12 MR. BUTLER: I don't think it is.

13 THE COURT: Because if it is, it would be -- I
14 mean --

15 MR. FINCH: I believe it is statutorily.

16 THE COURT: I don't think so, because they
17 changed the statute. If they -- they changed statute
18 now, we have assault and battery of a high and
19 aggravated nature is the one where you use a weapon.
20 It's a separate crime.

21 MR. BUTLER: I have several bases to object,
22 but I won't ask --

23 THE COURT: ABHAN would be a lesser included
24 offense of assault and battery with intent with the --
25 with the -- excuse me. ABHAN now is --

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1 MR. FINCH: Is the old --

2 THE COURT: -- old ABWIK.

3 MR. FINCH: Correct.

4 THE COURT: Which I think is a separate crime,
5 separate and apart of attempted murder. You know why?
6 Because you don't have to prove the specific intent to
7 kill. There is no lesser included, because they didn't
8 -- this is not even a lesser included of murder, because
9 you don't have to prove specific intent to kill or
10 murder. That's an element of crime. I mean, it's -- I
11 don't know -- what's the other reasons here? Maybe I'm
12 just --

13 MR. BUTLER: I don't think the evidence would
14 support it even if it were. He --

15 THE COURT: Excuse me.

16 (The Judge is speaking with the Law Clerk.)

17 THE COURT: This is 16-3-600: Assault and
18 battery of a high and aggravated nature is a lesser
19 included offense of attempted murder. It's in the
20 statute. So that's the reason.

21 MR. BUTLER: My argument would be the evidence
22 wouldn't support it. He either -- he either shot at
23 them with malice, at the very least, and don't have the
24 intent to kill --

25 THE COURT: Well, I guess, if you prove -- if

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1 you don't prove malice, it would be the same thing as
2 involuntary manslaughter. Assault and battery of a high
3 and aggravated nature would be -- you wouldn't have to
4 prove malice, but you'd do the same things, under the
5 new statute.

6 MR. BUTLER: Well --

7 THE COURT: Okay.

8 MR. BUTLER: -- I'm -- I'm going to -- do you
9 need to hear any further objection from me?

10 THE COURT: No. You can object to --

11 Question: What difference does it make in this
12 scenario? You've given him an LWOP, life without parole
13 notice; right?

14 MR. FINCH: That's correct.

15 THE COURT: So if -- we need to get him in here
16 probably for all this. Let's wait until he comes in,
17 because if he's convicted of armed robbery, convicted of
18 burglary first, that's going to trigger the LWAP, isn't
19 it?

20 MR. FINCH: That's correct.

21 THE COURT: So what difference does it make?

22 MR. FINCH: Would you like me to wait? I'm
23 sorry?

24 THE COURT: Yes.

25 (The Defendant is escorted into the courtroom.)

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1 THE COURT: Mr. Smith, we're discussing a
2 request by the State to include in my charge a lesser
3 included offense of assault and battery of a high and
4 aggravated nature, which -- lesser included of attempted
5 murder. And when discussing that aspect of it, it
6 occurred to me that you were not present. Your lawyer
7 has objected to that being included, for numerous
8 reasons. And the Court has indicated a reluctance to do
9 that, and I was inquiring with respect to this case, did
10 it really make any difference because you've been served
11 with notice of life -- that the State was going to seek
12 life without parole upon a conviction of one of the -- I
13 assume -- I don't know -- has he got a serious or most
14 serious offenses? Is this a two- or three-strike?

15 MR. FINCH: He has a two strike for previous --

16 THE COURT: So he has two strikes already?

17 MR. FINCH: That's correct.

18 THE COURT: So it doesn't matter. One is going
19 to be sufficient. Any one will trigger -- will be --
20 will push him over the limit.

21 MR. FINCH: That's correct. It's the position
22 of the State, however, that you have kind of -- these
23 two stories come from the two witnesses.

24 THE COURT: I'm not arguing about whether or
25 not the facts -- what I'm just asking you as a practical

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1 matter, they object to it. What do you want to create
2 an appeal issue for in this case? It's not worth that.
3 It's not worth it. It's no outcome. Nothing to be
4 gained by that. That's all I'm throwing out.

5 I battle with charging -- I'll give you -- go
6 read the case, Cottrell. It's in the Cottrell -- State
7 versus Cottrell. It's a death penalty case that I was
8 reversed on. You know why? Because I refused to charge
9 voluntary manslaughter where a person pulled out a .44
10 and shot a policeman point-blank in the face and killed
11 him. I didn't think that was manslaughter. And the
12 reason was, they -- he touched him on his shoulder,
13 therefore, restricted his movement, and that would be
14 sufficient provocation to shoot a policeman in the face.
15 I thought that was not rational.

16 The Court reversed me. They had to retry that
17 case because of that, and I almost charged it because I
18 didn't think it was going to matter anyway. And I wish
19 I had. Because you know what? That was the only thing
20 that came back. That's the reason it came back. So
21 think about it, Solicitor. It's not worth it.

22 MR. FINCH: May I have a moment to confer?

23 THE COURT: Yeah. It's called strategy.

24 MR. FINCH: I understand, sir.

25 THE COURT: That's all.

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1 (Respite.)

2 MR. FINCH: Your Honor, it is the position of
3 the State that if you will be charging -- regarding
4 credibility of witnesses, that you can charge, if you
5 believe one witness over another and disregard one
6 witness versus another, that the facts then --

7 THE COURT: But you don't need to argue your
8 right to it. I understand -- hell, I just read where
9 the statute says you have the right to it. I mean,
10 that's fine. I don't have any problem with it.

11 MR. FINCH: Okay. Then the State would request
12 that the ABHAN be charged.

13 THE COURT: The Court respectfully denies the
14 request --

15 MR. FINCH: Thank you.

16 THE COURT: -- because of the objection of
17 Defense counsel.

18 MR. FINCH: Thank you, your Honor.

19 THE COURT: Thank you. You're welcome.

20 Are you ready now?

21 MR. FINCH: Yes, sir.

22 THE COURT: Thank you.

23 Let's bring in our jury, please.

24 (The jury is escorted into the courtroom at
25 12:01 p.m.)

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1 THE COURT: Thank you very much, and thank you,
2 ladies and gentlemen. We're now moving into the
3 next-to-the-last phase of this process in where the
4 attorneys have their opportunity now to discuss the
5 evidence that you've heard, as well as to argue
6 reasonable inferences that you may draw from that
7 evidence. Their remarks will be extremely beneficial to
8 you when you begin the process of analyzing this case,
9 so please give them your attention, but remember their
10 remarks, while extremely important, should never be
11 considered evidence.

12 Following their remarks or their arguments, I
13 will then give you the instruction on the law. Thank
14 you very much for your attention. Give your attention
15 now to the attorneys.

16 Mr. Finch.

17 MR. FINCH: Thank you, your Honor.

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENTS

20 MR. FINCH: Good afternoon. I want to start
21 off by going back to Mr. Butler's opening statement,
22 where he said he lost count of the times that
23 Ms. Elliott said "story." I want to just revisit and
24 put together the entire story for you. And not because
25 it's a fictional story, because it's complete.

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1 You will be able to look at all the evidence
2 when you go back to deliberate. You'll take all this
3 evidence with you. You'll be able to look over it,
4 examine it, deliberate amongst yourselves and put
5 together the story from all the testimony you've heard,
6 physical evidence, the photographs, and do what the
7 Judge charged you with, and asked you to do -- right
8 when you started this -- just yesterday. Mr. Butler was
9 right. It's fast. You can blink, though. It's all
10 right to blink. It wasn't that fast. Some things
11 seemed really slow, putting exhibits in, things like
12 that. But they're all necessary to give you the story,
13 because you have to make the decision.

14 You're charged with interpreting the facts,
15 making decisions on the facts, and applying the law as
16 the Judge gives it to you. And the Judge is going to
17 charge you on the law, which means instruct you on the
18 law, because he's the expert on the law. He's the
19 authority. And I'm going to give you some -- a brief
20 understanding of the charges that Mr. Smith is facing.
21 And if there's any discrepancy between what I say about
22 the law and what you understand from the Judge and you
23 hear from the Judge, defer to the Judge.

24 First, Mr. Smith is charged with kidnapping.
25 And in South Carolina, you might think -- well, in

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1 general, you might think, kidnapping, well, that's kind
2 of when somebody comes up in a van, throws you in a van,
3 takes you away somewhere, with a ransom note. Not
4 statutorily in South Carolina. You're going to hear a
5 lot of words: seize, convey, disable. But, basically,
6 in South Carolina, you can keep somebody in one place
7 and not allow them to leave or move them from one place
8 to another against their will, that's kidnapping.

9 That's the essence. Just think about that for a moment.

10 He's also charged with burglary in the first
11 degree -- that's entering a dwelling place with the
12 intent to commit a crime inside. And in this case --
13 there's a bunch of factors that go into it. But in this
14 case, what's applicable, is it happened in the
15 nighttime, darkness. That means between the sundown and
16 sunup. There's testimony that it was dark outside,
17 4:00, 4:30 in the morning, out in Ravenel. Not even the
18 streetlights can fake any illumination at that time.

19 And he's charged with armed robbery. Pretty
20 simply, taking something away -- taking something that
21 doesn't belong to you while using a deadly weapon,
22 either threatening to use it or indicating that it's
23 there, and it's in your presence, in your control.

24 Finally, he's charged with attempted murder, and
25 that is attempting to kill somebody. If you have intent

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1 to kill me, you intend to kill. And you -- you will
2 hear the Judge instruct you on that.

3 And now we turn to the facts and the testimony
4 that you heard from the victims, the crime scene
5 investigator, the DNA analyst, that helps to complete
6 the story. A lot of times, when you think about putting
7 together a case and what's important and how people,
8 anybody, analyzes a case, sometimes we bemoan the CSI
9 effect, essentially, that maybe people want the
10 forensics in a certain way, or some things in life just
11 isn't perfect to be able to produce what we see on
12 television. There's another judge that charges juries,
13 that real court is nothing like what you see on TV, and
14 it's true. You've had that opportunity just these past
15 seven days to understand what it's like in real court.
16 It moves slower, the actors aren't necessarily as
17 good-looking.

18 But what happens in this case is actually a lot
19 like some of those shows, like your CSIs, where they
20 take the stories and they take the forensic and they put
21 it together and they try to figure out what is going on
22 until they arrive at the truth.

23 I already know that Mr. Butler is probably
24 making a note of that, arriving at the truth, because we
25 had some trouble with the truth from our victims, and

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1 you heard that, you saw that. You heard their
2 explanations for that. And that's where your common
3 sense comes in, your experience as individuals, as
4 people, to evaluate who testified and the evidence that
5 came in. What does that tell you about that? The Judge
6 is going to give you a charge on that. You get to judge
7 the credibility of the witness, the believability. Do
8 you believe that guy? Do you believe that woman?
9 Whoever it is, for whatever reasons. You can do that
10 on many reasons: How they testified before, whether
11 they -- whether they were caught in a lie, how they
12 performed right there in front of you, while facing you
13 and looking you in the eye. That's your job. That's
14 the job to judge the facts.

15 So let's talk about what this evidence tells
16 us. Let's talk about -- let me talk about what
17 everything points to. And at the end of the story --
18 I'm going to start with the end. It all points to the
19 guilt of Akeem Smith. Guilt to kidnapping, guilt to
20 burglary first, guilt to armed robbery, and guilt to
21 attempted murder. But why? Well, if you remember what
22 Octavia Ancrum told you when she took the stand, that
23 night was girls' night. She was out. She was out with
24 her family, spending time at her cousin's house, where
25 her sister stayed. Bunch of girls together, playing

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1 cards and drinking. Not uncommon on a Friday night
2 anywhere else in the Lowcountry. First time out after
3 having the baby, not just over two months later.

4 They're there, and she gets a call. She --
5 Ty's home with the kids, or had been home with the kids,
6 but he got a call to go out to work. So the kids were
7 with his mom, one trailer over. He went to work. She
8 had one job, aside from finally relaxing after two
9 months at home with that baby, pick up some Pampers on
10 the way home. We need some diapers. Such an
11 insignificant thing in the grand scheme of that day, of
12 her life, points to something in this story. It's a
13 little piece. It's those pieces that we see on TV that
14 get linked up to other things that make that show, that
15 one-hour or two-hour special so exciting at the end,
16 because it all comes together, and it all makes sense.

17 So she picked up the diapers. And she knows
18 that whole time where Ty was because she's just going
19 out. Ty's in the club business. They're up later. She
20 goes out. She notices before -- notices before 11:00.
21 She hangs out for four or five hours at her cousin's
22 house. And her sister testified about what time she
23 left. She got a call from Ty. Ty was heading home.
24 The club is up on Dorchester Road. He knew she was out.
25 She has the cell phone. She needed to get home, and

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1 she's calling to let him know, I'm on my way. And it
2 was Ashley Johnson's understanding that Octavia had to
3 get going, had to go. Ty's coming home. So she went
4 home.

5 In that time frame, there's no time to do
6 anything else other than drive from her sister's house
7 to her house. And when she arrived, she listened to a
8 song on the radio. Lots of people do that. Where you
9 finish up listening to that story on MDR or that song
10 that you think you like, you want to hear who it is, sit
11 in your car. Some people just get organized, sit in
12 their car. She was driving Ty's car that night.
13 Another little detail. His car. You'll be able to
14 look at the pictures of it. It's distinct. It's
15 recognizable. That gold Lexus with the really dark
16 tinted windows. Anybody who would have picked out Ty
17 would recognize that as his car. Recognize that as the
18 car, the person they picked out to be their victim.

19 Because Ty, as we learned, has a lot of cash on
20 him on nights when he's doing shows. Somebody knew he
21 was doing a show. You will be seeing from the pictures
22 that you will take back with you how he advertised. He
23 told you how he advertised. It's on the radio. If you
24 know the production company and you know the money man,
25 and you'll see the fliers stuck to his car. Another

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1 little piece.

2 So she gets home and listens to that music.

3 She gets out. She's got the Pampers under her arm. She

4 wasn't going to leave them in the car. She needed them

5 inside where the baby was. She started walking towards

6 her house, and out of the darkness come two men. She

7 didn't see the third man on the street. Ty did.

8 Because two men come at her, one masked, one unmasked.

9 A mask covered the bottom part of his nose and left his

10 eyes. And I can't tell you why she remembered his eyes,

11 necessarily. But you're going to have an opportunity to

12 look at that lineup, and you can look at his eyes. You

13 can make the decisions for yourself, reasonably infer

14 how she came to that. But it wasn't because she had

15 ever seen him before.

16 So there's one man without the mask comes from

17 her left, and the man with the mask, Akeem Omar Smith,

18 comes in front of her. So she does what anybody would

19 do. She lightened her load, dropped the diapers, and

20 ran for the door. But she wasn't fast enough, and they

21 hit her. They hit her on the head. She went to the

22 EMS, went to the E.R. She refused medical treatment,

23 because she had been hit on the head, and there was a

24 lump, but they wanted to do more. That's what she told

25 you. After they knocked her down, she got back up.

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1 They both said, Do what we say. Stay quiet. Do what we
2 say. We want him. Where is he? We want the money.
3 Take us inside.

4 That moment, is your kidnapping. When they
5 restricted her movement, when that man cut off her route
6 of travel, he was a direct participant in whatever
7 everybody else was doing. That unmasked man, the one
8 who was so brazen, he didn't even care if she saw his
9 face. Because you know what happens if you call the
10 police. Now you know who I am. Now the intimidation
11 factor goes up. You saw what it did to Octavia Ancrum.

12 Now they're inside the house. Force her
13 inside. They enter her house with the intent to take
14 items from inside. That's a crime. That's the larceny,
15 inside. And it's dark out. That's your burglary. So
16 there they are inside the house. Both of them take her
17 into the bedroom, continuing the kidnapping. Once
18 inside the bedroom, they want the money. Now she sees
19 they've both got guns. The lights are on. They've both
20 got guns.

21 That man goes into the dining room, kitchen
22 area and stays there and looks around to see what else
23 he can find. The unmasked man gets the cash that's
24 hidden. Then he makes a most indecent request --

25 You saw what that did to Octavia, just thinking

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1 back onto it.

2 -- while that man's standing and rummaging
3 around the kitchen area. That's important that she said
4 the man with the mask is there. But at the time she was
5 more scared of the guy without the mask because that
6 means something. When you're willing to show your face,
7 you're telling somebody, Go ahead, try to indict me. Or
8 go ahead and do it, and see what happens.

9 And then Ty comes home. It's him. It's him.
10 Here's the plan. That was the plan the whole time.
11 It's big money night at the club. Ty's coming home with
12 the cash. Let's get Ty. Let's get the cash. I don't
13 know how they knew he had a lot of cash, necessarily. I
14 don't know specifically, but they knew it. It doesn't
15 take a huge amount of research to figure that out, if
16 you watch and go to those clubs at night and see who
17 leaves with what and what they're driving.

18 So they go after Octavia because they think
19 it's Ty. Whoops, you screwed up the plan. The plan
20 could just as easily have been to get Ty at the car, get
21 the cash, grab it and go. And who cares what happens to
22 Ty? That's their plan. But Octavia came home. They
23 didn't count on her being gone. They probably counted
24 on her being asleep inside with the kids.

25 So Ty comes home. And they -- they were ready

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1 for Ty. They were standing there with guns. They had
2 planned that part of it. That's how they were going to
3 get the money. They had a guy out on the street. Let
4 -- ready to tell them when Ty was coming in. Now, he
5 was out on the street. He's probably out on the street
6 because he thinks he's already signaled to them Ty is
7 here. His car just drove up. Now there's no reason to
8 hide. Ty's not around. I'm good. I'm just going to
9 stand out here and wait for my ride. Come out of
10 hiding.

11 Ty comes up. And he sees that guy in the
12 street. And Ty -- you listened to Ty. You heard about
13 his past. I'm not asking you to put yourself in his
14 shoes. I'm asking you to just understand the man that
15 was talking to you, from his experience, he knew
16 something bad was going down, something real bad. And
17 as he came around that fence and he saw the car that was
18 driven by his wife that night, he knew she might be
19 involved. Then he saw the diapers. That tiny little
20 piece -- you can look at them in the photos -- right
21 where she said she dropped them. There it is. It's
22 bad. And my wife is somewhere with whoever's making
23 this bad.

24 So Ty does what he knew he shouldn't do, but he
25 knew he had to, and there's no way he could live with

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1 himself if he didn't do it. He grabbed the gun, a gun
2 that he had unlawfully in that car. And he made the
3 decision to protect his family. He made the decision to
4 go in, and it was going to be what it was going to be,
5 but he wasn't going to let his wife sit inside his house
6 and get taken advantage of in any way, shape, or form,
7 whether it's money, sex, violence. It's not happening.

8 So Ty does what he has to do. He grabs that
9 gun. He tells his mom, You talk to the police. You get
10 them here. And he goes inside that door, and he calls
11 out to his wife. And he knows his house. It's his
12 house. He knows where she is. It's not big. It's a
13 single-wide trailer. She says, I'm here. Just off that
14 hallway. Not loudly, because they told her to be quiet.
15 You don't say anything. Keep quiet. She had to warn
16 her husband. So she did. And he saw a shadow of a man
17 on that fridge. He knew roughly where he was. He took
18 a guess and shot him. And then that wall erupted back
19 because they were ready for him. Didn't take him any
20 time to pull that out of a holster, pull it out of his
21 pants, out of a jacket; he had that gun, and he was
22 waiting for Ty. He had that gun aimed right at that
23 wall. Because there's only one way in that trailer, and
24 there's only one way out. At least there was only one
25 way out. Akeem Smith found another way.

