

STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

ROBERT ODELL BROWN,

APPELLANT

APPELLATE CASE NO. 2013-001411

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Robert O. Brown,) 2012-GS-42-0359-0360
6 Defendant.) May 9, 2013
7 Spartanburg, South Carolina

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9
10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

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22 Circuit Court Reporter
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Motion -- page 2.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Robert Odell Brown.

2 Mr. Allen, this is your motion to compel disclosure of
3 evidence?

4 MR. ALLEN: Yes, Your Honor, it is.

5 THE COURT: Okay.

6 MR. ALLEN: Essentially, Your Honor, we're seeking
7 evidence from the personnel files, internal affairs files
8 and any other evidence of prior conduct of John Doe
9 Jason Bryant and Lorin Williams which may demonstrate their
10 character of credibility which may be favorable to the
11 defendant in his case.

12 I've spoken with the solicitor again a few minutes
13 ago. It's my understanding that their position is they --
14 and I believe the sheriff's department's position is --
15 that they oppose my being able to review, inspect and look
16 into personnel files or information which may relate to the
17 credibility of these particular witnesses.

18 I've indicated these particular witnesses. There's a
19 number of officers involved in this case, but from my
20 discussions with my client -- and I don't really want to
21 get into the details, what my client had to say if the
22 Court please, however we do take issue with certain
23 material facts related by the officers, these particular
24 officers.

25 Mr. Doe is the -- from what I understand about the

1 case -- the only witness the state has to call to testify
2 about the specific conduct which has led rise to the
3 charges of my client where he is alleged to be the victim,
4 specifically the charges concerning the resisting arrest
5 and the attempted murder.

6 Secondly, investigators Bryant and Williams were the
7 officers who interrogated my client. There was no
8 recording, audio or otherwise, of this particular
9 interrogation.

10 And, again, we question some of the information
11 contained in their writeups of what my client -- or what
12 they did, what my client is alleged to have said.

13 I'm basically trying to investigate my client's case,
14 and I'm trying to determine if there's any information in
15 these files that may indicate these officers have had
16 previous writeups, disciplinaries or any other actions that
17 may relate to their credibility which may lead us to
18 additional evidence which may be admissible evidence in the
19 case as, again, as it relates to the officers' credibility.
20 And I ask the Court to allow me or help us devise some
21 other fashion where I can seek this information out.

22 I have suggested that the solicitor and I can together
23 look through these files with the solicitor, and if they
24 want the county attorney involved -- I mean, me and the
25 county attorney if they want the county attorneys involved

1 it's all right -- to review these files and see if we can
2 agree as to the information which should be turned over to
3 me as it relates to these officers' credibility if there is
4 any.

5 I'm not looking for strictly personal information.
6 I'm not trying to get the birthdates; I'm not trying to get
7 dependents' information. I'm not trying to get any of that
8 information.

9 I only look for information that may relate to the
10 credibility and may lead us to admissible evidence that can
11 be used in his -- in my client's case and in this
12 particular case, which I understand is scheduled for the
13 week of June 17th. And that's all I'm trying to do.

14 I don't -- my understanding is Mr. Barnette does not
15 agree with that procedure, so I'm sort of a loss to
16 determine what I can do to investigate my client's case.
17 And I'm asking that they in some fashion be required to
18 turn this information over to me.

19 THE COURT: Mr. Barnette.

20 MR. BARNETTE: Thank you, Your Honor.

21 Our position is, Your Honor, obviously we object to
22 the motion.

23 First thing, these are personnel files of these
24 individual officers. This is something that's their -- I
25 mean, they're entitled to some confidentiality from that

1 standpoint.

2 I don't understand the relevance of it. He says
3 potential evidence.

4 What stops us from on every case asking for the
5 officers' personnel file on each one of them?

6 First thing, I wouldn't see how it would be relevant
7 to any situation involved in this. And I -- and the Court
8 probably knows the facts of the case, but Officer John Doe

9 [REDACTED] went to make a traffic stop of this individual. It's
10 a failure-to-stop case. He catches up with the individual.
11 The individual shot John Doe Doe Jones also shot him.

12 There's D.N.A. evidence that shows that the defendant
13 was at the scene. We have evidence, and we even have a
14 witness, about how he escaped trying to leave the area and
15 so forth. And he ran from the police in Virginia and was
16 caught in a vehicle up there.

17 But the issue, we have, Your Honor, is first -- well,
18 first thing, I don't even know what's in the personnel
19 files because we don't keep them. Obviously, the county
20 keeps their personnel files, and the city keeps theirs.
21 But there has not been anything presented to this Court
22 showing anything to be of any relevance out of these
23 personnel files.

24 Even if there was something potentially that was
25 relevant, the prejudicial effect of that would be huge

1 because it has nothing to do with this event. I don't see
2 any connection between anything from their personnel file
3 that could be matched to this.

4 I mean, I can state Rule 403, the relevance of the
5 prejudicial effect.

6 Even if it is character evidence, under Rule 404 it's
7 very strict liability how it could be used. And I don't
8 see how it could be used if it was determined relevant from
9 that standpoint, under what situation involving it, which
10 let them impeach about prior instances that may have
11 happened where somebody may have complained on them or
12 something like that. I don't know if there's any in there
13 or not.

14 But it's incredible to me that if this procedure is
15 done that we're going to have this on every case involving
16 a police officer or anybody -- or anybody. It could be
17 anybody's personnel file, say, they want to come and look
18 at my personnel file because I'm the prosecutor in the
19 case.

20 When do we stop it? Unless they have some evidence to
21 prove there is something that is relevant there or have
22 some reason to look at, I would say I don't see how the
23 motion can go forward.

24 THE COURT: Well, Mr. Allen, what is it that you --
25 not that you necessarily expect to find -- but what is it

1 that you believe? What's the type of information that
2 would be in a personnel file that you think would be
3 admissible in the course of the trial for the purpose of
4 attacking the credibility of the witnesses?

5 MR. ALLEN: Well, having never seen one it's hard for
6 me to state specifically what's in it. What I'm looking
7 for --

8 THE COURT: I know you don't know what's in it. But
9 what I'm saying is what is the type of information that you
10 might expect to find in one that would assist you in
11 attacking the credibility of the witness.

12 MR. ALLEN: There may have been -- or possibly
13 writeups concerning officers' falsifying reports in the
14 past.

15 There -- there may be information in a case like this
16 about excessive use of force in other cases in the past,
17 because there is some discussion in this particular case
18 about the arrest and about what happened during the course
19 of the arrest that may lead one to or lead me to be
20 concerned about use of force.

21 I have heard from a number of individuals that -- that
22 they have heard that there have been indications that at
23 least one of these officers -- Mr. Doe in particular --
24 has been known to use excessive force.

25 I don't know if there's anything in his personnel file

1 about that, any counseling information or anything like
2 that. That may become relevant in this particular case,
3 and I believe it will be relevant.

4 And/but that's the kind of information I'm looking
5 for, any information that deals with the officers
6 falsifying information, or in this particular case also
7 concerning Mr. ^{Doe} possible excessive use of force.

8 Do I know what's in the personnel files? No, I don't.
9 But if I can't look I'll never know if it's there. So in a
10 way the state's objecting -- objection is hampering my
11 ability to investigate the case.

12 It's my understanding, Your Honor, from the prior
13 Supreme Court cases cited in the motion, Kyles v. Whitley,
14 specifically United States vs. Bagley, that we'll have --
15 that we have the right to investigate even credibility
16 issues. And the state has a duty of course to turn over to
17 us information that may be -- that may tend to exculpate or
18 may tend to mitigate the punishment.

19 But, furthermore, it's my understanding through Bagley
20 and Kyles that we have to have the ability to investigate
21 and they have to -- it's my understanding that they should
22 be turning that information over to us as well.

23 So without either one of us knowing what's in there,
24 then neither one of us knows if they don't know if they're
25 inadvertently hiding information from us. And I don't know

1 if there's information in there because I can't look into
2 it. So that's where we're at.

3 There may be relevant information in there, and we'll
4 never know if they don't go look to report back to the
5 Court as to whether or not there is or is not and then
6 if -- if I'm not allowed to review it to determine if there
7 is any, then I'm hampered in my ability to investigate this
8 case.

9 And that's where we're at. And in this particular
10 case, again, as I said, my belief that the state's evidence
11 about the primary part of the alleged offense is going to
12 come from that one witness, Mr. Doe and that the
13 evidence concerning anything my client told the officers is
14 going to come from two other, you know, the other two
15 officers who, as the Court well knows, does not habitually
16 record or -- record by audio or video tape their
17 interrogations.

18 So, I mean, their credibility is going to be an issue
19 in this case. And if I can't investigate the credibility
20 I'm not able to provide in my opinion effective assistance
21 to my client.

22 MR. BARNETTE: May I respond, Your Honor, briefly?

23 Your Honor, if I understand Mr. Allen, he's making
24 allegations based off hearsay and double hearsay where
25 people's told other people about -- something about an

1 officer. Obviously, that's not been brought to the Court.
2 None of this stuff has. I mean, it's pure hearsay.

3 The second thing is, Judge, they simply have an
4 obligation -- any witness that we have, that we've got to
5 go check their personnel files and we've got to go look
6 them up to try to find any potential?

7 I mean, the way I understand Rule 5 and Doe is
8 obviously we have that information through police
9 investigations, through whatever. Obviously, we give that
10 over to them, because he's saying it's our obligation to go
11 check every witness, their background, their personnel
12 files, as well as the stop.

13 I mean, common sense has got to take over at some
14 point. I mean, you just keep researching and researching
15 and researching.

16 I mean, we've got to check everything to see if
17 there's any possible evidence? I mean, obviously brought
18 to our attention or we -- before that, obviously we're
19 under obligation to do that. But to investigate every
20 potential witness, police officer or any witness, I don't
21 think that's our obligation, and obviously we don't have
22 the personnel files. They're handled by the company or the
23 entity that's hired them employs them.

24 MR. ALLEN: I don't know about their obligation to on
25 their own go out and investigate, but here I am asking.

1 There are many officers that were involved in this
2 particular case. I'm asking for three. So I think I am
3 trying to be as reasonable as I can under the
4 circumstances.

5 And I'm asking, and I can't seem -- and I guess my
6 concern is all I can do is ask and apply to the Court. And
7 if the people who have the files are going to deny me that
8 access, then I'm just being denied access to potentially --
9 potential information that could assist my client in his
10 defense, secondly.

11 And we're not talking about a private entity, Your
12 Honor. We're talking about agencies of the State of South
13 Carolina.

14 THE COURT: All right. I'll think about it and issue
15 an order.

16 END OF REQUESTED TRANSCRIPT OF RECORD
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2012-GS-42-358-360
6 Robert Odell Brown and) 2012-GS-42-324
7 Shiquan Marquez Freeman,)
8 Defendant.) June 17 - 20, 2013
9) Spartanburg, South Carolina

10 B E F O R E:

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

12
13 A P P E A R A N C E S:

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15 TIMI POULOS, ESQUIRE
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17 CLAY T. ALLEN, ESQUIRE
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19 ANDREW J. JOHNSTON, ESQUIRE
20 Attorney for Defendant Freeman

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22 Linda D. Moffitt
23 Circuit Court Reporter
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1 (Proceedings June 27, 2013)

2 THE COURT: All right. State vs. Robert Odell Brown
3 and State vs. Shiquan Marquez Freeman.

4 Any matters we need to address before the jury panel
5 is brought around?

6 MR. JOHNSTON: May it please the Court, Your Honor.
7 On behalf of Freeman I have a matter.

8 THE COURT: Okay. Mr. Johnston.

9 MR. JOHNSTON: Your Honor, I do represent defendant
10 Shiquan Freeman. He is charged as an accessory after the
11 fact in this case, not as a principal.

12 In this case Mr. Freeman may rely on the defense of
13 necessity, defense of duress, which would require I believe
14 the introduction of certain evidence which would be
15 necessary to try and establish the grounds for that
16 defense.

17 I believe this evidence if introduced would likely be
18 detrimental to Mr. Brown's defense and the evidence would
19 not otherwise be admissible in a trial involving Mr. Brown
20 only.

21 My concern is that if we proceed forward with a joint
22 trial in this case that I may be limited in my attempts to
23 establish a viable defense for my client, Mr. Freeman,
24 because of the understandable concerns that Mr. Brown's
25 counsel has for him.

1 So, Your Honor, we would respectfully request so that
2 the rights of both defendants might be preserved that my
3 client's trial be severed from that of Mr. Brown.

4 THE COURT: All right. And your client is charged
5 solely with the accessory after the fact?

6 MR. JOHNSTON: Yes, sir.

7 THE COURT: And your position is that you intend to
8 introduce evidence of the defense of duress.

9 MR. JOHNSTON: That is correct, sir.

10 THE COURT: And that evidence in your view would
11 necessarily require that you present evidence of bad
12 character as to Mr. Brown?

13 MR. JOHNSTON: Yes, sir.

14 THE COURT: And you contend or assert that that is
15 evidence that you are comfortable would not be allowed to
16 be introduced in the trial of Mr. Brown alone?

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: But you feel it necessary in the case to
19 be tried together in order to establish your defense of
20 duress.

21 MR. JOHNSTON: That is correct, sir.

22 THE COURT: And your view of the evidence is that it
23 would without question prejudice Mr. Brown?

24 MR. JOHNSTON: Without question.

25 THE COURT: Okay. Mr. Barnette.

1 MR. BARNETTE: Your Honor, the way I understood in our
2 pre -- we actually talked back in chambers with the Court.
3 Basically, he'd be entering pre -- I mean, a prior bad act
4 where the defendant actually beat up his client before this
5 event occurred and that he was scared of him from that
6 standpoint.

7 I think he'd have a hard time proving it, but I
8 understand out of an abundance of caution if that defense
9 is proven, then obviously he's entitled to the severance.

10 I don't know if -- we won't know until actually that
11 is produced if the defense has been proven or not. But if
12 he attempts to prove it, obviously he's got to introduce
13 prior bad acts, you know, the beating or whatever else he
14 might introduce from Mr. Brown.

15 And I understand that could -- prejudicial Mr. Brown's
16 position if he doesn't testify. So I understand probably
17 out of an abundance of caution I probably would agree with
18 the motion to sever based on what I've heard back in
19 chambers and my understanding.

20 THE COURT: All right. And do you agree that there's
21 really no way to know whether or not there is sufficient
22 evidence to establish a defense of duress without taking
23 the testimony or starting the case and putting up the
24 witnesses and hearing what they have to say? And then of
25 course if that evidence does give rise to a defense of

1 duress, then it'd be too late. I mean, we'd have to either
2 stop the trial or -- well, I'm not sure what the remedy
3 would be.

4 MR. BARNETTE: I think it'd be -- I don't think
5 there's much case law in this area on top of that.

6 So I think it would be a slippery slope. And just out
7 of an abundance of caution I hate doing it, because, like I
8 said, I think -- I don't think they're going to be able to
9 prove the defense of duress. But, obviously, he's going to
10 be able to ask questions about that and talk about
11 Mr. Brown's prior character. I know that's obviously
12 prejudicial and usually not allowed in trials like that.

13 THE COURT: So is it your position then, Solicitor, in
14 order to avoid the potential of having this case retried
15 based upon my error if I were to allow the case to proceed
16 with both defendants and there being the defense of duress
17 established, rather than face that potential retrial you'd
18 prefer to simply agree to the severance and allow only
19 Mr. Brown's case to go forward today?

20 MR. BARNETTE: Yes, sir. And I am trying to avoid --
21 obviously, I'd like to avoid two different trials, same two
22 trials and the same defendant.

23 THE COURT: Right.

24 MR. BARNETTE: So obviously I would agree with it even
25 though I don't think they'd be able to prove it, but I just

1 wanted to make that was put on the record.

2 THE COURT: Okay. All right. Mr. Allen, do you need
3 to be heard? Do you need to be heard?

4 MR. ALLEN: I'm not sure if I need to be heard at this
5 point or not.

6 Certainly, we would object to and if necessary move
7 for a severance as well in the event or if they attempt to
8 put up information that would not normally be admissible in
9 the trial against my client alone, specifically any --

10 THE COURT: Well, now, excuse me for interrupting, but
11 Mr. Barnette is not opposing Mr. Johnston's motion.

12 MR. ALLEN: Well, I'm not opposing the motion either.

13 THE COURT: Okay. All right. That motion is granted.

14 So Mr. Freeman's case will be severed. It'll be tried
15 separately from that of Mr. Brown's.

16 MR. JOHNSTON: May we withdraw, Your Honor?

17 THE COURT: We'll go forward with Mr. Brown.

18 Yes, you may.

19 MR. BARNETTE: Your Honor, I know this case has been
20 called for trial, but he'll still be under the bond and
21 conditions that he was originally. Is that correct?

22 THE COURT: Oh, sure, yeah. He's under the same bond.
23 The jury hasn't been even selected, much less sworn. Okay.

24 MR. JOHNSTON: Thank you, Your Honor.

25 (Mr. Johnson and Defendant Freeman were excused.)

1 do your own investigation or be exposed to any type of
2 media coverage relating to the case.

3 Okay. So with that do have a good evening. Please
4 report to your jury room at 9:30 in the morning, 9:30 in
5 morning. Have a good afternoon.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Now, let's address the issue
9 of prior to today the defense has filed a motion to require
10 the prosecutor to turn over personnel files of particular
11 witnesses that are likely to be called during the trial of
12 this case.

13 The solicitor objected to that disclosure, No. 1, on
14 the ground that -- and y'all just correct me if I state
15 anything incorrectly -- No. 1, on the ground that he
16 doesn't have those records, they're not in his custody, he
17 has no control over them, and therefore he cannot supply
18 them to the defense even if he had them; and, secondly, it
19 was the solicitor's position that there was nothing in the
20 personnel file that would be admissible in evidence in this
21 case or likely lead to admissible evidence.

22 So, over the weekend I instructed the solicitor to
23 either obtain access to the personnel files of those
24 witnesses or have the defense subpoena the custodian of
25 those records and have those records brought to court.

1 I understand those files have been brought to court.
2 At my request and direction the solicitor has reviewed the
3 files in order to determine if in his opinion there is any
4 information contained in those files that would be subject
5 to disclosure pursuant to Doe vs. Maryland or Rule 5.
6 The solicitor has conducted that review.

7 There were two items that he submitted to the Court
8 for an in-camera review that he out of an abundance of
9 caution presented to me, because while he did not believe
10 it was discoverable, it didn't have to be disclosed, it did
11 not have to be provided to the defense, out of abundance of
12 an caution he's presented it to me to see if I had a
13 different view than what he had.

14 And so I have reviewed those particular documents, and
15 I have also determined that they are not discoverable.
16 They're not subject to disclosure pursuant to Rule 5 and/or
17 Doe vs. Maryland and that the information if provided
18 would not likely result in the finding of any other
19 relevant information that might be used in the course of
20 the trial.

21 Now, there was one sheet of paper which was taken from
22 a personnel file in the custody of the sheriff's department
23 and there were ten sheets of paper that were contained in
24 the personnel file in the custody of the Spartanburg City
25 Police Department.

