

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

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S.C. Supreme Court

CHANNACK KEAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002696

APPENDIX

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS
3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 vs.)
7 CHANNACK KEAM,)
8 DEFENDANT.)
9

TRANSCRIPT
OF
RECORD
08-GS-42-129

10 June 2nd, 2008
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE J. DERHAM COLE, JUDGE; and a jury.

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

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17 ASSISTANT SOLICITOR
18 Attorney for the State

19 JOHN RECKENBEIL
20 ESQ.
21 Attorney for the Defendant

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23
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Seventh Judicial Circuit

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THE COURT: We got any matters we need, we got any matters we need to address before we bring the panel back?

SOLICITOR COLER: I don't think so, Your Honor. There's one thing I forgot to point out in the body of the indictment. This incident occurred on the late evening of September 21st of 2007. The decedent actually passed away probably in the early morning hours of the 22nd. The body of the indictment says the incident occurred on or about September 22nd of 2007. So ---

MR. RECKENBEIL: I'll waive any issue with that on the record, Your Honor. I, I think it's -- there's no question that this was right at the time frame of the 21st and 22nd. So, I will waive---

THE COURT: Let's get the defendant in here---

MR. RECKENBEIL: Yes, sir.

THE COURT: ---so we can talk, discuss whatever we need to discuss.

MR. RECKENBEIL: Yes, sir.

(Whereupon, the defendant comes into the courtroom at this time.)

THE COURT: All right. What matters do we need to address?

SOLICITOR COLER: Judge, the, the State -- the

1 indictment indicates that the incident occurred---

2 THE COURT: You got the original or you got a copy of
3 it?

4 SOLICITOR COLER: I've got the original. I could hand
5 it up.

6 THE COURT: You don't have a copy for your own
7 purposes?

8 SOLICITOR COLER: I don't know if I do.

9 THE COURT: Okay.

10 SOLICITOR COLER: The body of the indictment indicates
11 that the incident occurred on or about September 22nd,
12 2007. I think the evidence is gonna show that it happened
13 on the, late on September 21st of 2007 from 10:00, 10:30
14 in the evening on till midnight. I think the evidence will
15 also show that the victim passed away perhaps into the early
16 morning hours of the 22nd.

17 The State would move to amend the indictment to
18 indicate September 21st of 2007 or, in the alternative, to
19 ask to proceed under the, because of the language that's on
20 or about September 22nd of 2007.

21 THE COURT: Well, what's wrong with that?

22 Did, did, did Mr. Easler die on the 21st?

23 MR. RECKENBEIL: He was transported to the hospital.
24 I'm not sure what time he actually died. But he was shot
25 about ten o'clock on the 21st.

1 THE COURT: I understand.

2 But I thought you said he died on the 22nd?

3 SOLICITOR COLER: I think he did. I think he died in
4 the early morning hours at the hospital, by the time they
5 got him to the hospital and passed away.

6 THE COURT: All right. Well, it wouldn't be murder
7 until he died, would it?

8 SOLICITOR COLER: No, sir.

9 MR. RECKENBEIL: Your Honor, we will waive any---

10 THE COURT: In any event, it says on or about.

11 SOLICITOR COLER: I was just pointing out that. I, I
12 just didn't want it to become an issue at some point, judge,
13 that if the evidence indicates that the shooting actually
14 happened on the 21st. The State's theory is on or about.
15 We're proceeding under that.

16 MR. RECKENBEIL: Your Honor, we will waive any issue
17 with, with the date. We're not -- that's not a deficiency
18 we feel in the indictment. That's not an issue I'll bring
19 up.

20 THE COURT: Okay.

21 SOLICITOR COLER: That's the only issue from the State,
22 Your Honor.

23 THE COURT: All right. Anything else?

24 Y'all got any request for voir dire, witness list,
25 things like that?

1 SOLICITOR COLER: Yes, sir.

2 MR. RECKENBEIL: Your Honor, the defense is okay with
3 your standard voir dire.

4 THE COURT: Okay.

5 SOLICITOR COLER: Your Honor, may I hand up a witness
6 list?

7 Judge, the only request I'd have regarding voir dire,
8 and I think it's in Your Honor's standard questions, is
9 whether any member of this jury panel has been prosecuted
10 by, any member of the jury or their family has been
11 prosecuted by the Seventh Circuit Solicitor's Office or
12 whether they've been a victim, they or a family member, has
13 been a victim of a crime prosecuted by our office. If I
14 remember correctly, that's in your standard.

15 THE COURT: Well, no, I've, I've asked it before. But
16 it's not standard.

17 SOLICITOR COLER: Yes, sir.

18 MR. RECKENBEIL: The only -- Your Honor, the only thing
19 from the defense, at the appropriate time, I just would have
20 one motion in limine.

21 THE COURT: Okay. You got any witnesses, potential
22 witnesses besides those on the State's list?

23 MR. RECKENBEIL: What is on the State's list is what
24 the defense would call and then obviously at the appropriate
25 time we will make the inquiry as to the defendant's

1 decision.

2 THE COURT: Okay. But nobody else?

3 MR. RECKENBEIL: No, sir.

4 THE COURT: Okay. All right. What, what motion do you
5 have?

6 MR. RECKENBEIL: The only thing, Your Honor, the motion
7 in limine is the fact that there is been mentioned by
8 Officer Durham that Kimberly Gregory was an eye witness at
9 the bar, and they're making mention that one of the
10 individuals leaving with the defendant threw up a gang sign.
11 I do not believe that Mr. Coler will bring this in. But
12 just for the protection of the defendant that I do not
13 believe that it would be relevant in any manner whatsoever
14 to mention the fact that this girl possibly threw up a gang
15 sign, which could give the inference that my client was a
16 member of the gang or a member of a gang.

17 THE COURT: All right. Now what's her name?

18 MR. RECKENBEIL: Her name is Kimberly Gregory.

19 THE COURT: Well, she's not on the witness list.

20 MR. RECKENBEIL: Okay. Well, Officer Durham as to
21 possibly---

22 SOLICITOR COLER: I can tell the Court we don't intend
23 to call Mrs. Gregory.

24 THE COURT: What officer?

25 MR. RECKENBEIL: I don't see him as well, Your Honor.

1 SOLICITOR COLER: We're not going to call Jack Durham,
2 an officer---

3 MR. RECKENBEIL: Never mind.

4 SOLICITOR COLER: ---with the Sheriff's Office---

5 MR. RECKENBEIL: We'll strike that.

6 SOLICITOR COLER: ---or Mrs. Gregory. Now, I've, I've
7 been over the testimony or interviewed all the other
8 witnesses we intend to present. They've never said anything
9 to me about a gang signs or gang symbols and nothing in the
10 written statements. I'll caution them before they take the
11 stand not to if -- I don't know what they're gonna say when
12 they get on the stand. But they've never indicated to me
13 they've seen any indication of gang signs or gang symbols.

14 THE COURT: Well, you're saying that's not what this
15 case is about?

16 SOLICITOR COLER: No, sir.

17 THE COURT: Okay.

18 SOLICITOR COLER: Again, and I'm just being honest with
19 the Court, they've never said anything to me about it. But
20 if they get up on the stand, you never know what they're
21 gonna say on the stand, but I will caution each of the lay
22 witnesses not to discuss or talk about any gang activity.

23 THE COURT: Well, I mean you've talked to all the
24 witnesses?

25 SOLICITOR COLER: I have. None of them have indicated

1 any gang activity.

2 THE COURT: Okay.

3 MR. RECKENBEIL: Just for our own protection, judge.

4 THE COURT: All right.

5 MR. RECKENBEIL: Thank you.

6 THE COURT: Anything else we need to address?

7 MR. RECKENBEIL: No, sir.

8 THE COURT: All right. Let's bring the jury back.

9 SOLICITOR COLER: Is there enough room to have the
10 family members and witnesses here or do you want them to
11 wait outside?

12 THE COURT: I don't think there's gonna be enough room
13 to have them sitting in the jury area. But they might sit
14 behind you.

15 SOLICITOR COLER: Yes, sir, I'll select a select few.

16 THE COURT: And this is alleged to have occurred at
17 Red's Bar in Fairforest?

18 SOLICITOR COLER: Yes, sir.

19 (Whereupon, the following takes place within the
20 presence of the entire jury panel.)

21 THE COURT: All right. Ladies and gentlemen, we are
22 ready to begin with the, the trial in the first case. It's
23 going to require some of your participation. And the title
24 of the case is The State versus Channack Keam. Mr. Keam has
25 been accused by the State of having committed the crime of

1 murder.

2 The State alleges that, on or about September the
3 22nd of 2007, that Mr. Keam did willfully, and with malice
4 aforethought, kill one Samuel Shane Easler by shooting him
5 and that Mr. Easler died as a result of that gunshot wound.

6 Now, as to those allegations and as to that charge the
7 defendant has entered a plea of not guilty, and that plea of
8 not guilty, therefore, places upon the State the burden of
9 proving the allegations that are set forth in the
10 indictment, the burden of proving each of the essential
11 elements that makes up the crime that they have alleged
12 against the defendant, and, therefore, the burden is upon
13 the State to establish the defendant's guilt to the
14 satisfaction of 12 jurors beyond a reasonable doubt before
15 any verdict of guilty could be returned.

16 And so, we're gonna be selecting probably 13 or 14 of
17 you to participate in the trial of the case. And by way of
18 your participation you're gonna be called upon to simply
19 listen to the testimony that will come out during the trial,
20 to consider any other evidence that might be received in the
21 trial of the case. From that evidence, the jury will decide
22 the facts. And after deciding the facts, you'll apply the
23 law that I will have provided you and you will determine
24 whether or not the defendant's guilt has been proven beyond
25 a reasonable doubt. And if it has, then your verdict would

1 be guilty. If it has not, then your verdict would be not
2 guilty.

3 Now, before we begin with that selection process I've
4 got some questions that I'm gonna be asking you. The
5 purpose of these questions is to determine if there's some
6 reason why any one of the jurors should not be selected to
7 participate in the trial of this particular case. And so,
8 as these questions are asked of you, should you need to
9 respond to them, I'm gonna ask if you please stand. I'll
10 address those matters with you individually in the event
11 that should become necessary.

12 Now, first of all, as I told you, the defendant, the
13 person who is accused of the crime of murder, is Channack
14 Keam.

15 Mr. Keam, if you'll please stand and face the jury
16 panel.

17 (Whereupon, Defendant Keam stands up along with Mr.
18 Reckenbeil.)

19 THE COURT: Mr. Keam is the person standing to your
20 left. Mr. Reckenbeil is the person standing to your right.
21 John Reckenbeil is Mr. Keam's lawyer. He'll be assisting
22 him in the trial of the case.

23 In this case, as I've stated, the person who's alleged
24 to have been the victim is Samuel Shane Easler.

25 Do you have some of Mr. Easler's family members present

1 so that the jury can see who they are, and perhaps by seeing
2 who they are, can determine if they know Mr. Easler?

3 SOLICITOR COLER: Yes, sir, his mom and step-mom are
4 present.

5 THE COURT: All right. Let me ask if you'll identify
6 yourself please and stand.

7 MRS. LAWSON: My name is Judy Lawson, and I'm Shane's
8 mother.

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

10 MRS. EASLER: I'm Carol Easler. I'm Shane's
11 stepmother.

12 THE COURT: Okay.

13 SOLICITOR COLER: Thank you.

14 THE COURT: And in this case, Bob Coler, an assistant
15 circuit solicitor for the Seventh Judicial Circuit, will be
16 presenting the case on behalf of the State.

17 Now, there are going to be a number of potential
18 witnesses. I'm going to identify those potential witnesses
19 for you. All of these persons may not testify during the
20 trial. But they have some information that they might be
21 called upon to provide. And so, they are potential
22 witnesses.

23 I'm going to recite a list of all of the potential
24 witnesses cause I need to find out if any juror knows
25 anybody who is being identified that relates to this case,

1 and that includes these potential witnesses.

2 So, as I recite this list, if you are connected by
3 blood or marriage, or you have any close personal or social
4 relationship, or if you have a business or a professional
5 relationship, or if you know these people, you've met them,
6 you know them in any fashion whatsoever, I'll ask that you
7 please stand so that we can identify what person that you do
8 know and what connection you have with them, and then we'll
9 determine if that will affect your judgment in anyway.

10 So the following are potential witnesses. These eight
11 that I'm gonna call out right now are employed with the
12 Spartanburg County Sheriff's Department. All employed with
13 the Spartanburg County Sheriff's Department.

14 They include Patrick Cockrell.

15 Steve Henderson.

16 Shannon Osterhout.

17 Reid Lindsey.

18 Jason Bryant.

19 Tim Davis.

20 Travis McJunkin.

21 And Robert Shaffer.

22 Any juror know any of those sheriff's deputies?

23 (No response.)

24 THE COURT: All right. We also have Freddie Thompson,
25 who's employed with Emergency Services, the 9-1-1.

1 We have John David Wren, who's a physician/pathologist
2 at Spartanburg Regional Medical Center.

3 We also have Ila Simmons and Suzanne Cromer employed by
4 the South Carolina Law Enforcement Division often, often
5 referred to as SLED.

6 And we have the following individuals who are residents
7 of Spartanburg.

8 They include Joshua Bailey.

9 Curtis Gosnell.

10 Teresa Bishop.

11 Tyler Vichith.

12 And Victoria Thongpane.

13 Now, does any juror know any person who's just been
14 identified for your benefit?

15 That includes the witnesses. That includes the
16 defendant. That includes the deceased, Mr. Easler. That
17 includes the lawyers. And it also includes any members of
18 any of those person's respective families.

19 If you know anyone, I will ask that you please stand.
20 (Jurors respond.)

21 JUROR: Did you say Travis McGinnis or McJunkin?

22 THE COURT: I said Travis McJunkin.

23 JUROR: Okay. One of my former students who is an
24 officer is McGinnis. That's what I was trying to say.

25 THE COURT: That's not the one.

1 JUROR: Thank you.

2 THE COURT: Okay. Thank you.

3 Yes, ma'am.

4 JUROR: I believe I have worked with Mr. Coler before
5 in my previous criminal investigator job.

6 THE COURT: Okay. And would that fact or that
7 connection have any bearing upon your decision in this case?

8 JUROR: No, sir.

9 THE COURT: And your name and number is what please,
10 ma'am?

11 JUROR: 145, Cynthia Sanders.

12 THE COURT: Okay. Thank you. Be seated.

13 Anyone else?

14 (No response.)

15 THE COURT: Now, as I told you, in this case, the
16 defendant is accused of having committed the crime of
17 murder. He's alleged to have shot Samuel Shane Easler.
18 They allege that at the time he shot him it was accompanied
19 by an intent or malice aforethought, and that Mr. Easler
20 died as a result of a gunshot wound.

21 This event is alleged to have occurred at a place
22 called Red's Bar located in the Fairforest community of
23 Spartanburg County, and there may of been some unfamiliar,
24 some information about this case provided over the
25 television or radio or newspaper or there may be just people

1 talking about the case somewhere.. And as a result, you
2 might have been exposed to some type of information that
3 relates to this case. If you have been exposed to any type
4 of information relating to this case from any source,
5 whether it be television, radio, newspaper, individuals, or
6 any other source, I need for you to please stand so that we
7 can identify what the source was and what perhaps type of
8 information that you have received.

9 All right. Everybody that needs to respond to that
10 question, I'll ask that you please stand.

11 (Jurors respond.)

12 THE COURT: All right. Now, as you stand, as I talk to
13 you, please tell me your name and your juror number and then
14 I'll ask you something else.

15 Yes, ma'am.

16 Yes, ma'am.

17 JUROR: My name is Karen Sellars. I'm 149.

18 THE COURT: All right. Now, tell me from what source
19 do you believe you received some information.

20 JUROR: Well now that you've brought the, the place and
21 view, I believe I worked with one of the associates. Well,
22 he worked at the plant where I worked, Mr. Bailey.

23 THE COURT: All right. And where do you work?

24 JUROR: I work at Y-Tech Incorporated.

25 THE COURT: Okay. And you know who?

1 JUROR: I think it's Josh Bailey.

2 THE COURT: Josh Bailey.

3 JUROR: I know him as Josh.

4 THE COURT: Yeah, Joshua Bailey, he's one of the
5 witnesses that I called out.

6 JUROR: Yes, sir.

7 THE COURT: Okay.

8 JUROR: Now that you said Red's Grill, I knew he worked
9 there, and he was involved in that.

10 THE COURT: Okay. Does Mr. Bailey work at Red's Grill?

11 SOLICITOR COLER: He did at that time. He does not
12 now.

13 THE COURT: That's what I'm talking about.

14 SOLICITOR COLER: Yes, sir.

15 THE COURT: Okay. And so, did you receive some
16 information from him?

17 JUROR: No, there was just talk.

18 THE COURT: You just heard talk about it from various
19 sources?

20 JUROR: Yes, sir.

21 THE COURT: All right. And, and what's the, what's the
22 last time that you recall having heard anything about the
23 case?

24 JUROR: Oh, he left shortly after that from where I
25 worked.

1 THE COURT: Okay. You talking back in 2007?
2 JUROR: Yes, sir.
3 THE COURT: You hadn't heard anything since then?
4 JUROR: No, sir, I haven't seen him or heard anything
5 since then, no, sir.
6 THE COURT: Now, is there anything that you've heard
7 about this case that would impair your ability to be fair
8 and impartial to both sides if you were selected as a juror?
9 JUROR: No, sir.
10 THE COURT: All right. Thank you, ma'am. You may be
11 seated.
12 All right. Yes, sir.
13 JUROR: I work for the Westview Fairforest Fire and EMS
14 District and my shift partner---
15 THE COURT: All right. Your name and number please,
16 sir?
17 JUROR: My name is Michael Knight and Number 90.
18 THE COURT: 90?
19 JUROR: Yes, sir.
20 THE COURT: And have you discussed it with anybody?
21 JUROR: Oh, we talked about it, yes, sir.
22 THE COURT: You have.
23 All right. And is there anything about what y'all
24 discussed that would affect your ability to be fair and
25 impartial in this case?

1 JUROR: (Witness nods affirmatively.)

2 I know too much about it.

3 THE COURT: All right. You think it would affect your
4 ability to be fair?

5 JUROR: Yes.

6 THE COURT: All right. We'll excuse Juror Number 90
7 from service in the case. Don't leave yet though and don't
8 discuss your knowledge with any other person. But you can
9 have a seat.

10 Yes, sir.

11 JUROR: Tyler Rice, 139.

12 THE COURT: And you've heard, seen, or read something
13 about the case?

14 JUROR: Yeah, I have a friend, James Byers, and his
15 name and Michael.---

16 THE COURT: Well, just tell me this.

17 All right. James Byers is a friend of yours?

18 JUROR: Right and his brother, Michael, supposedly owns
19 Red's.

20 THE COURT: All right.

21 JUROR: Or works there.

22 THE COURT: And so, you talked to him about the
23 incident?

24 JUROR: Yeah.

25 THE COURT: And how long ago was that?

1 JUROR: It's been months back they brought it up
2 talking about it and I was around.

3 THE COURT: Okay. And is there anything that you heard
4 about the case that would affect your ability to be fair and
5 impartial if you were a juror?

6 JUROR: No.

7 THE COURT: All right. Thank you. You may be seated.
8 Yes, ma'am.

9 JUROR: My name is Marshall Ksor. I'm Juror Number 92.
10 I teach at the Spartanburg County Alternative School and
11 last year about the time it was on the news, several of our
12 students, particularly the ones that were living around
13 Arcadia, came to school and a lot of them were talking about
14 it. I don't remember a whole lot about what was said. But,
15 you know, there's always something going on at the
16 alternative school, somebody, you know, get in trouble for
17 something. But I do remember a lot of the kids that some of
18 them thought they had knowledge of what went on.

19 THE COURT: Okay. But you don't specifically recall
20 any information that you were exposed to?

21 JUROR: No.

22 THE COURT: Well, in, in any event, is there anything
23 about that exposure that would affect your ability to be
24 fair and impartial if you were called upon to serve in the
25 case?

1 JUROR: I don't think so.

2 THE COURT: Okay. Thank you. You can be seated.

3 JUROR: My name is Clary Greenway. I'm Juror Number
4 66. And the information I've seen has just been through
5 local media.

6 THE COURT: What type?

7 JUROR: Newspaper---

8 THE COURT: Okay.

9 JUROR: ---and all, and all Channel 7.

10 THE COURT: And would you recall about the last time
11 you heard or saw anything about it or read anything about
12 it?

13 JUROR: Right when it happened. That was the last
14 time.

15 THE COURT: So, back shortly after September of 2007?

16 JUROR: Yes, sir, that was the last time.

17 THE COURT: All right. And do you have a specific
18 recollection of the circumstances of the case?

19 JUROR: Not specifically, no, sir.

20 THE COURT: All right. Is there anything about your
21 exposure to that information that would affect your ability
22 to be fair and impartial to both sides?

23 JUROR: No, sir.

24 THE COURT: All right. Thank you. You may be seated.
25 The next question I'm gonna ask you if you or your

1 immediate family member has ever been the victim of a
2 violent crime or ever been accused of having committed a
3 violent crime. And so, I'm going to define an immediate
4 family member for you. And those would include parents,
5 spouses, children, or siblings. Parents, spouses, children,
6 or siblings.

7 I need to know if you or any member of your immediate
8 family, as I just defined it, have ever been the victim of
9 any type of violent crime or have ever been accused of
10 having committed any type of violent crime. And I'm going
11 to also define violent crimes to include murder,
12 manslaughter, armed robbery, burglary, criminal sexual
13 conduct, often referred to as rape, criminal domestic
14 violence of a high and aggravated nature, or any other
15 similar type of crime.

16 I need to know if you or an immediate family member
17 have ever been the victim of such an offense or ever been
18 accused of having committed such an offense, if so, I'll ask
19 you to please stand. And again, as I've stated, I need you
20 to provide me with the information. If you don't want to
21 provide it standing where you are, you can come down here.
22 If you don't mind providing it where you are standing, I'll
23 just ask that you stay there.

24 Is there anybody that wants to come down here?

25 JUROR: I do.

1 THE COURT: Okay. Let me let you come first.

2 BAILIFF: Number 5, sir.

3 (Whereupon, a bench conference was held within the
4 hearing of the juror and the attorneys at this time.)

5 THE COURT: All right. Now, I'll start with you,
6 ma'am, if you'll please give me your name and your number?

7 JUROR: Rosalyn Kelly, Juror Number 87.

8 THE COURT: How does the question relate to you?

9 JUROR: Well, I have a brother that was accused of
10 domestic violence and served some time.

11 THE COURT: Is there anything about that experience
12 that would affect your judgment in this case?

13 JUROR: I don't believe so.

14 THE COURT: Thank you. Be seated.

15 Yes, sir.

16 JUROR: I'm Greg Fuller, Juror Number 58. And my
17 brother, half-brother has an extensive criminal record.
18 Mostly along the lines of burglary and breaking, breaking
19 and entering.

20 THE COURT: Would that have any bearing upon your
21 decision in this case?

22 JUROR: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, sir.

25 JUROR: Yes, sir, I have a charge pending of a criminal

1 domestic violence. I initially called the police as a
2 victim, and basically the girl flipped the story around on
3 me and I'm, I'm accused by the State. But it's still
4 pending. I've hired an attorney and all that good stuff.
5 And I definitely do not believe it would have any bearing on
6 my decision making in this case. I just wanted to let you
7 know.

8 THE COURT: All right. And your number was what?

9 JUROR: 103.

10 THE COURT: Thank you.

11 Yes, ma'am.

12 JUROR: My name is Carol Tucker. I'm Number 168. I
13 have a brother who was convicted of criminal domestic
14 violence and assault and battery with intent to kill.

15 THE COURT: And would either of those facts interfere
16 with your judgment in this case?

17 JUROR: No.

18 THE COURT: Thank you. You can be seated.

19 Yes, ma'am.

20 JUROR: I have a 15 year old son who's been accused of
21 a burglary, burglary, and no.

22 THE COURT: And your number was what?

23 JUROR: 45.

24 THE COURT: And would that have any bearing upon your
25 decision?

1 JUROR: No.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR: Yes, sir. My number is 187 and my ex-spouse,
5 they charged him with a CDV. He was found not guilty. But
6 it was a order of protection as a result of that. And no,
7 it won't have any bearing on it.

8 THE COURT: Would that have any bearing upon your
9 decision?

10 JUROR: No, sir.

11 THE COURT: Okay. Thank you. You may be seated.

12 Is there any member of the jury panel who is or some
13 member of your immediate family who has ever been or is now
14 employed as a law enforcement officer, police officer of any
15 kind, civilian or military, any agency or department.

16 You or an immediate family member is now or has ever
17 been employed as a law enforcement officer, if so, please
18 stand.

19 (Jurors respond.)

20 THE COURT: All right. Yes, sir, in the blue.

21 JUROR: Juror Number 98. Forrest Lynn. I was military
22 police in Iraq in 2004 to 2005.

23 THE COURT: All right. Thank you, sir. You may be
24 seated.

25 Yellow shirt.

1 JUROR: Yes, I am currently employed with the U.S.
2 Military Army at this time.

3 THE COURT: And your name and number?

4 JUROR: Number 54. My name is William Foster.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR: 93, correctional officer.

8 THE COURT: You say 93?

9 JUROR: Yeah, 93.

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

11 Yes, ma'am.

12 JUROR: 145. I'm a retired criminal investigator.

13 THE COURT: All right. Thank you. You may be seated.

14 Is there any member of the jury panel who is a member
15 of or do you contribute time or money to any organization
16 that some characterize as law enforcement support types of
17 organizations or victims rights organizations?

18 They include Mother's Against Drunk Drivers, Citizens
19 Against Violent Crime, the Honorary Sheriff's Association,
20 the Troopers Association, or any other similar type of
21 organization.

22 Do you belong to any or do you contribute time or money
23 to any, if so, I would ask that you please stand.

24 (Juror responds.)

25 JUROR: I'm the only one.

1 THE COURT: Probably. No, you got somebody behind you.

2 JUROR: Juror Number 5.

3 THE COURT: Five, yes, ma'am.

4 JUROR: Deborah Barksdale. South Carolina Troopers
5 Association for those killed in the line of duty.

6 THE COURT: All right. Thank you, ma'am.

7 Yes, ma'am.

8 JUROR: Anita Bruhnke, Number 18, and anybody that
9 calls my house. I contribute money to whatever
10 organization.

11 THE COURT: What's your number?

12 JUROR: Juror 18.

13 THE COURT: No, your phone number.

14 JUROR: I'm not telling.

15 THE COURT: Yes, ma'am.

16 JUROR: Hayden Mills, Number 111. I contribute to
17 Mother's Against Drunk Driving and the Troopers Association.

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

19 Anybody else?

20 (No response.)

21 THE COURT: All right. Now, I told you basically what
22 the case is about, where it occurred, what the allegations
23 are.

24 Is there anything about the nature of this case that
25 would prevent any juror from being able to be fair and

1 impartial if you were called upon to serve in the case?

2 Any reason whatsoever why you think you could not be
3 fair and impartial if you were called upon to serve as a
4 juror, if so, please stand.

5 (No response.)

6 THE COURT: All right. Any other questions requested
7 by the State?

8 SOLICITOR COLER: No, sir, Your Honor.

9 THE COURT: By the defendant?

10 MR. RECKENBEIL: Nothing from the defense, Your Honor.

11 THE COURT: All right. As your names are called,
12 you're gonna be asked to come forward. You'll see the desk
13 where the lawyers are seated. If you'll just come through
14 the desk, I mean down the aisle, take a stance about two
15 steps past where they're seated. Each side has an
16 opportunity to have you excused from service in the case or
17 to have you seated for service in the case. If either side
18 asked that you be excused, just go back and have a seat
19 where you are now. If both agree to have you seated for
20 service in the case, you'll be having a seat in that jury
21 box to my left and to your right.

22 So, please come forward as your name is called. You'll
23 be instructed if you'll be excused from service or seated
24 for service in the case.

25 All right. The clerk is gonna call your name and your

1 number. Please come forward as your name is called and
2 you'll find out if you've been selected or not.

3 (Whereupon, a jury panel was selected at this time.)

4 THE COURT: Let's get an alternate.

5 CLERK: Just one?

6 THE COURT: Let's do two.

7 MR. RECKENBEIL: Judge, can we approach a second?

8 THE COURT: Yeah.

9 (Whereupon, a bench conference was held out of the
10 hearing of the jury followed by two alternate jurors being
11 selected at this time.)

12 THE COURT: All right. Those who have been selected,
13 I'll ask that you please go with the bailiff to the jury
14 room, and I'll bring you back shortly to begin the trial of
15 this case.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Are there any matters that we need
19 addressed regarding jury selection by the State?

20 SOLICITOR COLER: No, sir, Your Honor.

21 THE COURT: By the defense?

22 MR. RECKENBEIL: Nothing from the defense, Your Honor.

23 (Pause.)

24 THE COURT: All right. Any matters we need to address
25 before the jury is brought in?

1 SOLICITOR COLER: No, sir, not from the State.

2 MR. RECKENBEIL: Nothing from the defense, Your Honor.

3 THE COURT: All right. I understand you got a witness
4 you're gonna call before lunch?

5 SOLICITOR COLER: If that's okay with the Court. We're
6 gonna call -- Doctor Wren is 15 minutes away. We'll place a
7 phone call right now.

8 THE COURT: Okay. All right. Bring the jury in.

9 Ask Mrs. Dimaggio, Jacqueline Dimaggio, Juror Number
10 186, to take the foreperson's seat.

11 (Whereupon, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. Ladies and gentlemen, we are
14 ready to begin with the trial of the case for which you were
15 selected.

16 And Mrs. Dimaggio, I'm gonna ask you to serve as the
17 foreperson of the jury.

18 As the foreperson you're gonna have three specific
19 duties that does, none of the other jurors will have.
20 Number one, you'll be asked to serve as a spokesperson for
21 the jury. And so, if, during the trial, something arises
22 that needs to be brought to my attention, that is you or one
23 of your fellow jurors has some difficulty or problem or
24 question, if you'll let the bailiff know, he'll let me know,
25 and I'll address any problem or question that you may have.

1 Secondly, you'll be asked to preside over jury
2 deliberations when the time comes for those deliberations.
3 That, of course, won't be until the end of the trial after
4 all of the evidence has been received and after I've
5 instructed you on the law that's applicable in the case.

6 But when the time does come for jury deliberations, you
7 are assigned with the task of presiding over that process
8 simply to ensure that those deliberations are carried out in
9 some orderly fashion.

10 And thirdly, you'll be asked to actually write the
11 verdict or the decision of the jury. You'll do that on a
12 verdict form that I'll provide you on which you will
13 indicate the jury's unanimous decision.

14 Now, the foreperson has those specific duties that I
15 just indicated, but that does not mean, because she is the
16 foreperson, she's any more important than any of you other
17 jurors because the decision of a jury panel is the unanimous
18 consensus opinion of all 12 jurors. And so, all of you are
19 going to have an equal say and an equal vote in what the
20 ultimate decision will be in this case. Someone simply has
21 to be delegated those responsibilities that I have just
22 indicated, and I have delegated, delegated those to
23 Mrs. Dimaggio and appointed her as the foreperson.

24 But all of you jurors are equally important so far as
25 the ultimate decision is concerned. Because, as I've

1 stated, the verdict has to be unanimous. All 12 of you must
2 be in agreement.

3 Now, Mrs. Spangler and Mrs. Pridemore, each of you have
4 been selected as alternate jurors, and the function of an
5 alternate juror is to take the place of one of the original
6 12. If, during the trial, one or more of these original 12
7 can not continue to serve, then one or both of you would be
8 called upon to take those juror's places. In that event,
9 you would become the 12th juror.

10 Now, when the time comes for jury deliberations at the
11 conclusion, if all of the original 12 are able to
12 participate as jurors, then your service ends and you can't
13 participate any further because the verdict of a jury is
14 that of 12. No more than 12 can participate in that
15 process.

16 But it is important that you pay just careful attention
17 as we ask of all the jurors in the case because it does
18 occur, from time to time for one reason or another, one of
19 the original 12 may be called away. In that event, one or
20 both of you will be called upon to participate as the 12th
21 juror.

22 So, we do appreciate your participation as alternate
23 jurors just as we appreciate the participation of each of
24 you jurors who have been selected for the purpose of
25 deciding the verdict in this particular case.

1 You may swear the panel.

2 (Whereupon, the jury panel was placed under oath at
3 this time.)

4 THE COURT: Now, ladies and gentlemen, as you know,
5 you've been selected to decide the verdict in the case of
6 the State versus Channack Keam. Mr. Keam has been accused
7 by the State by way of a document called an indictment.
8 They have accused Mr. Keam of having committed the crime of
9 murder.

10 The State alleges, by way of that indictment, that
11 Mr. Keam did, on or about September the 22nd of 2007, kill
12 Mr. Samuel Shane Easler by shooting him with a firearm, that
13 he committed those acts with malice aforethought, and that
14 Mr. Easler died as a proximate result of that gunshot wound.

15 As I've told you, as to the allegations and as to the
16 charge, the defendant has entered a plea of not guilty, and
17 that plea of not guilty, therefore, places upon the State,
18 because they brought the charge, to prove the allegations
19 set forth in the indictment, to prove each of the essential
20 elements of the crime charged; and, therefore, the burden is
21 upon the State to establish the defendant's guilt to the
22 satisfaction of you 12 jurors beyond a reasonable doubt
23 before any verdict of guilty could be returned.

24 The indictment is not evidence in the case. It's not
25 proof of anything in this case. It simply sets forth the

1 charge against the defendant. It serves as a notice
2 document to him. It puts him on notice as to what crime the
3 State alleges he has committed.

4 It will be in the jury room, Madam Forelady, when you
5 and your fellow jurors go back to deliberate, and it's there
6 because it's on the back of the indictment that you will
7 write the verdict of the jury. But other than serving as
8 the verdict form, the indictment serves no purpose so far as
9 you jurors are concerned.

10 Now, every person who is accused of a crime is presumed
11 innocent of the charge. That presumption of innocence
12 remains with any defendant as it was with this defendant
13 from the time that he is placed under arrest and throughout
14 the course of the process even throughout the course of the
15 actual trial in the case that we're now beginning. That
16 presumption of innocence will be with the defendant even at
17 the time that you go back to begin with your deliberations
18 in this case at the trial's conclusion.

19 That presumption of innocence will be with him in that
20 jury room and it will be with him forever unless you 12
21 jurors determine that he's no longer entitled to the
22 presumption of innocence. That is after you've carefully
23 considered all of the evidence in the case, and from that
24 evidence you've decided the facts, and after deciding those
25 facts you apply the law that I will have provided you. If

1 you 12 jurors unanimously determine that his guilt has been
2 proven beyond a reasonable doubt, then he would no longer be
3 entitled to that presumption of innocence. But it's only
4 if, unless, and until you are satisfied of his guilt beyond
5 a reasonable doubt that the presumption of innocence would
6 no longer be applicable.

7 Now, the way the trial will proceed is that in a moment
8 the lawyer's are going to address you in what are called
9 opening statements. There are two occasions in the trial of
10 a case where lawyers are permitted to address the jury, and
11 those two occasions are at the beginning of the trial before
12 any evidence has been introduced, and then again at the
13 conclusion of the trial after all of the evidence has been
14 received.

15 Keep in mind, however, that the lawyer's statements are
16 not evidence upon which you will base your decision and
17 that's because the lawyers aren't witnesses to anything.
18 They're not gonna be telling you anything about this case
19 that they know of their own personal knowledge or
20 experience. That is, that can't tell you anything about the
21 case based upon what they have previously perceived that
22 relates to it because they weren't witnesses, and they're
23 not going to take the witness stand. They're not going to
24 testify under oath. They're not going to be subjected to
25 direct and cross-examination as each of the witnesses will

1 be that are called during the trial.

2 And so, what the lawyers tell you is not evidence upon
3 which you will base your decision. But you should listen to
4 what they have to say because those statements do serve a
5 purpose. And the opening statements serve to provide you
6 with a basic understanding as to what this case is about
7 from the prospective of both the State and the defense so
8 that you'll have some context in which to place the evidence
9 that we will be receiving shortly thereafter.

10 The closing statements occur after all of the evidence
11 has been received. And again, those statements aren't
12 evidence. But it does permit the lawyers an opportunity to
13 discuss with you the evidence that you've seen and heard
14 during the trial of this case, and through that discussion,
15 each will have an opportunity to try to persuade you or to
16 convince you that that evidence does or does not support a
17 particular decision, and it's in-between the opening,
18 opening and the closing statements of the lawyers that we
19 will actually receive the evidence upon which you will base
20 your decision.

21 The State will go forward first in its presentation of
22 evidence. That's because the State has the burden of proof.
23 As I've told you, the State has the burden of proving a
24 defendant guilty beyond a reasonable doubt. And so, the
25 State has to present evidence because right now, if I've

1 told you to go back into the jury room and consider all of
2 the evidence in the case and render a decision, your verdict
3 would have to be not guilty because you don't have any
4 evidence to convince you otherwise. So, the State has the
5 obligation, the burden of proving the defendant's guilt
6 beyond a reasonable doubt. So, obviously they have to
7 present evidence.

8 After the State is concluded with their presentation of
9 evidence, the defendant has the same opportunity to testify
10 or to present evidence, but is under no obligation and is
11 not required to do so because the burden is not upon a
12 defendant to prove that he is not guilty or to prove that he
13 is innocent because, in some cases, that wouldn't even be
14 possible. The burden is on the State to prove the
15 defendant's guilt beyond a reasonable doubt.

16 However, a defendant in a criminal trial is afforded an
17 opportunity to testify or to present evidence should he or
18 she wish to do so. After all of the evidence has been
19 received and after I've instructed you on the law in the
20 case at the trial's conclusion, you'll then be asked to go
21 back and begin with your jury deliberations. Through that
22 process you're simply gonna be called upon, through the
23 exercise of good judgment and common sense, conscientiously
24 applied to the testimony and evidence in the case, to decide
25 the facts. That is, you'll determine what you believe if

1 anything happened back on September the 22nd of 2007 as it
2 relates to these allegations. And after you decide those
3 facts, you'll then apply the law that I will have provided
4 you and you will determine whether or not the, the
5 defendant's guilt has been proven beyond a reasonable doubt.
6 And if it has, then your verdict is guilty. If it has not,
7 then your verdict is not guilty.

8 All that we're gonna ask you to do in this case is to
9 pay careful attention and to be fair. You need to pay
10 careful attention from the beginning until the end. You
11 need to give each witness the same degree of attention as
12 the witnesses testify because there might be a conflict in
13 testimony. And that conflict, that conflict may relate to a
14 material issue of fact that you have to decide in order to
15 arrive at your decision in the case.

16 So, it's important that you give each witness the same
17 degree of attention as they testify so that when you go back
18 to begin your deliberations you'll be in a proper position
19 to be able to fairly evaluate and assess each witness'
20 credibility in light of not only that witness' testimony,
21 but in light of all of the testimony and all of the evidence
22 received during the trial.

23 It's also important that you keep an open mind
24 throughout the course of the trial. And so, that just means
25 that you are not to begin making up your minds or

1 formulating your opinions as to what you think the ultimate
2 decision in this case ought to be until all of the evidence
3 has been received, until I have instructed you on the law
4 that's applicable in the case, and until you've been asked
5 to begin with your jury deliberations at the trial's
6 conclusion. That is the process that is designed for you 12
7 jurors to arrive at a fair and just decision in this case.

8 So, I do want to thank you in advance for your
9 participation as well as for your careful attention
10 throughout the course of the trial. I will ask that you
11 please give the lawyer's your attention now as they give
12 your their opening statements.

13 Mr. Coler.

14 SOLICITOR COLER: Thank you, Your Honor.

15 May it please the Court.

16 Senseless. Senseless. That word is often used to
17 describe when a young person dies. As this trial proceeds,
18 you will see Shane Easler's death was truly genuinely
19 senseless.

20 As a passing motorist on a dark Hayne Street at about
21 10:10 in the evening just in front of Red's Bar & Grill
22 found Shane Easler lying on the road bleeding to death with
23 a gunshot wound to his chest, it had to occur to them that
24 the death of this young man was senseless. No reason in the
25 world Shane Easler needed to die that night.

1 It all started earlier that evening,
2 September 21st of 2007. The defendant, Mr. Channack Keam,
3 seated next to Mr. Reckenbeil, and three other individuals,
4 Shane Easler, Victoria Thongpane, and Tyler Vichith, all
5 went to Red's Bar & Grill. The defendant, Mr. Keam, Shane
6 Easler, Victoria, and Tyler were, were friends. They were
7 acquaintances.

8 You'll hear evidence and the testimony will show that
9 after they got into the bar that evening, some of the
10 bouncers/bartenders, asked Mr. Keam and the other three to
11 leave the bar as Mr. Keam was drinking beer that he had
12 brought into the bar. It's a violation of Red's policies
13 and the bartenders approached them and asked them to leave.

14 You'll hear testimony that Mr. Keam, who throughout
15 this trial you may hear him referred to as Channack or Tony
16 or Loke, Mr. Keam was belligerent, uncooperative, and
17 resistant. You'll hear the bouncers tell you that. He was
18 resistant and uncooperative with the bouncers themselves and
19 even he became uncooperative and belligerent with his own
20 group.

21 You'll hear testimony, I think the evidence will show
22 that Shane was trying to reason with Keam. Let's just go
23 home. It's not a big deal. Let's forget about it.
24 Mr. Keam was resistant to the bartenders asking him to leave
25 and his own friends and acquaintances trying to reason with

1 him.

2 You'll hear testimony then that the bartenders escorted
3 the group to the front door of Red's. And if y'all don't
4 know Red's, Red's is a bar and grill that sits 50 or 60 feet
5 off of Hayne Street. There's a big concrete factory right
6 next door to it. They escorted the group to the front door
7 of Red's and basically sent them out into the parking lot
8 and go back inside attending to the bar, bouncing, you know,
9 tending to the other patrons in the bar.

10 Not long after the group is, is put out into the
11 parking lot -- and you'll hear the bouncers say, as they
12 were being put out, Mr. Keam was continuing to be
13 argumentative, resistant, and there was a squabble between
14 the, between the group.

15 Not long after that, the people inside the bar, and
16 they'll come in and tell you, heard shots ring out. They
17 described it as a number of shots. Some said four. Some
18 said as many as six.

19 They went out to investigate. The parking lot is dark.
20 The bar is set off of Hayne Street a good ways. As the
21 bartenders and the bouncers are looking out there and trying
22 to investigate, see what's going on, see what these shots
23 are about, they hear a couple more shots. Some will tell
24 you one. Some say one to two. But it's a couple more
25 shots.

1 Of course, everybody inside the bar is concerned,
2 worried, and they kind of close that place down, call the
3 police, and, and the deputies arrive a short time later.
4 The first deputy's on scene at about 10:16 p.m. and they
5 find a passing motorist, Teresa Bishop, you'll hear from
6 her, she is there trying to save, trying to resuscitate
7 Shane Easler, who is lying on Hayne, Hayne Street bleeding
8 with a gunshot wound to the chest. They find Channack Kean
9 standing with the victim. Standing right there.

10 And, of course, the police are trying to figure out
11 what happened, trying to sort it out, and at first the
12 police think he's simply a witness to this. But you'll hear
13 from the officers, you'll hear from the detectives, his
14 statements and his versions just aren't logical, just, just
15 don't make sense.

16 Finally, he is patted down and frisked, you know, when
17 the police pat you down, he has in his right rear pocket a
18 .357 semiautomatic pistol. It's empty. There are no shell
19 casings, no bullets left in it. The police, of course,
20 recover that gun.

21 When a crime scene investigator comes out and what's
22 called processes or investigates the scene, he finds ten
23 spent shell casings. They'll be an expert in here about
24 ballistics and about guns that will tell you when a
25 semiautomatic gun is fired; the, the bullet, the projectile

1 goes through the barrell at the target, but the shell
2 casings get ejected, they get kicked out, and they end up on
3 the ground near where the gun is fired.

4 Those ten shell casings and the gun are -- the gun,
5 again, that came from Channack Keam's right rear pocket is
6 sent to a lab in Columbia. There's an expert down there and
7 she looks at the gun, and she looks at the shell casings.
8 She will tell you, I believe, that the, and she's created a
9 report to the effect, those shell casings, every one of
10 those ten was fired by that gun. Not a gun similar to that.
11 Not the same make and model. That particular gun that came
12 out of Keam's pocket.

13 Mr. Easler, Shane, is, is rushed to the hospital.
14 Mrs. Bishop tried to resuscitate him, tried to do what she
15 could do for him. But ultimately and unfortunately he
16 didn't survive the gunshot wound in the center mass right in
17 his chest.

18 For this incident, that man seated right there,
19 Channack Keam, is charged with one count of murder. And
20 Judge Cole is the expert in this courtroom on the law. And
21 he's gonna tell you, at the end of this trial, what the
22 elements of murder are. And I submit to you they're exactly
23 what you think, what you think they are. He's gonna tell
24 you they're three essential elements to murder. It's the
25 unlawful killing of another human being with malice

1 aforethought.

2 It doesn't require the State to prove a motive. It
3 doesn't require the State to prove a premeditated plan
4 where, where Channack Keam was lying, was lying in wait
5 waiting to get Shane Easler. It requires us to prove an
6 unlawful killing. And at the end of this trial you will
7 find there will be absolutely no lawful reason, no, no
8 reason, this is a senseless killing of another person.

9 Everybody on that front row and that back row will tell
10 you that Shane Easler was a person. He was 31 years old on
11 the night he died on September 21st, 2007.

12 And finally, the State's required to prove malice
13 aforethought and malice is a legal term, the judge will tell
14 you, used to describe ill will. A heart that's fatally bent
15 on mischief, a heart that is devoid of social
16 responsibility, a black heart.

17 That malice is got to exist in Mr. Keam's mind and his
18 heart, but it only needs to exist for a split second. It
19 could exist a week before. It could exist a day before. It
20 could exist an hour before. It could exist a minute before.
21 But that malice can exist at the second or at the time of
22 the fatal blow.

23 So, you're not gonna hear in this trial testimony that
24 Mr. Keam had it in for Shane and was out to get him and was
25 planning for weeks and days to get him. You are gonna hear

1 that when he opened fire with a .357 caliber and shot his
2 friend in the chest he had malice. He had a black heart.
3 He had a heart that just didn't care about social
4 responsibility.

5 And that's what the judge means when he talks about
6 malice aforethought. A forethought means it exists some
7 time prior to the shooting. Not after the shooting. But
8 that some time prior. It can be a split second before the
9 shooting.

10 This is gonna be a relatively short trial. Probably a
11 couple of days. Somewhere in the neighborhood of ten
12 witnesses from the State.

13 But please don't confuse the brevity of this trial, the
14 shortness of it with the importance. It is, it is the
15 State's day in court in this case. It is, is the
16 Spartanburg County Sheriff's Office day in Court in this
17 case. But most important, it is the day in Court for
18 Shane's family and friends who are here.

19 So, on behalf of, of the party I represent, the State
20 of South Carolina, the Sheriff's Office, and the family of
21 Shane Easler, I tell you I look forward to your verdict. I
22 want to thank you now for your attention and ask that you
23 simply do that. Just pay attention to our case, and, and
24 render your service honorably, which I know you'll do that,
25 and look forward to your verdict.

1 Thank you.

2 THE COURT: Mr. Reckenbeil.

3 MR. RECKENBEIL: May it please the Court, Your Honor?

4 THE COURT: Yes.

5 MR. RECKENBEIL: Ladies and gentlemen, you heard
6 Mr. Coler speak about, a little bit, the definitions of
7 murder in South Carolina. Well, I submit to you, ladies and
8 gentlemen, that Judge Cole will be giving you the
9 instructions at the end of this trial, and that is the law
10 in which, if fact, you are to judge the facts on it.

11 As Madam Clerk made you stand up and take an oath, she
12 read to you the fact that you are to judge the facts and
13 take the law as it is given to you. Well, that is what I
14 ask is that the fact that you take the law as Judge Cole
15 will give it to you at the end of this trial, and then make
16 a judgment on the facts by using your common sense and then
17 render a verdict.

18 Now, what the State has glossed over a little bit is
19 that there are tremendous, tremendous gaps in the facts.
20 The first thing is, that you're going to hear is that Tony
21 Keam, and I call him Tony, and Shane Easler were friends.
22 They were good friends. And this was a situation that they
23 just didn't end up at some bar. They were partying that
24 night together.

25 You're gonna hear that night that there was a

1 tremendous amount of drinking going on by, by all people.

2 By Victoria, by Tyler, by Shane, and even Tony.

3 You're also gonna hear the fact that there was
4 consumption of illegal drugs that night. But Tony Keam was,
5 in fact, taking Xanax.

6 Now, going forward to the bar, we are not gonna contest
7 the fact that he was not claiming any legal beers and
8 drinking them out of his own pocket. There's a video that
9 shows it. We're not gonna the, contest the fact that he was
10 not ushered out of the bar cause he was and he should of.

11 We are not even gonna contest the fact of what happened
12 except for the fact that the way that the State portrays it.
13 This is a senseless issue. But it is a horrible, horrible,
14 horrible accident.

15 The State wants you to infer from the time Shane and
16 Tony and Victoria and Tyler left the bar to the time that
17 the police find the gun in, in Tony's pocket, the time frame
18 of these people coming onto the scene, what happened. Well,
19 I submit to you, ladies and gentlemen, that there is
20 objective evidence that will be told to you through the
21 trial that will demonstrate this was a horrible accident.

22 You're gonna hear from a SLED agent. She's gonna get
23 on the witness stand. She's gonna say I did a GSR test,
24 which is a gunshot residue test, which, in all indication,
25 gives evidence that an individual is firing a gun. You're

1 going to hear, ladies and gentlemen, that Shane Easler, that
2 night, had gun residue on his right palm.