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1 So he started firing from that .357. He shot
2 four rounds. Shot a couple, backed out. Shot a couple
3 more, backed out. And he got shot. He saw -- he said
4 he saw a hand come around and fire at him. Now, I know
5 Mr. Butler is going to touch on this, we don't know what
6 bullet hit him. You saw that prelude with Mr. Milz,
7 Investigator Milz, about the bullet sizes and damages,
8 things you do to pumpkins. Ty's not made out of
9 pumpkins. He's a man. And he didn't say, I saw the
10 wife's hand come around the corner with her gun. He
11 said, I saw a hand come around the corner, and I was
12 shot. That bullet is still inside Ty. So we don't
13 -- there's no way to tell you where it came from.

14 But then those men did what they had to do.
15 They tried to get out of the front door, make their way
16 back to Davidson Road. But Ty and Octavia know what
17 kind of world they live in. They know that people are
18 going to target people they perceive to have money or
19 people that do have money, because that's what they
20 want, their money. They don't care about anything else
21 about them. So they had that -- that bar up in front of
22 the door. And you heard Octavia tell you, they said, F.
23 Kept going.

24 And then you heard about the broken window.
25 That's how they made their escape. The only other way

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1 out, right out that window. But you know what? You
2 don't just have Ty and Octavia. You have James Milz,
3 crime scene investigator, the tech. He doesn't have a
4 dog in this fight. He's just there to report what he
5 finds. Well, he finds four spent cartridges in a .357
6 that Ty said he took out of his car, and he fired, a
7 couple of shots, couple of shots.

8 Then he finds one spent cartridge in the
9 doorway of the bedroom, where Octavia said she stood,
10 went like this, turned her head and fired. And then --
11 Octavia fired one round and then there was a failure to
12 feed. Stop. What causes that? You heard Milz, limp
13 wrist, limp wrist shooting, turning your head and not
14 probably bracing the weapon. That's an interesting
15 little piece, and it's just another little piece.

16 And then you heard about the nine spent .45
17 shell casings inside the house, an additional two
18 casings in the driveway. What does that tell us? Tells
19 us the forensics of where the guns were when they were
20 fired, or at least the general area. And you heard
21 that Mr. Smith was standing in that area when the wall
22 erupted with gunfire, and that's where the majority of
23 those .45 casings were found.

24 Now, admittedly, it took a long time for Ty and
25 Octavia to admit to which gun was which and when and

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1 why. And you can evaluate that on your own. That goes
2 to their credibility. That's going to go to you
3 understanding the complete version of events. But
4 nobody here is testifying that, oh, yeah, by the way, we
5 also have a .45. That's at least one gun that's
6 unaccounted for. And it's firing nine shots, most in
7 the area of the kitchen, towards the doorway, just like
8 Ty told you. And he said in every version of events
9 that shots came at him through that wall, and then down
10 the hall, out the window. Out the window. So we know
11 somebody traveled that way, went out that window. Now
12 we just have to figure out who. Just another
13 interesting little piece.

14 Drops of blood. A glass cut Akeem Smith, and
15 he bled. He left two drops of blood that were collected
16 at the scene. Mr. Milz looked around for other blood.
17 He looked for blood anywhere else. That was the only
18 blood that was at the scene. And so he compared it. It
19 was compared, and it came back to a DNA profile that
20 could only belong to Mr. Smith.

21 That's getting to the complete puzzle. Now,
22 I'm not going to ask you to just forget that Octavia and
23 Ty didn't tell the truth to the police when they were
24 asked. I'm not going to ask you to forgive them that
25 transgression. But the remedy for that is not to ignore

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1 the physical evidence that corroborates the rest of the
2 story, even with those -- the rest of the physical
3 locations of the perpetrator, even with those lies in
4 there. But when you take the lies out and you get the
5 version that was testified to in front of you that you
6 can evaluate, how true is that? How true was it that
7 Ty, by all respects a tough man, ready to go into a
8 house that he knows has probably got at least one armed
9 individual into it, to let it be what it was going to
10 be? That's a tough man. Broke down in front of you,
11 when he admitted why he had done it.

12 That's for you to evaluate. You take a look at
13 those victims. You take a look at the physical
14 evidence. But the physical evidence points to one -- to
15 something very important. Somebody else was in that
16 house. At least one other person was in that house, at
17 least, and they were shooting, inside to outside, at Ty
18 Ancrum, while he was going inside his own house. And we
19 know who that person is, not because Octavia could pick
20 him out of a line-up, because the DNA tells us that.
21 Irrefutably, he was the one there. It helps that when
22 she covered up that face, those eyes, she remembered
23 those eyes. But that's all for you to consider, all the
24 different layers of this. And what becomes for you a
25 very complete version of events, an accurate version of

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1 events and the true version of events.

2 Akeem Omar Smith and his friends, or his
3 buddies, accomplices, set out to rob Ty. They found
4 Octavia, so they kidnapped her, burglarized her, stole
5 from her, and then tried to kill her husband when he
6 came home, because that was the only way out they knew
7 until they took the desperate measure to jump out that
8 window and then take off running. You'll see the
9 photos. You'll see where the glass goes, the line of
10 travel. We also know they went that way, because there
11 comes Ty out the other way with an AK-47, firing at
12 them, before his leg gave out because he had been shot
13 in the hip. That's all for you to consider. That's all
14 for you to consider and weigh against reasonable doubt.

15 And the Judge described reasonable doubt
16 briefly when we started the trial just yesterday. And I
17 want to just give you some -- some -- a way to think
18 about reasonable doubt. Again, it's that -- it's that
19 doubt that would cause a reasonable person, weighing all
20 this evidence, to hesitate to act. Now, it's different
21 from deliberating. Hesitating is not the same as
22 deliberating. Deliberating is once you take the time to
23 consider it. I remember Mr. Butler said there won't be
24 a mountain of evidence. There will just be two stories
25 here, two people to tell you something, and they don't

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1 -- they can't tell the truth when they're asked. It's
2 your decision to decide if they told you the truth on
3 that stand. But that's not the only two stories we get.
4 That's not the only two people involved.

5 Think about James Milz and Jennifer Clayton.
6 James Milz told you where all those bullet casings were
7 found, how they were found, what the trajectory of the
8 shots were. He told you where the blood was found. He
9 collected it and sent it to Jennifer Clayton, who told
10 you whose blood that was. It wouldn't be reasonable to
11 think that that blood got there any way other than Akeem
12 Omar Smith was inside that house shooting at Ty Ancrum,
13 and that he jumped out that window, cut himself, and
14 left his identity behind.

15 When you put this whole picture together and
16 you weigh all the evidence, I'm firmly convinced that
17 the State has met its burden to prove to you beyond a
18 reasonable doubt that Akeem Omar Smith kidnapped Octavia
19 Ancrum, burglarized her house, stole from her, in what's
20 called armed robbery, and then attempted to kill her
21 husband. I'd ask you to return a verdict of guilty on
22 all of those counts.

23 THE COURT: Thank you. Mr. Butler.

24 CLOSING ARGUMENTS

25 MR. BUTLER: I don't think I'll forget to say

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1 this, but in case I do, I'm going to say it now, even if
2 it loses me style points. There was no second person
3 there. The reason that they didn't want the police to
4 go inside, because they had seen the crime scene, and it
5 wouldn't match what they wanted to be able to say. And
6 the reason they lied about the guns is because if
7 Octavia has a .380 that leaves shell casings, that .380
8 would have been fired, I agree, limp-wristed, looking
9 the other way, right where her husband is shot. And
10 then, oh, no. What kind of mess do we have now? She
11 has to have the .357, which doesn't leave shell casings.

12 Now, I'm glad I don't have to prove that to you
13 beyond a reasonable doubt, because in all honesty, I
14 couldn't. But what I'm going to tell you over the next
15 few minutes, it makes a lot more sense than the story,
16 movie of the week, fabricated, fictionalized story that
17 Mr. Finch just recounted to you. And I'm sorry, if
18 that's a puzzle where all the pieces fit, it's a modern
19 art and masterpiece, with noses over here and eyes over
20 here and a triangle-faced dog and half of a cat. It
21 doesn't make any sense at all because it's not true.

22 When I was a little boy, one of my favorite
23 things to do was to go fishing with my granddad. And I
24 can tell you a lot about that because it's memorable to
25 me. I can see him today with his big worn hands --

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1 seemed big to me then -- putting the Wonder bread bags
2 over my shoes to be galoshes. I can hear with my ears,
3 the sound of the mud as I traipsed through. I can feel
4 the Louisiana heat on my skin. I can feel the tug of
5 that catfish on that old cane pole. And I can see my
6 granddad, taking the fish off, and his hands bleeding
7 into the water. I can see it. Rich red in a green
8 pond. I can see it. I can smell the catfish on the
9 skillet when my grandmother cooks it. I can hear it
10 popping. We all have experiences like that.

11 For some of you, it might be, you go to a
12 museum, and you can tell us about the vibrant colors,
13 and shapes, fantastic works of art that you saw. Maybe
14 it was a concert. Maybe you got to go to the Spoleto
15 Piccolo or Moja and hear music from a far-away country
16 and instruments you've never heard of. You could hear
17 them, and you could see the musicians.

18 Our world of experience is full of shapes and
19 sound and color and tastes and smell. What does that
20 have to do with this? I promise it does. I promise.
21 It's that what we're asking you to do here, it's not to
22 recount something that happened to you, but to go back
23 in time to a place where you were not, at a time two
24 years ago, when you had no way of knowing that this was
25 even going on. And your eyes, your ears, your sense of

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1 touch, your sense of smell all come from this chair and
2 this microphone and this box. And if what comes out of
3 here cannot be relied upon, then you can't go back in
4 time and figure this out. It is all of your senses.
5 All of them combined right here, right now. That's why
6 this is so important.

7 And do you know why we make all of you take an
8 oath? I take an oath; Judge takes an oath. You know
9 why witnesses take an oath? It's supposed to cement to
10 you the importance of what you are doing. It's supposed
11 to raise in your conscience, this is important, and I
12 need to tell the truth. And I'm here to tell you right
13 now something I know you already know: When Octavia
14 Ancrum put her hand on that Bible and raised her hand,
15 that oath meant nothing to her. Because unlike what
16 Mr. Finch just told you, she didn't just lie to the
17 police. She lied the day before you were here, outside
18 of your presence, and she lied to you again when she
19 told you she didn't lie the day before. It was
20 meaningless to her; it was pointless.

21 As attempted as I am to leave it at that, if
22 you can't believe -- and this really is only one person.
23 It's really only Octavia's testimony that's any
24 significance, because she's the only one that's really
25 there for all of it. If you can't believe her beyond a

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1 reasonable doubt, we're done. But lawyers like to talk,
2 and the lawyer in me won't let me just leave it at that.

3 For what you've been told to be the truth, it
4 has to make sense. I agree with Mr. Finch. But it
5 doesn't make sense in so many ways. Let's talk about
6 the difference between the masked man and the unmasked
7 man. Well, the unmasked man, she saw his face. She's
8 with him most of the time. Takes her back to the
9 bedroom. But she never describes him in any kind of
10 detail at all because that's the one that she's most
11 afraid of. Well, she should be afraid of anybody that
12 does that. I understand. But why isn't that the person
13 that you most want to catch; right? And the unmasked
14 man doesn't know whether she's talked to police or not.
15 If he wants to come back, he would probably assume that
16 she talked to police. He doesn't know what she's been
17 told, whoever he is. Well, take it back. He's made-up.
18 He's a ghost. But let's go with it for now. Okay? It
19 doesn't make any sense to say, well, I didn't want to
20 describe him because I was most afraid of him. He'll
21 come back and get me. No. That's why you do describe
22 him. That's why you do tell them everything that you
23 can tell them. He wasn't there or wasn't a person.

24 Versus the masked person. Why was Akeem there
25 so fast? Goes in the other part of the house. By her

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1 count, I didn't think that she was with the person that
2 she says is Akeem, long at all. Sees only his eyes,
3 never can describe him either, and seven months later
4 picks him out of the line-up. After only having seen
5 this and never having described him? That doesn't make
6 sense. It didn't happen. She picked him out because
7 she knew him.

8 By the way, Octavia never testifies that she
9 saw anybody shoot anyone. Just whatever that's worth.
10 What else doesn't make sense? The things that she never
11 told police. Let me tell you something about these
12 statements, because it almost always comes up. I can
13 question the witness about their statements, things they
14 didn't say, but the statements can't come into evidence.
15 I can ask her about that. I hope that -- I get ahead of
16 myself, and I want to go too fast. I went too fast, you
17 missed something, you can always ask to repeat it, but
18 you don't get to see the statements. It's just the
19 rules. But I asked her about that statement. She never
20 tells the police, to use Mr. Finch's word, about this
21 most indecent request. Yeah, it is most indecent. Take
22 off your clothes, put this pillow case over your head.
23 She doesn't tell the police that. Doesn't? I was
24 almost violated as an attempted sexual assault. Doesn't
25 tell the police that? You know why? Because it didn't

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1 happen. It's made-up.
2 What else did she say that wasn't in her
3 statement to police when she finally gets around to
4 talking to them? The money was taken -- oh, I'm sorry.
5 She doesn't tell that. The money [sic] tells you.
6 Money was taken from the drawer. A bunch of money taken
7 from the drawers. She didn't tell the police that. She
8 says he took her pocketbook. Well, let's see. Why
9 would she need to add that? Because the pocketbook is
10 still in the house. What explanation is there for that?
11 These two hard-core thugs go to the trouble, commit this
12 home invasion, armed like the wild, wild west, get the
13 purse with the money and the credit cards. Nah, ditch
14 this. We don't need it now. It doesn't make sense
15 because it didn't happen. But now she's got to come up
16 with something else that was stolen to make it an armed
17 robbery. Otherwise, why would you tell the police, oh,
18 yeah, we had a lot of money that was taken from these
19 drawers?

20 Mr. Ancrum's behavior doesn't make any sense
21 either. Well, on the version that you're asked to
22 believe. He enters the residence and just starts
23 shooting indiscriminately. Shoot first, ask questions
24 later, not having any real definite idea where his wife
25 is, but definitely not knowing who it is he's shooting

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1 at. Why would he do that? Oh, I believe that he was
2 angry. I believe he felt violated. But when she's on
3 the ground outside, what does he do? Scoops her up and
4 takes her away to his mother's house, put her in a car,
5 drives her off to get her out of there? No. What does
6 he do? He leaves her outside on the ground and goes
7 gets his AK-47 assault rifle and goes after whomever he
8 thinks it is -- by the way, he never says he saw two
9 people -- and starts shooting again indiscriminately, at
10 shadows in the night as they run away. Once they're
11 running away, aren't you trying to be safe? You're
12 going to collect your wife, you're going to get to the
13 hospital.

14 He wanted those guys for some reason for sure,
15 but it's not the reason that he told you. And he's
16 worried. All this going on. Would have been chaos. My
17 wife is hysterical. I've been shot. Who are these
18 people that invaded the privacy of my home? Get me to
19 the hospital right away. Let me call 911. Oh, one
20 moment. I need to lock the door. He locked the door
21 because he didn't want anybody going in there. Didn't
22 want anybody going in there.

23 Why did they not want anybody going back
24 inside, to assess the crime scene? Why didn't they want
25 to cooperate? You know what -- I don't want to be too

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1 dramatic, but, you know, some of this testimony, even by
2 Detective Colson, is a little bit bothersome to me. I
3 want to say offensive, but I won't go that far. I mean,
4 that's why we write things down. Is he going to try to
5 minimize -- attempt to minimize the lack of cooperation?
6 And I put it in front of his face. Yeah, I got her on
7 the phone, and she didn't -- they did not want to talk
8 to me. Wouldn't give me a statement and wouldn't meet
9 with me. How black and white is that? Told you that,
10 no, she gave me a statement. Well, no, she didn't. You
11 wrote it down this way. Right?

12 The deputies got the keys from them, because
13 they were trying to get away -- his words, not mine --
14 get away from the scene without giving us the keys.
15 That's not cooperating. That's lying. You can't get in
16 the house because I -- they took the keys. Well, what
17 about these keys here? Remember? I asked her that; she
18 denied it. Colson wasn't prepared to admit it until I
19 showed it to him in his own hand.

20 Okay. I can understand you might not want to
21 go into a lot of detailed description if you're worried
22 about getting your husband to the hospital. But once
23 you have to wait, it seems to me, if you give any
24 description at all, you give it then. It wasn't like
25 she didn't talk. It wasn't like she didn't tell them

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1 anything, but she just said, three black males, dark
2 clothes, that's it. You know why? Because she didn't
3 want to give details. She didn't want to give
4 information. Because they hadn't gotten together and
5 figured out what they were going to say yet. That's why
6 they don't want to cooperate. That's why they skipped
7 town. They don't -- haven't figured out how they're
8 going to explain the ballistics inside and how it comes
9 to be that, yeah, right where Ty is shot, there's a .380
10 shell, and that's her gun.

11 And you know, if there's any doubt about how
12 cooperative they were at the scene, why didn't they
13 bring you the responding officer? I'm glad that I got
14 Detective Colson to testify. They could have called
15 those people and didn't. Why didn't they want you to
16 hear what those people said as to how noncooperative
17 they were? And it's not just the emergency of the
18 situation, because the next day, Mr. Ancrum is released
19 from the hospital, and he still won't talk. They hadn't
20 figured out what to say yet.

21 You know what else the truth is? The truth
22 never can be physically impossible, is never true.
23 Here's what they had you believe. Mr. Ancrum is hit in
24 the hip with a .45 caliber bullet, by their own witness'
25 testimony, the most powerful handgun that exists. If

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1 you want a .50, I guess you're going to have to have a
2 bazooka; okay? After that -- I mean, he's not hit in
3 his arm or his shoulder. In the very muscles and limbs
4 and ligaments and bones he would be using to run back
5 in the house to get the AK-47, somehow not bleeding.
6 All right. Out of the house, with the AK-47, somehow
7 not bleeding. Down the stairs, with the AK-47, somehow
8 not leaving a drop of blood anywhere. Shooting in a
9 general direction of people that he couldn't see.
10 Wouldn't it seem like his hip should have been
11 shattered? It would blow a hole in a pumpkin the size
12 of a softball. And then takes the AK-47 to his mother's
13 house and ditches it, not leaving a drop of blood
14 anywhere. Maybe it was not a .45 that hit him. But
15 whoops, a .380, a smaller caliber weapon.

16 The truth can't rely upon ghosts. The second
17 person's a ghost. She doesn't describe him, even though
18 she would have been able to have done so because he
19 doesn't have a mask and he's with her, attempting to
20 sexually assault her. She doesn't describe him because
21 he wasn't there. Didn't happen.

22 Why doesn't Tyrone see two people? Because
23 there was none. Why is there only Akeem's blood if they
24 both jump out the window? Because there was no other
25 person. And why is there only evidence of two guns

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1 being fired inside, the .45 and the .380? We know who
2 fired the .380. There's only one gun, only one person.
3 There is no second person.

4 And why would you have to add a person, a
5 second or a third? If it was just one person doing
6 these horrible things, you say that. You add a second
7 and a third person to make it more believable. And if
8 it's not obvious, the truth can never be built upon
9 lies. Not only lies, but excuses for lies. Are there
10 excusable lies? I don't know. But these aren't they if
11 there are. And lies about lies. When somebody lies
12 about the fact that they're lying, I don't know how you
13 ever sort out the truth. The liar's paradox. I'm a
14 liar, I promise.

15 And once somebody is lying and they continue to
16 lie, the oath means nothing. Admitting to your lies is
17 meaningless, because here's why. The fact that somebody
18 admits to a lie doesn't matter. It's what made them
19 tell the truth. Okay? They didn't come forward and
20 say, Hey, look, I've got to get this off my chest.. My
21 conscience is bothering me. I don't want to mess this
22 up. Let me tell you what really happened. No. No.
23 No. It's after being confronted, either by the
24 Solicitor's Office or by me. Only then when they know
25 that they have no choice but -- but tell the truth about

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1 the weapons, not the whole thing. It's when someone
2 tells the truth that you know what they're really made
3 of and whether you can believe them.