1 My understanding is that seven of those sheets of
2 paper are in the possession of the defense.

3 There are three sheets of paper that have not been
4 provided to the defendant through counsel. One of those
5 sheets is simply a letter that really has nothing to do
6 with anything, sort of just an introduction of what's
7 attached to it. And then the other two sheets of paper are
8 matters contained in the personnel file, in a personnel
9 file, but which I have reviewed and determined is not
10 required to be disclosed pursuant to Rule 5 or Doe vs.
11 Maryland.

12 So those items, and only those items that were
13 presented to me for an in-camera review that are not in the
14 possession of the defense, will be placed into an envelope
15 and sealed and be held in the custody of the Court in the
16 event that somewhere down the line that those items need to
17 be reviewed by anyone.

18 But they will not be introduced in the trial of this
19 case because I've determined that they're not relevant to
20 anything and not likely to lead to any relevant information
21 that would be admissible in the trial. So I think that
22 covers that issue.

23 Is there anything else that needs to be added to that,
24 Mr. Barnette?

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

1 THE COURT: Mr. Allen?

2 MR. ALLEN: In addition to what Your Honor has
3 indicated, it was my understanding that -- well, I think
4 Your Honor did say it -- that the seven documents that I
5 have copies of are actually in the personnel file. I think
6 Your Honor did say that.

7 THE COURT: That's true. The seven -- well, I don't
8 know if I said that or not, but that is a fact.

9 The seven sheets -- the seven sheets of information
10 that I reviewed that the solicitor provided me of the ten
11 sheets of paper in a personnel file -- seven of those are
12 in the possession of the defense. You have those. And
13 those sheets that you have were contained in that personnel
14 file. They are the same, the only difference being is that
15 there are three additional sheets that you do not have that
16 are contained in that personnel file. One of those is
17 simply -- I can't really say how to describe it. It's just
18 a letter -- basically, it's just a letter. It's not -- it
19 doesn't relate to anything that relates to this case or any
20 other case or investigation engaged in or participated in
21 by the person whose personnel file was reviewed.

22 There are two sheets of paper that -- that relate to
23 the individual whose personnel file was reviewed, but those
24 sheets of paper do not relate to this case in any way, nor
25 do they relate to any other case or any other investigation

1 for which that individual was involved. And so I
2 determined that that information was not relevant to
3 anything that -- which related to this case.

4 Those are the -- those documents you do not have and I
5 have determined do not need to be disclosed.

6 MR. ALLEN: Yes, Your Honor. And while it's been
7 possibly implied, but just so the record is clear, the
8 documents, seven documents, that I do have were not
9 provided pursuant to the in-camera review, but these are
10 documents that I have received from a different source that
11 was referred to but separately.

12 Of course part of my concern was whether or not they
13 were, you might say, genuine copies and I think that -- and
14 the solicitor did advise the Court that those copies are
15 actually in the file.

16 THE COURT: Of course -- all right. And I've not
17 reviewed your documents --

18 MR. ALLEN: Okay.

19 THE COURT: -- but Solicitor Barnette has.

20 MR. ALLEN: That's correct.

21 THE COURT: He's seen what you have, and he represents
22 to me and to you that those documents that you have are
23 actual copies of documents contained in that personnel
24 file.

25 MR. ALLEN: Yes, sir. I was just trying to make it

1 clear that these were not documents that were provided to
2 me pursuant to the review.

3 I think Mr. Barnette continues to disagree that I
4 should be able to use them. And I don't know if the Court
5 has actually ruled on whether or not the documents I have
6 had may be used.

7 THE COURT: I have not ruled on that because I have
8 not even reviewed those documents.

9 I only reviewed those documents that the solicitor
10 related to me that you did not have in order to determine
11 if they should be disclosed. I didn't review those
12 documents that you do have.

13 That was -- that's something that you and the
14 solicitor and I can discuss, about the admissibility of
15 that if you contend there's information in those documents
16 that you believe should be allowed during the trial of this
17 case. But we've not made that determination yet. That is
18 correct.

19 MR. ALLEN: Yes, sir. I believe that will largely
20 depend upon testimony as it's presented. But of course
21 since I know the solicitor disagrees with the use or
22 admissibility of that information, I will certainly alert
23 the Court and request a hearing outside of the presence of
24 the jury before I intend to ask any questions that may
25 relate to that.

1 THE COURT: I think that's appropriate.

2 MR. ALLEN: Yes, sir. I believe that's all I have got
3 to add to Your Honor's.

4 THE COURT: All right. Mr. Barnette.

5 MR. BARNETTE: Your Honor, would you like to preview
6 those pages so you'll have an idea of what they --

7 THE COURT: Why don't you let me have those, and I
8 think look at them during the overnight recess so in the
9 event that question comes up I will have already had a
10 chance to look at them and know what they are.

11 MR. ALLEN: Yes, Your Honor.

12 MR. BARNETTE: And the other concern we had, obviously
13 we don't know how. I know Mr. Allen has expressed that the
14 concern we've got it's confidential forms. And obviously
15 we don't know how. I'm not saying he got them illegally,
16 but we don't know how they were gotten. And that's a
17 concern of the state concerning that also. I think that's
18 a matter to be taken up a later time but not in this court.

19 THE COURT: Yeah. I don't know. There's not much I
20 can do about that. I don't have the slightest idea how he
21 obtained those documents, but, I mean, there's no --
22 there's no indication that Mr. Allen or any member of his
23 staff has done anything inappropriate, is there?

24 MR. BARNETTE: No, sir. There's no allegation. I
25 just don't know who got -- who the original person -- I

1 think they were supplied by a third party or whatever, but
2 I don't know where that came from.

3 THE COURT: Exactly. But you're satisfied they came
4 out of the personnel file.

5 MR. BARNETTE: No question. I mean, I'm not saying
6 that they're not -- they are the copies of the documents.
7 The concern I've got is maybe that's another matter dealing
8 with another court, another place, but obviously somebody
9 got them from somewhere.

10 THE COURT: Okay. All right. Anything else?

11 MR. BARNETTE: Your Honor, I'm going to take these
12 documents. I think the clerk has got an envelope. I was
13 going to put it in a envelope and give it to Your Honor, I
14 guess.

15 THE COURT: Yes. Okay.

16 MR. BARNETTE: And then they'll be sealed at a later
17 time, I assume.

18 THE COURT: Okay. Do you have an extra copy of those
19 seven sheets that Mr. Allen has so I can look at those
20 tonight?

21 MR. BARNETTE: Yeah. I put -- they're in here.

22 THE COURT: Okay.

23 MR. BARNETTE: And he's got copies, obviously copies,
24 of those seven.

25 THE COURT: Yeah. Okay.

1 MR. ALLEN: So you got -- you're providing the Court
2 copies of those seven pages?

3 MR. BARNETTE: Right.

4 THE COURT: I should have 11 sheets of paper there.

5 MR. BARNETTE: Yes, sir. That's correct. One of them
6 is handwritten notes. That's the one from the county, and
7 then the ones that are typed is from the city.

8 THE COURT: Right.

9 MR. ALLEN: Okay.

10 MR. BARNETTE: Your Honor, do you want this marked as
11 an exhibit?

12 THE COURT: Well, I'll determine that. It depends on
13 where it needs to be filed.

14 MR. BARNETTE: Yes, sir.

15 THE COURT: It might need to be filed with the case, a
16 court's exhibit.

17 MR. BARNETTE: Yes, sir. Your Honor, these are copies
18 of those documents obviously. These are not the originals.

19 THE COURT: Okay.

20 MR. ALLEN: If I may, Your Honor, make two additional
21 points just so that the record is clear.

22 No. 1, of those documents that's been provided you
23 that have not been provided to me, of course I have not
24 been allowed to look at those documents either in-camera or
25 in any other fashion. So those documents, although the

1 solicitor has shared them with the Court, has not shared
2 them with me.

3 The solicitor has in the course of the Court's
4 instructions, had reviewed the files that were provided to
5 him by both the city and the county. But of course I've
6 not been allowed to review those in-camera or in any other
7 fashion.

8 Secondly, even though we continue and frequently talk
9 about the personnel records, my motion also goes to any
10 other -- I think I specified internal affairs' records and
11 reports as well, and I don't know if they are kept
12 separately or not. But I do want -- my request was not
13 limited just to personnel but to internal affairs' records
14 on the officers as well, which I presume the results of
15 those would be in the personnel files. But, again, having
16 never reviewed police officers' or sheriff's department
17 personnel files I don't know how they are kept.

18 THE COURT: Well, let me see a copy of your request.

19 MR. ALLEN: Yes, Your Honor. Showing the solicitor a
20 copy of my motion.

21 MR. BARNETTE: Is this the motion that was filed?

22 MR. ALLEN: That's the motion I filed. The first
23 paragraph, Your Honor.

24 THE COURT: Okay. Well, Mr. Barnette, is it safe to
25 say and fair to say that any information that Mr. Allen has

1 requested by way of his motion to compel would be contained
2 in the appropriate personnel file?

3 MR. BARNETTE: Your Honor, when -- the two files I
4 reviewed today had all of that -- had personnel as well as
5 an internal investigation.

6 THE COURT: Okay. So all of that was contained in
7 that personnel file.

8 MR. BARNETTE: What I was shown from both departments.

9 THE COURT: And you have asked, and there's nothing
10 else?

11 MR. BARNETTE: I've asked, and that's what they have
12 provided, Your Honor.

13 THE COURT: Okay. And that's what was provided you.
14 Have you got a copy of your subpoena? Does your subpoena
15 have the same language as your motion to compel?

16 MR. ALLEN: I don't want to misstate that. I stated
17 on the subpoena personnel files, internal affair files,
18 and/or any record of discipline. And one was sent to the
19 city and one was sent to the county.

20 THE COURT: Okay. All right. Mr. Barnette, you've
21 seen the subpoena in this case?

22 MR. ALLEN: He has not.

23 MR. BARNETTE: I have not seen it, Your Honor.

24 THE COURT: Okay. Well, but these subpoenas were
25 served on both the sheriff's department and the department

1 of public safety?

2 MR. ALLEN: They were. They was a subpoena to bring
3 the files to court today, yes, sir.

4 THE COURT: All right. And those files were brought
5 pursuant to this subpoena and provided to you, Mr.
6 Barnette?

7 MR. BARNETTE: Yes, sir. We went back and talked to
8 the Court in chambers and you ordered -- actually I think
9 you talked to Ms. Dupont, and you ordered them and the city
10 to both show those files --

11 THE COURT: But so they responded to the subpoena by
12 giving you all of the information that was requested in the
13 subpoena?

14 MR. BARNETTE: They brought -- it appears to be, from
15 what they gave me, was all the files they had.

16 THE COURT: They represented to you that's what it
17 was?

18 MR. BARNETTE: Yes, sir, they did.

19 THE COURT: Okay.

20 MR. BARNETTE: May I see those two subpoenas, Your
21 Honor, just to make sure that's what I'm looking at?

22 THE COURT: Sure.

23 MR. BARNETTE: Because I have not seen it.

24 THE COURT: All right. Mr. Allen, you can have your
25 subpoenas back.

1 Anything else before we recess?

2 MR. ALLEN: Your Honor, if you -- I mean, I can state
3 a couple of other motions if the Court wants to do that
4 now, or if the Court wants to take that up in the morning I
5 don't think it's going to -- I'm not sure it's going to
6 take a great deal of time, but I'm at the Court's pleasure.

7 THE COURT: All right. Let me see y'all just a
8 minute.

9 (Bench conference held off the record.)

10 THE COURT: All right. Court is in recess until 9:30
11 in the morning.

12 END OF PROCEEDINGS JUNE 17, 2013
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1 room, and it'll be with him forever unless you 12 jurors
2 determine that he's no longer entitled to that presumption
3 of innocence as it relates to a particular charge.

4 In other words, after you've carefully considered all
5 the evidence after it's been presented, and from that
6 evidence you have determined what you believe to be the
7 true facts as they relate to a particular charge, and after
8 deciding those facts you apply the law that I will have
9 provided you, if you 12 jurors unanimously determine that
10 his guilt as to a particular charge has been proven beyond
11 a reasonable doubt, then he would no longer be entitled to
12 the presumption of innocence as it relates to that
13 particular charge.

14 But it is only if, unless and until you are satisfied
15 of the defendant's guilt as to a particular charge beyond a
16 reasonable doubt that he would no longer be entitled to the
17 presumption of innocence as it relates to that charge.

18 Now, the way the trial will proceed is that in a
19 moment the lawyers are going to address you in what are
20 called opening statements.

21 There are two occasions in the trial of a case where
22 lawyers are permitted to address the jury, and that is at
23 the beginning of the trial before any evidence has been
24 introduced, then again at the conclusion of the trial after
25 all of the evidence has been received.

1 But keep in mind, as I've just indicated, the evidence
2 upon which you will base your determination of fact and
3 ultimately your decision comes in between the opening and
4 the closing statements of the lawyers. And therefore what
5 the lawyers tell you in their opening and closing
6 statements is not to be considered by you as any evidence
7 upon which you will base your decision.

8 That's because the lawyers don't know anything about
9 this case of their own personal knowledge or perception
10 like witnesses will be testifying to. And the lawyers
11 aren't going to take the witness stand. They're not going
12 to be placed under oath, and they're not going to be
13 subjected to direct and cross-examination as each of the
14 witnesses will be in order to test their recollection of
15 evidence they're providing.

16 So what the lawyers tell you is not to be considered
17 by you as any evidence upon which you'll base your
18 decision, but you should listen to what the lawyers have to
19 say because those statements to serve a purpose.

20 The opening statements serve to provide you with a
21 basic understanding as to what this case is about from both
22 the perspective of the state and of the defense so that
23 you'll have some context in which to place the evidence
24 that we will be receiving shortly thereafter.

25 The closing statements occur after all of the evidence

1 has been received. And, again, while those statements are
2 not evidence, it does afford the lawyers an opportunity to
3 discuss with you the evidence that you have seen and heard
4 during the course of this trial. And through that
5 discussion each will have an opportunity to try to persuade
6 you or to convince you that the evidence in the case does
7 or does not support a particular decision, depending upon
8 which lawyer is making an argument before you.

9 It's in between those opening and closing statements
10 we actually receive the evidence upon which you will base
11 your decision.

12 The state, as you know, has the burden of proof. The
13 state has made the charge and the accusation against the
14 defendant; and therefore they have the obligation to
15 establish his guilt to your satisfaction beyond a
16 reasonable doubt. So the state will go forward first in
17 its presentation of evidence.

18 Once the state has concluded with its presentation of
19 evidence any defendant has the same opportunity to testify
20 or call a witness or present additional evidence, but a
21 defendant in a criminal trial is never under any obligation
22 to testify or to call any witness or to produce any
23 evidence. That's because while the state does have the
24 burden of proof to establish his guilt beyond a reasonable
25 doubt, a defendant does not have any burden to establish

1 his innocence or to prove that he's not guilty because in
2 some cases that might not even be possible.

3 So while a defendant is afforded an opportunity to
4 present evidence, no defendant ever has to present
5 evidence, and no defendant has any burden to prove anything
6 in the trial of a case.

7 In any event, after all of the evidence has been
8 received and after you've heard the final summations of the
9 lawyers, I will then instruct you fully on the law as it
10 relates to the criminal law generally and as it relates to
11 these particular charges specifically.

12 Then you'll be asked to go back and to begin with your
13 deliberations. And through that process you are simply
14 going to be called upon through the exercise of good
15 judgment and common sense conscientiously applied to the
16 testimony and evidence in the case to decide the facts of
17 the matter.

18 Once you decide the facts that relate to these
19 allegations you'll then apply the law that I will have
20 provided you, and you 12 jurors will determine whether or
21 not the state has proven the defendant to be guilty of a
22 crime beyond a reasonable doubt.

23 If he has been proven guilty, then your verdict would
24 be guilty as to that particular charge. If he has not been
25 proven guilty, then your verdict would be not guilty as to

1 that particular charge.

2 Now, all that we're going to ask for you to do is to
3 pay careful attention throughout the course of the trial.
4 You are not to begin making up your minds or formulating
5 your opinions as to what you think the ultimate decisions
6 in the case ought to be until after all of the evidence has
7 been received, until I've instructed you on the law and
8 until you've been asked to begin with your deliberations in
9 the case.

10 It's also important that you give every witness the
11 same degree of attention as they testify because sometimes
12 during the course of a trial there is conflicting testimony
13 received by various witnesses. Sometimes the conflicts in
14 that testimony don't make any difference; sometimes they
15 do.

16 Where that conflict in testimony relates to a material
17 fact that you have to determine in order to arrive at a
18 decision, then you are the ones who determine what is the
19 most believable and credible testimony, and that's the
20 testimony that you will accept. And you will reject any
21 testimony or other evidence that you find not to be
22 credible or believable.

23 But so that you'll be in a proper position to be able
24 to fairly evaluate and to assess a witness' credibility
25 it's important that you pay attention while that witness

Opening statements

1 testifies and that you pay attention while each other
2 witness testifies so that when you do go back to begin your
3 evaluation and your assessment of a witness' credibility
4 you'll be able to judge each witness' testimony in light of
5 not just that witness' testimony but in light of all of the
6 testimony and all of the evidence received during the
7 course of the trial.

8 So I do want to thank you in advance for your
9 participation, as well as for your careful attention. I
10 would ask that you please give the lawyers your attention
11 now as they give you their opening statements.

12 Ms. Poulos.

13 MS. POULOS: Thank you, Your Honor.

14 Every hour of every day police officers put their
15 lives on the line to protect us and to keep our community
16 safe.

17 On one night about a year and a half ago Deputy Doe
18 Doe was trying to do just that when he was left lying on
19 the cold, hard ground face down in the dark shot bleeding
20 and stunned.

21 On the night of November the 6th of 2011 Deputy Doe
22 was patrolling his assigned area when he sees a blue car
23 speeding, then make a quick turn without signaling and
24 speed back up again.

25 He goes to catch up to the vehicle and sees a car

Opening statements

1 swerving and almost losing control and crossing over the
2 double yellow line.

3 He puts on his blue lights and his siren to make a
4 traffic stop, but the car would not stop. It kept going
5 faster and faster up to 60 miles per hour in a
6 25-mile-per-hour zone until finally it turns into a
7 driveway and wrecks into the tree.

8 The driver is the defendant in this case, Robert Odell
9 Brown. He gets out. He has dreadlocks, wearing a white
10 t-shirt and blue jeans, and he starts running.

11 Deputy Jones pulls in behind him, gets out of his car
12 and starts chasing after him on foot. They keep running.
13 They get to a fence. The defendant jumps over that fence.
14 Deputy Doe jumps over that fence.

15 They get to a second fence. The defendant jumps over
16 that fence but gets his jeans caught on the wire. Deputy
17 Doe runs up to him and tries to pull him down. There's a
18 struggle.

19 The defendant clears the fence. Deputy Doe jumps
20 over. And as soon as his feet hit the ground there's a
21 flash of light. Defendant opens fire and shoots Deputy
22 Doe in the face shattering his right eye socket and
23 tearing the skin all the way from his eye back to his ear.