3 You're gonna hear a number of things that Tony Keam
4 says through the course of this interview at the police
5 station, his reaction at the scene, and what, in fact, would
6 be a logical explanation as to what happened.

7 You're gonna hear Tony Keam first on the 9-1-1 tape say
8 we need an ambulance. Somebody's been shot. My friend has
9 been shot. There's no question on that 9-1-1 tape that
10 you're gonna hear an individual that you can barely
11 understand. Not because of the fact of his foreign accent,
12 but because of the fact that he's slurring his words because
13 of the intoxication case.

14 You're gonna hear him saying that it was a drive-by
15 shooting. You're also gonna hear from another witness that
16 he says that it was a drive-by shooting. But then you're
17 gonna hear an oral statement that was taken by the police at
18 some hours later, and you hear, by Mr. Keam's own admission,
19 that he was sobering up. And you will hear the fact that
20 Tony Keam says I take responsibility for what happened.

21 The judge is going to give you the instructions on the
22 law, on malice. I just ask that you take your oath as
23 serious as this trial is, and that is very serious, to the
24 utmost and apply it to the facts, using your common sense.

25 And will the State meet their burden of proof beyond a

1 reasonable doubt of every single element that they're
2 required to prove?

3 And that is malice and aforethought.

4 They have -- did Tony Keam have evil in his heart when
5 that gun went off when Shane Easler died?

6 You have heard from Judge Cole the fact that Tony Keam
7 is presumed innocent until we prove each and every one of
8 those elements. That's all we ask is that you give Tony
9 Keam, Keam that, that respect that he has under the
10 Constitution. That fact that he is innocent until proven
11 guilty. And we just ask that you pay attention to the facts
12 as presented at that witness stand because that is all that
13 matters in this courtroom, and the law that the judge gives
14 you.

15 Thank you very much.

16 THE COURT: Mr. Coler.

17 SOLICITOR COLER: Thank you, Your Honor.

18 State calls Doctor David Wren.

19 DAVID WREN, being first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR COLER:

23 Q Would you please state your full name for the record,
24 doctor?

25 A John David Wren.

David Wren - Direct examination
by Solicitor Coler

1 Q Tell the jury what you do for an occupation.

2 A I'm a medical doctor with a specialty in pathology.

3 Q Briefly describe for us your education, your training,
4 and the experience you have that enables, enables you to
5 perform your duties as a pathologist.

6 A Well, I have a, a Bachelor's, Bachelor's Degree, a
7 Master's Degree, and a Doctor of Philosophy Degree in
8 Chemical Engineering from Clemson University. I have a
9 medical degree from the Medical University of South
10 Carolina. I did a combined anatomic and clinical pathology
11 residency at the Medical University of South Carolina.

12 While I was there I was the assistant medical examiner
13 of Charleston County from July of 1980 until the end of
14 January of 1983. I did autopsies at the Medical University
15 one weekend a month as a secondary residency in forensic
16 pathology, while I was there, from around the same time, and
17 I passed my anatomic and clinical boards on the first try.
18 I never took my forensic boards because I just simply did
19 not have to, time to, to take them although I have been
20 qualified as an expert witness in forensic pathology both in
21 the Upstate and the low, lower state as well as in the
22 Midlands in multiple counties.

23 SOLICITOR COLER: Your Honor, at this point we offer
24 and move to qualify Doctor Wren as an expert in the field of
25 forensic pathology.

David Wren - Direct examination
by Solicitor Coler

1 THE COURT: Any objection?

2 MR. RECKENBEIL: No objection, Your Honor.

3 THE COURT: He is so qualified.

4 SOLICITOR COLER: Thank you, Your Honor.

5 Q Doctor Wren, can you ballpark estimate the number of
6 autopsies you performed in a given year and break that down
7 by month -- just estimate for us.

8 A I've done approximately 3,000. I usually do between
9 160 and 180 a year since 1989.

10 Q Did you have an occasion to perform an autopsy on the
11 victim in this case, Samuel Shane Easler?

12 A Yes, I performed an autopsy on an individual identified
13 as Samuel S. Easler in the Spartanburg Regional Medical
14 Center autopsy room on September the 22nd, 2007, beginning
15 at approximately 9:00 a.m.

16 Q All right. As a result of that autopsy, were you able
17 to determine, in your expert opinion, the cause of death of
18 Samuel Shane Easler?

19 A I assigned the cause of death as exsanguination meaning
20 that he bled to death secondary to a gunshot wound to the
21 chest.

22 Q Okay. Describe for us, if you will, the, the gunshot
23 wound, the location, and the path of the projectile, the
24 trajectory of the projectile.

25 A Mr. Easler had -- they had tried to resuscitate him in

David Wren - Direct examination
by Solicitor Coler

1 the emergency room. So, they had actually done a
2 thoracotomy incision from across the bottom of the chest.
3 But he had a distant gunshot wound to his right chest almost
4 in the midline. It appeared 16 and a quarter inches from
5 the top of his head and one and three quarter inches to the
6 right of his midline. It passed into his chest cavity. It
7 grazed the right atrium of the heart.

8 Where there was a through-and-through gunshot wound, it
9 went through his right upper and right lower lobes of his
10 lung, and it passed from his thoracic cavity between ribs
11 five and six posteriorly and that exit gunshot wound
12 appeared 18 and a half inches from the top of the head, two
13 and a quarter inches below where it entered, and it was two
14 and three quarter inches to the right of midline or an inch
15 over from the midline toward his right side.

16 As such, the, the path of that projectile was front to
17 back. It was slightly left to right on his body is the way
18 we reference it and it was slightly downward.

19 Q Would you just, for the jury's information, point out
20 on your body the approximate location of the entrance wound?

21 A The approximate location was almost in the midline of
22 the chest just to the right of midline, and the exit was
23 almost directly behind it, but slightly downward and
24 slightly to the right in the back.

25 Q All right. Now, you had mentioned the word distant

David Wren - Direct examination
by Solicitor Coler

1 gunshot wound.

2 Can you describe for the jury what you mean when you
3 say a relative, a distant gunshot wound?

4 A Well, without examining the clothes, clothing because
5 there was no clothing with the body, I can only say that
6 there was no evidence of a contact or a close range gunshot
7 wound on the body. Gunshot wounds are described as either
8 contact and it's either tight or loose contact meaning that
9 the barrel of the weapon is up against the skin or wherever
10 it, it's discharge.

11 Distant means there's no evidence that, that there was,
12 that one can tell that there's any deposition of either
13 powder or soot that comes out of the barrel at an
14 intermediate range. It was none of that. So, one can only
15 conclude that it was distant.

16 Q All right. And you used the term through and through
17 gunshot wound.

18 Describe for us what you mean by through and through
19 gunshot wound.

20 A It just simply means that the bullet passed completely
21 through the body and there was no evidence of a bullet or
22 even or, or, and no recoverable bullet fragments from the
23 body.

24 Q All right. So, it's my understanding you did not
25 collect or recover a projectile or any fragments of a

David Wren - Direct examination
by Solicitor Coler

1 projectile inside Mr., from Mr.---

2 A That's correct. There were none there.

3 Q All right. That's all the questions I have for you,
4 doctor. Thank you for being here. Please answer any that
5 Mr. Reckenbeil has.

6 CROSS-EXAMINATION

7 BY MR. RECKENBEIL:

8 Q Doctor Wren, you didn't examine the actual clothes---

9 A No.

10 Q ---of the victim?

11 A They didn't come with the body.

12 Q Yes, sir.

13 And so, you couldn't make a determination if there was
14 gun residue on those clothes, is that correct?

15 A No, I couldn't. Often times you can't if the clothing
16 is dark anyway. It'd have to be light clothing where I can
17 actually see it to, to make a, an evaluation. But
18 nevertheless, there were, those, that clothing did not
19 accompany the body.

20 Q So, is there a specific distance that you can give from
21 where you think this gunshot wound came from?

22 A No, you can only say, if there's no evidence of an
23 intermediate gunshot wound or contact, you can only say,
24 depends on the type of weapon that's used, and generally in
25 handguns, the maximum distance that will not leave -- the

David Wren - Cross-examination
by Mr. Reckenbeil

1 minimum distance where there will be no residues are six to
2 ten or twelve inches. So, if you don't see any evidence of
3 soot or powder, then one can only conclude that it was
4 further than six to twelve inches, and one can tell by
5 firing the weapon and the bullets, or similar bullets, one
6 can tell by, if there were residues or powder, one can tell
7 by firing that, in a controlled environment, about how far
8 it was away if one sees any evidence.

9 For instance, if you take a gun and you put it right up
10 against a, a white object, and you fire that, all of the
11 powder and the, the burning powder and the soot that comes
12 out of the barrel, of course, will be up against the, the,
13 the object, the object that you're firing against. So, it
14 will only go on past, through with the bullet.

15 If one starts backing up, then that powder comes out
16 and the soot comes out, and if it's straight on, it will
17 leave a circular deposition of soot and the powder will
18 tattoo that. Also, the burning powder will actually cause
19 what's called tattooing on the skin because it actually
20 burns little pockets in the skin. And if one doesn't see
21 that, then you can say that it was, that it wasn't close
22 enough to, to leave that.

23 So, as one backs up, it will eventually reach a point
24 to where that powder and soot that comes out does not reach
25 the target. So, it will leave no evidence that there was

David Wren - Cross-examination
by Mr. Reckenbeil

1 any, that it was close enough to cause that.

2 Q And---

3 A And so, one has to take the, the handgun or the
4 whatever type gun it is, and one has to actually fire that.
5 But there's a general range. For instance, shotguns, as
6 everyone knows is ever fired a shotgun, as those pellets
7 come out, they spread and eventually you can be far enough
8 away where only one or two may hit you. If there's a lot,
9 like a bird shot or, or that, have a lot of pellets, you can
10 at least eventually reach a point where the shotgun that
11 there will be, you'll be too far away for it to hit you.

12 But on the other hand, if you're close and you're in
13 contact with a shotgun, they'll be a big round hole and in
14 the body one will find the wadding as well as the cap, the
15 plastic cap that holds the shot. So, those are just general
16 considerations.

17 Q Just want to make sure I'm absolutely clear on one
18 point.

19 In your expert opinion, you say that it would be at
20 least six to twelve inches back so it wouldn't leave what
21 you call that soot and that depression on the individual?

22 A Right, if, if I could examine the clothing.

23 Q Right.

24 A And usually they try to, we try to recover the clothing
25 so it can be sent on either down with the body or sent to

David Wren - Cross-examination
by Mr. Reckenbeil

1 SLED.

2 Q Okay.

3 A Because we don't have the facilities to look under a
4 scanning microscope and things like that to, to see if there
5 were any powder there.

6 Q Thank you, Doctor Wren. Thank you very much.

7 SOLICITOR COLER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR COLER:

10 Q Just so I'm clear, the path or the, the trajectory of
11 the bullet is on the patient's body from his, his left to
12 his right?

13 A That's correct. It was going if---

14 Q You can demonstrate, you can demonstrate on me.

15 A This individual was 5'10" and a half inches in length
16 and there's a little bit of variation when a person is
17 relaxed after dying. There can be one or two inches
18 variation in how long you measure somebody. So, this person
19 was about 5'10". And look like you're about 5'10", 6-foot.

20 Q Pretty close.

21 A But anyway, it was 16 and a half inches from the top of
22 his head, and it went in approximately there. And it was
23 going from his left to his right. And it was going downward
24 slightly and front to back.

25 So, it came out somewhat like that. So, the person

David Wren - Redirect examination
by Solicitor Coler

1 that fired it, depending on how far away he was or that
2 position of that person, if the person was leaned over,
3 then, of course, that takes part of the, the downward
4 trajectory because the body is leaned over and it can be
5 straight.

6 So, if I shot him from this distance, then you can draw
7 a straight-line because it didn't hit any bone or anything
8 else, so it wasn't deflected. So, it went in and went
9 straight on through. And if you keep backing up, then you
10 would have to have the bullet even further, I mean the, the
11 weapon even further up to shoot at that angle unless he
12 leaned over. Now, if he leaned over, you can be even
13 closer.

14 Q But can you make a determination then you're standing
15 just to my left, doctor, is it your opinion that the barrel
16 of that gun was just to the left of Mr. Easler when he was
17 shot?

18 A Well---

19 Q Not to the right?

20 A Okay. Well, in relation it was. Because if I was
21 standing straight, then if you turned, it would -- if you
22 turned to your right, it would go that direction. If you
23 turned to your left, it would not go that way. So, so, the
24 barrel of the gun was, in relation to the front view of his
25 body, was to his left. Now it could of been in the midline

David Wren - Redirect examination
by Solicitor Coler

1 or it could of been over if he were turned, the further he
2 turned because we're not a stationary object. So, there are
3 lots of positions that one can be in. He could not be lying
4 on the ground unless I was standing over him because the
5 bullet would be going up then.

6 Q In, in your expert opinion, Doctor Wren, based on your
7 experience, if, if this were a self-inflicted gunshot wound,
8 in other words Shane shot himself, and he's right-handed, he
9 would of had to reach -- am I correct in understanding he
10 would have to reach like that?

11 Is that a fair statement?

12 A It would be very difficult. But, but, you know, one
13 could take the gun and hold it with the barrel, I mean the
14 barrel toward him and stick his thumb in there and pull the
15 trigger. But that's unusual.

16 Q But if somebody were right-handed and they had a
17 self-inflicted gunshot wound, would you expect---

18 A By holding the gun, they would have to really turn it.
19 I don't -- it's hardly any way you can do that.

20 Q Would you expect then the path to be from the patient's
21 right to left?

22 A More than likely, yes.

23 Q All right. Does the, does the stippling, the gun
24 powder, the hot gun powder, was that hot enough to burn
25 through clothing?

David Wren - Redirect examination
by Solicitor Coler

1 A Not usually. And, and handguns, by the way they put
2 out, depending on their size, can put out very little of
3 that powder and stippling depending on the type of bullet
4 also.

5 Q Okay. In your experience, doctor, as a forensic
6 pathologist, have you ever seen where a, the victim of a
7 shooting gets gunshot residue on his palm as a result of
8 being shot at?

9 A Yes, that, that happens. They also have, can have what
10 are called defense wounds. If they throw their hands up,
11 the bullet can actually or projectile can actually go
12 through the hand or graze it or whatever.

13 Q Okay. But---

14 A But it's not unusual for -- if someone threw their hand
15 up, if they were close enough to get, to get residues on
16 there.

17 Q Okay. All right. That's, that's my question. Thank
18 you, doctor.

19 MR. RECKENBEIL: Judge, can I ask one?

20 RE CROSS EXAMINATION

21 BY MR. RECKENBEIL:

22 Q Is it also possible that an individual with their hand
23 on the gun can get gun residue on it?

24 A That's true.

25 Q Okay. Thank you.

1 THE COURT: You may step down. Thank you.

2 Ladies and gentlemen, we're gonna recess for lunch.

3 We'll start back at 2:30, at 2:30 this afternoon.

4 Keep in mind from now until you have reached a decision
5 you can't talk about the case except during deliberations.

6 So, during the lunch recess, no discussions with any person,
7 that includes your fellow jurors. Also don't permit
8 yourselves to be exposed to any type of media coverage that
9 might relate to the case, television, radio, or newspaper.
10 And don't conduct any research or do your own investigation
11 into any issue that might arise during the trial.

12 You have to base your verdict in the case upon the
13 evidence received during the trial, and you can't supplement
14 it by doing outside research.

15 So, no discussion, no media exposure, no research, no
16 investigation.

17 Do have a good lunch. Please report back to your jury
18 room at 2:30 this afternoon. 2:30.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Let me see y'all just a minute before we
22 go.

23 (Whereupon, a bench conference was held at this time.)

24 THE COURT: All right. Court's in recess until 2:30.

25 (Whereupon, Court was in recess for the lunch hour.)

1 (Whereupon, a diagram was marked as State's Exhibit No.
2 1 for identification purposes only at this time.)

3 THE COURT: All right. Ready for the jury?

4 SOLICITOR COLER: Judge, if I can have just one second.
5 This thing is not working. So, we've had to replace it.

6 (Pause.)

7 SOLICITOR COLER: Thank you, Your Honor.

8 THE COURT: All right. Bring them in.

9 (Whereupon, the following takes place within the
10 presence of the jury.)

11 (Whereupon, a group of photographs was marked as
12 State's Exhibit No. 2 for identification purposes only at
13 this time.)

14 THE COURT: Good afternoon, ladies and gentlemen.

15 As you know, when we recessed for lunch, the State had
16 begun presentation of evidence. So, we're gonna continue
17 with that this afternoon.

18 Mr. Coler.

19 SOLICITOR COLER: Thank you, Your Honor.

20 May it please the Court.

21 State calls Curtis Gosnell.

22 CURTIS GOSNELL, being first duly
23 sworn, testified as follows:

24 THE COURT: Mr. Coler.

25 SOLICITOR COLER: Thank you, Your Honor.

Curtis Gosnell - Direct examination
by Solicitor Coler

1 May it please the Court.

2 DIRECT EXAMINATION

3 BY SOLICITOR COLER:

4 Q State your name for the record if you will.

5 A Curtis Lamar Gosnell.

6 Q And Mr. Gosnell, back in September of 2007 did you work
7 at Red's?

8 A Yes, sir.

9 Q What was your job title or what were your duties at
10 Red's?

11 A I was bartender and bouncer.

12 Q Okay. How long you been at Red's?

13 A I was there about a year.

14 Q Okay. Just describe for the jury where Red's Bar &
15 Grill is located.

16 Kind of orient the jury.

17 A It's on Hayne Street right in the middle of Tindal
18 Concrete.

19 Q Okay.

20 A It's a big concrete plant around it.

21 Q If you were to go from the courthouse to Hayne Street,
22 could you describe for the jury how you get there?

23 A I think the best way -- go up Howard Street, go through
24 Una.

25 Q Okay.

Curtis Gosnell - Direct examination
by Solicitor Coler

1 A Turn left. That's Hayne Street.

2 Q All right. And it's out near the, the Tindal Concrete?

3 A Yes.

4 Q All right. Were you working back on the night of this
5 incident?

6 A Yes, sir.

7 Q September 21st, 2007?

8 A Yes, sir.

9 Q What were your duties that night?

10 A I was bartending and bouncing.

11 Q All right.

12 A Yes, sir.

13 THE COURT: Mr. Gosnell, could you speak a little bit
14 louder please?

15 WITNESS: Yes, sir.

16 Q At some point that evening did you have an occasion to
17 come into contact with the defendant, Mr. Keam?

18 A Yes, sir.

19 Q All right. Describe for the jury what prompted you or
20 caused you to come into contact with him.

21 A Well, I also fix the pool tables when they messed up
22 and one had messed up. And I went back to fix it and I was
23 squatting down fixing it, and I seen him pull a beer out of
24 his left pocket. That's what made me confront him.

25 Q Okay. Describe for us the crowd that was in Red's that

Curtis Gosnell - Direct examination
by Solicitor Coler

1 night.

2 A It was a -- decent. It was a medium crowd.

3 Q Okay. When you saw Mr. Keam pull -- you said you saw
4 him pull a beer out of his pocket?

5 A Yes, sir.

6 Q All right. And what -- why did that prompt you to
7 approach him?

8 A Cause that's one of the rules there that no drinks are
9 brought in or out.

10 Q Okay. What did you do once you approached him?

11 A I asked him to throw the beer away and he---

12 Q Okay. What happened?

13 A And he, he refused.

14 Q Okay. What do you do as a bartender/bouncer when
15 somebody refuses to do that?

16 A Well, considering there was more than one, I went and
17 got the other bouncer, Josh Bailey---

18 Q Okay.

19 A ---and the owner, Michael Byers, and we all went back
20 and, you know, just asked them to leave.

21 Q All right.

22 A Leave.

23 Q Describe for us, the best of your recollection, the
24 group that Mr. Keam was with.

25 A It's young. Two, two males -- well, three males and a

Curtis Gosnell - Direct examination
by Solicitor Coler

- 1 lady.
- 2 Q Okay. Describe for us the lady.
- 3 What race was she?
- 4 Do you know?
- 5 A She was Asian.
- 6 Q Okay. And there was another, a couple other males with
- 7 him?
- 8 A Asian, young, young male and a white male.
- 9 Q Okay. So, it's Asian young lady, an Asian male, and a
- 10 white male?
- 11 A Yes, sir.
- 12 Q Okay. Did you know any of those people?
- 13 Had you ever met any of them---
- 14 A No, sir.
- 15 Q ---previously?
- 16 A No, sir, I did not.
- 17 Q All right. Were they all together when you approached
- 18 Mr. Keam about the beer?
- 19 A Yes, sir.
- 20 Q What did they do? ...
- 21 What did you observe them do when you were talking to
- 22 Mr. Keam about bringing beer in?
- 23 A They did nothing. They just backed off.
- 24 Q Okay. Did they present or pose any problems for us?
- 25 A No, sir.

Curtis Gosnell - Direct examination
by Solicitor Coler

- 1 Q All right. Did any of them ever say anything
2 belligerent or, or obnoxious or resistant to you?
3 A Mr. Keam did.
4 Q Aside from Mr. Keam?
5 A No, no one else did, no, sir.
6 Q Okay. When he, when he refused to, to comply with your
7 request, you said you went and got some more people?
8 A Yes, sir.
9 Q Who did you get?
10 A I got Josh Bailey and Michael Byers.
11 Q Okay. And then what did y'all do?
12 A We all three confronted him and asked him to just leave
13 the premises.
14 Q All right. What did he do as a result of that?
15 A He got really really upset.
16 Q Okay. Describe for us or tell us what he did, what you
17 mean when he got, when you say---
18 A He, he just act like he wanted to argue and keep
19 arguing about it and refusing to leave.
20 Q Okay.
21 A And then he asked me was I the police. And I said no.
22 I said in here technically I am cause---
23 Q Okay.
24 A But after that he left. After that he left.
25 Q Again, at that point, what were his other members of

Curtis Gosnell - Direct examination
by Solicitor Coler

- 1 this group doing?
- 2 A They were trying to get him to calm down.
- 3 Q Okay. Do you remember which people individual,
- 4 particular were trying to do that?
- 5 A Especially Shane. The white male, he was trying to get
- 6 him to calm down and just leave.
- 7 Q Okay. How was he trying to do that?
- 8 With words or with physical action?
- 9 A With words.
- 10 Q Okay. All right. Once you and Joshua Bailey and, and
- 11 Michael Byers approached the group again, what happened?
- 12 A They finally left.
- 13 Q Okay.
- 14 A We escorted them to the door and they went outside.
- 15 Q And what happened when you got the group to the door?
- 16 A We let them go outside. We remained inside for a
- 17 little while. I stood at the door and watched to see if
- 18 they were leaving.
- 19 Q Okay.
- 20 A And Josh went back behind the bar and Michael went back
- 21 behind the bar.
- 22 Q All right. What's the next thing you remember
- 23 happening?
- 24 A I seen the, the three males walk out of the parking lot
- 25 to the road and went to the left in front of Tindal

Curtis Gosnell - Direct examination
by Solicitor Coler

1 Concrete.

2 Q Okay.

3 A The girl got in the car that, that was parked to the
4 right of the door. She went and got in the car and left and
5 went out the parking lot toward them.

6 Q All right. I'm gonna show you an overhead in a second.
7 I'm gonna -- Your Honor, this is State's Exhibit No. 1
8 premarked for identification purposes at this point only.

9 I'm gonna place this on the overhead, and Mr. Gosnell,
10 ask you to refer to some things.

11 THE COURT: Mr. Gosnell, when Mr. Coler ask you
12 questions, you need to look at the overhead to see what he's
13 talking about. But when you respond, you'll have to turn
14 back towards the microphone.

15 WITNESS: Yes, sir.

16 Q All right. Mr. Gosnell -- for the record, Your Honor,
17 I'm placing State's Exhibit No. 1 on the overhead for
18 identification.

19 If this right here is Red's Bar & Grill, Mr. Gosnell---

20 A Yes, sir.

21 Q ---I want you to step down here with this laser pointer
22 and show us a couple of things.

23 (Witness comes down from the stand.)

24 Q Do you recognize that as Red's?

25 A Yes, sir.

Curtis Gosnell - Direct examination
by Solicitor Coler

- 1 Q Okay. And show us where Hayne Street would be?
- 2 A That would be Hayne Street.
- 3 Q And show us approximately where the front door of Red's
- 4 Bar & Grill is?
- 5 A It's probably right in here.
- 6 Q All right. And how, about how far off of Hayne Street
- 7 is the building where Red's Bar & Grill sits?
- 8 A Probably 50, 60 feet.
- 9 Q Okay. All right. Show us the direction you saw the
- 10 three males that you escorted out.
- 11 Where did they go?
- 12 A They left the door and approaching the fence here.
- 13 Q Uh-huh. (Affirmative).
- 14 A They went around the fence up toward the road.
- 15 Q All right. Which way did the female go?
- 16 A She got -- she went to the right and got into the car
- 17 and she came out---
- 18 Q Okay.
- 19 A ---of the parking lot and came up this way..
- 20 Q Where were you standing when that happened?
- 21 A I was still inside, but I was right inside the door. I
- 22 could see out the glass.
- 23 Q Okay. Describe the front door of Red's.
- 24 A It's a big door, metal door, but it's got big glass.
- 25 You can see most of the parking lot.

Curtis Gosnell - Direct examination
by Solicitor Coler

- 1 Q Okay. Make sure you speak up.
2 You can see out of the parking lot?
3 A Yes, sir.
4 Q Okay. All right. You can retake your seat for now.
5 (Witness returns to the stand.)
6 Q Did you go back inside Red's?
7 A I was still inside then.
8 Q Okay.
9 A I never went back out. I never went out---
10 Q Okay.
11 A ---till the shots.
12 Q All right. What's the next thing you heard or saw out
13 in the parking lot?
14 A Well, when they all left, we thought it was over and
15 they left. We went back to work. Just two or three minutes
16 later we started hearing gunshots.
17 Q Okay. Do you know or can you estimate how many
18 gunshots you heard initially?
19 A It's probably around six or seven.
20 Q Okay. What did you and the other bouncers or
21 bartenders do inside Red's?
22 A Well, Josh and I went, went outside to make sure there
23 was nobody else in the parking lot to see what was going on
24 cause a lot of kids hang out there --
25 Q Okay.

Curtis Gosnell - Direct examination
by Solicitor Coler

1 A -- eighteen years old. And it -- we just went out and
2 checked mostly.

3 Q All right.

4 A And we started down towards -- we heard one more shot
5 and then we started down toward the road and we heard some
6 more shots and we ducked down behind the cars.

7 Q Okay.

8 A And then the last, the last shot, right after the last
9 shot, the same car that the girl got into came down the
10 road.

11 Q Okay. Show us where you and Josh headed.

12 You can step down if you need to.

13 A Okay.

14 (Witness comes down from the stand.)

15 Q After hearing the initial, what you describe as six or
16 approximately six shots, which way did you go?

17 A Josh come down this side of the fence or that side of
18 the parking lot.

19 Q Uh-huh. (Affirmative).

20 A I was up above a little bit. I came down this way.

21 Q All right. And did you direct your attention to any
22 part of Hayne Street?

23 A Well, we were trying to look -- we know the gunshots
24 came from here somewhere.

25 Q Uh-huh. (Affirmative).

Curtis Gosnell - Direct examination
by Solicitor Coler

1 A And we were trying to see, but we couldn't see and
2 we -- in fact, the shots went off again. We ducked down
3 behind the cars and we ran up here to the trash can for a
4 minute. But when we ducked down behind the cars, the last
5 shot -- I seen the car that the girl had got in come back
6 down the road.

7 Q Okay. All right. What did you do after that?

8 A That's when we -- I went back in and keep people in,
9 people trying to come out, kids trying to come out and find
10 out what was going on.

11 Q Okay.

12 A I went and got them and made them stay inside.

13 Q All right. Did y'all call the police?

14 A Yes, sir.

15 Q Did they arrive shortly after?

16 A Yes, sir.

17 Q Okay. Did you speak to the police when they got out
18 there?

19 A Yes, sir.

20 Q Okay. You can retake your seat.

21 (Witness returns to the stand.)

22 Q Did you ever approach the, the area where Shane Easler
23 was shot?

24 A No, sir, I did not.

25 Q Okay. Did you ever get close to that or direct your

Curtis Gosnell - Direct examination
by Solicitor Coler

1 attention to that area?

2 A I really couldn't see anything. I tried. But I
3 couldn't see. It was dark.

4 Q Okay. Describe for us what Hayne Street, what the
5 lighting is like on Hayne Street out in front of Red's.

6 A Right in front of the building it's, it's pretty
7 bright. But up, when you turn, you can't really see because
8 of the fence and the concrete pipes and stuff.

9 Q And for the record, is, is Red's Bar & Grill in the
10 County of Spartanburg?

11 A Yes, sir.

12 Q You've had a chance, prior to your testimony this, this
13 afternoon, to watch the surveillance video from inside
14 Red's?

15 A Yes, sir.

16 Q Does it, in your, after viewing it, does it appear to
17 accurately portray the inside of Red's and the goings on on
18 September 21st of 2007?

19 A Yes, sir.

20 Q Can you see you, when you approached Mr. Keam and his
21 other friends inside the bar?

22 A Yes, sir.

23 Q All right. I'm gonna play that and ask you to point
24 out what, what you did and where, show us on there.

25 A Okay.

Curtis Gosnell - Direct examination
by Solicitor Coler

1 (Pause.)

2 SOLICITOR COLER: May we approach just a minute?

3 (Whereupon, a bench conference was held out of the
4 hearing of the jury at this time.)

5 SOLICITOR COLER: We can't get it to play right now,
6 Your Honor. So, we'll skip over that.

7 Mr. Gosnell, that's all the questions I have for you.
8 Please answer any questions that Mr. Reckenbeil has.

9 A Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. RECKENBEIL:

12 Q Mr. Gosnell, when you -- Mr. Gosnell, when you
13 approached my client when you were fixing the, the pool
14 table, how close were you to him?

15 A Approximately two to three foot.

16 Q Two to three feet.

17 How long have you been working at Red's Bar?

18 A I worked there about, at that time, maybe six months.

19 Q Six months.

20 They serve alcohol out there?

21 A Yes, sir.

22 Q You've been around intoxicated people before?

23 A A lot.

24 Q A lot.

25 Could you definitively tell when you notice a person

Curtis Gosnell - Cross-examination
by Mr. Reckenbeil

1 that's intoxicated or not intoxicated?

2 A Yes, sir.

3 Q The way that Tony Keam was acting that night, how you
4 describe -- would he be intoxicated or not intoxicated that
5 night?

6 A He seemed very intoxicated.

7 Q Very intoxicated?

8 A Yes, sir.

9 Q Did you have an opportunity to view his friends, the
10 three that he was with that night?

11 A Yes. Well, just the, the white guy cause he came and
12 bought a beer from me and he didn't seem that bad.

13 Q Okay. But he came and bought a beer from you?

14 A Yes, sir.

15 Q So, he was drinking that night?

16 A Yes, sir.

17 Q And you don't know how much he had before he got there?

18 A No, sir.

19 Q Thank you, sir.

20 SOLICITOR COLER: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 SOLICITOR COLER: The State calls Joshua Bailey.

23 JOSHUA BAILEY, being first duly

24 sworn, testified as follows:

25 DIRECT EXAMINATION

Joshua Bailey - Direct examination
by Solicitor Coler

1 BY SOLICITOR COLER:

2 Q State your full name for the record if you would.

3 A Joshua Leland Bailey.

4 Q And Mr. Bailey, back in September of 2007 were you
5 working at Red's Bar & Grill?

6 A Yes, sir.

7 Q What was your, what was your job?

8 A Bartender/bouncer.

9 Q How long you, had you been working there?

10 A Probably two years.

11 Q Okay. On the night of this incident, were you on-duty?

12 A Yes, sir.

13 Q All right. Did you have an occasion to come into
14 contact with Mr. Keam?

15 A Yes, sir.

16 Q All right. Describe for us what you saw and did
17 starting with when you first came into contact with Mr. Keam
18 and, and anybody that was with him.

19 A I was behind the bar when Kurt came and got my
20 attention that someone was bringing alcohol into the
21 building.

22 Q Okay.

23 A So, me and Kurt walked back there and Michael.

24 Q What did you do after Kurt got you, notified you or
25 told you about that?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Me, him, and Michael walked back. There's two rooms.
2 One main room, you turn to the right, there's another room.
3 Q Okay.
4 A They were in the back room.
5 Q What's in the back room?
6 A Six pool tables.
7 Q Okay. What did you do when you -- did you head to that
8 back room?
9 A Yes, sir.
10 Q All right. What happened?
11 A We asked him to leave.
12 Q All right. What was -- and was the defendant one of
13 the people you asked to leave?
14 A Yes, sir.
15 Q Okay. What was his response to you or what did you see
16 him say or do when you asked him to leave?
17 A He was arguing and he didn't want to leave.
18 Q Who was he arguing with?
19 A Mainly Kurt. I was standing beside of Kurt.
20 Q Okay. Did you see the people that were with him?
21 A Yes, sir.
22 Q What were they doing?
23 A Nothing.
24 Q Okay. Who -- can you describe the people that were
25 with Mr. Keam?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Yes, but---
- 2 Q Did you know any of them?
- 3 A No, I knew of -- I've, I've seen the white guy. But---
- 4 Q Shane?
- 5 A Right.
- 6 Q Okay. You -- where had you seen him?
- 7 A I have seen him there before.
- 8 Q In Red's?
- 9 A Yes.
- 10 Q Okay. How about the other two individuals?
- 11 A No, I did not know them.
- 12 Q Can you describe them?
- 13 What was their race and gender?
- 14 A It was an Asian male and Asian female.
- 15 Q Okay. The -- and when you say the three of them were
- 16 doing nothing, what do you mean?
- 17 A They were standing back. They wasn't arguing with us.
- 18 Q Okay. And about how long did the conversation between
- 19 you and Michael and Curtis Gosnell -- how did, how long did
- 20 that last with Mr. Keam?
- 21 A Probably three or four minutes.
- 22 Q Okay. And what were y'all trying to get him to do?
- 23 A To leave the property.
- 24 Q All right. What was he doing?
- 25 A Arguing.

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 Q All right. What was, what was his main source of
2 contention with you and Michael and Curtis?
- 3 A Like a threatening demeanor.
- 4 Q Okay.
- 5 A And it was -- I don't know.
- 6 Q Did he indicate to you or did you understand from him
7 why he didn't want to leave?
- 8 A I guess he was just mad.
- 9 Q About being thrown out?
- 10 A Yes, sir.
- 11 Q Okay. All right. Did the other three people with him
12 ever get involved in, in that conversation with, with you or
13 with him?
- 14 A No, the only thing I remember is the white guy, Shane.
- 15 Q Okay.
- 16 A He was telling him to stop, telling him stop. I guess
17 he wanted back in because at Red's it's once you get kicked
18 out you never come back.
- 19 Q Okay. And Shane was telling who to stop?
- 20 A Mr. Keam.
- 21 Q Okay. All right. What happened next?
- 22 A They finally left.
- 23 Q All right. Did y'all walk them out or escort them out?
- 24 A We walked them all the way to the front door.
- 25 Q What happened when y'all got to the front door?

Joshua Bailey - Direct examination
by Solicitor Coler

1 A I seen them go down the steps and I returned to the bar
2 and continuing working.

3 Q Okay. What's the next thing you remember happening?

4 A A couple minutes went by, Kurt came back and I heard
5 rapid bangs. Sounded like somebody hit the front door
6 because it was like steel and a lot of people thought it
7 was.

8 Q Okay.

9 A Me and Kurt went out the front door to check to see
10 what it was.

11 Q How many rapid bangs did you hear?

12 A I'd say four or five.

13 Q All right. When you and Kurt went out the front door
14 to check it out, what did you see or notice?

15 A As soon as we stepped out on the porch one more went
16 off.

17 Q Okay.

18 A So, we, we ducked and then Kurt went to the top of the
19 parking lot and I went and, a little bit lower than he did.

20 Q All right. Could you tell where that -- one more that
21 went off, could you tell where that came from?

22 I'm gonna ask you to refer to State's Exhibit 1 for ID
23 purposes.

24 Did you -- could you tell where that final, that last
25 shot came from or were you able to determine that?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Yes, it was right at the corner of the fence line.
- 2 Q Okay. I'm gonna hand you this pointer and point -- if
- 3 you need to step down you can.
- 4 Show the jury where you heard that last shot come from.
- 5 A It's right there at the corner of the fence line.
- 6 Q Okay. Where were you standing at that point?
- 7 A That -- they parked the cars facing the building so
- 8 they're parallel. Like---
- 9 Q Okay.
- 10 A ---like that in the parking lot, and I was hiding
- 11 behind the car right here.
- 12 Q Okay. Did you see anybody when you heard that last
- 13 shot?
- 14 Did you see any people out in the parking lot or out in
- 15 Hayne Street?
- 16 A Yes, there was a car parked facing this direction, that
- 17 direction.
- 18 Q Facing which direction?
- 19 A This way.
- 20 Q Toward?
- 21 A There's a, there's a Hot Spot.
- 22 Q Hot Spot down there, facing the Hot Spot now at the end
- 23 of Hayne Street?
- 24 A Right.
- 25 Q Do you know whose car that was?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Not -- I can't be exact on whose car it was, no.
- 2 Q Okay. All right. When you heard that last shot, what
- 3 did you do?
- 4 A Ducked.
- 5 Q Okay. Then what happened?
- 6 A The car left -- the car pulled off and then it came
- 7 back the opposite direction.
- 8 Q Okay.
- 9 A When the car was there, I could see people moving in
- 10 front of it.
- 11 Q Do you know who those people were that were moving in
- 12 front of the car?
- 13 A There was a guy in a light blue shirt. That's all I
- 14 could see.
- 15 Q Okay. Did he appear to be the same guy that you
- 16 checked him from the bar earlier?
- 17 A Yes, sir.
- 18 Q Mr. Keam?
- 19 A Yes, sir.
- 20 Q He was wearing a light blue shirt that night?
- 21 A Yes.
- 22 Q Okay. All right. Could you tell who the other person
- 23 was that was out there with them?
- 24 A No.
- 25 Q Was that because of the lighting?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Yes, sir.
- 2 Q All right. After---
- 3 A He was in front of the headlights.
- 4 Q Okay. After that car -- and where -- what did that car
- 5 do?
- 6 A Went down the road and came back.
- 7 Q Okay. After that car went down the road and came back,
- 8 what did you do?
- 9 A I ran to the corner of the street, right to the corner
- 10 of the fence.
- 11 Q Uh-huh. (Affirmative).
- 12 A About right there.
- 13 Q All right.
- 14 A And I seen the lady stopped.
- 15 Q Okay.
- 16 A And there was a guy laying on the ground.
- 17 Q All right.
- 18 A Mr. Keam was standing right behind him and I realized
- 19 it wasn't somebody shooting a gun.
- 20 Q Okay. You said you saw a lady stopped.
- 21 Was it somebody that had been in the bar or you---
- 22 A No, I don't believe so, no.
- 23 Q One of the cars gone by on Hayne Street you think?
- 24 A Yes.
- 25 Q All right. Then what did you do?

Joshua Bailey - Direct examination
by Solicitor Coler

- 1 A Red lives behind the bar.
- 2 Q Uh-huh. (Affirmative)
- 3 A He was at home asleep.
- 4 Q All right.
- 5 A I took off running and got him.
- 6 Q Red's the owner?
- 7 A Yes.
- 8 Q All right. And then the police arrived shortly after,
- 9 after that?
- 10 A Yes, sir.
- 11 Q You talked to them?
- 12 A Yes, sir.
- 13 Q Gave them a statement about what you saw?
- 14 A Yes, sir.
- 15 Q Of the group of four people you escorted out, which, if
- 16 any, were acting belligerent, resistant?
- 17 MR. RECKENBEIL: Objection, Your Honor, to the word
- 18 belligerent.
- 19 Q Which were uncooperative with you and the other
- 20 bouncers?
- 21 A Mr. Keam.
- 22 Q Okay. Anybody else?
- 23 A No.
- 24 Q And of the four that you escorted out, which were
- 25 trying to be cooperative and get everybody cooperative?

Joshua Bailey - Direct examination
by Solicitor Coler

1 A The Asian male and female just left. They never really
2 said a word. They never said a word.

3 Q Okay.

4 A Shane was just trying to get them to leave.

5 Q Okay. That's all the questions I have for you. Please
6 answer any that Mr. Reckenbeil has.

7 CROSS-EXAMINATION

8 BY MR. RECKENBEIL:

9 Q The car that was driving by to go back up after you
10 heard the final shots, do you know what kind of car that
11 was?

12 A It was a dark car with rims.

13 Q Dark car with rims.

14 Was that the same car that was in the parking lot?

15 A Yes.

16 Q It was.

17 Okay. And now, I think you were pointing to where I
18 think that's F -- see the circle with the F there and like
19 06?

20 A Uh-huh. (Affirmative).

21 Q Put my pen on here.

22 That's -- see where it says F?

23 A Right.

24 Q Cause I think that's where you were pointing when
25 Solicitor Coler was asking you about the last time you heard

Joshua Bailey - Cross-examination
by Mr. Reckenbeil

1 the bullet shots.

2 A It was -- no, it's on about middle ways of the parking
3 lot. This is the driver through here. The car's parked
4 right here.

5 Q Right.

6 A It was behind where the next car was parked.

7 Q Okay. But his question to you was is that the last
8 bullet shot that you heard went off, where did it come from,
9 and you pointed to about the section where F is.

10 A It was in this direction.

11 Q It was in that direction?

12 A Right.

13 Q Can you be specific as to Point F, .10, .6, Point E,
14 .5, .9, as to where, in fact, that shot came from?

15 A He asked from the beginning shots when I was at the
16 front door.

17 Q Right. And then he asked you, as to the last shot you
18 heard, where did it come from, and you said it was around
19 Point F.

20 I'm just asking you can you be definitive as to where,
21 in fact, it came from.

22 A This direction.

23 Q That direction?

24 A Yeah.

25 Q All right. Thank you, sir.

Joshua Bailey - Redirect examination
by Solicitor Coler

1 SOLICITOR COLER: Just one clarifying.

2 REDIRECT EXAMINATION

3 BY SOLICITOR COLER:

4 Q You just -- so I understand you, you just know the
5 direction that last shot came in?

6 A Right.

7 Q But you don't have anything else besides sound to base
8 that on?

9 You didn't see a muzzle flash?

10 You didn't see somebody with a gun?

11 A No.

12 Q You just know it came from that general direction,
13 direction down Hayne Street?

14 A Yes, sir.

15 Q Okay. All right. That's all.

16 THE COURT: Step down.

17 SOLICITOR COLER: And Your Honor, if there's no
18 objection we'd ask that Mr. Bailey and Mr. Gosnell be
19 excused from their subpoenas.

20 MR. RECKENBEIL: We have no objection, Your Honor.

21 THE COURT: They may be.

22 SOLICITOR COLER: State calls Teresa Bishop.

23 TERESA BISHOP, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

Teresa Bishop - Direct examination
by Solicitor Coler

- 1 BY SOLICITOR COLER:
- 2 Q Just tell us your name please.
- 3 A Teresa Bishop.
- 4 Q And you are from here in Spartanburg County?
- 5 A Yes, sir.
- 6 Q Okay. Back on the night of this incident, did you have
- 7 occasion to go by Red's Bar & Grill?
- 8 A Yes, sir, I did.
- 9 Q All right. About what time were you driving by?
- 10 A It was approximately 10:15, 10:20.
- 11 Q Okay. And which direction were you coming from and
- 12 which direction were you going?
- 13 A I was headed north toward the Hot Spot.
- 14 Q Okay. Use that pointer if you would.
- 15 And referring to State's Exhibit No. 1, just show the
- 16 jury where, which direction you were coming from.
- 17 A (Witness points.)
- 18 Q Okay.
- 19 A Just down towards the north.
- 20 Q All right. And describe for us what you saw and
- 21 observed as you passed Red's about that time, about 10:15
- 22 that night.
- 23 A Right as I passed Red's and got there to the railroad
- 24 tracks, the car in the opposing lane jerked toward me into
- 25 my lane, and then did the same thing again. I, I assumed it

Teresa Bishop - Direct examination
by Solicitor Coler

1 was just somebody drunk and I just pulled over to the side
2 of the road to let him get by.

3 As I pulled over to the side of the road and looked to
4 my left, I noticed that there was a body laying mostly off
5 the road. His head was in the road and there was someone
6 bent down over him with a cell phone.

7 Q Okay. Show us approximately where you were if you can
8 in relation to Red's Bar & Grill when the car swerved into
9 your lane.

10 A (Witness points.)

11 Q Okay. And show us where you pulled off or where did
12 you stop your car initially?

13 A Initially it was right, right about the same spot.
14 Just a little bit further.

15 Q Okay. What did you do next?

16 A When I realize that there was a body laying in the
17 road, I pulled over into the opposing lane of traffic and
18 right ahead of the body, right beyond the body, to stop any
19 more traffic from coming into that lane.

20 Q Okay. Assuming -- can you see the numbers on that, on
21 this overhead?

22 A Some of them.

23 Q Can you see the 01, 02, 03, and 04?

24 A Yes.

25 Q Okay. Assuming that this point 03 and 04 were

Teresa Bishop - Direct examination
by Solicitor Coler

1 approximately where the body was, show us where you stopped
2 or parked your vehicle.

3 A I pulled in right here.

4 Q Okay.

5 A Right on the side of the road there.

6 Q All right. And when you stopped your vehicle you said
7 to try to prevent traffic from hitting the body?

8 A Yes, sir, because there was more traffic coming.

9 Q All right. Traffic from which direction were you
10 trying to stop from hitting the body?

11 A Going south.

12 Q Okay.

13 A The opposite direction from where I was coming.

14 Q Okay. Well, then if three and four represent generally
15 where the body is, would you not have had to stop below the
16 body?

17 A Is that three?

18 Q Yes.

19 A It was, it was beyond the body. I passed the body and
20 then pulled over.

21 Q Okay.

22 A I'm sorry. I can't read the numbers clearly.

23 Q That's okay. I can't either.

24 What did you do after you stopped your vehicle?

25 A I stopped my vehicle and another car tried to go around

Teresa Bishop - Direct examination
by Solicitor Coler

1 and continue on and I stopped them and told them that there
2 was a body in the road and then I walked back to the, the
3 two people that were on the side of the road. I got down by
4 him and started to check for a pulse, and I asked the
5 gentleman that was with him what had happened. He was very
6 shaken and his words were slurred. But he said that a car
7 had come by and shot his friend.

8 Q Okay.

9 A And at that point I checked for a, I checked for
10 respiration, I checked for pulse, I couldn't find anything.
11 And I tried to -- I, I was going to try to do CPR, but then
12 you could hear the blood coming out. So, I didn't do that
13 and I asked the gentleman that was with him what his name
14 was and he said Shane. And so, at that point I just
15 started, you know, trying to revive him, smacking his face,
16 calling his name real loud, and he did respond a little bit.

17 Q Okay. When you say the gentleman beside him, was that
18 Mr. Keam, the defendant?

19 A Yes, sir.

20 Q Okay. And tell me again or describe for me again where
21 Mr. Keam was in relation to the body on the ground when you
22 walked up or approached the two of them?

23 A I believe, I believe that he was on the left side of
24 Shane around his knees and he was leaned over him saying
25 don't do this, man, don't do this.

Teresa Bishop - Direct examination
by Solicitor Coler

1 Q Okay. How close to the side of the road or to the
2 middle of the road were the, was Shane's body?

3 A Shane's body, as I said, was off of the road except for
4 the head.

5 Q Okay.

6 A His, his body was laying beside the road pointing
7 toward, his feet pointing toward the cement fence and his
8 head was on the edge of the road.

9 Q All right. Most of his body was on the shoulder of the
10 road?

11 Is that what you're talking about?

12 A Yes, sir.

13 Q Okay. And his head was across the white line in the
14 road?

15 A Yes, sir, just barely.

16 Q Okay. All right. As you were trying to resuscitate
17 Shane, what, if anything, did you notice the defendant
18 doing?

19 A He was -- I think, at that point, he had stood up and
20 he was, as far as I know, he was just watching me. I did,
21 you know, see him out the, of the corner of my eye, but most
22 of my attention was on Shane. But he just stood observing
23 and he did, a couple of times, ask me was he breathing.

24 Q Okay. Did he have anything in his hands at that point?

25 A No, he did not.

Teresa Bishop - Direct examination
by Solicitor Coler

1 Q When you first approached him, did you see anything in
2 his hands?

3 A The only thing that I saw was the cell phone.

4 Q All right. What was, what was he doing with the cell
5 phone?

6 A He had been talking on the cell phone. He had the cell
7 phone to his ear when I pulled off the side of the road
8 originally. Once I got to the body, I don't believe that he
9 had the cell phone. As a matter of fact, I remember seeing
10 the cell phone laying beside Shane and I think that he
11 picked that cell phone up at that time. I noticed that he
12 kept trying to reach for it, and then the next thing I knew
13 it was gone. So, I think he took the cell phone.

14 Q Okay. Describe for us his level of, of intoxication or
15 sobriety.

16 I mean was he, did he appear to be under the influence
17 of something or anything?

18 A His speech was slurred.

19 Q Okay.

20 A Other than that, I could not distinguish whether he was
21 upset from the incident or whether he was under the
22 influence. But his speech was slurred and he was very
23 agitated.

24 Q Okay. All right. What did you do after attempting to
25 resuscitate Shane?

Teresa Bishop - Direct examination
by Solicitor Coler.

1 A Well, I continued to do that until the police arrived.
2 It was just a few minutes. But I did get him to, to turn
3 his -- he was turning his head back and forth. And so, I
4 was getting some movement out of him, and then I just kept
5 encouraging him to keep breathing, that the sirens were
6 coming and they were on their way.. And there was a, another
7 lady that came by and said that she had a respirator mask
8 and asked me if I wanted it and she went to retrieve that.
9 But by that time the police had gotten there.