4 I mean, because, look, if they only tell the
5 truth when they're caught in a lie, what about all the
6 other things that you say that you're not able to catch
7 them in a lie. Right? Somebody who tells the truth
8 only when caught in a lie, you can never trust them.
9 And even Octavia wasn't going to tell the truth about
10 the testimony the day before. But you know what? She
11 didn't know I had a transcript. Did you see that? My
12 first question to her was: Yesterday, you took the same
13 witness stand, you put your hand on the same Bible,
14 raised your hand to tell the truth, and you told us that
15 the gun was brought in by the perpetrator, and it wasn't
16 your gun. I didn't say that.

17 She didn't know. She didn't know I had the
18 transcript. Normally, I would not have. Thought I
19 might need it, so I got it. And only then did she say,
20 Well, yeah, I said that, but I was confused. Well, you
21 heard it. I went through it. If you need to hear it
22 again, you can ask the court reporter to play it back.
23 I can't put the transcript in. But you heard it. That
24 was not ambiguous. It was not unclear what I was
25 saying. She was squirming because she was caught in a

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1 lie. And I don't have to tell you that.

2 Her reasons don't make sense. I couldn't tell
3 the truth about the guns because he's not supposed to
4 have a gun. All right, but he already told the police
5 that. Well, she didn't know that. Well, except for in
6 nine days, the person to whom you are married, who is
7 also a witness/victim to this thing, and you're with him
8 all the time, and you never tell them -- he never told
9 her what he told the police? Doesn't make sense. And
10 guess what else? You know it's not true. You know why?
11 Because Tyrone told you he told her what to say. On
12 Direct, he said, No, I told her what to say about the
13 guns. She still can't tell the truth. You know why?
14 Because she's trying to figure out what to say. It's
15 like your momma used to tell you. If you tell the
16 truth, you don't need to get your story straight,
17 period.

18 How many times can a person get caught in a lie
19 and the State of South Carolina still asks you to
20 believe them? I don't know, but not this many times. A
21 person cheats you in a business deal, scams you. Hey,
22 man, You know what? I'm sorry. You know, I didn't
23 really mean to do that. I did lie. You're right. You
24 caught me. I lied. Sorry I didn't tell you ahead of
25 time. Sorry that I'm only telling you the truth once

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1 you've lost all your money and you caught me. But, Hey,
2 I won't ever do it again, I promise. You want to do
3 another one? No. That's a rhetorical question. I hope
4 you get it. No.

5 A friend comes to you and says, I just don't
6 know what to do about this relationship I'm in. My
7 boyfriend is constantly unfaithful to me. No. No. He
8 doesn't come clean. He doesn't come to me in shame
9 because his conscience gets to him and says I've done
10 this horrible thing to you. He only admits it when he's
11 caught, but he promises me, he promises me that he will
12 never do it again. What do you tell your friend? What
13 do you tell them?

14 What really happened? I don't know, and I
15 don't think we will ever know. And that's because the
16 only people who know what happened cannot tell you the
17 truth about what happened, and continue to lie, even
18 under oath, about what happened. And when that happens,
19 there is no recovering the truth, because it's only
20 their word. It is forever lost. And I don't know what
21 happened. Perhaps the answer lies in -- I don't know --
22 what might be going on in a trailer, in a rural part of
23 the county, where your only neighbors are your family,
24 and there's woods around your house, not downtown, not
25 the east side, not North Charleston, only neighbors are

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1 your family, but you still barricade your door.
2 Barricaded, not locked. Barricaded. And where you
3 keep, you know, an AK-47 assault rifle under your
4 mattress. I don't know what's going on in that house,
5 but something's not right.

6 And if they don't know each other, how does
7 he -- how does anybody pick this house to commit a
8 robbery if they don't know each other? It doesn't make
9 any sense because it doesn't happen. What happened? I
10 don't know. Perhaps, Mr. Ancrum came home and was
11 angry, like he said, felt violated because he found
12 another man in the trailer with his wife, shot first,
13 asked questions later. Like the old Blues song, "Open
14 My Front Door, Hear My Back Door Slam." But none of
15 that would explain how it is that he's able to do all
16 these things when his hip should have been blown to
17 smithereens.

18 How about this? Just let me try. He wasn't
19 shot by a .45. It would have injured him much more
20 severely, left blood splattered on the walls, left a
21 blood trail all these places he ran. I believe that he
22 probably ran and got the gun. I don't doubt that. But
23 how come he's not bleeding? Because it wasn't a .45.
24 It was a smaller caliber weapon, a .380, his wife's, a
25 .380, that she shot, not looking, in the exact direction

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1 where he is when he gets shot.

2 Remember, try to -- you've got the photographs.

3 The .380 shell casing is right at the threshold of her
4 bedroom. Where the laundry room is, off the steps,
5 Tyrone's coming in and out, in and out. She shoots. Do
6 I know that? No. But I know that a .45 wasn't what did
7 it. I know he's not bleeding. I know there has to be
8 some explanation, and that makes more sense than what
9 they're trying to feed you. And that's why they had to
10 switch the guns. That's why they don't want to
11 cooperate. Because if she -- she has to have a .357
12 which doesn't leave shell casings. She can't be
13 responsible for the .380. They don't want to talk
14 because they've got to figure that out.

15 But you know what? I don't know. To an
16 extent, I'm speculating. I have to. You know why?
17 Because nobody, nobody could be expected to put this
18 puzzle back together again, with all these broken
19 pieces. And the fact that we find ourselves trying to
20 do just that, speaks volumes. They spit in the milk,
21 and now they want you to drink it. They've taken a
22 square peg, and they're trying to cram it into a round
23 hole, and it's splintering and making a mess, and now
24 they want you to clean it up. No. It doesn't make
25 sense because it didn't happen.

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1 And you might think, well, he could tell us
2 what happened. The Judge is going to tell you, but I
3 want to talk a little bit about it. A defendant in a
4 criminal trial never has to testify. And you can't even
5 mention it. You're not even supposed to think about it,
6 but I know you're humans. I want to talk about it a
7 little bit. Why do we not do that? It's because of
8 this. It's a lot -- asking a lot of you. If a person
9 stumbles over a word or pauses a little too long before
10 they give an answer, it's asking a lot of you not to
11 think, Wow, that just doesn't look right. That person
12 must not be telling the truth. So we don't make people,
13 when their liberty is at stake, go through that.

14 But you know what? In this case, it doesn't
15 matter. Because it's "they said" and "he said," and
16 what they said is a lie. Unvarnished, not a mistake,
17 lie. I use this as an example. Lawyers use examples
18 all the time. I don't want to draw from it, but this
19 one is true. When I was, I think, in graduate school,
20 in Columbia, a friend of mine came in the apartment.
21 And he had like a little box, and it was shaped kind of
22 rectangular, and it was all wrapped up in duct tape, and
23 he's getting the scissors out and a knife out, and he's
24 trying to cut it out. I said, What is that? He says,
25 It's supposed to be a portable CD player. And I

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1 laughed. And I said, Okay. How did you come into that?
2 He said, A homeless guy on the street sold it to me for
3 five dollars. I said, You can stop right now and put it
4 in the trash. He said, Well, how do you know? I
5 haven't opened it yet. I said, Well, because a homeless
6 guy gave it to you for five dollars, on the street, and
7 it's wrapped up in a cardboard box and duct tape. If it
8 were really a CD player, he would have taken it out, and
9 he would have pawned it for a lot more than five bucks.
10 Opened it, sure enough, it was a ceramic tile.
11 I didn't need to know what was in the box. When it's,
12 he said, she said, they said, he said, and what they're
13 saying is not the truth and doesn't make sense, you
14 don't need to know anything. And you know what else?
15 Detective Colson told you that Akeem gave a statement.
16 The State of South Carolina could have presented that, I
17 can't, it's just the rules, and they choose not to.
18 There's another reason why. I won't go last in
19 this part of the process. If I put up even a slip of
20 paper, I don't get to go last. I want you to hear from
21 me last, so I don't want to put up any evidence. I want
22 you to hear from me last. Well, why must you be
23 convinced beyond a reasonable doubt? Can't you just
24 say, Look, this is all fishy. Something must have
25 happened. You know, got to be guilty of something?

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1 Well, you will be violating your oath if you did that.
2 But why is it so important? Those experience -- those
3 experiences that I described early on, the museum,
4 fishing with my granddad, concert -- oh, I have another
5 one I forgot -- Thanksgiving, the smells -- the sights
6 and smells and tastes of Thanksgiving, all of those
7 things, life's rich tapestry and all that it brings,
8 that's what is at stake for anybody who sits there.
9 That is what is at stake for Akeem Smith.

10 So that's why you have to be convinced beyond a
11 reasonable doubt. It's the most important decision
12 you're ever going to make in somebody else's life. And
13 they need to give you a case that allows you to render a
14 verdict, not that you can live with, not that you can
15 tolerate, not that you can stomach, but that you can be
16 proud of. A verdict that you can be proud of. There's
17 no -- this is not the time to compromise. This is not
18 the time to take shortcuts.

19 And I want to tell you something else that's
20 important, because this does happen. You only get one
21 chance to get this right, and it is now. You can't come
22 to me tomorrow -- I promise that happens -- call the
23 Judge or call the Clerk's Office, you know, I was
24 thinking about that some more, I want to change my vote.
25 No. No. No. No recounts. No do-overs. This is it.

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1 And you might have heard about people, who years later,
2 get another trial because something went wrong. Well,
3 guess what? You know, people can look at the decisions
4 that I've made and question them. And they can even
5 look at -- the other Court's here look at the decisions
6 that this Judge has made and scrutinize them. But your
7 verdict, once you cast your verdict, it cannot be
8 questioned. Nobody can go behind it, and it exists
9 forever and a day, in blood and in stone, and it is
10 yours. You own it, and you want to own it and be proud
11 of it.

12 And this is an all-or-nothing day. You either
13 believe her beyond a reasonable doubt -- sound like a
14 lawyer again -- or you don't. If you don't, it's not
15 guilty on everything.

16 Everybody that participates in this process
17 takes an oath. Lawyers, Judges. It's not the same oath
18 you take. But you take an oath to do justice. And
19 justice is about winning. It's not about losing.
20 Because there are no losers when justice is done. But
21 this is your opportunity to give that oath meaning,
22 because some people in here chose not to give it
23 meaning. That oath is sacred, and this is your
24 opportunity to say, We take our oath sacred, even if you
25 do not. And if that oath means anything, your oath,

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1 your verdict is not guilty. Thank you.

2 JURY CHARGE

3 THE COURT: Thank you, ladies and gentlemen.

4 Now, if I could have your attention, it becomes my
5 responsibility as the trial judge to give you the law,
6 which, of course, you have promised to accept, and apply
7 fairly and impartially to the facts that you will
8 determine. And it is your exclusive duty to determine
9 the effect, the value, the weight, and the truth of the
10 evidence that has been presented in this trial. The
11 State and Mr. Smith expect that you will, very shortly,
12 conscientiously evaluate that evidence and decide what
13 you believe to be the true facts. And then once
14 deciding that, take the law, apply it fairly and
15 impartially, and report that decision. And I am
16 confident that you will do that. When you perform that
17 task, both the State and Mr. Smith will obtain a fair
18 and impartial determination in this case.

19 Now, please remember that what I'm saying
20 should never be considered evidence. The evidence, of
21 course, you know, came through the testimony of the
22 witnesses. And nothing in that -- that's the sole
23 source of the evidence, and that's all that you will
24 consider, their testimony and the exhibits that were
25 introduced during that testimony.

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1 During this instruction, you may hear me use,
2 from time to time, the word Defendant. That's a term
3 that we use to designate the party against whom a claim
4 is made. It doesn't matter whether it's a civil dispute
5 or a criminal dispute. That's the term that we use to
6 designate. So it's just another way of referring to
7 Mr. Smith. You're to consider it for no other purpose
8 other than for identifying that -- the person that is
9 the subject of the comment.

10 As I mentioned when we started, Mr. Smith has
11 been accused by these four documents. They are
12 indictments. Each one charging him with a different
13 crime. One burglary first degree, armed robbery,
14 attempted murder, and kidnapping. These documents will
15 not accompany you to your jury room. They are, as I
16 stated, a charging document and not evidence. To those
17 Indictments, Mr. Smith has rendered a plea of not
18 guilty, which places, then, upon the State the burden of
19 proving his guilt beyond a reasonable doubt.

20 As I mentioned, persons who -- just as
21 Mr. Smith, who are accused of committing criminal
22 offenses in this country, are to -- are never required
23 to come in and prove their innocence. They're not
24 required to prove anything at all, because the burden
25 rests upon the party making the accusations to prove

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1 that person's guilt beyond a reasonable doubt. And, in
2 fact, as I stated, persons so accused, Mr. Smith as
3 well, are presumed innocent. And that's an active
4 presumption in you, under that law and by your oath, to
5 actively presume that Mr. Smith is not guilty. And this
6 presumption of innocence is maintained at all times
7 throughout the trial of this case, and is only removed
8 when and if the State brings in enough evidence to
9 persuade you beyond all reasonable doubt that he is
10 guilty.

11 So obviously, ladies and gentlemen, a person
12 so accused has no burden to prove anything at all. A
13 person accused of committing a criminal offense does not
14 have to testify in his or her own behalf. And that
15 -- the decision not to testify cannot be considered by a
16 jury making a determination in that case for any purpose
17 whatsoever, because a person so accused has the
18 constitutional right to remain silent and assert that
19 right, and that can never be considered by a jury. I
20 would instruct you, therefore, that you are to reach no
21 inference, and you're to draw no conclusion whatsoever
22 from the fact that Mr. Smith did not testify in this
23 case. It should not even be discussed in your jury
24 room. The burden rests upon the State to prove his
25 guilt beyond a reasonable doubt, and you must look to

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1 that evidence to find out if the State has met that
2 burden of proof. If you discuss it, consider it, you
3 will have violated your oath in that regard.

4 What does it mean to prove it beyond a
5 reasonable doubt? What is beyond a reasonable doubt? A
6 reasonable doubt is a doubt which makes an honest,
7 sincere, conscientious juror in search of the truth in a
8 case to hesitate. Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the
10 Defendant's guilt. Now, there are very few things in
11 this life and this world that we know with absolute
12 certainty. And in criminal disputes such as this, the
13 law does not require proof that overcomes every possible
14 doubt.

15 If based upon your consideration of the
16 evidence, you're firmly convinced that the Defendant is
17 guilty of one or more of these crimes, then you must
18 return a verdict of guilty. If, on the other hand, you
19 think there is a real possibility that he's not guilty,
20 then you must give him the benefit of that doubt and
21 return a verdict of not guilty.

22 A reasonable doubt, ladies and gentlemen, may
23 arise from the evidence which is in the case or from the
24 lack or absence of evidence in the case. It's up to you
25 to determine whether or not a reasonable doubt exists as

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1 to the guilt of Mr. Smith. I charge you that he is
2 entitled to every reasonable doubt arising in the whole
3 case. What do I mean by that? If upon any issue of
4 fact which would be essential for you to return a
5 conviction or a verdict of guilty as to that particular
6 crime, you should have a reasonable doubt as to how that
7 issue should be resolved. I would instruct you it would
8 be your duty to resolve that reasonable doubt in his
9 favor.

10 The evidence which you are to consider consists
11 of the testimony of the witnesses and exhibits that have
12 been introduced and offered during the trial and nothing
13 else. Please remember that. Please also remember that
14 you are not to consider any matters of law that occurred
15 in your presence. And, generally, as you noted, I
16 excused you when we dealt with matters of law. But
17 there were occasions when you heard one side or the
18 other, through their attorneys, raise objections. And
19 those are matters of law. Generally, they dealt with
20 matters under the Rules of Evidence. And you've heard
21 my rulings. I either sustained the objection, which I
22 -- which means I didn't allow the question or the
23 answer, or I overruled the objection, permitting you to
24 hear the answer. You are not to place any weight or
25 emphasis on my ruling whatsoever. That -- that was my

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1 responsibility. And you're not to consider, when I
2 sustained the objection, why the attorney may have
3 raised the objection. That's not for your consideration
4 either.

5 I would really -- probably the best example
6 that I can think -- that occurs to me as to how we work
7 together really is, I think, demonstrated in one of the
8 rules. If the attorney raises an objection and I
9 overruled the objection, that was my responsibility as
10 the trial judge to make a ruling on the evidentiary
11 matter, whether or not I thought it -- did exclude it or
12 not. But that's as far as it goes. If you place any
13 weight on that and say, Well, since the Judge allowed
14 it, I guess I have to accept it, then you've let me
15 invade your province. On the contrary, once I ruled, it
16 stopped. Now it's shifted to you, and you decide
17 whether you believe it or not, and if so, how strongly
18 you believe it. So that's really an example of how we
19 work together in making these determinations.

20 Please understand that as officers of the
21 court, they have a responsibility to raise those
22 objections, and I have the duty to rule on those
23 objections, and that's as far as you need to consider,
24 insofar as that aspect of the trial.

25 Generally, ladies and gentlemen, in cases such

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1 as this, there are two types of evidence, and it's not
2 uncommon to find both of them present in any case. One
3 is direct evidence, and the other indirect, or the more
4 popular name or familiar name is circumstantial
5 evidence. Direct evidence is, as the name would imply,
6 is when someone testifies to -- generally, it's a
7 sensory perception. I heard something. I felt
8 something. I saw something, or the like. And if you
9 are firmly convinced of the credibility and the
10 truthfulness of that, then that would establish that
11 particular fact and circumstance.

12 Circumstantial evidence is when one testifies
13 to a number of issues of circumstances. And if you are
14 firmly convinced as to each of those, and when you link,
15 either through inductive or deductive reasoning, it
16 leads you to a logical conclusion. If you are firmly
17 convinced of that logical conclusion, then, likewise,
18 that would establish that particular fact or
19 circumstance.

20 Now, I will tell you that most common -- either
21 method can be used, and it's not uncommon to find both
22 circumstantial and direct evidence in the presentation
23 of a case. And our law makes absolutely no distinction
24 between the weight or the value to be given to direct or
25 circumstantial evidence, nor is any degree of certainty

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1 required, circumstantial evidence -- greater degree of
2 certainty required of circumstantial evidence than
3 direct evidence. You should weigh all of the evidence
4 in the case.

5 The law says, however, that the -- to the
6 extent that the State relies on the circumstantial,
7 there is one thing that you must remember. And that is,
8 if you consider all of the circumstances, and your
9 conclusion is, Well, you know, it's possible that the
10 person committed this offense, that would be sufficient.
11 If your conclusion is, Well, it's, I think it might be
12 probable that he committed it based on the
13 circumstances, that wouldn't be sufficient.

14 Why? Because it has to be more than somebody
15 being possibly guilty or probably guilty. It has to
16 rise to the level of beyond a reasonable doubt. So your
17 conclusion must -- you must be firmly convinced based on
18 the evidence that has been presented. That would
19 include both direct and circumstantial evidence in your
20 evaluation.

21 How do you decide what you believe or not?
22 Well, as we stated, and I stated to you, you brought
23 everything you needed to accomplish that. It's a
24 common-sense exercise. We do it every day of our lives.
25 And you -- the same methods that you've employed, and

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1 those factors that you've considered in assisting you to
2 make these determination in your life, you're expected
3 to use those very shortly when you begin your
4 deliberations in this case. And there are a number of
5 factors that one may consider. And I'm going to discuss
6 some of them with you now, but if I don't mention a
7 method or a factor that you've considered in your life
8 and you found it reliable, please use it when you begin
9 your deliberation.

10 But in deciding the issues of credibility, some
11 of the factors that you may want to consider would be --
12 one would be the appearance of the witness. How did
13 they appear to you, straightforward or hesitant in
14 answering questions? Was the testimony of a witness
15 consistent, or was it inconsistent? Was it strengthened
16 or weakened by other evidence in this case? How did the
17 witness come to know the facts that he or she testified
18 to? And what was the ability of the witness to know
19 those particular facts and circumstances? Was there a
20 reason for a witness to give testimony which may be
21 helpful to one side or the other or which may be
22 detrimental or damaging to one side or the other? In
23 other words, was the witness biased or prejudiced in any
24 fashion?