24 Deputy Doe turns. He hears more shots, feels a pain
25 in his left side and realizes he's been shot a second time.

Opening statements

1 He immediately hits the grounds. And while lying on
2 his back he manages to pull out his gun, aim, point towards
3 the defendant and shoot him multiple times. In an extreme
4 pain with no vision in one eye, blood covering his face he
5 manages to get back up on his feet and continue chasing
6 after the defendant. He gets to a point where he runs out
7 of steam and falls to the ground.

8 Now, the defendant at this point is still running.
9 He's still running. He's been shot, so he's leaving a
10 trail of blood.

11 He goes to a house, goes back to an outbuilding, goes
12 inside, comes out, and flees the scene in a different car.
13 And that's just the first part of the story.

14 From that point he gets into that car, goes to his
15 sister's house to get help and to get cleaned up. Over
16 there -- over come his girlfriend and his nephew, and the
17 three of them get into a third car, and they go to his
18 house. He changes clothes.

19 And then they get back into that car and get on I-85
20 and head towards Charlotte. At some point they stop to get
21 scissors, and they help him cut his dreadlocks off to
22 disguise his identity.

23 They keep going and driving several hours, all
24 throughout the middle of the night until they finally reach
25 a little town in Virginia.

Opening statements

1 They make a couple of stops there until they were
2 pulled over by the Virginia police. When they were pulled
3 over the car stops. The girlfriend and the nephew get out.
4 But the defendant who at the time is in the back seat jumps
5 into the front seat and puts the car in drive and takes off
6 leading the Virginia place on another chase through winding
7 gravel roads.

8 At one point he tries to run one of the Virginia cops
9 -- the officers' cars off the side of the road. They're
10 shooting to try to get him to stop. He still will not stop
11 until finally they push his car into an embankment and the
12 chase is over.

13 But does he get out? Still wouldn't get out. There's
14 a standoff until police finally had to shoot teargas into
15 his car. And he was left with no choice but to surrender.
16 And that, ladies and gentlemen, is the story of this case
17 in a nutshell.

18 Why are we here today? We're here because the state
19 has brought charges against the defendant, Robert Odell
20 Brown, for attempted murder, possession of a weapon during
21 the commission of a violent crime, resisting arrest with a
22 deadly weapon and failure to stop for a blue light.

23 We, the state, have the burden, the responsibility to
24 you guys to prove his -- to prove our case beyond a
25 reasonable doubt.

Opening statements

1 This is a case about a police officer doing his job
2 and about someone who almost killed that police officer
3 rather than just simply stopping. We believe that the
4 evidence will place the defendant at the scene of this
5 crime.

6 We will prove to you that he failed to stop for a blue
7 light, that he ran on foot to avoid being arrested, that he
8 shot a police officer twice and fled the scene, fled the
9 state with two other people until he was finally caught in
10 Virginia. That's what we're here to prove.

11 Now, during this trial you're going to hear testimony
12 from several witnesses, several officers, several other
13 people, and everybody's going to have something important
14 to add. And we may call certain witnesses out of
15 chronological order, and that's just to accommodate their
16 schedules. But their testimony will be nonetheless
17 important.

18 But we ask that you just pay attention to their
19 testimony and bear with us as we try to keep this as simple
20 and clear for you all as possible.

21 But most importantly in just a few minutes you're
22 going to get to hear Deputy Doe and he's going to tell
23 the story in his own words of what happened on that night,
24 of how a routine traffic stop quickly spiraled out of
25 control, how he faced an extremely dangerous situation with

Opening statements

1 skill and courage and how that day will be etched in his
2 memory forever.

3 On behalf of the state we thank you all for service
4 this week as jurors. And remember during this trial pay
5 attention, and remember at the end of it all to use your
6 good old common sense. Thank you.

7 THE COURT: Mr. Allen.

8 MR. ALLEN: When someone shoots at another individual
9 there's a tendency to want to get away. There's a tendency
10 to want to get away from that shooting and from that
11 danger.

12 The testimony in this case, you will hear a good bit
13 of testimony about what the state will try to establish.
14 But actually the event from which these charges arose which
15 the state has charged Mr. Brown occurred over a relatively
16 small period of time, approximately ten minutes to 10:00 of
17 November the 6th of 2011 during the night.

18 The testimony and the evidence will tend to establish
19 that even though Mr. Brown was there, the testimony will
20 establish that he was being told to do something he
21 couldn't do at the point, at that time, and that he was
22 shot.

23 Now, you will hear a lot of testimony. You will hear
24 a lot of evidence about a deputy shooting. And you'll hear
25 a lot of testimony and evidence about Mr. Brown's injuries.

Opening statements

1 You'll hear a lot of testimony and evidence about where
2 Mr. Brown went after that event.

3 But you will not hear any testimony about a particular
4 gun or a particular weapon that Mr. Brown is alleged to
5 have had or that they claim Mr. Brown had. You will not
6 see any gun the police in any of these locations recovered
7 that they claim Mr. Brown had.

8 Now, as indicated by the solicitor, you will hear
9 where Mr. Brown went afterwards and after this event. And
10 while they will try to make a case that he was trying to
11 flee from prosecution or flee from being arrested for this
12 charge, we will tend to show you differently.

13 It's very important for you to understand however, as
14 the judge has indicated and as others will indicate
15 throughout this trial, that we do not have any burden of
16 proof -- Mr. Brown and I. That's simply because oftentimes
17 to try to prove somebody's innocence, it's impossible.

18 You've heard that the state has the burden to prove
19 its charges that they've elected to bring against Mr. Brown
20 beyond a reasonable doubt.

21 That what that simply means -- and I want to elaborate
22 a little bit more on it -- is that if at the conclusion of
23 what I have to say, if you hear nothing else about the
24 case, there's only one thing to return, verdicts of not
25 guilty. Why? There's not been any evidence presented

Opening statements

1 other than what we have said. But as the judge instructed
2 you, that is not evidence and that is not something from
3 which you can base your ultimate decision about Mr. Brown's
4 charges.

5 I'm asking you to think about it along those lines
6 because that helps you follow the case. And try to
7 remember the state has got to establish beyond a reasonable
8 doubt his guilt.

9 Even though many times people I represent want to
10 prove innocence, again, the law doesn't require that. why?
11 Because we start from that presumption. We start from the
12 idea that he is, in fact, innocent as he sits there beside
13 me and as he sits there throughout this trial.

14 The state will not be able to establish beyond a
15 reasonable doubt Mr. Brown shot unlawfully the officer,
16 that he attempted to murder the officer, and the state will
17 not be able to establish beyond a reasonable doubt that he
18 resisted arrest.

19 At the conclusion of this case I'll demonstrate how
20 the evidence shows this and that the state has failed in
21 its burden of proof. And I'll be asking you for verdicts
22 of not guilty.

23 Thank you very much for your time and your attention.
24 Mr. Brown thanks you as well.

25 THE COURT: Mr. Barnette.

John Doe

DIRECT examination by Mr. Barnette

1 MR. BARNETTE: May it please the court, Your Honor. I
2 would like to call Deputy John Doe to the stand.

3 John Doe having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q If you would, please, give your full name for the
7 record.

8 A John Doe

9 Q And where do you work at, sir?

10 A Spartanburg County Sheriff's Office.

11 Q And how long have you been in law enforcement, sir?

12 A Approximately ten years.

13 Q What's your position now, sir?

14 A I'm currently assigned to the canine division on
15 routine patrol.

16 Q Back on November 6th of 2011, what was you working
17 then, sir?

18 A I was working third shift on uniform patrol.

19 Q That night what shift was you on, sir?

20 A Third shift.

21 Q In your shift, what area was you working that evening?

22 A Roebuck-Arkwright, the south side of Spartanburg
23 County.

24 Q And that evening was you working the area near
25 Carolina Drive at that time?

John Doe

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q If you would, tell the jury about what happened that
3 evening that drew your attention to the vehicle the
4 defendant was driving.

5 A I had just come down Irwin Avenue and made it to South
6 Church Street right at the intersection. As I turned
7 around I parked for a few minutes. I decided to go back
8 down Irwin Avenue the direction I had came from.

9 As I turned back onto Irwin Avenue and I got
10 straightened up facing Carolina Drive I observed a blue
11 Pontiac coming down Irwin Avenue back toward South Church
12 Street. So essentially we were coming head-on towards each
13 other.

14 The vehicle was approximately 60 to a hundred yards
15 away from me. I could tell it was traveling at accelerated
16 speed for the area of 25 miles-per-hour on that roadway.

17 Upon the vehicle seeing me they made a quick
18 right-hand turn onto Carolina Drive not using his turn
19 signal. At that time I pulled in behind the vehicle
20 attempting to catch up to the vehicle.

21 As I caught up to the vehicle we were going up
22 Carolina Drive about Sweetie Way. There's a sharp
23 right-hand curve. I initiated my blue lights. The vehicle
24 sped up even more and moved to the center of the roadway
25 and began picking up speed fairly rapidly.

John Doe

Direct examination by Mr. Barnette

1 I then turned on my siren and advised dispatch as well
2 as supervisors that I was in pursuit of the vehicle and it
3 was not stopping.

4 The vehicle continued up Carolina Drive until we
5 pulled into the driveway of [REDACTED] As the
6 vehicle pulled into the driveway it pulled in at an angle.
7 A black male with a white t-shirt, short dreadlocks and
8 blue jeans exited the vehicle and fled on foot back towards
9 Kimberly Drive.

10 I stopped my vehicle in the middle of the roadway,
11 exited my vehicle and fled on foot trying to apprehend the
12 suspect.

13 As we got to the corner of the house at [REDACTED] Carolina
14 Drive -- there is a small 3-foot section of chain-link
15 fence. The suspect went over the fence. I went over the
16 fence directly behind him.

17 We get to the back of the property line of [REDACTED]
18 Carolina Drive. There is another fence outlining their
19 property line.

20 The suspect goes over the fence. As he goes over the
21 fence the barbs on top of the fence catch the back of his
22 blue jeans. He gets stuck on the fence. I approach him.

23 We wrestle back and forth over the top of the fence.
24 He's trying to push me off to keep me from getting my hands
25 on him to place him under arrest.

John Doe

Direct examination by Mr. Barnette.

1 At that point I realize that I can't arrest him on the
2 opposite side of the fence. I go over the fence. And as
3 soon as my feet hit the ground he was within arm's reach of
4 the right-hand side. I turn to face him and a loud bang
5 hang and a flash goes off.

6 (Pause for the witness crying.)

7 MR. ALLEN: Your Honor, if I may.

8 THE COURT: Let me ask the jury if you'll please go to
9 your jury room.

10 We'll bring you back in just a few minutes. Don't
11 discuss the case.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Mr. Allen.

15 MR. ALLEN: Your Honor, the record shall reflect that
16 at the point where the witness stopped his testimony, or
17 stopped describing, he basically teared up and began crying
18 in the presence of the jury. It's obvious prior to the
19 Court's excusing the jury that he was crying.

20 It's been a year and a half. He's gone through this
21 before. I feel as if this is an -- I feel that this
22 showing of emotion from the deputy is unfairly swaying the
23 jury. Whether consciously or not, or unconsciously, it is,
24 in effect, appealing to their sympathies, something which
25 should not be part of this case. And I therefore move for

John Doe

Direct examination by Mr. Barnette

1 a mistrial at this point.

2 I don't know if he -- if Mr. Brown could continue to
3 get a fair trial with a witness, I mean, as he is
4 describing what's happened crying in the presence of the
5 jury.

6 THE COURT: All right. Well, I understand your
7 objection, but I'm going to overrule your request for a
8 mistrial.

9 I mean, it's perfectly understandable that someone who
10 has suffered a gunshot wound to the face might be emotional
11 about it just as soldiers are who come back from combat and
12 they are emotional about suffering injuries too that might
13 result in their own deaths.

14 So, however, I will say, Mr. Doe now, if you -- if
15 we need some time for you to be able to collect yourself,
16 we'll take that time. But you are going to have to be able
17 to testify with your emotions in check.

18 THE WITNESS: I understand, sir.

19 THE COURT: Do you need a little more time?

20 THE WITNESS: No. I'm good. I'll be okay.

21 THE COURT: Are you sure?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Does the state need to be
24 heard on anything?

25 MR. BARNETTE: No, sir. I agree with the Court's

John Doe

Direct examination by Mr. Barnette

1 sense of the situation.

2 THE COURT: Okay. All right. Let's bring the jury
3 back in, please.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Mr. Barnette.

7 BY MR. BARNETTE

8 Q If you would, sir, please continue on with what you
9 was telling the jury.

10 A As I went over the fence I heard the first loud bang.
11 I didn't feel anything at that point.

12 I turned to run to create distance between myself and
13 the suspect who was shooting at me. As I turned to run I
14 heard two more rounds go off.

15 At that point something struck me on my left hip. I
16 fell face first on the ground. I rolled over and looked
17 and the suspect was coming off the fence. He had got his
18 blue jeans untangled from the fence.

19 At that point he was coming directly towards me, and I
20 feared that he was going to continue trying to shoot me.
21 So I pulled my gun and started returning fire. I returned
22 nine rounds toward the suspect at which point he veered
23 away from me and continued running back toward Kimberly
24 Drive.

25 At that point still thinking I was going to apprehend

John Doe

Direct examination by Mr. Barnette

1 the suspect I jumped up, put my gun up and started chasing
2 the suspect again.

3 As we got to Kimberly Drive the suspect made a left
4 down Kimberly Drive back towards, essentially back towards,
5 the city of Spartanburg.

6 I continued. Made it down to the edge of Kimberly
7 Drive. And once I got out into the roadway I could see
8 that I couldn't see out of my right eye. I reached up and
9 checked, and I could feel blood, and there was a pretty
10 size -- good-size hole in the side of my head.

11 At that point I felt that I couldn't interact with the
12 suspect again if he came back. So I laid down and waited
13 on backup and radioed in and advised them that I had been
14 shot, that I had returned fire with the suspect and that he
15 was still running down Kimberly Drive.

16 Q Let me show you. Was there a video in your in-car
17 video that night, sir?

18 A Yes, sir.

19 Q Let me show you what's been marked as State's Exhibit
20 26. Is that a copy of the in-car video from that night?

21 A Yes, sir.

22 Q And does it fairly represent what happened that night?
23 Well, I understand the mike cuts out when you get farther
24 away and stuff, but as well as it could be done?

25 A Yes, sir.

John Doe

Direct examination by Mr. Barnette

1 Q And let me show you State's Exhibit 1. Is that a
2 picture of your gun that you have today --

3 A Yes, sir.

4 Q -- and was using that night? And then State's
5 Exhibit 190, is that a picture of the speed-limit sign on
6 Carolina Drive?

7 A Yes, sir. That's just before Sweetie Way as we turned
8 onto Carolina Drive.

9 Q And does that fairly represent the way it was that
10 night?

11 A Yes, sir.

12 MR. BARNETTE: Your Honor, I'd like to move these into
13 evidence at this time.

14 THE COURT: What are the numbers?

15 MR. BARNETTE: State's Exhibit 1, Your Honor, State's
16 Exhibit 26 and State's Exhibit 190.

17 THE COURT: What was the second number again?

18 MR. BARNETTE: It's No. 1, 26 and 190, Your Honor.

19 MR. ALLEN: As to State's Exhibit 26, we have no
20 objection to a portion of this, but I can express it a
21 little more fully at the bench. But there's -- we have no
22 objection to the video of showing the -- his following the
23 blue Pontiac and events that occurred immediately
24 thereafter.

25 THE COURT: Let me see y'all.

John Doe

Direct examination by Mr. Barnette

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

3 THE COURT: All right. Any objections to 1, 26 and --

4 MR. BARNETTE: 190, Your Honor.

5 THE COURT: -- 190?

6 MR. ALLEN: No objections as to 26. I understand no
7 objections to the portions they're going to play on the --
8 on that video, from the video. No objections to No. 1
9 provided. And as to 190 I'd object because they haven't
10 established a foundation for that at this time.

11 THE COURT: Okay. All right. Mr. Barnette, lay your
12 foundation for 1 and 190, and then we'll see if it comes
13 in.

14 Q Okay. State's Exhibit No. 1, which is a picture of
15 your pistol or gun, sir, is that a picture of your gun?

16 A Yes, sir.

17 Q And was that taken actually by me?

18 A Yes, sir.

19 THE COURT: Let me ask you to be sure you use that
20 black microphone. You can adjust it if you need to.

21 THE WITNESS: I'm sorry, sir.

22 A Yes, sir.

23 Q Okay.

24 MR. BARNETTE: Your Honor, I'd like to move State's
25 Exhibit No. 1.

John Doe

Direct examination by Mr. Barnette

1 Q And this was the gun you had the night of
2 November 6th of 2011.

3 A Yes, sir, it was.

4 MR. ALLEN: No objection to No. 1.

5 THE COURT: It's admitted.

6 (Glock Model 22 semiautomatic pistol marked State's
7 Exhibit No. 1.)

8 Q On Carolina Drive -- while the video's warming up --
9 Carolina Drive in this area, is it in Spartanburg County,
10 sir?

11 A Yes, sir, it is.

12 Q And State's Exhibit 190. Was that the sign that was
13 the speed-limit sign back on November the 6th of 2011, sir?

14 A Yes, sir, it was.

15 Q And it was a 25-mile-hour zone at that time.

16 A Yes, sir.

17 MR. BARNETTE: Your Honor, I realize this picture was
18 taken -- not in November obviously. It was taken just
19 recently, but I'd move it in evidence showing that the sign
20 was substantially the same at the time.

21 MR. ALLEN: No further objections.

22 THE COURT: It's admitted.

23 (In-car video marked State's Exhibit No. 26.)

24 MR. BARNETTE: Your Honor, permission to publish the
25 State's Exhibit 26 to the jury at this time.

John Doe

Direct examination by Mr. Barnette

1 THE COURT: All right. You may.

2 Let's do this. I don't know that the last alternate
3 can see that screen. So let me ask if the front row will
4 move to your right one seat and the back row move to your
5 left one seat. And the gentleman on the back row in the
6 green shirt, you'll have to come down one seat to the front
7 row.

8 Now, I realize -- especially the folks on my left
9 end can't see that screen as well as you'd like. But
10 understand that anything that's being shown on the screen
11 is also going to be in the jury room with you when you go
12 back. So you'll have additional opportunities to review
13 anything.

14 MR. BARNETTE: Excuse me one second, Your Honor.

15 (Pause.)

16 MR. BARNETTE: Apologize, Your Honor.

17 (Whereupon, the State's Exhibit No. 26 was played for
18 the jury.)

19 Q Officer Doe I'm going to replay this one more time.
20 I wanted the jury to see it. We're going to start at the
21 beginning.

22 Where is the speed located on the video?

23 A If you see on the right-hand side where it says E.P.
24 down in the bottom right-hand corner, the number just above
25 that is going to be the speed.

John Doe

Direct examination by Mr. Barnette

1 Q So it's going to be right in that area. I'll let you
2 point out when we play it back on there. And of course the
3 farther away you get from your car, the mike cuts out. Is
4 that what happens?

5 A Yes. The further you get away the less it picks up.
6 And it got real distorted after the shots were fired. It
7 distorted the mike, so the mike wouldn't really pick up
8 afterwards.

