

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2015-UP-178 (S.C. Ct. App. filed 4/8/15)

2013-GS-42-2013

THE STATE,

RESPONDENT,

V.

ANTWON M. BAKER, JR.,

PETITIONER

A P P E N D I X

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DEBORAH R. J. SHUPE
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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JUN 22 2015

S.C. Supreme Court

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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.

Antwon M. Baker, Jr., Appellant.

Appellate Case No. 2013-001366

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2015-UP-178
Submitted March 1, 2015 – Filed April 8, 2015

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Antwon Baker appeals his convictions for voluntary
manslaughter and unlawful carrying of a pistol, arguing the trial court erred in (1)

failing to direct a verdict of acquittal when he presented evidence of self-defense as a matter of law and the State did not disprove self-defense and (2) denying his motion for dismissal based upon the Protection of Persons and Property Act (the Act).¹ We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Issue 1: *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) ("When ruling on a motion for a directed verdict, the trial [court] is concerned with the existence of evidence, not its weight." (internal quotation marks omitted)); *id.* ("In contrast, when self-defense is properly submitted to the jury, the defendant is entitled to a charge, if requested, that the State has the burden of disproving self-defense by proof beyond a reasonable doubt." (internal quotation marks omitted)); *id.* ("On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State."); *id.* ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury." (internal quotation marks omitted)); *id.* at 382, 755 S.E.2d at 460 ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury." (internal quotation marks omitted)); *id.* (stating a petitioner's inconsistent accounts of an incident created credibility issues and questions of fact such that the case was properly submitted to the jury).

2. As to Issue 2: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review."); S.C. Code Ann. § 16-11-420(A) ("It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business."); S.C. Code Ann. § 16-11-440(C) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in [s]ection 16-1-60 [of the South Carolina Code]."); *Gilchrist v. State*, 364 S.C. 173, 180, 612 S.E.2d 702, 706

¹ S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2014).

(2005) (declining to elevate a dance club "to the possessory status of a home or place of business" based upon public policy considerations).

AFFIRMED.²

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

² 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.

ANTWON M. BAKER, JR.,

APPELLANT

APPELLATE CASE NO. 2013-001366

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2015-UP-178

PETITION FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, the undersigned counsel would petition for rehearing in this appeal based on this Court's denial of appellant's self-defense and castle doctrine claims because apparently this Court relied on the jury's rejection of appellant's self-defense case and overlooked evidence presented at trial that established self-defense as a matter of law as well as evidence in support of appellant's qualification for immunity under the castle doctrine since he was attacked in a restaurant, which is a place where he had a right to be protected. In support of this petition, counsel submits the following.

A.) Self Defense as a Matter of Law

Upon entering a Waffle House Restaurant, appellant was attacked by Brandon Glover at the entrance door. Appellant was alone, but Brandon Glover was at the Waffle House with his friends Anthony Young and Justin Davis. Apparently, Glover took it upon himself to take revenge upon appellant based on Young's story (a prior misdeed involving appellant) and hit appellant on his head as he entered the Waffle House. Appellant responded in self-defense by firing a weapon. Young was killed when the gunshots were fired. At trial, the jury rejected appellant's self-defense claim and the judge failed to grant appellant's directed verdict motion requesting a ruling that the shooting was in self-defense as a matter of law. This Court affirmed the trial judge's denial of appellant's request for a ruling of not guilty as charged due to self-defense as a matter of law under the ruling of State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014), to the extent that a jury verdict is controlling when there are "inconsistent accounts of an incident" or where the "evidence is susceptible of more than one reasonable inference." However, in the case at bar, the accounts establishing that appellant was not the aggressor, i.e., that he (appellant) was hit first, are uncontroverted, and not inconsistent, and thus proved appellant acted in self-defense as a matter of law based on the life or death situation that followed his assault. Therefore, Butler was inapplicable this case. The facts from the trial support this position.

At trial, state's witness Justin Davis testified that around 2:00 am on June 3, 2012, Brandon Glover drove him (Davis) and Anthony Young to a Waffle House located in Spartanburg County, and that appellant arrived there at the restaurant later while they were still there. Upon seeing appellant, Anthony Young declared that appellant previously pulled a gun on him. Davis testified that Brandon Glover went outside to talk with appellant and told him (appellant) that a fight would commence presumably out of loyalty to and revenge for Anthony Young. Appellant responded by

stating that Glover robbed one of his (appellant's) friends and that Anthony Young attacked him (appellant) previously with a gun. Then, as appellant moved to re-enter the Waffle House, Brandon Glover hit appellant about the head. Thereafter, appellant pulled out his gun and started shooting. Everyone ran as shots were fired. Anthony Young was shot in the crossfire and died. Tr. 101, l. 101 – p. 107, l. 25.

State's witness Joshua Hance testified that he was working as a cook at the Waffle House on that same morning and witnessed the events in question. Hance stated that appellant was ordering his food when another man approached and "had words" with him (appellant). Hance added that appellant made an exit, but that when he (appellant) re-entered, another man ran up and hit appellant, and that appellant responded by pulling out a gun and firing gunshots. Tr. 210, l. 15 – p. 217, l. 18.

Appellant did not testify at trial, but note that Brandon Glover testified at trial on behalf of the defense. Defense witness Glover testified that he was there along with Anthony Young and Justin Davis when the shooting at the Waffle House occurred. When appellant arrived and Young stated that appellant pulled a gun on him previously then he (Glover) went outside and argued with appellant. Glover stated that he threw the first punch at Glover at the Waffle house door and the shooting began afterwards. Tr. 388, l. 1 – p. 395, l. 11.

Shortly after the shooting, appellant was apprehended by police at the apartment complex nearby where he resided and gave them statements about what happened at the Waffle House. In his first statement, appellant explained that when he parked in the Waffle House parking lot on that night, he saw "ten to twelve boys" in the parking lot so he retrieved his gun. Then, appellant stated that as he was ordering and paying for his food and exiting, one male said he had a problem with him and another male said if he (appellant) didn't fight they would rob him. Appellant explained

that he pleaded with them to let it go, but that when he turned to re-enter the Waffle House, “two of them hit [him] in the back of the head” and that he “pulled out [his] gun and fired three to eight shots.” Tr. 304, lines 1-25. Appellant’s second statement was almost identical to his first statement except that he added that after he was approached by the male in the blue shirt who insisted that they fight.

Compare the holdings in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), where the Court in both cases found self-defense existed as a matter of law, which in effect meant that the state’s evidence was insufficient to disprove self-defense. In Dickey, the defendant, i.e. Dickey, who was a security guard in a housing complex, responded to a call regarding a male guest that was angry and drunk and made attempts to assault a resident of the complex. Dickey asked the angry and drunk man to exit the complex and when the man did so, he (Dickey) followed him outside in order to advise police of the man’s whereabouts if needed because the police had already been called and notified of the pending event. When the angry man, who had a liquor bottle in his possession, started walking back toward Dickey, threatening to fight, and asking why he was being followed, Dickey pulled out a gun and fired because the angry and drunk man continued to advance aggressively and reached under his shirt (presumably for a weapon). Thereafter, the man continued to march toward Dickey and did not stop moving forward until the second gunshot slowed him and after the third gunshot made him drop to his knees. The Dickey Court held that Dickey was entitled to a directed verdicts of acquittal on the charges on the ground of self-defense as Dickey was not the aggressor as he walked outside to inform police of this man’s location, and because Dickey believed he was in danger and had the

right to act (shoot) on appearances¹ due to this angry and drunk man's aggressive behavior, especially where it appeared as though the man was armed. There was no duty to retreat since there was no other means of avoiding the danger (could not turn back) without losing his life or sustaining injuries.

Moreover, in Hendrix, supra, defendant Hendrix, whose relationship with the aggressive intoxicated man who accosted him on the day in question was not good, was approached by this drunk on the day in question threatening to fight him, and thereafter drove to Hendrix's property, pulled out a gun, walked up, pointed the gun, and threatened to kill Hendrix. This occurred despite Hendrix's pleas for him to leave the property. Ultimately, Hendrix shot (four times) and killed the man. The Hendrix Court held that the intoxicated man was the aggressor and that Hendrix acted on appearances in believing he was in danger of losing his life or sustaining serious bodily injury and had no duty to retreat.

Likewise, appellant's case was one of self-defense as a matter of law.

B.) Protection of Persons and Property Act

Also, this Court's use of the holding in Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005), to support its holding in appellant's appeal that the Waffle House did not meet the qualifications of the "possessory status of a home or place of business" that would invoke the protection of the castle doctrine was inapplicable because equating a dance club from the Gilchrist case, which was the place where Gilchrist argued he had a right to protection under the Act, to a restaurant (Waffle House) where appellant argued he should have been protected under the Act,

¹ A person has the right to act on appearances even if the person's belief is ultimately mistaken. State v. Fuller, 297 S.C. 440 443-44, 377 S.E. 2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." Dickey v. State citing to State v. Starnes, 340 S.C.

constituted an unequal match. The Gilchrist Court overruled State v. Marlowe, 120 S.C. 205, 112 S.e.921 (1922), which found that a member of an Elk Club enjoyed immunity from retreating, and held contrary to Marlowe that with respect to the issue of immunity from the retreating, a club could not be elevated to the possessory status of a home or place of business. First, the holding in Gilchrist is not squarely on point with the immunity connected to the castle doctrine as Gilchrist addresses immunity from the duty to retreat. Next, a restaurant is characterized as a place where one has a right to be inside per the castle doctrine in the same vein as one's home vehicle or business. A restaurant is a place where meals are served to the public². A dance club is the equivalent of a night club, which is a place that stays open late at night and provides food, drink, and entertainment.³ The differences in the nature of these two venues cannot be viewed as equivalent to each other. A restaurant involves the activity of feeding, which encompasses a basic human need. One's attendance at a club involves a voluntary decision of a human being to place himself in an environment that does not meet a human need and where alcohol may be served and where dancing is a part of the scenery, which in turn most likely would encompass the potential for immoral behavior. Clearly, the castle doctrine protection would not apply to a night/dance club, but this protection would certainly apply to a restaurant. The Gilchrist holding was inapplicable in this case.

S.C Code Ann § 16-11-440(c) allows for immunity where one is not engaged in an unlawful activity and is attacked in another place (other than his home, vehicle or bushes) where he had a right to be inside, i.e. in a restaurant such as the Waffle House. In the case at bar, appellant

312, 322, 531 S.E.2d 907, 913 (2000) (citing State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978)).

²The American Heritage Dictionary Second College Edition (1985) p. 1053.

³ The American Heritage Dictionary Second College Edition (1985)p. 841.

established by a preponderance of the evidence that he was entitled to immunity under the Protection of Persons and Property Act. S.C. Code Ann § 16 -11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act. Similarly, this case involves a right to immunity in a public place where appellant had a right to be present, i.e., a restaurant known as the Waffle House. Specifically, under 16-11-440 (c) the Act provides that one is justified in using deadly force if:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person...

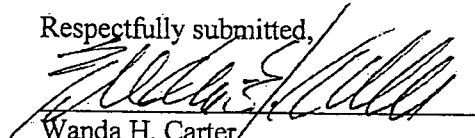
Moreover, unlike the case of Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), where there was no valid self-defense claim; here, appellant was not engaged in an unlawful activity and also, appellant's self-defense claim was established as a matter of law. Appellant was in a public restaurant, i.e., a public accommodation that was a place where he had a right to be and was attacked from behind by Glover. These are the uncontroverted facts. Glover himself admitted that he attacked appellant from behind at the Waffle House entrance. Also, appellant was confronted by a gang-like posse waiting to defend and attack; and clearly, appellant was outmanned and outnumbered. Appellant lawfully used deadly force to defend himself. Therefore, the trial judge erred in denying appellant immunity under the Act.

During the pretrial hearing held in the matter, Detective Richie Foster testified that in the course of his investigation into the Waffle House shooting, he learned that words were exchanged between appellant and a group of men, one of whom appellant had difficulty with previously, and that after these words were exchanged between the members of the group (including their threat to

rob him) and appellant, one of the members of the group hit appellant in the back of his head upon his entry into the restaurant. Then, appellant responded by firing gunshots. Tr. 26, l. 1 – p. 29, l. 24. Detective Foster added that appellant was neither trespassing nor banned from the Waffle House and was rightfully at the restaurant, and that appellant pleaded with the gang to leave it alone. Tr. 30, lines 4-20. g that the Act was inapplicable to appellant's case and in not reaching a ruling on the merits via S.C. Code Ann § 16-11-440 (c). Again, appellant was protected from prosecution because he defended himself in self-defense after being attacked in a place where he had a right to be at the time of the attack upon him.

WHEREFORE, based on the foregoing arguments, appellant requests a rehearing on the issues of appellant's proof of self-defense as a matter of law and statutory immunity under the castle doctrine.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 22nd day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

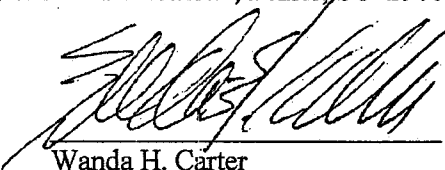
V.

ANTWON M. BAKER, JR.,

APPELLANT

CERTIFICATE OF SERVICE

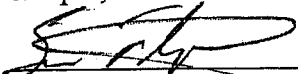
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Antwon M. Baker #355673, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 22nd day of April, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of April, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Antwon Michelle Baker, Jr., Appellant.

Appellate Case No. 2013-001366

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.

Paul E. Thomas

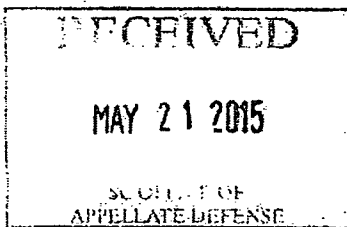
J.

John D. Heath

J.

John D. Heath

J.



Columbia, South Carolina

cc: Wanda H. Carter, Esquire
Alan McCrory Wilson, Esquire
Deborah R.J. Shupe, Esquire
Barry Joe Barnette, Esquire

FILED

may 21, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWON MICHELLE BAKER, JR.

APPELLANT

APPELLATE CASE NO. 2013-001366

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306-2335
(864) 596-2575

Attorneys for Respondent

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**THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:
STATE'S EXHIBITS # 1 (VOLUNTARY STATEMENT); # 2 (VOLUNTARY
STATEMENT); COURT'S EXHIBIT # 2 (JURY QUESTION); STATE'S # 35
(DIAGRAM); # 36 (LIST FOR SKETCH) # 57 (DIAGRAM); # 59 (WOUND CHART); # 60
(DIAGRAM);**

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
 3
 4 The State,)
 5 -vs-) TRANSCRIPT OF RECORD
 6 Antwon Michele Baker, Jr.,) 2012-GS-42-3668
 7 Defendant.) 2013-GS-42-2013
 8) June 3 - 6, 2013
 9) Spartanburg, South Carolina

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury

14 A P P E A R A N C E S:

15 DERRICK B. BULSA, ESQUIRE
 16 LINDSEY OVERBY, ESQUIRE
 Attorneys for the State
 17 ROBERT EUGENE IANUARIO, ESQUIRE
 18 MATT CANADY, ESQUIRE
 Attorneys for the Defendant

23 Linda D. Moffitt
 24 Circuit Court Reporter

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Voluntary statement	37	50
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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID. EV.</u>
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5	S-3	Photograph	120 121
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1 (Proceedings June 3, 2013)

2 THE COURT: First case is what, State vs. Antwon
3 Baker?

4 MR. BULSA: Baker, yes.

5 THE COURT: All right. Mr. Ianuario, you represent
6 Mr. Baker?

7 MR. IANUARIO: That's correct, Your Honor. And this
8 is my associate attorney, Matt Canady.

9 THE COURT: Matt Kennedy?

10 MR. IANUARIO: Canady.

11 THE COURT: Canady?

12 MR. IANUARIO: Yes, sir, Your Honor.

13 THE COURT: C-A-N-N-A-D-Y?

14 MR. IANUARIO: C-A-N-A-D-Y.

15 THE COURT: All right. Y'all represent Mr. Baker?

16 MR. IANUARIO: Yes, sir.

17 THE COURT: Where is Mr. Baker?

18 MR. IANUARIO: He is in the holding cell, the holding
19 area.

20 THE COURT: Have they gone to get him? Have you got
21 any matters to address before we pick the jury?

22 MR. BULSA: Yes, sir. First off we need to do
23 arraignment on the pistol charge. That was a direct
24 indictment.

25 He was served through his attorney -- unless he wants

1 to waive presentment on that or waive arraignment on it.

2 MR. IANUARIO: We can waive arraignment.

3 THE COURT: He was just charged with unlawfully
4 carrying a pistol, not with carrying a pistol in the
5 commission of a violent crime?

6 MR. BULSA: The sentence on the murder will cover
7 that, so, yes, sir, it will just be the unlawful
8 possession, because he's in unlawful possession regardless
9 of the outcome of the murder.

10 THE COURT: So he could get an additional sentence for
11 unlawful carrying a pistol on top of the murder.

12 MR. BULSA: He basically --

13 THE COURT: He's charged with possession of a pistol
14 during the commission of a violent crime -- he couldn't?

15 MR. BULSA: Based on the facts of the case to let the
16 jury know he was not in lawful possession of a pistol.

17 Second, Your Honor, I don't know how to phrase this,
18 but the defense I understand is claiming self-defense.

19 This occurred at a Waffle House, and for the sake of
20 the record and for any post-conviction relief should a
21 conviction be obtained, I'm not certain if a pretrial
22 hearing needs to be held regarding the "Stand Your Ground"
23 law since we've got a self-defense claim. He could be
24 immune from prosecution altogether.

25 THE COURT: All right. Well, let's wait until we get

1 the defendant in here.

2 THE BAILIFF: He's on his way, Judge.

3 THE COURT: Okay.

4 (Whereupon, the defendant entered the courtroom.)

5 THE COURT: What's that statute number?

6 (Pause.)

7 MR. BULSA: 16-11-410 I believe is where it begins.

8 Your Honor, the section that I believe may need to be
9 addressed is 16-11-440(c).

10 MR. IANUARIO: That's correct, Your Honor.

11 THE COURT: Okay. Mr. Ianuario, what's the
12 defendant's position?

13 MR. IANUARIO: Yes, Your Honor. We'd like to have a
14 hearing on the "Stand Your Ground". Pretty much the
15 defense is we believe it has merit for consideration.

16 THE COURT: All right. Mr. Ianuario, as I understand
17 it, you are making a motion for a dismissal of the
18 indictment pursuant to 16-11-450.

19 MR. IANUARIO: Correct, Your Honor.

20 THE COURT: Okay. What would you like to present?

21 MR. IANUARIO: The statute reads a person who is not
22 engaged in an unlawful activity and who is attacked in a
23 place where he has a right to be including but not limited
24 to his place of business has no duty to retreat and may
25 stand his ground.

1 Mr. Baker was a lawful patron at the Waffle House on
2 the evening of the shooting. I know we haven't gotten into
3 the facts of the case yet but he -- he was summoned
4 outside. There was a quarrel. He stuck his head out the
5 door and said he wanted no part of it, he was going back
6 inside, didn't want to fight.

7 As he was turning around to reenter he was jumped by
8 at least one individual. I believe there was four or five
9 standing around.

10 So although Mr. Baker was unlawfully carrying a pistol
11 at that point in time we do not believe he engaged in any
12 unlawful activity. He was not using the pistol in any sort
13 of manner to intimidate, to attempt to rob, coerce,
14 threaten, was not pointing it, presenting it and wasn't
15 aware the pistol was even there until he was attacked.

16 THE COURT: Okay. Would you like to present some
17 evidence?

18 MR. IANUARIO: Can you take the police reports without
19 the witness being present, or the witness statements?

20 THE COURT: Sir?

21 MR. IANUARIO: I have statements to -- to the fact,
22 but I would need the witnesses in to give the statements.

23 THE COURT: Well, I mean, I think you've got the
24 burden of proof.

25 MR. IANUARIO: Okay. May I speak to the prosecutor

1 one moment, Your Honor?

2 THE COURT: Okay.

3 (Pause.)

4 MR. IANUARIO: I would like to start with Investigator
5 Foster, Your Honor. I believe he's readily available.

6 MR. BULSA: They're upstairs. I've got to bring them
7 down here, Your Honor.

8 THE COURT: Let's get them down here.

9 (Pause.)

10 MR. BULSA: In the meantime would you like to arraign
11 the defendant on the indictment?

12 THE COURT: All right. You are Antwon Baker.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Ianuario is your lawyer?

15 THE DEFENDANT: Sir?

16 THE COURT: Mr. Ianuario is your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Ianuario, have you advised your client
19 that he's also been indicted -- in addition to the crime of
20 murder he's been directly indicted by the prosecutor on a
21 charge of unlawfully possessing a pistol on June the 3rd of
22 2012?

23 MR. IANUARIO: That's correct, Your Honor.

24 THE COURT: And you've talked to him about that?

25 MR. IANUARIO: Yes, Your Honor.

1 THE COURT: Does he waive arraignment or wish to be
2 arraigned?

3 MR. IANUARIO: We're going to waive the arraignment on
4 it, Your Honor.

5 THE COURT: Okay. Mr. Baker, do you understand what
6 the charge is? Do you understand the potential
7 punishment --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- for unlawful carrying a pistol?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay.

12 MR. BULSA: Additionally, Your Honor, the defendant
13 gave two written statements, spoke to two separate
14 investigators and gave information about this incident that
15 the state may intend to use.

16 It's my understanding the defense is waiving any
17 Jackson vs. Denno hearing regarding the voluntariness of
18 any of those statements.

19 MR. IANUARIO: That's correct, Your Honor.

20 THE COURT: How many statements are there?

21 MR. BULSA: Two written statements, and then he
22 discussed the case with Investigator Williams and also
23 Investigator Foster. And he made sort of a spontaneous
24 comment when the officers first approached him.

25 THE COURT: All right. Mr. Ianuario, you're aware of

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 MR. BULSA: The victim's family is outside the
2 courtroom. We'd like to bring them in.

3 THE COURT: Whose family?

4 MR. BULSA: The victim's family, Your Honor.

5 THE COURT: Do they have a name? Mr. Young's family.
6 Okay.

7 MR. IANUARIO: Your Honor, members of Mr. Young's
8 family. Some of them, two or three of them, are witnesses
9 in this case. I'd like to ask that those witnesses be
10 sequestered.

11 THE COURT: Okay.

12 MR. BULSA: They can stay outside.

13 Investigator Williams has arrived -- excuse me --
14 Foster has arrived.

15 THE COURT: All right. Mr. Ianuario, do you want to
16 call Mr. Foster?

17 MR. IANUARIO: Yes, Your Honor. I would like to call
18 Investigator Foster to the stand, Your Honor.

19 RICHIE FOSTER, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. IANUARIO

22 Q Thank you, Investigator Foster.

23 So the purpose of this hearing is a "Stand Your
24 Ground" hearing. I'm looking to determine if Mr. Baker was
25 not engaged in unlawful activity, if he was attacked in a

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 place where he had a right to be and that he had the right
2 to respond with force or deadly force. Those are the
3 issues I'd be looking for.

4 would you provide a brief summary for the Court of the
5 events that took place on the night of June 3rd, the early
6 morning hours?

7 A My understanding so far is that Mr. Baker stopped to
8 get something to eat, noticed that a crowd of people were
9 in the parking lot.

10 THE COURT: Well, excuse me just a minute. But, now,
11 he's not going to be able just to testify as to what
12 everybody else told him.

13 MR. IANUARIO: Shouldn't he be allowed to testify on
14 the information he gathered at the location in the course
15 of his investigation, not the authenticity of it but what
16 he was told?

17 THE COURT: Well, he can testify what everybody told
18 him if you don't want me to consider it as evidence that
19 would support a grant of immunity.

20 MR. IANUARIO: Understood, Your Honor.

21 THE COURT: I mean, this hearing is not different than
22 the trial. I mean, you have a burden to establish that
23 he's entitled to immunity, and you do that through
24 competent evidence, not just hearsay testimony.

25 MR. IANUARIO: Understood, Your Honor.

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 BY MR. IANUARIO

2 Q In the course of your investigation did you determine
3 that anyone else at the Waffle House had a firearm besides
4 Mr. Baker?

5 A No, I did not.

6 Q Was it suspected anyone else at the Waffle House had a
7 firearm besides Mr. Baker?

8 A There was one mention of it, and we could not prove it
9 was.

10 Q Approximately how many individuals did you interview
11 at the scene?

12 A Now, I personally probably didn't interview anybody at
13 the scene. I might have been -- apparently talked with
14 about 15 people all together.

15 Q How many of those -- are you familiar with the events
16 that led up to the shooting? Are you familiar with the
17 events that were alleged to have taken place before the
18 shooting?

19 A That same morning? Yes, sir.

20 Q And what was the synopsis of what started the
21 shooting? What led up to the shooting from your
22 investigation?

23 A From whose point of view?

24 Q From which -- from your point of view as a police
25 officer investigating the scene.

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 A There was a crowd of folks outside. Mr. Baker came
2 up, noticed that he had problems with one fellow in the
3 past.

4 He retrieved his firearm from his dash of his car,
5 walked in and ordered. Apparently some words were
6 exchanged between one or two or three of the group and him.

7 And he came outside one time, started to come back in.
8 He was hit in the back of the head and at that time turned
9 around and started shooting and, per the witnesses, chased
10 the victim around in the parking lot and stood over him and
11 kicked him.

12 Q Okay. And did you watch the video from the Waffle
13 House on the evening in question or the morning in
14 question?

15 A Yes, sir.

16 Q And does the video corroborate those events?

17 A The video only shows inside. You can tell Mr. Baker
18 is up at the counter placing his order and getting his
19 order.

20 Two individuals apparently come up to him, and they
21 have -- say something back and forth. He goes back
22 outside, and then you can briefly tell he breaks the
23 threshold of the door coming in and then turns around. And
24 that's supposedly when all the shooting starts.

25 Q And would you describe that doorway?

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 A A typical waffle House doorway. You walk in from
2 outside, and then you make an abrupt turn in -- in a type
3 of a little foyer area. And then there's another door that
4 comes into the main dining area.

5 Q And the door going into the main dining area, do you
6 remember if it was -- you had to pull to enter or to push
7 to enter the main dining area?

8 A I don't recall. I think most of them pull.

9 Q With the door in the main dining area closed,
10 approximately how big was the enclosed area that Mr. Baker
11 was attacked in?

12 A It's been a while since I've been at Waffle House, but
13 I'd say it's not much bigger than that desk you're in front
14 of -- behind.

15 Q And did you see if Mr. Baker had any trespass notices
16 or anything for this particular Waffle House on occasion in
17 the course of your investigation?

18 A No, sir.

19 Q Were you made aware of any sort of an issue with him
20 being banned from the establishment by any waffle House
21 employees?

22 A No. I did not.

23 Q Do you know if the individual that had a gun or was
24 alleged to have had a gun earlier in the evening was a part
25 of the skirmish?

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 A There were two separate groups that ended up coming
2 together, and he supposedly was part of the outside group
3 not connected to the group that Mr. Baker had had a problem
4 with in the past. They were sort of together but not
5 together if that makes any sense.

6 Q And do you know his exact involvement in this
7 skirmish? Did he indicate that he was a part of it or just
8 a witness?

9 A He -- the one that supposedly had the other gun is --
10 was a -- was coming there to meet one of the girlfriends.
11 That's his thing, that come there, I believe.

12 Q And did you interview Mr. Baker after the -- after the
13 incident?

14 A Yes, I did.

15 Q And bear with me just a moment.

16 (Pause.)

17 Q Did you have any indication that Baker started the
18 altercation?

19 A No, sir.

20 Q Did you have any indication that Baker attempted to
21 avoid the altercation?

22 A He kept telling the individuals that came in to tell
23 him that he was going to fight them -- he kept telling them
24 to leave it alone in his -- in his words.

25 Q And was that confirmed by other witnesses?

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 A I believe one of the females did say or was trying to
2 also keep them calmed down. Without reading through them
3 again, I can't be exactly sure.

4 Q In the statement that you took from Baker did he
5 indicate what the group of men standing outside the doorway
6 indicated to him?

7 A That he had some type of beef with their homeboy.

8 Q Did he mention to you that they said they were going
9 to rob him of everything that he had?

10 A Yes, sir.

11 Q And did Baker indicate that it appeared or he was
12 under the impression that any of those individuals had
13 firearms?

14 A He stated that he thought one of them may have had
15 because he kept his hands in his waistband.

16 Q Was that the same person that allegedly had a gun
17 earlier in the evening?

18 A Without having to read three or four of them, I'm not
19 quite sure. I don't recall the exact description. I don't
20 believe so, but it could have been.

21 MR. IANUARIO: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 A If you've got it that'd be great. Save me from
24 looking.

25 (Pause.)

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 A Yes, sir. I believe so.

2 Q Thank you.

3 And after this point in time Mr. Baker still refused
4 to fight and entered the building according to statements
5 you gathered and investigations you've done.

6 A Yes, sir.

7 Q Do you feel that that doorway that Antwon was
8 assaulted in offered him a reasonable avenue of escape?

9 A He could have kept coming in the restaurant, yes, sir.

10 Q And that was a full door, correct? Or we believe it's
11 a full door.

12 A I believe so.

13 Q So that would have delayed him. Do you think there
14 was any effort placed to hide from the attacker inside the
15 waffle House?

16 A There've been several hiding places in Waffle Houses
17 from shooters, yes, sir.

18 Q And do you think that he could have gotten to those
19 waffle Houses from the doorway before somebody fired off a
20 round?

21 A Given that we never found another weapon, yes, sir.

22 Q And how did you determine that Jakeem Middleton did
23 not have a weapon?

24 A He supposedly ran around the store or the restaurant
25 over to the adjacent restaurant -- I think it was IHOP back

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 then -- and hid in bushes and waited on his girlfriend to
2 pick him up or a friend girl to pick him up.

3 They come back. The only other -- we checked all of
4 that area, checked the car. The only other reference to a
5 weapon that he might have had would I think came from the
6 cook or one of the clerks inside of the Waffle House, might
7 seen, thought they saw, the butt of a gun in his pocket or
8 something -- I think in one of their statements.

9 Q Did you talk to a Brandon Glover on that particular
10 evening?

11 A I think I tried to.

12 Q And have you found a copy of your report yet?

13 A Let me -- yes, sir. He wasn't too helpful.

14 Q And what comment did you make about that in your
15 report? It starts with, "I was unable to get any
16 information from him," and then goes on for a couple of
17 more sentences. It's the bottom of my page. I don't know
18 if it's the same as yours.

19 A I'm sorry. Which page?

20 MR. IANUARIO: May I approach again, Your Honor?

21 THE COURT: Yes, sir.

22 A "Don't if he was on something or not. He would not
23 answer any question -- would not answer questions to any
24 degree."

25 Q And what did your investigation determine Mr. Glover's

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 involvement in this altercation was?

2 A He was a relative of the victim, I believe, and he was
3 with that group of people if I remember right.

4 Q Did any witnesses indicate that Mr. Glover started the
5 altercation?

6 A He supposedly as near as we could tell is one of the
7 individuals that hit Mr. Baker on the back of the head as
8 he came into the restaurant.

9 Q Okay. And stepping back a moment, going back to
10 Jakeem Middleton, you said that he was picked up in the
11 Waffle House or in the parking lot of the IHOP, correct?

12 A Yes, sir. I believe so.

13 Q And in the -- in your investigation his friend girl --
14 for lack of a better term -- determined that when she
15 picked them up, and according to his statement, Jay started
16 striving -- Jay being Jaquan -- "Jay starts driving and
17 they leave and come back." Do you know where they left to
18 go?

19 A It apparently wasn't too far because they came back as
20 officers were arriving too. I believe somebody else was
21 with them.

22 well, Glover said that was my cousin that needed to go
23 back, something to that. I think that was said somewhere.

24 Q Were girls with them?

25 A I believe it was Jakeem and Glover and maybe Jaquan.

Richie Foster (In-camera)
Direct examination by Mr. Ianuario

1 I think Jaquan and Jakeem were together.

2 Q Okay.

3 A I may be mistaken without going back through it.

4 Q Do you know of any reason that the friend girl would
5 have had to exit the waffle House parking lot to go
6 immediately next door into the IHOP? Did she say why she
7 was looking for them in the IHOP?

8 A Well, she brought them there, and I think she was
9 trying to go find them and make sure they were all right.

10 Q And did they say where they went when they left?

11 A They did not, just I think -- I don't think they got
12 anywhere before they turned around. I mean, I don't think
13 they went to a place. I just think they got down the road
14 and turned around as near as I could gather.

15 Q And did you take any gunshot residue samples or swabs
16 from Mr. Middleton, Jakeem Middleton?

17 A I don't think we did. There was no other mention of
18 anyone else firing any shots, so I do not believe that we
19 did that.

20 Q Did Middleton indicate that Mr. Baker fired at him?

21 A I believe, yes, sir. I do believe he said as he was
22 rounding the corner he turned back to look, and he said
23 that Mr. Baker fired at him.

24 Q How did Antwon keep his weapon stored?

25 A He stated to me that he keeps it with the magazine in

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 the well with no round in the -- in the chamber.

2 Q Okay. Did you investigate Mr. Glover at the time of
3 the incident and run his background?

4 A I did not.

5 Q Did you run the background on any of the witnesses
6 that were present?

7 A I did not.

8 Q So we don't know if any of them had a history of
9 violence or not.

10 A No, sir.

11 Q We don't know if any of them had a history of carrying
12 firearms or not.

13 A No, sir.

14 MR. IANUARIO: Nothing further at this time, Your
15 Honor.

16 MR. BULSA: May I bring the family in, Your Honor?

17 (Pause.)

18 CROSS-EXAMINATION

19 BY MR. BULSA

20 Q All right. Investigator Williams, this occurred at
21 the Waffle House on -- excuse me -- up on Abernathy
22 Boulevard?

23 A Yes, sir.

24 Q This is past the mall close to the Target.

25 A Yes, sir.

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 Q Okay. And you spoke about the double doors going into
2 the Waffle House.

3 Now, this incident did not occur inside those, that
4 doorway, did it?

5 A No, it did not.

6 Q Okay. That was -- the first of those two doors was
7 the door that the defendant was trying to enter when he was
8 hit in the back of the head.

9 A Correct.

10 Q Now, in your investigation of this case how many shots
11 had been fired?

12 A I believe it was six or seven.

13 Q Do you know how many -- how many shell casings were
14 found?

15 A Give me one second.

16 (Pause.)

17 A I'm counting right now, five.

18 Q Five shell casings recovered at the scene, right?

19 A Yes, sir.

20 Q And one spent bullet recovered at the scene.

21 A Yes, sir.

22 Q Okay. And the autopsy showed 12 bullet holes to the
23 victim, correct, to Mr. Young?

24 A I believe so, yes, sir.

25 Q And those were five actual in-and-outs, and then one

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 additional in-and-out from one of the same bullets.

2 A Yes, sir.

3 Q Is that right?

4 A I believe so.

5 Q So we have five shell casings and five shots to
6 Mr. Young.

7 Now, in your speaking with the defendant -- do you
8 have copies of his original statements?

9 A Yes, sir.

10 Q May I see those?

11 (Pause.)

12 (First Statement marked State's Suppression Exhibit No.
13 1 for Identification; second statement marked State's
14 Suppression Exhibit No. 2 for Identification.)

15 Q Now, we've got this marked state's exhibits for this
16 hearing.

17 State's Exhibit 1 is a 2-page statement. Would that
18 have been his first statement?

19 A Yes, sir.

20 Q Okay. And was it written in his own hand?

21 A It was.

22 Q Okay. And State's Exhibit 2 for this hearing is a
23 3-page statement. Is that the second statement?

24 A Yes, sir.

25 Q I'm not going over these in great detail, but would

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 you look in the first of these -- the first part of each of
2 these statements? Did he not -- did the defendant not
3 reference that he recognized a vehicle and some people he
4 had had issues with before?

5 A He did.

6 Q And he wrote that in both of these statements.

7 A Yes, he did.

8 Q So he made that recognition when he first drove into
9 the parking lot of this Waffle House, is that right?

10 A My understanding the way he relayed it to us.

11 Q And he referenced to you that he continued to park, in
12 fact, got out and put his gun in his waist.

13 A Yes, sir.

14 Q And I think -- let me. I think these actually differ
15 on the next point I want to make.

16 In the first statement, the 2-page statement, does he
17 reference whether anyone in the parking lot commented to
18 him as he was going into that Waffle House?

19 A "The boys didn't say nothing at first, so I went on in
20 and ordered my food."

21 Q Okay. And then in the second one did he reference any
22 comment that he said?

23 A He could hear them say it looked like him.

24 Q Okay.

25 A "I kept on walking."

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 Q All right. So in the second more lengthy statement he
2 referenced actually hearing a comment.

3 A Correct.

4 Q Yet he continued to go into the waffle House.

5 A Yes, sir.

6 Q Okay. Now, you commented about there being separate
7 groups of people at this waffle House. We have a group of
8 young ladies who are inside the waffle House eating, is
9 that right?

10 A Yes, sir.

11 Q Three ladies. And then we have Mr. Young coming to
12 the waffle House earlier before the defendant with three of
13 his friends.

14 A Yes, sir.

15 Q Is that right? And then we have this Jakeem Middleton
16 that had come to the waffle House with some of his friends.

17 A I think, yes, sir.

18 Q So Mr. Middleton was not actually part of the group
19 involving Mr. Young, was he?

20 A No, sir.

21 Q And the video, you said it only shows what occurs
22 inside the waffle House.

23 A Correct.

24 Q Does it show any sort of animosity being displayed
25 towards anybody?

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 A There's no volume but -- and it doesn't look like they
2 were -- they weren't in each other's face or anything. You
3 couldn't tell that good.

4 Q But what you asked --

5 A But you could tell they had a conversation together.

6 Q There's a conversation with the person you were able
7 to identify as the defendant with apparently one other
8 individual who we believe to be Brandon Glover, is that
9 right?

10 A Correct.

11 Q It's merely a conversation. It appears that Glover is
12 asking him to go outside.

13 A Yes, sir.

14 Q Because after that conversation they do go outside.

15 A Correct.

16 Q Then you cannot really see anything. But on one
17 occasion you can see the defendant coming back into the
18 door but then going back out immediately.

19 A Yes, sir. He just -- he just breaks the threshold of
20 the outside door.

21 Q Okay. Now, the defendant in his statements references
22 by his description what occurred. Does he say there were a
23 crowd of people around him?

24 A He walked outside to a crowd of people, I think.

25 Q Okay. And how does he describe that he shoots the

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 weapon?

2 A You might have to give me my paper back.

3 Q Do you need that?

4 A Yes, sir.

5 Q Okay.

6 A I believe -- in his second statement he just said he
7 pulls it out and starts firing it. The first one he turns
8 back around and pulls out his gun and fires three to eight
9 shots.

10 And I believe in -- when I was interviewing him he
11 made a fanning motion as he was describing what he was
12 doing as he was -- like he was spreading the crowd out.

13 Q Spreading the crowd. Okay. Yet only -- this was what
14 type of weapon?

15 A A semiautomatic handgun.

16 Q And that's the type that rounds are ejected as they're
17 shot?

18 A Yes, sir.

19 Q And was that weapon recovered?

20 A It was.

21 Q Was a clip in it?

22 A I believe it was, yes, sir.

23 Q How many rounds had been removed from the clip?

24 A I will have to look back on that. Bear with me just a
25 moment.

Richie Foster (In-camera)
Cross-examination by Mr. Bulsa

1 (Pause.)

2 A I believe it had ten -- ten rounds left in it if I
3 read it correctly.

4 Q And how many rounds does that clip hold?

5 A Fifteen.

6 Q Fifteen. So ten were still in it, and five rounds
7 were found or shell casings were found at the scene.

8 A Yes, sir.

9 Q And how many other people got hit when he did this
10 fanning motion shooting the gun?

11 A Just one, just the victim, no other victims.

12 Q Anthony Young was the only one who was struck.

13 A Yes, sir.

14 Q And Mr. Ianuario asked you about the -- one of the
15 cars specifically leaving, the one that went to pick up
16 Jakeem Middleton. Weren't there other cars in the parking
17 lot that left as well?

18 A Yes, sir.

19 Q And do you know why they were leaving?

20 A I would think to get out of the way of the gunfire.

21 Q Okay. And just so the Court has a good understanding,
22 these shell casings, were they just found right in front of
23 the Waffle House door?

24 A No. They were -- I think two were found just in that
25 parking lot there, and there were a couple of more on

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 through the parking lot, and then I believe at least one in
2 a parking lot above.

3 If you're looking at the front door of the Waffle
4 House there's a -- I guess a mini mall parking lot right
5 there. It's separated by a grass median. There was at
6 least one up there if I'm not mistaken.

7 Q So these shell casings were not grouped in one
8 location. They were spread over a distance.

9 A Yes, sir.

10 Q In fact, through the waffle House parking lot into
11 another parking lot.

12 A Yes, sir.

13 Q Do you know if the defendant was entitled to be
14 possessing that gun?

15 A Let me look.

16 Q Did he have a concealed weapons permit?

17 A I do not believe he did.

18 Q So he was not in lawful possession of that gun when he
19 got out to go to the Waffle House.

20 A No, sir.

21 Q Okay. Thank you. That's all I have.

22 REDIRECT EXAMINATION

23 BY MR. IANUARIO

24 Q Detective Foster, you indicated that Mr. Baker exited
25 out of the doorway or could have exited out of the doorway

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 and run into the parking lot. Is there any place to
2 substantially hide for cover in the parking lot?

3 A Awhile ago he could have came on in the waffle House.
4 When he went back out the Waffle House he went to confront
5 them and hide behind cars. I think he actually did say he
6 ran behind one car at one time.

7 Q And has a car ever stopped a bullet?

8 A It has.

9 Q Unless it hits the engine block or a major piece of
10 the moving -- will sheet metal, will a door stop, a bullet?

11 A No, sir.

12 Q At what point in time did you think that Antwon had a
13 duty to retreat? Would you say that duty arrived when he
14 recognized some people he had a problem with in the past?

15 A I don't think I would have pulled in the parking lot
16 if I'd a problem with somebody that was there.

17 Q But do you think that the law should be interpreted as
18 if you see anybody that you've had a problem with you
19 should just go away and not confront them, that you have no
20 right to be where anyone else is?

21 A I didn't get to go to law school that long.

22 Q The comments -- in his first statement that they
23 didn't say anything.

24 A Yes, sir.

25 Q Are you indicating they did not say anything to him

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 directly, or did they not say anything amongst themselves,
2 no words were spoken at all?

3 A If you'll let me have it back, I believe his first
4 statement says they did not say anything. The second one,
5 I believe he overheard them state something that made me
6 believe they weren't talking to him, he just overheard them
7 talking. Yes, sir. First one, "The boys didn't say
8 nothing first."

9 Q So we don't know if he was referring to them saying
10 anything directly at him or them just being completely
11 speechless.

12 A Yes, sir.

13 Q And in the second statement --

14 A "I started to walk toward the waffle House and I could
15 hear boys say it looked like him."

16 Q Okay.

17 A So that makes me think he's not being talked to.

18 Q So he's being talked about.

19 A Right.

20 Q You spoke with Jakeem, and he said he was there to
21 meet one of -- I'm sorry. Why was Jakeem at the waffle
22 House?

23 A I'm sorry?

24 Q Why did Jakeem Middleton go to the waffle House?

25 A I think he is the one that was going to meet a friend

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 and some girls.

2 Q And do you remember the name of his friend?

3 A D.J.

4 Q And did Jakeem indicate to you that that group of
5 people had been giving his group of people any problems?

6 A He had -- apparently some words were exchanged
7 somewhere, and I believe that came to be -- he was there to
8 talk with the girls already with the other guys.

9 Q Bear a moment.

10 (Pause.)

11 A I believe it says that actually D.J. was the one
12 having the problem.

13 Q Okay. Did you see any indication of that on the
14 video?

15 A No, sir.

16 Q Did D.J. indicate anything about previously knowing
17 Mr. Baker?

18 A No, he did not.

19 MR. IANUARIO: May I approach again, Your Honor?

20 (Pause.)

21 Q This may be just reading it wrong.

22 A "D.J. starts to tell him that he is having a problem
23 with someone inside, something about the girls already
24 being with somebody. And then he sees the white Crown Vic
25 drive in, and the driver's mean-mugging him, staring him

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 down. Driver goes on inside, and he hears D.J. say that he
2 had a beef with him in the past."

3 Q So it sounds like D.J. and Mr. Baker -- if I am
4 reading this right -- had issues in the past. Is that the
5 correct interpretation?

6 A That's what it sounds like, but I don't recall them
7 knowing each other.

8 Q And Jakeem indicated that Mr. Baker shot at him.

9 A I believe so as he was rounding the corner.

10 Q Did he indicate which corner of the Waffle House he
11 was rounding? I mean the back or the front.

12 A No, sir. I took it he -- the way he described it he
13 was running around the front towards 29 and around that
14 corner.

15 Q Okay. So from the description -- and you believed
16 Jakeem when he said he didn't have a gun, correct?

17 A Correct.

18 Q You believed Jakeem when he said he was shot at,
19 correct?

20 A Well, we never found any projectiles beyond him or
21 anywhere right there.

22 Q Well, why do you think he said he was shot at if he
23 wasn't? Did he give you any indication that he was trying
24 to hide something?

25 A I don't know. He could have just been running because

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 the shots were fired. And if Mr. Baker's fanning the gun
2 around he could have thought he was. We just never found
3 any projectiles in that direction.

4 Q So construing this liberally they fired a shot at
5 Jakeem. That's one shot. Mr. Baker is spraying and making
6 this motion as multiple shots.

7 There's only five shots missing from this gun, and
8 there's five-bullet passed from the deceased. Wouldn't
9 that indicate that there'd be another gun?

10 A If there was any more holes or projectiles.

11 Q But how did you determine the holes came from
12 Mr. Baker's gun?

13 A I believe that the projectile that was recovered
14 matched his gun.

15 Q Was there any D.N.A. found on that projectile?

16 A I don't recall that.

17 Q Are you familiar with the operation of a revolver
18 versus semiautomatic?

19 A A revolver just rotates in a little cylinder and the
20 shell casings stay inside the weapon.

21 Q So then if there was a revolver and a semiautomatic
22 and multiple shots were fired you would have only recovered
23 the casings from the semiautomatic.

24 A Correct.

25 MR. IANUARIO: Nothing further.

Richie Foster (In-camera)
Recross-examination by Mr. Bulsa

1 RECROSS-EXAMINATION

2 BY MR. BULSA

3 Q Was there any evidence at all to suggest there was
4 another weapon fired?

5 A No, sir, just the brief statement from the clerk
6 saying he thought he saw a butt of a weapon. And then
7 Mr. Baker said that one of them kept his hands on his
8 waist. No other --

9 Q The question, Investigator, was whether there was any
10 evidence at all that suggested another weapon was fired.

11 A None.

12 Q None?

13 A None.

14 Q Okay. Where did the defendant live at the time?

15 A I believe his address at the time was the townhomes
16 over off of East Blackstock Road.

17 Q Which is approximately how far from this location?

18 A A mile and a half maybe.

19 Q Was there another Waffle House in the proximity of
20 that address?

21 A Yes, sir. There is a Waffle House at Reidville Road
22 and East Blackstock.

23 Q Which is actually a little closer to his residence
24 than this one was.

25 A It should be. I'm not quite sure of the exactness,

Richie Foster (In-camera)
Redirect examination by Mr. Ianuario

1 but that should be closer to his residence than 29.

2 Q Thank you.

3 MR. BULSA: That's all I have.

4 REDIRECT EXAMINATION

5 BY MR. IANUARIO

6 Q Did you ask Mr. Baker what direction he was coming
7 from when he entered the Waffle House?

8 A I believe he said he was just coming home from being
9 out up 29. He came from that direction.

10 MR. IANUARIO: Nothing further.

11 THE COURT: Step down.

12 Next witness.

13 MR. IANUARIO: No further witnesses, Your Honor.

14 MR. BULSA: The state has no presentation to show.

15 THE COURT: Are these statements introduced into
16 evidence?

17 MR. BULSA: They are for this hearing, Your Honor. I
18 would offer them if they're not. I don't think I formally
19 introduced them.

20 But any objection to this being offered?

21 MR. IANUARIO: No objection.

22 (First Statement marked State's Suppression Exhibit No.
23 1; second statement marked State's Suppression Exhibit No.
24 2.)

25 THE COURT: Any argument y'all want to make?

1 MR. IANUARIO: Yes, Your Honor.

2 Again, I would argue the case should be dismissed as
3 the "Stand Your Ground" law applies. Aside from the
4 unlawful carrying of a pistol, there's no indication that
5 Mr. Baker was engaged in any unlawful activity.

6 There's no indication that he was at fault in bringing
7 on the fight. He even attempted to walk away. When he was
8 attacked the doorway entering into the Waffle House did not
9 offer sufficient room for him to escape the attack,
10 especially when you consider the door has to be pulled
11 inward, so that it would have slowed him down. Plenty of
12 time for someone to have stabbed him with a knife or shot
13 him at very close range.

14 Once you enter into the Waffle House the only way he
15 would have found any sort of cover that would have stopped
16 a bullet would have been to jump over the counter.

17 By the same token, had he exited the Waffle House
18 going into the parking lot -- he wasn't sure who had a gun.
19 He knows at least one gentleman did.

20 I believe that the vehicle would not have had --
21 provided adequate cover. He didn't have the means to
22 retreat to go get in his vehicle and leave.

23 Also, I believe there is evidence that there was
24 another firearm present.

25 If you look at the statements that Detective Foster

1 received it mentions that they're talking about robbing
2 Antwon.

3 There is a separate employee that mentions -- a Waffle
4 House employee that mentioned he saw Jakeem Middleton with
5 a -- what he believed to be a firearm earlier in the day.
6 Plus, Antwon says that Jakeem Middleton had a firearm.

7 Jakeem Middleton was out on bond and probation at the
8 time which would give him motivation to hide something.

9 He left the scene. He then returned. And even though
10 there were two statements saying that Jakeem Middleton had
11 a firearm, they neglected to take any G.S.R. sampling from
12 him to determine if the shot was fired by Mr. Middleton.
13 They just took him at his word.

14 Based on that I don't see that there's enough to
15 disprove that Antwon Baker was within his rights to defend
16 himself as he was being jumped by numerous men. And at
17 least one of them was flashing a firearm toward Mr. Baker.
18 And the testimony -- the independent statement from the
19 Waffle House manager also confirms that.

20 THE COURT: Well, I don't have that statement.

21 MR. IANUARIO: I believe Detective Foster had
22 mentioned that one of the Waffle House employees had
23 indicated there was a firearm present.

24 THE COURT: Okay. Mr. Bulsa.

25 MR. BULSA: Your Honor, there's no evidence that the

1 defendant himself saw a weapon at the Waffle House.

2 The evidence is clear that he saw the person or
3 persons that he claims he had an altercation with earlier.

4 He could have easily have gotten back in his car and
5 continued on to the other Waffle House which was closer to
6 his residence.

7 Your Honor, by stepping out of the car and arming
8 himself he was not engaged in unlawful activity -- he was
9 engaged in an unlawful activity. He had no right to
10 possess that firearm.

11 He enter -- he brought the firearm to this situation,
12 Your Honor. He is therefore not entitled to immunity under
13 this statute, nor can he reasonably believe it was
14 necessary to fire that gun that many times.

15 Based on the location of the rounds and the number of
16 shots Mr. Young had in his -- through his body, that
17 suggests that the defendant chased him down.

18 He took this as an opportunity to handle whatever
19 problem Mr. Young and he had had in the past. He -- he is
20 the one that presented and made this what it is.

21 He didn't -- he didn't seek to remove himself or avoid
22 any conflict. He armed himself in case there was a
23 conflict. And when there was he took the opportunity to
24 enter in a deadly fashion.

25 Your Honor, this is a case for the jury to decide, and

1 he is not entitled to immunity.

2 THE COURT: Well, to begin with, I'm not satisfied
3 that this statute applies to these circumstances.

4 The Protection of Persons and Property Act provides
5 that -- it's the intent of the general assembly to codify
6 the common law Castle Doctrine, which, as we know,
7 recognizes that a person's home is his castle, and that you
8 can protect your home from attack, or people in it from
9 attack, without the necessity of retreating and use force
10 as is necessary in order to repel the assault.

11 So the general assembly has stated in 16-11-420 that
12 the purpose of this statute is to codify the common law
13 Castle Doctrine and to extend the doctrine to include an
14 occupied vehicle and the person's place of business.

15 Well, this is not the defendant's residence; it's not
16 an occupied vehicle by the defendant; and it's not his
17 place of business. This is a public place.

18 Is there some reason why this statute's applicable?

19 MR. IANUARIO: Your Honor, I believe it's applicable
20 under subsection (c), that a person who is -- a person who
21 is not engaged in unlawful activity and who is, in fact, in
22 another place where he has the right to be.

23 I'm not saying that he was in his home or his vehicle.

24 THE COURT: I understand, but you've got to read the
25 statute in the context of whether they're trying to

1 promote. And they say that -- the purpose of the statute
2 is to protect the person in his home, occupied vehicle and
3 place of business.

4 Are y'all aware of any cases where there've been
5 immunity hearings regarding 16-11-440 and 450 that don't
6 involve a person's home, vehicle or place of business?

7 MR. BULSA: Not that I recall being reported on, Your
8 Honor.

9 MR. IANUARIO: I have been unable to find one, Your
10 Honor.

11 THE COURT: Sir?

12 MR. IANUARIO: I've been unable to find one.

13 THE COURT: Well, I think there's a reason for that.
14 All of the statutes I've been --

15 MR. BULSA: I -- I appreciate the Court's putting it
16 into context, and I agree the statute's not cleverly
17 written, but that phrase is the reason I brought it to the
18 Court's attention, because I felt somewhere down the road
19 the Court might extend it to a situation like this.

20 THE COURT: All right. Well, based upon what's been
21 presented I find that the statute is not applicable to the
22 circumstances.

23 But even if it is, I find that the defendant has
24 failed to establish by a preponderance of the evidence that
25 he acted reasonably, that he was attacked, and that he had

1 a reasonable fear of imminent peril or death or great
2 bodily injury, and that it was reasonably necessary to use
3 deadly force in order to prevent that death or great bodily
4 injury to himself.

5 So motion for dismissal pursuant to 16-11-450 is
6 denied.

7 All right. Anything else?

8 MR. IANUARIO: Nothing from the defense, Your Honor.

9 MR. BULSA: No, sir.

10 THE COURT: All right. Court is in recess until 2:30.
11 (Whereupon, a recess was taken.)

12 THE COURT: Mr. Ianuario, do you have a witness list
13 by any chance?

14 MR. IANUARIO: No, Your Honor.

15 No, Your Honor. At this point in time I believe I'll
16 be using the same witnesses as the state --

17 THE COURT: Okay.

18 MR. IANUARIO: -- as soon as I make a determination.
19 Otherwise, I'll notify the court.

20 THE COURT: All right.

21 MR. BULSA: May we approach?

22 THE COURT: All right.

23 (Bench conference held off the record.)

24 THE COURT: All right. Any other matters we need to
25 address before the panel is brought around?

Opening statements

1 been asked to go back and to begin with your deliberations.
2 That is the process that is designed for you 12 jurors to
3 arrive at a fair and just decision in the case.

4 So I do want to thank you in advance for your
5 participation, as well as for your careful attention. I
6 would ask that you please give the lawyers your attention
7 now as they give you their opening statements.

8 Mr. Bulsa.

9 MR. BULSA: May it please the Court.

10 Good afternoon, ladies and gentlemen.

11 Exactly one year ago today Anthony Young lost his
12 life. He was gunned down in the Waffle House on Highway 29
13 just below Target.

14 You'll hear from a pathologist the number of wounds he
15 had. He had 12 bullet holes in his body. All weren't
16 through and through. A total of five shots went into him.
17 One went in and out -- in and out. He was shot five times
18 in that parking lot, several of those being from -- from
19 behind as he was running away from the person shooting at
20 him.

21 You're going to hear that the person that killed him
22 was the defendant. I submit to you that's pretty clear,
23 that he is the killer.

24 You're going to hear from witnesses that were at the
25 Waffle House and worked at the Waffle House and

Opening statements

1 investigators from -- of that case as to what occurred that
2 morning. This is about 5:00 o'clock in the morning of
3 June 3rd of 2012.

4 The police broke this case pretty quickly not because
5 of the defendant but because an officer was pretty alert
6 and astute and began looking for the -- his -- the
7 defendant's car in some neighboring apartment and townhome
8 complexes. And just by chance they did find that car, and
9 he found the defendant, and he was arrested that morning.

10 You're going to hear a little bit about why that
11 incident occurred. You may not hear the full story, but
12 you'll hear some of what caused that.

13 This isn't a situation where the defendant did not
14 know Mr. Young. They might not have known each other's
15 names, but they knew each other. There'd been some history
16 between the two of them.

17 I submit to you the defendant -- the evidence will
18 show the defendant took this opportunity to end what had
19 been going on between the two of them.

20 This is a murder case, ladies and gentlemen. Murder
21 is the unlawful killing of another person with malice
22 aforethought. I submit to you 12 bullet holes is malice.

23 The defendant was not in rightful possession of the
24 pistol. He was old enough to own a gun. It's not like he
25 couldn't own a gun. But you can't just take a gun and arm

Opening statements

1 yourself when you go into a waffle House.

2 When you are transporting a gun you can have it on
3 your property. You can transport it from your property to
4 another location. You've got to have it in the vehicle in
5 a glove box or in the trunk, in a closed console.

6 You can't arm yourself when you go into a restaurant.
7 That's not the way the law works. This isn't the wild wild
8 West, but that's what it sort of became that night or --
9 excuse me -- that morning when he armed himself and drew
10 his weapon and gunned down Anthony Young.

11 Now, there are some friends of Anthony's that got a
12 little overzealous and did some things that I'm sure they
13 regret that ultimately led to Anthony's death. But listen
14 closely to the investigators in this case as they unravel
15 this case as to what Mr. Young's role was. I submit to you
16 he got killed because of something that happened in the
17 past that this man was tired of.

18 We submitted a lot of names as potential witnesses.
19 All of those won't testify. Perhaps half of them will.

20 This is a serious case. We're going to build the case
21 by showing you the surroundings of the incident and the
22 investigation that led to the detection of the defendant,
23 because he didn't stay there to tell the police what
24 happened. He fled. He went home and changed clothes, hid
25 the gun. And only by chance and good investigation did the

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1 police find him.

2 I thank you for your time and attention. I pray that
3 you pay close attention to each and every witness as you
4 will be deciding the facts of this case, and at the close
5 you'll find the defendant guilty. Thank you.

6 THE COURT: Mr. Ianuario.

7 MR. IANUARIO: Thank you. May it please the Court.

8 Good afternoon. I would like to start off by thanking
9 you for your service. As being a part of a jury you're the
10 unbiased part of the legal process that makes this
11 everything that it is.

12 I'm biased. I think my client is innocent. The
13 solicitor is biased. He thinks my client is guilty.

14 You get to hear all of that. You just got a brief --
15 a little bit of a summary of the facts. We'll get a lot
16 more into that.

17 I can understand none of y'all want to be here. I'm
18 going to do everything I can to respect your time and try
19 to make this go as quickly as I possibly can for you.

20 That said, if you ever found yourself on trial for
21 something I would like for you to give the same attention
22 to this case and the same attention to the details that you
23 would expect from the jury should you be on trial for
24 something.

25 Okay. We are going to be spending a couple of days

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1 together, so you may as well get to know us. I -- I'm 34
2 years old. I've got a three-year-old daughter. I didn't
3 grow up in a lawyer family. I grow up as a mechanic. I
4 was a mechanic 12 years ago until I decided it just wasn't
5 paying the bills. I somehow ended up in law school.

6 I also want to let y'all know this is the first murder
7 case that I've handled. So if you see any bumbling and
8 fumbling on my part, please do not hold that against
9 Antwon. That's me.

10 Solicitor Bulsa has been doing this a lot longer than
11 I have.

12 MR. BULSA: Objection, Your Honor. May we approach?

13 THE COURT: Okay.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 MR. IANUARIO: The gentleman in the glasses is my
17 associate attorney, Matt. He's going to be helping me.
18 You're not going to hear a lot from him. He's going to be
19 whispering in my ear.

20 And on the end we have Antwon Baker. Twenty-eight
21 years old. Lived in the Upstate his entire life. Five
22 kids. He's got a good turnout of his own family here to
23 support him.

24 He's been steadily employed since the age of 18. He
25 never been having -- took any government handouts or

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1 anything. Hard worker. He was working at Timken as a
2 forklift driver when this all occurred.

3 what we're talking about is the facts. And then y'all
4 as the jury have to interpret the facts. The facts are
5 that Antwon went to the Waffle House late at night, pulled
6 into the parking lot, saw somebody he had a beef with a
7 time or two in the past.

8 And he grabbed his firearm and stuck it in his
9 waistband. Did he do it with the intent to kill Anthony
10 Young? Did he do it because there may have been ten other
11 dudes standing around in the parking lot that looked
12 sketchy? We will get to that later.

13 He goes inside the Waffle House and orders a carryout
14 meal. Somebody asked him to come outside and talk to
15 Mr. Young. He steps outside. He says, "I don't want to
16 fight. I'm over it. It's a done deal."

17 And he turns around to walk back inside. And
18 Mr. Young's own cousin hit him in the back of the head and
19 started the attack.

20 There was issues as to what was said in that
21 altercation and the moments leading up to it. You'll have
22 to decide was Antwon adequately provoked, was he about to
23 be lynched in that situation, was he about to be robbed,
24 did he grab his gun with the intent of killing Anthony
25 Young or did he just grab a gun to carry it because it was

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1 a bad situation.

2 When he turns back inside, and he gets back in the
3 head, with the rest of it you'll figure out. Is it an
4 argument for self-defense? Did he go above and beyond?
5 Did he shoot down somebody in the back as they were running
6 to get away from him, or did he shoot somebody that was
7 running to go get a gun? We'll have some testimony that'll
8 flush some of that out later on. But that's an issue.

9 Did he flee as the solicitor said he ran, or did he
10 want to get out of the scene where there's just a shootout
11 and a whole bunch of people scattered and they were
12 probably going to be coming back? We believe there was
13 another gun, somebody else there that evening had a
14 firearm. You'll hear witness testimony that will allude to
15 that.

16 When you hear all of this up and you hear all the
17 evidence, hear the witness testimony, you've got to decide
18 who's believable and who's not. And sometimes that
19 testimony is going to conflict.

20 You've got to look at all of that and determine is my
21 client guilty. The levels of proof that we look at, the
22 lowest level is preponderance. That just means 51 percent
23 of the evidence.

24 If you want to sue your neighbor over something --
25 tree fell in your yard -- 51 percent of the evidence is in

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1 your side, you win.

2 The next level is clear and convincing evidence, and
3 there's no number on clear and convincing evidence, no
4 statistical amount. Clear and convincing evidence just
5 means that it's clear and convincing but not necessarily
6 beyond a reasonable doubt.