25 There's also been testimony during -- during

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1 this presentation of prior criminal actions attributed
2 to a person. I would tell you that that only comes in
3 and only may be considered by you for the sole purpose
4 of evaluating the credibility of that particular
5 witness. It doesn't mean, just because they have had
6 some prior criminal involvement, that that was -- that
7 doesn't mean that you can't believe them. It's just a
8 fact that you weigh with all other factors in making
9 that -- making a determination on the credibility and
10 believability of a witness.

11 Now, you're given very broad discretions when
12 it comes to determining the facts of a case. You have
13 the right to believe many witnesses against one, one
14 witness against many, you have the right to believe
15 all of a witness's testimony, parts of a witness's
16 testimony, or none of a witness's testimony. Now, you
17 don't make these decisions arbitrarily, but if there's a
18 reason in the record, that is the evidence of this case
19 for taking that position, you have that prerogative.
20 Because you're objective has been since you -- since we
21 started this case, is to determine the truth, regardless
22 of the source of the evidence. And that's what you will
23 do by evaluating and assessing the evidence which has
24 been presented.

25 One of the issues in this case, ladies and

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1 gentlemen, is identification of the Defendant as a
2 person who committed one or more of these crimes.
3 The State has the burden of proving identity beyond a
4 reasonable doubt. You must be satisfied beyond a
5 reasonable doubt of the accuracy of the identification
6 of the Defendant before you can convict him.
7 Identification testimony is an expression of belief or
8 impression of a witness. You must determine the
9 accuracy of the identification of the Defendant. You
10 must consider the believability of each identification
11 witness in the same way as any other witness. You may
12 consider whether the witness had an adequate opportunity
13 to observe the person at the time of the offense. This
14 will be affected by things such as, how long or short a
15 time was available, how far or close the witness was,
16 the lighting conditions, whether the witness had a
17 chance to see or know the person in the past.

18 Once again, I instruct you, the burden of proof
19 on the State extends to every element of the crime
20 charged, and this specifically includes the burden of
21 proving beyond a reasonable doubt the identity of the
22 Defendant. If after examining the testimony, you have
23 a reasonable doubt as to the accuracy of the
24 identification, then you, of course, must return a
25 verdict of not guilty.

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1 If on the other hand, you're firmly convinced
2 of the -- of the accuracy of the identification, then
3 you would certainly evaluate the other issues as well,
4 and whether or not the State has met its burden of proof
5 as to the remaining elements of the crime -- of the
6 particular crime.

7 Now, please remember something -- we're going
8 to talk now about the various crimes charged. As I
9 mentioned to you, I'm going to discuss with you the
10 elements required of the State of each. And please
11 remember that when I discuss theses elements, as well as
12 the other portions of my charge, while you have very
13 broad discretions when it comes to determining the
14 facts, you promise that you're going -- not exercise any
15 discretion when it comes to the law. Because as you
16 took that oath, it's my responsibility to give you the
17 law, and you must accept that law and apply it fairly
18 and impartially, and notwithstanding your personal
19 opinion or what you think the law should be or what you
20 thought the law was.

21 Again, you promised to set that aside, and I'm
22 confident that you will do that. And please remember
23 that my instruction is to be considered as a whole.
24 You're not to focus on any one aspect of it. Likewise,
25 the order of the instruction means nothing. I had to

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1 put it in some order. And please remember that. And it
2 is not evidence at any point.

3 Let's look first -- as I mentioned, there were
4 several charges. One of the charges is attempted
5 murder. In order to prove the crime of attempted
6 murder, the State must prove that the Defendant, with
7 the intent to kill, attempted to kill another person
8 with malice aforethought, either express or implied.
9 Malice, ladies and gentlemen, is hatred, ill will, or
10 hostility towards another person. It is the intentional
11 doing of a wrongful act without just cause or excuse and
12 with an intent to inflict an injury, or under the
13 circumstances that the law will infer an evil intent.

14 Malice aforethought does not require that the
15 malice exist for any particular period of time before
16 the act is committed, but malice must exist in the mind
17 of the Defendant just before and at the time of the act
18 being committed; therefore, there must be a combination
19 of the previous evil intent and the act itself.

20 Malice, as I stated, aforethought may be
21 expressed or inferred. Expressed is when someone -- and
22 the difference doesn't mean anything. They're both the
23 same. It's just a -- merely a matter in which you show
24 malice. Express malice is when it is shown that a
25 person speaks words which express hatred or ill will

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1 towards another person, or when the person prepared
2 beforehand to do an act which was later accomplished.

3 Malice may be inferred from conduct showing a
4 total disregard for human life. I also mention that a
5 specific intent to kill is an element of the crime of
6 attempted murder. Intent means intending the result
7 which actually occurs and not accidentally or
8 involuntarily. Intent may be shown by the acts and
9 conduct of the Defendant in other circumstances from
10 which you may naturally and reasonably infer intent.
11 The evidence of the character of the action taken --
12 allegedly taken by the Defendant, the character of the
13 instrument used, the manner in which it was used, the
14 purpose to be accomplished, and the resulting wounds or
15 injuries may be considered in determining the intent
16 with respect -- the intent accompanying the alleged act.

17 Intent may also be inferred when it's
18 demonstrated the Defendant voluntarily and willfully
19 commits an act that naturally has a tendency to destroy
20 or severely injure another -- excuse me -- to destroy
21 another's life. I'm sorry.

22 The Defendant also is charged with armed
23 robbery. In order to prove this offense, the State must
24 prove, first, beyond a reasonable doubt that the
25 Defendant took personal property from the person or

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1 presence of another. Property is in the presence of
2 another person if it is within that person's reach,
3 inspection, observation, or control, so that the -- that
4 the person could, if not overcome with violence or
5 prevented by fear, keep possession of that property.
6 The State must also prove beyond a reasonable doubt,
7 that the Defendant carried the property away, intending
8 to permanently deprive the owner of the property, and to
9 keep the property for the Defendant's own use. The
10 slightest removal of the property or the complete
11 possession of the property, even for an instant, by the
12 Defendant is sufficient to show a taking and carrying
13 away of the property. The taking and carrying away of
14 the property must also have been done with violence or
15 putting the owner of the property in fear of violence.

16 Finally, the State must prove beyond a
17 reasonable doubt that the Defendant was armed with a
18 deadly weapon during the robbery. A deadly weapon is
19 any article, instrument, or substance which is likely to
20 cause death or great bodily harm. Whether an instrument
21 has been used as a deadly weapon depends on the facts
22 and circumstances of each case. I would instruct you in
23 that regard, ladies and gentlemen, that a pistol is a
24 deadly weapon.

25 Now let's look at the offense of burglary in

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1 the first degree. The State must -- in order to obtain
2 a conviction for burglary in the first degree, must
3 prove beyond a reasonable doubt that the Defendant
4 entered a dwelling without consent. A dwelling is any
5 building or portion of a building in which a person
6 ordinarily sleeps. A building is a dwelling even if the
7 residents are temporarily absent from the building. In
8 order to prove the Defendant entered the dwelling, the
9 State does not have to show the Defendant's entire body
10 entered the dwelling. The smallest entry is sufficient.
11 Also, the State does not have to prove that force was
12 used to gain entry.

13 Next, the State must prove beyond a reasonable
14 doubt that the intent -- that the Defendant intended to
15 commit a crime, either a felony or misdemeanor at the
16 time of the entry. The mere entry into a dwelling
17 without consent is not burglary if the intent to commit
18 a crime is formed after the entry. On the other hand,
19 if the Defendant intended to commit a crime at the time
20 of the entry, it is burglary, even if the intent was
21 abandoned after the entry.

22 It does not matter whether the intended
23 crime was completed or not. The intent stated may
24 be shown by acts and conduct of a Defendant in other
25 circumstances which -- from which a jury may naturally

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1 and reasonably infer intent.

2 Finally, the State must prove beyond a
3 reasonable doubt that the entry -- the Defendant entered
4 or remained in the dwelling in the nighttime. Nighttime
5 is a period between sunset and sunrise, during which
6 there is not enough daylight to recognize a person's
7 face except by artificial light or moonlight.

8 Lastly, the Defendant is charged with the
9 offense of kidnapping. The State must prove beyond a
10 reasonable doubt, to obtain a conviction for kidnapping,
11 that the Defendant knowingly and unlawfully seized,
12 confined, kidnapped, or abducted another person without
13 authority of law. To do a thing unlawfully is to do
14 it willfully against the law. Knowingly means with
15 knowledge, consciously, not accidentally. Seize means
16 to take hold or sudden -- of suddenly or forcibly.
17 Confine means to limit, restrict, or enclose within
18 -- within bounds, imprison, or shut or keep in -- keep
19 in. Kidnap is to remove a person against that person's
20 will by unlawful force or by fraud. Abduct means to
21 carry off secretly or by force for illegal purpose.

22 Now, the State does not have to prove the
23 Defendant did all of these things. Instead, if you find
24 beyond a reasonable doubt that the Defendant did any of
25 these things, you may find the Defendant guilty of

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1 kidnapping. Something done without authority of law is
2 something which the law does not sanction, permit,
3 allow, condone, or provide justification for. The
4 kidnapping does not have to be for any personal or
5 monetary gain or gain for any illegal purpose, but may
6 be for any reason whatsoever. The gravamen of the
7 offense of kidnapping is some form of compulsion, but
8 the -- but the law says that the requisite force or
9 compulsion need not consist of the use of actual,
10 physical force, or violence, or of expressed threats.
11 The offense of kidnapping commences when one is
12 wrongfully and unlawfully deprived of freedom and
13 continues until that freedom has been restored.

14 I would also instruct you, ladies and
15 gentlemen, if a crime is committed by two or more
16 persons who are acting together in the commission of a
17 crime, the act of one is the act of all. A person who
18 joins with another to accomplish an illegal purpose is
19 criminally responsible for everything done by the other
20 person which occurs as a natural consequence of the acts
21 done in carrying out the common plan and purpose. If
22 two or more people are acting together, assisting each
23 other in committing the offense, the act of one is the
24 act of all, or as is sometimes said, the hand of one is
25 the hand of all.

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1 Prior knowledge that a crime is going to be
2 committed, without more, is not sufficient to make a
3 person guilty of a crime. Mere knowledge that another
4 person is going to commit a crime, even if the Defendant
5 was present when the crime is committed, is not
6 sufficient to convict a person as a principal. Guilt as
7 a principal is shown by actual or constructive presence
8 at the scene as a result of a prior arrangement.
9 Therefore, a finding of a prior arranged plan or common
10 scheme is necessary for a finding of guilt as a
11 principal. The State must prove beyond a reasonable
12 doubt by competent evidence that the theory of the hand
13 of one is the hand of all.

14 A principal in a crime is one who either
15 actually commits the crime or who is present aiding and
16 abetting -- aiding, abetting, or assisting in the
17 committing of the crime. When a person does an act in
18 the presence of and with the -- the assistance of
19 another, the act is done by both. Where two or more are
20 acting with a common plan or scheme are present at the
21 commission of the crime, it does not matter who actually
22 commits the crime. All are guilty.

23 Present at the commission of a crime means to
24 be sufficiently near to, aid and abet, and assist in the
25 commission of that crime. However, as I previously

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1 mentioned, merely being present at the scene of a crime
2 is not sufficient to commit one -- to convict one as a
3 principal under the theory of aiding and abetting.

4 Intent is also a necessary element, for there
5 must have been a common design or intent to commit the
6 crime, and the crime must have been committed pursuant
7 thereto with the person aiding and abetting by some
8 overt act. Intent means intending the results which
9 actually occurs, not accidentally or involuntarily.
10 Intent may be shown by the acts and conduct of the
11 Defendant and other circumstances for which you may
12 naturally and reasonably infer them to intend. As
13 stated, the State must prove these elements beyond a
14 reasonable doubt.

15 Also, ladies and gentlemen, general criminal
16 intent is a necessary element of each of these crimes
17 and must be established beyond a reasonable doubt.
18 Criminal intent is basically determined by considering
19 the facts and circumstances surrounding the situation,
20 and it may be inferred from the -- from the evidence in
21 which the circumstances have shown to have existed.
22 Criminal intent is a state of mind that operates jointly
23 with an act in the commission of a crime. Intent would
24 include those consequences which represent the very
25 purpose for which an act was done or known to be

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1 substantially certain to result regardless of the
2 specific desire.

3 Criminal intent is a mental state of conscience
4 wrongdoing, and it's up to you, in evaluating the
5 evidence, to determine whether or not the State has met
6 its burden of proof beyond a reasonable doubt as to the
7 element of criminal intent.

8 Throughout this entire process, ladies and
9 gentlemen, you were selected to be a judge with me.
10 And as judges, that means that we aren't advocates for
11 either side. We aren't partisans to either side. We
12 don't have any friends to reward, nor do we have any
13 enemies to punish. In fact, we are tasked with this
14 responsibility. And as a human being, I confess that
15 it's not always easy to do. We have to set aside all
16 human emotion. We can't be motivated by that. Has no
17 place in this process. And you too must do the same
18 thing. You have to set aside all human emotion, apply
19 your common sense, your sense of logic and reason,
20 fairly and impartially, analyze the evidence, determine
21 what you believe to be the true facts; and then once you
22 determine that, you take the law as I have given it to
23 you and apply that law fairly and impartially to those
24 facts. And I'm confident that you will each do that in
25 just a few moments.

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1 To assist you in reporting your decision, as a
2 presiding juror, I've prepared verdict forms for each
3 Indictment. You will note that these verdict forms are
4 similar in the sense that they're -- they have two
5 choices. The order in which they appear means nothing.
6 And there's a verdict form that basically -- this one
7 just happens to be burglary in the first degree, then I
8 have armed robbery. Each crime is set forth. So you
9 will need to do a verdict form for each of the crimes.
10 They're all captioned, and that caption is not any
11 significance to you. It's just to facilitate the filing
12 of the document. That's what it means and nothing else.

13 Let's look at them. And there's no need for me
14 to read each one, because they are basically -- other
15 than the crime, this one, as I stated, is burglary
16 first. We, the jury, by unanimous consent, find the
17 Defendant, Akeem Omar Smith, on the charge of burglary
18 -- and your two choices are guilty or not guilty.

19 You will note that there's a line that precedes
20 the choice. I would simply ask that you place a check
21 on the line, and you circle it, whichever it may be.
22 Then you'll note that line -- says, presiding juror, and
23 your name appears. If you'll just sign it where that is
24 -- over on that line and date it, then you will have
25 completed that form. As I stated, you will need to do a

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1 form for each one of the charges.

2 What will you be saying on any of these? If
3 your verdict is guilty, you'll be saying that you've
4 analyzed the evidence, and you are firmly convinced that
5 the State has met its burden of proof as to each of
6 those elements, and, therefore, as instructed, returning
7 a verdict of guilty, consistent with my instruction.

8 If you're saying not guilty, what will you be
9 saying? You've analyzed the evidence, and you find the
10 State has failed to meet its burden on one or more,
11 because if the State fails on one element, you must
12 return a verdict of not guilty, because they have to
13 prove each element beyond a reasonable doubt.

14 Unanimous is a term, as I'm sure you're
15 assuming, means exactly what it says. All of you have
16 to agree. Twelve to zero has to be the vote. Eleven to
17 one is not sufficient. You must be in agreement with
18 the decision. For it to be your decision, all 12 must
19 agree.

20 I know you're anxious to get to the point where
21 you're going to analyze the evidence, and you're almost
22 there. I have to excuse you to discuss my charge with
23 the attorneys. And it might be necessary to bring you
24 back into the courtroom to give you some clarification
25 or correction or additional instruction. And if so, we

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1 will do that. But if there aren't any additions, then
2 we will gather the exhibits and deliver them to you, and
3 when you receive those exhibits, you may then begin your
4 deliberations, but not before.

5 Now, once the deliberations start, the only
6 restriction that I place on the deliberations is this:
7 If at any time any juror has to leave the table for any
8 reason, you must stop deliberating until all 12 of you
9 are together. Other than that, you proceed as you deem
10 fit and proper.

11 Now let me ask you: The first 12 selected, do
12 any of you believe that you will not be able to continue
13 to resolve this case by deliberating and returning a
14 verdict? If so, please raise your hand.

15 Ms. Hammond, it appears at this point that the
16 first 12 will be able to continue. So when we excuse
17 the jury in just a moment, I'm going to ask that you not
18 join them in the jury room. They will take you to
19 another room, and I'll be in shortly to tell you how
20 much longer you need to remain with us. Of course, if
21 we bring the jury back for any reason, for additional
22 instruction, we will return you as well.

23 Thank you very much, ladies and gentlemen. You
24 may retire to your jury room. Thank you for your
25 attention. Await your exhibits until you begin your

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1 deliberation.

2 (The jury is escorted from the courtroom
3 at 1:34 p.m.)

4 THE COURT: Lunch should be there, hopefully.
5 Jenny, is lunch here?

6 THE DEPUTY CLERK OF COURT: Yes.

7 THE COURT: Good. Lunch is there.

8 Exceptions, additions from the State?

9 MR. FINCH: Nothing, your Honor.

10 THE COURT: Exceptions or additions for the
11 Defendant, other than those previously stated?

12 MR. BUTLER: No, sir.

13 THE COURT: Thank you very much. We will be at
14 ease.

15 (Exhibits and verdict forms are sent out to the
16 jury at 1:38 p.m.)

17 (The proceedings reconvene at 2:55 p.m.)

18 (Jury Note Number 1 is marked as Court's
19 Exhibit Number 2.)

20 (Defendant is present with his counsel.)

21 THE COURT: Court's Exhibit 2 is the first
22 note: Judge, we need the definition on attempted
23 murder.

24 Which I've copied from my charge. I'm going to
25 attach it to it and send it back so they can look at it

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1 and see it and visualize it, rather than just trying to
2 hear it -- and murder. I'm going to instruct them there
3 is no charge of murder. They need not consider that.
4 So I'm not sending that. That's why I'm bringing it in.

5 Any objection to attaching it? I made a copy
6 for each of you as well. I'm attaching to that -- the
7 portion of the charge that I read.

8 MR. BUTLER: No, sir.

9 THE COURT: Any objection?

10 MR. FINCH: No, your Honor.

11 THE COURT: Okay. Can you bring them in,
12 please, so this lovely lady can go back.

13 How about a court reporter that's good enough
14 to do two trials simultaneously.

15 MR. BUTLER: Judge?

16 THE COURT: Sir.

17 MR. BUTLER: Can I ask, as long as you're going
18 -- are you going to reread this?

19 THE COURT: No. I'm sending it back. I'm not
20 rereading anything.

21 That's the -- that's the part, at the judicial
22 school, where I found out we're one of the few states
23 that don't send the written charge, and we spent three
24 hours talking about the types of learners. And if
25 you've got a visual person, I can read it 15 times, and

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1 they're not going to pick it up. So that's why I send
2 it back. And that is exactly what I read to them.

3 (The jury is escorted into the courtroom
4 at 2:58 p.m.)

5 THE COURT: Thank you, ladies and gentlemen. I
6 have what's now Court's Exhibit Number 2. And the
7 question is: We need the definition on attempted murder
8 and murder. I've attached to this note -- and I'm going
9 to ask you to keep it with the other exhibits -- the
10 portion of my charge which I gave you concerning the
11 crime of attempted murder. The request for murder is
12 really not -- you don't need that because there's no
13 charge of murder. It's only attempted murder. So I'm
14 not giving you a charge on murder, since that's not a
15 charge that the jury needs to consider at all.

16 If you need further instruction or further
17 portions of the charge, just let me know. I'll be happy
18 to send them back as requested should that become
19 necessary. I'm going to send this back with you, and
20 then hopefully that will answer that question. And if
21 you need anything further, please let me know. Please
22 retire and resume your deliberations. Thank you.

23 (The jury is escorted from the courtroom
24 at 2:59 p.m.)