9 MR. BARNETTE: We're going to play it again, Your
10 Honor, so that way he can...

11 Q And if you want to describe, go ahead. But I wanted
12 to make sure they understood where the speed was. We'll
13 talk more about that.

14 (Whereupon, State's Exhibit No. 26 was replayed for
15 the jury.)

16 A The top right-hand corner, see where it currently says
17 73 and 67, that's the speeds that we were traveling on
18 Carolina Drive.

19 THE COURT: Be sure to use the microphone when you
20 talk.

21 THE WITNESS: I'm sorry, sir.

22 A Right there.

23 At this point was when I'm saying that he had -- as
24 soon as his vehicle pulled into the driveway he jumped out
25 while it was still running. And you can see his vehicle

John Doe

Direct examination by Mr. Barnette

1 traveling across the yard and struck a tree on the opposite
2 side of the yard. And we went over the first fence, and
3 then we got to the second fence. And you'll hear his
4 rounds go off first, which was the three rounds. And then
5 you'll hear me return fire, which is the nine rounds back
6 to back. Actually, if you'll listen he's calling me by
7 name when we're at the fence.

8 (Whereupon, State's Exhibit No. 26 was replayed for
9 the jury.)

10 Q I want to play that one more time. For some reason
11 the first part of it -- the first part is not related. I
12 guess that's off another vehicle from another situation.
13 But it picks up here. One thing. Obviously, were you
14 placing him under arrest for the failure to stop?

15 A Yes, sir. That's what I was attempting to do when he
16 fled on foot.

17 Q And, again, if you would, show them the speeds that
18 y'all were going if we can do this again.

19 A We're still accelerating. As you can see this -- the
20 number's still going up. It's catching up to us. And you
21 can. He's on the left side of the road straddling the
22 double yellow line as well. You -- you can't see him
23 coming out, but right there is when he comes out as soon as
24 you see the brake lights and the car is stopped.

25 Q And how many times were you shot, sir?

John Doe

Direct examination by Mr. Barnette

1 A I was shot twice.

2 Q And where was you shot at, sir?

3 A I was shot once on the right side of my face. It hit
4 the eye socket and went down the side of my head. And the
5 second one was in my left hip.

6 Q How many times did he actually shoot?

7 A He fired three rounds.

8 Q Okay. And was there gunpowder residue on your shirt,
9 what you had on that night?

10 A Yes, sir.

11 MR. ALLEN: Objection as to his giving an opinion
12 about whether or not there was gunpowder residue. It's not
13 been established that he --

14 MR. BARNETTE: I'll rephrase the question, Your Honor.

15 Q Approximately where did the shot come from? I mean
16 the third shot.

17 A The third shot come from when I had my back to him.

18 Q And which shoulder or which area did it come from,
19 what you could tell later?

20 A From my left side.

21 Q If you would, come down and let the jury, if you
22 would, let them see your face on the right side if you
23 would.

24 (Whereupon, the witness left the stand.)

25 A The scar starts under my eyelid and comes down all and

John Doe

Direct examination by Mr. Barnette

1 goes all the way down the side.

2 Q If you would, come down here, sir.

3 A It starts under here, and it comes down and just goes
4 down the side.

5 Q Okay, sir.

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

7 Q And how many days was you in the hospital, sir?

8 A I was in the hospital for three and a half days.

9 Q And how long was it before you went back to duty, sir?

10 A It was 33 days.

11 Q And the gun that was shot, what kind of shells were
12 they? Were they shotgun shells or pellets or what?

13 A Yes, sir. There's still several pellets left in that
14 they said wouldn't be --

15 MR. ALLEN: Objection as to his testifying as to
16 hearsay.

17 THE COURT: You can't testify to what somebody else
18 said.

19 Q And somebody else is going to be coming to testify
20 about that -- the doctor.

21 But was there pellets found?

22 A Yes, sir, there was pellets found.

23 Q And actually you was shot in the back side too?

24 A Yes, sir.

25 Q And where was you shot at approximately, sir, if you

John Doe

Direct examination by Mr. Barnette

1 could show the jury where you was shot at?

2 (Whereupon, the witness stood.)

3 A It was right here.

4 (Whereupon, the witness demonstrated.)

5 Q Okay. And they -- also obviously that was treated
6 also.

7 A Yes, sir.

8 Q And a similar type blast?

9 A Yes, sir.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Afterwards, how was your eye sight from your eye, sir?

13 A I don't have any.

14 MR. ALLEN: Your Honor, I object to this testimony as
15 basically not being relevant to the issue being tried in
16 this particular case, and it's improper, if I may approach
17 the bench to elaborate.

18 THE COURT: Okay.

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

21 THE COURT: Overrule the objection.

22 Q If you would, sir, please tell the jury about your eye
23 sight now, sir.

24 A I currently have no eye sight in my right eye at all.
25 I can't see anything.

John Doe

Cross-examination by Mr. Allen

1 Q And I think you described it. Can you actually punch
2 your eye, I mean, with your finger and not even see it?

3 A Yes, sir. If I bring my finger up to my eye you can't
4 even -- my eye won't blink because it won't even see it
5 coming.

6 Q And as far as you know that's -- and of course it's
7 been almost a area and a half since then.

8 A Yes, sir. Nothing has improved in the year and a half
9 that it has been.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions Mr. Allen may have for
13 you, sir.

14 CROSS-EXAMINATION

15 BY MR. ALLEN

16 Q Officer, I want to talk about first the -- right there
17 on South Irwin and South Church on that night.

18 A Yes, sir.

19 Q Okay.

20 A Yes, sir.

21 Q As I understand it, you indicated that you were
22 traveling up Irwin going towards South Church.

23 A No, sir. When I seen the defendant I was traveling on
24 Irwin Avenue back towards Crescent Avenue, back towards Dee
25 Traxx.

John Doe

Cross-examination by Mr. Allen

1 Q Okay. Well, prior to that then. I think you
2 indicated that you had traveled up South Irwin to South
3 Church and turned around.

4 A Yes, sir. I had previously.

5 Q Okay. And you did not park at the intersection of
6 South Church and South Irwin.

7 A I had previously. When I turned around I pulled over
8 and parked right there at the intersection for a short
9 time. And then I had pulled back out.

10 Q For how long?

11 A I can't tell you. I don't remember exactly how long I
12 sat.

13 Q Just a few seconds?

14 A It's been a year and a half ago. I don't remember
15 exactly how long I sat there.

16 Q Well, you wouldn't necessarily say that you were like
17 sitting stationary at that location, would you?

18 A I was for a period of time before I pulled back off
19 onto Irwin Avenue, yes, sir.

20 Q Okay. Well, how long of a period of time was it?

21 A Just to answer, I can't tell you how long it was.
22 It's been a long time since this incident occurred.

23 Q Well, was it just a matter of just turning in there
24 for a few seconds before you went back, or was it for
25 minutes?

John Doe

Cross-examination by Mr. Allen

1 A I honestly don't remember how long I sat at that.

2 Q And it was after you started going back down South
3 Irwin that you noticed this car that was making that right
4 turn onto Carolina.

5 A Yes, sir. It was.

6 Q Okay. You did not see that car that you ultimately
7 chased while you were sitting at that intersection of South
8 Church and South Irwin.

9 A No, sir. I did not.

10 Q Now, you -- South Irwin basically goes from South
11 Church and is somewhat curvy, is that right?

12 A Yes, sir. Some of it is.

13 Q Okay. It curves over to the right just a little bit
14 as you leave South Church, traveling from South Church.

15 A No, sir. It curves to the left there.

16 Q Curves to the left.

17 A Yes, sir.

18 Q And then it curves back to the right. Just after that
19 bridge that becomes Carolina Drive.

20 A If you come off South Church Street it travels less
21 than a hundred yards. It bears off to the left slightly,
22 and then it bears back to the right. And it straightens up
23 before there's another curve.

24 Q And then there is a big building there that's right
25 there as it makes that curve. It's a little back to the

John Doe

Cross-examination by Mr. Allen

1 right.

2 A There is a building that sets off the road probably 20
3 or 30 yards, yes, sir.

4 Q And if you continue to follow South Church -- or
5 excuse me -- if you continue to follow South Irwin it goes
6 all the way back to Crescent?

7 A Yes, sir, it does. It comes out just directly beside
8 Dee Traxx.

9 Q Where South Irwin comes up to South Church Street is
10 just past where the railroad trestle passes over South
11 Church Street as you're leaving Spartanburg city, right?

12 A Can you repeat that?

13 Q Yeah. I'll try to or say it differently.

14 Where South Irwin comes into South Church is just past
15 where the railroad trestle crosses over South Church Street
16 as you're -- as you're leaving Spartanburg.

17 A Yes, sir. That's correct.

18 Q And you did not see this automobile while you were
19 sitting stationary at South Irwin and South Church.

20 A No, sir. That occurred as I was back onto Irwin
21 Avenue.

22 Q In this case you wrote a report or supplemental
23 report.

24 A Yes, sir.

25 Q And you wrote this or prepared this around

John Doe

Cross-examination by Mr. Allen

1 November 30th of 2011.

2 A Yes, sir, I did.

3 Q You subsequently reviewed it and signed it on
4 December 13th of 2011. Do you need to see a copy to
5 refresh your memory?

6 A Yes, sir. I'm not understanding what you mean as far
7 as signed it.

8 Q Show you this document. Is this a report that you
9 prepared?

10 A Yes, sir, it is.

11 Q Prepared on November the 30th of 2011, the date it
12 shows at the top.

13 A Yes, sir. It is.

14 Q And is that your signature at the bottom?

15 A Yes, sir, that is.

16 Q Okay. And there's a date of 12/13/11.

17 A But that has nothing to do with the supplemental
18 though. This is a Xerox copy that was given to SLED on a
19 different date when they printed it out. That was just
20 signing what date that I had turned it over to them.

21 Q But that you turned it over. And you had a chance to
22 review it before you turned it over to them on -- in
23 December, correct?

24 A Yes, sir.

25 Q Okay. Now, at the point at which you prepared this

John Doe

Cross-examination by Mr. Allen

1 and at which you signed it you were being very careful to
2 put down things accurately, is that correct?

3 A Yes, sir.

4 Q Now, of course the report doesn't say anything about
5 your traveling up South Church Street -- excuse me --
6 traveling up South Irwin to South Church Street, does it?

7 A No, sir, it doesn't.

8 Q And it does say that while sitting at the
9 intersection. It does indicate that you were sitting
10 stationary at the intersection of South Church Street and
11 South Irwin, correct?

12 A Yes, it does, because I was explaining prior to the
13 events beginning.

14 Q Okay.

15 A It's justifying as far as where I was at and giving a
16 reference point.

17 Q Sure. And it also says that while sitting at the
18 intersection you saw the blue Pontiac.

19 A Yes, sir.

20 Q It doesn't say that you saw the blue Pontiac as you
21 were traveling back down South Irwin but while sitting you
22 saw the blue Pontiac.

23 A Yes, sir. I had been sitting at the intersection. As
24 I was pulling out was when I seen him as I was getting back
25 out on Irwin Avenue.

John Doe

Cross-examination by Mr. Allen

1 Q The statement further says that you saw the blue
2 Pontiac make that quick right -- I'm not quoting exactly.
3 But the next sentence indicates you saw the Pontiac make
4 that quick right turn onto Carolina Drive and that -- the
5 following sentence says, "I then turned out of," your
6 location and proceed, right?

7 A Yes, sir.

8 Q You then turned out.

9 A Yes, sir.

10 Q And that means that you then pulled out of where you
11 were sitting stationary according to the report.

12 A If that's the way you want to interpret it, yes, sir.

13 Q That's the way you meant the report.

14 A I was sitting stationary at South Church Street. I
15 turned out onto Irwin Avenue. The suspect come down Irwin
16 Avenue and made the right-hand turn onto Carolina Drive.

17 Q But your report indicates that you turned out onto
18 Irwin Avenue after you saw the blue car make that right
19 turn.

20 A I was on Irwin Avenue.

21 Q Does it -- but your report does say that you turned
22 out after you saw the car make that right turn onto
23 Irwin -- onto Carolina Drive, right?

24 A Yes, sir.

25 Q That's what your report says that you prepared

John Doe

Cross-examination by Mr. Allen

1 November 30th of 2011, correct?

2 A Yes, sir.

3 Q And turned over after you had a chance to look at it
4 again for accuracy on December the 13th of 2011.

5 A Yes, sir.

6 Q Now, this blue Pontiac was coming up South Irwin as if
7 it was coming from the direction where Crescent Drive is,
8 correct?

9 A Yes, sir, Crescent Avenue back towards South Church
10 Street.

11 Q Excuse me. Crescent Avenue. You indicated that upon
12 seeing or upon sighting your patrol vehicle the vehicle
13 made that turn. You didn't see any driver look at you, did
14 you?

15 A No, sir. I couldn't tell who was driving the vehicle,
16 no, sir.

17 Q From the point where you first saw this vehicle you
18 didn't see it very long before it made the right turn onto
19 Carolina, correct?

20 A No, sir.

21 Q Okay. Just a second.

22 A I -- two to three seconds at the most.

23 Q Now, when one makes a right from South Irwin onto
24 Carolina Drive they immediately go over a small bridge,
25 correct?

John Doe

Cross-examination by Mr. Allen

1 A Yes, sir. As soon as you turn onto Carolina Drive
2 there's a small bridge that travels over a little small
3 creek.

4 Q Just beyond that bridge is another right turn, pretty
5 much at a 90-degree angle, a right turn immediately beyond
6 that bridge, correct?

7 A Yes, sir. The road splits. Birch Street runs
8 straight ahead and runs back into South Church Street. And
9 Carolina Drive bears to the right.

10 Q A few yards farther after that right turn is a left
11 curve to remain on Carolina Drive too, correct?

12 A Yes, sir. There's another curve back to the left.

13 Q Now, your testimony is you first turned on your blue
14 lights.

15 A Yes, sir.

16 Q Okay. You turned on your blue lights approximately
17 where?

18 A Once we got -- it took me until we were going up
19 Carolina Drive approaching Sweetie Way to actually get
20 close enough to activate my blue lights.

21 So as were -- after we made the right-hand turn and
22 then back to the left-hand turn going up the hill on
23 Carolina Drive is when I activated my blue lights.

24 Q Your blue lights were activated for a while before the
25 sirens came on, correct?

John Doe

Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And you activated the sirens, right?
- 3 A Yes, I did.
- 4 Q Okay. How long were the blue lights on before you
- 5 activated your siren?
- 6 A I'm not sure. You can watch the video, and it'll show
- 7 the delay between the two, because as soon as the blue
- 8 lights come on there's a slight delay for it to kick in.
- 9 The camera system comes on, and then you can hear when the
- 10 siren comes on after that.
- 11 Q All right. Very well. So the video starts or the
- 12 camera starts when the blue lights came on, correct?
- 13 A Yes, sir. That's the way it's activated, is when you
- 14 flip the switch for the blue lights the camera system
- 15 automatically comes on.
- 16 Q And of course you can activate that camera system
- 17 manually too, correct? You can turn it on without having
- 18 activated either your emergency equipment, correct?
- 19 A Yes, sir. You can.
- 20 Q And you did not do that in this case.
- 21 A No, sir, due to the fact that I was driving 70
- 22 mile-an-hour trying to catch up to him in 25-mile-an-hour
- 23 zone. It wasn't safe for me to reach up and turn that
- 24 camera on.
- 25 Q Now, the E.P. designation that you showed us on the

John Doe

Cross-examination by Mr. Allen

1 video, that's actually recording your speed.

2 A The E.P. is just a reference point I was showing you
3 to know where on the screen to look for the speed. The
4 speed is actually the number directly over the top of it.
5 I'm not quite sure what the E.P. stands for.

6 Q Okay. So thank you for that clarification. I didn't
7 ask for what anything stood for. But, anyway, the speed is
8 above the letters E.P. on the video.

9 A Yes, sir, it is on the bottom right-hand corner.

10 Q That's actually recording your speed.

11 A Yes, sir, it is.

12 Q It's not recording the speed of the car in front of
13 you.

14 A No, sir.

15 Q Now, going to [REDACTED] Carolina Drive -- it's [REDACTED], right?

16 A Yes, sir. It was.

17 Q An individual got out of the driver's side of the blue
18 Pontiac and ran.

19 A Yes, sir, he did. As the vehicle turned into the
20 driveway you can see the vehicle hesitate for just a
21 second, and the gentleman fled from the driver's-side door.

22 Q And you stopped your vehicle.

23 A Yes, sir.

24 Q And you got out of your vehicle, correct?

25 A Yes, sir, I did.

John Doe

Cross-examination by Mr. Allen

1 Q Immediately.

2 A Yes, sir.

3 Q And you ran after the other person.

4 A Yes, sir, I did.

5 Q You did not stop to look into this Pontiac, correct --

6 A No, sir. I didn't.

7 Q -- or to check for anything or anybody else in the
8 area. But you just ran after the person.

9 A I was attempting to place the gentleman that was
10 driving the vehicle under arrest for the failure to stop.

11 Q As far as you know your microphone was working when
12 you got out of your vehicle, correct?

13 A It's actually working prior to me getting out of the
14 vehicle. That's how you hear the siren when it comes on.
15 The body mike's on me. And when I turn on the blue lights
16 it comes on and starts recording inside the car.

17 Q I believe there are two designations on the video.
18 There's an M1 and an M3, correct?

19 A Yes, sir.

20 Q M1 refers to the microphone that's on -- that's the
21 one on you.

22 A Yes, sir.

23 Q And an M3 is a microphone that is in the vehicle, in
24 your -- or in the recorder or something.

25 A Yes, sir. But the recording you hear is my body mike.

John Doe

Cross-examination by Mr. Allen

1 I left my body mike turned on all of the time. So as soon
2 as the blue lights come on it started recording everything
3 inside the vehicle.

4 Q Now, the body mike as far as you know accurately
5 picked up what was being said, or what you said and what
6 was being said, up to the point where it began to
7 malfunction or something, correct?

8 A Yes, sir.

9 Q And you did not say you're under arrest.

10 A No, sir. I --

11 Q In fact, the first thing that you could hear on the
12 recording is "don't go," correct? I mean, the first words,
13 shall we say. "Don't go."

14 A I don't remember saying "don't go," no, sir.

15 Q "Don't go. I'll shoot your" -- and I think the next
16 word was ass.

17 A Yes, sir.

18 Q That's your voice?

19 A Yes, sir, it is.

20 Q This was said at what point in the foot chase?

21 A I -- I think if you listen to it it's after we go over
22 the first set of fences.

23 Q Okay. Now, let's talk about going over. You say he
24 jumped. Is that the first fence?

25 A Yes, sir. He did.

John Doe

Cross-examination by Mr. Allen

1 Q And how do you go over, through that first fence?

2 A I'm not understanding.

3 Q How did you get through that first fence?

4 A I didn't say --

5 Q Did you jump it or did you go through, walk through
6 it?

7 A There wasn't a gate. You had to go over the fence.

8 Q Okay. Which reminds me. When the individual got out
9 of the car -- of course, now, he pulled into a driveway at
10 [REDACTED] Carolina, correct?

