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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RODNEY ALEXANDER NASH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000070

APPENDIX

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COUNTY OF SPARTANBURG) 7TH JUDICIAL CIRCUIT

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-VS-) 2006-GS-42-225

ROBERT ALEXANDER NASH,)

DEFENDANT.)

MAY 5 - 7 2008

SPARTANBURG, SOUTH CAROLINA.

B E F O R E:

THE HONORABLE THOMAS RUSSO, JUDGE; AND A JURY.

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

ANTHONY C. LEIBERT, ASSISTANT SOLICITOR

RYAN MCCARTY, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

BILL GODFREY, ESQUIRE

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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COURT REPORTER'S NOTE: STATE'S EXHIBIT NUMBERS 1 THROUGH 41 WERE PREMARKED FOR IDENTIFICATION BEFORE THE TRIAL OF THIS CASE BEGAN.

1 Monday, May 5, 2008

2 MR. LEIBERT: May it please the Court, Your Honor?

3 THE COURT: Yes, sir.

4 MR. LEIBERT: The State would call indictment number
5 06-GS-42-0225, The State vs. Rodney Alexander Nash, an
6 indictment for murder and the possession of a firearm during
7 the commission of a violent crime, Your Honor.

8 THE COURT: All right. Thank you, Solicitor.

9 Ladies and gentlemen, the solicitor has called for
10 trial the case of The State of South Carolina vs. Rodney
11 Alexander Nash, and he called out, as you heard, an indictment
12 number. An indictment, ladies and gentlemen, is simply a
13 document or a piece of paper that actually brings the formal
14 charge into this court.

15 To the charges contained in this indictment Mr. Nash
16 has pled not guilty. That places the burden of proof on the
17 State of South Carolina to prove his guilt beyond a reasonable
18 doubt, and Mr. Nash is presumed innocent of these charges.

19 I'm going to give you some information from these
20 indictments, but please understand this, the indictment and
21 the charges or the allegations that it contains are not
22 evidence against Mr. Nash in any way, nor are they any proof
23 of the allegations which are contained in this document. This
24 is simply the formal charge that the State has brought.

25 Mr. Nash, his presumption of innocence stays with

1 him now as we begin the trial and remains with him all the way
2 through the trial and all the way through jury deliberations
3 until a jury reaches a verdict. So please keep that in mind.

4 What I'm going to do, as you heard from the
5 solicitor, Mr. Nash has been charged with 2 offenses. One
6 he's been charged with the count of murder. And the
7 indictment alleges that Rodney Alexander Nash did in
8 Spartanburg County on or about June the 30th of 2005
9 feloniously, willfully and with malice aforethought kill one
10 Terrell Farr by shooting the victim and that the victim died
11 as a proximate result thereof in violation of subsection
12 16-3-10 and 20 of the South Carolina Code of Laws as amended.
13 And that's 1 count of the indictment.

14 The other count of the indictment that Mr. Nash has
15 been charged with is possession of a firearm during the
16 commission of a violent crime. And, again, that charge reads
17 that Rodney Alexander Nash did in Spartanburg County on or
18 about June the 30th of 2005 possess a firearm during the
19 commission of a violent crime as defined in Code Section
20 16-1-60, to wit, the crime of murder in violation of Code
21 Section 16-23-490 of the code of laws as amended.

22 Now, as I indicated to you, ladies and gentlemen,
23 these are simply charges to which Mr. Nash has pled not guilty
24 to, and has placed the burden of proof on the State.

25 If I may ask, is there any member of the jury panel

1 who knows anything about this case at all? If so, please
2 stand.

3 (There was no response.)

4 THE COURT: All right. Thank you. There are none.

5 Ladies and gentlemen, at this time, I'm going to
6 recognize the attorneys. I'm going to begin with the State,
7 have them introduce themselves, then I'll recognize the
8 defense and have them introduce themselves. So please listen
9 carefully while they do so.

10 Solicitor?

11 MR. LEIBERT: I'm Tony Leibert. I'm employed as an
12 attorney for Solicitor Trey Gowdy. My title is assistant
13 solicitor.

14 MR. MCCARTY: And my name is Ryan McCarty. I work
15 with Mr. Leibert. I'm also an assistant solicitor in the 7th
16 Judicial Circuit.

17 MR. LEIBERT: Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 Ladies and gentlemen, is there any member of the
20 jury panel related by blood, connected by marriage or who has
21 any close, personal or business relationship or who has been
22 represented by either Mr. Leibert or Mr. McCarty? If so,
23 please stand.

24 All right. And, ma'am, if I may, could I get your
25 name, please.

1 POTENTIAL JUROR: Yes. Lou Landrum.

2 THE COURT: All right. Ms. Landrum, and which one
3 of those gentlemen do you know or have some relationship with?

4 MS. LANDRUM: Mr. Leibert and I formerly worked at
5 Spartanburg County Department of Social Services.

6 THE COURT: All right. Ma'am, if I may ask you, the
7 fact that you worked with Mr. Leibert in that capacity in the
8 past would that in any way affect your ability to be fair and
9 impartial and give both the State as well as the defense a
10 fair hearing?

11 MS. LANDRUM: No, sir, it will not.

12 THE COURT: Thank you very much. You can have a
13 seat, ma'am.

14 All right.

15 MR. GODFREY: May it please the Court. Good
16 morning. My name is Bill Godfrey, Godfrey Law Firm. Our law
17 firm works in both Greenville, and Spartanburg, and Laurens.

18 And please stand up, Rodney.

19 Ladies and gentlemen, this is Rodney Alexander Nash,
20 and he is my client.

21 THE COURT: Thank you, Mr. Godfrey.

22 Ladies and gentlemen, is there any member of the
23 jury panel related by blood, connected by marriage or who has
24 any close personal or business relationship or who has in the
25 past been represented by Mr. Godfrey? If so, please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Is there any member of the jury panel related by
4 blood, connected by marriage or who has any close business or
5 personal relationship with Mr. Rodney Alexander Nash? If so,
6 please stand.

7 (There was no response.)

8 THE COURT: All right. Thank you. There are none.

9 Ladies and gentlemen, I'm going to go over a list of
10 names. These names are potential witnesses in this case.
11 They may or may not testify during the course of this trial.
12 But the question that I will ask you with regards to those is
13 the same question I just asked you regarding Mr. Nash, and
14 that is -- as I go through these names, please listen
15 carefully, and the question is going to be if you are related
16 by blood, connected by marriage or have any close personal or
17 business relationship with any of these witnesses. If you
18 hear a name and that question applies go head and stand, if
19 you would, please.

20 Now, there's several names that I'm going to be
21 calling out. So if you do stand please continue to listen
22 because it may be that it applies to more than one of these
23 individuals.

24 So keeping that question in mind, these following
25 individuals are potential witnesses in this case; James

1 Thomas, Alex Nash, Randy Bogan, Dan Piggins, Jason Bryant,
2 Tamara Nash, Tom Smith, Lilly Gallman, Joe Powell, Michael
3 Dean Wiggins, David Wren, Michael Woodcock, Todd Ruffner, Dan
4 Cude, and Wayne Butler.

5 Any member of the jury panel related by blood,
6 connected by marriage or have any close personal or business
7 relationship with any of those individuals? If so, please
8 stand.

9 (There was no response.)

10 THE COURT: All right. Thank you. There are none.

11 Is there any member of the jury panel or member of
12 your immediate family who has ever been the victim of a
13 violent crime? If so, please stand.

14 All right. Now, if I may, I'm going to start,
15 ma'am, with you. Could I get your name for the record,
16 please.

17 POTENTIAL JUROR: Yes, sir. Theresa Sessions.

18 THE COURT: Ms. Sessions, and I don't want any
19 details, but just want to know was it yourself or a member of
20 your family?

21 MS. SESSIONS: Member of the family.

22 THE COURT: All right. Ma'am, the fact that you've
23 had that experience in your family would that in any way
24 affect your ability if you were selected as a member of this
25 jury to give a fair and impartial trial both to the defense as

1 well as to the State?

2 MS. SESSIONS: Yes, sir, it would affect it.

3 THE COURT: It would. All right. Thank you very
4 much. Ms. Sessions, I'm going to get you to have a seat.
5 Thank you.

6 And, ma'am, your name?

7 POTENTIAL JUROR: Charlena Brayboy.

8 THE COURT: Same question for you as well, ma'am.
9 Was it yourself or a member of your family?

10 MS. BRAYBOY: Member of the family.

11 THE COURT: All right. The fact that you've had
12 that experience in your family, would that affect you, ma'am?
13 Would it affect your ability to be fair and impartial if you
14 were called as a member of this jury?

15 MS. BRAYBOY: Yes.

16 THE COURT: It would. All right. Thank you very
17 much, ma'am. You may have a seat.

18 Sir, your name?

19 POTENTIAL JUROR: David Gilbert.

20 THE COURT: All right, sir. And was it yourself or
21 a member of your family?

22 MR. GILBERT: A member of my family.

23 THE COURT: Sir, the fact that you've had that
24 occurrence in your family, would that in any way affect your
25 ability to be fair and impartial during the trial of this

1 case?

2 MR. GILBERT: No, it wouldn't.

3 THE COURT: Thank you very much. You may have a
4 seat. Could I get your name again, sir?

5 MR. GILBERT: Gilbert.

6 THE COURT: Gilbert. Thank you, sir.

7 Is there any member of the jury panel who has such
8 strong feelings about firearms that you could not be fair and
9 impartial in a case that involves the use of or the alleged
10 illegal possession or the alleged use of a firearm? If so,
11 please stand.

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 Is there any member of the jury panel who is -- or a
15 member of your immediate family a member of any group which
16 encourages strict enforcement of the criminal laws of our
17 state? In other words, groups such as Mothers Against Drunk
18 Driving, Citizens Against Violence, any of those type of
19 organizations. Is there any member of the jury panel that is
20 a member of any of those groups? If so, please stand.

21 (There was no response.)

22 THE COURT: All right. Thank you. There are none.

23 Ladies and gentlemen, I go through these questions
24 because, as it's probably obvious to you, the purpose and what
25 we try to do any time we have a case, whether it's a criminal

1 case or whether it's a civil case, is we want to empanel a
2 group of people who can listen to the evidence, hear the
3 evidence and give the State and the defendant a fair and
4 impartial trial. Now, that's the goal, obviously, and the
5 purpose of these questions.

6 There are times that, you know, we ask certain
7 questions but there are going to be questions that I'm not
8 going to ask just because I don't recall the question or I'll
9 just miss something. So I always ask this catch-all question.

10 Keeping in mind that all we're looking for are
11 people that can listen to the evidence and be fair and
12 impartial is there any member of the jury panel -- now, and
13 this is except those individuals I've already dismissed, is
14 there any member of the jury panel who knows of any reason
15 that if you were selected as a member of this jury panel that
16 you would not be able to be fair and impartial both to the
17 State as well as the defense? If there's any reason that you
18 feel you could not be fair and impartial, please stand.

19 All right. And, sir, your name?

20 POTENTIAL JUROR: James Mcbee.

21 THE COURT: Mr. Mcbee, I'm going to get you, if you
22 could, right up to the bench.

23 And if the attorneys would like to come forward they
24 are certainly welcome to do so.

25 (WHEREUPON, the following side-bar was reported.)

1 THE COURT: And, Mr. Mcbee, what I'm going to do, I
2 brought you up here so that the reporter could listen. Could
3 you tell me what the problems would be?

4 MR. MCBEE: I have a friend of my father's who is
5 convicted of a crime similar in nature. And I just see
6 families go through all of it, and I kind of believe that
7 possibly it would affect my decision.

8 THE COURT: I'm going to excuse you from the trial
9 of this case. Now, we've got another case that we're going to
10 need your help later on this afternoon. So you're not excused
11 for the week but just for this trial. All right. You can
12 have a seat. Thank you, sir.

13 (WHEREUPON, the side-bar was concluded.)

14 THE BAILIFF: Number 95, Your Honor.

15 THE COURT: All right. Come forward, please.

16 (WHEREUPON, the following side-bar was reported.)

17 MR. LOUDON: I have prior law enforcement experience
18 in 2002 and 2004 in Spartanburg, the City of Greer. Greer and
19 Spartanburg County.

20 THE COURT: Now, would that affect your ability to
21 be fair and impartial, or you just wanted to inform us of
22 that?

23 MR. LOUDON: Well, I'm more pro law enforcement than
24 anything.

25 THE COURT: You think it might have an effect?

1 MR. LOUDON: Yeah, I hate to --

2 THE COURT: I appreciate that. Your name?

3 MR. LOUDON: Eric Loudon.

4 THE COURT: Okay. Mr. Loudon, I'm going to excuse
5 you from the trial of this case. Thank you, sir.

6 (WHEREUPON, the side-bar was concluded.)

7 THE COURT: All right. Thank you, ladies and
8 gentlemen. Here's the good news. You're all qualified to
9 serve as jurors on this case.

10 Now, you may be sitting out there thinking, I don't
11 know what that old fool is thinking. I don't know anything
12 about the law. How can he tell me I'm qualified?

13 Well, ladies and gentlemen, that's the beauty of our
14 system where we allow our peers, people that we live and work
15 with every day to help us resolve differences, help us resolve
16 these matters.

17 You are not required to have any legal experience or
18 to have any legal education. What you do need to do, if you
19 are selected as a member of this jury or any jury, is to bring
20 with you the good common sense you use every day as you go to
21 work, as you go to school, as you take care of your families,
22 take care of yourself.

23 You bring that common sense with you. You listen to
24 the evidence. You decide what the facts are in the case, or
25 what you believe the facts are based on the evidence that

1 you've listened to. It doesn't require you to have a legal
2 education to do that.

3 At the close of all the evidence I will then give
4 you the law that applies to the case, and you'll then take
5 that law as I give it to you and you'll apply that law to the
6 facts that you found and then you'll reach a verdict. So it's
7 not necessary for you to have a legal education or a legal
8 background. I'll give you the law you need, and it will be in
9 plain English and simple form for you to understand.

10 So I appreciate you being here and I appreciate your
11 service to your community by being here.

12 Now, before we proceed, are there any further
13 questions or any voir dire from the State?

14 MR. LEIBERT: No, sir, Your Honor.

15 THE COURT: Thank you, sir.

16 Is there anything further from the defense?

17 MR. GODFREY: No, Your Honor.

18 THE COURT: Thank you, Mr. Godfrey.

19 Ladies and gentlemen, as I indicated to you earlier,
20 when you hear your name called if you would come forward and
21 bring with you whatever you brought and just come right here
22 before madam clerk and face the back of the courtroom, and
23 just follow the instructions from there.

24 All right. It's 5 and 10.

25 See, I'm in the big city. We get your name printed

1 out on a piece of paper. In Florence we use a cigar box and
2 we just draw your names out.

3 Just so you'll know, ladies and gentlemen, this is a
4 new program that a lot of the counties are adopting. Your
5 names, as they appear on the jury roster, a computer will take
6 your names and by pushing the button it will just basically do
7 the same purpose as the cigar box. It will jostle your names
8 up and just kick them out randomly. I'm trying hard to get
9 this in Florence, but we're not having a lot of luck yet.

10 So having said that, please listen for your name and
11 just follow those instructions.

12 THE CLERK: Juror number 169, Daniel Wofford.

13 (A black male came forward.)

14 THE CLERK: What say the State?

15 MR. LEIBERT: Please present Mr. Wofford.

16 THE CLERK: What say the defense?

17 MR. GODFREY: Please seat Mr. Wofford.

18 THE CLERK: Juror 71, Tony Jackson.

19 (A white male came forward.)

20 THE CLERK: What say the State?

21 MR. LEIBERT: Please present Mr. Jackson.

22 THE CLERK: What say the defense?

23 MR. GODFREY: Please seat Mr. Jackson.

24 THE CLERK: Juror number 98, Melody Mason.

25 (A white female came forward.)

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THE CLERK: What say the State?

MR. LEIBERT: Please present Ms. Mason.

THE CLERK: What say the defense?

MR. GODFREY: Please seat Ms. Mason.

THE CLERK: Juror number 146, Beulah Stewart.

(A black female came forward.)

THE CLERK: What say the State?

MR. LEIBERT: Please present Ms. Stewart.

THE CLERK: What say the defense?

MR. GODFREY: Please excuse Ms. Stewart.

THE CLERK: Juror number 94, Mai Lor.

(An Asian female came forward.)

THE CLERK: What say the State?

MR. LEIBERT: Please present the juror.

THE CLERK: What say the defense?

MR. GODFREY: Please seat Ms. Lor

THE CLERK: Juror number 13, Timothy Blake.

(A white male came forward.)

THE CLERK: What say the State?

MR. LEIBERT: Please excuse Mr. Blake.

THE CLERK: Juror number 149, Styles Thompson.

(A black male came forward.)

THE CLERK: What say the State?

MR. LEIBERT: Please present Mr. Thompson.

THE CLERK: What say the defense?

1 MR. GODFREY: Please seat Mr. Thompson.

2 THE CLERK: Juror number 148, Mandy Teague.

3 (A white female came forward.)

4 THE CLERK: What say the State?

5 MR. LEIBERT: Please present Ms. Teague.

6 THE CLERK: What say the defense?

7 MR. GODFREY: Please seat Ms. Teague.

8 THE CLERK: Juror number 40, Renny Delossantos.

9 (A white male came forward.)

10 THE CLERK: What say the State?

11 MR. LEIBERT: Please present the juror.

12 THE CLERK: What say the defense?

13 MR. GODFREY: Please seat the juror.

14 THE CLERK: Juror number 16, Carolyn Bradley.

15 (A white female came forward.)

16 THE CLERK: What say the State?

17 MR. LEIBERT: Please present Ms. Bradley.

18 THE CLERK: What say the defense?

19 MR. GODFREY: Please excuse Ms. Bradley.

20 THE CLERK: Juror number 67, Berta Hopkins.

21 (A white female came forward.)

22 THE CLERK: What say the State?

23 MR. LEIBERT: Please excuse Ms. Hopkins.

24 THE CLERK: Juror Walker Brownlee. I think that's

25 juror number 23.

1 (A white male came forward.)
2 THE CLERK: What say the State?
3 MR. LEIBERT: Please present Mr. Brownlee.
4 THE CLERK: What say the defense?
5 MR. GODFREY: Please seat Mr. Brownlee.
6 THE CLERK: Juror number 80, Lou Ellen Landrum.
7 (A black female came forward.)
8 THE CLERK: What say the State?
9 MR. LEIBERT: Please present Ms. Landrum.
10 THE CLERK: What say the defense?
11 MR. GODFREY: Please excuse Ms. Landrum.
12 THE CLERK: Juror number 162, Deborah Webber.
13 (A white female came forward.)
14 THE CLERK: What say the State?
15 MR. LEIBERT: Please present Ms. Webber.
16 THE CLERK: What say the defense?
17 MR. GODFREY: Please excuse Ms. Webber.
18 THE CLERK: Juror number 46, Joshua Forrest.
19 (A white male came forward.)
20 THE CLERK: What say the State?
21 MR. LEIBERT: Please present Mr. Forrest.
22 THE CLERK: What say the defense?
23 MR. GODFREY: Please seat Mr. Forrest.
24 THE CLERK: Juror number 62, Donald Hart.
25 (A white male came forward.)

1 THE CLERK: What say the State?

2 MR. LEIBERT: Please present Mr. Hart.

3 THE CLERK: What say the defense?

4 MR. GODFREY: Please seat Mr. Hart.

5 THE CLERK: Juror number 79, Gregory Laird.

6 (A white male came forward.)

7 THE CLERK: What say the State?

8 MR. LEIBERT: Please present Mr. Laird.

9 THE CLERK: What say the defense?

10 MR. GODFREY: Please seat Mr. Laird.

11 THE CLERK: Juror number 73, Mary Johnson.

12 (A white female came forward.)

13 THE CLERK: What say the State?

14 MR. LEIBERT: Please present Ms. Johnson.

15 THE CLERK: What say the defense?

16 MR. GODFREY: Please excuse Ms. Johnson.

17 THE CLERK: Juror number 76, Amanda Kirby.

18 (A white female came forward.)

19 THE CLERK: What say the State?

20 MR. LEIBERT: Please excuse Ms. Kirby

21 THE CLERK: Juror number 172, Cristin Bellew.

22 (A white female came forward.)

23 THE CLERK: What say the State?

24 MR. LEIBERT: Please present Ms. Bellew.

25 THE CLERK: What say the defense?

1 MR. GODFREY: Please seat Ms. Bellew.

2 THE CLERK: This will be for the alternate.

3 Juror number 110, Larry Scott Morris.

4 (A white male came forward.)

5 THE CLERK: What say the State?

6 MR. LEIBERT: Please excuse Mr. Morris.

7 THE CLERK: Juror number 93, Ruben Loftis. Juror
8 number 93, Ruben Loftis.

9 (There was no response.)

10 Juror number 2, Iqbal Alimohamed.

11 (An Asian male came forward.)

12 THE CLERK: What say the State?

13 MR. LEIBERT: Please present the juror.

14 THE CLERK: What say the defense?

15 MR. GODFREY: Please seat the juror.

16 THE COURT: Ladies and gentlemen, those of you that
17 remain in the jury panel, I'm going to excuse you now and ask
18 you to be back at 2:30. We have another case that they are
19 going to try in another court. I think it's another criminal
20 trial that they're going to do and they are going the pick
21 that jury at 2:30. Report to the jury assembly room at 2:30.
22 So you are excused until that time. Thank you.

23 Before I excuse the panel, are there any motions
24 regarding the jury selection, from the State?

25 MR. LEIBERT: No, sir, Your Honor.

1 THE COURT: Any motions from the defense?

2 MR. GODFREY: No, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, 2:30.

4 See you at 2:30.

5 (WHEREUPON, the jury venire was excused.)

6 THE COURT: Ladies and gentlemen, we're going to
7 break at this time as well for the lunch break, but what I'm
8 going to do is I'm going to ask you, if you would, you've been
9 selected as members of this panel. It's very important -- you
10 don't really know anything about this case other than the
11 little bit that I shared with you just a while ago, and when
12 you return from lunch that's where you still need to be.

13 In other words, during the lunch break I'm going to
14 ask you please do not allow anyone to talk with you about the
15 case, please do not talk with anyone about the case, and that
16 includes your fellow jurors, even amongst yourselves. You are
17 not to have any deliberations or any discussions about this
18 trial until I excuse you to your deliberations. So if you
19 would, please, that's very important.

20 If anyone does try to talk with you about the case
21 let them know immediately that you are a juror, you are not
22 allowed to talk about it. If they persist and insist on
23 talking with you, if you'll get me their name or let me know
24 who it was. I'll make sure it doesn't occur again. It is
25 very important that you base your decision in this case based

1 solely on the evidence that is presented during the course of
2 this trial in this courtroom and on nothing else.

3 I'm going to excuse you, but what I'm going to do
4 when I excuse you I'm going to ask you to go with the bailiff
5 out. They are going to show you where your jury room is, and
6 then when you report back if you'll just please come back
7 straight back to the jury room.

8 When you get back into the jury room if you need
9 anything let us know. They should have stuff back there.

10 Do you have soft drinks, crackers or something?

11 THE BAILIFF: We can get it, Your Honor.

12 THE COURT: If you need something let us know. But
13 you can get to know each other, talk amongst yourselves. Just
14 don't talk about the case, okay?

15 I'm going to ask you, if you would, to be back in
16 your jury room ready to go at 2:30. So it's about a quarter
17 to 1:00 now. That gives you about an hour and 45 minutes for
18 lunch. So if you'll please be back in your jury room at 2:30.

19 MR. LEIBERT: Your Honor, may it please the Court,
20 before they leave.

21 THE COURT: I'm sorry, ladies and gentlemen. Hold
22 on.

23 MR. LEIBERT: May we approach?

24 THE COURT: Yeah.

25 MR. LEIBERT: I'm sorry.

1 THE COURT: Just give me one second, please, before
2 you go.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: The news just got better. We're
5 actually going to take this afternoon and deal with some other
6 matters. So we're going to actually start this case in the
7 morning. And so everything I just shared with you still
8 applies. Don't talk about the case, don't let people talk to
9 you about the case.

10 Now, I'm going to expand it just a little bit
11 because I'm going to tell you right now if you live with my
12 wife you get interrogated when you get home; did you get
13 picked, what kind of case is it, who is involved?

14 I love my wife. She's the greatest lady in the
15 world, but she's very curious about what goes on in court
16 because she doesn't get to come very often.

17 Your spouse, or family members, or friends may be
18 curious as well. If they ask you if you are selected on a
19 panel you can tell them yes, I was chosen on a case. That's
20 where it needs to end because if you tell them yeah, it's a
21 case that involves Rodney Nash, they may know Mr. Nash or know
22 someone who knows him, and they may say something. Or if you
23 don't give a name, let's say you simply say yeah, I was picked
24 on a case, the guy is charged with murder and possession of a
25 weapon, they may say something about that that may affect your

1 ability to be fair and impartial. And as I told you before,
2 the key, the main thing in jury service is that we have jurors
3 that are fair and impartial and give both the State and the
4 defendant a fair trial.

5 So if they ask you anything other than did you get
6 picked, very politely just say listen, I did, I can't even
7 tell you the guy's name. I can't tell you the charges. I
8 can't tell you the witnesses' names.

9 What I can do though is you can tell them all they
10 want to know and probably more than they want to know when the
11 case is over. You can even do like they do in California, you
12 can write a book about it, if you want to. And if you can
13 sell it, God bless you. But please don't have any
14 conversation about this case, and it's very important to our
15 system of justice that we pick jurors that are fair and
16 impartial and they remain fair and impartial throughout the
17 course of the trial.

18 And there's one other thing I got to mention and,
19 sir, when you come back if you could not wear shorts. Let me
20 tell you something. If I could be in shorts I'd be in shorts.
21 I am not kidding you. It doesn't offend me but it's just the
22 Chief Justice has made those rules and we live by them. But
23 thank you anyway.

24 Now, having said that, let me ask you, if you would,
25 to be back in your jury room at 9:30 in the morning, okay? So

1 you got the afternoon off with pay, by the way. Not a lot,
2 but you got the afternoon off with pay. At 9:30 in the
3 morning, please be here. And if you'll follow the bailiffs
4 they'll show you where your jury room is, then when you come
5 back here tomorrow morning, please come straight up to the
6 jury room and be ready to go at 9:30.

7 Thank you, ladies and gentlemen.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 12:52 p.m.)

10 THE COURT: Okay. Have you got exhibits marked?

11 MR. LEIBERT: Yes, sir, we've already got everything
12 marked.

13 THE COURT: I know you've been through this before,
14 but is there anything we need to take up before tomorrow
15 morning?

16 MR. GODFREY: Tomorrow morning we'll need briefly a
17 Jackson V. Denno and a Neil V. Biggers, and that's all the
18 motions.

19 THE COURT: Any problem with us starting at
20 9 o'clock?

21 MR. LEIBERT: No, sir, that would be great.

22 MR. GODFREY: That's fine, Judge.

23 THE COURT: Okay. We'll start tomorrow morning at
24 9 o'clock. This trial will recess until tomorrow morning at
25 9 o'clock.

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 (WHEREUPON, the trial of this case was recessed for
2 the day.)

3 Tuesday, May 6, 2008

4 MR. LEIBERT: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. LEIBERT: We're going to do a Jackson V. Denno
7 very quickly.

8 THE COURT: All right.

9 MR. LEIBERT: We call Detective Tom Smith to the
10 stand, Your Honor.

11 THE COURT: All right. Detective Smith, if you'd
12 come around.

13 THOMAS N. SMITH, after having been duly sworn,
14 testified as follows:

15 MR. LEIBERT: May it please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. LEIBERT:

19 Q. Sir, please state your name.

20 A. Thomas N. Smith.

21 Q. And where are you employed?

22 A. Spartanburg County Sheriff's Office.

23 Q. were you so employed on July 30th, 2005?

24 A. Yes, sir

25 Q. And what was your position at that time?

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 A. I was an investigator with the Spartanburg County
2 Sheriff's Office.

3 Q. What role, if any, did you play in the case of State
4 vs. Rodney Nash?

5 A. I was the lead investigator.

6 Q. Did you have occasion to interview Mr. Rodney Nash
7 the day after the shooting on July 1st, 2005?

8 A. Yes, sir, I did.

9 Q. Where did this take place?

10 A. Spartanburg County Sheriff's Office.

11 Q. Was Mr. Nash brought to the sheriff's department or
12 did he arrive there on his own?

13 A. He was brought to the sheriff's office.

14 Q. All right. And did you obtain a statement from him?

15 A. Yes, sir, I did.

16 Q. Did you give him his Miranda warnings prior to that?

17 A. Yes, sir, I did.

18 MR. LEIBERT: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q. I hand you what's been marked State's Exhibit 9.
22 Can you identify that, please.

23 A. That's a pre-interrogation waiver form from
24 Spartanburg County Sheriff's Office.

25 Q. Was that used in this case with Mr. Nash?

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 A. Yes, sir, it was.

2 Q. Explain to the Court how you read someone their
3 rights and how you did it in this specific case.

4 A. Yes, sir. When he was first brought in we fill out
5 the top section with his name, age, date of birth and time,
6 and then we read it from the form.

7 Q. You read it to him?

8 A. Yes, sir.

9 Q. And how do you -- where is he sitting as opposed to
10 you?

11 A. He's in the same room at -- next to a little table
12 in an interview room.

13 Q. All right. Then read it to the Court as you read it
14 to him.

15 A. It says I have the right to remain silent. Anything
16 I say can and will be used against me in a court of law. I
17 have the right to talk to a lawyer, to have them present with
18 me while I'm being questioned. If you cannot afford to hire a
19 lawyer one will be appointed to represent me before any
20 questioning, if I so wish. I have the right to stop answering
21 questions at any point.

22 Then it says the above rights have been read to me
23 by, and I put my name, T. N. Smith. And then he signed saying
24 that he has read the same and understands them.

25 Q. All right. At that time, after he signed it, did

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 you ask him another question, whether he agreed to speak to
2 you?

3 A. Yes, sir. It's a two-part form. The second one
4 says I waive and give up my rights as explained and agree to
5 talk to T. N. Smith in reference to a homicide, and my
6 statement that I made -- make is of my own free will without
7 being threatened promise or favor of reward of any kind. Then
8 it ends with I am able to read and write the English language
9 and have finished 11 years in school. It's witnessed by
10 Detective Lindsey, and it's signed by Rodney Nash.

11 Q. What time was that done on July 1st?

12 A. This was done 9:58 a.m.

13 Q. Did he then give you a statement?

14 A. Yes, sir, he did.

15 Q. I hand you State's Exhibit 10. And what is that?

16 A. This is a volunteer statement written by Rodney Nash
17 on July 1st, 2005, and was completed at 10:24.

18 Q. At 10:24 a.m.?

19 A. Yes, sir.

20 Q. And is that in his handwriting or yours?

21 A. That would be his.

22 Q. It's about half a page long?

23 A. Yes, sir.

24 Q. Please publish that to the Judge.

25 A. About 3:00 p.m. I was on Road until

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 about 5:00, 5:30 p.m. I left and I went home and stayed until
2 about 8:30 p.m., 9:00 p.m. I left home and went to the
3 hospital to see my sister and her newborn but the doors were
4 locked and we couldn't get in.

5 We went back to Colony, and I never left
6 until this morning. I was basically home alone from 5:30 to
7 8:30, 9 o'clock.

8 Q. Old Farm Road is where the shooting occurred?

9 A. Yes, sir.

10 Q. And was that approximately 8:30 p.m.?

11 A. Yes, sir.

12 Q. He's saying he was there until 5:30 p.m.?

13 A. Yes, sir.

14 Q. When he was being booked in by law enforcement did
15 he initiate a conversation and give more information?

16 A. Late that afternoon while he was being booked in I
17 received information from Investigator Lachica indicating
18 Mr. Nash gave a brief oral statement that he was at the Li'l
19 Cricket on Road 41 at approximately 8:30.

20 Q. That he was at the Li'l Cricket at 8:30?

21 A. At 8:30, quarter of 9:00.

22 Q. There's a lot of Li'l Crickets. Did he give you a
23 location?

24 A. Road 41.

25 Q. And during this time that you got this statement,

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 Exhibit 10, did he ever ask to speak to an attorney?

2 A. No, sir.

3 Q. Did he ever quit answering your questions?

4 A. No, sir.

5 Q. Did he ever ask for a break?

6 A. No, sir.

7 Q. Did he ever ask for food or water?

8 A. No, sir.

9 Q. During the course of your career have you had an
10 occasion to see people who are under the influence of alcohol
11 or drugs?

12 A. Yes, sir.

13 Q. In your opinion, was he under the influence of
14 alcohol or drugs?

15 A. No, sir.

16 Q. Was his speech coherent?

17 A. Yes, sir.

18 Q. Did you offer him anything?

19 A. I believe we gave him a drink when he first came in.

20 Q. Did you promise him anything?

21 A. No, sir.

22 Q. Say we won't charge you, offer leniency?

23 A. No, sir.

24 Q. Did you threaten him in any way?

25 A. No, sir.

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 Q. In your opinion -- how many years you been doing
2 this?

3 A. Thirty.

4 Q. Was his statement a free and voluntary statement?

5 A. Yes, sir.

6 MR. LEIBERT: Your Honor, I'd offer State's 9 and 10
7 for identification for the Court's review.

8 Please answer any questions that Mr. Godfrey may
9 have.

10 THE COURT: Mr. Godfrey?

11 MR. GODFREY: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. GODFREY:

15 Q. Detective Smith, did you instruct one of the
16 uniformed officers to go over and pick up Rodney?

17 A. I believe two investigators went over and picked him
18 up that morning, yes, sir.

19 Q. At your request?

20 A. Yes, sir.

21 Q. Did he freely go with the investigators?

22 A. Yes, sir.

23 Q. Was he under arrest at that point in time?

24 A. No, sir.

25 Q. So he didn't have to go with the investigators?

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 A. No, sir, he did not.

2 Q. So he went to the sheriff's office and met with you
3 and who else?

4 A. Detective Lindsey.

5 Q. Were both of you in the room the entire time of the
6 interview?

7 A. We would have been in and out.

8 Q. Was Mr. Nash cuffed?

9 A. No, sir.

10 Q. He was not restrained in any way?

11 A. No, sir.

12 Q. When he was at the sheriff's office in the room was
13 he under arrest at that point in time?

14 A. No, sir.

15 Q. Was he free to go?

16 A. Yes, sir.

17 Q. And he continued to complete this form that you read
18 to him?

19 A. Yes, sir.

20 Q. Did you determine how much education that he had?

21 A. Eleven years, he told me.

22 Q. Did you determine if he could read and write?

23 A. Yes, sir.

24 Q. And what did you determine?

25 A. That he could read and write and understand English.

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 Q. Now, you read these rights to him?

2 A. Yes, sir.

3 Q. Did he read them to himself?

4 A. He read along with me to himself.

5 Q. How do you know that he understood those rights?

6 A. I asked him.

7 Q. And there was no hesitation in his answer to you?

8 A. No, sir.

9 Q. And, again, at this point in time was he free to go?

10 A. Yes, sir.

11 Q. He was not under arrest?

12 A. No, sir.

13 Q. And then he proceeded to give you this short
14 statement?

15 A. Yes, sir.

16 Q. And after he gave the statement did he read the
17 statement that you all wrote? Did he write the statement in
18 his own handwriting?

19 A. I believe he wrote the statement.

20 Q. And did you all type the statement up at a later
21 date?

22 A. Yes, sir.

23 Q. Now, at this time, how long was it that he was in
24 the room from the beginning of the advice of the rights to the
25 time the statement was actually taken?

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 A. About 20 -- 20 minutes, 20, 30 minutes.

2 Q. At some point did it turn out that he was not free
3 to go?

4 A. Yes, sir.

5 Q. And when did that point come?

6 A. Approximately 4:30, 4:00 in the afternoon.

7 Q. And he was still in the room --

8 A. Yes, sir.

9 Q. Giving a statement at that point in time?

10 A. He was --

11 Q. He was still in the room where he gave the statement
12 at that point in time?

13 A. Yes, sir.

14 Q. And his statement does not indicate any type of
15 guilt, does it?

16 A. No, sir.

17 Q. So when was the decision made that he be placed
18 under arrest?

19 A. Sometime during the day.

20 Q. So sometime before he gave the statement there had
21 been a decision that he would be placed under arrest?

22 A. No, sir. I believe it was after the statement.

23 Q. What was the critical information used that you were
24 going to make an arrest?

25 A. It was based on -- at the time it was based on

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 statements from the eyewitness, information we obtained from
2 the autopsy of a 45-caliber bullet, and approximately where
3 Mr. Nash was standing at the time the vehicle -- that the
4 shots were fired.

5 Q. Were the witness statements taken prior to Mr. Nash
6 coming to your office?

7 A. One of them was, yes, sir.

8 Q. Is that the statement of Mr. Wiggins?

9 A. Yes, sir.

10 Q. And that statement indicated that he believed Nash
11 to be -- Mr. Nash to be the shooter?

12 A. It put Mr. Nash at the scene next to a white vehicle
13 with a weapon right prior to the shooting.

14 Q. But up until 4:30 he was free to go?

15 A. Yes, sir.

16 MR. GODFREY: Nothing further, Your Honor.

17 THE COURT: Thank you, sir.

18 MR. LEIBERT: Nothing further, Your Honor. That's
19 the State's showing.

20 THE COURT: Thank you, Investigator Smith. You may
21 step down, sir.

22 MR. LEIBERT: Your Honor, we're going to have him
23 also in Neil vs. Biggers.

24 THE COURT: All right. Well, you may remain there
25 then.

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 All right, Mr. Leibert.

2 Now, at the conclusion of this hearing you are
3 moving these in?

4 MR. LEIBERT: Yes, sir, Your Honor.

5 THE COURT: Mr. Godfrey, would you like to address
6 the Court with regards to admissibility of these statements?

7 MR. GODFREY: No, Judge.

8 THE COURT: All right. Based on the testimony I
9 feel that the statements are admissible, that the statement
10 was given after having had his rights read to him, that he
11 understood those rights. The statement does appear to have
12 been done freely and voluntarily. There was no coercion or
13 force indicated, and I think they are proper to be admitted
14 and we'll admit them as State's 9 on the interrogation waiver
15 form and 10 on the voluntary statement.

16 (WHEREUPON, State's Exhibit Numbers 9 and 10 were
17 admitted into evidence.)

18 MR. LEIBERT: Thank you, Your Honor. Now if it
19 please the Court, we'll move forward on the Neil vs. Biggers.

20 THE COURT: All right. That sounds good.

21 DIRECT EXAMINATION

22 BY MR. LEIBERT:

23 Q. Detective Smith, did you interview a young man by
24 the name of Michael Wiggins on June 30th, 2005?

25 A. Yes, sir.

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 Q. And briefly tell His Honor who Michael Wiggins is.

2 A. Michael Wiggins was a young man that was in the
3 vehicle at the time of the shooting.

4 Q. All right. And did you obtain a statement from him
5 on that evening?

6 A. Yes, sir.

7 Q. Did you then create a lineup based on what
8 Mr. Wiggins told you?

9 A. Yes, sir.

10 Q. And I show you what's been marked for this period,
11 State's Exhibit 35. Can you identify that?

12 A. That's a photo lineup of 6 people in it.

13 Q. Six people in the lineup, and what is the gender in
14 each photo?

15 A. They are all males.

16 Q. And what is their race?

17 A. They are all black males.

18 Q. And is the hairstyle and facial hair similar?

19 A. Yes, sir.

20 Q. Any specific differences that you can tell?

21 A. No, sir.

22 Q. Explain to His Honor how you go about doing a photo
23 lineup in Spartanburg County?

24 A. Photo lineups are generated by a computer you put
25 your subject in. It's similar photos pop up, then you can

THOMAS SMITH (IC) - DIRECT BY MR. LEIBERT

1 either change them or arrange them. You can crop them, and
2 you can actually pick and choose as you go along. If somebody
3 in the lineup has something that makes them stand out then you
4 can remove that subject and another one will take its place.
5 It's computer generated.

6 Q. How long after the shooting did you show this to
7 Mr. Wiggins, how you used State's Exhibit 34?

8 A. This was shown at 10:05 p.m. The shooting happened
9 at approximately 8:30 p.m.

10 Q. So within a couple hours of being dispatched?

11 A. Yes, sir.

12 Q. Did Michael Wiggins -- explain to the Court how you
13 show someone a photo lineup and the procedure used.

14 A. When we first got to the sheriff's office I had a
15 brief conversation with Mr. Wiggins. We decided to put the
16 defendant in the lineup. Mr. Wiggins -- the lineup was
17 brought in, it was given to me. I would have given it to
18 Mr. Wiggins, placed it on the table facedown, asked him to
19 turn it over and see if anyone looked familiar to him.

20 Q. You do it facedown and he turns it over?

21 A. Yes, sir.

22 Q. All right. And how did he respond? How quickly did
23 he respond?

24 A. When he turned it over he immediately picked out the
25 defendant, Rodney Nash, as the subject holding the weapon in

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 the driveway at Old Farm Road.

2 Q. Did he have any reservations at all about that?

3 A. No, sir.

4 Q. Now, I believe the photo that came up on the
5 computer from Mr. Nash was from a 2002 photo; is that correct?

6 A. I'd have to go back and look but I believe that's
7 correct.

8 Q. It wasn't from the arrest --

9 A. Oh, no, sir.

10 Q. -- in the file because he hadn't been arrested yet?

11 A. Right, correct.

12 Q. And still yet even with a gap of several years the
13 young man still picked him out immediately?

14 A. Yes, sir.

15 MR. LEIBERT: Thank you, Your Honor. We'd offer
16 these, 34 and 35.

17 Please answer any questions Mr. Godfrey may have.

18 THE COURT: Mr. Godfrey, any questions, sir?

19 MR. GODFREY: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. GODFREY:

23 Q. Now, the photos are generated by a computer with
24 characteristics that you put in?

25 A. Correct.

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 Q. And if you don't like what the computer gives you
2 then you can go back and alter it to make the characteristics
3 more like the subject in question?

4 A. Yeah. Once you put it in it's going to pop up the
5 pictures. If you don't like one you can take it out and
6 another one will pop in in its place. You can select -- you
7 can select eventually, if you want to.

8 Q. Now, you testified that when you had the photo
9 lineup you placed it facedown on the table and Mr. Wiggins
10 turned it over.

11 A. Yes, sir.

12 Q. Did you ask if he saw anybody that looked familiar?

13 A. Correct.

14 Q. Well, isn't it true that Mr. Wiggins is related, at
15 least by marriage, to Mr. Nash?

16 A. Yes.

17 Q. And isn't it also true that the location of the
18 incident where the shell casings were found was the residence
19 of Alexander Nash, Rodney Nash's brother?

20 A. Yes.

21 Q. And isn't it also true that Donald Nash at one point
22 during the investigation, another brother, came up to the
23 house?

24 A. Yes.

25 Q. Well, why didn't you put -- either have three

THOMAS SMITH (IC) - CROSS BY MR. GODFREY

1 lineups or put pictures in this initial lineup -- I mean, as
2 it is the only person that he would have been familiar with is
3 the one he picked out, right?

4 A. Correct. The purpose -- when I first interviewed
5 him he immediately told me who the shooter was, or who he
6 thought the shooter was, Rodney Nash. So I put him in the
7 lineup immediately. The purpose of putting it down asking him
8 if it's -- to turn it over, see if he's familiar with anybody
9 is I don't want to suggest anything to him.

10 When he turns it over and identifies Mr. Nash, then
11 when I fill out the affidavit right after he identifies him I
12 ask him how does he know the subject, at which time he told me
13 -- or I filled out the affidavit that he was the one in the
14 driveway. Prior to showing the lineup he told me Rodney Nash
15 was married to his cousin. So he knew the subject before I
16 showed him the lineup.

17 Q. That's right. And I would assume if he knew Rodney
18 Nash he would have also known his brother?

19 A. I didn't ask him that.

20 Q. And isn't it true that Mr. Wiggins had just moved
21 back here from Georgia?

22 A. Yes, sir.

23 Q. In fact, about a month earlier?

24 A. I believe that's correct.

25 Q. Wouldn't it have been fair if there had been a

THOMAS SMITH (IC) - REDIRECT BY MR. LEIBERT

1 lineup that also included Donald Nash and a lineup that
2 included Alexander Nash? Don't brothers look the same? Don't
3 they have similar characteristics?

4 A. Yes, sir.

5 Q. Well, why wasn't that done?

6 A. At the time, he identified Mr. Rodney Nash. He
7 didn't identify anybody else. So that was the only person I
8 put in the lineup.

9 Q. And the only person in the lineup that Mr. Wiggins
10 knew was Rodney Nash?

11 A. To my knowledge, yes, sir.

12 MR. GODFREY: Nothing further.

13 REDIRECT EXAMINATION

14 BY MR. LEIBERT:

15 Q. The computer could have pulled up Alex Nash because
16 he would have been in your system?

17 A. Correct.

18 Q. And Donnie Nash as well?

19 A. If he's in the system, yes, sir.

20 Q. But you know that Alex is in the computer; is that
21 correct, in the system?

22 A. Yes, sir.

23 Q. So the computer that does this similarities didn't
24 feel that his brother -- and not all brothers look a lot
25 alike; is that correct?

THOMAS SMITH (IC) - REDIRECT BY MR. LEIBERT

1 A. Correct.

2 Q. The computer didn't kick out Alex Nash and you take
3 him out, did it?

4 A. Didn't take Alex out?

5 Q. Didn't put Alex in and then you remove Alex and put
6 somebody else?

7 A. No.

8 Q. You took the six that -- the five that gave you --
9 what the computer said was the most similar to Rodney Nash?

10 A. That was the lineup given to me. I don't even know
11 who drew the lineup up, but that's the lineup and that's the
12 way it's traditionally done. It's computerized.

13 MR. LEIBERT: Thank you.

14 Nothing further, Your Honor. That's our showing.

15 THE COURT: Anything further from the defense?

16 MS. GODFREY: Nothing further, Your Honor.

17 THE COURT: I'm going to allow and admit State's
18 Exhibit 34 and 35. It appears that the lineup was done in a
19 proper procedure. It does not appear that it has been unduly
20 suggestive or prejudicial to the defendant. It was properly
21 presented to the witness and does not appear that there was
22 any overt suggestions or influence on the witness to have the
23 witness select the individual he selected. I find that it was
24 done properly and according to procedure and I'm going to
25 allow those into evidence.

1 (WHEREUPON, State's Exhibit Numbers 34 and 35 were
2 admitted into evidence.)

3 MR. LEIBERT: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MR. LEIBERT: No, sir, Your Honor.

6 THE COURT: Mr. Godfrey, anything further before we
7 bring the jury out?

8 MR. GODFREY: Nothing, Your Honor.

9 MR. LEIBERT: Your Honor, sometimes we have people
10 that like to come in and out and we don't know your procedure
11 about -- this courtroom is a little bad or a little worse than
12 the east courtroom because everybody looks, and so with some
13 judges in between witnesses only. So I want to make sure we
14 don't have anybody coming in and out outside of your
15 procedure.

16 THE COURT: I don't mind people coming in and out as
17 long as it's done orderly. I don't allow people to come in
18 and out during the attorneys' opening statements or their
19 closing arguments --

20 MR. LEIBERT: Yes, sir.

21 THE COURT: -- or during the charge, but during the
22 course of the trial people can come and go as long as it's
23 done orderly and quitely.

24 MR. LEIBERT: Your Honor, before we bring the jury
25 in I want to make sure there's no one out that wants to come

1 in.

2 THE COURT: Yeah, that's fine.

3 [PAUSE]

4 MR. LEIBERT: Thank you, Your Honor.

5 THE COURT: All right. If there's nothing further
6 and we're ready to proceed let's bring the jury in.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 10:00 a.m.)

9 THE COURT: Good morning, ladies and gentlemen. I
10 hope everyone has been comfortable. And we have taken up
11 several matters of law that we needed to dispose of before
12 beginning the trial, and it will help the trial go smoother
13 and a little faster. So I appreciate your patience.

14 Before we get started there's a couple of things
15 that I need to do. I would like to ask Mr. Donald Hart,
16 Mr. Hart, would you be willing to serve as the foreperson of
17 this jury, sir?

18 MR. HART: Yes, sir.

19 THE COURT: All right. I appreciate that. And if
20 you don't mind, let me get you and this young man with the
21 yellow shirt to switch seats. And if, Mr. Hart, you would
22 occupy that seat whenever the jury is in, comes into the
23 courtroom, I'd appreciate that.

24 Ladies and gentlemen, the rest of you, you're free
25 and welcome to sit wherever you want to sit. Other than the

1 foreman's seat and the alternate's seat there are no other
2 assigned seats in the jury box.

3 I know that as humans we tend to be creatures of
4 habit. For example, my wife and I when we go to church on
5 Sunday if somebody is sitting in our seats we look around like
6 we don't know what to do, but we don't have an assigned
7 seating in the church. It's just that we've sat in the same
8 place for years. There's no assigned seating in the jury box
9 other than the foreman and the alternate seat. So please feel
10 free to sit wherever you want.

11 Now, if you've taken a real hankering to where you
12 are right now and that's where you want to sit I'm not going
13 to tell you no, and you can do that, but if you don't have a
14 particular place you want to sit you're welcome to sit
15 wherever you want to sit.

16 We're kind of tinkering and messing with the
17 temperature in here. When we first came in this morning it
18 was real hot. It's cooled off some. If anybody gets terribly
19 uncomfortable, please let me know and we will absolutely try
20 to accommodate you with regards to that.

21 Let me explain something quickly before I give you
22 my preliminary instructions, and that is with regards to the
23 foreperson or the foreman in this case.

24 Ladies and gentlemen, any time you have a group of
25 people that are going to get together and deliberate you need

1 to have somebody who just says okay, let's go ahead and start
2 our deliberations or -- and I'll tell you this later. All of
3 you must be present during deliberations so that if someone
4 needs to use the restroom or be excused the deliberations need
5 to stop while that person is out of the room, and then when
6 that person comes back then begin again.

7 And so the foreperson kind of just directs the
8 starting and the stopping of the deliberations. But the
9 foreperson has no more authority than any of you.

10 You will hear during my instruction that your
11 verdict in this case must be unanimous. You all must all
12 agree on the verdict. Therefore, the foreperson's vote has no
13 more weight than any of them. You are all equal. It's just
14 you need somebody to go ahead and start and stop
15 deliberations.

16 Also, the other role of the foreperson is to
17 basically be the communicator with the Court or the liaison
18 with the Court. If anyone on the jury panel, if there are any
19 questions from the jury panel to the Court the foreman will
20 then write that question on a piece of paper, pass it out to
21 me and I'll respond to the question. It may be that I just
22 have the foreman come out and tell him the answer or I may
23 bring you out as a panel. But again, when you have a group of
24 people it's just more effective to have one person to be the
25 one that communicates back and forth to the Court.

1 So, Mr. Hart, thank you for your willingness to
2 serve in that capacity.

3 And I just wanted to inform everyone of basically
4 what the foreman or the foreperson does.

5 Now, we're about to begin the trial of this case and
6 I'm going to ask you if you would to give Madam Clerk your
7 attention and she is going to place you under your oath as
8 jurors for the trial of this case.

9 Madam Clerk.

10 (WHEREUPON, the jury was sworn.)

11 THE COURT: Ladies and gentlemen of the jury, we are
12 about to try or begin the case of The State of South Carolina
13 vs. Rodney Alexander Nash. Now, before we begin this trial I
14 want to tell you that this trial may very well be very
15 different from what you might expect.

16 Many people don't have the opportunity to sit in on
17 actual jury trials such as you are doing here today and their
18 only experience or exposure to jury trials has been what
19 they've seen on television, seen in the movies or read in the
20 books. Well, obviously, those trials are always full of high
21 drama, intense action and riveting circumstances. It's
22 Hollywood, so-to-speak.

23 Now, while all of those things may or may not be a
24 part of this trial as far as the intense action, the high
25 drama, this trial is not for your entertainment. This trial

1 is a fundamental part of our democracy. It is a search for
2 the truth in an effort to make sure that justice is done
3 between the parties that are before the Court.

4 Searching for the truth and making sure that justice
5 is done is often slow, deliberate and repetitive, very much
6 the opposite of what you may have seen on television or read
7 in books or seen in the movies.

8 This courtroom, ladies and gentlemen, is a place of
9 honor that is dedicated to the protection and the preservation
10 of citizens' rights through what many have called the greatest
11 justice system ever created.

12 The attorneys who are appearing before you are
13 advocates for the parties that they represent, but first and
14 foremost they are officers of the Court. They are sworn to
15 uphold the integrity and the fairness of our judicial system
16 and to help you in your search for the truth. You should
17 expect them to be professional, competent and ethical in the
18 representation of their client's interest.

19 Remember that you have just taken an oath to try
20 this case and to reach a fair and a just verdict, and so you
21 are also expected to be professional, reasonable and ethical
22 in the performance of your duties. I want to thank you for
23 accepting your role as jurors in this case and for your
24 service to our system of justice.

25 Now, I'm going to tell you some things that will

1 serve as an introduction to the trial of the case. These
2 remarks are not a charge on the law.

3 I will, however, charge you on the law at the end of
4 the trial before you retire to your jury room to consider your
5 verdict. This is merely an explanation of the procedures that
6 we'll follow during the course of the trial so that you may
7 better understand what's going on.

8 Now, in this case, the defendant, Mr. Nash, is
9 charged by an indictment which has been filed with this Court
10 with the crimes of murder and possession of a weapon during
11 the commission of a violent crime. The elements of those
12 charges will be explained to you later. The indictment, as I
13 indicated to you earlier, is simply the charge by which the
14 case is brought into court and is not in any sense evidence of
15 any of the allegations that it contains.