10 Q Okay. And your background, you're not a nurse?

11 A No, sir, I'm not. I have been unit secretary in the
12 hospital for 20 years. When I originally took that course I
13 did take a CPR class. But I am not currently certified,
14 certified.

15 Q Okay. And that was the training you relied on in
16 trying to resuscitate Shane?

17 A Yes, sir, it was.

18 Q Okay. Did Mr. Keam, the defendant, say anything else
19 to you about what had happened aside a car drove by and shot
20 his friend?

21 A No, sir, that was the only thing he told me.

22 Q Okay. And that was in response to you asking him what
23 happened?

24 A Yes.

25 Q Thank you for being here, Mrs. Bishop. Please answer

Teresa Bishop - Cross-examination
by Mr. Reckenbeil

1 any questions that Mr. Reckenbeil has.

2 A Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. RECKENBEIL:

5 Q Mrs. Bishop, did you get an opportunity to see what
6 kind of car that was that was driving by that made you
7 swerve?

8 A It was a white pick uptruck, large like a Ram, but I
9 don't know that it was a Ram. It was one of the larger
10 pickup trucks that was white.

11 Q Okay. And when you pulled off to the side of the road
12 and you immediately exit your vehicle, you testified under
13 direct examination that Tony said that a car came by and
14 shot his friend?

15 A He did not say that until I asked him what had
16 happened.

17 Q Till you asked him what happened?

18 A Yes, sir.

19 Q You testified on direct examination that he was shaken,
20 that you could definitely tell he was shaken?

21 A Yes, sir, he was.

22 Q And his speech was slurred?

23 A Yes, sir.

24 Q All right. You also said that Tony was lent over him,
25 he was, he was leaning over him?

Teresa Bishop - Cross-examination
by Mr. Reckenbeil

1 A Yes, sir, he was. He was leaned over him and speaking
2 to him.

3 Q Was he down on his knees?

4 A I believe that he was on his knees originally.

5 Q Over Shane?

6 A Yes, sir.

7 Q And you said on direct examination saying don't do
8 this?

9 A Actually I -- that was a little bit of a misquote. He
10 said don't do this to me, man, and he repeated that a couple
11 of times, don't do this to me, man.

12 Q And he's saying this as he's leaning over Shane on his
13 knees saying don't do this to me, man?

14 A Yes, sir, that's right.

15 Q All right. That's all the questions I have.

16 SOLICITOR COLER: Nothing on redirect.

17 THE COURT: You may step down.

18 State calls Freddie Thompson.

19 (Whereupon, a CD was marked as State's Exhibit No. 3
20 for identification purposes only at this time.)

21 FREDDIE THOMPSON, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR COLER:

25 Q State your full name for the record.

Freddie Thompson - Direct examination
by Solicitor Coler

1 A Freddie Thompson.

2 Q Mr. Thompson, tell the jury what you do for a living.

3 A I'm employed by Spartanburg County Communications 9-1-1
4 Department.

5 Q What's your job title?

6 A At the time was assistant director of communications.

7 Q As part of your functions with 9-1-1, are you a records
8 keeper or custodian of records at 9-1-1?

9 A Yes, sir.

10 Q Do you keep a record of all the 9-1-1 calls that come
11 into your center here in Spartanburg County?

12 A Yes, sir, we do.

13 Q Did you keep and collect a copy of a 9-1-1 call in this
14 case?

15 A Yes, sir, we did.

16 Q Prior to your testimony, have you had an opportunity to
17 review the tape, review the DVD?

18 A Yes, sir, we have.

19 Q Does it appear to be an accurate portrayal of the 9-1-1
20 call in this case?

21 A Yes, sir, it does.

22 Q I'm going to hand you State's Exhibit No. 3, and ask
23 you if that appears to be a DVD of the 9-1-1 call.

24 A Yes, sir, it does.

25 SOLICITOR COLER: Judge, at this point we'd offer the

Freddie Thompson - Direct examination
by Solicitor Coler

1 DVD and offer to publish it to the, I mean the CD and offer
2 to publish it to the jury.

3 MR. RECKENBEIL: No objection, Your Honor, from the
4 defense.

5 THE COURT: It's admitted.

6 (Whereupon, State's Exhibit No. 3 was received into
7 evidence at this time.)

8 Q If you'll play that CD of the 9-1-1 call.

9 (Whereupon, State's Exhibit No. 3 was published for the
10 jury at this time.)

11 Q Is that the end of the call?

12 A That appears to be, yes.

13 Q All right. That's all the questions I have for you,
14 Mr. Thompson. Please answer any that Mr. Reckenbeil has.

15 SOLICITOR COLER: No questions from defense, Your
16 Honor.

17 THE COURT: You may step down, Mr. Thompson.

18 SOLICITOR COLER: The State calls Travis McJunkin.

19 TRAVIS McJUNKIN, being first duly
20 sworn, testified as follows:

21 SOLICITOR COLER: May it please the Court?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY SOLICITOR COLER:

25 Q State your full name for the record if you would.

Travis McJunkin - Direct examination
by Solicitor Coler

- 1 A Travis McJunkin.
- 2 Q Tell the jury where you work.
- 3 A Spartanburg County Sheriff's Office.
- 4 Q What is your title or position with the Sheriff's
- 5 Office?
- 6 A I'm currently a deputy two on uniform patrol.
- 7 Q What is a deputy two on uniform patrol do as part of
- 8 your duties?
- 9 A We respond to calls for service. Anytime someone may
- 10 call 9-1-1 and register a complaint. Generally most
- 11 anything in the community that calls 9-1-1 for that are
- 12 police related we respond.
- 13 Q Well, were you duty the night of this incident?
- 14 A Yes, sir, I was.
- 15 Q Remember what shift you were working?
- 16 A It was delta shift, which is a third shift. It's 7:00
- 17 p.m. to 7:00 a.m.
- 18 Q Did you have occasion to respond or were you dispatched
- 19 to Red's?
- 20 A Yes, sir, I was.
- 21 Q You got a copy of your incident report with you?
- 22 A Yes, sir, I do.
- 23 Q All right. Do you know approximately what time you
- 24 arrived on scene?
- 25 A Approximately 10:16 p.m.

Travis McJunkin - Direct examination
by Solicitor Coler

1 Q Okay. And describe for us what you, what you observed
2 and you can use the overhead if you need to refer to it.

3 Show us where you, where you arrived and what you
4 observed as you got to Red's.

5 A As I arrived on the scene, actually I parked close to
6 what would be the front of Red's Bar & Grill.

7 Q And if you turn your head, it's gonna be hard for the
8 reporter. So, you need to make sure you speak up so she can
9 hear everything.

10 A The general area in front of Red's Bar & Grill is where
11 I remember parking my vehicle. I exited my vehicle. I
12 observed, it was a female over a man laying on the side of
13 the road in, in that general area. I believe it's 03 and
14 04.

15 Q Okay.

16 A She was speaking to him at that time. I believe I also
17 seen Deputy Steve Henderson near him, the victim, at which
18 time I, I knelt down beside him myself and attempted to
19 either render first aid, to see if he could communicate. I
20 asked him several questions; what happened. I didn't get
21 any response. He did have signs of life. I wasn't able to
22 get any sort of I guess clear response or anything.

23 Q And just to clarify, clarification, you say you asked
24 him for information, you're talking about the victim, Shane?

25 A Yes, sir, I would be speaking in reference to the

Travis McJunkin - Direct examination
by Solicitor Coler

1 victim who was lying on, with his head in the roadway with
2 his body off.

3 Q All right. And the woman that was there, was that
4 Mrs. Bishop or do you recall?

5 A I couldn't recall. I---

6 Q All right. What happened next?

7 A After I began trying to speak to him and didn't get a
8 clear response, the gentleman, the Asian male who was
9 standing also in the area, I began to ask him what had
10 happened and he indicated that someone had shot his friend.
11 I asked him where and at that time, if I ain't mistaken, he
12 just pointed in a general direction back towards Red's cause
13 we were pass Red's. He wasn't exactly clear. I also asked
14 him if it happened inside of Red's Bar & Grill and he
15 indicated that it had not. And he just kept indicating in
16 the general direction down the road back towards Red's. He
17 never gave me a specific, and I tried several times for him
18 to give me a specific area in which his friend was shot.
19 But he wasn't able to give me a specific area.

20 Q Okay. What was the victim's condition at this point?

21 A Just not responsive in the sense that he could answer
22 any questions. It was mainly moans, that's the best way to
23 describe it, but nothing clear and conscious where he was
24 trying to communicate.

25 Q Were you, were you able to ascertain what his physical

Travis McJunkin - Direct examination
by Solicitor Coler

1 condition was, whether he was shot or not?

2 A He appeared that he had suffered a gunshot wound to his
3 chest area.

4 Q Okay. And why did he appear like that?

5 A I observed blood on his chest, a hole in his clothing
6 the best that I could tell.

7 Q All right. All right. And after speaking to him --
8 when you say that the individual that was with Shane, was
9 that the defendant, Mr. Keam?

10 A Yes, sir, it was.

11 Q Okay. After speaking with him and asking him what had
12 happened, what had occurred, what did you do next?

13 A Actually I went back to Red's Bar & Grill and spoke to
14 a gentleman named Michael, who works at Red's Bar & Grill,
15 asked him what had occurred and he said that he had a
16 problem with some individuals, some Asian males and a white
17 male who were inside his bar drinking. And my understanding
18 at that time was they had brought in some alcohol from
19 outside the bar. And in the process of asking them to
20 leave, they started to cause, you know, give them a hard
21 time inside the bar. And then they eventually, you know,
22 walked outside, was able to get them to leave the bar.

23 Q Okay. Is that Michael -- was that Michael Byers?

24 A Yes, sir, it is.

25 Q He's like the manager or the---

Travis McJunkin - Direct examination
by Solicitor Coler

1 A I'm not sure if he's the manager or co-owner. I'm not
2 sure of the exact relationship with the bar. But he's there
3 quite often.

4 Q All right. When you asked Mr. Keam what, what had
5 occurred, and he was able to generally point in some
6 directions, did he ever indicate to you anything else about
7 what had happened?

8 A No, sir, he was very vague in questions that I asked of
9 him.

10 Q Did, did he ask you -- I mean did he tell you it was an
11 accident?

12 A No, sir.

13 Q When you did ask him questions and he, he responded,
14 were his responses logical?

15 A No, sir, I -- the main -- I tried to establish the
16 actual incident location in reference to where the victim
17 was laying, and tried to get a more clear location where he
18 was shot other than where he was laying, and the only thing
19 he could do or would do rather, I'm not sure which, was just
20 point back towards Red's. He never would point and say I
21 was right here in this specific spot or we were not there.
22 He said, he said that it did not happen in Red's. Other
23 than that, he just pointed down the street. That's all that
24 he done.

25 Q Okay. What, what, if anything, did you observe about

Travis McJunkin - Direct examination
by Solicitor Coler

1 his intoxication or his sobriety?

2 A His, his speech was slurred and I could smell an
3 alcoholic beverage about his person. Even at one point, if
4 I'm not mistaken, there's actually a ditch between where the
5 victim lay and a fence line, and I had to grab him by the
6 shirt and keep him from falling into the ditch at one point
7 when he was walking around.

8 Q Okay. You were in here when the 9-1-1 tape was just
9 played?

10 A Yes, sir, I was.

11 Q Would you say that's similar to the, the speech that he
12 had when he spoke to you?

13 A Yes, sir.

14 Q And at this point you, were you interviewing him as a
15 witness?

16 A Yes, I was interviewing him as a witness. I can't
17 remember which deputy told me that they actually observed
18 him kneeling over the victim when he arrived. We assumed
19 that he was just a witness, also possible victim of himself
20 of the drive-by, which is initially what we were told. So
21 he was, at that time, we didn't consider him, I didn't
22 consider him as a suspect at all. I was just mainly trying
23 to use him to help us establish what had actually occurred
24 and he was also possibly a victim of a drive-by as well.

25 Q Okay. And you don't, as a general practice, Mirandize

Travis McJunkin - Direct examination
by Solicitor Coler

- 1 or advise witnesses of their Fifth Amendment rights?
- 2 A No, sir.
- 3 Q That's only for people who are suspects?
- 4 A Yes, sir, I had no, had no reason at that time to
5 believe he had any---
- 6 Q Okay.
- 7 A ---involvement whatsoever.
- 8 Q All right. What did you do next after you -- did you
9 eventually leave the location of Shane's body?
- 10 A Yes, I maintain a crime scene log which is standard
11 procedure for us. Anytime we go to a major incident, we
12 create a crime scene log which just documents all
13 individuals who were at the crime scene.
- 14 Q All right. At some point did, did the EMS/paramedics
15 arrive?
- 16 A Yes, sir, they did.
- 17 Q All right. Did you -- were you with Shane or in the
18 vicinity of his body until they arrived?
- 19 A Oh, yes, sir.
- 20 Q All right. After leaving the location of, of Shane
21 Easler and where he was, did you again try to communicate
22 with Mr. Keam or did you attempt, make another attempt to
23 communicate or decipher or sort out what had happened?
- 24 A I believe so. What exactly it consisted of I don't
25 believe it was meaningful because I don't think I was ever

Travis McJunkin - Direct examination
by Solicitor Coler

1 actually able to hold a conversation which I asked him a
2 question I was able to get a clear concise answer back from
3 him.

4 Q Okay. And again, his demeanor with you, was it similar
5 to what demeanor, the demeanor we heard on the tape?

6 A Yes, sir.

7 Q I mean you wouldn't characterize it as hysterical,
8 screaming, crying, would you?

9 A No, sir.

10 Q Would you characterize it -- how would you characterize
11 it?

12 A I want to say a sense of confusion. That doesn't
13 describe it the best way. He wasn't screaming, yelling. He
14 wasn't, didn't seem upset. Maybe confused.

15 Q Okay. All right. And intoxicated?

16 A Sure. I mean with the alcohol I could smell on his
17 body.

18 Q Okay. That's all the questions I have, deputy. Please
19 answer any that Mr. Reckenbeil has.

20 CROSS-EXAMINATION

21 BY MR. RECKENBEIL:

22 Q Deputy, did you bring your report with you that you
23 filled out the night of the incident?

24 A Yes, sir, I did.

25 Q May I have a -- Your Honor, if I may approach the

Travis McJunkin - Cross-examination
by Mr. Reckenbeil

1 witness?

2 (Pause.)

3 Q Now, you testified on direct examination that Mr. Keam
4 said to you that it was a drive-by.

5 You remember when you just told Mr. Coler about five
6 minutes ago that Mr. Keam told you it was a drive-by?

7 A Yes, sir.

8 Q Okay. You remember testifying to that, right?

9 A Yes, sir.

10 Q And you've been in the courtroom and you heard other
11 people say that, that it was a drive-by?

12 A Yes, sir, I have.

13 Q Okay. But no where in your report does it read the
14 fact that Tony Keam said to you that it was a drive-by
15 shooting?

16 A No, sir.

17 Q Right. It doesn't.

18 And there's no question that he was intoxicated that
19 night, correct?

20 A Are you asking me if he was intoxicated?

21 Q Yeah, I'm asking you.

22 Any question that he was not intoxicated that night?

23 A He had every appearance that I would consider someone
24 to be intoxicated.

25 Q All right. And when you came up and observed him, did

Travis McJunkin - Cross-examination
by Mr. Reckenbeil

1 you observe that he had blood on his hands?

2 A I don't recall.

3 Q You don't recall?

4 A No, sir.

5 Q But you did testify, when Mr. Coler asked you, is that
6 a deputy told you that he was actually kneeling over the
7 body?

8 A That's what I was told, yes, sir. I -- which deputy
9 that told me that, I could not tell you.

10 Q You don't remember?

11 A No, sir, there was so many of us out there.

12 Q Okay. All right. Thank you.

13 SOLICITOR COLER: Just a few, Your Honor.

14 REDIRECT EXAMINATION

15 BY SOLICITOR COLER:

16 Q Correct me if I'm wrong, deputy, but I didn't hear you
17 say drive-by shooting when I was asking you direct
18 examination questions.

19 Did you say -- do you recall saying drive-by?

20 A I did say drive-by shooting in reference to the suspect
21 possibly being part of a drive-by shooting, being a possible
22 victim of the drive-by shooting.

23 Q Okay. That was talking about you thought---

24 A In reference to him---

25 Q ---he and his friend may of been victims of a drive-by?

Travis McJunkin - Redirect examination
by Solicitor Coler

1 A Sure. You asked -- I believe the question was in
2 reference did I consider him to be a witness or a suspect,
3 something to that effect, and I told you that we only
4 considered him at that time to be a witness or a possible
5 victim of a possible drive-by shooting.

6 Q And your testimony today, and the only thing you ever
7 said that he said to you was that someone, someone shot my
8 friend?

9 A As far as I recall, yes, sir, that's all.

10 Q Okay. All right. Thank you.

11 MR. RECKENBEIL: Can we approach, judge?

12 THE COURT: Yes, sir.

13 (Whereupon, a bench conference was held out of the
14 hearing of the jury at this time.)

15 RECROSS EXAMINATION

16 BY MR. RECKENBEIL:

17 Q In response to Mr. Coler's questions, do you, on
18 redirect examination, I've reviewed the transcript---

19 A Uh-huh. (Affirmative).

20 Q ---would you not agree with me on direct examination
21 you said that Mr. Kean told you that someone shot his
22 friend?

23 A Sure. Yes, sir.

24 Q Okay. And you would agree with me, sir, that the
25 report that you filled out does not indicate that?

Travis McJunkin - Recross examination
by Mr. Reckenbeil

- 1 A Yes, sir.
- 2 Q You would agree that it's not in there?
- 3 A Yes, sir.
- 4 Q That's all I have.
- 5 SOLICITOR COLER: No redirect.
- 6 THE COURT: You may step down.
- 7 MR. RECKENBEIL: Thank you, judge.
- 8 SOLICITOR COLER: State calls Steve Henderson.
- 9 STEVE HENDERSON, being first duly
- 10 sworn, testified as follows:
- 11 DIRECT EXAMINATION
- 12 BY SOLICITOR COLER:
- 13 Q State your name if you would.
- 14 A Steve Henderson.
- 15 Q Tell the jury who you work for.
- 16 A Spartanburg County Sheriff's Office.
- 17 Q What is your title or position with the Sheriff's
- 18 Office?
- 19 A Deputy three in the K-9 division.
- 20 Q How long you been in law enforcement?
- 21 A Since 1998.
- 22 Q Were you on duty back on September 21st, 2007?
- 23 A Yes, I was.
- 24 Q Do you remember what shift you were working?
- 25 A Third shift.

Steve Henderson - Direct examination
by Solicitor Coler

1 Q Okay. Same as Deputy McJunkin, 7:00 to 7:00?

2 A I work 5:00 p.m. to 5:00 a.m.

3 Q All right. Did you have occasion to respond to Red's
4 for this incident?

5 A Yes, sir, I did.

6 Q From your memory or from your incident report, what did
7 you see and do upon arrival at Red's?

8 A I don't have a copy of the statement, but I---

9 Q Would one help refresh your recollection?

10 A Yes, sir, it would.

11 On the date, on September 21st, 2007, I was actually
12 on Hayne Street, which is where Red's Grill is, is located.
13 I was driving towards Red's Grill coming from the Una area
14 when we were advised by the communication center that there
15 was a possible shooting at Red's Grill. From my memory I
16 believe I was the first officer to arrive. I initially
17 pulled into the parking lot.

18 If I can---

19 Q Yeah, show -- use that pointer.

20 And Your Honor, for the record, he's referring to
21 State's No. 1 for ID purposes.

22 A I initially pulled into the parking lot, which is right
23 about here. And then I began, I heard someone from this
24 direction here yell he's in the road. I then backed my
25 vehicle out and pulled it down here on Hayne Street with my

Steve Henderson - Direct examination
by Solicitor Coler

1 blue lights activated. I noticed a white male laying semi
2 in the road there with a white female. I believe she was on
3 his left side and I believe there was an Asian male standing
4 somewhere within proximity of his body.

5 I stopped my Durango with my blue lights or my patrol
6 car with my blue light or my headlights directed on to those
7 three individuals.

8 Q All right. What did you do next?

9 A I then exited my patrol car. Again, that's when I
10 observed the white male victim who was lying in the road. I
11 noticed that his shirt had blood on it. I also observed the
12 white female that was knelt down beside him. I then advised
13 our communication center, our dispatcher where we were
14 located. That we were not actually in Red's Grill, but that
15 we were in, pretty much in the middle of the, in the roadway
16 on Hayne Street just up from Red's Grill.

17 I then tried to speak with the Asian male that was
18 standing close to the body and asked him what happened so
19 that I could either BOLD some information out or, or update
20 the responding officer on what was going on. Only thing
21 that I could really understand that he said was it was a
22 drive-by. I couldn't get any description from him as far as
23 a car, as far as who shot him, anything like that. I then
24 directed my attention to Mr. Easler, who was the victim
25 there lying on the road.

Steve Henderson - Direct examination
by Solicitor Coler

1 Q Okay. Did you try to get some more information from
2 Mr. Keam?

3 What -- you said the Asian male, was it the defendant?

4 A Yes, sir, it was.

5 Q Okay. Did you attempt to get some more information
6 about the drive-by or flesh out the details of the, of the
7 possible drive-by?

8 A No, sir, I just asked him briefly upon my initial
9 arrival.

10 Q Okay.

11 A Then I could see other patrol cars arriving of other
12 officers. If I'm not mistaken, Deputy McJunkin was within
13 seconds of me arriving. That's when the, Officer McJunkin
14 pulled up and I directed McJunkin to the Asian male, and
15 again, I turned my attention towards Mr. Easler.

16 Q Okay. How long were you with Shane Easler before the
17 EMS or the paramedics transported him from the scene?

18 A I was there the entire time with him.

19 Q How long were the paramedics on scene before they
20 transported him from Hayne Street or do you know
21 approximately?

22 A Just to be approximate, five, six minutes maybe.

23 Q Okay. All right. Mr. Keam's demeanor and speech, how
24 would you describe that for the jury when you encountered
25 again?

Steve Henderson - Direct examination
by Solicitor Coler

1 A Again, just the brief conversation I had with him, it
2 was, it was hard to understand. I wasn't for sure I could
3 smell alcohol. But I couldn't, I really -- I couldn't
4 differentiate if there was a language barrier or if it was
5 intoxication.

6 Q Okay. All right. Deputy, that's all the questions I
7 have for you. Please answer any that the defense may have.

8 MR. RECKENBEIL: Defense doesn't have any questions.
9 Your Honor.

10 THE COURT: Step down.

11 SOLICITOR COLER: Can we approach, Your Honor?

12 THE COURT: Yes, sir.

13 (Whereupon, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: All right. Ladies and gentlemen, we're
16 gonna take a short break before we go further. So, I'll ask
17 you to please go to your jury room. Do not discuss the case
18 in any fashion whatsoever. We'll bring you back after that
19 break.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Court is in recess for 15 minutes.

23 (Whereupon, a short recess was taken at this time.)

24 THE COURT: All right. Bring the jury in please.

25 (Whereupon, the following takes place within the

Patrick Cockrell - Direct examination
by Solicitor Coler

1 presence of the jury.)

2 THE COURT: You ready?

3 SOLICITOR COLER: Yes, sir.

4 May it please the Court.

5 Judge, the State calls Patrick Cockrell.

6 PATRICK COCKRELL, being first duly

7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR COLER:

10 Q State your name for the record if you will.

11 A My name is Patrick Cockrell.

12 Q And you work for the Spartanburg County Sheriff's
13 Office?

14 A Yes, sir, I do.

15 Q How long have you been with the Sheriff's Office?

16 A I been with the Sheriff's Office now for ten years.

17 Q What is your present assignment or title with the
18 Sheriff's Office?

19 A I'm a sergeant assigned to the uniform patrol division
20 of the Sheriff's Office. I currently work on the Charlie
21 Shift, which is -- I work 6:00 p.m. to 7:00 a.m.

22 Q Back in September of '07 were you assigned to the
23 uniform patrol?

24 A Yes, sir, I was doing the exact same duties then as I
25 do now except for I was on what's called the delta platoon.

Patrick Cockrell - Direct examination
by Solicitor Coler

1 Same hours. Just opposite rotation from if, where I work
2 now.

3 Q Okay. Did you have occasion to respond to Red's Bar &
4 Grill here in Spartanburg?

5 A Yes, sir, I did.

6 Q On September 21st, 2007?

7 A Yes, sir, I did.

8 Q Tell us, when you got there, was the victim, was Shane
9 Easler still present on the scene.

10 A Yes, sir, he was.

11 Q All right. What did you notice or what could you tell
12 us about his condition?

13 A When I arrived on scene Mr. Easler was lying on the
14 ground. As the other witnesses have described, he was
15 partially on the shoulder of the roadway along Hayne Street
16 with a, a significant portion of his head lying on the
17 pavement of the, of the edge of the road. He was in -- he'd
18 obviously been in, in some sort of violent condition because
19 he had -- he was lying there unconscious, unresponsive. He
20 had blood all around his shirt and looked to be what
21 appeared to be a gunshot.

22 Q Okay. Were -- had detectives arrived on the scene at
23 that, yet?

24 A No, sir, they had not.

25 Q All right. What was your primary function or role when

Patrick Cockrell - Direct examination
by Solicitor Coler

1 you, when you first arrived?

2 What was your duties?

3 A My primary function as the sergeant and working in that
4 particular district where this incident occurred is to go
5 there and to assist the uniform patrol officers in
6 maintaining crime scene security, segregating witnesses,
7 assisting victims. Just basically supervising making sure
8 that everything is, is done properly, and everything that
9 can be done to aid any victims is also being done.

10 Q All right. Did you have an occasion to come into
11 contact with the defendant, Mr. Keam?

12 A Yes, sir, I did.

13 Q All right. What -- when you came into contact with
14 him, did you attempt to talk to him?

15 A Yes, sir, I encountered Mr. Keam there. I had spoken
16 with a couple of, of the officers that were already there
17 prior to, to my arrival to ascertain what Mr. Keam was doing
18 there, who he was, what his, his role and all of what was
19 going on was. Officers were obviously busy tending to
20 Mr. Keam, securing the crime scene, identifying and
21 segregating witnesses.

22 The officers that I spoke with said that Mr. Keam, as
23 I, I, as I'm there, he's inside the crime scene area that's
24 been roped off already. So, obviously he has some role
25 there. But at this point none of the other officers were

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1 able to definitively tell me what Mr. Keam's role is, why
2 he's there, and what, what's gone on. That's why I began
3 to, to try to interview Mr. Keam to get some information
4 from them as to those answers.

5 Q All right. Were you successful?

6 Did you get logical answers when you spoke to him?

7 A Absolutely not.

8 Q Okay.

9 A Mr. Keam, he was, he was an Asian male. There was --
10 his English was, was not perfect. But I could not -- the
11 questions that I asked him, he gave me answers to, he gave
12 me different answers at different times that I asked the
13 same questions. I'm not able to attribute his, his
14 vagueness and his inconsistent statements that he gave to me
15 to whether it was a language barrier between he and I. He
16 seemed to understand what I said when I asked him a
17 question. But I wasn't getting appropriate responses.

18 So, I'm not sure if it was a language barrier and he,
19 in fact, didn't understand completely or if it was because
20 he was intoxicated and I distinctly got the impression that
21 was, in fact, grossly intoxicated.

22 Q What in particular -- you got a copy of your incident
23 report?

24 A I do not, no.

25 Q Would one help to refresh your recollection?

Patrick Cockrell - Direct examination
by Solicitor Coler

1 A Yes, sir.

2 Q Let's take a look at your incident report.

3 What information were you able to gather from Mr. Keam
4 upon initially talking to him?

5 What, what did he essentially tell you?

6 A I asked him, you know, what he was doing there, why was
7 he with Mr., Mr., was he with Shane when this incident
8 occurred who I later learned the victim's name was Shane.
9 And he indicated that, that he was in very close proximity
10 to Shane when he was shot. Within a matter of three feet I
11 believe is what he told me.

12 I asked him why he was out there on the roadway where,
13 in fact, it happened. He wasn't ever able to tell me
14 anything about how Shane got shot or anything of that
15 nature. When I asked him why they were on the side of the
16 road, where they were going, where they were coming from, he
17 gave me varying answers each time I asked the question.
18 Most predominately, the one that I remember him repeating,
19 was that they had left the bar to go to the store to get
20 beer, which made absolutely no sense.

21 Q No, no sense to leave the bar to go get beer?

22 A Correct.

23 Q I see.

24 All right. At some point did you turn Mr. Keam over to
25 somebody else to try to ascertain what he, what information

Patrick Cockrell - Direct examination
by Solicitor Coler

1 he had after you were unsuccessful?

2 A Yes, sir, I did. Since I had gotten the information
3 from Mr. Keam that he was in such close, close proximity to
4 Shane when he was shot, and I wasn't getting any logical
5 information from him that made any, any sense to me at all,
6 as soon as detectives arrived on scene, I turned Mr. Keam
7 over to Detective Reid Lindsey for further interviewing to
8 see if he could determine, in fact, what he was, it would
9 help us with identifying a suspect and shooting or anything
10 of that nature.

11 Q Okay. After turning Mr. Keam over to Detective Lindsey
12 and letting Detective Lindsey speak to him, did you have
13 occasion to come back into contact with Mr. Keam
14 subsequently?

15 A Yes, sir, I did. After some period of time, Mr. Keam
16 had been in the company of Detective Lindsey while he was
17 doing the interview and everything. I approached Detective
18 Lindsey at the back of his car. Apparently it was just at
19 the time that he was finishing up his interview with
20 Mr. Keam at which time Detective Lindsey advised me to go
21 ahead and arrest Mr. Keam.

22 Q And at that point you were not charging him -- what
23 were you, what were you advised to charge Mr. Keam with?

24 A Public disorderly conduct because of his grossly
25 intoxicated condition and, and that sort of thing.

Patrick Cockrell - Direct examination
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1 Q Okay. As a result of, of charging him or placing him
2 under arrest for public disorderly conduct, what did you do?

3 A I asked him, I asked Mr. Keam to step from Detective
4 Lindsey's car, which he did. I immediately proceeded to
5 conduct a search of Mr. Keam incident to the arrest at which
6 time I found a, a black handgun in Mr. Keam's right rear
7 pants pocket. The slide on the handgun was locked into the
8 rear position in the open position, and the gun did not
9 appear any longer to be, have any bullets in it.

10 Q What did you do once you discovered he had a handgun in
11 his possession?

12 A The first thing I immediately did was I seized Mr. Keam
13 by the, by the waistband of his pants with my left-hand,
14 secured the gun with my right-hand, and I yelled gun to
15 Detective Lindsey so that he would know that I did have a, a
16 handgun on this person that I was taking into custody and so
17 that he could provide me with backup and assistance as
18 needed.

19 Q Okay. All right. And at any point along that line did
20 Mr. Keam make any statements to you or---

21 A Yes, sir. Yes, sir, he did. As soon as I yelled out
22 gun, and started putting handcuffs on Mr. Keam, he said
23 yeah, I shot him.

24 Q Okay.

25 A Nothing else was said at that point in which Detective

Patrick Cockrell - Direct examination
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1 Lindsey had come around the car at that point to assist me
2 in securing Mr. Keam and the gun and began Mirandizing
3 Mr. Keam.

4 Q Was the statement he made to you in response to a
5 question by you or Detective Lindsey or anybody?

6 A No, sir, there was no questions asked of Mr. Keam at
7 that time. Again, as I was doing the search on him, I
8 discovered the gun. I immediately grabbed him and the gun
9 and yelled out gun, and without any, anything else being
10 said, he immediately blurted out yeah, I shot him.

11 Q He then testified that Detective Lindsey began to
12 advise Mr. Keam of his Miranda warnings?

13 A Yes, sir, that's correct. He did.

14 Q As he was doing that or after that did Mr. Keam make
15 any other statements to you or---

16 A Yes, sir.

17 Q ---make any other statements at the time?

18 A Yes, sir, he did make a statement as soon as -- I can't
19 remember if it was while Detective Lindsey was advising him
20 of his Miranda rights or immediately after. If memory
21 serves, it was immediately preceding or after Detective
22 Lindsey advised him of his rights. He said I didn't, I
23 didn't shoot him, why would I kill by bro.

24 Q Okay. Is that statement in response to any question by
25 you or Detective Lindsey or anybody on the scene?

Patrick Cockrell - Direct examination
by Solicitor Coler

1 A No, sir, not, not to my recollection. I know that I
2 didn't ask him any question and I don't believe that
3 Detective Lindsey had time to ask him any questions either.

4 Q Okay. At this point was Mr. Keam in handcuffs?

5 A Yes, sir, he was.

6 Q Did you have the gun secured in your possession?

7 A Yes, sir, I did.

8 Q What was done with Mr. Keam at that point?

9 A Mr. Keam was handed over to another deputy, Deputy
10 David Evatt, to transport him to the Sheriff's Office for
11 further processing.

12 Q All right. And what did you do with the handgun you
13 recovered?

14 A The handgun I recovered I turned over to our, our
15 forensic officer, Detective Tim Davis.

16 (Whereupon, a gun was marked as State's Exhibit No. 4
17 for identification purposes only at this time.)

18 Q I'm gonna hand you what's been premarked -- I'm gonna
19 hand you what's been premarked as State's Exhibit No. 4 and
20 ask you to look at the contents of that box.

21 The first thing I wanted you to do with that handgun is
22 verify that it is not loaded and it is not a potential
23 danger to anybody in this courtroom?

24 A Yes, sir, it is not loaded and it is not a danger to
25 anyone.

Patrick Cockrell - Direct examination
by Solicitor Coler

1 Q There's a security lock on it?

2 A Yes, sir, there is.

3 Q It can not be fired with that security lock on it?

4 A That's correct.

5 Q There are no rounds or bullets in it anywhere?

6 A They're no rounds, bullets, or the magazine is not
7 inserted.

8 Q Okay. All right. Can you recognize the contents of,
9 of that box, State's Exhibit No. 4?

10 A Yes, sir, I do.

11 Q And is that the pistol you recovered from Mr. Keam on
12 September 21st, 2007?

13 A Yes, that is the pistol I recovered from the right rear
14 pants pack of Mr. Keam's person.

15 Q Does it appear to be in the same condition or
16 substantially the same condition today as it was when you
17 recovered it?

18 A Yes, sir, with the only notable exception being the
19 magazine is no longer in the weapon which it was at the time
20 I, I found it.

21 Q If you'll take it out of the box and show the jury the,
22 the manner in which you recovered it and you talk about the
23 slide being locked back.

24 A The slide is in the, is in the open locked back
25 position now. When the weapon is loaded and a round is in

Patrick Cockrell - Direct examination
by Solicitor Coler

1 the chamber and it's prepared to fire, the slide is forward
2 on to the barrel and all you have to do is done pull the
3 trigger to discharge it. Again, the only difference being
4 that now this is the magazine that contains the bullet that
5 was inserted into the magazine well or the handle or the
6 pistol grip of the weapon.

7 Q When you recovered it, were there any rounds or bullets
8 in it?

9 A No, sir, the magazine was inserted, but there were no
10 bullets in it, either the magazine or in the chamber of the,
11 of the gun.

12 Q Okay. Do you know how many bullets that, that magazine
13 holds?

14 A That's a ten round magazine..

15 SOLICITOR COLER: Okay. Your Honor, at this point we'd
16 offer State's Exhibit No. 4 into evidence if there's no
17 objection.

18 MR. RECKENBEIL: No objection, Your Honor.

19 THE COURT: It's admitted.

20 SOLICITOR COLER: Thank you, Your Honor.

21 (Whereupon, State's Exhibit No. 4 was received into
22 evidence at this time.)

23 Q After Mr. Keam was turned over to Deputy, Deputy Evatt
24 for transport to the county jail or, or to the Sheriff's
25 Office, did you have any other contact or interaction with

Patrick Cockrell - Direct examination
by Solicitor Coler

1 him?

2 A With Deputy Evatt or---

3 Q With Mr. Keam.

4 A Mr. Keam, no. No, sir, I did not.

5 Q Okay. That's all the questions I have for you. Deputy
6 Cockrell. Please answer any Mr. Reckenbeil has.

7 CROSS-EXAMINATION

8 BY MR. RECKENBEIL:

9 Q Deputy Cockrell, what kind of gun is it?

10 A It's a Ruger automatic.

11 Q Okay. Now, how many guns have you gone through while
12 being a sheriff's deputy?

13 In other words, how many guns have you used while
14 you've been a sheriff's deputy?

15 A I've, I've used two.

16 Q Okay. Have you ever seen a gun like that before?

17 A Yes, several.

18 Q Several.

19 Have you ever used or fired a weapon like that before?

20 A I have used many weapons like that, similar to it, but
21 not that particular make and model.

22 Q Okay. Now, I'm gonna try and put this in layman's
23 terms because I'm not a gun expert, but when you pull the
24 trigger for the first time, for the first round, is it more
25 difficult pulling the trigger the first time than it is the

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 second or the third or fourth time if you're firing it
2 quickly?

3 A Absolutely not.

4 Q Okay. So, it could be fired quickly or easily the
5 first shot or the last shot?

6 A That's correct.

7 Q And how many pounds of pressure or, would it take for
8 that trigger to be, to be moved?

9 A I have absolutely no idea.

10 Q Okay. Is it -- is that the gun that it's easier for
11 you to shoot quickly rapidly?

12 A I'm sorry.

13 Could you ask that again?

14 Q Is that kind of gun the gun that can be, trigger can be
15 pulled rapidly?

16 A Yes.

17 Q Okay. So, you can pull that really quickly, bam, bam,
18 bam, bam, bam, bam, to discharge those rounds?

19 A Yes, you could if you chose to.

20 Q Okay. So, it's possible -- well, I want you to do this
21 for me.

22 Hold the gun if you would. Hold it like you're holding
23 it like you're gonna discharge it.

24 A (Witness complies.)

25 Q All right. Just stand---

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

- 1 A Can I turn?
- 2 Q No, just stand over there.
- 3 A Okay.
- 4 Q And don't aim it at me.
- 5 A Right.
- 6 Q But just, you know, I don't want it aimed at anyone.
- 7 A You want me to aim it at the floor?
- 8 Q Just aim it at the floor.
- 9 And how -- would you have any instinct of would that
- 10 gun be easier for the pounds of pressure to use against the
- 11 trigger than say the side arm that you have?
- 12 Well, you don't have a side arm.
- 13 A That's because I'm in court.
- 14 Q Because you're in a courtroom.
- 15 A No, because I'm not -- I've never fired this particular
- 16 brand or model. I couldn't---
- 17 Q Right.
- 18 A I couldn't answer as in comparison to mine. I can say
- 19 as a general rule, an R890 weapon, an automatic pistol of
- 20 this, of this type can be fired easily by anyone from a,
- 21 from a small child up to a elderly person.
- 22 Q Yes, sir. Yes, sir.
- 23 A If that's the -- does that, does that answer your
- 24 question?
- 25 Q That got me through about ten more questions.

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 A Okay.

2 Q And I appreciate your honesty there. That's exactly my
3 question is that the trigger with, something like that can
4 be fired a lot easier than other guns?

5 A As, as opposed to a revolver type weapon, yes, sir.

6 Q Yes, sir.

7 A That's correct.

8 Q Okay. Now, when you talked with Mr. Keam when you
9 first arrived, he said to you that he was about three feet
10 away from when Shane was shot?

11 A That's correct.

12 Q All right. And in direct examination you said that you
13 believed that Tony was grossly intoxicated, correct?

14 A I'm sorry?

15 Q That Mr. Channack, that Mr. Keam was.

16 A Oh, yes, yes.

17 Q I'm sorry. I---

18 A Yes.

19 Q That he was grossly intoxicated.

20 Now, are you familiar with the area of Hayne Street and
21 where Red Bar & Grill is?

22 A Yes, sir, I am.

23 Q And isn't it accurate that if you look on here kind of
24 where my notepad is pointing to the north sign there, isn't
25 there a Hot Spot down in that area if you remember?

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 A Yes, sir, I can't remember exactly how far down the
2 road it is. But yes, there is one in that direction.

3 Q So, if an individual said to you that they were walking
4 down from a bar, they could be walking to a convenience
5 store right?

6 A They could be. But again, it made no sense compared to
7 where he was going to what he was going to do there.

8 Q Sure.

9 Well, if you got kicked out of a bar, wouldn't it make
10 sense?

11 A That -- now that would.

12 Q Okay. If you got kicked out of a bar, you could be
13 walking down to a grocery store or a Hot Spot?

14 A That's correct.

15 Q And it would be fair, under the facts of what you
16 described, that they could be walking to the Hot Spot?

17 A That's absolutely plausible.

18 Q All right. Could you buy beer at a Hot Spot?

19 A That's correct.

20 Q Now, you also testified on direct examination that when
21 you were asked by Investigator Lindsey to put Mr. Keam under
22 arrest for public disorderly conduct, that's when you said
23 you discovered the weapon that you have up there in his back
24 right pocket?

25 A Yes, sir, that's correct.

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 Q And immediately upon you extracting that gun from the
2 back pocket, you yelled gun?

3 A Yes, sir, that's correct.

4 Q And then you put the handcuffs on Tony right away?

5 A Well, actually it wasn't right away. I had grabbed him
6 by the waistband with my left-hand, pulled the gun out with
7 my right-hand, shoved it into my pants pocket, then reached
8 around and got my handcuffs and put them on him.

9 Q Would you say---

10 A So, it's a matter of seconds.

11 Q Would you say that it startled you that what you found
12 in his back pocket?

13 A Absolutely it did.

14 Q And you would say that you were heightened in the sense
15 of your -- I guess you went from kind of a passive person to
16 putting him under arrest for public disorderly conduct to an
17 individual that you found had a weapon on him, right?

18 A That's, that's an accurate assessment.

19 Q And it would heighten your senses a little bit?

20 A That's an accurate assessment too.

21 Q Would it also heighten the fact of your voice being
22 raised cause you yelled out the word gun, didn't you?

23 A I absolutely did because Reid Lindsey, I couldn't
24 remember if Detective Lindsey was still in the front seat of
25 his car or he had already gotten out and was standing at the

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 apex of the door to his car, but I wanted to make absolutely
2 certain, as I was trained to do, that when I find a gun, any
3 officer around me is gonna know I found a gun.

4 Q Yes, sir.

5 A So absolutely I yelled it.

6 Q And you grabbed the back waistband of Tony?

7 A Yes, sir, cause he was now in my control.

8 Q Yes, sir.

9 A And make sure he understood that.

10 Q And then you said to, on direct examination, that he
11 said yeah, I shot him?

12 A That's correct.

13 Q And that's after what we just described took place?

14 A That's correct.

15 Q You also testified on direct examination that there was
16 a second time after Miranda -- and for the ladies and
17 gentlemen of the jury's benefit, just really briefly
18 describe what Miranda is.

19 A Miranda is when police officers advise a suspect or a
20 person that they are looking at as a suspect and they want
21 to ask them particular questions about a particular criminal
22 offense and we have custody of that person, we have to
23 advise them of their rights against self-incrimination,
24 their rights to have an attorney present with them during
25 questioning, their rights to talk to an attorney beforehand,

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 or their right to waive that and discuss it freely with us
2 without those rights.

3 Q And you heard them go over that Miranda warning?

4 A Yes, sir, I did.

5 Q Okay. And then, after the fact of what you just
6 described to the jury, Mr. Keam being told that he needs, he
7 needs to understand his right to remain silent, that he
8 needs to understand he's got a right to a lawyer, that he's
9 got to understand everything he says will, will, in fact, be
10 used against him in a Court of law, that's when, in fact, he
11 said I didn't do it?

12 Do you remember that in your statement?

13 A He, he -- that wasn't the exact words that he used, but
14 that's very close. He, he said that he didn't shoot him,
15 why would he kill his bro.

16 Q Correct.

17 But you want to see your statement where you said---

18 A I've got it right here.

19 Q Look at your statement. Look at the last, second to
20 the last line or third to the last line. Excuse me.

21 A Oh, I'm sorry. Yeah, I, I misspoke. That is exactly
22 the way he said it.

23 Q He said I didn't do it.

24 A I didn't do it. Why would I kill my bro.

25 Q Why would I kill my brother.

Patrick Cockrell - Cross-examination
by Mr. Reckenbeil

1 All right. Thank you.

2 SOLICITOR COLER: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR COLER:

5 Q That handgun is a semiautomatic handgun, correct?

6 A Yes, sir, it is.

7 Q That's not an automatic handgun?

8 A That's correct.

9 Q Is the difference between a semiautomatic and automatic
10 how you discharge the weapon?

11 A That's correct. A semiautomatic means the round, the
12 weapon discharges every time you pull the trigger, and an
13 automatic weapon means you pull the trigger and hold it and
14 as long as you hold it it will continue to shoot as long as
15 its got bullets.

16 Q To fire that weapon ten times you would have to pull
17 the trigger ten times?

18 A That is correct.

19 Q Not just pull the trigger once and hold it?

20 A That's correct.

21 Q And, and your testimony or your, your responses to Mr.
22 Reckenbeil were you didn't think that that trigger was any
23 more difficult to pull than, than other guns you're familiar
24 with?

25 A That's correct.

Patrick Cockrell - Redirect examination
by Solicitor Coler

- 1 Q But you still have to pull the trigger?
- 2 A That's absolutely correct.
- 3 Q Every time?
- 4 A Every time.
- 5 Q Okay. Mr. Reckenbeil asked you if you were surprised
- 6 when you found the gun in Mr. Keam's pocket.
- 7 A Yes, he did.
- 8 Q You were very surprised?
- 9 A I was extremely surprised.
- 10 Q Mr. Keam never once offered or said officer, I've got a
- 11 weapon in my back pocket?
- 12 A That's correct. And I -- based on everything that had
- 13 happened, I had no reason to suspect at that time that he
- 14 did.
- 15 Q Did he ever say to you there's been an accidental
- 16 shooting, and I've got the gun, I want, I want you to have
- 17 it?
- 18 A Absolutely not.
- 19 Q Okay. Did -- if he had been interviewed and released
- 20 from the scene, as many of the other witnesses were, would
- 21 you have ever recovered -- is it possible you would of never
- 22 recovered that gun?
- 23 A It's not only possible, it's---
- 24 MR. RECKENBEIL: Objection, Your Honor. Speculation.
- 25 THE COURT: Sustained.

Patrick Cockrell - Redirect examination
by Solicitor Coler

1 Q Were there many other witnesses who were spoken to and
2 released from the scene?

3 A Yes, sir, there were.

4 Q Did you pat down every one of them before they left?

5 A No, sir, we did not.

6 Q Okay. If they had guns, could they have left with guns
7 in their possession?

8 A Absolutely.

9 Q Anything to prevent Mr. Keam from being in that
10 situation?

11 A Yes, had, had, had there not been, not arisen the time
12 where we decided to place Mr. Keam under arrest for public
13 the disorderly conduct charge, no, we would of, they would
14 of never been a reason to pat him down.

15 Q All right. That's all the questions I have, deputy.
16 Thank you for being here.

17 A Thank you.

18 MR. RECKENBEIL: Nothing.

19 THE COURT: You may step down.

20 SOLICITOR COLER: State calls Tim Davis.

21 TIM DAVIS, being first duly sworn,
22 testified as follows:

23 SOLICITOR COLER: Beg the Court's patience one minute.

24 (Whereupon, a bag of spent shell casings was marked as
25 State's Exhibit No. 5 for identification purposes at this

Tim Davis - Direct examination
by Solicitor Coler

1 time.)

2 DIRECT EXAMINATION

3 BY SOLICITOR COLER:

4 Q State your name for the record.

5 A Tim Davis.

6 Q And tell the jury where you work.

7 A I work for Spartanburg County Sheriff's Office.

8 Q What's your title with the Sheriff's Office?

9 A I'm one of the crime scene investigators.

10 Q How long have you, have you been in crime scene
11 investigation?

12 A Approximately two and a half, three years now.

13 Q How long you been in law enforcement?

14 A Approximately 15 years.

15 Q Okay. Describe briefly what a, what an officer with
16 crime scene investigation unit does at the Sheriff's Office.

17 A We simply process the crime scene. It's usually a
18 uniform officer that arrives at the scene that initially
19 they call us and basically we're looking to photograph and
20 also collect any evidence that's there at the scene.

21 Q Do you process all different kinds of scenes?

22 A Yes, sir, we do.

23 Q Everything from murders to assaults and simple
24 assaults?

25 A That is correct.

Tim Davis - Direct examination
by Solicitor Coler

1 Q Did you have an occasion or were you dispatched to
2 process this scene?

3 A Yes, sir, I was.

4 Q Briefly describe what you do when you first get to a
5 scene like this.

6 What's the first thing you do?

7 A The first thing I do is obviously if there is a
8 supervisor on scene, that's the one I address, or if the
9 investigators are already on scene, I'll get with that
10 individual to make an assessment of what they have at the
11 scene, and what their, what direction they want me to start
12 with as far as what they have there at the scene.

13 Q Okay. And is that just to get you up to speed?

14 A That is correct.

15 Q All right. Do you do an initial walk through or an
16 overview?

17 A Generally.

18 Q Okay. Do you also take photographs of the scene?

19 A Yes, sir.

20 Q Do you look for evidence?

21 A Yes, sir.

22 Q What do you do with evidence if you see or note
23 evidence?

24 A We're gonna make a note of it. We're also gonna
25 eventually mark that evidence especially if it's something

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by Solicitor Coler

1 we're collecting, and a lot of times even if it's something
2 we're photographing, we'll simply make a mark on it placing
3 a marker, a numbered marker.

4 Q Okay. And, and the numbered marker, are those the
5 yellow markers you just placed by the evidence?

6 A That is correct.

7 Q And what do you do after you place a marker with a
8 number where there's something of evidentiary value?

9 A We'll go back and rephotograph it.

10 Q Okay. Do you eventually ultimately collect that
11 evidence?

12 A That is correct, sir.

13 Q All right. When you got to this scene, was one of the
14 first things you did take some photographs of the, of the,
15 Mr. Keam?