25 THE COURT: Any exceptions, additions from the

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1 State?

2 MR. FINCH: No.

3 THE COURT: Exceptions or additions from the
4 Defendant?

5 MR. BUTLER: No, sir.

6 THE COURT: Thank you very much. We'll be at
7 ease. Appreciate it.

8 (The Judge steps off the bench at 2:59 p.m.)

9 (The proceedings reconvene at 3:14 p.m.)

10 THE COURT: Let the record reflect Mr. Smith is
11 present. I'm advised the jury has reached a verdict.
12 Is the State ready to receive the verdict?

13 MR. FINCH: We are, your Honor.

14 THE COURT: Is the Defendant ready?

15 MR. BUTLER: Yes, sir.

16 THE COURT: Very well. Invite the jury to
17 return.

18 I do require that when the verdict is
19 published, I ask the Defendant to rise, please.

20 THE DEFENDANT: Yes.

21 THE COURT: Thank you, Mr. Smith.

22 (The jury is escorted into the courtroom
23 at 3:14 p.m.)

24 THE COURT: Thank you very much, ladies and
25 gentlemen. As I understand, the jury has reached a

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1 verdict. Is that correct, Mr. Reisinger?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: If you would pass the verdict
4 forms, please, to Mr. -- thank you.

5 (Document is handed to the Judge from the
6 bailiff.)

7 THE COURT: Verdict forms have been properly
8 completed. If you would publish the verdicts for us,
9 please, and ask the Defendant to please rise.

10 VERDICT

11 THE DEPUTY CLERK OF COURT: In the Court of
12 General Sessions, Case Number 2011-GS-10-4644, State of
13 South Carolina versus Akeem Omar Smith, we, the jury, by
14 unanimous consent, find the Defendant, Akeem Omar Smith,
15 on the charge of kidnapping: Guilty.

16 In the Court of General Sessions, Case Number
17 2011-GS-10-4645, South Carolina versus Akeem Omar Smith,
18 we, the jury, by unanimous consent, find the Defendant,
19 on the charge of armed robbery: Guilty.

20 In the case of General Sessions -- in the Court
21 of General Sessions, Case Number 2011-GS-10-4646, we,
22 the jury, by unanimous consent, find the Defendant, on
23 the charge of burglary in the first degree: Guilty.

24 Case Number 2011-GS-10-4647, we, the jury, by
25 unanimous consent, find the Defendant, on the charge of

State versus Akeem Smith
Jury Trial, November 15, 2012

1 attempted murder: Guilty.

2 Signed by Mr. Foreman, Thomas Reisinger,
3 November 15th, 2012.

4 THE COURT: Ladies and gentlemen, if the Clerk
5 has accurately published your verdict on each
6 Indictment, please indicate that by raising your right
7 hand.

8 (Jury complies.)

9 THE COURT: Thank you. You may put them down.
10 Let the record reflect that each juror raised his or her
11 right hand in response to the Court's inquiry.

12 Anything from the jury, from the State?

13 MR. FINCH: No, sir.

14 THE COURT: Anything further from the
15 Defendant?

16 MR. BUTLER: Yes, sir. Request a pole.

17 THE COURT: All right. Ladies and gentlemen,
18 what will happen --

19 You may be seated now, Mr. Smith. Thank you
20 very much.

21 Your names are going to be called, and the
22 Clerk is going to ask you, basically, two questions:
23 Was that your verdict -- and will we -- is it agreeable
24 that we just say "verdict" applies to all four, since
25 they were unanimous and identical?

State versus Akeem Smith
Jury Trial, November 15, 2012

1 Is that your verdict, and is it still your
2 verdict? And if you will just follow her instructions,
3 please. That's what we are talking about when we say we
4 are polling the jury. Thank you very much.

5 If you would assist us.

6 POLLING OF THE JURY

7 THE DEPUTY CLERK OF COURT: I'm going to call
8 each of you by the juror number, and I'm going to ask
9 you two questions. Just please answer.

10 Juror Number 216, is this your verdict?

11 THE JUROR: Yes.

12 THE DEPUTY CLERK OF COURT: Is this still your
13 verdict?

14 THE JUROR: Yes, ma'am.

15 THE DEPUTY CLERK OF COURT: Okay. Juror Number
16 290, is this your verdict?

17 THE JUROR: Yes.

18 THE DEPUTY CLERK OF COURT: Is it still your
19 verdict?

20 THE JUROR: Yes.

21 THE DEPUTY CLERK OF COURT: Juror Number 132,
22 is this your verdict?

23 THE JUROR: Yes.

24 THE DEPUTY CLERK OF COURT: Is this still your
25 verdict?

State versus Akeem Smith
Jury Trial, November 15, 2012

1 THE JUROR: Yes.
2 THE DEPUTY CLERK OF COURT: Juror Number 59 --
3 THE JUROR: Yes.
4 THE DEPUTY CLERK OF COURT: -- is this your
5 verdict?
6 THE JUROR: Yes.
7 THE DEPUTY CLERK OF COURT: Is this still your
8 verdict?
9 THE JUROR: Yes.
10 THE DEPUTY CLERK OF COURT: Juror Number 79, is
11 this your verdict?
12 THE JUROR: Yes.
13 THE DEPUTY CLERK OF COURT: Is this still your
14 verdict?
15 THE JUROR: Yes.
16 THE DEPUTY CLERK OF COURT: Juror Number 52, is
17 this your verdict?
18 THE JUROR: Yes.
19 THE DEPUTY CLERK OF COURT: Is this still your
20 verdict?
21 THE JUROR: Yes.
22 THE DEPUTY CLERK OF COURT: Juror Number 240 --
23 THE JUROR: Yes.
24 THE DEPUTY CLERK OF COURT: -- is this your
25 verdict?

State versus Akeem Smith
Jury Trial, November 15, 2012

1 THE JUROR: Yes.
2 THE DEPUTY CLERK OF COURT: Is it still your
3 verdict?
4 THE JUROR: Yes.
5 THE DEPUTY CLERK OF COURT: Juror Number 232,
6 is this your verdict?
7 THE JUROR: Yes.
8 THE DEPUTY CLERK OF COURT: Is this still your
9 verdict?
10 THE JUROR: Yes.
11 THE DEPUTY CLERK OF COURT: Juror Number 273,
12 is this your verdict?
13 THE JUROR: Yes.
14 THE DEPUTY CLERK OF COURT: Is this still your
15 verdict?
16 THE JUROR: Yes.
17 THE DEPUTY CLERK OF COURT: Juror Number 89, is
18 this your verdict?
19 THE JUROR: Yes.
20 THE DEPUTY CLERK OF COURT: Is this still your
21 verdict?
22 THE JUROR: Yes.
23 THE DEPUTY CLERK OF COURT: Juror Number 175 --
24 THE JUROR: Yes.
25 THE DEPUTY CLERK OF COURT: -- is this your

State versus Akeem Smith
Jury Trial, November 15, 2012

1 verdict?

2 THE JUROR: Yes.

3 THE DEPUTY CLERK OF COURT: Is this still your
4 verdict?

5 THE JUROR: Yes.

6 THE DEPUTY CLERK OF COURT: And Juror Number
7 213, is this your verdict?

8 THE JUROR: Yes.

9 THE DEPUTY CLERK OF COURT: Is this still your
10 verdict?

11 THE JUROR: Yes.

12 THE DEPUTY CLERK OF COURT: Thank you.

13 Your Honor, the jury has been polled, and the
14 verdict stands.

15 THE COURT: The jury has been polled, and the
16 jury has responded, and the verdict does stand.

17 Anything further from the jury panel at this
18 point?

19 MR. BUTLER: No, sir.

20 THE COURT: Ladies and gentlemen, thank you
21 very much. I appreciate your services in this case.
22 It's been an honor to serve with each one of you. I ask
23 you to retire to the jury room just for a moment, and I
24 will be with you in just a second. Thank you very much.

25 (The jurors are escorted from the courtroom)

State versus Akeem Smith
Jury Trial, November 15, 2012

1 at 3:19 p.m.)

2 THE COURT: All right. Any motions or matters
3 of law from the State?

4 MR. FINCH: No, your Honor.

5 THE COURT: Any motions or matters of law from
6 the Defendant, Mr. Smith?

7 MR. BUTLER: No, sir. Only as it relates to
8 sentencing at some point.

9 THE COURT: Very well. We'll hear that -- are
10 we prepared for sentencing this afternoon?

11 MR. FINCH: Yes, this afternoon. We just have
12 to get the sentencing sheets.

13 THE COURT: Go ahead. And while you go do
14 that, I'm going to go speak to the jury.

15 We'll be at ease.

16 (The Judge steps off the bench at 3:20 p.m.)

17 (A break is taken from 3:20 p.m. until
18 3:35 p.m.; at which time, the proceedings continue as
19 follows:)

20 SENTENCING

21 THE COURT: Has the Acknowledgement of Service
22 Form -- has that been filed? It doesn't appear that it
23 has been.

24 MR. FINCH: The Acknowledgment of Service?

25 THE COURT: Yeah. Dated 5-16-2012, one by

State versus Akeem Smith
Jury Trial, November 15, 2012

1 Mr. Smith and one by Mr. Butler.

2 MR. FINCH: I'm not --

3 THE COURT: I don't -- I have stamps of
4 these -- I don't need. These are just for Court's
5 information, because the Notice of Intent to Seek
6 Sentence of Life Without Parole, and the Affidavit of
7 Service for File.

8 MR. FINCH: I'm not sure if those are --

9 THE COURT: You need to just go ahead and file
10 those originals, if you will.

11 MR. FINCH: I'll file them.

12 THE COURT: You do not deny, Mr. Butler, that
13 apparently this shows your signature on 5-16?

14 MR. BUTLER: Yes. I'll say this: I definitely
15 was on notice that it was life without parole, so was
16 Mr. Smith. If there was a technical formal procedure
17 that was not followed, and just to protect myself, I'll
18 object, just to protect myself.

19 THE COURT: I understand.

20 MR. BUTLER: But I knew about that.

21 THE COURT: I'll have him file those originals,
22 but the Court is taking notice of that.

23 MR. BUTLER: Yes, sir.

24 THE COURT: But I have what has been filed, an
25 Affidavit of Service, which apparently was filed with

State versus Akeem Smith
Jury Trial, November 15, 2012

1 the Clerk on May 16th, 2012, and a Notice of Intent --
2 Intention to Seek Sentence of Life Without Parole, filed
3 on April the 25th, 2012, as part of the file.

4 MR. BUTLER: Yes, sir.

5 THE COURT: The Court is just noticing that.
6 You're not going to necessarily have to make that a
7 Court's exhibit.

8 Now, what we do have -- you have a copy -- I
9 have a certified true copy of the sentencing sheet by
10 Judge Hughston, in case 2003-GS-10-4608, where -- which
11 appears that Mr. Smith was sentenced for assault and
12 battery with intent to kill to a negotiated seven years;
13 is that correct?

14 MR. BUTLER: Yes, sir.

15 THE COURT: And that has a check, and I believe
16 it to be correct, is a violent offense and a most
17 serious offense.

18 MR. BUTLER: Yes.

19 THE COURT: You agree with that?

20 MR. BUTLER: I do, sir.

21 THE COURT: Very well. This sentencing sheet,
22 the certified copy, will become Court's Exhibit 3 for
23 purposes of sentencing, to be retained with all other
24 pleadings in the Clerk's file concerning this matter.

25 (Sentencing Sheet is marked as Court's Exhibit

State versus Akeem Smith
Jury Trial, November 15, 2012

1 Number 3.)

2 THE COURT: All right. Anything from the State
3 at this point?

4 MR. FINCH: No, your Honor. Just for the
5 record, I wanted to note that the victims knew they
6 could have stayed around for sentencing. They decided
7 to leave, had no desire to stay.

8 THE COURT: Very well.

9 MR. FINCH: Thank you.

10 THE COURT: Mr. Butler.

11 MR. BUTLER: Judge, I've told Mr. Smith that
12 even if this wasn't life without parole, I usually
13 advise my clients they don't need to speak in the -- in
14 case of an appeal; another trial, ask that he not
15 comment on your Honor's ruling. It's just always a
16 logical possibility. I always tell them that they
17 should probably remain silent, but in this case, even
18 more so because you have no discretion. But I want to
19 place an objection on the record.

20 THE COURT: Sure.

21 MR. BUTLER: In Miller versus Alabama, our
22 U.S. Supreme Court said that life without parole for
23 juveniles was unconstitutional. In those cases, the --
24 what would be our second or third strike occurred when
25 the Defendant was a juvenile. We don't have that

State versus Akeem Smith
Jury Trial, November 15, 2012

1 situation here. However, should somebody fashion this
2 argument later, I want to make sure that I've preserved
3 it.

4 Mr. Smith was 16 at the time of his first
5 strike and charged as an adult. So I would incorporate
6 the arguments made in Miller versus Alabama, in that
7 holding by our Supreme Court to say that a juvenile's
8 prior strike should not be used to allow the State to
9 seek life without parole against the Defendant, even if
10 they have reached the age of majority for the second or
11 third strike. And I just want to place that on the
12 record.

13 THE COURT: Okay.

14 I'm going to make a change to this one
15 sentencing sheet. One of them has "convicted." No
16 question, he was convicted by virtue of the verdict we
17 have of attempted murder. You agree with that?

18 MR. BUTLER: Yes, sir.

19 THE COURT: It had "pled." He did not plead to
20 that.

21 MR. BUTLER: Yes, sir.

22 THE COURT: Okay.

23 MR. BUTLER: And, Judge, there's one other
24 thing. It doesn't affect the dates, but he tells me,
25 the date of birth, on his sentencing sheet for the prior

State versus Akeem Smith
Jury Trial, November 15, 2012

1 strike, October th of ' , is incorrect, and his date
2 of birth is November th. He still would have been 16.
3 It doesn't matter. But should somebody want to make an
4 issue of it later, that's the proper date of birth.

5 THE COURT: November th, , is your proper
6 date of birth?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That's what appears on these
9 sentencing sheets.

10 All right. Mr. Smith, as your attorney
11 stated, you understand I don't have any discretion in
12 this matter? You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you wish to say anything,
15 nevertheless?

16 THE DEFENDANT: Did good. I had to speak, so
17 he did good. Thank you. Thank you, everybody.

18 THE COURT: All right, sir. Thank you so much,
19 Mr. Smith.

20 Given the notice being properly served, given
21 the verdict of the jury, and each case -- each case
22 being a most serious offense, that would create a second
23 strike, which would warrant and support a sentence of
24 life without parole. Therefore, the sentence imposed by
25 the Court on 2011-4644, -4647, -4646, -4645 is life

State versus Akeem Smith
Jury Trial, November 15, 2012

1 without parole. They are concurrent. Good luck to you,
2 sir.

3 MR. BUTLER: Thank you.

4 (The hearing of this cause concluded
5 at 3:43 p.m., on November 15, 2012.)

6 (End of Volume III of III.)

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State versus Akeem Smith
Jury Trial, November 15, 2012

R E P O R T E R ' S C E R T I F I C A T E

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 27th day of April, 2013.

ORIGINAL

ROLAYNE M. VOLPE CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires 30/2021

Reported by:
ROLAYNE M. VOLPE, CCR, RPR
Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2010-016609

INV. Colson R.O.

Personally appeared before me, a magistrate of this County, one Robert O. Colson who first being duly sworn, deposes and says that (name of the defendant)

AKEEM O'MAR SMITH

did within this County and State on the 2nd day of October 2010, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
KIDNAPPING
VIOLATION OF SECTION 16-3-910

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 10-02-10, at 0435 hours (darkness) while at _____ Rd, located in the County of Charleston, State of South Carolina, one AKEEM O'MAR SMITH, did commit the offense of KIDNAPPING, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, and annotated, in that the defendant did willfully and unlawfully and feloniously with malice aforethought enter the residence listed above with weapons and hold and confine the victim against her will.

The facts to establish the aforementioned are that on the above date and time the defendant, AKEEM O'MAR SMITH along with others, used force and brutality to overtake a female victim (Octavia Ancrum) at her residence. The defendants bear the female victim, forced her into the residence, and had her turn off the house alarm. The defendants then took about \$100 and the victim's purse. The defendants then began to search the residence for more money and valuables to take when the male victim, (Tyronce) and husband of the female victim arrived home. Upon his arrival an unknown male was in front of his residence acting as a look-out. This unknown co-defendant ran from the scene once confronted by the victim. The victim (Tyronce) then pulled behind the residence to discover that his wife was being held inside by the defendant and a second unidentified co-defendant. The victim went to his wife's car retrieved a hand-gun and confronted the defendant's in the house. A gun battle erupted in the house where the victim was shot in the hip. The defendant along with his partner broke out a window and escaped into the darkness. A sample of blood was recovered from the scene that was left by one of defendants when he was escaping out the window. This blood sample was sent to SLED where a profile was developed. This profile was compared to a known DNA data base and the defendant's DNA was a match to the sample left at the scene. The defendant was also identified in a six person line by a victim as one of the assailants.

Det Colson and Octavia Ancrum are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 3rd day of May 2011
2010.

Signature of Judge

(AFFIANT)

Address:

Phone:

358

FCH20110502809

WITNESSES

Robert O. Colson
Charleston County Sheriff

AGENCY CASE NUMBER

2010016609B

ARREST WARRANT NUMBER

M640192

DATE OF ARREST

May 5, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury AUG 1 - 2011
Date:

VERDICT

Guilty

Foreperson of Petit Jury Date: 10-15-12

INDICT

DOCKET NO. 2011GS1004645

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

AKEEM O'MAR SMITH
DOB:
B/M

Indictment for
Armed Robbery

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2010-016609

INV. Colson R.O.

Personally appeared before me, a magistrate of this County, one Robert O. Colson who first being duly sworn, deposes and says that (name of the defendant)

AKEEM O'MAR SMITH

did within this County and State on the 2nd day of October 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 10-02-10, at 0435 hours (darkness) while at _____ Rd., located in the County of Charleston, State of South Carolina, one AKEEM O'MAR SMITH, did commit the offense of ARMED ROBBERY, in violation of section 16-11-330 of the South Carolina Code of Laws of 1976, and annotated, in that the defendant did willfully and unlawfully and feloniously with malice aforethought enter the residence listed above with a weapon and with force take items away.

The fact to establish the aforementioned are that on the above date and time the defendant, AKEEM O'MAR SMITH along with others, used force and brutality to overtake a female victim (Octavia Ancrum) at her residence. The defendants beat the female victim, forced her into the residence, and had her turn off the house alarm. The defendants then took about \$100 and the victim's purse. The defendants then began to search the residence for more money and valuables to take when the male victim, (Tyrone) and husband of the female victim arrived home. Upon his arrival an unknown male was in front of his residence acting as a look-out. This unknown co-defendant ran from the scene once confronted by the victim. The victim (Tyrone) then pulled behind the residence to discover that his wife was being held inside by the defendant and a second unidentified co-defendant. The victim went to his wife's car retrieved a hand gun and confronted the defendant's in the house. A gun battle erupted in the house where the victim was shot in the hip. The defendant along with his partner broke out a window and escaped into the darkness. A sample of blood was recovered from the scene that was left by one of defendants when he was escaping out the window. This blood sample was sent to SLED where a profile was developed. This profile was compared to a known DNA data base and the defendant's DNA was a match to the sample left at the scene. The defendant was also identified in a six person line by a victim as one of the assailants.

Det Colson and Tyrone Ancrum are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 3rd day of May 2011
2010.

Signature of Judge:

Robert O. Colson
(AFFIANT)

Address:

Phone:

305 Pine kn
N. Laure
308-711

FCH20110502809

WITNESSES

Robert O. Colson
Charleston County Sheriff

AGENCY CASE NUMBER

2010016609B

ARREST WARRANT NUMBER

M640193

DATE OF ARREST

May 5, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury AUG 1 - 2011
Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11.15.12

INDICT

DOCKET NO. 2011GS1004646

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

AKEEM O'MAR SMITH
DOB:
B/M

Indictment for

Burglary - 1st Degree

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2010-016609
INV. Colson R.O.