16 The defendant, Mr. Nash, has pled not guilty to
17 these charges. The State therefore has the burden of proving
18 each of the elements of the indictment beyond a reasonable
19 doubt. It will be your duty, ladies and gentlemen, to decide
20 whether or not the State has met that burden. Your purpose as
21 jurors is to find and determine the facts of this case. You
22 are the sole judges of the facts.

23 If at any time I make any comment regarding the
24 facts of this case you must disregard those comments because
25 only you, the jury, are allowed to decide what the facts are

1 in this case.

2 You are to determine the facts from the testimony
3 that you hear from witnesses who take the witness stand and
4 any other evidence that may be introduced during the trial of
5 the case. It is up to you to determine the inferences which
6 you feel may be properly drawn from that evidence.

7 It is especially important that you perform your
8 duty of determining the facts diligently and conscientiously
9 because ordinarily there is no way to correct an erroneous
10 determination of facts by a jury.

11 Now, on the other hand, and with equal emphasis, the
12 same law that makes you the judges of the facts makes me the
13 judge of the law. The law as given to you by the Court is the
14 only law that you may consider in this case. You must accept
15 and follow it even though you may disagree with it. I'm not
16 allowed to tell you what the facts are in this case, and on
17 the other hand you're not allowed to disagree with me about
18 what the law is or what you think it should be.

19 Your job is to take the facts and take the law,
20 apply the law to the facts as you find the facts to be from
21 the testimony of the witnesses and from any other evidence
22 that's introduced. After doing that you will render a verdict
23 in this case, a true and a just verdict under the solemn oath
24 that you've just taken as jurors.

25 Now, ladies and gentlemen, until I tell you to begin

1 your deliberations you are not to discuss this case with
2 anyone, and that includes your fellow jurors. During the
3 course of the case we may -- we will, I'm sure, take various
4 breaks to allow you to stretch your legs, get something to
5 drink or snack or something like that. During those breaks,
6 during those times you will be instructed that you can talk
7 about anything you want except this case. It's very important
8 that you follow that.

9 Now, after the case has been submitted to you, you
10 must then only discuss it in the confines of your jury room
11 and only amongst yourselves, your fellow jurors.

12 During the course of this trial we may take a break
13 -- we will take a break for lunch, and you'll be allowed to go
14 out and go have lunch. Now, it may be that during the course
15 of that time you run into maybe one of the attorneys in the
16 hallway or outside the courtroom or whatever. They understand
17 that you are jurors in this case and that they are not allowed
18 to have any communication with you.

19 So if you run into the attorneys during the course
20 of this trial and they don't speak to you or say hello or
21 whatever they are not being rude. They are just doing what
22 they know they are supposed to do, and that is not to have any
23 communication with the jury. So please don't mistake that for
24 anyone being rude. They are just honoring the fact that you
25 are jurors and so they are not having any contact.

1 It is important that you consider this case and the
2 evidence which is presented during the course of this trial
3 and not anything that you may have heard or seen outside of
4 this courtroom. The only evidence presented will be evidence
5 that's presented during the course of this trial in this
6 courtroom.

7 It is important that you keep an open mind and that
8 you do not decide any issue in this case until all of the
9 evidence has been presented, the parties have had an
10 opportunity to make their closing arguments and then I have
11 instructed you on the law.

12 It is your solemn responsibility to determine the
13 guilt or the innocence of the defendant, and your verdict must
14 be based solely on the evidence as it is presented during the
15 course of this trial.

16 Now, in just a moment the solicitor will have an
17 opportunity to make what is called an opening statement in
18 which the solicitor will explain to you what the issues are in
19 this case, or at least what he believes the issues are in this
20 case. At the conclusion of his opening statement Mr. Godfrey
21 on behalf of Mr. Nash may have the opportunity to also make an
22 opening statement, although he's not required to. The burden
23 of proof rests on the State. The defendant in his defense is
24 not required to do anything.

25 Now, but what I do want to tell you is this. What

1 the attorneys tell you in their opening statements is not
2 evidence. It is simply their contentions or their positions
3 on what they believe the issues are in this case.

4 The only evidence in this case will be presented to
5 you through the testimony of witnesses who take the witness
6 stand and are sworn to tell the truth under oath. It is also
7 going to be presented during the course of the trial through
8 exhibits which may come in during the course of the trial.

9 Now, from time to time during the course of this
10 case you may hear one of the attorneys say something along
11 these lines; Your Honor, we have a matter of law that we need
12 to take up with the Court, or, Judge, may we approach the
13 bench? It is during those times that I may find it necessary
14 to ask you to retire to your jury room.

15 Many times when I'm talking to the lawyers
16 regarding an issue of law or a matter of law it may be
17 necessary for me to make some comment about the testimony or
18 about the facts that have been presented in relation to a
19 ruling that I must make.

20 As I indicated to you earlier, I'm not allowed to
21 have any influence on you with regards to the facts. I'm not
22 allowed to make comments about the facts. And so therefore,
23 to avoid that from happening, I may ask you to retire to your
24 jury room so that I don't do anything in connection with the
25 facts that would influence you in any way.

1 In determining what the true facts are in this case
2 you must decide whether or not the testimony of witnesses that
3 take the stand is believable or not. It's my responsibility
4 to rule as a matter of law whether certain testimony is
5 admissible at all or not. But once testimony is admitted into
6 this trial, whether or not you believe it is solely up for you
7 to decide.

8 In deciding whether to believe a witness you have
9 the right to consider the interest of any witness, the bias of
10 any witness, the prejudice of any witness, the opportunity for
11 the witness to have seen the matters about which that witness
12 testifies, the way the witness acts on the witness stand.

13 You have the right to consider anything that is in
14 this record that will help you to evaluate the testimony of
15 the witnesses. That means that it is your duty to pay close
16 attention to these witnesses, to observe the witnesses, to
17 listen to them.

18 Pay close attention to the attorneys and to the
19 Court. Please try not to allow your thoughts to wonder but
20 give strict attention to the testimony in this case so that at
21 the end of all the testimony, after all the attorneys have had
22 their opportunities to address you with closing arguments and
23 after I've charged you on the law you will then be in a
24 position to retire into your jury room, deliberate, discuss
25 the facts and determine what the facts are, apply the law to

1 those facts and to reach a true and a just verdict.

2 Now, in just a moment I'm going to recognize the
3 attorneys for their opening statements. As I indicated
4 earlier, I want to remind you it is important that you give
5 them your undivided attention. What they are saying to you
6 and what they are going to share with you is not evidence in
7 the case but it is important because it is their opportunity
8 to tell you what they believe the evidence is.

9 Now, before I recognize the attorneys let me ask,
10 are there any exceptions or objections to the Court's opening
11 remarks to the jury from the State?

12 MR. LEIBERT: No, sir, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. GODFREY: No, Your Honor.

15 THE COURT: Thank you, sir.

16 All right, ladies and gentlemen. Please give the
17 lawyers your attention as they address you.

18 At this time I'll recognize the State for your
19 opening statement.

20 MR. MCCARTY: Two friends are riding in a car on
21 June 30th, 2005 when they made a turn into the Linville Hills
22 Subdivision on a road called Old Farm Road. Neither one of
23 those two guys in the car knew that in just a matter of a
24 minute or few minutes their lives would be forever unalterably
25 changed.

1 The driver of that car was a 19-year-old young man
2 named Terrell Farr. He had no way of knowing when he turned
3 into the Linville Hills Subdivision that in just a few minutes
4 he would be dead and he would never leave the subdivision
5 alive. His passenger in the vehicle was his friend named
6 Michael Wiggins.

7 Michael Wiggins had no way of knowing that as they
8 turned down into that subdivision that they would come into
9 contact with this defendant, Rodney Nash, and that he would
10 watch as Rodney Nash pulled a gun, shot, gunned his friend
11 down in the street and killed him in their vehicle.

12 Ladies and gentlemen, as the Judge has told you,
13 this is a case about murder. The case is Rodney Nash killing
14 Terrell Farr on the night of July 30th, 2005.

15 During the course of the trial the State plans to
16 call witnesses that we will be able to elicit testimony from,
17 tell you about the case, tell you about what they saw, what
18 they witnessed.

19 You'll also hear from witnesses who are with the
20 sheriff's department, the Spartanburg County Sheriff's Office,
21 even some witnesses who are with the State Law Enforcement
22 Division, SLED. Through those witnesses you'll be able to
23 hear events.

24 Michael Wiggins will be able to tell you what
25 happened on that night, the events that occurred, what he saw,

1 what he heard, what he witnessed.

2 Through the sheriff's office and the other officers
3 with SLED you'll be able to hear about the course of the
4 investigation in this trial, who they spoke with, what
5 evidence was collected, and what that evidence reveals or in
6 some cases did not reveal.

7 A good word when we talk about evidence is a word
8 used, forensics, and the Judge touched on this briefly in his
9 opening comments. And when I say the word forensics I'm sure
10 we're all familiar with television shows like C. S. I. You
11 may not be a regular watcher but you know what it's about.

12 Those shows, like the Judge said, are meant for your
13 entertainment, and this trial is not. This trial is the real
14 world. It's real time. It's really happened. C. S. I. is
15 set up to entertain. It's set up to wrap up in an hour, and
16 we don't have that here. We don't have that luxury and we
17 shouldn't have that luxury.

18 This trial should be deliberate. It should take
19 some time to put forth evidence, and the State carries that
20 burden to prove to you beyond a reasonable doubt that Rodney
21 Nash is guilty of the crime of murder.

22 One of the other things I want to touch on briefly,
23 dealing with the entertainment industry and what we see in
24 movies or read in books or watch on television, as I stated,
25 this is real time. This is the real world, and as is, there's

1 going to be mistakes that are made.

2 Myself, Assistant Solicitor Leibert, even some of
3 the witnesses, we may fumble with our words, we may take a
4 minute to try and figure out what we need to say next or try
5 to remember a question or a response. Please don't hold that
6 against us, and certainly please don't hold that against the
7 witnesses as they testify.

8 What you see on TV are actors. There are scripts.
9 We don't have scripts here. They are polished, they are
10 rehearsed. We have usually one go through with it. And the
11 Judge is not going to say like a director, cut, let's redo
12 that. We really only have one shot at what we've got here.
13 We don't get to re-ask questions, we don't get to redo a
14 witness if we don't like something. We only have one time to
15 go through with this.

16 So, ladies and gentlemen, this is a jury trial, this
17 is a real live trial and the charge is murder in the case.
18 It's not supposed to be Law and Order, a movie, a book or
19 another television show that you may watch. This will take
20 some time. It may take the balance of today and part of
21 tomorrow. But with that being said, that's the difference
22 between today and what we've got here, and television.

23 Now, let's go back to a little bit about the case.
24 As I stated, you're going to hear from witnesses such as
25 Michael Wiggins who was in the vehicle that night. You'll

1 hear from law enforcement officers with the sheriff's office
2 and some people who are with the State Law Enforcement
3 Division, SLED. Through them, the State plans to produce its
4 case, elicit testimony, produce exhibits and evidence that
5 will prove to you beyond a reasonable doubt that Mr. Nash is
6 guilty of the crime of murder.

7 And at the end when you go back and the Judge has
8 charged you on the law and you're able to deliberate on that
9 charge I think you will have found sufficiently the State has
10 proven its case to you beyond a reasonable doubt. Thank you.

11 MR. GODFREY: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. GODFREY: Solicitors.

14 Ladies and gentlemen, I guess I'll start off first
15 with an apology. I'm not as mobile as I used to be. So I'm
16 probably going to be tied to the lectern or to the desk over
17 there.

18 This is a very important case. I represent Rodney
19 Nash. Rodney Nash is a very nice young man who is sitting
20 here in this courtroom because the State, the government comes
21 up with the charging paper, which is not evidence, which says
22 you are charged with murder, you are charged with possession
23 of a weapon during the commission of a violent crime.

24 But thankfully this is America, and as Rodney Nash
25 sits there he is presumed innocent. He doesn't have to prove

1 anything to anyone. It's the government who has to come in
2 here and prove beyond a reasonable doubt that Rodney Nash
3 committed the crime.

4 The government, the State, they are the ones who
5 have to put up the evidence. They are the ones who have to
6 convince you that things were done correctly and that all of
7 the elements of murder have been proven to you beyond a
8 reasonable doubt.

9 Now, we believe that the evidence will show that
10 Rodney Nash was living with his wife, who was pregnant at the
11 time, and on June 30 that morning his wife got up and went to
12 work, Rodney was not working. And he thought about it for
13 awhile, and the evidence will show that he went over to his
14 brother's house on Old Farm Road, and his brother is Alex
15 Nash. He was over there for awhile.

16 While he was there there was a fellow named James
17 Thomas who also lived in the house who was there, and there
18 was some other people that came in and out. He stayed there
19 until about 5:30, and we know that because James Thomas and
20 his brother will testify and they will tell you that he left,
21 Rodney left about 5:30.

22 What this case comes down to is that Alex Nash's
23 house, the evidence will show, is on the corner of that road,
24 and clearly a horrible incident happened, a man lost his life
25 on that road. He was driving in a car. Somebody shot him

1 when he was driving in the car.

2 The State has Mr. Wiggins, and Mr. Wiggins is going
3 to testify that he identifies Rodney Nash as the person who
4 most likely fired the shot. Your job as the jury is to
5 determine what the truth is. Unfortunately for Rodney Nash,
6 when he went home there was nobody home. He was there by
7 himself. This case is going to raise questions in your mind
8 about identification and about what the officers did to
9 determine who actually committed the crime.

10 The State has to prove who fired the shot. They
11 have to prove it with evidence beyond a reasonable doubt. And
12 you will hear from witnesses for Mr. Nash that he was not
13 present, that he had already left.

14 And you will also hear evidence that later that
15 evening Mr. Nash and his wife went to the hospital to see
16 Mr. Nash's sister, because she just had a baby, but couldn't
17 get in because the doors to the hospital were already locked.
18 And then they went back home and went to bed.

19 You'll hear evidence that the next day two officers
20 came to the door. And Rodney Nash went to the door and the
21 officers told him there had been an incident over at Old Farm
22 Road and wanted to question him, and you'll hear that he
23 voluntarily went with the officers. You'll also hear that he
24 voluntarily made a statement about what he knew, about what he
25 didn't know.

DAN PIGGINS - DIRECT BY MR. LEIBERT

1 This case is a difficult case, is a difficult case
2 because there is no clear evidence about what happened. And
3 it's going to be up to you to determine the truth of the
4 matter, and the truth of the matter is Rodney Nash is not
5 guilty beyond a reasonable doubt. Thank you very much.

6 THE COURT: Thank you, sir.

7 State may call your first witness.

8 MR. LEIBERT: The State would call Sergeant Dan
9 Piggins, Your Honor.

10 DAN PIGGINS, after having been duly sworn,
11 testified as follows:

12 MR. LEIBERT: May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. LEIBERT:

16 Q. Please state your name.

17 A. Dan Piggins.

18 Q. And where are you currently employed, sir?

19 A. Spartanburg County Sheriff's Office.

20 Q. And your title is sergeant?

21 A. Yes, sir.

22 Q. Were you employed on June the 30th, 2005?

23 A. Yes, sir.

24 Q. Were you on duty that evening between 8:15 and
25 8:30 p.m.?

DAN PIGGINS - DIRECT BY MR. LEIBERT

1 A. Yes, sir.

2 Q. Did you happen to be dispatched to
3 Road?

4 A. We were dispatched to the intersection of East
5 Blackstock and Old Farm Road.

6 Q. And what county is that in, sir?

7 A. Spartanburg County.

8 Q. And what time are you dispatched?

9 A. We were dispatched at 8:29 p.m.

10 Q. And did you have a partner with you?

11 A. Yes, sir. I was training an officer that evening
12 and I had Deputy Geno Bradley with me.

13 Q. And what time did you arrive there?

14 A. We arrived on scene at 8:31 p.m.

15 Q. And upon arriving what did you observe?

16 A. We found a white Toyota Camry in the intersection --
17 well, just shy of the intersection, with an unresponsive black
18 male in the front seat and another black male outside of the
19 vehicle.

20 Q. I show you State's Exhibit 1. Can you identify
21 that, Sergeant?

22 A. Yes, sir. That is the Toyota Camry that was at the
23 intersection when we arrived.

24 Q. And who was located in that car?

25 A. The victim, Farr, and Mr. Wiggins was outside the

DAN PIGGINS - DIRECT BY MR. LEIBERT

1 car.

2 Q. And what road is the car facing?

3 A. It's facing East Blackstock on Old Farm Road.

4 MR. LEIBERT: Your Honor, I'd offer this as State's
5 Exhibit 1.

6 MR. GODFREY: Without objection.

7 THE COURT: Without objection, State 1.

8 (WHEREUPON, State's Exhibit No. 1, a Photograph, was
9 admitted into evidence.)

10 MR. LEIBERT: Thank you, Your Honor.

11 BY MR. LEIBERT:

12 Q. What did you then do upon arriving, sir?

13 A. After we had secured the scene we advised our
14 dispatch to notify EMS that the scene was secure and they
15 could enter the scene and render aid to the victim.

16 Q. All right. The young man that was around the car,
17 did you get his name?

18 A. Yes, sir, Mr. Wiggins.

19 Q. And then what was the last thing that you did there
20 on the scene? What was your responsibility for the next
21 several hours?

22 A. For the next several hours was to maintain the
23 security of the scene. We strung police tape, for lack of a
24 better term, and just maintained a crime scene log during the
25 time which investigators arrived, as well as the forensics

DAN PIGGINS - CROSS BY MR. GODFREY

1 department as well.

2 Q. All right. Did a lead investigator then appear?

3 A. Yes, sir.

4 Q. And who would that be?

5 A. That would be Investigator Tom Smith.

6 Q. Did you ever go down to or was your
7 duties there at the vehicle?

8 A. My duty was actually at the scene where the vehicle
9 was, yes, sir.

10 Q. And how long, approximately, were you there?

11 A. We were there probably between 2 and 2 and a half
12 hours after we initially arrived.

13 MR. LEIBERT: All right. Thank you. Answer any
14 questions Mr. Godfrey may have.

15 THE COURT: Mr. Godfrey?

16 MR. GODFREY: Please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. GODFREY:

20 Q. Officer Piggins, you were the initial responding
21 officer?

22 A. Yes, sir.

23 Q. And when you got there what immediately did you see?

24 A. Immediately we saw the male in the front seat
25 unresponsive, and Mr. Wiggins standing outside the vehicle.

DAN PIGGINS - CROSS BY MR. GODFREY

1 Q. Were there any other people in the street?

2 A. There was a crowd that had started to gather once
3 all the, I guess lights and sirens, people came outside and
4 started back down towards the intersection where the car was
5 and where we were.

6 Q. And how many people you think were out there?

7 A. Initially -- well, probably within the first 5 to 10
8 minutes probably about 75, and the crowd grew as more police
9 cars and the media started to show and I think word maybe got
10 out through the neighborhood.

11 Q. So when you first got there your responsibility was
12 to check on the victim?

13 A. Yes, sir.

14 Q. And then call EMS?

15 A. Yes, sir.

16 Q. And then protect the crime scene?

17 A. Yes, sir.

18 Q. How do you protect the crime scene?

19 A. We strung police tape across Old Farm, at least
20 Blackstock, then I believe we went about 100, 150 yards back
21 up Old Farm Road and then down the sides of the road, probably
22 maybe 50 yards on either side where people couldn't have
23 access to the scene?

24 Q. So in other words, once you put the tape up people
25 had to stay outside of that area?

DAN PIGGINS - CROSS BY MR. GODFREY

1 A. Yes, sir. Bystanders, yes, sir.

2 Q. And you were there for 2 and a half hours or so?

3 A. Approximately, yes, sir.

4 Q. Did you take any statements from anyone?

5 A. No, sir, I did not.

6 Q. Was that your responsibility?

7 A. No, sir.

8 Q. Your responsibility was solely to protect the crime
9 scene?

10 A. Yes, sir.

11 Q. So what you know about this is that there's a
12 picture of a car which has been made an exhibit, and you
13 recognize the car?

14 A. Yes, sir.

15 Q. You don't know how the car got there or what
16 happened. You were just there to assure that the victim got
17 help and to protect the crime scene?

18 A. That's correct.

19 MR. GODFREY: Nothing further.

20 MR. LEIBERT: Nothing further, Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 MR. PIGGINS: Thank you, Your Honor.

23 MR. LEIBERT: The State would call Randy Bogan.

24 May we approach?

25 THE COURT: Yes, sir.

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 (WHEREUPON, a bench conference was had.)

2 RANDALL EUGENE BOGAN, after having been duly
3 sworn, testified as follows:

4 MR. LEIBERT: Your Honor, may I publish State's
5 Exhibit 1 to the jury, please.

6 THE COURT: Yes, sir.

7 MR. LEIBERT: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. LEIBERT:

11 Q. Mr. Bogan, please state your name.

12 A. Randall Eugene Bogan.

13 Q. On June 30th of 2005 where were you employed?

14 A. The Spartanburg County Sheriff's Office.

15 Q. How long had you been employed there?

16 A. Approximately 24 years, 23 years.

17 Q. And back on June 30th, 2005 what were your duties
18 there and your position?

19 A. I was in forensics. I went to crime scenes,
20 collected evidence, took photographs, just various things as
21 far as crime scene was concerned.

22 Q. How many years have you been in law enforcement?

23 A. Twenty-five years.

24 Q. Give the jury a brief background of your law
25 enforcement career, please.

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 A. I started with the sheriff's office in -- was in
2 narcotics. I left narcotics after 4 years. Was on uniformed
3 patrol for approximately 6 years, and the rest was in crime
4 scene, which was approximately -- approximately 10 years.
5 I've been in crime scene now. I left the sheriff's office,
6 retired from the sheriff's office and went to the coroner's
7 office where I'm currently employed.

8 Q. During the course of your career how many homicides
9 have you worked as a crime scene investigator?

10 A. It's actually hard to say. Probably in the
11 neighborhood of 4, maybe 500.

12 Q. All right, sir. Were you called out to
13 Road on June 30th, 2005?

14 A. Yes, sir, I was.

15 Q. And what time did you arrive?

16 A. At approximately 9 o'clock.

17 Q. And upon arriving what did you do?

18 A. Actually, there was a vehicle located in the center
19 of the roadway. There was no one in the vehicle. However, I
20 processed the vehicle, and by processing I mean took
21 photographs of the vehicle, looked for any blood, any bullet
22 holes, and also ran a dowel rod through the bullet holes that
23 I located to show a trajectory of the path of the bullet.

24 MR. LEIBERT: Your Honor, may I approach the
25 witness?

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 THE COURT: Yes, sir.

2 BY MR. LEIBERT:

3 Q. I show you State's Exhibit 1, sir. What is that?

4 A. This is a vehicle that I processed at the scene.

5 Q. And State's Exhibit 19?

6 A. This is also the vehicle, however this is showing
7 the bullet hole and the dowel rod ran through the door showing
8 the trajectory of the bullet.

9 Q. Now, explain to the jury what a dowel rod is.

10 A. A dowel rod is nothing more than a rod. It's a
11 wooden rod approximately -- well, I would say 2, 2 and a half
12 feet long. They make them in different diameters, and I took
13 this dowel rod and placed it into the vehicle in the side
14 where the bullet hole was showing the path of the bullet.

15 Q. All right. And State's Exhibit 18, can you identify
16 that as well?

17 A. Yes, sir. That is the back door there but this is a
18 photograph of the inside of the vehicle.

19 Q. Essentially showing the trajectory of the bullet?

20 A. That's correct. The dowel rod -- this is the other
21 end of the dowel rod here. It came through -- went through
22 the back door, through the seat, and you can see the other end
23 of the dowel rod there in the driver's side.

24 Q. Are you able to see all right, Mr. Bogan?

25 A. Yes, sir.

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 Q. Exhibit 1, was it in the roadway?

2 A. Yes, sir.

3 Q. And what did you do after examining the vehicle?

4 A. After I examined the vehicle I had it towed away
5 from the scene. And then I went down to another location
6 where officers had went to execute a search warrant, and I
7 went to that location to do any search on the location for any
8 evidence there.

9 Q. And was that Road?

10 A. Yes, sir, it was.

11 Q. Approximately how far was the vehicle from
12 Road?

13 A. I would say approximately 600 feet -- or yards
14 rather. It was a good distance.

15 Q. All right. Would you step down and we'll show you
16 some exhibits here and put them up for the jury.

17 A. Yes, sir.

18 (WHEREUPON, the witnesses stepped down from the
19 witness stand.)

20 Q. I'm going to hand you State's Exhibit 7. Can you
21 identify that, sir?

22 A. Yes, sir. That's the residence that I executed the
23 search warrant on.

24 Q. All right. And that is Road?

25 A. That's correct.

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 Q. All right. Then State's Exhibit 4, is that an
2 aerial shot of Old Farm Road?

3 A. Yes, sir, it is.

4 Q. Point out for the jury where Road was
5 and approximately where the car was when you saw the vehicle,
6 in State's Exhibit Number.

7 A. All right. This is Road, and the
8 vehicle was up in this location here (indicated).

9 Q. Was it actually stopped on the road?

10 A. It was stopped in the middle of the roadway, yes,
11 sir.

12 Q. Now I'm showing you State's Exhibit 12. Can you
13 identify that, sir?

14 A. Yes, sir. This is the vehicle that was located at
15 Road. It was actually in the driveway -- well,
16 above the driveway in the back portion of the house.

17 Q. All right. Now, did you do an investigation around
18 the car?

19 A. Yes, sir, I did. I collected 4 items from around
20 the vehicle.

21 Q. Do you recall what those 4 items were?

22 A. There was 2 bullet casings, also a hat and a
23 cigarette butt.

24 Q. Now I show you State's Exhibit Number 14. Do you
25 know what those are, sir?

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 A. Yes, sir. These are the 2 casings, I believe right
2 here, number 1 and number 2 were behind this vehicle in the
3 back sides of Road.

4 Q. All right. And now the next exhibit, number 2. I
5 believe that shows 2 of the placards plus number 4 as well?

6 A. It does, and number 4 would have been the cigarette
7 butt. Number 1 and 2 are the casings, as I stated before, and
8 number 4 would be the cigarette butt.

9 Q. All right. And now number -- I'm going to take that
10 down. We're going to do a close up of number 4. That is your
11 cigarette butt?

12 A. Yes, sir, that's the cigarette butt that I
13 collected.

14 Q. Investigator Bogan, were you ever a smoker?

15 A. Yes, sir.

16 Q. For how many years?

17 A. Approximately 20.

18 Q. Being a smoker, do you think you would know what a
19 fresh cigarette butt looks like?

20 A. Yeah --

21 MR. GODFREY: Objection. There's no foundation for
22 that. There's no expertise for that.

23 MR. LEIBERT: Your Honor, he's been a smoker. He
24 would know what a fresh cigarette butt is if he's been smoking
25 for 20 years.

RANDY BOGAN - DIRECT BY MR. LEIBERT

1 THE COURT: I'll allow it.

2 MR. LEIBERT: Thank you, Your Honor.

3 BY MR. LEIBERT:

4 Q. The cigarette butt that you found at
5 Road where you put placard number 4 and State's Exhibit 3,
6 does that appear to be a fresh cigarette butt?

7 A. Yes, sir, it did. In fact, I looked around the
8 vehicle and saw no other cigarette butts. That's what caught
9 my attention to this because, of course, we're looking for
10 evidence, and it looked like it was freshly put out on the
11 ground. So therefore, I collected it.

12 Q. All right. And near the car, I show you the next
13 exhibit, the white car, were there any cigarette butts in
14 State's Exhibit 11, cigarette ashes on the car?

15 A. Yes, sir. This is going to be the top of the
16 vehicle here in the front side of it. Now, the cigarette butt
17 was on -- there's a walkway going through this way and the
18 cigarette butt was back there (indicated). But the ashes were
19 on top of the car here, the front right side (indicated). And
20 I also took a closer photograph of these ashes, and that
21 actually caught my attention because the wind was blowing
22 somewhat and I know the ashes wouldn't be there by the wind
23 blowing had it not been recent. That's what drew my attention
24 to the ashes.

25 Q. All right. Then State's Exhibit 13?

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1 A. That's the close-up photograph of the ashes on top
2 of the car, the one you just saw.

3 Q. All right. And also Number 15?

4 A. That's also just another photograph of the ashes,
5 just a little bit further away from them.

6 MR. LEIBERT: All right, sir. You can have your
7 seat.

8 (The witness returned to the witness stand.)

9 MR. LEIBERT: Your Honor, to avoid confusion I'd
10 like to read off these exhibits and offer them at this time.

11 THE COURT: All right, sir.

12 MR. LEIBERT: Okay. State exhibit in the order 7,
13 4, 12, 14, 2, 3, 11, 13 and 15. We would offer those into
14 evidence at this time, Your Honor.

15 MR. GODFREY: Without objection.

16 THE COURT: All right. Without objection those
17 items are in evidence.

18 (WHEREUPON, State's Exhibit Numbers 2, 3, 4, 7, 11,
19 12, 13, 14 and 15 were admitted into evidence.)

20 BY MR. LEIBERT:

21 Q. Now, Investigator Bogan, when you put these placards
22 down and you have the 2 shell casings and the cigarette butt
23 and the -- and I believe there's a ball cap.

24 A. That's correct.

25 Q. Do you just all put them in a bag, or what do you do

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1 with them? Explain to the jury what you do with each item,
2 specifically your procedure.

3 A. Actually, I take and put -- I, of course, put the
4 rubber gloves on. I collect one of the items, place it into a
5 bag, mark that bag along with my initials and the time that I
6 collected it. Once it's placed in the bag and it's sealed or
7 closed I'll take those gloves off, put a new pair of gloves
8 on, collect one of the casings or my next item. And I'll do
9 exactly the same thing. I'll place it in the bag with my
10 initials and also close the bag and put the time I collected
11 it, take the gloves off, put a new pair of gloves on. We go
12 through several gloves, several pairs of gloves.

13 Q. And what is the purpose of that?

14 A. That's so it won't be contaminated. If there's any
15 DNA on one item it won't be transmitted to the second item
16 that we collect. That way I can't -- I don't
17 cross-contaminate anything.

18 Q. So would the cigarette butt then have been sent to
19 SLED for analysis?

20 A. Yes, sir. Everything that I collected was placed
21 into evidence, and the cigarette butt was sent to SLED for DNA
22 analysis.

23 Q. Now, rather than turn the lights down again I'll
24 show you State's Exhibit 14. I believe we talked about
25 placard 1, 2 and 4. Is there a placard 3 as well?

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1 A. Yes. The placard 3 is the ball cap that I was
2 speaking of that was located in the driveway.

3 Q. Was it near the cigarette butt and the placards or
4 farther away?

5 A. The cigarette butt and the 2 shell casings were in
6 close proximity, and the ball cap was further away.

7 MR. LEIBERT: Your Honor, I'd offer this Exhibit 17
8 at this time.

9 THE COURT: Any objection?

10 MR. GODFREY: No objection.

11 THE COURT: State's 17 admitted without objection.

12 (WHEREUPON, State's Exhibit No. 17, a Photograph,
13 was admitted into evidence.)

14 BY MR. LEIBERT:

15 Q. In addition to doing that did you do anything else,
16 such as a buccal swab?

17 A. Yes, sir, at the jail, I believe it was.

18 Q. Explain to the jury what that is.

19 A. Buccal swab is the collection of saliva from a
20 person's mouth. Actually, there's a kit that I open and use,
21 of course, rubber gloves again, and it comes with 2 swabs
22 which look like rather large Q-tips.

23 Basically, you take one and you swab one side of the
24 person's mouth, place it into an envelope. Take the other
25 swab, because it comes with two, and do the other side of the

RANDY BOGAN - CROSS BY MR. GODFREY

1 person's mouth. Then you mark them left and right and place
2 them in their proper containers that it came with, mark the
3 name of the person.

4 Sometimes we get fingerprints and actually put
5 fingerprints on the envelope or their name and what I. D. we
6 use. I can't remember -- in this situation I think I just
7 used the information that the jail had knowing that I had the
8 correct person doing the buccal swab.

9 Q. You package those and initial those just like the
10 other items?

11 A. That's correct. I package them, initial them and
12 also those go to SLED as well.

13 Q. Sent to SLED for analysis?

14 A. That's correct.

15 Q. Thank you. Answer any questions that Mr. Godfrey
16 may have.

17 A. Yes, sir.

18 MR. GODFREY: May it please the Court?

19 THE COURT: Yes, sit.

20 CROSS-EXAMINATION

21 BY MR. GODFREY:

22 Q. Officer Bogan, I just have a couple of questions.

23 And I'm going to ask if the solicitor would be kind
24 enough to put up the one with the ball cap on since I don't
25 know how to use it.

RANDY BOGAN - CROSS BY MR. GODFREY

1 MR. LEIBERT: Number 17.

2 Q. The 1 and 2 are back where the shell casings are?

3 A. Yes, sir.

4 Q. And I don't see it on the there but, Officer, show
5 us where the cigarette butt was.

6 A. The cigarette butt is going to be in this area right
7 here, and the reason the placards are not down yet is because
8 I took this photograph after these were initially located on
9 the initial search of the scene and then whenever I continued
10 searching the scene I found the cigarette butt, but it was in
11 close proximity of this area (indicated).

12 Q. Okay. So from the ball cap back to where the shell
13 casings were, about how many feet was that do you think?

14 A. I would say approximately 10 to 12 feet.

15 Q. Okay. When a shell, spent shell casing comes out of
16 a gun does it normally eject to the right and back?

17 A. Yes, sir.

18 Q. So based on your knowledge of semiautomatic weapons
19 and where the shell casings are could you estimate where the
20 person was standing that fired the shot?

21 A. I could, however, where these shell casings are
22 placed is not necessarily where they came out of the gun at
23 because if someone walks up and kicks one of course they are
24 going to be moved. But based on where those two were located
25 I would say that the person may have been standing here

RANDY BOGAN - CROSS BY MR. GODFREY

1 (indicated). I can't say for sure because, like I say, the
2 shell casings could have been kicked or anything else by
3 someone else.

4 Q. Now, if I understand the pictures, the road where
5 the car was going down would be to the left of that fence?

6 A. Yes, sir, over in this area (indicated). Yes, sir,
7 down the side right here (indicated).

8 Q. So the ball cap, if there would have been somebody
9 standing there they would have been almost in the path of the
10 bullet, wouldn't they?

11 A. It's possible, yes, sir.

12 Q. Now, did you find any other evidentiary items there?

13 A. Here on the outside, other than the ashes on the
14 vehicle which, of course, were really -- I mean, I can't
15 really collect them, the ones on the vehicle, the cigarette
16 butt, the two casings, and the hat, no, sir.

17 Q. Did you make any tire impressions? Were there any
18 -- it looks like the concrete ends and there's dirt there.
19 Were there any tire impressions in the dirt?

20 A. There is dirt there, however it's dirt and gravel.
21 So therefore the tire impressions, if there were any, would be
22 messed up because of the gravel part.

23 Q. And so it was unsuitable for any type of tire
24 impressions as far as matching anything; is that correct?

25 A. That's correct.

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1 Q. Now, is that where cars normally park at that house?

2 A. I couldn't tell you that.

3 Q. Well, based upon the gravel and the dirt did it
4 appear that that's where cars parked?

5 A. It looks like they parked right here, to be honest
6 with you, because of the oil (indicated).

7 Q. Okay. Now, the ashes that were found on the hood of
8 the car, did you collect those ashes?

9 A. No, sir. As I stated, they broke up and crumbled up
10 whenever I would attempt to move them.

11 Q. So there's no way to determine if those ashes came
12 from the cigarette butt that you found?

13 A. In my opinion, there wouldn't be any way to
14 determine one cigarette ash from another cigarette ash.

15 Q. Are you a forensic scientist in that area?

16 A. No, sir.

17 Q. All right. Now, you testified that the cigarette
18 butt was fresh?

19 A. Yes, sir.

20 Q. What makes it fresh?

21 A. Because it didn't look like it had been rained on,
22 stepped on or anything else. It was still round and just
23 laying on the ground. And that was on the walkway leading to
24 the rear of the door, which if it had been there for any
25 length of time, people going in and out, the traffic of people

RANDY BOGAN - CROSS BY MR. GODFREY

1 going in and out would be stepping on it and everything else.

2 It didn't look like it had been actually stepped on.

3 Q. So your testimony is that cigarette butt had not
4 been stepped on?

5 A. It didn't appear to have been, no, sir.

6 Q. Doesn't it look like the ashes have been spread at
7 the end of it?

8 A. I'm not a forensic expert, as you stated before, so
9 I couldn't tell you that. But it didn't look like it had been
10 stepped on, by me.

11 Q. Now, a cigarette butt, if it's there and there's
12 been, as you say, no rain, it would look the same for several
13 hours, wouldn't it?

14 A. Would look the same way? I don't understand what
15 you're asking me.

16 Q. Well, here's a cigarette. Unfortunately, I smoke.

17 A. Yes, sir.

18 Q. If that cigarette is there.

19 A. Yes, sir.

20 Q. And nobody steps on it and I leave for five hours
21 and come back is it going to look the same?

22 A. It's possible.

23 Q. It's possible? If nobody steps on it and there's no
24 rain is it going to look the same?

25 A. It's possible. It depends on the environment that

RANDY BOGAN - CROSS BY MR. GODFREY

1 it's in, as far as rain, dew, things like that.

2 Q. Now, you collected the cap, right?

3 A. Yes, sir, I did.

4 Q. And it was sent to SLED?

5 A. Yes, sir, it was.

6 Q. And you collected the cigarette butt and it was sent
7 to SLED?

8 A. Yes, sir, it was.

9 Q. The spent shell casings, how many total spent shell
10 casings did you find?

11 A. In the backyard two, to my knowledge.

12 Q. Okay. Same caliber gun?

13 A. I don't recall collecting a gun from the scene.

14 Q. No, the spent shell casings. Are they the same
15 caliber of spent shell casings?

16 A. As the gun, I don't know.

17 Q. Now, when you say that that's all you found from
18 that location, did you find other spent shell casings?

19 A. Not to my knowledge, no, sir. Not that I can
20 recall.

21 Q. So throughout the entire crime scene you found two
22 spent shell casings?

23 A. To the best of my knowledge, yes, sir. We found
24 other items in the residence but I don't think there was any
25 spent casings.

RANDY BOGAN - CROSS BY MR. GODFREY

1 Q. Well, you were present when there was a search
2 warrant made or a search made of that residence pursuant to a
3 search warrant?

4 A. Yes, sir.

5 Q. And did you find anything of evidentiary value in
6 that house?

7 A. I would actually have to take a look at the return
8 on the search warrant then I can be specific as to what was
9 located because I wrote everything down.

10 Q. Well, let me ask it another way. Did you send
11 anything to SLED that was found in that house?

12 A. No, sir. I don't recall sending anything to SLED
13 from inside the residence.

14 Q. And did you find a weapon inside the house?

15 A. I don't recall whether there was a weapon located in
16 the house or not. If I had of found a weapon inside of the
17 residence it wouldn't of matched the casings located on the
18 outside of the residence.

19 Q. And the casings, obviously you said that they could
20 be kicked or stepped on. When you picked them up did they
21 appear to be have been stepped on or did they appear to just
22 be lying there?

23 A. They appeared to just have been lying there. They
24 could have been kicked, but as far as being stepped on, I
25 wouldn't say they were stepped on because they were still

RANDY BOGAN - CROSS BY MR. GODFREY

1 round and not flat.

2 MR. GODFREY: Okay. Nothing further.

3 MR. LEIBERT: Nothing further, Your Honor.

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

5 You may call your next witness.

6 MR. LEIBERT: Your Honor, I believe State's Exhibit
7 18 and 19 were only marked for identification. I'd move those
8 into evidence at this time.

9 MR. GODFREY: Without objection.

10 THE COURT: Without objection 18 and 19.

11 (WHEREUPON, State's Exhibit Numbers 18 and 19,
12 Photographs, were admitted into evidence.)

13 MR. LEIBERT: May we approach, Your Honor?

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: Ladies and gentlemen, we're going to
16 take a little break, about 10, 15 minutes. If you need
17 anything in your jury room just let the bailiff know. We
18 hopefully can accommodate you with regards to that.

19 When you return to -- I mean, go to your jury room,
20 please have no conversation about this case, about anything
21 you've heard today. Talk about anything else you want. We'll
22 take about 15 minutes then we'll start back.

23 Everyone else remain seated while the jury is
24 excused.

25 (WHEREUPON, the jury leaves the courtroom at

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 approximately 11:04 a.m.)

2 THE COURT: All right. We'll be in recess for about
3 15 minutes.

4 (WHEREUPON, a brief recess was taken.)

5 THE COURT: Anything before we bring the jury panel
6 back?

7 MR. LEIBERT: Not from the State, Your Honor.

8 MR. GODFREY: Nothing, Your Honor.

9 THE COURT: If you would, please, sir, ask the
10 members of the jury to join us.

11 (WHEREUPON, the jury enters the courtroom at
12 approximately 11:45 a.m.)

13 THE COURT: All right. At this time, you recall we
14 took a short break, the State was still on their case.

15 And we'll recognize the State for their next
16 witness.

17 MR. LEIBERT: May it please the Court, Your Honor.
18 The State would call Michael Wiggins to the stand, sir.

19 THE COURT: Mr. Wiggins, if you'd come around,
20 please.

21 MICHAEL WIGGINS, after having been duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LEIBERT:

25 Q. Michael, please tell the jury your full name.

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

- 1 A. Michael Wiggins.
- 2 Q. And how old are you?
- 3 A. Twenty-two.
- 4 Q. Where do you currently live?
- 5 A. At Road.
- 6 Q. Did you know Terrell Farr?
- 7 A. Yes, sir.
- 8 Q. Were you with him on June 30, 2005?
- 9 A. Yes, sir.
- 10 Q. How old was Terrell?
- 11 A. I think he was 19 at the time, I think.
- 12 Q. How did you know him?
- 13 A. We were friends.
- 14 Q. Do you remember about how old you were when you met
- 15 him?
- 16 A. Like elementary.
- 17 Q. Did you remain friends up until like 8th grade?
- 18 A. We stayed friends the whole time.
- 19 Q. Did you move away in the 8th grade?
- 20 A. Yeah, I moved to Easley.
- 21 Q. To Easley, South Carolina?
- 22 A. Yes, sir.
- 23 Q. And did you move back at some time in 2005?
- 24 A. Yeah, May.
- 25 Q. And did you resume your friendship with Terrell?

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 A. Yes, sir.

2 Q. So when you came back in May of '05 that was about a
3 month before the shooting?

4 A. Yes, sir.

5 Q. Or maybe 2 months?

6 A. Yes, sir.

7 Q. I need to take you back to June 30, 2005, all right?

8 A. All right.

9 Q. Was Terrell your best friend?

10 A. Yes, sir.

11 Q. I got to ask you some hard questions, okay?

12 A. All right.

13 Q. Did you and Terrell go down Old Farm Road?

14 A. Yes, sir.

15 Q. What were you doing?

16 A. Taking my sister and her friend to my house.

17 Q. And where was your house?

18 A. At .

19 Q. Do you have to drive past to get to ?

20 A. Yes, sir.

21 Q. Michael, would you come down here so we could show
22 the jury.

23 A. (The witness complied).

24 Q. Michael, do you see where Old Farm Road is?

25 A. Right here (indicated).

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 Q. Where did you come in, off of East Blackstock?

2 A. Yes, sir.

3 Q. So you came down the road. Who was driving, you or
4 Terrell?

5 A. Terrell was driving.

6 Q. And when you went past Road, did you
7 see anybody?

8 A. I saw Rodney.

9 Q. And what was Rodney doing?

10 A. Walking like towards the side door.

11 Q. And when you say Rodney, do you mean Rodney Nash?

12 A. Right there, over there (indicated).

13 Q. The man sitting next to that lawyer?

14 A. Yes, sir.

15 Q. And you saw Rodney Nash doing what?

16 A. He was walking towards the side of the house, like
17 this side here (indicated).

18 THE COURT: Excuse me, If I may. Madam court
19 reporter is having a hard time picking up. So as you speak
20 make sure you direct your comments out this way so she can
21 hear, okay? Thank you.

22 BY MR. LEIBERT:

23 Q. Let me switch places with you, Michael.

24 All right. So show the jury where Blackstock Road
25 is.

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 A. Right here (indicated).

2 Q. And you're coming this way?

3 A. Down this way (indicated).

4 Q. All right. To your house and you saw him in State's
5 Exhibit 39.

6 All right. Let me show you in State's Exhibit 8.

7 Do you recognize that?

8 A. Yes, sir.

9 Q. All right. Where is Old Farm Road?

10 A. Right here (indicated).

11 Q. And which end did you come from, to the right?

12 A. Came from this way over here (indicated).

13 Q. Where did you see Rodney when you were coming,
14 Rodney Nash?

15 A. He was walking like right in there going to this
16 little door right here (indicated).

17 Q. All right. Now, this blow up, does this make it
18 look bigger or smaller, the distance?

19 A. It makes it look kind of like bigger, but it's not
20 though.

21 Q. Okay. You saw him, and what was he doing?

22 A. He was looking at the car while he was walking
23 towards the little side right here, going to this road, the
24 little sidewalk (indicated).

25 Q. And did Terrell continue on down?

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 A. Yes, sir.

2 Q. So did you guys keep going down?

3 A. Yes, sir.

4 Q. You go to ?

5 A. Then come back up.

6 Q. How long did you stay at ?

7 A. Not even 30 seconds.

8 Q. How long did you stay?

9 A. Not even 30 seconds.

10 Q. Then what did you do?

11 A. Dropped them off and went up the street.

12 Q. Now, did you come past Road again?

13 A. Yes, sir.

14 Q. Did you see Rodney Nash again?

15 A. Yes, sir.

16 Q. All right. Take the pointer and show them about
17 where the car was when you say Rodney Nash.

18 A. Right in here (indicated).

19 Q. Not the white car, where your car was with Terrell.

20 A. Oh. About right here (indicated). Nope. I seen
21 him like as I come down the hill. I seen him when he was like
22 leaning up against the car like right in here (indicated).

23 Q. And your car, it's continuing to drive?

24 A. Yes, sir.

25 Q. And who's driving?

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 A. Terrell.

2 Q. Where was Rodney Nash when you saw him the next
3 time? Was he still up here? Was he still walking up here
4 when you saw him?

5 A. When someone came back up?

6 Q. Come back up, where was Rodney?

7 A. No, he was on the car.

8 Q. All right. Show the jury where he was.

9 A. The car was parked about right here and he was
10 leaning up against the car (indicated).

11 Q. Let me show you State's Exhibit 16. Show the jury
12 where Rodney Nash was when you came down the second time.

13 A. Right in here (indicated).

14 Q. All right. And what, if anything, did you see?

15 A. I seen him have the gun like by his side and kind of
16 like wait until we got past then he started shooting.

17 Q. Did you see Rodney Nash holding a gun?

18 A. Yes, sir.

19 Q. Did Rodney Nash have a hat on his head?

20 A. No, sir, he didn't.

21 Q. When you saw the car and you kept going, did you
22 hear a gunshot?

23 A. No, sir.

24 Q. Why?

25 A. Because me and Terrell had the music kind of up.

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 Then by the time I looked back he had the gun and that's when
2 I ducked down, and the next thing I know Terrell talking about
3 I'm hit.

4 Q. Your first knowing that your best friend had been
5 shot was he said I'm hit?

6 A. Yeah. I thought he was playing.

7 Q. Did you hear the bang?

8 A. No, sir.

9 Q. What did you do when he said that?

10 A. I told him to speed off. He sped off and then he
11 was like -- I told him to stop the car so I could check on
12 him. He's like, I can't stop. And by the time I slammed it
13 in park and looked up he was already passed out.

14 Q. Did you look back to see where Rodney was?

15 A. When I stopped the car?

16 Q. No, when he said I'm hit.

17 A. Yeah, I looked back.

18 Q. And what did you see?

19 A. I seen Rodney.

20 Q. Was anybody else out there?

21 A. No, sir.

22 Q. All right. Have a seat.

23 A. (The witness complied).

24 Q. What did your friend say to you, I'm hit?

25 A. Yes, sir.

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 Q. Was he able to stop the car?

2 A. No, sir.

3 Q. What happened to the car?

4 A. I slammed it in park and we slid.

5 Q. Did it continue going down the road?

6 A. Probably a couple feet, then it slid.

7 Q. Did it go off the road?

8 A. Yes, sir, then it came back on.

9 Q. Were you able to get to the brake?

10 A. No, sir.

11 Q. So how did you stop the car?

12 A. By slamming it in park.

13 Q. Just slammed that thing into park?

14 A. Yes.

15 Q. And did it stop?

16 A. It slid.

17 Q. Did it come to a stop on the road?

18 A. Yes, sir.

19 Q. Were you coming toward, were you barreling down on
20 East Blackstock Road?

21 A. Yes, sir.

22 Q. I show you State's Exhibit 35. Come on down here.

23 A. (The witness complied).

24 Q. Were you shown a lineup?

25 A. Yes, sir.

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 Q. I show you State's Exhibit Number 35. Who did you
2 pick out of that lineup?

3 A. Rodney Nash. Right there (indicated).

4 Q. Is that how Rodney Nash looked on June 30, 2005, or
5 had he changed a little bit?

6 A. You can have a seat.

7 A. (The witness complied).

8 Q. Is that how Rodney Nash looked on June 30, 2005, or
9 had he changed?

10 A. He had changed.

11 Q. How did he change?

12 A. He had a little haircut.

13 Q. Like now?

14 A. Yes, sir.

15 Q. Rodney Nash married to any member of your family?

16 A. Yes, sir.

17 Q. Who?

18 A. My cousin.

19 Q. What is her name?

20 A. Tamara Meadows.

21 Q. Ever been to a family function with Rodney Nash?

22 A. He was there one time.

23 Q. And where was that at?

24 A. At my grandma's house.

25 Q. Is that where you live now?

MICHAEL WIGGINS - DIRECT BY MR. LEIBERT

1 A. Yes, sir.

2 Q. And Rodney Nash was there?

3 A. Yes, sir.

4 Q. With your cousin?

5 A. Yes, sir.

6 Q. And what's her name?

7 A. Tamara.

8 Q. And other than that -- and when did you see him?

9 This was 2005. What Christmas or what family occasion was he
10 there?

11 A. It was Christmas.

12 Q. Was it a year before or a couple years before?

13 A. Like years ago.

14 Q. Did you ever see him before that, between that time
15 and the shooting on June 30th?

16 A. I seen him in the neighborhood all time, him and his
17 brother.

18 Q. How sure are you --

19 A. Two hundred percent sure.

20 Q. -- that the man that killed your best friend is
21 Rodney Nash?

22 A. That's him.

23 Q. Do you have any, one-ounce of doubt?

24 A. No doubts.

25 Q. Rodney Nash killed your best friend?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 A. Yes, sir, he did.

2 Q. Sitting next to you?

3 A. Yes, sir.

4 Q. You didn't know if you were going to be killed, did
5 you?

6 A. No, sir.

7 MR. LEIBERT: Thank you, Michael. Answer any
8 questions Mr. Godfrey may have.

9 MR. GODFREY: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. GODFREY:

13 Q. Mr. Wiggins, now, you say Rodney Nash is married to
14 your cousin?

15 A. Yes, sir.

16 Q. And that would be Tamara Meadows Nash?

17 A. Yes, sir.

18 Q. And you know Tamara very well?

19 A. Yes, sir.

20 Q. And you lived here in Spartanburg up until middle
21 school?

22 A. Yes, sir.

23 Q. Did you see Tamara a good bit?

24 A. Yes, sir.

25 Q. Now, when you got to the eighth grade you moved from

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 Spartanburg?

2 A. To Easley.

3 Q. Moved to Easley?

4 A. Yes, sir.

5 Q. And how often did you come back to Spartanburg?

6 A. Every weekend, every Christmas event, every holiday.

7 Q. Did you know Rodney Nash that particular time?

8 A. Yes, sir.

9 Q. Pardon?

10 A. Yes, sir.

11 Q. How did you know him?

12 A. Because I seen him in the neighborhood. We used to
13 play basketball together.

14 Q. Now, when did you move to Georgia?

15 A. My junior year. So it would be like 2003.

16 Q. And did you move -- where in Georgia did you move?

17 A. To Monroe -- I mean, kind of like Rubindale.

18 Q. Is that close to Macon?

19 A. Yes, sir.

20 Q. So on the southern side past Atlanta?

21 A. Yes, sir.

22 Q. And when you moved down there, how often did you get
23 back up here?

24 A. We got off every holiday, everything -- every, like,
25 get out of school I came back home, and probably every other

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 weekend.

2 Q. Every other weekend?

3 A. Yes, sir.

4 Q. From past Macon to Spartanburg?

5 A. Yes, sir. My momma would come for my grandma so she
6 brung us like every other chance she got.

7 Q. Now, did you graduate from high school in Georgia?

8 A. Yes, sir.

9 Q. And when did you graduate?

10 A. May '05.

11 Q. May of '05?

12 A. Yes, sir.

13 Q. And then after you graduated you moved back to
14 Spartanburg?

15 A. Yes, sir.

16 Q. And started living with your grandmother again?

17 A. Yes, sir.

18 Q. So you had been back as a full-time resident to
19 Spartanburg for about 30 or so days?

20 A. Yes, sir.

21 Q. Now, when Tamara and Rodney got married you didn't
22 go to their wedding, did you?

23 A. No, sir.

24 Q. And if I understood your testimony you said you had
25 seen Rodney at a Christmas dinner in like 2003?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

- 1 A. No.
- 2 Q. All right. When was it?
- 3 A. Probably been -- probably like past way years ago.
- 4 Q. Years ago. Okay. Were you and Rodney ever friends?
- 5 A. No, sir.
- 6 Q. Did you ever talk to him?
- 7 A. No, sir.
- 8 Q. You just seen him around?
- 9 A. Yes, sir.
- 10 Q. And had you seen his brother, Alex?
- 11 A. Yes, sir.
- 12 Q. Know his brother Donnie --
- 13 A. Yes, sir.
- 14 Q. -- or Donald?
- 15 A. Yes, sir.
- 16 Q. Now, when you were driving down Old Farm Road on
- 17 June the 30th, you say your -- who was in the car with you and
- 18 Terrell?
- 19 A. My sister and her friend.
- 20 Q. And her friend, or just 2 girls in the back seat?
- 21 A. No, 1 girl.
- 22 Q. One girl in the back seat?
- 23 A. Yeah, my sister and her friend.
- 24 Q. Okay. Who was driving the car?
- 25 A. Terrell.