11 A Yes, sir.

12 Q And [REDACTED] -- the driveway to [REDACTED] Carolina Drive is along
13 the -- as you're looking at the house from Carolina Drive,
14 is on the left side of the house, correct?

15 A Yes, sir, it is.

16 Q But this car continues across the -- basically the
17 front yard over to the right side of Carolina Drive,
18 correct?

19 A Yes, sir. It continued all the way across the front
20 yard to a row of trees that was on the right side of the
21 yard and nosed up against the trees on the opposite side of
22 the yard.

23 Q Of course that's what the video shows, correct?

24 A Yes, sir. It does.

25 Q But you did not actually see it nose up to the trees

John Doe

Cross-examination by Mr. Allen

1 on that night.

2 A No, sir, I didn't. By the time the vehicle made it to
3 the trees we were already over the fence and behind the
4 house.

5 Q And the person you were chasing was on the -- went
6 over or went to the fence on the right side of the house or
7 the left side of the house? The side where the trees are,
8 where the vehicle was, or the other side?

9 A He actually went to the left side of the house,
10 because if we'd went to the right side of the house you'd
11 have seen us on video pass the side of the car.

12 Q You can't see the fence on the video on the right side
13 of the house, can you?

14 A No, sir, you cannot.

15 Q The fence we're talking about is basically a wire
16 fence, correct?

17 A The first or second fence?

18 Q Let's talk about the first fence, talking about the
19 first fence first.

20 A Okay.

21 Q That was a wire fence, basically the metal or the
22 aluminum poles supporting it.

23 A Yes, sir. The first fence was approximately a 3-foot
24 section of chain-link fence. I had poles on both sides,
25 had the -- not the barbs but the kind that are bent down --

John Doe

Cross-examination by Mr. Allen

1 and had a metal bar running across the top. So it was a
2 nice, full section of fence between the house and the
3 garage, I think it was.

4 Q Now, the next fence. Was that basically the far end
5 of the property of [REDACTED] or thereabouts? Correct?

6 A I'm assuming it was at the back of their property line
7 because it was the way their back yard was fenced in. It
8 was the back fence across their back yard.

9 Q Of course we know people don't fence beyond their
10 property lines. Property line's close to -- might --
11 apparently close to that fence.

12 A I'm assuming so. I'm not sure.

13 Q Right. Okay. And then there are trees and bushes
14 immediately past that part of the fence?

15 A Yes. There was a row of bushes and stuff just
16 directly on the other side of the fence.

17 Q And this was also a cyclone fence?

18 A I'm sorry? What now?

19 Q This is also a cyclone fence?

20 A I don't know what a cyclone fence is.

21 Q All right. Basically, the wire fence or chain-link
22 fence. Excuse me.

23 A It was a chain-link fence, but it had the metal barbs
24 on the top. It didn't have the tops bent down. It had the
25 chrome sticking up.

John Doe

Cross-examination by Mr. Allen

1 Q That's just where the wires are put together and
2 twisted, correct?

3 A It's at the top of the fence at -- how some chain-link
4 fences when you get to the top the pieces are bent down so
5 it's smooth across the top. This one wasn't bent down. It
6 had the pieces crossed over so they were pointy across the
7 top of it.

8 Q Okay. And that was what he was caught on, the parts
9 that stuck up over the fence.

10 A I'm assuming so. He was caught in the fence. Somehow
11 his blue jeans was caught in the fence keeping him from
12 continuing to flee.

13 Q At that point of course you were running as well,
14 correct?

15 A At the point that he's caught on the fence?

16 Q Right. The point -- I mean, you're running to chase
17 him, correct?

18 A Yes, sir. I did.

19 Q And you had in your hand the flashlight.

20 A Yes, sir.

21 Q Have in your hand a gun?

22 A No, sir.

23 Q Now, you told him to get on the ground.

24 A Yes, sir, I did.

25 Q "Get on the ground now," correct?

John Doe

Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q And there was a voice that says, "All right, man,"
3 correct?

4 A Yes, sir. But what you don't see is the fact that the
5 whole time he's saying, "All right, man," he's steady
6 pushing me off of him trying to keep me from placing him
7 under arrest.

8 Q Okay. He's pushing you?

9 A Yes, sir. Not like pushing me across the yard but
10 just trying to keep a distance between myself and him. And
11 that's what I put in the report as far as struggling
12 between the two of us.

13 Q Now, when you jump over the fence -- you jumped over
14 that second fence yourself, correct?

15 A I did.

16 Q And he was still at the fence, correct?

17 A Yes, sir. He was still just directly on the opposite
18 side of the fence as I was.

19 Q And you basically turned to face him, correct?

20 A Yes, sir. As soon as my feet hit the ground I turned
21 to face him, yes, sir.

22 Q Okay. And you were facing therefore back towards
23 Carolina Drive.

24 A No, sir. At that point I would have been facing
25 Airport Road.

John Doe

Cross-examination by Mr. Allen

1 Q Where does Airport Road run in connection with
2 Carolina?

3 A If you -- Carolina Drive and Kimberly Drive run
4 parallel, and both of them "T" into Airport Road.

5 Q Airport Road.

6 A So we would have been facing each other with his back
7 to Airport Road. And I was facing him.

8 Q And it was at that point that -- no shooting, correct?

9 A Yes, sir.

10 Q And you shot several times, numerous times, about
11 nine, right?

12 A I returned fire, yes, sir, after I had been fired upon
13 three times. I wasn't the first to shoot.

14 Q At the time you were shooting -- well, first, you
15 returned fire immediately.

16 A No, sir. You can hear in the video there's a delay.
17 First two rounds go off, or actually the first round goes
18 off.

19 I turned to create distance between the two of us.
20 And as I turned to run two more rounds go off. And I
21 actually -- there's a delay because I fell to the ground
22 and had to roll over and draw my service weapon or my
23 pistol to actually return fire.

24 Q Now, during a portion of what you're calling a delay
25 there's a lot of static or something or the microphone not

John Doe

Cross-examination by Mr. Allen

1 working, right?

2 A Yes, sir. I'm assuming that's from the distortion of
3 the first round of gunfire going off. I'm not sure.

4 Q And then you got up and went towards Kimberly Drive,
5 correct?

6 A After I shot back, yes, I got up and began chasing the
7 same person that had just shot me.

8 Q Now, Kimberly Drive, as you indicated, runs right
9 behind Carolina Drive, correct?

10 A Yes, sir. They run parallel to each other. If you
11 seen where we pulled in the driveway, approximately 200
12 yards behind that is Kimberly Drive. They just run
13 parallel to each other.

14 Q And the back yards of the folks on that side of
15 Carolina Drive go up to the -- basically the back-property
16 edge of folks on Kimberly Drive, correct?

17 A Yes, sir. [REDACTED] Carolina Drive backs up to the property
18 of [REDACTED] Kimberly Drive.

19 MR. ALLEN: One second, please, Your Honor.

20 (Pause.)

21 MR. ALLEN: No other questions. Thank you, Your
22 Honor.

23 MR. BARNETTE: A couple on followup, Your Honor.
24
25

John Doe

Redirect examination by Mr. Barnette

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q Your camera was left on after you left the car, is
4 that right?

5 A Yes, it was.

6 Q And it was on approximately an hour and a half or a
7 long distance afterwards.

8 A I'm not sure who turned it off afterwards. It was
9 left on. And whoever took possession of my patrol car
10 turned it off. I never went back to the scene.

11 Q And I know we've reviewed the video tape. Do you see
12 anybody else come outside of that car on that video?

13 A No, sir.

14 Q And obviously other officers came in response to you
15 shortly after that.

16 A Yes, sir.

17 Q So there was nobody else in the car other than you and
18 the defendant then.

19 A No, sir. There was not.

20 Q And what was the description that you had of the
21 defendant again, sir, if you would?

22 A When the first officer gave -- got to me I give them
23 the description of a black male, had on blue jeans with
24 a -- some kind of tear in the blue jeans.

25 MR. ALLEN: Your Honor, if it please the Court. I

John Doe

Redirect examination by Mr. Barnette

1 don't think that this is appropriate redirect. We didn't
2 go into anything about the description. I therefore
3 object.

4 MR. BARNETTE: I think he asked about the individual.
5 He indicated trying to say it was another person in the
6 car. I think I have a right to go back through that.

7 THE COURT: Overrule the objection.

8 BY MR. BARNETTE

9 A Blue jeans with some type of rip on it where they had
10 gotten caught in the fence with a white t-shirt. I advised
11 them that he was pretty tall. I'm 6'5", and we were
12 looking somewhat eye to eye when we were at the fence. And
13 that he had short dreadlocks.

14 Q And we have a map here since we've been talking about
15 areas here. And it does have other areas that may be
16 pertinent later to it. Let me show you State's Exhibit 22.
17 Is this Carolina and Kimberly Drive that we're talking
18 about, the two locations earlier involving you?

19 A Yes, sir, it is.

20 Q And there's two other locations here. Are you
21 familiar with the City of Spartanburg and County of
22 Spartanburg, sir?

23 A Yes, sir, I am.

24 Q And is this map a fair representation of the other
25 areas that we've been talking about later -- ■■■■ Queensbury

John Doe

Redirect examination by Mr. Barnette

1 Way, as well as [REDACTED] Delmar Road?

2 A Yes, sir, it is.

3 MR. BARNETTE: Your Honor, I'd like enter this into
4 evidence at this time.

5 MR. ALLEN: Subject to their showing the relevance of
6 some of these other markings on it, but I've got no
7 objection subject to their showing the relevance to the
8 other markings on it.

9 THE COURT: What number is that?

10 MR. BARNETTE: That'll be No. 22, Your Honor. We do
11 have other witnesses that will testifying afterwards about
12 it.

13 THE COURT: All right. It's admitted.

14 MR. BARNETTE: Thank you, Your Honor.

15 (Map marked State's Exhibit No. 22.)

16 Q If you would, just come down for a second, sir, if you
17 would.

18 THE COURT: Be sure you stand in front of that
19 microphone so that the court reporter can hear.

20 THE WITNESS: Yes, sir.

21 (Whereupon, the witness left the stand.)

22 Q If you would, try to stay back a little but so
23 everybody can see you.

24 The area we're talking about here, is this South Church
25 Street that comes down through here, sir?

John Doe

Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q And if you go back up here you've got, I think,
3 Carver, Mary Wright School and so forth, and the swim
4 center in this area.

5 A Yes, sir.

6 Q And we come down this way. And this is actually [REDACTED]
7 Kimberly. And Carolina Drive is that way down South Church
8 Street off that road, is that right? I believe this is
9 Airport Road that you're talking about that comes through
10 there.

11 A Yes, sir. It is.

12 Q And, like you said, these roads run parallel to each
13 other.

14 A Yes, sir.

15 Q And this is where the stop was made -- [REDACTED] Carolina
16 Drive.

17 A Yes, sir, it is.

18 Q And [REDACTED] is actually in this area right here.

19 A Yes, sir. It's directly behind it. That fence
20 separates the yards from it -- [REDACTED] Kimberly Drive and [REDACTED]
21 Carolina Drive.

22 Q And the Carolina Drive we're talking about here is
23 right here, and it's going through here.

24 A Yes, sir.

25 Q That's the route that you followed him when you caught

John Doe

Redirect examination by Mr. Barnette

1 up to him at.

2 A Yes, sir.

3 Q Thank you, sir.

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

5 Q Deputy Doe as you -- as you were laying down there
6 obviously on the road did you see the defendant come by you
7 later that evening?

8 A Yes, sir. While I was laying there waiting on another
9 unit to get to me I observed a burgundy Cadillac driven by
10 the same male.

11 MR. ALLEN: I object to this, Your Honor, as also
12 being new matter that wasn't even discussed.

13 THE COURT: I'll let you examine.

14 Let's do it all at one time if we can. Okay.

15 MR. BARNETTE: Yes, sir.

16 Q If you would, go ahead, sir.

17 A While laying there beside the mailbox at Kimberly
18 Drive I was approximately four to five feet from the side
19 of the roadway. I observed a burgundy Cadillac drive past
20 me with the same male driving that I had had my interaction
21 with earlier.

22 Q Thank you sir. Please answer any questions Mr. Allen
23 may have for you.

24

25

John Doe

Recross-examination by Mr. Allen

1 RECROSS-EXAMINATION

2 BY MR. ALLEN

3 Q The report that I showed you earlier that was made on
4 November 30th and signed on the 12th of December of 2011,
5 that's the only report you've prepared in connection with
6 this case?

7 A Yes, sir, it is.

8 Q It's the only thing that you have written in
9 connection with this case as far as reports.

10 A Yes, sir.

11 Q There's nothing in this report about a burgundy
12 Cadillac, is there?

13 A No, sir.

14 Q There's nothing in this report about your seeing the
15 same person you were chasing later that night or driving as
16 it passed you or something to that effect, correct?

17 A No, sir.

18 Q But you remembered that night clearly when you wrote
19 this report, correct?

20 A Yes, sir. That was the report to the best of my
21 recollection of what events occurred.

22 Q And again when you reviewed it on December 13th,
23 correct?

24 A On December 13th I didn't review it. I handed it over
25 to them. I was signing that I was giving it to them.

John Doe

Recross-examination by Mr. Allen

- 1 Q And that -- and you know as a police officer -- of
2 course you've been trained as part of your training or as a
3 deputy to -- you've been trained to write reports, correct?
- 4 A Yes, sir.
- 5 Q Putting in all of the necessary information, correct?
- 6 A Yes, sir.
- 7 Q Be as thorough as you can, correct?
- 8 A Yes, sir.
- 9 Q Be as accurate as you can, correct?
- 10 A Yes, sir.
- 11 Q Be as complete as you can, correct?
- 12 A Yes, sir.
- 13 Q And that was your thorough, accurate and complete
14 report that you made on -- back on November 30th, correct?
- 15 A Just as I said, it was to the best of my recollection
16 at the time I wrote the supplemental, yes, sir.
- 17 Q And since that date you understand as a trained
18 officer that you have the right to write additional
19 supplemental reports as things come to you, correct?
- 20 A Yes, sir.
- 21 Q And you didn't write any additional supplemental
22 reports, did you?
- 23 A No, sir. I have none.
- 24 Q You've never written any report about seeing a
25 burgundy Cadillac or the individual again, did you?

John Doe

Redirect examination by Mr. Barnette

1 A No, sir. I have not.

2 Q And as far as seeing anybody else, you didn't check
3 that Pontiac for anybody else, correct?

4 A No, sir. My focus was on catching the person that was
5 fleeing in the vehicle.

6 Q Right. And you went out after him as fast as you
7 could.

8 A Yes, sir, I did.

9 Q Nothing further. Thank you.

10 MR. BARNETTE: One question, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BARNETTE

13 Q Who did you tell about the red Cadillac?

14 A The first officer that arrived to me on the scene.

15 Q Did you also notify on radio traffic about it?

16 A Yes, sir. You can listen to the radio traffic, my
17 actual radio traffic, communicating with people coming to
18 me, and you can hear me say on the radio while I was laying
19 on the road --

20 MR. ALLEN: Object to this as being hearsay as to what
21 he --

22 THE COURT: Overruled.

23 A I -- you can hear me say on the radio that he just
24 passed me in a red Cadillac going out toward Airport Road
25 with no lights on.

Dr. Michael Orseck
Direct examination by Mr. Barnette

1 DR. MICHAEL ORSECK, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, please state your full name for the
5 record.

6 A Michael Orseck.

7 Q And where do you work at, sir?

8 A Spartanburg Regional.

9 Q And what is your position there, sir?

10 A Plastic surgeon.

11 Q And how long have you been a surgeon, sir, plastic
12 surgeon?

13 A A plastic surgeon for about ten years.

14 Q Okay. And where did you get your -- where did you get
15 your education, which med school?

16 A Ross University.

17 Q And did you -- how long have you been practicing
18 medicine, sir, or been a surgeon? Ten years and --

19 A Yeah.

20 Q How many surgeries have you done through your career?

21 A Thousands. I don't know. Three to four hundred a
22 year.

23 MR. BARNETTE: Your Honor, I would ask that he be
24 qualified in plastic surgery and in surgery, Your Honor.

25 MR. ALLEN: No objection.

Dr. Michael Orseck
Direct examination by Mr. Barnette

1 THE COURT: He is.

2 Q Sir, did you treat Deputy John Doe

3 A I did.

4 Q If you would, tell the jury about what -- what you
5 found once he came to you and what you had to do, sir.

6 A I first examined him in the trauma center shortly
7 after he was brought in.

8 At that point we found that he had a gunshot wound to
9 the right side of his face including his globe or his
10 eyeball, his eyelids, his cheeks, the bones supporting the
11 eyeball, as well as a gunshot wound to his buttocks.

12 Q And when you examined was you more concerned with the
13 eye at the time?

14 A Yes, definitely. I was very worried about it.

15 It was pretty evident at that point he had some visual
16 disturbances. Because there was no much blood it was hard
17 to get a good visual exam, because there was so much blood
18 in the eye, but we could tell right away he had some
19 significant visual problems, also, with the functioning of
20 his eyelid opening and closing, and as well as the bony
21 support that holds the eyeball in place.

22 Q What action did you take once you examined him and
23 realized what damage was done?

24 A I'm sorry?

25 Q What did you do once you realized --

Dr. Michael Orseck
Direct examination by Mr. Barnette

1 A We took him directly to the operating room after we
2 were sure he had no other life-threatening injuries.

3 We used titanium plates, and the shattered bone that
4 we made into bone grafts, so we construct his eye socket.
5 We repaired the eyelid, the muscles, and we reattached the
6 eyelids to the eye socket.

7 We also cleaned out all of the injured tissues, the
8 skin, in fact, the muscle and closed them.

9 Q And was there pellets in the eye or so forth?

10 A There were. There were pellets in the back of the
11 orbit right next to the orbital nerve which is the nerve
12 responsible for sight.

13 Q And was you able to clean out all of those pellets, or
14 was there any that had to be left?

15 A What I could see, but we didn't go into an extensive
16 search for all of them. That would cause more damage.

17 Q So it would cause more damage if you'd actually went
18 after all of the pellets.

19 A Right, right.

20 Q So afterwards you said you put a titanium plate in his
21 face.

22 A Right.

23 Q And was that to build the socket back up or the --

24 A Right, that and the bone grafts, right.

25 Q And the bone grafts, you said you had to really grind

Dr. Michael Orseck
Direct examination by Mr. Barnette

1 them up and basically put with the titanium.

2 A That's right.

3 Q And has his vision been greatly affected by this?

4 A It has. He's -- he's blind in that eye with no -- no
5 sight at all.

6 Q And like you said, this is possibly a life-threatening
7 wound to him from that standpoint.

8 A Yeah. Left -- certainly left untreated, you know, an
9 injury like this could cause, you know, bone infection.
10 And any bony infection that close to the -- to the brain
11 can be life threatening, sure.

12 MR. BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 Q Please answer any questions Mr. Allen may have for
15 you. Thank you, sir.

16 MR. ALLEN: No questions, Your Honor.

17 THE COURT: You may step down.

18 MR. BARNETTE: We'd ask the witness be excused, Your
19 Honor.

20 THE COURT: He may be.

21 (Whereupon, the witness was excused.)