7 Clear and convincing evidence is all that is required
8 to take someone's child from them in family court for a
9 child custody matter.

10 Then you get to the criminal defense, criminal level,
11 beyond a reasonable doubt.

12 What is beyond a reasonable doubt? We put a cat and a
13 mouse in here and we all go out to lunch, and we come back
14 in. The cat's sitting here and the mouse is gone. The cat
15 must have eaten the mouse.

16 But there's a crack under that door. We went over
17 there. There's also places the mouse could be hiding in
18 here -- under a chair, in a chair.

19 Unless we cut open the cat and examine the contents of
20 the stomach we don't know if that cat actually ate the
21 mouse or not.

22 And one of the fundamentals of the criminal justice
23 system in the United States is it's better to let the
24 guilty go free than to convict.

25 MR. BULSA: Objection, Your Honor.

Justin Davis
Direct examination by Mr. Bulsa

1 THE COURT: Overruled.

2 MR. IANUARIO: I'll wrap it up really quick on that
3 one. I know we want to get into it and get y'all out of
4 here.

5 My whole basic argument is the state cannot prove
6 beyond a reasonable doubt, first off, that Mr. Young or Mr.
7 Baker was not acting in self-defense, and the state cannot
8 prove beyond a reasonable doubt that he acted with malice
9 aforethought in the taking of Mr. Young's life. Thank you.

10 MR. BULSA: The state calls Justin Davis.

11 JUSTIN DAVIS, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BULSA

14 Q Mr. Davis, speak up when you talk. Okay. The jury
15 needs to hear you.

16 A Yes, sir.

17 Q Would you introduce yourself to them?

18 A I'm Justin Davis.

19 Q We need the microphone to hear you. Okay?

20 A Which one is it, this one?

21 THE COURT: That black one -- the black one.

22 A All right. I'm Justin Davis.

23 Q How old are you, sir?

24 A Eighteen.

25 Q Are you in school?

Justin Davis
Direct examination by Mr. Bulsa

- 1 A No, sir.
- 2 Q How far did you go in school?
- 3 A Say that again.
- 4 Q How far did you go in school?
- 5 A Eleventh grade.
- 6 Q Where did you go to school?
- 7 A Byrnes.
- 8 Q Do you know Anthony Young?
- 9 A Yes, sir.
- 10 Q How did you know Mr. Young?
- 11 A He was a good friend.
- 12 Q How long did you know him?
- 13 A About a year.
- 14 Q Okay. Do you remember the day of his death?
- 15 A Yes, sir.
- 16 Q Where did it happen?
- 17 A The Waffle House.
- 18 Q How did y'all get to the Waffle House?
- 19 A Brandon Glover.
- 20 Q Brandon Glover. So he drove. Answer yes or no.
- 21 A Yes, sir.
- 22 Q What did he drive?
- 23 A I think it was Bubba -- the Chevy Impala.
- 24 Q Okay. And who rode with Mr. Glover to the scene?
- 25 A Me and Anthony.

Justin Davis
Direct examination by Mr. Bulsa

1 Q You and Anthony and Mr. Glover. Why were y'all going
2 to the Waffle House?

3 A To meet Darrin and Brandon's sisters.

4 Q Okay.

5 A Just to eat.

6 Q So y'all were going there to meet some other friends?

7 A Yeah.

8 Q About what time did y'all get there?

9 A I'd say about 2:00 o'clock -- 2:00 or 3:00 o'clock in
10 the morning.

11 Q That morning. Had you been out that night?

12 A About 2:00 o'clock in the morning.

13 Q Where were y'all coming from?

14 A Anthony's house.

15 Q And where did Anthony live?

16 A In Timberland Apartments.

17 Q Timberland Apartments. So y'all had been chilling out
18 at his apartment?

19 A Well, Anthony wasn't with -- Anthony wasn't with us.
20 It was just me and Brandon. But Anthony arrived. And we
21 left from Timberland Apartments and went to the Waffle
22 House.

23 Q So you and Brandon were waiting at Anthony's apartment
24 for him.

25 A Yeah.

Justin Davis
Direct examination by Mr. Bulsa

1 Q Okay. And then y'all were going to meet some friends.
2 Did y'all get a meal?

3 A Yes.

4 Q When this happened were y'all fixing to leave?

5 A Yes, sir.

6 Q Okay. Would you in your own words tell the jury what
7 you saw happen?

8 A We was leaving the Waffle House, and that's when the
9 gentleman right here walked -- pulled up. And that's when
10 Anthony was like that's the dude that pulled a gun on me a
11 week before or whenever before. And that's when -- it
12 was -- little Brandon went out and told him to come outside
13 or whatever.

14 He came outside, and we approached him or whatever and
15 asked him what happened over there. And then the dude was
16 like -- you know what I'm saying -- you robbed my -- you
17 know what I'm saying -- you put a gun in my homeboy face or
18 whatever -- you know what I'm saying -- you fixing to have
19 to fight or something -- you know what I'm saying. And
20 that's what I told him. And that's when he tried to walk
21 back in the Waffle House. Then Brandon hit him in the
22 head, and he pulled out a gun and started shooting.

23 Q So Brandon actually hit him.

24 A In the back of the head.

25 Q Did you know this guy at all?

Justin Davis
Direct examination by Mr. Bulsa

- 1 A No. Ain't never seen him.
- 2 Q Had you seen him before?
- 3 A No.
- 4 Q Okay. Now, all of this happened because of something
- 5 Anthony had said?
- 6 A No. All of it happened because of what took place a
- 7 month or a week or before when he pulled out a gun and he
- 8 hit him in the face and knocked his teeth out with it.
- 9 Q So Anthony had told y'all something had occurred
- 10 before.
- 11 A Yeah.
- 12 Q And then Brandon went and spoke to the defendant.
- 13 A Brandon told him to come outside. And we all asked
- 14 him about it.
- 15 Q Okay.
- 16 A And he tried to walk back in the waffle House, and
- 17 that's when Brandon hit him in the back of the head.
- 18 Q Did you know he had a gun?
- 19 A Na-uh.
- 20 Q Did any of y'all have a gun?
- 21 A Na-uh.
- 22 Q What did you do when the defendant turned around and
- 23 started shooting?
- 24 A I ran behind the building the opposite way.
- 25 Q Did you see where everybody else went?

Justin Davis
Direct examination by Mr. Bulsa

- 1 A Na-uh.
- 2 Q Do you recall how many shoots there were?
- 3 A I'd say about -- about eight or nine.
- 4 Q Okay. And did you see what happened to Anthony?
- 5 A I mean, when I was looking back he said he was coming
- 6 after me. And I just seen them chasing him and shooting
- 7 him in the back. And I was going the opposite way. So, I
- 8 didn't see no more after that.
- 9 Q You saw the defendant chasing Anthony?
- 10 A Shooting him.
- 11 Q Which one was Anthony running?
- 12 A Like towards -- I can't think of that little plaza
- 13 name right there, but he was running towards the mall, and
- 14 I was running towards the wellford way.
- 15 Q Okay. You were running up towards the Target way.
- 16 A Yeah, I was running towards Target, and Anthony was
- 17 running towards the mall.
- 18 Q Okay. And there's a little strip mall parking lot
- 19 opposite --
- 20 A Yeah.
- 21 Q -- the waffle House.
- 22 A Yeah.
- 23 Q Okay. All right. What did you do after the shots
- 24 stopped?
- 25 A I was walking towards -- back towards the scene. Then

Justin Davis
Direct examination by Mr. Bulsa

1 I seen somebody else. Somebody else came and picked me up,
2 and we rode back to the scene. That's when the
3 policeman --

4 Q How far -- how far did you actually run?

5 A Like two buildings down.

6 Q Then you --

7 A I think I ran past IHOP. IHOP is like right beside
8 it, and I ran past there. And I can't remember what the
9 other building called.

10 Q And somebody picked you up and you went back to --

11 A went back to the scene.

12 Q why did you go back?

13 A Because I seen the police was there, and I knew
14 everything was fine.

15 Q And you went and talked to the police?

16 A Yeah.

17 Q So the police got there pretty quick.

18 A Yeah.

19 Q Okay. well, where was Anthony when you got back?

20 A On the ground in front of the Waffle House.

21 Q In the parking lot?

22 A Uh-huh, in the Waffle House parking lot.

23 Q Yes. Okay. So you last saw him running towards the
24 other parking lot.

25 A Yeah.

Justin Davis
Cross-examination by Mr. Ianuario

1 Q When you saw him he was back in the Waffle House
2 parking lot.

3 A Uh-huh.

4 Q Answer any questions Mr. Ianuario may have.

5 CROSS-EXAMINATION

6 BY MR. IANUARIO

7 Q You said somebody picked you up on the way back. Do
8 you know who that individual was?

9 A I don't -- I didn't know. I didn't know her
10 personally. It was a white girl.

11 Q Was there anyone else in the car?

12 A I think it might've been her boyfriend was in the car.
13 No. Her boyfriend's little brother was in the car. Her
14 boyfriend was still at the scene.

15 Q And that was it, just the three of y'all.

16 A Yes, sir.

17 Q What was the guy in the car with your little brother,
18 what was he wearing, do you remember?

19 A I don't remember what he was wearing, but I know his
20 brother had a bandanna on around his head.

21 Q Okay. And that was the one that was at the scene --

22 A Yeah.

23 Q -- when you were picked up. And did you sit in the
24 back seat of the car, or the front seat?

25 A I think it was the back seat -- the back seat.

Justin Davis
Cross-examination by Mr. Ianuario

1 Q And do you remember the statement that you gave the
2 night or the day of the shooting when you were being spoken
3 to by Detective Wood? Do you remember giving a statement
4 to the police?

5 A Do I remember giving a statement? Yes, sir.

6 Q And could you just tell me the part about where you
7 hear the gunshots again, like when you first heard them and
8 then what you saw and --

9 A No. I saw Brandon hit in the back of the head. When
10 he hit him in the back of the head, that's when he came up
11 to hit -- the night -- Jason.

12 Q Okay. Where were you when Brandon hit Antwon in the
13 back of the head?

14 A Like beside him, kind of like Anthony was on this side
15 and Brandon was right here, and I was like beside Brandon.

16 Q So you could hear what was being said between Antwon
17 and Anthony?

18 A Yeah.

19 Q What was being said?

20 A He was just like he pulled a gun like whatever -- you
21 know what I'm saying. He ain't got no gun now or whatever,
22 so that's fight. That's what Anthony was saying.

23 Q So Anthony wanted to fight him.

24 A Yeah.

25 Q And Anthony wasn't scared to fight a guy that had

Justin Davis
Cross-examination by Mr. Ianuario

- 1 pulled a gun on him in the past.
- 2 A No.
- 3 Q What did Brandon say to Mr. Baker?
- 4 A Basically, fixing to have to fight -- you know what
- 5 I'm saying cause --
- 6 Q For what?
- 7 A Because he pulled a gun out on him a week before and
- 8 knocked his teeth out.
- 9 Q Did he have to say you're going to fight-or, or did he
- 10 just say you've got to fight?
- 11 A You fixing to have to fight.
- 12 Q There was no "or".
- 13 A No.
- 14 Q And you didn't have a gun that night.
- 15 A No.
- 16 Q You don't know of anyone that had a gun that night.
- 17 A I know we didn't have a gun that night.
- 18 Q The shots that you heard, you said you heard eight or
- 19 nine shots. Was it eight or nine -- bam, bam, bam, bam,
- 20 bam -- or was it clusters -- one, two here, a couple over
- 21 here?
- 22 A Rapid.
- 23 Q Rapid fire.
- 24 A Rapid fire.
- 25 Q All of them?

Justin Davis
Redirect examination by Mr. Bulsa

1 A All of them.

2 Q Now, as soon as Antwon was hit and he came up with his
3 gun drawn did you run?

4 A Yeah.

5 Q And you ran toward -- like if this is the Waffle House
6 door, you'd be looking out, so you would run off to the
7 left side towards 29?

8 A No. I ran behind the building, like behind it, the
9 back of the building. I didn't to -- I didn't run towards
10 29. I ran behind the building.

11 Q Okay. And then you --

12 A Like behind the side of the building.

13 Q Was there anyone talking to Antwon besides yourself,
14 Brandon Glover and Anthony Young?

15 A No.

16 Q So it was just the three of y'all. And he was in the
17 doorway at the waffle House.

18 A Him, yeah.

19 MR. IANUARIO: Nothing further, Your Honor.

20 MR. BULSA: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. BULSA

23 Q Justin, did you know the girl who picked you up?

24 A No.

25 Q Did you know her boyfriend?

Justin Davis
Recross-examination by Mr. Ianuario

1 A No.

2 Q Or her brother?

3 A No.

4 Q Her boyfriend's brother. Why did you get in the car
5 with them?

6 A Because they seen what happened. They was right there
7 and they -- they saw me running behind the building, and
8 they just brought me back to the scene. They came and
9 picked my up and brought me back to the scene.

10 Q Okay. And I think you testified you only saw one gun
11 that night.

12 A Yeah.

13 Q So you didn't see anybody else shooting.

14 A Uh-uh.

15 Q Okay. Thank you. That's all I have.

16 RECROSS-EXAMINATION

17 BY MR. IANUARIO

18 Q And you said you didn't know the girl that picked you
19 up, right?

20 A No, I didn't.

21 Q But you were picked up by the girl. And her boyfriend
22 with the blue bandanna was not in the car, right?

23 A Yeah. He wasn't in the car.

24 Q Do you remember if you would have told the police that
25 you were perhaps picked up by the male in the blue

Andrew Metcalf
Direct examination by Mr. Bulsa

1 bandanna?

2 A No.

3 Q You don't remember if you would have told them that,
4 or, no, you weren't?

5 A I don't remember.

6 MR. IANUARIO: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 MR. BULSA: Your Honor, we ask that Mr. Davis be
9 excused. His family is going on vacation.

10 THE COURT: He may be.

11 (Whereupon, the witness was excused.)

12 MR. BULSA: The state calls Andrew Metcalf.

13 THE COURT: You are excused.

14 (Whereupon, the witness was excused.)

15 ANDREW METCALF, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Officer, please introduce yourself to the jury.

19 A Deputy Drew Metcalf.

20 Q And who are you employed with?

21 A Spartanburg County Sheriff's Office.

22 Q In what capacity?

23 A Deputy sheriff, uniform patrol.

24 Q How long have you been an officer?

25 A About four years now.

Andrew Metcalf
Direct examination by Mr. Bulsa

1 Q All of it with the county?

2 A Two years with Greenville County; two years in
3 Spartanburg.

4 Q Okay. So back when this occurred you'd been an
5 officer for about three years.

6 A Yes, sir.

7 Q What were your duties back in June of 2012?

8 A I was assigned to uniform patrol here in Spartanburg
9 County.

10 Q And by being assigned to uniform patrol what did you
11 do?

12 A Basically answered 9-1-1 calls. That's our main job.

13 Q What shift do you work?

14 A Night shift 7:00 -- 7:00 in the afternoon to 7:00 in
15 the morning.

16 Q So you were working June the 3rd.

17 A Yes, sir, I was.

18 Q It would have been the night of June the 2nd and the
19 morning of June the 3rd.

20 A Yes, sir.

21 Q Did you get a 9-1-1 call to respond to the Waffle
22 House?

23 A Yes, sir, I did.

24 Q Is that the Waffle House on Highway 29 up past
25 Westgate Mall?

Andrew Metcalf
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q That is in Spartanburg County?

3 A It is.

4 Q Is that the area you normally patrol?

5 A It is close to it. It's my bordering zone. My area
6 was a little bit higher north in the county, I guess you
7 could say, but it bordered my area. So I -- I mean, I was
8 always pretty close to it.

9 Q Do you recall about how long it took you to respond to
10 that call?

11 A Two to three minutes, most.

12 Q Were you one of the first officers that arrived?

13 A Yes, sir. I -- I was the first, yes, sir.

14 Q Would you describe for the jury what you saw when you
15 arrived?

16 A Basically, when I pulled in -- I guess, you know, as
17 you -- as you can probably imagine it was pretty -- it was
18 pretty panicky. There was a parking lot full of people.
19 You know, if I had to guess I would say approximately
20 between 15 to 20 people standing around the Waffle House
21 parking lot.

22 As soon as I got there I seen the victim, Mr. Young.
23 He was pretty much middle of the -- of the Waffle House
24 parking lot. He was laid face down. He was motionless.
25 He didn't appear to be breathing. He had what appeared to

Andrew Metcalf
Direct examination by Mr. Bulsa

1 be blood coming out from underneath his body.

2 And, like I say, there were several people, you know,
3 around him in the parking lot. It was just pretty much
4 just panic, you know.

5 So I got out and was basically trying to secure the
6 scene and make sure everything was safe for the people that
7 were there, trying to calm the scene down and see what
8 happened, see where the shooter was.

9 You know, at this point I had no idea. So the -- you
10 know, my first three to four minutes on scene were, you
11 know, pretty hectic just trying to calm everything down.

12 Q Did you actually pull into the parking lot yourself?

13 A I actually stopped. I'd probably say a little bit of
14 my car was still actually probably setting in 29. I did
15 not pull fully into the parking lot. I went to make the
16 turn and that's when -- you know, that's when I seen the
17 victim and a huge crowd. So I just stopped right there.

18 Q Were there cars in the parking lot?

19 A There were, yes, sir.

20 Q Okay. Was anybody attending to the victim?

21 A Nobody was attending to him, no. There was a -- there
22 was a female, a black female, that was -- I can't remember
23 if she was sitting down beside him or she was kneeling down
24 beside him. She was pretty close to him. She was crying
25 and yelling. That was -- that was the only person that

Andrew Metcalf
Direct examination by Mr. Bulsa

1 was, you know, right near him.

2 Q Were you -- did you get a description of who the
3 shooter might be or what he might be driving?

4 A I did. After -- you know, after being there for, you
5 know, not long at all, probably a matter of seconds, you
6 know, I had multiple people telling me at the same time,
7 you know, the person that did this had already left.

8 You know, basically I got a really quick description
9 of a black male that was driving a white mercury Grand
10 Marquis-Crown Vic type car, I believe with -- with black
11 wheels, I believe is what I got, like no hubcaps.

12 I probably got that within the first minute of
13 standing there. I mean, I put that on the radio as soon as
14 I got it, so probably a minute or two on the scene I'd put
15 that out on the radio.

16 Q Did you have a mike, a body mike, on?

17 A I did, yes, sir. I don't have it on now, but I
18 normally have a radio on and a have a mike to -- you know,
19 that's with me at all times.

20 Q All right. So you got that information and put it out
21 and then tried to calm the scene until the other officers
22 arrived.

23 A Yes, sir. I -- I was -- I was there, I don't know,
24 not long, minutes, you know. There were probably six,
25 seven or eight other deputies there with me.

Andrew Metcalf
Direct examination by Mr. Bulsa

1 E.M.S. got there, you know, fairly quick. It was a
2 matter of minutes. I know it wasn't long.

3 Q Did you do anything to try to locate any items of
4 evidence?

5 A I didn't so much. I helped tape -- tape the area off
6 pretty much.

7 There were a few other deputies. I think an I.D.
8 officer that was on the scene that was kind of, you know,
9 looking for shell casings and that kind of stuff. I didn't
10 really take part in -- in looking for evidence too much,
11 no, sir.

12 Q But you helped move the people away from --

13 A I did. I helped. I helped separate people, you know,
14 away from the scene, kind of trying to get them in separate
15 areas, get them away from the immediate scene, rope it off,
16 that kind of stuff, yes, sir.

17 Q Did the supervisor come on the scene and kind of take
18 charge?

19 A Yes, sir.

20 Q I don't think -- I meant to ask you this question.
21 But what time was it when you got that call?

22 A It was a few minutes before 5:00 in the morning. I
23 mean, I can't remember exactly. I remember it was slightly
24 before 5:00 o'clock in the morning.

25 Q Based on your clock.

Andrew Metcalf
Cross-examination by Mr. Ianuario

1 A Yes.

2 Q And do you recall what the lighting was around?

3 A Yeah. It was -- I mean, it was -- it was actually
4 starting to get daylight. It was -- wasn't pitch black
5 dark. It wasn't bright and sunny either. It was kinda, I
6 guess, dawn. It was dawn.

7 Q Okay. Do you recall if there were lights in the --
8 street lights or anything out?

9 A No. I couldn't tell you. I don't remember.

10 Q Did you have any trouble seeing when you got there?

11 A No, I did not.

12 Q Did you take place in trying to locate who did this?

13 A No, sir.

14 Q Were other officers dispatched to try to find him?

15 A Yes, sir. Basically, when I -- you know, when I put
16 it out over the radio we had a few deputies that were
17 basically doing nothing but riding around kind of the
18 immediate area. And one deputy did locate a vehicle that
19 matched the description not far down the road.

20 Q Okay. Thank you. That's all I have. Answer any
21 questions Mr. Ianuario may have.

22 CROSS-EXAMINATION

23 BY MR. IANUARIO

24 Q Thank you, Deputy.

25 You said you were the first on the scene.

Andrew Metcalf
Cross-examination by Mr. Ianuario

1 A I was.

2 Q And there were 15 to 20 people standing around when
3 you arrived.

4 A If -- if I had to guess, somewhere close to that, yes,
5 sir.

6 Q Okay. So, and you were the first to secure the scene
7 too.

8 A Yes.

9 Q Did you interview anyone on the scene, take any
10 statements from anyone?

11 A I attempted to take a statement from one -- one guy on
12 the scene.

13 We had so many deputies, you know, taking -- trying to
14 get statements from people, you know, that I think I tried
15 from one person, and he was -- he was pretty intoxicated,
16 and I was not able to get too much out of him, so.

17 Q Were you able to determine if he had anything to do
18 with the groups of people that were there, or did he just
19 happen to be at the Waffle House when this happened?

20 A Yeah. I mean, my -- my take on it was he was -- he
21 was there. But, like I say, I didn't feel comfortable
22 getting a statement from this person because he was so
23 intoxicated.

24 Q Nothing further. Thank you.

25 (Photograph marked State's Exhibit No. 3 for

Andrew Metcalf
Cross-examination by Mr. Ianuario

1 Identification.)

2 REDIRECT EXAMINATION

3 BY MR. BULSA

4 Q Deputy Metcalf, let me show you what's been marked
5 State's Exhibit No. 3 for Identification. Do you recognize
6 what that shows?

7 A Yes, sir.

8 Q Is it an accurate depiction of what you saw that
9 evening?

10 A Yes, sir.

11 Q Is that pretty much the view you would have had as you
12 parked your vehicle looking into the parking lot?

13 A Yes, sir. That's -- I mean, that's basically it minus
14 the -- you know, the extra people.

15 Q Okay.

16 MR. BULSA: Your Honor, the state would offer State's
17 Exhibit No. 3 into evidence.

18 MR. IANUARIO: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Photograph marked Defendant's Exhibit No. 3.)

21 MR. BULSA: That's all I have.

22 MR. IANUARIO: Nothing, Your Honor.

23 THE COURT: You may step down.

24 MR. BULSA: Your Honor, we ask that he be excused.

25 THE COURT: He may be.

Jeremy Byrd
Direct examination by Mr. Bulsa

1 (Whereupon, the witness was excused.)

2 MR. BULSA: The state calls Dwight Garcia.

3 Your Honor, while he's coming in may I publish this to
4 the jury, just have them pass it around?

5 Garcia didn't make it yet.

6 Okay. Let's bring in Deputy Byrd.

7 JEREMY BYRD, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BULSA

10 Q Officer, please introduce yourself to the jury.

11 A My name is Deputy Jeremy Byrd.

12 Q And who are you employed with?

13 A I'm employed with the Spartanburg County Sheriff's
14 office.

15 Q In what capacity?

16 A I work on the uniform patrol division.

17 Q How long have you been a police officer?

18 A A total of six years.

19 Q How many of those have been with Spartanburg County?

20 A A year and a half.

21 Q So back on June 3rd of 2012 what were your duties with
22 Spartanburg County?

23 A I was assigned to the uniform patrol division, Charlie
24 shift.

25 Q Charlie shift. Is that the late shift?

Jeremy Byrd
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Did you receive a call to go anywhere that evening or
3 that morning?

4 A Yes, sir, I did.

5 Q What did you receive?

6 A I responded to the Waffle House on Highway 29 to
7 assist other deputies that were responding to a shooting.

8 Q What was taking place when you arrived?

9 A Other deputies were on the scene. I assisted in
10 speaking with one of the witnesses and taking a statement
11 from one of the witnesses.

12 Q At any point during your time on the scene were you
13 directed to go to another location?

14 A Yes, sir, I was.

15 Q Where were you directed to go?

16 A I was advised to go to Magnolia Townhomes which is
17 located in the city limits of Spartanburg to assist another
18 officer.

19 Q Okay. And who were you going to assist?

20 A That would be Deputy Garcia.

21 Q And where is Magnolia Townhomes in relation to the
22 Waffle House?

23 A Estimate about a mile away.

24 Q About a mile away.

25 A Yes, sir.

Jeremy Byrd
Direct examination by Mr. Bulsa

- 1 Q What street was it off of?
- 2 A Blackstock Road.
- 3 Q That's the Blackstock that runs in front of the mall?
- 4 A East Blackstock Road is what it is, yes, sir.
- 5 Q Okay. Runs from the mall and behind the Dorman
- 6 Center.
- 7 A Yes, sir.
- 8 Q Okay. So past Lowe's and Best Buy?
- 9 A Yes, sir.
- 10 Q Okay. So if you take -- so you headed up 29 back
- 11 towards town?
- 12 A Yes, sir.
- 13 Q And then took a right on East Blackstock.
- 14 A Yes, sir.
- 15 Q And Magnolia Townhomes are on the left.
- 16 A Yes, sir.
- 17 Q Is that right?
- 18 A Yes, sir.
- 19 Q Okay. Sort of just past that far entrance to Dorman
- 20 Center.
- 21 A That's correct.
- 22 Q All right. And where did you respond to when you got
- 23 to that location?
- 24 A I pulled into the apartment complex, which is the
- 25 first entrance. And as I proceeded through there I

Jeremy Byrd
Direct examination by Mr. Bulsa

1 stopped. The road bears off to the right to go to some
2 other apartments. I stopped right there at the
3 intersection. Deputy Garcia was there as well.

4 Q Okay.

5 (Photograph marked State's Exhibit No. 4 for
6 Identification.)

7 Q Let me show you what's been marked for identification
8 as State's Exhibit No. 4. Do you recognize that aerial
9 photograph?

10 A I do, sir.

11 Q Does it show the area of town that we've been
12 discussing here through your testimony?

13 A Yes, sir. It is.

14 Q Does it show the location of the Waffle House in
15 question?

16 A Yes, sir.

17 Q How is it marked?

18 A It's marked with the letter "A".

19 Q Okay.

20 MR. BULSA: Your Honor, the state would offer State's
21 4 into evidence.

22 MR. IANUARIO: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Photograph marked State's Exhibit No. 4.)

25 Q Deputy, do you remember about how long you were at the

Jeremy Byrd
Direct examination by Mr. Bulsa

1 waffle House before you got the call to go help Deputy
2 Garcia?

3 A Yes, sir, approximately 45 minutes.

4 Q Forty-five minutes. Okay. And just look on the map
5 here, State's 4. Can you see it from there? Do you need
6 to step down?

7 A I can see it.

8 Q Here is a pointer. If you would using the pointer
9 point to the area where the waffle House is.

10 THE COURT: Let's do this.

11 Excuse me. Let me ask you to step down. Do you see
12 this microphone hanging from the ceiling?

13 THE WITNESS: Yes, sir.

14 THE COURT: Kind of stand below that. You don't have
15 to look up at it, but it'll pick your voice up. That's
16 good.

17 (Whereupon, the witness left the stand.)

18 BY MR. BULSA

19 A Right there, letter "A".

20 Q Letter "A".

21 A Yes, sir.

22 Q Okay. And show us where Magnolia Townhomes are.

23 A That's Magnolia Townhomes right there.

24 Q Okay. Just below the Dorman Center.

25 A Yes, sir.

Jeremy Byrd
Direct examination by Mr. Bulsa

1 Q Okay. Do you know what the letter "B" designates
2 towards the bottom of the map?

3 A That's the intersection of Reidville Road and I-26.
4 That's also Blackstock Road right there. There's another
5 waffle House located there as well.

6 Q Okay. The Waffle House where the shooting occurred
7 was up there at "A".

8 A Yes, sir.

9 Q Okay. And about how long did it take you to get there
10 during that drive?

11 A Less than a minute.

12 Q Were you -- were you with lights and siren?

13 A To -- from letter "A" to Magnolia Townhomes.

14 Q Yes, sir.

15 A Less than a minute.

16 Q Were you lights and sirens?

17 A No, sir.

18 Q Okay. Normal speed of traffic?

19 A Yes, sir.

20 Q Okay. You can step back to your seat.

21 (Whereupon, the witness returned to the stand.)

22 (Photographs marked State's Exhibits Nos. 5 and 6 for
23 Identification.)

24 Q Officer, what occurred when you got to Magnolia
25 Townhomes? Where was Deputy Garcia?

Jeremy Byrd
Direct examination by Mr. Bulsa

- 1 A Deputy Garcia -- if you don't mind -- he was located
2 in -- he was located right around in here at this little
3 intersection right here. I pulled into this inter --
4 pulled into this entrance right here, and he was located
5 off to my right.
- 6 Q Okay. Was he in the patrol car as well?
- 7 A He was, yes, sir, patrol S.U.V. -- patrol S.U.V.
- 8 Q Was it marked?
- 9 A Yes, sir.
- 10 Q And your car was a marked car?
- 11 A Yes, sir.
- 12 Q Were there any other officers in the area?
- 13 A Not at that time.
- 14 Q Okay. So did it appear he was watching something?
- 15 A I believe so.
- 16 Q Okay. And I show you State's Exhibits 5 and 6 for
17 Identification. Do you recognize what they show?
- 18 A Yes, sir. This is a white Grand Marquis vehicle with
19 black rims on it -- Ford.
- 20 Q Is that the vehicle he was watching?
- 21 A I had found out later, yes, sir, it was.
- 22 Q Okay. And does that vehicle fit the description that
23 was given by persons at the Waffle House?
- 24 A Very similar, yes, sir. The BOLO we were given was a
25 Ford Crown Victoria, yes, sir.

Jeremy Byrd
Direct examination by Mr. Bulsa

1 Q Okay. And this is a Mercury Grand Marquis.

2 A Yes, sir.

3 Q Same family.

4 A Yes, sir, yes, sir.

5 MR. BULSA: Your Honor, the state would offer State's
6 5 and 6 into evidence.

7 MR. IANUARIO: No objection, Your Honor.

8 THE COURT: They're admitted.

9 (Photographs marked State's Exhibits Nos. 5 and 6.)

10 Q Okay. This car was found at Magnolia Townhomes?

11 A Yes, sir.

12 Q Other than the description did it stand out in any
13 way?

14 A Other than the description, no, sir.

15 Q Okay. All right. And had a Florida tag, is that
16 right?

17 A Uh-huh, yes, sir.

18 Q When you pulled up did you meet with Deputy Garcia?

19 A No, sir.

20 Q What did you do when you pulled up?

21 A As I pulled in I got out of my vehicle, and a subject
22 approached me.

23 Q Okay. And who was that subject?

24 A That -- that would be Mr. Baker.

25 Q The defendant?

Jeremy Byrd
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q All right. Was he with anybody?
- 3 A He was walking up alone.
- 4 Q Do you remember how he was dressed?
- 5 A Yes, sir, white shirt and dark colored pants.
- 6 Q Okay. And what occurred when you approached you?
- 7 A As I exited the vehicle I spoke with him. I said,
- 8 "What's up, Man?" And he proceeded to say, "I did it. I
- 9 did that thing at the waffle House."
- 10 Q Did you have any idea who he was when you pulled up?
- 11 A Not at that time, no, sir.
- 12 Q Did you -- when he was approaching you the comment you
- 13 made to him, was that -- why did you ask him that, "What's
- 14 up?"
- 15 A Just being cordial.
- 16 Q Okay. So it's not like you would have been
- 17 investigating.
- 18 A No.
- 19 Q You just asked him a question, and he blurted out he
- 20 did that.
- 21 A Yes, sir.
- 22 Q Did he give you any more of a description?
- 23 A No, sir.
- 24 Q What did you do -- do when he told you that?
- 25 A I advised him at that time I was going to place him

Jeremy Byrd
Cross-examination by Mr. Ianuario

1 under investigative detention, and I had him sit in the
2 rear of my vehicle.

3 Q And then what did you do when you put him in the
4 vehicle?

5 A At that time myself and Deputy Garcia spoke. He
6 contacted the other units that were on the initial scene at
7 the Waffle House. And that was it.

8 Q Did they send a detective over?

9 A Yes, sir.

10 Q Okay. And what did you do when the detective arrived?

11 A I advised him the gentleman's in the rear of my car.
12 He got the gentleman out and continued his investigation.

13 Q What did you do?

14 A I stayed on the scene until I was relieved by a
15 day-shift unit.

16 Q Okay. You actually stayed at the Magnolia Town?

17 A Yes, sir.

18 Q Okay. All right. Thank you. Answer any questions
19 Mr. Ianuario may have.

20 A Okay.

21 CROSS-EXAMINATION

22 BY MR. IANUARIO

23 Q Thank you, Deputy.

24 You say that Antwon walked right up to you?

25 A Yes, sir.

Jeremy Byrd
Redirect examination by Mr. Bulsa

1 Q And freely admitted it.

2 A I'm sorry, sir?

3 Q He freely admitted to doing that thing at the Waffle
4 House?

5 A He walked up to me and stated, "I did it. I did the
6 thing at the Waffle House."

7 Q Did he resist arrest in any way, shape or form?

8 A No, sir.

9 Q Did he give you any hard times?

10 A No, sir.

11 Q Was he anything other than polite and respectful?

12 A Yes, sir. Very polite and respectful.

13 Q Did he happen to indicate which direction he was
14 coming from when he stopped at the Waffle House?

15 A No, sir.

16 MR. IANUARIO: Nothing further.

17 REDIRECT EXAMINATION

18 BY MR. BULSA

19 Q Deputy Byrd, did you go to the townhomes in response
20 to a 9-1-1 call?

21 A No, sir.

22 Q Do you know if a 9-1-1 call was made from that
23 location?

24 A Not to my knowledge.

25 Q So do you know if the police had been called to that

David Hogsed
Direct examination by Mr. Bulsa

1 location by the defendant?

2 A Not to my knowledge.

3 Q Okay. Thank you.

4 MR. BULSA: That's all I have.

5 THE COURT: You may step down.

6 MR. BULSA: Your Honor, we ask that he be excused.

7 THE COURT: You may be.

8 (Whereupon, the witness was excused.)

9 MR. BULSA: The state calls David Hogsed.

10 THE COURT: Mr. Bulsa, let me see y'all just a minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 DAVID HOGSED, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA

16 Q Please introduce yourself to the jury.

17 A I'm David Hogsed.

18 Q And what is your occupation?

19 A I am a sergeant with the crime scene unit of the
20 Spartanburg County Sheriff's Office.

21 Q Crime scene unit with the sheriff's office. How long
22 have you been with the crime scene unit?

23 A With the sheriff's office since 2005.

24 Q How long have you been an officer?

25 A Right at 24 years. I was with the city of Spartanburg

David Hogsed
Direct examination by Mr. Bulsa

1 for almost 16 years.

2 Q Were you with their crime scene unit also?

3 A Yes. I started crime scene unit investigation in
4 1998, latter part of '98 and '99.

5 Q Officer, were you called to this scene?

6 A Actually, I wasn't called. I was working that night.
7 And I heard it dispatched and just responded on my own.

8 Q When you say you heard it dispatched, describe for the
9 jury what you mean.

10 A We all carry -- all have radios in our trucks, cars,
11 whatever we drive -- and on our hips. And of course the
12 call came out that there had been a shooting incident at
13 the Waffle House at 8121 Warren H. Abernathy. And I was
14 actually on Highway 29 probably a mile or a mile and a half
15 away and responded.

16 Q And when a dispatch goes out is that in -- typically
17 in response to someone calling 9-1-1?

18 A Yes. Someone called 9-1-1. And, basically, what
19 they'll do is they'll -- they'll call a certain zone
20 officer and dispatch them to it. But of course with a call
21 such as this type if we're close, we're going.

22 Q Okay. Someone called 9-1-1, and 9-1-1, Spartanburg
23 communications, dispatches officers in the area. And you
24 overheard that and you went to the location.

25 A That's correct.

David Hogsed
Direct examination by Mr. Bulsa

1 Q Because based on your experience you thought they
2 might need your services?

3 A Yes. We -- we had a report of a shooting. And at the
4 time when I responded I had no idea someone had actually
5 been shot or not. So I'm going. If there's a victim there
6 they need us, and we're going.

7 Q Okay. So it didn't take you that long.

8 A No. I was there within four to five minutes.

9 Q So you were one of the first officers actually on the
10 scene.

11 A Like the first or second there, yes, sir.

12 Q Okay. So what did you observe in your trained eye?

13 A What I observed, there was a lot of people in the
14 parking lot going in several different directions.

15 Deputy Metcalf was with me. He was basically in front
16 of me. He actually pulled into the parking lot of the
17 Waffle House itself.

18 If you're facing the Waffle House from Highway 29 the
19 shopping center is to its left. I pulled into that parking
20 lot.

21 When I got out and went into the parking lot Deputy
22 Metcalf was instructing people to come to him. What I
23 observed to and what I went to was there was a black male
24 laying pretty much face down in the center of the parking
25 lot. And there was a female that was pretty much holding

David Hogsed
Direct examination by Mr. Bulsa

1 him and crying and talking to him.

2 I went up to her, saw what I thought to be blood
3 underneath him, told her who I was and asked her to stand
4 up and come with me, that I needed her to -- to come with
5 me. And I walked her to a deputy's patrol car and then
6 went back over to Mr. Young's location.

7 I felt for a pulse on his arm and did not feel one.
8 He didn't appear to be breathing. Of course went through
9 radio communications with our 9-1-1 dispatchers telling
10 them to get E.M.S. there and start making notifications of
11 everybody else to come.

12 Q After you made that call what did you then do?

13 A We started separating witnesses. And we had a lot of
14 people there.

15 I observed -- basically, I got everybody away from
16 where Mr. Young was laying because I observed what we refer
17 to as a fired cartridge casing laying beside his body and a
18 hat laying down by his feet.

19 There was three gentlemen going to a car up in the
20 parking lot where I had parked. And, well, they were down
21 there with us, and I walked them over to their car and
22 asked them just to stay in the car, just stay there until
23 we could get everything straightened out. And there I
24 noticed there was two fired cartridge casings near their
25 car. And I just told them shut it down, guys, need you to

David Hogsted
Direct examination by Mr. Bulsa

1 stay in your car, don't move the car until I can get
2 this -- this crime scene, you know, under control and we
3 get everybody situated.

4 Q Now, which parking lot did you see those other two
5 casings in?

6 A It's actually the shopping center to the left of the
7 Waffle House if you're facing it from Highway 29.

8 Q Okay.

9 (Photograph marked State's Exhibit No. 7 for
10 Identification.)

11 Q I show you what's been marked State's Exhibit No. 7.
12 This is an aerial shot taken off a computer. Does that
13 show that Waffle House and the adjacent buildings?

14 A It does.

15 Q Okay. Is that an accurate depiction of the -- that
16 location?

17 A It is.

18 Q Now, of course it's not a picture representing the
19 date in question, because we see a number of cars in the
20 parking lot. It's actually a daytime picture?

21 A This is a Google map picture.

22 Q Okay. But it does actually show it.

23 A Yes. I -- you have the Waffle House. IHOP is to its
24 right, and then the parking lot and the shopping center. I
25 don't know what all stores are here.

David Hogsed
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, the state would offer State's
2 7 into evidence.

3 MR. IANUARIO: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Photograph marked State's Exhibit No. 7.)

6 Q All right. I will put it in there with the Google
7 upside down, but let's see.

8 The road running the front of these buildings is
9 Highway 29?

10 A Can I step down?

11 Q Yes.

12 (Whereupon, the witness left the stand.)

13 A This is Highway 29 here. This is IHOP, waffle House.
14 And this is -- this is actually an "L" shaped building when
15 you see the whole interior or the whole building. It's
16 like an "L" shaped building.

17 Q Whereabouts did you see Mr. Young's body?

18 A Approximately right in this area.

19 Q Okay. And the shell casings you talked about seeing?

20 A Well, there was one close to him, and then the other
21 ones were over here. But I don't remember the exact
22 location where they were at. But the car that was in
23 question was -- is right in here.

24 Q Okay. So you actually saw shell casings past those
25 bushes.

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes. This is actually sort of like a little retaining
2 wall here. You have to step up to it.

3 Q Okay. And which way was Mr. Young facing?

4 A His head was here. Feet was on this end.

5 Q He was facing back towards the Waffle House?

6 A Back towards the Waffle House, yes, sir.

7 Q Okay. You can have a set.

8 (Whereupon, the witness returned to the stand.)

9 Q So you wanted to preserve the evidence in the position
10 it was in?

11 A That's correct. Once we got everybody pretty much
12 settled down, or separated I should say, notifications were
13 being made for a violent crimes investigator, the coroner's
14 investigators.

15 Once E.M.S. had arrived and had actually pronounced
16 that Mr. Young was deceased we called the coroner,
17 investigator. With the items that I had already seen I
18 went back to my truck and I got out some numbered placards
19 that we use to mark evidence. And I just stuck them down
20 by -- they were in no discernable order. It was just to
21 put them out so that you'll see the guys that were going to
22 be arriving, would see those bright yellow markers to help
23 the violent crimes investigators as well as the actual
24 crime scene team that was coming in to work the crime
25 scene.

David Hogsed
Direct examination by Mr. Bulsa

1 Q Can you put down all of the markers?

2 A I only put down four, which was the four items that I
3 had seen, which was the shell casing by -- by Mr. Young,
4 the hat that was near his feet and the two casings that was
5 by the car in the other parking lot.

6 Of course we call in. We actually -- we actually have
7 an on-call team at all times, and we called that team in to
8 actually process the crime scene.

9 So basically when that team got there they would have
10 taken my markers up and put theirs down and put any others
11 down of any other potential evidence that was found.

12 Q Okay. Just so the jury can have a perspective of what
13 you're talking about, I show you a couple more pictures.

14 (Photographs marked State's Exhibits Nos. 8 and 9 for
15 Identification.)

16 Q All right. Let me show you State's 8 and 9 for
17 Identification. Do you recognize the locations those
18 photographs are depicting?

19 A These -- these are not the markers that I put down.
20 They are the type of markers I put down.

21 Q Okay. But do they look -- do they identify the same
22 areas that you marked?

23 A Yes, they do.

24 Q Because you said they came in and somebody else
25 processed the scene.

David Hogsed
Direct examination by Mr. Bulsa

1 A Correct.

2 Q So the jury can have a perspective of your testimony,
3 are those in the same general location?

4 A Yes, they are.

5 Q Okay.

6 MR. BULSA: Your Honor, I would offer these into
7 evidence State's 8 and 9.

8 MR. IANUARIO: No objection, Your Honor.

9 THE COURT: They're admitted.

10 (Photographs marked State's Exhibits Nos. 8 and 9.)

11 Q Okay. Now, State's 8, the two markers towards the
12 middle of the parking lot, are those in similar locations
13 as the ones you marked?

14 (Whereupon, the witness left the stand.)

15 A Yes.

16 Q Okay. Where would Mr. Young's body have been lying?

17 A In this area here.

18 Q Okay. You said you saw something towards his feet,
19 which would have been what?

20 A Well, probably be a ball cap. The evidence has been
21 picked up.

22 Q Okay.

23 A Investigator Talanges came in and worked the crime
24 scene. He -- my markers were picked up and his was out
25 and --

David Hogsed
Direct examination by Mr. Bulsa

1 Q Okay. Just so there were two items in the middle of
2 the parking area.

3 A Two. One -- one right by his body and one at his
4 feet, and then two in the other parking lot by the car.

5 Q Okay. And this is State's 9. Is that the other
6 parking lot?

7 A Yes. This is the other parking lot, and that's the
8 general area where I did mark the two casings, the two
9 fired cartridge casings.

10 Q Okay. So looking at State's 7 showing the -- show on
11 this overhead where this two fired casings were.

12 A It would be here.

13 Q Okay. So they were out past the -- near the first
14 parking lot.

15 A Right. There's your triangle. Here's your triangle.
16 Close to the building.

17 Q All right. Okay. You can have a seat.

18 (Whereupon, the witness returned to the stand.)

19 Q How long were you on the scene, Officer?

20 A I arrived at about 5:00 a.m., approximately 5:00 a.m.
21 there, but I moved locations and arrived there at nine
22 minutes to 7:00.

23 Q And why did you move locations?

24 A I received a call that two of our deputies, Deputy
25 Garcia and Deputy Byrd, were out with a possible suspect

David Hogsed
Direct examination by Mr. Bulsa

1 vehicle and a suspect at Magnolia Townhomes on Blackstock
2 Road in the city. And I was asked to meet Investigator
3 Williams, Lorin Williams, at that location. And so I went
4 to that location.

5 Q And what did you do at that location?

6 A When I arrived Investigator Williams was sitting in
7 his car talking to a gentleman. They were talking.

8 Investigator Williams got out and told me was speaking
9 with an Antwon Baker and asked me if I would do a gunshot
10 residue kit, G.S.R. kit, on his hands. And I told him,
11 yes, I would. And he said give me just a few minutes. I
12 gave him a few minutes.

13 They stopped talking. And when Investigator Williams
14 come back out of the car I then completed the G.S.R. kit on
15 Mr. Baker's hands.

16 Q Did you go through any questions with Mr. Baker prior
17 to doing that?

18 A Yes. One of the first things I always ask anybody, is
19 I ask them if they've been Mirandized. Of course he told
20 me yes. And there is an information sheet.

21 Q What does Mirandized mean?

22 A Have you been given your -- your Miranda warnings,
23 your rights, so have you had your rights read to you. But
24 there's an information sheet that's within the G.S.R. kit,
25 and it asks several questions -- of course his name, date

David Hogsed
Direct examination by Mr. Bulsa

1 of birth, are you right-handed or left-handed. And then it
2 has the subject living, deceased and so forth.

3 Then it asks your occupation, if you have any hobbies.
4 And one of the -- and it asks what they've done from the
5 time of the shooting until the G.S.R. kit is done. And it
6 asks from the time of the shooting until G.S.R. kit if this
7 person has washed their hands.

8 And as we were going through the information sheet I
9 asked Mr. Baker if he'd washed his hands, and he told me
10 that, yes, that he had used a restroom and had washed his
11 hands. And I denoted that on the -- on the sheet.

12 Q Is there a place to note whether he changed his
13 clothes?

14 A No, there's not.

15 Q All right. So you processed his hands.

16 A Yes, sir.

17 Q Did you have any further conversation with him?

18 A No. That was pretty much it. And then Investigator
19 Williams came back over there. And to be honest with you,
20 I don't know where he went from there.

21 Q What did you do after that?

22 A We -- we were told or I was told that there was a
23 white Mercury Grand Marquis with a Florida tag and a black
24 Honda in two different locations of Magnolia Townhomes.
25 And we were -- I was asked to take photographs of those.

David Hogsed
Direct examination by Mr. Bulsa

1 And I was told that they were doing a -- search warrants
2 were being done for Apartment 10 and for the black Honda.
3 But we were going to tow the white Mercury to our county
4 shop for later processing.

5 So I just took digital photographs of that area and
6 those -- those two cars and downloaded those into our
7 digital crime scene computer later. And that was pretty
8 much my -- my entire involvement.

9 Q Did you do any other processing of the vehicles other
10 than taking the pictures?

11 A No, I did not.

12 (Photograph marked State's Exhibit No. 10 for
13 Identification.)

14 Q Show you State's Exhibit No. 10. Do you recognize
15 that view?

16 A Yes. That's the black Honda that was setting right
17 outside of Apartment -- in the area of Apartment 10.

18 Q Okay. And State's 6, is that the black -- the white
19 vehicle in the photograph?

20 A Yes, it is.

21 MR. BULSA: Your Honor, the state would offer --

22 A It was actually in front of Building C.

23 Q Okay.

24 MR. BULSA: The state would offer State's 10 into
25 evidence.

David Hogsed
Cross-examination by Mr. Ianuario

1 MR. IANUARIO: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Photograph marked State's Exhibit No. 10.)

4 Q So you didn't know what the involvement of these cars
5 were.

6 A Not -- not the black car. I knew what the white car
7 was.

8 Q Okay.

9 A We knew we were looking for a white car with black
10 rims with an out-of-state tag.

11 Q You turned over the processing of this to Officer
12 Talanges?

13 A Yes.

14 Q Okay. Thank you. Answer any questions Mr. Ianuario
15 may have.

16 CROSS-EXAMINATION

17 BY MR. IANUARIO

18 Q The hat. Did I understand correctly that the hat was
19 close to the body when you arrived on the scene?

20 A Near his feet area. I won't give a distance because I
21 didn't do any measuring that day, but it was down below his
22 feet area.

23 Q I am horrible at distance, so don't worry about it.
24 Are we talking a country mile away or --

25 A No.

David Hogsted
Cross-examination by Mr. Ianuario

1 Q That's fine.

2 A No.

3 Q And it was at the opposite end of the parking lot?

4 A No. His -- his body's here.

5 (Whereupon, the witness left the stand.)

6 A I won't give a specific location because I'm not
7 exactly sure. His body was in this area. Shell casing was
8 right beside him. The hat was down near in here.

9 Q Okay.

10 A Like going back towards the wall.

11 Q Okay.

12 (Whereupon, the witness returned to the stand.)

13 Q And you just initially marked the evidence. You
14 didn't actually process it. Did I understand?

15 A No. I put the markers out so that other officers that
16 were arriving on the scene -- they see those markers. They
17 know there's potential evidence there. They watch their --
18 watch where they step.

19 Q I understand. Do you recognize these items here and
20 here?

21 A I don't. I marked those four, and that was it.

22 Q And aside from the G.S.R. kit on Mr. Baker, did you
23 take G.S.R. samples from anyone else?

24 A No, sir, just Mr. Baker.

25 Q Nothing further. Thank you, sir.

1 MR. BULSA: Nothing further, Your Honor.

2 THE COURT: You may step down.

3 We're going to recess for the afternoon.

4 Let me caution the jury that you're not to talk about
5 the case with anybody during the overnight recess. You
6 also are not to conduct any research. Don't do your own
7 investigation. You don't -- of any kind.

8 You have to base your decision upon what you see and
9 hear during the trial.

10 You're never permitted to supplement your knowledge by
11 conducting research outside of this courtroom or by talking
12 about the case with other people to get advice. You just
13 base your decision upon the evidence presented during the
14 trial.

15 So no discussions, no research, no media exposure.
16 Don't watch anything on television; don't read anything in
17 the newspaper; don't listen to anything on the radio that
18 might relate to the case.

19 Do have a good evening, and please report to your jury
20 room at 9:30 in the morning, 9:30 in the morning. Have a
21 good evening.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Mr. Bulsa, can I see you and Mr. Ianuario,
25 please?

1 (Bench conference held off the record.)

2 THE COURT: Court's in recess until 9:30 in the
3 morning.

4 END OF PROCEEDINGS JUNE 3, 2013

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Dwight Garcia
Direct examination by Mr. Bulsa

1 (Proceedings June 4, 2013)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters to address before
5 the jury is brought in?

6 MR. IANUARIO: None from the defense, Your Honor.

7 THE COURT: Bring them in, please.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday the state was
12 in the midst of their presentation of evidence, so we'll
13 continue with that presentation this morning.

14 Mr. Bulsa.

15 MR. BULSA: The state calls Officer Dwight Garcia.

16 DWIGHT GARCIA, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BULSA

19 Q Deputy, if you would, introduce yourself to the jury.

20 A My name is Officer Garcia, Dwight Garcia. I've been
21 employed with the sheriff's office for the last seven
22 years.

23 Q And what are your duties with the sheriff's office?

24 A I work crime scene investigations with the sheriff's
25 office.

Dwight Garcia
Direct examination by Mr. Bulsa

1 Q Back in June of 2012 what were your duties?

2 A I was also a crime scene investigator at the time.

3 Q Okay. And did you participate in the investigation of
4 a shooting at the Waffle House on Highway 29?

5 A Not in full extent, no. I was initially --

6 Q How did you become involved?

7 A I became involved as I responded to the call for the
8 shooting at the Waffle House off Highway 29.

9 Q Were you on duty at the time?

10 A Yes, sir.

11 Q And what kind of vehicle were you in?

12 A I was in semi-unmarked black Durango.

13 Q Okay. And how were you dressed?

14 A I was dressed in officer's uniform.

15 Q Okay. But you weren't a regular patrol officer.

16 A No, sir.

17 Q All right. And how did you get the call to respond?

18 A I was in the office and overheard the call provided by
19 Spartanburg communications that a shooting had occurred at
20 the Waffle House off Highway 29.

21 My supervisor at that point told me to run to the
22 front desk and call the on-call crime scene homicide unit
23 to come out. And once I made that phone call I got in my
24 vehicle, and I responded.

25 Q Okay. And where did you go?

Dwight Garcia
Direct examination by Mr. Bulsa

1 A If I might refer to my notes.

2 Q If you need to, yes, sir.

3 A The address at the Waffle House on Highway 29 is 8121
4 Warren H. Abernathy in Spartanburg County. That's where I
5 responded to.

6 Q And do you recall approximately when you got there?

7 A At approximately 4:57 in the morning on June 3rd of
8 2012.

9 Q What was taking place when you arrived?

10 A When I arrived you had several officers. Basically,
11 everyone that was working on shift responded to that call.
12 There was not many priority calls holding or anything, so
13 everyone responded -- naturally responded to that call.

14 You had officers taping off crime scene area apart
15 from the Waffle House where the incident had occurred. You
16 had people separating witnesses, possibly involved
17 suspects, things -- things of that nature.

18 Q So when you arrived there were several officers
19 already kind of separating people and securing the scene.

20 A That's correct.

21 Q What did you do when you arrived?

22 A Once I initially concluded that everything had been
23 taken care of and my services were no longer needed I had
24 obtained information on a possible-suspect direction of
25 travel. And I just reverted back to investigative tactics

Dwight Garcia
Direct examination by Mr. Bulsa

1 and patrol tactics and went in search of the suspect and
2 suspect vehicle.

3 Q Okay. Well, tell us what you did.

4 A Is it all right if I refer to my notes?

5 Q If you need to, yes, sir.

6 A Once I obtained that suspect information I started
7 patrolling the surrounding areas.

8 The information we had received or was that put out
9 through the radio was suspect had fled in a white possibly
10 Crown -- late model Crown Victoria headed towards Warren H.
11 Abernathy in the city. At that point the vehicle had been
12 lost.

13 I knew in my mind at that point the vehicle couldn't
14 have been far, was probably going to be parked somewhere
15 close by. So I started patrolling, patrolling, patrolling.

16 As I was listening to my radio I overheard that
17 Spartanburg City Police Department, the Department of
18 Public Safety, had possibly gotten out with a vehicle
19 matching the suspect description at Camelot Drive, which is
20 near John B. White, Sr. Boulevard in the city limits of
21 Spartanburg.

22 I started in that direction. When I got there there
23 were no officers in sight. I went down Camelot,
24 neighborhood of Camelot off Camelot Drive.

25 I rode up and down John B. White, Sr. Boulevard,

Dwight Garcia
Direct examination by Mr. Bulsa

1 couldn't find anyone. So I parked at 1598 John B. White,
2 Sr. Boulevard which is McDonald's off John B. White, Sr.
3 Boulevard.

4 And I contacted Spartanburg communications via my
5 county-issued cellular phone to confirm the information I
6 had overheard over the radio was correct. They confirmed,
7 yes, Spartanburg city had been out with a vehicle matching
8 that description but it turned out not to be the suspect.

9 while I was on the phone Spartanburg communications
10 provided me an updated information regarding the suspect
11 information and suspect vehicle. And they -- that
12 information they provided me -- if you give me a minute to
13 refer back to my notes -- was a heavyset black male wearing
14 black hat, a white t-shirt, blue jeans, featuring short
15 hair and dreadlocks and facial hair driving a white Crown
16 Victoria or a Mercury Grand Marquis with no rims.

17 Upon concluding my conversation with Spartanburg
18 communications I continued to patrol the area to which I
19 eventually ended up at 201 East Blackstock Road, which is
20 Magnolia Townhomes, and discovered a vehicle.

21 Q Let me stop you right there.

22 It sounds like you were searching different locations
23 in the area of that car.

24 A That's correct.

25 Q Is that what you were doing?

Dwight Garcia
Direct examination by Mr. Bulsa

1 A Yes.

2 Q How were you selecting the areas you were looking?

3 A Well, they -- they said right there at the start of
4 Warren H. Abernathy is where they lost the suspect vehicle.

5 So I figured that's East Blackstock, was the first
6 thing that came to mind, and Camelot Drive, which is
7 actually a neighborhood.

8 I had actually gone on Camelot Drive initially when I
9 was trying to find the officers, ruled that out. And then
10 I made my way through East Blackstock trying to head
11 backwards Warren H. Abernathy.

12 And I thought, well, there's an apartment complex
13 that's off this road, it'd probably be wise to check into
14 those, which I did. I went into the hunt club, didn't find
15 anything matching that description. And the next stop was
16 obviously Magnolia Townhomes where I concluded.

17 Q Did you have any information to believe that the
18 person lived in any of these areas?

19 A No, sir, none.

20 Q So you're just taking a chance to search these
21 locations to see if you see something.

22 A That's correct.

23 Q And were you successful?

24 A Yes.

25 Q Howso?

Dwight Garcia
Direct examination by Mr. Bulsa

1 A Upon my arrival at Magnolia Townhomes I encountered a
2 vehicle matching the description. It was an older model
3 Crown Victoria. I got out and ran the tag through
4 Spartanburg communications. They returned the information.

5 I went to check the vehicle's engine block and see if
6 it was warm. The vehicle's engine block was cold. The
7 vehicle looked like it had not been operated possibly
8 overnight, maybe a day.

9 So when they gave me that information I made that
10 determination that vehicle had not been operated. Common
11 sense tells you if the vehicle has been operated recently
12 it's going to be warm. I ruled that vehicle out.

13 And I just continued my search of the apartment
14 complex, and I came across a late model white Grand Marquis
15 with no -- no hubcaps or rims. It was just solid black
16 wheels.

17 The one thing that stood about -- stood out was the
18 Florida tag. I thought, you know, that's unusual.
19 Every -- most of the tags in the town homes complex were
20 all out of South Carolina.

21 So after that I got out and ran the tag information.
22 They gave the tag information like before.

23 I went and touched the -- I checked to see if the
24 engine block of that vehicle was warm, which it was. And
25 I -- something just told me that this description is

Dwight Garcia
Direct examination by Mr. Bulsa

1 just -- is just too coincidental this close to the crime
2 scene. So I just -- I stuck to my guns and stayed with the
3 vehicle.

4 Q Okay. When you ran that vehicle information did it
5 come back to Antwon Baker?

6 A No, sir.

7 Q It did not?

8 A No, sir.

9 Q Okay. At that time you had no name of the suspect,
10 did you?

11 A No, sir, I did not.

12 Q So even though it didn't come back to him, it didn't
13 really matter in your investigation.

14 A No, sir.

15 Q All right. Let me show you what's been entered as
16 State's Exhibits 5 and 6, two pictures of the vehicle. Is
17 that the vehicle that you found?

18 A Yes, sir. This is the exact vehicle.

19 Q Okay. And it's our understanding that you then waited
20 at another spot in the complex watching that vehicle?

21 A Correct. I waited across -- it's hard to describe to
22 you -- the B building and C building. I was parked across
23 from the B and C building conducting surveillance.

24 (Photograph Marked State's Exhibit No. 11 for
25 Identification.)

Dwight Garcia
Direct examination by Mr. Bulsa

1 Q Show you what's been marked State's Exhibit No. 11 for
2 Identification. Is that an overview of those -- that
3 complex?

4 A Yes, sir, it is.

5 Q Are those apartments or townhomes?

6 A Sir, to be honest with you I don't -- I know the
7 complex is called Townhomes. I've never actually been
8 inside one of these buildings to -- to tell you if it's
9 actual apartment style or if it's actual townhomes.

10 Q Okay. Let me see. I'll show you this picture,
11 State's Exhibit No. 4. This is an aerial picture showing
12 the Waffle House location and then the Magnolia Townhomes.

13 THE COURT: Be mindful of the microphone, please.

14 Q Is that showing pretty much the area where you -- you
15 kind of looked around?

16 A Yes, sir. That's correct.

17 Q Okay. Just to reorient the jury this morning, let's
18 look at...

19 MR. BULSA: First, I would offer State's 11 into
20 evidence.

21 MR. IANUARIO: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Photograph Marked State's Exhibit No. 11.)

24 Q Okay. State's 4.

25 THE COURT: Please be mindful of that microphone.

Dwight Garcia
Direct examination by Mr. Bulsa

1 Q Just kind of look this way. Don't -- if you need to,
2 step -- let's step down.

3 A Okay.

4 (Whereupon, the witness left the stand.)

5 Q Here's a pointer using the red button.

6 A Okay.

7 Q That label up there noted as "A" will be where the
8 Waffle House is.

9 A Okay. That's the -- that's the Waffle House. That's
10 where the incident location actually occurred.

11 I started conducting my -- my search here at East
12 Blackstock. And here is the -- the -- I was unable to find
13 that vehicle. Eventually, I made it to here.

14 THE COURT: Excuse me just a minute.

15 I'm going to have to ask you. Do you see that
16 microphone hanging from the ceiling? Come towards that.
17 Thank you.

18 BY MR. BULSA

19 A I arrived here, which was 201 East Blackstock Road.

20 Q Let me show, and let me publish State's 11.

21 A This is a larger picture I believe of the complex.
22 This is where I first came in and started my search, made
23 my way around through here. And this is where the suspect
24 vehicle, the white Grand Marquis with Florida plate, was --
25 was located. And I conducted my surveillance here.

Dwight Garcia
Direct examination by Mr. Bulsa

1 My vehicle was facing out towards the B building and C
2 building.

3 Q Was your vehicle readily identifiable as a police
4 vehicle?

5 A The way it's -- I had it setting at that point in
6 time, no, it was not.

7 Q While you were watching that vehicle, what happened?

8 A While I was watching this vehicle I observed two
9 gentlemen come out of the C building and kinda just hang
10 out here. Appeared to be conversing amongst one another.

11 I didn't find anything readily suspicious about that
12 until after a while they started looking at my vehicle.
13 But I figured that was just going to be commonplace since
14 my vehicle -- you know, most -- most people in a
15 neighborhood or community know if that vehicle belongs
16 there or not. I figured I was probably sticking out
17 something like a sore thumb and they knew I didn't belong
18 in that neighborhood.

19 After a while a gentleman exited the B building here.
20 And I observed him walk through here and talk with two
21 other gentlemen. And they all appeared to be in
22 conversation. And they continued to look in my general
23 direction.