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 Q. And where were you?

2 A. In the passenger seat.

3 Q. And who was in the back seat?

4 A. My sister and her friend, Tequila.

5 Q. Okay. And you were going down Old Farm Road?

6 A. Yes, sir.

7 Q. Now, was the music up loud like it was when you were
8 going back?

9 A. Not that loud but it was up.

10 Q. And were you all talking?

11 A. Yes, sir.

12 Q. And about what speed were you going?

13 A. Probably like 20 something, I guess.

14 Q. Going about the speed limit?

15 A. Yeah.

16 Q. Now, as you passed -- whose house was that actually
17 that you passed when you saw Rodney?

18 A. That was Alex's house.

19 Q. It was Alex's house?

20 A. Yes, sir.

21 Q. The brother?

22 A. Yes, sir.

23 Q. As you passed that house what did you see in the
24 yard?

25 A. Seen nothing in the yard. The car, the white car.

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 I seen Rodney coming to the side door, seen him walking in the
2 doorway.

3 Q. So you saw the white car in the yard?

4 A. Yes, sir.

5 Q. And you saw Rodney going in that doorway?

6 A. Yes, sir.

7 Q. Going up that sidewalk to the doorway?

8 A. Yes, sir, and I seen my uncle in the doorway.

9 Q. You saw your uncle?

10 A. Yes, sir, James Thomas.

11 Q. James Thomas?

12 A. Yes, sir.

13 Q. And was that the same doorway that Rodney was going
14 in?

15 A. No, sir, it was the front door. The one facing Old
16 Farm Road?

17 Q. The one that faces Old Farm Road?

18 A. Yes, sir.

19 Q. Would that be the one that would be there where the
20 white car is?

21 A. Yes, sir.

22 Q. And James Thomas?

23 A. Yes, sir.

24 Q. And how is he related to you?

25 A. That's my grandma's brother.

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 Q. And where was he living at the time, do you know?

2 A. With Alex.

3 Q. So Alex and James Thomas were living there at that
4 house?

5 A. Yes, sir.

6 Q. Do you know if Rodney was living there?

7 A. I don't know for sure.

8 Q. Well, did you know where Rodney and Tamara were
9 living?

10 A. Yes, sir.

11 Q. Okay. So as you pass you see James Thomas standing
12 in the door?

13 A. Yes, sir.

14 Q. And you see one car, a white car?

15 A. Yes, sir.

16 Q. And you see Rodney walking up the sidewalk to go in
17 the door that -- on the other end of the house?

18 A. Yes, sir.

19 Q. What else do you see, who else is there?

20 A. That's it.

21 Q. Didn't see anything else at all?

22 A. No, sir.

23 Q. So one car, a white car?

24 A. Yes, sir.

25 Q. Do you know Mr. Rice?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 A. Yes, sir.

2 Q. Did you see Mr. Rice there?

3 A. No, sir.

4 Q. Did you see a -- not a motorcycle, one of those
5 smaller ones. Did you see --

6 A. Moped?

7 Q. Yeah. Did you see a moped there?

8 A. No, sir.

9 Q. Didn't see Mr. Rice?

10 A. No, sir.

11 Q. Now, you all didn't think there was anything wrong,
12 did you?

13 A. No, sir.

14 Q. Because actually if you had there were other ways to
15 get out from Road. You didn't have to go back up
16 the road there, did you?

17 A. Yes, sir.

18 Q. So as you go back up the road the music is turned up
19 loud?

20 A. No, sir. It's turned up. It's up but it's not
21 loud.

22 Q. Okay. It was up?

23 A. Yeah.

24 Q. And as you drive past the road, drive back up Old
25 Farm Road I believe your testimony was that when you went down

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 the road and came back you were only at your house for about
2 30 seconds?

3 A. Not even that.

4 Q. Not even that. How close is your house to Alex's
5 house?

6 A. I really couldn't tell you. It's close though.

7 Q. About a block?

8 A. Probably not even that.

9 Q. Not even that. Okay.

10 So you go back up Old Farm Road. So who was wearing
11 the blue cap?

12 A. Nobody had no blue cap on.

13 Q. Well, did you see a blue cap in the yard when you
14 passed?

15 A. No, sir.

16 Q. Didn't see a blue cap?

17 A. Nope.

18 Q. And still just a white car in the yard?

19 A. Yes, sir.

20 Q. Now, you gave a description to law enforcement of
21 the person that you saw with the gun, didn't you?

22 A. Yes, sir.

23 Q. And what clothing description did you give?

24 A. White T-shirt and blue jeans.

25 Q. Okay. What kind of T-shirt?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 A. Just a plain white T-shirt.

2 Q. Did it have sleeves?

3 A. Yes, sir.

4 Q. What kind of pants?

5 A. Blue jeans.

6 Q. Did you see anybody there with a red shirt?

7 A. No, sir.

8 Q. Did you see anybody there with a blue shirt?

9 A. No, sir.

10 Q. When you are going back up the road leaving, before
11 this incident happened, did you see Mr. Rice on a moped?

12 A. No, sir.

13 Q. So the only thing you saw in the yard was a white
14 car and somebody leaning next to it?

15 A. Yes, sir.

16 Q. Did you see James Thomas?

17 A. What, coming back up?

18 Q. Yes.

19 A. No, sir.

20 Q. Now, you told the officer, I believe you told
21 Detective Smith that you believe the shooter to be Rodney
22 Nash, right?

23 A. I know it was Rodney Nash.

24 Q. And the officer provided you with a photo lineup,
25 didn't he?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 A. Yes, sir.

2 Q. Other than Rodney Nash is there anybody else in that
3 lineup that you recognized at all?

4 A. No, sir.

5 Q. So the only person in that lineup that you recognize
6 was Rodney Nash?

7 A. Yes, sir.

8 Q. After the car was stopped, after the car got stopped
9 when you put it in park, jammed it in park, did you look back
10 up the street?

11 A. Yes, sir.

12 Q. What did you see?

13 A. Nobody.

14 Q. You didn't see Mr. Rice on a moped?

15 A. No, sir.

16 Q. Did you see James Thomas?

17 A. No, sir.

18 Q. Did you see -- was the white car still there?

19 A. Yes, sir.

20 Q. Did any cars pass you?

21 A. Just the one that I stopped, the one I used her
22 phone.

23 Q. So you are certain there was nothing in that yard
24 except a white car when you all passed, and James Thomas in
25 the door?

MICHAEL WIGGINS - CROSS BY MR. GODFREY

1 A. And Rodney.

2 Q. And Rodney going in the other door, right?

3 A. Yes, sir.

4 Q. Didn't see a cap?

5 A. No, sir.

6 Q. Didn't see any other cars?

7 A. No, sir.

8 Q. Didn't see a moped?

9 A. No, sir.

10 Q. After you got the car stopped what did you do?

11 A. I jumped out to see was Terrell okay, opened his
12 door, and he just wasn't talking or responding to me.

13 Q. And that was the only time you got out of the car?

14 A. Yes, sir.

15 Q. Now, the description that you gave of Rodney Nash or
16 of the person who had the gun, they had on a white T-shirt?

17 A. Yes, sir.

18 Q. And some type of blue jeans?

19 A. Yes, sir.

20 Q. No ball cap?

21 A. No, sir.

22 Q. T-shirt had sleeves?

23 A. Yes, sir.

24 Q. What type of gun was it?

25 A. I couldn't tell you. All I know is it was black.

MICHAEL WIGGINS - REDIRECT BY MR. LEIBERT

1 Q. Well, did you see a big clip?

2 A. Yes, sir.

3 Q. What kind was it?

4 A. Probably like extended clip.

5 Q. What's an extended clip?

6 A. Probably like 20 rounds or more inside.

7 Q. When you passed Old Farm Road going -- when you
8 passed Alex's house going out of the subdivision you saw a
9 white car in the yard at Alex's house, right?

10 A. Am I going back up the hill?

11 Q. When you are leaving, when you and Terrell Farr are
12 leaving.

13 A. Talking about leaving from my house?

14 Q. Yeah.

15 A. Yeah.

16 Q. So a white car and somebody leaning --

17 A. Rodney leaning up against the car.

18 Q. That you believed to be Rodney?

19 A. Yeah, it is Rodney.

20 MR. GODFREY: Nothing further.

21 REDIRECT EXAMINATION

22 BY MR. LEIBERT:

23 Q. Come on down here one more time.

24 A. (The witness complied).

25 Q. This is Road; is that correct?

MICHAEL WIGGINS - REDIRECT BY MR. LEIBERT

- 1 A. Yes, sir.
- 2 Q. Where was Rodney Nash --
- 3 A. Right in here (indicated).
- 4 Q. -- when Terrell said he had been hit?
- 5 A. Probably say he got hit right in here (indicated).
- 6 Q. Your car has already been passed?
- 7 A. Yes, sir.
- 8 Q. You're still going. And the last time you saw
9 Rodney going past, where was Rodney Nash standing?
- 10 A. Right here against the car (indicated).
- 11 Q. Against the car?
- 12 A. Yes, sir.
- 13 Q. Where did the car come to a stop? Show the jury how
14 far down the road.
- 15 A. All the way up there (indicated).
- 16 Q. How close were you?
- 17 A. Probably like right in here (indicated). There's
18 some writing on the road right there.
- 19 Q. Okay. You can have a seat.
- 20 A. (The witness complied).
- 21 Q. You know Alex Nash?
- 22 A. Yes, sir.
- 23 Q. Alex Nash shoot your friend?
- 24 A. No, sir.
- 25 Q. Did your uncle shoot your friend?

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 A. No, sir.

2 Q. Who shot your friend?

3 A. Rodney Nash.

4 MR. LEIBERT: Thank you.

5 THE COURT: Anything further, Mr. Godfrey?

6 MR. GODFREY: (Shook head).

7 THE COURT: Thank you, sir. You may step down.

8 You can call your next witness.

9 MR. LEIBERT: The State would call Detective Tom
10 Smith, Your Honor.

11 THE COURT: Detective Smith, if you would come
12 around, please.

13 THOMAS N. SMITH, after having been duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LEIBERT:

17 Q. Mr. Smith, please tell the jury your name.

18 A. Thomas N. Smith.

19 Q. And where are you employed?

20 A. Spartanburg County Sheriff's Office.

21 Q. How long have you been so employed there?

22 A. I've been in law enforcement 30 years.

23 Q. Were you employed on June 30th, 2005?

24 A. Yes, sir.

25 Q. And what was your position at that time?

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 A. I was a homicide investigator.

2 Q. Were you called to the area of Road on
3 June 30th, 2005?

4 A. Yes, sir, I was.

5 Q. What is the first thing you did upon arriving?

6 A. Arrived at the scene shortly after 9:00, observed
7 the vehicle in the roadway, talked to some uniformed patrol
8 officers, ascertained that there was a witness.

9 Q. Was there yellow crime scene tape around the car
10 when you got there?

11 A. Yes, sir.

12 Q. And what did you do after you were told there was a
13 witness?

14 A. I took the witness to the sheriff's office and
15 interviewed him.

16 Q. And what was his name?

17 A. Michael Wiggins.

18 Q. And approximately what time was that?

19 A. About 10:00; 9:30, 10:00.

20 Q. Based on what he told you did you put together a
21 photo lineup?

22 A. Yes, sir. After talking to him for a few minutes,
23 15 minutes, a photo lineup -- I requested a photo lineup. It
24 was brought to me and I showed it to him.

25 Q. I show you State's Exhibit 35. I show you State's

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 Exhibit 35. Can you identify that?

2 A. That's the photo lineup that was given to me.

3 Q. All right. I want you to come down here and explain
4 to the jury how you show someone a photo lineup.

5 (The witness stepped down from the witness stand.)

6 A. We were in a conference room with a table. What I
7 do is when I get it I put it facedown, ask them to turn it
8 over and see if there's anybody that looks familiar to them.

9 Q. So you don't turn it over, Michael turned it over?

10 A. Yes, sir.

11 Q. And did he turn it over?

12 A. Yes, sir, he did.

13 Q. And then what happened?

14 A. He immediately picked out Mr. Nash in the lineup.

15 Q. All right. Any hesitation?

16 A. No, sir.

17 Q. All right. Have a seat.

18 A. (The witness complied).

19 Q. Did you then attempt to locate Mr. Nash?

20 A. Next, I would have done an affidavit with the lineup
21 saying why he was familiar with the -- the purpose of the
22 lineup, and then I would have taken a written statement from
23 him.

24 Q. I show you State's Exhibit 34. Is that the
25 affidavit?

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 A. Yes, sir, it is.

2 Q. What is the number by which he told you was the
3 number of the man that shot his friend?

4 A. 1089111.

5 Q. Say that again, please.

6 A. 1089111.

7 Q. All right. Then what did you do?

8 A. I filled this affidavit out and had him sign it.

9 Q. Did you then look for Mr. Nash?

10 A. No, sir. I then took a statement from Mr. Wiggins,
11 then I returned to the crime scene and assisted in the search
12 of the residence of Road.

13 Q. And who was your crime scene investigator?

14 A. Investigator Bogan.

15 Q. Okay. Randy Bogan, and you assisted him in some of
16 that?

17 A. And some of the other officers, yes, sir.

18 Q. At some point did you then meet with Rodney Nash?

19 A. The following morning.

20 Q. And where was he located?

21 A. He was located at his residence.

22 Q. And do you recall where that was?

23 A. Old Colony or Colony over around Road 41 and 85.

24 Q. And did he come back to the sheriff's department?

25 A. Yes, sir, he did.

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 Q. And did he give you a statement?

2 A. Yes, sir, he did.

3 Q. When you take a statement from someone -- now, at
4 that time is he free to leave if he wanted to go?

5 A. Yes, sir.

6 Q. And do you recall what time he came in?

7 A. He came in about 10:00, 9:55.

8 Q. I show you State's Exhibit 9. What is that, sir?

9 A. That's a Miranda warning, pre-interrogation form.

10 Q. And what's the date and time on that?

11 A. It's July 1st at 9:58:05.

12 Q. Fourteen hours after the time that Dan Piggins was
13 dispatched to Old Farm Road?

14 A. Yes, sir.

15 Q. And where is that location at again?

16 A. This was done at the sheriff's office.

17 Q. All right. Tell the jury what you did with the
18 pre-interrogation waiver form.

19 A. When he first came in I filled out the top section
20 which puts his name, his address, his age, the date, the time,
21 and location, which would have been the sheriff's office.
22 Then I read it to him as he reads along with me, or follows
23 along with me.

24 Q. All right. Please read what you read to Mr. Nash.

25 A. It says I have the right to remain silent. Anything

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 I say can and will be used against me in a court of law. I
2 have the right to talk to a lawyer, to have them present with
3 me while I'm being questioned. If I cannot afford to hire a
4 lawyer one will be appointed to represent me before any
5 question if I so wish. I have the right to stop answering
6 questions at any point in the questioning.

7 The above rights have been read to me by T. N.
8 Smith. I've read the same and I understand my rights fully.
9 It's witnessed by Detective Lindsey, and it's signed by Rodney
10 Nash. That's the first half of the form.

11 Q. Once that was signed what do you do next?

12 A. Next, you read the second half; I waive, give up my
13 rights as explained above and agree to talk to T. N. Smith in
14 reference to a homicide, and my statement that I make is of my
15 own free will without fear of threat, promise, favor or reward
16 of any kind. I'm able to read and write the English language
17 and finished 11 years in school. Again, it's witnessed by
18 Detective Lindsey and signed by Rodney Nash.

19 Q. Did he ask for an attorney?

20 A. No, sir.

21 Q. Did he agree to give you a statement?

22 A. Yes, sir, he did.

23 Q. I show you State's Exhibit 10. What is that?

24 A. That's a statement given by Mr. Nash.

25 Q. You read him his rights at 9:58 a.m. What time was

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 the statement completed?

2 A. It was completed at 10:24 a.m.

3 Q. Twenty-six minutes later?

4 A. Yes, sir.

5 Q. Please publish the statement to the jury.

6 A. Statement of Rodney Nash, age 29, July 1st, 2005,
7 phone number -4921, date of birth , Social Security
8 number

9 About 3:00 p.m. I was on Road until
10 about 5:00, 5:30 p.m. I left and went home and stayed until
11 about 8:30, 9:00 p.m. I left home and went to the hospital to
12 see my sister and her newborn but the doors were locked and we
13 couldn't get in. We went back to Colony and I never
14 left until this morning. I was basically at home alone from
15 5:30 until 8:30, 9 o'clock. The statement ends. It's
16 witnessed by me and signed by Mr. Nash.

17 Q. Mr. Nash says he was at Old Farm Road,
18 Road until 5:30?

19 A. Yes, sir.

20 Q. And then home alone until 8:30 or 9:00?

21 A. Yes, sir.

22 Q. Did he later say oh, wait a minute, I was somewhere
23 else, too?

24 A. Later that eve -- later that afternoon he advised
25 another investigator who advised me that based on what they

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 told me it was ascertained that he was at the Li'l Cricket on
2 Road 41 and 85 at approximately 8:30, quarter of 9:00.

3 Q. Is that in the vicinity of where he lives?

4 A. Yes, sir.

5 Q. Is that the nearest convenience store to where he
6 lived?

7 A. Yes, sir.

8 Q. And he lived on what street?

9 A. East Colony.

10 Q. Did you then go determine if he had been at Li'l
11 Cricket?

12 A. Yes, sir. I went to Li'l Cricket the first week or
13 two of August and obtained a CD.

14 Q. I show you --

15 A. Or DVD.

16 Q. I show you exhibit 30. What is that?

17 A. That's the disk I received from Li'l Cricket.

18 MR. LEIBERT: Your Honor, at this time we would
19 offer State's Exhibit 30 and would like to publish it to the
20 jury.

21 MR. GODFREY: Without objection.

22 THE COURT: Without objection State's 30.

23 (WHEREUPON, State's Exhibit No. 30, a DVD, was
24 admitted in evidence and published for the jury.)

25 BY MR. LEIBERT:

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 Q. Detective Smith, would you come down here, please.

2 A. (The witness complied.)

3 Q. Detective Smith, what is the date down here?

4 A. 6-30-08.

5 Q. Of '08 or '05?

6 A. Of '05, I'm sorry.

7 Q. And what is the time?

8 A. 20:46.

9 Q. What does that mean in --

10 A. 8:46.

11 Q. 8:46 p.m.?

12 A. Yes, sir.

13 Q. All right. Go ahead and play it.

14 Do you see that car right there, Detective?

15 A. Yes, sir.

16 Q. Is that Rodney Nash?

17 A. Yes, sir.

18 Q. What is he wearing?

19 A. He's wearing a white tank top and blue jean shorts.

20 Q. June 30th, 2005 at 20:47 or 8:47 p.m.; is that

21 correct?

22 A. Yes, sir.

23 Q. Sergeant Piggins was dispatched 18 minutes earlier

24 at 8:29; is that correct?

25 A. Yes, sir.

THOMAS N. SMITH - DIRECT BY MR. LEIBERT

1 Q. All right, sir. Have a seat.

2 A. (The witness complied).

3 Q. Did you drive from Road to that Li'l
4 Cricket?

5 A. Yes, sir.

6 Q. Did you take more than one route?

7 A. Yes, sir.

8 Q. If you would come down here and show the jury.

9 A. (The witness complied).

10 Q. All right. What does that dot represent on this
11 map?

12 A. That would be the end of Old Farm Road. Close to
13 the end.

14 Q. That includes ?

15 A. Yes, sir.

16 Q. All right. Where was the Li'l Cricket -- show the
17 jury where the Li'l Cricket is that the defendant was seen at
18 18 minutes later.

19 A. Right here (indicated).

20 Q. All right. Where did the defendant reside at that
21 time?

22 A. Over here (indicated).

23 Q. Did you drive the route going the back roads to --
24 from Road to the Li'l Cricket?

25 A. Yes, sir. I left Old Farm Road, came up Blackstock

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 through the Westgate Mall area, over across the little
2 railroad tracks in Arcadia. I didn't cross the railroad
3 tracks but that's the Arcadia crossroads. I came down across
4 the railroad tracks here and out to 41.

5 Q. How long did that take you?

6 A. Approximately 15 minutes.

7 Q. Did you also do it using the interstate?

8 A. Yes, sir. I took the interstate and it took 8
9 minutes.

10 Q. Thank you.

11 (The witness returned to the witness stand.)

12 MR. LEIBERT: Answer any questions that Mr. Godfrey
13 may have.

14 CROSS-EXAMINATION

15 BY MR. GODFREY:

16 Q. Okay. Detective Smith, you had information from
17 Mr. Wiggins that Rodney Nash might be the person you are
18 looking for, right?

19 A. Yes, sir.

20 Q. And you requested that a couple of officers go to
21 Mr. Nash's house to ask him to come down to the sheriff's
22 office?

23 A. Yes, sir.

24 Q. And so did the officers go to his house?

25 A. Yes, sir.

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 Q. And did he voluntarily come to the sheriff's office?

2 A. Yes, sir.

3 Q. When he got to your office what was his demeanor?

4 A. He was okay. He was sober, calm.

5 Q. Was he cooperative?

6 A. Yes, sir.

7 Q. And how long total was he at the sheriff's office?

8 A. About 6 hours.

9 Q. Five or 6 hours. Did he remain cooperative
10 throughout the 5 or 6 hours?

11 A. Yes, sir.

12 Q. When you were questioning Rodney Nash did you advise
13 him that an officer saw him at the scene that night?

14 A. No, sir.

15 Q. You don't remember bringing an officer in to look at
16 Mr. Nash?

17 A. No, sir.

18 Q. Do you keep any handwritten notes?

19 A. Yes, sir. An Officer Wilson came by and I spoke to
20 him at 3:15.

21 Q. You don't have any memory now of Rodney Nash asking
22 you well, if there's an officer that saw me there bring him in
23 so he can see me?

24 A. I believe that was Officer Wilson.

25 Q. And when Officer Wilson looked at Rodney Nash he

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 said no, that's not the one, might be his brother?

2 A. Mr. Wilson -- I believe that investigator -- uniform
3 Officer Wilson spoke to Donnie Nash after the shooting the
4 evening before, and that would have been, I think, when Wilson
5 would have come back in and said it wasn't Nash that he spoke
6 to.

7 Q. Okay. Now, there were several leads about what
8 happened out there that night, weren't there?

9 A. Yes, sir.

10 Q. And one of the leads that you all had is that the
11 shooter had on a red shirt?

12 A. That was one of the descriptions given, yes, sir.

13 Q. And there was another lead which said the shooter
14 had on a blue cap?

15 A. At one time, yes, sir.

16 Q. And there was another lead that said that the
17 shooter was on the back of a moped with Mr. Rice?

18 A. There was a lead came in that said a subject fled
19 the scene on the back of a moped, yes, sir. Yes, sir.

20 Q. Now, you say that while you were at the crime scene
21 Donnie Nash came up?

22 A. Not while I was at the crime scene. I think it was
23 around 11 o'clock that night.

24 Q. But Donnie Nash went to the crime scene?

25 A. Came up towards the crime scene, wasn't allowed --

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 came up towards Road, was not allowed to go any
2 further.

3 Q. Was he wearing a red shirt?

4 A. Yes, sir, he was.

5 Q. Was he questioned?

6 A. He was questioned by the uniformed officer and
7 released.

8 Q. Did you ever question him?

9 A. No, sir.

10 Q. Was any gunshot residue test ever taken of his
11 hands?

12 A. No, sir.

13 Q. What is gunshot residue test?

14 A. Gunshot residue is going to be the powder that's
15 either burnt or unburnt that blows back on the hands. It's
16 either from the primer or from the actual powder in the shell
17 casing.

18 Q. Did you ever talk with Mr. Rice?

19 A. No, sir.

20 Q. Even though Mr. Rice supposedly had the shooter on
21 the back of his moped?

22 A. Yes, sir. That was one of the reports that we had.

23 Q. But you never talked with Mr. Rice?

24 A. No, sir.

25 Q. When you completed the photo lineup, when it was

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 developed and you went in to Mr. Wiggins and you put it
2 facedown on the table.

3 A. Yes, sir.

4 Q. You asked Mr. Wiggins to turn it over and see if
5 there's anybody he is familiar with?

6 A. Yes, sir.

7 Q. Then you say he immediately picked out Rodney Nash?

8 A. Yes, sir.

9 Q. Was there anybody else on there that he was familiar
10 with, or did he know anybody else?

11 A. I don't know.

12 Q. Well, is there any reason since his brother, Alex
13 Nash, lived at that house and since his other brother, Donnie
14 Nash, came up to the crime scene, is there any reason why you
15 didn't prepare three photo lineups and have all of the Nash
16 brothers in there?

17 A. Usually from a procedural point of view once a
18 subject is identified you don't show the witness any more
19 lineups.

20 Q. Well, don't most brothers look sort of similar?

21 A. Yes, sir, they can be.

22 Q. Now, Mr. Wiggins testified that the person he saw
23 with the gun had on a T-shirt with sleeves.

24 A. Yes, sir.

25 Q. That's what he told you, right?

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 A. I believe so, yes, sir.

2 Q. Now, when this video from the Li'l Cricket was
3 running the solicitor pointed out and said is that the car.
4 That's a dark colored car that Rodney Nash was in, right?

5 A. Yes, sir.

6 Q. Do you know what kind of car it was?

7 A. No, sir.

8 Q. Do you know the actual color of the car?

9 A. No, sir.

10 Q. Other than just being from that video, dark?

11 A. No, sir.

12 Q. When was it you got the warrant for Mr. Nash?

13 A. Late that afternoon.

14 Q. So Mr. Wiggins had told you about Mr. Nash and
15 picked him out of a photo lineup about what time?

16 A. First picked him out of a lineup about 10:05. We
17 completed a statement and an interview probably around 11:00
18 and then went back out to the scene.

19 Q. What did you do back out at the scene?

20 A. Assisted with the search of Road.

21 Q. How many times did you search?

22 A. Once.

23 Q. Just once? Did you find any evidence in that house
24 or anything in that house that appeared to be used in that
25 crime?

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 A. No, sir. In the residence?

2 Q. Yes.

3 A. No, sir.

4 Q. Now, you say that -- I believe you testified that
5 Mr. Nash was free to go?

6 A. Yes, sir.

7 Q. Up until the time you all got the warrant about
8 4:30?

9 A. I don't believe I signed the warrant but I told him
10 around 4:30 he was under arrest. I think I called the
11 solicitor's office then I went and obtained the warrant, but
12 he was being booked. He wasn't free to go at approximately
13 4:30.

14 Q. Okay. But up until that time it was -- you knew
15 what Mr. Wiggins had told you?

16 A. Yes, sir.

17 Q. Okay. Now, when Mr. Nash was being taken to the
18 jail and being booked in he made another statement to Officer
19 Lachica?

20 A. Yes, sir.

21 Q. And that was about the Li'l Cricket?

22 A. Yes, sir.

23 Q. But he didn't tell you that in the beginning?

24 A. No, sir.

25 Q. Did during your questioning of Mr. Nash, did you

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 tell him what time the crime supposedly occurred?

2 A. No, sir.

3 Q. And throughout the entire time that Rodney Nash was
4 with you he was cooperative?

5 A. Yes, sir.

6 Q. Did you ever find or locate a weapon?

7 A. No, sir.

8 Q. Were any more spent shell casings ever found out
9 there?

10 A. Spent, not to my knowledge, no, sir.

11 Q. So as far as you know there were only two bullets
12 fired?

13 A. Two shots, to my knowledge, yes, sir.

14 Q. Once you got the warrant for Rodney Nash did you
15 ever try to find Mr. Rice?

16 A. No, sir.

17 Q. Did you ever talk with Alex Nash?

18 A. No, sir.

19 Q. Did you ever talk with James Thomas?

20 A. James Thomas Edwards?

21 Q. You all had him as James Edwards. That's the fellow
22 that --

23 A. Correct.

24 Q. Okay.

25 A. Yeah. He was interviewed by an investigator the

THOMAS N. SMITH - CROSS BY MR. GODFREY

1 evening of the shooting. I believe it was Sergeant Wood.

2 Q. Did you ever talk with Rodney Nash's wife, Tamara
3 Nash?

4 A. No, sir.

5 Q. Did you ever determine who owned the blue cap?

6 A. No, sir. I'm pretty sure that they couldn't develop
7 a DNA profile from the cap.

8 Q. Or that the DNA did not match Rodney?

9 A. Correct.

10 Q. So basically, as I understand it, after Mr. Wiggins
11 gave you a statement and picked out Rodney Nash out of a photo
12 lineup, the person he recognized as being familiar, then
13 nobody else was contacted?

14 A. There was a canvas of the neighborhood done the
15 following morning. That evening when I went back out there
16 there was no one left in the neighborhood. So one was done
17 the following evening -- the following morning by other
18 investigators.

19 Q. And you had a statement from somebody indicating
20 that the shooter was on the back of a moped of Mr. Rice but
21 you never talked to Mr. Rice?

22 A. No, sir.

23 MR. GODFREY: Nothing further.

24 REDIRECT EXAMINATION

25 BY MR. LEIBERT:

THOMAS N. SMITH - REDIRECT BY MR. LEIBERT

1 Q. Who did this 19-year-old boy tell you who killed his
2 best friend? Who did this 19-year-old boy tell you who killed
3 his best friend?

4 A. Mr. Nash.

5 Q. Who did he pick out of a lineup?

6 A. Mr. Nash.

7 MR. LEIBERT: Thank you. Nothing further, Your
8 Honor.

9 THE COURT: Thank you, sir. You may step down.

10 MR. LEIBERT: May we approach, Your Honor.

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: Ladies and gentlemen, I'm going to go
13 ahead -- we'll go ahead and break for lunch at this time. I'm
14 going to give you a little bit of an extended lunch break.
15 It's about 18 minutes to 1:00. I'm going to ask you to be
16 back in your jury room ready to go at 2:30, okay? So that
17 gives you about an hour and 47, 48 minutes.

18 During the time that you are at lunch, please, as
19 I've told you many times, do not allow anyone to talk with you
20 about this case. If someone does attempt to speak with you
21 about it let them know that you are a juror and you can't
22 talk. If they persist then you let me know and we'll see to
23 it it doesn't continue.

24 Enjoy your lunch. Have a good lunch break and then
25 if you would, please be back in your jury room at 2:30 and

1 we'll start back at that time.

2 Everyone else, please remain seated while the
3 members of the jury are excused.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 12:44 p.m.)

6 THE COURT: All right. We'll be in recess then
7 until 2:30.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Anything we need to take up before we
10 bring the jury out?

11 MR. LEIBERT: No, sir, Your Honor.

12 MR. GODFREY: No, Your Honor.

13 THE COURT: All right. Thank you.

14 Please ask the jury to join us, sir.

15 (WHEREUPON, the jury enters the courtroom at
16 approximately 2:40 p.m.)

17 THE COURT: All right. Ladies and gentlemen, I hope
18 everyone had a good lunch and we're ready to proceed.

19 Solicitor, you may call your next witness.

20 MR. MCCARTY: Thank you, Your Honor. May it please
21 the Court. The State would call Wayne Butler.

22 THE COURT: Mr. Butler, if you would come around,
23 please, sir.

24 WAYNE BUTLER, after having been duly sworn,
25 testified as follows:

WAYNE BUTLER - DIRECT BY MR. MCCARTY

DIRECT EXAMINATION

1

2 BY MR. MCCARTY:

3 Q. Mr. Butler, would you please introduce yourself to
4 the jury.

5 A. Chief Wayne Butler. I'm employed by Li'l Cricket.

6 Q. What is your duty or your position with Li'l
7 Cricket?

8 A. I'm the chief of security.

9 Q. Chief of security. Is that for one particular store
10 or all the stores?

11 A. All the stores.

12 Q. And how many stores is that?

13 A. Eighty.

14 Q. Is that in Spartanburg County and elsewhere or --

15 A. Yes, sir. Spartanburg County, all the way down to
16 Charleston.

17 Q. How long have you been in that position?

18 A. Thirteen years.

19 Q. Prior to being chief of security for Li'l Cricket do
20 you have any other law experience?

21 A. Yes, sir. I was a police and chief for 28 years.

22 Q. What department would that be?

23 A. The last department that I retired from was Cowpens.

24 Q. Here in Spartanburg County?

25 A. Yes, sir.

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 Q. Chief Butler, are you familiar with a store, a Li'l
2 Cricket store located on Road 41 and Blackstock Road in
3 Spartanburg County?

4 A. Yes, sir, known as 203.

5 Q. Store number 203?

6 A. Yes, sir.

7 Q. Chief, I'd like to show you what's already been
8 marked as State's Exhibit Number 41. This is just a blow up.
9 Do you see that store located anywhere on this map?

10 A. Yes, right up here (indicated).

11 Q. Could you just point to it. I'm sorry maybe --

12 A. Right there (indicated).

13 Q. Up there on one of those dots?

14 A. The right.

15 Q. The right dot? This one here?

16 A. Right.

17 Q. Okay. Chief, I'm going to show you a little blow up
18 here and ask if this is what we were looking at as well. Is
19 this just kind of a blow up of the same map you were just
20 looking at?

21 A. Yes, sir.

22 Q. Chief, I'm going to hand you my pointer here. Could
23 you point for the jury just to the dot that's located at your
24 store.

25 A. Right here (indicated).

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 Q. That's your store there?

2 A. Yes, sir.

3 Q. Chief, how long have you been -- has that store been
4 part of Li'l Cricket chain for all 13 years you've been chief
5 of security?

6 A. No, sir. We just bought that store the 11th month
7 of 2000.

8 Q. In 2000?

9 A. In 2002.

10 Q. In 2002. Are you familiar with that store? Have
11 you ever been to that store before?

12 A. Yes, sir, quite often.

13 Q. I'd like to show you a set of these pictures and ask
14 if you'll just look at these.

15 A. Yes, sir. This is Li'l Cricket 203.

16 Q. All those pictures represent that store?

17 A. Yes, sir.

18 Q. Is that pictures of the store -- those are taken
19 rather recently, aren't they?

20 A. Yes, sir, it is.

21 Q. Do those pictures that you are looking at there, do
22 they accurately represent the store as it is today?

23 A. Yes, sir.

24 Q. Do they accurately or fairly represent the store as
25 it was on June 30th of 2005?

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 A. Yes, sir.

2 Q. Let me ask you a further question, Chief. In
3 preparation for your testimony today have you determined or
4 were you able to determine whether or not there's been any
5 construction done at that store since 2005 or since June 30th,
6 2005?

7 A. Yes, sir, there was no construction done after 2004.

8 Q. So the last time anything has been done at that
9 store is 2004; am I correct?

10 A. Yes, sir.

11 Q. Does the parking lot remain the same today as it did
12 on June 30th, 2005?

13 A. Yes, sir, it does.

14 Q. Is there anything that you can see in those pictures
15 that appear to be different, aside from maybe the gas prices,
16 from what they were in 2005?

17 A. Nothing, sir.

18 MR. MCCARTY: Your Honor, I'd ask at this time that
19 these pictures be admitted in evidence. I think it's 20
20 through 29, State's.

21 MR. GODFREY: Without objection.

22 THE COURT: All right, 20 through 29 without
23 objection.

24 (WHEREUPON, State's Exhibit Numbers 20 through 29,
25 Photographs, were admitted into evidence.)

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 BY MR. MCCARTY:

2 Q. Chief, I'm going to put some of these pictures up on
3 the overhead here for a second and see if you can walk me
4 through it. This is State's Number 22. What are we looking
5 at here?

6 A. You are looking at the front of the store on
7 Blackstock Road.

8 Q. The store itself is on Blackstock; am I correct?

9 A. Yes, sir. This is the road right here (indicated).
10 It goes on over across the interstate.

11 Q. Let me go back. Let me go back and look at 2 other
12 pictures that are up here. These are State's 20 and 21. See
13 if we can -- well, let me look at this one first, State's
14 Exhibit Number 20 here. Chief, what is that road out there to
15 the left?

16 A. This road right here?

17 Q. Yes, sir.

18 A. That's Blackstock Road. That's going back toward
19 Spartanburg, and this way it's going across the bridge, which
20 is over 85 business.

21 Q. Let's look at this picture here. Is that what you
22 are talking about?

23 A. Yes, sir.

24 Q. Again, that's the same roadway that runs right in
25 front of that store; am I correct?

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 A. Yes, sir, it comes in the parking lot right here.
2 You can come in right here from this side and right here from
3 the left (indicated).

4 Q. Those points of ingress and egress where you enter
5 and exit the store that you just pointed out, there seems to
6 be a little island there. Do you see that?

7 A. Are you talking about right here (indicated)?

8 Q. Yes, sir.

9 A. Yes, sir.

10 Q. Was that in the parking lot in 2005?

11 A. Yes, sir.

12 Q. Chief, I'm just going to show these pictures just so
13 the jury can see them as well. Again, this is just another
14 shot of storefront; am I correct?

15 A. That's correct.

16 Q. And, again, we're looking from Blackstock Road into
17 the store?

18 A. Blackstock Road into the store.

19 Q. Chief, the next picture I want to show you is
20 State's Exhibit Number 24. What are we looking at there?

21 A. You're looking at an angle from the left coming from
22 Spartanburg, and that's the driveway in the left.

23 Q. Chief, we see a Budweiser truck over there on the
24 left. Does that look like the truck, to your knowledge,
25 making a delivery to that store?

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 A. Yes, sir. They make deliveries all the way up to
2 4 o'clock. There's no deliveries after 4 o'clock.

3 Q. Maybe I didn't hear you there. Could you just
4 repeat that.

5 A. I said they make deliveries all during the day up
6 until 4 o'clock, and after 4:00 there are no deliveries.

7 Q. Is that for Budweiser or anyone?

8 A. That's for anybody.

9 Q. So anybody who delivers merchandise to that store
10 has to deliver before 4 o'clock in the afternoon?

11 A. Yes, sir.

12 Q. So is it safe to say that at 8 o'clock at night or
13 8:30 at night there would not be a delivery truck sitting
14 there?

15 A. There would not be.

16 Q. Chief, I want to show you another picture here.
17 Again, if you could just describe to the jury what we are
18 looking at here.

19 A. We are looking at the angle of Blackstock coming in
20 on the right-hand side like you're coming across that bridge.

21 Q. Chief, just 2 more pictures briefly. I'll show the
22 jury this picture here. If you could just tell me what we
23 have here.

24 A. Right here you have the cars parked in front.
25 That's the manager's car there. That's my car there, and then

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 all the cars are parked along there, in the front of the
2 parking lot.

3 Q. And then finally just this last picture here if you
4 could just tell us approximately what are we looking at there.

5 A. You are looking at Blackstock Road where you could
6 come in from this way coming from Spartanburg and this way
7 from across the bridge coming in (indicated).

8 Q. All right. Thank you, Chief.

9 Chief, I want to ask you, at this store is there
10 security video?

11 A. Yes, sir, there is.

12 Q. And I believe it's already admitted into evidence,
13 and I want to talk to you about something on that video, if we
14 can, for just a second. I'll show you just where we're at
15 with this real quick. Chief, can you see that video that we
16 have up there on the screen?

17 A. Yes, sir. There's a customer there and that's the
18 front door.

19 Q. Is that the front door of the store that we've just
20 looked at, all the pictures at?

21 A. Yes, sir, it is.

22 Q. And it looks like there's parking spaces out front;
23 am I correct?

24 A. Yes, sir. Right in front of the door there's 2
25 parking spaces, then there's 1 right here (indicated).

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 Q. Is there a little sidewalk or something for the
2 customers to get into the store at?

3 A. Yes, sir, there's a sidewalk all the way across the
4 front of the store.

5 Q. Now, this security camera video, let me ask you,
6 Li'l Cricket does this video; am I correct?

7 A. That's correct.

8 Q. I want to ask you about the time and the date on it.
9 Can you point to the date and the time on the video for the
10 jury, please.

11 A. Right here (indicated).

12 Q. And that says June 30th of 2005?

13 A. Yes, sir.

14 Q. And the time is 20:46 and 27 seconds; am I correct?

15 A. That's correct.

16 Q. Next we have P-D-T. Can you explain what the P-D-T
17 is.

18 A. That's specific daytime. What it is, the machines
19 come from California and they are already on it and what it
20 is, they don't change them because all they do is change the
21 time.

22 Q. So let me ask you. It being 20:46, and that's a
23 military time, am I correct to saying that's 8:46 p.m.?

24 A. Yes, sir, that is.

25 Q. So at 8:46 p.m. is this, according to this video,

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 8:46 p.m. Pacific time or 8:46 Eastern Standard Time?

2 A. Eastern Standard Time.

3 Q. So the P-D-T is the only thing that is incorrect on
4 the designation of time?

5 A. That's correct.

6 Q. Otherwise the time on the video is the correct time?

7 A. That's correct.

8 Q. Chief, I want to ask you, just play the video just
9 briefly from this point, if I can. We can make this full
10 size; am I correct?

11 A. Yes, sir.

12 Q. And this is actual security footage from inside the
13 store; am I correct?

14 A. That's correct, sir.

15 Q. Pause it right there for one second, Chief.

16 A. Right here there's a car coming in.

17 Q. That's what I was just getting ready to ask you. Do
18 you see a car pull into the parking lot, Chief?

19 A. Yes, sir, it's coming in right there (indicated).

20 Q. Could you tell from the video which way that car
21 made a turn into that big space?

22 A. Yes, sir, it come from this angle over here on
23 Blackstock Road and came in and made a left into the parking
24 spot.

25 Q. Made a left into the parking space?

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 A. Yes, sir, because the gas tanks are out here, and
2 you have to go around it (indicated).

3 Q. Chief, let me do this real quick. Is this Li'l
4 Cricket equipped with outside surveillance, surveillance
5 cameras in the parking lot or the exterior of the building?

6 A. No, sir. We have a camera pointing on the doors,
7 and that's why you can see the car coming in.

8 Q. So nothing on the exterior that would show us the
9 parking lot; am I correct, sir?

10 A. Right, sir.

11 Q. And, Chief, again, this was just the parking lot of
12 that video that we see; am I correct?

13 A. That's correct.

14 Q. Can you approximate, based on being out there, being
15 associated and being in that store approximately what space
16 that vehicle turned into?

17 A. This one right here (indicated).

18 MR. GODFREY: Objection to what's usual.

19 THE COURT: What was the question again?

20 MR. MCCARTY: Your Honor, I was just asking -- tend
21 to ask the witness based on his familiarity with the store if
22 he can show which space the car pulled into in the video.

23 THE COURT: Well, that would be a factual question,
24 I would guess. How does that call for --

25 MR. GODFREY: He's asking him based on his

WAYNE BUTLER - DIRECT BY MR. MCCARTY

1 experience at the store if he can tell how that car went in.

2 Cars can turn in parking lots different ways.

3 THE COURT: Sure. I'll sustain the objection.

4 BY MR. MCCARTY:

5 Q. Chief, let me just show you this picture of the
6 store, see if we can't look at this a little bit. The spaces
7 and the car that we see parked in front of the store there,
8 are those in individual parking spaces, to your knowledge?

9 A. Yes, sir, they are.

10 Q. Is the parking lot lined with parking spaces?

11 A. Yes, sir.

12 Q. Chief, is your testimony that on June the 30th of
13 2005 at 8:30 at night there were no deliveries of merchandise
14 to that store?

15 A. That's correct.

16 Q. What about gasoline deliveries?

17 A. No, sir.

18 Q. And there's been no construction on the store since
19 when?

20 A. Since 2004.

21 MR. MCCARTY: Mr. Butler, if you will, just answer
22 any questions Mr. Godfrey may have of you.

23 MR. GODFREY: No questions, Your Honor.

24 THE COURT: All right. Thank you, sir. You may
25 step down.

THOMAS N. SMITH - DIRECT BY MR. MCCARTY

1 You may call your next witness.

2 MR. MCCARTY: May I have just a moment, Your Honor.

3 THE COURT: Sure.

4 [PAUSE]

5 MR. MCCARTY: Your Honor, the State would like to
6 recall Investigator Tom Smith.

7 THE COURT: All right. Investigator Smith, sir, you
8 are still under oath, please.

9 MR. SMITH: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. MCCARTY:

12 Q. Investigator Smith, I just have a couple brief
13 questions for you. Put this map back up on this thing. Let
14 me hand you my pointer as well. Can you point to the Li'l
15 Cricket store that you just saw on the video that Chief Butler
16 just testified about.

17 A. (Indicated).

18 Q. And can you point to where the defendant, Rodney
19 Nash, was living on June 30th, 2005?

20 A. (Indicated).

21 Q. Investigator Smith, the road that runs in front of
22 -- let me see if I can slide this over so we get a little
23 better picture of the map, the roadway. The road that runs in
24 front of the Li'l Cricket is what street?

25 A. Blackstock Road.

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 Q. Could you direct your pointer in the direction of
2 where the homicide occurred.

3 A. Would have been across town going back this way
4 (indicated).

5 Q. Back that way?

6 A. Yes, sir.

7 Q. To the right of the map?

8 A. Yes, sir.

9 Q. Going to the left would be the direction of the
10 defendant's house; is that correct?

11 A. That's correct.

12 MR. MCCARTY: And, again, I think that would be it.

13 That would be the only question I have, Investigator Smith.

14 THE COURT: Cross?

15 MR. GODFREY: No questions, Your Honor.

16 THE COURT: Thank you, sir. You may step down.

17 MR. MCCARTY: Your Honor, the State would call Joe
18 Powell.

19 JOSEPH D. POWELL, after having been duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MCCARTY:

23 Q. Sir, please introduce yourself just to the jury,
24 please.

25 A. My name is Joseph D. Powell. I'm a forensic chemist

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 that works at the South Carolina Law Enforcement Division in a
2 section called trace evidence.

3 Q. And what exactly does trace evidence do?

4 A. Trace evidence is involved with analysis of many
5 different types of forensic material. We deal with analysis
6 of arson debris; explosives; fibers; paints; distance
7 determination, how far away somebody was when they were being
8 shot; and gunshot residue, meaning determination if someone
9 has fired a weapon or been around a weapon when it was fired.

10 Q. In regards to gunshot residue, do you have any type
11 of training or education specific to gunshot residue or -- and
12 I'm using the term greatly, GSR, right, that would be the
13 proper acronym, is GSR, in that situation?

14 A. That would be correct.

15 Q. Do you have any training --

16 MR. GODFREY: May it please the Court. I will
17 stipulate that Joseph Powell is an expert in the trace
18 evidence and gunshot residue evidence and has been for more
19 than 20 years.

20 MR. MCCARTY: Thank you.

21 THE COURT: All right. You may proceed, sir.

22 MR. MCCARTY: Thank you, Your Honor.

23 BY MR. MCCARTY:

24 Q. Mr. Powell, what is gunshot residue?

25 A. Gunshot residue is a residue which is produced when

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 the hammer of a weapon strikes a material called the primer.
2 We call it gun primer residue or gun primer. This is a shock
3 sensitive material.

4 Upon being struck by the hammer it will ignite.
5 This in turn will ignite the gunpowder. These two materials
6 in combination will cause a high amount of pressure to force
7 the bullet apart. The bullet itself will leave out. The
8 casing will remain behind coming through the barrel and
9 leaving out in the barrel.

10 The material that comes out of this gun is
11 bluish-gray material. It's composed of material from the
12 bullet. It's also from the primer and other materials. It
13 will come out as a cloud and will deposit itself on your hands
14 or any object which is near this weapon when it's discharged.
15 You could see it as a blue-gray smoke or you can smell it when
16 you fire a weapon.

17 Q. Let me ask you about that blue-gray smoke and what
18 comes out. Describe to the jury what its consistency is.

19 A. The consistency of this material is very similar to
20 very fine flour. It has properties that are just like flour.
21 It will get on material, and in the case of hands it will get
22 on the hands and fall into the cracks and crevices of the
23 hands, but unfortunately just like flour if you take your
24 hands and you do something to wipe your hands off you can
25 remove this material, and a little bit of extra work you can

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 remove all the material.

2 Q. Is gunshot residue then like glue and it sticks to
3 your hands?

4 A. No, sir. It doesn't have properties like a glue.
5 It is more like a flour and so thus it's easily removed by
6 wiping or washing your hands.

7 Q. How can someone like yourself determine whether or
8 not a person would have GSR on their hands or on their
9 clothes?

10 A. We have a sampling kit that is used to capture or
11 collect this material. What we do is it's broken up usually
12 into two components, one of which is a flattened piece of
13 aluminum which has a sticky adhesive kind of like Scotch tape,
14 and it's used to go over the surface of the skin to pick up
15 any particles of smoke that may be found on the part of skin.

16 Once we finished covering an area with a particle
17 lift we will then follow up with a cotton swab wetted with a
18 weak acid solution and mop up any residue that may have been
19 left on the skin. These two in combination are analyzed in
20 our laboratory and we look at the levels of materials.

21 If we find a certain amount of materials I take it
22 to a second test to confirm the presence of it by looking for
23 those particles of smoke. If I find those particles of smoke
24 it's gunshot residue.

25 Q. Approximately how many GSR analyses have you done

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 for SLED?

2 A. It would be many, many thousands. When I first came
3 on at SLED I was tasked with the purpose of setting up the
4 gunshot residue for this State. I performed the initial
5 testing, then I began to handle cases throughout the State,
6 and have been involved with it for the past 27 years.

7 Q. Does SLED have any policy or procedure in place for
8 analyzation of gunshot residue, and maybe I'll ask a little
9 bit more than that, about the time frames for which someone
10 must perform that test that you've described?

11 A. Yes, sir. Upon testing this material when someone
12 is alive any type of activity will begin to remove the
13 material, putting your hands in your pockets, wiping your
14 hands, or even if you are in a comatose state just your heart
15 beating will cause the perspiration to absorb the material.

16 I found that after 6 hours every weapon that I
17 tested, everything from the smallest weapon I could shoot,
18 which was a 22 Derringer, all the way up to a 50 caliber, the
19 materials in the hands would be gone after 6 hours. So we
20 have established a policy that if someone is alive, that if
21 the test is administered after 6 hours we do not do anything
22 with that kit. For there is nothing on that kit that's going
23 to be related to that shooting.

24 Now, that's not true for someone who is deceased.
25 When someone has been shot and they have died once the heart

JOSEPH D. POWELL - DIRECT BY MR. MCCARTY

1 stops the clock stops and you can collect that at any time
2 until someone physically washes it off their hands.

3 Q. Sir, in your expert opinion, if I wanted to throw a
4 hypothetical situation out to you, if someone was suspected of
5 firing a weapon and they were not tested until approximately
6 13 hours later would there or would there not be gunshot
7 residue, in your opinion, on their hands?

8 A. If there was -- there would not be gunshot residue
9 from the shooting 13 hours prior. If someone had residue on
10 their hands it would have been because they picked up a weapon
11 and recontaminated themselves but it would not be associated
12 with that initial shooting.

13 Q. If someone, a police agency, had sent a GSR kit to
14 SLED and you looked at the timeframe and it was 13 hours later
15 would you analyze that test?

16 A. No, sir. We would take and we would send it back
17 and send a report out stating that it was beyond the window
18 where we have any evidentiary value, and we would not analyze
19 that kit.

20 Q. So even though it may produce something your opinion
21 is that it would not determine whether or not he fired from
22 the original incident; is that correct?

23 A. Correct. If we ran the kit after 13 hours, if it's
24 a negative that means nothing. We do not know what that means
25 because we're beyond the window. If it's a positive it still

JOSEPH D. POWELL - CROSS BY MR. GODFREY

1 means nothing. It's not associated with that initial
2 shooting. That could only mean that person recontaminated
3 themselves with a weapon sometime within the 6-hour time
4 window.

5 Q. Sir, if you will, just answer any questions that
6 Mr. Godfrey may have.

7 A. Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. GODFREY:

10 Q. Mr. Powell, I just have 2. The standard is from the
11 time of the incident up to 6 hours there's a possibility of
12 being able to get gunshot residue?

13 A. Yes, sir, that is correct.

14 Q. And anything above 6 hours you all will not
15 consider, right?

16 A. That is correct.

17 Q. Now, did you receive any gunshot residue test at
18 SLED from this case?

19 A. No, sir. We did not receive any kits involving this
20 -- anyone involved in this case.

21 MR. GODFREY: Thank you, Mr. Powell.

22 MR. MCCARTY: Nothing in redirect, Your Honor.

23 THE COURT: Thank you, Mr. Powell. You may step
24 down.

25 MR. POWELL: Thank you, sir.

1 MR. LEIBERT: Your Honor, may we approach?

2 THE COURT: Yes.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: Ladies and gentlemen -- and this occurs
5 quite often during a trial. One of the witnesses who the
6 State intends to call is a physician who's currently working.
7 We didn't know when we were going to need him and so it may
8 take us about 15 minutes or so to get him over here.

9 So we're going to -- even though typically we just
10 got started, we're going to go ahead and take a break. I
11 think it's going to probably be about 15 minutes or so. So
12 I'll get you to return to your jury room.

13 I don't smoke but if any of you do and you feel like
14 this is a good opportunity for you to do so, if you would like
15 to do that I can arrange that for you. One of the bailiffs
16 will go out with you and allow you to do that.

17 If you're a nonsmoker but you are envious because a
18 smoker gets to go outside and enjoy the weather and you want
19 to go you can do that as well, or just make yourself
20 comfortable in the jury room. But we're going to take a short
21 break now and they are going to try to get that physician
22 here, okay?