16 A That is correct.

17 Q I'm gonna hand you some photographs. I'm gonna hand
18 you what's been premarked as State's Exhibit No. 2 for
19 identification purposes.

20 Do you recognize those photographs?

21 A Yes, sir, I do.

22 Q Are those pictures of, of Mr. Keam that you made at the
23 scene?

24 A That is correct.

25 Q Do they accurately portray Mr. Keam as, as he existed

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1 or as he appeared on the evening of September 21st, 2007?

2 A That is correct.

3 Q Do you recall or do you remember who directed you or
4 why you were asked to take pictures of Mr. Keam?

5 A I was directed by Sergeant Cockrell to take the
6 photographs of Mr. Keam.

7 SOLICITOR COLER: Your Honor, at this point we'd offer
8 State's No. 2 into evidence and offer to publish.

9 MR. RECKENBEIL: No objection, Your Honor, from the
10 defense.

11 THE COURT: It's admitted.

12 (Whereupon, State's Exhibit No. 2 was received into
13 evidence at this time.)

14 Q I'm gonna put some pictures on the, put these pictures
15 on the overhead.

16 Just ask you briefly, there are four picture here and
17 what are you looking at?

18 A That was Mr. Keam on the night in question and we're, I
19 believe we're actually near Sergeant Cockrell's vehicle at
20 the time.

21 Q All right. And the lower right-hand corner photograph
22 there appears to be some red substance on his, on his arm.

23 Do you know what that is or were you able to determine
24 that?

25 A It appeared to be blood and it was later swabbed and

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1 tested by another forensic officer.

2 Q All right. There's more pictures of State's Exhibit
3 No. 2.

4 These four photographs, what do they appear to show?

5 A The -- mainly looking toward Mr. Keam's arms and
6 whatnot. He's also got a cell phone in his possession.

7 Q The two bottom photographs appear to have some red
8 substance on his hands.

9 Do you know what that was or were you able to determine
10 what that was?

11 A I -- again, it was later looked at further. It
12 appeared to be blood at the time that I seen it.

13 Q Which hand are we looking at?

14 A You're looking at his right-hand on the bottom
15 photographs with the cell phone.

16 Q Some more photographs of State's No. 2.

17 The top two photographs appear to show what?

18 A That would be his left-hand, his left palm.

19 Q All right. Did you also discover some, what's been
20 referred to as spent shell casings?

21 A That is correct.

22 Q Do you recall how many you discovered?

23 A I found ten in total.

24 Q All right. Did you mark and collect those?

25 A Yes, sir, we did.

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1 Q All right. Describe for the jury, if you would
2 briefly -- you're familiar with handguns?

3 A That is correct, sir.

4 Q Semiautomatic handguns and how shell casings is
5 produced when the gun is fired?

6 A That is correct.

7 Q If, if you'll just walk the jury through, you can use
8 that gun if you want to demonstrate a little bit, they're no
9 bullets here, when you load that weapon, when it's fired,
10 how we end up with a spent shell casing on the ground and
11 what happens to the projectile when the gun is fired?

12 A Certainly, sir.

13 A bullet is basically the, the ammunition as a whole.
14 It has a projectile, which is the portion of that bullet
15 that gets sent out the barrel and toward the target that
16 you're aiming at. The casing that basically holds the
17 powder and all the contents that creates the mini-explosion
18 that sends that projectile out is contained within a casing,
19 basically a housing.

20 With a semiautomatic, it's going to feed another round
21 into, in, into the, you know, chamber and everything. In
22 other words, it's going to keep loading rounds. Well, what
23 happens with that casing that's in there at this time gets
24 thrown away from the firearm itself.

25 Q Show us, if you would, demonstrate on State's No. 4

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1 where you would put a round, show us the magazine, and where
2 you put a round for that weapon.

3 A The bullet simply gets loaded on to the top of the
4 magazine and they get loaded into the magazine itself, and
5 it's got numbers, indicators on the back of the magazine
6 itself.

7 Q All right. What's done with that magazine when bullets
8 are loaded into it?

9 A It's actually inserted into the base of the magazine or
10 into the base of the handgun itself --

11 Q All right.

12 A -- so that the bullets actually reach up toward the
13 chamber itself.

14 Q Okay. Show us on that gun where the spent shell
15 casings are ejected and where the projectile is, is
16 propelled through the barrel.

17 A Okay. The spent shell casings are going to be thrown
18 out of this area here which is called the, the port. It
19 basically gives the opening for the shell casings to get
20 thrown away from the firearm itself. The chamber and all
21 this that goes into the barrel is located right here that's
22 underneath the slide. This is the barrel. This is where
23 the projectile exits.

24 Q You found ten shell casings at the crime scene?

25 A That is correct.

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1 Q I'm going to hand you what's been premarked as State's
2 No. 5.

3 Take a look at the contents of that envelope and tell
4 me if you recognize the contents.

5 A Yes, sir.

6 Q What are they?

7 A They're spent shell casings with the head stamp
8 indicating they're from a .357 Sig ammunition.

9 Q Okay. Are those the ten shell casings that you
10 recovered from the scene of this incident?

11 A That is correct, sir.

12 Q Do they appear to be in the same condition or
13 substantially the same condition today as when you recovered
14 them back on September 21st of '07?

15 A Other than the markings where they were sent down to
16 SLED, yes, sir.

17 SOLICITOR COLER: Okay. Your Honor, at this point we'd
18 offer State's, is that State's Exhibit No. 5, the contents
19 of that envelope into evidence, the ten shell casings.

20 MR. RECKENBEIL: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Whereupon, State's Exhibit No. 5 was received into
23 evidence at this time.)

24 Q What do you do with that gun and those shell casings
25 after you collect them?

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1 Are they sent anywhere for analysis?

2 A Yes, sir, we send them down to our state department,
3 SLED, and they'll do an analysis on the shell casings and
4 the firearm itself and make a comparison between the two.

5 Q Okay. You don't do that comparison here in Spartanburg
6 County?

7 A No, sir, we do not.

8 Q All right. As part of your processing of this crime
9 scene, did you also note what's indicated as a pool of blood
10 or an amount of blood in the roadway?

11 A That is correct, sir.

12 Q Did you note that on your sketch?

13 A Yes, sir, I did.

14 Q All right. Next to that blood, did you note some
15 towels?

16 A That is correct, sir.

17 Q All right. We're looking at State's No. 1 on the
18 overhead.

19 Is that the crime scene sketch you prepared for this
20 case?

21 A That is correct.

22 Q Does that crime scene sketch generally portray the
23 location of the shell casings, blood, and the towels in
24 relation to Red's Bar & Grill for this incident?

25 A It does, sir.

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1 SOLICITOR COLER: Your Honor, at this point we'd offer
2 State's Exhibit No. 1 into evidence.

3 MR. RECKENBEIL: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Whereupon, State's Exhibit No. 1 was received into
6 evidence at this time.)

7 Q If you'll point out for the jury and show us, if you
8 need to step down here and do it with the laser, show us the
9 location of the ten shell casings you recovered from this
10 scene.

11 A Okay, sir. Items One and Two---

12 THE COURT: Be careful of -- excuse me. Be careful of
13 the microphone. You're rubbing against it.

14 Q If you would fold it -- if you'd turn it down this way
15 a little bit I think it will stay out of your way.

16 THE COURT: Well, we might need it so we can hear what
17 he's saying.

18 SOLICITOR COLER: Yes, sir.

19 A Items One and Two and the other eight shell casings in
20 reference to this incident were up here at the corner of the
21 parking lot for Red's Bar & Grill.

22 Q All right. So, Items One and Two are shell casings?

23 A That is correct.

24 Q Were those numbers indicate the location of two shell
25 casings?

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- 1 A That is correct.
- 2 Q And also you said Number Six through Thirteen are the
3 other eight remaining shell casings?
- 4 A That is correct.
- 5 Q And those are where?
- 6 A They're located near the corner of the parking lot of
7 Red's Bar & Grill.
- 8 Q Okay. All right. Show us the location of the amount
9 of pool of blood you noted.
- 10 A (Witness points.)
- 11 Q Can you---
- 12 A That would be---
- 13 Q Go ahead.
- 14 A There would be -- Items Three and Four are the, the
15 small pool of blood or what appeared to be blood and also
16 rags and towels that were used or left by EMS when they
17 treated the victim.
- 18 Q All right. And the time you arrived, the victim, was
19 he still on scene?
- 20 A The victim had already gone, transported.
- 21 Q Is that customary or usual for you, as a crime scene
22 investigator, to arrive some time after the incident had
23 occurred?
- 24 A It does occur obviously anytime the medical personnel
25 feel like they're able to possibly do something for the

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1 victim. Obviously they're gonna transport and they are our
2 main concern is to treat the, the victim.

3 Q Okay. Just, just so we're entirely clear, show us
4 where Red's Bar & Grill is on your sketch.

5 A (Witness points.)

6 Q Show us where Hayne Street is.

7 A (Witness points.)

8 Q We've seen the shell casings and the blood and towels.

9 Show us or can you tell us, based on your sketch, the
10 approximate distance the small pool of blood was from Red's
11 Bar & Grill.

12 A From here to the actual Red's Bar & Grill itself, it's
13 gonna be less than a hundred yards or less than a football
14 field. An exact measurement I can not give you, but it's
15 less than a hundred yards.

16 Q All right. That's all the questions I have for you,
17 investigator. Please answer any questions that the defense
18 may have.

19 MR. RECKENBEIL: No questions, Your Honor.

20 THE COURT: You may step down.

21 SOLICITOR COLER: May we approach, Your Honor?

22 (Whereupon, a bench conference was held out of the
23 hearing of the jury at this time.)

24 THE COURT: Oh, Mr. -- let me see y'all just a minute.

25 (Whereupon, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: All right. Ladies and gentlemen, this is a
3 convenient time for us to stop for the evening. So, we're
4 going to do so at this time.

5 Let me caution you, as I have previously, during the
6 overnight recess, you're still not to discuss the case with
7 any person in any fashion whatsoever. That includes your
8 fellow jurors. No discussions about the case of any kind.
9 No exposure to any type of media coverage, television,
10 radio, or newspaper. Do not conduct any research or do your
11 own investigation into any issue.

12 Do have a good evening and please report to your jury
13 room at ten o'clock in the morning. Ten o'clock in the
14 morning.

15 Have a good evening.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. This case is in recess until
19 ten o'clock in the morning.

20

21 (Whereupon, Court was in recess for the evening.)

22

23

24

25

1 Tuesday, June 3rd, 2008

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

4 MR. RECKENBEIL: Judge, I think I want to put a couple
5 things on the record before the jury comes to speeds things
6 up.

7 THE COURT: Okay.

8 MR. RECKENBEIL: The first thing is I think the State
9 wants to put the ballistics test in. I agreed that I will
10 stipulate that being marked by the court reporter right now.

11 The second thing, Investigator Lindsey is looking for
12 it, but I will say is that the defense will waive any
13 challenge to the recorded statement in the boom box of
14 Mr. Keam's purported statement taking place at the Sheriff's
15 Department with Investigator Lindsey approximately four to
16 five hours after the alleged shooting. So, we will, we will
17 waive any issues that we have with that matter.

18 THE COURT: All right. You, you've discussed with your
19 client his right to have a hearing outside the presence of
20 the jury for me to determine the voluntariness of any
21 statement before---

22 MR. RECKENBEIL: Yes, sir.

23 THE COURT: ---its admission in front of the jury?

24 MR. RECKENBEIL: Yes, sir.

25 THE COURT: And he's told you that the statement was

1 not involuntary?

2 MR. RECKENBEIL: What he's informed me is the fact he
3 remembers giving the statement, he remembers signing the
4 form, and he remembers the, the voluntariness of the
5 statement.

6 THE COURT: All right. And so, he -- you discussed
7 with him and he's telling you he does not wish to challenge
8 the voluntariness of that statement?

9 MR. RECKENBEIL: Yes, sir.

10 (Whereupon, the ballistics report was marked as State's
11 Exhibit No. 6 for identification purposes only at this
12 time.)

13 THE COURT: Okay. What else?

14 SOLICITOR COLER: Judge, the State and defense have
15 agreed to the admission of the ballistics report. Your
16 Honor, what's been marked as State's Exhibit No. 6 we'd
17 offer into evidence and the defendant's agreed and
18 stipulated to that, the admissibility of that report.
19 That's essentially Suzanne Cromer, a forensic scientist at
20 SLED, report indicating she test fired the handgun that was
21 sent to her in this case and was in working order and that
22 she compared the gun with ten spent shell casings that were
23 sent to her and her report indicates that the pistol she was
24 sent fired the ten spent shell casings she was sent. We're
25 offering that as State's No. 6.

1 THE COURT: Okay.

2 MR. RECKENBEIL: That would be without objection,
3 judge.

4 (Whereupon, State's Exhibit No. 6 was received into
5 evidence at this time.)

6 THE COURT: All right. What else?

7 SOLICITOR COLER: That's it from the State, Your Honor.

8 THE COURT: Okay. Bring the jury in please, sir.

9 (Whereupon, the following takes place within the
10 presence of the jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday the State was
13 still in the midst of their presentation of evidence. So,
14 we will continue with that presentation this morning.

15 Mr. Coler.

16 SOLICITOR COLER: Thank you, Your Honor.

17 The State calls Ila Simmons.

18 ILA SIMMONS, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR COLER:

22 Q State your name for the record if you would.

23 A My name is Ila Simmons.

24 Q Tell the jury where you work.

25 A At the South Carolina Law Enforcement Division also

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by Solicitor Coler

1 known as SLED in the forensic laboratory and trace evidence
2 department.

3 Q And where is your office located?

4 A In Columbia.

5 Q What is your title or position with SLED?

6 A I'm a forensic scientist.

7 Q Okay. What department are you assigned to?

8 A Trade evidence.

9 Q What does a forensic scientist with trace evidence do
10 with SLED?

11 A We analyze gunshot residue. We perform fiber
12 comparisons, paint comparisons. We analyze arson residue,
13 explosives. We do glass comparisons and duct tapes.

14 Q What education, training, and experience do you have
15 that has prepared you and, and enables you to perform your
16 duties as a forensic scientist in the trace department?

17 A I have a Bachelor's of Science Degree in Chemistry. I
18 began working at SLED after I completed my Bachelor's of
19 Science Degree. I worked for three years in a training
20 program with a court certified, qualified trace examiner.
21 He taught me how to collect, preserve, analyze trace
22 evidence. I had to take competency examinations, which were
23 practical, oral, and written, and, and I completed all of
24 those successfully.

25 I'm a member of the Southern Association of Forensic

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1 Science, the American Academy of Forensic Science. I'm also
2 a member of the FBI's GSR or gunshot residue symposium where
3 the FBI requests that analysts of gunshot residue come to
4 Quantico and we discuss the standards and practices that
5 everyone else will use when analyzing gunshot residue.

6 Q What percentage of your day do you spend analyzing
7 gunshot residue approximately?

8 A When I am on gunshot residue analysis rotation, I, I
9 would spend probably ninety percent. The other ten percent
10 would be writing records.

11 Q Have you ever been qualified as an expert in the
12 analysis of gunshot residue before?

13 A Yes.

14 Q Approximately how many times?

15 A Over a hundred times.

16 SOLICITOR COLER: All right. Your Honor, at this point
17 we'd offer Agent Simmons as an expert in the analysis of
18 gunshot residue.

19 MR. RECKENBEIL: No objection from defense, Your Honor.

20 THE COURT: She is so qualified.

21 SOLICITOR COLER: Thank you, Your Honor.

22 Q Agent Simmons, were you -- well, before we do that,
23 will you explain to this jury what gunshot residue is and
24 what you do to analyze it for purposes for that?

25 A Gunshot residue is a mixture of microscopic chemicals

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by Solicitor Coler

1 and particles that come out of the gun when it's fired. It
2 can get -- it comes out in a cone clean cloud from the
3 muzzle of the gun. Anything that's in close proximity to
4 the gun when the gun is fired can get gunshot residue on it
5 including the hands of the person firing it.

6 Gunshot residue is collected with a two part test. The
7 first test, first part of the test is a double sided sticky
8 tape that has a small handle attached it to. They'll take
9 the hand of the person from whom they're collecting the GSR
10 kit and take a sample; the particle lift from the palm of
11 the right-hand, another particle lift from the back of the
12 right hand, one from the left palm and one from the back of
13 the left-hand. After they completed the particle lifts,
14 they're sealed in viles, placed in an envelope.

15 The second portion of the test is cotton swabs with a
16 bit of dilute acid. Those are then swabbed over the areas,
17 the same areas of the hands, placed in tubes, and sealed.

18 The reason that gunshot residue test are conducted is
19 to see if someone has fired a weapon or been in the vicinity
20 of a weapon when it was fired.

21 Q What happens to the swabs, the collection kit after
22 someone makes that collection?

23 Is it forwarded to you?

24 A Yes, it is. It's brought to our agency in Columbia to
25 the laboratory. It's logged in by the submitting agency.

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1 It goes through our central log in process. It's given a
2 laboratory number and an item number and then it's submitted
3 to me where I take the samples, place them on the
4 instrumentation, and analyze them and see if gunshot residue
5 is present on the samples.

6 Q Do you participate in the collection of the sample?

7 A I do not.

8 Q Is that done by local law enforcement?

9 A Yes.

10 Q Okay. Does local law enforcement participate in the
11 analysis of the sample or is that done by you?

12 A That's done completely by me.

13 Q All right. Is it fair to say that your analysis
14 depends in part on the collection process?

15 A Yes, it is.

16 Q Okay. It's only as good as the collection process?

17 A That's correct. If it's collected incorrectly, then
18 there could be erroneous data.

19 (Whereupon, a photograph was marked as State's Exhibit
20 No. 7 for identification purposes only at this time.)

21 Q All right. I'm going to show you a picture. This is
22 been premarked for identification purposes as State's
23 Exhibit No. 7.

24 Is that a good demonstrative photograph of gunshot
25 residue?

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by Solicitor Coler

1 A Yes, it is.

2 SOLICITOR COLER: Okay. Your Honor, at this point we
3 offer this as State's No. 7 and offer to publish it to the
4 jury.

5 MR. RECKENBEIL: Just under the fact that this
6 obviously is for demonstrative purposes, we don't really
7 know if that can go to the jury.

8 THE COURT: Let me see it.

9 SOLICITOR COLER: We'll do it just for demonstrative
10 purposes.

11 THE COURT: Okay.

12 MR. RECKENBEIL: Yes, for demonstrative purposes,
13 that's fine I think.

14 THE COURT: Okay.

15 MR. RECKENBEIL: Cause it's not actually the gun that
16 was used in this case.

17 SOLICITOR COLER: That's right.

18 THE COURT: Okay.

19 MR. RECKENBEIL: So, I think just for demonstrative
20 purposes.

21 THE COURT: All right.

22 Q For the record, I'm placing what's been premarked as
23 State's Exhibit No. 7 on the overhead.

24 Agent Simmons -- dim the lights just a little bit.

25 If, if you'll show the jury what we're looking at and

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by Solicitor Coler

1 explain to them where the gunshot residue is and, and, on
2 this photograph.

3 A This is a picture of a semiautomatic pistol after it's
4 been fired. The gunshot residue is the plume of smoke.
5 It's this plume of smoke here that comes out of the weapon.
6 Some also comes out of an ejector port when the slide goes
7 back on the semiautomatic, and this cloud will actually
8 expand larger and larger and will eventually encompass a
9 person's hand that is firing the gun or anything out to
10 about five feet in front of the muzzle of the gun.

11 Q That plume of material coming out of the muzzle and
12 some that comes out of the, the port of the gun, describe
13 the physical characteristics of, of that element, of that
14 smoke.

15 A It has a consistency of flour like used in cooking.
16 So, if it were to get on someone's hands, it's very light,
17 very gentle, and able to be destroyed very easily.

18 Q Okay. And that's which -- that plume of smoke we're
19 looking at, that's what you look for as a settlement on
20 someone's hands or on, on clothing or whatever?

21 A Yes, components of it. That also contains some gun
22 powder and some smoke and other things that come out of the
23 gun. But gunshot residue is within that plume of material.

24 Q All right. And you just described the, the
25 characteristics of gunshot residue like flour.

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by Solicitor Coler

1 Describe for us the, the fragility of it or the
2 durability of gunshot residue.

3 How long does it last, what affects it?

4 A Gunshot residue will only remain on a living person's
5 hands for six hours after a shooting incident. If someone
6 were to shoot a gun at noon, it would, it would be gone by
7 6:00 p.m. But that doesn't mean that it stays on your hands
8 for six hours.

9 Immediately after a gun is fired, gunshot residue
10 begins to be destroyed or removed from the hands of someone
11 who shot the gun. As quickly as possible is optimum to
12 collect a GSR kit. If a shooting happened at noon, it
13 should be collected, you know, as quickly as, as it can be
14 collected.

15 On a deceased person, however, the body no longer
16 sweats. The hands aren't making contact with anything.
17 You're not absorbing things through your skin. So, it
18 remains on a deceased person until it is removed by an
19 outside source. By rain or by someone washing their hands.

20 Q Okay.

21 A It's, it's very fragile. If someone were to wash their
22 hands, if they were to wipe their hands on a towel, put
23 their hands in and out of their pockets, it can remove or
24 destroy the gunshot residue.

25 Q Does the presence of other foreign materials on

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by Solicitor Coler

1 someone's hand affect your ability to conduct your test?

2 A Yes, if someone has liquid, water, alcohol, blood, any
3 of these things can remove and destroy the gunshot residue
4 making it where I would not be able to detect it.

5 Q And you said that perspiration affects the gunshot
6 residue?

7 A Yes, it does.

8 Q Okay. And you said also just rubbing your hands?

9 A Yes.

10 Q If you use a cell phone, would that affect it?

11 A Yes, if it was making contact with a cell phone, yes.

12 Q Putting your hand in and out of your pocket?

13 A Yes.

14 Q All right. As a part of your duties, Agent Simmons,
15 were you asked to conduct analysis on two gunshot residue
16 kits in this case?

17 A Yes, I was.

18 Q Was one of those kits indicated to you the gunshot
19 residue kit of Channack Keam?

20 A Yes, it was.

21 Q And was the other kit indicated to you to be the kit
22 from Shane Easler?

23 A Yes.

24 Q All right. If you'll explain your process of, of
25 analyzing the kit and then explain to us your results.

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1 A Okay. We receive the kit. We begin by analyzing the
2 swabs first. What we're looking for is a combination of
3 three metals that's found in gunshot residue. The metals
4 are led, barium, and antiman. We have test fired numerous
5 weapons, different types of ammunition, and determined that
6 there's a certain threshold level that someone will get on
7 their hands from shooting a gun, and that's when we analyze
8 the swabs. That's what we're looking for.

9 The second portion of the test will be looking at the
10 particle lifts. The way we do that is we put them on a very
11 strong microscope, a microscope that can see a hundred
12 thousand times smaller than the human eye can see. And we
13 look for the actual gunshot residue particles. Gunshot
14 residue particles are round. They contain the same metals
15 that I spoke about, led, barium, and antiman.

16 The roundness is very important because when the
17 gunshot residue comes out like this, it's hot. It's in a
18 molten state. It would be as if you threw water in the air
19 and froze it immediately in the air being a round or tear
20 drop shaped particles. And that's why it's so important for
21 gunshot residue particles to be round on the hand.

22 Q After conducting your analysis on the gunshot residue
23 kit that was submitted to you for Channack Keam, can you
24 tell us what you found, what your results are?

25 A On the right palm, after we analyzed the swabs on the

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1 right palm, we found elevated levels of these three metals
2 that we were looking for, and we took it on to the second
3 portion of the test, and we did not find confirming round
4 gunshot residue particles. So, there was -- no gunshot
5 residue was found.

6 Q Okay. Your conclusion is no gunshot residue?

7 A That's correct.

8 Q But you found elevated levels of the metals that you
9 looked for?

10 A That's correct.

11 Q On, on his right palm?

12 A Yes.

13 Q Okay. Did you also examine the swabs from his right,
14 back of his hand, left palm, and left back hand?

15 A Yes, and in those samples no metals were found. The
16 first test we did, there were no metals were found that
17 indicated the presence of gunshot residue. The threshold
18 levels were not met.

19 Q Okay. I'm gonna place on the overhead State's Exhibit
20 No. 2 that's been admitted.

21 Agent Simmons, I'm gonna show you the photographs of
22 Mr. Keam's right-hand, those two lower photographs.

23 As a scientist that analyzes gunshot residue, does that
24 cause you any -- is there anything about his hands that
25 would cause you any concern about your tests?

Ila Simmons - Direct examination
by Solicitor Coler

1 A Yes, they appear to have blood on them.

2 Q Okay.

3 A And as I mentioned before, blood can destroy the
4 particles that we're looking for. It would destroy the
5 morphology of the particles. Therefore, if they were round
6 and you got blood on your hands, it would destroy the
7 roundness. However, it would still leave the lead, barium,
8 and antimony present. So, you would still see that there was
9 a quantity of those three metals. You just wouldn't find
10 the round particles that we were looking for.

11 Q Okay.

12 A That is a possibility.

13 Q All right. I'll ask you also if you'll tell the jury
14 about your results on the test you conducted on the samples
15 from the gunshot residue kit of Shane Easler.

16 A Yes, we found the three metals looking, that we were
17 looking for. They were present on the right palm in, in a
18 certain threshold that we need to say that gunshot residue,
19 that the metals found were consistent with gunshot residue.

20 On the back of the right-hand and the left palm, we
21 found -- we did not find the metals consistent with gunshot
22 residue. Our thresholds were not met. And on the back of
23 the left-hand, we found slightly elevated levels. But we
24 did not find the particles of gunshot residue that we were
25 looking for on the microscope.

Ila Simmons - Direct examination
by Solicitor Coler

1 Q All right. You found gunshot residue on his right
2 palm?

3 A Yes.

4 Q Okay. Thank you.

5 You did find gunshot residue on the back of his
6 right-hand?

7 A That's correct.

8 Q You did not find gunshot residue on his left palm?

9 A Yes, and I did not find it on the back.

10 Q Okay. In your experience as an expert knowing what you
11 know about gunshot residue, is that consistent or could that
12 be consistent with a defensive posture of Mr. Easler?

13 A Yes.

14 Q Gunshot residue on the right palm?

15 A That, that is. A defensive posture is a situation
16 where when someone obtains a gunshot wound, if their hand is
17 up in a situation like this or in this particular case, his
18 left, his right palm was up, the gunshot residue can also
19 get on something that's close to the gun. So, if the gun's
20 fired here and your hand is here, it can get on the palm of
21 your hand and that is a possibility.

22 Q If, if Mr. Easler were holding or handling that, a gun
23 like State's Exhibit No. 4 and fired it, would you not
24 expect to find gunshot residue on the back of his hand?

25 A Yes, I would.

Ila Simmons - Direct examination
by Solicitor Coler

1 Q Did you find any?

2 A I did not.

3 SOLICITOR COLER: Beg the Court's patience one minute.

4 (Pause.)

5 Q That's all the questions I have for you, Agent Simmons.

6 Thank you for coming. Please answer any that Mr. Reckenbeil

7 has.

8 CROSS-EXAMINATION

9 BY MR. RECKENBEIL:

10 Q Agent Simmons, Mr. Coler just asked you a question of

11 the fact that your opinion, it, it would not be consistent

12 with him firing the weapon.

13 But is it possible that he could of fired the weapon?

14 A It is a possibility and the gunshot residue could of

15 been removed in some way.

16 Q Sure. Absolutely.

17 Could it also be possible the fact of his being close

18 on the trigger somewhere and somebody else's hand could be

19 on the trigger as well?

20 A That is also a possibility, yes, sir. The other

21 person's hand was obscuring his, the back of his

22 right-hand---

23 Q Correct.

24 A ---it's a possibility.

25 Q Now, you testified that there's an ejector port.

Ila Simmons - Cross-examination
by Mr. Reckenbeil

1 And in your experience, is this, State's No. 7, is that
2 a semiautomatic gun?

3 A Yes, sir.

4 Q Okay. And here in State's Exhibit No. 4, is this a
5 semiautomatic weapon?

6 A Yes, sir, it also appears to be.

7 Q Okay. And it's possible, because the, the, the shell
8 casings come flying out of where this little hole is, is it
9 possible for gunshot residue to come out of there as well?

10 A Yes, it does.

11 Q And you believe, in your opinion, that five feet away
12 is the plume in which we see here on the, the exhibit, that
13 little snow cloud, goes, correct?

14 A Yes, with most handguns depending upon the caliber.

15 Q Did you ever test the clothes of Mr. Easler?

16 A No, sir, I did not.

17 Q That was never bought to SLED?

18 A No, sir.

19 Q So, you couldn't tell us whether or not there was any
20 gunshot residue on his, on his front area, could you?

21 A No, sir.

22 Q All right. And did you ever test the clothes of Mr.,
23 Mr. Keam?

24 A No, sir.

25 Q Okay. But you did test and you found the fact that it

Ila Simmons - Cross-examination
by Mr. Reckenbeil

1 came up to some level, but it didn't come to the threshold
2 level on Tony Keam's hands, correct?

3 A On Mr. Keam we found the threshold levels. However,
4 when I took it on to the microscope, we did not find
5 confirming particles.

6 Q Right.

7 Cause that's why your, that's why your test -- yeah,
8 make sure, first of all, for me, we do it the right way.
9 Have a second to look at that.

10 A Yes, sir.

11 Q Is that the report that you prepared in this case?

12 A Yes, sir, it is.

13 Q Does that look like it's a fair and accurate copy of
14 what you I think have in your lap?

15 A Yes, sir.

16 MR. RECKENBEIL: At this time, Your Honor, we would
17 move that as Defense No. 1 into evidence.

18 SOLICITOR COLER: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Whereupon, the SLED report was marked as Defendant's
21 Exhibit No. 1 and received into evidence at this time.)

22 Q Back to my question is, is that if you look on the
23 second page, and you were saying is the fact that the round
24 particles, that's why it demonstrates that there's a
25 negative result for each one of those for Tony Keam?

Ila Simmons - Cross-examination
by Mr. Reckenbeil

1 A Right. That's why the right palm says no gunshot
2 residue was found and the other say that the metals found
3 did not indicate the presence of gunshot residue.

4 Q Sure.

5 And then if you flip over to the, to the front side,
6 that's Mr. Easler's and he actually has all the particles
7 that give you a positive test like it demonstrates in 12.1 I
8 believe it is?

9 A On, on 12.1, which was the right palm, on someone who's
10 sustained a gunshot wound, we don't, we don't take the, to
11 the second step. We don't analyze the particles on the
12 microscope simply because we can not differentiate if it
13 came from having a gun fired in your vicinity or if you
14 were, were firing the gun.

15 Q Sure.

16 A So, it takes six hours to run your samples. So, with
17 someone who's received a gunshot wound, we don't analyze the
18 particle lift portion.

19 Q I understand that.

20 But again, it could be the fact that he's in close
21 proximity, as Mr. Coler called it, a defensive posture or
22 the fact that his hand was actually on the gun or close
23 thereof when it was actually being fired?

24 A Yes, that's a possibility.

25 MR. RECKENBEIL: And Your Honor, if I could just

Ila Simmons - Cross-examination
by Mr. Reckenbeil

1 publish this to the jury?

2 THE COURT: You may.

3 Q Thank you for coming up.

4 A Thank you.

5 SOLICITOR COLER: No redirect, Your Honor.

6 THE COURT: All right. You may step down. Thank you.

7 SOLICITOR COLER: If there's no objection, Your Honor,

8 we'd ask that Agent Simmons be released from her subpoena.

9 MR. RECKENBEIL: No objection.

10 THE COURT: She may be. Thank you.

11 SOLICITOR COLER: State calls Reid Lindsey.

12 REID LINDSEY, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR COLER:

16 Q State your full name for the record if you will.

17 A William Reid Lindsey.

18 Q And tell us where you work.

19 A Spartanburg County Sheriff's Office.

20 Q And what is your title or position with the Sheriff's
21 Office?

22 A I'm a detective currently assigned to the white collar,
23 sexual assault division.

24 Q How long have you been a detective with the Spartanburg
25 County Sheriff's Office?

Reid Lindsey - Direct examination
by Solicitor Coler

- 1 A I've been a detective for seven years. I started out
2 working property crimes for about three years, and then I
3 did a four year tour in violent crimes/homicide, which is
4 what I was doing when this occurred. And then I began this
5 year -- I moved to the sexual assault/white collar.
- 6 Q All right. And how long have you been in, in law
7 enforcement all together?
- 8 A About ten and a half years.
- 9 Q Were you dispatched to this incident as the lead
10 investigator?
- 11 A Yes, I was. I actually was on call. We get -- in
12 violent crime enforce and detect, you're on call rotation
13 for a week, and if you're in violent at the time you would
14 respond to any homicide or shootings, things of that nature,
15 during your on call week. I happened to be working second
16 shift that night. So, I was already working and I did
17 respond to this.
- 18 Q All right. Where did you go or where did you respond
19 to first?
- 20 A I went to Red's Bar & Grill on Hayne Street.
- 21 Q And for the record, that's in Spartanburg County?
- 22 A Yes, it is.
- 23 Q All right. Walk us through what you saw and what you
24 did upon arriving at Red's Bar & Grill.
- 25 A When I arrived, the deputies had been there for a few

Reid Lindsey - Direct examination
by Solicitor Coler

1 minutes. I forgot where I was. I was somewhere out in the
2 county, and it took me, I guess, anywhere from ten to
3 fifteen minutes to get there.

4 When I arrived, the deputies had already secured the
5 scene. You have Red's, which is on a two lane street, which
6 sits off 50, 60 feet I guess, and the deputies had
7 secured -- with this being Red's, you had crime scene tape
8 on either side blocking the roadway so no cars could come
9 through on either way.

10 There were several deputies dealing with folks that
11 were around the area. You had a young lady, I believe her
12 name was Mrs. Bishop, she was there. She attended to the
13 victim. The victim had already been transported by EMS. I
14 did see some debris in the roadway indicating that they had
15 done some work on him before they transported him. There
16 was another detective who had contacted me by phone, Mrs.,
17 Officer Howe. She was out working as well and I asked her
18 if she'd go ahead and get to the scene, try to find some
19 witnesses, start getting statements, getting things secured
20 up best we could.

21 It's a bar. You have a lot of cars in the parking lot.
22 If -- you have a lot of things going on. You do the best
23 you can to try to preserve everything the way it is.

24 Q At some point did you have an occasion to meet with or
25 speak with Investigator or Deputy Cockrell?

Reid Lindsey - Direct examination
by Solicitor Coler

1 A Yes, I did. He was one of the sergeants who was on the
2 scene. There was a couple supervisors. There were several
3 deputies. He told me that there was a Asian male there by
4 the name of Channack Keam who was involved in the incident
5 in some way. He said that he was a little bit uncooperative
6 with basically, not being uncooperative physically, but he
7 wasn't getting the answers that he, he thought were
8 appropriate, and also that he was intoxicated.

9 Q Okay. Did you do something with Mr. Keam or did Deputy
10 Cockrell ask you to speak to Mr. Keam?

11 A Yes, he did. I, I actually went and did some other
12 things before I spoke. I went inside the bar. I understood
13 that, that, you know, the victim, and possibly Channack, and
14 a couple other people actually were in the bar before they
15 came out and before the victim got shot. So, I went in the
16 bar and talked to a couple people in there. Also viewed a
17 video where you actually see Channack, Mr. Easler, another
18 Asian, another girl named Victoria, and another male later
19 identified as Tyler, all inside Red's and they get asked to
20 leave.

21 Q Okay. And that's the video we couldn't get to play
22 yesterday?

23 A Yeah, that's the video.

24 Q You have an occasion watch it?

25 A Yeah, I watched it in Red's that night.

Reid Lindsey - Direct examination
by Solicitor Coler

1 Q Is it fair to say that it, it fairly characterizes this
2 video that simply shows the foursome being escorted out of
3 the bar?

4 A That's, that's what it shows and there's no real audio
5 or anything. It just shows people approaching them and them
6 leaving.

7 Q No fighting, no, no shoving, no pushing, nothing like
8 that?

9 A No.

10 Q Okay. They're, they're escorted out of the bar?

11 A Yes, sir.

12 Q Okay. Do you remember what color shirt Mr. Keam was
13 wearing when you saw the video from inside the bar?

14 A It was light blue.

15 Q Okay. Do you remember what color shirt he was wearing
16 when you spoke to him?

17 A Light blue.

18 Q All right. Did you have an occasion then to step back
19 outside of Red's and talk to Mr. Keam?

20 A Yes, as I went inside and talked to people, I got, I
21 need to get some background information about what had
22 happened, get an idea of what I was dealing with. And once
23 I got that information, I directed some detectives to do
24 some things.

25 We needed to take -- first, we had all these people

Reid Lindsey - Direct examination
by Solicitor Coler

1 inside of Red's that we needed to talk to all of them. So,
2 I went inside and made an announcement basically be patient,
3 we're gonna have to talk to all of you. Then I came back
4 out and then directed people to do that and that's when I
5 went and spoke with Mr. Keam because obviously he was there,
6 you know, standing over the victim when he had been shot.
7 So, I needed to talk to him.

8 Q At that point was Mr. Keam a suspect?

9 A No, he was not.

10 Q Okay. At that point were you treating him as a, as a
11 witness?

12 A Absolutely.

13 Q Who may of had or may have valuable information?

14 A Well, he had to have some information. He was there
15 immediately when the person that had been shot.

16 Q Okay. Where did you take Mr. Keam to talk to him?

17 A I had parked my car up the street because obviously the
18 crime scene tape was up. I didn't go underneath it. So,
19 there was -- I think it was one of the entrances to Tindal
20 Concrete or the concrete place there. I had to park my car
21 in there. So, I asked him if he would walk up there with
22 me. Like I said, he was inside the crime scene tape
23 standing next to a police car by himself.

24 I went and got him, just asked him to walk up the
25 street with me, and we walked to my car, and we got -- he

Reid Lindsey - Direct examination
by Solicitor Coler

- 1 sat in the front passenger seat, and I sat in the driver's
2 seat.
- 3 Q And at that point he was not under arrest?
- 4 A No, he was not.
- 5 Q He was not a suspect?
- 6 A No, he was not.
- 7 Q You were talking to him as a, as a witness to the
8 crime?
- 9 A Yes, sir.
- 10 Q All right. Do you remember anything about his level of
11 intoxication or level of sobriety?
- 12 A Yeah, he was very intoxicated.
- 13 Q Did you smell any alcoholic beverage on him?
- 14 A Yes, I did. And at some point he told me he had
15 actually taken what -- the street name is totem pole, which
16 are Xanaxes.
- 17 Q Okay. When you got to the car, do you remember what
18 you asked him?
- 19 A Yeah, I asked him several things. I made specific
20 notes of a couple things.
- 21 Q Okay.
- 22 A I -- first I told him who I was and gave my name, told
23 him, you know, I was the investigator assigned to deal with
24 the shooting. I asked him why he was on the street. He
25 wouldn't give me a response. I asked him who was in the

Reid Lindsey - Direct examination
by Solicitor Coler

1 car -- there was information that there was a drive-by, that
2 his friend had been shot by a car that came by. So, I asked
3 him about that. He didn't know what the car was or who was
4 in the car. I asked him who he come to Red's with, and he
5 told me that he didn't never go in Red's, which I knew that
6 wasn't true cause I watched a video of him inside in Red's.

7 I told him that I had seen the video, and that this,
8 this video of him leaving had just, was only minutes before
9 the shooting had occurred. He told me he was with Victoria,
10 but he left out, that he was with another Asian male, Tyler.
11 He told me they had drove his car and it was a gray Lexus.
12 GS300.

13 I kept asking him some more questions, but it became
14 obvious that he was being evasive. I -- some of it could of
15 been the fact that he was intoxicated, and I knew I needed
16 to talk to him. So, the best way for me to do that, to
17 ensure that I was gonna have a chance to talk to him, the
18 fact that he was so intoxicated and in the public, I just
19 went and placed him under arrest for public disorderly
20 conduct. I can hold him and then wait for him to sober up
21 and then go back and talk to him.

22 Q Okay. Did you arrest him for public disorderly conduct
23 or did you have a deputy place him under arrest?

24 A I told him he was under arrest and we were gonna have a
25 deputy come over. Obviously I'm still working the scene.

Reid Lindsey - Direct examination
by Solicitor Coler

1 I'm, you know, in a, in a car with no cage. At the time I
2 wasn't wearing a gun. I don't even know if I have my badge
3 on. Typically I don't. I just wear something similar today
4 with not, you know, not a tie, a coat rather.

5 Q Okay.

6 A And so, I had asked the sergeant to come over, you
7 know, to basically, you know, put him in handcuffs and take
8 him to the Sheriff's Office for me.

9 Q All right. That was Sergeant Cockrell?

10 A Yes, sir.

11 Q All right. Describe for us what you observed when
12 Sergeant Cockrell came over and placed Mr. Keam under arrest
13 for public disorderly conduct.

14 A Well, I think I told him -- and I got a car and was
15 going around to that side and the idea was to open the door
16 up and for him to stand up, and we'll have him in the apex
17 of the door so basically you prevent -- you're leaving him
18 no space. You're gonna eliminate a struggle.

19 And it's been my experience, on numerous occasions
20 seeing someone who's intoxicated, especially under the
21 influence of, of alcohol, it's they, you know, they can
22 fight. So, I wanted to prevent this.

23 So, we went over there and I think I was assisting him
24 with help, actually helping him search him and we start
25 patting him down and I hit something really hard in the

Reid Lindsey - Direct examination
by Solicitor Coler

1 front, and he hit it about the same time I did and he shouts
2 out gun.

3 Q Okay.

4 A And then we recovered what the State's, I don't know
5 what State's Exhibit it is. That gun right there.

6 Q Did you observe Sergeant Cockrell take the gun out of
7 Mr. Keam's pocket?

8 A Yes, I did.

9 Q And what did Sergeant Cockrell do with the gun?

10 A He secured it and we placed it in evidence.

11 Q All right.

12 A I did -- one thing. I did make note of the caliber,
13 which was a .357 Sig. I initially thought the gun was a
14 Glock. But that was an error. It's a Springfield Armory I
15 believe. But I did know the caliber because I've worked
16 several homicides and shootings and such and it's an odd
17 caliber. Not that it's an odd uncommon round. Typically
18 you run into 9-millimeters, 40 calibers and 25's, something
19 like that.

20 Q All right. This was a .357 Springfield Armory?

21 A Sig.

22 Q And Sig is the abbreviation for that?

23 A Basically -- yeah, it's a .357 Sig. It's an actual
24 round developed by Sig.

25 Q All right. Did you -- do you recall, from your memory

Reid Lindsey - Direct examination
by Solicitor Coler

1 or your notes, Mr. Keam making any statement to you or to
2 Deputy, Deputy Cockrell as he was being placed under arrest
3 for the public disorderly conduct charge or as the weapon
4 was being taken out of his pocket?

5 A Yeah, he, he made -- he said I shot him.

6 Q Okay. Was that question in response to a question, I
7 mean that answer in response to a question by you or by
8 Deputy Cockrell?

9 A No, we were, we were putting him in handcuffs or, you
10 know, placing him under arrest.

11 Q Okay.

12 A Especially after we found that gun.

13 Q Would it be fair to characterize that as a spontaneous
14 statement?

15 A Absolutely.

16 Q All right. And that was -- how, how close in time was
17 that to you-all discovering or recovering the gun?

18 A In process of.

19 Q Okay. After, after he made that statement and, and was
20 arrested, did you proceed to advise him of any rights he had
21 under the Constitution?

22 A I advised him of his Miranda. I have a card that I
23 keep in my pocket.

24 Q Okay.

25 A And I read him his rights from that card.

Reid Lindsey - Direct examination
by Solicitor Coler

1 Q All right. After you -- did you complete reading his
2 rights to him?

3 A I did. But during the middle of it he told me he knew
4 all that.

5 Q Okay. Did you complete it anyway?

6 A Yeah, I went ahead and finished.

7 Q All right. What was done with -- did you -- do you
8 remember hearing any other statement made by Mr., Mr. Keam
9 after you made a, advised him of his Miranda warnings?

10 A No, I didn't and I'm aware that, that Sergeant Cockrell
11 did. But I was in the process of reading his rights. I did
12 not hear that.

13 Q Okay. All right. Where was he taken after that?

14 A He was taken to the Sheriff's Office.

15 Q Okay. Did you stay on the scene much longer after
16 speaking to Mr. Keam?

17 A I don't remember how long I did. But I did stay on a
18 while longer to get some things, make sure the shell casings
19 got collected, things like that, make sure all the photos
20 were being taken. Then I left shortly thereafter and went
21 back to my office.

22 Q Okay. What did you do when you got back, got back to
23 the Sheriff's Office?

24 A I had contacted Victoria by phone and I interviewed
25 her.

Reid Lindsey - Direct examination
by Solicitor Coler

1 Q All right. Who is Victoria?

2 A Victoria is a, was one of the, the female that was with
3 Mr. Keam---

4 Q Okay?

5 A ---at Red's.

6 Q All right. You contacted her by phone and where, where
7 did you conduct an interview of her?

8 A At the Sheriff's Office.

9 Q You asked her to come down?

10 A Yes, sir, she met me down there with Tyler.

11 Q Okay. And who is Tyler?

12 A Tyler is her, actually her brother. But he was also
13 the other Asian male that was with Mr. Keam.

14 Q All right. Did you interview Tyler?

15 A No, Detective Bryant interviewed Tyler.

16 Q Okay. All right. After that, did you have a, an
17 occasion to again speak with Mr. Keam?

18 A Yes, I did. It was later that morning. I actually had
19 gotten him a drink like around one o'clock, and I could
20 tell, you know, he was still somewhat intoxicated. So---

21 Q And when you say drink, you talking about a Pepsi?

22 A Yeah, yeah. You know, from like the vending machine
23 downstairs.

24 Q Oh.

25 A And I guess it was about three o'clock, some time

Reid Lindsey - Direct examination
by Solicitor Coler

1 around then, we went back and talked to him, myself and
2 Detective Bryant.

3 Q About how many hours after the incident was that when
4 you spoke to Mr. Keam the second time approximately?

5 A I think about five hours. I think the call came in
6 around 10:00 and it was about three o'clock in the
7 morning---

8 Q Okay. All right.

9 A ---if I'm correct.

10 Q Describe for us, if you would, Mr. Keam's sobriety or
11 intoxication level at three o'clock in the morning when you
12 subsequently interviewed him?

13 A Well, I asked him, I asked him, you know, if he was
14 sobering up and he was, he said he was. And not only that,
15 his voice, you know, his speech was no longer slurred. He
16 wasn't unsteady. You could tell that he had sobered up.

17 Q Okay. Was it -- did it appear to you that he was clear
18 minded?

19 A Yes, he was.

20 Q When you spoke to him, did he respond to you in a
21 timely manner?

22 A Yes, cause I actually did another waiver, waiver of
23 rights with another -- read him his rights again, went over
24 the waiver, actually had to read one of the lines of the
25 waiver.

Reid Lindsey - Direct examination
by Solicitor Coler

1 Q Okay. And the, the waiver form is a form you use as a
2 sheriff's investigator?

3 A Yeah. Yes, sir.

4 (Whereupon, the pre-interrogation waiver form was
5 marked as State's Exhibit No. 8 for identification purposes
6 only at this time.)

7 Q All right. I'm going to hand you what's been premarked
8 as State's Exhibit No. 8.

9 Is that, is that the waiver form you used to interview
10 Mr. Keam?

11 A Yes, it is.

12 Q Does it appear to be in the same condition as to when
13 you prepared it back on the night of this incident?

14 A Yes, it is actually a carbon copy. I wrote on top of
15 the white copy and it goes right through.

16 SOLICITOR COLER: All right. Your Honor, at this point
17 we'd offer State's No. 8 into evidence.

18 MR. RECKENBEIL: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Whereupon, State's Exhibit No. 8 was received into
21 evidence at this time.)

22 Q All right. Tell the jury what the, what the waiver
23 form says and how you use it when you get ready to interview
24 or talk to a suspect.

25 A It's got a couple different parts here. You got the

Reid Lindsey - Direct examination
by Solicitor Coler

1 top that has the information, name, address, the date, the
2 time, the location, which on this is SCS, which is
3 Spartanburg County Sheriff's Office, with the case number
4 and---

5 Q I'm sorry to interrupt you. We got it on the overhead.
6 That may be easier. You can use that laser.

7 A You see this is the part with the name. The, the
8 person you're talking to, that's their information, the case
9 number up here then you have the actual rights, which it's
10 basically the same thing I read from the card, but it's
11 actually on this form. And I read each line. After each
12 line I will write my initials after, to ensure that I've
13 read that line and I do it as I go down. And after I read
14 all five of these, we go to the part right here and it says
15 the above rights are read to me by myself, W. Lindsey, and
16 he signs right there and you witness.

17 About -- the second part is he actually waives, waives
18 it. It says I waive and give up my rights as explained
19 above and agree to talk to Officer Lindsey in reference to a
20 shooting, and my statement, any -- my statement that I make,
21 make is of my own free will without fear, threat, or
22 promise, or favor of reward of any kind. It says I'm able
23 to read and write the right English language and finished 12
24 years in school. And I do this myself. I ask him what high
25 school he went to or what was their last place of, you know,

Reid Lindsey - Direct examination
by Solicitor Coler

1 education, and he told me Little High School. Then you
2 witness again, he signs, he signed, and you witnessed, and
3 you have a notary, Jason Bryant.

4 Q All right. Did Mr. Keam, in fact, sign this portion of
5 the waiver form indicating that you read him his Miranda
6 rights?

7 A Yeah, he signed there and he signed here.

8 Q All right. And when he signed down here, did he sign
9 indicating that he was willing to waive those rights and
10 speak to you about what happened?