24 And after a while the gentleman that had left from
25 here, the B building to C building, started walking back.

Dwight Garcia
Direct examination by Mr. Bulsa

1 As he was walking back I exited my vehicle.

2 Actually, at that point in time I had requested for
3 another unit, another patrol unit, to meet me at this
4 location so that I could conduct a field interview with
5 this individual and see if he knew anything about the
6 incident.

7 At that point in time the subject was already in the
8 midst of approaching as I was getting out of my vehicle to
9 approach him.

10 Q Now, at this point did you have any reason to believe
11 that that person was connected to the white Grand Marquis?

12 A No, sir. At that point in time I didn't. The purpose
13 of me exiting my vehicle to make that approach was just a
14 field interview to see if he had any information regarding
15 the ownership of that particular vehicle.

16 Q All right. And then what occurred when you approached
17 him?

18 A I was -- he and I were in the middle of approaching.
19 Officer Jeremy Byrd arrived, came in through this way, this
20 entrance here, and met me at this point. And that's when
21 all three of us were engaged with the defendant.

22 Q Was Officer Byrd in a marked vehicle?

23 A Yes, sir.

24 Q And what took place when y'all came in contact with
25 each other?

Dwight Garcia
Direct examination by Mr. Bulsa

1 A I said that I -- I went to identify myself. I said,
2 hey, I'm so and so with the sheriff's, I'd like to talk to
3 you for a minute, at which point he -- he, the defendant,
4 made a comment. Actually, Jeremy Byrd also introduced
5 himself and said, hey, we'd like to talk to you. And at
6 that point the defendant made a comment to both of us.

7 Q What was that comment?

8 A If you wouldn't mind if I can refer back to my notes.

9 Q Sure. You can go back and have a seat.

10 A Okay.

11 (Whereupon, the witness returned to the stand.)

12 Q Set that there on the counter.

13 A At that point I referred in my -- for the purposes of
14 a report I referred to him as the subject because I had not
15 identified him at that point in time.

16 When we made initial contact with the subject the
17 subject replied, "I did it. I did that thing over there at
18 the Waffle House."

19 At that time Deputy Byrd and I informed the subject he
20 was being placed in investigative detention until further
21 notice, at which point I used a Miranda card and Mirandized
22 him and gave -- read him rights and asked him if he
23 understood at the conclusion of those rights to which he
24 replied, yes, he understood.

25 Q Did you have any further con -- conversation with him?

Dwight Garcia
Direct examination by Mr. Bulsa

1 A No, sir. After we put -- after I Mirandized him we
2 escorted him to the back of Deputy Byrd's patrol vehicle,
3 and I waited for violent crime investigators to arrive and
4 seek further in detail regarding this incident.

5 Q After you made the comment you called for an
6 investigator?

7 A Yes, yes.

8 Q Okay. But you were an investigator at that time.

9 A Yes.

10 Q Why did you not continue with your interview?

11 A I didn't continue the interview because my role is not
12 to investigate directly first hand individuals involved in
13 violent crimes.

14 Q So you were an investigator of the separate portion,
15 different type of crime at that time?

16 A I just -- my -- my duties at that time were crime
17 scene investigation. Typically, I get called out to a
18 scene after an event has happened. I don't typically and
19 can't do any kind of interrogation or interview --

20 Q I've got you.

21 A -- of suspects for -- for all intents and purposes
22 because that's -- that's their primary job function.

23 Q And who arrived?

24 A There were several investigators. I want to
25 believe -- I believe if I remember correctly -- I didn't

Dwight Garcia
Cross-examination by Mr. Ianuario

1 document here -- but it's Investigator Lorin Williams, is
2 one of the investigators that arrived on the scene. And I
3 believe Richie Foster also arrived on the scene.

4 Q Thank you. That's all I have. Answer any questions
5 Mr. Ianuario may have.

6 CROSS-EXAMINATION

7 BY MR. IANUARIO

8 Q Thank you, Deputy.

9 You say your job is processing a crime scene.

10 A That is correct. That's -- that's one of many jobs I
11 am able to discharge.

12 Q As part of your criminal investigation, is more
13 investigating the crime scene than the person.

14 A That's correct.

15 Q Okay. You said that you determined or you had a
16 description of the suspect vehicle and the direction of
17 travel. Who gave you that description?

18 A Spartanburg communications.

19 Q Okay. And I might have missed this. A marked car, or
20 unmarked?

21 A It was a semiunmarked vehicle.

22 Q Had lights with no stickers?

23 A No. The vehicle actually has lights. It's all
24 blacked out, a Dodge Durango, late-model Dodge Durango, and
25 it has two stars, one on each of the back glass side

Tanisha Martin
Direct examination by Mr. Bulsa

1 windows.

2 Q But it doesn't scream police car when you look at it?

3 A Depending on how you look at it.

4 Q Yeah.

5 A If it's -- if it's facing from the side you can tell
6 it's -- it's a marked vehicle. If I'm -- my driver's seat
7 facing you, you wouldn't be able to tell.

8 Q Okay. I understand. And you -- were you in uniform
9 at the time?

10 A Yes, sir, I was in full uniform.

11 Q And did Baker give you any sort of an issue when you
12 were placing him in investigative detention?

13 A Not at all, sir. He was highly cooperative.

14 Q Nothing further. Thank you.

15 MR. BULSA: Nothing further.

16 THE COURT: You may step down.

17 MR. BULSA: Tanisha Martin.

18 TANISHA MARTIN, having been
19 first duly sworn, testified as follows:

20 MR. BULSA: May we approach briefly, Your Honor, about
21 another matter?

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Ms. Martin, introduce yourself to the ladies and

Tanisha Martin
Direct examination by Mr. Bulsa

1 gentlemen of the jury.

2 A My name is Tanisha Martin.

3 THE COURT: Let me ask you to use that black
4 microphone. Pull up close to it and speak loudly so
5 everybody can hear.

6 Q This machine makes some noise. You're going to have
7 to speak up over it. Okay?

8 A Okay. My name is Tanisha Martin, and I live in
9 Gaffney, South Carolina.

10 Q And did you used to live at Magnolia Townhomes?

11 A Yes, sir.

12 Q When did you live there?

13 A From October till June last year.

14 Q October of 2011 through June of 2012?

15 A Yes, sir.

16 Q Were you renting a place there?

17 A Yes, sir.

18 Q Who were you living with there?

19 A Antwon Baker.

20 Q Okay. How did you know Mr. Baker?

21 A Through Facebook.

22 Q You met him through Facebook?

23 A Yes, sir.

24 Q And then y'all got together and lived together?

25 A Yes, sir.

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 Q How long did you live together?
- 2 A We lived together from October till June.
- 3 Q Okay. So the whole time you were there you lived with
- 4 him.
- 5 A Uh-huh.
- 6 Q Okay. And was it after he was arrested that you left
- 7 the townhomes?
- 8 A Yes, sir.
- 9 Q Do you have family in Gaffney?
- 10 A Yes, sir.
- 11 Q Now, were you working back at that time?
- 12 A Yes, sir.
- 13 Q Where did you work?
- 14 A Hamricks.
- 15 Q Hamricks. Did you have a vehicle?
- 16 A Yes, sir.
- 17 Q What kind of vehicle did you drive?
- 18 A Honda Accord.
- 19 Q Did Mr. Baker have a vehicle?
- 20 A Yes, sir.
- 21 Q What kind did he have?
- 22 A He was driving the white Crown Vic.
- 23 Q Was that -- okay. You say Crown Vic. That's right
- 24 there in front of you. Is that the vehicle that's shown in
- 25 State's Exhibit No. 5?

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Some people confuse it with a Crown Vic, but it's
- 3 really a Mercury, right?
- 4 A Uh-huh.
- 5 Q Okay. But was that his vehicle?
- 6 A It was his friend's.
- 7 Q His friend's. Okay. And who was his friend?
- 8 A Jonathan.
- 9 Q Do you know his full name?
- 10 A No, sir.
- 11 Q Did Jonathan live in that complex too?
- 12 A He did with us sometimes.
- 13 Q Okay. So Mr. Baker didn't have a vehicle of his own,
- 14 but he drove a friend of his' vehicle.
- 15 A Yes, sir.
- 16 Q Okay. Now, do you remember the night that all of this
- 17 happened?
- 18 A Yes, sir.
- 19 Q Did you know Mr. Anthony Young at all?
- 20 A No, sir.
- 21 Q Where had -- had you and Mr. Baker been out that
- 22 evening?
- 23 A Yes, sir.
- 24 Q Where had y'all been?
- 25 A My mother's.

Tanisha Martin
Direct examination by Mr. Bulsa

1 Q And your mother's the one that lives in Gaffney?

2 A Yes, sir.

3 Q Okay. So you and he visited your mother in Gaffney.

4 How long did you stay there?

5 A For a while. Basically, just about the whole evening.

6 Q Okay. What time did y'all come back to Spartanburg?

7 A Between 11:00 and 11:30.

8 Q Okay. So that would have been the night of June the

9 2nd. And it turned into June the 3rd.

10 A Yes, sir.

11 Q And when you got back home what happened?

12 A He was downstairs; I was upstairs.

13 Q Did you go to bed?

14 A I was cleaning up.

15 Q Okay. And what did he do?

16 A He was watching T.V.

17 Q Did he leave at some point?

18 A He did.

19 Q Do you know when he left?

20 A I don't know what time it was.

21 Q When y'all had been in Gaffney had you been driving

22 your car?

23 A Yes, sir.

24 Q Okay. And then when he left would he have taken your

25 car or the white car?

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 A No, sir. He left in the white car.
- 2 Q Okay. Did you know where he went?
- 3 A To a friend's house.
- 4 Q Do you know where that friend lived?
- 5 A No, sir.
- 6 Q Do you know who that friend was?
- 7 A No, sir.
- 8 Q You don't. Did that friend live in the city of
- 9 Spartanburg?
- 10 A Most likely.
- 11 Q Okay. All right. And did he call you or tell you
- 12 when he was going to be home?
- 13 A No, sir.
- 14 Q When did you next hear from him?
- 15 A When he came home.
- 16 Q He actually came home.
- 17 A Uh-huh.
- 18 Q Okay. Were you aware that he had been to the waffle
- 19 House?
- 20 A He told me.
- 21 Q Did y'all go to the waffle House on occasion?
- 22 A Yes, sir.
- 23 Q Which waffle House did you go to most?
- 24 A Both really.
- 25 Q Both.

Tanisha Martin
Direct examination by Mr. Bulsa

1 A Because we were in between, so we went to either-or.

2 Q Okay. So State's Exhibit No. 4. You may not be
3 familiar with this picture here, but we have one Waffle
4 House listed as "A" and one Waffle House listed as "B".
5 This one down here is on Reidville Road near the
6 intersection -- near 26. Then your apartments are right
7 here. Did you say y'all would frequent both Waffle Houses?

8 A Yes, sir.

9 Q Okay. Now, when he came home how was he acting?

10 A Scared, nervous.

11 Q Okay. Did he change his clothes?

12 A Yes, sir.

13 Q Okay. Do you know if he washed up?

14 A He did.

15 Q Are you aware of whether he had any firearms?

16 A Yes, sir.

17 Q You were? What kind of firearm did you know he had?

18 A I don't know the name of it. I just know it was a
19 gun.

20 Q You just knew he had a gun?

21 A Yes, sir.

22 Q Was it a pistol, a handgun?

23 A Yes, sir.

24 Q Okay. And where did he normally keep that handgun?

25 A In the box under the bed.

Tanisha Martin
Direct examination by Mr. Bulsa

1 Q In the box under the bed?

2 A Yes, sir.

3 Q Would he carry it in his vehicle when he went places?

4 A Not all of the time.

5 Q Okay.

6 (Photograph marked State's Exhibit No. 12 for
7 Identification; photograph marked State's Exhibit No. 13 for
8 Identification.)

9 Q Ms. Martin, let me show you State's Exhibits 12 and 13
10 for Identification. Do they show the box and the pistol in
11 the box?

12 A Yes, sir.

13 Q Okay. Now, that's under the bed. That's actually in
14 a vehicle, right?

15 A Yes, sir.

16 Q Okay. Did you place that in -- in the vehicle?

17 A Yes, sir.

18 Q All right.

19 MR. BULSA: Your Honor, the state would offer 12 and
20 13 into evidence.

21 MR. IANUARIO: No objection, Your Honor.

22 THE COURT: They're admitted.

23 (Photograph marked State's Exhibit No. 12; photograph
24 marked State's Exhibit No. 13.)

25 Q Okay. State's 12 shows the box closed and State's 13

Tanisha Martin
Direct examination by Mr. Bulsa

1 shows the box open and the pistol -- some rounds and all.

2 Now, the police found that in a car, your car, right?

3 A Yes, sir.

4 Q State's Exhibit No. 10, is that your car?

5 A Yes, sir.

6 Q Okay. And is your apartment right up -- right up in
7 here?

8 A Yes, sir.

9 Q Okay. So your vehicle is parked in front of your
10 apartment, right?

11 A Yes, sir.

12 (Photograph marked State's Exhibits No. 14 for
13 Identification; photograph marked State's Exhibit No. 15 for
14 Identification.)

15 Q I show you State's 14 and 15 for Identification. Does
16 that show -- State's 14 show the position of your car to
17 the apartment?

18 A Yes, sir.

19 Q And that's where you would have parked it the night
20 before?

21 A Yes, sir.

22 Q And State's 15 show a picture of the trunk of it?

23 A Yes, sir.

24 MR. BULSA: Your Honor, the state would offer 14 and
25 15 into evidence.

Tanisha Martin
Direct examination by Mr. Bulsa

1 MR. IANUARIO: No objection, Your Honor.

2 THE COURT: They're admitted.

3 (Photograph marked State's Exhibits No. 14; photograph
4 marked State's Exhibit No. 15.)

5 Q This one here has a better perspective. So when y'all
6 arrived home that night before -- is that a normal parking
7 space for you?

8 A On a Saturday night, yes, sir.

9 Q Okay. Now, tell the jury how that pistol box came to
10 wind up in your car. Because you said Mr. Baker would not
11 have driven your car, right?

12 A Uh-huh.

13 Q How did that pistol get in your car?

14 A I was taking him to turn himself in.

15 Q Excuse me?

16 A I was going to take him to turn hisself in.

17 Q That doesn't tell us how that pistol got in the back
18 of your car.

19 A I put it in there.

20 Q You put it in there.

21 A Yes, sir.

22 Q At whose direction?

23 A Sir?

24 Q At whose direction? Who told you to put it there?

25 A I told myself to put it in there.

Tanisha Martin
Direct examination by Mr. Bulsa

1 Q You did?

2 A Uh-huh.

3 MR. BULSA: Can I get some lights?

4 Q All right. Now, State's 15 shows the positioning of
5 the box in your trunk, right?

6 A Uh-huh.

7 THE COURT: Please answer yes or no when you respond
8 to a question.

9 A Yes, sir.

10 Q Now, ma'am, you know when you carry a pistol in your
11 car you're supposed to have it in a locked compartment,
12 either the glove box or the trunk.

13 A I didn't know that.

14 Q You didn't know that. Okay. But you had put it in
15 the right spot. Okay. But you're saying that Mr. Baker
16 told you to -- no. You said you put it in there on your
17 own.

18 A Yes, sir.

19 Q When did you call 9-1-1?

20 A I didn't call 9-1-1.

21 Q When did Mr. Baker call 9-1-1?

22 A He didn't call them, not that I know of.

23 Q Okay. So no one called 9-1-1. Okay. You remember
24 talking to the police that night, right?

25 A Yes, sir.

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 Q And you actually wrote a statement for them.
- 2 A Yes, sir.
- 3 Q And you wrote it out in your own hand.
- 4 A Yes, sir.
- 5 Q Meaning they gave you the paper and said please write
- 6 down what you know about this, right?
- 7 A Yes, sir.
- 8 Q Okay. Let me ask you to read to yourself, let you
- 9 refresh your memory. Right here, the last statement you
- 10 wrote, where it begins with, "Officer". Just read it to
- 11 yourself. I'm going to ask you a question.
- 12 (Pause.)
- 13 Q Okay.
- 14 A Okay.
- 15 Q All right. Now, I'm going to ask you who had you to
- 16 put that gun in your car.
- 17 A He asked me to put it in my car, but I put it in
- 18 there.
- 19 Q Of course you put it in there, but at his direction,
- 20 right?
- 21 A It was his.
- 22 Q Huh?
- 23 A It was his.
- 24 Q His what?
- 25 A His.

Tanisha Martin
Direct examination by Mr. Bulsa

1 Q His what?

2 A He asked me to put it in my car.

3 Q He asked you to put it in there. Okay. And read that
4 to your -- read the whole statement to yourself if you
5 would, and then I'll ask you another question about it.

6 (Pause.)

7 Q Okay. At what point was he going to turn himself in?

8 A After he came. He had told me what happened, and he
9 was saying I have to turn myself in.

10 Q Okay. But that was after he had come home. He had
11 changed his clothes, washed up, got you to put the gun in
12 your car.

13 A Yes, sir.

14 Q Right?

15 A Yes, sir.

16 Q Okay. And, in fact, do you remember when the police
17 arrived?

18 A Not what time. It was like everything happened so
19 fast.

20 Q Well, so they got there pretty soon after he got
21 there.

22 A Not too long after, yes, sir.

23 Q Okay. So about how long had he been there?

24 A I'm going to say probably 30 minutes.

25 Q Thirty minutes.

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Okay. So 30 minutes. He tells you -- he gets
- 3 changed, cleaned up. Y'all aren't walking out the door to
- 4 go to the police department, are you?
- 5 A No, sir.
- 6 Q No. In fact, he walked out and went and visited with
- 7 some buddies down the -- down the sidewalk, right?
- 8 A I was in the house.
- 9 Q So you don't know where he went.
- 10 A No, sir.
- 11 Q You just know he walked out.
- 12 A Yes, sir.
- 13 Q Okay. And it was just by chance that the police
- 14 happened to arrive.
- 15 A Yes, sir.
- 16 Q Because y'all hadn't called them there, had you?
- 17 A No, sir.
- 18 Q When he changed his clothes did he also change the
- 19 shoes he was wearing?
- 20 A I'm not sure if he did because I was downstairs. He
- 21 was upstairs.
- 22 Q Okay. All right. Did y'all share the same bedroom?
- 23 A Yes, sir.
- 24 (Photographs marked State's Exhibits Nos. 16 through 22
- 25 for Identification.)

Tanisha Martin
Direct examination by Mr. Bulsa

1 Q Let me show you a series of pictures. Okay?

2 A Yes, sir.

3 Q Marked for identification State's Nos. 16 through 22.
4 They're mostly clothing, but they show a room as well.

5 Would you look through there and tell me if you can
6 recognize those? Do you recognize those?

7 A Yes, sir.

8 Q Do they show your bedroom?

9 A Yes, sir.

10 Q And some clothing that would be whose?

11 A Antwon's.

12 MR. BULSA: Your Honor, the state would offer State's
13 16 through 22 into evidence.

14 MR. IANUARIO: No objection, Your Honor.

15 THE COURT: They're admitted.

16 (Photographs marked State's Exhibits Nos. 16 through
17 22.)

18 Q State's 16. Is that your bedroom?

19 A Yes, sir.

20 Q That's your bed.

21 A Yes, sir.

22 Q And we see some clothing on the bed.

23 A Yes, sir.

24 Q Right?

25 A Yes, sir.

Tanisha Martin
Direct examination by Mr. Bulsa

- 1 THE COURT: Please use the microphone when you're
2 responding to the questions.
- 3 A Yes, sir.
- 4 Q State's 11 -- excuse me -- State's 17 shows the pants
5 and shirt. would that have been what he was wearing?
- 6 A Yes, sir.
- 7 Q Okay. And then 18 is just a closeup of the pants, and
8 19 is a closeup of the shirt, and 20 shows a hat. would
9 that have been the hat he would have been wearing?
- 10 A Yes, sir, yes, sir.
- 11 Q And 21 is another view of the bedroom showing some
12 shoes. And 22 would be the closeup of his shoes. You said
13 you're not sure if he was wearing those. But those are his
14 shoes.
- 15 A Yes, sir.
- 16 Q Okay. All right. Now, you said you put the gun in
17 the car because you were going to take it to the police.
18 why didn't you put the clothing in the car and take that to
19 the police?
- 20 A I didn't think to take clothes.
- 21 Q You didn't. Okay. And, in fact, why are you getting
22 your car involved when you could have easily have driven
23 the car that he was driving during the incident?
- 24 A I wasn't thinking.
- 25 Q You weren't thinking?

Tanisha Martin
Cross-examination by Mr. Ianuario

- 1 A Not to take that car.
- 2 Q Now, you were pregnant at the time, weren't you?
- 3 A Yes, sir.
- 4 Q Pregnant by Mr. Baker?
- 5 A Yes, sir.
- 6 Q And you had that child.
- 7 A Yes, sir.
- 8 Q And how old is that child?
- 9 A Soon to be eight months on the 23rd.
- 10 Q Okay. All right. I believe that's all I have at this
- 11 time. Answer any questions Mr. Ianuario may have of you,
- 12 ma'am.
- 13 CROSS-EXAMINATION
- 14 BY MR. IANUARIO
- 15 Q Thank you, Ms. Martin.
- 16 You said Antwon washed up. What do you mean by washed
- 17 up?
- 18 A He got sick and kind of threw up a little on himself,
- 19 so he washed himself up.
- 20 Q Did he throw up any on his clothes?
- 21 A Not that I know of.
- 22 Q Did he wash his hands or did he take a shower?
- 23 A Took a shower.
- 24 Q So when he got out of the shower, that's when he put
- 25 on clean clothes?

Tanisha Martin
Cross-examination by Mr. Ianuario

- 1 A Yes, sir.
- 2 Q How many pairs of shoes did Antwon have?
- 3 A Too many.
- 4 Q Approximation. Too many being six; too many being
- 5 600?
- 6 A I'm going to say 20.
- 7 Q Did he have a pair that he wore all of the time?
- 8 A He switched up all of the time, so.
- 9 Q Did you ever see him switch up throughout the course
- 10 of the day?
- 11 A Yeah. He would change clothes, change shoes, hats,
- 12 everything.
- 13 Q Would you describe him as pretty clean?
- 14 A Yes, sir.
- 15 Q You said he normally kept the gun under the bed in a
- 16 box and that he did not carry it all of the time.
- 17 A No, sir.
- 18 Q When did he carry it?
- 19 A Like if he went out at night alone.
- 20 Q Okay. So was that common for him?
- 21 A To be out alone?
- 22 Q Well, to carry his gun if he was going out alone.
- 23 A Yes, sir.
- 24 Q Okay. What were y'all talking about on the way home
- 25 from your mother's?

Tanisha Martin
Cross-examination by Mr. Ianuario

1 A Nothing. We were just listening to music.

2 Q And you weren't talking about anyone in particular,
3 anything in particular.

4 A No, sir.

5 Q When you were going to go turn Antwon in and y'all
6 were going to go down to the police station did you feel
7 that that was an emergency situation warranting a call to
8 9-1-1?

9 A I wasn't thinking. I got woke up out of my sleep.

10 Q You were planning on driving to the police station so
11 they didn't need to send out the SWAT team.

12 A In my mind, no, not at the time.

13 Q Okay. Did he often leave late at night to go to a
14 buddy's house?

15 A Yes, sir.

16 Q So that was nothing alarming for you?

17 A No, sir.

18 Q Did Antwon give you a story about what happened?

19 A Yes, sir.

20 Q What were you told?

21 MR. BULSA: Your Honor, I need to object at this
22 point. That would be hearsay.

23 MR. IANUARIO: Your Honor, I would like to know what
24 her motivation was what, she was told as to the exigency of
25 the situation to get her not to call 9-1-1 or to just

Tanisha Martin
Cross-examination by Mr. Ianuario

1 casually go to the police. Not asking for the truth of the
2 matter asserted. I'm asking as to what she was under the
3 impression of at that time.

4 THE COURT: I still sustain the objection.

5 BY MR. IANUARIO

6 Q Okay. Did Antwon -- did Antwon tell you that he had
7 been in a fight that night?

8 A Yes, sir.

9 THE COURT: That's the exactly what he's objected to.

10 MR. IANUARIO: I'm sorry. I was trying to take it out
11 of the narrative form.

12 THE COURT: Well, it's hearsay as to whether -- ask
13 her what he told you or whether she tells you what he said.

14 MR. IANUARIO: I was trying to establish her
15 impression of the events as she understood at the time they
16 were taking place.

17 THE COURT: Let me see y'all just a minute.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 BY MR. IANUARIO

21 Q You gave a statement to the police on the day in
22 question, correct?

23 A Yes, sir.

24 Q What did you tell the police in regards to the events
25 of the morning?

Tanisha Martin
Redirect examination by Mr. Bulsa

1 A Basically, what was told to me.

2 MR. IANUARIO: May I approach, Your Honor?

3 THE COURT: You may.

4 Q Is this a statement you gave? I know it's light.

5 A Yes, sir.

6 Q Would you like to skim that over real quick?

7 A Okay.

8 (Pause.)

9 Q Did the police ask you -- did the police ask you what
10 Antwon was doing earlier that morning?

11 A No, sir.

12 Q Did Antwon indicate to you that he had been afraid for
13 his life in that conflict?

14 A Yes, sir.

15 MR. BULSA: Your Honor, that's hearsay. Objection.

16 THE COURT: That's hearsay.

17 It's an out-of-court statement made by the defendant
18 offered to prove the truth of the matter asserted. It's
19 hearsay.

20 MR. IANUARIO: Withdraw it, Your Honor. Nothing
21 further.

22 THE COURT: Well, you've already asked it.

23 REDIRECT EXAMINATION

24 BY MR. BULSA

25 Q Ma'am, what was Mr. Baker's attitude or demeanor like?

Tanisha Martin
Redirect examination by Mr. Bulsa

- 1 A He was scared, panicky.
- 2 Q He was?
- 3 A When he came home, yes, sir.
- 4 Q Okay. And did he keep that attitude during that whole
5 morning?
- 6 A Yes, sir.
- 7 Q All right. Do you know why he went to the waffle
8 House?
- 9 A To get something to eat.
- 10 Q Was it for you?
- 11 A Him and me both.
- 12 Q So you had previous knowledge that he was going to the
13 waffle House.
- 14 A Usually whenever he goes to the waffle House he will
15 bring me some hash browns, because I was pregnant at the
16 time. So that's what I like to eat from there.
- 17 Q And the one he usually went to was the one near
18 Reidville Road, right?
- 19 A He would go to either one.
- 20 Q Okay. This occurred on a Sunday morning, I believe.
- 21 A Yes, sir.
- 22 Q Correct? Thank you.
- 23 MR. BULSA: That's all.
- 24 THE COURT: You may step down.
- 25 MR. BULSA: Hillary Wilkins.

Hillary Wilkins
Direct examination by Mr. Bulsa

1 HILLARY WILKINS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Hey, Ms. Wilkins.

5 A Hey.

6 Q Could you introduce yourself to the jury?

7 A I'm Hillary Wilkins.

8 Q All right.

9 THE COURT: Please use -- please use that black
10 microphone when you speak. And you'll need to get closer.

11 Q And how old are you, ma'am?

12 A I'm 24.

13 Q And where do you live?

14 A I live in Spartanburg.

15 Q Okay. And do you work?

16 A Yes.

17 Q Where?

18 A Dish Network.

19 Q Dish Network?

20 A Uh-huh.

21 Q And did you know Mr. Young?

22 A Yes.

23 Q How did you know him?

24 A I'm -- I have a little girl with him.

25 Q And how old is y'all's daughter?

Hillary Wilkins
Direct examination by Mr. Bulsa

1 A She'll be four in October.

2 Q So you've known him for a while.

3 A Yes. Since 2007.

4 Q Did you see him the day he died?

5 A Yes.

6 Q Could you tell us about that night?

7 A It was late, because I had been in Charlotte this, the
8 day of the 2nd. And when I was coming back down the road
9 we had spoke, and he asked me to come and meet him to
10 visit. I guess to visit or whatever. And he told me to
11 come meet him at his mother's house.

12 And when I called back when I actually got to
13 Spartanburg he was like that everybody's going to the
14 Waffle House to eat. And I was like I don't feel like
15 going. But he was like just come up there, and like my
16 two -- my two friends were there also. He was like just
17 come up there and eat and then we'll go back to my mother's
18 house. And I was like okay.

19 So I went to the restaurant, and we were all there,
20 and we were all sitting around eating.

21 Q Let me -- let me ask you one question. Just curious.
22 Where is your daughter?

23 A Now? She --

24 Q Where was she at that point?

25 A She was at home with my mother. We had went out

Hillary Wilkins
Direct examination by Mr. Bulsa

1 previously for my sister's birthday. Her birthday -- her
2 birthday's on the 3rd. So we had went out that Saturday,
3 because the 3rd's on a Sunday. We had went out that
4 Saturday for her birthday.

5 Q So you went then to Charlotte on Saturday?

6 A Yes.

7 Q But your daughter stayed with your mother.

8 A Yes.

9 Q Okay. So she wasn't anywhere around.

10 A No.

11 Q Okay. All right. Now back to the Waffle House.

12 A Okay. When I arrived everybody was in there. We were
13 sitting in the bar. There's a bar. And I went in, and we
14 were all sitting around talking and laughing and speaking
15 about like old times or whatever just having a good time.

16 And I can't remember. Eating our food. And as I was
17 paying for my food like everybody had went outside. Like
18 my friend, she was hopping. Her ankle was twisted. She
19 was hopping. And everybody had already went outside.

20 I was still in the waffle House paying for my food.
21 And then I went out. And in the process of me going out
22 Anthony -- he was like talking to Brandon and was like, you
23 know, that's the guy that pulled a gun on me in Magnolia
24 Apartments before.

25 And then everything like just went I guess downhill or

Hillary Wilkins
Direct examination by Mr. Bulsa

1 whatnot. And like Brandon was drinking, so he was like,
2 you know, don't let nobody disrespect you and like egg
3 Anthony on. But Anthony the whole time was like ain't
4 nobody -- nobody's with all of that, we're not doing all of
5 that or whatever.

6 And I got -- once I got in my car and I'm like my
7 battery was messed up, so he had to wiggle my wires because
8 they were going bad.

9 Q Who is he?

10 A Anthony. He had to wiggle my wires under my -- so I
11 cranked up my car. It had a little shortage in it. And
12 when he did that he dropped my hood. He was like go home.
13 And I was like no.

14 And so then Ke -- me and my friends were in our car.
15 We took two separate cars. We were just sitting there
16 waiting for, I guess, everybody to get in the car and let's
17 all leave together.

18 And after he dropped my hood I -- Brandon -- I guess
19 Mr. Baker walked. I guess he was already in there. He was
20 in the waffle House.

21 Q Did you know that person at all?

22 A No. I had never seen him before.

23 Q Okay.

24 A And he had already been in the Waffle House. I guess
25 he walked past, you know, the Waffle House and went in.

Hillary Wilkins
Direct examination by Mr. Bulsa

1 And I seen Brandon go back in and speak to -- speak with
2 him. And then Brandon came back out and --

3 Q Were you watching this from your car?

4 A Yes.

5 Q Where were you parked?

6 A My car is parked right in front like -- say parking
7 place like right in front of the building, like I'm parked
8 in the -- like right beside handicap. I'm in the second
9 parking place.

10 Q Okay. What kind of car did you drive?

11 A A [sic] Altima, red Altima.

12 Q I've got a picture here, State's 7. It's not of the
13 night in question, but it shows the overhead of the waffle
14 House.

15 A Uh-huh.

16 Q So the jury has an understanding of where you might
17 have -- where you were parked.

18 THE COURT: If you need to step down and look at it,
19 you may.

20 (Whereupon, the witness left the stand.)

21 A I was parked -- like the door's right here.

22 Q Let me give you a pointer.

23 A Okay. Okay. Like the door is right here. There's
24 like a newspaper thing. I was parked here. This parking
25 space is handicap. I was parked here and Karen was parked

Hillary Wilkins
Direct examination by Mr. Bulsa

1 there. And Darrin was on the -- well, he was on the other
2 side of the handicap right here. So I was in this parking
3 place, and he was parked beside me. And Brandon's car was
4 over here.

5 Q All right. Now, you can have a seat.

6 (Whereupon, the witness returned to the stand.)

7 Q Do you know how Anthony had gotten to the Waffle
8 House?

9 A He rode with Brandon.

10 Q Do you remember what kind of car Brandon was driving?

11 A A -- a Chevrolet Impala, one of the old ones, the big,
12 long ones.

13 Q Okay. So he was parked across --

14 A He was parked -- he was backed in on the other -- on
15 the other side.

16 Q Okay. Now, so you had a pretty good view of what was
17 taking place.

18 A Yes.

19 Q About how close would you say that would have been to
20 your car?

21 A They were at the door, so probably like 15 feet maybe.

22 Q Okay. So you didn't leave.

23 A Uh-uh.

24 Q But what occurred at that point?

25 A After Brandon went and spoke with him they came back

Hillary Wilkins
Direct examination by Mr. Bulsa

1 outside. Well, Brandon came back outside, and they were
2 talking to Anthony. They was like he disrespected you or
3 whatever, calling him names or whatever, saying, you know,
4 you're going to fight this man and he's going to get that
5 one -- that round with this man or whatever.

6 And Anthony was like no, and like he walked to the
7 other side of the newspaper stand. He was standing on the
8 other side of it.

9 And Mr. Baker came out the door too, and Brandon was
10 talking to him and was like, you know, y'all are going to
11 fight or whatever. And even he was like no. You know what
12 I'm saying? He was like no, ain't nobody with it or
13 whatever.

14 Q All right. Let me -- let me stop you right there and
15 ask you this question. Did it appear from your perspective
16 that Mr. Baker recognized Anthony?

17 A Yes. I think he knew who he was, but I don't think he
18 like -- nobody was really like on it -- like nobody.

19 Q But from your viewpoint Mr. Baker didn't want to have
20 anything to do with it, and neither did Anthony.

21 A No.

22 Q Okay. All right. And continue on. What happened?

23 A Okay. So then I think -- I looked down. I was
24 putting a C.D. in or might have been checking my phone.
25 And that's when I just started hearing shots, and that's

Hillary Wilkins
Direct examination by Mr. Bulsa

1 when I looked up and I seen Brandon running in front of my
2 car.

3 And I seen Darrin go across in front of my car. And I
4 seen Anthony run across the parking lot. And Mr. Baker was
5 after -- running after him shooting.

6 And he was just shooting. And once he started
7 shooting he didn't stop. And just he chased him.

8 And so Kiara, she started backing out. And we started
9 backing out at the same time. And like so we was about to
10 hit, like it was about to crash. So I stopped and I let
11 Kiara go head.

12 And when I stopped I was like, you know, thinking he's
13 not in the car with nobody, he's running. So he was
14 running. He like ran across the next parking lot. And
15 when he ran I turned, and he started coming back toward the
16 car.

17 And then he was running, and he jumped. He jumped
18 over the little bush. He was still running a little bit,
19 but he was about to get in the car with me, and I was going
20 to pull off.

21 And then I don't know if he got shot. I don't know
22 what happened. He just fell on his face, and then
23 Mr. Baker ran up to him. And I was just sitting there.

24 I didn't know what was going to happen. So I pulled
25 off. I didn't know like if he was going to shoot me. I

Hillary wilkins
Direct examination by Mr. Bulsa

1 didn't know what he was going to do. So I pulled off.

2 I was going down the road, and I was blowing. I was
3 like blowing at Kiara and them and calling them. I was
4 like y'all stop. I was like he shot him. And I was like
5 he's not in the car with me. And I was like y'all stop.
6 we left him. It was like we left him, why did we leave
7 him.

8 And so I turned around and I went back. And in my
9 head I'm like I don't know what I'm going to do. I was
10 like I just going to run, and I don't know, and hit him
11 with my car. I don't know what I'm going to do.

12 But when I got back he was pulling out and Anthony was
13 laying on the ground. And I just stopped and got out of my
14 car, and I went over to him, and he was coughing and
15 choking on his blood. And his face was down in the ground,
16 the concrete.

17 And that's when I went over and I picked his head up
18 and I laid it on me. And he just died. I was talking to
19 him and he was coughing and coughing. And he just died
20 right there. And the police came and pulled me away. And
21 that was it.

22 Q Okay. So when you drove out of the parking lot the
23 last time you saw Anthony he was on the ground with
24 Mr. Baker standing over him.

25 A Yes.

Hillary Wilkins
Cross-examination by Mr. Ianuario

1 Q Thank you, ma'am. Answer any questions Mr. Ianuario
2 may have.

3 well, let me. Let me ask you one other thing. I'm
4 sorry. Never mind. I won't ask that. Thank you.

5 CROSS-EXAMINATION

6 BY MR. IANUARIO

7 Q Are you ready?

8 A I'm waiting on you.

9 Q Okay. You were out with your girlfriends, right?

10 A No. I was by myself. I drove by myself. They were
11 already there.

12 Q Okay. So you weren't. Do you remember if a group of
13 indiv -- if a group of males was talking to y'all that
14 night?

15 A Yeah. They weren't talking to me. They were there
16 talking to them.

17 Q Do you remember what they were talking about?

18 A Nothing, like just conversation, boys being boys.

19 Q Flirting?

20 A Flirting, yes.

21 Q How many of those boys were there?

22 A There was two. There was two. It was two inside, and
23 I think it was one -- I don't know -- waiting in the car
24 that got dropped off or something. But it was two there,
25 two extra guys there. But they weren't with us. They were

Hillary Wilkins
Cross-examination by Mr. Ianuario

1 with them. They were by themselves, but they came, and they
2 were talking to Kiara and Chassity at the bar and eating.
3 And they had went back outside.

4 Q Would you describe what those gentlemen were wearing,
5 what they looked like?

6 A One had dreads in his hair, and the other one, I think
7 he was like Hispanic or something maybe.

8 Q Okay. Do you remember what color of clothes they were
9 wearing?

10 A No.

11 Q Do you remember anything else unusual about them?

12 A No. I really wasn't paying them any attention.

13 Q Do you remember giving a statement to the police?

14 A Yes.

15 Q And in that statement do you remember describing a
16 gentleman with a red and black bandanna?

17 A Yes. He had braids.

18 Q Which one was that?

19 A He was with another person. I think he was with
20 somebody, a girl. He wasn't with the two other, the two
21 guys.

22 Q Okay. So he didn't seem like he had anything to do
23 with this.

24 A No.

25 Q Okay. Now, in that same report, again, you mention

Hillary Wilkins
Cross-examination by Mr. Ianuario

- 1 that Antwon said he didn't want no problems.
- 2 A Yes.
- 3 Q Do you mind if I approach?
- 4 A No.
- 5 Q Does that look like the statement you gave?
- 6 A Yes.
- 7 Q Would you mind reading here to see if anything sounds
- 8 different?
- 9 A I know what I said. I remember it.
- 10 THE COURT: Please use the microphone.
- 11 A I don't need to read it. I know what I said.
- 12 Q Okay. Did you tell the police that Anthony told Baker
- 13 that he was disrespecting him?
- 14 A Brandon. Anthony told Brandon that Mr. Baker had
- 15 disrespected him in Magnolia Apartments in a previous
- 16 altercation.
- 17 Q Did you see Brandon --
- 18 A I can't hear you.
- 19 Q I'm sorry. Did you see Brandon throw a punch?
- 20 A No.
- 21 Q Do you know if you were -- you weren't looking at this
- 22 altercation.
- 23 A No. I was looking -- I stayed -- when Anthony -- when
- 24 Mr. Baker had came out the door when they were talking, I
- 25 guess I looked down. I might have been putting a C.D. in

Hillary Wilkins
Cross-examination by Mr. Ianuario

1 or looking at my phone, but I didn't see. Like the only
2 thing -- when I looked back up the only thing I saw was
3 Mr. Baker aiming and shooting. I didn't see what happened
4 between the time he came out the door and when the gunshots
5 started firing.

6 Q In your statement you mention a Brandon Byrd.

7 A Yes, sir.

8 Q Is that Brandon Glover?

9 A It's Brandon Byrd-Glover. He has two last names.

10 Q Okay. I wanted to make sure on that one. Have you
11 ever known Brandon to carry a gun?

12 A I never seen a gun on Brandon.

13 Q Did he ever talk about carrying a gun?

14 A We don't -- no.

15 Q Do you know if Anthony had a gun ever?

16 A Anthony doesn't have a gun.

17 Q Do you know if he's ever had one?

18 A No.

19 Q And you were pulling back into the parking lot as
20 Anthony was --

21 A He was pulling out, uh-huh.

22 Q Was there anyone else in the parking lot at that point
23 in time?

24 A I didn't see anybody. The only people that were
25 there, like the people that were working inside.

Hillary Wilkins
Cross-examination by Mr. Ianuario

1 The only people that were outside like Brandon --
2 Darrin got in the car with Kiara. I think they ran across
3 in front of my car and got in the car with Kiara. So I
4 didn't see anybody out there. I really wasn't paying
5 attention to look around and see if anybody was outside. I
6 was focused on him laying on the ground.

7 Q And Kiara took off when the shooting was happening
8 too?

9 A Yes.

10 Q Who was the first person you remember seeing after you
11 approached Anthony?

12 A The police.

13 Q So no Waffle House employees.

14 A No. Nobody ran outside to me or nothing. Like it was
15 just me and him, and then the police car pulled up. And
16 then Kiara and Chassity pulled back up.

17 Q So it was -- did you say Kiara and Chassity pulled
18 back up? Were they in the same car?

19 A Yeah. They were together.

20 Q Okay. So when -- in the car that left it was Brandon,
21 Darrian, Kiara and Chassity.

22 A Yes.

23 Q Okay. Nothing further of this witness.

24 MR. BULSA: Nothing further, Your Honor.

25 THE COURT: You may step down.

Amy Padgett
Direct examination by Mr. Bulsa

1 We're going to take a short break before we go
2 further.

3 MR. BULSA: Yes, sir.

4 THE COURT: We'll take a short break. I'll ask the
5 jury to please go to your jury room. Do not discuss the
6 case in any fashion. It's not concluded. I'll bring you
7 back after that break.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Court's in recess for 15 minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: Are we ready for the jury?

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Mr. Bulsa.

16 MR. BULSA: The state calls Amy Padgett.

17 AMY PADGETT, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BULSA

20 Q Good morning, Ms. Padgett. Would you introduce
21 yourself to the jury?

22 A My name is Amy Padgett.

23 Q And how old are you, ma'am?

24 A Twenty-two.

25 Q Where do you reside?

Amy Padgett
Direct examination by Mr. Bulsa

- 1 A Do what?
- 2 Q Where do you live?
- 3 A In Chesnee, South Carolina.
- 4 Q In Chesnee.
- 5 Okay. And, ma'am, do you remember being at the waffle
- 6 House last year and seeing -- seeing something happen?
- 7 A Yes, sir.
- 8 Q Do you remember how you got there?
- 9 A Uh-huh.
- 10 Q You need to answer yes or no.
- 11 A Yes, sir.
- 12 Q How did you get there?
- 13 A I had rode with a friend, but it was in my car.
- 14 Q Okay. It was your car, but a friend of yours had been
- 15 driving it?
- 16 A Yes, sir.
- 17 Q What kind of car were you driving? what was your car?
- 18 A A Ford Taurus.
- 19 Q Ford Taurus. What -- who were your friends that you
- 20 were with?
- 21 A Jay and Quan.
- 22 Q Jay and Quan.
- 23 A Uh-huh.
- 24 Q Do you know their full names?
- 25 A I know their last names are Middleton. I can't --

Amy Padgett
Direct examination by Mr. Bulsa

1 don't know their first names.

2 Q Okay. And how long had you known them?

3 A Like a couple of months maybe.

4 Q And why had y'all gone to the Waffle House?

5 A To pick up one of their friends.

6 Q Did you know who the person was?

7 A I think his name was D.J.

8 Q D.J. Okay. And were you able to pick up D.J.?

9 A Yes, sir.

10 Q All right. Was that after something had happened?

11 A Uh-huh.

12 Q That's --

13 A Yes, sir.

14 Q Make sure you answer yes. Okay. Now, where did --
15 well, who was driving your car, which friend?

16 A Jay.

17 Q Jay was driving your car.

18 A Yes, sir.

19 Q Where did y'all park your car?

20 A Facing towards the opposite way of the Waffle House.

21 THE COURT: Ma'am, can you speak up a little bit
22 louder, please, so everybody can hear?

23 THE WITNESS: Yes, sir.

24 Q So were you in the parking spaces facing the Waffle
25 House?

Amy Padgett
Direct examination by Mr. Bulsa

- 1 A It was -- the back side of my car was facing towards
2 the Waffle House.
- 3 Q Okay. And did you get out and go inside the Waffle
4 House?
- 5 A No, sir.
- 6 Q Where were you in the car?
- 7 A In the passenger seat.
- 8 Q Did Jay and Quan go inside?
- 9 A I don't know if they went inside, but I know they got
10 outta the car.
- 11 Q Okay. And what were you doing?
- 12 A Just sitting on the phone.
- 13 Q And what, if anything, did you notice?
- 14 A Do what?
- 15 Q What -- what did you hear?
- 16 A I just heard everybody being loud, and then I just
17 seen people running and gunshots.
- 18 Q So when you heard people being loud did you look in
19 that direction?
- 20 A Not really, no, sir.
- 21 Q And what did you hear?
- 22 A I -- I mean, I just heard people talking. And then I
23 just seen people running and gunshots.
- 24 Q Did you see one person chasing another person?
- 25 A Yes, sir.

Amy Padgett
Direct examination by Mr. Bulsa

- 1 Q And which direction were those people running?
- 2 A The opposite from the waffle House.
- 3 Q Were they running into the parking lot in the next
- 4 business over?
- 5 A Yes, sir.
- 6 Q Okay. And then what did you see happen?
- 7 A I just -- I was trying to duck down, and then I looked
- 8 up, and I guess I seen the dude laying on the ground.
- 9 Q And where was the other guy that had been chasing him?
- 10 A Standing beside him.
- 11 Q Did you see them do anything to him?
- 12 A I remember seeing them kick him.
- 13 Q You saw a man standing over a man on the ground kick
- 14 the man on the ground?
- 15 A Yes, sir.
- 16 Q And then what happened?
- 17 A After that I just got in my driver's side, and I drove
- 18 off to find the people I was with.
- 19 Q And where did you find them?
- 20 A In IHOP parking lot.
- 21 Q So they had run on the other side of the waffle House.
- 22 A Yes, sir.
- 23 Q Had they run in the same direction you saw the two men
- 24 running from where the gunshots were?
- 25 A No, sir.

Amy Padgett
Cross-examination by Mr. Ianuario

1 Q Did you see anybody else out there with a gun?

2 A No, sir.

3 Q Okay. After you picked your friends up, what did you
4 do?

5 A He had got in -- Jay had got in the driver's seat and
6 then drove off and then made a U-turn to come back. And he
7 parked in the waffle House parking lot.

8 Q So you picked them up. Jay began driving again. And
9 instead of y'all driving away, y'all actually came back.
10 why did y'all come back?

11 A He had said something about he thought the guy was one
12 of his friends.

13 Q Okay. And did you learn whether that was correct?

14 A I didn't.

15 Q You did not?

16 A Uh-uh.

17 Q And did you stay there and talk to the police?

18 A Yes, sir.

19 Q Thank you. Answer anything Mr. Ianuario may have.

20 CROSS-EXAMINATION

21 BY MR. IANUARIO

22 Q what time did you pick up Jay and Quan roughly?

23 A I really can't remember.

24 Q Did you give a statement to the police?

25 A Yes, sir.

Amy Padgett
Cross-examination by Mr. Ianuario

- 1 Q Would you like to review that statement to refresh
2 your memory?
- 3 A Yes. I guess.
- 4 Q Does that look like the statement you gave?
- 5 A Yes, sir.
- 6 Q Do you want to read it over? About what time did you
7 pick up Jay and Quan?
- 8 A About 3:00 something.
- 9 Q And what did y'all do between the time you picked them
10 up and went to the waffle House?
- 11 A Went straight there.
- 12 Q And how long were y'all at the waffle House?
- 13 A Probably like 30 minutes.
- 14 Q Now, you said you -- just want to make sure I got this
15 correct. There were some people being loud, and you heard
16 some gunshots.
- 17 A Yes, sir.
- 18 Q And then you saw Mr. Baker chase Mr. Young and you
19 ducked, right?
- 20 A Yes, sir.
- 21 Q And then when you looked up you saw Mr. Baker standing
22 over Mr. Young.
- 23 A Yes, sir.
- 24 Q So you didn't see a portion of the conflict.
- 25 A Not really.

Amy Padgett
Cross-examination by Mr. Ianuario

1 Q Did you drive off before or after Mr. Baker left?

2 A After.

3 Q How did you find your friends?

4 A I -- I just turned to the left, and I was looking
5 around. And then I seen Jay in the parking lot, and I
6 pulled in there.

7 Q All right. And did you pick up Quan at the same time?
8 Were they together?

9 A They weren't really together, but we picked them up at
10 the same time, yeah.

11 Q Was Quan at the Waffle House or the IHOP also?

12 A I think he was in the next part like a couple of
13 spaces over maybe.

14 Q And then after you picked him up you went back to the
15 waffle House?

16 A We drove a little bit down the road, and then they
17 turned around and went back in the Waffle House.

18 Q Why did you not go straight back to the Waffle House?

19 A I really don't know.

20 Q Jay was driving though, right?

21 A Yes, sir.

22 Q Did y'all stop anywhere before you came back?

23 A No, sir.

24 Q After you got back to the Waffle House did you leave
25 again for any reason?

Amy Padgett
Redirect examination by Mr. Bulsa

1 A No, sir.

2 Q So just to make sure I've got everything correct, you
3 picked up Jay and Quan around 3:00 a.m. and went to the
4 waffle House. You heard the shooting, ducked and saw some
5 things. And then when you left you picked up Jay and Quan
6 next door at the IHOP. Jay took over. Y'all drove off,
7 turned around and came back. And y'all didn't leave again.

8 A Yes, sir.

9 Q Did you pick up anyone else beside Jay and Quan?

10 A D.J.

11 Q D.J. Now, where did you pick him up?

12 A The same place they were at.

13 Q And that was the IHOP?

14 A Uh-huh.

15 Q Where were you sitting in the car?

16 A In the passenger seat.

17 Q Front passenger seat?

18 A Yes, sir.

19 Q How many shots did you hear?

20 A Probably about six or seven.

21 MR. IANUARIO: Nothing further.

22 REDIRECT EXAMINATION

23 BY MR. BULSA

24 Q Ma'am, did you have any trouble seeing what you saw?
25 Was there anything in your way?

Amy Padgett
Redirect examination by Mr. Bulsa

1 A No, sir.

2 Q And it was light enough for you to tell what was going
3 on?

4 A Yes, sir.

5 Q Were you afraid?

6 A Yes, sir.

7 Q Okay. And the only person you saw shooting was the
8 man that was chasing another one.

9 A Yes, sir.

10 Q Thank you.

11 MR. BULSA: That's all I have.

12 MR. IANUARIO: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 MR. BULSA: Joshua Hance.

15 JOSHUA HANCE, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Good morning, Mr. Hance. Would you please introduce
19 yourself to the jury?

20 A My name is Joshua Hance.

21 Q Make sure you speak up and use that microphone. Okay?

22 A My name is Joshua Hance.

23 Q Who are you employed by?

24 A Waffle House.

25 Q How long have you been employed by Waffle House?

Joshua Hance
Direct examination by Mr. Bulsa

- 1 A About three years total.
- 2 Q Okay. What is your current position?
- 3 A My current position is assistant manager.
- 4 Q Which location?
- 5 A At Cedar Springs.
- 6 Q Did you ever work at the one on Highway 29 up near
- 7 Target?
- 8 A Yes, I did.
- 9 Q How long did you work there?
- 10 A About a year and a half.
- 11 Q Were you working there back in June of 2012?
- 12 A Yes, I was.
- 13 Q What was your job at that time?
- 14 A I was a cook.
- 15 Q Okay. And there at the Waffle House, they're all set
- 16 up pretty much the same, aren't they?
- 17 A Yes, sir.
- 18 Q Patrons can actually watch you cook their meals.
- 19 A Yes, sir.
- 20 Q So you have a view of the eating area as well as the
- 21 outside.
- 22 A Yes, sir.
- 23 Q Now, on June the 3rd of 2012 did you witness a
- 24 shooting?
- 25 A Yes, I did.

Joshua Hance
Direct examination by Mr. Bulsa

1 Q Okay. Let me start with some photographs.

2 (Photographs marked State's Exhibits Nos. 23 through 28
3 for Identification.)

4 Q Let me start off with these five photographs, State's
5 23 through 27 for Identification. Would you look at those
6 and see if they show different portions of the Waffle
7 House?

8 A Yes, they do.

9 Q Okay. Do they actually show the Waffle House you
10 worked at on Highway 29?

11 A Yes, sir.

12 MR. BULSA: Your Honor, the state would offer State's
13 23 through 27 into evidence.

14 MR. IANUARIO: No objection, Your Honor.

15 THE COURT: They're admitted.

16 (Photographs marked State's Exhibits Nos. 23 through
17 27.)

18 Q Now, how long that day had you been working when this
19 happened?

20 A About nine hours into the shift.

21 Q How long is your shift?

22 A It's a 10-hour shift.

23 Q So this was toward the end of yours.

24 A Yes, sir.

25 Q Was it around 5:00 o'clock in the morning?

Joshua Hance
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Does the Waffle House have video cameras?

3 A Yes, they do.

4 Q What do those video cameras show?

5 A It shows different views of the inside of the Waffle
6 House and in the back room.

7 Q Does it show any view of the outside?

8 A No, it doesn't.

9 Q State's 23. Is that the Waffle House you were working
10 at?

11 A Yes, it is.

12 Q Is that sort of a strip-mall type area?

13 A Yeah. It's like it was a shopping center.

14 Q Okay. All right. Is the door there at the end of the
15 awning?

16 A Yes, it is. It's right in that area right there.

17 Q State's 24 would be a picture of the door. But for
18 the posters and all did you have a pretty clear view of the
19 outside?

20 A Yes. You can pretty much see what's going on out
21 there.

22 Q Here's another view, State's 25.

23 A Yeah.

24 Q Okay. You see some glare from the photo, but are the
25 windows kept pretty clean?

Joshua Hance
Direct examination by Mr. Bulsa

1 A Yes, they are.

2 Q State's 26. Does that sort of show the portion of the
3 door area?

4 A Yes, it does.

5 Q All right. State's 27. Is that a window over from
6 these two we just saw in 26?

7 A Yes, it is.

8 Q Okay. There's no -- there's no poster in that way.

9 Now, I show you what's been marked for identification
10 as State's...

11 MR. BULSA: Madam court reporter, did I introduce
12 those pictures? I think -- if I didn't, I'd ask that they
13 be introduced.

14 THE COURT: Are you talking about the last group, 23
15 through --

16 MR. BULSA: Yes, sir.

17 THE COURT: Yes. They've been introduced.

18 MR. BULSA: Okay. I'm sorry.

19 BY MR. BULSA

20 Q I show you State's 28 for Identification. Do you
21 recognize that?

22 A Yes, I do. That's a picture of the floor and the
23 dining area with me right there at the cash register.

24 Q It's actually taken off of one of the videos.

25 A Yes, it is.

Joshua Hance
Direct examination by Mr. Bulsa

1 Q Okay. Of the night in question.

2 A Yes, it is.

3 MR. BULSA: The state would offer 28 into evidence.

4 MR. IANUARIO: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Photograph marked State's Exhibits No. 28.)

7 Q That's a view of the inside. We see the door area
8 here, and the windows. This would be you?

9 A That is me, correct.

10 Q Okay. And up here towards the top there appears to be
11 a time and date stamp.

12 A Correct.

13 Q June 3rd, looks like 5:1:17, be one minute after
14 5:00 based on that clock. Okay. And based on your view of
15 what occurred is this a still picture of right as the
16 incident is beginning?

17 A Right as it's beginning, correct.

18 Q It shows you watching what's going on.

19 A Right.

20 Q Tell the jury what you saw going on.

21 A I seen Mr. Baker came in and ordered his food. There
22 was another gentleman came inside, and they had some words.
23 They went out the door.

24 As Mr. Baker was coming back in there was a gentleman
25 came running up beside of the building. He hit Mr. Baker

Joshua Hance
Direct examination by Mr. Bulsa

1 in the side of the head, and then that's when Mr. Baker
2 pulled out the gun, and he started shooting.

3 I seen them take off running still shooting. And then
4 by the time I had already made it into the back, and I seen
5 the man fall out there in the parking lot.

6 And by that time another associate was already on the
7 phone with 9-1-1. And I told them there was a man down in
8 the parking lot.

9 Q Mr. Hance, let me ask you this. The person you saw
10 run up and hit Mr. Baker, is it the same man that talked to
11 him inside?

12 A No, it is not.

13 Q All right. And the man that was on the ground, did
14 you see him doing anything to Mr. Baker?

15 A No, I did not.

16 Q Who did you see running?

17 A As in running?

18 Q Running as the shots were being fired.

19 A I seen just a crowd of people scattered and --

20 Q Did it appear that anybody was chasing anybody?

21 A Just -- just Mr. Baker was chasing the man with the
22 gun shooting.

23 Q Mr. Baker was -- was he the man with the gun?

24 A Yes, he was.

25 Q Was he chasing the man that was on the ground?

Joshua Hance
Cross-examination by Mr. Ianuario

1 A Yes, he was. He was chasing the man and that was --

2 Q Okay. Did you see any other guns that night?

3 A No, I did not.

4 Q All right. So as this was going on were you walking
5 towards the back room?

6 A Yes, I was.

7 Q Had all the other employees been -- gone in the back
8 room?

9 A All but one other employee.

10 Q Why did y'all go back there?

11 A Just safety. Just getting out of Dodge.

12 And then we was back there watching the camera, and we
13 saw him come back in the restaurant. I'm assuming he was
14 wanting his burger that he had ordered that night. And he
15 wasn't in there no more than about three or four seconds,
16 and he left again.

17 Q Okay. Somebody was already on the phone with 9-1-1.

18 A Yes.

19 Q Okay. Thank you. That's all I have. Answer any
20 questions Mr. Ianuario may have.

21 CROSS-EXAMINATION

22 BY MR. IANUARIO

23 Q Hey, Josh.

24 A How are you doing?

25 Q In the time leading up to the shooting did you

Joshua Hance
Cross-examination by Mr. Ianuario

1 recognize Mr. Young, the deceased?

2 A No.

3 Q And do you recall about how long he had been inside
4 the Waffle House?

5 A He came -- he came in with some friends or what not.

6 They was probably in there like 20 or 30 minutes.

7 Q Did his friends come in too?

8 A Yes.

9 Q And did you get to overhear any of the conversation?

10 A No, I did not.

11 Q All right. The fight started in the doorway, correct?

12 A Correct.

13 Q And you saw a gentleman in a white shirt hit

14 Mr. Baker, correct?

15 A Correct.

16 Q Did he have braids, dreads, short hair?

17 A No, no.

18 Q That was not the same gentleman that was talking to
19 him earlier in the Waffle House?

20 A No.

21 Q How many shots did Baker fire from the doorway?

22 A From the doorway, probably two from the doorway.

23 Q In the back room of the Waffle House do you have doors
24 that exit towards the rear?

25 A Yes, we do.

Joshua Hance
Cross-examination by Mr. Ianuario

1 Q Did y'all decide -- did you decide to exit through the
2 rear?

3 A No.

4 Q Do those doors have windows on them facing the back
5 parking lot?

6 A No.

7 Q Have any windows on them?

8 A No.

9 Q So once you're in the back room you're pretty much
10 limited to what you can see from the camera view, right?

11 A Correct.

12 Q And then you saw Mr. Baker walk in and leave. And
13 about how long after you saw him walk out of the building
14 did you exit?

15 A I didn't come out until I seen a reflection from the
16 blue lights pull up in the parking lot.

17 Q All right. So you didn't come out until the cops got
18 there.

19 A Correct.

20 Q When Mr. Baker was standing in that doorway how many
21 gentlemen were approaching him? How many gentlemen were in
22 front of him?

23 A There wasn't nobody directly in front of him that I
24 could tell.

25 Q Okay. And how big is that entry area approximately?

Joshua Hance
Redirect examination by Mr. Bulsa
Recross-examination by Mr. Ianuario

1 A Maybe about six by ten or something.

2 Q And if you're entering into the Waffle House that door
3 that we can see in the picture, would you would push that
4 open to enter or pull it to enter?

5 A Pull it enter.

6 MR. IANUARIO: Nothing further.

7 REDIRECT EXAMINATION

8 BY MR. BULSA

9 Q Just briefly, Mr. Hance.

10 Mr. Ianuario asked you about how many shots you heard
11 fired from the doorway, and you said there was two.

12 A Correct.

13 Q Were there additional shots after that?

14 A There was.

15 Q Was that as they were running away?

16 A He was firing as he was running.

17 Q Thank you. That's all I have.

18 RECROSS-EXAMINATION

19 BY MR. IANUARIO

20 Q Approximately how many shots did you hear total?

21 A At least four or five shots total.

22 THE COURT: You may step down.

23 MR. BULSA: Your Honor, I ask that Mr. Hance be
24 excused to go to work subject to recall if necessary.

25 THE COURT: He may be.

Antoine Gist
Direct examination by Mr. Bulsa

1 (Whereupon, the witness was excused.)

2 MR. BULSA: Antoine Gist.

3 ANTOINE GIST, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Pull up close to the black mike there. Introduce
7 yourself to the jury.

8 A I'm Antoine Gist.

9 Q How old are you, sir?

10 A Twenty-four.

11 Q Where do you live?

12 A Spartanburg, South Carolina.

13 Q Are you employed?

14 A Yes, sir.

15 Q What do you do?

16 A I work at Burger King.

17 Q Okay. You've got a soft voice, so speak up. Okay?

18 A All right.

19 Q Sir, had you been -- were you at the Waffle House last
20 year when a shooting happened?

21 A Yes, sir.

22 Q Okay. Had you actually been at the Waffle House?

23 A No, sir.

24 Q How did you happen to be there when the police got
25 there?

Antoine Gist
Direct examination by Mr. Bulsa

- 1 A Because I seen what was going on.
- 2 Q Okay.
- 3 A I was riding by and I seen what was going on.
- 4 Q You were riding by in a car.
- 5 A Yes, sir.
- 6 Q And where had you been coming from?
- 7 A The club, a club, a night club in Greenville.
- 8 Q A night club in Greenville.
- 9 A Uh-huh.
- 10 Q So had you taken 85 from Greenville?
- 11 A Yes, sir.
- 12 Q And you would have taken the 29 exit?
- 13 A Yes, sir.
- 14 Q So were y'all going back home?
- 15 A Uh-huh, yes, sir.
- 16 Q Who was in the car with you?
- 17 A Me and three other -- two other friends. I'm sorry.
- 18 Q All right. Whose car were you in?
- 19 A Darrin, my friend Darrin.
- 20 Q What's the last name?
- 21 A Moore.
- 22 Q Darrin Moore's car. Was he driving it?
- 23 A Yes, sir.
- 24 Q Where were you seated?
- 25 A Passenger.