23 So everyone please remain seated while the members
24 of the jury are excused.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 3:08 p.m.)

2 THE COURT: All right. Court will be in recess for
3 about 15 minutes or you all just let me know if he gets here
4 quicker.

5 MR. LEIBERT: Yes, sir, Your Honor. Thank you. I
6 know they went to call him.

7 (WHEREUPON, a brief recess was taken.)

8 THE COURT: We're going to wait for just a moment.
9 Several of the jurors have just gotten their drinks, and I
10 told them if they want to bring them in they can do that. So
11 I'm going to let them get their drinks all situated then we'll
12 bring them in and get started.

13 Anything we need to take up before they come in?

14 MR. LEIBERT: Your Honor, can we approach on a
15 matter?

16 THE COURT: Sure.

17 (WHEREUPON, a bench conference was had.)

18 THE COURT: All right. Just for the record, I've
19 talked to the attorneys for both the State and the defense and
20 they have stipulated that State's Exhibits 31, which is a
21 45-caliber bullet that was removed from the victim, and
22 State's Exhibits 32 and 33, which are shell casings which were
23 retrieved from the Road, those are stipulated as
24 being admitted into evidence, and so there's no objection and
25 those will be admitted without objection.

1 (WHEREUPON, State's Exhibit Numbers 31, 32 and 33
2 were admitted into evidence.)

3 THE COURT: Am I clear that there is a stipulation
4 that forensics tests cannot say whether they were fired from
5 the same weapon but are consistent with being fired from a
6 45-caliber weapon; is that a stipulation?

7 MR. LEIBERT: Yes, sir.

8 MR. GODFREY: That's correct, Your Honor.

9 THE COURT: All right. Those stipulations are a
10 part of the record.

11 Is there anything else before we bring the jury in?

12 MR. LEIBERT: No, sir, I believe we're ready.

13 (WHEREUPON, Court's Exhibit No. 1, a Stipulation
14 Document, was marked and made a part of the record.)

15 THE COURT: All right. Please ask the members of
16 the jury to join us.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 3:42 p.m.)

19 THE COURT: All right. Ladies and gentlemen, we're
20 going to resume now.

21 The State may call your next witness.

22 MR. MCCARTY: Thank you, Your Honor. Your Honor,
23 the State would call Dr. David Wren.

24 THE COURT: Dr. Wren, if you would come around and
25 be sworn please, sir.

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 DR. DAVID WREN, after having been duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCCARTY:

5 Q. Dr. Wren, could you tell the jury what your
6 profession is.

7 A. I'm a medical doctor, with my professional training
8 in pathology.

9 Q. Please describe what pathology is.

10 A. Pathology is defined as the study of the disease
11 processes of the body. Pathology itself is divided into two
12 broad categories in the practice of medicine. One is clinical
13 pathology which is involved with interpreting, deciding on
14 appropriate tests and acting as a consultant to physicians on
15 basically blood work. It's divided into microbiology and
16 transfusion medicine, chemistry, blood banking. Those are the
17 major categories.

18 Then the other branch of pathology is anatomic
19 pathology which is concerned with tissue pathology, whether
20 cytology, which is actual individual cells, interpretation of
21 those, or tissues that are removed at surgery to determine the
22 extent of a disease process. The actual interpretation is
23 whether it's benign or malignant, and whether it's infectious
24 or otherwise to help the physician further treat an
25 individual.

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 Now, anatomic pathology has several subspecialty
2 categories. One is surgical pathology, which is actually
3 interpreting tissues that are removed either in a physician's
4 office or at surgery to determine, as I said, whether
5 something is benign or malignant, whether it's infectious or
6 immune or to give the doctor a diagnosis as to what he could
7 further treat the individual for, why the tissue was removed.

8 Another subspecialty is cytology, which is
9 interpretation of cells. Whether they be pap smears or non
10 genital cytology, tissues are examined for -- or cells are
11 examined for sputum, fluids removed from the lung cavities, or
12 the abdominal cavity, or fluids that are removed by fine
13 needle aspirate from -- basically it's fluid but it's cells
14 also from various lesions that one might see to determine
15 whether, again, something is benign or malignant.

16 Then a subcategory of surgical pathology or anatomic
17 pathology is autopsy pathology, which is in a classical
18 hospital setting, is autopsies of hospital patients. But
19 there is a subspecialty of anatomic pathology called forensic
20 pathology, which is medical legal examination of anything
21 that's connected with medical problems, if they are connected
22 with legal interpretations.

23 And as such, the majority of the work of a forensic
24 pathologist is to do autopsies either as a medical examiner or
25 as an agent of the coroner to try to determine the

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 circumstances surrounding death and one of the 5 manners of
2 death to determine whether further action is needed for the
3 health and safety of the community or whether nothing else
4 needs to be done if it's nature death.

5 Q. Thank you. Dr. Wren, could you briefly tell the
6 jury what your education is in this field and elsewhere.

7 A. Well, I have a bachelor's degree, a master's degree
8 and a doctorate of philosophy degree in chemical engineering
9 from Clemson University. I have a medical doctor degree from
10 the Medical University of South Carolina. I did a combined
11 anatomic and clinical pathology residency at South Carolina --
12 at the Medical University of South Carolina, that is.

13 And while I was at the Medical University from -- I
14 started my residency on February the 1st, 1979. Before my
15 class graduated from school I had finished early. And from
16 that time until the end of January 1983 I did autopsies --
17 well, not from that time, but I did my residency until the end
18 of December of 1982, and while I was there also from July of
19 1980 until the end of January of 1983 I was assistant medical
20 examiner of Charleston County.

21 And from just about that time -- that whole length
22 of time, I did autopsies one weekend a month of all the
23 forensic pathology cases that were sent to the Medical
24 University at that time, and at that time almost all of them
25 from all over the State were being sent except for Greenville,

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 Greenwood, Richland, and Sumter, and Horry County. Almost all
2 of the others were sent to the Medical University.

3 Q. Dr. Wren, and I may have asked this, and I'm sorry
4 if I did, can you tell the jury where you are currently
5 employed at?

6 A. I'm the laboratory medical director of Spartanburg
7 Regional Medical Center. I work -- I'm the president of
8 Spartanburg Pathologist Consultants who has the contract with
9 Regional, and with Mary Black Hospital, as well as Wallace
10 Thompson to do their clinical pathology and their anatomic
11 pathology but we work independently, but I do work at Regional
12 all the time.

13 Q. Dr. Wren, can you estimate in your career
14 approximately how many autopsies you have done?

15 A. About 3,000 now.

16 Q. And, Dr. Wren, have you ever testified in courts in
17 Spartanburg County or other courts in this State as an expert
18 in the field of pathology?

19 A. Yes. I've been qualified as an expert in the field
20 of forensic pathology in Anderson, Greenville, Spartanburg,
21 Union, York, Chester, I believe, Lancaster, Greenwood,
22 Newberry, and a host of counties in the lower part of the
23 State, including Orangeburg, and Charleston, and Berkeley, and
24 those counties along the coast.

25 MR. MCCARTY: Your Honor, at this time, I would

DR. DAVID WREN - EXAMINATION BY MR. GODFREY

1 offer Dr. Wren as an expert in the field of pathology and
2 further in forensic pathology.

3 MR. GODFREY: Say that again.

4 MR. MCCARTY: As an expert in pathology and forensic
5 pathology.

6 MR. GODFREY: May it please the Court. May I ask a
7 question of the witness?

8 THE COURT: Sure. Absolutely.

9 EXAMINATION

10 BY MR. GODFREY:

11 Q. As I understood your testimony, you are clearly
12 certified in clinical and anatomic pathology?

13 A. That's correct.

14 Q. And you are board certificated in that area?

15 A. I didn't say that but I am.

16 Q. Are you board certificated in forensic pathology?

17 A. No. I qualified for the boards but for the first
18 six or seven years that I was here in Spartanburg I didn't do
19 very many autopsies so I never took the exam.

20 MR. GODFREY: Your Honor, I would say that he is an
21 expert in the field of pathology but not forensic pathology.

22 MR. MCCARTY: Your Honor, just expert in pathology.
23 We'll ask for that instruction.

24 THE COURT: All right.

25 BY MR. MCCARTY:

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 Q. Dr. Wren, on July 1st of 2005, did you perform an
2 autopsy on a person by the name of Terrell Farr?

3 A. Yes. I performed an autopsy on an individual, a
4 young black male identified by the coroner's office as Terrell
5 Farr in Spartanburg Regional Medical Center autopsy room on
6 July the 1st, 2005, beginning that autopsy at 10:20 a.m.

7 Q. Dr. Wren, based upon that autopsy can you with a
8 degree of medical certainty give an expert opinion as to the
9 cause of the death of Terrell Farr?

10 A. The cause of his death was an exsanguination,
11 meaning he bled to death from a gunshot wound to his left,
12 basic armpit, that went through and through his left lobe of
13 the lung and through and through his heart encompassing both
14 ventricles, which are the pumping part of the heart, and so I
15 just assigned the cause of death as a large caliber gunshot
16 wound to the chest. I can talk forever about the mechanism,
17 but nevertheless, the cause of death was a gunshot wound.

18 Q. Dr. Wren, did you remove a bullet or a bullet
19 fragment from Terrell Farr?

20 A. Yes. I removed a large caliber bullet from just
21 beneath in the area of the sternum, at the lower border of the
22 sternum. It's called the xiphoid-sternal junction. That
23 bullet had passed through the lower lobe of the left lung and
24 through and through the heart and came to rest there, not
25 exiting the body.

DR. DAVID WREN - DIRECT BY MR. MCCARTY

1 Q. Dr. Wren, if I can show you what's marked as State's
2 Exhibit Number 31. Do you recognize that, sir?

3 A. I described the bullet that I removed as a copper
4 jacketed lead bullet. It had visible lands and grooves. It
5 had only slight distortion of the bullet. It measured .45
6 inches in diameter and 7/10ths or 70/100ths of an inch in
7 length, and on the base of that bullet I placed the number 8,
8 the arabic number 8, and the Greek letter for delta which is
9 on here, and this actually fits that description.

10 Q. Dr. Wren --

11 A. I also labeled the vial that it's in FA05158, which
12 is the autopsy number, number 158 and 2005. I signed it,
13 depicted that the area was from the chest, and I dated it
14 7-1-05.

15 Q. Doctor Wren, what did you do with that bullet after
16 it had been removed and you had done your report on it?

17 A. I forwarded it to Officer Todd W. Ruffner of the
18 Spartanburg County Police Department, who signed for that
19 bullet at 11:35 a.m.

20 MR. MCCARTY: Thank you, Dr. Wren. If you will, if
21 Mr. Godfrey has any questions, please answer those for him.

22 MR. GODFREY: Thank you, Dr. Wren. I have no
23 questions.

24 THE COURT: Thank you very much Dr. Wren.

25 MR. LEIBERT: The State would call Ms. Lilly

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 Gallman, Your Honor.

2 LILLY GALLMAN, after having been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LEIBERT:

6 Q. Ma'am, please tell us your name.

7 A. Lilly Smalls Gallman.

8 Q. I believe you have laryngitis; is that correct?

9 A. Yes, I do.

10 MR. LEIBERT: Your Honor, would you inquire if the
11 jury can hear her. She's having trouble speaking.

12 THE COURT: Ladies and gentlemen, Ms. Gallman has,
13 from what I understand, has severe laryngitis. She doesn't
14 feel bad but she has a hard time speaking. So if at any time
15 you have a difficulty hearing her if you just raise your hand
16 and let us know.

17 And, Ms. Gallman, if you can, speak into that
18 microphone, hopefully that will help amplify your voice.

19 MS. GALLMAN: Yes, sir.

20 MR. LEIBERT: Thank you, Your Honor.

21 BY MR. LEIBERT:

22 Q. Ms. Gallman, where are you employed?

23 A. I'm employed with the South Carolina Law Enforcement
24 Division.

25 Q. And what specific division do you work for?

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 A. I'm a forensic DNA analyst. I work in the DNA
2 department.

3 Q. And what is your title?

4 A. Forensic DNA scientist.

5 Q. How long have you been doing that?

6 A. I've been employed with SLED for 18 years.

7 Q. Please give the jury a very brief background of your
8 education.

9 A. I have a degree in biology from the University of
10 South Carolina. When I received my degree I continued working
11 at the University in the area of genetics. I did cloning of
12 DNA, sequencing of DNA, and a lot of the tests that I utilized
13 at my job with SLED.

14 I began working with South Carolina Law Enforcement
15 Division in January of 1990. Since that time, I've attended
16 the FBI DNA typing schools, both the beginners and the
17 advanced. I've taken advanced courses in genetics and
18 statistics, all of which to utilize in the job that I do now.

19 I've also been trained by serologists in the area of
20 serology so I would be able to check items for identification.

21 Q. So you do DNA analysis?

22 A. Yes.

23 Q. You've been doing that for 18 years?

24 A. Yes, at SLED.

25 Q. Have you ever been qualified by a court as an expert

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 in DNA analysis?

2 A. Yes, I have.

3 Q. Approximately how many?

4 A. Between 50 and 60 times.

5 MR. LEIBERT: Your Honor, at this time, I'd offer
6 Ms. Gallman as an expert in DNA analysis as a forensic
7 scientist.

8 MR. GODFREY: Without objection.

9 THE COURT: Without objection.

10 MR. LEIBERT: Thank you, Your Honor.

11 BY MR. LEIBERT:

12 Q. Ms. Gallman, did you have an opportunity to analyze
13 some items in this case?

14 A. Yes, I did.

15 Q. Now, tell the jury what items you actually tested.

16 A. I receive what we call a buccal swab, which is just
17 a cotton swab where you wipe it on the inside of a person's
18 mouth so you'll be able to get some of their cells to be able
19 to extract DNA from, and the buccal swab --

20 Q. Let me stop you there. I'm showing you State's
21 Exhibit 38. Is that the buccal swab?

22 A. Yes. They took 2 swabs. That's why you see 2
23 containers in here. They took 2 swabs from Mr. Nash.

24 Q. Okay. Go on. Is that like a big Q-tip?

25 A. Yes. See how long the box is? That's how long the

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 stick is, but on the end there's cotton, like a Q-tip, and it
2 was swabbed on the inside of his mouth, both the left and
3 right cheek.

4 Q. Are you able to then determine someone's DNA from
5 doing that?

6 A. Yes, because everyone's DNA is the same all over
7 your body. So if you swab on the inside of someone's mouth or
8 you get a buccal sample, or even semen, whatever sample you
9 have from this person's body the DNA will be the same.

10 Q. All right. I hand you what's been marked as State's
11 Exhibit 36. This is a cigarette butt. Did you analyze that
12 for DNA?

13 A. Yes, I did.

14 Q. Also State's Exhibit 37, which I believe was a
15 cutting away from a ball cap, did you examine that as well?

16 A. Yes, I did.

17 Q. Explain very briefly to the jury what DNA is and how
18 you analyze it.

19 A. DNA stands for deoxyribonucleic acid. Commonly,
20 this is how we do it in court, we try to explain it as in that
21 you get part of your DNA from your mother and part from your
22 father. Everyone's DNA is unique except for identical twins
23 because they're coming from the same egg. Since everyone's
24 DNA is unique you're able to determine whether you have a
25 match or you do not have a match between evidence that's

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 submitted in a case.

2 Q. In this case, did you do an analysis -- what were
3 your findings on the analysis of the cap?

4 A. The DNA profile developed from the cap, which the
5 cutting is our item number 4.1, Rodney Nash is excluded as
6 contributor to that item.

7 Q. How about the DNA analysis of the cigarette butt?

8 A. Okay. I'm reading from my report.

9 Q. All right. That's fine. I don't believe there's
10 any objection. Go ahead.

11 A. The DNA profile developed from item 5 is a mixture,
12 which is the cigarette butt. Rodney Nash cannot be excluded
13 as contributor to this mixture. Once we determine that we
14 have -- this person can be included in a sample, in this
15 particular time it's a mixture, we then apply statistical
16 value to that particular profile, DNA profile. And I'm
17 reading off of my report; The probability of randomly
18 selecting an unrelated individual who could contribute to this
19 mixture is approximately 1 in 130,000.

20 Q. That means Rodney Nash's DNA is on the cigarette
21 butt?

22 A. He is included in that mixture.

23 Q. And there's someone else's mixture on there that's
24 unknown?

25 A. That's correct.

LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 Q. All right. Please step down here and show the jury
2 very quickly how you analyze that.

3 A. (The witness complied).

4 Q. All right. Let's start with table 1.

5 A. Okay. This is the second page of my report. All
6 the information that we gather on a particular person's DNA
7 profile and the evidence is put inside this chart. So the
8 first chart is coming from the profile plus the kit that we
9 use to develop a DNA profile on evidence; which is 4.1 and 5,
10 and a standard which is the buccal swab coming from Mr. Nash.

11 Q. So 4.1 is the cap and 5 is the cigarette butt; is
12 that correct?

13 A. That's correct.

14 Q. All right. And tell them, what are your findings
15 and how Mr. Nash is included in the cigarette butt?

16 A. Okay. Along the top you see these numbers. All of
17 these are different areas on the DNA chromosome. This last
18 one is amelogenin, which is the sex chromosome. In males
19 you'll will see XY. In females you'll see XX.

20 Okay. When you look at the evidence for the item
21 number 5, which is the cigarette butt, you'll see Mr. Nash at
22 the top and you'll see the cigarette butt. He's the 15-17
23 here, and the evidence is a 15-17.

24 In the next column he's a 15-16 and evidence is
25 15-16. The next column he's a 22-23 and I have a 20-22-23.

LILLY GALLMAN - CROSS BY MR. GODFREY

1 You see his 22 and 23 there. And as you go along looking at
2 the different columns you'll see Mr. Nash in there. Here he's
3 11-13 and 11-13 here, 27-29, 27-29, 13-15, 13-15, 12-14,
4 12-14, 11-12 and a 10.

5 Q. All right. Then as to the cap he was excluded
6 because the numbers don't match?

7 A. Yes.

8 Q. Or some of them don't match.

9 A. Yes. If you look at the cap here you see a 15 but
10 there's no 17. Here both of -- his alleles, are what we call
11 them, numbers are here. But when you go to the next one he's
12 a 22. There's no 22 here. The 11 is missing from here, and
13 when you get here definitely you don't see him because he's a
14 27-29 and there's a 28-30.

15 MR. LEIBERT: All right. Thank you very much. Have
16 a seat and answer any questions that Mr. Godfrey may have.

17 CROSS-EXAMINATION

18 BY MR. GODFREY:

19 Q. Ms. Gallman, I just have 2 questions. If I
20 understood what you testified to the cigarette butt, the DNA
21 in that cigarette butt, part of it was Rodney Nash and then
22 there is somebody else's DNA on there?

23 A. That's correct.

24 Q. So it looks like perhaps somebody shared a
25 cigarette?

LILLY GALLMAN - CROSS BY MR. GODFREY

1 A. Yes.

2 Q. On the testing from the cap, there is no Rodney Nash
3 DNA on the cap?

4 A. He's excluded from the cap.

5 MR. GODFREY: Thank you. Nothing further.

6 MR. LEIBERT: Thank you, Your Honor. We have no
7 further questions. May she be excused? Her son is graduating
8 from college in a couple hours.

9 THE COURT: Well, congratulations. You need to go.

10 Any objection?

11 MR. GODFREY: Absolutely not.

12 THE COURT: Thank you very much for being here,
13 ma'am.

14 MR. LEIBERT: May we approach, Your Honor?

15 THE COURT: Sure.

16 (WHEREUPON, a bench conference was had.)

17 THE COURT: Ladies and gentlemen, Mr. Leibert is
18 going to read something to you in the record but before he
19 does let me explain. There are times during the course of any
20 trial that there's no controversy or there's no difference of
21 opinion regarding certain pieces of evidence. It is what it
22 is. And so the parties can agree that it is what it is, so
23 they stipulate to it.

24 A stipulation is simply an agreement. The parties
25 just agree that the item is what, in fact, it is and then it's

1 admitted into evidence. There have been a couple of
2 stipulations in this case and Mr. Leibert is going to read to
3 you the stipulations that the 2 sides have agreed on what he's
4 going to read to you.

5 MR. LEIBERT: Thank you, Your Honor. May it please
6 the Court?

7 THE COURT: Yes, sir.

8 MR. LEIBERT: Ladies and gentlemen, we stipulate as
9 follows. State's Exhibit 31, which is the bullet that
10 Dr. Wren just used is a 45-caliber bullet that was removed
11 from the body of Terrell Farr.

12 We further stipulate that exhibits 32 and 33, and
13 you will have these back in the jury room, were the shell
14 casings retrieved at Road by Investigator Randy
15 Bogan, and further these were 45-caliber shell casings.

16 Finally, we stipulate that forensic tests cannot say
17 whether they were fired from the same weapon but are
18 consistent with all being fired from a 45-caliber weapon.

19 Your Honor, that is our stipulation.

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

21 All right. Ladies and gentlemen, you've worked
22 hard, you deserve to be rewarded. We're going to recess for
23 the afternoon, so you get off a little early today. And I do
24 anticipate that we'll conclude this trial at some point
25 tomorrow. So you'll more than likely get the case for you to

1 deliberate probably sometime tomorrow.

2 Let me share with you or caution you, as I did
3 yesterday, that when you go home this evening, when you went
4 home yesterday you just knew that you were on this case but
5 you didn't know anything more about it than what we discussed.
6 But now you've heard some of the evidence and so when you get
7 home again loved ones will probably be curious as to what went
8 on today.

9 If you would, please, as I told you yesterday, just
10 politely tell them that you anticipate that the case will
11 conclude tomorrow and you'll get it for your deliberations.
12 So if they can just wait one more day you'll tell them all
13 they want to know tomorrow when you get home, but you are not
14 to have any conversation with anybody about this case today,
15 this evening.

16 Please, if you can, I know that sometimes we don't
17 have control over this. When I came up here Monday morning I
18 drove up Monday morning from Florence, which is about a two
19 and a half hour drive, it's not a bad drive, and I thought I'd
20 get a good night sleep and drive up here. I didn't plan on my
21 little boy running a fever and getting sick during the night
22 and I was up with him all night long. Things happen you don't
23 plan on but to the extent you can, try to get a good night's
24 rest tonight.

25 As you can tell from your service today jury service

1 is not physically taxing as far as muscular but it is mentally
2 challenging and it is mentally taxing. So obviously if you
3 can get a good night's rest it will better prepare you for
4 your day tomorrow, and if you can get a good meal that tends
5 to have you well refreshed and ready to go tomorrow. So if
6 you can do that tonight, please try to do that.

7 If you would be back in your jury room at 9:30 in
8 the morning we'll get started shortly thereafter.

9 So if everyone would please remain seated while the
10 members of the jury, you are free to go, and we'll see you at
11 9:30 in the morning.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 4:12 p.m.)

14 THE COURT: All right. Before you all get out of
15 here for the day let me give you what I've prepared thus far
16 regarding the jury charge and the verdict form. And if you
17 would, just look over that this evening then tomorrow if there
18 are any changes or if there's any additions or deletions you
19 want to make, or whatever, just we can talk about that in the
20 morning, okay?

21 So if there's nothing else, we'll stand at ease
22 until tomorrow morning at 9:30, okay?

23 MR. LEIBERT: Thank you very much, Your Honor.

24 (WHEREUPON, the trial of this case was recessed for
25 the day.)

1 and 32 and 33. We would offer those into evidence. State's
2 Number 16, a photograph of Road. Exhibit 39 and
3 40 are 8-by-11 maps; 41, Your Honor, is the large map that
4 we're offering. Then Exhibit 23 [sic] is the cigarette butt.
5 Exhibit 37 is the cutting from the baseball cap, and Exhibit
6 38 are the buccal swabs. Thank you, Your Honor.

7 THE COURT: All right.

8 MR. GODFREY: And that would be without objection.

9 THE COURT: All right. Without objection those are
10 all in.

11 (WHEREUPON, State's Exhibit Numbers 16, 31, 32, 33,
12 37, 38, 39, 40 and 41 were admitted into evidence.)

13 THE COURT: And, Mr. Godfrey, I'd be happy to hear
14 from you regarding any motions at the close of the State's
15 case, sir.

16 MR. GODFREY: May it please the Court. The defense
17 would move for a directed verdict in this case. If you take
18 the evidence in the light most favorable to the State the
19 defense does not believe that they have put forth a prima
20 facie case and we would ask that the case should be dismissed.

21 THE COURT: Thank you, sir. I'm going to
22 respectfully deny that request. At this stage, the Court
23 obviously needs to be concerned about the existence of
24 evidence but not the weight of evidence. The jury is to give
25 the evidence whatever weight they feel is appropriate. We do

1 have testimony from an eyewitness and I guess if the jury
2 believes that or doesn't believe that, but that's certainly
3 their call. So I'm going to respectfully deny your motion.

4 Anything else at this time?

5 MR. LEIBERT: No, sir, Your Honor.

6 MR. GODFREY: No, Your Honor.

7 THE COURT: Now, Mr. Godfrey, have you discussed
8 with Mr. Nash whether or not he is going to take the stand?

9 MR. GODFREY: Yes, Your Honor, I have discussed that
10 with him. I have advised him of his constitutional right
11 regarding that matter, and he has decided to testify.

12 THE COURT: All right. That's fine.

13 Mr. Nash, if you would, sir, let me just talk with
14 you briefly about that. I know you've talked with Mr. Godfrey
15 but you understand, sir, that you do have the right to remain
16 silent, that the burden of proof is on the State. You do not
17 have to do anything. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, I've talked with counsel, briefly.
20 You understand that if you do decide to take the stand that
21 the State's attorney would have an opportunity to question you
22 and that you would have to respond to their questions. You
23 understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And also it's my understanding that --

1 and I think we've reviewed any prior record that you have. It
2 is my understanding that you have a habitual traffic offender
3 conviction from back in 2003, I think it is.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You understand they'll be able to, not
6 go into details, but they'll be able to ask you whether you
7 have that conviction? Do you understand that, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right, sir. Now, this decision to
10 testify, has that been your decision or has anyone coerced you
11 into that?

12 THE DEFENDANT: It's my decision, Your Honor.

13 THE COURT: All right, sir. Thank you very much.
14 You may have a seat.

15 All right. What I'm going to do then, if there's
16 nothing further, before the jury comes out I'm going to go
17 ahead then and just when they come out, Mr. Leibert, I'll
18 recognize you for -- well, I'll just say State may call your
19 next witness, and you can indicate you wish to put the
20 stipulation on the record. Do that and then you can rest.

21 And at that time, you know, I'll note that we've
22 taken up motions then I'll recognize the defense for your
23 first witness, okay?

24 All right. Anything else before the jury comes out?

25 MR. LEIBERT: No, sir, Your Honor.

1 MR. GODFREY: No, Your Honor.

2 THE COURT: All right. Please ask the members of
3 the jury to join us, sir.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 10:15 a.m.)

6 THE COURT: Good morning, ladies and gentlemen. I
7 hope everyone had a good evening and ready to go back to work
8 this morning. You recall when we left off the State -- we
9 were still in the State's case, and so we'll continue at this
10 time.

11 Mr. Leibert, you may call your next witness.

12 MR. LEIBERT: May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 MR. LEIBERT: Ladies and gentlemen, the last piece
15 of evidence we have is State's Exhibit 42. The parties agree
16 that this is a photograph of Donnie Nash.

17 THE COURT: All right. And the State's 42 has been
18 moved into evidence?

19 MR. LEIBERT: Yes, sir, Your Honor.

20 (WHEREUPON, State's Exhibit No. 42, a Photograph,
21 was admitted into evidence.)

22 THE COURT: And, ladies and gentlemen, as you
23 recall, yesterday I explained to you that there are certain
24 pieces of evidence that the State and the defense agree on and
25 that's a stipulation. So they've stipulated to that

ALEX NASH - DIRECT BY MR. GODFREY

1 photograph of Donnie Nash, that that is a photograph of Donnie
2 Nash, and that is in evidence. All right.

3 MR. LEIBERT: Your Honor, the State rests.

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

5 We have taken up, ladies and gentlemen, motions that
6 the Court needs to address at the close of the State's case,
7 and we have done that.

8 And so at this time we'll continue to move forward
9 and would recognize Mr. Godfrey, for your first witness.

10 MR. GODFREY: May it please the Court. The defense
11 calls Alex Nash.

12 THE COURT: All right. Would you ask Mr. Nash to
13 come in, please.

14 Mr. Nash, if you would come forward, please, sir, to
15 be sworn.

16 ALEX NASH, after having been duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GODFREY:

20 Q. What is your name?

21 A. My name is Alex Nash.

22 Q. Are you related to Rodney Nash?

23 A. Yes, I am.

24 Q. How are you related?

25 A. He's my brother.

ALEX NASH - DIRECT BY MR. GODFREY

1 Q. Back on June 30th of 2005, do you recall where you
2 were living?

3 A. On Road.

4 Q. Who was living with you there?

5 A. James Thomas and Richard Rice.

6 Q. Do you remember that day?

7 A. Yes, I do.

8 Q. Do you recall seeing Rodney that day?

9 A. Yes, I do.

10 Q. About what time did you see Rodney Nash?

11 A. About like 3 o'clock.

12 Q. And do you recall how long Rodney was at your house?

13 A. He left around 5:00. Between 5:00 and 5:30.

14 Q. And how do you remember that?

15 A. Because I had to go to court that day, traffic
16 court.

17 Q. And where was your traffic court?

18 A. Right downstairs in this building.

19 Q. In this building?

20 A. Yes, sir.

21 Q. And they have traffic court that late in the
22 afternoon?

23 A. Yes, sir. They were running late for some reason
24 and I had to be there at 6 o'clock, and I had left like at
25 5:30.

ALEX NASH - DIRECT BY MR. GODFREY

1 Q. Now, describe the location of your house on Old Farm
2 Road.

3 A. It's right on the corner of Rodney Drive and Old
4 Farm Road.

5 Q. So your house is at the corner?

6 A. Yes, sir.

7 Q. Did you have any problems with people coming in your
8 yard?

9 A. Yes, sir. I got a lot of friends and they like to
10 wait around for me until I get back home.

11 Q. Now, Alex, do you smoke?

12 A. Yes, sir.

13 Q. When you are outside in your house -- at your house
14 on Road smoking what do you do with the cigarette
15 butts?

16 A. I thump them on the ground.

17 Q. Does James Thomas smoke?

18 A. Yes, sir.

19 Q. What does he do with his cigarette butts?

20 A. Just thump them.

21 Q. Does Rodney smoke?

22 A. Yes, sir.

23 Q. When he's outside what does he do with his cigarette
24 butts?

25 A. He'd just thump them.

ALEX NASH - CROSS BY MR. LEIBERT

1 Q. Now, what time again did you leave to go to
2 magistrate's court?

3 A. Around 5:30.

4 Q. Was Rodney there at that time?

5 A. No, he had already left.

6 Q. So he left between 5:00 and 5:30?

7 A. Yes, sir.

8 Q. Did you talk with Rodney again that night?

9 A. No, sir.

10 Q. When you got back from court what did you see?

11 A. My house surrounded with yellow tape and a lot of
12 police.

13 Q. Did the police ask you any questions?

14 A. No, sir.

15 Q. Did you ever talk to the police?

16 A. No, sir.

17 Q. Did they ever ask you anything about where you were
18 that evening?

19 A. No, sir.

20 Q. You never talked to the police at all?

21 A. No, sir.

22 MR. GODFREY: Nothing further.

23 CROSS-EXAMINATION

24 BY MR. LEIBERT:

25 Q. Your yard should have just been loaded with

ALEX NASH - CROSS BY MR. LEIBERT

1 cigarette butts, right?

2 A. Pretty much.

3 Q. You don't know where your brother was from 5:30 to
4 6:00, do you, on June 30th?

5 A. No, sir, I was in court.

6 Q. He wasn't in court with you?

7 A. No, sir.

8 Q. So you don't know where he was from 6:00 to 6:30?

9 A. No, sir.

10 Q. From 6:30 to 7:00?

11 A. Nope.

12 Q. From 7:30 to 8:00?

13 A. No, sir.

14 Q. And 8:00 to 8:15, 8:00 to 8:29?

15 A. No, sir.

16 Q. From 8:00 to 8:40?

17 A. No, sir.

18 Q. And 8:47 p.m. you don't know where he was, do you?

19 A. No, sir.

20 Q. You love your brother very much, don't you?

21 A. Yes, I do.

22 MR. LEIBERT: Thank you.

23 MR. GODFREY: Nothing further of this witness.

24 The defense would call James Thomas.

25 THE COURT: Thank you, Mr. Nash. You may step down,

JAMES THOMAS - DIRECT BY MR. GODFREY

1 sir.

2 JAMES THOMAS, after having been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GODFREY:

6 Q. What is your name?

7 A. James Thomas.

8 Q. Do you recall where you were living back on June the
9 30th of 2005?

10 A. Yes, sir.

11 Q. Where were you living?

12 A. At Road.

13 Q. Who were you living with?

14 A. Alex Nash.

15 Q. Was anybody else living there at the time?

16 A. Reginald Rice.

17 Q. Do you remember that day?

18 A. Yeah.

19 Q. Do you recall seeing Rodney Nash that day?

20 A. Yeah.

21 Q. Do you know about what time it was that you saw
22 Rodney?

23 A. Well, it was early. It was around 3:00, I guess.

24 Q. And what did Rodney do when he got there?

25 A. Well, he washed his car and fed the dogs.

JAMES THOMAS - DIRECT BY MR. GODFREY

1 Q. Was Alex there?

2 A. Yeah, he was there.

3 Q. Did you all have a conversation or what did you do?

4 A. Yeah. We sit outside and talked. Nothing in
5 particular.

6 Q. Was Mr. Rice there that afternoon?

7 A. Yeah, he was there but he left. He left early. He
8 left earlier that day.

9 Q. Did you see him come back?

10 A. No.

11 Q. Do you know how long or do you recall how long
12 Rodney Nash stayed at the house?

13 A. No, I don't.

14 Q. Pardon me, sir?

15 A. No, I don't.

16 Q. Do you have any idea when he left?

17 A. It was probably about 5:30, I guess.

18 Q. Were you at the house the whole time?

19 A. Yeah.

20 Q. Were you present when the incident occurred
21 regarding the shooting?

22 A. No, I wasn't there then.

23 Q. Where were you?

24 A. I had went to the store.

25 Q. And how did you get to the store?

JAMES THOMAS - DIRECT BY MR. GODFREY

- 1 A. I walked.
- 2 Q. Do you recall about what time it was that you went
3 to the store?
- 4 A. I guess about 7:30, I guess.
- 5 Q. And when you got back to the house what did you see?
- 6 A. I seen officers, police and ambulance.
- 7 Q. And what did you do?
- 8 A. I just sit there in the yard.
- 9 Q. Did you see Rodney again?
- 10 A. No, I didn't.
- 11 Q. Did you see Mr. Rice again that night?
- 12 A. No, I didn't.
- 13 Q. Did you see Mr. Rice the next day?
- 14 A. No.
- 15 Q. Mr. Rice lived there, right?
- 16 A. Yeah, he did.
- 17 Q. When was the next time you saw Mr. Rice?
- 18 A. I don't really know.
- 19 Q. Do you still live at Road?
- 20 A. No, I don't.
- 21 Q. You have moved since then?
- 22 A. Yes, I have.
- 23 Q. Did you have any conversation with Rodney Nash after
24 you got back from the store?
- 25 A. No, I didn't. I didn't see him anymore.

JAMES THOMAS - CROSS BY MR. LEIBERT

1 MR. GODFREY: Nothing further.

2 CROSS-EXAMINATION

3 BY MR. LEIBERT:

4 Q. Make sure I understand okay. You walked to the
5 store at approximately what time?

6 A. About 7:30.

7 Q. Is that when you got back or that when you left?

8 A. I left about 20 minutes after, or something like
9 that.

10 Q. After 7:00?

11 A. Yeah.

12 Q. When you left Rodney Nash was gone?

13 A. Yeah.

14 Q. When you came back the tape was already up?

15 A. No, it wasn't no tape up.

16 Q. No tape up. You were there when the shooting took
17 place?

18 A. No, I wasn't.

19 Q. Where were you at 8:30?

20 A. I was at the house sitting in the police car.

21 Q. All right. You weren't there when the shooting took
22 place?

23 A. No, I wasn't.

24 Q. Do you know where you were when the shooting took
25 place?

JAMES THOMAS - CROSS BY MR. LEIBERT

1 A. Yeah, I was at the store.

2 Q. So you didn't see this shooting?

3 A. No, I didn't.

4 Q. You don't know where Rodney Nash was at 8:29 p.m.?

5 A. No, I don't.

6 Q. You don't know where Rodney Nash was 8:47 p.m.?

7 A. No, I don't.

8 Q. Michael Wiggins is your nephew; is that correct?

9 A. Yeah.

10 Q. And he used to come down to and hang
11 out with you, right?

12 A. I never seen him there.

13 Q. Never saw him there one time?

14 A. Nope.

15 Q. All the years you lived there?

16 A. No.

17 Q. You sure about that?

18 A. I'm sure.

19 MR. LEIBERT: All right. Thank you.

20 MR. GODFREY: The defense would call Tamara Nash.

21 THE COURT: Thank you, sir. You may step down.

22 TAMARA NASH, after having been duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. GODFREY:

TAMARA NASH - DIRECT BY MR. GODFREY

1 Q. What is your name?

2 A. Tamara Nash.

3 Q. Are you related to Rodney Nash?

4 A. Yes.

5 Q. How are you related to Rodney?

6 A. I'm his wife.

7 Q. How long have you all been married?

8 A. Four years.

9 Q. Are you all still together?

10 A. We're still married.

11 Q. Are you all still living together or are you

12 separated?

13 A. Separated.

14 Q. Do you all have any children?

15 A. Yes, we have 1 daughter.

16 Q. Back on June 30th of 2005 do you recall where you

17 were living?

18 A. Yes.

19 Q. And where was that?

20 A. At Colony Drive.

21 Q. And how long had you all been living there at that

22 time?

23 A. About 3 years.

24 Q. Are you employed?

25 A. Yes.

TAMARA NASH - DIRECT BY MR. GODFREY

1 Q. Where are you employed?

2 A. White Oak.

3 Q. And what is that?

4 A. Nursing home.

5 Q. And what do you do for them?

6 A. I'm a nurse.

7 Q. Do you remember June the 30th of 2005?

8 A. Yeah.

9 Q. Did you go to work that day?

10 A. Yes.

11 Q. Did you talk with Rodney that day?

12 A. Yes.

13 Q. Was Rodney working that day?

14 A. No.

15 Q. About what time was it that you talked with Rodney?

16 A. I called, I talked to him on my lunch break and I
17 talked to him when I got off from work heading home on the
18 cell phone.

19 Q. Okay. So you talked to him twice that day?

20 A. Uh-huh

21 Q. Once about lunchtime?

22 A. Lunchtime, about 12:30 maybe.

23 Q. Did you know what Rodney was going to do that day?

24 A. No.

25 Q. You say you talked to him again by phone when you

TAMARA NASH - DIRECT BY MR. GODFREY

1 got home from work?

2 A. When I got off from work headed home.

3 Q. Got off from work?

4 A. Yeah, on my way home.

5 Q. About what time was it that you talked with him when
6 you got off from work?

7 A. That was a little after 5:00. Something after 5:00.

8 Q. And where was Rodney then?

9 A. He said that he was headed home, that he would be
10 home in a little bit, on his way home.

11 Q. Were you there when he got home?

12 A. No.

13 Q. Where did you go?

14 A. Choir practice.

15 Q. And what choir do you sing in?

16 A. With my church, church choir, Corner Stone.

17 Q. Is that a regular choir practice night?

18 A. Uh-huh.

19 Q. What church do you go to?

20 A. Corner Stone.

21 Q. And how long does the choir practice last?

22 A. About an hour and a half.

23 Q. After the choir practice what did you do?

24 A. I went home.

25 Q. When you got home was Rodney there?

TAMARA NASH - DIRECT BY MR. GODFREY

1 A. Uh-huh.

2 Q. What was he doing?

3 A. Eating pizza and watching TV.

4 Q. What did you all do after you got home?

5 A. Ate pizza, watched TV for a little bit then we left
6 to go to the hospital to see his sister. They had a baby.

7 Q. I'm sorry. You went to the --

8 A. Hospital to visit his sister. She had just gave
9 birth to her little girl.

10 Q. Okay. So you have any idea what time it was you all
11 probably went to the hospital?

12 A. When we got there it was a little after 9:00 because
13 we weren't able to get in.

14 Q. The doors were locked?

15 A. Yeah.

16 Q. So what did you do then?

17 A. Went back home.

18 Q. And Rodney was with you when you went to the
19 hospital?

20 A. Yes.

21 Q. And he was with you when you went back home?

22 A. Yes.

23 Q. When you got back home what did you do?

24 A. Just got ready and went to bed.

25 Q. So you went to bed. Rodney went to bed, too?

TAMARA NASH - DIRECT BY MR. GODFREY

1 A. Yes.

2 Q. Now, at this point in time what was your physical
3 condition?

4 A. My physical --

5 Q. Were you pregnant?

6 A. Yes -- was I pregnant then? No. No, I wasn't
7 pregnant then. No.

8 Q. Okay. So you and Rodney went to bed?

9 A. Uh-huh.

10 Q. Now, do you know if Rodney got up at all during the
11 night?

12 A. No.

13 Q. Did Rodney appear to be restless?

14 A. No.

15 Q. Did he appear to be out of sorts?

16 A. No.

17 Q. Did he appear to be nervous or anxious?

18 A. No.

19 Q. So far as you could tell did you think everything
20 was just fine?

21 A. Yeah, all right.

22 Q. Were you at home the next day?

23 A. Yes.

24 Q. Were you present when there was a knock on the door?

25 A. Yes.

TAMARA NASH - DIRECT BY MR. GODFREY

1 Q. Tell us what happened when there was a knock on the
2 door.

3 A. Knock on the door and there was, I want to say 2
4 detectives. Rodney had answered the door. They asked him was
5 he Rodney Nash, and he told them yes. And they asked him did
6 he mind going down to the sheriff's office with them. And he
7 said no. And he said let me, you know, get a shirt or
8 something to put on, and he went.

9 Q. And when did you see Rodney again?

10 A. Later on that day at the sheriff's office because
11 later on I went on down there.

12 Q. About what time was that?

13 A. I think I got there maybe about -- probably about
14 11:00 or 12:00, but actually I didn't get to see him until
15 they let him out.

16 Q. Okay. Is Michael Wiggins related to you?

17 A. Yes.

18 Q. How is he related?

19 A. We're cousins.

20 Q. Did you all grow up together?

21 A. Somewhat, yeah.

22 Q. Did he always live in Spartanburg?

23 A. No.

24 Q. Do you know when it was that he left Spartanburg?

25 A. I want to say he left maybe after middle school,

TAMARA NASH - DIRECT BY MR. GODFREY

1 maybe. His middle school year. I can't remember exactly, but
2 he didn't go to high school here.

3 Q. Did you see him much after he left Spartanburg?

4 A. No, not much.

5 Q. When you and Rodney got married did you have a
6 wedding?

7 A. Yes.

8 Q. Was Michael Wiggins invited or did he come to the
9 wedding?

10 A. He didn't come, no.

11 Q. Have you ever seen Michael Wiggins and Rodney
12 talking?

13 A. No.

14 Q. Has Michael Wiggins ever been over at your house
15 when you were still living with Rodney?

16 A. No.

17 Q. Do you recall the last time that you saw Michael
18 Wiggins?

19 A. The last time I seen him was Thanksgiving Day, I
20 believe.

21 Q. Before 2005?

22 A. Before 2 -- oh, I'm sorry. No. I can't recall the
23 last time I seen him before then.

24 Q. It had been awhile?

25 A. Yeah.

TAMARA NASH - CROSS BY MR. LEIBERT

1 Q. Did you know that Michael Wiggins had moved back to
2 Spartanburg in May of 2005?

3 A. Yeah, I knew he was back.

4 Q. How did you know that?

5 A. Basically through family, my mom and them talking
6 about him being back or whatever.

7 Q. Did he come to see you after he got back?

8 A. No.

9 Q. Did you see him?

10 A. I'm thinking maybe like at, you know, his
11 grandmother house or something like that but --

12 Q. Now, going back to June the 30th of 2005, did you
13 see Rodney do anything unusual around the house or around you
14 that night?

15 A. No.

16 Q. He just seemed like the same old Rodney?

17 A. Yeah.

18 MR. GODFREY: Nothing further.

19 MR. LEIBERT: May it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. LEIBERT:

23 Q. Good morning.

24 A. Good morning.

25 Q. About what time would you have gone to work?

TAMARA NASH - CROSS BY MR. LEIBERT

1 A. That morning.

2 Q. That would have been like 8 o'clock? Your shift was
3 8:00 to 5:00?

4 A. Yeah, I had to be there at 8:00.

5 Q. So after you left work you didn't see your husband
6 again until you came home after choir practice?

7 A. Yes.

8 Q. He wasn't there when you came and changed clothes?

9 A. No.

10 Q. And you didn't go to the convenience store with him
11 at 8:47, to the Li'l Cricket, did you?

12 A. No.

13 Q. And that Li'l Cricket is 2 to 3 minutes from your
14 home?

15 A. Yeah.

16 Q. From your home then. Now, Rodney was not employed
17 at that time?

18 A. No.

19 Q. Didn't have a driver's license?

20 A. No.

21 Q. And when you were at work and he wasn't working he
22 would spend a lot of time over at Road with his
23 brother, correct?

24 A. He would be there from time to time.

25 Q. And your cousin, Michael, lived down at with his

RODNEY NASH - DIRECT BY MR. GODFREY

1 grandmother?

2 A. Uh-huh.

3 Q. And so when the guys would play ball you wouldn't
4 have been there or even known about it because you were at
5 work?

6 A. Yeah, I guess.

7 MR. LEIBERT: Thank you.

8 THE COURT: Anything further?

9 MR. GODFREY: Nothing further. The defense would
10 call Rodney Nash.

11 THE COURT: Thank you, ma'am. You may step down.

12 RODNEY ALEXANDER NASH, after having been duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GODFREY:

16 Q. What is your name?

17 A. Rodney Alexander Nash.

18 Q. And you're married to Tamara?

19 A. Yes, I am.

20 Q. And you all are presently separated?

21 A. Yes, we are.

22 Q. How many children do you have with Tamara?

23 A. We have 1 child, a daughter.

24 Q. Now, is Alex Nash your brother?

25 A. Yes, he is.

RODNEY NASH - DIRECT BY MR. GODFREY

1 Q. And you know James Thomas?

2 A. Yes, I do.

3 Q. You know Reginald Rice?

4 A. Yes, I do.

5 Q. Do you remember the day June the 30th, 2005?

6 A. Yes, I do.

7 Q. Do you recall what you did when you got up that
8 morning?

9 A. I sat around for a little bit. I got a little dog
10 at home I feed, and I sat around with my little dog for a
11 little bit, and just basically nothing while I was at home
12 that day. And after I finished doing all that I went over to
13 my brother house probably about 3 o'clock.

14 Q. Well, let me ask you. Were you employed at this
15 time?

16 A. No, I was not.

17 Q. Were you looking for employment?

18 A. Yes, I was.

19 Q. Now, you say at some point you decided to go over to
20 your brother's house?

21 A. Yes, I did.

22 Q. About what time was that?

23 A. I went over there about 3 o'clock.

24 Q. Did you call him before you went over there?

25 A. No, I did not.

RODNEY NASH - DIRECT BY MR. GODFREY

1 Q. Did you have any conversations with anyone before
2 you went over there?

3 A. No, I did not.

4 Q. Do you recall talking with your wife at all?

5 A. I talked to her earlier that day before -- probably
6 on her lunch break, around about 12 o'clock.

7 Q. So you went over to Alex's house at about what time?

8 A. About 3 o'clock.

9 Q. Who was there?

10 A. Him, Alex, James Thomas and Reginald Rice was over
11 there.

12 Q. What did you do when you got there?

13 A. Sat around for a little bit like we do every day. I
14 fed my dogs. I got some dogs over there, also. I fed my
15 dogs. I washed them up. I had a little fresh litter. And
16 washed my car up, washed his car up that day. Sat around and
17 drunk [sic] a couple of beers, and that was basically it. A
18 little daily routine.

19 Q. How did you get over there?

20 A. I drove.

21 Q. What kind of car did you have?

22 A. I had a '91 Chrysler New Yorker.

23 Q. And you drove to _____ Road?

24 A. Yes, I did.

25 Q. How long did you stay there?

RODNEY NASH - DIRECT BY MR. GODFREY

1 A. Stayed there for about 2 hours, 2 and a half hours.

2 Q. Do you recall what kind of clothes you had on?

3 A. It was hot that day, and I really didn't feel like
4 changing clothes so I had on the same clothes I had on all day
5 because I knew I was going to be messing with those dogs. So
6 I just put on some shorts, a pair of blue jean shorts and a
7 tank top and pair of tennis shoes.

8 Q. Did you have a cap?

9 A. No, I did not.

10 Q. While you were at Alex's house did you see anyone
11 else that lived there? Did you talk with anyone else that
12 lived there?

13 A. No, I did not.

14 Q. Did you see James Thomas?

15 A. Yes, I did.

16 Q. While you were there were you staying inside the
17 house or were you outside the house?

18 A. In and out the house.

19 Q. Did anybody else come by the house that didn't live
20 there?

21 A. No, they did not.

22 Q. What was James Thomas doing while you were there, do
23 you know?

24 A. I believe in and out of the room. I think he was in
25 there cooking something to eat when I got there that day. So

RODNEY NASH - DIRECT BY MR. GODFREY

1 I automatically go outside and mess with my dogs or whatever
2 I'm going to do outside because, you know, I'm used to staying
3 in the house most of the time when I'm at home.

4 Q. Do you recall about what time it was that you left?

5 A. I left from over there probably between 5:00 and
6 5:30.

7 Q. And how do you remember that?

8 A. Because I wanted to go see my sister's child. She
9 just had gave birth probably like the day before, and I wanted
10 me and my wife to go up there and see the baby because I ain't
11 seen the baby yet. You know what I'm saying? See her
12 condition, see how they was doing.

13 And she had to go to Bible study -- choir practice
14 that day. So I didn't know that until I was about to leave
15 from over there. So I decided to go home and, you know, get
16 prepared for her to come home and go with me up there, and she
17 didn't get off until like 5:00 that evening.

18 Q. Okay. Now, when you left who was at the house?

19 A. At my house?

20 Q. At Road.

21 A. James --

22 Q. Alex's house.

23 A. James Edward Thomas and my brother.

24 Q. Did Alex talk to you about what he had to do that
25 evening?

RODNEY NASH - DIRECT BY MR. GODFREY

1 A. He said he had a little traffic court he had to go
2 to at the magistrate court that day, and I meant to call him
3 back later on this evening but I never did, see how it went.

4 Q. Okay. So you say you left between 5:00 and 5:30?

5 A. Yes, sir.

6 Q. And then did you receive a call from anybody?

7 A. I received a call from my wife saying that she was
8 getting off work, she had to go to choir practice.

9 Q. Okay. So what did you do then?

10 A. I went on home.

11 Q. What did you do when you got home?

12 A. Sat around. I put me some pizza in the oven because
13 I was pretty hungry. Sat around and listened to music, looked
14 at TV for a little bit, kicked the bobo, shot to the store for
15 a little bit because I ain't had no cigarettes or no -- you
16 know what I'm saying? I smoke cigars, too. I went to the
17 store, came back home after I left the store. I never did
18 leave until she got there.

19 Q. Okay. When your wife got home what were you doing?

20 A. I was laying across the bed looking at TV, eating
21 pizza.

22 Q. Then what did you and your wife do?

23 A. We left and went to go see my sister and her child,
24 but got up there, the doors were locked. So that was a quick
25 trip, turned right around and came back home.

RODNEY NASH - DIRECT BY MR. GODFREY

1 Q. When you got back home what did you do?

2 A. Went straight to bed. We sat up for a little bit
3 and watched TV, you know, but as I recall went to bed, drifted
4 off.

5 Q. And you went to bed the same time as your wife?

6 A. Yes, I did.

7 Q. Did you get up at all that night and leave?

8 A. No, I did not.

9 Q. Slept the night through?

10 A. Yes, I did.

11 Q. What happened the next morning?

12 A. Probably around 9:00 or something like that, might
13 have been a little after that, I heard a knock at the front
14 door. And I got up out the bed and I was like, who is this
15 this early in the morning?

16 So I went and answered the door and it was
17 detectives out there in my front yard. It was like 2 of them
18 at my door, and they wanted me to come down to the sheriff's
19 department to answer some questions. About what, I didn't
20 know. So I was like sure, and I told them to hold up for a
21 minute, let me put a shirt on and put some shoes on, and I
22 went with them.

23 Q. Where was Tamara?

24 A. She was still in the bed.

25 Q. Was she off that day?

RODNEY NASH - DIRECT BY MR. GODFREY

1 A. Yes, she was.

2 Q. So you left with the officers?

3 A. Yes, I did.

4 Q. And then did you talk with Detective Smith?

5 A. Yes, I did.

6 Q. And did he want to take a statement from you?

7 A. Yes, he did.

8 Q. Did he read your Miranda warnings to you?

9 A. Yes, he did.

10 Q. Did you understand all of that?

11 A. Yes, I did.

12 Q. And you agreed to talk with him?

13 A. Yes, I did.

14 Q. And you gave him a statement?

15 A. Yes, I did.

16 Q. And what did Detective Smith want to know?

17 A. He wanted to know -- wanted to ask me some questions
18 in reference to a homicide. And I didn't know nothing about
19 it until I got to the sheriff's department, and that's what we
20 was politicking on.