Personally appeared before me, a magistrate of this County, one Robert O. Colson who first being duly sworn, deposes and says that (name of the defendant)

AKEEM O'MAR SMITH

did, within this County and State on the 2nd day of October 2010, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
FIRST DEGREE BURGLARY
VIOLATION OF SECTION 16-11-311

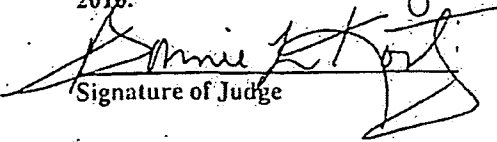
The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on 10-02-10, at 0435 hours (darkness) while at _____ Rd, located in the County of Charleston, State of South Carolina, one AKEEM O'MAR SMITH, did commit the offense of FIRST DEGREE BURGLARY, in violation of section 16-11-311 of the South Carolina Code of Laws of 1976, and annotated, in that the defendant did willfully and unlawfully and feloniously with malice aforethought, enter the residence listed above to do a crime there in Armed Robbery.

The fact to establish the aforementioned are that on the above date and time the defendant, AKEEM O'MAR SMITH along with others, used force and brutality to over take a female victim (Octavia Ancrum) at her residence. The defendants beat the female victim, forced her into the residence, and had her turn off the house alarm. The defendants then took about \$100 and the victim's purse. The defendants then began to search the residence for more money and valuables to take when the male victim, (Tyron) and husband of the female victim arrived home. Upon his arrival an unknown male was in front of his residence acting as a look out. This unknown co-defendant ran from the scene once confronted by the victim. The victim (Tyron) then pulled behind the residence to discover that his wife was being held inside by the defendant and a second unidentified co-defendant. The victim went to his wife's car retrieved a hand gun and confronted the defendant's in the house. A gun battle erupted in the house where the victim was shot in the hip. The defendant along with his partner broke out a window and escaped into the darkness. A sample of blood was recovered from the scene that was left by one of defendants when he was escaping out the window. This blood sample was sent to SLED where a profile was developed. This profile was compared to a known DNA data base and the defendant's DNA was a match to the sample left at the scene. The defendant was also identified in a six person line by a victim as one of the assailants.

Det Colson and Tyron Ancrum are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 2nd day of May 2011
2011.


Signature of Judge


(AFFIANT)

Address: 325 Pinckney
N. Hwy 5C
Phone: 708-7512

362

FCH20110502809

WITNESSES

Robert O. Colson

Charleston County Sheriff

AGENCY CASE NUMBER

2010016609B

ARREST WARRANT NUMBER

M640194

DATE OF ARREST

May 5, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 1 - 2011

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1004647

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

AKEEM O'MAR SMITH

DOB:

B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2010-016609
INV. Colson R.O.

Personally appeared before me, a magistrate of this County, one Robert O. Colson who first being duly sworn, deposes and says that (name of the defendant)

AKEEM O'MAR SMITH

did within this County and State on the 2nd day of October 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 10-02-10, at 0435 hours (darkness) while at _____ Rd, located in the County of Charleston, State of South Carolina, one AKEEM O'MAR SMITH, did commit the offense of ATTEMPTED MURDER, in violation of section 16-3-29 of the South Carolina Code of Laws of 1976, and annotated; In that the defendant did willfully and unlawfully and feloniously with malice aforethought shoot at the victim (Octavia Ancrum) during an armed robbery.

The fact to establish the aforementioned are that on the above date and time the defendant, AKEEM O'MAR SMITH along with others, used force and brutality to over take a female victim (Octavia Ancrum) at her residence. The defendants beat the female victim, forced her into the residence, and had her turn off the house alarm. The defendants then took about \$100 and the victim's purse. The defendants then began to search the residence for more money and valuables to take when the male victim, (Tyronne) and husband of the female victim arrived home. Upon his arrival an unknown male was in front of his residence acting as a look out. This unknown co-defendant ran from the scene once confronted by the victim. The victim (Tyronne) then pulled behind the residence to discover that his wife was being held inside by the defendant and a second unidentified co-defendant. The victim went to his wife's car retrieved a hand gun and confronted the defendant's in the house. A gun battle erupted in the house where the victim was shot in the hip. The defendant along with his partner broke out a window and escaped into the darkness. A sample of blood was recovered from the scene that was left by one of defendants when he was escaping out the window. This blood sample was sent to SLED where a profile was developed. This profile was compared to a known DNA data base and the defendant's DNA was a match to the sample left at the scene. The defendant was also identified in a six person line by a victim as one of the assailants.

Det. Colson and Octavia Ancrum are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 3rd day of May 2011
2010.

Signature of Judge

[Signature]
(AFFIANT)

Address: 7005 Park Ave
N. Charleston
Phone: 803-7312

PAGE _____ OF _____

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA #

10-016609

DATE

10-11-10

STATEMENT OF

Octavia Ancrum

ADDRESS

Rd Ravenel, SC

PHONE #

EMPLOYER:

PHONE #

RACE:

Black

SEX:

F

DATE OF BIRTH:

On Oct. 2nd about 4:30 am as I arrived home to get out of my vehicle, I was rushed by 2 men in all black. One hit me in the back of my head while I tried to run. The men forced me inside the home, and took my cash and purse. I was held at gunpoint by one guy who was unmasked, while the other was looking around. My husband arrived about 5 min into the robbery and the men started shooting at him. The men tried to make an exit and dropped one of the pistols and I picked it up and started firing it and then I put my husband in the car to take him to the hospital.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

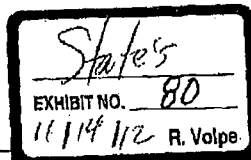
WITNESSES:

[Signature] 9802

[Signature]
Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

Signature



COSO-109

R5 FCH: 00038

PAGE 1 OF 1

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

GED

OCA # _____

DATE 10-5-10STATEMENT OF Tyrone Mackay

PHONE # _____

EMPLOYER: _____

PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

On Friday night I left the Club and on my way home I ~~found~~ saw a man standing on the side of the Hwy. I pulled up and asked him what he was doing and he took off running. I chased him with my car and he ran into the woods. I got out of the car and saw a box of papers on the ground. I knew something was wrong so I went into my wife's car and got the gun out of her glove box. I then called out to my wife and she said there was a car in our house. The gun fight went on between me and the guys that were in the house. I was shot they ran to the back of the house and dove through the window. I got my wife and when we were getting in the car to go to the hospital the cops arrived.

Q: Do you know who did this? NO

A: _____

Q: Who had the .380? I got the .380 out of my

A: wife's car it belongs to my wife

Q: Who had the .357? My wife said when she snatched away from the guys the ran and when she got up she saw the gun on the floor and picked it up and started to shoot it.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

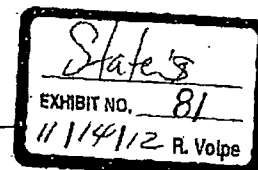
WITNESSES:

[Signature]

[Signature]
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CCSO-109

PAGE 1 OF 2CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # _____

DATE _____

STATEMENT OF

Tyrene Arcum

ADDRESS _____

PHONE # _____

EMPLOYER: _____

PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

Q: How many are inside? 2

A: _____

Q: Did you see a car? Look like a white Honda

A: _____

Q: Could you ID by the voice? maybe

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

[Signature][Signature]
Signature

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PAGE 1 OF 1

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA #

DATE

5-6-11

STATEMENT OF

ADDRESS

PHONE #

EMPLOYER:

PHONE #

RACE:

SEX:

DATE OF BIRTH:

We came from the club together in our own cars. I was driving around with Octavia then her boyfriend came home. She told me to run because he had a gun so I heard gun shot then I fire back. Had run out the window but I was scared.

Q: When did you meet Octavia?

A: 2 months

Q: How long have you known Octavia?

A: 2 months

Q: What Club were you at?

A: I don't know the club?

Q: Was any one with you that night?

A: NO

Q: When did you park the car?

A: Front Right if you look at it

Q: Did you carry a gun?

A: 2 Guns

Q: What Kind of guns or gun were they?

A: 90 or 40 Auto / 38 380 Auto

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

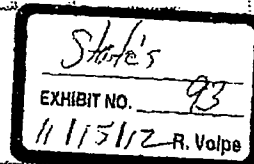
WITNESSES:

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95 FCH 00047

PAGE 2 OF CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENTOCA # DATE STATEMENT OF ADDRESS PHONE # EMPLOYER: PHONE # RACE: SEX: DATE OF BIRTH:

Q: When did you start shooting the guns?

A: When he started shooting

Q: Where were you at when the male friend arrived?

A: Back room

Q: Did you jump out the window?

A: Yes

Q: Did you take any thing from the house?

A: No

Q: Have you spoken to Octavia after?

A: No

Q: Did you leave with both guns?

A: Yes

Q: Did you have sex with Octavia?

A: No

Q: Did you have sex with Octavia? (Before the day)

A: No

Q: How long were you at the house before he arrived?

A: 20 min

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

Signature

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RE FCH: 00040A

PAGE 3 OF _____CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # _____

DATE _____

STATEMENT OF A. K. Smith

ADDRESS _____

PHONE # _____

EMPLOYER: _____

PHONE # _____

RACE: _____

SEX: _____

DATE OF BIRTH: _____

Q: What does she look like?

A: Light skin, hair straight down

Q: Does she have any tattoos?

A: Don't know

Q: What color eyes does she have? Brown

A: _____

Q: What kind of car was she driving?

A: dark car of some

Q: Did she have any kids?

A: don't know

Q: How many times did you talk to her before that night? 5 times

A: _____

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

[Signature][Signature]
Signature

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R5 FCH: 880486

INCIDENT SUPPLEMENT

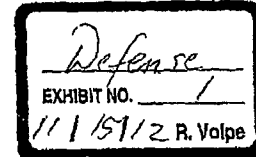
CHARLESTON COUNTY SHERIFF'S OFFICE
3505 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700

J. Al Cannon, Jr.
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2010-016609-B	PAGE _____ OF _____ PAGES	NCIC ENTRY	IND.	EXT.
☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL WITNESSES	☐ ADDITIONAL STOLEN PROPERTY		
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL SUBJECTS	☐ ADDITIONAL RECOVERED PROPERTY		

INCIDENT TYPE: Burglary/ B&E

Incident Location: Rd Ravenel SC
Incident Date: 10-02-10



On this date this R/D was called out to the scene by Sgt Zimmer at the request of Sgt York for a shooting. At about 600 hours this R/D arrival at the scene and was met by Sgt York and Deputies Kjellman and Roberson. The victims had already been transported to MUSC and no other victims or witnesses were on scene. The report from the responding deputies was that a call went out at about 0434 hours in reference to a shooting. The victim's family who lives behind the residence, where the shooting took place, called 911. The responding deputies discovered the victims Tyrone and Octavia Ancrum in their vehicle in the yard trying to drive off from the scene. The deputies stopped the victims from leaving and discovered that Tyrone had been shot in the right buttock. The victims were not very helpful and were very reluctant to give any information to assist in the investigation but stated that (3) black males were in the house when they arrived home. Tyrone stated he was walking in to the house when he discovered his wife at gun point in the kitchen. The victim stated he was shot by the suspect who left the scene by jumping out a window in the back of the trailer. The deputies on scene finally were able to get the keys to the house from the victim who was trying to get away without letting the deputies into the house. The victims were taken to MUSC by EMS and arrived at the ER at 0550 hours.

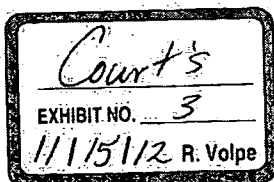
Detective Wilson drafted a search warrant and Investigator Milz executed the warrant and collected evidence from the scene. It was apparent that a larger shoot out had occurred with multiple rounds fired from different guns and suspects. This R/D went down to MUSC to get statements from the victims but they had left by 0645 hours. This R/D went back to the scene to assist in the collection on evidence. This R/D discovered that the victim had a mother at

Ln. At about 1030 the victims had not returned home so this R/D went to the victim's mother's house Ms. Johnson where she called the victims and this R/D spoke to the victims who would not meet with this R/D, and give me any statements. This R/D gave the victims mother a card and also gave him this R/D's phone number and asked him to call by Monday and at least advise me if he wished to assist in this investigation or not. This case is pending the victim's cooperation.

TYPE (GROUP)						TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
STOLEN	0	0	0	0	0	0	
DAMAGED	0	0	0	0	0	0	
BURNED	0	0	0	0	0	0	
RECOVERED	0	0	0	0	0	0	
SEIZED	0	0	0	0	0	0	
SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☒ ACTIVE UNFOUNDED	☐ ADM. CLOSED	☐ ARREST UNDER 18 ☐ ARREST 18 AND OVER	☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRADITION DENIED	
REPORTING OFFICER(S)		DATE		BADGE NUMBER		APPROVING OFFICER	
Det. R. O. Colson		10/20/2010		9802			
FOLLOW-UP INVESTIGATION		YES		NO		OFFICER	

CCSO - 100 3/1/09

R5 FCH: 00022



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

 COUNTY OF CHARLESTON
 STATE AKOEM VS D'MAR SMITH

 AKA:
 Race: B Sex: M Age: 1
 DOB: 6

DL# _____ SID# _____

 INDICTMENT/CASE#: 2003 -GS- 10 - 4608
 A/W#: H. 393711
 Date of Offense: 4.22.03
 S.C. Code §: 16-3-620
 CDR Code #: 0101114
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS:TO: ABWIK (0-00 4RS)in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0101114
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

 ATTEST: [Signature] Solicitor Akoem Smith Defendant [Signature] Attorney for Defendant

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. STARTED APRIL 27, 2003.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____ PTUP _____ days/hours Public Service Employment
 Payment Terms: Obtain GED
☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning
 \$ _____ paid to Public Defender Fund
 Other: _____

 Recipient:
 *Fine: \$ _____
 \$14-1-206 (Assessments 107.5%) \$ _____
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 \$56-5-2995 (DUI Assessment) \$12 \$ _____
 \$35.13 (Public Def/Prob) \$500 \$ _____
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 \$50-21-114(BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75
 TOTAL \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: G. Bens

PRESIDING JUDGE

Judge Code: 0101018Sentence Date: 8-28-03
 ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 DEPUTY CLERK

White - Clerk Green - Corrections Canary - Probation

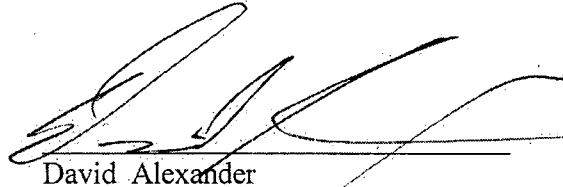
Pink - Defendant

SCCA/217 (7/2003)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 16th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM O. SMITH,

APPELLANT

APPELLATE CASE NO. 2012-213518

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court should have charged self-defense when: (1) the alleged victim admitted that he shot first, and (2) the jury was free to disbelieve the State's evidence tending to disprove self-defense?

2.

Whether the Eighth and Fourteenth Amendments forbid sentencing an adult defendant to mandatory life without parole when one of his prior "strikes" was a crime committed as a juvenile?

STATEMENT OF THE CASE

In August 2011, a Charleston County grand jury indicted appellant Akeem Smith ("Smith") for armed robbery, first-degree burglary, kidnapping, and attempted murder. On November 13, 2012, appellant was tried before the Honorable R. Markley Dennis and a jury. R. 1. Beattie Butler and Michael Cooper represented appellant. R. 2. Timmy Finch and Shannon Elliott represented the State. R. 2. The jury convicted appellant and Judge Dennis sentenced him to mandatory life imprisonment without parole based on South Carolina's recidivist statute. R. 354, 1. 20 – 355, 1. 2. Appellant timely served and filed a notice of appeal and this appeal follows.

ARGUMENT

1.

The trial court should have charged self-defense because: (1) the alleged victim admitted that he shot first, and (2) the jury was free to disbelieve the State's evidence tending to disprove self-defense.

Introduction

In the wee morning hours of October 2, 2010, a gun battle erupted in a single-wide trailer. Despite numerous undisputed lies by the alleged victims as to what happened, one undisputed fact was that one of them fired the first shot. Despite this testimony, the trial judge refused to charge self-defense. Deciding this issue requires only the simple application of precedent that holds: (1) when any evidence of self-defense is introduced, it must be charged to the jury, and (2) the jury is free to disbelieve any part or all of a witness's testimony. Simply put, because the alleged victim testified he fired the first shot and the jury could disbelieve their testimony about why or how the defendant came to be in the trailer, a self-defense charge was required.

Relevant Facts

Octavia and Tyrone Ancrum, a married couple, lived in single-wide trailer in rural Charleston County. R. 48, ll. 21 – 24. Octavia was a “stay-at-home mom.” R. 46, ll. 22 – 23. Tyrone, a *soi-disant* concert promoter, owned a company called “Behind Closed Doors Production.” R. 119, l. 18 – 120, l. 6. He described it as a cash business. R. 120, ll. 7 – 13. When asked if he had any felony convictions, Tyrone replied, “armed robbery, stolen car – I have various charges.” R. 120, l. 22 – 121, l. 2. He also had a conviction for trafficking cocaine. R. 142, ll. 1 – 3. Although it was illegal for Tyrone to possess a firearm, the

concert promoter owned a “.357 Magnum with a built-in laser scope” and an AK-47 that he kept beside his bed. R. 134, ll. 2 – 3. R. 129, l. 21 – 130, l. 7. R. 61, ll. 12 – 16. Octavia owned a .380 handgun which she kept in the dresser drawer in their bedroom. R. 61, ll. 12 – 24. Octavia had a pending charge for assault with intent to kill with the solicitor’s office prosecuting the case. She ultimately pled to a misdemeanor charge of unlawful carrying of a firearm and received a fine. R. 23, l. 21 – 24, l. 12. R. 110, ll. 11 – 20.

Tyrone and Octavia’s Version of Events at Trial

On the night of the gun battle, Octavia claimed she had been at a “girls’ night” at her sister’s house. R. 116, ll. 17 – 25. R. 47, ll. 2 – 18. She left for her sister’s house at approximately 11:00 PM. R. 47, ll. 12 – 18. She stayed at her sister’s house playing cards and drinking until 4:00 AM. R. 47, l. 25 – 48, l. 7. Tyrone had taken the children to his mother’s house. R. 48, ll. 11 – 18.

Octavia described what happened when she returned home as a home invasion and robbery. She claimed that when she got out of her car two men ambushed her and hit her in the back of the head. R. 52, l. 1 – 53, l. 3. They forced her to let them in her trailer. R. 52, l. 21 – 53, l. 23. The men took her into the bedroom and demanded money. R. 53, l. 17 – 54, l. 8. She gave them her purse and an undetermined amount of cash that she and her husband kept hidden underneath the bottom drawer of their dresser. R. 55, l. 3 – 56, l. 14.

One of the men did not wear a mask. R. 53, ll. 17 – 23. The unmasked man told Octavia to take off her clothes and put a pillowcase over her head. R. 56, l. 20 – 57, l. 5. The other man was standing across the hall. R. 57, ll. 6 – 13. At this point, they heard a car arrive outside and one of the men said, “that’s him.” R. 60, ll. 7 – 17. The men told her to be quiet. R. 60, ll. 7 – 23.

Octavia heard her husband walk onto the porch and “faintly” say her name. R. 60, ll. 18 – 23. She told him not to come in. R. 60, ll. 18 – 23. According to Octavia, “as soon as I said that, that’s when the gunshots erupted.” R. 60, ll. 22 – 23.