11 A Yes, he did.

12 Q All right. Did you ever make him any promises or make
13 any threats to him to get him to talk to you?

14 A No, I did not.

15 Q Did he appear to be sober now at three o'clock in the
16 morning when you were talking to him?

17 A Yes, he did.

18 Q Did he appear to you that his statement was given to
19 you freely without any promise or threats?

20 A Yes, it was.

21 Q All right. Now, when you take a statement, they're
22 several different ways you can take a statement, is that
23 correct?

24 A That is correct.

25 Q What, what different ways do you employ as an

Reid Lindsey - Direct examination
by Solicitor Coler

1 investigator to take a statement?

2 A I typically use two. I'll either take a written
3 statement or do an audio statement. And typically what I do
4 is, during the interview when we get to the point we're
5 taking a statement, I ask them what they want to do, would
6 you rather have a, do a written statement or would you
7 rather have an audio statement.

8 Q Okay.

9 A And in this case it was an audio statement.

10 Q All right.

11 (Whereupon, the audio cassette was marked as State's
12 Exhibit No. 9 for identification purposes only at this
13 time.)

14 Q I'm gonna hand you what's been premarked State's
15 Exhibit No. 9.

16 Is this an audiotape of the statement Mr. Keam gave to
17 you on September 22nd of 2007?

18 A Yes, it is.

19 Q Before testifying today, have you had an opportunity to
20 listen to it?

21 A Yes, I have.

22 Q Does it accurately portray or depict your interview of
23 Mr. Keam on September 22nd of '07?

24 A Yes, it does.

25 SOLICITOR COLER: Your Honor, at this point we'd offer

Reid Lindsey - Direct examination
by Solicitor Coler

1 State's No. 9 into evidence and offer to publish to the
2 jury.

3 MR. RECKENBEIL: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Whereupon, State's Exhibit No. 9 was received into
6 evidence at this time and a small portion was published to
7 the jury at this time.)

8 Q Let me stop you right there.

9 Whose voice is that?

10 A That's Detective Bryant. He was in the room with me.

11 (Whereupon, the remainder of State's Exhibit No. 9 was
12 played for the jury at this time.)

13 Q That's all the questions I have for you, detective.

14 Please answer any questions Mr. Reckenbeil may have.

15 CROSS-EXAMINATION

16 BY MR. RECKENBEIL:

17 Q Investigator Lindsey, you are the lead investigator, as
18 you testified on direct examination, that night, correct?

19 A Yes, sir.

20 Q So, you would be in charge of all the officers that
21 were out there gathering the evidence?

22 A Yes, sir.

23 Q Okay. How many officers would you estimate were out
24 there that night?

25 By your facial expression, I imagine it was a lot?

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 A It, it would be a guess. I, I -- seven or eight, maybe
2 ten, I don't know. There were several.

3 Q A lot?

4 A Yes, sir.

5 Q Okay. And in your estimation of trying to picture that
6 night, how far would you guess the crime tape was roping off
7 this area that's shown by State's Exhibit No. 1?

8 A I guess it's -- are you talking about this, on the
9 roadway?

10 Is that what you're asking about?

11 Q I'm saying just---

12 A Cause basically that's what it was. You had the road
13 blocked off and you're, there's another, some tape around
14 kind of blocking off just to keep you from walking across
15 the shell casings. But a guess is, I don't know, a hundred
16 yards on either side to the road. I don't know. Maybe not
17 that far.

18 Q Sure.

19 Okay. And in your experience, how long would you say
20 that the officers would be out there collecting evidence?

21 A On this one?

22 Q Uh-huh. (Affirmative).

23 A It could be -- sometimes, you know, it just varies. It
24 depends on -- I guess because you have so many people to
25 talk to.

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 Q Sure.

2 A You got to let the cars get out and everything else.
3 It could be a couple hours. It could be the next day. I
4 think this one was maybe three or four hours.

5 Q Okay. And you actually testified that you told people,
6 the patrons in the bar, sorry, folks, I need you to sit
7 tight, it's gonna be a while, stay in the bar, we need to
8 take some interviews of you people?

9 A Yeah, I actually got on the intercom inside the bar,
10 yeah.

11 Q Okay. And there was numerous amounts of interviews
12 taken by eye witnesses and people that were in the bar?

13 A Yes, there was.

14 Q All right. First off I want to talk about the fact
15 there's no question that in your investigation that they
16 were kicked out of the bar for bringing beers in improperly
17 and an argument ensued or whatever it might be classified,
18 but they were escorted out of the bar?

19 A Yeah, that's correct.

20 Q Okay. And in your investigation, from the witness
21 statements, would it be fair to say that one of the witness
22 statements from one of the gentlemen working there said that
23 he saw Shane and Tony walking away?

24 A That's correct.

25 Q And it would be fair to say that, from 03 and 04 that's

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 where there was the, the blood from the towels and also
2 blood in the roadway, that's ultimately where Shane was
3 located?

4 A That's correct.

5 Q Now, in any witness statements, in any police reports,
6 in anything, was there anybody telling you that they noticed
7 a bullet hole inside of Red's Bar?

8 A I don't remember anybody saying that.

9 Q No.

10 Anybody in any of their statements ever saying to you
11 that they, in fact, noticed a bullet hole in their car?

12 A I don't remember anybody telling me that.

13 Q And there was a lot of people there that night, weren't
14 there?

15 A Yes, there was.

16 Q A lot of people parked in that parking lot that night,
17 weren't there?

18 A I would estimate it was probably 30 cars.

19 Q Okay. Now, we see that there's a fence line, and I'm
20 not too familiar with that area. So, I'm going to go by
21 your expertise of the area.

22 Is there actually a fence there?

23 A I think -- yeah, it's, it's a chain link fence. It's
24 got---

25 Q Okay. Chain link fence.

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 A ---stuff growing on it.

2 Q Now, any sort of notification that there was any bullet
3 holes in that fence?

4 A No.

5 Q Did Tindal Concrete ever report to you and say that
6 there was bullet holes in Tindal Concrete windows, doors, or
7 anything like that?

8 A No, they did not.

9 Q So -- and in this whole, in fact, vast area that we're
10 talking about here, not one officer, and not one eye
11 witness, not one employee, puts in their statement that they
12 actually found a bullet?

13 A I would have to actually go back and read all of them,
14 but I do not remember anyone saying that.

15 Q Yes, sir.

16 Nothing?

17 A No.

18 Q Just shell casings?

19 A That's correct.

20 Q And shell casings, in your experience, is what houses
21 the bullet, the bullet is projected and the shell casings
22 pops out the side of the gun?

23 A That's correct.

24 Q And we can see from this exhibit that there are, count
25 with me, eight shell casings around F, 13, 12, 11, 10, 9, 8,

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 7, 6?

2 A Yeah, that's right near the light pole in the corner.
3 Is that what you're talking about?

4 Q Yes, sir.

5 A Right.

6 Q Right by the light pole.

7 Eight shell casings?

8 A That's correct.

9 Q Would that be consistent with the fact of somebody
10 rapidly firing a weapon?

11 A It's very possible.

12 Q And because you're located -- there's a pretty good
13 cluster of those shell casings there, right?

14 A You combined that with the fact that some of the
15 witnesses heard a series of bangings, yes.

16 Q Yeah, bam, bam, bam, bam, bam?

17 A That's correct.

18 Q Right.

19 But nobody testified that there were any bullet holes
20 in Red's Bar, right?

21 A That's correct.

22 Q Nobody testified there were any bullet holes in their
23 cars?

24 A That's correct.

25 Q Nobody testified that they found any bullets, right?

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 A That's correct.

2 Q So, is it possible that an individual with that amount
3 of shell casings just shot the gun in the air?

4 SOLICITOR COLER: Your Honor, I object. That calls for
5 this witness to speculate.

6 THE COURT: Overruled.

7 SOLICITOR COLER: Thank you.

8 Q The question again, with the evidence, the fact of what
9 we have here, no bullets being found, no bullets in the, in
10 the bar, no bullets in the car, no bullets in the fences,
11 and you have all those shell casings, is that not consistent
12 or is it possible that somebody just shot the gun in the
13 air?

14 A That is a possibility.

15 Q Okay. Well, we'll come back to that.

16 You also heard that there was testimony from one of the
17 bartenders that Tony was argumentative in the bar?

18 A Yes, sir.

19 Q And he was argumentative about the fact of being kicked
20 out?

21 A Yes, sir.

22 Q And you also heard one of the employees at the bar
23 saying that Shane, who frequented the place, came up to Tony
24 and said hey, buddy, calm down?

25 A Yes, sir.

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

- 1 Q You don't need to be doing that?
- 2 A Yes, sir.
- 3 Q In your investigation, due to the fact that you are the
- 4 lead investigator, talking with all the witnesses that
- 5 you've had the opportunity to, could you classify Tony and
- 6 Shane as being friends?
- 7 A Yes.
- 8 Q Could you classify them as being good friends?
- 9 A According to the family they were.
- 10 Q Okay. And there's no question of the fact that Tony
- 11 admitted to you that he took some Xanaxes?
- 12 A That's correct.
- 13 Q That they were at his house drinking beforehand?
- 14 A That's correct.
- 15 Q And that several witnesses say the fact that Tony Keam
- 16 was grossly intoxicated?
- 17 A Yes, sir.
- 18 Q Did you have an opportunity, in your investigative
- 19 capacity, to review the, the gun residue test?
- 20 A I've read the report, yes, sir.
- 21 Q And you see the fact where the gun residue test comes
- 22 back negative on Tony Keam?
- 23 SOLICITOR COLER: Judge, I'm gonna object to that as
- 24 being argumentative and also that this witness is not expert
- 25 on gunshot residue. The residue expert was here and

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 testified to her report. I think for him to ask this
2 witness about somebody else's report goes beyond the scope
3 of his knowledge or expertise.

4 THE COURT: Well, if he doesn't have knowledge of it or
5 any expertise in it he can't respond to it.

6 SOLICITOR COLER: I'd also, and I'd also argue, or not,
7 also object because Mr. Reckenbeil's questions are
8 argumentative.

9 MR. RECKENBEIL: I'll---

10 SOLICITOR COLER: The question is saying what the
11 report says. Agent Simmons was here and testified to what
12 the report said. I'm not so sure she ever used the word
13 negative.

14 MR. RECKENBEIL: Okay.

15 THE COURT: All right. Rephrase your question.

16 SOLICITOR COLER: Thank you.

17 Q You, you see the -- you've, you've reviewed the report,
18 sir?

19 A That's correct.

20 Q And you've heard the testimony of Agent Simmons?

21 A That's correct.

22 THE COURT: Let me ask you to please use that
23 microphone.

24 WITNESS: Yes, sir.

25 Q And you would agree with me that the test that she

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 conducted came out to be what it was, the fact that her gun
2 residue test said that there was no amount detectable on
3 Tony's hands, hands, left and right?

4 A That is correct.

5 Q You would also see on the back of that, the second
6 page, or it might be on the first page, that there was gun
7 residue in, according to her test, on Shane Easler's
8 right-hand?

9 A Yes, sir.

10 Q Right palm.

11 A Yes, sir.

12 Q You also heard and I want you also -- you've been a
13 police officer for ten and a half years?

14 A Yes, sir.

15 Q I want you to use your experience as a police officer
16 in answering these questions as well, and if you can't
17 answer them, you can't answer them, but she also testified
18 the fact that it's very possible that when the gun is firing
19 and the plume comes out, as Mr. Coler said, it could be a,
20 defensive, but it's also the fact that his hand could be on
21 the gun when it's being fired?

22 A Yes, sir.

23 Q It's possible?

24 A Yes, sir.

25 Q Now, looking back up on here, you see the fact of all

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 those shell casings, the eight up by the fence line, by the
2 light pole, is it possible and is it consistent with the
3 fact of the officers, as they've testified before, the
4 bouncers they've testified before, that Tony Keam and Shane
5 Easler are walking from the bar towards the Hot Spot?

6 A That's possible, yes, sir.

7 Q Okay. Would it be consistent with what people have
8 reported to you about the fact that they saw them walking
9 away?

10 A It's consistent they were walking -- it's consistent
11 they were walking away, yes.

12 Q All right. And it's also consistent with the fact with
13 what evidence has come in with the lady seeing Tony Keam and
14 Shane Easler on the side of the road, Mrs. Phelps?

15 You remember that?

16 A Yes, sir.

17 Q Okay. With the fact of taking everything that I've
18 just talked about, the fact that you have gun residue on
19 Shane's hand, you have the fact that Shane and Tony are best
20 of friends, you have the fact that there are shell---

21 SOLICITOR COLER: Your Honor, I'm gonna object again.
22 This is argumentative. He's making a closing argument.

23 THE COURT: Well, sustained.

24 Q Is it not possible that Shane Easler put his hand on
25 the gun and it accidentally went off?

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 SOLICITOR COLER: Judge, again---

2 THE COURT: Sustained.

3 Let's me, let me see y'all just a minute...

4 (Whereupon, a bench conference was held out of the
5 hearing of the jury at this time.)

6 Q Let's move to your oral, oral statement that you took
7 from Mr. Keam.

8 First off, you felt, at that point in time, that he was
9 capable to give a statement?

10 A Yes, I did. That's why I asked him about it.

11 Q Right.

12 And you felt that he was, he was trying to be truthful
13 at that point in time?

14 SOLICITOR COLER: Again, objection. That calls for
15 this officer---

16 MR. RECKENBEIL: I'll strike that.

17 SOLICITOR COLER: ---to speculate.

18 Thank you, Your Honor.

19 MR. RECKENBEIL: I'll strike that.

20 Q You felt, in fact, that he was capable enough to give
21 that statement?

22 A I do, yes.

23 Q All right. And you testified first that when you
24 interviewed him at the scene that he was grossly
25 intoxicated, that's why you had him arrested for public

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 disorderly conduct?

2 A There's no question he was intoxicated/drunk at the
3 scene.

4 Q All right. And when you have him outside the vehicle,
5 you and Officer Cockrell started patting him down?

6 A That's correct.

7 Q But before this pat down and before Miranda it was
8 reported to you that Tony said that he said he shot the gun
9 or he shot him?

10 Do you remember testifying to that?

11 Did Cockrell not report to you the fact that Tony made
12 this just statement the fact that he shot him?

13 A No, he -- when we were -- when we went to arrest him
14 and we found the gun he said I shot him.

15 Q Right.

16 And that was before Miranda?

17 A And that was before Miranda.

18 Q Before Miranda.

19 A Correct.

20 Q Then Cockrell finds the gun and you use the word
21 shouted gun?

22 A Yeah, I mean it's -- I would say shout, raised voice, I
23 don't know how you want to put it. I would classify it as
24 shout. You're trained that, from the time you leave the
25 academy, obviously a gun is a very dangerous, dangerous

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 instrument.

2 Q Uh-huh. (Affirmative).

3 So, it heightened the anxiety of Officer Cockrell, did
4 you -- is that fair to say?

5 A Oh, absolutely.

6 Q All right.

7 A Myself too.

8 Q You did as well?

9 A Any police officer would have a heightened sense of
10 anxiety when you have a gun.

11 Q And then you immediately start to Mirandize Tony Keam?

12 A Oh, absolutely, yes, sir.

13 Q Tell him about his rights to remain silent, right to a
14 lawyer?

15 A (Witness nods affirmatively.)

16 Right, at that point, he, you know, we're putting him
17 in handcuffs, he's under arrest, he's in custody, so, you
18 know, his Miranda rights kick in.

19 Q And is it your testimony that you didn't hear him say I
20 didn't do it, I wouldn't kill my bro?

21 A I, I don't remember. I'm not saying that he didn't say
22 that. I just don't remember him saying that.

23 Q You don't remember that?

24 A No.

25 Q Okay. Moving to the tape, he said that, at first, he

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 didn't remember being at Red's Bar?

2 A That's correct.

3 Q But it's clear that he was?

4 A Yes, sir, it's clear. That's the reason we knew he
5 wasn't being cooperative.

6 Q But he admitted that on the tape?

7 A That's correct.

8 Q And when you said to him in that question that whether
9 it was an accident, remember that?

10 The very tail-end of your statement that he said you
11 know, do you feel---

12 A Yeah, I mentioned that on the tape. I didn't actually
13 ask him. But in the interview before we took the statement,
14 if it was an accident.

15 Q But you remember what, in fact, that you said in that,
16 that question that whether it was an accident?

17 A That's correct.

18 Q And his response was yes, I'm responsible, but I don't
19 remember it?

20 A That's correct.

21 MR. RECKENBEIL: Your Honor, if I could have one
22 second?

23 (Pause.)

24 Q The gun, it was found in his back pocket?
25 Not in his front pocket?

Reid Lindsey - Cross-examination
By Mr. Reckenbeil

1 A It was on his right side. I believe it was in his back
2 pocket.

3 Q Back pocket.

4 All right. Just to make sure.

5 Okay. That's all the questions I have.

6 SOLICITOR COLER: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY SOLICITOR COLER:

9 Q Mr. Reckenbeil asked you if, during the course of your
10 investigation, you obtained information that the two men,
11 Mr. Shane Easler and Channack Keam, were walking way from
12 the bar down Hayne Street.

13 A That's correct.

14 Q And you said you did.

15 Did you also obtain information that there was an
16 argument going on or some dispute between the two of them?

17 A Yes, I did.

18 Q Okay. Mr. Reckenbeil asked you if, if it was reported
19 to you that Channack Keam said I shot him.

20 You -- were you actually present when he said that?

21 A Yes, I was, I was, that was during the pat down.

22 Q Okay. That wasn't reported to you by somebody?

23 You were present and heard that?

24 A No, I heard that myself, yes, sir.

25 Q Okay. There were a lot of police officers at Red's Bar

Reid Lindsey - Redirect examination
by Solicitor Coler

1 & Grill at 10:15 on September 21st, 2007?

2 A That's correct.

3 Q What -- is it fair to say that most of them were there
4 to secure the scene for security purposes?

5 A Yeah, it was a -- I mean this was a very large scene, a
6 lot of people. It's a bar. Lots of witnesses. You need
7 people to control it.

8 Q Mr. Reckenbeil asked you about Miranda rights.

9 Did you attempt to give, did you give Mr. Keam his
10 Miranda warnings after you discovered the gun and once he
11 was placed in, under arrest?

12 A I gave him his Miranda warnings when we had him in
13 handcuffs and the gun was secured. At that point I took my
14 card out of my pocket, read him his rights. Obviously I'm
15 not gonna read him his rights when I'm getting a gun.

16 Q Was he cooperative with you then?

17 A Yes, sir.

18 Q Okay. Well, how long have you been -- I mean did he
19 listen to his rights?

20 A Yes. Yes.

21 Q Did he interrupt you at anytime?

22 A Yeah, he told me he knew all that.

23 Q Okay. Okay. Well, Mr. Reckenbeil asked you if you or
24 any of your investigators recovered or discovered any bullet
25 holes at the scene, and you said you, you think, you think,

Reid Lindsey - Redirect examination
by Solicitor Coler

1 think they did not.

2 A I don't remember that they recovered any.

3 What were you talking about, bullet holes in property?

4 Q Well---

5 A There was a bullet hole. But that wasn't in property.

6 Q There was one bullet hole.

7 A There was a bullet hole in the, in the victim right in
8 his chest.

9 Q Okay. That's all I have.

10 MR. RECKENBEIL: Briefly, Your Honor.

11 RE CROSS EXAMINATION

12 BY MR. RECKENBEIL:

13 Q Just so I'm, I'm clear is, is that you remember the
14 statement given by one of the employees that helped escort
15 Mr. Keam out of the bar. He said he heard Shane and Tony
16 arguing as they were walking out of the bar.

17 Do you remember that?

18 A Yes, sir.

19 Q And he, he said that he heard Shane say thanks, Tony,
20 for getting us kicked out of the bar. That was the content
21 of the argument.

22 A I have knowledge of what the content of the argument
23 was. But I don't know if it was by him.

24 Q Okay. And so, if they're walking -- was, was there any
25 other testimony of the fact that anyone heard what was said

Reid Lindsey - Recross examination
by Mr. Reckenbeil

1 in the street while they were in the street?

2 A There's no testimony to it, no.

3 Q Okay. Just the fact of what, he was walking out of the
4 bar and what they were saying?

5 A That's correct.

6 Q That's all. Thank you.

7 SOLICITOR COLER: No redirect.

8 THE COURT: You may step down.

9 SOLICITOR COLER: May we approach briefly, Your Honor?

10 (Whereupon, a bench conference was held out of the
11 hearing of the jury at this time.)

12 SOLICITOR COLER: May it please the Court, Your Honor.

13 That's the State's witnesses. We have one additional
14 piece of evidence to move into evidence. There's a
15 stipulation by both parties that the firearm ballistics
16 report prepared by Agent Suzanne Cromer over at SLED is, is
17 offered in evidence and is admissible as the, State's
18 Exhibit No. 16. Suzanne Cromer's SLED report.

19 MR. RECKENBEIL: Your Honor, defense would not object
20 to the stipulation.

21 THE COURT: Okay.

22 SOLICITOR COLER: That, Your Honor, that's the State's
23 case, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, that is all the testimony or evidence to be offered by

1 the State at least in their case in chief. But before we go
2 further I've got some legal matters I'll need to address
3 with the lawyers. It should take only a few moments and
4 then I'll bring you back to continue.

5 Please go to your jury room and do not discuss the case
6 in any fashion.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Any motions or matters to
10 address?

11 MR. RECKENBEIL: Respectfully, Your Honor, just for the
12 record, the defense would make a motion for a directed
13 verdict of acquittal based on the fact the State has not met
14 their burden of proof. I understand, Your Honor, just the
15 existence of the fact. But at this point in time I don't
16 believe that the State has produced any evidence to
17 demonstrate a malice or aforethought. I know it can be
18 circumstantial. But just for the record we'd make a motion
19 for directed verdict of acquittal.

20 THE COURT: All right. Well, there is direct evidence
21 and there's also substantial circumstantial evidence which
22 would tend to establish each of the essential elements of
23 the crime alleged. It's for the jury to determine whether
24 or not it establishes those elements beyond a reasonable
25 doubt.

1 So, your motion for directed verdict is denied.

2 Any other matters we need to address before we
3 continue?

4 MR. RECKENBEIL: Your Honor, my client has informed me
5 his willingness to testify. I'd like the Court to inquire
6 as to that to make sure that he understands his proper
7 Constitutional rights.

8 THE COURT: Okay. Mr. Keam, your lawyer told me that
9 you and he have discussed your right to testify as well as
10 not testify during the trial of this case.

11 Do you understand that because you're the one accused
12 of the crime you have an absolute right to remain silent?

13 In other words, nobody can make you testify. No one
14 can require that you make any statement. No one can require
15 that you answer any questions as they relate to this
16 particular charge.

17 You have an absolute right to remain silent and to
18 require the State to come into Court with sufficient
19 evidence to establish your guilt to the satisfaction of this
20 jury beyond a reasonable doubt, and you don't have to help
21 the State in their efforts to prove your guilt by you taking
22 the witness stand and making statements or answering
23 questions that might tend to prove your own guilt.

24 At the same time, if you do wish to testify and provide
25 any testimony in front of this jury, now is the only

1 opportunity that you will have to do so. In other words,
2 you can't wait until the end of the trial after the jury has
3 reached a decision and, and change your mind about what your
4 decision is as to whether or not you will testify.

5 If you elect to testify, if you do take the witness
6 stand, you'll have to answer not only your lawyer's
7 questions, but you'll have to answer the prosecutor's
8 questions to the extent they are relevant even if the
9 responses to those questions might tend to prove you guilty.
10 And if you make a decision not to testify, I will instruct
11 the jury that they may not consider that fact in any way
12 whatsoever in their deliberations or in their determination
13 as to whether or not the evidence in this case has
14 established your guilt beyond a reasonable doubt.

15 Now, have you had sufficient time to talk with your
16 lawyer about your right to testify and not testify?

17 DEFENDANT: Yeah.

18 THE COURT: And has he explained to you the advantages
19 and the disadvantages of your testifying as well as your not
20 testifying?

21 DEFENDANT: Yes, sir.

22 THE COURT: And do you appreciate what those advantages
23 and disadvantages are?

24 DEFENDANT: Yeah.

25 THE COURT: Have you reached a decision?

1 DEFENDANT: Not yet.

2 THE COURT: You haven't reached a decision yet?

3 (Defendant Keam nods negatively.)

4 THE COURT: Well, now, do you understand if you do
5 testify you're gonna have to speak up a lot louder than
6 you're speaking right now cause I can't hear what you're
7 saying?

8 DEFENDANT: I understand.

9 THE COURT: All right. Now, do you understand the
10 advantages and disadvantages of testifying and not
11 testifying?

12 DEFENDANT: Yeah.

13 THE COURT: Sir?

14 DEFENDANT: Yes, sir.

15 THE COURT: And you've discussed those with your
16 lawyer?

17 DEFENDANT: Yes, sir.

18 THE COURT: Has anyone suggested what decision you
19 ought to make?

20 Has anyone told you that you ought to testify or anyone
21 told you that you ought not to testify?

22 DEFENDANT: No.

23 THE COURT: You understand that it's your decision?

24 DEFENDANT: I understand.

25 THE COURT: You understand nobody can make that

1 decision for you?

2 DEFENDANT: I understand.

3 THE COURT: You understand you have to live with the
4 consequences of that decision and that's why it is yours?

5 DEFENDANT: Yes, sir.

6 THE COURT: And you're telling me right now you haven't
7 made a decision?

8 DEFENDANT: Yeah.

9 THE COURT: Yes, that's what you're telling me or yes,
10 you've made a decision?

11 DEFENDANT: I haven't made a decision.

12 THE COURT: You have not made one?

13 DEFENDANT: Have not made one.

14 THE COURT: And when are you gonna make it?

15 DEFENDANT: (No response.)

16 THE COURT: All right. We'll take ten minutes.

17 MR. RECKENBEIL: Yes, sir.

18 THE COURT: You talk with your lawyer. You've got to
19 come up with a decision because now is the time, you see,
20 where you get to present evidence. You testify or not. You
21 can call witnesses or not. You can call witnesses and you
22 still not testify. But now is -- the State has presented
23 their evidence and now is the time for you to present any
24 that you want to present. So, you've got to make that
25 decision.

1 You understand?

2 DEFENDANT: I understand.

3 THE COURT: All right. We'll take ten minutes. You
4 talk with your lawyer about it.

5 Court's in recess for ten minutes.

6 (Whereupon, a short recess was taken at this time.)

7 THE COURT: All right. Mr. Keam, have you had a chance
8 now to discuss with your lawyer your decision about whether
9 you'll testify or not?

10 DEFENDANT: Yes, sir.

11 THE COURT: And have you reached a decision?

12 DEFENDANT: Yes.

13 THE COURT: And is this decision, that yours?

14 It's not your lawyers?

15 It's not your families?

16 It's not somebody else's?

17 It's your decision?

18 DEFENDANT: It's my decision.

19 THE COURT: And what decision have you reached?

20 DEFENDANT: To testify.

21 THE COURT: You will testify?

22 DEFENDANT: I will testify.

23 THE COURT: Okay. All right. You can have a seat.

24 Bring the jury in.

25 MR. RECKENBEIL: Thank you.

1 THE COURT: Be sure you speak up when you testify.

2 (Whereupon, the following takes place within the
3 presence of the jury.)

4 THE COURT: All right. Ladies, ladies and gentlemen,
5 as you know, the State has concluded in their presentation
6 of evidence. So, we're now going to proceed with any to be
7 offered by the defense.

8 Mr. Reckenbeil.

9 MR. RECKENBEIL: Thank you, Your Honor.

10 May it please the Court.

11 The defense will call Channack Keam.

12 CHANNACK KEAM, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RECKENBEIL:

16 Q State your full name for the record and spell your
17 first name.

18 A Channack Keam. The first name, C-H-A-N-N-A-C-K.

19 Q And what do you go by, Tony?

20 A Tony.

21 Q All right. You just make sure you speak loud and
22 clear.

23 Tony, where were you born?

24 A In Thailand.

25 Q Okay. What part of the world is that?

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 A Southeast Asia.
- 2 Q Southeast Asia.
- 3 When did you come to the United States?
- 4 A 1982.
- 5 Q And you completed what grade when you're here in the
- 6 United States?
- 7 A Twelfth grade.
- 8 Q Do you have a pretty good understanding of the English
- 9 language?
- 10 A Yes, I do.
- 11 Q All right. Have you had sometimes difficulty when I
- 12 use some words that you don't understand?
- 13 A Sometime.
- 14 Q Okay. But for the most part, you have a pretty good
- 15 grasp of, of the English language?
- 16 A Yes, sir.
- 17 Q Okay. Just make sure you speak loud.
- 18 A (Witness nods affirmatively.)
- 19 Q Where do you live, Tony?
- 20 A I live at [REDACTED] Spartanburg, South
- 21 Carolina.
- 22 Q Okay. Who do you live there with?
- 23 A Mom, dad, brothers.
- 24 Q Okay. And at the time of when this happened, back in
- 25 September of 2007, were you living there?

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 A Yes, sir.
- 2 Q How long have you known Shane Easler?
- 3 A About five years.
- 4 Q Five years?
- 5 A Five years.
- 6 Did you guys go to school, did you guys go to school
- 7 together?
- 8 A No.
- 9 Q Just knew him?
- 10 A Just know him.
- 11 Q Okay. How would you classify Shane?
- 12 Would he be an acquaintance, a friend, good friend,
- 13 best friend?
- 14 A One of my best friends.
- 15 Q One of your best friends.
- 16 And how long would you classify Shane as being one of
- 17 your best friends?
- 18 A About a year after I met him.
- 19 Q So, about four years?
- 20 A About four years.
- 21 Q All right. Moving to the night of September 21st,
- 22 2007, we've heard some testimony of you started off at your
- 23 house that night. Just want you to tell the jury the
- 24 beginning of that night.
- 25 A Well, we was at my house and April and Tyler was there.

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 He came by.
- 2 Q Who was that, April?
- 3 A April and Tyler.
- 4 Q April and Tyler.
- 5 Okay.
- 6 A And Shane came, Shane showed up. And he brought a case
- 7 of beer. We started drinking.
- 8 Q Do you know what time you guys started drinking that
- 9 night?
- 10 A I think it was about eight o'clock.
- 11 Q Eight o'clock that night?
- 12 A I'm not sure.
- 13 Q Was there any set plan as to what to do that evening?
- 14 A Well, he said a buddy of his got a birthday party and
- 15 we was gonna go there. So --.
- 16 Q Okay. Was everybody drinking at your house?
- 17 A Just me and him really.
- 18 Q And when you say him, Shane?
- 19 A Shane.
- 20 Q Can you estimate how many beers that Shane had at your
- 21 house that evening?
- 22 A A case.
- 23 Q I'm saying drink wise.
- 24 A Oh, you mean drinking?
- 25 Q Yeah, drink wise.

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 A About four or five bottle at least.
- 2 Q Four or five bottles.
- 3 Do you remember what kind of beer it was?
- 4 A It was Bud Lite.
- 5 Q Okay. And can you recall how many beers you had that
- 6 evening drink wise?
- 7 A About the same amount he had.
- 8 Q All right. There's also been some testimony of you
- 9 consuming some what you call totem poles, is that right?
- 10 A Yes, sir.
- 11 Q And what is a totem pole?
- 12 A It's Xanax. It's other name was Xanax.
- 13 Q Have you taken totem poles in the past?
- 14 A I have.
- 15 Q Okay. And can you describe to me what sort of feeling
- 16 that does for you when you take it?
- 17 A I don't remember nothing the next day. Nothing.
- 18 Q Can, can you recall as to what the feeling it does to
- 19 you when you take it?
- 20 Not obviously post of like down the road and you not
- 21 remembering.
- 22 But does it make you hyper?
- 23 Does it make you calm?
- 24 Does it make you, you know, hallucinate?
- 25 A It make you calm to the point of sometimes it make you

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 drowsy and when you drink with it.
- 2 Q It heightens it?
- 3 A Yeah.
- 4 Q Can you recall about how many of those Xanaxes that you
- 5 took that evening?
- 6 A I took two.
- 7 Q Speak up.
- 8 A Two.
- 9 Q You took two?
- 10 A Yeah.
- 11 Q Do you recall if anybody else at that house took the
- 12 Xanaxes as well?
- 13 A Me and Shane.
- 14 Q Just you and Shane?
- 15 A Yeah.
- 16 Q Do you remember how many he took that evening?
- 17 A I believe he took two.
- 18 Q All right. Ultimately you left the house, correct?
- 19 A Yes, sir. Yes, sir.
- 20 Q Whose decision was it that you wanted to leave the
- 21 house and go somewhere else?
- 22 A I don't remember that part.
- 23 Q Do you have a specific recollection as to kind of when
- 24 the, the night that you, you had difficulties remembering
- 25 things?

Channack Keam - Direct examination
by Mr. Reckenbeil

1 Do you remember what time that could of been?

2 A I don't know.

3 Q Do you have any understanding of what time you actually
4 left the house?

5 A I have no clue.

6 Q Okay. Do you know where you went after you left the
7 house?

8 A Nope.

9 Q Well, you've heard testimony that you were at Red's Bar
10 & Grill.

11 Do you deny that?

12 A No.

13 Q Okay. Do you recall how you got there?

14 A What you mean by recall how?

15 Q Do you remember how you got to the bar?

16 A Do I remember how I got there, no.

17 Q You've heard testimony the fact that there was a Lexus
18 driven there.

19 Whose car is that?

20 A That's my car.

21 Q That's your car?

22 A Yes, sir.

23 Q Do you have any understanding, either at the time frame
24 or afterwards, who drove the car there?

25 A I remember Victoria was driving the car after.

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 Q After the fact?
- 2 A Yeah.
- 3 Q But you don't specifically recall the actual you
- 4 getting in the car and driving over to Red's Bar & Grill?
- 5 A No, I don't.
- 6 Q All right. Well, why don't you just tell the jury what
- 7 you remember after the fact of when you claim you don't
- 8 remember?
- 9 When's the next thing that you actually remember?
- 10 A The next thing I remember is when I, like, kind of wake
- 11 up from sleep walking or something and I seen Shane on the
- 12 ground bleeding. So, I went to hold his head. I sit right
- 13 next to him and hold, and hold his head up, and I try to
- 14 talk to him. He try to respond. So, I tell him not to
- 15 respond.
- 16 Q Okay. Do you remember making a phone call to 9-1-1?
- 17 A That, no.
- 18 Q All right. And it's your testimony that from the time
- 19 frame of you leaving the house to the time frame of you
- 20 being over Shane's body you don't have any recollection of
- 21 that?
- 22 A No.
- 23 Q You remember hearing in the courtroom that the 9-1-1
- 24 call?
- 25 Do you remember that, when the gentleman got on the

Channack Keam - Direct examination
by Mr. Reckenbeil

1 witness stand with the lap top?

2 A Yes. Yes.

3 Q Was that your voice?

4 A That don't sound like it to me, but it is my voice.

5 Q Do you recall any of the contents of that conversation
6 specifically now here today?

7 A What is that?

8 Q Do you recall any of the contents of that conversation
9 that you had with the 9-1-1 dispatch as you sit here today?

10 Do you have a specific recollection of you being on the
11 phone calling 9-1-1?

12 A What do you mean like?

13 Q Do you remember it?

14 A Do I remember it?

15 Q Do you remember the phone call?

16 A No.

17 Q What do you remember after the fact of you then being
18 over Shane's body?

19 What do you remember happening next?

20 A It's a lady that came and tried to help him up, give
21 him CPR.

22 Q All right. Do you remember talking to her?

23 A I'm not really sure.

24 Q What was your thought -- after you see your friend on
25 the ground, this lady's coming up to give CPR, what were you

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 thinking at that point in time?
- 2 A I didn't know what I was thinking. I don't know.
- 3 Q You don't know.
- 4 Okay. After the lady came and tried to issue CPR or
- 5 talk with Shane, what do you remember happening next?
- 6 A I asked -- well, I asked Shane what happened and then
- 7 somehow I reach in my back pocket and I felt a gun back
- 8 there.
- 9 Q Okay.
- 10 A And I---
- 11 Q Did he---
- 12 A And I---
- 13 Q ---respond to you in any way?
- 14 A He try to respond and he try to say something. I told
- 15 him don't talk. So --.
- 16 Q So, he never said anything to you?
- 17 A No, not really, no.
- 18 Q All right. Eventually you, you talked to the police
- 19 officers at the scene.
- 20 Do you remember that at all?
- 21 A Yeah.
- 22 Q All right. You probably didn't know their names at the
- 23 time, but do you remember---
- 24 A I don't.
- 25 Q ---an Officer Cockrell?

Channack Keam - Direct examination
by Mr. Reckenbeil

- 1 A No.
- 2 Q All right. Remember sitting here in trial where the
3 gentleman said that he found a gun in your back pocket, that
4 officer?
- 5 A That, that same officer?
- 6 Q Yeah.
- 7 Do you remember him?
- 8 A Do I remember talking to him or --?
- 9 Q Yes, sir.
- 10 Do you remember talking to him?
- 11 A I think so, yeah.
- 12 Q Do you remember, remember saying to the officer that
13 you shot Shane?
- 14 A No.
- 15 Q You ever remember saying to the officer and anybody
16 else that it was a drive-by shooting?
- 17 A No.
- 18 Q Do you remember having a conversation at the scene with
19 an Officer Lindsey, Detective Lindsey, excuse me, the
20 gentleman that's sitting, sitting here at counsel table?
- 21 A I don't know.
- 22 Q You don't remember that?
- 23 A Nope.
- 24 Q Eventually you were taken down to the Sheriff's Office.
25 Do you remember that?

Channack Keam - Direct examination
by Mr. Reckenbeil

1 A That I know.

2 Q Okay. And I want you, what you do -- once you have a
3 recollection, I want you to explain to the jury what you
4 remember happening after that.

5 A After what?

6 Q After the time that you start recalling the fact that
7 you were having a meeting at the Sheriff's Department with
8 Officer Lindsey.

9 A What do I remember?

10 Q Yeah.

11 A I don't know.

12 Q You heard the tape today of what was said.

13 Was that you on the tape?

14 A Yes, that was me.

15 Q Do you remember saying all that stuff?

16 A I didn't know what I was saying though.

17 Q You don't remember what you were saying?

18 A I mean I remember what I said to him, yeah.

19 But what was the question that you asked me?

20 Q Well, there was a lot of questions that were asked to
21 you.

22 My question to you is do you have a specific
23 recollection of talking with those officers at the Sheriff's
24 Department?

25 A I believe he asked me it was, it was, if it was an

Channack Keam - Direct examination
by Mr. Reckenbeil

1 accident or something like that, and I say yeah, I'm
2 responsible for it if it's---

3 Q Right.

4 A ---you know --.

5 Q And why did you answer that question that way?

6 A Why?

7 Q (Mr. Reckenbeil nods affirmatively.)

8 A Because I was being booked for murder. I got the gun
9 in my pocket.

10 Q Okay. I understand that.

11 A And I don't have any evil intent to hurt anybody, my
12 friend or anybody.

13 Q He also asked you if you had something to say to his
14 family and you heard what you said.

15 A Yeah.

16 Q Are you sorry this happened?

17 A Yes, I'm sorry.

18 Q And ultimately when, in fact, they asked you, you know,
19 that this was a drive-by, you realized that it wasn't the
20 truth as you heard yourself on the tape, right?

21 A I'm not really sure what happened.

22 Q Right.

23 So, you heard Officer Lindsey say that this was -- you
24 originally said it was a drive-by, but your testimony under
25 oath today is the fact that you just don't recall what

Channack Keam - Direct examination
by Mr. Reckenbeil

1 happened.

2 A (Witness nods affirmatively.)

3 Q You got to answer out loud. You got to answer the
4 question.

5 A What was the question again?

6 Q I said ultimately you just don't -- you said to Officer
7 Lindsey, when he answered, asked you the question, was the
8 fact of you stating that it was a drive-by a lie, and you
9 answered on the tape and you said yes. You've testified now
10 on direct examination under oath the fact that you don't
11 recall what happened.

12 Is that not true, the fact that you just don't recall
13 what happened?

14 I'm not trying to confuse you.

15 A But, but I am confused.

16 Q But you are confused.

17 A Yes, sir.

18 Q You've heard on the tape where it says you said it was
19 a drive-by.

20 A Yes, sir.

21 Q You remember that?

22 A Yes, sir.

23 Q Officer Lindsey asked you if that was a lie.

24 You remember that?

25 A Yes, sir.

Channack Keam - Direct examination.
by Mr. Reckenbeil

1 Q Isn't it true that it was a lie because now you are
2 testifying that you do not remember what happened?

3 A I guess it's true, yeah.

4 Q All right. Answer any questions that Mr. Coler has.

5 CROSS-EXAMINATION

6 BY SOLICITOR COLER:

7 Q You know what happened, don't you, Mr. Keam?

8 A What you mean by know what happened?

9 Q You remember what happened that night?

10 A No, I don't.

11 Q Your responses to Mr. Reckenbeil were slow?

12 Yes?

13 A Yes.

14 Q Delayed?

15 A Yeah.

16 Q In your mind sitting there right now you remember,
17 don't you?

18 A No, I don't.

19 Q You just don't want to say it, do you?

20 A I don't remember..

21 Q You don't want to say it in front of Shane's family?

22 A I really don't remember.

23 Q You don't want to say it in front of your family, do
24 you?

25 A I really don't remember.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q That's a convenient answer for you right now to say I
2 don't remember because---

3 MR. RECKENBEIL: Objection, Your Honor. Argumentative.

4 THE COURT: Overruled.

5 Q Does that -- does, does that answer suit Mr. Keam best
6 by just simply saying I don't remember over and over again?

7 A Because it's the facts. I was on drugs.

8 Q Okay.

9 A I took two pills. I drank some beer.

10 Q You---

11 A That's what that pill does to you.

12 Q Okay. You remember parts of the night, don't you?

13 A Parts of it, yeah.

14 Q Why is it when we get to the part, the most important
15 part, you can't remember a single thing?

16 A What -- and what is that?

17 Q The, the night your friend was shot in the chest, that
18 night, why can't you remember a single thing about that part
19 of the night?

20 A The, the part when he was shot? . . .

21 Q (Solicitor Coler nods affirmative.)

22 A Because I don't remember it.

23 Q You don't remember because it's convenient for you to
24 say I don't know because you don't want to admit what you
25 did, isn't that right?

Channack Keam - Cross-examination
by Solicitor Coler

- 1 A No, I don't remember.
- 2 Q All right. You remember what you did before you went
3 to the bar.
- 4 A Because before we went to the bar---
- 5 Q Yes or no.
- 6 A Yes.
- 7 Q You remember how many beers Shane Easler brought to
8 your house?
- 9 A Yes.
- 10 Q You remember how many Xanaxes you took?
- 11 A Yes.
- 12 Q You remember what you say Shane took?
- 13 A Yes.
- 14 Q Those are all things that happened before your friend
15 was shot in the chest.
- 16 Why can you remember those and not the incident itself?
- 17 A Because that was before we took the pills.
- 18 Q You were clear minded enough to lie, right?
- 19 A No.
- 20 Q Okay. You made a statement to everybody that would
21 listen, Teresa Bishop, Deputy Henderson, that it was a
22 drive-by shooting.
- 23 You admit that, right?
- 24 A I guess, yeah.
- 25 Q Again, why does it take you so long to answer?

Channack Keam - Cross-examination
by Solicitor Coler

1 Are you having trouble understanding me?

2 A Yeah.

3 Q Okay. Is there anything about the two words what
4 happened that you don't understand?

5 A No.

6 Q Is there anything about those two words?

7 A No.

8 Q You did tell a lie. You told everybody that would
9 listen, including a 9-1-1 operator who recorded your voice,
10 that it was a drive-by shooting and you did that because
11 that served Channack Keam best at that time, right?

12 A Right.

13 Q Okay. Now, that's no longer gonna serve you because
14 that, that clearly isn't true. Now, you've reverted to I
15 just don't know.

16 That's, that's your story, right?

17 A Because I really don't remember.

18 What you want me to say?

19 Q Well, you are -- you -- well, do you admit to me then
20 that you lie until you can't lie anymore and then when you
21 can't lie anymore you just say I don't remember?

22 Will you at least admit that to me?

23 I know it's difficult. I know you don't want to say it
24 in front of your family and in front of Shane's family.

25 A This is not a lie. Whatever I say is not a lie.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q Yes, it, it -- was it a drive-by shooting?

2 A Well, I don't know. But I did say that. But I don't,
3 I don't know.

4 Q Okay. Did the person who did the drive-by shooting
5 toss you the gun after they were done with it and you put it
6 in your pocket for safekeeping?

7 Is that your theory of what happened?

8 A No.

9 Q Okay. Why then did you tell the police it was a
10 drive-by shooting?

11 A That's just the first thing that come out of my mouth.

12 Q Right.

13 A I mean the first thing that was in my head, right.

14 Q Right.

15 The first thing, the best defense for Channack Keam at
16 this point was to tell that lie, put it on somebody else,
17 right?

18 Look, I know this is difficult. But you got to get it
19 off your chest.

20 That's why you did it, right?

21 A No.

22 Q Okay. Today you've abandoned that. You're not saying
23 it's a drive-by. Now you're just saying I simply don't
24 know, I can't answer any of your questions, I'm shutting
25 down, right?

Channack Keam - Cross-examination
by Solicitor Coler

1 A The reason why I said it because I was terrified and I
2 was---

3 Q Sir---

4 A ---I was in shock. I seen my friend bleeding.

5 Q Right.

6 You were terrified for getting into a lot of trouble
7 for what you had done, and when you are facing a lot of
8 trouble, what you do is tell a lie to get yourself out of
9 trouble.

10 That's why you lied, isn't it?

11 At least admit that part to me.

12 A I did not -- well --.

13 Q You did not what?

14 You look like you want to say something more than you
15 said.

16 Do you?

17 A Can you repeat that question?

18 Q Yes.

19 You lied until the point you could no longer maintain
20 that lie, the lie about it being a drive-by shooting,
21 because that served you best at that time?

22 A I guess.

23 Q Right?

24 A I guess, yeah.

25 Q You guess or yes?

Channack Keam - Cross-examination
by Solicitor Coler

1 I mean come on.

2 A Yes. Yes.

3 Q Okay. Now, that is no longer going to serve you
4 because, based on all the evidence and everything that we
5 know, it wasn't a drive-by shooting?

6 There's no question about that, is there?

7 A I don't know.

8 Q Okay. So, your next line of defense is I just simply
9 don't know what happened. I can remember what happened
10 before. I can remember a little bit about after. But
11 conveniently I don't, I can't answer a single thing about
12 what happened about the time my friend was shot in the chest
13 after we got kicked out of the bar.

14 Is that what you're telling us?

15 A Yes.

16 Q Okay. You do not deny, and this is something that
17 occurred way before you took totem poles or drink beer, this
18 is your gun?

19 A It looks like it, yeah.

20 Q It looks like it or it is?

21 This is your gun, isn't it?

22 A Yeah.

23 Q This is the gun the police took out of your back pocket
24 that night?

25 A Yes, sir.

Channack Keam - Cross-examination
by Solicitor Coler

- 1 Q This is the gun you were carrying that night?
- 2 A Yes.
- 3 Q This is the gun you asked your girlfriend, Victoria,
4 for when you got kicked out of the bar that night?
- 5 A I don't remember that. I don't.
- 6 Q Every time we get close to the incident you just, you
7 say you don't remember a single thing?
- 8 Is that, is that what I'm to understand?
- 9 A I don't remember getting kicked out of the bar. I
10 don't remember asking her for the gun.
- 11 Q Okay. You were so intoxicated that, that you could of
12 done whatever you wanted, and now you're asking to be
13 excused for that because you simply don't remember it?
- 14 Is that what I understand?
- 15 A Yeah.
- 16 Q What?
- 17 A Yeah.
- 18 Q Okay. Do you remember loading the gun?
- 19 A No.
- 20 Q Okay. This holds ten rounds, right?
- 21 A Yes, sir.
- 22 Q It's your gun?
- 23 You know that?
- 24 A Yes, sir.
- 25 Q You bought ten bullets or a pack of bullets and you

Channack Keam - Cross-examination
by Solicitor Coler

- 1 loaded ten into here.
- 2 A Yes, sir.
- 3 Q Nothing accidental about that, right?
- 4 A Yes, sir.
- 5 Q Purposeful?
- 6 A Yes, sir.
- 7 Q Intentional?
- 8 A Yes, sir.
- 9 Q Okay. You took this that holds ten rounds and you
- 10 stuck it in the bottom of the gun, right?
- 11 A Yeah.
- 12 Q You did that?
- 13 Nobody else?
- 14 A Yes, sir.
- 15 Q And you got that gun on your possession, in your
- 16 possession at some point that night?
- 17 No question about that?
- 18 A At some point, yeah.
- 19 Q At some point.
- 20 Okay. It was when Victoria, when you got thrown out of
- 21 the bar and you went to Victoria and you said hey, give me
- 22 my gun, right?
- 23 A I don't remember that.
- 24 Q Okay.
- 25 A I can't answer that.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q Mr. Reckenbeil spent a few minutes talking to you about
2 what happened at your house before you went to the bar, and
3 you talked about the beer and the Xanax and who was there
4 and hanging out and all that.

5 You never once said that's when I put the gun in my
6 pocket, right?

7 A Because I don't remember that.

8 Q Okay. Let -- then is it safe for me to presume that
9 you didn't put the gun in your pocket when you left your
10 house?

11 That would be safe for me to presume, right?

12 A Well, the gun was in my car.

13 Q Okay. All right. Now we're getting somewhere.

14 All right. Then when you got thrown out of the bar,
15 you went to your car and you got your gun?

16 A I don't remember that part.

17 Q Okay.

18 A But when I was at my house I remember the gun was in my
19 car.

20 Q All right. You didn't take your gun into Red's?

21 A (Witness nods negatively.)

22 Q I hope you didn't take your gun into Red's.

23 A I mean I don't think so.

24 Q You're so intoxicated you say you don't know what
25 you're doing. You're not responsible for a single thing.

Channack Keam - Cross-examination
by Solicitor Coler

1 You didn't take a gun with ten live rounds in it into
2 Red's Bar with, loaded with young people shooting pool and
3 drinking beer, did you?