21 Q. Now, how long were you at the sheriff's office?

22 A. I was there from about, I say around 10:00 to about
23 5:00 that evening.

24 Q. Were the officers nice to you?

25 A. I'd say pretty much -- it was all right.

RODNEY NASH - DIRECT BY MR. GODFREY

1 Q. Didn't have any problems with them?

2 A. No, not really.

3 Q. And about 5:00 what happened?

4 A. I was arrested for a murder. I was charged with
5 murder.

6 Q. How did you feel at that point in time?

7 A. I was surprised. Actually, I was shocked.

8 Q. Now, when you were on your way to the jail or to
9 booking did you tell an officer something else that happened?

10 A. Yes. I think his name was Officer Lachica, not
11 sure, but this was before I even left the interrogation room,
12 before they even took me out, and I had remembered that I had
13 went to the store that day, and I was at home. That was the
14 only place I went after I left my brother's house, other than
15 going to the hospital.

16 And, you know, when it comes to a homicide they want
17 to know your alibi but I wasn't around anybody that day but my
18 brother and, you know, my wife, and that was before and after
19 the fact. So I had to think, you know what I'm saying, where
20 else I was or where else have I been other than that, and
21 that's what I had thought of.

22 Q. Well, when you got home that afternoon nobody came
23 to your house?

24 A. No, they did not.

25 Q. And you didn't see anybody that evening until your

RODNEY NASH - CROSS BY MR. LEIBERT

1 -- after you got home, you didn't see anybody until your wife
2 got back?

3 A. That's right.

4 Q. Mr. Nash, did you kill Terrell Farr?

5 A. No, I did not.

6 MR. GODFREY: Nothing further.

7 MR. LEIBERT: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. LEIBERT:

11 Q. You don't have a driver's license, do you?

12 A. No, I do not.

13 Q. And you didn't have a driver's license on June 30th,
14 2005, did you?

15 A. No, I didn't.

16 Q. And yet you drove all the way from all
17 the way to your home on Old Colony Road, didn't you?

18 A. Yes, I did.

19 Q. And that's because you had been convicted of
20 habitual traffic offender, correct?

21 A. Correct.

22 Q. So you knew you weren't supposed to be driving?

23 A. That's right.

24 Q. But you didn't care?

25 A. I did, but it didn't matter at the time.

RODNEY NASH - CROSS BY MR. LEIBERT

1 Q. You drove to go visit your brother?

2 A. Yes, I did.

3 Q. Not to work, did you? Not to pick up your wife who
4 was sick? You went to go visit your brother. The law didn't
5 matter to you, did it? You need to answer me.

6 A. Excuse me?

7 Q. You need to answer me.

8 A. I didn't hear the question.

9 Q. The law didn't matter to you, did it?

10 A. I mean, I really wasn't thinking about it at the
11 time.

12 Q. Let me make sure I didn't misunderstand what you
13 said. When you left between 5:00 and 5:30 you went home and
14 had pizza?

15 A. Yes, I did.

16 Q. And you got home about what, 6:00?

17 A. A little bit -- a little bit before 6 o'clock.

18 Q. And that's when you put the pizza in the oven?

19 A. No.

20 Q. Microwave? Did you put it in the microwave?

21 A. No, I put it in the oven but it wasn't at that time.

22 Q. When did you do that?

23 A. Probably around -- I'd say about a little after
24 8:00.

25 Q. So you didn't eat pizza when you first got home,

RODNEY NASH - CROSS BY MR. LEIBERT

1 according to your testimony? I'm not trying to trick you. I
2 thought you said you left Old Farm Road between 5:00 and 5:30?

3 A. I did.

4 Q. And you went home and ate pizza?

5 A. Yes, I did.

6 Q. But now you're saying you ate pizza about 2 and a
7 half hours later?

8 A. It wasn't exactly when I got home, right after I got
9 home.

10 Q. All right. Was it 2 hours later?

11 A. I think so.

12 Q. And then at 8:47 p.m. you walk into the Li'l
13 Cricket, didn't you?

14 A. As I recall, around this time.

15 Q. And that's about 2 minutes from your house, correct?

16 A. Probably a little more than 2 minutes.

17 Q. And you saw the videotape, didn't you, State's
18 Exhibit 31? You saw the recording yesterday, right?

19 A. Yes, I did.

20 Q. And you came in from the left, didn't you?

21 A. From the right.

22 Q. You came in from the right?

23 A. I went to the right when I got out of the store.

24 Q. And when you left you went an opposite way from the
25 way you came in, didn't you?

RODNEY NASH - CROSS BY MR. LEIBERT

1 A. Same way.

2 Q. Are you sure about that?

3 A. Positive.

4 Q. All right. Thank you.

5 Now, that's your cigarette butt at Road

6 on June 30th, 2005, isn't it?

7 A. Uh-huh. I suppose so.

8 Q. Which is right next to 2 45-caliber shell casings;
9 isn't that true?

10 A. That's what he said.

11 Q. And just happened to have a 45-caliber shell case --
12 bullet, pardon me, come out of Terrell Farr's body, right,
13 same day? Right?

14 A. I suppose so.

15 Q. Because you murdered him, didn't you?

16 A. No, I did not.

17 Q. And you thought you were going to get away with it
18 by running to the Li'l Cricket across town and buying yourself
19 some more cigarettes, didn't you? Didn't you?

20 A. No, I did not.

21 MR. LEIBERT: Thank you.

22 THE COURT: Anything further?

23 MR. GODFREY: May it please the Court. The defense
24 rests.

25 THE COURT: All right. Mr. Nash, thank you, sir.

1 You may have a seat.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, the
4 defense has rested and I need to take up some matters of law
5 with the attorneys before we continue. So I'm going to ask
6 you, if you would, to step back into your jury room. Please
7 have no conversation about the case. If you need anything
8 just let me know and we'll try to accommodate you on that.

9 So if everyone will remain seated.

10 Members of the jury, if you would please return to
11 your jury room.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 10:57 a.m.)

14 THE COURT: Yes, sir, Mr. Godfrey.

15 MR. GODFREY: May it please the Court. The defense
16 would renew the directed verdict motion on the same basis as
17 before.

18 THE COURT: All right, sir. Thank you. I'm going
19 to respectfully deny that motion. I think there's evidence in
20 the case that requires the jury's determination, and I'm going
21 to allow them to make that call.

22 Let me ask you all -- or let me do this first.
23 Mr. Leibert, I did a little looking into Mr. Godfrey's request
24 on a charge for identification. Does the State have any
25 position on that?

1 I'll just share with you in State V. Simmons, which
2 is a '92 case, in that case the court did hold that in a
3 single witness identification case the court should instruct
4 the jury that the burden of proving identity rests on the
5 state and to give a charge on that.

6 MR. LEIBERT: Yes, sir.

7 THE COURT: I've got a charge on that. I'm going to
8 hand it to you and let you look it over.

9 Mr. Godfrey, you can look at it as well.

10 And I'll give you all an opportunity to look at that
11 then hear from you if you have any objection to that.

12 [PAUSE]

13 MR. LEIBERT: We have no objection, Your Honor.

14 THE COURT: All right. Is that satisfactory,
15 Mr. Godfrey?

16 MR. GODFREY: Absolutely, Judge. Thank you.

17 THE COURT: All right. So, gentlemen, the only
18 change in the charge then than the copy from what you have is
19 I've removed the language regarding the defendant not
20 testifying because in this case Mr. Nash did. I've removed
21 that and I've added this identification language. Other than
22 that the charge, I believe, is what you've got in front of
23 you.

24 Now, the verdict form, you all had a copy of that.
25 Is that satisfactory?

1 MR. LEIBERT: With the State, yes, sir.

2 MR. GODFREY: Yes, Your Honor.

3 THE COURT: Okay. Well, why don't we take a few
4 minutes, let you gather the exhibits like you want them and if
5 you need to use the restroom or stretch your legs or whatever,
6 and then we'll bring the jury back out and go into the closing
7 arguments.

8 MR. LEIBERT: Thank you, Your Honor.

9 (WHEREUPON, a brief recess was taken.)

10 THE COURT: Let me just mention it to you and ask
11 you -- and I got this from Judge Brogden when he used to be on
12 the bench and I just thought it was a great way to charge a
13 jury and so I've just followed it. When I give the jury their
14 charge I come off the bench and come down and do it down there
15 in front of them. Is there any objection to that?

16 MR. GODFREY: No objection at all.

17 MR. LEIBERT: I've never seen that.

18 THE COURT: I just find that it's just friendlier
19 and they pay more attention to you, I think, when you're
20 standing right there in front of them than when you're sitting
21 way back here.

22 Are you going to open on the law?

23 MR. LEIBERT: No, sir.

24 THE COURT: Or just start with you Bill and
25 finish --

1 MR. GODFREY: Start with me and finish with Tony.

2 THE COURT: You all just let me know when you're
3 ready with your stuff there.

4 MR. LEIBERT: We're ready, Your Honor.

5 THE COURT: Well, let's ask the members of the jury
6 to join us, please.

7 Let me also, if we can get somebody to announce out
8 there that we're about to start clothing arguments. If they
9 want to come in that's fine but we're going to lock the doors
10 so they're not going to be able to come in. So if they want
11 to come in they need to come on in.

12 Let's go ahead and give a chance to at least let
13 anybody come in that wants to come in. And so everyone who is
14 here in the courtroom, I don't know how long it will take for
15 the attorneys to argue and how long the -- well, I can tell
16 you my charge is going to be about 15 or 20 minutes, or
17 probably 15 minutes, but once we start you are not allowed to
18 leave either. So kind of make a decision whether you want to
19 stay or go.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 11:30 a.m.)

22 THE COURT: Ladies and gentlemen, you have heard all
23 the evidence in this case. You've heard -- been presented the
24 State's case, you've heard the defense case, and now we've
25 reached the point of the trial that all the evidence is in and

1 it's time for you to hear from the attorneys with what is
2 typically referred to as closing arguments.

3 I prefer to just call it final summation, but
4 everyone likes to accuse lawyers of liking to argue. So we'll
5 call it closing arguments. They are not going to argue with
6 you but what they are going to do is they are going to address
7 you with what they believe the evidence has shown.

8 Now, let me say this to you. Just as I told you
9 with opening statements, statements, comments, the summations
10 of the attorneys are not evidence. All of the evidence that
11 is in this record for you to consider is already in. This is
12 just their opportunity to tell you at least what they believe
13 the evidence has shown.

14 Attorneys often times will tell you this. I used to
15 do it when I practiced law, but I'll tell you now from the
16 bench that you are to listen carefully to the attorneys but if
17 anything that the attorneys tell you conflicts with what you
18 remember the testimony you have to go with whatever you feel
19 you recall or whatever your perception of the evidence is.

20 But you must give the attorneys your attention, as
21 this is their opportunity to try and assist you with what the
22 evidence has shown. And at the close of their summation, when
23 both sides have completed their summations, then I will give
24 you the law that applies to this case and that you are to
25 apply to this case.

1 All right. So having said that, we'll recognize the
2 attorneys for their closing arguments.

3 Mr. Godfrey?

4 MR. GODFREY: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. GODFREY: Solicitors.

7 What does a guilty man do? What does a guilty man
8 do? Somebody who is guilty, they run, they hide, they try to
9 get away. They leave the city, they leave the county, they
10 leave the state. They try to escape. Guilty people run.
11 What did Rodney Nash do?

12 In the beginning on June the 30th, 2005 before any
13 of this happened he wakes up at home with his wife. He told
14 you he wasn't working at the time. He was looking for a job.
15 His wife gets ready and she goes to work.

16 He plays with his dog, feeds his dog, messes around
17 the house, looks at some TV, talks to his wife about
18 lunchtime. He then decided to go over to his brother's house,
19 Alex, at Road.

20 He gets over there, he talks to Alex. James Thomas
21 is there. Rice was there for a little while, then Mr. Rice
22 left. And he's talking, playing with his dogs, washed off
23 some cars, and then he leaves.

24 He told you that he left about between 5:00 and
25 5:30. Alex, when he testified, told you that Rodney left

1 before he did, and Alex remembered that day because he had to
2 come over here to pay a traffic ticket. James Thomas left
3 after Alex and Rodney and walked down to a store.

4 Rodney goes home. His sister has had a baby. He
5 wants to go see the baby at the hospital. He hasn't seen the
6 baby before. His wife, Tamara, she testified called Rodney
7 when she got home to change cloths to go to choir practice.
8 And she said Rodney was on his way home.

9 She said she was there about 5:30, or whatever the
10 time was that she said. I don't remember exactly. She goes
11 to choir practice. Choir practice lasts about an hour, hour
12 and a half, according to her. So Rodney is at home. There's
13 nobody there except his dog and the TV.

14 His wife comes in from choir practice. It's late,
15 and they go to the hospital to see the baby. It's too late to
16 get in at the hospital. Both Rodney and Tamara testified that
17 they went back home and went to bed.

18 What does a guilty man do? The State says, alleges
19 that Rodney Nash fired 2 shots into a car killing a man. What
20 does a guilty man do? Is he going to go home and fix a frozen
21 pizza? Is he going to go home and wait for his wife to come
22 back from choir practice so they can go to the hospital to see
23 his sister and her new baby?

24 What's a guilty man going to do? Is he going to
25 stay at the residence he's lived at for the past 3 years

1 knowing that everyone knows he lives there? Rodney and Tamara
2 went to bed, slept there the entire night. What's a guilty
3 man going to do?

4 The State says he fired 2 shots and killed a man.
5 What's a guilty man going to do? Is she going to go home and
6 sleep with his wife? Is he going to go home and act like
7 nothing happened? Guilty people run. Guilty people hide.
8 Guilty people try to get away.

9 He's at his apartment or house with Tamara all
10 night. They are sleeping in the next morning, there's a knock
11 at the door. Rodney goes to the front door. He's not
12 dressed, still in his clothes he slept in. It's the police.

13 What's a guilty man going to do? You fire 2 shots
14 and kill somebody and you're politely going to walk to your
15 front door to see who's there or are you going to run out the
16 back door and try to get away? What does a guilty man do?

17 Rodney Nash opened the front door. Officers say
18 hey, we'd like to talk to you. He said okay, let me get some
19 clothes on. I'll go with you. He didn't try to run. He
20 didn't try to hide. He did what any citizen would do. He
21 cooperated with law enforcement.

22 He goes down to the sheriff's department. Detective
23 Smith reads him his Miranda rights. And Rodney told you, I
24 understood what they were saying. I understood I didn't have
25 to talk to him. Miranda rights say you can have an attorney,

1 you can stop talking. You don't even have to answer any
2 questions at all.

3 What does a guilty man do? Is a guilty man going to
4 cooperate with the police? He knew what his rights were.
5 They were explained to him very well by Detective Smith. He
6 knew he didn't have to talk to them. He knew he had a right
7 to an attorney, and he talked to the police anyway. He was
8 cooperative and he stayed down there as long as they wanted
9 him to stay.

10 Then about 5 o'clock a warrant comes down. They say
11 you are under arrest for murder. I don't think anybody could
12 ever understand how that would make anyone feel.

13 People go about their daily lives and they're not
14 concerned about exactly what time you did this or what time
15 you did that, people go home all the time alone and read books
16 or watch TV or watch movies, but an allegation was made from
17 one witness saying yeah, he's the one who fired the shots.

18 What does a guilty man do? If Rodney Nash was
19 guilty of anything do you really think he would have gone
20 home? Do you really think he would have tried to see his
21 sister's baby at the hospital? Do you really think he would
22 have stayed at his house and slept with his wife that night?
23 Do you really think he would have opened the door to the
24 police?

25 What does your common sense tell you? Guilty men

1 run. They hide. They try to escape. They leave. Rodney
2 didn't do any of that. He went home to his wife, he spent the
3 night with his wife. He opened the door to the police, and he
4 agreed to go talk with them. Guilty men don't do that.

5 Now, let's look at some of the evidence in this
6 case. Obviously, they had 2 shell casings at
7 Road. Indisputable there's spent shell casings there. They
8 don't have a weapon. They searched Old Farm Road, the house
9 at Old Farm Road, and Detective Smith told you they didn't
10 find anything at that house that was evidence on this crime.
11 They don't have a weapon. They have 2 spent shell casings.

12 And then you have this blue cap which is lying just
13 a few feet from the shell casings. Funny thing about that
14 blue cap nobody knows who it belongs to. Whoever left that
15 cap there sort of left in a hurry.

16 We know as a matter of forensic science that that
17 cap did not belong to Rodney Nash. Ms. Gallman came in, and
18 bless her heart, she had horrible laryngitis. But she told
19 you and showed you with that stuff they put up there, that I
20 still don't understand, how he was -- had nothing to do with
21 that cap. It's not his DNA, not Rodney Nash's DNA. It
22 wasn't his cap.

23 When Michael Wiggins testified I asked him, did you
24 see a blue cap when you drove by the first time? Did you see
25 anybody wearing a blue cap? Was there anybody else in the

1 yard? No, no, no, wasn't there. Well, it was. They got the
2 pictures of it. We don't know who that blue cap belonged to.

3 Then I asked Detective Smith about some leaves that
4 they had during this investigation. There was a report that
5 somebody with a blue cap had a gun. There was another report
6 that the shooter was on the back of a moped driven by
7 Mr. Rice. Mr. Rice, according to Alex, lived there at
8 Road. Nobody ever talked to Mr. Rice.

9 There was a report that the shooter had on a red
10 shirt. Mr. Wiggins tells us that the shooter had on a white
11 T-shirt with sleeves and blue jean pants. Who had the red
12 shirt? There's another question about a blue shirt.

13 You know, you had Donnie Nash who you have a picture
14 of came up to the crime scene somewhere in the neighborhood of
15 11 o'clock. I'm sure you all remember. I don't. But the
16 officers were still there. He had on a red shirt. His last
17 name was Nash. Did they do a gunshot residue test on his
18 hand? Nope. Did they question him about anything? Not
19 really. They checked his I. D. and said go on.

20 Joe Armstrong sat right there from SLED yesterday.
21 Joe Armstrong has been a trace evidence expert for 27 years,
22 gunshot residue expert for 27 years. He sat right there and
23 told you yesterday that SLED has a timeframe. If they get a
24 gunshot residue kit within 6 hours of the incident they test
25 it.

1 Now, he told you the gunshot residue is like flour.
2 You can knock it off your hands, you can get it off your hands
3 by putting your hands in your pocket. You know, you have a
4 Nash go to a crime scene in a red shirt, they didn't check the
5 gunshot residue.

6 Then you have Mr. Wiggins. He is absolutely
7 positive that the shooter had on a white T-shirt with sleeves
8 and blue jean pants. He also is absolutely positive that it
9 was Rodney Nash. You can't have it both ways.

10 You have got this tape or CD from the Li'l Cricket.
11 Rodney Nash goes in there and he has on a white T-shirt tank
12 top and blue jean shorts. If you look at the time on the
13 video and the time they claim they got the call and use
14 Detective Smith's time it takes to go around through the
15 interstate as quick as you can, how in the world did he get
16 his clothes changed?

17 His home is at the furthest distance from the crime
18 scene. The Li'l Cricket is within 4 or 5 minutes of Rodney's
19 house. How do the clothes change? The eyewitness got
20 something wrong. We know there's a problem with the clothes.
21 Is there a problem with who he said he believes pulled the
22 trigger?

23 We are not saying that Mr. Wiggins is a bad person.
24 He's not. He lost his best friend. That's a horrible thing.
25 It's a horrible thing. But it's also horrible to be charged

1 with something that you didn't do. The only evidence that
2 they have, realistically, is his word, and he got some stuff
3 wrong. Got some stuff wrong.

4 Now, they have a cigarette butt, which according to
5 Ms. Gallman has a mixture of DNA on it. Mixture was that of
6 Rodney Nash and someone else. I asked Ms. Gallman, did
7 somebody share a cigarette? I don't know any other way you
8 can get 2 different sets of DNA in it. I guess there are.
9 That would be the most easy.

10 You know he smokes. He was at his brother's house.
11 They were in and out. Alex said they throw the cigarette
12 butts on the ground. Cigarette butt, a fresh cigarette butt?
13 What's a fresh cigarette butt?

14 I smoke. I don't smoke in my house. I also don't
15 have an ashtray outside. I smoke at the corner of the garage
16 and I smoke downstairs at the patio, and I put my cigarettes
17 out at the same place all the time. So once a week I go out
18 and pick them up.

19 Use your common sense. If any of you smoke you know
20 what I'm talking about. You step on a cigarette, you go back
21 hours later and it still looks the same way. Fresh cigarette
22 butt? Sure he smoked.

23 They want to talk about these ashes on the white
24 car. And the officer says that's real important because, you
25 know, the wind was blowing. Curious thing about that. The

1 forensic tech didn't get there until at least a couple hours
2 after the incident. I guess the wind stopped blowing for
3 those 2 hours. I don't know how the ashes got there. They
4 don't know if it belongs to that cigarette butt or not.

5 You know, as a person you go on about your life, you
6 are not bothering anybody. Somebody makes an allegation and
7 you are home alone. You got nobody to say yeah, I was there.
8 That's terrible, that's horrible, but look at the evidence.

9 You know, I asked Mr. Wiggins several times, what
10 did you see? He saw a white car, claims he saw James Thomas
11 in the door when they went up the road. He claims he saw
12 Rodney Nash going in the sidewalk of the upper side of the
13 house. He claims he saw the white car.

14 I said what else did you see? Is there anything
15 else that you saw? And he said no. I asked specifically
16 about the blue cap. He said no.

17 Well, you know the thing that's really missing from
18 Road that he should have seen? The dark colored
19 car that belonged to Rodney Nash. Rodney had to drive over
20 there to his brother's house. Where was Rodney's car? It
21 wasn't there. He was gone.

22 You know, sometimes when people see horrible things
23 happen, what happens is horrible they get all nervous and
24 sometimes people think they see things that they don't see.
25 And the easiest example of that, I love football. I grew up

1 football, I will always be football. You can watch an NFL
2 game on Sunday and you can watch it as it happens and you'll
3 see something and you'll sit there and say he was in bounds,
4 he caught that ball, and you see the instant replay and he
5 didn't.

6 Sometimes people make mistakes about what they see.
7 It doesn't make them bad people. Sometimes people make
8 mistakes. In this case, the blue cap belonged to somebody but
9 we don't know who, and it was within feet of the spent shell
10 casings. There were leads that were not followed up on about
11 the shooter wearing a red shirt, the shooter wearing a blue
12 cap, the shooter being on the back of a moped with Mr. Rice.
13 None of those things were followed up on.

14 And then you have to return to what does a guilty
15 man do? They run. They hide. They try to get away. That
16 man over there did none of that. He went home, he went to see
17 his sister and baby at the hospital. He slept with his wife.
18 He answered the door. He said hello to the police. He went
19 down with them. That's not a guilty man. That's a
20 responsible citizen doing what he's supposed to do.

21 This case, the State, the government, they have to
22 prove beyond a reasonable doubt that Rodney Nash killed
23 Terrell Farr. The unlawful killing of another with malice
24 aforethought either express or inferred. Rodney Nash didn't
25 know Terrell Farr. He didn't know him.

1 They have to prove each element of the offense
2 beyond a reasonable doubt, and reasonable doubt has been
3 defined as a doubt that would cause a reasonable person to
4 hesitate to act.

5 Ladies and gentlemen, in this case there are
6 multiple reasons to hesitate to act. Rodney Nash did not act
7 like a guilty man because he isn't one. The police did not
8 follow up on leads.

9 It is a horrible thing, Terrell Farr is dead. No
10 one can bring him back, no one can replace the loss of his
11 family and friends. On the flip side, it is a horrible thing
12 Rodney Nash has been charged with firing the bullets, but he
13 didn't do it. That's a horrible thing.

14 The State has to prove each and every element of the
15 offense of murder beyond a reasonable doubt. Is there doubt
16 in this case? I would submit to you, ladies and gentlemen,
17 that the doubt is overwhelming.

18 I would ask you to please consider all of the
19 evidence, and when you get back to deliberate my client, his
20 family and I are sure that you will return a verdict of not
21 guilty. Thank you.

22 THE COURT: Thank you, Mr. Godfrey.

23 Solicitor?

24 MR. LEIBERT: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. LEIBERT: Mr. Godfrey.

2 He ran. He did run. He ran from the crime scene
3 across town, and he thought he got away with it. He thought
4 he got away with it. He ran to the arms of his wife across
5 town but he got caught. And you are going to see, we are
6 going to have a Perry Mason moment here in a few minutes. He
7 got caught.

8 This is not a case of mistaken identity. This is a
9 case of an eyewitness to a murder. When that young man with a
10 lot of courage to come in here, when that man went down Old
11 Farm Road listening to his music with his best friend he
12 didn't know that in 2 to 3 minutes his friend was going to be
13 dead, and he was playing Russian Roulette coming up 4 lanes of
14 Blackstock Road and if he didn't jam that thing into park he
15 was a dead man, too.

16 I am 200 percent positive that he did it. That man
17 did it. He didn't even let me finish the question. And when
18 he tried to ask it -- and this is not a drive-by shooting, or
19 am I in bounds or am I out of bounds. I've been to Christmas
20 functions with him. I have played basketball with him over a
21 period of years. I saw him twice on that day. He's married
22 to my cousin. Two hundred percent.

23 Is he going to let the killer of his best friend go
24 free and accuse the husband of his cousin? Common sense says
25 no. I am positive. Not I really believe so, I am almost

1 certain. Two hundred percent. Never hesitated.

2 There's a killer in this room, and his name is
3 Rodney Nash. Not Donnie Nash, it's not Alex Nash, it's Rodney
4 Nash, and he thought he got away with it. He thought he got
5 away with it.

6 He's at the Li'l Cricket. Sure, but he turned the
7 wrong way, and I'm going to show it to you a couple times and
8 then you are allowed to see anything.

9 And there was never any evidence by somebody making
10 a call about anybody, a shooter with a blue hat, okay? And
11 let's remember what Michael said. He said Rodney didn't have
12 on a hat. Rodney did not have on a hat.

13 Rodney had on blue jeans. When you look on the tape
14 look to see where they are at. Wasn't cut off here, it didn't
15 come down here. It was right here. Are those shorts? You
16 can say no, you got it wrong. Those aren't shorts, those are
17 pants. If you call them pants you could say no, you got it
18 wrong, those are shorts. I don't know what you call them.

19 When I was in school we'd of said what are you
20 doing, waiting for a flood? That's what my little girl said.
21 Those are pants waiting for a flood. Those are not shorts.
22 Either way you could say well, he didn't know. Okay. And he
23 saw the tape. Okay. So Rodney took off his white T-shirt.
24 Okay. He thought he got away with it. The perfect murder.

25 Oh, hello, sweetheart. Oh, the police are here.

1 Oh, I'd love to talk to you. I've been here. Bring his wife
2 in, bring his brother in. They all know he left between 5:00
3 and 5:30 but they don't know where he is at 6:00, or 6:30, or
4 7:00, or 7:30, or 8:00, or 8:30, or 9:00. But then he tried
5 to say I'm across town.

6 You see, here is where the murder happened, and I'm
7 sorry I can't hold that still, but that's Road
8 where his best friend was gunned down in death in 2 minutes.
9 Guilty men run. He didn't stay there.

10 He goes up here, goes over to here, goes up this
11 road, up to here, then he goes up to here and he turns left.
12 He turns left into the Li'l Cricket. And you'll see, he comes
13 in this way. But to go home he had to go out the other way.
14 He came in this way and then he pulled out that way.

15 Now, it's hard to see, and we're going to show it to
16 you a couple times. He said I'm positive -- that came out of
17 his mouth. I'm positive I did the same way. Got you.

18 He ran from the crime scene and he tried to create
19 an alibi and got into bed with his wife, his beautiful wife, a
20 precious lady raising a little girl on her own. He's a
21 cold-blooded killer.

22 This is not a case of mistaken identity. This is a
23 case of an eyewitness to a murder, that I've been in a home
24 with him, sat down and ate with him. Maybe it's been a few
25 years.

1 I met His Honor on Monday and if I see him
2 hitchhiking next week I'll know that was the Judge. Whether
3 he's pointing a gun at me or hitchhiking I'll know from seeing
4 him that that was the Judge.

5 This is not a robbery in a convenience store where
6 it's the first time you ever saw him and, you know, it's a
7 white male, bald-headed, glasses, maybe 5-6, a little fat,
8 okay, you know, sees me one time. No. This is not what this
9 is. This is the husband of my cousin where we sat down and
10 ate at our grandmother's house that we've played basketball
11 with and that I then saw twice on that day.

12 Okay. Let's review some of the evidence. You get
13 to take all of this back there. If you want to look at this
14 like the doctor did we'll get you gloves. If you actually
15 want to look at that. But you are allowed to see anything.
16 You can ask for gloves. If you want to hear somebody's
17 testimony again you can hear that. If you want to hear this.

18 See, reasonable doubt isn't that you don't have to
19 think about. See, reasonable doubt is you deliberate, you
20 talk about all the evidence, and when you review it all what
21 has the ring of truth. Do you believe Michael Wiggins? If
22 you believe Michael Wiggins he is guilty.

23 Is he a misinformed young man that's just distraught
24 from losing his best friend? No. I have sat down and eaten
25 with this man. I have played ball with this man. I have seen

1 him in the neighborhood, and I saw him walking across the
2 road.

3 He didn't say he saw him driving across the road.
4 He saw him walking across the road, and then when he came back
5 he had a gun and then "boom", his friend is dead in less than
6 2 minutes. Dead. And he has to jam that thing into park from
7 being dead himself. And he's trying to call 911.

8 I am 200 percent positive that it was my cousin's
9 husband. Not his brother, him. Not I'm pretty sure or I
10 think so, it looks a lot like him.

11 So they did a lineup, and those are computer
12 generated. And Detective Smith says all right, now, I want
13 you to turn this over and then you see if you know that
14 person, and the computer picks out people that look alike.

15 And he turned it over and he said that's the man.
16 That's the husband of my cousin, that's the man I've had
17 Christmas dinner with at grand mom's house, that's the man I
18 had played basketball with, that is the man that I have seen
19 in the neighborhood, that is the man that walked across Rodney
20 Street when we went down the first time, and that is the man
21 that killed my best friend.

22 If you believe that he's guilty, but we can keep
23 going, that's all we need, he's guilty. If you believe
24 Michael Wiggins, he's guilty. If you believe he saw him
25 enough to identify him he's guilty. You sit down and eat with

1 somebody, play ball with them and you see them around the
2 neighborhood. You know, they live right down the road from
3 each other. For that 30 days been seeing him around. His
4 uncle lived there.

5 At 8:29 p.m. on June 30th, 2005 Sergeant Dan Piggins
6 gets a call for a homicide. At this time, the car has come to
7 a stop. Michael gets out. He's trying to render aid to his
8 friend. He stops a nice lady, they call 911. The police are
9 there within 2 minutes.

10 There's no hat. He didn't have a hat on. The
11 killer didn't have a hat on. Okay. Did he see the hat on
12 ground? No, he didn't see that. You sure you seen the hat on
13 the ground? No. He saw the 5-foot-7 man holding a gun. He
14 saw the white car. He didn't see a cigarette butt either.
15 Common sense says you won't see that.

16 Now, I'd have a real problem if he said his killer
17 had a hat on, but he didn't. Rodney Nash didn't have a hat
18 on. Just because there's a hat in the driveway doesn't mean
19 the killer would have it on, and it wouldn't necessarily mean
20 that Rodney hasn't never worn the hat. But he wasn't wearing
21 it that day because the eyewitness said he wasn't. He wasn't
22 wearing it, and it wasn't near it. The things that are near,
23 ladies and gentlemen, and you get to take all these back, are
24 the shell casings.

25 Now, the distance, you see the distance? This yard

1 is not very big. You can see how close the yard is to the
2 road. It's very close. It's less than here to there. You
3 see that? That's State's Exhibit 16. Here's where the 2
4 shell casings are. Here's where the cigarette butt is with
5 his DNA. What luck, 1 cigarette butt in the whole yard. Not
6 hundreds like they want to say, 1. One cigarette butt with
7 his DNA right by the shell casings. Several feet down the
8 driveway is the hat.

9 There's a killer in this room. His name is Rodney
10 Nash. He murdered Terrell Farr, and he got caught. So what
11 luck? So then 18 minutes later when he says he's there -- and
12 what did Michael say? He said they were somewhat past.

13 You see? You see where the bullet went in? Just
14 like he said, it wasn't a straight-on shot. They were going
15 past, and then Terrell said I'm hit. What? I'm hit. And it
16 came through at an angle.

17 And where did he first see him? See, he said he
18 came walking across Rodney Street. That's where he parked his
19 car, across Rodney Street. Then he says he saw him walk over
20 here to the house, and then when he came back out he was where
21 the car was. And the picture's not -- the car is not in here.

22 And he was holding a gun, and less than 2 minutes
23 later at the end of the road his friend is dead. And Rodney
24 runs back across the street, gets in his sister's car without
25 a driver's license, to hell with the law, it doesn't matter.

1 I'll go visit my brother if I want to. I'll kill somebody if
2 I want to. I don't care what the law is. And he drove around
3 town, across town thinking oh, my God, I got away with it. I
4 got away with it.

5 The next morning the police come. Hey, no problem.
6 I'm been here with the wife. It wasn't me. He didn't know he
7 threw that cigarette butt down. Uh-oh, right next to the
8 shell casings. They happen to be the same caliber as the
9 bullet taken out of Terrell Farr's heart.

10 Beyond a reasonable doubt does not mean beyond all
11 doubt. If you say you believe Michael he's guilty. I'm 200
12 percent sure. I won't keep saying how many times he's met
13 with him. But then you add DNA, the shell casings right by
14 the cigarette butt, and then the final piece that gets him.
15 He said I am positive I pulled out the same way I pulled in.

16 Now, we are going to show you this tape. And look
17 at his pants too when we show you the tape. He comes up this
18 way up Reidville Road back onto this road, and then he comes
19 over to here and he turns left into the store, and then when
20 he pulls out he pulls out and goes the other way over to his
21 house. See, if he came from his house he would have pulled in
22 the same way. Watch on the tape. He comes in this way from
23 the area of the murder.

24 And Detective Tom Smith drove the distance in 15
25 minutes, and 18 minutes later he walks in there and buys some

1 more cigarettes.

2 Go ahead and play the tape, sir.

3 Look here, ladies and gentlemen. You'll see a car
4 come in right after a lady walks in. Of course, you can watch
5 it as many times as you want because this is very important.

6 All right. Now, watch up here. See the car coming
7 in from that angle and you will see that Rodney Nash comes out
8 of the car. See the shorts down there -- or the pants? Then
9 you will need to be watching up here as it pulls in. Does it
10 go back this way or does it go this way? He goes this way
11 toward his home.

12 See the shorts -- or the pants. Now, watch the car.
13 You'll be looking up here. It's going to go that way, the
14 opposite way that it turned in. He's backing up and going
15 away. You can see it right there. You can watch that as many
16 times as you need to if you're not able to see that.

17 Thank you, sir. Please turn the lights back up.

18 I know it was him. The Camry goes off the road,
19 Michael gets it back up. He's with the police. Again, the
20 timeline, 8:29 to dispatch. It takes 15 minutes to drive it
21 when the police drove it, 18 minutes later he pulls in from
22 the area of the crime scene.

23 I'm positive I went the same way. No, you didn't.
24 You lied because you were running from the crime scene where
25 you just thought you got away with murder.

1 The man that killed my best friend is married to my
2 cousin. His name was Rodney Nash. He's guilty. He's guilty.

3 Nobody can tell you. His witnesses came in and said
4 they were with him or talked on the phone. Nobody can tell
5 you where he was from 5:30 to 9:00. He tried to bring them
6 here to say and they all know just when he left, but then they
7 all left, too. Everybody that said when he left
8 Road they weren't there either. They all left, too. He left
9 right before they did.

10 So with a little bit of questioning; But you don't
11 know that he came back, do you? You don't know where he was?
12 See, they tried to make it like he was gone, but the problem
13 was they were gone. You see? Did you catch that? They were
14 gone.

15 The cigarette butt with his DNA next to 2
16 45-caliber shell casings that's consistent with the same
17 caliber that's pulled out of that young man's body a few
18 minutes later.

19 My job is to do justice, ladies and gentlemen. A
20 19-year-old boy lost his life on Old Farm Road, and his best
21 friend sitting next to him as he died saw the man that killed
22 him. Absolutely positively sure Rodney Nash killed my best
23 friend.

24 On behalf of Trey Gowdy, on behalf of the Farris I
25 ask you to speak the truth, that's what a verdict is. The

1 truth is he's guilt as charged. Thank you.

2 THE COURT: Ladies and gentlemen, just give me one
3 second. I'm going to come around there.

4 Ladies and gentlemen, I come down here to give you
5 the charge on the law for a couple of reasons. When we
6 started this case I told you that you are the judges of the
7 facts of this case. You are the sole judges of the facts of
8 this case, and so during the course of the trial you have the
9 attorneys and the witnesses who are working in this area of
10 the courtroom that I call the arena and they are presenting
11 all that evidence to you for your consideration. So it's
12 appropriate that I'm out of the way, just not involved here.

13 But we have reached this portion of the trial that
14 you and I are in this together because you are the judges of
15 the facts and I am the judge of the law, and I'm going to give
16 you the law that you are to apply to the facts. So it's
17 appropriate for me to come down here. And then the other
18 reason is not nearly such a legal reason. It's just that it's
19 just much more friendly to talk to people face-to-face rather
20 than to do it from back over there.

21 I'm going to give you the charge on the law at this
22 time.

23 And I will tell you, Mr. Foreman, that this charge
24 that I'm going to give you, I'm going to read it straight from
25 my notebook here and I'm going to send this notebook back into

1 the jury room with you. So you'll have this in the jury room
2 should you need it, but please listen carefully while I charge
3 you on the law that applies to this case.

4 Mr. Foreman and members of the jury, you have heard
5 the evidence and the arguments of both parties. I will now
6 explain to you the law which applies to this action.

7 The indictment charges the defendant, Rodney
8 Alexander Nash, with the charges of murder and possession of a
9 weapon during the commission of a violent crime. I remind you
10 that the fact that the defendant was arrested, charged and
11 indicted in this case is not evidence in this case and cannot
12 be considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.

14 The indictment is merely the formal written
15 instrument which brings the charges made against the defendant
16 to court. It is the formal document by which this case is
17 brought into this court.

18 The defendant has pled not guilty to this indictment
19 and to the charges, and that plea puts the burden on the State
20 to prove the defendant guilty. A person charged with
21 committing a criminal offense in South Carolina is never
22 required to prove him or herself innocent.

23 I charge you that it is an important rule of law
24 that the defendant in a criminal trial, no matter what the
25 seriousness of the charge may be, will always be presumed to

1 be innocent of the crime for which the indictment was issued
2 unless guilt had been proven by evidence satisfying you of
3 that guilt beyond a reasonable doubt.

4 This presumption of innocence does not end when you
5 begin your deliberations but it accompanies the defendant
6 throughout the trial until you reach a verdict of guilt based
7 on evidence satisfying you of that guilt beyond a reasonable
8 doubt.

9 The presumption of innocence, ladies and gentlemen,
10 is like a robe of righteousness that is placed about the
11 shoulders of the defendant which remains with the defendant
12 until it has been stripped away from the defendant by evidence
13 satisfying you of his guilt beyond a reasonable doubt.

14 The presumption of innocence is not a mere legal
15 theory. It is not just a legal phrase. It is a substantial
16 right to which every defendant is entitled unless you, the
17 jury, are satisfied from the evidence of the defendant's guilt
18 beyond a reasonable doubt.

19 Now, what is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. The State has the
22 burden of proving the defendant guilty beyond a reasonable
23 doubt.

24 Some of you may have served as jurors in civil cases
25 where you were told that it is only necessary to prove that a

1 fact is more likely true than not, such as the greater weight
2 of the evidence or the preponderance of the evidence. In
3 criminal cases the State's proof must be more powerful than
4 that. It must be beyond a reasonable doubt. Proof beyond a
5 reasonable doubt is proof that leaves you firmly convinced of
6 the defendant's guilt.

7 There are very few things in this world that we know
8 with absolute certainty, and in criminal cases the law does
9 not require the proof that overcomes every possible doubt.

10 If based on your consideration of the evidence you
11 are firmly convinced the defendant is guilty of the crime
12 charged you must find the defendant guilty. If on the other
13 hand you think that there is a real possibility that the
14 defendant is not guilty then you must give the defendant the
15 benefit of that doubt and find him not guilty.

16 I remind you that during this trial you and I have
17 certain duties to perform. As the trial judge it's my
18 responsibility to preside over the trial in this case, and I
19 also have the duty to rule on the admissibility of evidence
20 that is offered during the course of the trial.

21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered stricken from
23 the record in this case during the trial you would disregard
24 that testimony. You are to consider only the testimony which
25 has been presented from the witness stand, any exhibits which

1 have been presented or made a part of this record in this case
2 and then any stipulations of counsel.

3 I have the additional duty to charge you the law
4 applicable to this case. As the presiding judge I am the sole
5 judge of the law of this case and it is your duty as jurors to
6 accept and apply the law as I now state it to you.

7 If you already have an idea as to what the law is or
8 what the law ought to be and it does not agree with what I now
9 tell you that the law is you must abandon your idea because
10 you are sworn to accept the law and apply the law exactly as I
11 state it to you.

12 In every case tried in this court before a jury, the
13 jury becomes the sole and exclusive judges of the facts in the
14 case. A trial judge cannot intimate, state, comment on or
15 make any statement to a trial jury about the facts of a case.

16 Since you, the jury, are the sole judges of the
17 facts in this case you are not to infer from what I have said
18 during the progress of this trial in ruling upon the
19 admissibility of evidence or otherwise, or anything that I say
20 now during the course of this instruction to you that I have
21 any opinion about the facts of this case. The law does not
22 allow me to have an opinion about the facts in this case.

23 This is a matter solely for you to determine as the
24 jury. It is your duty to determine the effect, value and
25 weight and truth of the evidence presented during the course

1 of this trial.

2 Now, there are two types of evidence which are
3 generally presented during a trial. There's direct evidence
4 and there's circumstantial evidence.

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact such as an
7 eyewitness. It is evidence which immediately establishes the
8 main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It is
11 evidence which immediately establishes collateral facts from
12 which the main fact may be inferred. Circumstantial evidence
13 is based on inference and not on personal knowledge or
14 observation.

15 The law makes absolutely no distinction between the
16 weight or the value to be given to either direct or
17 circumstantial evidence, nor is there a greater degree of
18 certainty required of circumstantial evidence than of direct
19 evidence. You should weigh all of the evidence in this case.

20 After weighing all of the evidence if you are not
21 convinced of the guilt of the defendant beyond a reasonable
22 doubt you must find the defendant not guilty. If on the other
23 hand after weighing all the evidence you are convinced of the
24 guilt of the defendant beyond a reasonable doubt then you
25 would find the defendant guilty.

1 Necessarily, you must determine the credibility of
2 the witnesses who have testified in this case. Credibility
3 simply means believability. It becomes your duty as jurors to
4 analyze and to evaluate the evidence and determine which
5 evidence convinces you of its truth.

6 In evaluating eyewitness testimony you should
7 remember that the State must prove the identity of a defendant
8 as the person who committed the crime beyond a reasonable
9 doubt.

10 In determining the believability of witnesses who
11 have testified in this case you may believe one witness over
12 several witnesses or several witnesses over one. You may
13 believe a part of the witness's testimony and reject the
14 remaining part, or you may believe the testimony of a witness
15 in its entirety or reject the testimony in its entirety.

16 You may consider whether any witness has exhibited
17 to you any interest, bias or prejudice or other motive in this
18 case. You may also consider the appearance of a witness and
19 the manner of the witness while testifying on the stand.

20 An issue in this case is the identification of the
21 defendant as the person who committed the crime charged. The
22 State has the burden of proving identity beyond a reasonable
23 doubt. You must be satisfied beyond a reasonable doubt of the
24 accuracy of the identification of the defendant as the person
25 who committed the crime.

1 Identification testimony is an expression of belief
2 or impression by a witness. You must determine the accuracy
3 of the identification of the defendant. You must consider the
4 believability of each identification witness in the same way
5 as any other witness.

6 You may consider whether the witness had an adequate
7 opportunity to observe the offender at the time of the
8 offense. This will be affected by things like how long or how
9 short a time was available, how far or how close was the
10 witness, the lighting conditions and whether the witness had
11 the chance to see or know the person in the past.

12 The burden of proof is on the State and it extends
13 to every element of the crime charged and this burden includes
14 proving beyond a reasonable doubt the identity of the
15 defendant as the person who committed the crime.

16 Now, the testimony of a police officer is not
17 entitled to more weight than that of any other witness. You
18 are the sole judges of the credibility of a witness and you
19 are not to give more credence to a police officer's testimony
20 solely because he or she is a police officer. Rather, you
21 should judge an officer's testimony by the same standards that
22 you apply to any other witness.

23 The rules of evidence ordinarily do not permit
24 witnesses to testify as to their opinions or conclusions.
25 There is an exception to this rule that exists for witnesses

1 that we call expert witnesses. A person who by education and
2 experience has become an expert in some art, science,
3 profession or calling may state an opinion as to relevant and
4 material matter in which the witness claims to be an expert,
5 and may also state reasons for that opinion.

6 You should consider any expert opinion received into
7 evidence in this case, and like any other evidence, give it
8 the weight that you think it deserves.

9 If you decide that the opinion of an expert witness
10 is not based on sufficient education or experience, or if you
11 conclude that the reasons given in support of the opinion are
12 not sound, or that the opinion is outweighed by other evidence
13 you may disregard the opinion in its entirety.

14 An expert witness's testimony is to be given no
15 greater weight than that of another witness simply because
16 that witness has been classified as an expert. Further, you
17 are not required to accept an expert's opinion even though
18 it's not contradicted.

19 Now, there is one indictment in this case but with
20 two charges. Each charge is a separate crime. You must
21 decide, you must consider each charge separately. That is,
22 you must decide separately what the evidence in the case shows
23 about each crime that is charged. Your decision on one charge
24 should not affect your decision on another charge. You take
25 each charge on its own merit.

1 Now, the defendant is charged with the crime of
2 murder. The State must prove beyond a reasonable doubt that
3 the defendant killed another person with malice aforethought.
4 Malice is hatred, ill will or hostility toward another person.
5 It is the intentional doing of a wrongful act without just
6 cause or excuse and with an intent to inflict an injury or
7 under circumstances that the law will infer an evil intent.

8 Malice aforethought does not require that malice
9 exists for any particular time before the act is committed but
10 malice must exist in the mind of the defendant just before and
11 at the time that the act was committed. Therefore, there must
12 be a combination of the previous evil intent and the act.

13 Malice aforethought may be expressed or inferred.
14 These terms expressed and inferred do not mean different kinds
15 of malice but merely the manner in which malice may be shown
16 to have existed, that is either by direct evidence or by
17 inference from the facts and circumstances which are proved.

18 Express malice is shown when a person speaks words
19 which express hatred or ill will for another or when the
20 person prepared beforehand to do the act which was later
21 established. For example, lying in wait for a person or any
22 other acts of preparation going to show that the deed was
23 within the defendant's mind would be expressed malice.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise when

1 the deed is done with a deadly weapon.

2 A deadly weapon is any article, instrument or
3 substance which is likely to cause death or great bodily harm.
4 Whether an instrument has been used as a deadly weapon depends
5 on the facts and circumstances of each case.

6 The following are examples of instruments which may
7 be considered deadly weapons; a pistol, a shotgun, a rifle, a
8 dirk, dagger, a knife, a slingshot, metal knuckles, a razor,
9 gasoline, a firebomb or Molotov cocktail, and lighter fluid.

10 A gun may be a deadly weapon even if it is not
11 operating. It is for you to decide in this case beyond a
12 reasonable doubt whether or not a weapon was used.

13 Now, the defendant is also charged with the
14 possession of a weapon during the commission of a violent
15 crime. The State must prove beyond a reasonable doubt that
16 the defendant was in possession of a firearm or visibly
17 displayed what appeared to be a firearm during the commission
18 of a violent crime.

19 A firearm means any machine gun, automatic rifle,
20 revolver, pistol or any weapon which will or is designed to or
21 may be readily converted to expel a projectile.

22 In order to find the defendant guilty of possession
23 of a weapon during the commission of a violent crime you must
24 first find the defendant guilty of either committing a violent
25 crime or attempting to commit a violent crime. Under South

1 Carolina law murder is a violent crime.

2 Mr. Foreman, ladies and gentlemen of the jury, as
3 you retire to begin your deliberations I wish to express the
4 hope that each of you will be mindful of the importance of
5 your responsibility.

6 You are not called to serve upon jury duty very
7 often, and the proper performance of the duty requires each of
8 you to reach the height of freeing your mind of all improper
9 influences. You and I are acting for this community and that
10 is why we must see to it that this trial is fair and that the
11 verdict is just.

12 You have observed as the presiding officer of this
13 Court is addressed as Your Honor. The reason is not because
14 of the person wearing this robe but that this Court is
15 entrusted with the honor of this community, the honor of this
16 State, and the honor of this Country in seeking that every
17 case that is tried here receives fair and impartial justice.

18 Now, you, the jury, take into your care the
19 preservation of the honor of this community, the honor of this
20 State, and the honor of this Country.

21 Do not get the idea that I'm trying to intimate to
22 you how I might think you should decide this case. As I've
23 already told you, under the laws of the State of South
24 Carolina you, the jury, are the sole judge of all questions of
25 fact. It would be highly improper for me to influence you in

1 the performance of that duty.

2 But as the presiding officer of this Court I am
3 vitally concerned that whatever verdict you find will be the
4 result of you going into your jury room and confining your
5 consideration to the evidence and the law that you have heard
6 in this courtroom, weighing it fairly and impartially as I
7 have every confidence you will do.

8 Ladies and gentlemen, everyone is entitled to
9 justice in this case. Both the State and the defendant all
10 are entitled to justice, nothing more, nothing less. Your
11 verdict in this case cannot be based on sympathy, compassion,
12 prejudice or emotion, or some other consideration that is not
13 found in the evidence.

14 The Court is of the confirmed opinion that whatever
15 verdict you reach will represent truth and justice for all the
16 parties involved in this case.

17 And, Mr. Foreman, remember that the verdict of the
18 jury must be a unanimous verdict. Everyone must agree on the
19 verdict.

20 I'm now going to go over with you the verdict form
21 and the possible forms of verdict in this case. It's very
22 simple. The verdict form is simple.

23 Mr. Foreman, you'll take it and be in charge of it.

24 After your deliberations the verdict form simply as
25 to murder we, the jury, find the defendant, Rodney Alexander

1 Nash, either not guilty or guilty of murder. And as to the
2 possession of a weapon during the commission of a violent
3 crime we, the jury, find the defendant, Rodney Alexander Nash,
4 either guilty or not guilty of that offense. It's a simple
5 verdict form, easy for you to follow and fill out.

6 And I would ask, Mr. Hart, that you are in control
7 of that and that whenever the jury does reach a verdict that
8 you'll reflect the jury's verdict on this form. Then when you
9 have a verdict you are to knock on the door and let the
10 bailiff know that you have a verdict, then we'll bring you
11 back into court to receive them.

12 Now, evidence that was presented during the course
13 of the trial, these exhibits that have been entered into
14 evidence, those will also be back in your jury room for you to
15 view and look at. If you did decide you wanted to look at
16 this film or this tape, again, if you'll just let us know
17 that. We'll have to bring you back out here to do that
18 because it's all set up out here.

19 Now, your lunch should be here. What I'm going to
20 get you to do, if you would, is go back into your jury room.

21 But, Mr. Foreman, there needs to be no discussion
22 about the case quite yet. You've got the evidence, you've got
23 law but before you begin your deliberations I need a moment to
24 confer with the attorneys to make sure that the charge that
25 I've given you is complete and there's nothing to be added or

1 taken away from that.

2 If there is a change in the charge or if there is an
3 addition to the charge I'll bring you back out and give you
4 that. If not, I'll gather all of this evidence.

5 And, Mr. Hart, when the evidence and this notebook
6 are sent back to you that will be your cue to then go ahead
7 and begin your deliberations.

8 If your lunch is back there when you go back don't
9 hesitate on that, go ahead and start eating your lunch. If I
10 need to bring you out here, I'll bring you out. But go ahead
11 and begin your lunch if it's back there, and once you get this
12 notebook and that evidence that will be the cue to start
13 deliberations, okay?

14 So if you all would please return to your jury room
15 while I discuss the matters with the attorneys.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 12:38 p.m.)

18 THE COURT: All right. Are there any exceptions or
19 objections to the charge by the State?

20 MR. MCCARTY: Your Honor, in your oral instructions
21 on page 13 of our packet, I believe the malice charge.

22 THE COURT: Right.

23 MR. MCCARTY: Your Honor, you were correct in your
24 oral instruction which you said is to determine whether or not
25 a weapon or a gun is a deadly weapon, however the written

1 instruction, the copy that I have, the last paragraph says it
2 is for you to decide in this case beyond a reasonable doubt
3 whether a hand or a fist is a deadly weapon.

4 THE COURT: Yeah, and that is here, too. I didn't
5 read it. I'm going to strike through.

6 MR. MCCARTY: Again, like I said, you were correct
7 in your oral instruction but just before the written
8 instruction would go back I would ask that that be changed.

9 THE COURT: Right, and I saw that. I thought I took
10 that out. I was surprised when I saw that.

11 MR. MCCARTY: And I apologize. I didn't read that
12 well last time either.

13 THE COURT: That's fine. I'm going to strike
14 through that. But that, obviously, the facts of this case,
15 that's not an issue.

16 MR. MCCARTY: Yes, sir. And then just on page 14 it
17 was just a typographical error for Madam Forelady as opposed
18 to Mr. Foreman.