Antoine Gist
Direct examination by Mr. Bulsa

- 1 Q Front passenger seat. And there was another man in
2 the back seat?
- 3 A Yes, sir.
- 4 Q All right. What drew your attention to the Waffle
5 House?
- 6 A A large crowd of people outside.
- 7 Q All right. And tell us what you saw.
- 8 A I seen a lot of people just scattering and running,
9 leaving, somebody laying outside on the ground.
- 10 Q Speak up. I didn't hear any of that.
- 11 A I said I seen a lot of people scattered and running
12 and leaving and somebody outside laying on the ground.
- 13 Q Did you hear anything?
- 14 A Gunshot.
- 15 Q You heard gunshot.
- 16 A Uh-huh.
- 17 Q All right. Is that -- is the gunshot what caused
18 people to scatter?
- 19 A Right, yes, sir.
- 20 Q All right. And did you -- can you be any more
21 descriptive about how you saw the people running away?
- 22 A Just running and loud in different directions.
- 23 Q Different directions.
- 24 A Uh-huh.
- 25 Q All right. And then you saw someone on the ground?

Antoine Gist
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Did you see anybody at the person on the ground?
- 3 A I seen somebody walking back to their car.
- 4 Q Somebody walking back to their car?
- 5 A Uh-huh, yes, sir.
- 6 Q Had that person been over -- standing over the man on
- 7 the ground?
- 8 A He was walking. I'm not sure if he was standing over
- 9 him, but he was walking from somewhere, I think.
- 10 Q You need to read your statement to refresh your
- 11 memory? Let me let you read over this to yourself.
- 12 (Pause.)
- 13 Q Does that help you remember?
- 14 A A little. It does.
- 15 Q Okay. So you saw the man on the ground.
- 16 A Yes, sir.
- 17 Q And everybody else had scattered. Had cars left the
- 18 parking area?
- 19 A Yeah. There wasn't no cars there.
- 20 Q How were y'all actually watching this? Had you pulled
- 21 your car over somewhere?
- 22 A Yes, sir, in the plaza next door to the waffle
- 23 House -- in the plaza next door to the waffle House.
- 24 Q Show you State's 23. Just turn and glance up there.
- 25 The plaza you're talking about is this area over here?

Antoine Gist
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Okay. And when y'all pulled into that did y'all pull
3 over towards this part of the parking area?
- 4 A Yes, sir.
- 5 Q All right. That's good. You can face me again.
- 6 All right. And the cars had left. And now that you
7 read your statement do you recall seeing somebody standing
8 over the man on the ground?
- 9 A Yes, sir. He was standing over him.
- 10 Q And what did that person do?
- 11 A He walked up to his car and left.
- 12 Q Did he seem like he was -- how did he seem?
- 13 A To be honest, I'm not sure.
- 14 Q Okay. Did he seem in a hurry, frantic?
- 15 A He wasn't in a hurry.
- 16 Q I'm sorry?
- 17 A I said he wasn't -- he was not -- I don't think he was
18 in a hurry to me.
- 19 Q Okay. And what kind of car did he get into?
- 20 A A white vehicle, maybe a Crown Vic, I think.
- 21 Q Did you write it in your statement?
- 22 A I did.
- 23 Q What did you write in your statement?
- 24 A A Grand Marquis, I think.
- 25 Q White Grand Marquis?

Antoine Gist
Cross-examination by Mr. Ianuario

1 A Yes, sir.

2 Q Okay. Had somebody in your car called for the police?

3 A Yes, sir.

4 Q Who was that?

5 A My friend Vonte.

6 Q And he was -- was he the one in the back seat?

7 A Yes, sir.

8 Q Okay. So y'all are watching this. And he's calling
9 the police while you're watching it on 9-1-1?

10 A Yes, sir.

11 Q Okay. Did y'all stay there until the police got
12 there?

13 A Yes, sir, we did.

14 Q And you actually gave a statement, written.

15 A Yes, sir.

16 Q Thank you. Answer any questions Mr. Ianuario may
17 have.

18 CROSS-EXAMINATION

19 BY MR. IANUARIO

20 Q Thank you, Mr. Gist. So when you were approaching the
21 waffle House it was on your right side, right?

22 A Yes, sir.

23 Q So when you're driving by you don't -- what you first
24 see is the people in the street out front.

25 A Yes, sir.

Antoine Gist
Cross-examination by Mr. Ianuario

- 1 Q And that drew your attention to it.
2 why did y'all stop in the parking lot next door?
- 3 A We pulled over there because the people was scattering
4 and running. we heard the gunshots.
- 5 Q Couldn't you have kept -- just kept on driving? well,
6 no. You weren't driving but --
- 7 A I wasn't driving.
- 8 Q -- was there any discussion to stop, or did it just
9 kind of happen?
- 10 A It just kind of happened.
- 11 MR. IANUARIO: May I approach, Your Honor?
- 12 Q Okay. Do you recognize the parking lot there? This
13 is the IHOP, waffle House, and I believe that's the parking
14 lot you said you stopped in.
- 15 A Right there.
- 16 Q Does that look kind of right for you?
- 17 A Yes, sir.
- 18 THE COURT: Use the microphone when you respond to a
19 question.
- 20 A Yes, sir.
- 21 Q Approximately where in this parking lot did you park?
- 22 THE COURT: Ms. Gist --
- 23 A Close to -- yes, sir.
- 24 THE COURT: -- there's a microphone that you keep
25 bumping into. That's what making that noise.

Antoine Gist
Cross-examination by Mr. Ianuario

- 1 THE WITNESS: Okay. I'm sorry.
- 2 THE COURT: Please don't do that.
- 3 Q So whereabouts were you parked?
- 4 A Close to the bushes on the side.
- 5 Q And kind of this area here?
- 6 A Yes, sir.
- 7 Q Okay. And where was Mr. Baker parked?
- 8 A In the Waffle House parking lot.
- 9 Q Where at in the Waffle House parking lot?
- 10 A In a parking space.
- 11 Q Was he in this area up front, this side, this side?
- 12 Narrow it down a little bit.
- 13 A On the side there where the cars are.
- 14 Q Right here?
- 15 A Where the cars are.
- 16 THE COURT: Use the microphone when you respond to a
- 17 question, please.
- 18 Q Was he right in this area here?
- 19 A Yes, sir.
- 20 Q Okay. You saw him drive off. Did you see anybody
- 21 else leave after he left?
- 22 A No, sir.
- 23 Q Approximately how many gunshots did you hear?
- 24 A Maybe two -- one or two.
- 25 Q Nothing further.

Antoine Gist
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q From your perspective did it appear that he was the
4 last one to leave the parking lot?

5 A Yes, sir.

6 Q While you were there waiting for the police did other
7 cars come back to the parking lot?

8 A You said -- what was your question?

9 Q Do you remember -- do you remember people coming back
10 to the parking lot?

11 A Yeah, people came there.

12 Q People came back.

13 A Uh-huh.

14 Q But that white car did not come back.

15 A No, sir.

16 Q All right. Thank you.

17 MR. BULSA: That's all I have.

18 THE COURT: You may step down.

19 MR. BULSA: The state calls Robert Talanges.

20 ROBERT TALANGES, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA

23 Q Would you please introduce yourself to the jury?

24 A Charles Talanges, Spartanburg County Sheriff's Office.

25 Q What are your duties with the sheriff's office?

Robert Talanges
Direct examination by Mr. Bulsa

- 1 A I work forensics and crime scene I.D.
- 2 Q And how long have you been an officer?
- 3 A About 24 years now.
- 4 Q And how long have you been a forensics officer?
- 5 A Since 1997.
- 6 Q How long have you been with the sheriff's office?
- 7 A Going on nine years.
- 8 Q And did you respond to the Waffle House on Highway 29
- 9 on June the 3rd?
- 10 A Yes, I did.
- 11 Q Was Officer Hogsed already there?
- 12 A Yeah. There were several officers already at the
- 13 location. They secured it.
- 14 Q And Officer Hogsed, he works in a position the same as
- 15 yours, right?
- 16 A Yes, he is. He's a supervisor for our department.
- 17 Q Okay. So he is kind of the head over the forensic
- 18 division?
- 19 A The night shift, that's correct.
- 20 Q Okay. And was he going off duty when this occurred?
- 21 A In a few hours he would have been. It was like
- 22 5:00 something in the morning when I got the call.
- 23 Q Were you actually on call to go -- were you on duty
- 24 that night?
- 25 A No. I was on -- how it works is we do major-call once

Robert Talanges
Direct examination by Mr. Bulsa

1 every three weeks. So I was on. For any major calls that
2 comes in, I was to respond.

3 Q Okay. So approximately when did you arrive?

4 A 5:00 something in the morning.

5 Q Had the scene already been secured?

6 A Yes. It was secured by Officer Hogsed, and several
7 other deputies were there at the scene.

8 Q So everybody had been moved away from the building and
9 the parking lot?

10 A That is correct.

11 Q And what did you go in and do?

12 A Upon my arrival myself -- and I waited for another
13 deputy named Stepp. He was my partner at that time. He
14 surveyed the scene and he pro -- he started to photograph
15 the incident location.

16 Q Okay. When you got there was it completely daylight
17 or was it still kind of dawn?

18 A It was still dark.

19 Q Okay. Now, we have State's Exhibit 23. That must
20 have been taken later in the morning.

21 A Yeah. We rephotographed the scene in daylight hours
22 as well.

23 Q Okay.

24 (Photographs marked State's Exhibits Nos. 29 through 34
25 for Identification.)

Robert Talanges
Direct examination by Mr. Bulsa

1 Q All right. Let me first start with the exhibit that's
2 already been introduced State's Exhibit 3.

3 Does that sort of show the lighting, how it was when
4 you arrived?

5 A Yes, it does. It was still dark outside. Dawn hadn't
6 arrived yet.

7 Q Okay. And this photograph, was it actually taken from
8 sort of the roadway or the entrance to the parking lot?

9 A That's correct, about the entrance to the parking lot.

10 Q Okay. Now, let me show you some photographs marked
11 for identification at this point State's 29 through 34.
12 would you look at those and see if you recognize them?

13 A Yes.

14 Q Are those accurate depictions of the scene that night?

15 A Yes, they are, and also day hours as well.

16 MR. BULSA: Your Honor, the state would offer State's
17 29 through 34 into evidence.

18 MR. IANUARIO: No objection, Your Honor.

19 THE COURT: They are admitted.

20 (Photographs marked State's Exhibits Nos. 29 through
21 34.)

22 Q Starting with State's 29, that would be the entrance
23 to the waffle House.

24 A That's correct.

25 Q Watch that microphone if you would. You keep hitting

Robert Talanges
Direct examination by Mr. Bulsa

1 it.

2 This is sort of a pan of this area. State's 30, does
3 that show the opposite parking lot?

4 A That's the Master's business in the parking lot
5 located next to the waffle House.

6 Q And State's 31.

7 A That's another view of the other parking lot.

8 Q Carrying your camera on around, and State's 32.

9 A Yes. It's a pan of it.

10 Q And now State's 33. Looks like it's taken from within
11 the parking lot of the Master's.

12 A That is correct.

13 Q What are those two markers we see?

14 A We -- we located two shell casings at the -- in that
15 parking lot.

16 Q Okay. And State's 34 is a view back towards the
17 waffle House.

18 A That is correct.

19 Q We see the markers again. Those are right there?

20 A Yes, sir.

21 Q Okay. Did you create a diagram of this location?

22 A Yes, I did.

23 Q What's the purpose of creating the diagram?

24 A So we can -- if the diagram is not to scale we take
25 triangularization for measurements so if we have to

Robert Talanges
Direct examination by Mr. Bulsa

1 recreate or place the items back in the location where
2 they're at. It shows the complete layout, is what you
3 would call it.

4 Q Does it show the items that you would have collected?

5 A It all -- and all evidence collected as well.

6 Q What were you actually looking for?

7 A See -- we went to the shooting scene. So we're
8 looking for any shell casings, guns, bullets and any
9 evidence that would be related to this case.

10 Q Okay.

11 (Diagram marked State's Exhibit No. 35 for
12 Identification; list for sketch marked State's Exhibit No.
13 36 for Identification.)

14 Q Let me show you what's been marked for identification
15 State's 35 and 36. Is that your diagram and your legend?

16 A Yes, they are.

17 MR. BULSA: Your Honor, the state would offer these
18 into evidence.

19 MR. IANUARIO: No objection, Your Honor.

20 THE COURT: They are admitted.

21 (Diagram marked State's Exhibit No. 35; list for sketch
22 marked State's Exhibit No. 36.)

23 Q Okay. Let's start with State's 35. Kind of walk us
24 through if you would. Just step down here.

25 (Whereupon, the witness left the stand.)

Robert Talanges
Direct examination by Mr. Bulsa

1 Q Let me see if I can slip this over.

2 Walk us through if you would what items you located
3 and your position.

4 A This is the ledger here and the case number and any
5 time. My arrival was 4:58, so it would have been
6 5:00 o'clock. I'm the one that did it.

7 The crime scene sketch, my partner that night was Cody
8 Stepp. And of course Sergeant Hogsed was there as well.

9 This is the Waffle House parking lot and this is
10 Master's. There were two different locations -- 8855,
11 which would be the Master's, which is the parking lot
12 adjacent to the Waffle House. That's where we found
13 evidence item No. 1 and No. 2. They were tagged. They
14 were spent shell casings. That stamp was -- should be next
15 to it.

16 And then CCW, plus 12. That's the manufacturer, is
17 what it is.

18 And then we got evidence No. 3, which is found in the
19 location of 8121 Warren H. Abernathy, which was the Waffle
20 House parking lot. We had No. 3. It's a black ball cap,
21 5950. It has New York on it.

22 And we've got No. 4, which is going to be spent shell
23 casing.

24 No. 5 is a spent shelling case.

25 No. 6, we were in Waffle House where the suspect was

Robert Talanges
Direct examination by Mr. Bulsa

1 inside actually ordering and had a menu in his hand. We
2 tagged that as evidence No. 6 and collected that for
3 processing.

4 And No. 7 was found outside the door. It was outside
5 the entrance door.

6 Later on that morning we found evidence No. 8, which
7 was a fired bullet and projectile.

8 Q So that means you found five spent shell casings.

9 A That's correct.

10 Q And all had the same head stamp.

11 A Yes, they did.

12 Q Okay. But only one spent round.

13 A Only one bullet.

14 Q Okay. What areas did you search for evidence?

15 A Nighttime, we searched from the side of the building
16 as it goes all the way across here and back down. We
17 searched for any type of bullets, stripes, any type of
18 bullet marks, anything that would strike a building.

19 We searched the Waffle House. We searched the -- both
20 parking lots were searched as well. So basically this
21 whole area here all the way down in the parking lot.

22 Q Okay. And you said it was daylight before you found
23 No. 8.

24 A Yes.

25 Q Did you check the area in the daylight as well --

Robert Talanges
Direct examination by Mr. Bulsa

- 1 A Yes, we did.
- 2 Q -- that you just described?
- 3 A We had to go over it a second time because we located
- 4 No. 8 which was in the parking lot.
- 5 Q Did you find any bullet strikes?
- 6 A No, I didn't.
- 7 Q All right. You've got several rectangular objects
- 8 with triangles in there. What are those?
- 9 A These here?
- 10 Q No. The ones in the parking lot of the Waffle House.
- 11 Appear to be vehicles.
- 12 A Yeah. These are vehicles here. I've got it wrote
- 13 down. That's what these are in the positions they were
- 14 when I arrived.
- 15 Q Okay. All right. So it appears that several of those
- 16 are not even parked correctly.
- 17 A This one here and this one here. When I -- when I was
- 18 being briefed by my sergeant he said it was total chaos
- 19 when he got there. Everybody was running lights. And
- 20 that's why vehicles came sliding in and parked in different
- 21 positions.
- 22 Q Now, these shell casings that you recovered, did they
- 23 appear to have been run over or kicked or stepped on?
- 24 A No, sir.
- 25 Q No. All right. Go back and have a seat.

Robert Talanges
Direct examination by Mr. Bulsa

1 (Whereupon, the witness returned to the stand.)

2 (Photographs marked State's Exhibits Nos. 37 through 46
3 for Identification.)

4 Q We've seen several of the pictures that were already
5 taken. You put placards out for the -- each item that you
6 recovered?

7 A That's correct, located, correct.

8 Q Look at State's 37 through 46 if you would. Do you
9 recognize those?

10 A Yes, I do.

11 Q Okay. Do those accurately depict the items of
12 evidence recovered at that scene?

13 A Yes. They are.

14 Q Okay.

15 MR. BULSA: Your Honor, the state would offer State's
16 37 through 46 into evidence.

17 MR. IANUARIO: No objection, Your Honor.

18 THE COURT: They are admitted.

19 (Photographs marked State's Exhibits Nos. 37 through
20 46.)

21 Q State's 37 is item one. Is that a shell casing?

22 A Spent shell casing, correct.

23 Q State's 32 is --

24 A Also a shell casing. Those were found in the Master's
25 parking lot.

Robert Talanges
Direct examination by Mr. Bulsa

- 1 Q State's 39.
- 2 A That's going to be a 50-59 ball cap.
- 3 Q And State's 40.
- 4 A A spent shell casing.
- 5 Q State's 41.
- 6 A That's also a spent shell casing.
- 7 Q A little hard to see. Would you point that one out to
- 8 us?
- 9 A I see the corner right there.
- 10 Q Okay. Now, State's 42.
- 11 A That's the inside the Waffle House. That's the menu
- 12 that we were told that was held by the suspect.
- 13 Q Why did you collect it?
- 14 A Put -- put him inside the restaurant.
- 15 Q Potential fingerprints?
- 16 A Fingerprints, that's correct.
- 17 Q State's 43.
- 18 A Another spent shell casing.
- 19 Q And State's 44.
- 20 A That's going to be the fired bullet found in the
- 21 parking lot.
- 22 Q Now, State's 45 sort of gives you a perspective of
- 23 where No. 7 was found, is that right?
- 24 A That's correct.
- 25 Q No. 7 was a shell casing.

Robert Talanges
Direct examination by Mr. Bulsa

1 A No. 7 is a shell casing outside the door almost
2 abutting the -- the parking curb right there.

3 Q Okay. And State's 46 shows perspective No. 8.

4 A No. 8 looking back at the Waffle House.

5 Q These are two pictures that have previously been
6 admitted. State's No. 8. This shows No. 8 again, as well
7 as -- I believe those are what, three and four?

8 A That's correct, three and four.

9 Q Okay. State's 9 gives you a perspective of where the
10 other two shell casings were.

11 A In the parking lot at Master's, that's correct.

12 Q Now, what did you do with these items as you collected
13 them?

14 A Everything is collected, packaged. And depending on
15 what's going to be submitted for testing, whatever's going
16 to be submitted, it will be sent to SLED.

17 Q All right.

18 (Fired projectile marked State's Exhibit No. 47 for
19 Identification; spent shell casing marked State's Exhibit
20 No. 48 for Identification; spent shell casing marked State's
21 Exhibit No. 49 for Identification; spent shell casing marked
22 State's Exhibit No. 50 for Identification; spent shell
23 casing marked State's Exhibit No. 51 for Identification;
24 spent shell casing marked State's Exhibit No. 52 for
25 Identification.)

Robert Talanges
Direct examination by Mr. Bulsa

1 Q Let me show you what's been marked State's Exhibits 47
2 through 52 for Identification.

3 Are these the items that you recovered from the
4 parking lot area?

5 A Yes, they are.

6 Q Okay. We see them. They're actually in clear
7 packaging. Do you know what that denotes?

8 A They've been submitted to SLED. I know that.

9 Q Okay. SLED is --

10 A Analyzed them.

11 Q What is SLED?

12 A South Carolina Law Enforcement Division. That's our
13 state agency that does all of our analysis and testing.

14 Q Okay. So when you packaged them for evidence you put
15 them in the Manila envelopes.

16 A That is correct. We put them in Manila envelopes.
17 Then they're submitted to SLED. SLED repackages them after
18 they do the testing.

19 Q Okay.

20 MR. BULSA: Your Honor, the state would offer State's
21 47 through 52 into evidence.

22 MR. IANUARIO: No objection, Your Honor.

23 THE COURT: They are admitted.

24 (Fired projectile marked State's Exhibit No. 47; spent
25 shell casing marked State's Exhibit No. 48; spent shell

Robert Talanges
Direct examination by Mr. Bulsa

1 casing marked State's Exhibit No. 49; spent shell casing
2 marked State's Exhibit No. 50; spent shell casing marked
3 State's Exhibit No. 51; spent shell casing marked State's
4 Exhibit No. 52.)

5 Q Okay. And what would have been the purpose to submit
6 them for?

7 A We actually had a weapon that was recovered at another
8 location, and we were going to tie the ballistics back to
9 that, those casings, as well as the bullet back to that
10 weapon?

11 Q Okay. That was the goal.

12 A That was our goal, that's correct.

13 Q Okay. Let's talk about that pistol, now. Where was
14 that recovered?

15 A That was recovered off Blackstock Road, I think, 201
16 Blackstock Road. There's apartments over there. It was in
17 the trunk of a Honda vehicle.

18 Q Did you go to that location as well?

19 A I went to that location as well.

20 Q Okay. All right. And just for clarity, State's 14,
21 does that show the black Honda?

22 A Yes, it does.

23 Q Okay. You were directed then to the trunk of that
24 vehicle, State's 15?

25 A Correct. We did a search warrant on the residence as

Robert Talanges
Direct examination by Mr. Bulsa

1 well as the vehicle -- was drawn up on it. And the search
2 of the vehicle we -- there's a clear box, clear lid on it,
3 in the back of the trunk area.

4 Q And we've seen a picture of State's 13. That's how
5 it's packaged.

6 A Yes, sir, just like that.

7 (Photograph marked State's Exhibit No. 53 for
8 Identification.)

9 Q Let me show you State's 53 for Identification. Is
10 that the same pistol that was in the package in the box?

11 A Yeah, that's the picture. That's the -- the weapon I
12 recovered.

13 Q That would have been the next picture after this one.

14 A That's correct. What I did was the magazine if you
15 notice wasn't completely seated, so that would have been
16 taken out. So there was no round in the chamber.

17 We checked that, cleared it. And then the ammunition
18 was counted. So I had 15 in two magazines. One -- two of
19 those had 15 rounds apiece, and the magazine was in the --
20 in the magazine well of the weapon only had ten.

21 MR. BULSA: The state would offer 53 into evidence.

22 MR. IANUARIO: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Photograph marked State's Exhibit No. 53.)

25 Q Okay.

Robert Talanges
Direct examination by Mr. Bulsa

1 MR. BULSA: Could I get one of the officers to render
2 this safe for me?

3 (Pause.)

4 Q While he's doing that, did you recover some other
5 items from inside an apartment?

6 A Yeah, clothing. I think we gave it No. 10.

7 Q Okay. And did you also recover some shoes?

8 A Two sets of shoes. I recovered a set of shoes from
9 officer Nix that he retrieved from the jail and also
10 drive -- looked in the back to the same apartment, and I
11 was instructed by Investigator Foster that there was
12 another set of shoes at the residence that we needed to
13 collect.

14 Q Okay. So one officer went to the jail to collect
15 shoes that Mr. Baker had been wearing?

16 A That's correct.

17 Q But somehow you got information that they might not
18 have been the same shoes he was wearing when this occurred?

19 A That is also correct.

20 Q So you went back to Magnolia Townhomes to take another
21 pair of shoes.

22 A That's correct.

23 Q So the clothing taken in State's 16 through 20 -- just
24 glance over that -- were taken on the same day as when the
25 pistol was recovered.

Robert Talanges
Direct examination by Mr. Bulsa

1 A All clothing was recovered and shoes on the same day.

2 Q Okay. But this was just a later time.

3 A Right.

4 Q Shoes in State's 21 and 22.

5 A Yes, at a later time.

6 Q Okay. Later time that same day. What was the purpose
7 of collecting those shoes?

8 A There was a scuff mark on the victim's head, forehead
9 area, that appeared to be maybe a shoe scuff mark.

10 So what we did is we compared the shoes that we got
11 from the jail -- the sole of it -- to the marking on the
12 head. And it didn't appear to be the same. And we found
13 out later on that possibly he had wore another pair of
14 shoes or had changed shoes.

15 Q Were you able to make a comparison with those?

16 A I didn't make a comparison, but we collected the shoes
17 just to have it compared, that's correct.

18 Q Okay. Do you know if that was actually successful?

19 A I have no idea.

20 Q Okay.

21 (Pistol marked State's Exhibit No. 54 for
22 Identification; ammunition, magazine and Allen wrench marked
23 State's Exhibit No. 55 for Identification.)

24 Q Show you what's been marked State's 54 and 55 for
25 Identification at this time.

Robert Talanges
Direct examination by Mr. Bulsa

1 Is that the weapon that was recovered from the
2 vehicle?

3 A Yes, it is.

4 Q Fifty-four is the weapon and 55 is the --

5 A Magazines.

6 Q -- magazines and the bullets. Okay. And all of this
7 would have been submitted to the state law enforcement
8 agency to compare with the shell casings.

9 A That is correct.

10 Q Okay. Did you yourself have any contact with the
11 defendant?

12 A I'm trying -- I don't think I had contact with him.

13 Q Your duties were to process the scene and collect any
14 items of potential evidentiary value.

15 A That's correct.

16 Q Thank you. That's all I have. Answer any questions
17 Mr. Ianuario may have.

18 MR. BULSA: Your Honor, I'd offer the gun and rounds
19 into evidence if I didn't do it.

20 THE COURT: Fifty-four and 55?

21 MR. BULSA: Yes, sir.

22 MR. IANUARIO: No objection, Your Honor.

23 THE COURT: They're admitted.

24 (Pistol marked State's Exhibit No. 54; ammunition,
25 magazine and Allen wrench marked State's Exhibit No. 55.)

Robert Talanges
Cross-examination by Mr. Ianuario

1 CROSS-EXAMINATION

2 BY MR. IANUARIO

3 Q Thank you, Deputy.

4 When you were -- when you first arrived on the scene
5 you said that Sergeant Hogsed described it as total chaos.

6 A Yes.

7 Q Roughly how many people were on the scene when you
8 arrived?

9 A When I arrived I know that the scene was secured.
10 One, two. I'd say maybe four to five deputies were there.
11 That would include the crime scene guys as well.

12 Q And did you rope off the parking lot before you
13 started any sort of search?

14 A Everything was roped off prior to my arrival.

15 Q Okay. So no one from the crowd could have been in
16 that area to tamper with things.

17 A Not after it was secured, no.

18 Q Then you checked for bullet strikes and shell casings.

19 A That's correct.

20 Q And you recovered five shell casings and one
21 projectile.

22 A That's correct.

23 Q Okay. And Nos. 1 and 2 were the shell casings that
24 were recovered from the parking lot, correct?

25 A That's correct.

Robert Talanges
Cross-examination by Mr. Ianuario

1 Q And you found no bullet strikes in this area.

2 A No, sir. I did not.

3 Q What all parts of the building did you look at? Did
4 you look top to bottom or just the --

5 A We were looking -- we were looking at the sides,
6 strikes to the curbs, the walls. From the top of the
7 building to the bottom of the building is what we were
8 looking at.

9 Q Okay. And did you check this back wall on here?

10 A Yeah. There was a brick wall in the back side, yes,
11 sir.

12 Q And there are no bullet strikes indicated in there?

13 A I did not see any.

14 Q And you checked the Waffle House for signs of a bullet
15 strike also.

16 A Yes, we did.

17 Q And there were no signs of a bullet strike there.

18 A None.

19 Q Okay. And then projectile No. -- projectile -- it's
20 No. 8 -- was located later you said.

21 A Earlier in the morning, that's correct, later in the
22 morning.

23 Q How much later are you talking about -- five minutes,
24 20 minutes?

25 A We're looking -- it was daylight hours when it was

Robert Talanges
Cross-examination by Mr. Ianuario

1 located.

2 Q Okay. And the projectile is somewhere. The
3 projectile is No. 8.

4 A No. 8, yeah.

5 Q And what were these three items here located in your
6 file?

7 A The parking lot, as most parking lots, had trash in
8 it. That was a couple of one-dollar bills.

9 Q Did you determine if the one-dollar bills had anything
10 to do with the shooting?

11 A Shooting? We didn't collect it because it wasn't --
12 we didn't believe it was part of the shooting. That's why
13 we didn't recover it.

14 Q Okay. And so -- and they were there the entire time
15 that you were there -- the dollar bills?

16 A Until they blew away, because we left all of the trash
17 and everything in the parking lot.

18 Q Okay. And how long did it take for you to notice the
19 dollar bills after arriving on the scene?

20 A They weren't marked. Probably just right after we
21 arrived.

22 Q Okay. And the projectile here wasn't discovered until
23 daylight hours, is that correct?

24 A That's correct.

25 Q Now, going back to this diagram of the Waffle House,

Robert Talanges
Cross-examination by Mr. Ianuario

1 so this is a solid wall and this is a solid wall, correct?

2 A That's correct.

3 Q And this back here is a solid wall, correct?

4 A Yes, sir.

5 Q And pretty much up until the end of the building this
6 is a solid wall.

7 A I would say Extreme Pole Fitness, is a solid wall
8 there. Everything else is storefront with glass. So
9 that's the front while we -- going down towards the waffle
10 House.

11 The waffle House has a semi brick wall, and then the
12 rest, the front door, is glass. And there's a back wall
13 that's nothing but concrete.

14 Q So in this general U-shaped area we only found one
15 projectile and no bullet strikes.

16 A That is correct.

17 Q So then would that indicate the potential that either
18 the projectile was traveling at an upward angle and cleared
19 all of the walls?

20 A I couldn't say that. I just know. We didn't find
21 any.

22 Q Good enough. How many casings did you find in front
23 of the front door?

24 A One.

25 Q One shell casing.

Robert Talanges
Cross-examination by Mr. Ianuario

1 A That'd be No. 7.

2 Q I am done with -- okay. And this is the firearm that
3 you recovered.

4 A Yes. Serial No. U.S. 968022.

5 Q Would you describe the general condition of that gun?

6 A What you do you mean by describe the general
7 condition?

8 Q Does it look like it's a brand new firearm, or used?

9 A I don't know how many rounds -- I couldn't -- I
10 couldn't even estimate how many.

11 It's a, you know, polymer type lower receiver. You've
12 got another upper receiver, basically almost like a Glock.
13 I couldn't even say. Condition-wise, I guess it's
14 operable.

15 Q Does the middle on the upper slide appear worn? Does
16 the finish appear worn?

17 A You know what? It has a mat finish on it for glare.
18 That way it doesn't bother your sights when you're
19 shooting.

20 Q Okay. And the sights, what condition does it appear
21 to be in?

22 A I guess good condition.

23 Q Okay. Are they clean?

24 A Yeah, about as clean as mine on my weapon.

25 Q Are they bright white?

Robert Talanges
Cross-examination by Mr. Ianuario

1 A I don't know if they're the type -- I don't know if
2 they're type -- I didn't know if they're Tritium on-sights.
3 I don't know what kind of sights are on here.

4 Q Okay. And they look like stock sights. There's no
5 markings indicating an after market.

6 A It looks just like a stock gun, stock pistol.

7 Q Okay. Was there anything else in the case when you
8 recovered that firearm?

9 A Two -- well, the picture shows two magazines, each
10 having 15 rounds per.

11 The magazine that was in the magazine well but not
12 seated had ten rounds in it. And the capacity of each mag
13 is 15 rounds.

14 Q Okay. One more time. I'm sorry. What is this item
15 that's in the box?

16 A It looks a piece of paper, price tag maybe or --
17 because they said he bought it or it was purchased
18 recently.

19 Q Maybe you can see it a little better.

20 A Some kind of papers, like I say.

21 Q Does that look like -- does that look like it says
22 four thirty-nine ninety-five on it? Does that look like
23 it's a price tag?

24 A It could be.

25 Q Was there a laser recovered with the firearm?

Robert Talanges
Cross-examination by Mr. Ianuario

1 A Yes, there was.

2 Q Was that laser mounted on the firearm at the time it
3 was recovered?

4 A The picture shows that it's not.

5 Q And is that laser in evidence anywhere?

6 A It was all packaged and put in as one unit.

7 Q And that would be the unit?

8 A Yeah. That's going to be it.

9 Q How does that mount to a firearm?

10 A Well, this Allen-wrench screw here, it's called the
11 tactical slide, which is here. It slides on, and it
12 actually just tightens down. And it looks to have either a
13 thumb switch or a -- yeah.

14 It's a -- it's a thumb switch on here versus a
15 pressure switch, which would be on your slide or grip area.

16 Q And that was not mounted on it when it was recovered.

17 A Uh-uh.

18 Q And so did you agree it looks clean?

19 A Pardon me?

20 Q Would you say that that looks like it's clean or
21 covered in gun powder like it's been used a lot or --

22 A I would say that -- I can't say if it's -- I don't
23 know what condition the -- they take care of the weapon
24 like mine.

25 Q Okay. Nothing further.

Robert Talanges
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Sir, what is the purpose of the laser?

4 A That's a -- it's an aiming mechanism. You see that on
5 more tactical type weapons. It's a laser pointer. It's
6 supposedly the bullet's going to strike at when you point
7 your weapon. If there's a laser pointer at a certain --
8 certain location that's where the bullet should be targeted
9 to hit.

10 Q And it actually mounts up underneath the barrel?

11 A Yes. It's a tactical-slide mechanism.

12 Q Underneath the barrel instead of on top?

13 A Uh-huh.

14 Q Okay. So if that were on there it would make aiming
15 it easier?

16 A Well, it's -- looking through yours sights you're
17 looking where the dot is --

18 Q Okay.

19 A -- on the -- the laser.

20 Q So if that had been mounted it would be easier to
21 target somebody.

22 A That's correct.

23 Q And it's just as -- is it fairly difficult to mount,
24 or is it easy to mount?

25 A Appears to be pretty easy. You've got an Allen-set

Robert Talanges
Redirect examination by Mr. Bulsa

1 screw that tightens to the tactical rail.

2 Q Okay. So we can tell from the picture that somebody
3 clearly dropped the clip, right?

4 A Uh-huh.

5 Q So somebody could easily have removed the laser.

6 A It's possible.

7 Q Okay. Did you attend the autopsy of Mr. Young?

8 A Yes, I did.

9 Q Did you recover any bullets from his body?

10 A We recovered no bullets. And that is after even
11 looking through the x-rays. We didn't find any bullets or
12 bullet fragments.

13 Q And he was shot multiple times.

14 A Entrance and exits, that's correct.

15 Q The fact that you didn't find any other rounds, what
16 does that tell you?

17 A Depending on the positioning of the shooter, the
18 positioning of the victim, you're looking at horseshoe type
19 from the Waffle House to the Pole Fitness area.

20 If anything would have been shot or fired in this
21 direction here you're looking at -- it could have been
22 infinity. It could have struck Ingles across the way or
23 could have struck miles away, because bullets can travel a
24 great distance.

25 Q Do you always find every piece of evidence?

Robert Talanges
Recross-examination by Mr. Ianuario

1 A No.

2 Q Sorry?

3 A No, we don't always find every piece of evidence.

4 Bullets are real tricky to find because, like I said, they

5 travel for a great distance.

6 Q It's clear in this case you didn't find everything.

7 A That's correct.

8 Q Thank you.

9 RECROSS-EXAMINATION

10 BY MR. IANUARIO

11 Q Do you have any experience with lasers on firearms?

12 A Have experience or have I used?

13 Q Are you familiar with how they work?

14 A Yes, I do. I have used lasers on a weapon, that's

15 correct.

16 Q Okay. So the laser mounts a couple of inches below

17 the barrel?

18 A Some. Some mount below the barrel. Some actually

19 mount inside the grip.

20 Q But the particular one we have in evidence.

21 A This one here is mount -- that's right. It's -- the

22 weapon has a tactical slide, and that's -- that's what it's

23 made for is a laser sight or a flashlight.

24 Q So if the bullet's going straight and the laser is

25 supposed to indicate where the bullet's going, the way to

Robert Talanges
Recross-examination by Mr. Ianuario

1 do that would be to slightly raise the elevation of the
2 laser so they cross at, say, 25 yards. Then the weapon is
3 sighted in for 25 yards.

4 A That's right. The laser would be adjusted to that,
5 that's correct.

6 Q And closer distances or further distances than that
7 you're going to have a disparity between the bullet
8 placement and the laser.

9 A You shouldn't, no. Greater distance, you would. But
10 up close, you would not.

11 Q Okay. But there would be a linear distance over time.
12 The laser has to be aimed slightly upwards in order to get
13 to the point of impact.

14 A That's correct.

15 Q As a law enforcement officer are you given the option
16 to use a laser on your firearm?

17 A Well, I've done -- I've used different types of
18 weapons at work. So, yes, I have.

19 Q SWAT aside.

20 A Okay.

21 Q Standard duty would you -- do you carry a laser on
22 your side arm?

23 A No, I do not.

24 Q Why not?

25 A I don't need to carry one.

Robert Talanges
Recross-examination by Mr. Ianuario

1 Q Do you know of any officers that use lasers?

2 A Other than the SWAT?

3 Q Other than the SWAT. Standard agency.

4 A Not in our agency, no.

5 Q Okay. Create issues with aiming under bad situations
6 for an officer? You've been in more panic situations than
7 I have.

8 A Pardon me?

9 Q If in a panic situation would that laser cause a
10 distraction?

11 A That -- that particular one has to be -- it's a thumb
12 drive for -- or has a switch on it. It's not a kind --
13 I've used were pressure switches, would be great on the
14 grip. So when the weapon's in your hand as soon as it --
15 you -- as soon as you pick up the weapon or grab it, it
16 actually -- it turns it on, as this one here has to be
17 physically turned on.

18 MR. IANUARIO: Nothing further.

19 MR. BULSA: Nothing further.

20 THE COURT: You may step down.

21 MR. BULSA: Ask that he be excused.

22 THE COURT: He may be.

23 (Whereupon, the witness was excused.)

24 THE COURT: We're going to break for lunch.

25 Let me caution the jury again not to discuss the case,

Angela Nelson
Direct examination by Mr. Bulsa

1 not to engage in any research or investigation. Also,
2 don't permit yourselves to be exposed to any type of media
3 coverage that might relate to the case.

4 Do have a good lunch. Please report to your jury room
5 at 2:15, at 2:15 this afternoon.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Court is in recess until 2:15.

9 (Whereupon, a recess was taken.)

10 (Shoes marked State's Exhibit No. 56 for
11 Identification.)

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

13 MR. BULSA: Yes, sir.

14 THE COURT: Bring them in, please.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Good afternoon, ladies and gentlemen.

18 We're going to continue with the state's presentation.

19 MR. BULSA: The state calls Angela Nelson.

20 ANGELA NELSON, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA

23 Q Good afternoon. Introduce yourself to the jury,
24 please.

25 A Angela Nelson.

Angela Nelson
Direct examination by Mr. Bulsa

- 1 Q Slide up to the microphone.
- 2 Who are you employed with?
- 3 A Spartanburg County Sheriff's Office.
- 4 Q In what capacity?
- 5 A I work under the evidence technician.
- 6 Q You keep evidence secure at the sheriff's office?
- 7 A Yes, sir.
- 8 Q Okay. And specifically in this case involving the
- 9 death of Anthony Young did you take some items to the South
- 10 Carolina Law Enforcement Division --
- 11 A I did.
- 12 Q -- In Columbia? Okay. Do you have records showing
- 13 what you took?
- 14 A Yes, sir.
- 15 Q Specifically, did you take five spent shell casings
- 16 and a fired bullet?
- 17 A I did.
- 18 Q Specifically, were those the items that are denoted by
- 19 State's Exhibits Nos. 47 through 52?
- 20 A This is them.
- 21 Q Okay. And I show you what's been marked for
- 22 identification at this point State's 56. Do you recognize
- 23 that object?
- 24 A I do.
- 25 Q How so?

Angela Nelson
Direct examination by Mr. Bulsa

1 A It's a package that when we prepare anything to go to
2 SLED we check to make sure that it's sealed in the capacity
3 in which it came in to us. We make sure the case number is
4 correct, the item's correct. And -- and we put it in
5 another package or a box and take it down to SLED.

6 Q Would that have been placed into evidence by officer
7 Talanges?

8 A It was.

9 Q And it denotes the items being sneakers?

10 A Correct.

11 MR. BULSA: Your Honor, the state would offer this
12 into evidence as State's 56.

13 MR. IANUARIO: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Shoes marked State's Exhibit No. 56.)

16 Q Were those sneakers also taken to the state law
17 enforcement division?

18 A Yes, sir.

19 Q Was everything in a sealed package when it was taken
20 down there?

21 A Yes, sir.

22 Q And do you know what happened when it was taken to
23 SLED?

24 A When I dropped it off with evidence technician,
25 sometimes they will either place it in another package to

Taylor Bouknight
Direct examination by Ms. Overby

1 go to whatever department it needs to go to for analysis or
2 they will place it in a box.

3 Q But when you leave it's in a sealed condition.

4 A Correct.

5 Q Even if it's broken open at SLED, they seal it in your
6 presence.

7 A Yes. And we would have to put our initials and the
8 date on it, whatever they sealed it with.

9 Q So and is that so if things weren't -- do not get
10 contaminated?

11 A Correct.

12 Q Okay. Thank you.

13 MR. BULSA: That's all I have.

14 MR. IANUARIO: I have no questions for this witness,
15 Your Honor.

16 THE COURT: You may step down.

17 MS. OVERBY: The state would call Taylor Bouknight.

18 TAYLOR BOUKNIGHT, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. OVERBY

21 Q Can you please state your name for the jury?

22 A Taylor Brooke Bouknight.

23 Q And, Ms. Bouknight, where are you currently employed?

24 A The morgue at Spartanburg Regional.

25 Q Can you tell us some of your duties and

Taylor Bouknight
Direct examination by Ms. Overby

1 responsibilities at the morgue? what would they include?

2 A I've worked in the morgue for three years. I just
3 became the morgue supervisor in January. I'm responsible
4 for all of our ordering, our charging, paperwork, any
5 details, things that need to be done. Some of my employees
6 don't have the ability to do in assisting with coroners'
7 cases and in-house cases that happen in the hospital.

8 Q Did you assist in the case of Anthony Young?

9 A I did.

10 Q And were you present at the autopsy performed on
11 Anthony Young on June the 3rd of 2012?

12 A I was.

13 Q At that time did you observe a blood sample that was
14 taken from Mr. Young?

15 A Yes.

16 Q And can you tell us who took that sample?

17 A Dr. David Wren.

18 Q And did you observe Dr. Wren take that sample?

19 A I did.

20 Q How was it collected?

21 A Dr. Wren took it from the aorta cavity once we started
22 the autopsy. We get a syringe for him, and a needle, and
23 he takes it that way -- the aorta.

24 Q After Dr. Wren collected the sample what did you then
25 do with it?

Taylor Bouknight
Direct examination by Ms. Overby

1 A He'll take. He puts kit in three gray-top tubes, the
2 same type of tubes we use for all of our coroner cases. He
3 then hands it over to me. I put the patient labels. I
4 collect the date and the time that we withdrew the blood
5 and then put those on the blood and then seal it with
6 evidence tape from the coroner's office.

7 Q These tubes that they were placed in, are they
8 uncontaminated containers?

9 A Yes. We take them from there. We put them in an
10 evidence bag. We label the bag. I sign off on it as chain
11 of custody, and then I put in a locked refrigerator.

12 Q And did you do that in this case?

13 A Yes, ma'am.

14 Q After labeled and sealed were these samples handled by
15 you in any other way?

16 A Oh, no, ma'am.

17 MS. OVERBY: That's all the questions I have of this
18 witness.

19 MR. IANUARIO: I have no questions.

20 BY MS. OVERBY

21 Q I'm sorry. I have one more.

22 Did you then after the sample was placed in the
23 refrigerator, did you turn it over to the Spartanburg
24 County investigators?

25 A I did. We do those with all of our coroners' cases.

Joy Lathan
Direct examination by Ms. Overby

1 They take responsibility of the blood after we put it in
2 the locked refrigerator.

3 Q That's all the questions I have. Please answer any
4 questions Mr. Ianuario may have for you.

5 A Okay.

6 MR. IANUARIO: No questions, Your Honor.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you.

9 MR. BULSA: Joy Lathan.

10 JOY LATHAN, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. OVERBY

13 Q Can you please state your name for the jury?

14 A Name is Joy Lathan with the Spartanburg County
15 Coroner's Office.

16 Q Can you tell us in what capacity you're employed with
17 the coroner's office?

18 A I am a coroner's investigator.

19 Q And what do some of your duties and responsibilities
20 include?

21 A Responsibilities may be collecting evidence,
22 transporting evidence to SLED, and photographing and
23 working crime scenes.

24 Q Were you involved in the investigation of the death of
25 Anthony Young?

Joy Lathan
Direct examination by Ms. Overby

1 A Not directly involved in the investigation. I did
2 transport the blood evidence.

3 Q And where did you transport that evidence?

4 A To the state law enforcement division lab in Columbia.

5 Q Specifically, what items did you take to SLED?

6 A It was two vials of blood.

7 Q And when you -- where did you receive those samples
8 from?

9 A I received them from the morgue. I got them outta the
10 unlocked morgue refrigerator at the morgue. I placed one
11 vial into our hold -- monthly hold bag -- placed the other
12 two vials along with the bag, the evidence bag, and signed
13 it out to me and transported it to SLED.

14 Q And were those vials sealed upon your receipt of them?

15 A Yes, ma'am. They were sealed with evidence tape over
16 the caps.

17 Q And when you turned those items over to SLED did they
18 remain sealed?

19 A Yes, ma'am.

20 Q And were these two vials of blood altered or opened in
21 any way by you?

22 A No, ma'am.

23 Q Do you recall to whom at SLED you provided those vials
24 to?

25 A It was a SLED lab tech. I believe her name was

Quintus Young
Direct examination by Mr. Bulsa

1 Stephanie. I'm not sure. I don't have the report in front
2 of me.

3 Q Did you provide this to Amy Stephens?

4 A Amy Stephens. I'm sorry. Yes, ma'am. She signed
5 over the paperwork to me that day.

6 Q When you -- after dropping those items off at SLED,
7 when you left those items were they still sealed?

8 A Yes, ma'am, they were still sealed. Actually, they
9 sealed them I think in a heat-sealed envelope back.

10 Q No further questions. Please answer any questions
11 Mr. Ianuario may have.

12 A Yes, ma'am.

13 MR. IANUARIO: No questions for this witness.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 MR. BULSA: Quintus Young.

17 QUINTUS YOUNG, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BULSA

20 Q Good afternoon, Mr. Young. Would you introduce
21 yourself to the jury?

22 A Yes. My name is Quintus Young, II.

23 Q Who are you employed by?

24 A I am employed with the South Carolina Law Enforcement
25 Division, commonly known as SLED.

Quintus Young
Direct examination by Mr. Bulsa

1 Q What is your occupation there?

2 A There I am a forensic toxicologist.

3 Q How long have you been doing that work?

4 A A little over six years.

5 Q Now, we're not concerned about the toxicology part of
6 this case. But did you receive some vials of blood
7 pertaining to the victim, Anthony Young?

8 A Yes.

9 Q And as part of your duties did you supply a sample of
10 that blood to the D.N.A. department at SLED?

11 A Yes, sir.

12 Q How would that have been done?

13 A Once -- once we've done the analysis or as much as we
14 need to do, we then take a small portion and place it in a
15 clean vial and seal it in a new heat-sealed pouch. And we
16 send it to D.N.A.

17 Q While that blood is in y'all's custody is it -- does
18 it remain in a protective environment?

19 A Yes.

20 Q It's safe and secure and untampered with?

21 A Yes.

22 Q Okay. So the item -- you did what you needed with
23 your portion and then sent a sample for another possible
24 testing if necessary.

25 A Correct.

James Green
Direct examination by Mr. Bulsa

1 Q Okay. Thank you.

2 MR. BULSA: That's all I have.

3 MR. IANUARIO: No questions for this witness, Your
4 Honor.

5 THE COURT: You may step down.

6 MR. BULSA: We ask that he be excused, Your Honor.

7 THE COURT: He may be.

8 (Whereupon, the witness was excused.)

9 MR. BULSA: Betty Butler.

10 (Pause.)

11 MR. BULSA: She's in the restroom, Your Honor. We
12 will move to John Green.

13 JAMES GREEN, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA

16 Q I called your name as John, but it's really James.
17 James, would you introduce yourself to the jury?

18 A My name is James Green, and I work at the South
19 Carolina Law Enforcement Division.

20 Q And in what capacity?

21 A I'm a firearms examiner in the forensic services
22 laboratory.

23 Q What kind of training have you had in the area?

24 A When you start at SLED you go through the SLED course
25 instruction in firearms and toolmarks. It's approximately

James Green
Direct examination by Mr. Bulsa

1 a three-and-a-half-to-four-year course of instruction
2 studying under court-qualified examiners.

3 First, you start watching them do their work, and as
4 you progress through your training you take oral
5 examinations, written examinations, practical problems and
6 do thousands of microscopic verifications or examinations.

7 At the end of the training cycle you're given a very
8 comprehensive final exam where you're working basically
9 fake cases, cases created in the laboratory, to see if you
10 come up with the correct answer.

11 Q So would you consider -- do you do all of this so you
12 can become an expert in firearms and toolmark
13 identification?

14 A Yes, sir.

15 Q Have you testified in court in that capacity before?

16 A Yes, sir.

17 Q Have you been qualified as an expert in that field?

18 A Yes, sir.

19 MR. BULSA: Your Honor, the state would offer him as
20 an expert in the field of firearms identification and
21 toolmark identification.

22 MR. IANUARIO: No objection, Your Honor.

23 THE COURT: He is so qualified.

24 BY MR. BULSA

25 Q Mr. Green, in this case specifically involving the

James Green
Direct examination by Mr. Bulsa

1 deceased, Anthony Young, what items did you receive from
2 the Spartanburg County Sheriff's Office?

3 A I'll refer to the SLED item numbers. I received items
4 two through six -- two, three, four, five and six, which
5 were five fired 9mm NATO caliber or 9mm Luger caliber
6 cartridge cases.

7 Item seven was one fired bullet; item nine was a
8 Springfield model XD semiautomatic pistol, 9mm Luger
9 caliber with a serial number of US 968022 with three
10 magazines, 40 unfired cartridges and one laser sight with a
11 mount, a plastic gun box and an Allen wrench.

12 Q Okay. If you would, confirm that these items marked
13 through State's Exhibits 47 through 52, 54 and 55, those
14 items that you just referenced --

15 A Ladies and gentlemen of the jury, what I'm doing now
16 is when we get evidence into the laboratory we mark it with
17 our lab number, the item number and our initials if it's
18 large enough. So when you see me rolling the packages with
19 my fingers I'm looking through each exhibit to see if these
20 are what I looked at.

21 (Pause.)

22 A State's Exhibit 47, 48, 49, 50, 51 and 52 and State's
23 Exhibit 55 are the items of evidence I received in this
24 case.

25 Q How about the items in the box, State's 54, I think?

James Green
Direct examination by Mr. Bulsa

1 Excuse me. That's 55. The pistol is 54 for the record.

2 A Yes, sir. These are the magazines, the unfired
3 cartridges, the laser sight and mount, and the Allen
4 wrench.

5 Q Okay. Those three magazines, do they hold an equal
6 amount of bullets?

7 A Yes, sir.

8 Q How many bullets do they hold?

9 A They all hold 15.

10 Q Okay. And two are completely filled and one had ten?

11 A Let me refer to my notes as to how they were packaged.
12 (Pause.)

13 A When I received them they were in a zip-lock bag. The
14 cartridges were not in the magazines, but one magazine had
15 14 unfired cartridges with it in the bag, and another bag
16 has 16 unfired cartridges with it in the bag. And then ten
17 unfired cartridges were in a separate zip-lock bag.

18 Q All right. Did you do anything specifically with
19 those rounds in this case?

20 A I weighed them just to see what nominal gram weight
21 the bullet was. They all weighed roughly the same. I
22 disassembled one of the unfired cartridges to look at the
23 components. And the bullet, which was the projectile
24 portion of the cartridge, weighed 115 grams.

25 Q Did they have the same head stamp as the fired

James Green
Direct examination by Mr. Bulsa

1 casings?

2 A Yes, sir.

3 Q So they were all the same make and model.

4 A Yes, sir. They were all the same make.

5 Q Now, what tests did you perform on these shell casings
6 and spent round?

7 A When we get evidence submitted to the laboratory in
8 absence of a firearm, what we can do is we'll look at them
9 on a comparison microscope, which is a -- two microscopes
10 basically connected by an optical bridge that lets us look
11 at two different items at the same time under different
12 angles of lighting.

13 And what I did was any time I get a case if there's a
14 gun or not I'll look at the fired evidence components first
15 to see, say, if we have six cartridges cases, or five, how
16 many guns may be represented in those cartridge cases.

17 Once I get those matched to one gun, two guns, three
18 guns, if we do have a firearm submitted I'll test fire the
19 firearm or firearms to get test specimens from them fired
20 by this particular gun. I know so because I fired them
21 myself.

22 Then I'll look at the tests against each other to see
23 if the firearms marked inconsistently. And once I do that
24 I'll compare the tests against the evidence.

25 Q And what were the results of your test?

James Green
Direct examination by Mr. Bulsa

1 A Once I test fired State's Exhibit -- I think you
2 said -- 54, was the pistol, I compared them with State's
3 Exhibits 48, 49, 50, 51 and 52, which were the fired
4 cartridge cases.

5 I determined or concluded that all of those cartridge
6 cases were fired by this pistol.

7 Then I looked at my test-fired bullets versus State's
8 Exhibit 47 and concluded that that bullet was fired by this
9 firearm as well.

10 Once we do that we'll write our -- our conclusions
11 down on our worksheets. And then I'll go get a second
12 examiner to come in and look at my evidence and form their
13 own conclusion based on that.

14 Q How does that firearm fire?

15 A This is a semiautomatic pistol. If you're somewhat
16 familiar with firearms, I apologize in advance.

17 A semiautomatic pistol like this one is fed by a
18 magazine, which is this. All you do is you load the
19 unfired cartridges into the magazine. You insert the
20 magazine full into the magazine well, and you'll lock. And
21 you can hear it click.

22 Then what you do is you pull the slide forward and
23 allow it to go forward under spring tension, and that will
24 top the pistol.

25 Then you pull the trigger. without being too

James Green
Direct examination by Mr. Bulsa

1 technical, doing so will release the striker or the firing
2 pin. Firing pin will go forward, hit the primer of the
3 cartridge which will cause a small explosion which will
4 send a flame through the flash hold of the cartridge case
5 igniting the powder inside.

6 The powder will burn at various rates, different rates
7 and bullet pressure. Once a critical pressure is reached
8 the bullet will be expelled from the mouth of the cartridge
9 case down the barrel towards the intended target.

10 In a law of physics, you know, equal-opposite
11 reactions. As the bullet's going down the barrel the
12 cartridge case will be slammed against the breach face of
13 the firearm obtaining any marks placed on the breach face
14 by manufacture.

15 The slide will then move to the rear. And you can't
16 see it, but there's an ejector on the slide. It'll grab
17 the fired cartridge case out of the chamber, pull it back.
18 And when the slide hits this more rearward motion the
19 cartridge case will hit the ejector. The ejector expels
20 the fired cartridge case from the firearm.

21 The slide will go forward and pull the trigger again.
22 That'll keep happening until either the magazine runs dry
23 or you're out of ammunition or you stop shooting.

24 Q Are there any safety features on that gun?

25 A This pistol has three safeties built into it. They're

James Green
Direct examination by Mr. Bulsa

1 a couple of passive safeties and active safety.

2 The first is a trigger safety. I don't know if you
3 can see it, but the trigger comes down here, and then
4 there's a little projection that comes out front. That's a
5 trigger safety.

6 That means unless your finger's on the proper
7 orientation to disable that trigger safety the trigger
8 cannot be pulled. It's -- it's blocked by a piece of
9 plastic.

10 The second safety is a grip safety. And what that
11 does is you can pull the trigger all you want. But unless
12 the grip safety is depressed and the firearm's functioning
13 properly -- and this one did -- in the absence of the grip
14 safety being pulled the firearm is not fired. You have to
15 make sure the grip safety is depressed while you're pulling
16 the trigger to make the firearm fire.

17 The third safety is a built-in safety, and it's a
18 firing pin safety. You cannot see it, but it's right here.
19 It blocks the forward movement of the firing pin until the
20 safety is depressed. And all that's done internally by a
21 bar or trigger bar.

22 When you pull the trigger the bar comes up, which
23 depresses the firing pin safety and allows the firing pin
24 to move forward.

25 Q Actually, the firearm has to be loaded first, doesn't

James Green
Direct examination by Mr. Bulsa

1 it?

2 A Yes, sir.

3 Q If it's loaded don't you have to physically pull the
4 slide back?

5 A Some. There's two ways to do it. Some pistols if you
6 have a loaded magazine you can insert the magazine, and you
7 can hit -- let me try this. You can hit the slide release
8 or the slide lock, and that'll cause the slide to go
9 forward stripping the first cartridge, magazine loading
10 into the chamber, or you can manually do it by gripping the
11 serrations, pulling it to the rear and letting go. And
12 that'll also load the pistol.

13 Q So even though a magazine can be in it if one's not --
14 a round's not loaded in the chamber, it won't fire.

15 A Correct.

16 Q Right? Okay. So it takes multiple steps to fire this
17 weapon.

18 A Yes, sir.

19 Q How hard is it to actually pull the trigger and fire a
20 round?

21 A Let me see what I tested the trigger for. The
22 trigger-pull weight tested about six and three quarter
23 pounds. So it's roughly two-thirds of the weight of a
24 gallon of milk.

25 Q What does that mean?

Quintus Young
Cross-examination by Mr. Ianuario

1 A It takes about roughly six and three quarter pounds of
2 pressure exerted on the trigger to make the firearm fire.

3 Q Why do you relate it to a gallon of milk?

4 A Because they weigh roughly eight pounds.

5 Q So does that mean if you had a gallon of milk trying
6 to raise it with one finger?

7 A Yes, sir.

8 Q Okay. So it takes some actual force to pull it.

9 A Correct.

10 Q All right. Thank you. That's all I have. Answer any
11 questions Mr. Ianuario may have.

12 CROSS-EXAMINATION

13 BY MR. IANUARIO

14 Q Start with a nice, easy one. We're talking about case
15 ejection. On semiautomatics where do the cases generally
16 eject?

17 A Generally they go back into the rifle.

18 Q Back into the rifle.

19 A Very generally. There's a whole bunch of different
20 factors that can affect it. But as a general rule with the
21 ejection port right here -- the extractor is on the right,
22 the ejector is on the left. When it's being pulled back
23 it's going to want to tend to go that way.

24 Q The safety features that we're talking about, as soon
25 as you pick up and you grip the gun you activate the grip

Quintus Young
Cross-examination by Mr. Ianuario

1 safety, correct? And it takes no independent actuation
2 other than picking up the firearm?

3 A That's kind of a sticky point because if you get a --
4 if you don't have a good grip on the firearm -- and you can
5 hold it down here. You're not going to get a grip safety.
6 But if you -- if you get a good grip on it, the grip safety
7 will be deactivated by your grip.

8 Q So it doesn't require a separate movement from
9 grabbing the gun.

10 A No. It's -- if you're trained to shoot or if you've
11 shot before your first motion will be a good tight grip on
12 the back strap.

13 Q And the trigger safety. Same way once you put your
14 finger on the trigger. It's automatic. There's no
15 separate actuation.

16 A Correct. Well, if your finger's on the -- on the --
17 about midway it'll be deactivated, yes.

18 Q Okay. So then to lay it on the table the gun would be
19 safe. As soon as I grab it up with my finger on the
20 trigger it's armed and ready to go. All the safeties are
21 off.

22 A If it's loaded, yes, sir.

23 Q And no independent action taken up at that point, and
24 that stuff is fine.

25 A Right. Well, other than the firing pin safety.

Quintus Young
Cross-examination by Mr. Ianuario

1 Q And that's there to protect. why is that firing pin
2 safety? what does that protect against?

3 A If this gun were loaded and I were to drop the pistol
4 straight down, straight up or on the -- on the butt, which
5 is this feature, by inertia it could cause the firing pin
6 to move forward.

7 So that's a safety feature designed to -- if it's not
8 depressed it's keeping constant pressure on the firing pin
9 to keep it from going forward until it's deactivated.

10 Q And that safety requires no separate action.

11 A Just pulling the trigger.

12 Q How hard is it to chamber that weapon? You said
13 you're familiar with it.

14 A That's -- depends on the gun strength.

15 Q Let me rephrase that.

16 When you ratchet it, cock and slide, chamber in it,
17 did it seem unusually hard, very easy?

18 A I deal with guns every day, so it's just a --

19 Q So there's nothing remarkable about it.

20 A No.

21 Q If you had to chamber a gun in a hurry how quick could
22 you do it?

23 A Me? Fairly quick.

24 Q All right. Now, generally speaking a -- somebody --
25 does it take any special skill to chamber it other than

Quintus Young
Cross-examination by Mr. Ianuario

1 just being familiar with a gun?

2 A If you've shot one pistol, you've shot them all.

3 Q Okay. So if somebody had a gun in their waistband
4 could they pull it out and chamber it really quick, or is
5 that too much of an action?

6 A It -- it could be done, but you'd have to be in my
7 experience -- you'd have to be familiar with the pistol to
8 help you do that.

9 Q Okay. That's not outside the question.

10 A No.

11 Q Would you describe that pistol in your expert opinion
12 as far as condition?

13 A On the N.R.A. scale it's good, which means there's
14 little appreciative wear on the working surfaces. It
15 doesn't need any -- any -- any changes in the parts or
16 anything like that to make it function.

17 Q Was it clean when you received it?

18 A It had fingerprint powder on it.

19 Q Okay. Was there blast -- black -- basically, when you
20 handled the gun did you get your hands dirty?

21 A Yes, sir.

22 Q Okay. Do you see any aftermarket parts on that
23 pistol?

24 A I did not. The -- because I actually called
25 Springfield on a case shortly before this. This could be

Quintus Young
Cross-examination by Mr. Ianuario

1 considered an aftermarket part. It was on the pistol. I
2 don't know if that's what you're getting at. But as far as
3 internal-working-mechanism parts, I did not see anything
4 that ordinarily would not have come from the factory.