4 A I don't think so. I don't know none of that. But I
5 don't think so.

6 Q All right. You would admit to me that it was not a
7 pleasant experience getting kicked out of the bar?

8 Couldn't have been?

9 A You're saying it's not?

10 Q You wouldn't like getting thrown out of the -- you
11 didn't like getting thrown out of the bar, did you, getting
12 asked to leave?

13 A Doesn't anybody?

14 Q Right.

15 That's all -- that's my point and you're not any
16 different than anybody else.

17 That would of been embarrassing, that would of been
18 upsetting, that would of been a problem for Channack Keam,
19 right?

20 A Right.

21 Q And that would of made you mad, which it did?

22 Didn't make you happy, did it?

23 A Well, I didn't know if I'm, if I'm mad or whatever. I,
24 I don't know how I feel at that, at that moment, at that
25 time.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q You don't know how you felt getting thrown out of the
2 bar?

3 A I mean I don't know what I was doing. So --

4 Q Okay. And we're, we're back -- you don't -- you simply
5 don't remember any of that?

6 A Any of that.

7 Q From the minute you left your home till the minute the
8 police get done talking to you on tape, all that in there is
9 just blank?

10 A That's right.

11 Q Okay. All right. But while you were doing that, you
12 were, you were -- while that was occurring, you had, you
13 weren't unconscious during that incident, right?

14 You're not telling us that?

15 A What you mean unconscious?

16 Q Knocked out, unconscious.

17 A Oh, no, no.

18 Q Asleep?

19 A No, no.

20 Q You were up and moving around?

21 A I was up moving around, but I don't remember any of it.

22 Q You watched yourself on a video -- you seen yourself on
23 a videotape inside -- we can play it here.

24 You've seen yourself on a video inside the bar?

25 A No.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q You don't deny that?

2 A I ain't never seen a video in the, in the bar.

3 Q Okay. You, you heard officers talk about seeing you at
4 the scene and talking to you.

5 You admit Channack Keam, you, were standing up,
6 talking?

7 You even remembered a little bit about Mrs. Bishop,
8 didn't you, the lady that was trying to resuscitate Shane?

9 A Yeah.

10 Q Okay. So, you remember that?

11 A Yes, sir.

12 Q So, you were awake and alive and breathing,
13 functioning, and standing up?

14 A Yes, sir.

15 Q Okay. Why do you have this gun?

16 MR. RECKENBEIL: Objection, Your Honor. He's getting
17 into some areas that's just not relevant.

18 SOLICITOR COLER: Well, I'm just trying to---

19 THE COURT: Let me see y'all up here.

20 (Whereupon, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: Excuse me just a minute, Mr. Coler.

23 SOLICITOR COLER: Yes, sir.

24 (Whereupon, a bench conference was held out of the
25 hearing of the jury at this time.)

Channack Keam - Cross-examination
by Solicitor Coler

1 MR. RECKENBEIL: Your Honor, I just ask that that last
2 question be stricken from the record.

3 SOLICITOR COLER: I'll rephrase the question, Your
4 Honor.

5 THE COURT: Okay. Strike that one and ask another one.

6 Q Why did you have that gun in your pocket in the parking
7 lot on Hayne Street in front of Red's Bar & Grill?

8 A I don't remember why.

9 Q I'm not asking if you remembered having it.

10 Why, why did you have it?

11 Why would you have it?

12 A I don't know.

13 Q You don't know why you would have your gun in your
14 pocket?

15 A No.

16 Q Okay. On the 9-1-1 tape you listened to here in, in
17 Court---

18 A Yes.

19 Q ---you don't deny that that's your voice?

20 A That's my voice..

21 Q And you don't deny telling the 9-1-1 operator it was a
22 drive-by shooting?

23 A Yeah.

24 Q Okay. No, no where on that tape do we hear anything
25 about it being an accident?

Channack Keam - Cross-examination
by Solicitor Coler

- 1 A That's correct.
- 2 Q Okay. No where on that tape do we hear you say I just
- 3 don't know what happened?
- 4 A I don't remember that.
- 5 Q You didn't hear that, did you?
- 6 A I don't know.
- 7 Q Okay. You don't remember and you didn't tell anybody
- 8 anywhere that it was an accident, right?
- 9 A Right.
- 10 Q And, and that's when this was all fresh in your mind,
- 11 the night of the incident, when it, when it just happened,
- 12 and we never hear anything like that from you?
- 13 A Could you repeat that again?
- 14 Q The night of this incident---
- 15 A Yeah.
- 16 Q ---when what happened was fresh in your mind, you never
- 17 said it was an accident?
- 18 A I was asked if it was an accident.
- 19 Q What did you say?
- 20 A I said if it was, if it is an accident -- I mean, I
- 21 mean that's the only way I see it, it's an accident.
- 22 Q Really.
- 23 How do you see that?
- 24 How do you -- do you have an answer for that?
- 25 A No.

Channack Keam - Cross-examination
by Solicitor Coler

1 Q Okay. It wasn't an accident that you got your gun. It
2 wasn't an accident that you loaded your gun. It wasn't an
3 accident that you fired your gun ten times.

4 So, how, how is it an accident?

5 A I don't remember any, any of that. So --.

6 Q We're back to I don't remember. But my question is how
7 was it an accident. It was or it wasn't.

8 A I don't know.

9 SOLICITOR COLER: Beg the Court's patience one moment.

10 (Pause.)

11 SOLICITOR COLER: That's all the questions I have, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. RECKENBEIL:

15 Q Mr. Coler asked you how do you see that it's an
16 accident.

17 Sitting in the courtroom for the past two days, is
18 there anything that can give you an inclination of how it
19 could be an accident?

20 A Because I have no kind of intent or any malice to hurt
21 anybody. So, I mean he shot, I understand that, and it is
22 got to be an accident.

23 Q Why?

24 A I don't know.

25 Q Why would it be an accident?

Channack Keam - Redirect examination
by Mr. Reckenbeil

1 Would you shoot and kill your best friend?

2 A No.

3 Q All right.

4 SOLICITOR COLER: If I may ask one question.

5 RECROSS EXAMINATION

6 BY SOLICITOR COLER:

7 Q You're not saying somebody else shot and killed Shane
8 Easler, are you?

9 A No, I, I can't say that either.

10 Q You did?

11 A I can't say I did it.

12 SOLICITOR COLER: Okay. That's all, Your Honor.

13 THE COURT: All right. You can step down.

14 MR. RECKENBEIL: Your Honor, the defense would rest.

15 THE COURT: Any reply?

16 SOLICITOR COLER: No, sir, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, that is
18 all of the testimony and evidence to be received in the
19 case. What remains to be done are the lawyer's final
20 summations after which I'll instruct you fully on the law,
21 after which you'll begin with your deliberations in the
22 case.

23 Because of the hour, we're gonna stop now. We're gonna
24 recess for lunch. We will resume this afternoon at two
25 o'clock, at two o'clock this afternoon.

1 So, you're excused now. Do not discuss the case with
2 anybody. Don't conduct any research or do your own
3 investigation. Don't permit yourselves to be exposed to any
4 type of media coverage relating to this case.

5 Have a good lunch and report back to your jury room at
6 two o'clock this afternoon.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Mr. Reckenbeil, you want to
10 renew your motions?

11 MR. RECKENBEIL: Yes, sir, respectfully we would just
12 renew our motion for directed verdict real quick.

13 THE COURT: All right. That motion is denied.

14 What about request for instructions, State have any?

15 SOLICITOR COLER: I don't have, I don't have mine -- I
16 don't have them typed up, but voluntary intoxication is not
17 a defense. I'm sure, Your Honor -- I'm, I'm pretty sure
18 I've seen Your Honor's charge on that. Other than that,
19 just the charge and the element of murder.

20 THE COURT: Okay. Mr. Reckenbeil.

21 MR. RECKENBEIL: Yes, sir, Your Honor.

22 May it please the Court.

23 Your Honor, we understand that he is charged with, with
24 murder and that obviously we are perfectly okay with Your
25 Honor's instructions as you normally give with that. We

1 would also respectfully request a charge of involuntary
2 manslaughter.

3 Your Honor, I am citing the case of State versus
4 Pittman, which is a 2007 Supreme Court case, in which chief
5 Justice Toal delivered the opinion of the Court. In there
6 she describes involuntary manslaughter as the unintentional
7 killing of another without malice, but while engaged in an
8 unlawful activity not naturally tending to cause death or
9 great bodily harm or the unintentional killing of another
10 without malice while engaged in a lawful activity with
11 reckless, reckless disregard for the safety of others.

12 Your Honor, I think we have established convincingly
13 that Channack Keam was grossly intoxicated that night. The
14 reason for his arrest and detention was public disorderly
15 conduct.

16 Your Honor, I believe that that meets the second prong
17 of the first part of the test by one engaged in unlawful
18 activity. There's no question that public disorderly
19 conduct is an unlawful activity. I think we can establish
20 the fact that there was a killing in, in light of the
21 defense's position, an unintentional killing. And we do not
22 believe that public disorderly conduct would be an activity
23 which naturally tends to cause the death or great bodily
24 harm of an individual. Therefore, we respectfully request a
25 charge of involuntary manslaughter.

1 THE COURT: Mr. Coler.

2 SOLICITOR COLER: With all due respect, Your Honor, I
3 don't think there's any evidence that, that he was engaged
4 in some lawful activity and doing that grossly negligently
5 or he was engaged in some unlawful activity that likely
6 would result in death or bodily harm. There's just simply
7 no evidence of either of those in the record.

8 Public disorderly conduct is unrelated to the weapon.
9 It's an, it's an ancillary charge that doesn't have anything
10 to do with the firing of the weapon. So, the State's
11 position would be that involuntary manslaughter would be an
12 improper charge at this, at this stage.

13 THE COURT: All right. Well, in order to be entitled
14 to an instruction on involuntary manslaughter as a lesser
15 included offense, it would be necessary that there be
16 evidence and facts tending to support certain elements.
17 They're two legal theories under which you would be entitled
18 to an involuntary manslaughter charge. And one, if you can,
19 if the evidence tends to establish that the killing was
20 unintentional, it was without malice, while the person was
21 engaged in the commission of some unlawful act not amounting
22 to a felony and not naturally tending to cause death or
23 result in great bodily harm.

24 Even if, from the evidence, you determine there is some
25 evidence to establish that the killing was unintentional and

1 was without malice, which are ordinarily jury questions
2 anyway, the only evidence in the case is, is that the
3 defendant was engaged in an unlawful act which did amount to
4 a felony in the presentation and the pointing of a firearm,
5 and the presentation and pointing of a firearm, and
6 discharging a firearm into the crowded area is an act the
7 natural tendency of which is to cause death or result in
8 great bodily harm. So, the defendant would not be entitled
9 to a, an involuntary manslaughter instruction based on that
10 legal theory because there's no evidence to support it.

11 The other way that you might be entitled to an
12 involuntary manslaughter is under the legal theory that the
13 killing be unintentional, without malice, while the person
14 is engaged in lawful activity in a criminally negligent
15 manner. Pointing and presenting a firearm, not acting in
16 self-defense, is not lawful activity. Discharging a firearm
17 in a public area, not acting in self-defense, is not lawful
18 activity.

19 There is no evidence that the defendant was acting
20 lawfully in self-defense. There is no evidence other than
21 the conduct engaged in was not lawful activity. So, the
22 defendant would not be entitled to an instruction on
23 involuntary manslaughter under that second legal theory of
24 involuntary manslaughter.

25 So, because there's no evidence tending to support that

1 lesser included offense, I find that the lesser included
2 offense is not properly, should not properly be or it can
3 not be properly instructed to the jury.

4 So, I'm going to decline your request.

5 MR. RECKENBEIL: Your Honor, just, just for the record,
6 also then we would make a motion to have the charge of the
7 lesser included of voluntary manslaughter. Under the facts
8 of this case, we would have, depending upon the way we look
9 at our Court of Appeals and Supreme Court, the way they
10 define voluntary manslaughter, there would be an opportunity
11 for an argument to be made that the argument either with
12 Shane or with those bouncers created a sudden heat of
13 passion and would also be legal provocation, and thus we
14 would respectfully request a, a voluntary manslaughter jury
15 charge.

16 THE COURT: All right. Well, there is some evidence
17 that there was some argument, or some altercation, some
18 disagreement relating to the defendant and others being
19 instructed to leave the bar. There is no evidence that
20 there was any provocation by Shane Easler that would give
21 rise to the defendant acting under a theory of voluntary
22 manslaughter.

23 While the killing, while there is some evidence that
24 the killing could have occurred in sudden heat of passion,
25 there is no evidence to establish that that sudden heat of

1 passion was based upon sufficient legal provocation. In
2 order to be entitled to an instruction on voluntary
3 manslaughter there has to be both. There has to be a killing
4 in sudden heat of passion and that heat of passion has to be
5 based upon a sufficient legal provocation.

6 In this case, while you could argue that the killing
7 was in heat of passion based upon the altercation or the
8 disagreement, there is no evidence to indicate a sufficient
9 legal provocation from Shane Easler that would allow the
10 defendant to be entitled to an instruction for voluntary
11 manslaughter.

12 In fact, I think all of the evidence in the case
13 establishes that, that Shane Easler actually did nothing to
14 give rise to heat of passion other than perhaps getting
15 kicked out of the bar would give rise to heat of passion.
16 But all of the evidence indicates that Shane Easler was
17 simply trying to get the defendant to calm down so that they
18 wouldn't get in any more trouble. He was not -- Shane
19 Easler was not one of the involved in the disagreement or
20 altercation with the defendant. He was simply trying to get
21 his friend to calm down so that they wouldn't be in any more
22 difficulty or trouble.

23 So, there is no sufficient legal provocation. And, as
24 I understand the law, a killing even in the sudden heat of
25 passion, if it's not based upon sufficient legal

1 provocation, is murder and not manslaughter. So, the
2 defendant would not be entitled to an instruction on
3 voluntary manslaughter and I also decline that request.

4 MR. RECKENBEIL: Thank you, sir.

5 THE COURT: All right. Any others?

6 MR. RECKENBEIL: Nothing from the defense, Your Honor.

7 THE COURT: All right. Court is in recess until two
8 o'clock.

9 (Whereupon, Court was in recess for the lunch hour.)

10 THE COURT: All right. Everybody ready for the jury?

11 SOLICITOR COLER: State's ready.

12 MR. RECKENBEIL: Defense is ready, Your Honor.

13 THE COURT: All right. Bring them in.

14 SOLICITOR COLER: Judge, it's my understanding the
15 defense is gonna make the State open on the law.

16 THE COURT: Okay.

17 SOLICITOR COLER: We're prepared to do that.

18 THE COURT: Okay.

19 (Whereupon, the following takes place within the
20 presence of the jury panel.)

21 THE COURT: Good afternoon.

22 As you know, when we recessed, all of the evidence has
23 been received. And so what remains to be done are the
24 lawyer's final summations after which I'll instruct you on
25 the law, and then you'll begin your jury deliberations.

1 So, please give the lawyers your attention now as they
2 give you their closing statement.

3 Mr. Coler.

4 SOLICITOR COLER: Thank you, Your Honor.

5 May it please the Court.

6 THE COURT: Yes.

7 SOLICITOR COLER: Ladies and gentlemen, I get two
8 opportunities to speak to you. I get to speak to you for a
9 few minutes now about the law in this case, and then Mr.
10 Reckenbeil is gonna talk to you, and then I get one final
11 chance to talk to you about the facts and how it applies to
12 the law. So, I'm just gonna take a couple minutes to
13 discuss briefly the law in this case.

14 As I told you at the beginning of the case, Judge Cole
15 is the judge in this case, is the expert on the law. He and
16 he alone will direct you, will tell you, will charge you
17 what the law is. And you, as jurors, have taken an oath and
18 sworn to take the law as he, as he charges you, as he
19 directs you, and apply it to the facts.

20 He's gonna tell you, you may have come in here and, and
21 believed what you thought were the elements of murder. You
22 may have seen something on television, in a book, in a
23 movie. But your job, as jurors, is to put that aside and
24 take the law as Judge Cole instructs you or charges you it
25 is.

1 I think there are three important charges or laws to
2 speak to you about, and I'll be brief again. As I said,
3 because Judge Cole is the expert.

4 I want to talk to you briefly about the law of
5 intoxication, and I believe Judge Cole's gonna tell you, at
6 some point in his charge, that voluntary intoxication is not
7 a defense to a criminal act. In other words, you can't go
8 out, get so drunk, get so intoxicated, and so messed up on
9 some drug or alcohol and then ask the law to excuse your
10 activity. I think the judge is gonna tell you that in,
11 exactly or very close to those words.

12 Another thing the judge is gonna talk to you about is
13 the types of evidence, and you saw people come in here and
14 testify and you've got some pieces of exhibits to take back
15 with you to the jury deliberation room. But I think he's
16 gonna tell you or I know he's gonna tell you there are
17 essentially two types of evidence. There is direct evidence
18 and there is circumstantial evidence.

19 Direct evidence would be if someone were to come in
20 here and tell you to your face they just went outside and I
21 saw it was raining. They saw an event and they, they came
22 in here and they described it for you. That's direct
23 evidence. If someone were to come in here and say I, I was
24 out in front of Red's, and I saw Tony Keam shoot Shane
25 Easler, that would be direct evidence.

1 The other kind of evidence, and it's just as powerful,
2 just as important as direct evidence, is circumstantial
3 evidence. And again, you probably have seen television,
4 movies, and read books. Circumstantial evidence is exactly
5 what you probably think it is. It's when you link together
6 a series of events and it leads you to a logical conclusion.

7 If that same person came in here and told you last
8 night before I went to bed I watched the news, and the
9 weatherman said it's going to rain. And I went to bed and I
10 laid down and the next morning I woke up and I looked out in
11 my yard and my driveway and the grass was wet and there were
12 puddles on the road and, and things were wet.

13 If they came in here and told you, you could logically
14 conclude or deduce it rained. That person didn't come in
15 and say I saw it rain. But they provided to you a sequence
16 of events that, when you logically follow them, it leads you
17 to a conclusion.

18 So, that, those are the two kinds of evidence, and in
19 this case there's some direct evidence I'd submit and some
20 circumstantial evidence. But again, both are just as
21 powerful, just as important as each other.

22 The last thing Judge Cole or that I want to talk to you
23 about that I think Judge Cole is gonna talk to you about is
24 the charge of murder. And remember when I stood up in my
25 opening statement and I told you murder does -- the law

1 doesn't require the State to prove a motive. The law does
2 not require the State to prove premeditation for any
3 appreciable time. In other words, we aren't required to
4 present somebody to come in here and say the reason Tony
5 shot Shane was because.

6 We're not required to present to you evidence of
7 premeditation. In other words, the law doesn't require, for
8 somebody, somebody to be convicted of murder, that they lay
9 in wait, that they plan, that they make a, a, plans or
10 preparations to do a killing. I told you there were three
11 elements of murder, an unlawful killing, of another human
12 being, with malice aforethought. That's what's required to
13 convict somebody of murder. That's what the State is
14 required to present to you.

15 And again, after Mr. Reckenbeil, Mr. Reckenbeil speaks
16 to you in a moment, I'll get up and I'll be able to talk a
17 little bit more about those. An unlawful killing is
18 probably exactly what you-all thought it was. It's a
19 killing that's not excused by the law.

20 Another person, exactly what you think it was. Shane
21 Easler was a human being.

22 And malice aforethought. Remember I told you at the
23 beginning that Judge Cole is gonna tell you, malice is an
24 ill will. It's a heart that is devoid of social
25 responsibility. It's a heart that's fatally bent on

1 mischief.

2 We can't cut Channack Keam open and look inside his
3 brain or look inside his heart. So, we have to take and
4 look at the circumstances that surround the incident and
5 decide whether or not he possessed that malice. And that's,
6 that's your job. That's what you get to decide.

7 And the malice must exist aforethought. That, that
8 means before the killing. But again, it doesn't have to
9 exist for any appreciable time. It, it doesn't have to be
10 for a day or for an hour or even a minute. It can be at the
11 split second that the fatal blow is struck. As Channack
12 Keam is firing that, that shot into his friend's chest, if
13 he's got malice in his mind, that's malice aforethought.

14 But again, I'm gonna talk to you about this when we
15 talk about the facts. But we have to look at the
16 circumstances that surround the killing and make that
17 decision.

18 I want to thank you for your attention. And because I
19 get to speak to you again in a few minutes I'll sit down now
20 and look forward to talking to you just briefly in a few
21 moments.

22 THE COURT: Mr. Reckenbeil.

23 MR. RECKENBEIL: Thank you, Your Honor.

24 May it please the Court.

25 Ladies and gentlemen, before I start I'd like to echo

1 Mr. Coler's sentiments and thank you very much. I know it's
2 not easy to come into a courtroom away from your families,
3 away from your jobs, and to perform your civic duty. Before
4 I started and while I practiced law we didn't have a war
5 going on, and it was easier for me to stand up and say the
6 most important thing that a citizen can do is do jury duty.
7 Well, obviously we know that's not the case now with what's
8 going on in Iraq and Afghanistan.

9 But us, as a citizen, we have a responsibility to keep
10 this country going, and the only way it happens is you
11 people. Because the fact is that the King of England, he
12 decided rules, before, in fact, our country said, hey, we're
13 gonna start our own thing. That's not what happens in this
14 country. So, without you 14 people sitting here, our
15 country and our way of judicial system doesn't run.

16 So, I, I say this in every trial that I'm in and I will
17 continue to the day that I stop practicing. Thank you
18 because I'm part of this system and so are you. So, as your
19 fellow citizen, I appreciate the fact of you coming in here
20 and listening to this case and making a decision anyway that
21 it might be.

22 Now, Mr. Coler has talked to you about what the law in
23 the State of South Carolina is, and Judge Cole will inform
24 you as to what, in fact, the required elements are.

25 Now, there's no question that we have certain things

1 that have been met in this case. The fact that, you know,
2 Shane Easler was a person, and the fact that, you know, Bob
3 Coler is gonna stand up here and say that there was an
4 unlawful killing.

5 But what I want you to focus on is the facts and the
6 law that Judge Cole is gonna talk to you about is what
7 malice and aforethought is. Ill will, evil intent, depraved
8 heart in the fact of the killing of Shane Easler.

9 Now, it is an absolute tragedy and I would be inhumane
10 if I stood before you and said this is not an absolute
11 horrible, horrible tragedy. But as you stood up here at the
12 very beginning of this case, and you raised your right arms
13 as the clerk said to you, you said that you would take an
14 oath that you would apply the law as given to you by Judge
15 Cole and you would apply it to the facts. As I asked you in
16 opening statement, I'm gonna ask you again in closing
17 argument, that that is what you are to do.

18 Just because of the fact that Mr. Easler was killed
19 does not mean the fact that it was murder. The government
20 and the State must prove beyond a reasonable doubt that, in
21 fact, there was malice and aforethought. And that's what I
22 want to discuss with you as to why the logical conclusion is
23 that it wasn't.

24 We've seen their description throughout the trial and
25 you remember when I was speaking to Investigator Lindsey as

1 to what was found at the scene. He is the chief
2 investigator, lead investigator of what happened that
3 evening, collecting all the evidence. Not one bullet. Not
4 one bullet hole. Nothing was found at the crime scene.
5 Nobody came back here and said to you there were bullet
6 holes in Red's Bar. Nobody told you there was bullet holes
7 in the cars. Nobody even said that they found a bullet in
8 the crime scene area.

9 So, what can we logically deduce?

10 As Mr. Coler talked to you about the rain example, what
11 can we logically deduce as a result of the fact that not one
12 bullet was found, not one bullet hole was found, and nothing
13 was found in Red's Bar?

14 The fact that that gun was fired in the air. Wasn't
15 shot at anybody. It was fired in the air because we have
16 eight shell casings flipped out of that gun right up on that
17 light pole.

18 So, we can logically conclude at that point in time
19 that that gun fired in the air cause, if not, you would of
20 had people trumpsing (phonetic) up here on to this witness
21 stand saying yeah, there were bullet holes in Red's Bar..
22 There were bullet holes in my car when I came out of that
23 bar. There were bullets found all over the gun or all over
24 the street area.

25 But you didn't hear one person say that cause it

1 wasn't. So, we can logically conclude, from that set of
2 circumstances, that that gun was fired in the air.

3 Going through the incident, there is no question that
4 Channack Keam was thrown out of that bar. There was no
5 question that that argument ensued as a result of him being
6 tossed out of the bar. No way should he have been bringing
7 beer into an establishment and trying to drink it. No way.

8 There's no way he should of been taking illegal drugs,
9 Xanaxes. He, he's the only one that testified that, in
10 fact, that Shane was taking them as well, that they were
11 drinking as well.

12 So, we can logically conclude, the fact that there was
13 no evidence to contradict what they were saying or what
14 Channack Keam was saying, is the fact that he was grossly
15 intoxicated, that his senses were depreciated. You heard
16 him say he was, didn't know what he was doing, the fact that
17 he didn't remember, that every time he takes those Xanaxes
18 it's kind of like he goes out.

19 So, we get to the point where, in fact, Shane Easler is
20 killed.

21 What can we draw from the objective circumstances?

22 Gunshot residue test for Shane Easler, right palm.
23 Quantity of metals are found are consistent with gunshot
24 residue.

25 You have an expert that comes in to court that

1 testifies that she has a certain threshold level upon other
2 things, and you do the test, and you come back with some
3 sort of result. Well, that result came back and it is clear
4 from that test, from that scientific expert, that there was
5 gunshot residue on the palm of Shane Easler.

6 The State's gonna stand up here and argue that, in
7 fact, Shane Easler had a defensive posture because of the
8 fact that the gunshot residue got on there.

9 Well, where's the bullet going through his hand?

10 This is their exhibit the State put in evidence. The
11 plume of smoke comes out the front of the gun.

12 Where's the bullet that went through Shane Easler's
13 hand?

14 You didn't hear that because that's not how it
15 happened.

16 I talked with the expert as to where gun residue can
17 come out of the, the gun. It could come out the gun because
18 a person's hand is on the gun. It could come out because
19 the person's on the side of the gun.

20 Shane Easler had gun residue on the palm of his hand.

21 Can we logically conclude, from the fact that Shane
22 Easler did not have a bullet go through his hand, that Shane
23 Easler had residue on the palm of his hand, that Shane
24 Easler was probably the only voice of reason to tell you,
25 Channack Keam, get your butt out of this, the bar or get

1 your butt to stop drinking those beers in the bar cause
2 that's just wrong?

3 Can we logically conclude the fact that gunshots from
4 Tony Keam, there were eight of them, fired up in the air,
5 the two of them walking down to the Hot Spot to get more
6 beer and then he shoots another one?

7 Can we logically conclude from the facts that Shane
8 Easler was attempting to get that gun from Tony Keam and it
9 went off?

10 The State wants you to conclude, from circumstantial
11 evidence, the fact that Tony Keam had malicious and
12 aforethought, malice and a aforethought, that he had ill
13 will, that he had a depraved heart when he did the killing.

14 Well, ladies and gentlemen, can we not look at the flip
15 side of it?

16 That Shane Easler was doing what he was doing that
17 whole entire time that evening and trying to calm his friend
18 down and it just went off.

19 You heard that officer get on the witness stand and
20 talk and it took a little bit of time. But he said even a
21 toddler could pull the trigger. It doesn't take much pounds
22 of pressure for that trigger to be pulled. It doesn't. A
23 toddler, as the officer testified, could get that and that's
24 why we have accident, and that's what he testified to.

25 More circumstantial evidence that the State wants you

1 to conclude, but what we will submit, as the defense, you
2 have the lady passerbyer who stops, Mrs. Phelps. She comes
3 up -- and you heard her testify. She comes up and she sees
4 Channack Keam on his knees saying don't do this to me, man,
5 don't do this to me, man.

6 Can we not logically conclude that this man is over
7 him, Channack Keam, after an accident took place trying to
8 save his friend?

9 What do we have to support that?

10 Look at the blood on his hands, on his arm. He was
11 over his friend trying to save him.

12 And the 9-1-1 call directly afterwards, no question
13 Channack Keam is slurring his speech. There is no question
14 that he has a difficult time articulating himself. Some on
15 you saw him on the witness stand.

16 Does he speak perfect English on top of the fact of
17 taking Xanax and drinking the way that he was?

18 That 9-1-1 tape, I invite you to listen to it again.
19 It's a piece of evidence. It will be in evidence.

20 Was that a young man who just murdered his friend on
21 that 9-1-1 tape?

22 How many times did you hear say, Channack say come on,
23 come on?

24 There was no way Channack Keam could articulate enough
25 to say buddy, shut up, send an ambulance right now, my

1 friend is bleeding to death because that's probably what I
2 would of said. Don't ask me these other questions of what
3 my name is. Send an ambulance right now.

4 That's what he was doing in his own way. He was trying
5 to save his friend. And all that 9-1-1 tape guy was
6 interested in is what's your name, trying to get a suspect
7 car, and make a description instead of just send an
8 ambulance. So, Channack, hey, he gave up.

9 The State's gonna get up here and I can anticipate the
10 fact they are going to harp on what he said directly after
11 that with the officers while in custody. Yeah, I shot him.

12 Is that not logical from the facts of what I just
13 discussed that again it's an accident?

14 And then when, in fact, an officer finds in the back
15 pocket his gun, pulls it out, and yells gun, and I submit to
16 you, ladies and gentlemen of the jury, Officer Cockrell, I'm
17 sure he didn't say just gun, and I'm sure he just didn't
18 grab by one or two of his little fingers on the back of
19 Channack Keam's pants. I'm sure he ripped the back of his
20 pants and he said gun, and then he read him his Miranda
21 rights.

22 And we all know what those are, as the officer said.
23 You have the right to remain silent. Anything you say will
24 be against, used against you in a court of law. You have
25 the right to a lawyer immediately there. And any logical

1 person, if, in fact, they were involved with something that
2 didn't occur such as murder, say I wouldn't kill my brother.
3 That's the statement that they said. I wouldn't kill my
4 bro.

5 A couple hours later, Investigator Lindsey brings him
6 down to the station. Again, this is a piece of evidence.
7 You'll have the opportunity to listen to it. I'm not gonna
8 play it for you again. But I want to recite some things.

9 Investigator Lindsey asked him was this an accident.
10 He asked him a long sentence.

11 Said were you involved, were you responsible, was this
12 an accident?

13 I invite you to listen to that cause then what's Tony
14 Keam's response?

15 I'm responsible.

16 Is an individual that says that they are responsible
17 guilty of murder?

18 I submit to you, ladies and gentlemen, they're not
19 cause in order for him to be guilty of murder he would have
20 to throw away a five year friendship, which is another piece
21 of circumstantial evidence. Throw away his relationship
22 with this individual and have an ill will and have a
23 depraved heart and have malice and aforethought for when he
24 took that gun and he shot and killed his best friend.

25 The circumstances in this case do not logically

1 conclude, no matter how bad or how inarticulate that that
2 young man is, is sitting over at that witness or the defense
3 table, the logical conclusion of the facts of the objective
4 evidence do not support it.

5 While I do not condone what that young man did that
6 night of drinking to that point, and taking those drugs to
7 that point, and having that gun with him, we have to protect
8 the law and we have to take what the judge gives us as the
9 law of South Carolina. And while we have to absolutely put
10 and pour our hearts out to Shane's family, we have a
11 responsibility to make sure that the government and the
12 State proves their case beyond a reasonable doubt, and to
13 make sure that they meet every single element that they are
14 suppose to meet under the law because that is our
15 responsibility that we owe to this country and that we owe
16 every criminal defendant. No matter how bad it is, and no
17 matter how ridiculous it is, we owe that to every single one
18 of our criminal defendants that are brought before the
19 justice of this Court.

20 So, I ask that you would go back and review all the
21 evidence. And then once you've had an opportunity to
22 deliberate, we would ask that you return a not guilty
23 verdict for the charge of murder against Channack Keam.

24 I thank you for your time.

25 THE COURT: Mr. Coler.

1 SOLICITOR COLER: Thank you, Your Honor.

2 May it please the Court.

3 Somebody once said I'm not mad at you because you lied.

4 I'm mad because I can no longer trust what you say.

5 Let's think about what Channack Keam said and did on
6 September 21st of 2007. Well, let's think about what he
7 did here.

8 His defense now is I don't know. I just -- I simply
9 don't know. That's -- my, my defense is I have no idea, I
10 don't have an inkling of what happened on September 21st
11 of 2007 from the time I went into Red's Bar till the time I
12 found myself standing over my dead friend or my bleeding
13 friend's body. That's his defense.

14 How do we get there?

15 Well, I'll buy into Mr. Reckenbeil's argument for about
16 two minutes, and I can appreciate his position. He's here
17 to advocate on behalf of his client and convince you that
18 this was a struggle, this was a horrible accident.

19 If this -- well, aside from Mr. Reckenbeil's statement
20 to you, there is no, none, zero, absolutely no evidence that
21 this was a struggle that led to Shane's death. That did not
22 come in through the testimony to you during this trial.
23 It's not in evidence even after Channack Keam took the stand
24 and had an opportunity to tell you if, in fact, that's what
25 happened, that's what happened.

1 He didn't say it. He couldn't say it. He never did
2 say that this was a struggle between Shane and I that led to
3 Shane's death.

4 And if it was a struggle, let's think about something.
5 We know there are eight shell casings right here just
6 outside the bar exit. Two more shell casings down here. If
7 it was a struggle -- and remember these two shell casings
8 are where Shane's body was.

9 If it was a tragic struggle, and the gun ended up just
10 going off once and killing Shane, why were there two shell
11 casings?

12 Why is there a second shot?

13 Is it -- did the first shot somehow miss during the
14 struggle and then another shot?

15 Don't you think that first shot would of sobered
16 everybody up and everybody would of stopped?

17 There are two shots. Channack Keam was angry,
18 frustrated, came out of the bar. He was firing off shots
19 because he was angry. He was, he was upset about getting
20 kicked out of the bar... Two shots at his buddy farther down
21 the road. Not one. Two.

22 And then the first thing Channack Keam says is this was
23 a drive-by shooting. Remember he tells everybody that will
24 listen. Tells Deputy Henderson. Calls 9-1-1 and tells
25 them. He tells Mrs. Bishop who's there resuscitating Shane.

1 This was a drive-by shooting. Remember that was before the
2 police found the gun in his pocket and ten shell casings at
3 the scene.

4 When that version no longer was viable, didn't make any
5 sense, it now became okay, I'm responsible and I'm sorry it
6 happened.

7 Remember that?

8 That was on the tape.

9 Then it proceeded to his version in here I, I don't
10 know. I simply don't know. I, I know how many beers Shane
11 brought over to my house. I remember what he drank. I
12 remember what I drank and I remember who was there. I
13 remembered who went to Red's Bar & Grill. I remember Teresa
14 Bishop, the woman resuscitating Shane, and me thinking
15 something bad had happened. But in-between I don't have a
16 clue. I don't -- I can't tell you anything that happened.

17 Ladies and gentlemen, that is a convenient lie. That
18 is, that is -- his first version no longer works, his second
19 version no longer works. We're down to the third and final
20 desperate version.

21 Why is Shane dead?

22 I don't know.

23 I got -- you got the gun in your back pocket, the shell
24 casings are here, you are with Shane, you got kicked out of
25 the bar together, I, I don't have a clue. I don't know.

1 You want to talk about logical deductions and using
2 your common sense, y'all make those logical deductions when
3 you get back to the deliberation room. One of the things
4 Judge Cole is gonna talk to you about is demeanor of
5 witnesses.

6 Channack Kean looked like somebody who was straight
7 forward and honest in telling you what happened?

8 He was slow with his responses, seemed to be going over
9 his answer in his mind before he even spit it out. He
10 seemed like he had a lot on his mind. He had a lot on his
11 chest that he wanted to get out. He kept looking up over at
12 the family, looking at his family, and he just couldn't let
13 it out.

14 Maybe he didn't want to disappoint everybody in this
15 courtroom. Maybe he didn't want to finally say yes, I, I
16 did a stupid thing. I was angry. I was frustrated. It was
17 my gun. I ended up killing my friend. But you saw him.
18 You, as jurors, get to decide. You guys get to look at his
19 demeanor and make determinations about truthfulness and, and
20 about what he was telling you.

21 So, he had no explanation for a gunshot wound in the
22 center of his friend's chest. None, none whatsoever. Just
23 to say I don't know.

24 What we do know, the evidence that's presented, and,
25 and this is when, when I talked to you about circumstantial

1 evidence, you do have a little work to do. You have to go
2 back and take those pieces of evidence and, and look at them
3 and link them together and I submit to you, I'd suggest to
4 you they will lead to a very logical conclusion, the only
5 conclusion.

6 But what we do know is he went to a bar with three
7 others. He got kicked out of the bar. The three others
8 went along with him. He was the one that was mouthy,
9 uncooperative, resistant, whatever you want to say. It was
10 his friend, Shane, who was reasonable, trying to
11 rationalize. Shane wasn't looking for a struggle, wasn't
12 looking for a fight. He was just trying to rationalize and
13 everybody go home. And, and we know, without question, he
14 was found standing over his friend's body with a gunshot
15 wound in his chest lying there on that dark street bleeding
16 to death.

17 And, and we know it's -- we know, he told Mrs. Bishop,
18 it was a drive-by. He told it to Deputy Henderson. He told
19 it to 9-1-1. Again, that was a convenient lie at the time.
20 But it, it eventually crumbled on him.

21 We know there were eight shell casings just outside of
22 the bar, and I submit to you it's exactly what it looks
23 like. He's frustrated. He's angry. He's mad at the world
24 for getting thrown out of that bar and he let's off shots.

25 And you know who he wanted to impress or, or who he

1 wanted, whose attention he wanted to get?

2 Who knows?

3 But there's eight shell casings from his gun.

4 And we know there are two shell casings down by the
5 body. Not one. Not one whether it be a struggle where that
6 one shot would end it. Two.

7 Did the first one miss and then the second one hit him?

8 Probably so.

9 But if it was a struggle, they'd be one shot. Because
10 one of two things would of happened. Shane would of been
11 shot and fallen to the ground or I promise you everyone
12 would of sobered up in a hurry and stopped if it was a
13 struggle.

14 It was a, it was, it was his calculated intent to fire
15 at his friend, and, and this wasn't -- he didn't just graze
16 his friend. He didn't clip him in the leg. He didn't catch
17 his shoulder. Look where he shot. In the center of his
18 chest. He focused on his friend's body and picked the
19 center mass, the, the, the most biggest part and shot
20 straight in that right in his chest.

21 And we know he never, to anybody, said it was an
22 accident. Didn't say that on 9-1-1. Didn't tell any of the
23 officers at the scene. Didn't tell Deputy, Detective
24 Lindsey when he had a chance to do it. Never said it.

25 Wouldn't that have been the first thing that was coming

1 out of your mouth if you just accidentally hurt your friend?

2 Wouldn't you want the police to have the gun so they
3 could see, get it, examine it, examine your hands, examine
4 your friend's?

5 I mean all those things. He never said it. He planned
6 to keep the gun in his pocket and hopefully -- if he didn't
7 have the gun, this is a whole different case. That gun in
8 his pocket is bad for him.

9 And, and he finally told you, had a chance to tell you
10 his version. And he got up here and his lawyer asked him a
11 lot of questions. And I got up and asked him a lot more,
12 several more questions. He never told you it was an
13 accident. Never told you that. He is just going now with
14 desperation. He's got no more avenues to go down. No where
15 else to turn. And it's just now I don't know.

16 Judge Cole is gonna tell you, as I mentioned, that
17 murder is the unlawful killing of a human being with malice
18 aforethought. Again, there is no question this was an
19 unlawful killing. There's nothing about this killing that's
20 lawful. It wasn't in self-defense....It wasn't protecting
21 your country, protecting your home, protecting your family.
22 There's nothing about it that's lawful. It's the killing of
23 another human being.

24 Everybody behind the State's table will tell you that
25 Shane Easler is a human being. He was a 31 year old young

1 man with a lifetime in front of him.

2 And it's a killing done with malice aforethought.

3 Malice is a legal term. Judge Cole is gonna tell you it's
4 ill will, a heart that's fatally bent on mischief. It's a
5 heart that is void, has no concern for social
6 responsibility.

7 And ladies and gentlemen, the textbook version of
8 malice is getting thrown out of a bar, getting angry about
9 it, your friend just trying to make peace, just trying to
10 get everybody to go home, to, at some point, after firing
11 eight shots, to turn that anger, to turn that frustration,
12 to turn that malice against your own friend and shoot and
13 kill Shane Easler who was just trying to get everybody to go
14 home peacefully.

15 Everybody could and lived another day.

16 Thanks.

17 THE COURT: Madam Forelady, and ladies and gentlemen of
18 the jury, you, of course, have heard and seen all the
19 evidence and the final summations of the lawyers, and,
20 therefore, I'm going to instruct you on the law that's
21 applicable in the case. Then you'll be asked to go back and
22 begin your deliberations. And through that process, you
23 will examine the evidence, decide the facts, apply the law,
24 and arrive at a fair and just decision in the case.

25 It is your duty, as jurors, and it is exclusively your

1 duty to determine what the facts are. You do that through
2 your own common sense examination and evaluation of all the
3 testimony and other evidence received during the trial of
4 this case. You 12 jurors alone will decide what weight,
5 value, and effect to give any particular testimony or other
6 evidence in the case. Your sole objective is to simply
7 reach the truth in the matter. And by doing that, you will
8 have fulfilled your obligation as jurors, and that is to
9 simply give both the State and the defendant a fair and
10 impartial trial.

11 Now, in this case, as you know, the State, through the
12 solicitor, has charged the defendant, Channack Keam, with
13 the crime of murder. The allegations setting forth that
14 charge are contained in the indictment that I referred,
15 referred to prior to and after your selection as jurors.

16 The indictment, as I told you, is not evidence in the
17 case. It's not proof of anything. It will be in the jury
18 room because it is on the indictment, Madam Forelady, that
19 you're gonna be asked to actually write the decision of the
20 jury. But other than serving as a verdict form, the
21 indictment serves no purpose as far as you jurors are
22 concerned.

23 But the State does accuse Mr. Keam of having committed
24 the crime of murder. They allege that on or about September
25 the 22nd of 2007 he did willfully, and with malice

1 aforethought, kill one Samuel Shane Easler by shooting him
2 in the chest and that he died as a proximate result of that
3 act or acts.

4 As to those allegations and as to the charge contained
5 in the indictment, the defendant has entered a plea of not
6 guilty. And as I've told you, that plea of not guilty
7 places upon the State the burden of proving the allegations
8 contained in the indictment, the burden of proving each of
9 the essential elements of the crime the State claims the
10 defendant has committed, and, therefore, the burden is upon
11 the State to establish the defendant's guilt to the
12 satisfaction of you 12 jurors beyond a reasonable doubt
13 before any verdict of guilty could be returned.

14 The burden is never upon a defendant or a person
15 accused of a crime to prove that they are not guilty or to
16 prove that they are innocent because in some cases that
17 might not be possible. The burden is always upon the State,
18 in bringing a charge against another, to establish that
19 person's guilt beyond a reasonable doubt.

20 It is a vital, important, and cardinal rule of law that
21 that every defendant in a criminal trial, and it doesn't
22 matter how serious the offense might be for which that
23 person stands charged, that person is always presumed
24 innocent of that charge. That presumption of innocence
25 remains with any defendant, as it does with this defendant,

1 from the time that he is placed under arrest and throughout
2 the course of the criminal process and even throughout the
3 course of the actual trial.

4 And as I told you, that presumption of innocence will
5 be with Mr. Keam even as you go back and begin with your
6 deliberations in this case. That presumption of innocence
7 will be with him in the jury room with you and it will be
8 with him forever unless you 12 jurors determine that he's no
9 longer entitled to that presumption of innocence. That is,
10 after you carefully considered all the evidence in the case,
11 and from that evidence you decided the facts, and after
12 deciding those facts you applied the law that I will have
13 provided you, if you 12 jurors unanimously determine that
14 his guilt has been proven beyond a reasonable doubt, then he
15 would no longer be entitled to the presumption of innocence.
16 But it's only if, unless, and until you are satisfied of his
17 guilt beyond a reasonable doubt that the presumption of
18 innocence would no longer be applicable.

19 Now, while the State does have the burden of proving
20 the defendant's guilt beyond a reasonable doubt, that
21 doesn't mean that the State has to prove his guilt beyond
22 all doubt or beyond any possible doubt. But the State does
23 have the burden of proving the defendant's guilt to your
24 satisfaction beyond a reasonable doubt, and the term
25 reasonable should be given its plain and ordinary meaning.

1 A reasonable doubt is the kind of doubt that will cause
2 a reasonable person to hesitate to act upon the information
3 provided. And a defendant, in criminal a trial, is entitled
4 to any reasonable doubt that arises from the evidence or
5 lack of evidence in the case. And if, upon any factual
6 issue essential to a finding of a verdict of guilty, you
7 have some reasonable doubt as to how that issue should be
8 resolved, it will be your duty to resolve that reasonable
9 doubt in favor of the defendant. And, therefore, if, upon
10 your consideration of the whole case, you have a reasonable
11 doubt as to his guilt, you must resolve that reasonable
12 doubt in his favor and return a verdict of not guilty.

13 And on the other hand, after you have carefully
14 considered all the evidence in the case and applied the law,
15 if you have no reasonable doubt as to his guilt, then, of
16 course, it would be your corresponding duty to find him
17 guilty of the crime of murder if it has been proven to your
18 satisfaction beyond a reasonable doubt.

19 Now, the same law that provides that you are the judges
20 of the facts also provides that I am the judge of the law,
21 and that simply means nobody's gonna tell you how to arrive
22 at your determination of facts in this case. You do that,
23 as I previously stated, through the exercise of good
24 judgment and common sense conscientiously applied to the
25 testimony and the evidence in the case.

1 You must, however, accept the law as I provide it to
2 you as being the law that is applicable in this particular
3 case. In other words, you're not to concern yourself with
4 what you thought the law was before you came to serve as a
5 juror this week or what you think the law ought to be. You
6 must, under your oath, accept the law as I provide it to you
7 as being the law that is applicable in this particular case,
8 and then you simply take that law as you apply it to the
9 facts as you 12 jurors determine those facts to be based
10 upon your own common sense examination of all of the
11 evidence presented during the trial of the case.

12 Now, because you are the judge of the facts in this
13 case, you are therefore necessarily the sole judges of the
14 credibility. That is the believability of each witness that
15 has testified during this trial. You 12 jurors alone will
16 decide what weight, value, and effect to give to any
17 particular witness' testimony or even a portion of
18 testimony. So, there are a number of factors which you, you
19 should consider in arriving at your assessment as to a
20 particular witness' credibility, and I'm going to list those
21 factors for you.

22 You may consider the demeanor of the witness. That is
23 how the witness appeared to you as the witness testified
24 from that witness stand.

25 Was the witness straightforward in responding to

1 questions or was the witness hesitant or evasive in
2 responding to questions that were asked of that particular
3 witness?

4 Simply put, did the witness appear to you to be telling
5 the truth and to have knowledge of the facts to which that
6 witness has testified?

7 You may also consider whether or not the testimony of a
8 witness is consistent or is it inconsistent with that
9 witness' own testimony provided here in Court or with other
10 statements made by that same witness outside of Court, and
11 you may consider whether or not the testimony of a witness
12 is consistent or is it inconsistent with other witness'
13 testimony or other evidence received during the trial of the
14 case.

15 You may also consider how the witness came to know the
16 facts to which that witness has testified. That is what was
17 a particular witness' opportunity and ability to perceive
18 the existence of those facts to which they have testified by
19 having previously used their senses, and then what is that
20 witness' ability to be able to come into Court and to
21 accurately recollect to you as to what they have previously
22 seen or heard or felt for that matter.

23 You may also consider any bias or prejudice or interest
24 that a witness, that a witness may have.

25 In other words, do you find some reason that a

1 particular witness would come into Court and would testify
2 one way or another to help or to hurt one side or the other?

3 And you may consider any interest that a witness might
4 have in the outcome of this case if you determine that a
5 witness does have such an interest and you find that that
6 interest would bear upon that particular witness'
7 credibility. You may also consider whether or not the
8 testimony of a witness is strengthened or is weakened by
9 other testimony or other evidence received during the trial
10 of case.

11 Now, because you are the judge of the facts, and
12 because you are the judges of the credibility of each
13 witness, you are permitted to believe as much or as little
14 of what a witness has testified to as you deem is
15 appropriate. And so, you may believe everything that a
16 witness testified to. You may choose to believe none of it.
17 You may believe one portion of a witness' testimony and
18 reject some other portion of that same witness' testimony,
19 and in this case you may believe one witness as opposed to
20 several or several as opposed to one.

21 But whatever you, whatever your good judgment and
22 common sense tells you is the most believable and credible
23 testimony is the testimony you should accept and you should
24 reject any testimony or other evidence that you find not to
25 be credible or believable. Again, your sole objective is to

1 simply reach the truth in the matter, and by doing that you
2 will have fulfilled your obligation as jurors.

3 Now, while there are various forms of evidence such,
4 such as testimony, photographs, documents, charts, and other
5 types of physical exhibits, there are really only two types
6 of evidence. Either or both of those types of evidence may
7 be used to prove any fact in issue, and the two types of
8 evidence are direct evidence and circumstantial evidence.

9 Now, direct evidence is the testimony of a person who
10 testifies from actual knowledge of a fact. It is testimony
11 by a person who has perceived the existence of some fact by
12 means of his or her senses, and then that witness comes into
13 Court and testifies as to what they have previously seen, or
14 heard, or felt.