19 THE COURT: Oh, and I did correct that.

20 MR. MCCARTY: Yes, sir.

21 THE COURT: I have corrected that.

22 All right. Anything further?

23 MR. MCCARTY: No, Your Honor.

24 THE COURT: Anything from the defendant?

25 MR. GODFREY: No exceptions.

1 THE COURT: All right. Gentlemen, if you all will
2 do me a favor, look through the exhibits and make sure they
3 are all here, and if they are all here, this is the
4 instruction book that should back with them.

5 And I'll need the alternate.

6 (WHEREUPON, the alternate was dismissed.)

7 THE COURT: All right. Guys, we will remain at ease
8 while the jury is deliberating. Bill, or any of you, if you
9 all want to leave the courthouse or step out or whatever if
10 you'll just leave us a cell number or some number where we can
11 reach you if they have a question or a verdict or whatever,
12 and we'll be happy to just leave that with Jessie and we'll
13 give you a call if we need you back up here.

14 (WHEREUPON, the jury was instructed to begin
15 deliberations at approximately 12:45 p.m.; and the trial of
16 this case was recessed while awaiting a verdict from the
17 jury.)

18 THE COURT: Ask the jury to come back out.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 4:12 p.m.)

21 THE COURT: Ladies and gentlemen, what I'm going to
22 do is I'm going to address some of the things you've mentioned
23 then we're going to play the video for you. And let me say
24 this, because we can do one of two things. First of all,
25 we'll play it however you want it played. You just direct us

1 and let us know how you want it played.

2 And the other thing is it's up here on the screen as
3 it is, or we can flip this laptop around, which it may be
4 clearer on that, and can play it for like three or four of you
5 once, then play it for three or four. You know what I'm
6 saying? However you all want it done, but we'll be happy to
7 do that to your liking.

8 But let me address some of the other matters that
9 you put out. And I'm just going to take them pretty much as a
10 group because my answer to them is going to be the same and
11 probably not thrill you.

12 But your first question was that on the day of the
13 shooting what time was the time of sunset and what day of the
14 week was it; and then you asked how long was it before
15 Mr. Wiggins called 911 after the shots; then what hospital did
16 Mr. Nash go to with his wife, and then either Mary Black or
17 Spartanburg Regional; and then when did Mr. Nash change his
18 hair; and then you've asked to see the statement that was made
19 by Mr. Wiggins at the police station.

20 All of these questions relate to -- would relate to
21 testimony. Now, I can't sit here and tell you that these
22 issues were addressed during the testimony or not. All I can
23 really tell you is that the evidence in this case is -- came
24 from the testimony of the witness stand and you have to go off
25 your recollection.

1 It may be that one of these questions wasn't even
2 addressed, and if it wasn't then that's not in evidence and so
3 I can't give you the answer to that because it's not in
4 evidence. You have to base your verdict on the evidence that
5 came through during the course of the trial, and you have to
6 go on your collective recollection of what that evidence was.

7 So I'm not being any help to you, to be honest with
8 you, other than to tell you that if these questions were
9 addressed during the course of the trial it would come through
10 the witness stand or any exhibits, which you have. So you'll
11 have to go based on that.

12 The video we're going to show you, and we'll show it
13 however you direct us to. I will have them play it through
14 and if at any time you need it to be replayed or whatever you
15 need you let us know and we'll do that, okay?

16 So if you would, let's kill the lights and show the
17 video.

18 (WHEREUPON, State's Exhibit Number 30 was played for
19 and by the jury.)

20 THE COURT: All right. Ladies and gentlemen, if
21 you've seen the video enough or as much as you need to then if
22 you would return to your jury room and continue your
23 deliberations, please.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 4:26 p.m.)

1 THE COURT: All right. Now, with regards to the
2 Court's response to the questions which the jury had sent out,
3 are there any objections or exceptions from the State with
4 regard to the Court's response?

5 MR. LEIBERT: No, sir, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. GODFREY: No, Your Honor.

8 THE COURT: All right. I'm going to make this a
9 Court's for the record. And we'll remain at ease while the
10 jury is deliberating.

11 (WHEREUPON, Court's Exhibit No. 2 was marked and
12 made a part of the record; and the trial of this case was
13 recessed while awaiting a verdict from the jury.)

14 THE COURT: Ladies and gentlemen, just talking to
15 everyone here in the courtroom now, I'm told that they have a
16 verdict. I sit here just as you do not knowing what that is.
17 So having said that, though, one thing I do know, and that is
18 whatever the verdict is it needs to be received in a
19 professional manner.

20 The jury, whether you agree with their verdict or
21 not, they at least deserve the right to have their verdict
22 received without any outbursts or emotional displays. So I
23 say that because if there's anyone that feels that they may
24 not be able to control their emotions I'd ask you to not be
25 here when the verdict is read.

1 And, again, I don't anticipate that everybody is
2 going to agree with their verdict but it is their verdict and
3 they have the right, or at least they deserve to have it
4 received properly, and then after the jury is excused, you
5 know, you can feel however you want to feel.

6 So having said that, if anybody feels that they
7 cannot control their emotions I would ask you to leave because
8 what I don't want to do is be forced to have to discipline
9 somebody who ignores my request.

10 So having said that, is the State ready or prepared
11 to receive the jury's verdict?

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

13 THE COURT: Is the defense ready?

14 MR. GODFREY: Yes, Your Honor.

15 THE COURT: All right. Please ask the members of
16 the jury to join us, sir.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 4:37 p.m.)

19 THE COURT: All right. Mr. Foreman, has the jury
20 reached a unanimous verdict, sir?

21 THE FOREMAN: Yes, sir.

22 THE COURT: If you would, sir, please, if you'd give
23 the form to the bailiff so that he may bring it up to the
24 Court.

25 (WHEREUPON, the verdict form was handed to the

1 Court.)

2 THE COURT: All right. Madam Clerk, it appears to
3 be in order. If you would please publish the verdict of the
4 jury.

5 THE CLERK: State of South Carolina, County of
6 Spartanburg. State of South Carolina vs. Rodney Alexander
7 Nash in the Court of General Sessions, indictment number
8 2006-GS-42-0225. We, the jury, find the defendant, Rodney
9 Alexander Nash, guilty of murder. As to possession of a
10 weapon during the commission of a violent crime, we, the jury,
11 find the defendant, Rodney Alexander Nash, guilty. Signed
12 Donald Hart, Jr. today, 5-7-08.

13 Ladies and gentlemen of the jury, is this your
14 verdict and still your verdict? If so, please raise your
15 hand.

16 (WHEREUPON, all hands were raised.)

17 THE CLERK: So say you all.

18 THE COURT: All right. Thank you, ladies and
19 gentlemen.

20 Thank you, Madam Clerk.

21 Any request from the defense for polling of the
22 jury?

23 MR. GODFREY: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, I want to take this opportunity to thank you for your

1 time and your efforts this week, and your service.

2 You know, I didn't get to talk with you as a group
3 when you were first qualified as jurors, and I'm not --

4 Who qualified the jury? I'm not sure. Judge Young
5 maybe -- excuse me, Judge Couch did.

6 THE BAILIFF: Judge Hayes did.

7 THE COURT: Judge Hayes did. Okay. But anyway,
8 ladies and gentlemen, I don't know what the Judge may have
9 shared with you but, you know, your service on the jury really
10 is an honor that you -- has been bestowed because there are
11 very few countries in this world that allow people of the
12 community to have their cases heard by their peers, and it's
13 an honor to do what you have done this week in your service.

14 It really is a service. You are going to get paid
15 something for your service this week, but it's not going to be
16 even remotely close to how valuable your time is. So, really,
17 that's just kind of an honorarium. Your jury service, it
18 truly is a service to your community. And I want to thank you
19 on behalf of the entire community here for you exercising your
20 service during the course of this trial.

21 Now, in just a moment I'm going to take a short
22 break, but in just a moment I'm going to proceed to the
23 sentencing phase. I also tell the juries, you've worked the
24 case, you've heard everything, you've been here and been
25 through it. A lot of judges just excuse the jury, thank you

1 and excuse you and send you on, and you are certainly free to
2 go once I conclude my remarks. But if you wish to stay you
3 are certainly welcome to do that as well.

4 The court is always a public forum and it's always
5 open to the public, and so therefore what I'm going to do in
6 just a moment is I'm going to excuse you but you are welcome
7 to come back into the court and have a seat if you want to be
8 present for that. If you don't, then you are certainly free
9 and welcome to go and to leave.

10 Let me say this. Your service for this week is
11 concluded. We had a couple of other cases but we've already
12 got those juries drawn and we're good to go on that, and then
13 we have some other guilty pleas that we're going to take up
14 for the balance of the week. So this will conclude your
15 service for this week.

16 You have earned an exemption. If Judge Hayes didn't
17 tell you, I'm sure he did though, but you only are required to
18 serve on jury duty in Circuit Court once every three calendar
19 years. So if you get a notice for jury service the balance of
20 this year or the next two year s you can exercise that
21 exemption and --- or accept that exemption and not serve.

22 Having said that, I hope that you will consider if
23 you do get summoned again to serve, and I say that because I'm
24 53 years old, I have never been summoned for jury duty in my
25 life. I got a summons about a month ago for me to serve on

1 jury duty during the term of court in 2 weeks in Florence
2 where I'm presiding.

3 So all my life I don't get a chance to serve. I
4 finally get summoned and I can't serve. Although, I didn't
5 know, I haven't decided whether to excuse myself or not.

6 But my point of all this, you don't get called that
7 often to serve. It is an honor to serve. I realize it is not
8 convenient and I realize many of you have other places you
9 either rather would be or need to be. But I do want to thank
10 you on behalf of Spartanburg County and the entire State of
11 South Carolina for your service.

12 Now, having said that, you are free to go. As I
13 said, I'm going to take just a short recess while the State
14 prepare a sentencing sheet and I gather my thoughts, and then
15 we'll have the sentencing shortly. You're welcome to stay for
16 it, come back in and stay for it, or you're free to go. But
17 thank you again for your service.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 4:45 p.m.)

20 THE COURT: All right. Before we proceed to
21 sentencing are there any motions?

22 MR. GODFREY: If it please the Court?

23 THE COURT: Yes, sir.

24 MR. GODFREY: We would move to set the verdict aside
25 and move for a new trial based on the fact that the evidence

1 does not support the verdict.

2 THE COURT: Thank you, Mr. Godfrey. I'm going to
3 respectfully deny that motion. Again, the evidence in the
4 case is what it was, and I think it boiled down to a matter of
5 credibility, believability and that is certainly in the
6 province of the jury and whatever weight they give the
7 testimony. And it's not for the Court to agree or disagree
8 with them with regards to what weight they give testimony but
9 certainly I find that there was sufficient evidence whereby a
10 jury could reach a verdict they reached, and I'm going to
11 respectfully deny your motion.

12 I'm going to take just a moment before we proceed to
13 the sentencing phase -- well, actually, I want to back that up
14 a little bit because I do want to take a moment. What I would
15 like to do though is go ahead and proceed into that and I'd
16 like to be able to hear both from the State and from the
17 defense regarding sentencing.

18 Are you prepared to go forward?

19 MR. LEIBERT: Yes, sir, Your Honor. We have
20 sentencing sheets completed.

21 THE COURT: If I may then, Solicitor, let me, if you
22 would -- and I know I heard the conviction for the habitual
23 traffic offender, but if there 's any other record let me know
24 what that is and then I'll be happy to hear from you any
25 further regarding sentencing.

1 MR. LEIBERT: Your Honor, he was convicted of
2 discharging a firearm in October 3rd, 1994, as well as
3 unlawful carrying of a pistol; May of '95, false pretense;
4 unlawful carrying of a weapon, March 13th, 2001; simple
5 possession of marijuana, October 2nd, 2000; driving under
6 suspension, February 6th, 2001; possession of marijuana March
7 26th, 2002; driving under the influence, 2001; habitual
8 traffic offenders, Your Honor, April of '03; DUS 3rd or
9 subsequent, April of '08. That is his record, Your Honor.

10 THE COURT: All right. Anything further regarding
11 sentencing?

12 MR. LEIBERT: These are his parents, Mr. and
13 Mrs. Farr. I don't believe they are able to speak. This is
14 their beautiful daughter. She's a nurse. She's a college
15 graduate, a wonderful young lady. And, of course, you've
16 heard from Michael.

17 Do any of you wish to speak?

18 (There was no response.)

19 That's all we have, Your Honor.

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

21 Mr. Godfrey, I'll be happy to hear from you on
22 Mr. Nash's behalf, and then either from Mr. Nash or anyone on
23 his behalf I'll be happy to hear from you.

24 MR. GODFREY: May it please the Court. You have
25 heard during the course of the trial about my client's life.

1 You know that he and his wife are presently separated, you
2 know that he has a little child.

3 Your Honor, his family has been standing behind him
4 when he has been going throughout this. This has been a
5 rather long experience with this particular charge.

6 His mother is Ruth. She is seated here. This is
7 his sister. And, of course, his brother, Alex, is back there.

8 Ruth, do you want to say anything to the Judge?

9 THE COURT: Ma'am, If I could just get your name for
10 the record, please.

11 MS. NASH: Ruth Nash.

12 THE COURT: All right, Ms. Nash. I'll be happy to
13 hear from you.

14 MS. NASH: I would just like to ask Your Honor to
15 have mercy on my child. He has been through a lot in his
16 short life and I would just like to ask you to have mercy on
17 him.

18 THE COURT: All right. Thank you, ma'am. Thank you
19 for being here.

20 MS. NASH: I would greatly appreciate it.

21 MR. GODFREY: Judge, based on his record there is
22 nothing like this on his record. There's no violence on his
23 record. He is a young man. He understands the verdict of the
24 jury and we would respectfully request the mercy of the Court.

25 THE COURT: Thank you very much, Mr. Godfrey.

1 Mr. Nash, would you like to address the Court?
2 You're not required to, sir, but I certainly would be happy to
3 hear from you.

4 THE DEFENDANT: Yes. I would appreciate if you have
5 mercy on me, Your Honor. I've been having a rough time, and I
6 had a rough time during this right here trying to prove my
7 innocence, and I'm still innocent of this right here. I mean,
8 I'm not guilty of none of this, but that's the decision of the
9 Court, and I understand that, Your Honor. But I ask you to
10 please have mercy on me.

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

12 THE DEFENDANT: Thank you.

13 THE COURT: Can I have the sentencing sheets?

14 MR. LEIBERT: Your Honor, I have sentencing sheets.
15 Sometimes defense signs, sometimes they don't.

16 THE COURT: That's all right.

17 Ladies and gentlemen -- and I know that this has
18 been a long process and I don't mean to prolong it any longer,
19 and I'm not going to take -- you know, obviously, I had no
20 idea what the verdict would be. I found out as you did.

21 But during the time I've been giving sentencing a
22 thought if it did come back as a guilty verdict but, of
23 course, I wanted to wait and hear from whoever wanted to speak
24 and address the Court.

25 I'm going to take just a few minutes. I'm going to

1 take just a few minutes. I'm not going to take very long but
2 just a couple of minutes. And so if everyone would just
3 remain at ease. I'll be back in about 2 or 3 minutes and then
4 we'll proceed to sentencing.

5 (WHEREUPON, a brief recess was taken.)

6 MR. LEIBERT: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 MR. LEIBERT: I think I may have filled a portion
9 wrong on the sentencing sheet. I think under the count 2,
10 16-23-490 under subsection B, I believe the Court -- that can
11 be consecutive or concurrent.

12 THE COURT: Yeah. I was just verifying that. Yeah.

13 MR. LEIBERT: I apologize.

14 THE COURT: That's not a problem. I was just
15 verifying that.

16 Ladies and gentlemen, of course, there's nothing
17 worse about my job than having to do this where you have to
18 have the burden of sentencing young men and women, and I don't
19 shun that responsibility but it's just to let you know that
20 it's not easy.

21 In South Carolina, the law provides that if someone
22 is convicted of murder that the Court must sentence that
23 individual to a term of imprisonment of not less than 30
24 years, all the way up to life in prison. That's the range
25 that the Court has to consider.

1 And I've always been one to look closely and, you
2 know, our law provides for a sentencing range for a reason.
3 There are individuals -- and don't get me wrong. The taking
4 of a life is the taking of a life and there can't be any -- in
5 other words, I guess what I'm saying is there's not any non
6 serious murders versus serious murders but there are more
7 violent offenses or at least the murder is conducted in a more
8 violent way in certain situations, and I think that's why the
9 legislature gives us a range.

10 The better example that I sometimes use is in a
11 case of -- for example, a burglary charge, burglary 2nd
12 degree. The law is a range of anywhere from 0 to 15 years,
13 and you take things into consideration. You take into
14 consideration the remorse of the defendant, you take into
15 consideration the defendant's prior record. You take into
16 consideration several matters.

17 And so chances are I wouldn't sentence someone on a
18 burglary 2nd charge who has no prior record to 15 years
19 whereas I might sentence someone who has got an extensive
20 prior record to 15 years. And I think that's the purpose of
21 the sentencing range that the legislature gives us as we
22 consider these things.

23 My concern here, and it saddens me to no end
24 because, Mr. Nash, you have a history of being in unlawful
25 possession of weapons. I wish you would have learned from

1 that. You have a history of discharging a firearm.

2 But having said that -- and I don't want in any way
3 to offend the parents of Terrell. I guess to you it doesn't
4 matter how this occurred. The fact is your son is gone. And
5 whether it was done execution style in a violent way or
6 whether it was done as it was done doesn't make it any less,
7 and I understand that, but part of the sentencing process I
8 have to consider those things.

9 I tell people always, and I never stand here or sit
10 here and tell anyone that the sentences that I impose are
11 correct. They are what I feel is correct. But who is to say
12 I'm always right. I'm like everyone else. I'm human and I
13 have -- I'm fallible as well.

14 I do take the opportunity to pray about what I
15 should do and I do ask for wisdom from the Lord in doing what
16 I do, and I don't know if I get that or not. I certainly hope
17 so and I believe I do.

18 I'm going to consider some of the facts in this
19 case. I cannot get into the heart of an individual. I can't
20 get into the mind of an individual. I do know that if I have
21 a case before me and the individual held someone at gunpoint,
22 stuck the gun to their head and pulled the trigger I can get
23 to the intent of that. I absolutely understand that that
24 individual meant to kill someone.

25 I'm not going make a judgment on whether Mr. Nash

1 intended to kill Terrell or whether he was just trying to
2 scare people and a stray bullet did what it did. The bottom
3 line is it doesn't matter because Terrell is gone, and it's
4 wrongfully done.

5 The sentence of the Court -- please stand for
6 sentencing. With regards to your indictment 2006-GS-42-225,
7 on count 1 of that indictment on the charge of murder the
8 sentence of the Court is that you be committed to the State
9 Department of Corrections for a period of 40 years.

10 And on count 2, the possession of a firearm during
11 the commission of a violent crime, the sentence of the Court
12 is that you be committed to the State Department of
13 Corrections for a period of 5 years.

14 I'm going to run those concurrent and give you
15 credit for any time that you have served. Good luck to you,
16 Mr. Nash.

17 THE DEFENDANT: Thank you, Your Honor.

18 THE COURT: I want to thank the attorneys for the
19 State, Mr. Godfrey for Mr. Nash. Thank you, all of you, for
20 your professionalism and the way you have conducted yourselves
21 with the trial and the way you assisted the Court during the
22 trial of the case.

23 It is always a pleasure to preside over trials when
24 you have got good lawyers on both sides, and we had that in
25 this case. And I appreciate very much the professionalism

1 that was shown to the Court and the courtesies that you showed
2 to the Court.

3 If there's nothing else regarding this trial, Court
4 will be adjourned until 9:30 in the morning.

5 (WHEREUPON, the trial of this case was concluded.)

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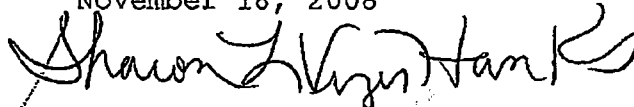
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I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 7th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 5th, 6th and 7th day of May 2008.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

November 18, 2008



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
County of SPARTANBURG)

In the Court of Common Pleas

Rodney Alexander Nash, 2928770
Full name and prison number, if any, of applicant)

2010-CP-42-3746

v.)

APPLICATION FOR
POST-CONVICTION RELIEF

State of South Carolina
Name of Respondent)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUL 20 AM 11:19
M. HOPE BLACKLEY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Correctional Inst,
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions, Spartanburg SC.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-42-225
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 7, 2008, 40 yrs with 5yr Concurrent
 - (b) _____
 - (c) _____

KX

- 5. Check whether a finding of guilty was made
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal was dismissed _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. March 1, 2010 _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results: N/A

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing: N/A

- (a) N/A _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel _____
- (b) _____
- (c) _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 JUL 20 AM 11:19
 M. HOPE BLACKLEY

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Trial Counsel failed to request of the Court Jury instruction of the defense of alibi.
- (b) Trial Counsel failed to object to improper comments made by prosecution during Opening Statements.
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?
N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?
N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A
- (d) any other petitions, motions or applications in this or any other Court?
N/A

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 JUL 20 AM 11:19
 M. HOPE BLACKLEY

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition: N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented: N/A

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised: N/A

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented: N/A

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

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17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. E.P. Bill Godfrey, Godfrey Law Firm L.L.C., 10 E. Ave.
Greenville SC 29601

ii. _____

iii. Joseph L. SAVITZ, III, SC Appellate defense, P.O. Box 11589

(b) the proceedings at which each such attorney represented you: Columbia SC 29211

i. Godfrey - Arraignment, Trial, Sentencing

ii. _____

iii. Joseph L. SAVITZ - Appeal

18. State clearly the relief you seek in filing this application.

Sentence Vacated, Conviction Overturned, New trial Awarded, any other relief the Court deems proper.

19. Are you now under sentence from any other court that you have not challenged? NO

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

VERIFICATION

I, Rodney Alexander Nash #892870, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Rodney Nash #892870

Sworn to and subscribed before me

This 15 day of July, 2010

Joyce L Young L.S.
Notary Public for South Carolina

My Commission Expires 8 28 20 11

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APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Rodney Alexander Nash #892870, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Rodney A. Nash
Applicant

Sworn to and subscribed before me

This 15 day of July, 2010

Joyce L Young L.S.
Notary Public for South Carolina

My Commission Expires: 8 28 20 11

2010-CP-42-3746

SPARTANBURG COUNTY COURT OF GENERAL SESSION

IN THE COUNTY OF SPARTANBURG

THE HONORABLE THOMAS RUSSO PRESIDING

Rodney Alexander Nash, #292870,

Applicant;

Vs.

State of South Carolina,

Respondent.

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POST-CONVICTION Relief Brief

Rodney A. Nash #292870
McCormick Corr. Inst.
386 Redemption Way
McCormick South Carolina, 29899

[Faint, illegible stamp]

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STATEMENT OF ISSUE

- I. Trial Counsel rendered ineffective assistance of counsel.
- A) Trial Counsel failed to request of the Court, Jury instruction on the defense of alibi.
- B) Trial Counsel failed to object to improper comments made by the prosecution during opening statements.

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STATEMENT OF CASE

On May 5-7, 2008, Rodney Alexander Nash stood trial in Spartanburg County before Judge Thomas Russo and a jury on indictments charging him with murder and possession of firearm during the commission of a violent crime. The jury found Mr. Nash guilty as charged, and the judge imposed concurrent sentences of forty (40) years for murder and five years for possession of a firearm during the commission of a violent crime.

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ARGUMENT

The Applicant, Rodney Alexander Nash has been held in the McComb Correctional Inst. for more than two years pursuant to a guilty verdict stemming from a jury trial. In this argument, the applicant will show that his trial counsel failed to request, of the court, jury instruction of the defense of alibi.

Failure to give alibi charge, where defendant claims to be at another place during the crime is reversible error and defense counsel's failure to request alibi instruction where sole defense was alibi, constitutes ineffective assistance of counsel. [Riddle v. State, 418 S.E.2d (SC 1992)] - "The absence of a charge gave rise for the jury to conclude that it was impermissible for them to consider alibi as defense. The Applicant's testimony throughout these proceedings was that he was not present at the time of the crime and never waived. It is well settled that omission of an alibi charge when the defendant claims to have been in another place at the time of the crime constitutes deficient representation under the objective

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Standard of reasonableness set out in Strickland. [Strickland v. Washington, 104 S.Ct. 2052 (1984)]. The Applicant further expounds on this issue and contends that there was no overwhelming evidence of guilt presented in this case, therefore, it cannot be said, as in [Geter v. State, 409 S.E.2d 344 (1991)] that, "reasonable probability of a different result does not exist when there is overwhelming evidence of guilt." Being as there was little to no evidence to contradict the Applicant's statements concerning the crime in question, it is highly probable that a different result, as in the first two trials, (first two trials ended in mistrials) could have been reached. Therefore, Counsel was deficient in his representation by not requesting of the Court a Charge of alibi.

It is the Applicant's hope that this Court take into consideration the testimony as well as the evidence that Applicant has presented, and with accordance with the South Carolina laws and rules of court, grant Mr. Nash's request for Post-Conviction Relief.

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Applicant Nash also contends that his trial Counsel was below the objective standard of reasonableness for not objecting to improper comments made by the solicitor during opening statements.

During the opening statements by the prosecution, the solicitor made the following comments: "Ladies and gentleman, as the judge has told you, this case is about murder. This case is Rodney Nash killing Tarrell Farr on the night of July 30th, 2005." (T. Tr. p. 63; Ln 12-14). In this statement, the prosecution characterizes applicant Nash as a killer and at this juncture in court, it has not been proven through any evidence that applicant committed any crime, thereby making the comments improper.

In [Gilchrist v. State, 565 S.E.2d 281 (sc. 2002)], the courts held that the State made improper comments during opening statements and that prejudice flowed from counsel's erroneous failure to object to said opening statements." Furthermore, defense counsel cannot assert trial strategy as a defense to an ineffective assistance claim for failure to object to comments which constitute an error of law and are inherently prejudicial. Where

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Trial Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. However, in this instant case, trial counsel can show no strategic or tactical reason for allowing the prosecution, without immediate objection, to call the applicant, in front of the jury, "A Killer."

The prejudicial impact of the failure of trial counsel to object is, the state was allowed without challenge to put the prestige and influence of the solicitor's office behind a statement that cast the applicant in an unfair light before any evidence was presented, and with little to no evidence against applicant, makes the statements even more prejudicial. There had been no evidence or information presented

to the jury that corroborates the statements made by the prosecution.

"Because a jury must make its own assessment of a defendant, it is inappropriate for the state to make such comments." [State v.

Kelly, 540 S.E.2d 851 (2001)].

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In light of the forgone facts, applicant Nash ask this honorable Court to grant his application for Post-Conviction Relief.

Respectfully,

S/ Rodney A. Nash
RODNEY A. NASH, # 292870

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CONCLUSION

Mr. Nash was tried for the offenses for which he is currently imprisoned on three separate occasions with the first two trials resulting in Mistrials due to hung juries. The State was allowed by the applicant's trial counsel to change strategy three different times until the state finally obtained a conviction against Mr. Nash. Applicant Nash's trial attorney's deficient performance in this third jury trial directly led to the applicant being convicted. It is Mr. Nash's hope and prayer that this honorable court, after reviewing the evidence presented by the applicant in this Post-Conviction Relief, grant Mr. Nash's application, reverse his conviction, and award the applicant a new trial.

Sincerely,

S/ Rodney A. Nash

RODNEY A. NASH, # 292870

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SPARTANBURG COUNTY COURT OF GENERAL SECESSION

IN THE COUNTY OF SPARTANBURG

THE HONORABLE THOMAS BUSSO PRESIDING

Rodney Alexander Nash, # 292970,

Applicant,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Rodney A. Nash, certify that a true copy of Applicants Post-Conviction Relief brief and attachments has been served on the office of the Clerk of Court of Spartanburg County at: P.O. Box 3483, Spartanburg SC. 29306. I further certify that I am the applicant in the above matter and regular communication by mail exist between myself and the State of South Carolina.

Sworn and Subscribed Before Me

This 15 Day of July, 2010

Joyce E Young
NOTARY PUBLIC SOUTH CAROLINA

My Commission Expires: 8/28/2011

S/ Rodney A. Nash
RODNEY ALEXANDER NASH #292970

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1 The driver of that car was a 19-year-old young man
2 named Terrell Farr. He had no way of knowing when he turned
3 into the Linville Hills Subdivision that in just a few minutes
4 he would be dead and he would never leave the subdivision
5 alive. His passenger in the vehicle was his friend named
6 Michael Wiggins.

7 Michael Wiggins had no way of knowing that as they
8 turned down into that subdivision that they would come into
9 contact with this defendant, Rodney Nash, and that he would
10 watch as Rodney Nash pulled a gun, shot, gunned his friend
11 down in the street and killed him in their vehicle.

12 Ladies and gentlemen, as the Judge has told you,
13 this is a case about murder. The case is Rodney Nash killing
14 Terrell Farr on the night of July 30th, 2005.

15 During the course of the trial the State plans to
16 call witnesses that we will be able to elicit testimony from,
17 tell you about the case, tell you about what they saw, what
18 they witnessed.

19 You'll also hear from witnesses who are with the
20 sheriff's department, the Spartanburg County Sheriff's Office,
21 even some witnesses who are with the State Law Enforcement
22 Division, SLED. Through those witnesses you'll be able to
23 hear events.

24 Michael Wiggins will be able to tell you what
25 happened on that night, the events that occurred, what he saw,

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RANDY BOGAN - DIRECT BY MR. LEIBERT

1 A. Yes, sir. These are the 2 casings, I believe right
2 here, number 1 and number 2 were behind this vehicle in the
3 back sides of Road.

4 Q. All right. And now the next exhibit, number 2. I
5 believe that shows 2 of the placards plus number 4 as well?

6 A. It does, and number 4 would have been the cigarette
7 butt. Number 1 and 2 are the casings, as I stated before, and
8 number 4 would be the cigarette butt.

9 Q. All right. And now number -- I'm going to take that
10 down. We're going to do a close up of number 4. That is your
11 cigarette butt?

12 A. Yes, sir, that's the cigarette butt that I
13 collected.

14 Q. Investigator Bogan, were you ever a smoker?

15 A. Yes, sir.

16 Q. For how many years?

17 A. Approximately 20.

18 Q. Being a smoker, do you think you would know what a
19 fresh cigarette butt looks like?

20 A. Yeah --

21 MR. GODFREY: Objection. There's no foundation
22 that. There's no expertise for that.

23 MR. LEIBERT: Your Honor, he's been a smoker. He
24 would know what a fresh cigarette butt is if he's been smoking
25 for 20 years.

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RANDY BOGAN - DIRECT BY MR. LEIBERT

1 THE COURT: I'll allow it.

2 MR. LEIBERT: Thank you, Your Honor.

3 BY MR. LEIBERT:

4 Q. The cigarette butt that you found at
5 Road where you put placard number 4 and State's Exhibit 3,
6 does that appear to be a fresh cigarette butt?

7 A. Yes, sir, it did. In fact, I looked around the
8 vehicle and saw no other cigarette butts. That's what caught
9 my attention to this because, of course, we're looking for
10 evidence, and it looked like it was freshly put out on the
11 ground. So therefore, I collected it.

12 Q. All right. And near the car, I show you the next
13 exhibit, the white car, were there any cigarette butts in
14 State's Exhibit 11, cigarette ashes on the car?

15 A. Yes, sir. This is going to be the top of the
16 vehicle here in the front side of it. Now, the cigarette butt
17 was on -- there's a walkway going through this way and the
18 cigarette butt was back there (indicated). But the ashes were
19 on top of the car here, the front right side (indicated). And
20 I also took a closer photograph of these ashes, and that
21 actually caught my attention because the wind was blowing
22 somewhat and I know the ashes wouldn't be there by the wind
23 blowing had it not been recent. That's what drew my attention
24 to the ashes.

25 Q. All right. Then State's Exhibit 13?

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RANDY BOGAN - CROSS BY MR. GODFREY

1 MR. LEIBERT: Number 17.

2 Q. The 1 and 2 are back where the shell casings are?

3 A. Yes, sir.

4 Q. And I don't see it on the there but, Officer, show
5 us where the cigarette butt was.

6 A. The cigarette butt is going to be in this area right
7 here, and the reason the placards are not down yet is because
8 I took this photograph after these were initially located on
9 the initial search of the scene and then whenever I continued
10 searching the scene I found the cigarette butt, but it was in
11 close proximity of this area (indicated).

12 Q. Okay. So from the ball cap back to where the shell
13 casings were, about how many feet was that do you think?

14 A. I would say approximately 10 to 12 feet.

15 Q. Okay. When a shell, spent shell casing comes out of
16 a gun does it normally eject to the right and back?

17 A. Yes, sir.

18 Q. So based on your knowledge of semiautomatic weapons
19 and where the shell casings are could you estimate where the
20 person was standing that fired the shot?

21 A. I could, however, where these shell casings are
22 placed is not necessarily where they came out of the gun
23 because if someone walks up and kicks one of course they
24 going to be moved. But based on where those two were located
25 I would say that the person may have been standing here

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RANDY BOGAN - CROSS BY MR. GODFREY

1 (indicated). I can't say for sure because, like I say, the
2 shell casings could have been kicked or anything else by
3 someone else.

4 Q. Now, if I understand the pictures, the road where
5 the car was going down would be to the left of that fence?

6 A. Yes, sir, over in this area (indicated). Yes, sir,
7 down the side right here (indicated).

8 Q. So the ball cap, if there would have been somebody
9 standing there they would have been almost in the path of the
10 bullet, wouldn't they?

11 A. It's possible, yes, sir.

12 Q. Now, did you find any other evidentiary items there?

13 A. Here on the outside, other than the ashes on the
14 vehicle which, of course, were really -- I mean, I can't
15 really collect them, the ones on the vehicle, the cigarette
16 butt, the two casings, and the hat, no, sir.

17 Q. Did you make any tire impressions? Were there any
18 -- it looks like the concrete ends and there's dirt there.
19 Were there any tire impressions in the dirt?

20 A. There is dirt there, however it's dirt and gravel.
21 So therefore the tire impressions, if there were any, would
22 messed up because of the gravel part.

23 Q. And so it was unsuitable for any type of tire
24 impressions as far as matching anything; is that correct?

25 A. That's correct.

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RANDY BOGAN - CROSS BY MR. GODFREY

1 Q. Now, is that where cars normally park at that house?

2 A. I couldn't tell you that.

3 Q. Well, based upon the gravel and the dirt did it
4 appear that that's where cars parked?

5 A. It looks like they parked right here, to be honest
6 with you, because of the oil (indicated).

7 Q. Okay. Now, the ashes that were found on the hood of
8 the car, did you collect those ashes?

9 A. No, sir. As I stated, they broke up and crumbled up
10 whenever I would attempt to move them.

11 Q. So there's no way to determine if those ashes came
12 from the cigarette butt that you found?

13 A. In my opinion, there wouldn't be any way to
14 determine one cigarette ash from another cigarette ash.

15 Q. Are you a forensic scientist in that area?

16 A. No, sir.

17 Q. All right. Now, you testified that the cigarette
18 butt was fresh?

19 A. Yes, sir.

20 Q. What makes it fresh?

21 A. Because it didn't look like it had been stepped on or
22 stepped on or anything else. It was still round and just
23 laying on the ground. And that was on the walkway leading
24 the rear of the door, which if it had been there for an
25 length of time, people going in and out, the traffic of people

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RANDY BOGAN - CROSS BY MR. GODFREY

1 going in and out would be stepping on it and everything else.

2 It didn't look like it had been actually stepped on.

3 Q. So your testimony is that cigarette butt had not
4 been stepped on?

5 A. It didn't appear to have been, no, sir.

6 Q. Doesn't it look like the ashes have been spread at
7 the end of it?

8 A. I'm not a forensic expert, as you stated before, so
9 I couldn't tell you that. But it didn't look like it had been
10 stepped on, by me.

11 Q. Now, a cigarette butt, if it's there and there's
12 been, as you say, no rain, it would look the same for several
13 hours, wouldn't it?

14 A. Would look the same way? I don't understand what
15 you're asking me.

16 Q. Well, here's a cigarette. Unfortunately, I smoke.

17 A. Yes, sir.

18 Q. If that cigarette is there.

19 A. Yes, sir.

20 Q. And nobody steps on it and I leave for five hours
21 and come back is it going to look the same?

22 A. It's possible.

23 Q. It's possible? If nobody steps on it and there's
24 rain is it going to look the same?

25 A. It's possible. It depends on the environment that

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RANDY BOGAN - CROSS BY MR. GODFREY

1 Q. Well, you were present when there was a search
2 warrant made or a search made of that residence pursuant to a
3 search warrant?

4 A. Yes, sir.

5 Q. And did you find anything of evidentiary value in
6 that house?

7 A. I would actually have to take a look at the return
8 on the search warrant then I can be specific as to what was
9 located because I wrote everything down.

10 Q. Well, let me ask it another way. Did you send
11 anything to SLED that was found in that house?

12 A. No, sir. I don't recall sending anything to SLED
13 from inside the residence.

14 Q. And did you find a weapon inside the house?

15 A. I don't recall whether there was a weapon located in
16 the house or not. If I had of found a weapon inside of the
17 residence it wouldn't of matched the casings located on the
18 outside of the residence.

19 Q. And the casings, obviously you said that they could
20 be kicked or stepped on. When you picked them up did they
21 appear to be have been stepped on or did they appear to just
22 be lying there?

23 A. They appeared to just have been lying there.
24 could have been kicked, but as far as being stepped on,
25 wouldn't say they were stepped on because they were still

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LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 submitted in a case.

2 Q. In this case, did you do an analysis -- what were
3 your findings on the analysis of the cap?

4 A. The DNA profile developed from the cap, which the
5 cutting is our item number 4.1, Rodney Nash is excluded as
6 contributor to that item.

7 Q. How about the DNA analysis of the cigarette butt?

8 A. Okay. I'm reading from my report.

9 Q. All right. That's fine. I don't believe there's
10 any objection. Go ahead.

11 A. The DNA profile developed from item 5 is a mixture,
12 which is the cigarette butt. Rodney Nash cannot be excluded
13 as contributor to this mixture. Once we determine that we
14 have -- this person can be included in a sample, in this
15 particular time it's a mixture, we then apply statistical
16 value to that particular profile, DNA profile. And I'm
17 reading off of my report; The probability of randomly
18 selecting an unrelated individual who could contribute to the
19 mixture is approximately 1 in 130,000.

20 Q. That means Rodney Nash's DNA is on the cigarette
21 butt?

22 A. He is included in that mixture.

23 Q. And there's someone else's mixture on there that's
24 unknown?

25 A. That's correct.

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LILLY GALLMAN - DIRECT BY MR. LEIBERT

1 Q. All right. Please step down here and show the jury
2 very quickly how you analyze that.

3 A. (The witness complied).

4 Q. All right. Let's start with table 1.

5 A. Okay. This is the second page of my report. All
6 the information that we gather on a particular person's DNA
7 profile and the evidence is put inside this chart. So the
8 first chart is coming from the profile plus the kit that we
9 use to develop a DNA profile on evidence, which is 4.1 and 5,
10 and a standard which is the buccal swab coming from Mr. Nash.

11 Q. So 4.1 is the cap and 5 is the cigarette butt; is
12 that correct?

13 A. That's correct.

14 Q. All right. And tell them, what are your findings
15 and how Mr. Nash is included in the cigarette butt?

16 A. Okay. Along the top you see these numbers. All of
17 these are different areas on the DNA chromosome. This last
18 one is amelogenin, which is the sex chromosome. In males
19 you'll will see XY. In females you'll see XX.

20 Okay. When you look at the evidence for the te
21 number 5, which is the cigarette butt, you'll see M. Nash
22 the top and you'll see the cigarette butt. He's t
23 here, and the evidence is a 15-17.

24 In the next column he's a 15-16 and evidence is
25 15-16. The next column he's a 22-23 and I have a 20-22-23.

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LILLY GALLMAN - CROSS BY MR. GODFREY

1 You see his 22 and 23 there. And as you go along looking at
2 the different columns you'll see Mr. Nash in there. Here he's
3 11-13 and 11-13 here, 27-29, 27-29, 13-15, 13-15, 12-14,
4 12-14, 11-12 and a 10.

5 Q. All right. Then as to the cap he was excluded
6 because the numbers don't match?

7 A. Yes.

8 Q. Or some of them don't match.

9 A. Yes. If you look at the cap here you see a 15 but
10 there's no 17. Here both of -- his alleles, are what we call
11 them, numbers are here. But when you go to the next one he's
12 a 22. There's no 22 here. The 11 is missing from here, and
13 when you get here definitely you don't see him because he's a
14 27-29 and there's a 28-30.

15 MR. LEIBERT: All right. Thank you very much. Have
16 a seat and answer any questions that Mr. Godfrey may have.

17 CROSS-EXAMINATION

18 BY MR. GODFREY:

19 Q. Ms. Gallman, I just have 2 questions. If I
20 understood what you testified to the cigarette butt, the DNA
21 in that cigarette butt, part of it was Rodney Nash and the
22 there is somebody else's DNA on there?

23 A. That's correct.

24 Q. So it looks like perhaps somebody shared a
25 cigarette?

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LILLY GALLMAN - CROSS BY MR. GODFREY

1 A. Yes.

2 Q. On the testing from the cap, there is no Rodney Nash
3 DNA on the cap?

4 A. He's excluded from the cap.

5 MR. GODFREY: Thank you. Nothing further.

6 MR. LEIBERT: Thank you, Your Honor. We have no
7 further questions. May she be excused? Her son is graduating
8 from college in a couple hours.

9 THE COURT: Well, congratulations. You need to go.
10 Any objection?

11 MR. GODFREY: Absolutely not.

12 THE COURT: Thank you very much for being here,
13 ma'am.

14 MR. LEIBERT: May we approach, Your Honor?

15 THE COURT: Sure..

16 (WHEREUPON, a bench conference was had.)

17 THE COURT: Ladies and gentlemen, Mr. Leibert is
18 going to read something to you in the record but before he
19 does let me explain. There are times during the course of
20 trial that there's no controversy or there's no difference of
21 opinion regarding certain pieces of evidence. It is what it
22 is. And so the parties can agree that it is what it is so
23 they stipulate to it.

24 A stipulation is simply an agreement. The parties
25 just agree that the item is what, in fact, it is and then it's

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUL 20 AM 11:20
M. HOPE BLANCHET

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Rodney Alexander Nash, #292870,)	2010-CP-42-3746
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for post conviction relief (PCR) filed July 20, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the January 2006 term of the Spartanburg County Grand Jury for murder and possession of a firearm during commission of a violent crime (06-GS-42-0225, counts 1 and 2 respectively). Everett P. Godfrey, Jr., Esquire, represented him. On December 10, 2003, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable Thomas A. Russo sentenced him to confinement for forty years for murder (count 1) and five years for possession of a firearm during commission of a violent crime (count 2).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted on Applicant's behalf. Applicant also submitted a *pro se* brief. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Nash, Op. No. 2010-UP-176 (S.C. Ct. App. filed March 1, 2010). The Remittitur was sent on March 17, 2010.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel failed to request a jury instruction of the defense of alibi,
 - b. Counsel failed to object to improper comments made by prosecution during opening statements.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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February 16, 2011.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2010-CP-42-3746

RODNEY ALEXANDER NASH, #292870)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL


STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Alexandria Marie Wolf, Esquire
1247 Boiling Springs Rd.
Spartanburg, SC 29303

DATED this 16th day of February, 2011.


Norma Bigbee, Legal Assistant

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3
 4 Rodney Alexander Nash,)
 5 Applicant,) TRANSCRIPT OF RECORD
 6 -vs-) 2010-CP-42-3746
 7 The State.) January 7, 2013
 8) Spartanburg, South Carolina
 9
 10

11 B E F O R E :
 12 HONORABLE J. DERHAM COLE, JUDGE
 13
 14

15 A P P E A R A N C E S :
 16 ALEXANDRIA M. WOLF, ESQUIRE
 17 Attorney for the Applicant
 18 SUZANNE H. WHITE, ESQUIRE
 19 Attorney for the State
 20
 21

22 Linda D. Moffitt
 23 Circuit Court Reporter
 24
 25

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1 THE COURT: Okay.

2 MS. WHITE: Thank you, Your Honor. This is the case
3 of Rodney Nash vs. the State. It's case No.
4 2010-CP-42-3746.

5 He's represented today by Ms. Alex Wolf.

6 Mr. Nash was indicted January of '06 for murder and
7 possession of a weapon during the commission of a violent
8 crime. He proceeded to trial.

9 There actually were two trials that ended in a hung
10 jury. So the case that we're here today on is a third
11 trial that was conducted May of 2008.

12 At that time he was found guilty and received a
13 sentence of 40 years for murder and a concurrent sentence
14 of five years on the possession of a weapon charge.

15 An appeal was filed, an Anders brief was submitted,
16 and that was dismissed.

17 He filed this application July 20th of 2010 alleging
18 ineffective assistance of counsel for counsel's failure to
19 request an alibi instruction and failure to object to
20 improper comments made by the prosecution during the
21 opening.

22 And at this point I will turn it over to Ms. Wolf.

23 THE COURT: Ms. Wolf.

24 MS. WOLF: Thank you, Your Honor. Call Mr. Nash.

25

Rodney Alexander Nash
Direct examination by Ms. Wolf

- 1 MS. WOLF: Thank you, sir. May it please the Court.
- 2 Q Mr. Nash, give us your full name, please.
- 3 A Rodney Alexander Nash.
- 4 Q You're going to have to speak up.
- 5 A Rodney Alexander Nash.
- 6 Q And where are you presently incarcerated?
- 7 A McCormick Institution.
- 8 Q And how old are you, sir?
- 9 A I'm 36 years old.
- 10 Q And who was your attorney at your first two, as well
- 11 as your third trial, in the matter of your arrest and
- 12 subsequent conviction on a murder charge in Spartanburg
- 13 County?
- 14 A E.P. Bill Godfrey.
- 15 Q And did you retain him privately or was he court
- 16 appointed?
- 17 A Privately.
- 18 Q And do you recall how you came to select Mr. Godfrey
- 19 as your counsel?
- 20 A I was referred to him by -- by another inmate.
- 21 Q And if you would, just give the Court a brief
- 22 recollection of how it was that you came to be tried three
- 23 times.
- 24 A From my understanding that the jury was hung on the
- 25 first two -- two trials. And I was convicted on the third

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 trial.

2 Q All right. And you have raised two issues -- the
3 shorter ones in your petition for P.C.R. And I would like
4 you to take the first one and explain to us why you feel
5 your attorney was ineffective in not requesting, I believe,
6 an instruction to the jury on alibi.

7 I'll have specific questions for you, but just that was
8 a basis for relief that you generated when you were in the
9 facility and were awaiting, I suppose, placement or
10 whatever. But in the first year of your incarceration you
11 determined that you felt a jury instruction of alibi should
12 have been given. Can you tell us why?

13 A Because of the evidence -- I feel that the evidence in
14 my trial was circumstantial and there was no overwhelming
15 evidence of guilt and --

16 Q Well, let's focus on the jury-instruction issue
17 particularly.

18 Okay. You are asking this Court to allow you a new
19 trial because at your third trial there was no instruction
20 to the jury as to how the jury should handle an alibi
21 defense. So let's first start by saying what was your alibi
22 defense at trial.

23 A What was my alibi defense at trial, was that I wasn't
24 present at the scene of the crime when the crime allegedly
25 occurred.

Rodney Alexander Nash
Direct examination by Ms. Wolf

- 1 Q All right. where did the crime allegedly occur?
2 A Road.
3 Q And did you have any relationship to that -- that
4 location?
5 A That was where my brother lived.
6 Q Which brother?
7 A Alex Nash.
8 Q And did anyone else live there?
9 A James Thomas.
10 Q Anyone else?
11 A Reginald Rice.
12 Q Anyone else?
13 A No one else lived there.
14 Q Alex Nash is your brother, is that correct?
15 A Correct.
16 Q Reginald Rice -- is he related to you?
17 A No, he's not.
18 Q And Mr. James?
19 A Thomas.
20 Q Thomas. Is he related to you?
21 A No, he's not.
22 Q And did any of your belongings get housed at that
23 location?
24 A No, they weren't.
25 Q would you help the Court get a little bit caught up

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 since the judge hasn't had the benefit of reading through
2 three trial transcripts how it was that you were associated
3 with that scene and that location the day of the shooting?

4 A From my understanding I was -- a guy by the name of
5 Michael Wiggins said that he seen me shoot his friend.

6 Q Let's go back a little bit though. If you would,
7 tell this court. Were you at that location earlier that
8 day or somehow associated with that location?

9 A Oh, yes, I was. I was --

10 Q Tell the judge about that.

11 A Earlier on June the 30th of 2005, earlier that day, I
12 was over at my brother's house at Road.

13 Q What time of the day were you there?

14 A And it was between 3:00 and 3:30. I was washing cars.
15 I go over there probably like two to three times a week.
16 And that particular day I went over there doing my little
17 normal routine. I washed -- washed cars. I had some dogs
18 over there. I feed my dogs, and I sit around, and we talk
19 and smoke cigarettes and drink beer.

20 Q So you kept your dogs over there.

21 A Some of them.

22 Q Was there any other property of yours at that
23 location?

24 A No, there wasn't.

25 Q Who was there when you were there smoking cigarettes

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 and washing cars and feeding dogs?

2 A Alex and James Thomas.

3 Q And what time did you leave that location?

4 A Between 5:00 and 5:30.

5 Q And when you left were other people still there?

6 A Yes, they was.

7 Q Who was still there?

8 A My brother and James Thomas.

9 Q And when you left around 5:00 or 5:30 where did you
10 go?

11 A I went home.

12 Q Who was with you?

13 A No one was with me.

14 Q And once you got home was there anyone there waiting
15 for you?

16 A No, there wasn't.

17 Q And if you would, then just give us the timeframe.

18 You got home around what time?

19 A Somewhere around between 5:00 and 6:00 o'clock.

20 Q Okay. And when you arrived home, what did you do?

21 A I sat around, and then I put a pizza in the oven. And
22 I waited on my pizza to get finished cooking, and I
23 didn't -- I didn't have anything to smoke. I didn't have
24 anything. I smoke after I eat. So I didn't have anything
25 to smoke, so I put my pizza in the oven. And I recall

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 going to the store, but I never did know what time I went
2 to the store that day.

3 Q Do you know what time you got back?

4 A I got back, I know, sometime around 9:00 o'clock.

5 Q Okay. And to the best of your recollection, the
6 information you were provided in preparing for your trial,
7 in viewing, if you didn't review back then, in reviewing
8 all of the discovery we've completed for this P.C.R., what
9 time was the shooting alleged to have occurred?

10 A From my understanding it happened at 8:00 -- 8:30.

11 Q Okay. So when you got home around 6:00 o'clock until
12 you were eating your pizza around 9:00 o'clock, who was
13 with you?

14 A No one was with me.

15 Q Is there anyone that came to the door or anyone that
16 you had any contact from that time period, 6:00 until 9:00?

17 A From 6:00 until 9:00?

18 Q Yes, sir.

19 A I talked to my wife over -- over the cell phone. She
20 was on her way home from -- from work to go to choir
21 practice. I talked to her when she got off. She gets off
22 5:00, 5:30. She got off about 5:00 or 5:30 that day. I
23 talked to her on the cell phone.

24 Q But she didn't come home to you. She went to choir
25 practice.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A She got -- she went home, but she made it home
2 before -- before I did and left and went to choir practice.

3 Q So from 6:00 to 9:00 did anyone come to the door?

4 A No, ma'am.

5 Q Did you go run any errands or meet up with any
6 friends?

7 A No, I did not.

8 Q Were you completely alone from 6:00 until 9:00 that
9 night?

10 A Yes, I was.

11 Q So, sir, who would be your alibi? Who would come to
12 court and say Mr. Nash was with me at the time of the
13 shooting?

14 A Well, I was at -- I was -- I was at the convenience
15 store, and I feel like that by me being at a specific place
16 at -- at a specific time that it was -- it was an alibi.
17 But I didn't -- I really didn't know what -- what an alibi
18 was. I thought an alibi was being at some place else other
19 than being at the scene of a -- where a crime allegedly
20 happened. That's what I thought alibi was. I did not know
21 that alibi -- that you had to be around somebody to have
22 alibi or somebody had to know where you was to have alibi.

23 So that's when I -- that's -- I had asked -- I had --
24 I had mentioned something to the detective, Lachicko, about
25 the convenience store that day. And he told, you know what

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 I'm saying, I -- I had mentioned something about the
2 convenience store. So I figured that -- I figured that
3 was -- that was the other -- only other place I been, you
4 know what I'm saying, other than home.

5 Q Let's focus on that. The convenience store would be
6 the store you went to to get the cigarettes to smoke when
7 you had your pizza, is that right?

8 A Right.

9 Q And do you recall your attorney getting in part of his
10 discovery a copy of the D.V.D. from the convenience store
11 showing you were there?

12 A Yes, ma'am.

13 Q And you don't have any complaints against Mr. Godfrey
14 about the fact that he got that or -- or that he reviewed
15 that and prepared for trial with that information. Were
16 there any complaints about how he handled that?

17 A I felt like since -- to me I felt like if the
18 identification -- if the identification defense -- as far
19 as the identification defense, it was -- it -- it didn't --
20 I felt like as far as identification defense it didn't work
21 the first two times, so.

22 Q Stop for a second and tell me what you mean by
23 identification defense.

24 A The first two times was -- well, I -- when I say
25 identification defense that mean -- well, not

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 identification defense but the defense as far as the state
2 failing to prove that I did it, did the crime beyond a
3 reasonable doubt.

4 Q Okay. Let's -- let's put that aside for just a second
5 because I don't want to get you off track. And I know
6 sometimes the words you use sound like they're legal terms,
7 and some are and some aren't. So let's hold on
8 identification aside for just a second. Okay?