Tyrone claimed that on his way home from a club, he noticed a man standing near his gate. R. 124, l. 19 – 125, l. 19. Tyrone confronted the man and he ran away. R. 125, ll. 3 – 15. As Tyrone came to his house, he “knew something was wrong.” R. 125, ll. 20 – 21. He took his laser-scope .357 Magnum from the glove compartment. R. 126, ll. 14 – 15. When he noticed the back door was not locked it “totally confirmed that something was wrong.” R. 125, ll. 20 – 25. He called to his wife and when she responded, he claimed he could hear in her voice that something was wrong. R. 126, ll. 1 – 4.

Tyrone peeped around the corner and saw a shadow. R. 127, ll. 8 – 16. Despite knowing his wife was somewhere in the dark single-wide trailer, he described being the first to fire down its length:

I see a shadow that’s moving off of the refrigerator. And I know it’s not my wife, because I just – I heard her voice come from this side of the house. **So this point, I shoot through the wall.**

Q. What did you think you were shooting at when you shot through the wall?

A. I knew someone was in my house. It wasn’t a question. Because why would she answer me and not come out? Like, it was just – and I knew she was on this side, so who’s moving around on the opposite side of the house?

Q. What happened **after you shot** and –

A. **They returned fire.** So they are, like, shooting up in the hallway, and I’m backing out of the hallway. Because, like, I could hear the bullets coming by me.... I go back up the steps again, and as I’m trying to get in the house, I shoot again, and – **I’m just shooting blindly. I don’t see nothing, but I’m shooting.** Start to shoot through that wall again, through the same side over by the where I saw the shadow.

R. 127, l. 8 – 128, l. 10 (emphasis added). The gun battle continued and Tyrone heard “the windowpane bust out.” R. 129, ll. 4 – 6. Tyrone made his way to the yard. R. 129, ll. 7 – 16.

Octavia said the unmasked man dragged her during the gun fight and used her as a body shield. R. 62, ll. 2 – 17. She broke free. R. 62, ll. 2 – 17. She heard the glass break. R. 62, ll. 4 – 17. She “ended up getting the gun, the .380, and firing it in the direction that I had seen them run off into.” R. 62, ll. 18 – 20. Octavia was certain that it was her gun from the dresser that she fired. R. 65, l. 3 – 67, l. 11. R. 96, ll. 6 – 9.

Tyrone saw Octavia come running out of the house and fall. R. 129, ll. 7 – 16. Instead of checking on his wife, Tyrone “ran in the house to get my assault rifle.” R. 129, ll. 21 – 22. He retrieved his AK-47 from “between the mattresses” and ran across the yard firing into the darkness. R. 131, ll. 9 – 11. At this point, Tyrone realized he had been shot in the leg. R. 131, ll. 9 – 17. He hid his AK-47 behind his mother’s house. R. 131, ll. 9 – 17. He locked the door to his trailer. Tyrone and Octavia got in the car and were pulling out of the driveway when the police arrived and prevented them from leaving. R. 131, l. 9 – 132, l. 2.

The Police Investigation and Tyrone and Octavia’s Version of Events Before Trial

Tyrone and Octavia tried to get away without letting the police in their house. R. 221, l. 11 – 222, l. 2. The police got a search warrant. R. 223, ll. 7 – 11. They recovered multiple shell casings and photographed the numerous bullet holes in the trailer. R. 153, l. 17 – 181, l. 15.

The lead investigator, Robert Colson, described Tyrone and Octavia as “not very helpful” and “reluctant to give any information to assist in the investigation.” R. 221, ll. 11

– 16. Neither would identify any suspects. R. 224, ll. 21 – 24. Colson closed the case. R. 222, ll. 3 – 15. Octavia admitted that she “was uncooperative.” R. 75, ll. 13 – 17. Tyrone was discharged from the hospital after a four-hour stay. R. 77, ll. 16 – 19. After a brief stop at their aunt’s house, the couple went to Savannah. R. 77, l. 20 – 139, l. 6.

Nine days later, Octavia gave the police a false sworn statement. R. 89, ll. 22 – 24. She admitted she lied in the statement. R. 88, ll. 8 – 10. Omitted from her statement was any mention of the men getting cash from a dresser drawer, the men telling her to take off her clothes, or the men telling her to put a pillowcase over her head. R. 88, l. 23 – 89, l. 21. She told the police that one of the suspects dropped the .380 pistol, she picked it up, and shot him. R. 87, ll. 17 – 19. Octavia claimed she told these lies because she was worried her husband would be charged as a felon in possession of a firearm. R. 75, ll. 18 – 22.

However, Octavia continued to lie about the gun even after the trial began. At the Neil v. Biggers hearing, when Octavia was asked whether the gun she grabbed belonged to her, she testified she was not sure. R. 15, l. 19 – 16, l. 10. The following exchange occurred at the hearing:

Q. Do you know how that gun got there?

A. My assumption was that it was their gun. That was just my assumption.

Q. Well, it wasn’t your gun; is that right?

A. I’m not sure.

Q. So the gun that you found in the house, you’re not sure whether it is yours or not? This is important.

A. It’s the gun that I found in the house. Was –

Q. You just said you’re not sure if –

A. I’m not sure if the gun that I fired was mine. I fired a gun.

Q. So if you don't know where it came from, you wouldn't know which suspects' gun that was, because it might have been yours?

A. Repeat the question so that I have clarity on that.

Q. You wouldn't know whether it came from a suspect, or which suspect it came from, because it could have been yours; the gun?

A. To the best of my knowledge I don't believe that it was my firearm.

Q. Okay. Whose was it? Which of the two, if it wasn't yours?

A. Maybe it was – it was his. I'm not sure. They were both in the area, so I'm not – I have no way of positively identifying if it belonged to either that – Mr. Smith or the other guy that was present.

R. 16, l. 8 – 17, l. 9. When confronted with this lie that occurred the day before trial on cross-examination, Octavia claimed she was confused and blamed the defense lawyer because it was his “job to trick me up on those types of questions.” R. 92, l. 3 – 98, l. 1.

Octavia then claimed she thought defense counsel meant the .357, but was forced to admit this was yet another lie because she and Tyrone owned the .357, as well. R. 98, ll. 2 – 16. After the Biggers hearing, Octavia and Tyrone met with the police and the solicitor. R. 100, ll. 11 – 17. Tyrone told Octavia to do what the solicitor said and to “just tell the truth.” R. 101, ll. 13 – 20.

Even three days before trial, the Charleston County Solicitor's Office was still trying to determine whether to believe their star witnesses' stories. Tyrone initially told the police that the first gun he had was his wife's .380, even though at trial he testified he had the laser-scope .357. R. 138, ll. 4 – 5. He lied to the police and never mentioned the AK-47. R. 138, ll. 13 – 23. The first time he told anyone about the AK-47 was approximately three days before trial when he “got into it” with a detective. R. 138, l. 24 – 139, l. 7. The detective told Tyrone “nothing that you are saying is matching up with these guns. **Your story is**

okay, but when we get to these guns, it's not making sense." R. 139, ll. 4 – 7 (emphasis added). Tyrone further described this confrontation:

I told them that I would confess to the guns and the handling of the weapons, but I wasn't going to do it and go to jail for it. Before I would admit to it, I would just deny it. At that point, he was, like, you know, you're not the criminal. You're the victim here. And, like, **we just need the truth so we can get this guy off the streets.**

R. 139, l. 20 – 140, l. 1 (emphasis added). Tyrone entered into a proffer agreement. R. 149, ll. 21 – 23. He then handed the AK-47 over to the prosecution. R. 140, ll. 8 – 9.

The police found blood droplets outside of the house that were later matched to the defendant. R. 161, ll. 18 – 25. R. 244, ll. 2 – 6. The defendant admitted he was at the scene in his opening statement. R. 38, ll. 10 – 14. Octavia identified the defendant from a photographic lineup stating she was "80%" certain of her identification. R. 82, ll. 8 – 20. She denied having ever seen the defendant before. R. 83, l. 24 – 84, l. 6.

On the night of the incident, before Octavia and Tyrone left for the hospital, the only description she was willing to give the police was, "black men" and "dark clothes." R. 102, ll. 1 – 13. She said the defendant had on a mask, but the other person did not. R. 102, ll. 14 – 22. Even though Octavia previously claimed she was afraid to give a description because the assailants might retaliate, she admitted that she gave the police no further information about their description immediately after the incident when the police were in the best position to apprehend them. R. 103, l. 2 – 104, l. 9. R. 75, l. 18 – 76, l. 9. She never initiated contact with the police after the incident. R. 105, ll. 16 – 19.

The defendant exercised his constitutional right not to testify. During closing argument, defense counsel used Tyrone and Octavia's repeated lies to forcefully argue that the jury should disbelieve their story. R. 294, l. 25 – 315, l. 1. He argued that the

“unmasked man” who Octavia never described did not exist. R. 298, ll. 3 – 23. R. 305, ll. 4 – 14. Citing the “old Blues song, ‘Open My Front Door, Hear My Back Door Slam,’” defense counsel posited that Tyrone came home, found Octavia alone with the defendant in the bedroom, and opened fire.¹ R. 309, ll. 6 – 17.

Noting that Tyrone testified he fired first, the defendant asked the trial judge to charge self-defense. R. 263, ll. 19 – 22. The trial judge stated, “There could be some argument. I’m not sure that it did or didn’t. I mean, there’s some evidence of that, but I would—there’s some evidence that he fired, but I don’t—that’s really unclear, but I don’t think there’s a sufficient basis for the self-defense.” R. 263, l. 24 – 264, l. 3. The trial judge did not give a self-defense charge. R. 315, l. 3 – 339, l. 1. The trial judge noted the previously stated exceptions after the completion of the charge. R. 339, ll. 10 – 11.

Discussion

The trial judge erred in refusing to charge self-defense. “If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge’s refusal to do so is reversible error.” State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). “When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012).

¹ This was, in fact, what the defendant said happened in a statement he gave to the police that was not admitted into evidence. R. 367 (State’s Ex. 93.).

Tyrone testified he was the first to shoot. R. 127, l. 8 – 128, l. 10. This fact alone constitutes the “any evidence” necessary to receive a self-defense charge. Therefore, this case must be reversed.

The State will likely argue that the only evidence in the case was Octavia and Tyrone’s tale of a home invasion. If Octavia and Tyrone’s version is believed, then the defendant would not be “without fault in bringing on the difficulty.” Id. at 314, 733 S.E.2d at 609. However, any such ruling would require the court to believe Octavia and Tyrone’s yarn. “A jury is free to believe a portion of the testimony of a witness and disbelieve another portion.” State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991); see also State v. Register, 323 S.C. 471, 481, 476 S.E.2d 153, 159 (1996) (stating jury is free to believe or disbelieve expert witness testimony). The trial judge charged the jury it had “the right to believe many witnesses against one, one witness against many, parts of a witness’s testimony, or none of a witness’s testimony.” R. 324, ll. 11 – 16.

The jury could have believed that the defendant was alone at the house with Octavia (as was argued by defense counsel) and Tyrone came home and opened fire (as Tyrone testified). The trial court could not have reached a conclusion that the defendant was not entitled to a self-defense instruction without making a credibility determination in the State’s favor. See State v. Rogers, 405 S.C. 554, 569 n.5, 748 S.E.2d 265, 273 n.5 (Ct. App. 2013) (stating that at the directed verdict stage—which uses the same “any evidence” standard as a jury charge—the court may not weigh the credibility of witnesses). Any such credibility determination was not allowed.

Finally, the trial court’s refusal to give a self-defense charge could not rightfully be based on the defendant’s failure to present any evidence. The defendant has no burden to

present evidence. U.S. Const. amends. V, VI, XIV. The State has the burden of disproving self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). The trial court did not abide by the “any evidence” standard for determining whether to charge self-defense and improperly shifted the burden to present evidence of self-defense to the defendant. This error requires reversal of the case and a new trial.

2.

The Eighth and Fourteenth Amendments forbid sentencing an adult defendant to mandatory life without parole when one of his prior “strikes” was a crime committed as a juvenile.

Smith received a mandatory sentence of life imprisonment based on a crime he committed when he was sixteen years old. R. 352, l. 21 – 354, l. 9. Citing Miller v. Alabama, 132 S.Ct. 2455 (2012), Smith objected to the use of this crime as one of his “strikes” under section 17-25-45 of the South Carolina Code. R. 350, l. 21 – 354, l. 9; R. 371 (Court’s Ex. 3). The State did not contest that the prior strike was based on a crime committed when Smith was sixteen. R. 350, l. 21 – 354, l. 9. The trial judge disregarded the objection and sentenced him to life without the possibility of parole. R. 354, l. 20 – 355, l. 2. The trial judge asked the defendant, “[Y]ou understand I don’t have any discretion in this matter?” This lack of discretion violates Smith’s constitutional rights.

In Graham v. Florida, the United States Supreme Court held “that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” 560 U.S. 48, 75 (2010). The Supreme Court extended this holding in Miller, stating, “We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” Miller,

132 S.Ct. at 2469. It logically follows from this rule that the Eighth Amendment forbids mandatory life sentencing based on a crime committed as a juvenile.

The Court stated “that children are constitutionally different from adults for purposes of sentencing.” Id. at 2464. Children have less moral culpability. Id. at 2464-65. The Miller Court emphasized the need for individualized sentencing for juveniles. Id. at 2467. The Court stated that the sentencer must “have the ability to consider the mitigating qualities of youth.” Id. As aptly noted by Judge Dennis, South Carolina’s recidivist law took away his discretion and his ability to consider any possible range of sentences. Removing this discretion from the trial judge violated Smith’s Eighth Amendment rights.

South Carolina already holds that a juvenile adjudication may not be used as a “strike.” State v. Ellis 345 S.C. 175, 179-80, 547 S.E.2d 490, 492 (2001). In 2002, the South Carolina Supreme Court considered the exact question presented by this case. State v. Standard, 351 S.C. 199, 204-07, 569 S.E.2d 325, 328-30 (2002). In Standard, the Court held that if a juvenile had been tried and adjudicated as an adult, that conviction could be used as a strike. Id. Standard relied on now-invalid reasoning in older United States Supreme Court and federal appellate cases to reach that conclusion. Id. For example, Standard held that “lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment.” Id. at 205, 569 S.E.2d at 329. This holding is no longer good law after Miller and Graham.

Since Miller and Graham have overruled the principles underlying Standard, it is time to correct this practice in South Carolina. While this Court cannot overrule state Supreme Court precedent, it can recognize when such precedent has been rendered invalid

by decisions of the United States Supreme Court. The Court should do so in this case and overturn Smith's LWOP sentence.

CONCLUSION

For the reasons stated above, appellant's conviction should be reversed and remanded for a new trial with the instruction that his conviction for a crime committed as a juvenile cannot be used as a "strike" in the event he is convicted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

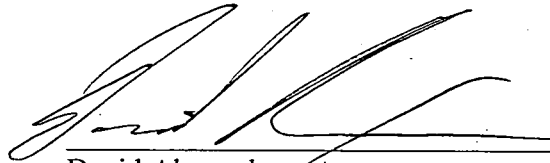
ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and 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."

July 7th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

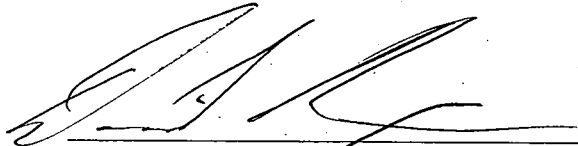
V.

AKEEM O. SMITH,

APPELLANT

CERTIFICATE OF SERVICE

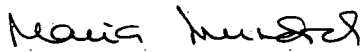
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of July, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-213518

The State,

Respondent,

vs.

Akeem O. Smith,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's request to charge self-defense. There was no evidence presented at trial indicating the charge was proper.
- II. The trial court did not err in relying on a conviction of Appellant for a crime which occurred when Appellant was sixteen as Appellant's first strike for purposes of the recidivist statute. The use of the juvenile conviction did not violate the Eighth and Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court properly denied Appellant's request to charge self-defense. There was no evidence presented at trial indicating the charge was proper.

Appellant contends the trial court erred in failing to give a self-defense charge to the jury. He claims the jury could believe part of the State's evidence and disbelieve part and it would support a claim for self-defense. There is absolutely no evidence presented demonstrating Appellant acted in self-defense. Accordingly, the trial court properly denied the request to charge self-defense.

A trial court is required to charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 58.

A self-defense charge is not required unless it is supported by the evidence. State v. Light, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." Light, 378 S.C. at 650, 664 S.E.2d at 469 (citing State v. Slater, 373 S.C. 66, 644

S.E.2d 50 (2007)); State v. Frazier, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013). To prove entitlement to a self-defense charge, the record must contain evidence of four elements:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

Light, 378 S.C. at 649, 664 S.E.2d at 469.

At trial, Octavia Ancrum and Tyrone Ancrum both testified regarding the events of October 2010. Octavia testified she left Tyrone at home while she went over to a family member's house for a girls' night. She stated she purchased some diapers and other items on her way. (T.107-108; R. 46-47). During the evening, Tyrone called and indicated he was taking the children to his mother's house. (T.109; R. 48). She said she returned home around 4:00 am. (T.111-112; R. 50-51).

When Octavia got out of the car and gathered the items she purchased earlier in the evening, she headed to the door of the trailer. She testified she saw a shadowy figure running towards her, so she tried to turn and run. A second figure appeared and the two ambushed her. (T.113; R. 52). She stated one person hit her with something hard and she fell to the ground. (T.113; R. 52). Octavia dropped the items she had purchased as the

two individuals forced her into the house. (T.114; R.53). The individuals then demanded money and asked where her husband was at the time. (T.114-115; R. 53-54). Octavia got money she kept hidden in a dresser and gave it to the men. (T.116-117; R. 55-56). One man remained in the bedroom area with Octavia, while the other went to another area of the house. (T.120-121; R. 59-60).

Octavia testified she heard the men saying "That's him" and realized her husband Tyrone had returned home. She said when Tyrone opened the door, she heard him call her name and she told him not to come in the house. At that point, she stated "gunshots erupted." (T.121; R. 60).

Tyrone testified he stayed home for a while after his wife left. (T.182-183; R. 121-122). He runs a music promotion business with a partner and they had a show that night. He received a call from his partner about how busy the show was that night, so he took the children to his mother's home and headed to the show to assist. (T.182-183; R. 121-122). His promotions business deals with lots of cash, and he usually brings the cash home with him at night after a show. (T.185; R. 124). At the end of the show he returned home around 4:00 in the morning. (T.184; R. 123).

Tyrone indicated as he passed the gate to his trailer, he saw a guy standing up from his house. He stated he did not recognize the man and he knows all the people in the area because most are related. When Tyrone confronted the man about what he was doing near his house, the man ran. (T.186; R. 125). As Tyrone pulled up to his house, he saw the diapers on the ground and believed something was wrong. (T.186; R. 125).

After getting a gun out of the glove compartment of his vehicle, Tyrone went to the trailer and found the back door unlocked, confirming his suspicions something was

wrong. He testified he opened the door and called to his wife. She responded and he could hear something was wrong in her voice. (T.186-187; R. 125-126). Tyrone testified he looked into the house and saw a shadow of a person moving in a different area of the house from where his wife's voice originated. He testified he shot through the wall knowing someone was in his house and that something was wrong. (T.188; R. 127). A gun fight ensues between Appellant and his co-perpetrator and Tyrone. (T.188-189; R. 127-128). The men in the house ultimately broke out a window and ran from the house. (T.190; 192; R.129; 131). Tyrone went in pursuit of the individuals until his leg gave out and he realized he had been shot. (T.192; R.131).

While Appellant's counsel did a thorough job of cross-examining Tyrone and Octavia regarding the inconsistencies in their statements, their failure to be completely honest regarding the weapons located in the home, and their questionable backgrounds, nothing presented changed the facts of the events from those presented by Octavia and Tyrone. No evidence in the Record indicates Appellant responded in self-defense. There is no evidence in the record to indicate he was in the Ancrum's home for any reason other than an illegal reason. The only evidence placed him in the home as part of a burglary and armed robbery.