22 MS. POULOS: Your Honor, the state would next call
23 Sergeant Jason Bryant.

24

25

Jason Bryant
Direct examination by Ms. Poulos

1 JASON BRYANT, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. POULOS

4 Q If you would, sir, please state your name and where
5 you are employed.

6 A My name is Jason Bryant, and I'm with the Spartanburg
7 County Sheriff's Office.

8 Q And back on November the 6th of 2011 did you receive a
9 call regarding an officer-involved shooting here in
10 Spartanburg County?

11 A I did.

12 Q And where was that location?

13 A That was located on Kimberly Drive, in the Kimberly
14 Drive area.

15 Q Did you go out to the scene?

16 A I did.

17 Q And did you see blood in the area?

18 A I did.

19 Q Can you describe the scene for the jury?

20 A The first thing that I arrived at was the area where
21 Deputy Doe had received medical treatment. It was -- it
22 was where the -- he had exchanged the gunfire and
23 everything such as that. There was a good bit of medical
24 paraphernalia that was laying around that the medics had
25 treated him at.

Jason Bryant
Direct examination by Ms. Poulos

1 And then I had gotten information to go to where the
2 vehicle was located.

3 Q Okay. And what car -- what color -- I'm sorry -- was
4 the vehicle?

5 A It was like a greenish-blue Pontiac.

6 Q Did you also see the fence where they had crossed
7 over?

8 A I did.

9 Q And did you see blood nearby at [REDACTED]

10 A I apologize. I didn't hear.

11 Q Did you see the blood that was nearby at [REDACTED]
12 Drive?

13 A I did not. I did not respond to that location.

14 Q Okay. And just so we can get some relation, 473
15 Carolina Drive, is that close to or is it -- [REDACTED]
16 Drive?

17 A It is. Everything is extremely close. It's tight
18 down there.

19 Q Okay. Could you see the trail of blood?

20 A There were -- there were evidence that had led in that
21 area, that's correct.

22 Q And do you have knowledge that -- or was there a
23 robbery or home-invasion call given out from the 107
24 Kimberly Drive location?

25 A There was.

Jason Bryant
Direct examination by Ms. Poulos

1 MR. ALLEN: I'm going to object to that
2 characterization, Your Honor, if I may approach.

3 THE COURT: Okay.

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

6 THE COURT: You may continue.

7 Q You can answer the question.

8 A There was. There was subsequently a call directly
9 afterwards in regards to a home invasion and I believe a
10 larceny of a vehicle.

11 Q Did you find out that it was actually not a home
12 invasion?

13 A well, later on per se an individual had came, knocked
14 on the door. And I don't know whether you'd say he was
15 under duress or anything such as that. Keys were provided.

16 MR. ALLEN: Your Honor, I'm going to object to this.
17 This is getting into hearsay.

18 THE COURT: Answer yes or no. Can we just answer yes
19 or no?

20 Q Could you just answer yes or no?

21 A No.

22 Q All right. I'll move on.

23 was SLED called to investigate this case?

24 A They were. In any officer-involved shooting we -- we
25 get those individuals involved directly.

Jason Bryant
Direct examination by Ms. Poulos

1 Q Okay. And once you're at the scene and you secure the
2 crime scene do you then turn it over to SLED so they can
3 begin their investigation?

4 A We do. And we assist them also.

5 Q And through your investigation you mentioned the
6 bluish Pontiac. Did you determine who the Pontiac belonged
7 to?

8 A It did -- we were. Through a record-system show it
9 did show that it belonged to Crystal Lovett.

10 Q And did you also obtain a phone number associated with
11 Crystal Lovett?

12 A We did. We had a phone number that we had obtained
13 that was hers.

14 Q And what was that phone number?

15 A That number was (864)279-8400.

16 Q And where did you determine that Ms. Lovett lived?

17 A Through -- through the record system and everything
18 such as that and in information that was provided --

19 MR. ALLEN: Your Honor, they're getting into a great
20 deal of hearsay. I object. He's talking about records and
21 what he was advised of, I mean.

22 THE COURT: This is Ms. Lovett's residence?

23 MS. POULOS: Yes, sir, Your Honor.

24 THE COURT: Is she going to testify?

25 MS. POULOS: Yes, sir.

Jason Bryant
Direct examination by Ms. Poulos

1 MR. BARNETTE: Yes, sir.

2 THE COURT: Okay. Overrule the objection.

3 MS. POULOS: Thank you, Your Honor.

4 BY MS. POULOS

5 Q And did you start talking to other witnesses at this
6 point?

7 A I did.

8 Q Okay. And was this the first time that you learned of
9 the defendant's name in this case -- Robert Brown?

10 A Once information had came from the residence where
11 they were residing.

12 Q And earlier you mentioned Crystal Lovett. Did SLED
13 assist you in trying to track her phone basically?

14 A They did.

15 Q Okay. Did SLED ask that the phone be tracked? Did
16 they put in that request?

17 A We had -- we had requested that through -- through
18 them and were able to get that done.

19 Q Okay. And was the information that they provided, was
20 that information relayed back to you all?

21 A It was. It was relayed back to me.

22 Q And who from the Spartanburg Sheriff's Office followed
23 the tracking of that phone?

24 A As far as the relaying of the information, it was
25 provided to me, and then I provided it to other

Jason Bryant
Direct examination by Ms. Poulos

1 investigators.

2 Q And did you receive information during the course of
3 this investigation that a vehicle with a South Carolina tag
4 had been located in Virginia?

5 A We did.

6 Q And who gave you that information?

7 A Investigator Williams once -- once SLED per se had
8 went up on the phone or began to track the phone we were
9 able to follow them basically through the Charlotte area
10 and on up.

11 And through -- through the tracking of this phone the
12 South Carolina Law Enforcement Division had closed it in on
13 a certain area in a pretty tight radius. And at that time
14 Investigator Williams observed a vehicle. I believe it was
15 a red Impala with a South Carolina tag.

16 MR. ALLEN: Your Honor, if it please the Court. He's
17 getting into hearsay of what Investigator Williams possibly
18 said.

19 THE COURT: Well, let me see y'all just a minute,
20 please.

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

23 THE COURT: Overrule the objection.

24 BY MS. POULOS

25 Q Investigator Bryant, did you run the tag number of the

Jason Bryant
Direct examination by Ms. Poulos

1 vehicle that was located in Virginia?

2 A I had it ran, that's correct.

3 Q And who did the car belong to?

4 A Joanne Brown -- Joanne Huston.

5 Q Who is Joanne Brown Huston?

6 A She is a relative of the defendant.

7 Q Okay. And did you determine through your record
8 search where Ms. Brown Huston lived?

9 A That's correct. That was on Queensbury.

10 Q Okay. And did you relay that information as to who
11 the vehicle belonged to back to Investigator Williams who
12 was in Virginia?

13 A Absolutely.

14 Q And I'm going to show you what's already admitted as
15 State's Exhibit 22.

16 MS. POULOS: And, Your Honor, may the witness step
17 down?

18 THE COURT: He may.

19 (Whereupon, the witness left the stand.)

20 Q If you can, step down and show the jury the locations
21 that have been highlighted on the map.

22 A Sure.

23 Q And if you could, please point to the location where
24 the incident occurred.

25 A The incident happened right here at the Carolina Drive

Jason Bryant
Cross-examination by Mr. Allen

1 area and then the Kimberly Drive area.

2 Q That would be [REDACTED]

3 A That's correct.

4 Q Okay. And you stated earlier that -- well, actually
5 if you could, point to [REDACTED]

6 A [REDACTED] is right here. It's off the Lucerne
7 Drive area if you're familiar with that area of Spartanburg
8 County.

9 Q And if you could -- earlier who did you state lived at
10 that address?

11 A That was Joanne Brown -- Joanne Huston.

12 Q And you said it was a relative of Mr. Brown's.

13 A That's correct.

14 Q Okay. And then finally, if you could, please point to
15 [REDACTED]

16 A Right there. It's off the Southport Road area, 295.

17 Q And who did you determine lived there?

18 A That was Crystal Lovett.

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

20 Q Thank you. Please answer any questions Mr. Allen may
21 have for you.

22 CROSS-EXAMINATION

23 BY MR. ALLEN

24 Q You went to what address first in connection with this
25 case?

Jason Bryant
Cross-examination by Mr. Allen

- 1 A I'm sorry, sir? I didn't hear you.
- 2 Q You went to Kimberly Drive first?
- 3 A I did.
- 4 Q Do you know what address you went to?
- 5 A If I remember correctly it was the [REDACTED] area, that
- 6 area.
- 7 Q The first place that you went to?
- 8 A Was Kimberly Drive, yes, sir.
- 9 Q [REDACTED]
- 10 A If I remember correctly the physical address.
- 11 Q That is the place where you saw the -- I think you
- 12 said some medical equipment?
- 13 A Where they had treated Deputy Doe [REDACTED] that's correct.
- 14 Q Is that [REDACTED]?
- 15 A It was on that Kimberly Drive area, yes, sir.
- 16 Q It -- was it at [REDACTED]?
- 17 A To the best of my recollection. I can't swear to the
- 18 physical address. It was in a driveway area, yard,
- 19 driveway area.
- 20 Q And, well, I mean, did you -- did you have anything in
- 21 your report that would better reflect your memory about
- 22 where you went?
- 23 A No, no, sir.
- 24 Q All right. Now, to the best -- then you went to an
- 25 address on Carolina Drive?

Jason Bryant
Cross-examination by Mr. Allen

1 A Directly back behind the area on Kimberly.

2 Q Right. It's the next street over that runs parallel
3 with Kimberly Drive.

4 A That's correct.

5 Q As a matter of fact, Kimberly Drive comes off Airport
6 Road in one direction, is that right?

7 A They kind of meet up off of that.

8 Q Okay. But further on down beyond [REDACTED] it
9 curves to the left and goes back to Carolina Drive.

10 A Now, as far as curves or anything like that, I
11 couldn't tell you. I don't travel that road on a regular
12 basis. I apologize.

13 Q Okay. Did you go by the streets or did you walk
14 through the yards to get to Carolina Drive on that night?

15 A I had went by the streets.

16 Q Okay. Do you know the direction that you traveled to
17 get to Carolina Drive?

18 A I went down Kimberly and then up and then back down
19 Carolina.

20 Q Up where, to Airport or to --

21 A If I could see a map I could tell you. I'm not
22 familiar with the roads there.

23 Q State's Exhibit 22 is a map, isn't it?

24 A Let's see here. Yes, sir. It was Airport.

25 Q So you went --

Jason Bryant
Cross-examination by Mr. Allen

1 A I went down Kimberly, up Airport, up Carolina.

2 Q All right. Okay. And where these dots, these red
3 dots, are with these addresses, are these to the best of
4 your knowledge accurate placements of these two addresses?

5 A To the -- to the best of my knowledge, yes, sir. I
6 didn't make the map.

7 Q Right. So [REDACTED] does not -- the back yard of
8 [REDACTED] does not go to the back yard of [REDACTED]
[REDACTED]. Is that a correct statement?

10 A No, not -- not on this map. But in real life it does.
11 It's pretty much just a couple of fence hops and you're in
12 the back yard. It's in very close proximity.

13 Q Okay. But it's not directly or is -- you're saying
14 [REDACTED] is directly behind 473?

15 A I'm saying it's very close proximity.

16 Q What does that mean as far as how the back yards --

17 A Well, I'm -- I'm chubby, and I don't mind walking from
18 473 to 107, I mean.

19 Q I'm not quite sure what that --

20 A It's pretty close for a big man. I wouldn't get too
21 winded.

22 Q Well, thank you for all of these comments. But what
23 I'm trying to get at is as you go down back behind 473,
24 you're saying 107 is behind it.

25 A I'm saying it's in extreme close proximity.

Jason Bryant
Cross-examination by Mr. Allen

1 Q You don't know what's behind [REDACTED], do you?

2 A I know [REDACTED] is real close to it.

3 Q All right. Is [REDACTED] the location where you saw the
4 Pontiac?

5 A Yes, sir.

6 Q Okay. You once described that as a green Pontiac.

7 A Bluish-green.

8 Q You've always described it as a bluish-green Pontiac?

9 A If I could refer to my notes one second.

10 (Pause.)

11 A Green in my notes. It's like an aqua --
12 aquaish-bluish-green.

13 Q Your notes say green, right?

14 A Yes, sir.

15 Q And of course when you prepared those notes, you
16 prepared them when it was fresh in your mind, correct?

17 A Sure.

18 Q And you were trying to be accurate and complete.

19 A Sure.

20 Q You didn't say aqua, correct?

21 A No, sir.

22 Q Or bluish-green.

23 A No, sir.

24 MR. ALLEN: One second, please, Your Honor.

25 (Pause.)

Johnny Darrell Betsill
Direct examination by Ms. Poulos

1 MR. ALLEN: No other questions.

2 MS. POULOS: Nothing further, Your Honor.

3 THE COURT: You may step down.

4 MS. POULOS: Your Honor, the state would call Special
5 Agent Darrell Betsill.

6 JOHNNY DARRELL BETSILL, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. POULOS

9 Q If you would, sir, please state your name and where
10 you are employed.

11 A My name is Johnny Darrell Betsill, and I'm currently
12 employed with the Greenville Federal Courthouse System.

13 Q And back on November the 6th of 2011 where were you
14 employed?

15 A I was a state law enforcement division agent, commonly
16 known as SLED.

17 Q And on November 6th of 2011 did you receive a call to
18 assist in a case involving an officer who was shot in
19 Spartanburg County?

20 A I did.

21 Q And did you respond to the scene?

22 A I did.

23 Q Were other officers present as well?

24 A They were.

25 Q During your investigation were you provided with a

Johnny Darrell Betsill
Direct examination by Ms. Poulos

1 phone number from Spartanburg officers that was associated
2 with the vehicle that was left at the scene?

3 A I was.

4 Q And do you recall what that number was?

5 A I don't have my notes with me. The solicitor has my
6 case file, and I could find it in there.

7 Q Pass up a copy of your case file to refresh your
8 recollection.

9 A Yes, ma'am. It's in here.

10 Q And could you please state what that number is?

11 A The number I was provided was area code (864)279-8400.

12 Q And did you call that number?

13 A I did.

14 Q Did you speak with a female?

15 A I did.

16 Q What was the female's name?

17 A Crystal Lovett.

18 Q And did you confirm whether, in fact, she actually
19 owned the blue Pontiac?

20 A I did.

21 Q And how many times would you say that you spoke with
22 her?

23 A I called her phone that night for -- the first time I
24 called we -- I did get connected to her, and I explained to
25 her that her vehicle was at the address close to Carolina

Johnny Darrell Betsill
Direct examination by Ms. Poulos

1 Drive and Kimberly Drive and it had been involved in a --
2 in a deputy-involved shooting in which a deputy was shot
3 and asked her did she own the vehicle. She said she did.

4 MR. ALLEN: I'm going to object to the -- him going
5 into the hearsay testimony of Ms. Lovett.

6 MS. POULOS: I'll move on.

7 Q Agent Betsill, did you order a trace on that phone?

8 A I did.

9 Q And through your investigation were you able to
10 determine the direction that that -- the phone was
11 basically heading?

12 A I was.

13 Q And where was -- where was it heading?

14 MR. ALLEN: Your Honor, I mean, I object to going into
15 this testimony until they establish a foundation for his
16 qualifications to testify to this subject matter.

17 THE COURT: Okay.

18 MS. POULOS: May we approach, Your Honor?

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

21 Q Agent Betsill, was the phone traced?

22 A It was.

23 Q And was the information provided back to the
24 Spartanburg County Sheriff's Office?

25 A Yes, ma'am.

Johnny Darrell Betsill
Cross-examination by Mr. Allen

1 Q Thank you. Please answer any questions Mr. Allen may
2 have.

3 CROSS-EXAMINATION

4 BY MR. ALLEN

5 Q You did not go out to Kimberly Drive that night.

6 A I did.

7 Q Or/and to Carolina Drive that night?

8 A I did.

9 Q And you arrived at those locations approximately when,
10 do you recall?

11 A It -- it would have been late evening, possibly into
12 the early morning hours, of November the 7th of 2011. And
13 when I say that, it might have been shortly after midnight
14 or just before midnight.

15 Q Okay. So right around midnight of the 6th and 7th.

16 A It was close to that.

17 MR. ALLEN: No other questions of this witness.

18 Q Thank you.

19 MS. POULOS: No further questions, Your Honor. We'd
20 ask that this witness be released.

21 THE COURT: You may step down. You may also be
22 excused.

23 (Whereupon, the witness was excused.)

24 MR. BARNETTE: Your Honor, the next witness may be
25 quite lengthy.

Melissa Skipper wallace
Direct examination by Mr. Barnette

1 MELISSA SKIPPER WALLACE,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, ma'am, please state your full name for
5 the record.

6 A Melissa Skipper wallace.

7 Q Where do you work at, ma'am?

8 A I'm employed by the South Carolina Law Enforcement
9 Division, commonly known as SLED.

10 Q And what was your position with them back in
11 November the 6th of 2011?

12 A I was an agent assigned to the crime scene and latent
13 print department.

14 Q And how long have you worked for SLED, ma'am?

15 A Coming up on eight years.

16 THE COURT: Excuse me just a minute.

17 That white microphone is not the one. It's the black
18 one.

19 Q And when you was working crime scenes, how many crime
20 scenes did you work a year?

21 A Around 60.

22 Q And did you come to [REDACTED] and Kimberly
23 Drive, [REDACTED], as well as [REDACTED]

24 A I did.

25 Q And if you would, tell the jury how you identified

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 about that.

2 A Typically, we receive calls from our dispatch for
3 call-for-service, and then we make contact with the local
4 agency that has requested us.

5 That's what happened in this instance. I received a
6 phone call in reference to an officer-involved shooting at
7 about 10:30.

8 Q And when you arrived there what did you find, ma'am?

9 A The scene had been secured by the sheriff's office.
10 Highway patrol was also on the scene. There was a lot of
11 law enforcement personnel there, and they pretty much had
12 shut down an entire block.

13 Q And this is obviously in Spartanburg County, this
14 whole location was.

15 A It was, yes.

16 Q And you got to the crime scene -- I guess work this
17 chronological.

18 Let me do this first. Let me show you State's
19 Exhibit 23. Is this a diagram, a rough diagram, that you
20 did of the areas that you located there in the [REDACTED]
21 Drive and [REDACTED] and [REDACTED]

22 A State's Exhibit 23 is actually the completed diagram I
23 did after the fact. This was not on computer. And once I
24 had returned to the lab I did my paperwork.

25 Q Okay. It's not to scale, but it's a rough drawing of

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 what -- what you had there and what you found?

2 A It is not to sale, correct.

3 MR. BARNETTE: Your Honor, I'd like to enter State's
4 Exhibit 23 and publish it to the jury so they can follow
5 along.

6 MR. ALLEN: No objection.

7 THE COURT: It's admitted.

8 (Crime scene diagram marked State's Exhibit No. 23.)