9 A Okay.

10 Q And the, again, let's focus on this allegation that
11 there was no alibi instruction to the jury.

12 Do you understand now that in order to have an alibi
13 defense you must present somebody that can say I was with
14 the defendant at the time the crime was allegedly being
15 committed and I didn't see him commit a crime while I was
16 with him?

17 A Well, I felt like -- I felt the tape, the Exhibit
18 No. 30 that was in evidence, I felt like that that was --
19 that could've been a part of my alibi.

20 Q And that was offered into evidence at trial, wasn't
21 it?

22 A Right.

23 Q And your attorney was able to cross-examine Wayne
24 Butler from the Li'L Cricket, as well as the officers that
25 offered that tape into evidence. Didn't they?

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A Right.

2 Q Now, would you agree the problem with that tape is
3 that it puts you within spitting distance of the scene of
4 the crime within 10 to 15 minutes of the crime being
5 committed? Do you recall that?

6 A I recall that.

7 Q In fact, I think it's exactly 14 minutes from the time
8 that the shots were allegedly fired until you're seen on
9 this video at the Li'L Cricket getting your cigarettes.

10 A I recall that.

11 Q Can you understand how that evidence doesn't
12 necessarily give you an alibi so much as it puts you near
13 the scene of the crime in very close proximity at the time
14 that the crime was committed?

15 A The -- the store was the closest store to my house.

16 Q And when you testified at trial your attorney elicited
17 that testimony from you, did he not?

18 A Yes.

19 Q Okay. And do you have any complaints about the
20 fairness with which he had you testify and explain as to
21 why you were at that particular store at that particular
22 time?

23 A I didn't have any, I don't have any, dispute with
24 that.

25 Q Okay. And then just to be clear, no one went to the

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 store with you. You didn't get a ride from anyone to go to
2 the store. You just got in the car and went to the store
3 on your own.

4 A Right.

5 Q Is there any other information that you gave
6 Mr. Godfrey in terms of assisting him in locating someone
7 who could give you an alibi defense, someone who could have
8 been with you or was with you even from 6:00 o'clock until
9 9:00 o'clock that night?

10 A No, ma'am.

11 Q Okay. Is there any other information that you would
12 like this Court to hear in its determination as to whether
13 or not a jury instruction of alibi was truly warranted in
14 your case?

15 A I felt that a jury instruction on alibi was warranted
16 in my -- in this case because I didn't have any -- I didn't
17 have anybody with me on the night that the shooting
18 allegedly happened or whatever, but I was in -- I was at
19 home.

20 I -- the Exhibit No. 30, the C.D., the surveillance
21 from the Li'L Cricket, was admitted into evidence, and they
22 seen it. They seen -- they seen it. The jury seen it.
23 And it was the closest -- closest store to my house. And
24 that was the only specific place that I know that I -- that
25 I was other than being at home.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q Okay. And you testified about that, and your attorney
2 made sure you explained fully the distance from your home
3 to that Li'L Cricket and why you were there.

4 A Uh-huh.

5 Q Okay. All right. Let's move on then to the second
6 concern that you had, and that was the fact that one of the
7 sheriff's deputies testified about the age of a cigarette
8 butt located at the scene of the shooting.

9 A Right.

10 Q And, again, for the benefit of this Court who has not
11 read through three trial transcripts, tell us -- give us
12 some background on what was the deal with this cigarette
13 butt. Where was it found?

14 A From my understanding it was found at the scene of the
15 crime.

16 Q Okay. If you could, set the stage for us so that we
17 can see in our own mind's eye where the shooting allegedly
18 took place, where the victim was when he was shot as far as
19 you recall from your study of the police information.

20 A From my study of the police investigation the -- the
21 cigarette butt was located in -- in the yard of

22 Road on the sidewalk smear -- smeared out like -- like
23 someone put the cigarette butt out. And the cigarette butt
24 allegedly had my D.N.A. and someone else's D.N.A. on it, on
25 the cigarette butt.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q Okay. And do you know whether they were able to
2 determine who else's D.N.A. was on that cigarette butt?

3 A I sure don't, but my trial lawyer -- well, but my
4 brother -- me and my brother and -- me, Alex Nash and James
5 Thomas testified that we all smoked.

6 Q Okay. So as far as getting the information to the
7 jury about who might also be on that cigarette butt, did
8 your attorney do a good job of making sure that the jury
9 understand all of the possible people that could have
10 shared that cigarette?

11 A I don't think so. I think he could have did a better
12 investigation of it.

13 Q Well, but you said that he had you testify that you
14 shared that cigarette with other people, right?

15 A But I still didn't know who else's D.N.A. was on the
16 cigarette butt.

17 Q Okay. Was the jury presented evidence that there were
18 other people other than you that smoked that cigarette?

19 A Excuse me?

20 Q Was the jury given evidence? Do you recall that the
21 jury received evidence or testimony that other people
22 smoked that cigarette as well as possibly you?

23 A Yes.

24 Q Now, what was the situation with the butt being
25 offered into evidence with respect to an allegation that it

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 was old or a new cigarette butt, do you recall?

2 A Randy Bogan, Detective Randy Bogan, testified that the
3 cigarette butt was fresh and -- and the reason he testified
4 that it was fresh is because he'd been a smoker for 20
5 years. But he wasn't qualified as a D.N.A. analysis [sic]
6 to make -- to make that statement.

7 Q Okay. I am going to ask you and show you what is the
8 transcript from the third trial. And if you would, just
9 read for me. We're at page 81. Tell the court what line.
10 This is the direct examination by Randy Bogan from Mr.
11 Leibert who was the prosecuting attorney. And if you
12 would, start with line No. 1.

13 The question that was asked to Officer Bogan was, "All
14 right. And now I'm going to take that down. We're going to
15 do a closeup of No. 4. That is your cigarette butt."

16 And what was the answer?

17 A "Yes, sir. That's the cigarette butt that I
18 collected."

19 Q And that would be Randy Bogan collecting, is that
20 right?

21 A Right.

22 Q And then, "Investigator Bogan, were you ever a
23 smoker?"

24 A And the answer was, "Yes, sir."

25 Q "For how many years?"

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A The answer is, "Approximately 20."

2 Q "Being a smoker do you think you would know what a
3 fresh cigarette butt looks like?"

4 A The answer is "Yes."

5 Q And at that point Mr. Godfrey objected. And what did
6 Mr. Godfrey ask the court or tell the court?

7 A Mr. Godfrey said there is no foundation for that,
8 there's no expertise for that.

9 Q And then Mr. Leibert said, "Your Honor, he's been a
10 smoker. He would know what a fresh cigarette butt is if
11 he's been smoking for 20 years."

12 what did the court rule?

13 A The court allowed it.

14 Q And at that point the testimony from the officer as to
15 the age of the cigarette butt became available to the jury,
16 is that correct?

17 A Right.

18 Q Now, is that the cigarette-butt issue you've raised in
19 your P.C.R.?

20 A Yes, ma'am.

21 Q Okay. So if you would, describe for the court what it
22 is that you are asking the court to -- to look at. Why do
23 you feel your attorney was defective in some way in
24 handling that issue?

25 A I felt that my attorney could have preserved the issue

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 for a direct appeal.

2 Q Okay. And in reviewing the trial transcript did you
3 find any evidence that he renewed that objection on the
4 record at any time after he initially raised it on page 80?

5 A No, ma'am.

6 Q Do you feel that if he had protected that issue on the
7 record you would have been able to move forward on an
8 appeal subsequent to your conviction?

9 A Yes, ma'am.

10 Q Now, you and I have discussed the fact that the
11 standard for you as a P.C.R. applicant is twofold: One,
12 that your attorney didn't do a good job or fell below the
13 average, but then the second is you must show that but for
14 that mistake the jury would have come back with a different
15 verdict in your case, even another hung jury or perhaps an
16 appeal would have been held and your conviction reversed
17 had it come back from a successful appeal.

18 So you've testified right now that Mr. Godfrey did not
19 preserve that issue on appeal, that allowing Mr. Bogan to
20 testify and the jury to hear that there's some issue of
21 expertise, that was the error.

22 Now, tell me how we can persuade this Court that but
23 for that error you would have gotten an acquittal, another
24 hung jury, or had it gone to appeal that an appellate court
25 would have reversed and said that that error was so grave

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 that it made it impossible for you to get a fair trial.

2 So let me ask you this. You understand that -- the
3 second element you must prove today.

4 A Right.

5 Q With regard to that second element then had the judge
6 ruled in favor of your attorney and struck Mr. Bogan's
7 testimony that the butt was fresh or not fresh -- let's
8 assume Mr. Godfrey prevailed and the judge said it can't
9 come into evidence as to whether it's fresh or not, can
10 only come into evidence as to whose D.N.A. is on it, tell
11 me why you believe the jury would have come back with an
12 acquittal or a hung-jury ruling if that piece of evidence
13 had been excluded, the age of the cigarette butt, not the
14 actual cigarette butt. Do you understand?

15 A I'm trying to.

16 Q Okay. Assume you're right, the trial judge was wrong.
17 You and Mr. Godfrey are right and shouldn't --

18 A Right.

19 Q And the judge should have said, "I'm sorry, Mr. Bogan,
20 you're not an expert and you don't know how old a cigarette
21 should look like when it's been outside for a while."

22 A Right.

23 Q I'm going to let Mr. Bogan testify about the D.N.A.
24 that's on it but he won't be allowed to tell the jury
25 whether this is an old cigarette butt or a new cigarette

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 butt.

2 Tell me why you think had the judge ruled that way and
3 kept the age of the cigarette butt out of evidence that
4 would have given you a different result at the end of that
5 trial, that would have caused the jury to come back with a
6 not-guilty or another hung jury.

7 A Because by the cigarette -- by the jury being led to
8 believe the cigarette butt was fresh it -- it -- it led the
9 jury to believe that I was recently at the scene of the
10 crime.

11 Q And I don't want to be unkind, but if I don't ask you
12 this opposing counsel will. But you were at the scene of
13 the crime. You testified that you left there at 5:30 that
14 day.

15 why does it make any difference how old, if that was a
16 cigarette butt from that day or from five weeks before? You
17 still put yourself at that location within hours of the
18 shooting.

19 A Because I testified that I smoked and I thought the
20 cigarette butt was out.

21 My brother testified that he smoked and he thought the
22 cigarette butt's out on the ground. And -- and James
23 Thomas also testified that he smoked and he thought the
24 cigarette butt was out on the ground and --

25 Q Okay.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A And by the cigarette butt -- by the jury being -- by
2 Randy Bogan testifying and being allowed to say that the
3 cigarette butt was -- was fresh because he's been a smoker
4 for 20 years led the jury to believe that I was recently at
5 the scene of the crime.

6 Q And there's a bit -- you did testify yourself at
7 trial, did you not?

8 A Right.

9 Q And you testified that you were at that location
10 earlier that day.

11 A Earlier that day.

12 Q Yeah, but you left at 5:30 or 6:00.

13 A But they were saying that the cigarette butt was
14 fresh.

15 Q Okay. So your -- your definition of fresh is what?

16 A I don't think that -- I don't think there's any
17 scientific -- science that can -- that can tell you how
18 fresh a cigarette butt is.

19 Lillie Gallman, the -- the lady that was qualified for
20 the D.N.A. analysis, she was qualified all three -- all
21 three trials.

22 In the first trial Lillie Gallman testified that
23 there's no way that they can tell, there -- there's no way
24 that you can tell how fresh the cigarette butt is. But she
25 never did say that in the second or the third trial.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q And so why do you feel the jury would have come back
2 with a different ruling had they not been allowed to hear
3 Randy Bogan's testimony about the freshness?

4 A Because the jury was led to believe that I was
5 recently at the crime by -- by Randy Bogan by -- by the
6 judge allowing Randy Bogan's testimony that the cigarette
7 butt was fresh.

8 Q Okay. Is there any other issue with respect to the
9 admissibility of that cigarette butt that you felt your
10 attorney did or did not handle properly?

11 A Preserve the issue for a direct appeal.

12 Q And --

13 A And getting a -- a independent analysis or a
14 independent D.N.A. analysis for the defense on a cigarette
15 butt, because it was somebody else's D.N.A. on the
16 cigarette butt other than mine, but I don't know who.

17 Q Okay. Did you testify at trial as to the other people
18 that shared cigarettes with you -- and wrote them down?

19 A I mean, I -- I -- I testified that I smoke and I
20 throwed them out, but I didn't testify on who might have
21 shared a cigarette with me.

22 Q Are you sure you didn't mention Alex or James Thomas?

23 A I didn't mention anyone that might have shared a
24 cigarette butt with me.

25 Q Okay.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A All I know is that it was someone else's D.N.A. on the
2 cigarette butt other than mine.

3 Q Okay. And so you felt that your attorney should have
4 had an independent evaluation of the other D.N.A.
5 contributor?

6 A Right.

7 Q Any other issues with respect to the evidentiary
8 relevance of the age of that cigarette butt? Anything else
9 that you thought about while we've been preparing?

10 A Excuse me? Can you repeat that?

11 Q Any other issues with respect to how your attorney
12 handled the issue of the age of the cigarette butt coming
13 into evidence that you felt he should or shouldn't have
14 done? You thought that he didn't protect the issue on
15 appeal, the objections to the expertise of Randy Bogan as a
16 certifier of the agency perhaps, and then you've also just
17 said now you thought maybe your attorney should have hired
18 an expert and had the D.N.A. tested. Is there anything
19 else with respect to that cigarette butt before we move on?

20 A No, ma'am.

21 Q Now, let's get to the third one, and that third issue
22 has to do with the failure of your attorney to not procure
23 the trial transcript from your second trial, is that
24 correct?

25 A Right.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q And since you filed this P.C.R. we've procured a copy
2 of that second transcript. I keep calling it the second
3 transcript. The transcript from the second trial, is that
4 correct?

5 A Uh-huh.

6 Q And I sent that to you many months ago. You've had a
7 chance to go through it.

8 A Yes, I have.

9 Q And you also received a transcript from the first
10 trial. How did you receive that? When did you receive
11 that?

12 A I received the transcript from the first trial through
13 the appellate defense.

14 Q Okay. And --

15 A From the first trial? I'm sorry -- I'm sorry -- I'm
16 sorry. I did not -- I received the third one through the
17 appellate defense. The first one I received from -- I
18 think it was in -- in Mr. Godfrey's records.

19 Q Okay. So --

20 A I'm sorry.

21 Q No problem. So Mr. Godfrey had obtained that
22 transcript before the second trial as far as you are aware.

23 A The first transcript --

24 Q Yes.

25 A -- before the second trial?

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q Yes.

2 A I think so.

3 Q And to the best of your knowledge did he have that
4 transcript available when he was preparing for the second
5 trial?

6 A Yes, ma'am.

7 Q And then when the second trial came back as a hung
8 jury did he to the best of your knowledge obtain a copy of
9 the transcript from the second trial?

10 A I thought he obtained one.

11 Q Did you review it with him when you guys were
12 preparing for your third trial?

13 A The first trial transcript or the second trial
14 transcript? The second trial transcript, did we review it?

15 Q Yes.

16 A No, we did not.

17 Q Have you subsequently learned that, in fact,
18 Mr. Godfrey did not request, receive or have available to
19 him a transcript from that second trial in preparing for
20 your third trial?

21 A Right.

22 Q Why do you think that that was an error or a fatal
23 flaw in the presentation of your strongest defense?

24 A Because it was a lot of contradicting testimony from
25 the eye witness.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q Which eye witness?

2 A Michael Wiggins.

3 Q Okay. You've reviewed the first trial transcript and
4 the second and the third, is that correct?

5 A Right.

6 Q And in so doing you've identified inconsistencies in
7 Mr. Wiggins' testimony.

8 A Right.

9 Q And it's your position that had your attorney had that
10 second transcript what would have -- what would -- what
11 should he have done at trial that would have changed the
12 outcome?

13 A First of all, he could have -- he -- he could have
14 examined the voluntary statement from Michael Wiggins,
15 because the voluntary statement is inconsistent with
16 Michael Wiggins' trial testimony at all three trials. And
17 the voluntary statement was never admitted as an exhibit.

18 Q Okay. So you wanted him to offer the state's witness,
19 Michael Wiggins' --

20 A Voluntary statement.

21 Q -- voluntary statement into evidence.

22 A Right.

23 Q Do you understand that if he had done that that it's
24 possible that the jury could have been allowed to maybe
25 even take that into the jury room and study that in their

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 deliberation?

2 A Right.

3 Q And that would have been okay with you.

4 A Yes, ma'am.

5 Q All right. So you saw Mr. Wiggins' voluntary
6 statement before trial -- yes, no? Did you?

7 A No, I did not.

8 Q You did not review that with the discovery?

9 A No, ma'am.

10 Q How do you know there was one?

11 A The voluntary statement?

12 Q Yes, sir.

13 A I didn't know it was a voluntary -- that he had a
14 voluntary statement until I was convicted.

15 Q And when were you first able to review that voluntary
16 statement?

17 A When I got all of the -- when I got my discovery, when
18 I got my discovery back from the -- from the courts.

19 Q Is that the discovery that I subpoenaed from the
20 sheriff and the solicitor and sent you, or is that the
21 information you got from Mr. Godfrey's file?

22 A From Mr. Godfrey's file and the file that you had
23 also.

24 Q Okay.

25 MS. WOLF: Your Honor, if I might just take a moment I

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 need to locate that statement.

2 (Pause.)

3 Q Let me move on and I will come back to that because I
4 don't want to start digging around and getting that out of
5 order. So let's focus on what is your recollection of what
6 Mr. Wiggins told the police when he initially reported the
7 shooting.

8 A That he rode past -- that they rode past the house,
9 rode past Road and they saw -- they saw me
10 crossing the street or going up beside the house at
11 Road while they was taking some girls down the street
12 to Michael -- Michael Wiggins' house.

13 And they came right back up the street, and that's
14 when -- that's when Michael Wiggins say he seen me with a
15 gun and when he shot -- when he -- when they rode past the
16 house I started -- I started shooting. And he heard the
17 shots and he ducked.

18 And that's when they say the victim stated that he was
19 hit. And he said that he had the victim stop the car. He
20 had to help the victim stop the car and call for help. He
21 had to call for help.

22 Q Okay. And that's where the eye witness testimony of
23 the state's witness, Mr. Wiggins, was -- was crucial to
24 saying that you were the man he saw moments before the
25 shooting occurred.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 A Right.

2 Q And that statement from Mr. Wiggins is what you felt
3 should have been used to impeach him on the stand when he
4 testified at your subsequent trial.

5 A That also, but Michael Wiggins was saying that -- that
6 I had on a white -- a white t-shirt and blue jean pants
7 when I had on a white tank top and blue jean shorts.

8 Q Okay.

9 A And you can -- you can see that from the surveillance,
10 the Exhibit No. 30, the surveillance from the Li'L Cricket.

11 Q Okay.

12 A And he was allowed to change his statement from saying
13 that -- that he heard -- from saying that he heard a shot
14 to he's saying that he saw me actually shoot a gun.

15 Q Okay.

16 A That he was allowed to change. He was allowed to
17 change it. The reason why I was saying that he was allowed
18 to change it was because he said he heard a shot. Then he
19 turned around. He turned -- he turned around and he say he
20 didn't hear a shot, he seen me shoot a shot, he seen me
21 shoot. He didn't hear a shot. He seen me shoot the gun.

22 Q Okay. So you recollect that his testimony changed
23 over the course of the three trials?

24 A Yes, ma'am.

25 Q And you thought your attorney should have

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 cross-examined him using his prior inconsistent statements.

2 A Right.

3 MS. WOLF: One moment, Your Honor.

4 (Pause.)

5 MS. WOLF: Do you want to approach?

6 MS. WHITE: Sure.

7 MS. WOLF: If we might approach, just a question, Your
8 Honor, a procedural.

9 THE COURT: Sure.

10 (Bench conference held off the record.)

11 Q Mr. Nash, before we switch gears and prepare for the
12 court to be able to review the testimony of Mr. Wiggins
13 from the original statement, from the first trial, the
14 second trial, and the third trial -- and just correct me if
15 I am wrong -- but that's essentially what -- what you're
16 getting at with this third cause of action, is if your
17 attorney had taken the first trial, second trial and the
18 original statement of Mr. Wiggins and used that to attack
19 his credibility at the third trial the jury would have come
20 back with a different verdict for you, is that correct?

21 A Yes, ma'am.

22 Q What we're going to do now is the Court's going to
23 give me leave to secure from our files Mr. Wiggins'
24 original statement to the law enforcement, and then I will
25 present a copy of Mr. Wiggins' transcript from the first

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 and the second trials. Do you understand? So we'll take a
2 break in just a second.

3 But other than those three pieces of this puzzle before
4 I let you off the stand, is there anything else by way of
5 Mr. Godfrey not preparing for that third trial that you felt
6 resulted in his behavior falling below the standard of the
7 average normal defense attorney other than his not getting
8 that second transcript and attacking Mr. Wiggins' testimony
9 with it and the original statement to the cops?

10 A Can I read something?

11 Q Read it to yourself if you need to refresh or you have
12 a question.

13 A Okay. I -- I was thinking. I -- I was saying that --
14 that my trial lawyer was also ineffective for -- for
15 presenting -- for presenting witnesses for the defense
16 without first interviewing the witness to ascertain whether
17 the witnesses would support -- support the theory of the
18 defense.

19 Q Okay. So the people he presented at trial for you,
20 the names of the people you gave him --

21 A Uh-huh.

22 Q -- who did you give him to testify for you at trial?

23 A Tamara -- tamara Nash, Alex Nash and James Thomas.

24 Q Okay. And who didn't testify for you? Of those
25 three, who did not come forward and testify for you at your

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 third trial at which you were convicted?

2 A At my third trial?

3 Q Yeah.

4 A All three of them testified.

5 Q And your position today is that Mr. Godfrey did not
6 interview them or properly prepare them for trial.

7 A Right.

8 Q Was there something that you expected them to testify
9 to that you did not hear from them at trial?

10 A Bill -- well, Mr. Godfrey, my trial lawyer, he -- he
11 did a pretty good job on -- on -- as far as the direct
12 examination on each -- each -- each -- each witness except
13 for he didn't -- he didn't never ask -- he didn't never ask
14 them what I was wearing that day, the day of the -- the day
15 in question. And it was -- and a lot of it had to do with
16 identification and every -- every -- all -- all three of
17 those witnesses they got on the stand saw me that day.

18 Q Okay.

19 A And Michael Wiggins said I had on a white t-shirt and
20 blue jean pants when I had on a white tank top and blue
21 jean shorts. And all three of those, all three of those
22 witnesses, with the exception of one, because one is
23 deceased, can get up on the stand and -- and tell the Court
24 that I had on a tank top and I had on blue jean shorts that
25 day.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q Okay. Just to clarify that counsel even pounces on
2 you, but of your three defense witnesses, James Thomas, the
3 older gentleman who has now passed away --

4 A Right.

5 Q -- he saw you at the scene earlier that day when you
6 were feeding the dog --

7 A Right.

8 Q -- and smoking and stuff like that.

9 A Right.

10 Q What time did he leave the scene?

11 A He say -- he say he left after me. I guess he left
12 around, I guess it was around, 6:00 o'clock.

13 Q Okay. So he would have testified at trial what you
14 were wearing when you left.

15 A The last time he seen me.

16 Q Around 5:00 o'clock that day.

17 A Right.

18 Q Okay. And then Alex would have testified what you
19 were wearing at the time he saw you leave that day.

20 A Right.

21 Q And did Alex leave before you did or after you did?

22 A After.

23 Q So, again, Alex would have said the same thing, this
24 is what Rodney was wearing when he left at 5:00 o'clock.

25 A Right.

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 Q And Tamara, your then wife --

2 A Right.

3 Q -- what time that day was the last time she saw you
4 that day?

5 A When she went to work.

6 Q That morning?

7 A Right.

8 Q Okay. So she couldn't even tell the jury what you
9 were wearing at 5:00 o'clock, two and a half hours before
10 the shooting. Okay. She could only tell the jury what she
11 saw you wear that morning when you got up and left the
12 house.

13 A Right.

14 Q And you thought that Mr. Godfrey should have done what
15 with those three witnesses with respect to clothing
16 identification on their exam or cross-examine or redirect?

17 A Ask them what did I -- what was I wearing the day, the
18 day of the incident.

19 Q And, again, now, the second stage of our case is had
20 the jury heard from Alex, Rodney was wearing this at
21 5:00 o'clock when he left, and from James, Rodney was
22 wearing this when he left at 5:00 o'clock, and from Tamra,
23 Rodney was wearing this when he left at 8:00 o'clock this
24 morning -- the shooting occurred two and a half hours after
25 that last witness saw you -- how -- why do you think the

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 jury would have come back another acquittal or a hung-jury
2 verdict?

3 A Because I had on the same thing that they would have
4 testified to on the surveillance tape from the -- from
5 the -- from the Li'L Cricket that was admitted into
6 evidence.

7 Q And did the jury see that surveillance tape?

8 A Yes, ma'am.

9 Q And they saw what you were wearing?

10 A Yes, ma'am.

11 Q And I believe on your direct examination at your third
12 trial you testified what you were wearing.

13 A Yes, ma'am.

14 Q So the jury could see that, and they heard you say,
15 yeah, that's me, that's what I was wearing.

16 A Yes, ma'am.

17 Q Okay. And so the defect in your attorney's
18 presentation was not putting up those other three witnesses
19 to bolster your credibility and the video on the tape.

20 A Yes, ma'am.

21 Q Take another moment. Just review your notes and make
22 sure there's no other issues before I bring you down and we
23 get into those trial transcripts.

24 Okay. Just take a second. Is there something else
25 that you think Mr. Godfrey didn't do for you that would have

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 resulted in a different outcome?

2 (Pause.)

3 A No, ma'am.

4 Q Okay. Anything else in the course of getting all of
5 your discovery and everything I could possibly find for you
6 from the state and from your counsel -- anything else
7 that's come up in any of our discussions or in the volumes
8 of material you've been able to go through the two years
9 we've been waiting for this P.C.R.? Anything else in there
10 that you've come across and you're like, oh, yeah, I think
11 that is a good grounds and I need to make sure that Judge
12 Cole hears that?

13 A No, ma'am.

14 Q Okay. Now, one final issue concerning some C.D.s that
15 we received from the solicitor's office in the end of
16 October. I believe when we met last week I showed you the
17 package of information from digital media that we received.

18 A Yes, ma'am.

19 Q To the best of your recollection did you receive any
20 digital media through your discovery process with your
21 attorney at the first, the second or the third trial other
22 than the video from the Li'L Cricket of you after the
23 shooting?

24 A No, ma'am.

25 Q Do you have any recollection of your attorney telling

Rodney Alexander Nash
Direct examination by Ms. Wolf

1 you there are ten C.D.s, D.V.D.s with four or five hundred
2 phone recordings?

3 A No, ma'am.

4 Q Those are the questions I have for you right now. I'm
5 going to ask the judge to let you step down while we
6 prepare the exhibits of your trial transcripts for the
7 Court to review.

8 MS. WHITE: Well, do you want me to go ahead and
9 cross-examine?

10 THE COURT: Yeah. I want you to go ahead.

11 Tell me. What does he need to show me what's in the
12 trial transcript?

13 MS. WOLF: We're going to offer those with the
14 original statement from Mr. Wiggins, and so that the Court
15 can see the -- what my client believes was the failure of
16 Mr. Godfrey to raise the discrepancies between the
17 transcript from the second trial to what Mr. Wiggins
18 testified to.

19 THE COURT: Well, I understand it. But you don't
20 think I can discern that for myself, I need him to show me
21 what's in the transcript?

22 MS. WOLF: No, sir. That's why we said once he steps
23 down his case will be finished, because you will be
24 receiving those on the bench to review at your pleasure.

25 THE COURT: Okay. Well, then we can go ahead to the

Rodney Alexander Nash
Cross-examination by Ms. White

1 cross-examination.

2 MS. WHITE: Okay.

3 CROSS-EXAMINATION

4 BY MS. WHITE

5 Q Mr. Nash, just a few questions for you.

6 In regards to an alibi charge, was an alibi charge
7 offered at either of the first two trials that resulted in a
8 hung jury?

9 A No, ma'am.

10 Q Okay. And as was discussed, the video tape from the
11 D.V.D. of the Li'L Cricket places you there around 8:47
12 that night, is that right?

13 A Yes, ma'am.

14 Q Okay. And the crime supposedly happened and the
15 police dispatch I think was at about 8:29. Does that sound
16 about accurate?

17 A From my understanding, yes, ma'am.

18 Q Okay. And so wasn't it true that the police were able
19 to get up on the stand and testify that they had driven
20 from the scene of the crime to that Li'L Cricket and could
21 do it in anywhere from 8 to about 15 minutes? Do you
22 recall that testimony?

23 A Yes, ma'am.

24 Q Okay. So at that point alibis saying you couldn't
25 have been, you know, at the scene of the crime, but it was

Rodney Alexander Nash
Cross-examination by Ms. White

1 kind of tough for you to say that if there was a timeframe
2 that you could have gotten from Old Farm Road to the Li'L
3 Cricket within the time of the shooting.

4 Do you realize that in 15 minutes they're saying you
5 could have gotten there easily? That's what the police were
6 saying, is that correct?

7 A I suppose so.

8 Q Okay. In regards to the D.V.D. as well weren't there
9 some issues with whether or not you pulled in from the side
10 of coming from the victim's, from the scene of the crime,
11 versus coming into the -- to the parking lot from where you
12 would have been coming in if you were coming from your
13 home?

14 A Could you repeat that?

15 Q At the trial wasn't there some testimony about the
16 fact of your car turned into the parking lot of the Li'L
17 Cricket?

18 A Oh, yes, ma'am, yes, ma'am.

19 Q Okay. As to whether or not you turned in from the
20 left or the right.

21 A Yes, ma'am.

22 Q And that was kind of talking about whether or not you
23 came in from the direction of the scene of the crime versus
24 came in from the direction of your home, is that right?

25 A Yes, ma'am.

Rodney Alexander Nash
Cross-examination by Ms. White

1 Q Okay. So that was -- that was an issue that was at
2 trial as well.

3 A Yes, ma'am. I think my lawyer, I think my trial
4 lawyer, objected to that also.

5 Q Okay. And you did acknowledge that your trial
6 attorney objected to Mr. Bogan being able to testify as to
7 the age of the cigarette, is that right?

8 A Yes, ma'am.

9 Q And the fact is whether or not the cigarette had been
10 there at 5:30 or 8:30, that was about a 3-hour difference?

11 A I think so.

12 Q If you had done it right before you left versus at the
13 time of the crime, is that right? Is that a yes?

14 A I guess so, yes, ma'am.

15 Q Okay. And as we talked about earlier, testimony was
16 presented that both of the other folks that were at the
17 home -- testified how you handled your cigarettes and
18 testified that they smoked as well.

19 A Yes, ma'am.

20 Q Okay. In regards to preparing for the transcript or
21 preparing for the testimony -- Mr. Wiggins -- you said that
22 you were never given his statement, voluntary statement, to
23 police?

24 A No, ma'am.

25 Q So you weren't aware at all that he had identified you

Rodney Alexander Nash
Cross-examination by Ms. White

1 prior to trial, prior to all of those trials?

2 A I was aware, but I never did read any of his voluntary
3 statement, initial statements.

4 Q Okay. And, in fact, he gave a statement identifying
5 you as the person and also picked you out of a lineup, is
6 that right?

7 A My understanding, yes, ma'am.

8 Q Okay. And he, in fact, was related to you by
9 marriage, is that correct?

10 A Yes, ma'am.

11 Q Okay. So he had known you for years.

12 A I didn't know him.

13 Q You testified that you didn't know him, but yet he
14 testified that he had known you or of you for years, is
15 that right?

16 A I think that's what he testified to.

17 Q Okay. And, in fact, the testimony about the
18 difference in the outfit was presented to the trial, isn't
19 that right, that your attorney cross-examined him about the
20 statements and whether or not he had said the person was
21 wearing a hat or a t-shirt? He asked him several times
22 about are you sure it was a t-shirt with sleeves. Do you
23 recall that?

24 A He changed it up. He changed it up too.

25 Q Mr. Wiggins actually said it was a shirt with sleeves

Rodney Alexander Nash
Cross-examination by Ms. White

1 though, did he not?

2 A Yes, he did.

3 Q Okay. And that was through the cross-examination of
4 your attorney.

5 A Right.

6 Q Okay. And he also talked to him about the fact that
7 you were wearing blue jeans like pants, right?

8 A Right.

9 Q And your attorney cross-examined him on that, got him
10 to acknowledge several times that it was blue jeans and a
11 white shirt with sleeves.

12 A Right.

13 Q Okay. So obviously that testimony was presented, and
14 then the video of you wearing the tank top and shorter
15 pants or shorts was shown to the jury, is that correct?

16 A Right.

17 Q Okay. And, finally, you said counsel failed to
18 interview the witnesses before the trial to make sure that
19 they were in line with the defense theory. Had these folks
20 not already testified at the two prior trials?

21 A Yes, ma'am.

22 Q So your testimony he is that he didn't interview them
23 before any of those trials or that he didn't interview them
24 before this third trial?

25 A He didn't interview them to -- to -- to ascertain the

Rodney Alexander Nash
Cross-examination by Ms. White

1 theory of a defense.

2 Q And did they not testify along the same lines as they
3 did at both of the previous trials?

4 A Yes, ma'am.

5 Q Okay. As to the fact of they had seen you at 5:30.
6 After that they weren't sure.

7 A Yes, ma'am.

8 Q Okay. All right.

9 MS. WHITE: Your Honor, that's all the questions I
10 have for this witness.

11 MS. WOLF: Nothing on redirect, Your Honor.

12 THE COURT: Okay. You may step down.

13 MS. WOLF: If we can take a brief moment, and I will
14 prepare the transcripts for the Court's viewing.

15 THE COURT: We'll take ten minutes.

16 (Whereupon, a recess was taken.)

17 MS. WOLF: Your Honor, if I can approach.

18 THE COURT: Yes.

19 (Bench conference held off the record.)

20 MS. WOLF: Your Honor, if I can approach.

21 THE COURT: Sure.

22 MS. WOLF: For the benefit of the Court, the
23 transcript from the first trial -- and we have
24 paper-clipped the relevant testimony of Mr. Wiggins which
25 appears from pages 97 to 121.

1 THE COURT: I don't want to introduce as an exhibit
2 the entire transcript if you're only offering some portion
3 of it.

4 MS. WOLF: I am. That's why I'm delineating. So I'm
5 going to pull this out, the partial transcript, pages 97 to
6 120, testimony, direct and cross, of Mr. Michael Wiggins,
7 the first trial.

8 And from the second trial, Your Honor, testimony of
9 Mr. Wiggins from pages 114 to 135.

10 The Court already has the third trial transcript in
11 its record, and Mr. Wiggins' testimony appears from page 93
12 to 118.

13 (Pages 97-120 marked Applicant's Exhibit No. 1; pages
14 114-135 marked Applicant's Exhibit No. 2.)

15 MS. WOLF: Your Honor, the only additional document
16 would be the original statement to the police from
17 Mr. Wiggins.

18 Counsel has approved and given me permission to
19 present that to the Court at the lunch hour. I did leave
20 it on top of my desk rather than in my trial notebook.

21 That completes our case, Your Honor.

22 THE COURT: Ms. White.

23 MS. WHITE: Thank you, Your Honor. We would call Bill
24 Godfrey to the stand.

25

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 first trial was '06; the second trial was '07 probably?

2 A Probably.

3 Q Okay. Now, in talking with Mr. Nash about the case
4 did you discuss with him the various defenses that he had
5 as options?

6 A Yes. We did.

7 Q And what was the main theory you thought for the
8 defense at this third trial?

9 A The only thing they had really was Wiggins, and
10 Wiggins -- the question is could Wiggins see what Wiggins
11 claimed he saw.

12 The alibi really wasn't an alibi. I mean, the fact
13 that he said that Rodney said he wasn't there does not in
14 and of itself give an alibi.

15 Birdman or James Thomas and Alex both testified that
16 Rodney had already left. But, then, again, they left too
17 before the particular incident. So everybody that lived at
18 Road or that had been visiting at Road
19 was not there when the incident occurred.

20 So, you know, the whole thing -- they never had a gun.
21 They never found the gun. They had strange statements that
22 were given to the police. There was one statement that
23 Rodney was on the back of a moped riding up and down the
24 road behind somebody after this incident occurred.

25 what you had in this case was one of the sloppiest,

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 most ridiculous investigations by investigators that I had
2 seen in a long time.

3 They never executed any real -- any search warrants.
4 And they shot a hole through Road house to get in.
5 They took a 12-gauge shotgun and shot right through the
6 door so they could get in.

7 Q Now --

8 A And they went in and searched that house, but they
9 never, never searched Rodney's house. They never located a
10 gun.

11 There was a cap that no one could ever really explain.
12 The investigators looked like they seized on one person and
13 decided to build a case around it.

14 Q And, in fact, the folks that lived at Old Farm Road --
15 Alex Nash and James Thomas -- you brought out that they
16 were never even interviewed. Were they?

17 A No.

18 Q No gunshot residue test was completed.

19 A No gunshot residue test on those people. And, you
20 know, Alex testified that he left to go pay a ticket here
21 at the courthouse after 5:00 o'clock.

22 Now, I don't know anybody that pays a ticket here at
23 this courthouse after 5:00 o'clock. And nobody questioned
24 that. I was hoping that the solicitor would cross on that
25 and give me -- open the door for me a little bit, but he

Everett P. Godfrey, Jr.
Direct examination by Ms. white

1 didn't. He was smart enough not to.

2 But/and, you know, James Thomas came back when the
3 crime scene tape was up, and he showed out a little bit
4 apparently, and he gets arrested for public disorderly
5 conduct and gets taken to jail.

6 But they never question him. They never questioned
7 the people that lived there. And the officers knew the
8 background behind this.

9 Rodney's parents' house had been shot up. There had
10 been a driveby shooting. I sat in Rodney's parents' living
11 room and I looked at the holes in the wall. It had been
12 repaired. It'd been painted. But you could see the holes.

13 There was some bad blood going on in that
14 neighborhood. From Road if you went down two
15 streets and turned right, his parents' house was right
16 there. And it is a very nice house.

17 Now, Alex's house is a little tiny house. And his
18 sister lived not too far away.

19 There was some bad blood going on in that neighborhood
20 and there was some shooting going on in that neighborhood,
21 and things got way out of control. Rodney didn't have a
22 record.

23 Q Isn't it true that he has another brother who also
24 appeared at the scene of the crime after everything -- was
25 it Donnie Nash? Is that correct?

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 A Yeah. Donnie Nash also showed up, yes.

2 Q Okay. So essentially you were trying to attack the
3 credibility of the investigation and basically the lack of
4 direct evidence, you thought.

5 A Yes. The direct evidence was realistically
6 nonexistent.

7 The gun was never located; the police never talked to
8 anybody who lived in that house; they never executed a
9 search warrant at Rodney's house.

10 It -- they never really talked to anybody that was
11 there around -- when you say around the scene, that
12 neighborhood -- a tremendous number of people ended up out
13 there on the street when the officers were there. There
14 was way too many people for them to talk to.

15 But they never talked to people who were related to
16 the Nashes or to the people who lived at Road.
17 They never tried to verify what people were saying about
18 where they went, in particular Alex or James Thomas.

19 Q And that Mr. Rice, that was the one that supposedly
20 had the moped there, is that right?

21 A Right.

22 Q Now, the first two trials was ended obviously with
23 hung juries.

24 A Right.

25 Q Was there a strategy change? Did you discuss with

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 Mr. Nash changing anything from those, or did you feel like
2 stick with what you were going with?

3 A I didn't see that -- there wasn't a whole lot we could
4 change.

5 what I told Rodney was that if the state keeps trying
6 this they're likely at some point going to get you, because
7 at the end of the first trial what I heard from the public
8 defender's office, I was told that it was 11 to one for not
9 guilty. And the solicitor told me it was 11 to two for not
10 guilty.

11 At the end of the second trial I was told by solicitor
12 Leibert that it was 8-4 for guilty. And at the second
13 trial we did not have Rodney's wife. They were on the
14 outs. And she was a very good witness for us.

15 At the third trial we had her back. But the state,
16 being the state, they have their questionnaires they send
17 out.

18 And then at the second trial the jury came back with a
19 question, good question. They wanted to know the distance
20 between Road and the Li'L Cricket. They wanted to
21 know how many miles it was. And, obviously, they wanted to
22 know if it could be driven from the time of the alleged --
23 from the time of the shooting to the time that he's on the
24 video tape.

25 Leibert and crowd, they rode with that one real well.

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 So they got that checked out, and then one of the
2 solicitors realized, hey, if you look at the video he's
3 turning in from the left. If you turn in to the left from
4 Li'L Cricket that means he's coming from Road. If
5 he was coming from his apartment he'd be turning in from
6 the right. So they tried to make a big deal about that at
7 the third trial.

8 Q Now, in between this was there ever any plea offers or
9 discussions of pleas?

10 A Yes. At the -- before the second trial Tony Leibert
11 told me that they would offer voluntary for 15 years, and I
12 told Rodney about the voluntary for 15 years.

13 In fact, that was the day that we were going to strike
14 the jury. We were standing right outside smoking a
15 cigarette out there down by the steps, and I told him. And
16 Rodney told me, said I can't do that, I didn't do this, I'm
17 innocent, I can't take that. So I said okay. So we went
18 to trial, and fortunately we got a hung jury.

19 Q In regards to the objection made to Mr. Bogan's
20 testimony about the freshness of the cigarette, is there
21 anything else -- obviously, you know, the timeline we're
22 looking at is whether or not it was put there anywhere from
23 3:00 to 5:00 versus around 8:30. So just looking at a
24 3-to-5-hour range, I mean, was there anything else you
25 think you could have done or --

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 A I objected, so it's protected for the record. But the
2 whole idea -- I mean, if you're a smoker -- and I am, and I
3 shouldn't be, but I am -- but, doggone it, you can't tell
4 how fresh a cigarette is. I can put one out in the ashtray
5 on my porch, and I could go back. And I can't tell you
6 whether I put that one out before I came over here to
7 Spartanburg or whether I put it out last night.

8 Now, sometimes you can if they get damp or something.
9 You can tell. But that's -- that's stretching matters a
10 bit.

11 Q So the evidence that they had was essentially
12 Mr. Wiggins saying I know that Rodney Nash did it, I saw
13 him with a gun and then picking him out of a lineup.

14 A Uh-huh.

15 Q And you questioned him about his identification of the
16 clothing Mr. Nash was wearing?

17 A Right.

18 Q And the fact that he knew Mr. Nash from the fact that
19 they were related by marriage.

20 A Yeah. He knew of him. It's not like, yeah, they --
21 they were related by marriage. They had been at
22 different -- a couple of family functions together. But
23 they never really talked. So, yeah, there had been some
24 sight. I mean, they had seen each other.

25 But, on the other hand, what I was trying to get

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 across is that Rodney's brother lived there. Rodney and
2 his brother look alike too.

3 And of course -- and I never -- this never crossed my
4 mind until I got in this chair, because I never sat on the
5 passenger side of the car.

6 Road is higher than the roadbed. That was,
7 if memory serves, it was a Camry that they were in.

8 Wiggins was in the passenger seat. Road is
9 not on a hill, but it's higher than the roadbed. You're
10 going this direction. I'm not sure at this point in time
11 Wiggins could have seen who it was that was standing up
12 there with the gun if he could have seen anybody. It would
13 have taken a crime-scene-analysis expert to go in and work
14 the angles and figure everything out.

15 Q And they did -- there were some pictures presented of
16 the home and of the layout --

17 A Yes.

18 Q -- of the street and everything, weren't there?

19 A Yes.

20 Q Okay. Essentially, do you think this was -- turned
21 out to be more of an issue of credibility for the jury?

22 A Yes.

23 Q And, finally, in regards to the witnesses that
24 testified on his behalf at the third trial -- Tamra Nash,
25 Alex, and James Thomas -- did you have a chance to talk

Everett P. Godfrey, Jr.
Direct examination by Ms. White

1 with them prior to their testimony?

2 A Yes, I did.

3 Q And had they testified at the prior trials as well?

4 A Yes. Tamra got me at the first trial because I did
5 not realize she was going to testify that Rodney and she
6 had made love that night when they went to bed. And it
7 went over real well for the jury. So I think that really
8 surprised that it really went over well, and I think it
9 really helped us. I didn't see that one coming.

10 But, yeah, I had talked to everybody. James Thomas
11 was harder to talk to. He was -- James Thomas was James
12 Thomas. They called him Birdman, and he was a good old
13 guy.

14 Q And in regards to Michael Wiggins, was there anything
15 significant in the testimony that you had heard in the
16 prior trials that you thought you could have attacked him
17 on in regards to inconsistent statements that would have
18 made a difference?

19 A I thought I did what I needed to do. If I missed
20 something, I missed it. The transcript will have to speak
21 for itself.

22 Q Thank you, Mr. Godfrey. I will turn it over to
23 Ms. Wolf.

24 MS. WOLF: Thank you. If it pleases the Court.

25

Everett P. Godfrey, Jr.
Cross-examination by Ms. Wolf

1 CROSS-EXAMINATION

2 BY MS. WOLF

3 Q Mr. Godfrey, I reviewed all of the discovery,
4 everything you had. And let me ask you just off the top.

5 The state provided in response to my subpoena a package
6 of C.D.s. And I would ask you to look at that. And can you
7 tell me if there was ever a package of ten C.D.s or D.V.D.s
8 of telephone conversations purportedly from your client to
9 someone else that was provided to you in response to your
10 discovery request at trial?

11 A No. I had one D.V.D., and that was the Li'L Cricket,
12 that Rodney and I went over. I had absolutely no D.V.D.s
13 or C.D.s or phone calls from the jail.

14 Q And you did file a Rule 5 and pursue all discovery?

15 A Yes, I did.

16 Q And let me ask you. If the case was coming down to
17 credibility, especially of Mr. Wiggins, why didn't you
18 procure the transcript from the second trial and use that
19 to attack Mr. Wiggins every way possible?

20 A Because I didn't see very much difference in Wiggins'
21 testimony between the first trial and the second trial, and
22 I didn't see the necessity of getting another transcript
23 for the sake of trial to get ready for the third trial.

24 I talked with Tony Leibert about it, if Tony was going
25 to get a transcript that I was going to get a transcript as

Everett P. Godfrey, Jr.
Cross-examination by Ms. Wolf

1 well. But neither one of us thought it was going to be
2 necessary because what we heard was so much the same from
3 the first two trials that we heard.

4 Q Is that what you meant by the statement you made to --
5 on direct that the transcripts could speak for themselves?

6 A I'm sorry? Say that again.

7 Q Is that what you mean you testified a moment ago that
8 the transcripts would speak for themselves, if you missed
9 something it would be in those transcripts, they were
10 comparing them?

11 A Well, you put the transcripts in so that the judge can
12 review them. If I missed something that I should have
13 impeached him on, obviously the judge can read that.
14 They're going to speak for themselves. If I missed it, I
15 missed it. I mean, it's there.

16 Q Okay. In talking to Rodney did you discuss with him
17 the possibility that maybe Alex and James were not being
18 fully honest with you about what they saw or where they
19 were the night of the offense?

20 A No. I did not tell him that I -- no. I did not do
21 that.

22 Q Did he --

23 A I don't think James Thomas was dishonest with me. I
24 had a question in the back of my mind about where Alex had
25 gone. I just don't believe people come here after 5:00

Everett P. Godfrey, Jr.
Cross-examination by Ms. Wolf

1 o'clock to pay a ticket.

2 Q And did at any time Rodney advise you or ask you to
3 impeach the credibility of his own witnesses to actually
4 attack Alex --

5 A No.

6 Q -- and investigate Alex? Did he share with you any
7 concerns that maybe it was Alex that committed this crime
8 and it was a mistake of brothers?

9 A No.

10 Q You indicated that you were aware that the
11 investigation from the sheriff's office was shoddy, that
12 there were multiple witnesses that talk about seeing a
13 moped and possibly Mr. Nash leaving on a moped and other
14 vehicles.

15 Why not bring all of those people in? Why didn't you
16 call all of those witnesses to just overwhelm the jury with
17 the shoddiness of this investigation?

18 A I talked to the investigator about what was out there
19 and what they did and didn't do. And I thought that was a
20 lot safer than bringing in a bunch of people.

21 Q If you would, just tell me why you did not ask the
22 judge to charge the jury with an alibi instruction.

23 A I did not think it was necessary, No. 1, and, No. 2, I
24 didn't want a jury to focus so much on an alibi when there
25 was a shoddy investigation. And a lot of my defense was

Everett P. Godfrey, Jr.
Cross-examination by Ms. Wolf

1 going on the shoddy investigation and the identification of
2 who it was that actually had the gun.

3 I didn't want them to focus on the fact that Rodney
4 didn't have a classic alibi with somebody saying, yeah, he
5 was over here with me and jury saying, well, yeah, the
6 state has disproved the alibi beyond a reasonable doubt so,
7 you know, we're going to find him guilty. I did not want
8 to go there.

9 I wanted the jury to look at the totality of
10 everything. And I really thought that the discrepancy in
11 the dress of the person who fired the shot meant a lot.

12 The other thing, Rodney did nothing that was
13 consistent with guilt. Rodney went home. We know he went
14 to the convenience store. He looked very normal in the
15 convenience store. He was not nervous or anything.

16 His wife comes home from choir practice. They go to
17 the hospital to visit. When they get there they can't get
18 in because the hospital was past visiting hours.

19 They go back home. He spends the night at home with
20 his wife in the same bed together. He's not nervous. His
21 demeanor is just fine. Everything is normal.

22 He gets a phone call the next day from the police
23 saying could you come down and talk to us. He says sure.
24 He goes down to talk to them and then he's never -- never
25 is able to leave. He did not one thing that was consistent

Everett P. Godfrey, Jr.
Cross-examination by Ms. Wolf

1 with guilt. And that's just very strange.

2 Normally -- let's say that whoever it was didn't know
3 that they shot somebody and killed them when they fired
4 into the car.

5 Certainly, later on that evening the person would have
6 heard. All of a sudden they would have known, hey, I
7 killed somebody. Most folks just don't go home and go to
8 bed. Nothing that he did was consistent with guilt.

9 And this case has troubled me for years, and it will
10 continue to trouble me. I have a suspicion, but all I have
11 is a suspicion. And unfortunately for Rodney, Rodney has
12 the reality of where he is.

13 Q Just one moment, please.

14 (Pause.)

15 Q That's all we have. Thank you, sir.

16 MS. WHITE: The state has nothing further, Your Honor.

17 THE COURT: You may step down.

18 MS. WHITE: The state has no other witnesses, Your
19 Honor.

20 THE COURT: All right. Anything else?

21 MS. WOLF: Just to clarify again on the record, Your
22 Honor, I'll be delivering the original police statement of
23 Mr. Wiggins at or before the lunch hour, and that we're
24 leaving the record open to allow the solicitor time to
25 produce the media, which is supposed to be on the disc

1 which they sent me in November.

2 MS. WHITE: No objection, Your Honor.

3 THE COURT: Okay.

4 END OF REQUESTED TRANSCRIPT OF RECORD

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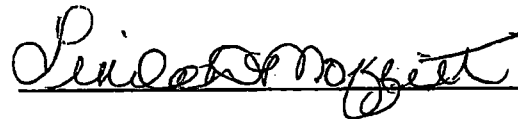
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 7th day of January 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 2, 2015



Linda D. Moffitt
Circuit Court Reporter

Tom Smith - Redirect examination
by Solicitor Leibert

1 THE COURT: You may step down.

2 SOLICITOR LEIBERT: Call Michael Wiggins, Your Honor.

3 THE COURT: Come around, sir.

4 MICHAEL WIGGINS, being first duly
5 sworn, testified as follows:

6 SOLICITOR LEIBERT: May it please the Court, Your
7 Honor?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY SOLICITOR LEIBERT:

11 Q Please state your name.

12 A Michael Wiggins.

13 Q And how old are you?

14 A Twenty.

15 THE COURT: How old?

16 WITNESS: Twenty.

17 Q You need to talk real loud for the jury.

18 A Okay.

19 Q And where do you currently live?

20 A Road.

21 Q All right. Did you know Terrell Farr?

22 A Yes, sir.

23 Q And how old was he last June 30th?

24 A Nineteen.

25 Q All right. How did you know him?

Michael Wiggins - Direct examination
by Solicitor Leibert

- 1 A Childhood friends.
- 2 Q How did, how did you know him as a child, neighbors, go
3 to school together?
- 4 A We went to school together.
- 5 Q And when did you meet?
- 6 A Like elementary.
- 7 Q All right. Did you ever move away?
- 8 A I moved to Georgia.
- 9 Q And when did you move away?
- 10 A Eighth grade.
- 11 Q All right. And when did you come back?
- 12 A This summer.
- 13 Q Last summer?
- 14 A This summer.
- 15 Q December?
- 16 A Yeah. No, this summer.
- 17 THE COURT: This summer.
- 18 Q This summer.
- 19 All right. Were you here on June 30th?
- 20 A Yeah, I was here.
- 21 Q Of 2005?
- 22 A Yes, sir.
- 23 Q Were you visiting then?
- 24 A I moved back.
- 25 THE COURT: Wait a minute now. You said you moved

Michael Wiggins - Direct examination
by Solicitor Leibert

1 back.