Appellant contends the mere fact Tyrone testified he shot first entitles him to a jury charge on self-defense. However, Tyrone was in his own home and firing at an intruder. He knew someone was present that was not entitled to be there and there is no evidence indicating otherwise. The Record must reflect some basis to demonstrate all four elements of self-defense prior to the charge being proper and there is no evidence of any kind indicating Appellant was not at fault in bringing on the difficulty.

Additionally, he contends the jury could believe the argument of Appellant's counsel that the second co-perpetrator did not exist and Tyrone came home to find Appellant with his wife. No evidence in the record supports this theory. No evidence is presented indicating Appellant and Octavia were involved in an illicit affair. Appellant asserts the jury could accept the version of events proffered by counsel during closing argument. Closing argument, however, is not evidence in the record. See State v. Charing, 333 S.C. 124, 133, 508 S.E.2d 851, 856 (1998); Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933). Even though counsel for Appellant may have hypothesized about alternate theories, no evidence exists in the record to support the theory and, as a result, no evidence supports Appellant's claim for a self-defense charge.¹

Further, Appellant contends the jury could disregard part of Octavia and Tyrone's testimony but believe Tyrone's testimony he fired first and it would support a self-defense charge being given. First, as discussed above, there is absolutely no evidence supporting a self-defense charge in the record. So even if part of the testimony was disregarded by the jury, there is still no evidence supporting the claim of self-defense. Second, a charge of self-defense cannot be based on the possibility the jury may believe some of the evidence and disbelieve other evidence. See e.g., Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011) (finding alternate theory of liability such as accomplice liability must be based on evidence presented and cannot rely on possibility jury will

¹ Further, it should be noted even if there is evidence Tyrone came home and found Appellant engaged in an illicit affair with Octavia, thereby causing Tyrone to fire the first shot, Appellant would still not be without fault in bringing on the difficulty. See State v. Floyd, 160 S.C. 420, 158 S.E. 809, 812 (1931) (appellant found by victim in the midst of an illicit affair with victim's wife was not without fault in bringing on the difficulty). As a result, even under Appellant's unsupported theory, he was not entitled to a self-defense charge.

believe or disbelieve portion of the testimony); State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976) (a lesser-included offense may not be charged merely on the theory the jury may believe some of the evidence and disbelieve other evidence).

Further, any possible error in failing to give the charge is harmless beyond a reasonable doubt. The jury convicted Appellant of burglary, armed robbery, and kidnapping. Clearly they did not believe he had consent to be in the home, but instead believed the version of events told by Octavia and Tyrone. As a result of being convicted on the other charges, he would not have been without fault in bringing on the difficulty.²

A charge of self-defense is only appropriate in a situation when the jury has actually been presented with evidence upon which it could rely to find Appellant acted in self-defense. No such evidence exists in this case; therefore, the trial court appropriately denied the request to charge self-defense.

² The self-defense charge would have only been a defense to the attempted murder charge. It would not have acted as a defense to the burglary, armed robbery, or kidnapping charges. Accordingly, the only relief Appellant could be granted would be a new trial on the attempted murder charge. As a result, the life without parole sentence would still be applicable based on the convictions for burglary, armed robbery, and kidnapping all of which also qualify as most serious offenses.

II. The trial court did not err in relying on a conviction of Appellant for a crime which occurred when Appellant was sixteen as Appellant's first strike for purposes of the recidivist statute. The use of the juvenile conviction did not violate the Eighth and Fourteenth Amendment to the United States Constitution.

Appellant maintains the Eighth and Fourteenth Amendments forbid sentencing Appellant to life without parole when basing the enhancement on a prior conviction committed as a juvenile. The trial judge properly sentenced Appellant under section 17-25-45 of the South Carolina Code (Supp. 2012) because Appellant's prior juvenile conviction for a most serious offense constituted a qualifying prior conviction for enhancement purposes under the statute. Furthermore, the enhancement of Appellant's sentence with the prior juvenile conviction did not violate his right to be free from cruel and unusual punishment under the Eighth Amendment.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "[T]he trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001).

Pursuant to section 17-25-45:

Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

- (1) one or more prior convictions for:
 - (a) a most serious offense.

S.C. Code Ann. § 17-25-45(A) (Supp. 2012). Appellant's current convictions for armed robbery, burglary, kidnapping, and attempted murder all qualify as a most serious

offense. See S.C. Code Ann. § 17-25-45(C)(1) (Supp. 2012). Furthermore, his prior conviction for assault and battery with intent to kill constitutes a most serious offense. Id. (Court's Exhibit 3; R. 371).

A juvenile adjudication in family court does not qualify as a conviction for purposes of sentencing enhancement under the statute. See State v. Ellis, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001). However, when a juvenile is tried as an adult in general sessions court, a resulting conviction or guilty plea is a conviction for enhancement purposes. See State v. Standard, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002).

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. XIII. As the South Carolina Supreme Court has recognized, what constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by "evolving standards of decency that mark the progress of a maturing society." Standard, 351 S.C. at 204, 569 S.E.2d at 328 (quoting Thompson v. Oklahoma, 487 U.S. 815, 821 (1988)). "[U]nder State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), . . . , the two principles to consider in determining whether a punishment is cruel and unusual are (1) the evolving standards of decency that mark the progress of a maturing society and (2) the proportionality between the punishment and the offense." State v. Williams, 380 S.C. 336, 346, 669 S.E.2d 640, 645 (Ct. App. 2008).

The United States Supreme Court (USSC) noted: "We have pinpointed that the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" Atkins v. Virginia, 536 U.S. 304, 312, 122 S.Ct.

2242, 2247 (2002) (quoting Penry v. Lynaugh, 492 U.S. 302, 331(1989)). “The Legislature has the power, within constitutional limits, to define and punish crimes.” State v. Washington, 338 S.C. 392, 400, 526 S.E.2d 709, 713 (2000) (quoting Guinyard v. State, 260 S.C. 220, 226, 195 S.E.2d 392, 395 (1973)). In this case, the legislature has determined a repeat offender of a most serious crime should be punished severely with life in prison without the possibility of parole.

The Eighth Amendment only prohibits sentences which are grossly out of proportion to the severity of the crime. See Curtis v. State, 345 S.C. 557, 575, 549 S.E.2d 591, 600 (2001); see also, State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) (“The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime.”). Further, the USSC has found:

All of these principles-the primacy of the legislature, the variety of legitimate penological schemes, the nature of our federal system, and the requirement that proportionality review be guided by objective factors-inform the final one: The Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are “grossly disproportionate” to the crime.

Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (Kennedy, J. concurring in part and concurring in judgment).

In State v. Standard, the South Carolina Supreme Court determined the enhancement of a sentence under S.C. Code Ann. § 17-25-45 with a prior juvenile conviction did not constitute cruel and unusual punishment. Standard, 351 S.C. at 204, 569 S.E.2d at 328. “[The Court held] that an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment.” Id. at

206, 569 S.E.2d at 329 (emphasis in original). Subsequently, the Court of Appeals also found the imposition of a sentence of life without parole based on a prior juvenile conviction did not constitute cruel and unusual punishment. Williams, 380 S.C. at 348-349, 669 S.E.2d at 647.

In the present case, Appellant is categorically challenging the use of a juvenile conviction for enhancement purposes under South Carolina's recidivist offender statute. Appellant contends the recent holding of the USSC in Miller v. Alabama, 132 S.Ct. 2455 (2012) and Graham v. Florida, 560 U.S. 48 (2010), suggested a change in contemporary values and called into question our courts' holdings in both Standard and Williams.

Neither the holding of Miller, nor the holding of Graham, has impacted the underlying holdings of Standard and Williams. In Graham, the USSC found a sentence of life without parole to be unconstitutional for a juvenile offender who did not commit a homicide. Graham, 560 U.S. at 75. The Court in Graham discussed its holding in Roper v. Simmons, 543 U.S. 551 (2005), in which the USSC found the death penalty to be cruel and unusual punishment for a juvenile. The USSC explained juveniles have a "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed." Graham, 560 U.S. at 68 (citing Roper, 543 U.S. at 569-570). The Court further explained: "Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." Id.

The USSC in Miller found a sentencing scheme mandating life without parole for a juvenile offender violated the Eighth Amendment. Miller, 132 S.Ct. at 2469. The

Court again, relying on Roper and Graham, explained the differences between a juvenile and an adult. The Court then found those differences significant because the transition from juvenile to adult is one in which maturing occurs, in which changes occur in the parts of the brain that control behavior, and “as the years go by and neurological development occurs, [the juvenile’s] ‘deficiencies will be reformed.’” Id. at 2464-2465 (quoting Roper, 543 U.S., at 570).

The facts of this case are different from those of Roper, Graham, and Miller in one significant aspect—Appellant was not a juvenile when he committed the crime for which he was sentenced to life without parole. Appellant, at the time he committed the attempted murder, burglary, armed robbery and kidnapping for which he was sentenced to life without parole as a recidivist offender, was approximately 24 years of age. As a sixteen year old, Appellant committed an assault and battery with intent to kill. Under the rationale of Graham, Roper, and Miller, as he grew older, Appellant should have matured and his “deficiencies” seen as a juvenile should have been “reformed.” Instead, his actions as a recidivist of most serious and egregious crimes have shown that Appellant is one of the individuals demonstrating “irretrievably depraved character.”

At the time Appellant executed his most recent egregious crimes, Appellant could no longer claim he had any diminished responsibility for his actions based on his age or maturity. Therefore, there is no rational basis to exclude his prior juvenile convictions from consideration for sentencing purposes; further, Roper, Graham, and Miller do not require the exclusion.

The punishment Appellant received as an adult is not further punishing him for his crime as a juvenile. Instead, it is punishing him as a repeat offender who did not

reform his behavior, and instead, demonstrated a continued disrespect for the law and for others. See Gryger v. Burke, 334 U.S. 728, 732 (1948) (“The sentence as a fourth offender or habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.”); see also, Solem v. Helm, 463 U.S. 277, 296 (1983) (“[A] State is justified in punishing a recidivist more severely than it punishes a first offender.”). In addition, Appellant’s enhanced sentence is entirely consistent with the rationale behind recidivist offender statutes, which is to more severely punish offenders who continue to break the law. See United States v. Rodriguez, 553 U.S. 377, 385 (2008) (“[A]n offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation.”).

Additionally, other courts have considered the impact of Graham and Roper on recidivist life sentences and found the use of a juvenile conviction as a prior offense is not improper. See United States v. Graham, 622 F.3d 445, 463 (6th Cir. 2010) (finding the imposition of a sentence of life imprisonment under a recidivist statute based upon a prior juvenile conviction was not unconstitutional because the instant offense was committed by an adult offender and not a juvenile with lessened culpability as discussed in Graham v. Florida); United States v. Scott, 610 F.3d 1009, 1018 (8th Cir. 2010) (“The Court in Graham did not call into question the constitutionality of using prior convictions, juvenile or otherwise, to enhance the sentence of a convicted adult.”); see, e.g., United

States v. Wilks, 464 F.3d 1240, 1243 (11th Cir. 2006) (“Our conclusion that youthful offender convictions can qualify as predicate offenses for sentencing enhancement purposes remain valid because Roper does not deal specifically – or even tangentially – with sentence enhancement. It is one thing to prohibit capital punishment for those under the age of eighteen, but an entirely different thing to prohibit consideration of prior youthful offenses when sentencing criminals who continue their illegal activity into adulthood. Roper does not mandate that we wipe clean the records of every criminal on his or her eighteenth birthday.”).

Also, Appellant has failed to establish a clear or universal rejection of the use of prior juvenile convictions for enhancement purposes under recidivist offender statutes. Without a clear showing to the contrary, there is no basis to determine the statutory sentencing practice is unconstitutional. See State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (“When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.”).

Accordingly, the trial court properly found section 17-25-45 and its mandatory imposition of life without parole controlled in this case. Nothing in the USSC’s opinions of Roper, Graham, or Miller has altered the analysis allowing for the use of a prior juvenile conviction as the qualifying conviction for the sentence enhancement. This Court should, therefore, affirm Appellant’s sentence to life without parole.

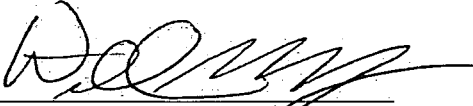
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 24, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-213518

The State,

Respondent,

vs.

Akeem O. Smith,

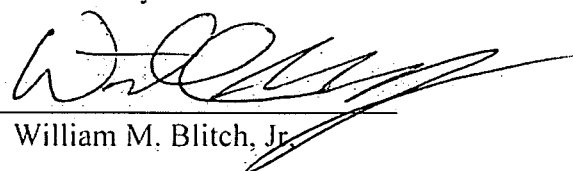
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), ACACR, 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 Filings."

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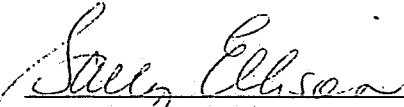
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 24th day of June, 2014.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM O. SMITH,

APPELLANT

APPELLATE CASE NO. 2012-213518

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Reply to Argument 1

The State ignores the evidence in the record supporting Smith's self-defense theory. It also ignores the principle that Smith is entitled to the inferences flowing from the evidence in the light most favorable to him. The standard of review for analyzing whether a jury charge should have been given is the same as whether a directed verdict should have been granted: the "any evidence" standard. State v. Muller, 282 S.C. 10, 10, 316 S.E. 2d 409, 409 (1984) (self-defense); State v. Larmand, 402 S.C. 184, 190, 739 S.E. 2d 898, 901 (Ct. App. 2013) (directed verdict). "When reviewing the denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." Larmand at 190, 739 S.E. 2d at 901.

Just like when reviewing a directed verdict, a defendant whose request for a self-defense charge has been denied is entitled to have the appellate court view inferences arising from the evidence in the light most favorable to him. "To determine whether self-defense is fairly raised by the proof and must be instructed to the jury, a court must, in effect, consider the evidence in the light most favorable to the defendant, including drawing all reasonable inferences flowing from that evidence." State v. Thacker, 164 S.W.3d 208, 245 (Tenn. 2005).

Octavia and Tyrone lied about the incident from the beginning. They tried to flee the scene without letting the police in their house. R. 221, l. 11 – 222, l. 2. Neither would identify any suspects. R. 224, ll. 21-24. Octavia gave the police a false statement. R. 89, ll. 22-24. Octavia had a pending charge for assault with intent to kill with the same solicitor's office prosecuting the case. R. 23, l. 21- 24, l. 12. R. 110, ll. 11-20.

Tyrone was the first to open fire into a dark single-wide trailer even though he knew his wife was in the field of fire. R. 127, l. 8 – 128, l. 10. Not only did he shoot down what must have been a limited angle, he blindly fired through a wall. R. 127, l. 8 – 128, l. 10. An inference that can be drawn – and was made by the defense attorney in closing – was that Tyrone did not care if he hit Octavia when he fired through a wall because he believed he was catching her with another man. R. 309, ll. 6-17.

This inference is supported by the evidence that Tyrone and Octavia lied about the incident, that Tyrone admitted he fired first, and that Tyrone fired blindly through a wall without concern for his wife's safety. The Court should ignore the State's assertion that Smith would be at fault for bringing on the difficulty because he was committing adultery. Even if the 1931 case cited by the State stood for the proposition it claims, whether Smith knew Octavia was married would be a jury question. See State v. Floyd, 160 S.C. 420, 158 S.E. 809, 813 (1931) (holding that jury did not necessarily ignore trial court's instruction not to try an adulterous defendant for "immorality or adultery").

The State asserts that a request to charge may not be based on believing some part of the State's evidence and disbelieving other parts of it. This assertion significantly overstates the holding of several cases. The correct way to state this principle is that the request to charge may not be based on speculation which requires the belief of some portion of evidence and the disbelief of other evidence. In this case, the jury would not need to speculate that Octavia and Tyrone were liars. They both admitted they were liars. The police testified that they were uncooperative immediately after the incident. The evidence that Octavia and Tyrone lied about the incident combined with the admission of shooting

first provides a solid evidentiary and inferential basis for self-defense and does not invite unreasonable speculation.

A more in-depth look at the cases cited by the State betrays its overreach. In State v. Barber, 393 S.C. 232, 712 S.E. 2d 436 (2011), the question was whether there was evidence to submit accomplice liability to the jury. Four men allegedly participated in a robbery and murder. Id. at 234-36, 712 S.E.2d at 437-38. Three of the alleged participants testified for the prosecution and other witnesses' testimony indicated that more than one man was armed. Id. at 237-39, 712 S.E.2d at 438-40. Despite the testimony of these witnesses, the defendant (at PCR) argued that the evidence was insufficient to present accomplice liability to the jury. Id. at 236, 712 S.E.2d at 438. Barber is an "any evidence" case and does not stand for the proposition contended by the State.

Respondent also overstates State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). In Funchess, the court found "no conflict in the evidence" that the defendant assaulted the victim with the intent to ravish her. Id. at 429, 229 S.E.2d 332. The court addressed the defendant's contention that the jury could disbelieve the unconflicted evidence and rejected this as a "mere contention." Id. The defense theory in Funchess was alibi. Id. In the North Carolina case cited in Funchess, the defendant's theory was that he did not enter the house where the assault occurred. State v. Hicks, 84 S.E.2d 545, 547 (N.C. 1954) ("As to this, his position is simply that he did not go into the house with Abernathy.") In Funchess and Hicks, the defendants requested an instruction based on speculation that contradicted their theory of the case.

As opposed to Funchess and Hicks, the appellant admitted he was in the house. His theory was that Tyrone fired first. The evidence was in conflict because the testimony of the

witnesses was itself in conflict and full of lies. Therefore, the Funchess rule barring speculative disbelief of the State's evidence does not apply to this case and the evidence supported a self-defense charge.

Finally, the State contends the failure to give the self-defense instruction only would require reversal of the attempted murder conviction, but not Smith's remaining convictions. This assertion is erroneous because the trial judge's refusal to charge self-defense foreclosed Smith's theory of the case. This amounted to a *de facto* comment on the evidence. See S.C. Const. art. V, § 21, ("Judges shall not charge juries in respect to matters of fact, but shall declare the law.") If error is found, all of Smith's convictions must be reversed.

Reply to Argument 2

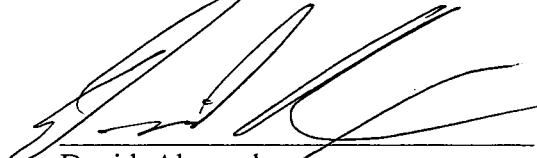
The State utterly failed to refute appellant's argument that after Miller v. Alabama, 132 S.Ct. 2455 (2012) and Graham v. Florida, 560 U.S. 48 (2010), the constitutional basis for our Supreme Court's decision in State v. Standard, 351 S.C. 199, 569 S.E. 2d 325 (2002) has evaporated. All of the cases cited by the State were decided before Miller. As such, they have no relevance to the current issue on appeal.

Individualized sentencing is required for juveniles. Miller, 132 S.Ct. at 2469. In this case, the trial judge had no ability to make any kind of determination about the prior conviction and Smith's culpability. The trial judge had no ability to assess Smith's ability to be reformed or any relevant sentencing factor for the current crime. The recidivist statute robbed the trial judge of all discretion. After Miller, judges must have the ability to use discretion when considering the impact of juvenile convictions and sentencing. If the appellant does not receive a new trial, this case should be remanded for resentencing.

CONCLUSION

For the reasons stated in Issue 1, appellant's convictions must be reversed and remanded for a new trial. Alternatively, for the reasons stated in Issue 2, appellant's sentences must be reversed and remanded for a new sentencing proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

This 7th day of July, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final reply Brief complies with Rule 211(b), SCACR, and 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."

July 7th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

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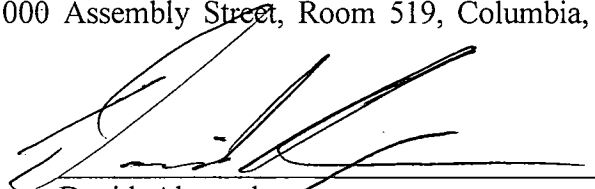
V.

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of July, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.