9 MR. BARNETTE: Permission to publish this to the jury,
10 Your Honor.

11 THE COURT: You may.

12 Q As that's coming on there, did you first go to a blue
13 Pontiac at that time to look at it first when you first
14 arrived at the scene?

15 A After I made contact with the officers on the scene we
16 walked around Carolina Avenue to the scene that was -- that
17 was over there where the initial stop was made.

18 Q Okay. Let me show you what's been marked State's
19 Exhibits 45 through State's Exhibit 50. Are these
20 photographs that you took at the scene at [REDACTED]
21 Drive and the object you saw?

22 A I'm not sure if we took State's 45, but we did take
23 State's 46 through 50, and they do accurately reflect the
24 scene as we found it.

25 Q Even the ones on 45, did that reflect what you saw

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 that night, ma'am?

2 A They do.

3 MR. BARNETTE: Your Honor, I'd like to enter State's
4 Exhibits 45 through 50 at this time.

5 MR. ALLEN: No objection to Exhibits 45 through 50.

6 THE COURT: They are admitted.

7 (Photographs marked State's Exhibits Nos. 45 through
8 50.)

9 Q In the diagram, ma'am, is this [REDACTED] or
10 avenue in your -- or drive in your diagram?

11 A It is.

12 Q And is this approximately where -- whose car was right
13 there?

14 A Which car, that one?

15 Q That one there.

16 A The car you're pointing at is the representation of
17 the deputy's vehicle.

18 Q And whose car was this?

19 A That will be the Pontiac.

20 MR. BARNETTE: Permission to publish 45 through 50,
21 Your Honor.

22 THE COURT: You may.

23 Q I believe there's actually four pictures on here. And
24 the picture right here, what is this right here, ma'am?

25 A That's the rear of the Pontiac.

Melissa Skipper wallace
Direct examination by Mr. Barnette

1 Q And is this the deputy's car right here?

2 A That is the hood of his car, yes.

3 Q I believe we go to this picture here. Actually, it's
4 another picture showing a different angle or from a -- I
5 guess a distance out.

6 A That's correct.

7 Q Showing you the bottom. And is that a closer image to
8 the blue Pontiac?

9 A Yes. It also shows the tire tracks through the yard.

10 Q And this is actually just a closeup view to that?

11 A That's correct.

12 Q Showing you State's Exhibit 46. What does this
13 picture represent, ma'am?

14 A That is a photograph of the passenger side of the
15 Pontiac where it came to rest up against the shrubbery.

16 Q Showing State's Exhibit 49 or 48. Excuse me. What's
17 that a picture of, ma'am?

18 A State's 48 is a closeup of the hood where it came in
19 contact with that shrubbery.

20 Q And State's Exhibit 49. If you would, just tell us
21 what that is, ma'am.

22 A That's another photograph of the front of the vehicle
23 where it stopped.

24 Q And State's Exhibit 50. I show that picture. What is
25 that a picture of, ma'am?

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 A That's a photograph of the driver's side of the car,
2 again, where it came into contact with the shrubbery.

3 Q Did you later process the Pontiac, ma'am?

4 A We did.

5 Q What I mean process, did you go inside and look in it
6 and so forth?

7 A We did.

8 Q Let me show you what's been marked State's Exhibits 51
9 through 54. If you would, take a look at those, ma'am. Do
10 those pictures fairly represent what you saw when you
11 processed the inside of that car?

12 A They do.

13 MR. BARNETTE: Your Honor, I'd like to introduce
14 State's Exhibits 51 through 54 at this time.

15 MR. ALLEN: Your Honor, we object to State Exhibits 51
16 through 54 on the basis of my pretrial motion made in
17 connection with the Grand Prix.

18 MR. BARNETTE: May I approach, Your Honor?

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

21 THE COURT: Okay. Fifty-one through 54 inclusive are
22 admitted over objection.

23 (Photographs marked State's Exhibits Nos. 51 through
24 54.)

25 MR. BARNETTE: Thank you, Your Honor. Permission to

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 publish these to the jury, Your Honor.

2 THE COURT: You may.

3 Q Showing you State's Exhibit No. 51. Is this the
4 inside of the blue Pontiac?

5 A Yes. It's the driver area of the vehicle.

6 Q Okay. This item right here, what was that, ma'am?

7 A It was a McDonald's cup.

8 Q Okay. And showing you State's Exhibit 52. What is
9 that item there, ma'am?

10 A Again, that's the McDonald's cups, photographs taken
11 from the passenger side of the vehicle.

12 Q Does it appear to still have drink in it?

13 A Yes.

14 Q And later on did you swab, take a swab, for D.N.A.
15 from that cup?

16 A We took a swab from the straw.

17 Q Right. From the straw of that cup, is that right?

18 A Yes.

19 Q State's Exhibit 53. What is that, ma'am?

20 A That is a photograph of the rear of that same vehicle.

21 Q And State's Exhibit 54. What is this, ma'am?

22 A That's a photograph of the vehicle registration.

23 Q Okay. And who's actually the owner or the
24 registration to?

25 A Crystal Lovett.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q And that was found in the car also.

2 A That's correct.

3 Q Going back to the straw, which is State's Exhibits 51
4 and 52 from the car, was these the swabs that you collected
5 from that item, and State's Exhibit 21?

6 A They are.

7 Q And these were submitted for testing, is that right?

8 A That's correct.

9 MR. BARNETTE: Your Honor, I'd like to move State's
10 Exhibit 21 into evidence at this time.

11 MR. ALLEN: Again, Your Honor, object on the basis of
12 my pretrial motion made in connection with the Pontiac
13 automobile.

14 THE COURT: It's admitted over objection.

15 (Swabs marked State's Exhibit No. 21.)

16 MR. BARNETTE: Thank you, Your Honor. May I publish
17 this to the jury?

18 THE COURT: You may.

19 Q So the swab's out here -- and I know I had somebody
20 testifying to them -- that came from the McDonald's cup
21 inside of that car.

22 A That's correct.

23 Q Afterwards did you take pictures? Continuing on.
24 Going back to the diagram, did you go onto [REDACTED]
25 Drive, the fence area, and back into that area?

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 A I did.

2 Q And did you -- I guess you actually went back in the
3 back yard of [REDACTED]

4 A We started with [REDACTED] and worked our way
5 to the fence and documented the area back there. And then
6 we went back around to Kimberly Drive and started from 101
7 and worked our way back towards the fence.

8 Q Okay. I'm glad you said.

9 Let's do it this way. State's Exhibits 55 through 59.
10 If you would, does these fairly represent what you saw that
11 night? I guess it's starting from the back of Carolina
12 Drive, 473, and going to the other side of the fence.

13 A Yes.

14 Q Apologize. Some is not as clear as they should be.

15 A Yes.

16 Q Do these fairly represent what you saw that night?

17 A Yes.

18 MR. BARNETTE: Your Honor, I'd like to enter State's
19 Exhibits 55 through 59 at this time.

20 MR. ALLEN: No objection as to 55 through 59.

21 THE COURT: They are admitted.

22 (Photographs marked State's Exhibits Nos. 55 through
23 59.)

24 MR. BARNETTE: Permission to publish to the jury, Your
25 Honor.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 THE COURT: You may.

2 Q Starting with State's Exhibit 55. Is this the back
3 yard of [REDACTED] going back towards the fence
4 towards [REDACTED]

5 A It is.

6 Q Showing you State's Exhibit 56. Is this just a
7 closeup view of that area going into that fence?

8 A It is.

9 Q And showing you State's Exhibit 57. Is this going
10 from the other -- from [REDACTED] into the fence
11 going back to [REDACTED]

12 A Yes.

13 Q And showing you State's Exhibit 58. Is that the area
14 near the fence line there in the back yard of [REDACTED]
15 Drive?

16 A It is.

17 Q Showing you State's 59. Specifically, the one in the
18 bottom there, is that that fence area back there where they
19 crossed where the fence -- [REDACTED] going back
20 towards [REDACTED]

21 A It is.

22 Q Like you said, you actually started -- went that way,
23 and then you went back to the front of [REDACTED]
24 and started working backwards?

25 A Yes, sir.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q And that's where Deputy Doe was at originally. I
2 know he wasn't there when you went, but that's where his
3 gear was.

4 A That's correct.

5 Q Let me show you what's been marked State's Exhibits 60
6 through 89. Do those pictures fairly represent what you
7 saw that night?

8 A Sixty and 61 were as we found it. The remaining ones
9 were after we had placed markers.

10 Q Do those fairly represent after you placed the markers
11 what you saw that night?

12 A They do.

13 Q And all the markers placed in there was placed by you.

14 A That's correct.

15 MR. BARNETTE: Your Honor, I'd like to move State's
16 Exhibit 60 through 89 into evidence at this time.

17 MR. ALLEN: Your Honor, specifically as to Exhibits 69
18 and 68, they appear to depict the same thing. I think
19 they're -- one is duplicative of the other, and therefore I
20 would object to both of them being offered into evidence.

21 Seventy through -- I believe 70 through 74 are also
22 duplicative. I object to all four of those being offered
23 into evidence. And those would be my objections to this
24 group of documents. I know --

25 THE COURT: All right. You object to 68 through 74.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Let me see those.

2 MR. BARNETTE: May I approach, Your Honor?

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

5 THE COURT: They are admitted over objection.

6 (Photographs marked State's Exhibits Nos. 60 through
7 89.)

8 MR. BARNETTE: Your Honor, permission to publish these
9 to the jury.

10 THE COURT: You may.

11 Q Showing you State's Exhibit No. 60. What is this,
12 ma'am?

13 A That is a photograph of Deputy ^{Doe} [REDACTED] gear that was
14 left in the driveway where he was found.

15 Q And what driveway is this? Is this [REDACTED]
16 Drive?

17 A That's correct.

18 Q And publishing to you State's Exhibit 51. What's that
19 a photograph of, ma'am?

20 A That's another photograph of the same area.

21 Q And showing you State's Exhibit 62. What is this a
22 photograph of? Let me lighten it up or darken it a little
23 bit. What is this, ma'am?

24 A That's a photograph of the gear in relationship to the
25 trash can next to the driveway.

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1 Q And did you take a -- what's the "A" stand for, ma'am,
2 in this case?

3 A The "A" is to mark his gear.

4 Q Okay. And "B", what does that, ma'am, stand for?

5 A That was to mark the blood around the trash can.

6 Q There was a blood splatter taken from that area or
7 from the trash can or from that area?

8 A If I can refer to my notes.

9 Q Yes, ma'am.

10 A That was from where the marker is.

11 Q Okay. And showing us State's Exhibit 12. Is that the
12 swabs taken from the marker at the "B" marker?

13 A Yes.

14 Q And you collected these, is that right, ma'am?

15 A That's correct.

16 MR. BARNETTE: Your Honor, I would like to enter
17 State's Exhibit 12 into evidence at this time.

18 MR. ALLEN: No objection.

19 THE COURT: It's admitted.

20 (Swabs marked State's Exhibit No. 12.)

21 MR. BARNETTE: May I publish it to the jury, Your
22 Honor?

23 THE COURT: You may.

24 Q Showing this is a swab from the blood taken marker
25 "B", is that correct?

Melissa Skipper wallace
Direct examination by Mr. Barnette

1 A That's correct.

2 MR. BARNETTE: Publishing State's Exhibit 63.

3 Q what does that picture show, ma'am?

4 A That is another photograph of the same area. It shows
5 "B" in relationship to the driveway, as well as the address
6 on the mailbox -- [REDACTED].

7 Q Shows [REDACTED]

8 A That's correct.

9 Q Show you State's Exhibit 64. what does that show,
10 ma'am?

11 A That's the same trash can that was next to the
12 driveway. And there was blood at the top of the trash can.

13 Q Is that what was indicated right in that area?

14 A Yes.

15 Q Let me show you State's Exhibit 65. Can you tell us
16 about this location, ma'am?

17 A That is another photograph of that same trash can in
18 relationship to [REDACTED], which was next door.

19 Q That's [REDACTED] next door.

20 Showing you State's Exhibit 66. Is this going towards
21 the back yard of [REDACTED] And of course 103 is
22 right near it too.

23 A That is the back yard of [REDACTED]

24 Q what is this right here, ma'am?

25 A Those were some flags that were placed by the

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1 sheriff's office prior to our arrival marking some
2 evidence.

3 Q Okay. State's Exhibit 67. What is that, ma'am?

4 A That's another photograph of the same area taken from
5 a different angle.

6 Q State's Exhibit 68. Will you tell the jury what that
7 is, ma'am?

8 A That's a closer photograph of that same tree. This is
9 after we had placed markers denoting the evidence.

10 Q And what letter is that placard there, ma'am, the
11 first one we see? This may help. State's Exhibit 69. Let
12 me publish that to you, ma'am.

13 THE COURT: Be careful of the microphone, please.

14 THE WITNESS: Sorry.

15 A This is marker "C", and "E" behind it.

16 Q Okay. And did you collect blood from those samples --
17 those areas, ma'am?

18 A I did.

19 Q Okay. Let me show you State's Exhibits 13 and 14.
20 Was that what you collected from markers "C" and "D"?

21 A It is.

22 Q And did you collect those?

23 A I did.

24 MR. BARNETTE: Your Honor, I'd like to enter 13 and 14
25 into evidence at this time.

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1 MR. ALLEN: No objection.

2 MR. BARNETTE: Permission to publish them, Your Honor.

3 THE COURT: What are those numbers?

4 MR. BARNETTE: Thirteen and 14, Your Honor.

5 THE COURT: They're admitted.

6 (Swabs marked State's Exhibits Nos. 13 and 14.)

7 Q Actually No. 13 is actually marker "C", came from the
8 "C" marker.

9 A That's correct.

10 Q And then of course the one, State's Exhibit 14, was
11 the marker "D" that came from the one from the "D" marker.

12 A That's correct.

13 Q Showing you back on State's Exhibit No. 70, can you
14 tell the jury what this is, ma'am?

15 A That's another photograph of that area. Marker "D" is
16 on the lower portion of the photograph, and there's
17 additional markers in the background.

18 Q Before I get too far with this, you actually have
19 these placards or signs marked on your diagram, is that
20 right?

21 A That's correct.

22 Q Approximately where you had found like where the A, B,
23 C, D and where all of the rest of them are.

24 A That's right.

25 Q And State's Exhibit 71. If you would, tell us what

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1 this is, ma'am.

2 A That's another photograph of the back yard at [REDACTED]
[REDACTED]. It shows markers "J", "E". And there's
4 some others further over on the right-hand side.

5 Q And then from the back here is that the fence, the
6 fence area we saw in earlier pictures?

7 A That's the corner of the fence. There was a -- there
8 were two utility poles just past the corner of the fence.

9 Q Okay. Showing you State's Exhibit 72. Are those
10 placards also that was in that area?

11 A They are.

12 Q Let me show you State's Exhibit 73. Are these some
13 more of those placards?

14 A They are. They're taken at a different angle.

15 Q Let me show you what's been marked as State's
16 Exhibit 15, 16 and 17. I believe these are markers "E",
17 "F" and "G". Are those swabs that was collected of blood
18 that you collected, ma'am?

19 A They are.

20 MR. BARNETTE: Your Honor, I'd like to move in -- I'd
21 like to move these into evidence at this time, Your Honor.

22 THE COURT: The numbers are?

23 MR. BARNETTE: Fifteen, 16 and 17, I believe, Your
24 Honor.

25 MR. ALLEN: No objection.

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1 THE COURT: Fifteen, 16 and 17 are admitted.

2 MR. BARNETTE: Thank you, Your Honor.

3 (Swabs marked State's Exhibits Nos. 15, 16 and 17.)

4 MR. BARNETTE: Permission to publish them, Your Honor.

5 THE COURT: You may.

6 Q It might be easier. I know there's pictures of this,
7 but come down. So "E", "F" and "G" -- are markers "E", "F"
8 and "G", is where you got the samples from, is that right,
9 which would be similar to this area right in here?

10 A Yes.

11 Q In the back did you also collect shell casings?

12 A We did.

13 Q And was those marked appropriately also?

14 A Yes.

15 MR. BARNETTE: Publish State's Exhibit 74.

16 Q Is this just more placards of when the items were
17 collected such as "E", "G", "F"? And then there's other
18 ones --

19 A Yes.

20 Q -- I believe along with it up to "Q".

21 A Yes.

22 Q And I'll go through these before I introduce the
23 casings.

24 Going back to "C", starting with State's Exhibit 75,
25 that was the "C" placard, is that right?

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- 1 A Yes. It is.
- 2 Q And do we see blood in this area?
- 3 A Yes.
- 4 Q Going to "D". Do we -- is this the blood area for
5 the -- State's Exhibit 76. Is that where you found the
6 blood, at the "D" marker?
- 7 A Yes.
- 8 Q Going to "E", which is State's Exhibit 77. Is that
9 the blood you found there?
- 10 A Yes.
- 11 Q State's Exhibit 78. Again, where the "F" marker was,
12 is that where you found the blood at?
- 13 A Yes.
- 14 Q Right there. And State's Exhibit 79. Is that the
15 blood you found at the "G" marker?
- 16 A Yes. There's also some a little lower in the
17 photograph as well.
- 18 Q Okay. And move on. "H" marker. Did you find shell
19 casing?
- 20 A Yes.
- 21 Q And is that the shell casing there?
- 22 A Yes. That's the cartridge case.
- 23 Q State's Exhibit 80 and State's Exhibit 81, which is
24 "I", did you find a shell casing there?
- 25 A Yes. That's a cartridge casing.

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1 Q And what kind of casings were these, what kind of
2 ammunition?

3 A They were Winchester 40 S & W's.

4 Q And State's Exhibit 82 at "J". Is that a shell casing
5 you found there?

6 A Yes.

7 Q And State's Exhibit 83 at "K". What was this item,
8 ma'am?

9 A That was a flashlight located close to the fence.

10 Q Go back to your diagram. Was that the item found near
11 the back, near the fence?

12 A Yes.

13 Q State's Exhibit 84-L. Is that a shell casing that was
14 found there?

15 A Yes.

16 Q I believe it's right here.

17 A Yes.

18 Q State's Exhibit "M". Is that also shell casings
19 found? I believe it's right in this area.

20 A Yes.

21 Q State's Exhibit 86. Is this a marker "N" where
22 another shell casing was found?

23 A That's correct.

24 Q State's Exhibit 87. I believe that's marker "O". Is
25 that a shell casing found there?

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1 A Yes.

2 Q And "P". Was there another shell casing found there
3 -- 88?

4 A Yes.

5 Q And "Q" I believe is the last one, No. 89. Was there
6 a shell casing found there?

7 A Yes.

8 Q Let me show you these items. I believe they're
9 State's Exhibit 2 through -- that's 6, 9, 5, 2, 10, 8. I'm
10 going to show you. These are State's Exhibits 2 through
11 10. Is these shell casings you collected at those spots,
12 ma'am?

13 A They are.

14 MR. BARNETTE: Your Honor, I'd like to enter these
15 into evidence at this time.

16 MR. ALLEN: No objections to Items 2 through 10.

17 THE COURT: They are admitted.

18 (Fired 40 S & W cartridge cases marked State's
19 Exhibits No. 2 through 10.)