2 When did you move back?

3 WITNESS: This time, I mean summertime like, like May.

4 I moved back in May.

5 THE COURT: What year?

6 WITNESS: This year.

7 THE COURT: 2006?

8 WITNESS: Yeah.

9 Q Last month you moved back?

10 A I mean -- I'm sorry. I mean last year. I'm sorry.

11 Q Okay. Are you nervous?

12 A Yeah.

13 Q Okay. I understand.

14 So May of 2005?

15 A Yeah, May 2005.

16 Q Were you with Terrell on May or June 30th, 2005, at
17 about 8:25, 8:30 p.m.?

18 A Yes.

19 Q All right. And where were you, in a car, in a house?
20 Where were you?

21 A We was in a car.

22 SOLICITOR LEIBERT: May I approach the witness, Your
23 Honor?

24 THE COURT: (Nods affirmatively.)

25 Q Show you State Exhibit 1.

Michael Wiggins - Direct examination
by Solicitor Leibert

- 1 What is that?
- 2 A That's the car we was in.
- 3 Q All right. Who was driving?
- 4 A Terrell.
- 5 Q All right. Who was in the front seat?
- 6 A Me.
- 7 Q And was anybody in the back seat originally with the
- 8 two of you guys?
- 9 A No, it was my sister and my, her friend. But we
- 10 dropped, we dropped them off.
- 11 Q All right. What's your sister's name?
- 12 A Tori.
- 13 Q And what's her friends's name?
- 14 A Tequila.
- 15 Q And what road did you have to drive down to drop them
- 16 off?
- 17 A Old Farm Road.
- 18 Q All right. And what is the address at the end of Old
- 19 Farm Road that you went to?
- 20 A
- 21 Q That's your address?
- 22 A Yes, sir.
- 23 Q Is that where your grandmother lives?
- 24 A Yes, sir.
- 25 Q All right. When you dropped them off, when you were

Michael Wiggins - Direct examination
by Solicitor Leibert

1 going down to drop them off, did you ever see the defendant?

2 A Yeah, we came down, we seen him walking across the
3 street.

4 Q And where did you see him at?

5 A He was like coming back like going up towards like his
6 door like coming across the street looking at us.

7 Q And what residence was he near?

8 A The house they was in. I guess Alex house I guess.

9 Q Is that Road?

10 Do you know?

11 A No, it's on Rodney Drive.

12 Q At the corner of Rodney and Old Farm Road?

13 A Uh-huh. (Affirmative).

14 Q All right. When you were driving down to take the
15 girls home---

16 A Uh-huh. (Affirmative).

17 Q ---could you, was Rodney on your -- did you look out
18 the right window and see Rodney?

19 MR. GODFREY: Objection to leading.

20 THE COURT: Sustained.

21 Q When you looked -- when you were driving down the road,
22 which window did you have to look out to see the defendant?

23 A To the right.

24 Q And what was he doing as you drove by?

25 A He was like walking back across the street like staring

Michael Wiggins - Direct examination
by Solicitor Leibert

1 at us.

2 Q All right. Did you drop the girls off?

3 A Yeah, we dropped them off.

4 Q Did you stay very long?

5 A Hu huh. (Negative).

6 Q Did you stay at all?

7 A No, it wasn't even like ten seconds.

8 Q All right. And then what did you do?

9 A Dropped them off, came up the street. I noticed he was
10 leaning on the car and had a gun in his hand. I told
11 Terrell---

12 Q Who's he?

13 A Rodney.

14 Q All right. Is Rodney Nash in the courtroom?

15 A Yes, sir.

16 Q All right. Please point him out.

17 A (Witness points.)

18 Q Seated next to his lawyer---

19 A Yes, he is.

20 Q ---at the table?

21 All right. And what happened?

22 A We went up the street. I saw him. He had a gun in his
23 hand, Rodney. I'm like Terrell he got a gun. I guess
24 Terrell didn't hear me cause we had the music up. Got past.
25 And so, I know Terrell like they shooting at us. So, he

Michael Wiggins - Direct examination
by Solicitor Leibert

1 ducked down, I ducked down, and then I heard like the last
2 shot, the one that hit Terrell in the back.

3 Q All right. Did you see the defendant with a gun?

4 A Yeah, I seen him with a gun.

5 Q All right. How much time elapsed before you heard a
6 shot?

7 A I really couldn't tell you. It happened so fast.

8 Q What was the defendant wearing?

9 A A white shirt. 

10 Q Was there anybody else out there at that time?

11 A Not at that time.

12 Q All right. After the shooting, what happened?

13 A He hit, he was hit. I thought he was hit. Like I'm
14 hit, he grabbed his chest and he like -- I told him to go.
15 So, he hit the gas and he was like I can't stop. So, I
16 tried to reach down and hit the break. I couldn't grab it.
17 So, I slammed it in park, and when I look up, he was like
18 already passed out shaking.

19 Q All right. Did the car ever go, ever go off the road?

20 A It went -- I steered it back on the road.

21 Q All right. How did the car come to a stop?

22 A I slammed it in park.

23 Q Where was the car?

24 Where did it come to a stop at, on the road or on the
25 grass?

Michael Wiggins - Direct examination
by Solicitor Leibert

- 1 A On the road.
- 2 Q What did you do next?
- 3 A I jumped out the car, checked his neck and stuff, and
4 I, and I flagged a black lady down who happens to come down
5 the street at the same time I was trying to use his phone.
6 I didn't know how to use it. So, I got her phone and called
7 9-1-1.
- 8 Q Was Terrell saying anything at that time?
- 9 A No, he was already passed out by then.
- 10 Q Did you have a phone?
- 11 A No, it's just him.
- 12 Q You took his phone and what happened---
- 13 A I couldn't---
- 14 Q ---did you say---
- 15 A I couldn't -- I didn't know how to use it. He had it
16 locked.
- 17 Q You flagged a lady down?
18 Is that what you said?
- 19 A Uh-huh. (Affirmative).
- 20 Q All right. And then what happened?
- 21 A She let me -- I asked can I use the phone. I told her
22 my friend just been shot.
- 23 Q All right. And again, is Terrell saying anything at
24 this time?
- 25 A No, he's already passed out by then.

Michael Wiggins - Direct examination
by Solicitor Leibert

- 1 Q Did you call 9-1-1?
- 2 A Yes, sir.
- 3 Q All right. Then what happened?
- 4 A I told them where I was and I ran like to the top of
5 the street to try to, to flag them down and show them where
6 I was and they came down.
- 7 Q Did you stay with your friend until the police or EMS
8 arrived?
- 9 A Yeah, I stayed there.
- 10 Q And then -- did you then talk to the police and give
11 them a statement?
- 12 A Yeah, they put me in a car.
- 13 Q Before June 30th, 2005, had you ever seen the
14 defendant?
- 15 A Yeah, I seen him a couple times, yeah.
- 16 Q Is he married to a member of your family?
- 17 A That's my cousin.
- 18 Q On the night of June 30th, 2005, at approximately
19 8:30 p.m. when you passed _____ Road, who pointed the
20 gun at your, at your car?
- 21 A Rodney.
- 22 Q Do you know Donald Nash?
- 23 A Yeah, I know him.
- 24 Q Could it have been Donald Nash?
- 25 A No, it wasn't him.

Michael Wiggins - Direct examination
by Solicitor Leibert

1 Q Do you see Alex Nash?

2 A I know Alex.

3 Q Could it have been Alex Nash?

4 A It wasn't Alex.

5 Q Thank you, sir. Answer any questions Mr. Godfrey may
6 have.

7 CROSS-EXAMINATION

8 BY MR. GODFREY:

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9 Q Mr. Wiggins, in your statement you said that the black
10 male that you saw was married to your cousin Tamara Meadows?

11 A Yes.

12 Q Is that right?

13 And, of course, you know Tamara Meadows very well,
14 don't you?

15 A Yes, sir.

16 Q I think up until -- you lived with your grandma up
17 until about middle school here in Spartanburg, right?

18 A Yes, sir.

19 Q And you use to go over to Tamara's house and all the
20 time spend the night?

21 A No, sir.

22 Q But you saw her a good bit?

23 A Not really.

24 Q Well, you didn't---

25 A After, after eighth grade I didn't really see her

Michael Wiggins - Cross-examination
by Mr. Godfrey

1 really besides like on holidays and stuff.

2 Q And then I guess middle school, I think you said eighth
3 grade, that's when you moved?

4 A Yes, sir.

5 Q And is that when you went to live with your mother and
6 brother?

7 A Yes, sir.

8 Q So, you left Spartanburg in the eighth grade?

9 A Yes, sir.

10 Q Did you move to Georgia in the eighth grade?

11 A No, we moved to Easley.

12 Q And---

13 A And then after Easley we moved to Georgia.

14 Q You moved to Georgia?

15 A Yes, sir.

16 Q You're a high school graduate?

17 A Yes, sir.

18 Q What high school did you graduate from?

19 A Monroe High School in Georgia.

20 Q And where is that in Georgia?

21 A Monroe Georgia. It's like right, like, like right near
22 Macon.

23 Q Right near Macon.

24 And when you were going to high school, you were living
25 with your mother?

Michael Wiggins - Cross-examination
by Mr. Godfrey

- 1 A Yes, sir.
- 2 Q What year did you graduate from high school?
- 3 A '05.
- 4 Q So, you graduated from high school in---
- 5 A May.
- 6 Q ---May of 2005?
- 7 A Yes, sir.
- 8 Q And then you decided to come back to Spartanburg?
- 9 A Yes, sir.
- 10 Q So, you actually hadn't lived in Spartanburg since the
11 eighth grade?
- 12 A Yes, sir, but I been coming up to visit.
- 13 Q You come back to visit.
- 14 Well, when Tamara and Rodney got married, you didn't go
15 to their wedding, did you?
- 16 A No, sir.
- 17 Q And the family normally has get-togethers at Christmas
18 time, isn't that right?
- 19 A Yes, sir.
- 20 Q And I think for the last three Christmases you haven't
21 been at the Christmas function either, have you?
- 22 A Every, every Christmas I came home.
- 23 Q Did you go to the Christmas function?
- 24 A Yeah, Christmas we have -- Christmas holiday, it be at
25 my grandmother's house and he hasn't been there.

Michael Wiggins - Cross-examination
by Mr. Godfrey

1 Q Pardon?

2 A We have Christmas, like we eat at my grandmother's
3 house.

4 Q And what else did you say?

5 A And he, he wasn't there last -- the last Christmas,
6 this Christmas past he wasn't there.

7 Q I'm sorry. I can't hear and I apologize.

8 A Christmas, when we had Christmas dinner at my
9 grandmother's house he wasn't there.

10 Q Okay. So, he wasn't there?

11 A No, he wasn't there.

12 Q Now, you say you have met him on a couple of times?

13 A I just seen -- yeah, he---

14 Q Seen him, seen him a couple times?

15 A Yeah, I seen him there one Christmas like before all
16 this happened he came down there one, one Christmas. Him
17 and my cousin came down there one Christmas to eat.

18 Q Okay. So, you saw him one time at Christmas?

19 A Yeah, I mean I been seeing him around though.

20 Q Did you ever stop and talk with him?

21 A No, I ain't never had a conversation with him.

22 Q And according to your testimony, you say that you saw
23 him a couple of times.

24 Can I take it from that that you've never had a
25 conversation with him?

Michael Wiggins - Cross-examination
by Mr. Godfrey

- 1 A Ain't never had a conversation with him.
- 2 Q Now, your grandmother lives at what, Road?
- 3 A Yes, sir.
- 4 Q Now, isn't it true that to get out of that subdivision
- 5 you don't actually have to go back up Old Farm Road to
- 6 Blackstock?
- 7 There's two other ways to get out?
- 8 A Yes.
- 9 Q Now, when you were with Terrell Farr and the girls were
- 10 in the back seat --
- 11 A Uh-huh. (Affirmative).
- 12 Q -- where were y'all coming from?
- 13 A Coming from picking Tequila up.
- 14 THE COURT: I'm sorry.
- 15 What?
- 16 WITNESS: Picking my sister's friend up. Her name's
- 17 Tequila.
- 18 THE COURT: Oh, her name is Tequila?
- 19 WITNESS: Yeah.
- 20 Q Now, what speed do you think you were traveling down
- 21 Old Farm Road?
- 22 A At which time?
- 23 Q When you were taking the girls to your grandma's house.
- 24 A Probably going about the speed limit.
- 25 Q I'm sorry. Say that again.

Michael Wiggins - Cross-examination
by Mr. Godfrey

- 1 A Probably going like the speed limit. Probably going
2 like thirty maybe, thirty, thirty-five.
- 3 Q Okay. And were you talking with the people in the car?
- 4 A Yeah, we was talking.
- 5 Q And you were in the passenger, front passenger seat?
- 6 A Yes, sir.
- 7 Q And Terrell Farr was, excuse me, was driving?
- 8 A Yes, sir.
- 9 Q And the girls were in the back seat?
- 10 A Yes, sir.
- 11 Q And you-all were having a conversation all along the
12 road?
- 13 A No, not really.
- 14 Q But you were having some conversation?
- 15 A We had, we had just started, had just started talking.
16 I was like he looking at us and he like yeah, I seen him.
17 That's the only time we talked. We dropped my sister off
18 and came back up the street.
- 19 Q Now, where was it that you claim you saw Rodney?
- 20 A Walking across Rodney Street or Rodney Drive, Street,
21 you know.
- 22 Q And you turned around to look out the right window---
- 23 A No.
- 24 Q ---to look at him?
- 25 A When I saw he was coming up we could see him like out

Michael Wiggins - Cross-examination
by Mr. Godfrey

1 the right window. We could basically like see him direct
2 when he was coming across the street looking at us. I
3 happened to turn around and looked back.

4 Q And who else did you see at Road?

5 A I saw my uncle in, in the doorway.

6 Q And who is your uncle?

7 A James Thomas.

8 Q James Thomas?

9 A Yes, sir.

10 Q Is that James Edwards Thomas?

11 A Yes, sir.

12 Q And he is your uncle?

13 A Yes, sir.

14 Q So, you saw him in the doorway---

15 A Uh-huh. (Affirmative).

16 Q ---at Road?

17 And you think you saw Rodney at, in the yard of
18 Road?

19 A I did see Rodney.

20 Q Who else was there?

21 A That's all I saw.

22 Q What about a Mr. Rice?

23 You know a Mr. Rice?

24 A He wasn't there.

25 Q Didn't see him?

Michael Wiggins - Cross-examination
by Mr. Godfrey

- 1 A Didn't see him.
- 2 Q So, you-all were going down the road at say
3 thirty miles an hour?
- 4 A Uh-huh. (Affirmative).
- 5 Q You went down to---
- 6 A My house.
- 7 Q ---grandma's house, dropped off the girls.
- 8 A Uh-huh. (Affirmative).
- 9 Q Then if you thought there was something wrong, why did
10 you go back up Old Farm Road?
- 11 Why didn't you use one of the other ways out?
- 12 A There was nothing wrong. He was just looking.
- 13 Q So, there's nothing wrong?
- 14 A Yeah, nothing wrong. We didn't think, think nothing
15 was wrong.
- 16 Q All right. Now, when you passed Road,
17 since you didn't think there was anything wrong, are you
18 still looking in the yard?
- 19 A No, when we -- I just happened to see him leaning
20 beside the car with something black in his hand. I got
21 closer, looking close, told Terrell he had a gun. I guess
22 Terrell didn't hear me cause the music was up. We got like
23 a little bit past and that's when he started shooting.
- 24 Q But you never actually, you never actually saw him
25 shoot, did you?

Michael Wiggins - Cross-examination
by Mr. Godfrey

1 A Yeah, I kind of glanced back and I seen him pointing
2 the gun. That's when I ducked down in the seat with
3 Terrell.

4 Q Well, if you saw him shoot, why didn't you put it in
5 the statement you gave the police?

6 A I did. But I said I ducked down.

7 Q You hear the shot.

8 A No, Terrell told me, he said duck down, and I happened
9 to glance back and see him. He was pointing.

10 Q Now, you say that when you passed by there that the
11 black male, according to you, had a handgun with a long clip
12 in his right hand?

13 A Yep.

14 Q Are you talking about a clip that actually sticks out
15 the handle of the gun?

16 A Yeah, like a thirty round.

17 THE COURT: Like a what?

18 WITNESS: Like a thirty round clip.

19 Q Like a thirty round clip?

20 A Yeah.

21 Q Now, once the car came to a stop, according to your
22 statement you gave the police, there were a lot of people
23 came running up the street?

24 A Yeah.

25 Q What's a lot of people?

Michael Wiggins - Cross-examination
by Mr. Godfrey

- 1 A Like people just heard the gunshot and seen the car
2 stopped on the side of the road and seen me on the driver's
3 side trying to talk to Terrell.
- 4 Q Did you ever get out of the car until it stopped?
- 5 A No, when it stopped, then I got out.
- 6 Q So, when you got the car stopped is the first time you
7 got out of the car?
- 8 A Yes.
- 9 Q And you ran around to help Terrell?
- 10 A Yes, sir.
- 11 Q Now, you say a lot of people came running up.
12 Could you put a number on that?
- 13 A Probably like five came running. It was like some down
14 like below Old Farm Road looking up towards the car.
- 15 Q So, the last time that you saw Rodney Nash at a social
16 function was Christmas about three years ago?
- 17 A Probably so.
- 18 Q Pardon?
- 19 A Probably so. But I been seeing him around though.
- 20 Q Nothing further.
- 21 THE COURT: Redirect?
- 22 REDIRECT EXAMINATION
- 23 BY SOLICITOR LEIBERT:
- 24 Q Did Detective Smith ever show you a lineup?
- 25 A Yes, sir.

Michael Wiggins - Redirect examination
by Solicitor Leibert

1 Q And you---

2 THE COURT: Woa, woa, woa, woa, woa, woa.

3 (Whereupon, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Y'all give me five minutes.

6 Okay. We got to decide which way we're going here in
7 just a little bit.

8 Okay. Y'all go back to your jury room. But don't,
9 don't discuss the case.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Gentlemen, hold on before you
13 go smoke a cigarette.

14 All right. Let the record reflect we had a conference
15 at the bar, at the bench. I was concerned about the
16 solicitor going into a lineup without us having -- just to
17 make the record perfectly clear that the lineup wasn't
18 suggestive, there needs to be a Biggers versus Neal or Neal
19 versus Biggers, whatever the correct name of the case is. I
20 think it's Biggers versus Neal.

21 MR. GODFREY: Neal versus Biggers.

22 THE COURT: Neal versus Biggers. Thank you.

23 Solicitor's worried about a witness being available.

24 So, I told him we can take a witness out of turn. I can

25 stop today and we can start tomorrow. I'll do whatever. I

Michael Wiggins - Redirect examination
by Solicitor Leibert

1 don't want to make anybody upset, mad, nervous. Try your
2 case like you want to.

3 So, let's take five minutes and let everybody get
4 recomposed, let the defense lawyer smoke him a cigarette,
5 y'all talk, and come back into my chambers in just a few
6 minutes and let's see how we're going.

7 Fair enough?

8 SOLICITOR LEIBERT: Yes, sir.

9 THE COURT: Fair enough?

10 MR. GODFREY: Yes, Your Honor.

11 THE COURT: All right. You're on the witness stand.

12 Welcome to go to the bathroom, whatever. Just don't discuss
13 your testimony with anybody.

14 Okay. Fair enough?

15 WITNESS: Yeah.

16 THE COURT: Make sure the defendant gets the bathroom,
17 and whatever he needs for a break. Stand at ease for not
18 long now, fellows, and lady.

19 (Whereupon, a short recess was taken at this time.)

20 THE COURT: Let the record reflect we had a little
21 discussion in chambers. The parties have agreed to do some
22 stipulating, and they need to get the actual stipulation
23 wording done tonight, which may shorten up things. Sort of
24 at a stopping point. What we'll do is excuse the jury until
25 ten o'clock in the morning. Everybody else be back at 9:30

Michael Wiggins - Redirect examination
by Solicitor Leibert

1 and we'll do the lineup, Biggers hearing.

2 Mr. Leibert, anybody that you had in connection with
3 that, please have them here at 9:30 so we can move and not
4 make the jury wait until 10:00.

5 SOLICITOR LEIBERT: Yes, sir.

6 THE COURT: You're a young man who is---

7 SOLICITOR LEIBERT: Mr. Wiggins.

8 THE COURT: Mr. Wiggins, sir, stand up for me.

9 (Witness complies.)

10 THE COURT: I remind you that you're still in the
11 middle of your testimony. I'm instructing you not to
12 discuss your testimony with anyone at all tonight. No one
13 from the Solicitor's Office. No one for the defendant. No
14 one from anybody. Please do not violate that order.

15 Okay?

16 WITNESS: All right.

17 THE COURT: Fair enough?

18 WITNESS: Yeah.

19 THE COURT: All right. Anything for the record before
20 I bring the jury in and dismiss them, from the State?

21 SOLICITOR LEIBERT: No, sir, Your Honor.

22 MR. GODFREY: No, Your Honor.

23 THE COURT: Thank you.

24 Bring the jury in please.

25 (Whereupon, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, first of all, I apologize. It took
4 longer than I thought. What we did while you were out, we
5 have -- there was maybe one or two additional witnesses, and
6 I had a conference with the lawyers, but they're going to
7 enter a stipulation. They're gonna work on the wording of
8 it over the night. That precludes or keeps us from having
9 to bring in those particular witnesses and we'll make the
10 case more efficient and speed it up.

11 Not to be trying to speed it up. But there's no sense
12 in putting up a witness that they both agree on what they're
13 gonna say and it's not contested. So, that's what a
14 stipulation is. They're gonna work on that over the evening
15 so we can have that ready to read to y'all tomorrow.

16 I've got some other things I have to do outside of your
17 presence, just some legal matters. I'm gonna do that between
18 9:15 and ten o'clock tomorrow and have all that done so when
19 you get here you don't have to wait. I would ask that --
20 we're gonna start court at ten o'clock sharp.

21 Now, please be present and on time. Around 9:30, 9:15,
22 we will have donuts -- who's in charge?

23 Y'all can get donuts. That's the man we -- I'll hold
24 him in contempt, Mr. Riley.

25 Y'all rather have donuts or sausage biscuits or you can

1 tell me?

2 I'll tell you what, when you go back before you leave,
3 just tell Mr. Riley what you want and I mean I can't get you
4 donuts and sausage biscuits. So, I'm gonna, whichever one
5 y'all think you'd like, whoever out votes the other, y'all
6 handle that, Mr. Foreman.

7 FOREMAN: We'll take that first one.

8 THE COURT: No, seriously, y'all tell him what you
9 would like. We'll have some hot coffee for you and either
10 donuts or some sausage biscuits, and be ready to go and
11 start right at ten o'clock sharp.

12 So, with that, everybody else please remain seated, and
13 y'all have a very pleasant evening.

14 Anybody need any assistance getting home or everybody
15 okay?

16 (Jurors nod affirmatively.)

17 THE COURT: Thank you.

18 See you in the morning at ten o'clock and have a very
19 nice evening. Do not discuss the case with anyone please.

20 Thank you.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Okay. We'll stand at ease until 9:30 in
24 the morning.

25 Mr. Leibert, if you'll have those two people come see

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SOLICITOR LEIBERT: May we approach for a moment?

THE COURT: Yes, you may.

(Whereupon, a bench conference was held at this time.)

THE COURT: All right. Is the State ready?

SOLICITOR LEIBERT: Yes, sir, we're bringing the family
down.

THE COURT: All right. We'll go ahead and start.

Defense, defense ready, Mr. Godfrey?

MR. GODFREY: Yes, sir.

THE COURT: All right. Bring the jury in.

(WHEREUPON, the following takes place within the
presence of the jury.)

THE COURT: Good morning.

I trust everyone had a good evening and you're ready to
begin again with the trial.

The Court -- the record will reflect that all jurors
have returned to the courtroom.

When we broke yesterday the State was in the process of
presenting its evidence.

The State may call its next witness.

SOLICITOR LEIBERT: Call Michael Wiggins, Your Honor.

THE COURT: Sir, come forward and be sworn.

MICHAEL WIGGINS, being first duly

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1 sworn, testified as follows:

2 THE COURT: Sir, have a seat in the stand. Once you're
3 seated, state your name for the record.

4 WITNESS: My name is Michael Wiggins.

5 THE COURT: Your witness.

6 SOLICITOR LEIBERT: Please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY SOLICITOR LEIBERT:

10 Q Michael, how old are you?

11 A Twenty-one.

12 Q Are you currently employed?

13 A Yes, sir.

14 Q And where are you employed?

15 A At ExoPack.

16 Q What is that?

17 A It's ExoPack Bag Company.

18 Q All right. Did you graduate from high school?

19 A Yes, sir.

20 Q All right. And what year did you graduate?

21 A 2005.

22 Q And where did you graduate from high school?

23 A Morrow High School.

24 Q And where is that at?

25 A It's in Georgia.

- 1 Q Did you know Terrell Nash --
- 2 A Who?
- 3 Q -- or Terrell Farr?
- 4 I'm sorry.
- 5 A Yes, sir.
- 6 Q And when did you start knowing him?
- 7 A We been friends, like childhood friends.
- 8 Q Did you meet in school?
- 9 A Yes, sir.
- 10 Q Were you friends all through school?
- 11 A Yes, sir.
- 12 Q At some point -- at some grade did you move away?
- 13 A Eighth grade.
- 14 Q All right. Did you -- when did you meet Terrell---
- 15 A Like---
- 16 Q Back in kindergarten?
- 17 A Yeah, kindergarten.
- 18 Q Did you hang out the whole time?
- 19 A Yes, sir.
- 20 Q All right. Did you, at some point, move back to South
- 21 Carolina?
- 22 A Yes, sir.
- 23 Q All right. And when was that?
- 24 A 2005.
- 25 Q Do you remember what month that was in?

1 A May.

2 Q All right. Now, when were you with Terrell on June the
3 30th---

4 A Yes, sir.

5 Q ---of 2005?

6 All right. And where were you at, in a car, a house?
7 Where were you at?

8 A We was in his car.

9 Q And whose car?

10 A Terrell's car.

11 SOLICITOR LEIBERT: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, you may.

14 Q I show you State's Exhibit No. 1.

15 Do you recognize that?

16 A Yeah, that's the car we was in.

17 Q All right. Now, who was driving that car?

18 A Terrell.

19 Q And where were you seated?

20 A In the passenger seat.

21 Q Did you have an occasion, at around 8:30, 8:25PM, to go
22 down Old Farm Road?

23 A Yes, sir.

24 Q All right. And where were you going?

25 A To my house.

1 Q And what number is your house on Old Farm Road?

2 A .

3 Q And then was anybody with you and Terrell at that time?

4 A My sister and her friend.

5 Q And what did you do?

6 A We dropped them off at my grandma's house.

7 Q Okay. On your way to Old Farm, do you go past

8 Old Farm?

9 A Yes, sir.

10 Q All right. And did you observe anything upon going
11 past there?

12 A We seen Rodney walking across the street.

13 SOLICITOR LEIBERT: All right. May I approach the
14 witness again, Your Honor?

15 THE COURT: Yes, you may.

16 Q Could you come on down here, Michael?

17 A (Witness comes down from the stand.)

18 Q I show you State Exhibit 7.

19 Do you recognize that?

20 A Yeah, this where Alex stay at.

21 Q All right. where is Road?

22 A Right here.

23 Q All right. And where's the address of ?

24 Is that that house?

25 A Yes, sir.

1 Q All right. Now, when you were coming -- are you coming
2 from this end or coming from this end?

3 A This end.

4 Q All right. You're driving down this way?

5 A Yes, sir.

6 Q All right. And your house is where?

7 A Right there.

8 Q All right. ?

9 A Yeah.

10 Q All right. When you're driving down here, what did you
11 see as you were approaching Farm?

12 A As we were coming---

13 Q Let's hold this so that everyone can see it please,
14 sir.

15 A We were coming down this street this way. We seen
16 Rodney come from this way walking across like going to these
17 steps right here, and he was looking at us like staring hard
18 like at us as we were walking, going in the car going down
19 the street. We can see him out the right side of my window.
20 He's staring at us. As, as we were going to Old Farm Road,
21 while he's walking like that at a diagonal angle, like going
22 towards, coming towards the stairs like going in this side
23 door right there.

24 Q All right. And then what did you do?

25 Did Terrell keep driving?

- 1 A Yeah.
- 2 Q All right. Did you drop the girls off?
- 3 A We dropped the girls off.
- 4 Q How long did you stay?
- 5 A Not even ten seconds.
- 6 Q All right. Did you come back down the road?
- 7 A Came back up the road.
- 8 Q All right. And when -- you, you came from what end?
- 9 A From my house.
- 10 Q All right. And that would be---
- 11 A Be right here.
- 12 Q All right. So, what did you observe -- came from which
- 13 end now?
- 14 A This end right here.
- 15 Q All right. And what, if anything, did you observe as
- 16 you were coming past---
- 17 A Soon as we come---
- 18 Q --- Farm?
- 19 A ---coming up over there---
- 20 Q Stand back over there so they can see.
- 21 A ---I seen Rodney like leaning back on the white car
- 22 with something like a black gun in his hand, and I told
- 23 Terrell look, he got a gun. I guess Terrell didn't never
- 24 hear me or whatever.
- 25 So, we got past a little bit, and then he started, he

1 started shooting. Terrell like I'm hit. I thought he was
2 playing until like he grabbed his chest, and he -- I told,
3 told him to speed off, and as soon as he speed off, he's
4 like I can't stop. So, I tried, tried to stop the car. He
5 looked up and he already passed out.

6 Q All right. Have a seat.

7 A (Witness returns to the stand.)

8 Q I show you State Exhibit 12.

9 Do you recognize that?

10 A Yeah, that's the car Rodney was leaning on.

11 Q And where was that car parked?

12 A In the driveway just like that.

13 Q At what address?

14 A At .

15 Q All right. Now, had you ever seen Rodney Nash before?

16 A Yeah, I seen him in the neighbor a couple times and I
17 seen him at one family event.

18 Q All right. Was he married to some family member of
19 yours?

20 A He married my cousin.

21 Q Married to your cousin?

22 A Yes, sir.

23 Q And what is her name?

24 A Tamera Meadows.

25 Q All right. Now, does your family ever get together on

1 Christmas or other holidays?

2 A Yeah, we get together, get together every holiday.

3 Q All right. Now, when you moved away from eighth grade
4 to graduating at twelfth grade, did you continue to come
5 back for --?

6 A Yes, sir, I moved to Easley. So, that's like 35, 40
7 minutes away. So, I came home every holiday, spring break,
8 and every other weekend.

9 Q All right. And how about when you were in Georgia?

10 A Georgia, I came home every, every holiday, every spring
11 break, and probably two times out of a month.

12 Q All right. And where were holidays held at?

13 A Either at my grandmother's house or her mother's house.

14 Q All right. And on one Christmas occasion you did see
15 Rodney Nash?

16 A Yeah, he came to my grandma house.

17 Q He was at your grandmother's house?

18 A Yes, sir.

19 Q Had you ever seen him other than that?

20 A In the neighborhood.

21 Q You'd seen him around?

22 A Yeah.

23 Q Ever talked to him though?

24 A No, sir.

25 SOLICITOR LEIBERT: May I approach the witness again?

- 1 THE COURT: Yes, you may.
- 2 Q Were you shown a lineup in this case?
- 3 A Yes, sir.
- 4 Q All right. And who showed you that lineup?
- 5 A Tom Smith.
- 6 Q All right. Now, when you were shown the lineup --
- 7 let's come down here again.
- 8 A (Witness comes down from the stand.)
- 9 Q when he showed you a lineup, how did he show it to you?
- 10 A He---
- 11 Q It's on the table.
- 12 How was---
- 13 A He put it face like this.
- 14 Q was it like this?
- 15 A Yeah.
- 16 Q All right.
- 17 A He put it in front of me. He said turn it over, and if
- 18 you see the person who did this, point him out.
- 19 Q All right. Did he tell you to turn it over?
- 20 A Yes, sir.
- 21 Q All right. And did you turn it over?
- 22 A Yes, sir.
- 23 Q All right. Go ahead and do like you did.
- 24 A (Witness complies.)
- 25 Q And what did he tell you?

1 A To pick out who it was.

2 Q All right. Did you recognize the person in any of
3 those photos as the person that---

4 A Rodney Nash, 1089111.

5 Q All right. You selected Rodney Nash?

6 A Rodney Nash.

7 Q All right. How long did it take you to do that?

8 A Less than five seconds.

9 Q All right.

10 A (Witness returns to the stand.)

11 Q How sure are you that that's the person that shot
12 Terrell?

13 A Hundred percent.

14 Q One hundred percent?

15 A Yes, sir.

16 Q Thank you. Answer any questions Mr. Godfrey may have.

17 THE COURT: Mr. Godfrey, your witness.

18 MR. GODFREY: May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. GODFREY:

22 Q Mr. Wiggins, Tamera Meadows is your cousin?

23 A Yes, sir.

24 Q And you know her pretty well?

25 A Yes, sir.

1 Q And you lived with your grandmother here in Spartanburg
2 up until middle school?

3 A Yes, sir.

4 Q And you use to see Tamera rather frequently?

5 A Holidays and special occasions.

6 Q Didn't see her other than -- excuse me.

7 Didn't see her other than that?

8 A No, sir.

9 Q Now, you say you left Spartanburg when you were in the
10 eighth grade?

11 A Yes, sir.

12 Q And you went to live with your mother?

13 A Yes, sir.

14 Q And the first place you moved to was Easley?

15 A Yes, sir.

16 Q How long did you live in Easley before you moved to
17 Georgia?

18 A Two and a half years.

19 Q I'm sorry?

20 A Two and a half years.

21 Q And during that period of time you say you came back
22 over here at holidays and spring break?

23 A Yeah, and every other -- summer time and everything.

24 Q During that time period, before Rodney married Tamera,
25 did you have any idea who Rodney was?

- 1 A Yes.
- 2 Q You had seen him before?
- 3 A Yes, sir.
- 4 Q And when you moved to Georgia, do you remember when
5 that was?
- 6 A That was like '03.
- 7 Q And, so, you're what a sophomore or junior in your---
- 8 A I was going to my junior year.
- 9 Q And you went to Monroe High school?
- 10 A Morrow.
- 11 Q Huh?
- 12 A Morrow.
- 13 Q Morrow?
- 14 A Uh-huh. (Affirmative).
- 15 Q And you graduated from that high school?
- 16 A Yes, sir.
- 17 Q And you graduated in --?
- 18 A '05.
- 19 Q What month?
- 20 A May.
- 21 Q Did you graduate at the beginning of May?
22 Do you remember?
- 23 A The 15th.
- 24 Q May the 15th you graduated---
- 25 A Yes, sir.

- 1 Q ---from high school?
- 2 A Yes, sir.
- 3 Q Now, the high school, is that near Macon, Georgia?
- 4 A Kind of.
- 5 Q Well, what is it really closer to if it's not Macon?
- 6 A Riverdale, Georgia.
- 7 Q All right, sir. And at this point in time you were
8 still living with your mother?
- 9 A During -- when I graduated?
- 10 Q Yeah.
- 11 A Yes, sir.
- 12 Q So, you graduated on May the 15th?
- 13 A Yes, sir.
- 14 Q And you moved back up here?
- 15 A Yes, sir.
- 16 Q So, you'd been here about 15 days before this incident
17 occurred?
- 18 A Yes, sir.
- 19 Q And you went back to live with your grandmother?
- 20 A Yes, sir.
- 21 Q Had you and Terrell kept up a regular friendship during
22 the entire time you had been gone?
- 23 A Yes, sir, we talked to each other everyday.
- 24 Q Now, did you go to the wedding of Tamera and Rodney?
- 25 A No, sir.

1 Q And based on your direct testimony, I assume that you
2 never actually had a conversation with Rodney at any point
3 in your life?

4 A No, sir.

5 Q So, you've never actually met him face-to-face and
6 talked to him about ball games or anything of that?

7 A I seen him face-to-face. I haven't met him. I haven't
8 talked to him face-to-face.

9 Q Now, in your direct testimony I believe you said -- how
10 many -- you hadn't see him for about three years at
11 Christmas functions?

12 Is that what you said?

13 A Probably more than that.

14 Q Probably more than that?

15 A Yes, sir.

16 Q Do you know his brother, Donnie Nash?

17 A Yes, sir.

18 Q Do you know his brother, Alex Nash?

19 A Yes, sir.

20 Q Do you know a fellow by the name of, the last name of
21 Rice?

22 A Yes, sir.

23 Q Okay. Where were you-all when you first turned down
24 Old, turned down the road to go to your house --

25 A Uh-huh. (Affirmative).

- 1 Q -- when the young ladies were in the back seat, where
2 had you-all come from?
- 3 A From picking her friend up.
- 4 Q And when you say her, are you talking about---
- 5 A My sister.
- 6 Q Your sister?
- 7 A Her friend, Taquila.
- 8 Q Okay. So, your, your sister and Taquila were in the
9 back seat?
- 10 A Yes, sir.
- 11 Q And you were taking them to --?
- 12 A My grandmother's house.
- 13 Q Your grandma's house.
- 14 And that's when you went by Road?
- 15 A Yes, sir.
- 16 Q Now, you say that when you went by Road
17 you saw Rodney?
- 18 A Yes, sir.
- 19 Q who else did you see?
- 20 A My uncle in the doorway.
- 21 Q And what is your uncle's name?
- 22 A James Thomas.
- 23 Q James Edwards Thomas?
- 24 A Yes, sir.
- 25 Q And he was in what doorway?

- 1 A Rodney's doorway of the house.
- 2 Q He was in the house, the doorway of Road?
- 3 A Yes, sir.
- 4 Q who else did you see?
- 5 A That's it.
- 6 Q Didn't see anybody?
- 7 A Just my uncle and Rodney.
- 8 Q Didn't see Mr. Rice?
- 9 A Nope.
- 10 Q Didn't see Alex?
- 11 A No.
- 12 Q And were you-all having a conversation as you were
- 13 going down the road?
- 14 A Not really.
- 15 Q Were you listening to music?
- 16 A Yes, sir.
- 17 Q Was the music up loud?
- 18 A No, sir.
- 19 Q So, you could of had a conversation, you just really
- 20 weren't talking?
- 21 A Only thing I said was I seen Rodney staring at us and
- 22 we both looked and we was like yeah.
- 23 Q Well, you say you saw Rodney staring at you, and you
- 24 say you live at the end of the road.
- 25 A Yes, sir.

- 1 Q But isn't it true that you don't have to go back up
2 past Road to get out of the subdivision?
3 It's two other ways out?
- 4 A Yes, sir.
- 5 Q So, you didn't have to go back up that way at all?
6 A No, sir.
- 7 Q All right. Now, if you thought Rodney was staring at
8 you, why did y'all go back up that way?
- 9 A Well, instead -- he just staring. It's -- he's not
10 saying anything.
- 11 Q So, you didn't think there was anything wrong?
12 A There wasn't no kind of threat. Anybody can stare.
- 13 Q Okay. So, you didn't think there was anything wrong?
14 A Nope.
- 15 Q And when you passed the house going out of the
16 subdivision, what did you see?
- 17 A I seen Rodney leaning on that white car with a gun in
18 his hand.
- 19 Q And where was James Edwards Thomas?
20 A He wasn't in the door no more.
- 21 Q Did you see him?
22 A No, sir.
- 23 Q Did you see anybody else?
24 A I saw Rodney. That's it.
- 25 Q Didn't see somebody in a blue cap?

- 1 A No, sir.
- 2 Q Was there anybody else on the street?
- 3 A No, sir.
- 4 Q Did you look on the other side of the road?
- 5 A Yes, sir.
- 6 Q So, you passed the house and you hear a gunshot?
- 7 A Yes, sir.
- 8 Q You never saw the person that fired the gun?
- 9 A Rodney.
- 10 Q Did you ever see him actually fire the gun?
- 11 A I seen him -- he had his hand up like this.
- 12 Q But you never actually saw it?
- 13 You ducked down, didn't you?
- 14 A No, I didn't duck down. I glanced back and looked.
- 15 Q Didn't Terrell tell you to duck down?
- 16 A He told me to duck, but I still looked.
- 17 Q So, you claim now you say you saw him shooting?
- 18 A Yeah, I mean I glanced back and I seen him. He had his
- 19 hand up.
- 20 Q You remember you gave a statement to the police?
- 21 A Yes, sir.
- 22 Q You didn't put that in the statement to the police, did
- 23 you?
- 24 A I was probably too nervous to because I was worried
- 25 about my friend.

- 1 Q So, it's not in your statement to the police?
- 2 A I don't think so.
- 3 Q When you first talked with Detective Smith were you
4 still on Old Country Road?
- 5 A Old what?
- 6 Q I'm sorry. The Road.
- 7 A It wasn't briefly cause they put me in a car. So, I --
8 they put me in a car from everybody. So, I didn't really
9 talk to him until I come got to the station.
- 10 Q Okay. So, Rodney was not wearing a blue cap?
- 11 A No, sir.
- 12 Q How was he dressed?
- 13 A In a white T-shirt.
- 14 Q And what do you mean a white?
- 15 A Yes.
- 16 Q One with sleeves?
- 17 A A plain white T-shirt probably about right here.
- 18 Q You sure about that?
- 19 A Yes, sir.
- 20 Q And what kind of pants did he have on?
- 21 A Probably like some blue jeans.
- 22 Q Were they pants or shorts or what?
- 23 A I think pants.
- 24 Q You think pants.
- 25 So, there was no blue cap?

- 1 A No blue cap.
- 2 Q And he had a T-shirt on with sleeves that came down
3 almost to his elbows?
- 4 A No, this like a regular T-shirt.
- 5 Q Regular T-shirt.
- 6 A Might of been a cutoff.
- 7 Q Was it white?
- 8 A Yes, sir.
- 9 Q And you're absolutely sure about that?
- 10 A Yes, sir.
- 11 Q Once you got the car stopped --
- 12 A Yes, sir.
- 13 Q -- what did you do next?
- 14 A I ran around the car and tried to check Terrell.
- 15 Q And then what did you do?
- 16 A I seen -- I try to use his phone, but he had his phone
17 locked and I didn't know the code to unlock it, and it just
18 so happened a black lady was coming down the road and I
19 flagged her down and asked can I use her phone and tell her
20 that my friend's been shot.
- 21 Q And did people start coming up to the car?
- 22 A Yes, sir.
- 23 Q About how many people did you see?
- 24 A Probably like five to ten.
- 25 Q Were people asking if they could help?

1 A No, sir, I mean they didn't come all the way to the
2 car. They came like to certain, a certain distance. But
3 they didn't come all the way up to the car and really just
4 look in it.

5 Q Now, the description of Rodney, you're absolutely
6 certain about that---

7 A Yes, sir.

8 Q ---description?

9 A He's married to my cousin. So, I know who he is.

10 Q But he didn't have on a blue cap?

11 A No, sir.

12 Q And he had on a---

13 A White T-shirt.

14 Q ---regular T-shirt?

15 A White T-shirt.

16 Q And you think blue jean pants?

17 A Yes, sir.

18 MR. GODFREY: Nothing further.

19 THE COURT: Redirect?

20 SOLICITOR LEIBERT: No redirect, Your Honor.

21 THE COURT: Sir, you may step down.

22 SOLICITOR LEIBERT: May he be released, Your Honor?

23 THE COURT: Any objection to this witness being

24 released?

25 MR. GODFREY: No objection, Your Honor.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Rodney Alexander Nash, #292870,)
)
 Applicant,)

2010-CP-42-3746

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)

Respondent.)
)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 20, 2010. The Respondent made its Return on or about February 16, 2011. An evidentiary hearing into the matter was convened on January 7, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Alexandria M. Wolf, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. E.P. "Bill" Godfrey, Jr., Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the January 2006 term of the Spartanburg County Grand Jury for murder

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possession of a firearm during commission of a violent crime (06-GS-42-0225, counts 1 and 2 respectively). Everett P. Godfrey, Jr., Esquire, represented him. On December 10, 2003, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable Thomas A. Russo sentenced him to confinement for forty years for murder (count 1) and five years for possession of a firearm during commission of a violent crime (count 2).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted on Applicant's behalf. Applicant also submitted a *pro se* brief. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Nash, Op. No. 2010-UP-176 (S.C. Ct. App. filed March 1, 2010). The Remittitur was sent on March 17, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel failed to request a jury instruction of the defense of alibi,
 - b. Counsel failed to object to improper comments made by prosecution during opening statements.

At the hearing, Applicant informed the court that he was proceeding solely on the allegations that Counsel was ineffective for failing to request an alibi jury instruction, failing to object to officer's testimony as an expert regarding a cigarette, and failing to obtain the transcript from the second trial following a hung jury before this trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had opportunity to observe each witness who testified at the hearing, and to closely pass upon the

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credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 188

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480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he retained Counsel, who represented him at three trials, where the first two ended with a hung jury. Applicant testified that he thought Counsel should have requested an alibi jury instruction because there was no overwhelming evidence of guilt. Applicant testified that he was not at the residence when the victim was shot driving by the residence. Applicant testified that his brother, Alex Nash, was present, along with Reginald Rice and James Thomas. Applicant testified that he had been at the home earlier in the day around 3:00 pm, at which time he washed cars and fed the dogs, but claimed that he left the home sometime between 5:00 and 6:00 pm. Applicant then testified that he cooked dinner at home and went to the store to get cigarettes before arriving back home around 9:00 pm. Applicant testified that the incident report indicates that the shooting occurred at 8:30 pm. Applicant testified that he gave his alibi to the Detective in charge of the case and Counsel was able to obtain the DVD from the convenience store where Applicant bought cigarettes. However, Applicant testified that the DVD placed him within fifteen minutes of the scene of the shooting within approximately fifteen minutes following the shooting. Applicant testified that he had no other information or no other witnesses to offer in support of his alibi.

Counsel testified that he had been practicing criminal defense in both state and federal courts since 1989. Counsel testified that Applicant's alibi was not actually an alibi because it was not impossible for him to have been present at the scene of the crime, in particular based upon the DVD and testimony that Applicant pulled into the convenience store from the direction of the shooting and not his home. Counsel testified that he did not think that an alibi charge was necessary and he wanted the jury to focus more on the shoddy investigation by police rather than the claim of alibi. Counsel testified that there were never any search warrants filed in the

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case, no interviews with anyone that was present at the house at the time of the shooting or any gunshot residue testing on anyone at the house. Counsel testified that his strategy was to attack the credibility of Wiggins and focus on the lack of direct evidence to support Applicant's guilt. This Court finds that as to the allegation that Counsel was ineffective for failing to request an alibi instruction, the Applicant failed to meet his burden of proof. To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime. State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), quoting State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). To qualify as an alibi, defendant must be able to account for his whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012)(citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). As indicated by both Applicant and Counsel's testimonies, the Applicant was seen on a DVD within a fifteen minute drive from the scene of the shooting, at a time approximately fifteen minutes following the shooting. Therefore, Applicant's story did not provide an alibi and Counsel cannot be found deficient for failing to request an alibi instruction. Further, "[i]n evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed 'in its entirety and not in isolation.'" Gibbs v. State, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013). As the record reflects, the jury was charged with instructions regarding the State's burden to prove the identity of the shooter beyond a reasonable doubt. (ROA p. 250). Therefore, this Court finds that the Applicant failed to demonstrate that Counsel was deficient in this regard, or that Applicant suffered any prejudice as a result of alleged deficient performance. This claim denied and dismissed.

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Applicant testified that during the trial, Officer Bogan testified regarding the age of a cigarette butt found at the residence where the shooting occurred. Applicant testified that the cigarette butt contained the DNA of Applicant and someone else, but they did not test the butt against anyone else's DNA. Applicant acknowledged that Counsel brought out to the jury that both Alex and James smoked as well. Applicant also acknowledged that when Bogan testified that the butt was "fresh," Counsel objected based on there being no foundation for the opinion and no expertise in the area. (ROA p. 80). However, Counsel's objection was overruled and the testimony was allowed in. (ROA p. 81). Applicant testified that he wanted Counsel to preserve the issue for a direct appeal, but Counsel never renewed the objection. Applicant testified that Counsel should have obtained an independent analysis of the DNA on the cigarette butt and preserved the issue for appeal.

Counsel testified that he did object to the Bogan's testimony regarding the age of the cigarette and cross-examined the investigator on what they did and what they did not do to investigate the case. ~~This Court finds that the Applicant has failed to meet his burden of proof as to this claim.~~ The record reflects that Counsel did object to Officer Bogan's testimony regarding the age of the cigarette butt and the objection was preserved. Therefore, this claim is denied and dismissed.

Applicant testified that Counsel failed to obtain the transcript from the second trial. Applicant testified that Counsel did have the transcript from the first trial in order to prepare for the second trial, but Counsel did not obtain the transcript from the second trial. Applicant testified that the transcript would have assisted Counsel because the victim's friend, Wiggins, offered contradictory testimony. Applicant testified that Wiggins' voluntary statement was inconsistent with his testimony at all three trials and Counsel should have introduced those

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inconsistencies at trial. Applicant testified that he was not aware of Wiggins' statement until after the third trial. Applicant testified that Wiggins stated that he saw Applicant going into the house and then saw Applicant shooting at victim, but Wiggins testified that Applicant was in a white t-shirt and jean pants, and Applicant stated that he was wearing a white tank top and jean shorts. Further, Counsel did not ask Alex or James Thomas what Applicant had been wearing when he left the home around 5:00 pm. Applicant testified that Counsel failed to interview defense witnesses Tamara Nash, Alex Nash, and James Thomas prior to trial to ensure that their testimony was consistent with the defense theory. Applicant introduced pages 97-120 from the first trial transcript as Applicant's #1, pages 114-135 from the second trial as Applicant's #2, and referred the court to pages 93-118 from the transcript of the third trial.

Counsel testified that he did not think that there was much difference between Wiggins' testimony between the first and second trials, so he saw no need to obtain the transcript from the second trial when he had the transcript from the first trial. Counsel testified that he did interview and talk with all defense witnesses prior to the trial. Counsel testified that the only difference between the first and second trials was that at the second trial, the Applicant's wife was not present and the jury returned with questions regarding the distance between the residence and the Lil Cricket convenience store where Applicant was seen on DVD. Counsel testified that he attempted to attack the credibility of Wiggins and his identification, by pointing out that the Applicant and his brothers looked similar.

As to the allegation that Counsel was ineffective for failing to obtain the transcript from the second trial, this Court finds that the Applicant has failed to meet his burden of proof. clear that Counsel had prepared extensively for each subsequent trial and was prepared to examine each witness, including Wiggins, as to any inconsistencies. The nature and scope of

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cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions Counsel allegedly failed to ask Wiggins and did not present any testimony showing Wiggins' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Further, the Applicant has failed to offer any testimony or evidence to demonstrate that the outcome of this trial would have been any different had Counsel obtained that transcript. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the testimony of Counsel was more credible than the testimony of the Applicant. This Court further finds that Counsel had prepared extensively for Applicant's trial. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland.

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that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION


Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of November, 2014


 J. Derham Cole
 Presiding Judge

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WITNESSES

- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANT
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE
- 8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

H687444 (Count One)

Direct Indictment (Count Two)

ACTION OF GRAND JURY

True Bill
Amy E. American

Foreperson of Grand Jury

Date: 1-5-06

VERDICT

Foreperson of Petit Jury

Date:

DOCKET

06-GS-42-0225

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 09 2006

TERM

THE STATE

v

RODNEY ALEXANDER NASH

Indictment for

MURDER AND POSSESSION OF
FIREARM DURING COMMISSION OF A
VIOLENT CRIME

SC Code 16-03-0010, 0020

CDR Code 116; 0549

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2006 JAN 10 PM 4:21
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 05 2006 the

Grand Jurors of Spartanburg County present upon their oath:

Count One-Murder

That Rodney Alexander Nash, did in Spartanburg County on or about June 30, 2005, feloniously, willfully, and with malice aforethought, kill one Terrell Farr by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Count Two-Possession Of Firearm During Commission Of A Violent Crime

That Rodney Alexander Nash did in Spartanburg County on or about June 30, 2005, possess a firearm, during the commission of a violent crime as defined in Code § 16-1-60, to wit: MURDER, in violation of Code § 16-23-490. *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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
STATE Redway VS. Alexander Nash
AKA: _____
Race: _____ Sex: M Age: 31
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 00-GS-42-225
AW#: H687 444
Date of Offense: 6/30/05
S.C. Code §: 16-3-10, 20
CDR Code #: 0110

SENTENCE SHEET COUNT-ONE

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: MURDER (30 YEARS - LIFE)

in violation of § 16-3-10, 20 of the S.C. Code of Laws, bearing CDR Code # 0110
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor 40 Defendant _____ Attorney for Defendant _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided, that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____
PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Recipient: _____
*Fine: _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

KG McKinney, DC
Clerk of Court/ Deputy Clerk
Court Reporter: Sharon Vizz-Hants

PRESIDING JUDGE [Signature]
Judge Code: 2111411
Sentence Date: 5-7-08

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
STATE Rodney vs Alexander Nash
AKA: _____
Race: B Sex: M Age: 31
SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 06-GS-42-225
AW#: D.F.
Date of Offense: 01/30/05
S.C. Code §: 16-23-490
CDR Code #: 0549

SENTENCE SHEET

COUNT TWO

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession of Firearm during Commission of violent crime (5 years consecutive)
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (Defendant Initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor
_____ Defendant
_____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS
Recipient: _____
*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B, TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(B)(1) Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 189.75

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

B.G. McKenney, DC Clerk of Court/ Deputy Clerk
Court Reporter: Sharon Vign-Hanks

PRESIDING JUDGE [Signature]
Judge Code: 2119TT
Sentence Date: 5-7-08

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.

Rodney Nash,

Appellant.

Appeal From Spartanburg County
Thomas Anthony Russo, Circuit Court Judge

Unpublished Opinion No. 2010-UP-176
Submitted January 4, 2010 – Filed March 1, 2010

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, all of Columbia;
Solicitor Harold W. Gowdy, III, of Spartanburg, for
Respondent.

PER CURIAM: Rodney Nash was convicted of murder and possession of a firearm during the commission of a violent crime. Nash appeals arguing the trial court erred in failing to instruct the jury on the defense of alibi and admitting evidence without a proper foundation. Nash also filed a pro se brief. After a thorough review of the record and both briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss Nash's appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

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