5 THE COURT: Excuse me.

6 For the record, let me ask you to identify the objects
7 you held up and said it was perhaps an aftermarket part.

8 A The -- the laser sight and the mount, which I believe
9 was State's Exhibit 55.

10 Q Approximately what day did you receive these pieces of
11 evidence?

12 A I don't have the chain of custody in front of me, but
13 I started the examination on July 12th of 2012.

14 Q And this incident took place on June the 3rd. So
15 maybe six weeks after.

16 A Yes, sir.

17 Q Did you do any testing with the laser?

18 A No, sir.

19 Q Didn't switch it to see if it was on or had batteries
20 in it?

21 A You know, I usually do. But, no, I didn't do any
22 examination on the -- on the laser sight.

23 Q Is there any particular --

24 A Actually -- I'm sorry. I take that back. I did. It
25 functioned, and it was in off position as received.

Quintus Young
Cross-examination by Mr. Ianuario

1 Q And did you see if it was sighted improperly?

2 A No, sir. That -- that has no bearing on -- on my
3 examinations.

4 Q Okay. Can that gun be fired one-handed?

5 A Yes, sir.

6 Q What affect would firing a gun one-handed have on
7 accuracy and shock placement?

8 A It depends on your level of skill.

9 Q Minor level, shot a gun a few times, but definitely
10 not a competition shooter.

11 A That's a hard question to answer because I -- there's
12 so many variables.

13 Q Let me rephrase it. What is a proper grip on a
14 firearm?

15 A Once again, it depends on who's teaching.

16 Q I'll phrase again.

17 When holding a firearm two-handed do you take this
18 front hand and use it to push the firearm into your palm so
19 that there's no pressure on the trigger finger?

20 A Some people do teach that, yes, sir.

21 Q And if you were to remove that support and to shoot
22 one-handed would the motion of the trigger cause the aim of
23 the gun to go slightly right or left?

24 A It could.

25 Q What conditions were the sights on that gun in?

Quintus Young
Cross-examination by Mr. Ianuario

- 1 A well, they're just your standard three dots -- your
2 two dots on your rear and your one dot on your front sight.
3 It just looks like a firearm that's been fired.
- 4 Q So those aren't tritium night sights?
- 5 A No, sir, just regular sights.
- 6 Q Then there's nothing special. If the lights get
7 darker, it's harder to see them.
- 8 A Correct. It's just the standard sights put on
9 Springfield XD pistols.
- 10 Q would you describe them as being clean in appearance?
- 11 A I can only go as I received it right now. The two
12 rear dots are clean and the front dot is kind of meated in
13 color, kinda like off white.
- 14 Q Okay. Do you have any experience with lasers on
15 firearms, personal shooting, not just criminal?
- 16 A No, sir. I've seen people use them. I've shot my
17 personal-am issued firearms with weapon lights attached to
18 them, but never laser, no, sir.
- 19 Q Is there any particular reason you don't use a laser?
- 20 A Don't need one.
- 21 Q How would you sight in a laser if it was on a firearm?
- 22 A I don't know. I've never done one.
- 23 Q But on the firearm that laser mounts roughly an inch
24 or two below, correct? You would extend the loaded barrel.
- 25 A There's a laser sight -- the accessory rails here,

Quintus Young
Cross-examination by Mr. Ianuario

1 which is where you would attach the laser sight using this
2 mount. It would sit right about there, so it'd be roughly
3 maybe an inch underneath the bore, which is the barrel.

4 Q When you put those things on -- I know you don't have
5 a lot of experience with them -- do you know if they
6 generally come sighted in from the factory, or does it
7 require testing?

8 A I do not know, sir.

9 Q If that laser's going to be an inch below the barrel
10 or two inches below the barrel -- and that's a good
11 point -- but in order to find the point of impact you're
12 going to have to angle the laser slightly upward so when it
13 crosses with the bullet, right?

14 A Right. It'd be like sighting in a rifle scope.

15 Q So then short -- let's say we've got 25 yards just for
16 example. Below the 25 yards the shots are going to be
17 hitting high. Past 25 yards the laser would cross the
18 trajectory.

19 A Right.

20 Q And the laser would be higher, so the shots wouldn't
21 hit well.

22 A Right.

23 Q So it's important to have those things sighted in for
24 a safe distance. It affects the accuracy.

25 A If you're using the "L" effect actually, yes, but when

James Green
Redirect examination by Mr. Bulsa

1 we have firearms come in with lasers they're usually not
2 sighted. And I keep pointing in here at the ladies over
3 there, whatever, but ideally you would like your laser to
4 meet your point of aim at whatever the given distance is
5 and sight it for that.

6 Q And you had checked the point of angle on that
7 firearm?

8 A As far as?

9 Q As far as the laser.

10 A No, sir, I didn't attach the laser to it. That's not
11 an examination we are to perform.

12 Q Okay.

13 MR. IANUARIO: Nothing further.

14 REDIRECT EXAMINATION

15 BY MR. BULSA

16 Q Did your tests consist of any tests of accuracy for
17 this weapon?

18 A No, sir.

19 Q In fact, can't you just fire a gun by pointing it at
20 somebody or anything?

21 A You can.

22 Q You don't actually have to pin them down with it --
23 sight, do you?

24 A No, sir.

25 Q Or use a laser sight.

James Green
Recross-examination by Mr. Ianuario

1 A No, sir.

2 Q It's pretty simple to shoot.

3 A Correct.

4 Q To shoot, right?

5 A Yes, sir.

6 Q And these rounds, are they capable of passing
7 completely through a body?

8 A The full metal jacket bullets, which means it's a
9 totally encapsulated bullet, lead core covered by the
10 jacket, it would make it easier to pass through something.
11 That's not my area of expertise, but, yes, it would make it
12 easier as opposed to a hollow point or a soft-nosed bullet,
13 which tend to expand or slow down.

14 Q Thank you. That's all I have.

15 RECROSS-EXAMINATION

16 BY MR. IANUARIO

17 Q When you're shooting that firearm in order to
18 accurately shoot your target is it important to look down
19 the sight line?

20 A Depending on your level of skill, yes.

21 Q Hollywood aside, you've seen people shoot from the hip
22 in your personal experience -- instructor or anything.

23 A I could --

24 Q Expert level aside, how accurate are people usually
25 when they shoot from the hip?

James Green
Recross-examination by Mr. Ianuario

1 A Not very.

2 Q How accurate are people generally when they're
3 shooting while running?

4 A I can't answer that. I've never shot while running.

5 Q Do you know what it means to lead the target?

6 A Yes.

7 Q Would you please explain that for the jury?

8 A Leading the target is if -- I'm a deer hunter, so I
9 always use deer hunting as an example.

10 If you've got a walking deer or a running deer if the
11 deer's coming through here and you're aiming here, by the
12 time your bullet gets there the deer's going to be passed.
13 You've shot behind it.

14 So when you lead a target you basically in your mind
15 try to find out where it's going to be and get to a
16 mythical point where you're -- where you want your bullet
17 to strike the deer. So you've got to be a little bit out
18 in front of it.

19 If it's walking slowly or if it's running full -- I
20 wouldn't shoot anyway -- but you've got to lead a little
21 bit more, shot more, in front of the target in hopes that
22 by the time the target gets to your point the bullet will
23 be there.

24 Q How did you learn about leading the target?

25 A Shooting clay pigeons with my granddad.

James Green
Recross-examination by Mr. Ianuario

1 Q So you didn't pick it up right away. You did a little
2 instruction on it?

3 A Yes, sir.

4 Q So it's not a skill that people just pick up a gun and
5 familiar with it.

6 A No, sir, not --

7 Q You said the rounds recovered were full metal jackets.

8 A Yes, sir. There was one bullet received, and it was
9 a -- it was a full metal jacket.

10 Q Would you describe the difference between a full metal
11 jacket and a hollow point in terms of its affects on its
12 target?

13 A A hollow point bullet is designed to expand once it
14 hits whatever the target is -- water, like we shoot into
15 where we're test firing or shoot into the dirt or a body,
16 like when people hunt.

17 The bullet is designed once it has fluid enter the
18 hollow-point cavity or tissue the bullet will tend to
19 expand, which will create a larger bunch-out and create
20 more hydrostatic shock or damage to the target.

21 A full metal jacketed bullet doesn't have that hollow
22 point cavity, so the bullet will tend to not want to slow
23 down quite as quickly and be more of a -- like a line drive
24 baseball. It'll just go straight.

25 Q So when the hollow point hits its target it expands.

James Green
Redirect examination by Mr. Bulsa
Recross-examination by Mr. Ianuario

1 It grows.

2 A That's what it's designed to do, yes.

3 Q And the purpose of that is to -- greater chance of
4 striking something.

5 A Right. More of what they call hydrostatic shock. It
6 puts more of a traumatic force onto the target.

7 Q Does the result of that traumatic force usually leave
8 bigger exit wounds?

9 A I haven't seen autopsies and done that kind of stuff,
10 but shooting a deer with a hollow point cavity, yes, it
11 creates a larger exit wound.

12 Q Nothing further. Thank you.

13 MR. BULSA: May I have one more, Your Honor?

14 REDIRECT EXAMINATION

15 BY MR. BULSA

16 Q Do you have to lead a target if you're chasing it from
17 behind?

18 A I wouldn't think so, I mean, if you're directly behind
19 it.

20 Q Thank you.

21 RECROSS-EXAMINATION

22 BY MR. IANUARIO

23 Q But you would have to leave a target if you were
24 shooting in the side.

25 A If you're perpendicular, yes.

Betty Butler
Direct examination by Mr. Bulsa

1 Q Okay.

2 THE COURT: You may step down.

3 MR. BULSA: I ask that he be excused.

4 THE COURT: He may be.

5 (Whereupon, the witness was excused.)

6 MR. BULSA: Betty Butler.

7 BETTY BUTLER, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BULSA

10 Q Good afternoon, Ms. Butler.

11 A Good afternoon.

12 Q Please introduce yourself to the jury.

13 A My name is Betty Butler.

14 Q Who are you employed with?

15 A I'm employed with the South Carolina Law Enforcement
16 Division, also known as SLED, as a forensic technician in
17 the D.N.A. department.

18 Q Okay. And as part of your duties do you process items
19 of evidence?

20 A Yes, I do.

21 Q And specifically in this case did you receive a pair
22 of tennis shoes?

23 A Yes, I did.

24 Q Okay. And what were you asked to do with those shoes?

25 A With this pair of tennis shoes I was asked to look for

Betty Butler
Direct examination by Mr. Bulsa

1 possible touch D.N.A., which means if anyone had touched
2 these particular shoes or any body fluids on these
3 particular shoes.

4 Q Okay. Specifically, let me show you this item of
5 evidence, State's 56. Would you look at those?

6 A Do you want me to open it up?

7 Q If you need to. Can you tell from the packaging?

8 A Oh, I can tell from the packages. We always have to
9 put the item number, which is SLED items No. 8, my
10 initials, B.W.B., the lab number L126652, and the date that
11 I process, which is 8/8/12.

12 Q Okay. All right.

13 MR. BULSA: Your Honor, I'm not sure I actually
14 introduced those. I would offer that into evidence.

15 MR. IANUARIO: No objection, Your Honor.

16 THE COURT: They're admitted if they're not already.

17 (Exhibit previously marked.)

18 Q Now, you actually took them out of the package of
19 course to look at them. Where did you swab those?

20 A I swabbed the front portion of the left and the right
21 shoe.

22 Q Okay. And what would you have done with those swabs?

23 A Once I swabbed these particular shoe -- shoes --
24 normally, we use a clean swab. Once the -- and the swab is
25 wet. And we dry it, have to put it into like a gold coin

Betty Butler
Direct examination by Mr. Bulsa

1 envelope and let it dry. Once it dries we seal it up. We
2 put our initials and date on it and put it in the
3 heat-sealed pouch and send it to further testing.

4 Q While you were performing this processing did you have
5 access to anything that would could come from Anthony
6 Young?

7 A No. This was the only thing that I had, the item
8 eight, the pair of shoes.

9 Q So would there have been any way for those shoes to be
10 contaminated within your lab?

11 A No, because every -- every case that we have, we have
12 to spray our tables. Everything that we use, we have to
13 clean it in between every case.

14 Q Okay. And so you sealed the samples or the swabs that
15 you took from these shoes.

16 A That's correct.

17 Q And that was so the D.N.A. analyst could compare those
18 to other standards?

19 A That's correct.

20 Q Thank you, ma'am. That's all I have. Answer any
21 questions Mr. Ianuario may have.

22 MR. IANUARIO: I have no questions.

23 THE COURT: You may step down.

24 MR. BULSA: Paul Meeh.

25 Your Honor, we ask that she be excused.

Paul Meeh
Direct examination by Mr. Bulsa

1 THE COURT: She may be.

2 (Whereupon, the witness was excused.)

3 PAUL MEEH, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Mr. Meeh, would you introduce yourself to the jury?

7 A My name is Paul Meeh. I work at SLED in the D.N.A.
8 department.

9 Q And how long have you been with SLED?

10 A Five years.

11 Q What are your duties in the D.N.A. department?

12 A I'm asked to identify body fluids and to see who they
13 belong to.

14 Q Are you an expert in any specific area?

15 A I would say in forensic D.N.A.

16 Q What kind of schooling or training have you had in the
17 area?

18 A I got my undergrad in biology from the University of
19 South Carolina in 2001; got my Master's in biomedical
20 science in 2003 from the medical school.

21 I was working on my Ph.D. until 2007, and I was hired
22 away. I did not finish my Ph.D., but I had about four
23 years in with that.

24 Then I had a year and a half of training at SLED in
25 the D.N.A. department under another forensic scientist, so.

Paul Meeh
Direct examination by Mr. Bulsa

1 Q Have you testified in court as an expert?

2 A Yes, sir, I have.

3 MR. BULSA: Your Honor, I would offer Paul Meeh as an
4 expert in the field of forensic D.N.A.

5 MR. IANUARIO: No objection, Your Honor.

6 THE COURT: He is so qualified.

7 BY MR. BULSA

8 Q Agent Meeh, what did you do in this case?

9 A I was asked to look for touch D.N.A. or body fluids on
10 some shoes or on some swabs from shoes.

11 Q Okay. Specifically, were those swabs -- how did you
12 receive the swabs?

13 A They were created by Betty Butler and sent up to me.
14 She was in evidence processing. And she created them and
15 sent them to me to try to figure out if there was any
16 D.N.A. from the person on there.

17 Q Were they in a sealed condition when you received
18 them?

19 A Yes. I wouldn't process them if they weren't sealed.

20 Q What were you comparing those to?

21 A I had a standard, a D.N.A. standard, from Anthony
22 Young to compare those to.

23 Q That standard, would that have come through the
24 toxicology department at SLED?

25 A Yes. This one in particular did.

Paul Meeh
Direct examination by Mr. Bulsa

1 Q Okay. And what did your testing determine?

2 A Well, I had two swabs. One was 8.1, which was the
3 left sneaker or swab from the left sneaker. And I had 8.2
4 which was the swab from the right sneaker.

5 The D.N.A. profile developed from item 8.2, which is
6 the right sneaker, is a mixture of at least two
7 individuals.

8 The D.N.A. profile of the major contributor to this
9 mixture matches the D.N.A. profile of Anthony Young. The
10 probability of randomly selecting an unrelated individual
11 having a D.N.A. profile matching the major contributor to
12 this mixture is approximately one in 1.4 quadrillion.

13 The partial D.N.A. profile of the minor contributor to
14 this mixture is suitable for exclusionary purposes only.

15 Q So would you say that Anthony Young's D.N.A. was on
16 those -- was on that sneaker?

17 A In my opinion, yes.

18 Q Okay. And do you -- is there any way you can
19 determine what kind of substance it was?

20 A Well, I tested for blood just to see if there was any
21 blood there, and it wasn't that. So I didn't do any
22 further testing for things. We can test for saliva; we can
23 test for other body fluids. But in this case it just
24 wasn't indicated.

25 And actually the submitting paperwork after I -- after

Paul Meeh
Direct examination by Mr. Bulsa

1 I'd already tested for the blood, it actually asked me to
2 look for touch D.N.A. as well. So I continued on in that
3 after testing for blood.

4 Q But from your analysis and in your expertise we can
5 draw from your testimony that those sneakers -- at least
6 one of those sneakers -- touched Anthony Young or touched
7 something.

8 A It's more -- it's more correct to say that Anthony
9 Young's D.N.A. is present on that sneaker. I can't say
10 when or how it got there.

11 Q Okay. All right. So somehow Anthony Young's D.N.A.
12 got transferred to that sneaker.

13 A Correct.

14 Q You're in no position to say how it happened.

15 A Correct.

16 Q Is it consistent with that sneaker striking him in the
17 head?

18 A It could be. In this example -- touch D.N.A. is
19 different than fluids. Touch D.N.A. comes from your skin,
20 and it requires a good bit of your skin cells or some other
21 body fluid to make this much D.N.A. There was a good bit
22 present here.

23 So I don't know what exactly that means in terms of
24 how it was transferred. You know, I wasn't there. But it
25 means that some -- at some point Anthony Young, a

Paul Meeh
Cross-examination by Mr. Ianuario

1 substantial portion of Anthony Young, came in contact with
2 those shoes.

3 Q Thank you. Answer any questions Mr. Ianuario may
4 have.

5 MR. IANUARIO: Thank you.

6 CROSS-EXAMINATION

7 BY MR. IANUARIO

8 Q You say that was different than a fluid analysis.

9 A Correct.

10 Q What other possible ways could somebody get touch
11 D.N.A. on them? I know you've seen it in your experience.

12 A Sure. well, the obvious one is that if you and I were
13 handling something like that piece of paper. That's the
14 obvious one. Skin cells directly coming off of there.

15 There could be just shed cells. A very common one is
16 if we get clothing. If we swab your clothing for
17 ownership, which we'll do the collar here, you've been
18 shedding your own D.N.A.

19 It's almost never just you either in there. It's --
20 you know, if your clothes are washed alongside your kids or
21 your spouse or whatever, you end up transferring cells that
22 way too.

23 So there are many ways to transfer cells. It could be
24 urine; it could be spit. In this case those weren't tested
25 for, for example.

Richie Foster
Direct examination by Mr. Bulsa

1 Q Okay. There's no blood found on them?

2 A That's correct. I tested for blood, and none was
3 found.

4 MR. IANUARIO: Nothing further.

5 MR. BULSA: Nothing further, Your Honor.

6 THE COURT: You may step down.

7 MR. BULSA: We would ask that he be excused.

8 THE COURT: He may be.

9 (Whereupon, the witness was excused.)

10 MR. BULSA: The state calls Richie Foster.

11 RICHIE FOSTER, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BULSA

14 Q Please introduce yourself to the jury.

15 A My name is Richie Foster, and I work for the
16 Spartanburg County Sheriff's Office.

17 Q In what capacity?

18 A Violent crimes investigator.

19 Q How long have you been an officer?

20 A Twenty-five years.

21 Q How long have you been with violent crimes?

22 A Seven years.

23 Q Are you the lead investigator in this homicide?

24 A I am.

25 Q Did you have occasion to come into contact or speak

Richie Foster
Direct examination by Mr. Bulsa

1 with the defendant?

2 A I did.

3 Q where did you first meet up with him?

4 A I met with him at our office, which we'd call the
5 criminal investigation division, C.I.D.

6 Q Prior to meeting with him had you been to the scene of
7 the crime?

8 A I'm sorry. I -- I drove. I think I drove Mr. Baker
9 to the office from -- from the townhomes. And, yes, I did
10 go to the scene of the crime also.

11 Q Had you been to the waffle House before you went to
12 the townhome?

13 A I did.

14 Q Okay. So did you have a good, fair understanding of
15 what had taken place?

16 A Yes, sir.

17 Q So you actually picked him up from the townhomes and
18 took him downtown?

19 A Yes, sir.

20 Q Okay. For what purpose?

21 A To interview him to get his side of the story.

22 Q Okay. Did -- had he already been Mirandized, so to
23 speak, read his --

24 A It was my understanding that Investigator Williams did
25 that, yes, sir.

Richie Foster
Direct examination by Mr. Bulsa

- 1 Q Okay. And we actually heard an officer here testify
2 today that he also did that as well. Do you recall?
- 3 A Mr. -- Deputy Garcia, I believe, yes, sir.
- 4 Q Now, were you able to speak with Mr. Baker?
- 5 A I was.
- 6 Q What was his demeanor while you were speaking to him?
- 7 A He was a little apprehensive, just been involved in a
8 shooting, didn't quite know what we were there for. And I
9 was there just to find out his side of the story.
- 10 Q Okay. And take the jury through the process of this
11 interview.
- 12 A We go and talk with folks. We don't do like on T.V.
13 and browbeat them or anything. We just sit down with them
14 and try to tell the story and have a conversation back and
15 forth as to what happened.
- 16 Q Who all was involved in that interview process?
- 17 A Just he and I.
- 18 Q And what was -- what were the conditions of the room
19 and --
- 20 A I don't remember exactly which particular room we had,
21 but we have five interview rooms. Most of them are
22 probably four by six. Two, three, maybe four, people could
23 fit in there, and sitting down talking to each other.
- 24 Q Okay. Did he ever ask to invoke any of his rights?
- 25 A No, sir, he did not.

Richie Foster
Direct examination by Mr. Bulsa

1 Q Did you in any way attempt to coerce him?

2 A No, we did not.

3 Q Okay. Did you just give him a piece of paper and say
4 write down what happened or --

5 A First, I asked him to talk to me and tell me what
6 happened. And he related his story to me. And then I
7 asked him if he would write this down so we could get it on
8 paper.

9 And we have what we call a voluntary statement form.
10 It's pretty much just a standardized paper with a lot of
11 lines on it. And you fill out your personal information as
12 you're -- at the top of it. And then you sign it at the
13 bottom.

14 Q Okay. So he actually wrote his statement out on a
15 whim.

16 A Yes, sir.

17 Q I show you what's been marked State's Exhibit No. 1
18 for Identification. Do you recognize that?

19 A Yes, sir, I do. This would be the first of two
20 written statements that he gave me.

21 Q Okay. And does it have his signature on it?

22 A It does.

23 Q Okay. What did you do with it once you obtained it?

24 A I'm sorry?

25 Q What did you do with that statement once you got it?

Richie Foster
Direct examination by Mr. Bulsa

1 A Put it in the file.

2 Q Did you cease the investigation at that point?

3 A No, sir, we did not. We actually -- I gathered some
4 more information from the other witnesses that were there.

5 We had -- I think we had at least four or five other
6 witnesses there at the office in the other rooms talking
7 and getting their side of the story, as well as other
8 investigators out in the field, and talking with them.

9 And when we'd get through talking with one we'd come
10 out and explain what happened in that room so we can gather
11 all of the same information together and find out what's
12 going on.

13 Q Okay. So that led you to go back and talk to him some
14 more?

15 A Yes, it did. There was some evidence we found that --
16 that he didn't cover in his first rendition of his story to
17 me nor in his written statement to me.

18 Q Okay.

19 MR. BULSA: Your Honor, I would offer State's Exhibit
20 No. 1 into evidence.

21 MR. IANUARIO: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (First Statement marked State's Exhibit No. 1.)

24 Q Please publish that to the jury by reading it.

25 A "On 6/3/12 at 5:00 in the morning I was on my way

Richie Foster
Direct examination by Mr. Bulsa

1 home. I wanted something to eat. I went to the Waffle
2 House off of Greenville Highway. When I pulled up I see a
3 blue Caprice. That same" -- and I can't -- "same"
4 something "at my apartment building before that I had --
5 that I had beef with before. It was ten to 12 boys in the
6 parking lot. So when I parked I reached for my gun and put
7 it in my waist. Then I got outta the car. I started to
8 walk to the door of Waffle House. That boys didn't say
9 nothing at first. So I went on in and ordered my food.
10 These two boys kept peaking -- peaking in looking. So as I
11 was paying for my food one of them come in and said that
12 his cousin had a problem with me. I told him to let it go.
13 He told -- he told me to say it to his homeboy. So I
14 walked outside of the front door and told the dude to let
15 it go. He was walking back and forward. His friend was
16 telling him to fight me. Then this dude said if I don't
17 fight that they was going to take everything I had. I said
18 one more time to let it go. He was not listening to me.
19 So as I turn around to go back into the Waffle House two of
20 them hit me in the back of my head. I -- I turned back
21 around and pulled my gun out and fired three to eight
22 shots. Everyone ran but except one in the blue shirt. He
23 fell. Then I ran. I ran back in the Waffle House to ask
24 have they called the police. They were scared because I
25 still had my gun in my hand. So I left out to leave. I

Richie Foster
Direct examination by Mr. Bulsa

1 jumped in my car and went home so I can call the police and
2 tell them what happened." And that was the end of the
3 statement.

4 Q Did your investigation reveal a 9-1-1 call from
5 Mr. Baker?

6 A No, it did not.

7 Q After you got some other information you interviewed
8 him some more and then he gave a second written statement?

9 A Yes, sir.

10 Q Specifically, those questions you asked him -- let me
11 do it this way. I show you State's Exhibit No. 2 for
12 Identification. Would this be the second statement?

13 A Yes, sir.

14 Q Written by him again?

15 A Yes, sir.

16 Q And how much time had passed since the first statement
17 and the second statement?

18 A The first statement he finished at 9:10 in the
19 morning, and the second statement was at 10:09 in the
20 morning.

21 MR. BULSA: Your Honor, I would offer State's 2 into
22 evidence.

23 MR. IANUARIO: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (Second statement marked State's Exhibit No. 2.)

Richie Foster
Direct examination by Mr. Bulsa

- 1 Q Please publish that.
- 2 A "On 6/3/12 at 5:00 a.m. I was on my way home. I
3 wanted something to eat. I went to the Waffle House off
4 Greenville Highway. When I pulled up I seen this blue
5 Caprice that I had a problem with two months ago. And it
6 was like ten to 12 boys in the parking lot. So I back up
7 in a parking space like two cars down from that Caprice.
8 So I grab my gun and put it on my waist. Then I got out of
9 my car. I started to walk toward Waffle House front door.
10 And I -- and I can hear boys say it looked like him. I
11 kept on walking. I went in Waffle House. I placed my
12 order. Two-boy kept peaking in saying that is him. So as
13 I was paying for my food one of them in a white shirt came
14 in and told me he heard that I had a problem with his
15 homeboy. I told him to let it go. He said for me to tell
16 his homeboy. So I went outside. For dude approached me
17 was just saying that me and their homeboy is in -- in that
18 blue shirt was going to fight. I told them to let it go.
19 A tall dude in a black shirt was telling him that it was
20 going down, that he had his right hand on his waist band.
21 Hold something on his waist like he had a gun. And a short
22 dude with dreads had a white t-shirt, was saying that they
23 had guns and if I didn't fight them, their homeboy, that
24 they was going to take everything I had. I told the dude
25 in the blue shirt to let it go. As I was walking back and

Richie Foster
Direct examination by Mr. Bulsa

1 forward -- as he was walking back and forward I was scared
2 that they was going to gang me. Some girls in a -- some
3 kind of car was yelling one of them to leave me alone.
4 Then the tall dude in black was saying it's going down and
5 I got -- it was going down and get something up." I can't
6 make that out. "And he was going to leave me stumped. I
7 told the dude in white to let it go. And then I turned my
8 back and they -- and tried to walk in waffle House. Two of
9 them hit me from behind in the back of my head. So I duck
10 and turn around and pull my gun out and start firing it
11 into the crowd. Everybody starts running. So I started to
12 run to my car. I fired another shot because the dude in
13 the blue was running toward his car like he was going to
14 get something. So I ran on the passenger side of my car to
15 around back of it. I turned around to see if anyone was
16 behind me. I -- I tripped over the side way and my gun
17 went off again. I ducked behind my car to see if the
18 coast was -- if the way was clear so I can run back in the
19 waffle House, and it was. So I ran in, and then they
20 called the police. They were scared because I still had my
21 gun in my hand. So I ran out back to my car, and I left
22 the scene. End of statement."

23 Q So the second time he didn't say anything about
24 leaving to go call 9-1-1?

25 A No, he did not.

Richie Foster
Direct examination by Mr. Bulsa

1 Q And the first statement he commented he shot between
2 three and five times. He didn't reference any number in
3 the second statement, did he?

4 A No, sir, he did not.

5 Q In the second statement he says he shot into the
6 crowd, is that right?

7 A I just read both of them. Give me one second.

8 (Pause.)

9 A Second statement, "He just pulled his gun out and
10 starts firing into the crowd," yes, sir.

11 Q Okay. Just trying to paint the picture that there
12 were a lot of people surrounding him, is that right?

13 A Apparently he said ten to 12 in both of them.

14 Q Okay. And says he fired into a crowd. Did your
15 investigation reveal anybody else had any wounds to them?

16 A No, it did not.

17 Q And each statement he indicates -- he does not mention
18 who the person is that struck him, does he?

19 A No. It doesn't. I think maybe one -- no. He doesn't
20 say. I believe in his rendition of his story when he was
21 telling me he described him as a guy with a white t-shirt
22 maybe. If I had my notes I could be more specific. Some
23 reason that's reminding me of something.

24 (Pause.)

25 A I am sorry. It wasn't him that told me that. It was

Richie Foster
Direct examination by Mr. Bulsa

1 someone else that it was a white shirt.

2 Q Didn't you ask him some specific questions in between
3 these statements?

4 A As far as I can tell when I asked him he did not see
5 who did it.

6 Q Didn't you ask him the specific question as to who hit
7 you?

8 A Bear with me just a minute.

9 (Pause.)

10 A I think I'm reading that both times I asked he could
11 not describe who hit him. And I'm just trying to read this
12 quickly.

13 Q Second to last page of your report, Detective. "Then
14 go back upstairs to sit down with Antwon again," that
15 paragraph.

16 A I asked him if he knew who hit him. He said the short
17 dude with dreads that had the white shirt on.

18 Q So he did indicate he knew who hit him.

19 A Yes, sir.

20 Q Yet in his statements he didn't put that.

21 A No, he did not.

22 Q And he didn't shoot the guy with the dreads and the
23 white shirt, did he?

24 A No, he did not.

25 Q In fact, in the second statement he referenced a

Richie Foster
Cross-examination by Mr. Ianuario

1 couple of people maybe reaching for weapons, right?

2 A Correct.

3 Q Were either one of those persons shot that night?

4 A No, they were not.

5 Q It doesn't describe the victim doing anything. Did
6 he?

7 A No, sir.

8 Q Please answer any questions Mr. Ianuario has.

9 CROSS-EXAMINATION

10 BY MR. IANUARIO

11 Q Thank you, Detective.

12 Between Antwon's first statement and second statement
13 is there any information that's changed to be

14 contradictory, any clear changes of facts that don't sync?

15 A The -- the reason I asked him about the extra evidence
16 we found, I believe it was the evidence that we found some
17 shell casings in the parking lot behind his car. And I
18 wanted to try to find out how he -- how he got shell
19 casings up to the back of the parking lot.

20 Q Okay. How -- and how did he say those shell casings
21 got in the back parking lot?

22 A He -- he says that he ran behind his car and tripped
23 over the -- the curbing there and the shot went off there.
24 But that only accounted for one of the shell casings.

25 Q Did anyone else -- did you get a description of the

Richie Foster
Cross-examination by Mr. Ianuario

1 vehicle that Mr. Baker left in?

2 A Yes, sir, I did.

3 Q And who gave you that description?

4 A It was being broadcast over the radio as I was
5 responding up there, and also every officer I talked to
6 when I got there was explaining to me that he left in a
7 white Crown Vic or Grand Marquis type vehicle.

8 Q Did you take a statement from Mr. Glover?

9 A I'm sorry? From who?

10 Q From Brandon Glover.

11 A I tried to. I think I did actually get one. There
12 wasn't -- I'm not sure. His -- mine and his communication
13 skills together weren't too good, and I did not get a good
14 statement from him at all.

15 Q How did he appear to you? what mental capacity was
16 he?

17 A He appeared to be on something. I don't know if it
18 was alcohol or drugs.

19 Q Okay. Did he indicate to you how many shots that he
20 thought he had heard?

21 MR. BULSA: Objection, Your Honor. That calls for
22 hearsay.

23 MR. IANUARIO: I'm looking to the investigation, not
24 the truth of the matter asserted.

25 THE COURT: Sustained.

Richie Foster
Cross-examination by Mr. Ianuario

1 BY MR. IANUARIO

2 Q Did you have -- did a Waffle House employee call 9-1-1
3 that night?

4 A If I remember right reading over the 9-1-1 log, I
5 believe a call came from inside the Waffle House, yes, sir.

6 Q And did he call 9-1-1 in regards to the shooting, or
7 did he call before the shooting?

8 A I believe a call came out if I understand correctly,
9 that a man with a gun at Waffle House, and then while they
10 were en route they upgraded it to actual shooting at the
11 Waffle House.

12 Q And were you able to obtain a description of the man
13 with the gun?

14 MR. BULSA: Your Honor, ask for a more clear question.
15 That's asking for hearsay.

16 Q Who did you determine that particular individual to
17 be, the man with the gun that led up to the 9-1-1 call?

18 A Mr. Baker.

19 Q And no -- correct me if I'm wrong. Wasn't there a
20 Waffle House employee that indicated somebody other than
21 Mr. Baker had the firearm?

22 MR. BULSA: Objection, Your Honor.

23 THE COURT: Sustained.

24 Q Did you get -- did you search the vehicles that were
25 in the parking lot?

Richie Foster
Cross-examination by Mr. Ianuario

1 A I did not personally, but I think the victim's vehicle
2 was searched. And I'm not sure what else the forensic's
3 officer -- I believe that is all that was searched in the
4 parking lot.

5 Q Do you know if anything was found in that vehicle?

6 A Not to my knowledge.

7 Q Were you able to identify the person Antwon was
8 describing as tall dude in his statement?

9 A I think if you could point me to the right page that
10 you're looking at it'll speed me up.

11 Q Not a problem. Give me a second here too.

12 A Yes, sir. "The tall dude with the bandanna kept his
13 hands in his waist area at the right front pocket like he
14 had a gun." And that is Mr. Baker telling me this, and
15 Jakeem Middleton is who he was describing.

16 Q And did you have any other independent indications
17 that Jakeem Middleton had a firearm?

18 MR. BULSA: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q Did you speak with Jakeem Middleton?

21 A I'm sorry?

22 Q Did you speak with Jakeem Middleton in your
23 investigation?

24 A I did.

25 Q And were you able to determine whether or not he had a

Richie Foster
Cross-examination by Mr. Ianuario

1 firearm?

2 THE COURT: That would be hearsay, Mr. Ianuario.

3 MR. IANUARIO: I was going into the results of his
4 investigation as to determine --

5 THE COURT: Let me see y'all just a minute.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 BY MR. IANUARIO

9 Q Did you investigate Jakeem Middleton?

10 A Investigating? what are you asking?

11 Q Running background on him.

12 A No, sir, I did not.

13 Q Did you take any G.S.R. samples from Mr. Middleton?
14 Were any collected?

15 A No, sir, we did not.

16 Q And why not?

17 A There was no indication that he fired a weapon.

18 Q What do you think Antwon meant when he said they would
19 take everything that he had?

20 MR. BULSA: Objection, Your Honor. That calls for
21 speculation.

22 THE COURT: Sustained.

23 Q Did you ask Antwon -- no. Did you look in the ground
24 behind Mr. Baker's vehicle to see if you could find a
25 projectile?

Richie Foster
Cross-examination by Mr. Ianuario

1 A I did not personally, but the forensic team went
2 through both parking lots. I think the adjacent buildings.
3 They did not find anything other than the eight items they
4 marked already.

5 Q Did they dig into the grass at all in the ground?

6 A I wasn't -- I don't know that they did that.

7 Q Were G.S.R. samples collected from Mr. Young?

8 A Yes, sir, there were.

9 Q And did you receive the results of those samples?

10 A Yes, sir, I believe so.

11 MR. BULSA: Objection, Your Honor. That's hearsay as
12 well.

13 THE COURT: Sustained.

14 MR. IANUARIO: May I approach?

15 THE COURT: Is that something that I just sustained?

16 MR. IANUARIO: It's a document addressed to him with
17 regards to the G.S.R. results.

18 THE COURT: Was it prepared by him?

19 MR. IANUARIO: No, sir.

20 THE COURT: Then it's hearsay. You can get those
21 witnesses here if you want them to testify.

22 MR. IANUARIO: Okay.

23 BY MR. IANUARIO

24 Q One last question, sir. How did you determine to
25 charge Antwon with murder?

Richie Foster
Redirect examination by Mr. Bulsa

1 A We consulted with the solicitor's office.

2 Q Okay. Which solicitors in particular?

3 MR. BULSA: Objection, Your Honor. That's irrelevant.

4 THE COURT: Sustained.

5 MR. IANUARIO: Nothing further.

6 REDIRECT EXAMINATION

7 BY MR. BULSA

8 Q Officer, did he tell you, Mr. Baker tell you, where he
9 had parked his vehicle?

10 A He parked it -- I believe he stated two -- two spaces
11 down. I don't remember if he said from the car or just two
12 spaces down.

13 Q Actually said he backed it in.

14 A Backed it in, yes, sir.

15 Q Would it have been backed in near the bushes at the
16 scene?

17 A That's correct.

18 Q The bushes are what separated the two parking lots?

19 A And a little grass median. I think it's actually
20 elevated also.

21 Q You testified you asked him a follow-up question when
22 those two shell casings were found in the Master's parking
23 lot, how they got there. And his explanation was he
24 tripped over something?

25 A Tripped over the curbing.

Richie Foster
Redirect examination by Mr. Bulsa

- 1 Q One of the other follow-up questions to him -- I
2 believe it's on the last page of your report. You asked
3 him how many times he shot.
- 4 In his first statement he actually noted it was three
5 to eight times, but you asked him a follow-up question.
6 And what was his answer that time?
- 7 A He thinks he shot four or five times.
- 8 Q Okay. Did you determine if he had a cell phone?
- 9 A I don't recall that I brought that up.
- 10 Q Okay. Did you question him on his lack of calling
11 9-1-1?
- 12 A I'm sorry?
- 13 Q Did you question him on his lack of calling 9-1-1?
- 14 A I don't believe I did.
- 15 Q Okay. Did he ever comment to you whether he went near
16 the victim's body at any point after he was shot?
- 17 A He said -- he does not indicate. When I asked him if
18 he -- why he hit the guy he did not answer me.
- 19 Q Concerning why who hit the guy?
- 20 A I'm sorry. Wrong -- wrong person.
- 21 Q He didn't, Mr. Baker didn't, comment about actually --
- 22 A No, sir.
- 23 Q -- hitting anybody, did he?
- 24 A No, sir. I'm sorry.
- 25 Q In fact, he didn't comment about ever coming in

Richie Foster
Recross-examination by Mr. Ianuario

1 contact with anybody other than somebody hitting him in the
2 back of the head.

3 A Correct.

4 Q He didn't put himself anywhere near Mr. Young, did he?

5 A No, sir.

6 Q Thank you.

7 MR. BULSA: That's all I have.

8 RECROSS-EXAMINATION

9 BY MR. IANUARIO

10 Q When you were speaking to Mr. Baker at any point in
11 those statements did you ask him how he stored the weapon?

12 A Yes, I did.

13 Q And how did he indicate he stored the weapon?

14 A He says that he keeps the magazine in the magazine
15 well but no round in the chamber, so if he pulls it out to
16 shoot it you have to rack a round into the chamber.

17 MR. IANUARIO: Nothing further.

18 THE COURT: You may step down.

19 We'll take a break.

20 So I'll ask the jury to please go to your jury room.

21 Don't discuss the case. I'll bring you back shortly.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: We will be in recess 15 minutes.

25 (whereupon, a recess was taken.)

Dr. John David Wren
Direct examination by Mr. Bulsa

1 THE COURT: All right. Ready for the jury?

2 MR. BULSA: Yes, sir.

3 THE COURT: Bring them in.

4 Let me see y'all just a minute, please.

5 (Diagram marked State's Exhibit No. 57 for

6 Identification.)

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: All right. You may proceed.

10 MR. BULSA: The state calls Dr. David Wren.

11 DR. JOHN DAVID WREN, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BULSA

14 Q Good afternoon, Dr. Wren. Would you introduce
15 yourself to the jury, please?

16 A My name is John David Wren, W-R-E-N.

17 Q What is your occupation, sir?

18 A I'm a pathologist.

19 Q With the Spartanburg Regional Medical Center?

20 A I work for Carolinas Pathology Group which has a
21 contract for pathology services at Spartanburg Regional and
22 Mary Black and Village Hospital and Wallace Thompson.

23 Q Are you an expert in the area of forensic pathology?

24 A Supposed to be.

25 Q You have been qualified as an expert numerous times,

Dr. John David Wren
Direct examination by Mr. Bulsa

1 have you not?

2 A Yes.

3 MR. BULSA: Your Honor, the state would offer Dr. Wren
4 as an expert.

5 MR. IANUARIO: No objection, Your Honor.

6 THE COURT: He is so qualified.

7 BY MR. BULSA

8 Q Dr. Wren, as part of your duties did you perform an
9 autopsy on a Anthony Terrell Young?

10 A Yes. I performed an autopsy on an individual
11 identified as Anthony Terrell Young on June the 3rd of 2012
12 beginning at approximately 10:35 a.m. in the Spartanburg
13 Regional Medical Center Autopsy Room.

14 Q And the medical records listed him as 23 years of age.

15 A Yes.

16 Q What was his size?

17 A Size?

18 Q Yes, sir.

19 A I measured him as 66 inches in length, which may vary
20 a little bit depending on several circumstances. And he
21 weighed 161 pounds.

22 Q So approximately 5'6" in height.

23 A Yes.

24 Q And in the course of your examination did you examine
25 the head area of him?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A Yes.

2 Q What wounds, if any, did you find or note on his head?

3 A He had a slightly patterned, meaning that it looked
4 like it was inflicted by something obliquely or ended
5 abrasion, with mild bruising extending from the medial left
6 upper eyebrow to the hairline that covered about three by a
7 little over 1 inch in diameter.

8 And those deeper contused and abraded areas were
9 equally spaced but irregular in width. There was a brush
10 type abrasion over the supraorbital area measuring about a
11 little over two by a quarter centimeter, I mean, inch. And
12 there was some abrasions along the left cheek and left
13 periorbital area, as well as the left nose and left lateral
14 space -- left lateral face along the mouth covering an area
15 of about -- I'm doing this by calculations -- a little over
16 three and a half inches in overall dimensions.

17 He had an old scar about the nose, but he didn't have
18 any fractures there. He had remote fractures of the teeth,
19 Nos. 8, 23 and 24 which are numbered according to dental
20 protocol.

21 And he had a deep laceration of his chin that measured
22 a little less than an inch in length and about two-tenths
23 of an inch in width along his chin.

24 Q Did you date any of those wounds?

25 A Pardon?

Dr. John David Wren
Direct examination by Mr. Bulsa

- 1 Q Did you date, the time or day as to when those --
2 A They were perimortem meaning that they occurred around
3 the time of death.
4 Q Even the fractured teeth?
5 A No. Couldn't tell about that.
6 Q So those could have been inflicted --
7 A I said they were remote. So I thought they were --
8 had already been there.
9 Q Okay. And you used a lot of technical terms, but in
10 layman's terms he had wounds to his forehead on each side?
11 A Yes, and along the left cheek and nose and mouth.
12 Q And then the chin.
13 A And then the chin. It's laceration.
14 Q Could those have been consistent with someone striking
15 a blow to his face?
16 A Could have been, or could have been a falling and
17 collapsing.
18 Q Okay. Falling to the pavement.
19 A Yes.
20 Q Okay. Now, specifically, were you looking for gunshot
21 wounds to his body?
22 A Yes. I found several.
23 Q How many?
24 A There were a total of 12 defects consistent with
25 gunshot defects.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q Okay. And to assist the jury in your testimony did
2 you prepare a diagram?

3 A Yes, I did, and a chart.

4 Q Okay. I need to show you what's been marked State's
5 57, specifically the diagram. Is that your diagram, or a
6 copy of it?

7 A Yes. That's a copy of my diagram with my lettering
8 and signature.

9 MR. BULSA: Your Honor, the state would offer 57 into
10 evidence.

11 MR. IANUARIO: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Diagram marked State's Exhibit No. 57.)

14 Q Now, did you recover any projectiles or bullets from
15 the body?

16 A I don't think so. I'll have to check.

17 (Pause.)

18 A No bullets were recovered and x-rays reveal no
19 evidence of bullet-wound fragments in my summary.

20 Q And you described 12 defects as you called them.

21 A Yes.

22 Q Those holes.

23 A Pardon?

24 Q Holes in his body.

25 A Basically holes, yes.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q Okay. So that suggests bullets passed through and
2 through.

3 A Yes.

4 Q Of those 12 how many were entrance wounds?

5 A Five entrance and one reentry. So there was six all
6 together.

7 Q So based on the math he was shot --

8 A Five times.

9 Q -- five times. One exited and reentered and exited
10 again.

11 A Right.

12 Q Okay. Now, as we go specifically through those wounds
13 let me publish State's 57. Do you need to step down,
14 Doctor? It'll be easier.

15 A Probably.

16 (Whereupon, the witness left the stand.)

17 Q If you would, take us through the wounds.

18 A Okay. Basically, when you -- when one describes
19 wounds on the body we do the front first from head to toe
20 if possible, and then the back from head to toe. And
21 that's the way they're numbered, I try to number them.

22 No. 1 is an exit in the left upper chest. And the
23 entrance for that is in the right medial midback. So that
24 wound, that gunshot, was going from the decedent's back
25 right toward his left and exited the body. That was the

Dr. John David Wren
Direct examination by Mr. Bulsa

1 fatal gunshot wound that passed through his heart and
2 caused extensive internal hemorrhage.

3 The next gunshot wound the entra -- the exit is -- I
4 didn't put it on this -- this -- this chart. But over here
5 the exit is in the front entrance in the back of his arm,
6 went through the arm, did not hit any vital structures,
7 didn't hit the bone. It just went through the body and
8 continued on.

9 Can't see those very well. I will have to get my
10 chart.

11 (Pause.)

12 A No. 4 passed into his right side and exited in his
13 right side, just passed through the body, and it was going
14 from his back right to his left also. So that is No. 4.

15 No. 5 went into his left or right hip, passed through
16 the tissues and came out anteriorly just above his -- the
17 bone in front of the pelvis, reentered his left upper thigh
18 and exited his left medial thigh and kept passing, kept
19 going.

20 No. 6 was the entrance in the back.

21 No. 7 was sort of in the left back and passed through
22 the body and exited from the front to back.

23 And then eight, nine and ten were those I've already
24 described.

25 And then the other two are in the right medial leg

Dr. John David Wren
Direct examination by Mr. Bulsa

1 more slightly on the inside. And this one was very
2 difficult to tell whether it was going -- which direction
3 it was going because it looked like it could have been a
4 ricochet type wound. But, anyway, it went through his
5 thigh and did not hit any bone or any tissues and kept
6 going.

7 Now, the clothing, he did have some clothing with him.
8 And the wounds matched the defects I found in the clothing.
9 So he was clothed when this happened.

10 Q Would these wounds be consistent with him running away
11 from somebody shooting at him?

12 A If he was ducking, yes; the ones in the back, these
13 two here. And then he had to have turned in some manner.
14 Either the ones in the right side were first and then he
15 turned and ran, or they could have been inflicted after
16 these. There's no way to tell for sure.

17 Then this one, definitely he was -- I think in my
18 opinion he was on the ground when this happened, because
19 his heart -- he had his leg way up like this trying to ward
20 something off and someone shot him.

21 (Demonstration by the witness.)

22 A Wrong leg. Shot him through like that.

23 Q Thank you, Doctor.

24 It's an obvious question, but what is the cause of
25 death?

Dr. John David Wren
Cross-examination by Mr. Ianuario

1 (Whereupon, the witness returned to the stand.)

2 A The immediate cause of death was a gunshot wound to
3 the -- to the back.

4 The other wounds were potentially fatal. And we say
5 they're potentially fatal because we don't know what would
6 happen after that. They could become infected, and he
7 could have died as a result of that.

8 So there's an immediately fatal gunshot wound to the
9 back. It went through the chest and through the heart and
10 out the front of the chest.

11 The others were only potentially fatal at the time.

12 Q Have you been able to --

13 A Pardon?

14 Q Would he -- could he have run away while he was being
15 shot like this?

16 A Yes. You can run as far as your brain will allow you
17 to stay conscious.

18 Q It's not like Hollywood, you get shot and you drop.

19 A Not necessarily.

20 Q Thank you, Dr. Wren. That's all I have. Answer any
21 questions Mr. Ianuario may have.

22 CROSS-EXAMINATION

23 BY MR. IANUARIO

24 Q Thank you, Dr. Wren.

25 would you describe the difference between entry and

Dr. John David Wren
Cross-examination by Mr. Ianuario

1 exit wounds?

2 A Well, basically entrance wounds are of course when the
3 bullet goes in the body. And an entrance wound and that --
4 in forensic terms are divided into contact, close range or
5 intermediate range, and distant.

6 Now, distant gunshot wounds means that there's no
7 evidence that we can see as to how far away it was. It
8 will become more apparent as I talk further, but there's no
9 evidence of soot that comes out of the barrel or burning
10 powder that comes out of the barrel that one can see on the
11 body or on the clothing.

12 A contact gunshot wound is -- is either a tight
13 contact or loose contact. Tight contact means that the --
14 the -- of course it was pushed strongly against the tissue
15 that it went in. In that case -- well, let me regress for
16 just a little bit.

17 A distant gunshot wound the bullet is spinning as it
18 passes into the body usually unless it's been deflected.
19 And it's spinning, and it just bores a hole in the body.

20 Now, if it goes straight in there's no abrasion border
21 around it. There's no evidence except the hole there.

22 If it's going in obliquely to the place that it's --
23 that it goes into it leaves a little abrasion border that
24 one can see as one examines that wound. And it can tell
25 which direction the leading part of the bullet hit the skin

Dr. John David Wren
Cross-examination by Mr. Ianuario

1 first.

2 As a bullet leaves the body it does not bore itself
3 out. It tears itself out. So when that happens, is the
4 skin tenses up. It stretches up, and it just tears out.
5 And once you see that wound you can put it back together
6 and there's no defect there. On the other hand, if it's an
7 entrance you can't put that wound back together. So that's
8 what one looks for.

9 Now, if it's tight contact, as I was saying, when the
10 bullet passes into the body it does leave a hole. But the
11 powder and the expanding gasses that come out of the barrel
12 have to go somewhere, and they blow back around the barrel.

13 And that tears the skin into we call a stellate wound
14 where the wound is jagged and irregular and can tear up to
15 2 inches around it.

16 If it's loose contact basically the same thing
17 happens, but you can see in both cases, you can see
18 charring around the edge of the wound.

19 Now, if it's intermediate what happens is basically
20 it's like that of a distant gunshot wound except as the
21 powder and the burning -- as the powder, burning powder,
22 and soot come out of the barrel if there's -- if there's
23 something in the way it spreads radially and makes an
24 enlarging circle.

25 So one can take the ammunition that the person was

Dr. John David Wren
Cross-examination by Mr. Ianuario

1 using and the gun -- and the gun -- and one can fire that
2 ballistically. And SLED does this where they test it. And
3 they can tell from what we measure on the body how far the
4 burning powder and the soot have -- have expanded. And
5 they can compare that with their results and tell
6 approximately how far away it was. So those are
7 intermediate gunshot wounds or close range.

8 Any questions?

9 Q When you're looking at full metal jacket projectiles
10 is the exit wound the same as entry, or are there
11 differences still?

12 A There's still -- there are still differences, yeah.
13 Any time a bullet comes out of the body it does not usually
14 bore its way out. It tears its way out.

15 And then on top of that the bullet when it sometimes
16 enters the body it'll start tumbling or it'll hit something
17 and deform itself. And then it will come out and it won't
18 be a round hole or an oval hole. It'll be irregular.

19 Q And on that shot that exited and reentered, what would
20 a reentry look like?

21 A Reentry will sort of look like an exit in that the
22 bullet can go in sideways. It can go in distorted. So it
23 doesn't -- it's not spinning like an undistorted bullet
24 would.

25 Q Is there a noticeable difference in the exit wound

Dr. John David Wren
Cross-examination by Mr. Ianuario

1 when you're looking at full metal jacket projectile versus
2 a hollow point?

3 A Yes. A hollow point will expand inside the tissues.
4 And when it comes out it makes a bigger hole if it comes
5 out. Usually it doesn't come out.

6 Q Were there any wounds that you had trouble
7 rationalizing, something just didn't seem standard?

8 A Well, only the one in the leg. I said I couldn't tell
9 for sure. But there was no way it could have gone --
10 hardly any way it could have gone in up in the thigh and
11 come out where it did. So that's why I rationalized it was
12 probably in lower and out up more toward his -- his crotch.

13 MR. IANUARIO: Nothing further.

14 MR. BULSA: Nothing further, Your Honor.

15 THE COURT: You may step down. Thank you.

16 MR. BULSA: Your Honor, the state would rest.

17 THE COURT: Let me see y'all just a minute.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Ladies and gentlemen, that is all of the
21 testimony and evidence to be offered by the state, at least
22 in their case in chief.

23 Before we go further I've got some legal matters I
24 need to address with the lawyers, and that should take a
25 few minutes. It'll probably take us to the end of the day.

1 So we'll recess now. We'll resume in the morning
2 beginning at 9:30.

3 So keep in mind my caution previously given. No
4 discussions, no research, no investigation, no exposure to
5 any type of media coverage.

6 Have a good afternoon. Please report to your jury
7 room at 9:30 in the morning.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: All right. Any motions or other matters
11 to address?

12 MR. IANUARIO: Your Honor, I'd like to move for a
13 directed verdict and dismissal in that the state has not
14 disproven self-defense beyond a reasonable doubt. And I
15 believe it has been successfully alleged during the state's
16 case.

17 THE COURT: Mr. Bulsa.

18 MR. BULSA: Your Honor, it's clear the victim was shot
19 multiple times running away. That's not self-defense.

20 MR. IANUARIO: Your Honor, there's no ruling that says
21 one gunshot versus five gunshots is self-defense. It's the
22 total of the circumstances.

23 THE COURT: Well, considering the evidence in the
24 light most favorable to the state as I must do on a motion
25 for a directed verdict I do find that the evidence

1 presented does present a reasonable jury question as to
2 whether or not the defendant acted in self-defense. And I
3 think they could reasonably find that he did not or they
4 could find that he did.

5 So based upon it being a jury question I find there is
6 sufficient evidence to submit it to the jury. So your
7 motion for a directed verdict is denied.

8 MR. IANUARIO: Thank you, Your Honor.

9 THE COURT: Any others?

10 MR. IANUARIO: No, Your Honor.

11 THE COURT: Now, Mr. Ianuario, do you have all of the
12 witnesses or any witnesses that you want to have here that
13 are on the state's list? Do we need to make any
14 arrangements to be certain that they're available?

15 MR. IANUARIO: Brandon Glover and Delton Sease are
16 with the -- in the Spartanburg County Detention Center. I
17 just need to have them transported.

18 THE COURT: Glover and Sease are in the detention
19 facility?

20 MR. IANUARIO: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. IANUARIO: I believe that the police officers are
23 on standby. I don't know if I'll need them, but I don't
24 think there'll be an issue with -- I'm happy with them
25 being on standby. We can wait a few minutes if we have to.

Brandon Glover
Direct examination by Mr. Ianuario

1 BRANDON GLOVER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. IANUARIO

4 Q Would you please state your name for the record, sir?
5 would you please state your name for the record?

6 A Brandon Glover.

7 THE COURT: You need to get closer to that black
8 microphone, please, sir, and use it.

9 A Brandon Glover.

10 Q And are you familiar with the events that took place
11 on the night of June 3rd of 2012?

12 A Yes, sir.

13 Q And on that evening did you encounter Mr. Antwon
14 Baker?

15 A Yes, sir.

16 THE COURT: Could you speak up? Let me ask you to get
17 closer to that microphone. You can adjust it if you need
18 to. There you go. Speak up loudly so we can hear you.

19 BY MR. IANUARIO

20 A All right.

21 Q Would you give us a little background of the night,
22 how you ended up at the Waffle House and everything leading
23 up to Mr. Glover?

24 A It was me -- me, a friend of mine, and another friend.
25 We was just sitting, and at my cousin's house.

Brandon Glover
Direct examination by Mr. Ianuario

1 Q which friends are these?

2 A Darrian -- Darrian Tolliver and a friend named Justin.

3 Q Okay. Go ahead.

4 A We was playing video games, and then we decided we'd
5 chill some, go get something to eat.

6 Q All right. About what time did you get to the Waffle
7 House?

8 A Don't really remember the time.

9 Q Okay. At any point in that evening had you been
10 drinking any?

11 A A little bit.

12 Q Any drugs?

13 A Nah. Just a couple of drinks.

14 Q Okay. So when you arrived -- do you know Anthony
15 Young?

16 A Yes, sir.

17 Q Would you tell me a little bit about your relationship
18 with him?

19 A He's my cousin.

20 Q And did you meet him at the Waffle House?

21 A No, sir. He actually pulled up right when we was
22 pulling off to go up to the Waffle House.

23 Q Okay. Did y'all ride there together, or did he follow
24 behind him?

25 A We rode there together.

Brandon Glover
Direct examination by Mr. Ianuario

- 1 Q And what kind of car did you ride in?
2 A A blue Chevrolet Caprice.
3 Q Okay. Where were you at the Waffle House the first
4 time you saw Mr. Baker?
5 A Where was I?
6 Q Were you in the parking lot, inside eating?
7 A Leaving outta the Waffle House.
8 Q Okay. What happened after Mr. Baker arrived?
9 A He went in the Waffle House, and I was told that was
10 Mr. Baker.
11 Q Okay. Who told you this?
12 A Anthony.
13 Q What else did Anthony tell you about Mr. Baker that
14 night?
15 A He was the guy that pulled out a firearm on 'm and hit
16 'm a couple of weeks earlier.
17 Q Do you if Anthony called the police in that event?
18 A No. I'm not sure.
19 Q Did you approach Mr. Baker that evening and speak with
20 him?
21 A Uh-huh.
22 Q Was this inside the Waffle House or in the parking
23 lot?
24 A Right on -- right in the entrance of the Waffle House.
25 Q Okay. But did you go in and speak with him at any

Brandon Glover
Direct examination by Mr. Ianuario

1 point inside the Waffle House?

2 A No, sir, not to my knowledge. I think the whole
3 conversation we had was on the outside of the Waffle
4 House --

5 Q Okay. Bear with me just a moment.

6 A -- to my memory.

7 Q Okay. Can you see this, Mr. Baker -- I mean
8 Mr. Glover?

9 A Yes, sir.

10 THE COURT: Mr. Glover, they're going to be asking you
11 to look at that film. I understand you have to look up at
12 it, but any time you respond to a question you've got to
13 turn back and speak into that microphone.

14 THE WITNESS: All right.

15 (Whereupon, the video was played.)

16 BY MR. IANUARIO

17 Q Does that appear to be you, Mr. Glover?

18 A Yes, sir. Looks like me.

19 Q What were y'all talking about at this point in time?

20 A I do not remember.

21 Q All right. But you walked up to him, and then y'all
22 stepped outside?

23 A Yes, sir. That's all I remember being outside.

24 Q All right. I'm going to skip over the next couple of
25 minutes. After the shooting occurred what did you do?

Brandon Glover
Direct examination by Mr. Ianuario

- 1 A When it was all done?
- 2 Q Uh-huh.
- 3 A Finished with?
- 4 Q Yes, sir.
- 5 A I stayed there for the police to arrive.
- 6 Q Okay. And did you see Mr. Baker leave?
- 7 A No, sir.
- 8 Q And so you couldn't identify his vehicle.
- 9 A Yes. I seen what kind of car he pulled up in.
- 10 Q Okay. But you didn't see which direction he pulled
- 11 out from?
- 12 A No. We passed 'm coming back.
- 13 Q You passed him coming back? You just said you didn't
- 14 leave.
- 15 A You said did I stay there until -- did I say there the
- 16 whole -- what I after the police --
- 17 Q You said you stayed until the police came. And then
- 18 you just said you passed him coming back. Where were you
- 19 coming back from, Mr. Glover?
- 20 A Went to the gas station.
- 21 Q You went to the gas station after the shooting.
- 22 A Uh-huh.
- 23 Q So you didn't stay there to wait for the police like
- 24 you just said.
- 25 A No, sir.

Brandon Glover

Direct examination by Mr. Ianuario

1 Q Is there anything else that you'd like to go ahead and
2 tell us now? In that fight did you throw the first punch?

3 A Yes, sir, I did.

4 Q Did Mr. Baker tell you that he didn't want to fight?

5 A No, sir.

6 Q He didn't tell you that he wanted to fight -- didn't
7 want to fight?

8 A No, sir. We got into argument.

9 Q Did he turn around to leave?

10 A Uh-uh.

11 Q He didn't try to walk back in the store? Have you
12 seen Antwon since this event occurred?

13 A Yes, sir.

14 Q Have you spoken with Antwon since this event has
15 occurred?

16 A No, sir.

17 Q You haven't spoken with Antwon at all since this event
18 occurred.

19 A No, sir.

20 Q Again, I'd like to remind you are under oath.

21 A Not that I remember. Well, we're -- we're in the same
22 pod at the detention center.

23 Q At the detention center. And are you in the -- in the
24 detention center for anything to do with this particular
25 evening we're discussing?

Brandon Glover
Direct examination by Mr. Ianuario

1 A No, sir.

2 Q Did you have a gun on the evening in question?

3 A No, sir.

4 Q Have you ever carried a gun?

5 A No, sir.

6 Q You've never carried a gun?

7 A I mean, yes, sir, I have. I have charges for unlawful
8 carrying.

9 Q Charges, plural?

10 MR. BULSA: Objection, Your Honor.

11 A One charge.

12 THE COURT: Sustained.

13 Q At the time of this shooting did you have any pending
14 charges?

15 MR. BULSA: Objection, Your Honor.

16 THE COURT: Let me see y'all just a minute.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Sustain the objection.

20 BY MR. IANUARIO

21 Q When you went up to the gas station after the shooting
22 who did you go with?

23 A My sisters.

24 Q All right. Who was driving?

25 A My older sister.

Brandon Glover
Cross-examination by Mr. Bulsa

1 Q What's her name?

2 A Kiara.

3 Q Were you in her automobile?

4 A Yes, sir.

5 Q All right. And which seat were you sitting in?

6 A The back seat.

7 Q All right. And Chassity Glover would be your other
8 sister.

9 A Yes, sir.

10 Q And they were there that night, correct?

11 A Yes, sir.

12 MR. IANUARIO: Nothing further.

13 CROSS-EXAMINATION

14 BY MR. BULSA

15 Q Mr. Ianuario stated, Mr. Glover, a couple of minutes,
16 so I want to go to those couple of minutes.

17 Tell us what occurred outside the Waffle House between
18 you and Mr. Baker.

19 A I asked him why did he pull out a firearm on Anthony,
20 hit him.

21 Q Okay. Say that again.

22 A I asked him why he pull out a firearm on Anthony and
23 hit him.

24 Q why did he pull out a firearm on Anthony and hit him?

25 A Yes, sir.

Brandon Glover
Cross-examination by Mr. Bulsa

- 1 Q And what was his response?
- 2 A "F y'all."
- 3 Q Okay. And then what happened?
- 4 A We argued, and I hit 'm.
- 5 Q How many times did you hit him?
- 6 A Once.
- 7 Q And then what happened?
- 8 A And then he started shooting.
- 9 Q Where did the gun come from?
- 10 A Off his hip.
- 11 Q Did you see him pull it off his hip?
- 12 A Yes, sir.
- 13 Q Where was Anthony at this time?
- 14 A In the parking lot.
- 15 Q Was he between you and Mr. Baker?
- 16 A No, sir. He was more to my left.
- 17 Q Okay. And how many other people were out there in the
- 18 parking lot?
- 19 A Anthony. I'll say five or six people.
- 20 Q Okay. And let's name them for us.
- 21 A It was Anthony, my two sisters, Darrian. He might
- 22 have been sitting in the car. Justin, Hillary, and might
- 23 have missed some more people, the car --
- 24 THE COURT REPORTER: I don't understand.
- 25 THE COURT: Say that again. Might have been some more

Brandon Glover
Cross-examination by Mr. Bulsa

- 1 people and what?
- 2 A It might have been more people.
- 3 Q Were those people with you?
- 4 A All of us people I just named was --
- 5 Q In your group.
- 6 A Yeah. People I know.
- 7 Q Was there another group?
- 8 A Yes. I remember some males being there.
- 9 Q Okay.
- 10 A I remember seeing them after it -- after it happened.
- 11 I don't know if they there when it all happened.
- 12 Q Okay.
- 13 A But they was there when -- when it was all done. And
- 14 I remember seeing them in the Waffle House before.
- 15 Q Okay. And when Mr. Baker pulled the gun and started
- 16 shooting what did you do?
- 17 A I ducked and ran.
- 18 Q Which direction did you run?
- 19 A To the right.
- 20 Q So it would have been away from the door toward the
- 21 end of the parking lot.
- 22 A In front of the door like towards the street.
- 23 Q Okay. All right. Towards the street, because you're
- 24 facing, actually facing, the Waffle House, right?
- 25 A Yeah.