15 Now, circumstantial evidence, on the other hand, is the
16 proof of some other fact or set of facts, which taken either
17 singularly or collectively, may prove the existence of a
18 fact in question as a necessary consequence. That is
19 through an inference and an inference is simply a deduction
20 of fact that may logically and reasonably be drawn from the
21 proof of some other fact or set of facts.

22 In other words, it's not a fact proven by the direct
23 testimony of a witness based upon that witness' personal
24 perception. But it is a conclusion which might reasonably
25 be drawn from the proof of other facts. In other words, you

1 may infer that a particular event occurred or that a
2 particular fact exist based upon the proof of sufficient
3 factual circumstances which would reasonably warrant your
4 arriving at such a conclusion.

5 Now, the law makes absolutely no distinction between
6 the weight or value to be given to either direct evidence or
7 circumstantial evidence nor is there a greater degree of
8 certainty required of circumstantial evidence as opposed to
9 direct evidence. Whatever type of evidence is used to prove
10 any fact in question, you should consider all of the
11 evidence presented during the trial of this case. And after
12 carefully considering all of that evidence in your minds, if
13 you are not convinced of the guilt of the defendant beyond a
14 reasonable doubt, then you must resolve that doubt in his
15 favor and return a verdict of not guilty.

16 Now, in this case, as you are aware, the defendant has
17 been accused by the State of having committed the crime of
18 murder. Murder is a statutory offense. That just means
19 that the definition of it is provided for in a statute
20 passed by the Legislature, and that statute is set forth in
21 16-3-10, and that statute provides that murder is defined as
22 the killing of any person with malice aforethought either
23 expressed or implied. The words express or implied
24 referring to the element of malice aforethought. So, again,
25 the definition of murder is the killing of any person with

1 malice aforethought either expressed or implied.

2 Now, in order for you to find the defendant to be
3 guilty of the crime of murder, it would be necessary that
4 the evidence in this case has established, to your
5 satisfaction beyond a reasonable doubt, that the defendant
6 did commit some act or acts which proximately caused the
7 death of Samuel Shane Easler, and that that killing was done
8 with malice aforethought.

9 Malice aforethought is an essential element of the
10 crime of murder. Malice, as an essential element of the
11 crime of murder, is a term keynoting an ill will and having
12 an intent to do harm.

13 Now, intent means the State of a person's mind which
14 directs his actions towards a specific object or goal, and
15 intent would include those consequences which represent the
16 very purpose for which an act is done as well as those
17 consequences which are known to be substantially certain to
18 result whether actually intended or not.

19 Malice is a technical term importing wickedness and
20 excluding just cause or legal excuse. It is something which
21 springs from depravity, from a heart devoid of social duty,
22 and fatally bent on mischief. Malice, as an element of the
23 crime of murder, may likewise be defined or described as a
24 state of mind which indicates a formed purpose and design to
25 do a wrongful act under circumstances that exclude any legal

1 right to do it.

2 Now, the word express or implied malice do not mean
3 different kinds of malice, but merely the manner in which
4 malice may be shown to have existed. That is to say either
5 proven by direct evidence or by circumstantial evidence from
6 which one could reasonably infer the existence of malice.

7 Now, malice may be expressed as where there is an
8 expressed threat to kill, or a lying in wait, or where the
9 circumstances showed directly that an intent to kill was
10 entertained by the person committing the homicide. Malice
11 may be inferred, though no express intent to kill is proven
12 by direct evidence, where the facts and circumstances which
13 have been proven by the evidence in this case satisfy you,
14 beyond a reasonable doubt, that malice was present in the
15 mind of the defendant at the time when the killing took
16 place.

17 The existence of malice may be inferred from the
18 circumstances which have been shown to have existed at the
19 time of the event and you are permitted, under the law, to
20 infer the existence of malice from proof of an unlawful and
21 an intentional killing of another person without
22 justification or legal excuse. You are permitted to infer
23 the existence of malice from proof of a wrongful intent to
24 injure another person through the infliction of serious
25 bodily harm indicative of a wicked or a depraved spirit.

1 You are permitted to infer the existence of malice from
2 proof of the intentional use of a deadly weapon. You are
3 permitted to infer the existence of malice from proof of the
4 intentional commission of an act which is inherently
5 dangerous to human life. You are also permitted to infer
6 the existence of malice from proof of the commission of a
7 reckless or reckless act which is inherently dangerous to
8 human life and which is done so recklessly as to manifest a
9 depravity of mind signifying an extreme disregard for or an
10 extreme indifference to human life.

11 Now, malice, as an essential element of the crime of
12 murder, does not necessarily require proof of an ill will or
13 a hatred towards the particular individual who is killed nor
14 does it necessarily require proof of an actual or a specific
15 intent to take human life. But rather it means a state of
16 mind accompanying conduct signifying a general malignant
17 recklessness and an extreme disregard for or an extreme
18 indifference to human life.

19 Now, even if the facts proven in the case are
20 sufficient to give rise to an inference of malice, such an
21 inference is simply an evidentiary fact to be taken into
22 consideration by you 12 jurors along with all of the other
23 evidence in the case, and you may give such inferences such
24 weight, if any, that you determine they should receive, if
25 any. Simply stated, you are permitted to infer the

1 existence of malice from proof of any one or more of the
2 circumstances that I have just described for you as well as
3 from any other evidence in the case from which you might
4 reasonably infer malice. But you are, in no way, required
5 to do so.

6 The State is required to prove malice just as it must
7 prove any other essential element of the crime charged, and
8 it is for you 12 jurors to determine whether or not the
9 evidence in this case establishes malice existed beyond a
10 reasonable doubt based upon your consideration of all the
11 evidence introduced in the case and any reasonable
12 inferences, inferences that might be drawn from that
13 evidence.

14 It's also necessary that malice be aforethought. The
15 law does not require that malice must exist for any
16 appreciable length of time before the commission of an act
17 proximately causing a fatal result. Indeed it may be
18 conceived at the very moment that the fatal act is
19 committed. It is sufficient in the law so long as the State
20 does prove, beyond a reasonable doubt, both the existence of
21 malice and the commission of an act or acts by the defendant
22 which proximately caused the fatal result and the death of
23 Samuel Shane Easler.

24 Now, while the State must prove, beyond a reasonable
25 doubt, that a killing occurred, accompanied by the element

1 of malice aforethought, in order to establish the crime of
2 murder it is not necessary that the State prove any motive
3 for such a killing although there may be evidence relating
4 to such a fact introduced during the trial of the case. But
5 motive is not an essential element of the crime of murder.

6 You are further instructed that the voluntary
7 consumption by a person of alcohol or any other intoxicating
8 substance is no defense to the commission of a crime. A
9 person who voluntarily consumes intoxicating substances is
10 just as responsible for acts committed while under the
11 influence of those intoxicating substances as he would be if
12 the acts were committed while he was sober or otherwise not
13 under the influence of any intoxicating substance.

14 Now, Madam Forelady, and ladies and gentlemen of the
15 jury, I am not in any way concerned with what your decision
16 is. But I do tell you, as I have earlier, that the verdict
17 has to be unanimous. All 12 of you must be in agreement
18 before any verdict may be returned.

19 Now, Madam Forelady, you'll have the indictment in the
20 jury room. You'll see, on the back of the indictment in the
21 lower left-hand corner, the word verdict and it's beneath
22 that word you'll indicate the jury's unanimous decision. In
23 this case you have two possible verdict forms and those two
24 verdicts forms are guilty or not guilty.

25 If the State has satisfied you beyond a reasonable

1 doubt of each of the essential elements of the crime of
2 murder, then your verdict would be guilty. If the State is
3 failed to prove any one or more of the essential elements of
4 that crime, beyond a reasonable doubt, then your verdict
5 would be not guilty. So, whatever that decision is, it must
6 been unanimous. And once it's been reached, indicate that
7 decision in the space provided and sign your name as the
8 foreperson and place the appropriate date to, beneath your
9 signature.

10 Now, during your deliberations, I don't know if we have
11 any smokers on the jury. If we do, you can smoke during
12 deliberations, but you can't smoke in the jury room. You
13 have to go outside if you want to smoke. So, if you need to
14 smoke, let the bailiff know and they'll take you outside.
15 You are instructed that if a juror is absent or for any
16 authorized purpose, the deliberations must stop. They may
17 only resume when all 12 jurors are present so that all may
18 participate.

19 During your deliberations, if you have any question
20 about the facts or evidence, I can not answer any question
21 like that. If you think or if you're wondering if some
22 other piece of evidence that might be available that you
23 could get, it doesn't matter whether it exists or not, no
24 additional evidence may be received now that you are going
25 back to begin with your deliberations in the case. So,

1 don't inquire about any other evidence because even if it
2 does exist you can't have it.

3 If, at anytime, you have a question about the law
4 that's applicable, I can always answer those questions. So,
5 if you need an additional instruction, you need an
6 explanation or a clarification, if you'll let me know, Madam
7 Forelady, I'll be happy to provide that additional
8 instruction or clarification of the instruction.

9 And if, at any time, you need to direct something to
10 me, if you'll write it on a piece of paper, Madam Forelady,
11 give it to the bailiff, he'll provide it to me and I'll
12 respond accordingly.

13 If, during your deliberations, you have a question
14 about testimony that's been given, I do not have transcripts
15 available for the benefit of the jury. But if you think a
16 question that you have can be answered by having testimony
17 replayed, we can bring you back into the courtroom for the
18 purpose of having a witness' testimony replayed in whole or
19 only in part. That depends on what the jury would like to
20 hear. So, if you need to have testimony replayed, let the
21 bailiff know, he'll let me know, and we'll make those
22 arrangements.

23 No additional evidence can be received. So, no point
24 asking me anything about that. If you have a question about
25 the law, I can answer those questions. Let me know if you

1 need an additional explanation, and I'll provide it for you.

2 I think that's everything.

3 All right. With the exception of the two alternates,
4 I'll ask the original 12 if you'll please go with the
5 bailiff to the jury room. But do not begin deliberations
6 yet. I've got some matters I'll need to address with the
7 lawyers. If I don't need to bring you back, I'll simply
8 send word by way of the bailiff that you can begin
9 deliberations. In that event, he'll bring all of the
10 exhibits and the verdict form.

11 (Whereupon, the following takes place outside the
12 presence of the jury. The alternate jurors were dismissed
13 at this time.)

14 THE COURT: Are there any exceptions taken to the
15 instructions or request for additional instructions by the
16 State?

17 SOLICITOR COLER: No, sir, Your Honor.

18 THE COURT: By the defendant?

19 MR. RECKENBEIL: Your Honor, we do have no exception,
20 exceptions to what Your Honor has read. But we will rest
21 obviously on our objections that we made on the voluntary
22 and involuntary charge.

23 THE COURT: All right. So, you except to me declining
24 your request to instruct them on voluntarily manslaughter
25 and involuntary manslaughter?

1 MR. RECKENBEIL: Yes, sir, respectfully for the record.

2 THE COURT: Okay. Let me ask y'all to verify the
3 exhibits before they go back.

4 (Pause.)

5 MR. RECKENBEIL: Judge, do you want to pass back a
6 computer or an audio recorder or would you wait if they want
7 to hear that?

8 THE COURT: Well---

9 (Whereupon, a bench conference was held at this time.)

10 THE COURT: All right. Are all the exhibits accounted
11 for?

12 MR. RECKENBEIL: Yes, sir.

13 SOLICITOR COLER: Yes, sir.

14 THE COURT: All right. Send them back and tell the
15 jury to go ahead and begin deliberation and notify us when
16 they conclude. Tell, tell them if they want to hear the
17 9-1-1 tape, we'll have to bring them back in the courtroom
18 to do that.

19 MR. RECKENBEIL: Thank you, judge. I appreciate it.

20 THE COURT: We'll be at ease while the jury is
21 deliberating.

22 (Whereupon, the jury began deliberations at 3:21, and
23 returned with a question at 3:36.)

24 THE COURT: Let me see y'all just a minute.

25 (Whereupon, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: Okay. Bring them in.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: Madam Forelady, as I understand it, what
6 the jury would like to have reinstructed or an additional
7 instruction as to is what the law, how the law permits a
8 jury to infer the existence of malice---

9 FORELADY: That's correct, Your Honor.

10 THE COURT: ---from other evidence proven in the case?
11 Is that what you're looking for?

12 FORELADY: Yes.

13 THE COURT: Okay. I mean you just want that portion of
14 the instruction?

15 FORELADY: Yes, please.

16 THE COURT: Okay. All right. The existence of malice
17 may be inferred from the circumstances shown to have existed
18 at the time of the event, and you are permitted, under the
19 law, to infer the existence of malice, if you determine it
20 to be reasonable, from proof of an unlawful and an
21 intentional killing of another person without justification
22 or legal excuse. You may also infer the existence of malice
23 from proof of a wrongful intent to injure another person
24 through the infliction of serious bodily harm indicative of
25 a wicked or depraved spirit.

1 You are permitted to infer the existence of malice from
2 proof of the intentional use of a deadly weapon. You are
3 permitted to infer the existence of malice from proof of the
4 intentional commission of an act or acts which is or are
5 inherently dangerous to human life. You are permitted to
6 infer the existence of malice from proof of the commission
7 of a reckless or reckless acts, which is inherently
8 dangerous to human life, and which, if done so recklessly,
9 as to manifest a depravity of mind signifying an extreme
10 disregard for or an extreme indifference to human life.

11 Now, while you are permitted to infer the existence of
12 malice from proof, from proof of any one or more of those
13 circumstances that I just described, as well as from any
14 other evidence received during the trial of the case from
15 which you might reasonably infer such a fact, you are in no
16 way required to make that inference unless you determine it
17 to be reasonable based upon your own good judgment and your
18 common sense.

19 Okay.

20 FORELADY: Thank you.

21 THE COURT: Now, if you'll please retire and continue
22 your jury deliberations. If you need any additional
23 explanation or clarification, let me know.

24 FORELADY: Thank you.

25 (Whereupon, the question of the jury was marked as

1 Court's Exhibit No. 1 for identification purposes only at
2 this time.)

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Any exceptions taken to the additional
6 instructions?

7 SOLICITOR COLER: No, sir, not from the, not from the
8 State, Your Honor.

9 MR. RECKENBEIL: Nothing, nothing from the defense,
10 Your Honor.

11 THE COURT: Okay. We'll continue to be at ease while
12 the jury is deliberating.

13 (Whereupon, the jury began deliberations again at 3:40,
14 and returned with a verdict at 4:45.)

15 THE COURT: All right. I understand the jury has
16 reached a decision. I don't know what the verdict is, but
17 it doesn't make any difference. All spectators are reminded
18 that there will be no outburst, no reactions, no emotional
19 display as a result of what this jury's decision is. And if
20 anybody who can not control your emotions, pending what the
21 decision is, you need to leave now because if there's any
22 outburst you will be taken into custody and you will be
23 going to the local facility for some period of time. I'll
24 make that determination.

25 Anybody want to leave now?

1 (No response.)

2 THE COURT: Okay. Bring the jury in.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. Madam Forelady, have you and
6 your fellow jurors reached a unanimous decision?

7 FORELADY: We have, Your Honor.

8 THE COURT: And have you indicated that decision on the
9 back of the indictment as requested?

10 FORELADY: Yes, sir.

11 THE COURT: Did you sign your name as foreperson and
12 date it?

13 FORELADY: Yes, sir.

14 THE COURT: If you'll please hand that up by way of the
15 bailiff.

16 (Forelady complies.)

17 THE COURT: You may publish the verdict.

18 CLERK: State of South Carolina, County of Spartanburg,
19 Court of General Sessions, Indictment Number
20 2008-GS-42-0129, State of South Carolina versus Channack
21 Keam, indictment for murder, the jury finds the defendant
22 guilty. Signed Jacqueline Dimaggio, foreperson, and dated
23 6/3 of '08.

24 Ladies and gentlemen of the jury, if this is your
25 verdict and still your verdict, if so, please raise your

1 right-hand.

2 (Whereupon, all jurors raise their hands at this time.)

3 CLERK: So say you-all.

4 THE COURT: All right. Does the defendant wish to have
5 the jury polled?

6 MR. RECKENBEIL: Yes, Your Honor.

7 THE COURT: All right. Poll the jury please, ma'am.

8 (Whereupon, the jurors were polled at this time and all
9 jurors answered in the affirmative that this was and is
10 still their verdict.)

11 CLERK: So say you all.

12 THE COURT: All right. Any other matters we need to
13 address with the jury present?

14 SOLICITOR COLER: Nothing from the State, Your Honor.

15 MR. RECKENBEIL: Nothing from the defense, Your Honor.

16 THE COURT: All right.

17 (Whereupon, the jury was dismissed at this time.)

18 THE COURT: All right. Anything we need to address
19 prior to imposition of sentence?

20 SOLICITOR COLER: No, sir.

21 MR. RECKENBEIL: Yes, sir, Your Honor. If I -- Your
22 Honor, just respectfully for the record, Your Honor, under
23 Rule 29, I would make a motion for a new trial based upon
24 the fact that the Court's failure to instruct the jury on
25 voluntary manslaughter and involuntary manslaughter, and all

1 prior objections that we made during the course of this
2 trial.

3 THE COURT: All right. That motion is denied.

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

5 THE COURT: All right. Anything further on behalf of
6 the State?

7 SOLICITOR COLER: Just I don't know if the victims want
8 to be heard, Your Honor.

9 THE COURT: You mean the family?

10 SOLICITOR COLER: Yes, sir, I'm sorry. Family of the
11 victim.

12 (Pause.)

13 SOLICITOR COLER: Judge, I'm told a couple of the
14 family members or at least one wanted to address the Court
15 at the appropriate time.

16 THE COURT: All right.

17 SOLICITOR COLER: Your Honor, come around?

18 THE COURT: Yes, she can stand there with you. She can
19 come up here. Just come over here next to that witness box.

20 MRS. EASLER: Carol Easler, Shane's step-mom. And I
21 think I speak for myself and his mom in that we know this
22 is -- this is been hard for everybody because the families
23 are kind of intertwined as they were good friends and we
24 know him. He's been to my house. He's been to his, Shane's
25 mother's house many times.

1 And we had hoped that it wouldn't come to the jury
2 trial. We hoped that he would plead guilty, do some time,
3 cause we do feel like he needs to be punished for what he
4 did because what -- drinking and doing pills is not an
5 excuse for what happened.

6 But at the same time, we are forgiving and, and, and,
7 and I have no intention of seeing him spend the rest of his
8 life in jail. And I know that's how, that's how Teresa and
9 I both feel and I just wanted you to know that.

10 THE COURT: Okay. Thank you, ma'am. Good luck to you.

11 MRS. EASLER: Thank you.

12 SOLICITOR COLER: That's all from the State, Your
13 Honor.

14 THE COURT: All right. Mr. Reckenbeil.

15 MR. RECKENBEIL: Your Honor, on behalf of the, of the
16 family, as well as my client, this is a horrible situation
17 as Your Honor is heard. Really little words can comfort as
18 to what has gone on here. I would respectfully echo his
19 stepmother's incentives in the fact that asking this Court
20 for leniency on the fact that my client spending the rest of
21 his life in jail. I understand Your Honor has latitude in
22 this matter, and we would ask for the mandatory minimum.

23 THE COURT: All right. Mr. Keam, is there anything
24 you'd like to add to what your lawyer has told me?

25 DEFENDANT: No, sir.

1 THE COURT: All right. On Indictment 2008-0129, State
2 versus Channack Keam, indictment for murder, where you have
3 been found guilty by a jury of that offense, Sentence of the
4 Court is you, Channack Keam, be confined to the South
5 Carolina Department of Corrections for a period of 30 years.

6 Now, Mr. Keam, you have a right to appeal the decision
7 of the jury and the Sentence of the Court. You must file
8 any notice of your intention to appeal those decisions
9 within ten days of today's date. Your lawyer will provide
10 you advice in that regard.

11 SOLICITOR COLER: Thank you, Your Honor.

12

13 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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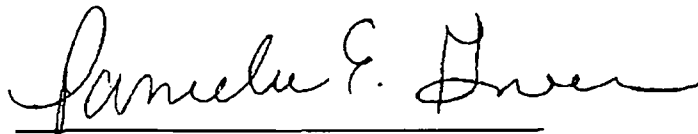
25

C E R T I F I C A T E

I, Pamela E. Green, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 2nd and 3rd day of June, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 11th, 2008

A handwritten signature in cursive script, reading "Pamela E. Green", written over a horizontal line.

PAMELA E. GREEN, Court Reporter

WITNESSES

[Signature]

Spartanburg County Sheriff's Department

3. GRAND JURY

4. INDEXED

5. CHECKED INDEXED

6. CHECKED INDEXED

7. ASSESSMENT AND

FROM GRAND JURY

8. TRAFFIC VIOLATIONS CODE

☒

Computer

ARREST WARRANT NUMBER

K285560

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1/3/08

VERDICT

Guilty

Foreperson of Petit Jury

Date:

1/3/2008

DOCKET NO.

08-GS-42-0129

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 07 2008

TERM

THE STATE

v

Channack Keam

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2008 JAN 11 PM 2:31

MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 04 2008

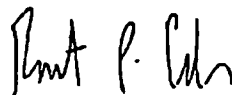
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Channack Kearn did in Spartanburg County on or about September 22, 2007, feloniously, willfully, and with malice aforethought, kill Samuel Shane Easler by shooting him in the chest, 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).

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 VS.
CHANNACK KeanINDICTMENT/CASE#: 08-GS-42-0129
AW#: K285516
Date of Offense: 9-22-07
S.C. Code §: 16-3-10
CDR Code #: 0116AKA:
Race: Kean Sex: Male Age: 27
DOB: 9-15-80 SS#: 026-62-3902
Address: 320 W. WINDY ST
City, State, Zip: Spartanburg SC 29303
DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Robert P. Cahn
SolicitorChannack Kean
DefendantJohn C. Reckers
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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	\$100.00
§56-5-2995 (DUI Assessment)	\$12	\$12.00
§35.13 (Public Def/Prob)	\$500	\$500.00
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$100.00
§50-21-114(BUI Breath Test Fee)	\$50	\$50.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$40.00
3% to County (if paid in installments)	\$	\$12.00
TOTAL	\$	\$1387.00

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.

W. McKinnon

Clerk of Court/Deputy Clerk

Court Reporter: Dawn G. Baker

PRESIDING JUDGE

Judge Code: 21-1-01-51-3Sentence Date: June 3, 2008

COPY³⁰⁹ 175W (MB)

STATE OF SOUTH CAROLINA)
)
County of Spartanburg)
)
Channack Kean, 00328676)
)
Full name and prison number (if any) of Applicant)
)
)
v.)
)
)
State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

2011-CP-42-2033

APPLICATION FOR

POST-CONVICTION RELIEF

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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application 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 the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Spartanburg
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-42-129 Murder
(b) _____

CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY -6 PM 10:55
MAILED BY
J. BOLEY

(33)

5. The date upon which sentence was imposed and the terms of the sentence:
 (a) June 2, 2008, Hon. J. Durham Cole, 30 years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty ^x _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
 Yes _____
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. S.C. Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. April 29, 2010 opinion and remittitur issued May 17, 2010
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion No. 2010-UP-264 - Filed April 29, 2010
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

2011 MAY -6 AM 10:55
 M. HOPE ELLA BAILEY

CLERK OF COURT
 SPARTANBURG COUNTY

(M)

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) Brady and discovery violations
- (c) Ineffective assistance of Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to effectively represent in the defense of the case.
- (b) State failed to timely disclose discoverable information.
- (c) Failed to properly object and preserve issues during trial.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY -6 AM 10:55
M. HOPE ALLENLEY

(33)

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY -5 AM 10:55
A. HOPE BLACKEY

16. If any ground set forth in (10) 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:

- (a) It would have been untimely. _____
- (b) _____
- (c) _____

17. 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 applications with respect to this conviction, which you filed? Yes _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. John Reckenbeil, P.O. Box 1633, Spartanburg, SC 29304 _____
- ii. J. Falkner Wilkes, 114 Whitsett St., Greenville, SC 29601 _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial proceedings _____
- ii. Post trial proceedings, appeal, PCR _____
- iii. _____

CLERK OF COURT
SPARTANBURG COUNTY
2017 MAY -6 AM 10:55
M. J. HOPKINS
CLERK

(M)

19. State clearly the relief you seek in filing this application:
Reversal and new trial.

20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, Channack Kean, 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.

C. Kean

SWORN to and subscribed before me this 3rd
day of May, 2001.

[Signature] (L.S.)
Notary Public

My Commission Expires: 2.11.04

CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY -6 AM 10:55
M. HOPE BLACKLEY

(M)



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Channack Keam, 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 of 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 said proceeding or give security thereof.

C. Keam

Applicant

SWORN or affirmed to and subscribed before me this

3-8 day of May, 2011.

[Signature]
Notary Public

My Commission Expires: 2-12-14

CLERK OF COURT
SPRINGFIELD COUNTY
2011 MAY -6 AM 10:55
M. HOPE BLANCHLEY

(m)

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

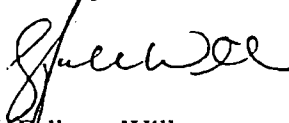
May 6, 2011

M. Hope Blackley
CLERK OF COURT
PO Box 3483
Spartanburg, SC 29304-3483

Re: Channack Keam, 00328676

Dear Ms. Blackley,
Please note my representation in this case.

Sincerely,



J. Falkner Wilkes

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY -6 AM 10:55
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Channack Keam, #328676,	)	2011-CP-42-2033
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 6, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the January 2008 term of the Spartanburg County Grand Jury for murder (08-GS-42-0129). He was represented by John G. Reckenbeil, Esquire. On June 2, 2008, the Applicant proceeded to trial, where he was found guilty of the charge by a jury. He was sentenced by the Honorable J. Derham Cole to confinement for thirty years.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Keam, Op. No. 2010-UP-264 (filed April 29, 2010). The Remittitur was returned on May 17, 2010.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the 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 effectively represent in the defense of the case,
 - b. Counsel failed to properly object and preserve issues during the trial,
2. Brady and discovery violations, in that;
 - a. The State failed to timely disclose discoverable information.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the 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, the 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.

The Applicant also alleges that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a

reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

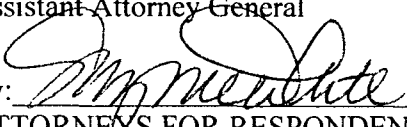
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 2, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Channack Keam,

2011-CP-42-2033

Applicant,

v.

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 2nd day of May, 2012.

COURT OF COMMON PLEAS
2011-CP-42-02033

Channack Keam,

Applicant,

-VS-

The State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

November 4, 2014
Spartanburg, South Carolina

Ordered: January 10, 2015

Delivered: February 27, 2015

BEFORE:

The Honorable R. Keith Kelly, Presiding Judge.

APPEARANCES:

Mr. Jeffrey Faulkner Wilkes, Esquire
Attorney Appearing for the Applicant

Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Pamela Faucette
Circuit Court Reporter

I N D E X**Channack Keam PCR****Page:**

Ms. White's Recitation of Facts..... 3

W I T N E S S E S**Mr. Simone Moeung:****Page:**

Direct by Mr. Wilkes..... 4
Cross by Ms. White..... 10

Ms. Amanda Condrey:**Page:**

Direct by Mr. Wilkes..... 11

Mr. John Reckenbeil, Esquire:**Page:**

Direct by Mr. Wilkes..... 16
Cross by Ms. White..... 30
Redirect by Mr. Wilkes..... 35

E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
1 - (Statement/Misc Documents)	16	20
2 - (Statement/Misc Documents)	16	23
3 - (Statement/Misc Documents)	16	25
4 - (Statement/Misc Documents)	16	35
5 - (Handwritten Note)	16	37 (Over Obj.)

Respondent's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

Reporter's Certification:..... 38

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

November 4, 2014**11:58 A. m.**

1 (Off-the-Record Comments)

2 THE COURT: Yes, ma'am?

3 MS. WHITE: Thank you, Your Honor. We're here before you
4 today on *Mr. Channack Keam vs. The State*, case number 2011-CP-42-2 —
5 2033.

6 Mr. Keam was indicted January of '08 on the charge of murder,
7 proceeded to trial where he was rep — represented by Mr. John Reckenbeil.
8 And he received a sentence of 30 years after he was convicted.

9 There was an appeal and it eventually was affirmed. He's alleged
10 allegations of ineffective assistance of counsel and a *Brady* violation. And,
11 Your Honor, he's represented today by Mr. Jeff Wilkes. So I'll turn it over to
12 Mr. Wilkes.

13 THE COURT: Yes, sir?

14 MR. WILKES: Thank you, Your Honor. May it please the Court?
15 We're going to hurry through backwards. And I'm going to call two witnesses
16 so that they can leave. One has got a child here (inaudible) ----

17 THE COURT: Yes, sir.

18 MR. WILKES: So I'll start with Simone Moeung.

19 (Off-the-Record Comments)

20 (Whereupon,

21 Simone Moeung

22 having been duly sworn, testified as follows:)

23 THE COURT: Thank you, sir. Please, have a seat. Speak loudly
24 and clearly. This is my court reporter. She has to record everything. And tell
25 us your full name.

1 THE WITNESS: My name is Simone Moeung.

2 THE COURT: Okay. Yes, sir?

3 Direct Examination by Mr. Wilkes:

4 Q. May I call you Simone?

5 A. Yes.

6 Q. And you pronounce your last name as Moeung?

7 A. Moeung, that's correct.

8 Q. Okay. Mr. Moeung, spell your last name.

9 A. M-o-e-u-n-g.

10 Q. Thank you. Now, do you know Mr. Keam?

11 A. Yes, sir.

12 Q. Did you know him around the time that Mr. Easler (phonetic) died?

13 A. Yes.

14 Q. And did you know Mr. Easler?

15 A. Yes.

16 Q. Are you aware of circumstances and events leading up to Mr. Easler's
17 death?

18 A. Yes.

19 Q. Were you ever contacted by Mr. Reckenbeil or any other lawyer at the
20 time on behalf of Mr. Keam?

21 A. No.

22 Q. What was your relationship with Mr. Keam and Mr. Easler?

23 A. We were all three best friends.

24 Q. Okay. And what was the relationship between Mr. Keam and Mr.
25 Easler specifically?

26 A. They were real good friends, close friends.

1 Q. Okay. Now, if you had been contacted by Defense Counsel, what
2 would you have been able to tell him about the background between Mr. Keam and
3 Mr. Easler and the other people that were supposedly involved on the day of the
4 incident?

5 A. Pretty much a lot of things.

6 Q. Okay. Such as?

7 A. Such as Shane was my sister's boyfriend at the time.

8 Q. Okay.

9 A. And ----

10 Q. What is your sister's name?

11 A. Siena Sams (phonetic).

12 Q. And is there any connection between Shane and her now?

13 A. No.

14 Q. I don't mean Shane. Keep going. I'm sorry. Shane is deceased.

15 A. Right.

16 Q. Okay. Siena is now related to you — not you, but to who? She's
17 married to who now?

18 A. Oh, Alan Kennedy (phonetic).

19 Q. Okay. All right. Go ahead and explain what you were explaining.

20 A. Oh, okay. Shane, he — he was my sister's ex-boyfriend, but at the
21 time, before everything happened, I'd say a week, maybe two ago before everything
22 happened, he had put his — his hands on my sister.

23 Q. Okay. And what — tell me more about that. Why is that important?

24 MS. WHITE: Your Honor, I was going to object to relevancy, and

25 I guess he's ----

1 **MR. WILKES:** Well, I'm — the questions I'm asking are what are
2 the things that he could tell Defense Counsel for Defense Counsel to follow
3 up, discover other information, and do other things.

4 So, in addition to having his testimony, it's relevant in a PCR case even
5 though things may not seem relevant or hearsay or whatnot, it's still relevant
6 as to the investigation in the case for a PCR.

7 **THE COURT:** Okay.

8 **Q.** (By Mr. Wilkes) Now, tell me why that's important.

9 **A.** At the time, they had got into it, and I had to kick him out ----

10 **Q.** Okay.

11 **A.** ---- because he was living with me a — a week or two before all of this
12 happened.

13 **Q.** Okay.

14 **A.** And pretty much I had got — I did get word that, you know, they was
15 hanging out and having a good time before that night — well, that night.

16 And my sister's husband, Alan, was there also when whatever was
17 going on. And ----

18 **Q.** Now, when you say your sister's husband, that's husband ----

19 **A.** Now.

20 **Q.** ---- now? Okay.

21 **A.** But at the time wasn't.

22 **Q.** And ----

23 **A.** And he was my sister's baby's father at the time.

24 **Q.** Okay.

25 **A.** And he was upset that Shane had put his hand on her.

1 Q. Okay. And so you're saying that you believed at the time that he was
2 mad at Shane, who is the deceased?

3 A. Right.

4 Q. Okay. And tell me what else you know.

5 A. I also know that there was more people there at — at the bar at the
6 time.

7 Q. Okay. Who — who do you believe was at — and we're talking about
8 Red's being the place right near the incident scene, right?

9 A. Right, yeah.

10 Q. Okay. Who else was there?

11 A. Victoria, I don't know her last name, which used to be Channack's
12 girlfriend.

13 Q. Okay.

14 A. And her brother Tyler.

15 Q. Okay. And can you tell me any relationship that you're aware of
16 between Tyler and either Mr. Easler or Mr. Keam?

17 A. Tyler really didn't like Channack because of him dating his sister. And
18 — well, Shane they had been hanging out awhile and Shane would — those two
19 would argue about things that, you know, they — Tyler didn't like.

20 Like they would get into it after drinking a little — while they were
21 drinking.

22 Q. All right. And what's the relationship between Alan and ----

23 A. Tyler?

24 Q. Yes.

25 A. They were best friends ----

1 Q. Okay.

2 A. ---- pretty much.

3 Q. All right. Now, subsequent to the incident, did you run into either Alan
4 or Tyler?

5 A. Can you run by that again?

6 Q. Did you have an occasion, at your house, to see either Alan or Tyler?

7 A. I've seen Adam — Alan after everything happened, probably two or
8 three days later.

9 Q. Okay. And where did you see him?

10 A. At my house.

11 Q. And was he with anybody?

12 A. Yeah, from — a Mexican (phonetic) guy.

13 Q. All right. And what kind of car were they driving?

14 A. A black Honda Civic.

15 Q. Okay. Now, do you — were you under the belief at that time that there
16 was any motive between Alan and the deceased ----

17 MS. WHITE: Your Honor, I think that calls for a legal — the
18 motive, he can't ----

19 MR. WILKES: I didn't mean to say motive. I apologize.

20 THE COURT: Okay. All right.

21 MR. WILKES: That's — that is the legal term.

22 Q. (By Mr. Wilkes) Was there any ill will between Alan and the deceased
23 at that time?

24 A. Yeah. I believe that Alan was pretty upset about him hitting my sister.
25 And, you know...

1 Q. All right. And are there any other — are there any other facts you're
2 aware of that would give Alan or Tyler a reason for ill will toward Mr. Keam for the
3 deceased?

4 A. Yeah, pretty much Tyler didn't like Channack, for one reason, dating his
5 sister. And, you know, Shane, he didn't like him because Alan didn't like him and
6 they were pretty much best friends. And Shane would talk junk to him, you know.

7 Q. And you indicated that, if you had spoke to Defense Counsel at the
8 time or near the time of the trial, you could have told him these things?

9 A. Yes.

10 Q. And you say that you saw Alan in a black Honda Civic how long after
11 the incident?

12 A. Two or three days later.

13 Q. At...?

14 A. My home.

15 Q. Okay. Very good. And you didn't actually see the incident with your
16 sister getting hit or choked or whatever happened, did you?

17 A. No, my ex-wife did.

18 Q. Okay. And she is?

19 A. Amanda Condrey.

20 Q. And she's here?

21 A. Yes.

22 Q. Okay. All right. Very good. If you'll answer any questions the Attorney
23 General has.

24 THE COURT: Yes, ma'am?

25 MS. WHITE: Thank you, Your Honor, just briefly.

Cross Examination by Ms. White:

Q. The incident occurred in 2007; is that right?

A. Yes.

Q. And you're testifying today that you recall seeing Alan seven years ago with a Mexican driving a black Honda Civic?

A. Yes.

Q. Okay. In regards to testimony, you said your sister is now married to Alan Kennedy?

A. Yes.

Q. So that is your brother-in-law?

A. Yes.

Q. Okay. Did you ever approach or try to contact Mr. Keam's attorney to share with him this information that you think is important?

A. No.

Q. Okay. So were you — as far as you know, Mr. Reckenbeil was not aware of any of the information you have?

A. As far as I know, yes.

Q. Okay. Thank you.

MS. WHITE: That's all I have, Your Honor.

THE COURT: Anything?

MR. WILKES: No, sir.

THE COURT: Thank you. You may step down, sir. Please, be careful.

(The witness complied with the request.)

MR. WILKES: We would ask Amanda Condrey to come forward to

1 the witness stand.

2 **THE COURT:** Ma'am come up and be sworn, please.

3 (The witness stepped forward to be sworn.)

4 (Whereupon,

5 **Amanda Condrey**

6 having been duly sworn, testified as follows:)

7 **THE COURT:** Tell us your full name and spell your last name,
8 please.

9 **THE WITNESS:** Amanda Lynn Condrey, and my last name is
10 spelled C-o-n-d-r-e-y.

11 **THE COURT:** Thank you. Yes, sir?

12 **Direct Examination by Mr. Wilkes:**

13 **Q.** Ms. Condrey, did you witness — it was Tyler I believe --- assault —

14 **A.** It was Shane ----

15 **Q.** I'm sorry, Shane assaulted Siena?

16 **A.** I did.

17 **Q.** And tell me what happened.

18 **A.** They had been drinking, Siena and Shane at home.

19 **Q.** Okay.

20 **A.** And I'm not sure what the argument started over, but about 15 minutes
21 into the argument, I seen him shove her into a wall. And he attempted to choke her.
22 That's why I stepped in because she had a car accident and she's got brain damage
23 and the slightest little hit could kill her.

24 I made him leave the house that night. Simone was at work. I was the
25 only one that was at the house with them that night.

1 During the argument, when Shane had shoved Siena into the wall, after
2 he got off of her and I stepped between them, I heard her yell at him, "You're dead."

3 I knew that was something out of anger, but following what happened
4 afterwards....

5 Q. Okay. And how long before the incident with Mr. Keam ----

6 A. It was about three or four days.

7 Q. Okay. And who all knew about that?

8 A. About the fight?

9 Q. Uh-huh (affirmative).

10 A. Myself and the children that were in the house.

11 Q. Okay. And did Alan subsequently learn about it?

12 A. He did. I'm not sure exactly how fast he learned about it. I went to
13 work the next three days and the day of the incident with Shane at Red's, I got off of
14 work at 3 o'clock in the morning and Alan was at the house with Siena.

15 Q. Okay. Very good. Are you aware of any ill will between Alan or Tyler,
16 Mr. Keam or ----

17 A. Between the four of them, I was aware that there were some problems.
18 Tyler did have animosity towards Channack because he was dating his sister.

19 Q. Okay.

20 A. The age problem. And Shane — Shane didn't have any personal
21 feelings against Alan. He left it alone, but Alan was upset after he found out about
22 the physical assault.

23 Q. Okay. Did you ever see Alan in the black Honda Civic?

24 A. I did. The night that I got off of work, after the incident actually
25 happened at Red's, when I got off, it was Alan at the house with another person and

1 Siena and the guy Marco (phonetic), that drove the black Honda.

2 The Honda was the car that actually came in that night that I was....

3 Q. Okay. Very good. And, if you had been contacted by Defense

4 Counsel, would you have been able to tell him this at that time?

5 A. I did speak to Mr. Reckenbeil one time on the phone.

6 Q. Okay.

7 A. And he was supposed to call me back, but I never got another call after

8 that. I tried to tell him everything that I did know about it.

9 Q. Okay.

10 A. Things I was told by somebody else that was at the Red's bar that

11 night ----

12 Q. Okay.

13 A. ---- things I know from home, and, you know, the problems between the

14 four people ----

15 Q. Okay.

16 A. ---- involved.

17 Q. And what did you try to tell him about the things that you ----

18 A. I explained to him that with Alan, there was already problems ----

19 Q. Right.

20 A. ---- between Shane as it was because of Siena.

21 Q. Right.

22 A. And I explained to him that everything that had happened between the

23 time I spoke to him — well, between the time of the incident and the time I spoke

24 with him.

25 I told him that the way things played out, it didn't seem concrete to me,

1 what was being said because, when I would return to work the next day, I had a co-
2 worker tell me how he went to Red's and he had seen a black Honda ----

3 **MS. WHITE:** Your Honor ---

4 **THE COURT:** That's ----

5 **MS. WHITE:** ---- I object to hearsay.

6 **MR. WILKES:** Hearsay is appropriate if she is saying these are
7 the things that I either told him or could have told him that he could have
8 followed up on. It is hearsay in the trial, but it's appropriate on the issue of
9 proper investigation and what you do after that.

10 **THE COURT:** I'm going to allow it.

11 **MS. WHITE:** Okay.

12 **A.** I did inform Mr. Reckenbeil, though, that I had been told by a co-worker,
13 who was at Red's that night, that the black Civic had been there.

14 **Q.** Right.

15 **A.** And it had been Tyler and Alan in the Civic. My co-worker had left
16 before the incident actually took place, so he wasn't there during the actual event.
17 But he seen the car there and I tried to tell Mr. Reckenbeil about that.

18 And I waited on another call so I could give the rest of the information
19 because the day I was on the phone with him, it was a hectic day with everything that
20 happened.

21 I had the kids to worry about. had to get back to work. I had to make
22 sure my sister-in-law was okay. And I had to figure out why Alan kept coming around
23 because I didn't feel safe with him coming around.

24 **Q.** Did you leave your number and contact ----

25 **A.** He had my information.

- 1 Q. Okay. And, at the time — you were married at that time?
- 2 A. Common law, but yeah.
- 3 Q. To ----
- 4 A. Yeah.
- 5 Q. ---- Simone? Okay, okay. Very good. So you all were living together
- 6 at that time?
- 7 A. Yes.
- 8 Q. So, if he had spoke with you; he could have spoke with ----
- 9 A. Yes.
- 10 Q. ---- someone else? Okay. And you all are not living together now?
- 11 A. No.
- 12 Q. Okay.

13 MR. WILKES: No further questions, Your Honor.

14 THE COURT: Yes, ma'am?

15 MS. WHITE: Nothing further, Your Honor ---

16 THE COURT: Okay.

17 MS. WHITE: ---- from the State.

18 THE COURT: Ma'am, you may step down. Please, be careful.

19 (The witness complied with the request.)

20 THE COURT: Yes, sir?

21 MR. WILKES: May we continue?

22 THE COURT: Yes, sir.

23 MR. WILKES: We call Mr. Reckenbeil to the stand.

24 THE COURT: Okay.

25 (Whereupon, Applicant's Exhibit Numbers 1 through 5 were

1 marked for identification.)

2 (The witness stepped forward to be sworn.)

3 (Whereupon,

4 John Reckenbeil, Esquire

5 having been duly sworn, testified as follows:)

6 THE COURT: Thank you. Please take a seat and tell us who you
7 are.

8 MR. RECKENBEIL: My name is John Reckenbeil, R-e-c-k-e-n-b-
9 e-l-l.

10 THE COURT: Thank you. Yes, sir?

11 MR. WILKES: If I may approach?

12 THE COURT: Yes, sir.

13 Direct Examination by Mr. Wilkes: 12:30 P.m.

14 Q. Mr. Reckenbeil, I'm going to give you the exhibits and I'll work through
15 them in order. If you'll look at what's marked I believe as Applicant's Number 1,
16 there is a couple of statements. How well do you remember the trial? Let me ask
17 you that first.

18 A. I remember the trial.

19 Q. Okay.

20 A. I can say — I would say probably fairly — fairly well.

21 Q. Okay. Is it fair to say that the — was the — was it a difficult trial?

22 A. (No Response)

23 Q. A difficult case to defend?

24 A. I think it was a difficult trial. And I think it was — it was a difficult legal
25 factual issue because I didn't see any sort of animosity between Shane and

1 Channack. And, you know, I — I called him lazy, if I'm not mistaken. His ----

2 Q. You are correct.

3 A. Okay. Well, good. See, I do remember things. I couldn't see animosity
4 and I didn't think the domestic dispute had anything to do with it.

5 So —

6 Q. And, when I say "lazy," that was laziness?

7 A. Yeah, Simone was lazy, yes.

8 Q. That's correct.

9 A. So I saw — and I was correct because of the way that the mother stand
10 up — stood up and — in sentencing and said, "I lost one son; I don't want to lose
11 another for life." And so I saw a close bond here. So it just didn't make a lot of
12 logical sense because these guys were close and they were good friends.

13 Q. Okay. Now, let me make sure. When you referred to "lazy," that Mr.
14 Moeung was lazy?

15 A. From my notes reflecting that and I looked over ----

16 Q. Okay.

17 A. ---- and remember seeing that, yes.

18 Q. And the deceased is...?

19 A. Shane Easler.

20 Q. Shane Easler? Okay. Now, what — from the theory of the Defense,
21 did — do you feel like you presented the potential for a drive-by shooting effectively?

22 A. I — I guess. I — I really can't say because I don't think there really was
23 a drive-by shooting defense in this.

24 Q. Okay.

25 A. I know it was probably sporadic in the defense of — of saying it — it

1 possibly could have been somebody else, but when the — the gun was found in
2 Channack's back pocket, that's a problem — that would — that's a problem ----

3 Q. Well, let me ----

4 A. — I didn't think needed to go to the jury (phonetic).

5 Q. There was a gun found in Channack's back pocket, correct?

6 A. Right.

7 Q. But, was there any evidence that, that gun actually fired the bullet that
8 killed the deceased? Am I correct to say that there's no physical evidence linking the
9 fatal shot to the gun?

10 A. The only thing would be is there wasn't — there was testimony from
11 SLED that the gunshot residual particularly was not found on Channack's hand, but
12 there was gun metal fragments that — that was found on his hand that could be
13 consistent with — with a gun being fired.

14 Q. But, the gun that was found, there was no actual ballistics — there's no
15 bullet found, no ballistics to show that, that gun fired the fatal shot, correct?

16 A. Yeah, correct.

17 Q. Okay. So was there not a number of statements, as far as being
18 multiple gunshots, in different groups? In other words, a — a burst of gunfire and,
19 then, another burst of gunfire? In other words, two separate groups like?

20 A. I can't say that I specifically recall that.

21 Q. If you will, look at what's marked as Applicant's Number 1.

22 (The witness complied with the request.)

23 Q. The first page on Applicant's Number 1 should be a statement of
24 Teresa Bishop.

25 (Brief Pause)

1 A. All right. I see that.

2 Q. Do you recall — you filed discovery — or received discovery and, in that
3 discovery, do you recall the statement of Ms. Bishop?

4 A. I can't say word-for-word, but if you give me a second, I can briefly
5 review it.

6 (Brief pause while the witness reviews documents.)

7 A. Okay, I remember.

8 Q. Is that ----

9 A. Yes, it refreshes my recollection, yes, sir.

10 Q. Okay. And Ms. Bishop gave a statement to the police that specifically
11 said that Mr. Keam told her a car drove by and shot his friend?

12 A. Correct.

13 Q. Okay. Now, if you'll flip over to the next page, which is the
14 supplemental report from Officer Henderson?

15 A. Yes, sir.

16 Q. And I've highlighted it. Does that not also indicate that the Defendant
17 apparently said to Officer Henderson it was a drive-by?

18 A. Right. "...and he was hard to understand, but stated it was a drive-by,"
19 yes, sir.

20 Q. It was a drive-by?

21 A. Yes, sir.

22 Q. And, in the next page, the next page being Investigator Lindsey's
23 report, says — and I highlighted it in the middle — it says, "He told me that a car
24 came by and that he shot the victim"?

25 A. I see that.

1 Q. Or, "A car came by and shot the victim"?

2 A. Yes, sir, I see that.

3 Q. Okay. So, at least there was a --- a — some indication there that, if that
4 was the testimony of these people, if they had testified at trial that way, there would
5 be a — at least evidence of a drive-by shooting?

6 A. Yes, sir. There — there was —

7 Q. Okay.

8 A. Yes, sir, you're correct in that statement.

9 Q. Okay.

10 MR. WILKES: Your Honor, we would offer that as Applicant's
11 Number 1.

12 MS. WHITE: No objection, Your Honor.

13 THE COURT: Without objection, it's admitted.

14 (Whereupon, Applicant's Number 1 was admitted without
15 objection.)

16 Q. (By Mr. Wilkes) If you look at the — Applicant's Number 2, the first
17 page would be that of a voluntary statement from Doll Hammiger (phonetic). Does
18 that ring a bell, Doll Hammiger (phonetic)?

19 A. Yes, sir. I've had a chance to review it and I — I do remember a
20 witness talking about this specific issue.

21 Q. Okay. Now, in that statement — I highlighted the portion --- does it say,
22 "I, then, heard gunshots. I came outside. When I came outside, I heard four or five
23 more shots." And, then, it says down below, "They said they saw two cars."

24 A. That's correct. That's what it states.

25 Q. Okay. And Hammiger was not called to testify, correct?

1 A. I don't ---- I don't believe so, apparently so.

2 Q. Okay. The second sheet shows the voluntary statement, again, of
3 another witness, Michael Wayne Byers (phonetic). And, if you look down to where
4 I've highlighted, Mr. Byers indicated to the police, "They had stopped and I saw
5 several of them running around the outside of the car. They shot around once. The
6 first time was three or four times."

7 And it goes on down and it talks about a car coming back down King
8 Street toward Arcadia. And he says later on down, "I saw a vehicle stopped in the
9 area. I saw the small, dark car stopped at earlier when the people running around
10 outside." And there were two — two or three people down on the side of the road."
11 (Phonetic)

12 So Mr. Byers indicates in — in that statement, that there's a possibility
13 that shots were fired while the car was present by the deceased; at least you could
14 interpret it that way?

15 A. Correct. I'll go by what it states.

16 Q. Okay. Mr. Byers, as you recall, was not called as a witness?

17 A. I don't have a specific recollection of that, but I'll take your word for it.

18 Q. Okay. If you'll look at the next statement, Anthony S. Miles (phonetic)
19 giving a statement. I've highlighted a portion of it — well, most of it actually — talking
20 about two Hispanic or Asian man and a tall white guy standing together and, then, a
21 dark car coming down the road;

22 About waiting on that car to clear. He says he was opening -- opening
23 his door and heard more shots. There was a car, "I'm not sure if it was the same one
24 or not pulled up beside them and stopped in the road."

25 So, again, it's potentially some indication there that the shooting could

1 have come from a vehicle?

2 A. Again, I'll absolutely take it for what's on the piece of paper, yes, sir, uh-
3 huh (affirmative).

4 Q. And, then, if you'll turn to the next page, there's a statement from
5 Jeffrey Benefield (phonetic) who says there were four to six — four to six rounds
6 fired. And, then, on down it says, "I heard two more shots fired and I seen what
7 looked to be a muzzle blast from a gun from the first round."

8 Do you see where that statement indicates that?

9 A. Yes, sir.

10 Q. And, if you'll turn over to the next page, it's a second statement
11 apparently by Benefield and he needed to add something because it must have been
12 important. He says, "In a...." — he says, "Then, a dark colored car pulled up beside
13 the two guys. Then, I heard two more rounds fired and the car had left so the muzzle
14 (phonetic) left," which going back and adding that, would, then, make it appear as
15 though the shots could have come from that car that pulled up?

16 A. Possible.

17 Q. Okay.

18 A. Yes, sir.

19 Q. And, if you'll flip over to the next one, Joelyn Wally (phonetic), gave a
20 statement to the police also. It says, "We saw two people walking up the road," and
21 indicates that he could see a small dark car stop at the two people walking. "I heard
22 shots from that direction." Again, indicating the possibility that the shots could come
23 from the vehicle ----

24 A. Sure, yes, sir.

25 Q. ---- if you read it (phonetic). Now, none of these witnesses were called

1 to testify; would you ----

2 A. I don't have any reason to disagree with you.

3 Q. Okay. And do — according to your notes or recollection, do you know if
4 you interviewed any of these witnesses?

5 A. I can't ---- I don't have a specific recollection, but I don't believe that I
6 spoke with any of them individually.

7 Q. Okay. And you would agree that further reading of — of their
8 statements that, if they testified consistent with their statements, that, that might give
9 an indication that there's a possible drive-by? In other words, as an alternative
10 theory of Mr. Keam having fired the shot?

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

12 Q. Now, the witnesses —

13 MR. WILKES: And that's a single exhibit. I'd like to move that into
14 evidence.

15 MS. WHITE: Without objection, Your Honor.

16 THE COURT: Okay. Without objection.

17 (Whereupon, Applicant's Exhibit Number 2 was entered into
18 evidence without objection.)

19 Q. (By Mr. Wilkes) If you'll turn to Applicant's 3 and take a look at that. I
20 think the first statement there is from Curtis Lamar Gosnell (phonetic).

21 A. Yes, sir.

22 Q. And, if you'll recall, Mr. Gosnell did testify.

23 A. Yes, yes, sir.

24 Q. Okay. When Mr. Gosnell testified — I — I don't know if you've had a
25 chance to look at the — the transcript, but would it be fair for me to say that you did

1 not cross examine Mr. Gosnell on the theory of a drive-by shooting?

2 A. Again, I — I would say probably not. And I — I would agree with you
3 that, yeah, the transcript reads the way it does.

4 Q. Okay. And I — I will refer to Page 80, 89 of the record for that cross
5 examination.

6 If you'll look on the highlighted portion of Mr. Gosnell's statement, it
7 talks about having heard at least three gunshots back to back. And, then, when he
8 walked out, "I heard one more shot from a gun."

9 And, then, it goes on to say, a little bit later, "At this point, I saw a black
10 car with chrome wheels driving very slowly from the direction of the gunshot toward
11 the old mill." (Phonetic)

12 That is what his statement says?

13 A. Yes, sir.

14 Q. And it would — therefore, would that not be a fair question to ask on
15 defense if he heard the shot coming from the direction or see the car coming from
16 the direction of the gunshot plus the proximity of it as far as could it have come from
17 the car?

18 A. True, yes, sir.

19 Q. If you'll flip over, Joshua Leland Bailey (phonetic) also gave a statement
20 to the police. And I believe Mr. Bailey testified also. And I think his — your cross
21 examination of — of Mr. Bailey would be on Page 91.

22 The statement indicates Asian blue shirt (phonetic) was on the phone
23 arguing with a white guy shortly later on from in the bar. And that — that
24 appears to be while they're in the parking lot I guess. "Shortly later on in the bar we
25 heard..." — or while they were in the bar, they heard four to five rapid shots.

1 And, then, it indicates, when they went outside, they saw a car parked
2 to the left parked along the fence with people outside of it. Then, they heard one
3 more shot and the car drove off and the car kept coming back and forth.

4 He described it as a Honda Civic, dark Honda Civic, couldn't say who it
5 was in the car. Would it have been a fair cross examination question on -- on the
6 possibility of a drive-by to ask, when he heard one more shot and the car drove off, is
7 it possible that the shot came from the car?

8 A. Sure. That would be a fair question in your line of thinking, yes, sir.

9 Q. Now, did -- and you did file -- you filed discovery? The police gave
10 you discovery, they gave you statements? They undoubtedly gave you these
11 statements?

12 A. Yes, sir.

13 Q. Okay. And did you speak ----

14 MR. WILKES: And let me move that into evidence as Exhibit 3.

15 MS. WHITE: Without objection, Your Honor.

16 THE COURT: Without objection.

17 (Whereupon, Applicant's Exhibit Number 3 was entered into
18 evidence without objection.)

19 Q. (By Mr. Wilkes) Did you -- is Exhibit Number 4 [sic] your notes? Am I
20 correct in that?

21 A. No, sir, that's way too neat of handwriting.

22 Q. Okay. So those aren't your notes?

23 A. No, sir.

24 Q. Did you ever speak with Mr. Benefield?

25 A. Benefield was the -- the last one that we just looked at or was that

1 Bailey?

2 Q. I think Benefield — was Benefield last?

3 MS. WHITE: No, that was Bailey. Benefield is the one that just
4 — one of the statements that you had in — in Number 2.

5 MR. WILKES: It may be in Number 2.

6 Q. Do you have those indicating who you spoke with?

7 A. I don't believe that I spoke with Benefield, no, sir.

8 Q. Okay. Did you speak with any of those witnesses who gave those
9 statements that I've just went through with you?

10 A. I can't specifically recall saying that I did, no, sir.

11 Q. Okay. And is it — what would be the theory --- agreed that it's a very
12 difficult case, but what was — did you have a particular theory that you went into the
13 case as far as the defense?

14 A. Yeah, just the lack of mental intent, the requisite for murder.

15 Q. Okay. All right.

16 A. I — I don't think it was accident because of the fact that there was just
17 no objective evidence that Shane had his hand on the gun.

18 Q. Fair enough.

19 A. But I think it was an accident in the context of Tony not having a mental
20 intent to really want to murder his — his best friend.

21 Q. Okay. Let me jump to Number 5. If you'll look at Applicant's Number 5,
22 did you ever speak with April Martin?

23 A. Yes, sir, I believe I did.

24 Q. Okay. And did she give you that particular, whatever you want to call it,
25 recitation of her recollection, the letter?

1 A. I — I believe this is April Martin. I — yeah, I — that I'm pretty certain
2 was her handwriting. So, yeah, I would say that that's April Martin's.

3 Q. Okay. And you had this letter prior to trial?

4 A. Yes, sir.

5 Q. Did — it indicates in the letter I think, if I'm characterizing it fairly, that
6 there was some bad blood similar to what was just testified to by the two witnesses.
7 Does it — did you get that indication between Tyler perhaps and —

8 A. Yeah, yes, sure.

9 Q. And it indicates also something about Antwone Post (phonetic) seeing
10 the black Civic and a Mexican driving, but we don't know who it was?

11 A. Yes, sir.

12 Q. And that was in there as well, correct?

13 A. Yes, sir.

14 Q. From — from that, from having April's information and other
15 information, did you see enough to pursue the drive-by shooting possibility?

16 A. I think the analysis would go under third-party guilt.

17 Q. Well, third-party guilt — briefly third-party guilt is — is it not admissible if
18 there's some credible evidence to support testimony of it?

19 A. Right. I — I do believe that, but I think the standard is a little bit higher.
20 And you've got to forgive me because I'm trying to step away from criminal law, so I
21 — I wouldn't even know what the — the standard is. But I'm — I'm pretty certain
22 that, at that point in time, I was focused on the third-party guilt and the case law
23 would be the case law on that.

24 Q. Okay. Very good. When you mentioned accident, did you argue
25 accident to the jury?

1 A. I didn't, but I tried to in the best way that I thought I could.

2 Q. And was there not an abundance of it, but was there the existence of or
3 mention of accident in the testimony?

4 A. Yes, there was.

5 Q. Okay. And — and you argued it to the jury and the State argued
6 specifically against accident?

7 A. Right, correct.

8 Q. Okay. Would you agree with me that, despite arguing both for and
9 against by the State and yourself, not in that order, it was never requested to be
10 charged to the jury?

11 A. I — I would have to look at ----

12 Q. Do you recall?

13 A. No, I — I specifically do not recall whether or not accident was
14 requested. But I know I requested a much less — the lesser included.

15 Q. Okay.

16 A. And I was going — I was going for that in the — the mentioning of the
17 mental intent. But, of course, yeah, I don't believe so.

18 Q. Okay.

19 A. I don't believe I asked for accident.

20 Q. And would you agree that — that, if the jury agreed with you and your
21 argument that it was an accident, that they still couldn't find accident because it had
22 not been charged if they followed the law?

23 (Brief Pause)

24 A. Yes. They would have to — if — if the jury — okay. Well, let me
25 dissect that a little.

1 Q. The question is —

2 A. Right. The jury would have to have to get the jury charge in order for
3 them to have a specific finding. Now, if Judge Cole — if — I believe, if he charged
4 the lesser included, then, a jury could answer the question with an answer of
5 voluntary or involuntary manslaughter because of the lack of the mental intent; thus,
6 taking into the equation, "Well, Channack really didn't mean to kill his best friend,"
7 which I don't think he did.

8 But, then — but, you're right, a specific add-on of accident may have
9 given an emphasis to the jury to be able to hang their hat back there in deliberations
10 that we can go lower or we can go somewhere completely different if there was a
11 little bit more emphasis on it, yes, sir.

12 Q. But, specifically, you argued it, there was some evidence of it; slight,
13 but some evidence of it ----

14 A. Right.

15 Q. ---- and the jury agreed with you that it was accident, without the jury
16 charge, they could not have found him not guilty because they didn't have the
17 charge?

18 A. Right, yeah. I —

19 Q. Very good.

20 A. Yeah, I — yes, sir. I didn't think they were going to find him not guilty; I
21 was hoping they would find him guilty of voluntary or involuntary.

22 Q. I understand.

23 (Brief Pause)

24 Q. You — the — the gun that was used in evidence that was purportedly
25 taken from Mr. Keam, that was offered and all resulting evidence was offered

without objection; without a suppression motion made.

Can you explain why you did not make a suppression motion on the introduction of the gun or any evidence relating to the gun?

(Brief Pause)

A. I don't know any argument to be made of an individual found with a gun that is consistent with the gun that killed an individual right then and there, in a close proximity and close proximity in time, of a gun being suppressed because it is just found in the area unless it was an AK-47 that just happened to be found.

The prejudicial effect I — I think may waste the court's time. Sorry, I shouldn't — let me — let me start again. I didn't think there was a good faith basis to make a suppression motion based upon that, in light of the objective evidence and the circumstantial evidence present during discovery and before the Court that day.

Q. And but you — you — you agree that the gun was not actually linked to physical evidence that killed; it was circumstantial?

A. Yes, sir.

Q. Okay.

A. Yes, sir, yes, sir. It was circumstantial, yes, sir.

Q. Okay.

MR. WILKES: Very good. That's all I have.

THE COURT: Yes, ma'am?

MS. WHITE: Just briefly.

Cross Examination by Ms. White:

Q. Mr. Reckenbeil, you said that you weren't practicing criminal law much. How long had you been practicing at this time when you represented Mr. Keam?

A. Well, I — what I mean by that is I can't — I don't do criminal law

1 anymore; very, very rarely do I do a case. So it's been several years since I've even
2 looked at any of the criminal statutes on third-party guilt.

3 But, at the point in time when I was representing Channack, oh, I was
4 at the height of my criminal career; that's — that's all I did.

5 Q. So, in 2008, you were keeping up with criminal law and the laws and
6 the — the case law?

7 A. Exactly, because, at the time I was — the same exact time that
8 Congressman — I mean, Solicitor Gowdy was pursuing his death penalty case that I
9 was on the defense side, and I was very up-to-date on all the laws because I was
10 arguing third-party guilt in that death penalty case.

11 Q. And, in regards to this case, part of the problem with the defense was
12 the fact that, when the gun was found, the Applicant actually said, "Yeah, I shot him,"
13 right?

14 A. Yes.

15 Q. Okay. So, allegations of drive-by shootings, there might have been a
16 car seen, but nobody could link that car to the actual shooting either; is that right?

17 A. Correct.

18 Q. And, in fact, although you said that the evidence was circumstantial, the
19 car — there were 10 bullet shell casings found that matched the gun that Mr. Keam
20 had in his pocket?

21 A. That's correct.

22 Q. And those were all around the area or near to where the victim was
23 found?

24 A. That's correct.

25 Q. Okay. And, again, the gunshot residual test indicated that there was

1 some materials on the hand but there was also blood found on the hand; is that
2 right?

3 A. Yes.

4 Q. So, did you feel like you had a tough I guess road to defend once he
5 had stated he had shot him and had that? What — what options did you have
6 essentially at that point?

7 A. Yeah, my — my only option was, when that sort of evidence came in, I
8 was going to say, "Well, somebody else did it." A jury would take two minutes to find
9 guilt.

10 But I think that this case clearly demonstrated that there was a chance
11 to get a lower finding by the jury based upon Channack's relationship with Shane.
12 And that they were best friends.

13 And I think it's indicative of Judge Cole's sentencing. He gave him 30
14 years, which is the highest you can for voluntary manslaughter. And so Judge Cole
15 is extremely tough on people in sentencing, especially when you go to trial.

16 I — I can't remember a case ever where Judge Cole has given the
17 minimum to somebody after a trial. And so I think it's very indicative of the
18 complexity and difficulty of the relationship that Shane and — and Channack had.
19 And so I — I — I was hoping that it was conveyed to the jury that way.

20 Q. Was there any evidence that you had that was concrete evidence I
21 guess of any kind of like we're talking about third party guilt that the gentleman that
22 they're — that the testimony was presented on earlier might have had bad blood or
23 might have had a fight with someone or any evidence that anyone else was involved
24 that night other than speculation?

25 A. Yeah. There were people — people saying a lot of different things to

1 include April Martin's, you know, outline. And, you know, there was a lot of different
2 things going on and people trying to say, "Well, I saw this," or "I heard that."

3 But, when it came down to it — and my analysis was that I had to go for
4 the fact that there was a good relationship because I couldn't say that there was a
5 horrible relationship between these two, but he's accidentally shot him.

6 So I had to pick my poison and, say, "Okay, I think there's a very good
7 relationship between these two. That's why he wouldn't kill him," or go for the third-
8 party guilt, which I thought the evidence just wasn't there.

9 I didn't even think I would be able to argue it to be honest with you.
10 And so I had to bolster the relationship. So, if I was going to bring in the fact that
11 Shane was a — a woman beater, that — and Tony was pissed about it, and — and
12 everybody was pissed about it, then, it would put some sort of animosity and some
13 sort of, "Well, I want to get him back on it." So I wanted to make sure that they were
14 portrayed as best of friends, which I think they were.

15 Q. Okay. One brief more question. You presented — at one point, there
16 was some testimony about the possibility of shooting up into the air and the bullet
17 coming down. Was that something you thought could just cause a question in the
18 mind of the jury or that ever kind of had been suggested I guess that, that's what
19 happened?

20 A. I'm sure that, that was just a — that — the question was...? It's — it's
21 just a possibility of it.

22 But, you know, my thought was I think it was frustration of those bullets
23 being shot either prior to or after by Tony. I don't think that there was any way,
24 shape, or form him intending to do anything except for just out of frustration that he
25 had with either the situation of being tossed out of the bar or the frustration of what

1 had just happened to Shane.

2 Q. Okay. And, in regards to the testimony of Mr. Keam, did that harm —
3 do you think it was helpful to the case or more harmful; how his testimony was
4 presented?

5 A. He had a — you know, obviously, he was advised of his rights and
6 decided that he --- on his own, that he wanted to testify. But I — I — I agreed with
7 him.

8 I think Tony had to get up on the witness stand and testify. I — but
9 there are some things in your life you will never forget as a trial lawyer. And I will
10 never forget the — the point in my redirect examination of Tony, after Bob Coler
11 launched him softball and basically said, "You know, why didn't you murder Shane
12 Easler?" And he just — I remember Tony just sitting on the stand and just shaking
13 his head.

14 And I stood up and I said, "Mr. Coler asked you why you didn't kill
15 Shane Easler." And he just kind of sat there. And I remember shouting like,
16 "Because you — because he was your best friend?" And he was like, "yeah, yeah."

17 And so I remember that like it's clear as day because that's the whole
18 point that I thought. There's no way that the relationship that Tony and Shane had
19 that he would — he would kill his best friend.

20 Q. And, in fact, he, during cross examination, acknowledged that he had
21 lied about it being a drive-by shooting, didn't he?

22 A. I ----

23 Q. Or do you recall ----

24 A. I don't recall that.

25 Q. Page 237, if Mr. Coler said, "You lied about until the point you could no

1 longer maintain that lie, the lie about it being a drive-by shooting because that served
2 you best at the time," and he said, "I guess." And he said, "Right, I guess, yeah."
3 And, then, later on he said, "yes."

4 So the — the defense of the drive-by shooting was kind of not possible
5 when the Applicant actually acknowledged that, that had been a lie when he had told
6 police someone shot him as they were driving by?

7 A. That — right, your question is accurately stating the facts of the
8 evidence.

9 Q. Okay.

10 MS. WHITE: Thank you. That's all I have, Your Honor.

11 THE COURT: Mr. Wilkes, anything?

12 MR. WILKES: Yes, sir.

13 **Redirect Examination by Mr. Wilkes:**

14 Q. Was Mr. Keam's essential testimony or his essential line that he just
15 couldn't remember? Did he indicate that he had a lack of memory?

16 A. Yeah, no question. Yeah, I think so.

17 MR. WILKES: Your Honor, I would offer Exhibit 5 [sic] into
18 evidence.

19 THE COURT: Any objection?

20 MS. WHITE: And that's Miss ---- what — what is it?

21 MR. WILKES: April Martin.

22 MS. WHITE: Okay. No objection, Your Honor.

23 THE COURT: No objection.

24 (Whereupon, Applicant's Exhibit Number 4 was entered into
25 evidence without objection.)

1 Q. (By Mr. Wilkes) Have you actually seen this before today —

2 A. No.

3 MR. WILKES: Oh, wait. I said that wrong. That was Number 4.

4 THE COURT: Number 4, yes, as marked.

5 Q. (By Mr. Wilkes) Have you seen Number 5 before today?

6 A. I --- I can't specifically say if I did or not. But give me a quick minute to
7 make sure that none of this is my handwriting.

8 Q. Or would it be notes of your assistant?

9 A. This may have been notes. There was a — a private investigator that
10 was hired. And goodness gracious, I can't remember his name at this point in time.
11 But I know him and I met several times.

12 Q. All right. And ----

13 A. So this could be his notes.

14 Q. Okay. And so he took notes and spoke to some people; Benefill — not
15 Benefill — Benefield being one of them?

16 A. Yes, sir.

17 Q. Okay. Very good.

18 MR. WILKES: We would move that in as Applicant's Number 5.

19 THE COURT: Any objection?

20 MS. WHITE: Your Honor, we would just object to the point that
21 he can't really authenticate the notes. He thinks that they may have been
22 from an investigator, but I don't think there's any ----

23 Q. (By Mr. Wilkes) Do you believe that — if I can follow up. Do you
24 believe that those are the investigator's notes?

25 A. I do.

1 Q. Okay. Thank you.

2 THE COURT: Over objection and for what it's worth as Judge
3 Epps would say.

4 (Whereupon, Applicant's Exhibit Number 5 was entered into
5 evidence over objection.)

6 MR. WILKES: No further questions, Your Honor.

7 THE COURT: Anything further?

8 MS. WHITE: Nothing further, Your Honor.

9 THE COURT: Thank you. You may step down. That concludes
10 the hearing.

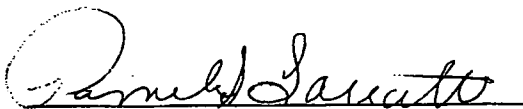
(Whereupon, the proceeding concluded at 1:07 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 37, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

February 21, 2015



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Teresa R. Bishop			AGE: 47		DATE: 9/22/07
ADDRESS: [REDACTED]					
PHONE # [REDACTED]		DOB: [REDACTED]		SSN: [REDACTED]	

Approximately 10:15 pm on 9/21/07 I was traveling on Hayne St. toward Fair Forest as I passed Reds bar a car in the opposing lane swerved erratically twice crossing into my lane I slammed and pulled off the road then I saw a body laying in the on opposite side of the road. A man was leaning over him talking on a cell phone. I pulled into the opposing lane to stop traffic. I left my truck and went to the victim on the road, the man with him said a car drove by and shot his friend. I checked for a pulse and could not find one, his chest was not rising & falling, and there was no noticeable breaths. I began to talk loudly and pat him on his face and held his hand and arm. I was able to stimulate him to breath. And he began to move his head back and forth. I continued to speak to him until paramedics and police arrived. **END OF STATEMENT. TRB**

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 2254 PM. on the 21st Sept. day of 2007.

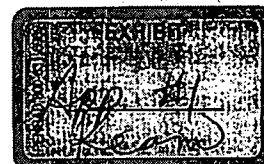
WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office



11/14/07 15522

AGENCY I.D.
SC0420000

SUPPLEMENTARY REPORT

CASE NUMBER

2007091238

NCIC

INCL

EXTD.

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY

PAGE 1 of 1 PAGES.

☐ MODIFIED
ORIGINAL☐ CASE STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

ON 09-21-07 I Responded to Red's Grill in reference to a shooting. Upon my arrival I pulled into the parking lot & heard someone yell "he's in the road." I observed a white male/victim lying in the roadway, with a white female & asian male over him. I approached the victim & noticed his shirt had a lot of blood on it & victim was unresponsive. I advised dispatch of our location. I then tried to speak w/ the asian male about the shooting. He was hard to understand but stated "it was a drive-by." I was unable to get a description from the male. I then tried to keep witnesses back. Once EMS arrived. EMS transported the victim & I assisted w/ the crime scene.

NARRATIVE

SUBJECT IDENTIFIED

☐ YES ☐ NO

SUBJECT LOCATED

☐ YES ☐ NO☐ ACTIVE ☐ ADM. CLOSED☐ UNFOUNDED☐ ARRESTED UNDER 18☐ ARRESTED 18 AND OVER☐ EX-CLEAR UNDER 18☐ EX-CLEAR 18 AND OVERREASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

S. Henderson

9-21-07

012

P. CORRELL

9/22/07

575

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

11/14/07 : 0007

INVESTIGATION REPORT		Page 1 OF 1
SC0420000	TYPE: ☐ PRELIMINARY ☐ CONTINUING	CASE NUMBER 2007091238
INCIDENT TYPE Murder	VICTIM Shane Easler	
LOCATION 2245 Hayne St.		

On 09/21/07 I responded to Red's Bar and Grill on Hayne St. in reference to a shooting that had occurred near there. I was notified that the victim had been shot in the chest and was unresponsive. Upon arrival the scene was secured by crime scene tape and traffic had been blocked off on both sides of the road near the incident location. Red's Grill had been secured and I advised the patrons there that they would need to speak with an investigator as they left. I spoke with Sgt. Cockrell upon arrival who advised me that there was a subject on scene by the name of Channack Kean who was present when the victim was shot but he was uncooperative and was intoxicated. He also told me that the parties involved in the shooting including Kean and the victim were in Red's Grill and were asked to leave by employees there. I was told there was a video of them in the bar and I went inside to view this. I watched the video and saw the group involved in the incident. There was an Asian male wearing black later identified as Tyler Vichith, an Asian female later identified as Victoria Thongpane, the victim, and Channack Kean who was wearing a blue shirt. They were asked to leave and Channack "Tony" became angry and argued with the employees. He can be seen on video putting his hand in his right side pocket where the gun was later found. I then went back outside and asked Channack "Tony" if I could talk with him in my car which was parked up the road. He agreed and followed me to my car. He sat in my front seat and I could smell a strong odor of alcoholic beverage on his person. I told him who I was and I asked him what happened. He told me that a car came by and shot the victim. I asked him why he was on the street and he would not respond. He told me that he didn't know who was in the car nor did he know what kind of car it was. I asked him who he had come to Red's with and he told me that he did not go in Red's. I told him I saw a video of him and 3 others including the victim inside Red's only minutes before the shooting. He told me that he was with Victoria and the victim. He stated he was not with any other male. He told me that they had driven his car to the bar. He asked me where his car was. He told me that it was a grey Lexus GS 300. As I continued to ask him questions he became more evasive. I then advised him that he was under arrest. He was grossly intoxicated and was placed under arrest for Public Disorderly Conduct (Public Drunk). I then asked Sgt. Cockrell who had come to my car to place him in handcuffs and put him in a patrol car. I exited the car and went to the passenger's side and assisted in the arrest. I began searching the suspect I felt something hard on his right side. I asked him what it was. Sgt. Cockrell then advised me that it was a gun. He then handcuffed him. The weapon was a 357 Sig Glock semi-auto pistol black in color. This is the same caliber of all the shell casings that were found on scene including the casings that were found near the victim. As Channack was being arrested and the gun removed from his person he made the spontaneous statement "I shot him". He did this without being asked any questions. I then advised him of his Miranda Rights from a card that I keep in my wallet. He interrupted me as I read them and told me "I know all that". He was taken to the sheriff's office. I contacted Victoria by phone and asked her to come to the sheriff's office. She was with her brother Tyler who was also at the bar with the victim and the suspect. I interviewed Victoria about the incident and she initially was uncooperative. I explained to her what several witnesses had seen. She gave a statement as to her knowledge of the incident. After several hours had passed I asked Channack if he had sobered up and he told me yes. I gave him a soft drink at 0112. Around 0300 I, along with detective Bryant moved him into an interview room. I asked him if he was sober and he stated that he was. I read him his Miranda Rights again and completed a waiver. I asked him if he understood. I had him read line 1 back to me. I then asked him what had happened. He stated that he did not remember much due to the fact that he had been drinking and taking "Totem Poles" (Xanax). He stated that he did have the gun and that he was responsible. He stated he did not remember exactly how it happened. He was coherent and

11/14/07 1:25:25

responded promptly to questions. He did not have slurred. He gave an audio taped statement. During the interview he was advised of witness accounts of the incident.

INVESTIGATOR <i>W.Lindsey</i>	REPORT DATE: <i>09/22/07</i>
UNIFORM OFFICER WORKING CASE:	INCIDENT DATE:
APPROVING OFFICER:	DATE RECORDED:

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Darl Hammacher		AGE: 24		DATE: 09-22-07	
ADDRESS: [REDACTED]					
PHONE # [REDACTED]		DOB: [REDACTED]		SSN: [REDACTED]	

I was called to help Kirk out some guys because one had brought in a beer in his pocket. I followed them outside the bar. There were four of them. A Asian girl and guy and another Asian guy and a white guy. I saw the Asian guy in a blue shirt walk away with a white guy down the street. I saw the Asian girl and guy leave in a car going the other way. I then went inside the bar. I then heard gun shots and I came outside. When I came outside I heard 4 or 5 more shots. I never heard nobody scream or nothing. I took cover behind the trash can. After the gun shots, approx. 5 min., I walked toward the street with Shane and Jason. Shane was to the left and Jason was on the right. They said they saw two cars. One was at the edge of the fence with it's lights on and left after the gun shots. The other car was coming down toward the Hot Spot. I then left in my car to see if I seen another car. When I came back there were cops here and I saw the body. -----EOS-----

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 1222 AM. on the 22 day of Sept. 2007.

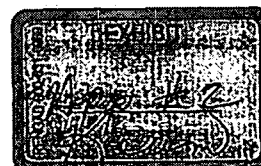
WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office



CASE # 2007091238	VOLUNTARY STATEMENT	PAGE 1 OF 1
STATEMENT OF: Byars, Michael Wayne		
PHONE #	DOB:	SSN:

On 9-21-07 @ around 9:50 pm. I was watching over surveillance system in the bar and noticed an Asian male w/ a beer that we know he didn't buy in here. We asked him to leave. He was w / two other Asian males, an Asian female, and a white male. This suspect a/m (Asian male) became mouthy and confrontational w/ my employees and eventually the w/m that he was w/. We got them outside and this a/m kept pointing back at the grill while using his phone. They left in a small dark colored car w/ rims. We did not go outside. A couple of minutes later we heard shots outside and looked and saw the small dark car riding by heading toward Arcadia. We came outside. Then we saw them heading back toward Fair Forest. They had stopped and I saw several of them running around the outside of the car. They shot around (1) once. The first time it was 3-4 times. The guy we threw out was wearing a blue shirt, baggy. I saw him about this time out on the main Rd., about 40-50 feet from my parking lot toward Fair Forest. A few seconds later, they came back down Hayne St. toward Arcadia. I moved to the end of the parking lot @ the road looking for the car to come by and I saw a vehicle stopped in the area that I saw the small dark car stopped at earlier when all the people were running around outside of it. There were 2-3 people down on the side of the road. When the police got here, that's when I learned someone had been shot.

This statement was written for me by Sgt. Allan Wood as I told it to him. *MB*

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 2350 PM. on the 21 day of Sept. 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Anthony S. Miles			AGE: 22		DATE: 9/22/07
ADDRESS: [REDACTED]					
[REDACTED]			DOB: [REDACTED]		SSN: [REDACTED]

Late in the evening of 9/21/07 Me, Nate, and John were coming to Reds. As we came to pull in I heard several gun shots. There was an Asian or Hispanic man and a taller white guy standing together. There was a dark colored car coming down the road. We had to wait for that car to clear us before we turned in. I was opening my door and I heard a few more shots. There was a car, I am not sure if it was the same one or not pulled up beside them and stopped in the road. The car was coming from the same direction as we were. Statement written by J. Bryant at my request.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 1245 AM. on the 22 day of September 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.

(Seal)

Notary Public of South Carolina

My Commission expires: _____

SH104

Typed by: Tawane Johnson

Date: October 29, 2007

Criminal Investigations Division

Spartanburg County Sheriff's Office

CASE # 2007091238	VOLUNTARY STATEMENT	PAGE 1 OF 1
STATEMENT OF: Jeffrey N. Benfield	AGE: 20	DATE: 22 Aug 07
ADDRESS: [REDACTED]		
PHONE # [REDACTED]	DOB: [REDACTED]	SSN: [REDACTED]

I was driving towards Reds when I heard 4-6 rounds fired from a weapon. I seen two males one white and one darker skin walking in the grass towards Hot Spot. I pulled into Reds with my friends and as I got out of the car and shut my door I heard two more shots fired and I seen what looked to be mussel blast from a gun with the first round. My friend ran towards the bar and when me and my other friend realized what happened we did the same.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 12:32 AM. on the 22 day of AUG 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Jeffrey N. Benfield			AGE: 20		DATE: 22 Aug 07
ADDRESS: [REDACTED]					
PHONE # [REDACTED]		DOB: [REDACTED]		SSN: [REDACTED]	

I was driving to Reds when I heard 4-6 rounds fired from a weapon. As I was pulling into Reds I saw two males one white and one darker skin. As I got out of the car the males were walking in the grass towards Hot Spot. Then a darker colored car pulled up beside the two guys. Then I heard two more rounds fired and caught a glimpse of the mussel blast from one. Then my friends took off running towards the door and I followed.

This is my second and correct statement I forgot about the car in my first statement.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 12:47 AM. on the 22 day of AUG 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.

(Seal)

Notary Public of South Carolina

My Commission expires: _____

SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Baulig - Jolan Steven			AGE: 20		DATE: 9-22-07
ADDRESS: [REDACTED]					
PHONE # [REDACTED]		DOB: [REDACTED]		SSN: [REDACTED]	

On 9-21-07 @ around 10:00 pm Me, Nathan BeneField and Anthony (LNU) were coming up Hayne St. from the direction of Arcadia going to Red's Grill to shoot pool. When we got close to the parking lot we heard about 5 pops. I made the comment that it sounded like firecrackers and we pulled on in near the road and parked at the far right side as face the building. When we were pulling in, this small dark car was behind us. They continued on heading toward Fair Forest. We saw 2 people walking up the road toward Fair Forest. At least one was male. When we parked and got out I could see the small dark car stop at the two people walking. I heard a few shots from that direction and my friends and I took off running toward the grill front door. That's all I heard and saw.

This statement was written for me by Sgt. Allan Wood as I told it to him. JSB

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 0029 AM, on the 22 Sept. day of 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20_____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: October 29, 2007
Criminal Investigations Division
Spartanburg County Sheriff's Office

CASE # 2007091238		VOLUNTARY STATEMENT		PAGE 1 OF 1	
STATEMENT OF: Gosnell, Curtis Lamar			AGE: 37		DATE: 09-22-07
ADDRESS: [REDACTED]					
PHONE # [REDACTED]		DOB: [REDACTED]		SSN: [REDACTED]	

This statement is written by M. Horton for Curtis Gosnell at his request.

I am an employee at Red's Grill and on 09-21-07 at around 10:30 pm I saw an Asian or Hispanic male in his mid 20's wearing a blue shirt take a beer out of his pocket, which is against the rules at Red's. I then asked this person to leave the bar at which point he got an attitude and started running his mouth and then he drank the beer and sat the can on the counter. I walked off and waited for him to leave. After he did not leave Darrell, Josh, and I went back over to him and told him to leave now. He then left with an Asian or Hispanic female approx. 20 yoa, 505 Hgt, 140 lbs blue jeans colored shirt, a white male approx 18 yoa, baggy jeans, 510 Hgt, 160 lbs, a male subject that I can not remember and a white male 510 Hgt., 150 lbs, blue shirt and a hat. The person that I have described last came to the bar and bought a bottled Bud Lite. All of these people left out of the bar together. The original person I asked to leave put his hand in his right front pants pocket as I was talking to him and kept it there until he left. As the group was leaving the white male in the blue shirt and the guy I threw out were arguing and thanks for getting us thrown out was said by the white male in the blue shirt. The group stood outside the door and appeared to be arguing for a few minutes and then left.

About 5 to 10 minutes after the group I heard at least 3 gun shots back to back. Darrell, Josh and myself came outside to see what happened. As I was walking in the parking lot I heard one more shot from a gun that sounded like it came from the left of the bar looking at the road. At this point I saw a black car with chrome wheels driving very slow from the direction of the gunshot toward the Old Mill. I could not see inside the car. At this point I went back inside until I walked back out about a minute later. I walked to the road and saw a vehicle and a what appeared to be a woman kneeling on the ground over something. I waited in the parking lot for the police. The group of people that I described leaving together also came into together.
End of Statement.



CASE # 2007091238	VOLUNTARY STATEMENT	PAGE 1 OF 1
STATEMENT OF: Joshua Leland Bailey	AGE: 23	DATE: 9-21-07
ADDRESS: [REDACTED]		
[REDACTED]		SSN: [REDACTED]

I am employed at Reds Grill. Curt came to me and said that he saw a Asian guy on our monitor drinking beer that he had pulled out of his pocket. I Josh Bailey and Curt and Michael Byars went to ask him to leave. He was about 5 foot 6 inches Asian guy wearing blue shirt and shorts with real short hair. He was very difficult and tried to argue. He was with another Asian guy wearing a black shirt and an Asian girl and a white guy. The white guy was arguing with the guy in the blue shirt to calm down then they went into the parking lot still arguing. The Asian in the blue shirt was also on the phone while arguing with the white guy. Shortly later from in the bar we heard 4 to 5 rapid shots. Then me Michael, Curt, David went into the parking lot and saw a car parked to the left along the fence with people outside of it. Then I heard one more shot and the car droved off. We went closer to the road but the car kept coming back and forth slowly then shortly after we saw the police.

The description of the car parked to the left on long the fence was dark possibly back with crome wheels maybe a Honda Civic or something. There were people standing around the car when I first came out but I was unable to see who they were due to it being dark. The car left and then creped back by 2 to 3 times. I am not positive the direction the car left in. End of Statement.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of my statement. This statement was completed at 11:56 PM. on the 21 day of September 2007.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____
day of _____, 20____.
(Seal)

Notary Public of South Carolina
My Commission expires: _____
SH104

Typed by: Tawane Johnson
Date: 10/26/07
Criminal Investigations Division
Spartanburg County Sheriff's Office

April Martin 10-10-85

Pacolet, SC 29372

On the day of Sept, 21, 2007 me (April martin) and my boyfriend Tyler Crowe went to go see Channak and Victoria about 1pm. Shane stopped by and Channak and Shane decided they were going to go to one of Shane's friends Birthday. Shane brought a six pack because he missed Channak's birthday. Shane, me (April), and Tyler all left to go take showers so we could come back and meet up to go to the party together. We (April, Tyler) followed Shane to his house so we could find out where his (Shane's) mom lived. Shane picked up two Xannaks to give Channak for his birthday. Me (April) + Tyler went back to our house and Shane left to go back to Channak's house. When we finally called them to let them know ^{we} were going to be late Channak answered his phone and he sounded upset, I asked him what was wrong and he said somebody shot Shane, I (April) asked who shot Shane, Channak said I don't know but I have to go. I (April) called Victoria she said to meet her at Hot Spot so we did. Her brother (Tyler Vichit) met.

eff (the mutual friend said) that Tyler Vichith was saying he ^{Am} didn't snitch. It was like Tyler already knew someone as shot before - got the call. We left and went to a mutual friends house down the street. When ^{Am} we got to the friends house, Victoria Thongpane was already there and so was Tyler Vichith and a white guy named Taylor ~~petter~~ was there, So I tried to call Channak phone back and no one answered and a friend tried again and the police answered. Victoria's phone rang and it was the police. Tyler Vichith got scared again and started asking our friends and us (me (April) and Tyler) what to say, what to do. Victoria or Tyler neither one wanted to go back and talk to the police. ~~There were~~ ^{Am} The next day when I (April) had to go make my statement with the police and Victoria's brother ^{Am} was waiting on us outside begging me (April + Tyler) not to tell the detective that Tyler Vichith, Taylor, or Allen Kennedy was there.

We were all supposed to go to a birthday party that night but Victoria said it was her idea to go to Red's bar and grille. Me (April) and Tyler Crowe seen the black civic and a Mexican driving but we don't know who it was. On 12/23/07 I talked to Victoria and she said she (Victoria) had asked her brother ^{Am} some questions because she heard that her brother was bragging

about drugging Channak and framing him then Tyler Vichith told Victoria that she just didn't want ~~see anyone~~ to believe her boyfriend shot someone then Victoria said how do you know that he shot him I thought you (Tyler Vichith) didn't see anything.

When I spoke with the investigator he said Channak was holding Shane. If Channak had shot Shane and he is right handed, he would not have put the gun in his left back pocket and stay there by Shanes side.

Sworn and subscribed before me Jake W Bertsch
on this 28th day of December 2007.

X April D Martin
April D. Martin

X Tyler Crane
Tyler Crane

Jake W Bertsch
Notary Public for state
of South Carolina

my commission expires
1/24/2010

Witness K Carter
Katie Carter

"TONY" GARY GRAY
65300

PASSPORT VICS

SAMUEL SHANE
EASLER

CHANNACK KEAM

[REDACTED]

→ WITH VICTORIA ~~AND~~ THONGPAYNE VICTIM
→ WHEN PLACED ~~UNDER~~ ~~UNDER~~ UNDER FOR ROY
VICTORIA (FOUND GUN AND SUPPORT
216-1007) JAMES "I SHOT AT"

[REDACTED]

0112 → GIVEN COCA-COLA

104 UNITS ON SCENE

GARY
585-9309

JEFFREY BENFIELD

[REDACTED]

→ AS THEY APPROXIMATED REDS HEARD SHOTS SPRING
→ PULLING INTO RED'S SAW A WHITE GUY
AND DARK SKINNED MALE ON ROAD UP
FROM RED'S
→ SAW CAR STOP NEXT TO THEM ON
ROAD DARK COLORED CAR
→ HEARD TWO SHOTS COMING FROM
AND SAW MUZZLE BLAST FROM GUN
COMING FROM WHERE CAR AND 2 GUYS
WERE
→ HE WAS LOOKING BACK THROUGH FENCE



VICTORIA MISTY THONGPANE

TONY'S CELL

→ WAS WITH BROTHER TYLER, TONY, AND SHANE

→ LEFT FROM TONY'S HOUSE TOGETHER TO GO TO RED'S

APRIL

PHONE CALL WHILE OVER BOOY.

WENT TO PARENT'S HOUSE AND TOLD THEM WHAT HAPPENED

VICTORIA

MICHAEL BROWN

TONY'S CELL

VERIZON.

9/28/07 2133 = FUCKING COP

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

Channack Keam, #328676,)

2011-CP-42-2033

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC -2 AM 8:36
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 26, 2011. The Respondent made its Return on or about May 2, 2012. An evidentiary hearing into the matter was convened on November 4, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Falkner Wilkes, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Samon Moeung and Amanda Condrey testified on Applicant's behalf. John G. Reckenbeil, 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, the trial transcript and Applicant's Exhibits.

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. The Applicant was indicted at the January 2008 term of the Spartanburg County Grand Jury for murder (08-GS-42-0129). He was represented by John G. Reckenbeil, Esquire. On June 2, 2008, the Applicant

proceeded to trial, where he was found guilty of the charge by a jury. He was sentenced by the Honorable J. Derham Cole to confinement for thirty years.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Keam, Op. No. 2010-UP-264 (filed April 29, 2010). The Remittitur was returned on May 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 effectively represent in the defense of the case,
 - b. Counsel failed to properly object and preserve issues during the trial,
2. Brady and discovery violations, in that;
 - a. The State failed to timely disclose discoverable information.

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 the opportunity to observe each witness who testified at the hearing, and to closely pass upon their 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, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Samon Moeung testified that he was good friends with both the Applicant and the victim, Shane Easler, at the time of the shooting. Moeung testified that at the time of the shooting, Easler was dating Moeung's sister. Moeung testified that his sister had a child with Alan Kennedy at that time and is married to Kennedy currently. Moeung testified that Easler had pushed his sister prior to the shooting and Kennedy was angry with Easler. Further, Moeung testified that one of the people hanging out with the Applicant and victim on the night of the

shooting was Tyler, who was Kennedy's best friend. Moeung testified that Tyler did not like the Applicant because the Applicant had dated Tyler's sister. Moeung testified that two or three days after the shooting, he saw Kennedy at his house with some "Mexican" driving a black Honda Civic. Moeung testified that he would have been willing to testify to these facts at trial had he been contacted by Counsel. However, Moeung acknowledged that he never tried to contact Applicant's attorney to offer his statement.

Amanda Condrey testified that she would have testified at trial to the fact that the victim had assaulted Moeung's sister and the sister made a statement that the victim "was dead." However, Condrey testified that she was not sure if Alan Kennedy knew that Easler had assaulted Moeung's sister. Condrey testified that she has seen Kennedy in a black Honda Civic with a "Mexican." Condrey also testified that she knew there were problems between Easler and Kennedy. Condrey testified that Kennedy and Tyler were seen at Red's that night with a black Honda Civic. Condrey testified that she spoke with Counsel on the phone once, but never heard from him again and was never subpoenaed for trial.

Counsel testified that he was retained by Applicant to represent him at trial on the murder charge. Counsel testified that at the time of Applicant's case, he handled predominately criminal cases and remained updated on all of the case law and statutes affecting criminal law practice. Counsel testified that the case was difficult, in particular because there was no known animosity between the victim and Applicant. Counsel testified that the overall theory of the defense was that Applicant was not guilty of murder because there was a lack of intent. Counsel testified that he focused on presenting evidence that Applicant and the victim were best of friends and had no animosity towards each other.

Counsel testified that he did not intend on arguing accident because there was no

evidence that the victim ever had his hand on the gun and the only option would be that a stray bullet just happened to hit the victim and kill him if Applicant had been randomly shooting in the air. Counsel acknowledged that he did not request a jury charge on accident. Further, Counsel testified that he could not argue that a third party committed the shooting because of the gun found on Applicant and the Applicant's statements to police that he had shot the victim.

Applicant introduced Exhibit #1, which was a packet including a statement from Teresa Bishop, a supplemental report from Officer Henderson, and an investigative report from Investigator Lindsey. Each document in the packet referenced Applicant stating that it was a drive-by shooting. Applicant also introduced Exhibit #2, which was a packet including statements of Daryl Hammacher, Michael Byars, Anthony Miles, Jeffrey Benfield, and Jolan Steven Baulig. Each statement referenced hearing multiple shots and several mentioned seeing a small dark car in the area. Applicant's Exhibit #3 included the statements of Curtis Gosnell and Joshua Bailey, two employees at Red's Grill who were present the night of the shooting. Each of those statements referenced seeing a small dark car with chrome rims near the parking lot of Red's. Applicant's Exhibit #4 was a letter from April Martin.

Counsel testified that he was aware of those reports and the statements made by Applicant and others regarding the dark car and a possible drive-by, but did not think that he could present a defense of a third party shooting Easler in a drive-by shooting. Counsel testified that he also recalled speaking with April Martin about the black car and supposed bad blood between the victim and others. Counsel testified that there were a great number of rumors going around regarding the shooting. Counsel testified that a gun was found in the Applicant's back pocket and ten shell casings were found in the area that matched the Applicant's gun. Counsel did acknowledge that the bullet that killed the victim was never found. Counsel testified that he

did not recall speaking with any of the other witnesses who provided statements. However, Counsel testified that he hired a investigator who talked with many of the witnesses. Applicant's Exhibit #5 included handwritten notes about an interview with Jeffrey Benfield and April's phone number. Counsel testified that he believed the handwriting was that of his investigator.

Counsel testified that he did not object to the State introducing the gun as evidence because he was not and is not aware of any legal argument he could make since the gun was found on the Applicant near a shooting while he was being searched incident to arrest for public disorderly conduct. Counsel testified that he had no good faith basis to make a motion to suppress the gun. This Court agrees and finds that Counsel was not deficient in failing to make a motion with no legal basis.

The Applicant alleged that Counsel was ineffective for failing to conduct a meaningful cross-examination of the State's witnesses, in particular, in regards to the possibility of the shooting occurring as a drive-by shooting from the small dark car. This Court notes that the State's witnesses Curtis Gosnell (ROA p. 77-8) and Joshua Bailey (ROA p. 87-9; p. 91) describe a small dark car driving by the parking lot of Red's around the time of the shooting. Witness Teresa Bishop testified that a car jerked into her lane right before she saw the victim, but later described the car as a large white pick-up. (ROA p. 94; p. 101). Bishop also testified that the Applicant told her a car had driven by and shot his friend. (ROA p. 97). Several officers also testified that the Applicant indicated that it was a drive-by shooting. (ROA p. 118).

In regards to the Applicant's allegation that Counsel was deficient in his cross-examination of the State's witnesses, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of 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, and did not present any testimony showing the witnesses' answers at trial would have been different. The statements about there being a drive-by shooting were presented to the jury and the testimony that a small dark car was driving near the scene at the time of the shooting was presented. As Counsel discussed, there was no additional evidence he thought he could present to support an argument of third-party guilt. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Therefore, this claim is dismissed.

This Court also finds that Counsel was not ineffective for failing to further interview witnesses, investigate or pursue a defense of third-party guilt because as Counsel testified, the evidence was insufficient to present a legal defense of third-party guilt. As clarified in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006), "a defendant [can] introduce evidence of third-party guilt regardless of the strength of the State's case if the evidence offered by the accused as to the commission of the crime by another person is limited to such facts as are inconsistent with his own guilt and that raise a reasonable inference or presumption as to his own innocence." Miller v. State, 379 S.C. 108, 114 n.2 (2008). The Applicant presented no evidence that would cause this Court to find that a legal defense of third-party guilt could have been utilized at trial. As discussed, there were merely rumors and possible inferences with the allegations of "bad blood" and sightings of a small black car near the scene. Therefore, this claim is denied and dismissed.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel investigated further. This Court notes that Counsel has years of experience representing clients on similar charges and remained updated on case law through research.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant has failed to establish any deficient conduct on Counsel's behalf. Therefore, this Court finds that the Applicant's arguments have no merit and should be denied and dismissed.

Brady and Discovery Violations

This Court finds that the Applicant failed to offer any evidence or testimony to support his claim of a Brady violation or any discovery violations. This Court finds that the prosecution

suppressed no evidence that was favorable to the accused. Accordingly, this allegation is dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel and discovery violations, Counsel's testimony was most credible. 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 – 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.

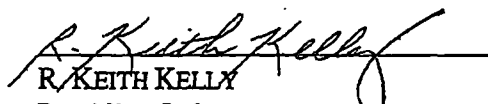
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

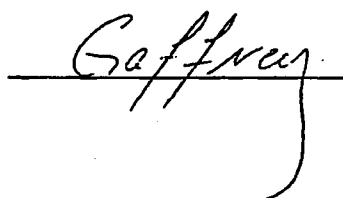
appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must 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 26 day of November, 2014.


R. KEITH KELLY
Presiding Judge

, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC -2 AM 8:36
M. HOPE BLACKLEY