Brandon Glover
Cross-examination by Mr. Bulsa

- 1 Q You're facing the door, and Mr. Baker's back is to the
2 door?
- 3 A Yes, sir.
- 4 Q You take off to your right.
- 5 A Yes, sir.
- 6 Q Do you look back and see what else is going on?
- 7 A Yes, sir.
- 8 Q What did you see?
- 9 A When I -- I got to like the second car, and I ducked
10 beside it. I looked up, and he was chasing Anthony.
- 11 Q Where was he chasing Anthony?
- 12 A Into the next parking lot.
- 13 Q All right. And what did -- what did -- tell us
14 what -- what else you saw.
- 15 A He was chasing him, shooting him.
- 16 Q Did you sit there and watch it all?
- 17 A Yeah. They was chasing him, shooting him close range.
18 I guess Anthony felt like he couldn't run but so far and
19 tried to turn around and fight 'm off. He still kept
20 shooting 'm. And once he realized he couldn't fight 'm off
21 he started running back towards the Waffle House, and he
22 continued chasing 'm shooting 'm.
- 23 Q And what happened?
- 24 A And once Anthony dropped I got in the car with my
25 sisters. They were screaming for me to get in the car --

Brandon Glover
Cross-examination by Mr. Bulsa

1 my sisters.

2 AS we was pulling out I seen them standing over 'm. I
3 don't know. I can't quite say if he shot some more or
4 what. I just seen him moving around. He might have been
5 kicking on the floor. I'm not real sure. And we sped off
6 to safety. When I came back --

7 THE COURT REPORTER: I can't hear him.

8 Q I'm sorry. You said you sped off to safety?

9 A Yeah. We sped off to the gas station. And we got
10 back. Anthony was laying in the same place he was laying
11 when we pulled off.

12 THE COURT: You need to speak up louder.

13 A We went to the gas station, and when we got back
14 Anthony was laying in the same place that he was when we
15 had left.

16 Q He was in the same place when you'd left.

17 Okay. Did you see the defendant leaving the area?

18 A Yes, sir.

19 Q I think you testified you saw him in his car passing
20 you.

21 A Yes, sir, on the highway.

22 Q On Highway 29.

23 A Yes, sir.

24 Q He would've been going towards town.

25 A Yes, sir.

Brandon Glover
Cross-examination by Mr. Bulsa

- 1 Q And you would've been coming back to the Waffle House.
2 A Yes, sir.
3 Q Did you know Mr. Baker at all?
4 A Not -- not really. I just knew he was a neighbor of
5 one of me-and-Anthony friends, close friends.
6 Q So you knew -- you and Anthony knew a person that
7 lived at Magnolia Townhomes?
8 A Yes, sir.
9 Q And who is that person's name?
10 A Rock -- Rodney.
11 Q Rodney. Okay. Where did this supposed assault on
12 Anthony take place?
13 A At Magnolia.
14 Q Did you witness any of that?
15 A No, sir.
16 Q Prior to the night of his death had Anthony told you
17 anything about that before?
18 A Yes, sir.
19 Q Okay. So this wasn't the first time you'd heard about
20 it.
21 A Uh-uh.
22 Q Did you know what kind of car this man drove before
23 this night?
24 A Him?
25 Q Yes, sir. Mr. Baker.

Brandon Glover
Cross-examination by Mr. Bulsa

1 A Yes. It's a white sedan, I remember.

2 Q No. But did you know it before that night? Did you
3 recognize it from Magnolia Townhomes?

4 A Yes, sir.

5 Q Okay. What I'm trying to get at is when he pulled up
6 did you yourself have any recognition of him.

7 A I kind of remembered him a little bit, but I didn't.

8 Q Okay. But it was Anthony's calling your attention to
9 him that made you remember.

10 A Yeah.

11 Q All right. So Anthony remembered him.

12 A Yes, sir.

13 Q Could you tell if the defendant recognized Anthony?

14 A Yes, sir. I think they gave each other some eye
15 contact.

16 Q Okay. Now, you got into an argument with Mr. Baker
17 about hitting Anthony in the past. Were you trying to get
18 him to fight Anthony?

19 A No, sir. I was just questioning him, asking him why,
20 why would he go about doing that.

21 Q Was Anthony involved in that argument at all?

22 A Anthony really wasn't saying anything.

23 Q How tall are you?

24 A I'm 5'5", 5'2" or 5'3", somewhere in that range.

25 Q And how much do you weigh?

Brandon Glover
Redirect examination by Mr. Ianuario

- 1 A Like a month ago I was 140.
- 2 Q Were you about the same weight a year ago?
- 3 A Yeah.
- 4 Q Did you have a gun that night?
- 5 A No, sir.
- 6 Q Did Anthony have a gun that night?
- 7 A No, sir.
- 8 Q Did any of the people with you have a gun?
- 9 A No, sir.
- 10 Q Did you see anybody else with a gun?
- 11 A No, sir.
- 12 Q How many people did you see shooting?
- 13 A One.
- 14 Q Thank you, Mr. Glover.
- 15 REDIRECT EXAMINATION
- 16 BY MR. IANUARIO
- 17 Q How many shots did you hear that night, Mr. Glover?
- 18 A Numerous, a lot of them. I don't really -- I didn't
- 19 really keep count.
- 20 Q And you said you saw Mr. Baker chasing Anthony around
- 21 the parking lot.
- 22 A Yes, sir.
- 23 Q At any point was he in the parking lot of the mall
- 24 across the way -- strip mall?
- 25 A Yes, sir.

Brandon Glover
Redirect examination by Mr. Ianuario

1 Q And which direction was Anthony running in that
2 parking lot?

3 A He was running away from the Waffle House.

4 Q Was he running -- so he was running away from the
5 Waffle House.

6 A Yes, sir. And then he turned around.

7 Q You said you didn't know much about Antwon, right,
8 other than that he had been known to carry a gun?

9 A Uh.

10 Q And you're roughly 5'3" and 150 pounds, correct?

11 A Uh-huh.

12 Q You're 5'3" and 140 pounds, correct?

13 A Yes, sir.

14 Q So what possessed you at 5'3" and 140 pounds to attack
15 a larger man that the only thing you knew about him was
16 that he carried a gun?

17 A Being upset at what he did to Anthony.

18 Q Are you sure you didn't have a gun that night?

19 A I'm positive.

20 Q Are you sure you didn't plan on robbing Antwon that
21 night?

22 A No, sir. I don't do that.

23

24

25

Brandon Glover
Recross-examination by Mr. Bulsa
Redirect examination by Mr. Bulsa

1 MR. IANUARIO: Nothing further.

2 RECROSS-EXAMINATION

3 BY MR. BULSA

4 Q Did you see a gun on him -- Mr. Baker -- before you
5 hit him?

6 A No, sir.

7 Q If you knew he had a gun would you have hit him?

8 A No, sir.

9 Q Thank you.

10 REDIRECT EXAMINATION

11 BY MR. IANUARIO

12 Q If you had had a gun would you have hit him?

13 A No, sir.

14 MR. IANUARIO: Nothing further.

15 THE COURT: You may step down.

16 MR. IANUARIO: I'd like to call Delton Sease as my
17 next witness, Your Honor. He should be quickly.

18 THE COURT: Is he up here?

19 MR. IANUARIO: He's downstairs.

20 MR. BULSA: May we approach on that matter?

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: Ladies and gentlemen, we're going to
24 excuse you for lunch.

25 I'll ask you to report back to your jury room at 2:30.

Brandon Glover
Direct examination by Mr. Ianuario

1 THE COURT: All right. Mr. Glover, come back around.
2 You have previously been placed under oath, and so you're
3 still under oath for the purpose of these questions. Have
4 a seat in the witness chair.

5 BRANDON GLOVER, having been
6 previously duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. IANUARIO

8 THE COURT: Okay.

9 Q Thank you, Mr. Glover.

10 Do you know a young man by the name of Delton Sease?

11 A Seen 'm.

12 Q And how you are you familiar with him?

13 A I'm not really familiar with 'm if I'm thinking of the
14 same guy. I'm not really sure.

15 Q Is he in the detention center with you?

16 A Yes.

17 Q Have you ever spoken to Antwon in the presence of
18 Mr. Sease?

19 A No, sir, not -- no, sir, not I know.

20 Q So then in the presence of Mr. Sease you never had a
21 conversation with Antwon concerning what your intentions
22 for the night of June 3rd of 2012 were.

23 A No, sir.

24 Q So then Mr. Sease would not have overheard you tell
25 Antwon that you had a gun that night.

Brandon Glover
Cross-examination by Mr. Bulsa

1 A No, sir.

2 Q And then of course Mr. Sease would not be able to
3 testify that you told Antwon in his presence you had
4 planned on robbing him that night.

5 A No, sir.

6 Q Nothing further, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BULSA

9 Q Which pod are you in in the jail?

10 A Pod four.

11 Q Pod four?

12 A Uh-huh.

13 Q Which pod is the defendant in?

14 A Same pod.

15 Q Same pod. Is that a pod where you can mingle
16 together, you can be out at the same time?

17 A We come out one -- one at a time. Like he's upstairs.
18 He come out at one time. Then I come out the other time.
19 But there's plenty of times that we come out. It's
20 possible.

21 Q Okay. Did you ever have any conversations with him?

22 A With Antwon?

23 Q Yes, sir.

24 A No, sir.

25 Q In the jail?

Delton Sease
Direct examination by Mr. Ianuario

1 A No, sir.

2 Q Was Mr. Sease ever in that same pod with y'all?

3 A Yes. He is. He's upstairs with Antwon.

4 Q He's upstairs. Is he in the same pod and the same
5 cell?

6 A He comes out at the same time when Antwon come out.

7 Q Okay.

8 A They around each other all the time.

9 Q Thank you.

10 MR. IANUARIO: Nothing further, Your Honor.

11 THE COURT: All right. You may step down.

12 MR. IANUARIO: I would like to call Delton Sease.

13 (Pause.)

14 DELTON SEASE, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. IANUARIO

17 Q Would you please state your name for the jury, sir?

18 A Delton Sease.

19 Q And how old are you, sir?

20 A Seventeen.

21 Q And where are you currently residing?

22 A At the county.

23 Q Okay. Which pod are you in?

24 A Pod four.

25 Q Do you know a gentleman by the name of Brandon Glover?

Delton Sease
Direct examination by Mr. Ianuario

- 1 A I don't know his name, but I know who you talking
2 about.
- 3 Q Would you give a description of him?
- 4 A Dark-skinned dude with long dreads, and short, about
5 5'3".
- 6 Q Okay. And do you know Antwon Baker?
- 7 A Yes, sir.
- 8 Q All right. Do you know both of them through county?
- 9 A Yes, sir.
- 10 Q Did you know either one of them before?
- 11 A No, sir.
- 12 Q Have you ever overheard the two of them talking?
- 13 A Yes, sir.
- 14 Q What did they talk about?
- 15 A The Glover dude had told Antwon to come here. And
16 Mr. Glover told Antwon all he wanted Antwon to do was fight
17 his cousin. And Antwon told Mr. Glover he didn't want to
18 fight him, so why did you put him into it. So Mr. Glover
19 said I just wanted you to fight him. He talking about I
20 had a gun and I would rob your -- and Antwon told -- asked
21 him who hit me in the back of my head. He told him, yeah,
22 I hit you on the back of my head. So that was it. I had
23 got up and walked off.
- 24 Q Okay. So just to be clear, you heard Brandon Glover
25 tell Antwon Baker that he was trying to start a fight with

Delton Sease
Cross-examination by Mr. Bulsa

1 his cousin. And after Antwon said he wanted no part of it,
2 then Mr. Glover admitted to having a firearm and had the
3 plan on robbing him and he hit him in the back of the head.

4 A Yes, sir.

5 Q Is there anything substantially different or anything
6 that I may have missed?

7 A No, sir.

8 MR. IANUARIO: Nothing further, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. BULSA

11 Q Mr. Sease, when were you arrested?

12 A May the 11th of 2012.

13 Q 2012?

14 A Yes, sir.

15 Q So you've been in the same pod the whole time?

16 A No, sir.

17 Q How long have you been in pod four?

18 A Since November the 9th.

19 Q How were you let out of your cell in pod four?

20 A How am I let out of my cell?

21 Q Yes, sir. Did you go out with other people?

22 A Sometimes. Just stand up.

23 Q Are you upstairs or downstairs?

24 A Upstairs.

25 Q Where is Mr. Baker's pod or his cell?

Delton Sease
Cross-examination by Mr. Bulsa

- 1 A Forty-four across from, all the way down on the other
2 side.
- 3 Q He's on the top?
- 4 A Yes, sir.
- 5 Q And you talked to him through his cell?
- 6 A Uh-uh.
- 7 Q No?
- 8 A Uh-uh.
- 9 Q But you talk with him when you're out together.
- 10 A Yeah. I talk to him sometimes.
- 11 Q And how long have y'all been in the same pod?
- 12 A Since I first came.
- 13 Q Since he first came?
- 14 A Since I first came in.
- 15 Q You came in first then.
- 16 A I guess so. I really wasn't paying attention.
- 17 Q You got to know him well enough to call him Antwon,
18 right?
- 19 A Yes, sir.
- 20 Q But you didn't get to know Mr. Glover.
- 21 A No, sir.
- 22 Q You didn't even know his name.
- 23 A No, sir.
- 24 Q How is it that you came to tell this story?
- 25 A When I was sitting down at the T.V. I was just

Delton Sease
Cross-examination by Mr. Bulsa

1 watching T.V. And next thing I know all I heard was some
2 yelling coming through the door. And I asked Antwon who
3 that was, and he said that's my victim, he was the person
4 who was there when -- at the Waffle House and stuff. And I
5 was like, oh. And I just left it alone.

6 Q Was he yelling through the door?

7 A Yes, sir.

8 Q Explain that a little more.

9 A Man who was yelling at the door was Mr. Glover. He
10 was yelling at Antwon, telling him all I wanted you to do
11 was fight my cousin. And, yeah, I hit you in the head,
12 and, yeah, I had a pistol and I would rob you.

13 Q So were there other people out there?

14 A Yes, sir.

15 Q Okay. And how is it that you came to tell somebody
16 that you overheard this?

17 A Because I was sitting right beside them.

18 Q I know. But who did you tell?

19 A Who did I tell?

20 Q Yes, sir.

21 A I had told his -- both of them.

22 Q His attorney?

23 A Yes, sir.

24 Q How did you come to talk to his attorney?

25 A I had -- he asked me to come and help him talk.

Delton Sease
Cross-examination by Mr. Bulsa

- 1 Q Antwon asked you to come and help him?
- 2 A Yeah. He asked me did I hear what happened in the
3 courtroom -- in -- in the T.V. area. And I told him, yeah,
4 I heard. He asked me would I be like help him and, I told
5 him yes, sir.
- 6 Q Of course you and he had talked about this case before
7 though, hadn't you?
- 8 A No, sir.
- 9 Q You didn't know why he was in there?
- 10 A No, sir.
- 11 Q You never talked to him about it.
- 12 A No, sir.
- 13 Q You're 17 years old?
- 14 A Yes, sir.
- 15 Q What's your birthday?
- 16 A November 9th, 1995.
- 17 Q '95. So you went in -- so you weren't that much older
18 than 17 when you got arrested.
- 19 A I was 16.
- 20 Q You were 16.
- 21 A Yes, sir.
- 22 Q Turned 17 in June.
- 23 A Yes, sir.
- 24 Q You've been convicted in juvenile court for
25 shoplifting, haven't you?

Delton Sease
Redirect examination by Mr. Ianuario

1 A Yes, sir.

2 Q Okay. Nothing further.

3 REDIRECT EXAMINATION

4 BY MR. IANUARIO

5 Q One quick question, Mr. Sease.

6 Does everyone in the jail talk about their case
7 freely?

8 A No, sir.

9 Q Do a lot of people stay tightlipped about their case?

10 A Yes, sir.

11 MR. IANUARIO: Nothing further.

12 THE COURT: You may step down.

13 MR. IANUARIO: The defense rests, Your Honor.

14 THE COURT: Any reply?

15 MR. BULSA: Yes, sir. The state would recall Dr.
16 Wren.

17 THE COURT: You've previously been placed under oath,
18 so you are still under oath. Thank you.

19 DR. JOHN DAVID WREN, having
20 been previously duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BULSA

22 Q Dr. Wren did you bring a copy of your --

23 A Pardon?

24 Q -- in this case -- did you bring a copy of your report
25 in this case?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A Yes, I did.

2 Q We've previously talked about your diagram, State's
3 Exhibit No. 57.

4 Okay. Dr. Wren, I think you testified -- but we
5 didn't introduce it -- that you had prepared a chart to go
6 along with the diagram.

7 A Well, actually when I did the autopsy -- I always, as
8 I stated in the previous testimony, I identify the wounds.
9 And I call those out to an assistant, who in this case it
10 was probably Teri Carter, the coroner's investigator,
11 because she usually does -- does them for me.

12 Q Okay.

13 A And once I've done that I do not try to prepare the
14 diagram until I go back, and sometimes I don't even prepare
15 one. But I prepared one in this case at their request
16 because there were so many bullets. And I did it after I
17 got the chart. Now, the chart is correct.

18 (Wound chart marked State's Exhibit No. 59 for
19 Identification.)

20 Q Okay. Show you what's been marked as State's 59 for
21 Identification. Is that the chart that would go along with
22 this diagram?

23 A Yes.

24 Q It consists of two pages?

25 A Pardon?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q It consists of two pages.

2 A Two pages, yes. There were 12 wounds. We only have
3 space for ten on each diagram. So when I get to ten I take
4 another page and label it 11 through 12 in this case.

5 Q Okay. And, in fact, it's -- the chart is actually
6 labeled as a stab-wound chart, but you crossed it out and
7 wrote bullet.

8 A Right.

9 MR. BULSA: Your Honor, the state would offer State's
10 59 into evidence.

11 MR. IANUARIO: Objection, Your Honor. Solicitor Bulsa
12 had a chance to enter this into evidence during the state's
13 case. He's now trying to come back in and get a second
14 bite at the apple after he's seen the defense case.

15 THE COURT: Overruled.

16 (Wound chart marked State's Exhibit No. 59.)

17 Q And you since compared your chart with the diagram.

18 A Yes.

19 Q And is the information on the chart correct?

20 A As I stated, like I said in the previous testimony, I
21 do a wound chart, and then I do a diagram if necessary or
22 requested. And that's what happened.

23 Q Okay.

24 A And I have compared them. And I might add with
25 pictures that have been provided that were taken at the

Dr. John David Wren
Direct examination by Mr. Bulsa

1 autopsy.

2 Q Okay. Your testimony change at all as to the number
3 of wounds to Mr. Young's body?

4 A As well as I could tell at the autopsy.

5 Q Okay.

6 A It actually matched up with the wounds. For instance,
7 if you have three holes and two bullets, then something's
8 wrong. If you have three holes and one bullet, then you
9 would explain or try to explain as one of the bullets from
10 one of the wounds. The other two would have to be
11 postulated and proven to be an in-and-out.

12 Q First off let me ask you. Did you go to the scene of
13 the crime?

14 A No.

15 Q So the defense put in some pictures, some of those
16 being of the victim at the scene of the crime. Those would
17 not be relevant to your testimony. And he also put in a
18 group of photographs of clothing Defense Exhibits 1 and 2,
19 8 through 11. Will you look at those first?

20 A No. 2 is actually three holes in the left upper chest
21 of the shirt which is not entirely inconsistent ever with a
22 bullet coming out with the -- with the shirt folded in some
23 manner to where it goes in, out, in and out -- I mean out,
24 in, and out.

25 Q Defense No. 2.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A Well, No. 10 has six holes in it. I have no idea
2 where it's from. It's sprained out in a picture taken of
3 holes in a linear line like would go in and out, in and
4 out, and in and out.

5 Q Defendant's No. 10.

6 A No. 8 is a photograph of the pants, long pants. One
7 can see one of the wounds on the lower portion of the
8 pants. And I don't believe there's another hole in there
9 down in that area. But there are possible holes up in the
10 left upper portion. But I can't tell for sure.

11 Q State's No. 8.

12 MR. IANUARIO: No objection, Your Honor.

13 Q I mean Defense 8, not state's.

14 Were all of these taken at the autopsy?

15 A Well, I recognize my watch here. So I was holding
16 some of them, but I think they were taken at the autopsy.

17 Q Okay. Anything remarkable about the other photos?

18 A Well, the one of the shorts, undershorts, No. 9, I
19 don't see any obvious holes in that. There's no background
20 to it. So sometimes you can't tell. There's blood on that
21 one.

22 Q That's No. 9.

23 A No. 1 appears to be some -- I've quoted that he had on
24 some black denim jeans with blue woven belt through the
25 loops. And I believe this is consistent with that. I

Dr. John David Wren
Direct examination by Mr. Bulsa

1 can't -- they're so closeup I can't tell the orientation,
2 but it looks like a brand name of a patch on it with a
3 defect beside it.

4 Q Defense No. 1.

5 A I stated that he had on a black short-sleeve pullover
6 t-shirt, a black tank tee -- top t-shirt, which I believe
7 No. 11 is that's -- I can't tell whether this is a torn
8 area or exactly what it is. But there is a defect just
9 below that torn area, what looks like the straps at the top
10 there.

11 Q That's Defense No. 11. Okay. Did all of these
12 defects appear to line up with the wounds underneath?

13 A Yes, yes, as well as I could tell.

14 I can read the -- my description. I said, "There are
15 three defects present anteriorly in the left upper portion
16 of the pullover t-shirt. There are a linear set of defects
17 in the right lower portion anteriorly," which I believe
18 that was what I talked about first. "There are five
19 defects posteriorly in the shirt. There's a single defect
20 anteriorly in the tank top t-shirt along the neck seam, and
21 an additional defect is present along the right lower side,
22 and a third defect is present posteriorly mid to midline in
23 the midportion. Inspection of the pants reveals a single
24 defect along the right medial knee, a separate defect along
25 the left anterior pocket, a defect near the waistband

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1 posteriorly near the midline and at least three defects in
2 the crotch region with two on the right and one along the
3 left more inferiorly and laterally. The boxer shorts
4 contain only a single defect posteriorly along the right
5 lateral side and a separate defect along the right inferior
6 crotch region along with an additional defect anteriorly
7 along the left upper thigh near the midportion. Most of
8 these defects overlie associated wounds in the body to be
9 described subsequently."

10 Q The --

11 A "The defects are photographed." Pardon?

12 Q The fact that the boxer shorts only had two wounds,
13 two defects, but the pants had four --

14 A Right.

15 Q -- in the crotch area suggests in and out.

16 A Right.

17 Q Okay. All right. Now, the defense introduced these
18 pictures as well, three through seven. What do those mean
19 to you?

20 A Well, No. 6 shows a -- what I believe is an entrance
21 defect in the right upper hip area lateral to the superior
22 crease of the buttocks. I don't see any others.

23 Q All right.

24 A No. --

25 Q No. 6. Would you --

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1 A And that was --

2 Q -- hand --

3 A Actually on my -- pardon?

4 Q Go ahead. Tell us.

5 A That was actually on my chart described as gunshot
6 wound No. 7 which appeared in the right superior hip 30
7 inches from the top of the head and three and a half inches
8 to the right of midline. And it measured 0.27 inches in
9 diameter.

10 Q So would that be an entrance or an exit wound?

11 A It was entrance, looks like an entrance.

12 Q State's 59 -- excuse me -- 57. This is the diagram
13 that was introduced.

14 A That was the one I introduced, yes. But the posterior
15 diagram is -- posterior diagram is inaccurate.

16 I have trouble sometimes calling left and right, but
17 it should have been over on this side. And the bullet was
18 going in the opposite direction from what that is.

19 Now, the one here is basically sort of correct, but it
20 is also going more superiorly. I mean, I'm sorry. It's
21 going -- No. -- gunshot wound No. 7 is an entrance in the
22 right hip. It communicated with exit wound in the right
23 lateral anterior iliac crest which is the hipbone in the
24 front subcutaneously.

25 The entrance was 30 inches from the top of the head

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1 and 3 and a half inches to the right of midline as I
2 described, whereas the exit was 28 inches from the top of
3 the head and 5 inches to the right of midline.

4 So that bullet was going upward to the decedent's
5 right and anteriorly instead of the way it's diagrammed.
6 That was entrance four and seven.

7 Q would you correct that on a blank sheet?

8 A Pardon?

9 Q would you correct that on a blank sheet?

10 A Sure.

11 (Pause.)

12 A As I stated, No. 7 was an entrance in the posterior
13 hip 3 and a half inches to the right of midline. So I'll
14 put it about where it was in the posterior diagram.

15 And the exit was more superiorly but on an anterior
16 surface. So I'm going to dot that in because from the back
17 one cannot see it. And I'm going to draw an arrow in the
18 direction it was coming. I'm going to dot it between the
19 two. And then it starts out dotted and then becomes solid
20 as it reappears from the body.

21 Now, I can put it on the anterior diagram, but it'll
22 be opposite in that the entrance is dotted in this area
23 because it's behind the body, and the exit is more
24 laterally and a little bit higher.

25 And so that bullet is dotted coming in, dotted through

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1 the body, and then solid coming out. So that's No. 7, is
2 the entrance. No. 4 is the exit.

3 I'll have -- if you want the others put in I'll have
4 to put them on there, or we can leave them out, whichever
5 you want.

6 (Diagram marked State's Exhibit No. 60 for
7 Identification.)

8 A Continuing with your --

9 Q Let me stop you a minute, Dr. Wren.

10 A Okay.

11 Q Let me do something.

12 MR. BULSA: Your Honor, the state would offer No. 60
13 into evidence.

14 MR. IANUARIO: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Diagram marked State's Exhibit No. 60.)

17 Q All right. Now, this is what you just drew making the
18 corrections.

19 A Yes.

20 Q Did you compare the rest of the bullet holes and
21 arrows to your chart?

22 A Yes. Those are correct.

23 Q Those are correct. Okay. But for this -- well, this
24 one is correct.

25 A Well, basically it's going sort of in a wrong

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1 direction.

2 Q Okay.

3 A But those wounds were -- it was hard to put those on
4 there after I had drawn the in-and-out, then my in-and-out.

5 The one diagonally across is from his right down to
6 his left lower side, which was a little bit more horizontal
7 than had actually -- but when I tried to put the other one
8 in it'd been right on top of it, so I sort of messed up
9 with that one.

10 Q Okay. And Defense Exhibit No. 6 shows wound --

11 A That shows that one. Now, this one --

12 Q No. 7?

13 A That's No. 7.

14 No. 4, Exhibit No. 4, shows that one again plus the
15 one that came in from his right side laterally, which is
16 entrance No. 5.

17 Do you want me to put that on there -- five and four
18 and seven? Put seven on there and four on there -- I mean,
19 five on here.

20 Q Well, this is an exhibit already.

21 A Okay.

22 Q So Defendant's Exhibit No. 4. Point to those if you
23 would.

24 A This is wound in his right upper hip slightly -- well,
25 see, he's at an angle now, but the straight-on picture

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1 showed it was at the upper border of his buttocks, crease
2 of his buttocks.

3 This is No. 7 right there. Same one.

4 And this one over here laterally in this picture --
5 move it back over. This one here is No. 5 --

6 Q All right.

7 A -- on the diagram, which is an entrance.

8 Q That'll be No. 5.

9 A Right here.

10 Q So he's got entrance wounds --

11 A Right here. It went from five to eight, to nine, to
12 ten and kept going.

13 Q Okay. All right. How about on the other pictures?
14 what do they show?

15 A Now, I might be wrong, but it looks like -- well,
16 actually No. 5 shows the exit of the wound that went into
17 his back buttocks, upper hip. That's No. 7, this one.
18 Exhibit No. 5.

19 Q That would be No. 4?

20 A Yeah. That would be No. 4 wound, yes.

21 Q No. 4 wound, but it's Defense Exhibit --

22 A Yes. And like I described previously, that wound is
23 irregular, and it's probable that this bullet that went
24 through there either hit his iliac bone, the hipbone, or
25 grazed through it and started tumbling and came out at an

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1 irregular angle or distorted.

2 Q So these two -- let's see. Defense Exhibit 6 and
3 Defense Exhibit 5 show these two wounds that are
4 actually --

5 A There's the entrance and there's the exit.

6 Q Okay. Clearly see the distinction in the shape.

7 A Pardon?

8 Q Can you clearly see the distinction in the shape?

9 A Yes. Well, not clearly on that one, but that's it
10 pretty -- right there in back.

11 Q Okay. All right. What about the other picture?

12 A The other picture I believe is the -- I did not
13 dictate. I usually don't dictate when they have a lot of
14 tattoos, but I believe this is the in-and-out of his arm,
15 but I am not absolutely sure, which is No. 3. And No. 7 I
16 believe is where I approximated the wound together, one of
17 the wounds, to show it was an exit, which is No. -- Exhibit
18 No. 7.

19 You did say that he had tattoos on the arms
20 bilaterally, but I don't know which is which. I believe
21 that's the left arm there, but I'm not sure.

22 Q Okay.

23 A And then this one is where the -- where I approximated
24 to show that it tore out instead of bored in, which is
25 No. 7.

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1 Q All right. So Defense No. 3 appears to be looking at
2 him laying on his back.

3 A I think -- no. Wait a minute. Turn it the other way.
4 Turn it.

5 I believe this is the posterior armpit and this is the
6 anterior armpit. And there's the bullet coming -- no.
7 wait a minute. This is probably the anterior and that's
8 posterior. And there's the bullet hole. Went through his
9 left arm.

10 Q Okay. Is that -- which way did it go, front to back,
11 or back to front?

12 A Well, actually when I -- when I wrote it down I put
13 that the entrance was slightly lower than the exit -- than
14 the exit.

15 On the diagram I called it posterior lateral, which is
16 lateral and posterior. It's not in the front. So it's in
17 the back of his arm.

18 And I said that the -- I did not give the distances,
19 but I did give the dimensions and said that the exit which
20 was No. 2 -- I probed that wound backward, neither up nor
21 down, and laterally.

22 The other one I said was going forward, which was an
23 entrance, neither up nor down, and going medially in the
24 body.

25 Q Okay. So in your diagram, State's Exhibit 57, on the

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1 frontal view you don't even see that wound.

2 A No. I didn't show it. I did not show it. It's
3 hard -- it's hard to diagram something on the side with the
4 arm when you've got -- when you've got a front view and a
5 back view.

6 Q So it's predominantly towards the back part of the
7 arm, this wound.

8 A Yes. The entrance was more toward the back. The exit
9 was more toward the front. And it was going sort of
10 horizontally instead of exactly the way that is.

11 Q And Defense Exhibit No. 7. This would be the same
12 wound but without the rod. What does that show?

13 A It shows that this is an exit. And that's a grazing
14 entrance.

15 Now, I -- that looks like the armpit. I'm not sure
16 what this is.

17 Usually when you take pictures you're supposed to take
18 one far enough to where you can get some orientation, and
19 you take a closeup. And without the benefit of the closeup
20 it's a guess as to where that is. So I can't tell you
21 exactly where it is.

22 I believe that's the hand, the praying hand, probably
23 there. And then this is the wound.

24 There's the back entrance and -- well, this is the
25 through-and-through.

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Direct examination by Mr. Bulsa

1 Q Does it really matter which way it came in and out?

2 A Pardon?

3 Q Does it really matter in the arm which way it came in
4 and out?

5 A Well, it would tell where the person was that fired
6 it.

7 I thought it went in the back, but these wounds are
8 really -- this one has a large abrasion border. Did not
9 hit anything. And I said that the -- it was abrasion from
10 9:00 o'clock to 12:00 o'clock up to 0.28 inches in width.
11 And it was the anterior wound.

12 There was discoloration around the posterior wound
13 from two to six up to 0.16 inches in width. And it was
14 posterior.

15 So this -- this bullet as it passed through was
16 almost -- it was -- almost missed him. And it would have
17 been -- it would have been going towards the skin. It
18 would have been what most people call almost a grazing
19 wound. One can see that it's -- it's not very deep. It's
20 just going through here.

21 Q Okay.

22 A And I thought more likely it was from posterior to
23 anterior or from back to front because of the -- of the
24 wound in the back --

25 Q Okay.

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1 A -- which was the fatal one anyway.

2 Q Let me show you Defense Exhibit No. 4 again. Do you
3 see the two wounds?

4 A The entrance -- the entrance -- the entrance in the
5 back was right up in here. I can't tell for sure. Let me
6 see the picture again. Can I see the photograph?

7 Q Showing you State's -- I mean, Defense Exhibit 4.

8 A Yes. Here it is. I mean, I can see it very easily
9 here.

10 Q Okay. There's no doubt that's an entrance.

11 (Photograph marked State's Exhibit No. 61 for
12 Identification.)

13 Q Let me show what's been marked for identification as
14 State's 61. This is a black-and-white picture showing --
15 what does that show us?

16 A It shows abrasions on his forehead that I described
17 earlier, and barely see the laceration on his chin. It
18 shows the abrasions on the right side -- left side of his
19 face. And down in this blood and so forth is probably the
20 exit. But I can't see it very well on here. There is a
21 picture of that though. There's the entrance right there.

22 MR. BULSA: Your Honor, the state would offer State's
23 61 into evidence.

24 MR. IANUARIO: No objection, Your Honor.

25 THE COURT: It's admitted.

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Direct examination by Mr. Bulsa

1 (Photograph marked State's Exhibit No. 61.)

2 Q So the jury can see what you're describing, point
3 out --

4 A This is abrasion, abrasion, abrasions that I
5 described. And the laceration was right at the tip of his
6 chin. And I can't tell exactly where the exit is here.

7 Q Okay.

8 A You do have pictures of it.

9 Q Let me show you these and see. Which one is the
10 better one to use?

11 A This one shows it better, but this is a little closer.

12 Q Okay.

13 (Photograph marked State's Exhibit No. 62 for
14 Identification.)

15 Q Show you State's 62. Is that a picture you feel shows
16 it?

17 A Yes. It shows where it is, right.

18 Q Okay.

19 MR. BULSA: Your Honor, the state would offer 62 into
20 evidence.

21 MR. IANUARIO: No, objection, Your Honor.

22 THE COURT: It's admitted.

23 (Photograph marked State's Exhibit No. 62.)

24 Q Similar view, just a little different angle.

25 A There's a -- the wound there with some blood trailing,

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1 because probably this picture was taken after he'd been
2 turned to take a picture of solely the back. And they took
3 another picture, and the blood ran out of his chest and
4 drained to his left side.

5 Q And that is the fatal wound.

6 A Yes, without a doubt.

7 Q Thank you, Dr. Wren. That's all I have. Answer any
8 questions Mr. Ianuario may have.

9 CROSS-EXAMINATION

10 BY MR. IANUARIO

11 Q Thank you, Dr. Wren.

12 Did you review your report and your notes for your
13 testimony today?

14 A Pardon?

15 Q Did you review your notes and your reports and graphs
16 and everything for your testimony here today?

17 A Yes. I looked at them.

18 Q Did you look at them for your testimony yesterday
19 also?

20 A Pardon?

21 Q And did you look at them for your testimony yesterday
22 also?

23 A I looked at them cursory, but I did not notice that
24 there was a discrepancy between the sides on the front and
25 back view.

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Cross-examination by Mr. Ianuario

1 Q Okay. And when did you become aware of that
2 discrepancy?

3 A When it was brought to my attention this morning.

4 Q And who brought that to your attention this morning?

5 A Mr. Smith. That there was a question about it.

6 MR. IANUARIO: Nothing further, Your Honor.

7 THE COURT: All right. You may step down.

8 MR. BULSA: Your Honor, that's the state's reply.

9 THE COURT: Let me ask the jury to please go to your
10 jury room. Do not yet discuss the case. I'll bring you
11 back shortly.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Any motions or other matters to address?

15 MR. IANUARIO: Yes, Your Honor. I'd like to move for
16 a directed verdict at this point in that the state has not
17 disproven self-defense beyond a reasonable doubt as
18 required by state law and case law. I don't feel there's
19 enough of an issue to put forward to the jury in this one,
20 Your Honor.

21 THE COURT: All right. That motion is denied as it
22 was previously.

23 Any others?

24 (No response.)

25 THE COURT: All right. I think we're going to have to

1 conclude in the morning. I've got some other stuff I've
2 got to do this afternoon.

3 So we will recess for the afternoon. I'll need to see
4 the lawyers about jury instructions.

5 All right. Bring the jury back, please.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Ladies and gentlemen, as you've heard,
9 both the state and the defense have rested in their
10 presentation of evidence.

11 What remains to be done are the lawyers' final
12 summations, after which I'll provide you with the
13 instruction on the law. And then you'll begin with your
14 deliberations. And that's likely going to take longer than
15 what we have left for the balance of the afternoon.

16 I do have some other matters that are scheduled
17 however.

18 So we're going to recess this case for today. We will
19 resume in the morning at 9:30 at which time you'll hear the
20 lawyers' final summations. I'll instruct you on the law.
21 Then you can begin with your deliberations in the case.

22 So during the overnight recess keep in mind you're
23 still not to talk about the case. Don't discuss it in any
24 fashion whatsoever with any person whatsoever.

25 Don't conduct any research. Don't do your own

1 (Proceedings June 6, 2013)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters we need to address
5 before the jury is brought in?

6 MR. BULSA: Have we decided on jury charges, Your
7 Honor?

8 MR. IANUARIO: May we approach, Your Honor?

9 THE COURT: Yes, sir.

10 (Bench conference held off the record.)

11 THE COURT: First of all, let me address with
12 Mr. Baker.

13 Mr. Baker, obviously you did not testify during the
14 trial of the case. You and your lawyers discussed that,
15 and you did make a final decision not to testify in the
16 trial.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that's a decision that you made of
19 your own free will and accord?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you're satisfied with that decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Any other matters we need to
24 address regarding the instruction requests?

25 MR. BULSA: Yes, Your Honor. The state believes that

1 while the jury could certainly find malice based on the
2 extent of the shooting and the number of shots, the state
3 also believes they might find that there was no malice or
4 the malice was negated by sufficient provocation, the
5 defendant acted in heat of passion. Therefore, we would
6 request a lesser offense of voluntary manslaughter.

7 THE COURT: All right. Mr. Ianuario.

8 MR. IANUARIO: Yes, sir. Thank you, Your Honor.

9 I request simply a murder charge in this case. It's
10 not voluntary manslaughter. This issue has been addressed
11 as a murder from day one.

12 I believe all of the facts that are in the case are
13 substantial enough that we can go through and attack the
14 charge of murder.

15 With regards to the voluntary manslaughter charge --
16 one moment, Your Honor.

17 (Pause.)

18 MR. IANUARIO: I question whether or not there's
19 enough legal provocation in order for that charge to
20 sustain.

21 THE COURT: All right. Well, of course I am required
22 to charge the law as it relates to the facts and any
23 reasonable inferences that can be drawn from those facts by
24 the jury.

25 In this particular case I believe that there is

1 sufficient evidence of an unprovoked attack by someone
2 against the defendant that could give rise to a sufficient
3 leave provocation in order for him to act as he did under
4 the circumstances.

5 So, based upon that evidence existing, it could
6 reduce the crime from that of murder to that of voluntary
7 manslaughter. So I think a voluntary manslaughter charge
8 is applicable to the facts as presented by the evidence in
9 the case and from any reasonable inferences that might be
10 drawn from that evidence.

11 So, based upon the existence of sufficient evidence to
12 establish him guilty of only the lesser offense I will
13 instruct the jury on the lesser offense of voluntary
14 manslaughter in addition to the charge of murder, and of
15 course self-defense.

16 Any others?

17 MR. BULSA: None other than that, Your Honor.

18 MR. IANUARIO: Nothing else, Your Honor.

19 THE COURT: All right. Bring the jury in, please,
20 sir.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Good morning, ladies and gentlemen.

24 As you know, when we recessed yesterday all of the
25 evidence had been received, and what remained to be done

Closing arguments

1 are the lawyers' final summations, after which I'll
2 instruct you on the law. Then you can begin with your
3 deliberations.

4 So please give the lawyers your attention now as they
5 give you their final summations.

6 Are y'all going to be using that screen?

7 MR. BULSA: Yes, sir.

8 THE COURT: All right. Let me ask you to move the
9 rope so the jurors can move down.

10 (Pause.)

11 THE COURT: All right. Mr. Ianuario.

12 MR. IANUARIO: Thank you, Your Honor.

13 Good morning, ladies and gentlemen.

14 (Pause.)

15 MR. IANUARIO: I apologize about that. Good morning.
16 Thank you for the past three days and your time today. It
17 really means a lot that you are a part of the legal system,
18 that you are the voice that can speak and determine all of
19 these facts in an unbiased perspective.

20 I'd like to ask that you return a verdict of not
21 guilty for Antwon Baker. The state however would you have
22 believe that Antwon Baker is a murderer, that he took the
23 life of Anthony Young and he did so intentionally with a
24 reckless and wanton disregard.

25 And of course the state's evidence, they presented a

Closing arguments

1 lot of information, a lot of information that you're going
2 to be asked to interpret one way even though nothing else
3 seems to make sense.

4 You're going to be asked to overlook the fact, for
5 example, that Antwon Baker, an alleged murderer, got out of
6 his car with the intent to kill somebody but he did not
7 chamber a round in his gun? If he was going on the hunt
8 why would he not put a round in his gun? You're going to
9 be asked to overlook that fact.

10 If you believe that Antwon chased Anthony Young down
11 and he shot him repeatedly in the back, then you should
12 probably return a verdict of guilty. But in order to do
13 that we have to look at all of the evidence. Does
14 everything add up, or can I create a reasonable doubt in
15 your mind that Antwon Baker is not guilty of murdering
16 Anthony Young?

17 The state would have you believe that Antwon fired
18 five shots and that each one of these five shots struck
19 down Mr. Young. He fired these five shots while shooting
20 one-handed in low light, dusk, with this firearm.

21 If you can see the sight picture of this gun, it's
22 dirty. These are not Tritium night sights. This is not a
23 bright white easy-to-pick-up dot. In low light while
24 running one-handed he somehow hit five shots out of five on
25 his moving target from a bunch of different directions with

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1 this sight picture.

2 Now, the state will argue that Mr. Baker pulled off
3 this amazing feat because he used a laser on that firearm,
4 a laser that was not attached to that firearm when it was
5 recovered.

6 No witnesses report seeing a little red dot going
7 anywhere. And, honestly, how bright is that little red dot
8 going to show up on a black shirt at dusk? well, that
9 doesn't show up on a black shirt at dusk or dawn, twilight
10 hours.

11 The SLED forensic guy, the gun expert, he even said
12 most of the lasers he sees aren't sighted properly, they go
13 off this way. So the chances of Antwon actually using that
14 laser are very slim. Doesn't really add up.

15 Let's take a little bit more closer look at these
16 wounds and how they were incurred. Let's start with the
17 fight that took place and the chase across the parking
18 lot -- the chase across this parking lot.

19 Notice how dark it is. Now, now that we have low
20 light in the room, take another look at the sight picture.
21 Can you clearly see the three white dots on this dirty
22 firearm? Could you make the same shot five times while
23 running in low light with this sight picture?

24 This is this parking lot during the day. These
25 indicate the shell casings that were located in the parking

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1 lot. And this is the diagram.

2 Now, according to the testimony that we've heard the
3 fight took place here, and then you've got to think that
4 Mr. Baker chased Anthony Young through this parking lot
5 shooting at him and that's how these two shell casings,
6 Nos. 1 and 2, got to be in this fight -- if he was chasing
7 him in this parking lot and shooting at him.

8 Now, keep in mind we also heard the SLED expert say
9 that a shell ejects to the right and back. So in order to
10 have shell casings be here to the right and in the back,
11 that would mean that Antwon is somewhere approximately in
12 this area shooting, as Brandon Glover said, at Anthony
13 Young running straight towards the Extreme Pole Fitness.
14 That would explain how those shell casings get there.

15 But could somebody explain to me how there's no broken
16 glass in the store? There's no broken glass anywhere
17 around here. No projectiles recovered from around here.

18 This whole shootout took place in a giant u-shape, a
19 horseshoe, and only one projectile was recovered out of the
20 five. Something was probably overlooked here. Can't
21 guarantee anything, but it doesn't add up.

22 However, Mr. Baker says in his own statement that when
23 he was running from the shooter and his car was parked
24 approximately here across from the doorway, his car was,
25 say, here or here. We don't know, because No. 3 is where

Closing arguments

1 the hat was. We know this car wasn't here.

2 And the shell casings hit back and to the right. He's
3 hiding in this corner and he's peaking around and the gun
4 accidentally discharges once, it's going to kick a shell
5 casing over here.

6 The state would argue that Antwon only said a shot
7 went off, not two. If you're going to believe that logic
8 also keep in mind that several witnesses heard more than
9 five shots. So other witnesses, their statement of events,
10 was taken through as where, but this very logical
11 explanation of how these two shell casings ended up here
12 wasn't even investigated.

13 The state would argue that Antwon came up with the
14 idea of ducking behind the car and accidentally discharging
15 after the state went back and/or the detective went back
16 and asked him something doesn't add up, let's talk about
17 these shell casings over here. And Antwon said he ducked
18 behind the car and a shot went off.

19 They're going to say he's lying. If he was going to
20 fabricate this story from the evidence that he was just
21 presented with wouldn't he have said that he fired off two
22 shots instead of one? That'd be a much better fabricated
23 story to explain that. But he only had one shot.

24 I'd argue that his recollection was misconstrued.
25 Lord knows everyone else heard multiple gunshots. Some

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1 people say they heard one, some people say they heard
2 three, four. Somebody said six to eight. There's a
3 difference in everybody's recollection. Everybody else's
4 recollection, oh, that difference is accepted. But
5 Mr. Baker's recollection there's a difference in anything,
6 they're trying to use that to get him for the murder.

7 Let's talk about the rest of those shots. Now, we
8 don't have any testimony as to the exact route that Anthony
9 Young was running on this day.

10 Item No. 7 is a shell casing. Items 4 and 5 are a
11 shell casing, and one and two. Total of five shell casings
12 recovered.

13 Now, if you take a look at this chart here -- take a
14 look at this original chart that we got yesterday after we
15 got this one two days ago.

16 It shows bullet passed going this way. One going this
17 way and this way and this way. The problem is that the
18 doctor put the bullets on the wrong side. The doctor put
19 the bullets, holes, on the wrong side of the diagram, and
20 he's the state's expert.

21 He misplaced a major wound. This isn't, oops, I was a
22 quarter inch off. You're on the wrong side of the body.
23 And he didn't catch it because he gave his file a cursory
24 glance before he came in and testified.

25 Ladies and gentlemen, Mr. Baker deserves more than a

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1 cursory glance on this case. He deserved a full
2 investigation. He deserves accurate information. You need
3 accurate information so you can make your determination as
4 to whether or not these shots were actually what happened
5 on that night.

6 Now, there's no arguing that this is a fatal shot that
7 went through the back kind of at a weird angle. It's not
8 straight into the back. The medical examiner hypothesized
9 that maybe he was bending over.

10 We've got this shot that goes across the hips. Now,
11 two days ago the medical examiner said it went through and
12 it didn't touch anything. Yesterday he said that this
13 wound over here seemed odd and perhaps the bullet grazed
14 the hipbone and started tumbling.

15 Which is it, Doctor? You don't know your left from
16 your right? One day you say a bullet didn't hit anything.
17 Now you say it grazing something. What other mistakes did
18 he make?

19 You can't trust which wounds are labeled an entry
20 wound and exit wound because he doesn't know his left from
21 his right -- left from his right.

22 I think there's a big difference, and it's important
23 to know, which wound is an entry wound and which wound is
24 an exit wound. And we cannot say anything with any sort of
25 accuracy from this medical exam.

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1 You saw the doctor on the stand yesterday. This shot
2 in the leg, his hypothesis for this shot, because this
3 looked more like an entry style wound in this and this in
4 this area looked more like an exit wound -- his original
5 hypothesis was that Mr. Young was laying on the ground and
6 was shot.

7 It would have come in from an angle. It would not
8 have run the length of his leg unless Antwon Baker was
9 laying on the ground 4 inches above it, pulled the trigger
10 and it went up his leg. Where's the projectile? We don't
11 know.

12 What if these wounds were reversed? What if it says a
13 bullet going in his knee and coming out of his thigh, it
14 went in his thigh and out his knee?

15 What if Anthony Young was reaching for a gun and
16 accidentally shot himself? Well, there would be gunshot
17 residue for that. The medical examiner said he didn't see
18 any gunshot residue. Well, he didn't see a lot of things.

19 Take a look for ourselves at what we can see. If Mr.
20 Young had a gun in his waistband and reached down and
21 grabbed it in a hurry and pulled the trigger and
22 accidentally shot himself, then gunshot residue would be in
23 this area of his pants. Do you see any gunshot residue on
24 the underwear?

25 MR. BULSA: Objection, Your Honor. He's arguing facts

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1 not in evidence.

2 THE COURT: Overruled.

3 MR. IANUARIO: I don't see anything except for a messy
4 pair of undershorts that is inconclusive and dark colored.
5 We saw the medical examiner's eyes yesterday. Forensic
6 officer didn't take samples from this, and all that we have
7 is the medical examiner stating that he didn't see any
8 G.S.R.

9 He also didn't see any G.S.R. on these black pants.
10 Of course you probably wouldn't be able to see gunshot
11 residue on black pants. What do we see on these black
12 pants? We have a hole in the knee on these black pants.

13 Now, if you were to believe the medical examiner's
14 theory there'd be another hole somewhere around in here.
15 There's not.

16 So let's take a better look at that hole in the knee
17 and figure out exactly what we're looking at. There it is
18 at the crime scene. Looks a little different. Let's have
19 a closeup of it. Sure looks like the fabric's blown
20 outward.

21 I'd imagine that if it gets blown outward that would
22 indicate that a bullet was exiting, not entering, through
23 the knee. Very good theory.

24 We didn't take G.S.R. from the clothes. We relied on
25 a medical examiner's visual cursory glance to determine

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1 whether or not there was G.S.R. on that.

2 Now, now we've got potential self-inflicted gunshot
3 wound. Should at least do a little more digging -- G.S.R.,
4 clothes -- to see if that's actuality what it was. No
5 digging was done. They just went ahead and assumed that it
6 must have gone in through here and up here with no exit
7 wounds through somewhere. But that, that's supposed to be
8 a sign of a bullet going in.

9 And keep in mind that on the scene they put white
10 gauze underneath the pants leg, the same white gauze that
11 the medical examiner couldn't identify when it was used to
12 highlight the holes in the black shirt. He didn't even
13 recognize medical gauze that had blood on it. He didn't
14 recognize medical gauze. He saw it as a rip. It was a
15 ripped shirt, a white ripped shirt, with a white cotton
16 filling.

17 If you're going to believe the saying about Anthony
18 Young shooting himself in the leg, where's the gun?
19 There's not a gun, so we've got to do a little more work on
20 this, if you're going to believe that. Otherwise, you have
21 to accept Dr. Wren's theory of how everything went down,
22 and stretch.

23 So what else was missing besides that gun? No other
24 personal property. Did Anthony Young have a wallet,
25 identification or money? Who's going to go out to eat and

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1 not take money? Who goes out without a wallet and
2 identification in this day and age?

3 MR. BULSA: I think he's arguing facts not in evidence
4 again. He's supposed to ask questions --

5 THE COURT: Well, he can argue -- he can also argue
6 the lack of evidence. Overruled.

7 MR. IANUARIO: All of the personal property was
8 entered into evidence on this case, what's in the trial.

9 I'll move on -- I'll move on. He didn't have a
10 wallet. That's all.

11 I guess that's probably why he couldn't make change
12 for Jakeem Middleton -- Jakeem Middleton, the man that was
13 trying to break a hundred-dollar bill at the cash register,
14 the same man that's suspicious behavior coincided with that
15 of a robbery, because the Waffle House's own corporate
16 policy said do not break large bills late at night.
17 Customers that walk in off the street, should you open the
18 register? And then they get robbed.

19 Mr. Monsey -- Mauney saw a gun on Jakeem Middleton.

20 Now, we heard Solicitor Bulsa talk to Charles
21 yesterday repeatedly about how he could have seen the gun
22 from that angle. He didn't move. I don't know what he saw
23 over there -- I don't know what he saw over there.

24 I do know that whatever he saw concerned him enough
25 that he called 9-1-1 and just -- he accidentally got the

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1 shootout on audio. Go back and listen to the audio when
2 you get in the jury room and see how many gunshots you can
3 hear clearly. I think I can hear several. Played it for
4 other people. We all get different numbers. The whole
5 shootout was captured on that 9-1-1 audio.

6 When you're in the deliberation room listen and see if
7 the gunshots that you can hear match up with the way the
8 shell casings were recovered. If you hear two in quick
9 succession do you see two shell casings close by? If you
10 hear three shots in quick succession do you see three shell
11 casings in the room? Figure out the number of shots that
12 you hear and see if it matches up with the shell casings.

13 Charles Mauney also told the police that this guy,
14 Jakeem Middleton, had a gun. He said the police didn't
15 seem very interested in that.

16 How can you investigate a shooting when you have a
17 witness that says somebody in there had a gun. My client
18 gives a description in the statement to the investigator
19 that later determines to be the same man, Jakeem Middleton.

20 So now we've got two people saying that Jakeem
21 Middleton had a gun. When they asked Jakeem Middleton
22 about it, I don't have no gun. And they take him at his
23 word. They don't take Antwon Baker at his word. They take
24 Jakeem Middleton at his word that he didn't have a gun.

25 I have a theory as to why that gun was never found.

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1 Y'all probably didn't think I was going anywhere with this
2 and it was moot. And I promise I wasn't wasting your time.
3 Let's take a look at two different stories.

4 First, our first witness, Justin Davis. Justin Davis
5 said that after the shooting he ran down the road. He was
6 picked up by Quan and Amy. And her boyfriend Jakeem was
7 found at the Waffle House.

8 Let's take a look at Amy's story. Amy said that she
9 picked up Jakeem in the IHOP parking lot, he took over
10 driving, they went down the road. Even though the shooting
11 had stopped, they went in the opposite direction and turned
12 around and came back.

13 What are they trying to hide? It's a pretty big
14 discrepancy as to whether or not three people were in the
15 car, or four, who's driving and where the man with the gun
16 is. Huge discrepancy. Not investigated.

17 Here you have an aerial view of the Waffle House.
18 This is a parking lot where the shell casings were
19 recovered. This is the Waffle House parking lot. And this
20 is the IHOP. Amy Padgett went to go pick up Jakeem
21 Middleton from the IHOP. Why couldn't he have walked back?
22 Why couldn't he have gone in the IHOP?

23 When she picked him up here in this huge parking lot
24 it was full of cover with a building that had customers in
25 it where it would be safe. They chose to exit, drive off

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1 in the opposite direction, and then just randomly decided
2 to turn around and come back.

3 But keep in mind we don't know who was in that car
4 because none of the stories match up. What are they trying
5 to hid? Something. It's pretty big detail. Jakeem was at
6 the Waffle House and Jakeem was driving. You don't screw
7 that detail up.

8 So Jakeem Middleton had a gun and he was looking to
9 make some money. At least that's the impression that the
10 Waffle House manager got. Keep in mind the Waffle House
11 manager said he sees rambunctious individuals all of the
12 time. It's obvious, put arm bands on, and he has to take
13 them off before he hammers people. And he doesn't need to
14 call the cops.

15 So something about Jakeem Middleton and something
16 about what was going on in that parking lot disturbed him
17 enough that he decided to call 9-1-1 before the shooting
18 ever took place. It's a reasonable man in a situation that
19 sees what's going on, sees what's unfolding. He's very
20 familiar with his clientele.

21 He sees a regular come in the store. He sees a whole
22 bunch of regulars he doesn't recognize. Some dude walks in
23 off the street and asks for change for a hundred. He's
24 concerned. He's got a fear. He calls the police.

25 Meanwhile, Jakeem Middleton goes outside. They don't

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1 know what happens outside. So we're going to be
2 speculating in this. This is hypothesizing. Believe as
3 much or as little as you want.

4 Jakeem Middleton was looking to make a buck, and
5 Jakeem Middleton's gun was showing it.

6 Now, Brandon Glover by most accounts is fairly
7 intoxicated and looking to fight. Anthony Young had an
8 ongoing beef with Mr. Baker. And we heard in the
9 physician's report, assuming that he measured properly,
10 Anthony Young was 5'6". Brandon Glover was 5'3". And
11 Antwon Baker is about 5'9". He's a larger man.

12 Anthony Young had no problems telling anybody that
13 would listen that that man pulled a gun on him in the past.
14 You heard him going here.

15 You got two little guys. You've got a big guy that's
16 going to carry a gun. You plan on jumping him, plan on
17 doing something to him, when you get to go a gunfight when
18 you take a gun to a gunfight.

19 Two little dudes and a dude known to carry a gun. It
20 makes sense that they would jump him? And I've got Jakeem
21 Middleton walking around out here looking to make a buck
22 flashing his gun around.

23 who did they -- say walk up to and say, hey, man, do
24 you want to make a buck. That's robbing.

25 You heard testimony yesterday said Brandon Glover had

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1 a plan to rob Mr. Baker. He could either fight his cousin
2 or get the crap picked out of him and be robbed, beaten,
3 leave him stinking. I don't know what that means, but dead
4 bodies stink.

5 So let's say Middleton, Young and Glover all get
6 together. Let's jump this guy. Brandon Glover gets his
7 fight. Anthony Young gets his reputation back. Jakeem
8 Middleton gets a quick lick. Make sure every money he's
9 got on him -- makes way more sense, doesn't it?

10 So what unfolds next? Brandon Glover goes inside the
11 restaurant, walks up to Antwon Baker and tells him he needs
12 to come outside and fight. Antwon says he doesn't want any
13 part of that. He tries not to fight. Mr. Glover says,
14 well, go outside and tell that to my homeboy. That's what
15 Antwon does.

16 Here in the top corner we can see Mr. Glover talking
17 to Antwon Baker. See what happens. They're talking.
18 Can't understand what they're talking about.

19 Antwon looks outside. I believe that's the part where
20 he says you need to go outside and tell it to my homeboy.
21 And watch this. See that? Antwon's walking outside
22 towards Mr. Glover. Mr. Glover walks out behind him --
23 behind him.

24 This is the doorway that Antwon Baker was led out.
25 This is where Antwon Baker was standing. And as soon as

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1 that door shuts Glover is no longer standing behind
2 Mr. Baker. He's around at the front.

3 Might be kind of tough to see, but this picture is in
4 evidence, and you can take a look at it. This door says
5 push, which means that if Mr. Baker decided he didn't want
6 to get in a fight and he didn't want to go out in the
7 parking lot, they're in the prime opportunity to jump him.
8 He had no place to go. That room is maybe ten by six max,
9 a door that you'd have to stop and pull open and step back
10 toward the attackers and then go through.

11 Then he's going to run into the waffle House. And
12 somehow he's supposed to magically find cover in this open
13 area where he's supposed to magically hurdle this
14 countertop, this high countertop, and get behind it for
15 cover. That's where he supposed to retreat, into the
16 waffle House, into the wide open area.

17 Don't pay attention to Hollywood. These things won't
18 stop a bullet. He'd have to get behind the counter in
19 order to get to safety. There's no guarantee he can get in
20 the back room. If he can't get in the back room, he's
21 stuck.

22 There's an exit door over here to the side. Antwon
23 doesn't know what's outside. He said there were ten to 12
24 individuals in the parking lot. Waffle House manager said
25 there's a large group of individuals in the parking lot

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1 people didn't recognize. Antwon was a regular there. If
2 those people are regulars there Antwon would probably
3 recognize all of them. He didn't know who was waiting for
4 him on the outside the door. He was trapped in this
5 doorway.

6 Now, even when presented with this option he says I
7 don't want to fight. That is one of the few things that
8 each and every witness agreed on, is that Antwon Baker
9 tried to walk away from that fight. Even biased witnesses,
10 witnesses that were friends with the deceased, said Antwon
11 Baker didn't want to fight.

12 He's not a man that went out looking for murder. He's
13 not a man that overreacts. If he wanted to fight, if he
14 wanted to kill Anthony Young, he had a chance right there
15 in the doorway. He could have pulled his gun and did it.
16 He said I don't want to fight.

17 He turns around to walk back inside, and they jump
18 him. They hit him in the back of the head, and he can't
19 see what happened.

20 Now, they've already threatened him. We've heard
21 testimony that Brandon Glover had a gun. Antwon's
22 statement says somebody was gesturing like they had a gun.
23 He goes into this little box, and he's attacked and hit in
24 the back of the head. He doubled over. Bam. I can pull
25 out my gun and hit shoot him there if I was wanting to hit

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1 him in the back of the head.

2 He's got a reasonable fear for his life. They just
3 threatened him. They said they were going to leave him
4 stinking. He is hit in the back of the head. He comes
5 around and ratches his firearm and fires off a shot. He's
6 not aiming.

7 This is one of those magical miracle shots that
8 somehow hits Mr. Young. Maybe he hit that shot. People
9 could get lucky. But four more times? I don't know -- I
10 don't know.

11 So let's go back to figure out what really happened in
12 that doorway. This is Joshua Hance. This is Joshua Hance
13 looking at Antwon Baker as he's getting struck.

14 Joshua Hance works at the Waffle House. He don't a
15 dog in that fight. He's got no bias. He doesn't care who
16 wins or loses. He was just recycling what he saw over
17 here. Recycling what he saw here. And looking at it.

18 Do you remember his testimony? You remember he said
19 he heard two shots? He heard two shots -- he heard two
20 shots. And that's the only shell casing that was recovered
21 from the doorway.

22 Now, if Anthony Young had a gun and reached up and
23 pulled it and shot himself in the leg and that gun was a
24 revolver we wouldn't have an extra shell casing on the
25 ground, now, would we? we'd hear two shots and one shell

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1 casing. That matches the story. That matches the wound,
2 not Antwon Baker acting in intentional disregard for human
3 life. He was trying to defend himself because there was
4 another gun.

5 Anthony Young shot himself in the leg. Even if he
6 didn't shoot himself in the leg somebody had a gun because
7 there's one shell casing, two shots. One of those guns was
8 a revolver. We know that one gun was hidden. We don't
9 know. Jakeem Middleton left the scene. Then he comes back
10 with no gun. It could have been a revolver.

11 Maybe Jakeem Middleton fired the shot which doesn't
12 explain where Anthony Young's gun would have gone, but that
13 issue alone, two shots, one shell casing, means there's a
14 revolver.

15 Now, after those first two shots everyone scattered.
16 You've heard testimony that Antwon chased down Anthony
17 Young. That testimony is corroborated by entry wounds in
18 the rear and the exit wounds in the front.

19 That testimony is corroborated by scientific evidence
20 you can no longer trust, because the doctor can't tell his
21 right from his left. If he can't tell right from left, how
22 does he know the front from the back, entrance and exit?
23 Didn't assume exit. It's irrelevant. I believe it is.

24 While we're going on in this chase in the parking lot
25 Brandon Glover did say that Anthony ran and turned around

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1 to fight him and then turned around to run again.

2 was he running for his life, or is he running to get
3 away so that he can turn around and fire another shot?

4 That makes more sense. Did Antwon shoot the guy in his
5 back four times after saying he didn't want to fight?

6 Keep in mind this is a man the police said was polite
7 and courteous the whole time. You haven't heard one single
8 statement that Antwon Baker was a violent man except for
9 Brandon Glover. If you want to believe his testimony,
10 please go ahead. I wouldn't.

11 So now was he shooting Anthony Young in murder, was he
12 shooting Anthony Young because the threat wasn't
13 neutralized yet? Because Anthony Young was running. The
14 doctor did say that this wound wouldn't slow him down. The
15 doctor even said that that you can have traumatic
16 life-ending wounds and keep moving until the engine runs
17 out.

18 So somehow Mr. Young is running around the parking lot
19 and turns around to reengage Baker and turns around and
20 then runs again.

21 Turns around, fires a shot or two at Baker. Those
22 were mystery shots. He would have been in the direction
23 that he wouldn't have hit any of these buildings. That's
24 not what the testimony was.

25 Turns around and fires another couple of shots at

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1 Baker. Crap. He's gaining on me. Turns around again.
2 When he turns around, because he runs out of ammo, he turns
3 around to gain more ground. Does that means he's mistaken?

4 But you still have the right to attack him. Lord
5 knows he tried to attack you in a small glass room with no
6 exits and three of his friends. That's a dangerous man.

7 We don't know if he turned around because he said
8 stop, don't shoot, here's my gun, I'm done, or if he just
9 turned around to reengage. I believe he was trying to put
10 some distance between him and Mr. Baker so we're engaged.
11 That would explain some of his extra shots that have been
12 kinda heard.

13 Now, at some point in time it is universally agreed
14 upon Anthony Young fell on the ground. We don't know when
15 he died. Ms. Wilkins said that he was still making sounds
16 when she showed up when Antwon was leaving. So when Antwon
17 left he was still alive.

18 Now, Antwon stood over him. We've got evidence that
19 Antwon kicked him in the head. That seems pretty damning.
20 I'll admit that.

21 Let's back up a step. With the target disengaged, his
22 attacker laid off because it's dark. He's dressed in all
23 black. Antwon can't see if he's hit. He can't see if he's
24 bleeding. He can't see anything. It's a black man wearing
25 black clothes in twilight hours.

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1 There's no way he can see if he hit Mr. Young.
2 Mr. Young falls on the ground. He may have tripped. He
3 may have gotten back up. We don't know what's going on.
4 We don't know if he was trying to get his gun, if he was
5 trying to get back up. But Antwon kicked him in the head.

6 Is that the action of a murderer? You probably think
7 yes. But if Antwon Baker wanted him dead, he was on the
8 ground, and bam. That's all he had to do.

9 If he wanted to kill Anthony Young he had his prime
10 opportunity right there. He kicked him in the head to
11 neutralize him to make sure that he was down because he
12 didn't want to kill him. And it's only then as he's
13 standing over him and sees the blood slowly start to run
14 out that he panics. He's scared. He realizes that he's
15 actually shot a man. I've never shot a man. I don't know
16 what those emotional feelings are like. But I've heard
17 it's hell.

18 So now he's scared and he doesn't know what to do, so
19 he goes in the Waffle House. Says he's going to go in the
20 waffle House and call 9-1-1.

21 What's significant about this? He didn't get in his
22 car and flee right away. He went inside to see if they'd
23 call for help.

24 Keep in mind no one else called 9-1-1. None of
25 Mr. Young's friends called 9-1-1. No one else in that

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1 parking lot called 9-1-1. The two 9-1-1 calls we have are
2 from the Waffle House employee that called because Jakeem
3 Middleton was highly suspicious and a random person that
4 happened to be driving by.

5 why didn't his friends call 9-1-1? Antwon Baker is
6 the only person that actually went inside to even see if
7 anybody was calling for help.

8 And then when he goes inside he's a million things
9 going through his mind, and he realizes that I'm a black
10 man in Spartanburg and I've got a gun in my hand and
11 there's a shooting and I don't know who's coming back or I
12 know if the cops going to be the ones to get here first or
13 it's going to be the guys that left? And do I need to go
14 hide guns or leave to go get more guns? I need to get
15 home. When you're injured and you're hurt and you're
16 scared you want to go home.

17 He went home. He threw up on himself according to his
18 girlfriend. He takes a shower. Now, the state would have
19 you believe he took a shower to dispose of the evidence.
20 He showered regularly according to his girlfriend. He
21 changes clothes all the time.

22 The state would have you believe that he changes shoes
23 to hide evidence. You heard his girlfriend. They don't
24 know how many shoes he's got. He's got too many. He
25 changes them all the time. He wasn't trying to hide

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1 anything.

2 He told his girlfriend to go put the gun in the trunk
3 of the car because they were going to go down to the police
4 station and that's a murder weapon. They didn't take the
5 white Crown Vic or the white Grand Marquis because that was
6 his buddy's.

7 When the cops show up to arrest Antwon Baker or just
8 they show up looking Antwon's talking to somebody. Now,
9 the state would argue that Antwon's telling the grand old
10 story about how he shot and killed somebody.

11 We don't know what the nature of that conversation
12 was. We don't know what the mannerisms were. We don't
13 know if it was a friendly conversation, a drawn-out
14 conversation. We don't know if that was Antwon Baker's
15 buddy saying, here, man, here's your car keys back, look
16 after my pregnant wife, I might be gone a while.

17 So remember Tanisha Martin was also upset, and Tanisha
18 Martin was getting ready to go to the police station too --
19 this pregnant woman at 5:00 o'clock in the morning
20 emotionally disturbed. She is going to need a few minutes
21 before she can calm down and drive.

22 They weren't trying to hide anything. He walked right
23 up to the cops and said yow, I'm the guy you're looking
24 for, I did it. And he was polite and courteous the whole
25 time, aided in the investigation, told them where the gun

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1 was, didn't try to hide anything. Is that the actions of a
2 murderer? Is that the actions of a guilty man? Doesn't
3 add up.

4 That's a nice resolution for the story right there,
5 isn't it? Antwon Baker kills him, he goes home, gets
6 arrested, case closed.

7 Let's talk about what happened after Antwon. You
8 heard the police officer describe the scene as total chaos,
9 15 to 20 people standing around. Total chaos does not
10 sound like a secured crime scene to me.

11 Who left the scene and who came back? We know that
12 Middleton left the scene and came back, along with Amy and
13 Justin Davis. We know that Brandon Glover and his sisters
14 Kiara and Chassity left and came back according to Hillary
15 Wilkins' testimony.

16 Hillary Wilkins testified that they left while the
17 gunshots were still being fired. Hillary Wilkins left very
18 briefly but came back just in time to see Antwon Baker
19 leave, and she gave in her testimony that no one else left
20 that parking lot. She was there the whole time. She was
21 with Anthony Young.

22 I guess that means that Antwon Baker must have taken
23 the gun off of Anthony in order to hide it. All the
24 witnesses say Antwon stood over the body. No one said
25 anything about kneeling down. No one said anything about a

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1 possum body. No one said anything about it. No one said
2 anything.

3 There's a blood stain. Corresponding pictures show
4 that we can accurately tell which part of the body it is.
5 Bear with me for a moment. I missed one.

6 (Pause.)

7 MR. IANUARIO: There's blood stain next to the left
8 leg, and you kind of see the edge of a shoe here. The edge
9 of a shoe, cuff turned up, cuff turned up, shoe lace, shoe
10 lace, blood stain, blood stain.

11 What's the problem with this blood stain? There are
12 no wounds in his left leg. There's a puddle of blood.
13 It's not running out from underneath the body because,
14 look. You'd see it running out. There's clear asphalt all
15 through here. And it's his left leg. It wasn't shot in
16 his left leg, was he?

17 How did this blood stain get over here when there are
18 no injuries in the left leg, no injuries around this ankle,
19 and you can clearly see it didn't pour out from underneath
20 the body? Somebody moved his body. Hillary said it didn't
21 happen, so it must not have happened, or somebody's
22 mistaken in their testimony.

23 You know in talking about mistakes in testimony, we
24 talked about the car rides. Hillary testified that she saw
25 Kiara, Chassity, their friend Darrian and Brandon get in

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1 the car and speed off. Hillary drove separate.

2 Brandon's story doesn't mention a steering guy. Don't
3 you think she'd know how many people were in the car when
4 you left the murder scene?

5 Keep in mind Mr. Glover first said he stayed until the
6 cops came. Then he slipped up, and he said I saw them when
7 we was coming back. He didn't volunteer that. He slipped
8 up. He was lying on the stand. That's your star witness
9 lying on the stand. What's he trying to hide?

10 In order to believe that there's absolutely no gun on
11 Mr. Young you have to believe Dr. Wren's testimony about
12 this going in here and coming up the leg, and you'd have to
13 believe that any chaos or crime scene this guy described as
14 chaos -- nobody tampered with any evidence.

15 Now, if you remember this has been paused. This is at
16 4:59:55 in the morning. Antwon just went outside. Right
17 there in the corner you can kind of see the white shirt a
18 little bit. See him walking around. And I've got to play
19 this slow so we don't miss anything. I apologize about
20 that. But, again, I want to make sure that no detail is
21 overlooked. Lord knows enough has already been overlooked
22 in this case.

23 Remember talking about this waving, the other two
24 employees, the two girls. They're in the back side of the
25 restaurant. They didn't get a statement from them.

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1 Again, keep in mind that this is playing slow. Joshua
2 Hance looks up. Joshua Hance sees a scuffle. Note the
3 time 5:01:18. Josh Hance is now walking inside.

4 Josh Hance is now in the back room. Josh Hance saw
5 the first 12 seconds of the fight. He didn't see
6 everything. He was looking right at those first two shots
7 that were fired. You kinda have to believe on that. The
8 rest of this he's in the back room. So in a 72-second
9 gunfight he sees the first 12. We don't know who's chasing
10 who around the parking lot.

11 Came in the store -- commotion at that point in time.
12 Let's keep watching. Still playing. Something's going on.
13 Here comes Antwon back in 5:02:30. Roughly 71 seconds
14 later, again, not going to fidget with it to get the timing
15 just right, but I'd like for y'all to not have to come back
16 tomorrow. Approximately 70 seconds. So Joshua Hance saw
17 12 seconds of a 70-second fight. But he did see the first
18 12 seconds. We know that. And he was looking right at the
19 first shots that were fired. Shots, plural.

20 Now, Antwon's walked back outta the building. Keep in
21 mind according to testimony that we have a police
22 investigation.

23 Antwon's car is parked directly across from the door,
24 door here, directly across being either here or here and a
25 place that would line up with these shell casings if they

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1 were ejected back and to the right if he was -- the gun
2 like he said. So you're not going to see his hands.

3 Now, we've got about a minute. Takes two and a half
4 to three minutes until the police arrive. Baker's already
5 gone. Plenty of time for somebody to toss a body. Cops
6 still not there yet.

7 Now I'm going to go to this frame by frame. What is
8 that glimmer that just appeared in the top corner? Do you
9 see it? Right here is a glimmer. It's not there in the
10 screen before. Now it shows up.

11 If you look carefully you see a little dot there and a
12 little dot there. Might be headlights.

13 Let's see what the next screen holds. Wow, look at
14 that. More headlights there, and headlights here. And now
15 you've got a clear view of them. You know why you have a
16 clear view of them? Because they're swerving around a dead
17 body. Do you know why they're swerving around a dead body?
18 They knew it was dead.

19 A non-guilty human being would see somebody lying on
20 the ground bleeding and stop and help them. You know why
21 they didn't stop? Because they knew he was dead because
22 they tossed the body. Over a minute has gone by since
23 Antwon has left. Cops still aren't here yet. And you can
24 see in two frames headlights, headlights, gone. They got
25 out of there in a hurry.

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1 Somebody else could still be tossing a body, but all
2 we know is a car left and then afterwards drove around a
3 dead guy. Still no cops.

4 That's why I probably ought to hit play now. There we
5 go. Now, the car's already left, and there's still no
6 cops. Car drove around a dead body a minute after the
7 assailant left.

8 If they're sitting in that parking spot they saw
9 Antwon Baker leave. They knew there was no longer a
10 threat. Why did they take a minute to leave? Why did they
11 leave at all? We still don't have the cops here yet.
12 There's nobody else to be running around in the parking
13 lot.

14 Hillary Glover testified that -- I'm sorry -- Hillary
15 Wilkins testified that nobody came in that parking lot.
16 You just saw lights leave. Testified nobody left that
17 parking lot and nobody missed the body.

18 Who else had -- here comes Mr. Hance out. Kinda watch
19 up in the top corner. You'll see a very faint blue light.
20 The cops had arrived.

21 How much time elapsed between the time you saw Antwon
22 walk into the Waffle House, walk out of the Waffle House?
23 Plenty of time for somebody to toss a body, take the gun
24 and leave. And we saw somebody leave even though
25 Ms. Wilkins said that nobody left.

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1 We've still got another two minutes for the cops to
2 get here. Plenty of time to disturb a crime scene. Plenty
3 of time to pick up your own shell casings if you were so
4 inclined and smart. Plenty of time to hide a revolver.
5 Plenty of time to do anything.

6 Remember Brandon Glover testified that he didn't have
7 a gun. We heard direct conflicting testimony. Brandon
8 Glover testified he didn't have a plan to create an act of
9 violence, to rob Mr. Baker. You heard conflicting
10 testimony.

11 Brandon Glover was a cousin of Mr. Young. Hillary
12 Wilkins was a mother of Mr. Young's child and friends with
13 the Glover family. So clearly she lied about who was
14 leaving the parking lot. Who would she be lying for? Why
15 would she be lying? Somebody just killed her baby's daddy.
16 Don't you think she'd say, hey, police officer, somebody in
17 this case just left. And you saw the headlights like I
18 did. You saw them swerve around the body like I did. She
19 left that part out completely. She must be trying to hide
20 somebody in her family.

21 Take a look at the statements. Brandon Glover. He
22 broke down under testimony. He said he didn't leave and
23 went to the gas station. And then he couldn't give me a
24 reason to go to the gas station. I got a reason he went to
25 the gas station. To get rid of his gun and to get rid of

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1 Anthony Young's gun and any other things they might have.

2 And then the guy took his dead cousin's wallet and
3 took his money. Shameful. He didn't incur one single
4 criminal charge out of this, and he started the fight.
5 Unconflicted testimony he started the fight. Didn't even
6 get charged with assault and battery, and Mr. Baker's on
7 trial for murder. It's not fair. It's not right. Because
8 Mr. Glover acted as a criminal. He hid the evidence for
9 his crime. He hid his dead cousin's gun.

10 Mr. Baker handed over everything. He walked right up
11 to him. All he did was go home and come to terms with what
12 happened and make sure nobody else showed up and shot him.
13 Having a rough day, he was, but he's not guilty. Just
14 means he's going through a troubling time.

15 It didn't happen until after he realized that Mr.
16 Young was dying. He didn't become upset and emotional
17 until after, not during the commission of the crime.
18 During the commission of the crime we are trying to figure
19 out if he's realizing an attacker, Mr. Young running to
20 gain ground or running for help. Nobody said there was any
21 help. Nobody came to his aid. Nobody did anything, and
22 everybody left the scene. Nobody called 9-1-1. That
23 somehow Mr. Glover's guilty of murder of all of those
24 holes.

25 Antwon Baker did not murder Mr. Young. He fired a

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1 shot at Mr. Young. We don't even know if he fired the shot
2 that killed him because we heard testimony there are more
3 than five shots heard.

4 We know at the doorway two shots were fired. One
5 casing was recovered, so something's off. We just say that
6 maybe somebody was shooting at Antwon because he was going
7 after their friend. Maybe somebody's honorable and noble
8 and trying to protect Mr. Young and they accidentally hit
9 Anthony. Can't rule it out.

10 We've got two guns that left the scene. We've got an
11 inept medical examiner that doesn't know his left from his
12 right. We've got a crime scene that's -- doesn't add up to
13 the story. No broken glass, no projectiles recovered in a
14 giant horseshoe.

15 What we do know absolutely is that Mr. Baker went
16 outside. He was summoned outside by Mr. Glover, lured
17 outside by Mr. Glover.

18 He went in that little area. The door shuts behind
19 him. Mr. Glover walks around and comes out to the front.
20 Antwon Baker says I don't want any part of this, I don't
21 want to fight, I'm over it.

22 Numerous witnesses were able to hear that. There
23 weren't too much witnesses, is what Anthony and Brandon
24 were saying. Witnesses could hear Antwon say they didn't
25 want to fight, and they couldn't give specifics of what

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1 they're fighting over, what's being said, who's posturing.
2 Said Mr. Baker said he didn't want to fight -- the same man
3 who turned himself into the police when they showed up at
4 his apartment complex to do an investigation without
5 trouble. Polite, courteous the whole time. A regular at
6 that Waffle House.

7 Keep in mind we don't know which direction he was
8 coming from, so it may have been out of his way to go to
9 that other Waffle House. Maybe come this way. This is
10 closer. He's a regular here. Mr. Mauney knew it.

11 When he turned around and walked back inside and got
12 hit in the back of the head, his options, pull the door.
13 He's dead.

14 Plowed through three guys with guns and go into a
15 parking lot with minimal cover in ten to 12 people, a
16 parking lot that was so rowdy the manager decided to call
17 the cops before a shooting happened.

18 He doesn't know who's friend or foe in there. He
19 can't go in here. He's in aquarian, clearly shooting fish
20 in a barrel. He was stuck. He had no option but to pull
21 his firearm and shoot. Now, he wasn't carrying that
22 firearm legally, but that does not waive his right to
23 defend himself.

24 He had no option. He pulled the gun and turned around
25 and he shot. He doesn't know who fired that other shot

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1 that he heard in the doorway. He just knows he heard
2 another shot in the doorway.

3 I don't know why he selected Mr. Young instead of Mr.
4 Glover or Mr. Middleton or anyone else. We weren't there.
5 He just happened to go after Mr. Young.

6 I would imagine that Mr. Young was reaching like he
7 was going for a gun and shot himself in the leg, and then
8 Mr. Baker would identify that person as that's the man that
9 has the gun, that's my biggest threat. But he knows
10 there's other people. He describes a tall dude in his
11 statement that also had a gun.

12 So he doesn't fire that gun and chase Anthony Young
13 down and kill him in cold blood. He says he runs over here
14 to his car that's behind him and he fires off an accidental
15 shot.

16 If you want to believe he's being chased through this
17 parking lot where are the bullet strikes in this area? You
18 mean to tell me if somebody's running for their life and
19 they're running around like this and somehow all the
20 bullets go in one direction except for the one projectile
21 that was recovered out of five.

22 And then all in the midst of this Antwon fires five
23 shots and somehow hits him five times. We shouldn't put
24 him in jail. We should put him in a uniform and send him
25 to Afghanistan if he's that damn good.

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1 He had no choice but to shoot to save his life.
2 Mr. Young was running from him, but we don't know if he was
3 saying I give up or running to turn around in cover.

4 We know that a whole bunch of stuff had been hidden,
5 so what witness testimony can you go by? There's flaws in
6 all of them. There's flaws in the Waffle House guys. He's
7 got nothing in it, but we do know he saw the first 12
8 seconds and he heard two gunshots. We know that. The rest
9 of it, the part about chasing around in the parking lot, a
10 70-second fight.

11 The problem with the state's case is they believe that
12 Antwon is guilty of murder because Anthony Young was shot
13 in the back four times, in the front one time, and count
14 the leg wound going in, and that he kicked him in the head,
15 stood over him and watched him die in cold blood.

16 The problem with that is we don't know what Anthony
17 Young was doing. We know there's a mysterious wound in the
18 leg. We know there was two gunshots, one shell casing
19 indicating a revolver. We know that the guns left the
20 scene. We know the police didn't investigate the guy that
21 the manager called. He said, hey, he's got a gun.

22 They didn't take gunshot residue sample from a man at
23 the scene of a shooting that had a gun. How big of a hole
24 in a case is that? Huge.

25 Antwon Baker had no choice but to do what he did. If

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1 he wanted to murder Anthony Young he would have shot him in
2 the back of the head when he was on the ground. He said he
3 kicked him just to make sure he was down -- neutralize a
4 threat -- not to kill him. Make sure he didn't get back
5 up.

6 When he sees what's happening he doesn't get in his
7 car and flee. He goes in the Waffle House to see if they
8 called for help. And he's the only person out of the
9 entire parking lot that goes and tries to get help.
10 Everyone else flees and comes back. They didn't go to call
11 9-1-1. They go to a gas station. Oh, we just go down the
12 road to do a u-turn. Did they forget that the Waffle House
13 is on the right and you're pulling out of the IHOP parking
14 lot? why did you have to go left?

15 Two people lied about where they went after the
16 shooting. We know we've got a window of opportunity for
17 somebody to have taken a gun off of Mr. Young, that Mr.
18 Young has a possible self-inflicted gunshot wound. We have
19 no conclusive determination if it is or isn't, because,
20 well, we just don't. And you're supposed to take all of
21 that evidence and to convict Mr. Baker of murder. You're
22 supposed to ruin his life.

23 The only wrong that he did that night was carry a gun
24 without a permit. And then when he was attacked he
25 defended himself. So carrying a gun without a permit I

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1 guess opens up the door to a lot of possibilities.

2 The prosecutor will argue that he had a chance just to
3 not go to that Waffle House. Yeah. But he didn't have any
4 intentional threats.

5 It's a bad idea for me to dress myself in a
6 hundred-dollar bill and carry boxer shorts and walk down
7 the street in the ghetto, but if somebody attacks me I have
8 a right to pull out a gun and shoot them, don't I?

9 Antwon Baker had a right to be at that Waffle House.
10 He didn't have to leave when he saw them. He didn't
11 recognize most of the people in the parking lot, and
12 neither did the manager. He was going in to get a to-go
13 order.

14 We don't know anything other than he showed up to get
15 some food for his pregnant girlfriend on his way home.
16 Didn't go out looking for crime. He carried his gun as he
17 always did, which his girlfriend said. When he was going
18 out late at night. Takes out from under the bed, puts it
19 in his waistband as he always did.

20 Didn't seem to be any indication of drama when they
21 were coming home from her mom's house. He didn't seem like
22 a man that was going out looking for a fight. Didn't seem
23 like a man that was looking out and going to cause a
24 murder.

25 He's a man that's protecting himself. He was prepared

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1 for trouble because, Lord knows, late at night in parts of
2 Spartanburg it can be pretty damn dangerous. But he didn't
3 go on a hunt. He didn't go out trying to kill somebody.
4 He didn't kill an innocent man that was running away. He
5 killed his own attacker. And we still don't even know who
6 fired the shot that killed him, because we've got an inept
7 medical analysis. We know that two shots were fired, one
8 shell casing recovered. There's just too many holes to
9 convict Antwon Baker of murder.

10 And, again, keep in mind. This isn't, oh, he just
11 overreacted as he pulled his gun and it was a heat of the
12 moment and he chased him down because he was angry.

13 Antwon didn't get emotional until he kicked him and he
14 realized he was starting to die. I didn't just kick a guy
15 and knock him out. Wow. I see blood coming out from
16 underneath -- on black asphalt and a black male wearing all
17 black. I better go inside and get some help. And now he
18 starts to panic.

19 You want to believe the witness statements that said
20 he standing over him and just standing there calm, cool and
21 collected? That's not like a man that's in the heat of the
22 moment, a man that's passionate.

23 He just all of a sudden realized the aftermath.
24 That's what the people said. That's when he started to go
25 into shock, when he went to get help in the Waffle House.

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1 He went home to shower and turn himself in to the
2 police. You're supposed to take poor medical examination.
3 I could have thrown darts at that diagram and gotten a more
4 accurate result. You're supposed to take that examination
5 and convict Mr. Baker with it.

6 You're supposed to use a police investigation to
7 convict Mr. Baker with it. But somehow in that
8 investigation they found no other bullets, no other
9 strikes, no broken glass in this giant "U". Plus, the lead
10 investigation, didn't take gunshot residue samples from the
11 man that seemed that we had 9-1-1 call about having a gun.
12 Big holes in the case.

13 We're supposed to convict Antwon Baker because
14 Mr. Young was unarmed and innocent. Anthony Young brought
15 on it. Brandon Glover clearly brought it on, but I believe
16 they were working in cahoots. They're cousins and hung
17 out. Brandon Glover is the reason Anthony Young's dead.

18 Anthony Young was armed. Anthony Young was a part of
19 it. And poor Anthony Young shot himself in the leg. Why
20 else would three men, two of them significantly smaller,
21 attack a man known to carry a gun unless they've a gun
22 themselves? And they've got plenty of opportunity for it
23 to be removed from the crime scene. We see the vehicle
24 leaving. Again, witness statements said no vehicle left.

25 I can't think of any other possible explanation to

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1 resolve all of these inconsistencies than the story I just
2 gave you. My story is not absolute. The solicitor's going
3 to give you one here in a few minutes. I'm sure it'll be
4 much different than mine.

5 Weigh the two stories. Weigh the evidence. See which
6 one explains everything better, because Mr. Baker's life
7 depends upon it. Thank you.

8 THE COURT: Does any juror need a short break before
9 we continue with the prosecutor's argument? Anyone?

10 (No response.)

11 THE COURT: All right. Mr. Bulsa.

12 MR. BULSA: I won't be nearly as long, ladies and
13 gentlemen.

14 I think the evidence is very clear. I respectfully
15 disagree with Mr. Ianuario that this man had a right to be
16 in a Waffle House, a public restaurant, wielding a firearm.

17 MR. IANUARIO: Objection, Your Honor. Possession of a
18 firearm is not relevant to nullify self-defense.

19 MR. BULSA: Your argument claimed you said --

20 THE COURT: Excuse me just a minute.

21 The objection is overruled.

22 He is also charged with the crime of unlawful
23 possession of a firearm.

24 MR. BULSA: The defense conveniently overlooks that.

25 This man drove into the parking lot of a Waffle House.

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1 Yeah. He had a right to drive there. He sees someone that
2 he had a beef with.

3 Does he decide to avoid any future conflict and just
4 go to another waffle House down the street from his house
5 that he frequents just as much as this one? No. He puts a
6 weapon in his pants. I believe if Mr. Maunsey -- Mr.
7 Mauney had seen a gun on him he would have called the
8 police.

9 Ladies and gentlemen, the evidence is clear. Five
10 wounds, five entrance wounds. These are all scattered now.
11 Five bullet holes, a sixth wound, the reentry, all of them
12 leaving the body.

13 Five shell casings at the scene, five rounds missing
14 from the magazine of that weapon. All of the rounds
15 recovered. One gun.

16 There is never, zero, physical evidence that there was
17 any other weapon used. Mr. Ianuario wants you to believe
18 that there was some sort of shootout, yet in one breath
19 he's arguing where's all the other holes in the buildings,
20 the busted glass. Well, it goes the same way against his
21 argument if somebody else was in a shootout with this man.

22 Ladies and gentlemen, I want you to go back with me.
23 We presented this case in a logical fashion. We began by
24 talking about the crime scene, and we presented some lay
25 witnesses to you. We gave you different perspectives of

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1 different parties.

2 State's Exhibit 35. It's the diagram. We had Justin
3 Davis who was -- would have been out in the parking lot
4 when it happened. He rode there with Mr. Glover and
5 Mr. Tolliver, he said. No. Excuse me. Mr. Glover and the
6 victim, Anthony Young. Mr. Tolliver drove in another
7 vehicle. It would have been this blue Caprice. He gave
8 you his perspective.

9 We called Hillary Wilkins who would have been parked
10 somewhere over in this area -- the girlfriend of Anthony --
11 who says she basically watched him die in her arms.

12 We called a lady, Amy Padgett, who had no part to any
13 of this, but she had been there with the Middletons. She
14 was parked somewhere back over in here viewing it from this
15 angle.

16 We called Joshua Hance who was in the Waffle House and
17 had a view from this angle.

18 And we even called somebody that was driving down the
19 street who saw this commotion and then pulled into this
20 parking lot. We wanted you to deal with it from all of the
21 angles.

22 It's common sense in human life that everybody's going
23 to have a different perspective. The defendant kept
24 talking about the number of shots that were claimed. Well,
25 everybody is hearing and remembering and seeing things

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1 differently.

2 I think Justin testified he thought he heard eight.

3 I don't believe Hillary was asked that question.

4 Amy said six or seven.

5 Joshua Hance said four or five.

6 Antoine Gist said one or two.

7 what did the defendant himself say? well, apparently
8 Mr. Ianuario wants you to just throw out his own client's
9 statements, because all of that hypothesizing and
10 theorizing, he says, a zero of that is in this man's
11 handwriting, the man who Mr. Ianuario says is the only one
12 that did the right thing.

13 He left to go call the police. I seem to recall he
14 didn't call the police. And when he was found some people
15 might call it lucky. I call it providence.

16 Officer Garcia found the car and found the defendant.
17 He realized he was caught. And he says I did that thing.
18 Not I had to do it. Not somebody was going to kill me.
19 Not that somebody pulled a gun on me. I did that thing at
20 the Waffle House.

21 But back to my point initially about the number of
22 shots. In his own hand he puts I shot between three and
23 eight times. Five falls right in the middle of that.

24 Used a laser? We didn't argue that. Mr. Ianuario
25 asked all of those questions about the laser. Apparently

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1 he has some fascination with firearms. And I don't believe
2 you have to sight a gun to shoot it, especially if you have
3 closer range. I'm not a firearm's expert. I don't own a
4 firearm. I don't like firearms. They're dangerous
5 weapons. What is a handgun made to do? Why do you put it
6 in your waistband when you go into a public restaurant?

7 We even brought in Tanisha Martin, the defendant's
8 girlfriend, because I wanted you to see what this man did,
9 the man who apparently did the right thing, who said in his
10 first statement he left to go call the police, yet he
11 doesn't. He tells his girlfriend instead put the gun in
12 your car. Basically get it out of the house. Hide it.

13 He washes up and changes clothes and goes about as if
14 nothing was different. But by providence the officer found
15 him that quickly.

16 I'd like to think the investigation would have
17 revealed if we had a video of him, had a -- the menu that
18 he touched, could possibly got fingerprints off. But it
19 happened. The officers' response so quick they didn't have
20 to go that route.

21 And then they gave the opportunity, as Investigator
22 Foster said, to tell his side of the story. And he writes
23 it in his own hand. Investigator Foster realizes some
24 things aren't matching up, so he gives the defendant a
25 chance to explain what's not matching up, principally these

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1 two shell casings.

2 And what is the defendant's response? Oh, I tripped
3 over it. I think he said a sideways. I don't know what he
4 means -- a sidewalk, a curbing or something -- and the gun
5 went off. That's his explanation.

6 Nowhere does he say Mr. Young pulled a gun on me.
7 Nowhere does he say Mr. Young turned to fire a shot as was
8 so demonstratively demonstrated by Mr. Ianuario. All of
9 that is fiction, all of that is conjecture and speculation
10 and false, because there's zero evidence of that.
11 Apparently some phantom shooter, phantom gunshots,
12 self-inflicted wounds.

13 So we bring the lay witnesses in to give you their
14 perspectives. Then we brought these officers in. And I
15 talked a little bit about Garcia and how he rode around and
16 did a good job, especially going in a separate circle. He
17 started close to the scene, checked the -- checked the
18 complexes close to the scene, and then the hunt club, and
19 then he goes to the next one.

20 He happens to find a car that's warm that matches the
21 description, and he waits. And you heard the rest of that
22 story.

23 We have the two forensic officers. Officer Hogsed and
24 Officer Talanges came in. Their job is to collect all of
25 the evidence. The road deputies had secured the crime

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1 scene and gotten everybody out.

2 Then they began collecting the evidence and collected
3 everything that is there. They're human. They don't find
4 everything. This isn't C.S.I. Clearly, gunshots went
5 somewhere. He had five through-and-through holes through
6 Mr. Young and only one round recovered. But nothing else.
7 Sad. Your chance. You know what's your providence. They
8 recovered everything that he did.

9 And then we bring in the investigators who interviewed
10 these witnesses that testified and put the big picture
11 together, and met with the defendant and got his side of
12 the story which I'll go into in a little bit.

13 Then we have the autopsy that shows the wounds. He
14 wants you to throw out Dr. Wren's testimony. I submit to
15 you Dr. Wren is an expert. He's been doing this for a
16 number of years. He's a human. Everything on the frontal
17 portion of this diaphragm is correct but for the direction
18 of the arrow. And if you look at this and you flip it this
19 should have been over here. But he's human just like
20 everybody else. So he corrected it.

21 We went over the pictures with you to show what --
22 what they are. He got shot. And the ultimate wound, the
23 ultimate fatal wound, was the shot to his back.

24 All of these different angles, it's consistent with a
25 man running and ducking and trying to get away from his

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1 assailant.

2 I've already talked about the gun and the shell
3 casings and the round. The most damaging evidence, I
4 submit to you, ladies and gentlemen, State's 56, a pair of
5 shoes. He didn't trip over him. No. Kick him to
6 neutralize him? I don't know where that came from, because
7 it's certainly not in Mr. Baker's statement.

8 He kicked him like this as Ms. Padgett said. Ms.
9 Padgett said that that's the purpose for going to get the
10 shoes, sending them to SLED to determine if possibly
11 there's some of the victim's D.N.A. on this man's shoes.

12 That proves everything, what Mr. Ianuario tries to get
13 you to believe is wrong. It corroborates the testimony
14 presented.

15 Then we have the motive. Why did this happen? That's
16 not an element of the offense. We don't have to prove
17 motive. But sometimes, most often, juries want to hear why
18 this happened.

19 I submit to you you heard a little bit about why. You
20 didn't hear the full story, but you heard from Justin and
21 from Brandon. And Hillary made a mention that Anthony
22 recognized the defendant from an earlier altercation.

23 I submit to you that the defendant recognized Anthony
24 from that earlier altercation which would have taken place
25 at Magnolia Townhomes.

Closing arguments

1 That is why Anthony Young is the one that died in the
2 parking lot. That is why he chased Anthony Young down in
3 the parking lot. Because if you read his statements -- and
4 we'll go over those in a minute -- he doesn't talk about
5 Anthony Young doing much of anything except walking back
6 and forth. He talks about the guy in the white, talks
7 about some guy in blue or black, some tall guy in black
8 reaching in his waistband.

9 He says Anthony before the shooting is walking back
10 and forth, and yet he mentions Anthony again as if Anthony
11 were running towards the car. So he fired another shot to
12 what he thought was to get a gun.

13 But I thought he had a revolver in his waist. Wait a
14 minute. No, he didn't. That's not true. If Anthony was
15 running, he was running to get away. He was running in
16 this direction and moves around and dies.

17 Murder is the unlawful killing of another human being
18 with malice aforethought. Malice does not have to be in
19 your heart or your mind for any length of time.

20 The judge will explain this to you. He'll use words
21 like a appreciable amount of time. Mr. Young -- Mr. Baker
22 did not have to plan to kill Anthony Young when he pulled
23 into this parking lot and parked and got out and went and
24 ordered. That would be premeditation. It's not the law in
25 South Carolina.

Closing arguments

1 The law in South Carolina is malice aforethought. So
2 I submit to you what happened is when he was out there --
3 I'm not going to excuse what Brandon Glover did. Brandon
4 Glover regrets what he did. Acted stupidly and wound up
5 getting his cousin killed.

6 Mr. Young was struck, and he turned. His reaction was
7 to pull a gun. That seems like a harsh reaction, doesn't
8 seem like an equal amount of force to retaliate with.

9 Look at the back of the head, and you turn around with
10 a gun, not your fist, to hit him back. He pulls a gun.
11 And he shoots and hits Mr. Young and continues to chase Mr.
12 Young.

13 I submit to you this is the malice. Put it in his
14 head. He's going to kill him.

15 There are several undisputed facts that this is a
16 waffle House, public restaurant, open 24 hours. The
17 defendant pulled in. He recognized the car he saw. He did
18 not have to stay. But, no, he chose to stay and back in
19 and arm himself with a weapon and go inside.

20 He could have gone to the other waffle House which was
21 not that far out of the way. In fact, I think Ms. -- I
22 don't know where the map is. Y'all recall seeing the map.
23 We've got so much pieces in here.

24 His residence was pretty much right in the middle. He
25 chose to go inside even though he recognized the guy, the

Closing arguments

1 car of Mr. Young.

2 Remember, there's nobody else there with any motive to
3 harm Anthony. They were all his friends or some people
4 that were connected to him.

5 I think the guy you saw dancing in the video -- I
6 should have asked Brandon this question. But I believe
7 that was Anthony. He was wearing black. You can tell by
8 his clothing. He was kind of acting out dancing with a
9 girl. That's how he was acting that night.

10 He chose to go outside with Brandon. He could have
11 said, no, I'm not going out there. I'm going to stay in
12 here and wait on my food and go home. I'm not going out
13 there.

14 So he's not afraid of anything. In fact, he goes
15 outside. And hard to believe, he tells him I don't want to
16 have any trouble. So what does he do? He's not afraid
17 even though he claims he saw people reaching. He said they
18 were threatening to do something to him. He turns to go
19 back inside, and then he gets hit. And then he reacts and
20 then he responds and then he continues.

21 We know he fired at least five rounds. He claims he
22 might have fired more. But the physical evidence suggests
23 that it's five unless he went home and loaded some more
24 rounds into the gun.

25 I went through everybody's perceptions about the

Closing arguments

1 number of shots. This is a serious case. They're all
2 fleeing, taking cover. Yes. They're getting out of Dodge.

3 Clearly, Anthony is running away from the Waffle
4 House, because he doesn't fall facing that way. He ran
5 around, which is consistent with everybody's statement how
6 he was fleeing and got chased and came back. He was
7 ironically the only person that ever got struck with a
8 bullet.

9 The defendant in one of his statements I believe says
10 he turned and shot into a crowd of people. Remarkably, it
11 was just Anthony that got shot.

12 Anthony had five wounds. Mr. Young had zero. Mr.
13 Young had zero wounds. No injury from the strike to the
14 back of the head. Nothing. Anthony had five wounds.

15 I'm not going to put it on the overhead, but you're
16 going to have it in your jury room. He had wounds to his
17 face. Three shell casings over here. Two over here.
18 Looks like a trail to me, a fleeing trail. And of course
19 we heard how he died on the scene. We hear how the
20 defendant flees and how he goes about his business.

21 Now, his girlfriend claims he threw up and he was
22 panicky. Wasn't it kind of ironic when the officers said
23 he came up to me and was pretty calm, he was calm and said
24 I did that thing at the Waffle House? Doesn't sound like
25 any panic or fear or shock.

Closing arguments

1 Talked about the lack of him calling the police, the
2 D.N.A. on the shoe, which is tremendous, tremendous
3 evidence which corroborates Amy's testimony that she says
4 he kept.

5 Antoine Gist says that he saw him standing over him.
6 And Brandon, who the defense called by the way yesterday,
7 told a remarkable story which is pretty consistent with
8 what happened. But from his vantage point he saw the
9 defendant standing over Mr. Young. He couldn't tell what
10 he was doing.

11 Hard to believe he was hiding that gun. I'm going to
12 say it. He was hiding that gun in his girlfriend's car.
13 The bullets he used were full metal jacket, which could
14 have easily went through and through. We have the number
15 of shots, the wounds to the head, shot through the heart,
16 the defendant's statements. All of that's uncontradicted,
17 undisputed facts.

18 You'll have these in your jury room. I hope you can
19 read them because it's a little bit hard to read. I think
20 you heard Detective Foster reading them.

21 This is the first of Mr. Baker's statement. He says
22 there were ten to 12 bullets. "So I parked and reached for
23 my gun in my waist." Remarkable.

24 He talks about -- this would be Brandon. "I was
25 paying for my food. His cousin had a problem with me. Let

Closing arguments

1 it go." And then he goes outside.

2 Here it is. "I told the dude to let it go. He was
3 walking back and forth." All right. Friends tell him to
4 fight. "Don't fight. They're going to take everything I
5 had. Told them to let it go. They would not listen to me.
6 I turned to go back inside."

7 He says two of them hit him. It's clear only one
8 person did. And remember my followup questions to
9 Mr. Foster? He had a little bit of trouble finding them in
10 his notes, but he had a document. And one of his questions
11 was do you know who hit you. Yeah. The guy in the white
12 with the braids. He doesn't put it in here. Here it is.
13 Fired three to eight shots.

14 Okay. Everyone ran except the one in the blue shirt.
15 He puts him falling immediately. Hum. And then they ran
16 back into the Waffle House and calls the police -- to call
17 the police.

18 They were scared. "I still had my gun. I left. I
19 jumped in my car and went home so I can call the police and
20 tell them what happened." That's not what he did and
21 that's not descriptive of what happened.

22 So the officer said wait a minute, wait a minute.
23 There are some other things here we need to talk about, or
24 two, and which none of this, of course, was talked about in
25 defense's closing.

Closing arguments

1 And here we go again. Ten to 12 boys. Let's see.
2 Pulled up. "I seen a dude we had a problem with two months
3 ago."

4 Well, we know he had a problem with somebody in that
5 group. Goes to the waffle House armed paying for his food
6 in the white shirt. And there it is again. Brandon. A
7 little more descriptive of the persons. Told him to let it
8 go. He said tell my homeboy. That's what's going on on
9 the inside when you saw that 20-second conversation inside.

10 They go outside. He says four dudes this time
11 approach him. First he says ten to 12, and then he says
12 four dudes.

13 "Just saying that me and the homeboy in that blue
14 shirt." Five. "Tall dude in a black shirt." well, I
15 don't know who that was. "Tell him it's going to go down
16 right now," because he talks about the guy in the white
17 shirt and the guy in the blue and tall dude in a black
18 shirt.

19 Saying they had a gun. Didn't say ever saw a gun.
20 Never saw a gun. Said they said they had a gun. In fact,
21 throughout this whole thing he never sees a gun. Yet what
22 was the defense's theory? Antwon had -- I mean Anthony had
23 the revolver and turned to shoot. So he had to shoot in
24 self-defense.

25 "Ran back to walk inside." Two of them, there again,

Closing arguments

1 says two of them again hit him from behind. "Back of my
2 head." I don't know why he keeps saying two.

3 He ducks and turns, pulls a gun out and started firing
4 into the crowd. Remarkable.

5 "Everybody starts running. I started to run to my
6 car, and I fired another shot," because the dude in the
7 blue was running towards his car like he was going to get
8 something -- get something -- not that he pulled a gun and
9 was aiming it at me. Not that somebody else had a gun and
10 aiming at me. Not somebody else had a revolver and shot at
11 me while I was in front of the Waffle House. No. Somebody
12 was acting like they were going to get something.

13 Somebody went to the passenger side of my car and I
14 turned around to see if anyone was behind me. I trip over
15 here -- I trip over a side something and my gun went off
16 again. I ducked behind my car to see if the way was clear
17 so I can run back to the Waffle House. And he goes back
18 in.

19 I don't remember him saying anything about tripping
20 over Mr. Young, kicking Mr. Young, because what's fiction
21 is most of what he's got in his statements. I guess he's
22 trying to paint a story of self-defense.

23 "They hit me so I had to shoot. I thought they were
24 going to get more guns. I didn't see any more guns. I
25 thought they were going to the car to get a gun, so I had

Closing arguments

1 to keep shooting."

2 But you only get one guy chasing down in the parking
3 lot, so self-defense doesn't quite jive. So you come to
4 court and you start arguing that, wait a minute, all of
5 these other people had guns, even though Mr. Baker didn't
6 see them.

7 Mr. Mauney thought he saw a guy with a gun. Mr. Baker
8 saw somebody reaching in his waist. No gun. Somebody run
9 to a car, get something. No gun. Got to come up with all
10 of these other guns. And then somehow they remarkably left
11 the scene.

12 Mr. Ianuario points something out claiming you see
13 some headlights leaving. He used the same frame to show
14 blue lights coming. Did y'all catch that? This is the
15 very same frame or camera angle he says show a car coming
16 this way.

17 Yet when he points out the blue lights you can see the
18 reflection in the same window. Did the blue lights come
19 here and jump the curb and come around here? No. It's a
20 reflection. These headlights are headlights of people
21 coming back, not leaving from this direction.

22 Use your common sense. You can't have it one way and
23 then say it the other way. The officers didn't pull into
24 that parking lot. They stopped where they said they did
25 out near the other road. I'm not going to drive through a

Closing arguments

1 crime scene where a man is laying on the ground, people
2 milling, scared, crying, weeping. They're going to stop
3 and take into account what's going on and separate people.

4 That's what you see in those two headlights that
5 Mr. Ianuario wants to argue were was a car fleeing from the
6 parking lot, or it was a car coming back.

7 So the judge is going to charge you, ladies and
8 gentlemen, on the law of murder and the law of unlawful
9 possession of a pistol, which I submit to you through his
10 attorney is admitted to. Mr. Ianuario has admitted he's
11 guilty of that crime. So that's an easy conviction.

12 The judge is going to charge you on murder. I went
13 over what that is.

14 He will charge you on self-defense because in his
15 statements, in those statements, he tries to claim
16 self-defense.

17 I submit to you if he shot one time it's a little too
18 much force to respond to a blow with a gun, that would be a
19 true jury question. But you lose your self-defense when
20 you chase a man down. But you'll still have that as a
21 consideration.

22 The judge will charge you about the -- what
23 self-defense is and the requirements that you have to find
24 that all everything exists before you can excuse a case for
25 self-defense.

Closing arguments

1 Was he without fault? He went in sort of anticipating
2 something might happen. He armed himself. Is he without
3 fault for what actually happened? He went to a public
4 place armed with a gun knowing he had a problem with
5 somebody at the restaurant.

6 I mean, then he goes outside. Does that mean -- is he
7 without fault as to this situation? That's a jury
8 question. I submit to you that you can easily find, no, he
9 wasn't.

10 Did he have any reason to believe he was in danger?
11 Doesn't sound like it. He went out, and he walked back in
12 and he got hit. He wasn't -- he didn't believe he was in
13 danger.

14 Would a reasonable man in the same circumstances do
15 the same thing? A reasonable man probably wouldn't park
16 and go out and get -- arm himself and go inside. He'd
17 probably just leave.

18 MR. IANUARIO: Objection, Your Honor. He's
19 speculating as to what a reasonable man would do in that
20 situation.

21 THE COURT: Overruled.

22 MR. BULSA: Did he act with reasonable force? I
23 commented about that. I don't think a bullet matches a
24 fist. That's a jury question. But I would certainly argue
25 that five bullets don't match one fist.

Closing arguments

1 Did he act on appearances? Everybody's scattering.
2 Man's trying -- the victim was probably trying to run and
3 get cover behind the car just like everybody else was
4 running and getting behind cars. He wasn't going to get a
5 gun. If he had a gun he probably would have drawn it, but
6 he didn't. He was running for his life, and he lost.

7 The judge will charge you if you're in a public place
8 you actually have a duty to retreat. Mr. Ianuario talked
9 about that a little bit. Is he going to retreat inside?
10 He was going inside. He eventually walked inside.

11 There were -- there were employees there. They had a
12 phone. There were places he could have gone. But those
13 are considerations. You have to believe all of those.

14 The judge will charge you about your duties. And
15 you're -- you're the judges of the facts. You judge the
16 credibility of all of the witnesses. That's why we bring
17 it to court. We know who -- the witnesses we called.

18 The defense recalled Officer Talanges to introduce
19 some photographs. He didn't really ask him any questions
20 about them, just did you take those pictures. It was
21 really kind of confusing why he brought him. I went over
22 the photographs with Officer Talanges so you had an idea of
23 what they were actually showing.

24 He called Charles Mauney, the Waffle House employee,
25 who had no dog in this fight. I think he may have

Closing arguments

1 embellished a little bit, but I'm not going to fault him
2 for that.

3 But Mr. Ianuario went over some of the video. You'll
4 have this back in the jury room, and you may have a little
5 trouble figuring it out. Hopefully, we can send some
6 instructions back with you. But there's a backup viewer on
7 this computer. You have to go into this disc through the
8 backup viewer. You open it up, click the backup viewer.
9 And then down here there's a -- let me see if I can pull it
10 up and show it to you. You might find it actually
11 intriguing.

12 (Pause.)

13 MR. BULSA: We may just send it back with the disc in
14 the computer. But here's the folder. You click on that
15 and go into the C drive. You pull the -- pull this up.
16 And you actually will have to push one of these --
17 highlight one of these buttons and then push play and it'll
18 start playing.

19 But just as Mr. Ianuario did, I went through it as
20 well to look at some times. And there's -- I mean, 71
21 seconds is a long time. Think about it. That's actually a
22 long time, especially if you take into account the
23 defendant's version that all I did was turn around and
24 react and shot, fled to my car and ran then back inside.

25 Now, but if you're chasing somebody down, standing

Closing arguments

1 over them, kicking them, and then come back inside -- but I
2 come to this point because Mr. Mauney, this is actually --
3 he's on the phone here. If you watch all of this all the
4 way through he actually -- apparently called somebody else,
5 because he kind of stays on the phone after the shooting.
6 This is backwards.

7 The black man that he said with the bandanna comes
8 in -- I've got to show all the other screens. Camera two
9 is the one that shows the doorway where you can see people
10 coming in. The most important shots as camera angles are
11 two and three pretty much, because there's the door.
12 Here's the door. It's showing back inside. And you can
13 see Mr. Baker, and you can see the man in black with the
14 bandanna as long as he says he saw the gun. And of course
15 you see everybody back there in the office.

16 But he comes in about 4:55:48. You see him up there
17 under this. Okay. And he stays in there. Let's see. He
18 stays in there about three minutes. This is -- this is
19 really convenient. You've got the time here. About
20 4:58:39 is what I counted. And he leaves. You see the
21 defendant has come in. He's over here. There he goes
22 looking.

23 Okay. And remember Mr. Mauney testified that he was
24 trying to make change for a hundred and he saw an outline
25 of a gun or saw the butt of the gun.

Closing arguments

1 4:58:39 is when he actually walks out the door. Okay.
2 4:58:39 and Mr. Mauney is still up here. Mr. Mauney does
3 not pull his phone for a couple of minutes. Two minutes
4 might sound like a long time, but a lot of stuff happens in
5 that two minutes. What happens is this confrontation
6 between Brandon and Mr. Glover.

7 And, see, Mr. Mauney appears to be going about his
8 business and working in the cleaning up and working in the
9 kitchen area.

10 He hasn't gone back to make a phone call about this
11 guy with a gun. He's looking at those guys. He's watching
12 them. He's still kind of watching them as he's talking to
13 his people.

14 They go outside. He's putting stuff up. He's still
15 not going to call the police. Just kind of ironic. He
16 claims he was fearful that the man was going to come and
17 rob him.

18 He's looking outside again. He appears to see
19 something going on. Then he reaches for his phone and goes
20 to the back. That is right before all of this happens,
21 because you've got Josh here that we saw. So you can't see
22 the shooting in the video, but the timing actually helps
23 you with whether it's consistent with people's testimony.
24 And I submit to you it is.

25 Then the defense called Brandon. And of course when

Closing arguments

1 they called Brandon he didn't ask him about his version of
2 the events. He skipped right over that and tried to hammer
3 Brandon, tried to get him to say he had a gun. But you saw
4 Brandon's reaction to all of those kind of questions, and
5 especially to his reaction about whether he told Baker
6 something in the jail. He was kind of perplexed, shocked,
7 what are you talking about, that kind of thing.

8 That's why we have trials, so you can watch the people
9 on the stand. And then Sease is a young kid trying to gain
10 favor from Mr. Glover, I submit. Sounds like he's had a
11 bad life. He's been in jail for over a year.

12 I'll finish with this, ladies and gentlemen. I ask
13 that you use your common sense. Don't -- you don't come to
14 court and throw away your life experiences. You use your
15 common sense and life experiences to judge credibility,
16 judge the overall set of circumstances.

17 I submit to you the question is not really is this
18 self-defense. It's certainly not that it is phantom
19 shooters, phantom guns.

20 I submit to you the real question is going to be
21 whether this was a murder or whether the judge will charge
22 you it is a lesser included offense of murder, and that is
23 voluntary manslaughter.

24 Voluntary manslaughter would negate the malice
25 element. It's a killing of someone if you're provoked and

Closing arguments

1 then you react and act out of heat of passion.

2 You'll have to decide whether that blow by Brandon to
3 the defendant was legal provocation, and if this man's
4 reaction was merely in response did he act out of heat of
5 passion based on his prior difficulties with this man,
6 because he didn't shoot anybody else. Why did he shoot
7 Brandon?

8 But Brandon was clearly with Anthony, so the
9 provocation would be linked to Anthony, because Anthony
10 called his buddies. He said, hey, that's the guy that did
11 that to me. He shouldn't have said that, but he did. It's
12 a fact. That's the guy that hit me with a gun.

13 It is the chasing of Anthony down, shooting him five
14 times, kicking him in the head. Are those acts out of heat
15 of passion based upon that provocation?

16 That I submit to you is the real question in this
17 case, is this murder or is this voluntary manslaughter. I
18 submit to you there's evidence to support the malice. I
19 explained it to you before -- the chasing, the five shots,
20 standing over him. That shows an evil heart, a heart bent
21 on mischief, a heart meaning malice towards another person.
22 Or is it merely manslaughter that was just heat of passion.

23 I submit to you he's guilty of murder, but I would
24 respect a decision for manslaughter. But Mr. Young was
25 shot five times, fatal blow being from the back.

Jury charge

1 If there was a fight going on as Mr. Ianuario keeps
2 calling it, it wasn't much of a fight. It was a blow and
3 multiple shots in the direction of Anthony Young. Thank
4 you.

5 THE COURT: We are going to take a quick break before
6 I provide you with the instruction. So I'll ask you to
7 please go to your jury room. Don't talk about the case.
8 I'll bring you back in just a few minutes.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: We'll be at ease for ten minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: All right. Bring the jury in, please.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Mr. Foreman and ladies and gentlemen of
17 the jury, you of course have heard and seen all of the
18 evidence, as well as the final summations of the lawyers.
19 So I'm now going to instruct you on the law that's
20 applicable in the case.

21 Then you'll be asked to go back and begin with your
22 deliberations. And through that process you'll examine all
23 of the evidence, you'll decide the facts, apply the law and
24 arrive at a fair and just decision, whatever that decision
25 may be.

Jury charge

1 It is your exclusive duty to determine what the facts
2 are. You do that through your own common sense examination
3 and evaluation of all of the testimony and other evidence
4 received during the course of this trial.

5 You 12 jurors alone will decide what weight, value and
6 effect to give to any particular witness' testimony or
7 other evidence in the case.

8 Your sole objective of course is to render a fair and
9 impartial decision based solely upon the evidence and the
10 law that's applicable as I will have provided it to you.

11 Now, in this case, as you know, the state has accused
12 the defendant, Antwon Baker, with having committed two
13 separate and distinct criminal offenses, although they are
14 alleged to have arisen out of one particular event or
15 course of events which the state alleges occurred back on
16 June the 3rd of 2012.

17 But there are two separate charges. You'll be
18 rendering two separate and distinct decisions. Those
19 decisions may be the same. They may be different. That of
20 course will depend upon your determination of fact and then
21 your application of the law to the facts as you determine
22 those facts to be.

23 The defendant is charged in one indictment with the
24 crime of murder. The state alleges on June the 3rd of 2012
25 he did wilfully and with malice aforethought cause the

Jury charge

1 death of Anthony Young by shooting him with a handgun and
2 that Mr. Young died as a proximate result of that gunshot
3 wound.

4 He's also charged in a separate indictment with the
5 unlawful carrying of a pistol in violation of a particular
6 statute.

7 Now, as to those charges and as to those allegations
8 Mr. Baker has entered a plea of not guilty. And a plea of
9 not guilty, as you know, has placed upon the state the
10 burden of proving the allegations that they have set forth
11 in each of those indictments, the burden of proving each of
12 the essential elements that constitute the crimes alleged
13 against the defendant; and therefore the burden is upon the
14 state to establish the defendant's guilt to the
15 satisfaction of you 12 jurors beyond a reasonable doubt
16 before any verdict of guilty could be returned as to either
17 of the indictments.

18 The burden is never upon a defendant or a person
19 accused of a crime to prove that they are not guilty or to
20 prove that they are innocent because in some cases that
21 might not be possible. The burden is always upon the state
22 because they made the accusation to establish the
23 defendant's guilt to your satisfaction beyond a reasonable
24 doubt.

25 It is a vital, important and cardinal rule of law that

Jury charge

1 every defendant in a criminal trial, no matter how serious
2 the offense might be for which that person stands charged,
3 that person shall always be presumed innocent of the
4 charge.

5 That presumption of innocence remains with any
6 defendant, as it does with this defendant, from the time
7 that he is placed under arrest and throughout the course of
8 the criminal process and even throughout the course of the
9 actual trial in the case.

10 That presumption of innocence will be with Mr. Baker
11 even as you go back into your jury room to begin with your
12 deliberations in this case.

13 That presumption of innocence will be with him in that
14 jury room, and it'll be with him forever unless you 12
15 jurors determine that he's no longer entitled to the
16 presumption of innocence.

17 In other words, after you've carefully considered all
18 of the evidence in the case, and from that evidence you
19 have determined what you believe to be the true facts as
20 they relate to a particular charge, and upon deciding those
21 facts and applying the law as I will have provided it to
22 you if you 12 jurors unanimously determine that his guilt
23 has been proven as to a charge beyond a reasonable doubt,
24 then he would no longer be entitled to the presumption of
25 innocence as it relates to the particular charge. But it

Jury charge

1 is only if, unless and until you are satisfied of his guilt
2 beyond a reasonable doubt that the presumption of innocence
3 would no longer be applicable.

4 Now, while the state does have the burden of proving
5 the defendant's guilt beyond a reasonable doubt, that does
6 not mean that the state has to prove his guilt beyond all
7 doubt or beyond any possible doubt. But it does require
8 the state to prove his guilt to your satisfaction beyond a
9 reasonable doubt.

10 The term reasonable doubt should be given its plain
11 and ordinary meaning. A reasonable doubt is the kind of
12 doubt that would cause a reasonable person to hesitate to
13 act upon the information provided.

14 A defendant in a criminal trial is entitled to any
15 reasonable doubt that arises from the evidence or lack of
16 evidence in a case. And if upon any factual issue
17 essential to a finding of a verdict of guilty you have some
18 reasonable doubt as how that issue should be resolved, it
19 would be your duty to resolve that reasonable doubt in
20 favor of the defendant.

21 And, therefore, if upon your consideration of the
22 whole case you have a reasonable doubt as to the
23 defendant's guilt it would be your duty to resolve that
24 reasonable doubt in his favor and to return a verdict of
25 not guilty.

Jury charge

1 And, at the same time, after you've carefully
2 considered the evidence, decided the facts and applied the
3 law if you have no reasonable doubt as to his guilt it
4 would be your corresponding duty to find him guilty of any
5 crime that has been proven to your satisfaction beyond a
6 reasonable doubt.

7 Now, the same law that provides that you are the
8 judges of the facts also provides that I am the judge of
9 the law. And that simply means that nobody's going to tell
10 you how to arrive at your determination of fact in this
11 case.

12 You do that, as I've already stated, through the
13 exercise of good judgment and common sense conscientiously
14 applied to the testimony and evidence received during the
15 course of this trial.

16 You must however under your oath as a juror accept the
17 law as I provide it to you as being the law that you are to
18 apply in this case.

19 In other words, you're not to concern yourself with
20 what you thought the law was before you came to serve as a
21 juror this week or what you think the law ought to be.

22 Under your oath as a juror you must simply accept the
23 law as I provide it to you as being the law that you are to
24 apply in the case.

25 Then you simply take that law and you apply it to the

Jury charge

1 facts as you 12 jurors determine those facts to be based
2 upon your common sense examination and evaluation of all of
3 the evidence received during the course of the trial.

4 Now, because you are the sole judges of the facts in
5 this case you are therefore necessarily the sole judges of
6 the credibility or the believability of each witness that
7 has testified during the course of the trial.

8 You 12 jurors alone will decide what weight, value and
9 effect to give to any particular witness' testimony or even
10 portions of that testimony.

11 There are a number of factors which you should take
12 into consideration in arriving at your assessment as to a
13 particular witness' credibility, and I'm going to list
14 those factors for you.

15 You should consider the demeanor of the witness, that
16 is how the witness appeared to you as the witness testified
17 from that witness stand. Was the witness straightforward
18 in responding to questions, or was the witness hesitant or
19 evasive in responding to questions that were asked of the
20 witness.

21 Simply put, did the witness appear to you to be
22 telling the truth and to have knowledge of the facts to
23 which that witness has testified.

24 You should also consider whether or not the testimony
25 of a witness is consistent, or is it inconsistent with that

Jury charge

1 witness' own testimony here in court, as well as any
2 statements made by that same witness outside of court, as
3 well as whether or not the testimony of a witness is
4 consistent, or is it inconsistent with other witness
5 testimony or other evidence received during the course of
6 the trial.

7 You should also consider how the witness came to know
8 the facts to which a witness has testified. In other
9 words, what was that witness' opportunity and ability to
10 perceive the existence of those facts to which that witness
11 has testified by having previously used his or her senses.
12 And then what is the ability of that witness to be able to
13 come into court and to accurately recollect to you as to
14 what they have previously perceived by seeing something,
15 hearing something, or feeling something for that matter.

16 You should also consider any bias or prejudice or
17 interest that a witness might have with regard to a case.
18 In other words, do you find some reason that a particular
19 witness would come into court and would testify one way or
20 another to help or hurt one side or the other.

21 You may consider any interest that a witness might
22 have in the outcome of the case if you determine that a
23 witness does have such an interest and you find that that
24 interest would bear upon that particular witness'
25 credibility.

Jury charge

1 You may also consider whether or not the testimony of
2 a witness is strengthened, or is it weakened by other
3 testimony or other evidence received during the course of
4 the trial.

5 Now, you as the finders of the facts and you as the
6 judges of the credibility of each witness are permitted to
7 believe as much or as little of what a witness has
8 testified to as you deem is appropriate. And, therefore,
9 you may believe everything that a witness testified to.
10 You may choose to believe none of it. You may believe some
11 portion of a witness' testimony and reject some other
12 portion of that same witness' testimony.

13 In a given case you may believe one witness as opposed
14 to several, or several as opposed to one. But whatever
15 your good judgment and common sense tells you is the most
16 believable and credible testimony is the testimony you
17 should accept. And you should reject any testimony or
18 other evidence that you find not to be credible or
19 believable.

20 Again, your sole objective is to simply render a fair
21 and just decision based solely upon the law and evidence as
22 received during the course of the trial.

23 Now, while there are various forms of evidence such as
24 photographs, documents, charts and other types of physical
25 exhibits, there are really only two types of evidence.

Jury charge

1 Either or both of those types of evidence may be used to
2 prove any fact that's in issue. But the two types of
3 evidence are direct evidence and circumstantial evidence.

4 Direct evidence is the testimony of a person who
5 testifies from actual knowledge of the fact. It is
6 testimony by a person who has perceived the existence of
7 some fact by means of their senses, and then they come into
8 court and they testify as to what they have previously
9 seen, heard or felt.

10 Circumstantial evidence, on the other hand, is the
11 proof of some other fact or set of facts which taken either
12 singly or correctively may prove the existence of a fact in
13 question as a necessary consequence. That is through an
14 inference.

15 An inference is simply a deduction of fact that may
16 logically and reasonably be drawn from the proof of some
17 other fact or set of facts. In other words, it's not a
18 fact which is proven by the direct testimony of a person
19 based upon their personal perception, but it is a
20 conclusion which might reasonably be drawn from the proof
21 of some other fact or set of facts.

22 In other words, you may infer that a particular event
23 occurred or that a particular fact exists based upon the
24 proof of sufficient factual circumstances which would
25 reasonably warrant your arriving at a particular

Jury charge

1 conclusion.

2 The law however makes no distinction between the
3 weight or value to be given to direct evidence as opposed
4 to circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence as opposed to
6 direct evidence.

7 Whatever the type of evidence used to prove any fact
8 in issue you should consider all of the evidence presented
9 during the trial of this case. And after carefully
10 considering all of that evidence in your minds if you are
11 not convinced of the guilt of the defendant beyond a
12 reasonable doubt, then it would be your obligation to
13 return a verdict of not guilty.

14 Now, in this case, as you know, the defendant is
15 charged with the crimes of murder and the unlawful carrying
16 of a pistol.

17 I'm going to instruct you first on the law as it
18 relates to the crime of murder. Then afterwards I'll
19 instruct you on the law as it relates to the crime of
20 unlawfully possessing a pistol.

21 As you have been told, you will also be permitted to
22 consider a lesser included offense to that of the greater
23 offense, being the crime of murder. You're also going to
24 be able to consider the lesser included offense of
25 voluntary manslaughter even though that particular criminal

Jury charge

1 offense is not actually set forth in the indictment.

2 So I'll charge you on the law as it relates to the
3 crime of murder, then the lesser included offense of
4 voluntary manslaughter, and then the separate indictment of
5 unlawfully carrying a pistol.

6 Section 16-3-10 of the Code of Laws defines the crime
7 of murder, and that code section provides that murder is
8 the killing of any person with malice aforethought either
9 expressed or implied. Murder is the killing of any person
10 with malice aforethought either expressed or implied.

11 In order for you to find the defendant guilty of the
12 crime of murder it would be necessary that the evidence in
13 this case has established to your satisfaction beyond a
14 reasonable doubt that the defendant, Antwon Baker, did
15 commit some act or acts which proximately caused the death
16 of Anthony Young and that that killing was done with malice
17 aforethought. Malice aforethought is an essential element
18 of the crime of murder.

19 The test for establishing proximate causation is
20 whether or not the criminal acts of the person charged with
21 an unlawful homicide were the proximate cause of the death
22 of the decedent. In other words, but for the criminal acts
23 the death would not have occurred.

24 Malice as an essential element of the crime of murder
25 is a state of mind connoting an ill will and having the

Jury charge

1 intent to do harm.

2 The term intent refers to the state of a person's mind
3 which directs his actions towards a specific object or
4 goal.

5 Intent would include those consequences which
6 represent the very purpose for which an act is done, as
7 well as those consequences which are known to be
8 substantially certain to result whether actually intended
9 or not.

10 Malice is a technical importing wickedness and
11 excluding just cause or legal excuse. It is something
12 which springs from depravity, from a heart devoid of social
13 duty and fatally bent on mischief.

14 It is a state of mind indicating an extreme disregard
15 for or an extreme indifference to human life. Malice may
16 be likewise defined as a state of mind which indicates a
17 formed purpose and design to do a wrongful act under
18 circumstances that exclude any legal right to do it.

19 The words expressed or implied malice do not mean
20 different kinds of malice but merely the manner in which
21 malice may be shown to have existed, that is to say either
22 proof by direct evidence or by circumstantial evidence from
23 which the existence of malice might be reasonably inferred.

24 Malice may be expressed as where there is an expressed
25 threat to kill or a lying in wait or where the evidence

Jury charge

1 shows directly that the intent to kill was entertained by
2 the killer.

3 Malice may be inferred, though no expressed intent to
4 kill is proven by direct evidence, where the facts and
5 circumstances which have been established by the evidence
6 in the case satisfy you beyond a reasonable doubt that
7 malice was present in the mind of the defendant at the time
8 that any killing took place.

9 The existence of malice may be inferred from
10 circumstances shown to have existed at the time of the
11 event, and the existence of malice may be inferred from
12 acts, declarations or conduct of the defendant along with
13 any other circumstances from which you might reasonably
14 infer such a fact as often the state of a person's mind can
15 only be proven by circumstantial evidence.

16 Malice as an essential element of the crime of murder
17 does not necessarily require proof of an actual or a
18 specific intent to take human life, although such intent
19 may be proven by the evidence in the case. But rather it
20 means a state of mind accompanying conduct signifying a
21 general malignant recklessness and an extreme disregard for
22 or an extreme indifference to human life.

23 Even if the factual circumstances proven are
24 sufficient to raise an inference of malice such an
25 inference would simply be an evidentiary fact to be taken

Jury charge

1 into consideration by you 12 jurors along with all of the
2 evidence received during the course of the trial. You may
3 give such weight to such inferences as you deem they should
4 receive, if any.

5 The state is required to prove malice, just as it must
6 prove any other essential element of the crime, and it is
7 for you 12 jurors to determine whether or not the evidence
8 in this case establishes malice beyond a reasonable doubt.

9 It is also essential that there exist not only malice
10 but that it be malice aforethought. The law does not
11 require that malice must exist for any appreciable length
12 of time before the commission of an act or acts proximately
13 causing a fatal result.

14 Indeed, malice may be conceived at the very moment
15 that the fatal act is committed. It is sufficient in the
16 law so long as the state has proven beyond a reasonable
17 doubt both the existence of malice and the commission of an
18 act or acts by the defendant which proximately caused the
19 fatal result.

20 You must determine whether or not malice aforethought
21 exists based upon your consideration of all of the evidence
22 introduced during the course of the trial and any
23 reasonable inferences that might be derived therefrom.

24 Now, while the state must prove that a killing
25 occurred accompanied by the element of malice aforethought

Jury charge

1 in order to establish the commission of the crime of
2 murder, it is not necessary that the state prove any motive
3 for the killing. Motive is not an essential element of the
4 crime of murder which has to be proven, although in some
5 cases there may be evidence relating to such fact
6 introduced during the trial of the case.

7 An indictment for murder may also include any lesser
8 included offense, whether or not that lesser included
9 offense is actually set out in the indictment.

10 A defendant who has been charged with offense of the
11 crime of murder may be found guilty of only the lesser
12 included offense of voluntary manslaughter if the jury
13 determines that the evidence in the case warrants such a
14 finding whether or not that lesser included offense is
15 actually set forth in the indictment itself.

16 Manslaughter is defined as an unlawful killing of a
17 human being without the element of malice either expressed
18 or implied being present.

19 While the element of malice must be proven in order
20 for the defendant to be found guilty of the crime of
21 murder, malice is not an essential element of the crime of
22 voluntary manslaughter.

23 Voluntary manslaughter is defined in the law as the
24 unlawful killing of another human being committed in a
25 sudden heat of passion which was provoked by a sufficient

Jury charge

1 legal provocation.

2 The law recognizes that sudden heat of passion arising
3 out of exasperation, rage, anger, sudden resentment, fear
4 or terror may for the time being affect the self control of
5 an individual temporarily disturbing the ability to
6 properly reason, creating in a person an uncontrollable
7 impulse to do violence and therefore reduces the crime from
8 that of murder to that of voluntary manslaughter provided
9 that the sudden heat of passion arose from a sufficient
10 legal provocation.

11 The law does not reduce from murder to voluntary
12 manslaughter every homicide that is committed in the heat
13 of passion. It must be the heat of passion justly excited
14 by a sufficient legal provocation. If a sufficient legal
15 provocation does not exist, then the killing even committed
16 in the heat of passion is considered murder and not
17 voluntary manslaughter.

18 The sudden heat of passion aroused by a sufficient
19 legal provocation which may reduce an unlawful homicide
20 from that of murder to that of voluntary manslaughter needs
21 not be such emotion as would dethrone reason entirely or
22 shut out knowledge or volition, but it must be a heat of
23 passion which is provoked by such facts or circumstances
24 related to the event as would naturally disturb the ability
25 of an ordinary reasonable person to properly reason

Jury charge

1 rendering his mind incapable of cool reflection and
2 producing what according to human experience may be
3 described as an uncontrollable impulse to do violence.

4 In determining whether an act resulting in the death
5 of another person was impelled by heat of passion aroused
6 by a sufficient legal provocation or was impelled by malice
7 you should take into consideration all of the surrounding
8 circumstances and the conditions accompanying the event.

9 You are instructed that while no mere words alone, no
10 matter how insulting or threatening, would constitute a
11 sufficient legal provocation or justify the use of deadly
12 force in retaliation, where such words are accompanied by
13 overt threatening or hostile acts or by a physical
14 encounter, then such conduct may, depending upon the
15 circumstances of the case, give rise to a legal provocation
16 sufficient to reduce the offense from that of murder to
17 that of voluntary manslaughter.

18 And, therefore, as I have stated, while murder is the
19 killing of another accompanied by malice aforethought,
20 voluntary manslaughter is an unlawful homicide committed in
21 the absence of malice but in sudden heat of passion aroused
22 by a sufficient legal provocation.

23 And also, again, a sufficient legal provocation is the
24 existence of facts or circumstances as would naturally
25 affect the ability of an ordinary reasonable person to

Jury charge

1 properly reason and render in that person's mind incapable
2 of cool reflection and producing what according to human
3 experience might be described as an uncontrollable impulse
4 to do violence.

5 Now, in this case the defendant has raised what is
6 known in the law as the defense of self-defense. The law
7 recognizes the right of every person to defend himself or
8 herself from death or from sustaining serious bodily harm.
9 And to do this a person may use such force as it reasonably
10 necessary even to the point of taking human life.

11 Even where a person is not lawfully in possession of a
12 pistol he is not precluded from asserting the defense of
13 self-defense in its use where he is justified under the law
14 in acting in self-defense.

15 The right of self-defense is founded upon necessity,
16 either actual or reasonably apparent necessity. And
17 self-defense is a complete defense to a charge of an
18 unlawful homicide should you find it to exist based upon
19 your evaluation of the evidence produced during the trial
20 of the case.

21 The existence of self-defense entitles a person
22 charged with the commission of an unlawful homicide to a
23 verdict of not guilty.

24 Now, although the defendant has raised the defense of
25 self-defense, the burden of proof is not on the defendant

Jury charge

1 to prove the existence of self-defense. As I have
2 previously instructed you, the burden is always upon the
3 state to prove the defendant's commission of the crime
4 alleged against the defendant beyond a reasonable doubt,
5 and this would therefore necessarily require that the state
6 prove beyond a reasonable doubt the absence of
7 self-defense.

8 There are four basic elements required to be present
9 before self-defense can exist where deadly force is
10 employed in defense of an assault.

11 First, it must be shown that the defendant was without
12 fault in bringing on the immediate difficulty which gave
13 rise to the necessity for using deadly force resulting in
14 the taking of a human life.

15 One cannot provoke, initiate or otherwise through his
16 own fault bring about a difficulty and then claim the right
17 of self-defense in the use of deadly force against an
18 attack which was caused by his own provocation.

19 Secondly, it must be shown that at the time the fatal
20 act or acts were committed that the defendant actually
21 believed that he was in imminent danger of losing his life
22 or sustaining serious bodily injury or that he actually was
23 in such imminent danger. The term imminent danger means an
24 immediate or present danger and not a past or future
25 danger.

Jury charge

1 Thirdly, if the defense is based upon a belief of
2 imminent danger, then it must be shown that the belief was
3 reasonable, that a reasonably prudent person of ordinary
4 firmness and courage would have entertained the same
5 belief.

6 If the defendant actually was in imminent danger, then
7 it must be shown that the circumstances were such as would
8 warrant a person of ordinary prudence and courage to
9 inflict the fatal injury in order to save himself from
10 serious bodily injury or loss of life.

11 It must be shown that a reasonably prudent person of
12 ordinary firmness and courage if acting under the same or
13 similar circumstances would have reached the same
14 conclusion and entertained the same belief.

15 Deadly force is only appropriate when necessary and
16 may only be exercised where the defendant entertains a
17 reasonable belief that he is about to sustain a loss of
18 life or suffer serious bodily harm.

19 The law of self-defense encompasses preventive action
20 taken to protect life if such action is taken in
21 anticipation of imminent danger of losing one's own life or
22 sustaining serious bodily injury and such action is in
23 response to an immediate threat.

24 Although words alone will never give rise to a right
25 to the use of deadly force in response, words accompanied

Jury charge

1 by hostile and threatening acts may, depending upon the
2 circumstances relating to the event, give rise to a right
3 to employ deadly force when acting in self-defense.

4 The defendant has the right to act on appearances. He
5 may be mistaken. The law does not hold someone to a
6 refined assessment of the danger as might be accomplished
7 having an adequate time to reflect, provided however that
8 he has acted as a person of ordinary reason, firmness and
9 courage would have acted or should have acted in meeting
10 the appearance of the danger.

11 In other words, he does not have to wait until his
12 assailant gets an advantage, for one always has the right
13 to act under the law of self-preservation and to prevent an
14 assailant from getting an advantage over him.

15 There is however a requirement of objectivity. The
16 belief must be reasonable, that is that a reasonable and
17 prudent person if acting under the same or similar
18 circumstances would have so believed or would have been
19 warranted in so acting.

20 And, fourthly, it must be shown that the defendant had
21 no other means of avoiding the danger of losing his own
22 life or sustaining serious bodily injury other than to act
23 as he did in the particular circumstances, because, as I've
24 stated, self-defense is founded upon necessity.

25 It is therefore a person's duty to avoid the use of

Jury charge

1 deadly force and the taking of human life where it is
2 possible to avoid such action even to the extent of
3 retreating from one's adversary if such can be done without
4 increasing the danger to one's self.

5 In other words, to avoid the necessity of using deadly
6 force against another who might be the aggressor the person
7 claiming self-defense must retreat from the confrontation
8 unless it is shown that by retreating the defendant would
9 have increased the danger of sustaining serious bodily
10 injury or loss of life to himself.

11 If you have a reasonable doubt as to the defendant's
12 guilt after considering all of the evidence received during
13 the trial of the case including any evidence relating to
14 the issue of self-defense, then it would be your duty to
15 resolve that doubt in favor of the defendant and to find
16 him not guilty.

17 And if, on the other hand, you have no reasonable
18 doubt as to the defendant's guilt after considering all of
19 the evidence including any evidence relating to the issue
20 of self-defense, then it would be your duty to find the
21 defendant guilty of any unlawful homicide that has been
22 proven to your satisfaction beyond a reasonable doubt based
23 upon my instruction already provided you as to the elements
24 of the crimes of murder and voluntary manslaughter.

25 The second indictment charges the defendant with

Jury charge

1 unlawfully possessing a pistol. That particular indictment
2 alleges a violation of section 16-23-20. That section
3 provides that it shall be unlawful for anyone to carry
4 about his person, whether concealed or not, any pistol.

5 There are certain -- a certain number of exceptions
6 contained in the statute. None of those exceptions applied
7 under the circumstances of this particular case.

8 So the state would have to prove beyond a reasonable
9 doubt that the defendant did have in his possession
10 unlawfully a pistol as established by the evidence in the
11 case.

12 Now, you are further instructed, and I emphasize to
13 you, that the fact that a defendant does not testify during
14 the trial of the case is not a circumstance that may be
15 considered by you in any way whatsoever in your
16 deliberations or in your determination as to whether or not
17 his guilt has been proven beyond a reasonable doubt.

18 You may not permit such a fact to weigh in the
19 slightest degree against a defendant. As I have already
20 told you, the burden is not upon a defendant to prove that
21 he or she is not guilty or to prove that he or she is
22 innocent because in some cases that might not be possible.

23 The burden is upon the state to prove the defendant's
24 guilt to your satisfaction beyond a reasonable doubt, and
25 therefore you are not to reach any conclusion nor draw any

Jury charge

1 inference from the fact that a defendant does not testify
2 during the trial of the case, nor may that fact be
3 considered in any way by you in your deliberations or in
4 your verdict, nor may that fact even be discussed while you
5 are engaged in your deliberations in the case.

6 Now, Mr. Foreman and ladies and gentlemen, I am not in
7 any way concerned with what your decisions are, but, as I
8 believe I have stated, and it's still true, your decisions
9 must be unanimous. All 12 must be in agreement.

10 As I have said, you've got two separate indictments.
11 One indictment, you'll be considering two separate and
12 distinct offenses. The other indictment is the one alleged
13 in the indictment.

14 But with regard to the indictment charging the crime
15 of murder, you have three potential verdict forms. Those
16 three potential verdict forms are guilty, which means
17 guilty of the charge contained in the indictment.

18 If the state has failed to prove one or more of the
19 essential elements of the crime of murder beyond a
20 reasonable doubt, then you could consider the lesser
21 included offense of voluntary manslaughter.

22 If you find that the state has proven the defendant to
23 be guilty of only the lesser included offense, then under
24 those circumstances the verdict form would be guilty of
25 voluntary manslaughter. You'd have to write that out.

Jury charge

1 If the state has failed to prove the defendant to be
2 guilty of either murder or manslaughter beyond a reasonable
3 doubt, then under those circumstances the verdict form
4 would be not guilty.

5 So, again, the three verdict forms, potential verdict
6 forms for the indictment charging murder, are guilty or
7 guilty of voluntary manslaughter or not guilty.

8 With regard to the indictment charging unlawful
9 possession of a pistol, you have two potential verdict
10 forms, and those forms are guilty or not guilty.

11 So, Mr. Foreman, whatever you and your fellow jurors
12 decide as to the appropriate verdict, you'll see on the
13 back of each indictment in the lower left-hand corner
14 there's the word verdict. And it's beneath that word that
15 you will indicate the jury's unanimous decision as to
16 whatever that decision is. And then you'll sign your name
17 as the foreperson and place the appropriate date. You are
18 the only juror that needs to sign the verdict form.

19 Once you have reached your decisions if you'll knock
20 on the door, tell the bailiff you've reach a verdict, we'll
21 bring you back to receive those verdicts.

22 You may in that instance give the evidence to the
23 bailiff. But, Mr. Foreman, you will maintain the
24 possession of the verdict forms. Do not give those to the
25 bailiff. I will receive those from you after you're back

Jury charge

1 in the courtroom and seated as you are now.

2 Now, during your deliberations there may come a time
3 where you have some question about the facts of the case or
4 evidence in the case.

5 Please understand that I am never permitted to discuss
6 with you the facts or the evidence. I'm not permitted to
7 answer any questions that relate to the facts or that
8 relate to evidence.

9 You are not permitted to have any additional evidence.
10 Even if something out there does exist that you think will
11 be helpful in assisting you in resolving the case, if it
12 hasn't been introduced as of now it cannot be introduced
13 after you go back to deliberate. So do not inquire about
14 any other type of evidence. If it's not in the jury room
15 you cannot have it.

16 If however you ever have a question about the
17 testimony of a witness, you are permitted to have that
18 testimony replayed in its entirety or only in part if
19 that's all you need.

20 I don't have transcripts of the witnesses' testimony,
21 but if you would like to have the testimony of a witness
22 replayed in its entirety or in part if you'll let me know
23 of that fact we'll bring you back to the courtroom to have
24 that witness' testimony reheard.

25 If at any time you have a question about the law that

Jury charge

1 is applicable, I am permitted to answer those questions.
2 So should you need for me to provide you a reinstruction or
3 you need an additional explanation or a clarification of
4 the law that I've already provided, I am permitted to
5 provide you with that additional instruction, explanation
6 or clarification.

7 Mr. Foreman, if at any time you need to address some
8 comment to me if you'll write it on a piece of paper, give
9 it to the bailiff, he'll provide to me, and I'll respond to
10 the issue, answer the question or assist you in any way
11 that I can.

12 I don't know if we have smokers on the jury. If we
13 do, you are permitted to smoke, but you cannot smoke in the
14 jury room. You have to go outside to accomplish that
15 purpose.

16 You are however instructed that should a juror be
17 absent from the jury room for some authorized purpose the
18 deliberations have to stop. They may only resume when all
19 12 jurors are present so that all may participate.

20 Your lunches have been ordered. I don't expect that
21 they're here right now, but they should be here shortly.
22 And I'll leave that up to you as to whether you want to
23 stop the deliberations and eat and then resume, or whether
24 you want to deliberate while you're eating. That's
25 simply -- will be left to your discretion.

Jury charge

1 I think that covers everything. But in the event I
2 have forgotten something I'm sure one of these lawyers will
3 remind me that I neglected to provide you with some
4 information that I was required to. In that event I'll
5 bring you back into the courtroom to provide you with that
6 additional information.

7 If I do not need to provide you with any additional
8 information I'll send word by way of the bailiff that you
9 may begin with your deliberations. In that event he will
10 bring to the jury room all of the exhibits which have been
11 introduced.

12 And to you, Mr. Foreman, he'll also bring the
13 indictments which will simply serve as the verdict forms.

14 There is a disc in that computer that has some videos
15 that have been played during the course of the trial, so
16 that's in evidence, and that'll be back in the jury room
17 with you. It should be simple to use, although I don't
18 have the slightest idea how to do it. But I'm sure one of
19 y'all do or collectively y'all can figure it out. But if
20 you can't, you let me know, and we'll find someone who can
21 assist you with being able to look at those store videos
22 again.

23 Okay. All right. With the exception of Ms. Benson,
24 I'll ask the 12 primary jurors to please retire to your
25 jury room. But do not begin deliberations until I send you.

Verdict

1 a decision. Are we ready to receive it?

2 MR. BULSA: Yes, sir.

3 MR. IANUARIO: Yes, Your Honor.

4 THE COURT: Okay. Bring them in.

5 (Whereupon, the jury returned to the courtroom at
6 3:45 p.m.)

7 THE COURT: Mr. Foreman, have you and your fellow
8 jurors reached a unanimous decisions on each of the
9 indictments?

10 THE FOREMAN: Yes, Your Honor, we have on each of the
11 indictments.

12 THE COURT: And have you reflected those decisions on
13 the back of the indictment as requested?

14 THE FOREMAN: Yes, sir, I have.

15 THE COURT: Did you sign your name as the foreperson?

16 THE FOREMAN: Yes, sir.

17 THE COURT: And date it?

18 THE FOREMAN: Yes, Your Honor, I have.

19 THE COURT: Please hand those up by way of the
20 bailiff.

21 You may publish the verdicts.

22 THE CLERK: In the General Sessions Court, Case
23 No. 2013-GS-42-2013, the State vs. Antwon Baker, indictment
24 for unlawful carrying of a pistol, the verdict is guilty.

25 This is signed by the foreperson and dated today's

Verdict

1 date.

2 Case No. 2012-GS-42-3668, the State vs. Antwon Baker,
3 indictment for murder, the verdict is guilty of voluntary
4 manslaughter.

5 This is also signed by the foreperson and dated
6 today's date.

7 Ladies and gentlemen of the jury, if this is your
8 verdicts and still your verdicts, please raise your right
9 hand.

10 (Whereupon, all jurors responded in the affirmative.)

11 THE CLERK: So say you all.

12 THE COURT: All right. Does the defendant wish to
13 have the jury polled?

14 MR. IANUARIO: Yes, Your Honor.

15 THE COURT: All right. Poll the jury, please, ma'am.

16 THE CLERK: Ladies and gentlemen of the jury, I will
17 ask a question of you, after which I will call your name
18 and ask you to stand individually and answer my question,
19 the question being is this your verdict and still your
20 verdict.

21 No. 12, Base.

22 THE JUROR: Yes, ma'am.

23 THE COURT: Jason Bass. I'm sorry.

24 No. 143, Rogers.

25 THE JUROR: Yes, ma'am.

Sentence

1 (Whereupon, the trial jury was excused.)

2 THE COURT: All right. Are there any matters to be
3 addressed prior to the imposition of sentence?

4 MR. IANUARIO: None from the defense, Your Honor.

5 THE COURT: All right. Mr. Bulsa.

6 MR. BULSA: Your Honor, the defendant's prior record
7 consists of a public disorderly conduct in 2009; driving
8 under suspension in 2006.

9 At the time of this crime, Your Honor, he was out on
10 bond for criminal domestic violence of a high and
11 aggravated nature which is still pending at this time.

12 THE COURT: All right. Mr. Ianuario.

13 MR. IANUARIO: Thank you, Your Honor.

14 You're obviously familiar with the facts of the case
15 and the background of it, so I'll skip over that portion of
16 it.

17 I just testify as to Antwon's character. If the
18 purpose of a criminal sentence is to reform and
19 rehabilitate the criminal, he's been a model inmate for the
20 past year. He's been a wonderful client.

21 I don't think he needs to have the harshest penalty
22 that he could incur in order to teach him his lesson, so to
23 speak.

24 I do believe that when he does get out the Court won't
25 be seeing much of him ever again. He's really not -- not a

Sentence

1 bad individual. The history that he has is minimal. He's
2 not been convicted on that C.D.V. high and aggravated. I'm
3 aware of the circumstances behind that, but I won't get
4 into it.

5 If the Court please, I'd like to ask for mercy of the
6 Court. And if you would entertain any of the family
7 members, I'd like to ask for that as well.

8 THE COURT: Sure. Okay.

9 LISA FLEMING: Your Honor, my name is Lisa Fleming.
10 I'm Antwon Baker's mother.

11 He and -- his father and I were divorced when he was
12 two. I raised him up in the church. He's always been a
13 good child, good at heart. Out of all three of my kids,
14 always caring about others. He just had a hard time at
15 life because he always was picked on.

16 He has five beautiful kids that is looking forward to
17 him. One he hasn't even seen as of yet.

18 He is a good son. He just need a good -- he just
19 needs a chance, sir. Thank you.

20 THE COURT: All right. Anyone else?

21 ANTWON BAKER: Your Honor, my name is Antwon Baker.

22 That's my son. He's a good son. He used to come to
23 see me every, every week, and we would talk. He respected
24 everybody.

25 He just got tired. Just like his mother said, people

Sentence

1 picked on him. All of the stories -- he used to tell me
2 what was going on. And just be lenient. I mean, my God.
3 It's just bad.

4 INAUDIBLE WITNESS: Your Honor, my name is
5 (inaudible). I just ask that you be lenient on him too as
6 you do the sentencing.

7 I knew Antwon probably 15 years or better. He always
8 have been a good kid. I mean, I talked to him throughout
9 life about life, about joining the military and doing
10 positive things.

11 I just ask that you should be very lenient on him
12 during the sentencing.

13 DENA MEDLOCK: Your Honor, my name Dena Medlock [sic].
14 I am Antwon Baker's aunt.

15 I first would like to tell them I'm sorry they lost
16 their child, but I want to also tell them that two families
17 affected in this, not just one.

18 Antwon was a good child, and he got a good heart. And
19 if my mother was alive she would prove it to you. My
20 mother was a diabetic. She was 60 something years old when
21 we lost here. She lost her left leg. And this young man
22 when we had to go to work -- worked at night. He would go
23 over during the day and take care of my mother and do
24 anything that lady asked him to do.

25 He's not a bad boy. He is not -- he was not raised up

Sentence

1 in the streets. He was not raised up to carry guns. He
2 was not raised up to be a thug. He was brought up in the
3 church. We all were.

4 And I sympathize with the family, but we -- we are
5 affected by this too. It's not just one family. There's
6 two families involved in this. Thank you.

7 THE COURT: Anyone else?

8 (No response.)

9 THE COURT: All right. Mr. Baker, is there anything
10 you'd like to tell me?

11 THE DEFENDANT: No, sir. Happening, sir, I'm sorry
12 for the loss to him and the family, but it could have went
13 either way because there was more than one gun out there.
14 I know for a fact more than both shots -- more than my gun.

15 I'm sorry for the Young family. And I'm -- easily my
16 family could be on the other side too. It could easily
17 have turned around and be different. I'm sorry for my
18 actions, but I was scared. I'm not...

19 THE COURT: Okay. Thank you.

20 Mr. Ianuario, let me get you to put the addresses on
21 here, please, sir.

22 (Pause.)

23 THE COURT: All right. On Indictment 2012-3668,
24 that's an indictment for murder, wherein you have been
25 found guilty by the jury of the offense of voluntary

Sentence

1 manslaughter, Sentence of the Court is you, Antwon Michele
2 Baker, Jr., be confined to the South Carolina Department of
3 Corrections for a period of 18 years.

4 Indictment 2013-2013, unlawful possession of a pistol,
5 one year concurrent.

6 Mr. Baker, you have a right to appeal the verdicts of
7 the jury and the Sentence of the Court. You must file any
8 notice of your intention to appeal those decisions within
9 ten days of today's date.

10 Anything further?

11 MR. IANUARIO: Nothing further, Your Honor.

12 THE COURT: All right.

13 END OF REQUESTED TRANSCRIPT OF RECORD
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WITNESSES

Spartanburg County Sheriff's Office

10/15/13

10/15/13

10/15/13

10/15/13

10/15/13

10/15/13

ARREST WARRANT NUMBER

10/15/13

Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAY 03 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date

June 6, 2013

DOCKET NO

13-GS-42-2013

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 10 2013

TERM

THE STATE

vs.

Antwon Baker

Indictment for

**WEAPONS/UNLAWFUL
CARRYING OF PISTOL**

SC Code: 16-23-20, 0050(A)(2)

CDR Code: 0044

Class MIS-C

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 PM 3:46
M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

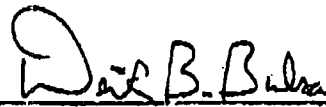
INDICTMENT

At a Court of General Sessions, convened on MAY 02 2013 the
Grand Jurors of Spartanburg County present upon their oath:

WEAPONS/UNLAWFUL CARRYING OF PISTOL

That Antwon Baker, did in Spartanburg County, on or about June 3, 2012,
unlawfully carry about his person a pistol, in violation of §16-23-0020, 0050(A)(2), *THE
CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

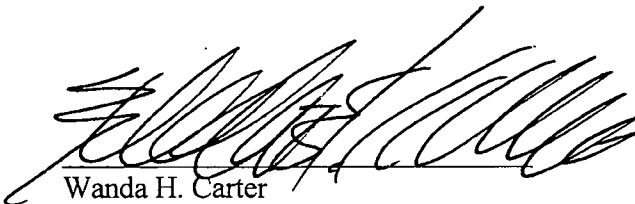
Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 3rd, 2014

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief 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 Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWON MICHELLE BAKER, JR.

APPELLANT

APPELLATE CASE NO. 2013-001366

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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.) The trial judge erred in failing to direct verdicts of acquittal on the gun and murder offenses charged against appellant because the state failed to disprove self-defense in the case, and more importantly, appellant presented evidence of self-defense as a matter of law, particularly since appellant's assailant testified for the defense and admitted he started the fight by attacking appellant from behind with a blow to the back of his head.

2.) The lower court erred in denying appellant's pre-trial motion for dismissal of the case via immunity under the Protection of Persons and Property Act as the Act was applicable to his case despite the fact that he was not attacked in his vehicle, or his residence, or his place of business; because nonetheless, he was attacked in "another place where he had a right to be," i.e., a restaurant, and therefore could protect himself per S.C. Code Ann 16-11-440(c) included in the Act

STATEMENT OF THE CASE

Appellant Antwan Michele Baker was found guilty of murder and unlawfully carrying of a pistol per jury trial held during the June 2013 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Appellant was sentenced to imprisonment for an aggregate period of eighteen years. Robert Eugene Ianuario and Matt Canady represented appellant at trial, and Assistant Solicitors Derrick B. Balsa and Lindsey Overby appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

QUESTION I

The trial judge erred in failing to direct verdicts of acquittal on the gun and murder offenses charged against appellant because the state failed to disprove self-defense in the case, and more importantly, appellant presented evidence of self-defense as a matter of law, particularly since appellant's assailant testified for the defense and admitted he started the fight by attacking appellant from behind with a blow to the back of his head.

At trial, state's witness Justin Davis testified that around 2:00 am on June 3, 2012, Brandon Glover drove him (Davis) and Anthony Young to a Waffle House located in Spartanburg County, and that appellant arrived there at the restaurant later while they were still there. Upon seeing appellant, Anthony Young declared that appellant previously pulled a gun on him. Davis testified that Brandon Glover went outside to talk with appellant and told him (appellant) that a fight would commence presumably out of loyalty to and revenge for Anthony Young. Appellant responded by stating that Glover robbed one of his (appellant's) friends and that Anthony Young attacked him (appellant) previously with a gun. Then, as appellant moved to re-enter the Waffle House, Brandon Glover hit appellant about the head. Thereafter, appellant pulled out his gun and started shooting. Everyone ran as shots were fired. Anthony Young was shot in the crossfire and died. R. 61, l. 61 – p. 67, l. 25.

State's witness Joshua Hance testified that he was working as a cook at the Waffle House on that same morning and witnessed the events in question. Hance stated that appellant was ordering his food when another man approached and "had words" with him (appellant). Hance added that appellant made an exit, but that when he (appellant) re-

entered, another man ran up and hit appellant, and that appellant responded by pulling out a gun and firing gunshots. R. 170, l. 15 – p. 177, l. 18.

Appellant did not testify at trial, but note that Brandon Glover testified at trial on behalf of the defense. Defense witness Glover testified that he was there along with Anthony Young and Justin Davis when the shooting at the Waffle House occurred. When appellant arrived and Young stated that appellant pulled a gun on him previously then he (Glover) went outside and argued with appellant. Glover stated that he threw the first punch at Glover at the Waffle house door and the shooting began afterwards. R. 294, l. 1 – p. 301, l. 11.

At the close of the state's case, and at the close of all testimony at the end of the case for the defense, counsel moved for directed verdicts and dismissals on the gun and murder offenses charged against him because the state failed to disprove the elements of self-defense in the case. R. 292, l. 10 – 22. The trial judge denied the motions. R. 292, l. 23 – p. 293, l. 7; R. 339, 15-22.

Shortly after the shooting, appellant was apprehended by police at the apartment complex nearby where he resided and gave them statements about what happened at the Waffle House. In his first statement, appellant explained that when he parked in the Waffle House parking lot on that night, he saw “ten to twelve boys” in the parking lot so he retrieved his gun. Then, appellant stated that as he was ordering and paying for his food and exiting, one male said he had a problem with him and another male said if he (appellant) didn't fight they would rob him. Appellant explained that he pleaded with them to let it go, but that when he turned to re-enter the Waffle House, “two of them hit [him] in the back of the head” and that he “pulled out [his] gun and fired three to eight shots.” R. 264, lines 1-25.

Appellant's second statement was almost identical to his first statement except that he added that after he was approached by the male in the blue shirt who insisted that they fight, he (appellant) noticed the following:

A tall dude in a black shirt was telling him that it was going down, that he had his right hand on his waist...something... like he had a gun. And a short dude with dreads had a white t-shirt, was saying that they had guns and if I didn't fight them, their homeboy that they were going to take everything I had. I told the dude in the blue shirt to let it go. As I was walking back and forward – as he was walking back and forward I was scared that they was going to gang me. Some girls in a – some kind of car was yelling one of them to leave me alone. Then the tall dude in black was saying its going down and I got – it was going down and gets something up.” I can't make that out. “And he was going to leave me stumped. I told the dude in white to let it go. And then I turned my back and they – and tried to walk in waffle house. Two of them hit me from behind in the back of my head. So I duck and turn around and pull my gun out and start firing it into the crowd. R. 266, l. 19 – p. 267, l. 11.

The trial judge charged self-defense to the jury in this case. R. 428, l. 1.8 – p. 431, l. 24. In a case of self-defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999). If there is any evidence in the record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Stone, 285 S.C. 386 330 S.E. 2d 286 (1985).

In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Also, depending on the circumstances, words accompanied by

hostile acts may establish self-defense and one has a right to act on appearances. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Moreover, when a one claims self defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 4 89 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

Here, it was clear that Glover fueled the attack, provoked appellant, and chided appellant about engaging in a fight, and then finally struck the first blow attacking appellant about his head from behind. Appellant was surrounded by Glover and his (Glover's) associates who refused to abide by appellant's requests to them to "let it go." Appellant was alone, out numbered, and surrounded by Glover's posse. Also, Glover's gang was armed as appellant saw what he believed to be weapons in their possession. Appellant was in fear of his life and had no other means of avoiding the attack other than to fire his weapon. In other words, Glover was the aggressor and appellant, who was surrounded by foes sans any means of escape, was in danger of losing his life or sustaining serious bodily injury. Hence, appellant was justified in firing his weapon in self-defense as a matter of law.

Compare the holdings in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), where the Court in both cases found self-defense existed as a matter of law, which in effect meant that the state's evidence was insufficient to disprove self-defense. In Dickey, the defendant, i.e. Dickey, who was a security guard in a housing complex, responded to a call regarding a male guest that was angry and drunk and made attempts to assault a resident of the complex. Dickey asked the angry and drunk man to exit the complex and when the man did so, he (Dickey) followed

him outside in order to advise police of the man's whereabouts if needed because the police had already been called and notified of the pending event. When the angry man, who had a liquor bottle in his possession, started walking back toward Dickey, threatening to fight, and asking why he was being followed, Dickey pulled out a gun and fired because the angry and drunk man continued to advance aggressively and reached under his shirt (presumably for a weapon). Thereafter, the man continued to march toward Dickey and did not stop moving forward until the second gunshot slowed him and after the third gunshot made him drop to his knees. The Dickey Court held that Dickey was entitled to a directed verdict of acquittal on the charges on the ground of self-defense as Dickey was not the aggressor as he walked outside to inform police of this man's location, and because Dickey believed he was in danger and had the right to act (shoot) on appearances¹ due to this angry and drunk man's aggressive behavior, especially where it appeared as though the man was armed. There was no duty to retreat since there was no other means of avoiding the danger (could not turn back) without losing his life or sustaining injuries.

Moreover, in Hendrix, supra, defendant Hendrix, whose relationship with the aggressive intoxicated man who accosted him on the day in question was not good, was approached by this drunk on the day in question threatening to fight him, and thereafter drove to Hendrix's property, pulled out a gun, walked up, pointed the gun, and threatened to kill Hendrix. This occurred despite Hendrix's pleas for him to leave the property. Ultimately, Hendrix shot (four times) and killed the man. The Hendrix Court held that the

¹ A person has the right to act on appearances even if the person's belief is ultimately mistaken. State v. Fuller, 297 S.C. 440 443-44, 377 S.E. 2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." Dickey v. State

intoxicated man was the aggressor and that Hendrix acted on appearances in believing he was in danger of losing his life or sustaining serious bodily injury and had no duty to retreat.

Here, the state did not meet the requirements to disprove the elements of self defense beyond a reasonable doubt. Clearly, appellant's case was a case of self-defense as a matter of law. Thus, there was insufficient proof of appellant's guilt on the state's charges beyond a reasonable doubt, which meant that his convictions were obtained in violation of the Fourteenth Amendment Due Process Clause and article 1, Section 3 of the South Carolina State Constitution.

QUESTION II

The lower court erred in denying petitioner's pre-trial motion for dismissal of the case via immunity under the Protection of Persons and Property Act as the Act was applicable to his case despite the fact that he was not attacked in his vehicle, or his residence, or his place of business; because nonetheless, he was attacked in "another place where he had a right to be," i.e., a restaurant, and therefore could protect himself per S.C. Code Ann 16-11-440 (c) included in the Act.

In the case at bar, appellant established by a preponderance of the evidence that he was entitled to immunity under the Protection of Persons and Property Act. S.C. Code Ann § 16 -11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act. See State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), where the defendant could not invoke protection under the Act because a valid case of self-defense did not exist, but in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), the Act citing to State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (citing State v.

applied because the deceased kept advancing into the defendant's house after the defendant kicked him out and warned him not to return. Similarly, this case involves a right to immunity in a public place where appellant had a right to be present, i.e., a restaurant known as the Waffle House. Specifically, under 16-11-440 (c) the Act provides that one is justified in using deadly force if:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person...

Moreover, unlike the case of Curry, where there was no valid self-defense claim; here, appellant was not engaged in an unlawful activity and also, appellant's self-defense claim was lawful and valid. Appellant was in a public restaurant, i.e., a public accommodation that was a place where he had a right to be and was attacked from behind by Glover. These are the uncontroverted facts. Glover himself admitted that he attacked appellant from behind at the Waffle House entrance. Also, appellant was confronted by a gang-like posse waiting to defend and attack; and clearly, appellant was outmanned and outnumbered. Appellant lawfully used deadly force to defend himself. Therefore, the trial judge erred in denying appellant immunity under the Act.

Appellant moved for dismissal of the charges against appellant per immunity under the Act prior to trial. R. 15, l. 17 – p. 17, l. 24; R. 47, l. 1-p. 48, l. 19; R. 15, lines 15 – p. 16, l. 18. Counsel made his position known as follows:

Defense Counsel: the statute reads a person who is not engaged in an unlawful activity and who is attached in a place where he has a right to be...has no duty to retreat and may stand his ground. Mr. Baker was a lawful patron at the Waffle House on the evening of the shooting. I know we haven't gotten into the facts of the case yet but he – he was summoned outside. There was a quarrel. He stuck his head out the door and said he wanted no part of it, he was going back inside, didn't want to fight...[so] as he was turning around to reenter he was jumped by at least one individual. I believe there were four or five standing around. R. 16 – p. 17. L. 9.

During the pretrial hearing, Detective Richie Foster testified that in the course of his investigation into the Waffle House shooting, he learned that words were exchanged between appellant and a group of men, one of whom appellant had difficulty with previously, and that after these words were exchanged between the members of the group (including their threat to rob him) and appellant, one of the members of the group hit appellant in the back of his head upon his entry into the restaurant. Then, appellant responded by firing gunshots. R. 22, l. 1 – p. 25, l. 24. Detective Foster added that appellant was neither trespassing nor banned from the Waffle House and was rightfully at the restaurant, and that appellant pleaded with the gang to leave it alone. R. 26, lines 4-20.

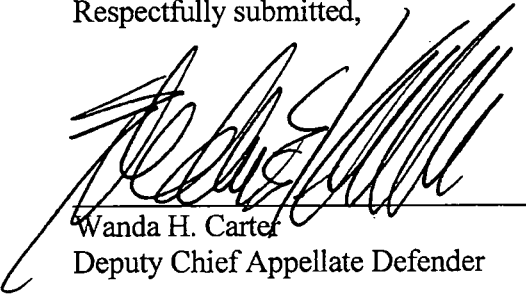
The trial judge denied appellant's request for immunity under the Act in effect on the ground that the Act was inapplicable because the crime scene was not appellant's residence, or his vehicle, or his place of business. R. 50, l. 2 – p. 51, l. 22.

Clearly, the trial judge erred in ruling that the Act was inapplicable to appellant's case and in not reaching a ruling on the merits via S.C. Code Ann § 16-11-440 (c). Again, appellant was protected from prosecution because he defended himself in self-defense after being attacked in a place where he had a right to be at the time of the attack upon him.

CONCLUSION

Based on the foregoing arguments, appellant requests that his convictions and sentences be vacated because self-defense was established as a matter of law, or in the alternate, that his convictions and sentences be vacated because he was immune from prosecution under S.C. Code Ann § 16-11-440 (c), or that the case be remanded for a proper hearing and ruling per section (c) of the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line. The signature is stylized with many loops and flourishes.

Wanda H. Carter
Deputy Chief Appellate Defender

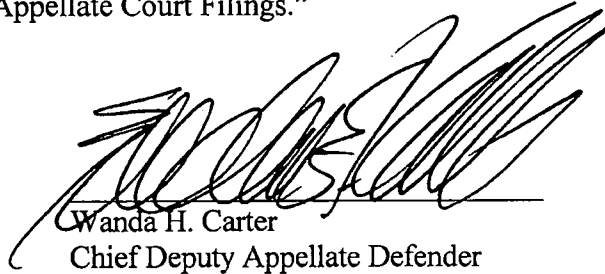
ATTORNEY FOR APPELLANT

This 23rd day of September, 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."

September 23rd, 2014



Wanda H. Carter
Chief Deputy Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, S. C. 29211-1589
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STATE OF SOUTH CAROLINA

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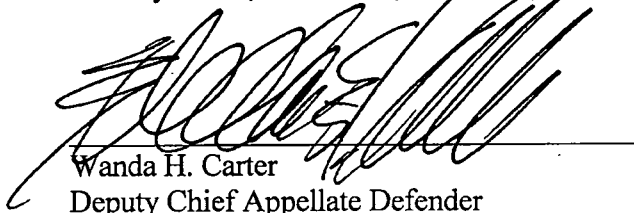
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APPELLANT

CERTIFICATE OF SERVICE

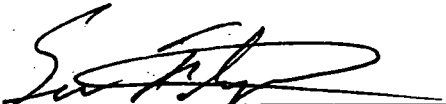
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Megan Harrigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of September, 2014.


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of September, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001366

THE STATE,

Respondent,

v.

ANTWON MICHELLE BAKER, JR.

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

County Courthouse
3rd Floor
180 Magnolia St.
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly denied Appellant's directed verdict motion because the evidence presented created a jury issue regarding Appellant's self-defense claim.

II. The circuit court properly denied Appellant's motion for dismissal under the Protections of Persons and Property Act because even if the Act applied, Appellant failed to meet its requirements for immunity from prosecution.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF THE FACTS

In July, 2012, the Spartanburg County Grand Jury indicted Appellant Antwon Baker, Jr., on one count of murder arising from the shooting death of Anthony Young ("Victim") in a Waffle House parking lot on June 3, 2012. In May, 2013, the Grand Jury also indicted Appellant on one count of unlawful carrying of a pistol in connection with the same incident. The case was called for a jury trial on June 3, 2013, before the Honorable J. Derham Cole, Circuit Court Judge.

Prior to trial, Appellant moved to dismiss the murder indictment on the ground he was entitled to immunity from prosecution under the Protection of Persons and Property Act (the Act) (a/k/a Stand Your Ground). In support of the motion, Appellant presented testimony from a police investigator regarding statements made by Appellant and other witnesses about the circumstances leading up to and following the shooting. The circuit court denied the motion, finding the Act did not apply, but even if it did, Appellant "failed to establish by a preponderance of the evidence that he acted reasonably, that he was attacked, and that he had a reasonable fear of imminent peril or death or great bodily injury, and that it was reasonably necessary to use deadly force in order to prevent that death or great bodily injury to himself." (Trial Transcript [TT], pp. 16-17, 24-56; Record on Appeal [R.], pp. 16-17, 20-52).

Justin Davis testified Brandon Glover drove him and Victim to the Waffle House around 2:00 a.m. on June 3, 2012. Appellant arrived when they were in the parking lot about to leave, and Victim stated Appellant previously hit him in the face with a gun and knocked his teeth out. Davis testified Glover went inside the Waffle House and told Appellant to come outside. After they walked outside, Davis, Glover, and Victim asked Appellant about the previous incident. Appellant said Glover robbed one of his friends,

,and Victim put a gun to this friend's face, and then stated "you fixing to have to fight or something." After Appellant turned to walk back into the Waffle House, Glover hit him in the head, and Appellant pulled out a gun and starting shooting. As Davis was running away, he saw Appellant chasing Victim and shooting him in the back. (TT, pp. 101-112; R., pp. 61-72).

Hillary Wilkins was in the Waffle House parking lot the night of the shooting, and testified she saw Appellant chasing Victim and shooting at him. (TT. 194, l. 6-7; R., p. 154, l. 6-7). Wilkins saw Victim fall down, and as she drove out of the parking lot she saw Victim laying on the ground with Appellant standing over him. (TT, pp. 187-200; R., pp. 147-160).

Amy Padgett testified she was also in the parking lot that night, heard gunshots and saw Appellant chasing Victim. After Victim fell down, she saw Appellant stand beside Victim and kick him. (TT, pp. 201-210; R., pp. 161-170).

Joshua Hance testified he was working at the Waffle House the night of the shooting, and he saw Appellant get hit in the head, pull out a gun and start shooting. He also saw Appellant chasing Victim, firing the gun as he ran, and Victim fall on the ground. (TT, pp. 210-220; R., pp. 170-180).

Antoine Gist testified he was riding past the Waffle House that night when he saw a lot of people "just scattering and running, leaving, somebody laying outside on the ground." He saw a man standing over the person on the ground, and then getting in a car and leaving the parking lot. He testified the man "wasn't in a hurry." (TT, pp. 221-229; R., pp. 181-189).

Officers subsequently apprehended Appellant at his apartment complex, and recovered a semi-automatic 9mm handgun, containing a fifteen round clip holding ten rounds, from the trunk of Appellant's girlfriend's car. They also recovered five shell casings and one fired bullet at the crime scene, including two shell casings in a strip mall parking lot adjacent to the Waffle House parking lot, which were forensically connected to Appellant's gun. (TT, pp. 229-246, 269-274, State's Exhibit 35 [Diagram], State's Exhibit 36 [List]; R., pp. 189-206, 229-234).¹

Appellant gave two voluntary, written statements after his apprehension. In the first statement, he indicated that when he arrived at the Waffle House, he saw "10-12 boys" in the parking lot, and he had problems with some of them in the past, so he put his gun in his waistband before entering the Waffle House. He further stated the boys "didn't say nothing at first," but kept looking at him through the window. As he was paying for his food, one of the men [Glover] came in and told him to come outside because his cousin had a problem with Appellant. Appellant stated he went outside to tell them to let it go, but they continued to tell him to fight. When he turned to go back into the Waffle House, someone hit him in the back of the head, so he turned around, pulled out his gun, and fired "three to eight shots," and "everyone ran but one in the blue shirt," who "fell," and Appellant left to call the police. (State's Exhibit 1 [Voluntary Statement]; R., pp. ____).

Approximately an hour later, Appellant gave a very similar statement, but enhanced his story regarding events leading up to the shooting. This time, he stated one

¹ The following Exhibits are on file with the Court: State's Exhibit #1 (Voluntary Statement); #2 (Voluntary Statement); #35 (Diagram); #36 (List for Sketch); #57 (Diagram); #59 (Wound Chart); #60 (Diagram).

of the boys said “it look like him” as he walked into the Waffle House, and when he walked back outside, one of the men said “it was going down,” had his hand on his waistband, and said they were going to rob Appellant if he did not fight Victim. After someone hit him:

“I duck and turn around and pull my gun out and start firing it into the crowd. Everybody starts running. So I started running to my car. I fired another shot because the dude in the blue was running toward his car like he was going to get something.”

((State’s Exhibit 2 [Voluntary Statement]; R., pp. ____).

Detective Richie Foster testified police found no other weapons, casings or bullets at the crime scene. He further testified Victim was the only one wounded that night. (TT, pp. 303-307; R., pp. 263-267).

Dr. John David Wren, who performed Victim’s autopsy, testified he found twelve bullet holes in the body, five entry wounds, one re-entry wound and six exit wounds, and determined Victim was shot five times. He also found a “slightly patterned” abrasion on Victim’s forehead. The fatal wound entered Victim’s back, passed through his heart, and exited his chest. The wounds in Victim’s back were consistent with Victim running away as he was shot, and Dr. Wren stated two wounds (one entry and one exit) to Victim’s leg were inflicted while Victim was on the ground. (TT, pp. 319-327; R., pp. 279-287).

A forensic DNA analyst with the South Carolina Law Enforcement Division testified he compared swabs from the front of a pair of tennis shoes belonging to Appellant to samples from Victim and Appellant. He determined the swab from the front of the right shoe contained Victim’s DNA, with a one in 1.4 quadrillion likelihood of finding an unrelated individual with that DNA. He testified there was “a good bit” of

material from Victim on the shoe, which was consistent with the shoe striking Victim in the head at some point. (TT, pp. 291-298; R., pp. 251-258).

Appellant moved for a directed verdict on the ground the State did not disprove self-defense beyond a reasonable doubt. Viewing the evidence presented in the light most favorable to the State, the circuit court denied the motion, finding the evidence presented a jury question on the self-defense issue. (TT, pp. 332-333, 436; R., pp. 292-293, 338).

The jury convicted Appellant of unlawful carrying of a pistol and voluntary manslaughter, and the circuit court sentenced him to concurrent terms of one year incarceration and eighteen years incarceration, respectively. (TT, pp. 539-540, 545-546; R., pp. 438-439, 443-444). This appeal followed.

ARGUMENT

I. The circuit court properly denied Appellant's directed verdict motion because the evidence presented created a jury issue regarding Appellant's self-defense claim.

Appellant asserts the circuit court erred in denying his directed verdict motion because the State failed to disprove self-defense as a matter of law. In support of this assertion, Appellant recites an extremely truncated version of the evidence, and completely ignores the evidence making his self-defense claim a clear jury question.

When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight. State v. Butler, 407 S.C. 376, 755 S.E.2d 457, 460 (2014). On appeal from the denial of a directed verdict, the appellate courts view the evidence and all reasonable inferences in the light most favorable to the State. *Id.*; State v. Weston, 367 S.C. 279, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63, 69 (1998).

A defendant must meet four prongs to justify using deadly force in self-defense:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 716 S.E.2d 97, 101 (211) (*citing* State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, 493 [1998]). “[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt.” *Id.*

The directed verdict analysis in this case could begin and end with the first and fourth prongs of self-defense. There was ample evidence from which the jury could find Appellant was at fault in bringing on the difficult, and he had ample opportunity to avoid the danger rather than act as he did under the circumstances..

When Appellant drove up to the Waffle House, he recognized some of the people in the parking lot as people he had trouble with previously, and rather than leave to avoid trouble, he made the conscious decision to park and go inside. He then **illegally** armed himself before exiting his car and entering the Waffle House, specifically **because** he knew there might be trouble with those people.² See State v. Slater, 373 S.C. 66, 644 S.E.2d 50, 52 (2007) (“Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense.”) (*quoting* State v. Bryant, 336 S.C. 340, 520 S.E.2d 319, 322 [1999]). Finally, when Glover confronted him inside the Waffle House, Appellant went outside with him rather than call the police, again knowing there might be trouble.³

²Appellant does not challenge his conviction for unlawfully carrying the pistol.

³Appellant’s assertion he believed one of the men (**not** Victim) had a gun is irrelevant because his own statements reveal he had absolutely **no** basis for such a belief when he armed himself and went inside. When he walked outside with Glover, Appellant only saw the man with a hand on his waistband, and never actually saw a gun. Law enforcement found no other guns at the scene, and there was no evidence anyone other than Appellant fired any shots.

Based on this evidence, the jury could reasonably conclude Appellant was at fault in bringing on the difficulty, and he had several opportunities to avoid the danger entirely.

Analysis of the second and third self-defense requirements also supports denial of Appellant's directed verdict motion. Appellant's conscious decisions to enter the Waffle House, and then walk outside with Glover after Glover confronted him inside, contradict the assertion he actually, or even reasonably, believed he was in danger. Then, even after the men purportedly told him they were going to rob him, and purportedly seeing one of the men holding his hand on his waistband, Appellant turned his back on the men, which contradicts the assertion he believed he was in danger.

Further, witness testimony and Appellant's statements indicated the men outside the Waffle House wanted Appellant to "fight" Victim. No one threatened to shoot Appellant if he did not "fight," and hitting Appellant in the back of the head was likely calculated to initiate a "fight," not a shoot-out. Rather than try to get back inside the Waffle House, Appellant immediately turned around and started shooting, actually chased Victim across the parking lot while shooting him in the back, kicked Victim after he fell, and then shot Victim again while he was on the ground.⁴

Appellant's reliance on Dickey and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), is misplaced, because both cases are distinguishable. In Dickey, the defendant was a security guard, and while acting within the scope of his duties, shot a highly intoxicated, aggressive man, the defendant had just evicted from the premises. The man charged the defendant while threatening him and reaching under his shirt like he was reaching for a weapon, and the defendant's ability to retreat was hampered by his

⁴Appellant conveniently ignores this critical evidence.

hampered by his physical condition and a set of locked doors. In reversing the defendant's voluntary manslaughter conviction, the Supreme Court found the **uncontroverted** facts established self-defense as a matter of law. 716 S.E.2d at 101-103.

In Hendricks, the defendant **legally** possessed a firearm while on his own property, and the victim came onto the defendant's property armed with a shotgun and threatened the defendant. The Supreme Court reversed the defendant's voluntary manslaughter conviction, again finding the uncontroverted evidence established self-defense as a matter of law. 244 S.E.2d at 506-507.

Contrary to the defendants in Dickey and Hendricks, Appellant **illegally** armed himself prior to any confrontation, and made no effort to retreat from the very trouble he anticipated. Further, according to Appellant's own version of the events, Victim, who was unarmed, did not say or do anything threatening toward Appellant before Appellant chased him across the parking lot and shot him multiple times in the back. Those facts alone distinguish this case. *Compare* State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014) (distinguishing Dickey and finding evidence created credibility issues and questions of fact regarding defendant's self-defense claim).

Viewed in the light most favorable to the State, the evidence in this case created questions of fact for jury determination on each prong of the self-defense issue. The circuit court's denial of Appellant's directed verdict motion is amply supported by the record, and should be affirmed.

II. The circuit court properly denied Appellant's motion for dismissal under the Protection of Persons and Property Act because even if the Act applied, Appellant failed to meet its requirements for immunity from prosecution.

Appellant contends the circuit court erred in denying his motion for immunity pursuant to S.C. Code Ann. §16-11-450, because under S.C. Code Ann. §16-11-440(C), he was not engaged in an unlawful activity and was attacked in a place he had a right to be present (Waffle House). As with his directed verdict argument, Appellant's contention ignores critical evidence.

The expressly stated legislative intent of the Act is "to codify the common law Castle Doctrine which recognized that a person's home is his caste, and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. §16-11-420(A) (Supp. 2013). The legislature further provided "that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. §16-11-420(B) (Supp. 2013).

The main thrust of the Act is set forth in §16-11-440(A), which "provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle." State v. Curry, 406 S.C. 364, 752 S.E.2d 263, 266 (2013). If subsection (A) does not apply, the analysis defaults to subsection (C), "which deals with the use of force by one who is attacked in another place where he has a right to be." *Id.*

The immunity from prosecution afforded under §16-11-450 only applies "if a person is found to be justified in using deadly force." *Id.* (emphasis in original). Using a

preponderance of the evidence standard, the trial court must determine the right to immunity pre-trial, which the appellate court reviews for abuse of discretion. *Id.* “A **valid case of self-defense must exist**,” and the trial court “must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity,” which “includes all elements of self-defense, save the duty to retreat.” *Id.* (emphasis added).

The circuit court questioned whether the Act applied in this case because Appellant was not in his home, vehicle or business when the shooting occurred. Admittedly, whether “another place where he has a right to be” extends beyond places in which the person has a possessory interest remains an open question in South Carolina. Contrary to Appellant’s contention, however, the applicability of the Act was not the sole basis for the circuit court’s ruling.

The circuit court expressly found that even if the Act applied, Appellant failed to sufficiently establish a valid self-defense claim for purposes of immunity. Specifically, the court found Appellant “failed to establish by a preponderance of the evidence that he acted reasonably, that he was attacked, and that he had a reasonable fear of imminent peril or death or great bodily injury, and that it was reasonably necessary to use deadly force in order to prevent that death or great bodily injury to himself.” (TT, pp. 55-56; R., pp. 51-52).

Ignoring the duty to retreat prong for purposes of argument only, the record amply supports the circuit court’s determination Appellant did not establish a valid self-defense claim. The evidence Appellant presented at the pre-trial hearing, including his own

statements to police, clearly established Appellant's fault in bringing on the difficulty, which standing alone, vitiates his immunity claim.

Rather than simply leaving when he recognized some of the people in the parking lot, Appellant consciously armed himself illegally and went inside the Waffle House. He then voluntarily went back outside after Glover confronted him, well knowing there could be trouble. Appellant never actually saw anyone holding a gun, and in response to a blow to his head, he immediately started shooting and chased Victim through the parking lot. There was no evidence of any other guns present or shots fired. (TT, pp. 24-50, State's Exhibit 1, State's Exhibit 2; R., pp. 20-46).

The circuit court properly exercised its discretion in determining Appellant failed to present a valid self-defense claim for purposes of immunity under the Act. Accordingly, the circuit court ruling should be affirmed.

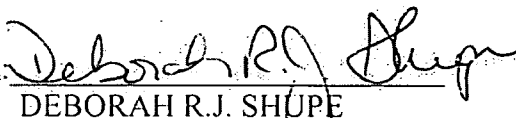
CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

By: 
DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 12, 2014

STATE OF SOUTH CAROLINA

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Appeal From Spartanburg County
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CERTIFICATE OF COUNSEL

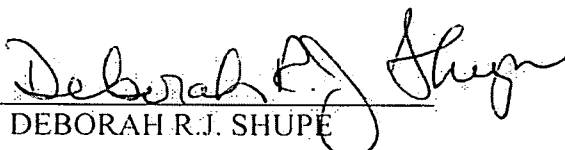
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

By:


DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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September 12, 2014

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THE STATE,

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v.

ANTWON M. BAKER, JR.,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Final Brief of Respondent on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Wanda H. Carter
Chief Deputy Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 12th day of September, 2014.



SALLY ELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727