20 Q I'm not going to publish all of these to the jury, but
21 showing State's Exhibit No. 3. Is that the marker "I"?

22 A Yes, it is.

23 Q And where the marker "I" is is where you would have
24 found that, where you marked on your diagram.

25 A That's correct.

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1 Q So if we go back to the diagram, where "I" is located
2 is where State's Exhibit 3 was found approximately.

3 A That's correct.

4 Q And all of the other shell casings would correspond
5 with the letter that you have on your diagram.

6 A That's correct.

7 Q Going from there, did you move on from [REDACTED]
8 Drive to another location?

9 A We did.

10 Q Did you go towards [REDACTED]

11 A Yes. We went to 107 next.

12 Q And what -- what was y'all's intention that direction?

13 A There was a blood trail that went down the side of the
14 road that led up into the driveway and around into the shop
15 that they had. It was at the end of their driveway but
16 kind of in their back yard.

17 Q And did you take pictures or was there pictures taken
18 of those areas?

19 A There were.

20 Q Let me show you what's been marked State's Exhibits 90
21 through -- State Exhibits 90 through 116. Do those
22 pictures -- give a chance to look at them and see if those
23 pictures fairly represent what you saw that night.

24 A Yes.

25 MR. BARNETTE: Your Honor, I'd like to enter these

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1 into evidence at this time.

2 MR. ALLEN: Your Honor, for Exhibits 90 through 116
3 I'd object to all of -- I would object to 106, 107 and 109
4 all coming in as being unnecessarily duplicative of
5 essentially the same scene, as well as 112 and 113 are --
6 those two are unnecessarily duplicative. And no objections
7 as to the other photographs.

8 MR. BARNETTE: May I approach, Your Honor?

9 THE COURT: 106, 107, 109, 112 and 113 are admitted
10 over objection. The others are admitted without objection
11 as being the rest of photographs 90 through 116.

12 (Photographs marked State's Exhibits Nos. 90 through
13 116.)

14 MR. BARNETTE: May I publish these to the jury, Your
15 Honor?

16 THE COURT: You may.

17 Q Starting with State's Exhibit No. 90, ma'am. Can you
18 tell us -- can you tell us what that is, ma'am?

19 A That is a photograph of the edge of the roadway and
20 the residence at [REDACTED]

21 Q And what box is that right there, ma'am?

22 A That's 105, which is the house that's not represented
23 in the photograph.

24 Q Okay. And this one is the box in front of 107?

25 A That's correct.

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1 Q Showing you State's Exhibit 91. Can you tell us what
2 that represents, ma'am?

3 A That's another photograph of the front of the yard.
4 The flags denote the blood trail that was next to that car.

5 Q State's Exhibit 92. What is this a picture of, ma'am?

6 A That's another photograph of that area. You can see
7 the actual box for 107. That blue car is the same blue car
8 in the previous photograph. And then there -- the blood
9 trail continues on around the -- the second
10 champagne-colored car.

11 Q And showing you State's Exhibit 93. What are those
12 items there, or what do they appear to be, ma'am?

13 A Blood.

14 Q And showing you State's Exhibit 94. What does that
15 appear to be, ma'am?

16 A Additional blood.

17 Q Okay. State's Exhibit 95. What is that, ma'am?

18 A That's another photograph of the same car in reference
19 to the residence.

20 Q State's Exhibit 96. Can you tell the jury what this
21 is, ma'am?

22 A That's blood drops on the front of that -- I think
23 it's a Cadillac.

24 Q Is that right there, ma'am?

25 A Yes.

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1 Q State's Exhibit 97. What is that, ma'am?

2 A That's another photograph of the side of the Cadillac
3 in reference to the residence at 107.

4 Q Across the street at 108, did you go over there and
5 look also, ma'am?

6 A Yes, we did.

7 Q And what did y'all see over there?

8 A There were some cameras mounted on the side of the
9 residence. So that is what this photograph denotes, is the
10 front of their residence, and the side of it. And that's a
11 camera on the eave.

12 Q Right there. Showing you State's Exhibit 99. It's
13 just a continuation of that, is that right?

14 A That's correct.

15 Q Going back to across the street at 107. What does
16 this, ma'am, appear to be?

17 A Those are some stepping stones at the residence. And
18 there were some blood drops on them.

19 Q Showing you State's Exhibit 101. Are those the blood
20 drops in that area, ma'am?

21 A Yes, yes.

22 Q And showing you State's Exhibit 102. Is this going
23 into the back yard of [REDACTED]

24 A That's right, and also shows the shop.

25 Q Is this the shop you're talking about?

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- 1 A Yes.
- 2 Q Okay. And State's Exhibit 103. What is that, ma'am?
- 3 A That is the gate going into the back yard.
- 4 Q Got 104, State's Exhibit 104. What are these items
- 5 right here, ma'am?
- 6 A That's blood drops on that same gate at [REDACTED]
- 7 Drive.
- 8 Q State's Exhibit 105. What is that, ma'am?
- 9 A That is a side-view photograph of that same shop in
- 10 the back yard at 107. That was taken from inside that
- 11 fence.
- 12 Q And showing you State's Exhibit 106. What is this a
- 13 picture of, ma'am?
- 14 A It's a photograph of the door on the shop.
- 15 Q On the top of -- what is that right there, ma'am?
- 16 A It's a camera.
- 17 Q And later on did y'all find video equipment where it
- 18 was recording on those cameras?
- 19 A Yes.
- 20 Q Showing you State's 107. What is that, ma'am?
- 21 A That's some blood on the door.
- 22 Q Is this where the blood was located?
- 23 A Some of it, yes.
- 24 Q And showing you State's Exhibit 108. What is that,
- 25 ma'am?

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1 A That is a photograph of the ramp that leads up to the
2 door. And there were blood drops on the ramp.

3 Q And State's Exhibit 109. What is this a picture of,
4 ma'am?

5 A This is another photograph, a closer photograph, of
6 the bottom of the door.

7 Q And is there also -- what is this here also along with
8 this?

9 A Blood.

10 Q State's Exhibit 110. What is that, ma'am?

11 A That is a photograph of the inside of that shop just
12 inside that doorway once the door is opened.

13 Q Showing you State's Exhibit No. 111. What is this
14 area, ma'am?

15 A It's the same area. It's just a different angle. You
16 can see the blood that's on the floor.

17 Q Okay. And that's what you're talking about there?

18 A Yes.

19 Q Showing State's Exhibit 112. What's that a picture
20 of, ma'am?

21 A That's another photograph of that same area where you
22 can see the floor directly inside the doorway.

23 Q And State's Exhibit 13. Can you tell us what that is,
24 ma'am?

25 A That is a photograph of the same area taken from the

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1 corner of the room.

2 Q Okay. State's Exhibit 14. How many rooms was in this
3 shop or in this area?

4 A At least three.

5 Q Okay. Is this going into another room?

6 A Yes.

7 Q That door does. And what does it appear to be on the
8 floor?

9 A Blood.

10 Q State's Exhibit 115. What was that, ma'am?

11 A Some of their computer equipment that was stored in
12 the shop.

13 Q And was this hooked to the cameras, this monitor?

14 A As far as I remember something was hooked up to the
15 cameras.

16 Q And State's Exhibit 16. Is that a recording device
17 that was found in the -- or the scene in the shop?

18 A Yes.

19 Q Did you collect a blood sample from the blood located
20 in that building?

21 A I did.

22 Q Let me show you what's been marked as State's
23 Exhibit 18. Is that the swab that you collected from some
24 of the blood in that building?

25 A It is.

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1 MR. BARNETTE: Your Honor, I'd like to move this into
2 evidence at this time, State's Exhibit No. 18.

3 MR. ALLEN: No objection.

4 THE COURT: It's admitted.

5 (Swabs marked State's Exhibit No. 18.)

6 MR. BARNETTE: Your Honor, may I publish it to the
7 jury?

8 THE COURT: You may.

9 Q Showing you State's Exhibit 18. And this is from the
10 floor in the shop, the blood at [REDACTED] is that
11 right?

12 A Yes.

13 Q After processing that scene did you move on to another
14 scene?

15 A We went back down to [REDACTED] because we had
16 observed some bullet holes that we wanted to see if we
17 could recover any evidence from.

18 Q And was there any -- could you recover any evidence
19 from those bullet holes at the time?

20 A We recovered one fired bullet from one bullet hole at
21 the back door.

22 Q Let me show you what's been marked as State's Exhibit
23 11. Is that the bullet that y'all recovered from [REDACTED]
[REDACTED]?

25 A It is.

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1 MR. BARNETTE: Your Honor, I'd like to move this into
2 evidence at this time.

3 MR. ALLEN: No objection.

4 THE COURT: What number is that?

5 MR. BARNETTE: No. 11, Your Honor.

6 THE COURT: Admitted.

7 (One fired bullet marked State's Exhibit No. 11.)

8 Q Just publishing it for the jury, you had marked that
9 it came from the house at [REDACTED] there off Kimberly Drive, is
10 that right?

11 A That's correct.

12 Q After that did you get notification about a red
13 Cadillac to be processed?

14 A We received notification at some point during the
15 evening. I'm not sure exactly when.

16 Q Did you do anything else at these crime scenes? There
17 is -- let me go back. There is one other thing I wanted to
18 ask you about.

19 The Pontiac that was wrecked at originally [REDACTED]
20 Drive, did you process for fingerprints?

21 A We did.

22 Q And did you collect fingerprints from that car which
23 is going to be the first car we looked at, the blue car?

24 A We did, but it was not there at the scene.

25 Q You took it and processed it later, is that right?

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Direct examination by Mr. Barnette

1 A That's right.

2 Q Okay. And it was secured and put in a place where you
3 could process it.

4 A That's correct.

5 Q And did you collect some fingerprints from that?

6 A I did.

7 Q Let me show you what's been marked as State's Exhibits
8 32, 33 and 34, as well as State's Exhibits 28, 29 and 30,
9 and also 31. Is these fingerprints that you processed from
10 the car itself?

11 A Yes.

12 Q Okay. And before I go into it, have you been trained
13 in fingerprint identification?

14 A I have.

15 Q And what kind of training did you receive concerning
16 that?

17 A I have a bachelor of science degree from the
18 University of South Carolina in mathematics. I've been a
19 sworn police officer for almost 12 years in South Carolina.

20 I have also successfully completed courses in basic
21 fingerprint, ridgeology, advanced palm print comparison
22 techniques and complex latents.

23 I have also successfully completed the SLED latent
24 print crime scene department's 2-year in-house training
25 program under court-qualified senior examiners.

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1 Q And how many times -- how many fingerprints have you
2 done analysis on?

3 A Thousands.

4 Q And how many times have you been qualified in court?

5 A About 15.

6 MR. BARNETTE: Your Honor, I would move her as an
7 expert in fingerprint analysis at this time.

8 MR. ALLEN: No objection.

9 THE COURT: She is so qualified.

10 Q I'm going to just for State's Exhibit 46 so we know
11 which car we are talking about, that that was a car that
12 you processed, is that right, concerning fingerprints?

13 A Yes.

14 Q And you collected these items from that car at a later
15 date but from that car, is that right?

16 A It was -- we arrived on scene late. Well, I arrived
17 on the scene late on the 6th, and we worked through the
18 night. We processed that the following morning.

19 Q So it was the following morning you did the processing
20 on the fingerprints off the cars.

21 A That's correct.

22 MR. BARNETTE: Your Honor, I'd like to move in State's
23 Exhibits 28 through 34 at this time.

24 MR. ALLEN: Your Honor, I object to 28 through 34
25 inclusive on the basis of my pretrial motions I made

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1 concerning the Pontiac automobile.

2 THE COURT: All right. They're admitted over
3 objection.

4 MR. BARNETTE: Thank you, Your Honor.

5 (Latent lifts marked State's Exhibits Nos. 28 through
6 34.)

7 Q And after collecting these fingerprints did you get an
8 exemplar to do an analysis that was taken from the
9 defendant?

10 A Yes, I did. I did get an known standard, yes.

11 Q And did you compare these fingerprints to that
12 exemplar?

13 A Yes, I did.

14 Q Let me show you what's been marked as State's
15 Exhibit 35. Is that the fingerprint exemplar that you
16 used, or palm print?

17 A Yes.

18 MR. BARNETTE: Your Honor, I'd like to move this into
19 evidence at this time.

20 MR. ALLEN: Essentially, I have an objection on the
21 basis that all of this testimony is fruit of the poisonous
22 tree based upon my pretrial motion based on the Pontiac
23 automobile.

24 THE COURT: Exhibit 35 is admitted over objection.

25 MR. BARNETTE: Thank you, Your Honor.

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1 (Set of major case prints marked State's Exhibit No.
2 35.)

3 Q Going back to State's Exhibits 28 through 34. What
4 you did was on these, for example, 28, you marked where
5 they were collected from.

6 A Yes.

7 Q And then on the other side obviously was a print that
8 you -- was the print that you collected, is that right?

9 A That's right.

10 Q And all of these are the same. Twenty-nine is the
11 location you collected them from and the actual print that
12 you lifted.

13 A Correct.

14 Q Was you -- try to explain to the jury a little bit.
15 Do you automatically just because I touch something, do I
16 automatically leave a fingerprint there?

17 A No.

18 Q What happens when -- like, for example, I touch a
19 porous surface like this, what happens to the -- my
20 fingerprint?

21 A For porous surfaces, that's usually a material that is
22 fairly absorbent, for instance, paper, cardboard, things
23 like that -- unfinished wood.

24 It's more difficult to recover a latent print off of a
25 porous item just because of the absorbent nature of it and

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1 because -- depending on how porous it is, it's going to
2 leave gaps in the fingerprint.

3 There's other factors that play into it in terms of
4 the surface of the hands themselves. Latent prints are
5 made up of mostly moisture, sweat and other oils from the
6 body that collect along the fingers on the hands.

7 So if a person during the summertime, say, if they are
8 really sweating, they're going to leave, tend to leave,
9 smudges and smears as opposed to distinct fingerprints.

10 If it's cold, a person's not really sweating, they may
11 not be producing moisture. They may not leave a
12 fingerprint at all.

13 It also has to do with the texture of their hands.
14 For instance, a person who works a lot with their hands,
15 their hands are going to be more calloused, and they're
16 less likely to leave a print that's readily identifiable.

17 Q And, for example, I do this, what would happen to the
18 print, if I move my hand in that motion?

19 A That would be a smear most likely if a print is left
20 at all. There wasn't a lot of pressure looks like it was
21 applied.

22 Q Okay. But you was able to get some prints off this
23 vehicle, is that right?

24 A Yes. We processed around the driver area, the front
25 driver area, of the vehicle.

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1 Q Did any of these prints come back to the defendant?

2 A State's Exhibit 29, as well as State's Exhibit 34,
3 were identified to the defendant's palms. Both were his
4 right palms.

5 Q So we have 29 and 34 from there, ma'am?

6 A That's 29.

7 Q That's 34. Showing State's Exhibit 29 which is one of
8 the prints that was I.D.'d to be his. It was found at the
9 driver's window's front in the Pontiac?

10 A Yes.

11 Q And State's Exhibit 34. And where was it found at,
12 ma'am?

13 A That was on the driver's side. It was the window
14 frame above the rear driver's-side door.

15 Q And the other prints, were they not useable or wasn't
16 identified to him?

17 A Three of them were not suitable for identification,
18 and two of them he was eliminated.

19 Q After working those crime scenes and processing these
20 cars was you called to another area where there was a red
21 Cadillac that was found?

22 A The red Cadillac was found during the course of us
23 processing the area of Carolina Drive and Kimberly. It was
24 photographed and towed. And I didn't see it at the
25 location where it was found.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q Okay. I understand. Did you process that car?

2 A Yes.

3 Q And what kind of car was it?

4 A It was a red Cadillac.

5 Q Showing you State's Exhibits 125 through 135. Are
6 those pictures of the red Cadillac that you processed,
7 ma'am?

8 A Yes.

9 Q Does these pictures fairly represent what you saw?

10 A Yes.

11 MR. BARNETTE: Your Honor, I'd like to enter State's
12 Exhibits 125 through 135 into evidence at this time.

13 MR. ALLEN: No objections.

14 THE COURT: They're admitted.

15 (Photographs marked State's Exhibits Nos. 125 through
16 135.)

17 MR. BARNETTE: May I publish these to the jury, Your
18 Honor?

19 THE COURT: You may.

20 Q State's Exhibit 125. Was this the red Cadillac that
21 you processed, ma'am?

22 A It was.

23 Q Show you State's Exhibit 126. What is this a picture
24 of, ma'am?

25 A That is a photograph of the driver front area of the

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 vehicle.

2 Q And do you see anything on the steering wheel, on the
3 door?

4 A There was a good bit of blood on the steering wheel
5 and the door.

6 Q Okay. State's Exhibit 127. What is this, ma'am?

7 A That is a photograph of the driver front area, and
8 there is blood on the threshold of the door.

9 Q State's Exhibit 128. What is that a picture of,
10 ma'am?

11 A It's a closeup of the same steering wheel.

12 Q State's Exhibit 129. What is that a picture of,
13 ma'am?

14 A That is another photograph of the driver's seat area.
15 That's the center console.

16 Q State's Exhibit 130. What is that a picture of,
17 ma'am?

18 A It's a closeup of the lock on the driver door.

19 Q State's Exhibit 31.

20 A That is another photograph of the driver-door pull
21 handle and upper area of the door.

22 Q State's Exhibit 132. What is that, ma'am?

23 A That is a photograph of the steering wheel and
24 driver's-seat area taken from the front passenger seat.

25 Q Okay. State's Exhibit 133. What is that, ma'am?

Melissa Skipper wallace
Direct examination by Mr. Barnette

1 A At the time it appeared to be vomit.

2 Q State's Exhibit 134.

3 A That's the back-seat area of the Cadillac.

4 Q And State's Exhibit 135.

5 A That is a photograph of the tag of the car.

6 Q Okay. And did you collect the blood swab from that
7 car also?

8 A From the steering wheel, yes.

9 Q And let me show you State's Exhibit No. 19. Is that
10 the swab of the blood that you got from the Cadillac?

11 A Yes.

12 MR. BARNETTE: Your Honor, I'd like to move State's
13 Exhibit No. 19 into evidence at this time.

14 MR. ALLEN: No objection.

15 THE COURT: It's admitted.

16 (Swabs marked State's Exhibit No. 19.)

17 MR. BARNETTE: Your Honor, may I publish this to the
18 jury?

19 THE COURT: You may.

20 Q And this is the swabs that you collected from the
21 steering wheel of the red vehicle, the red Cadillac.

22 A Yes.

23 Q In your investigation on the crime scene and
24 everything was you notified about another location?

25 A We were notified about a [REDACTED]

Melissa Skipper wallace
Direct examination by Mr. Barnette.

1 Q okay. And did you go to that crime scene?

2 A We did.

3 Q okay. Let me show you. And did you process that
4 scene?

5 A We photographed it and collected some evidence.

6 Q okay. Let me show you what's been marked State's
7 Exhibits 135 through 145. And do those pictures fairly
8 represent what you saw that evening?

9 A Yes.

10 MR. BARNETTE: Your Honor, I'd like to enter these
11 into evidence at this time.

12 MR. ALLEN: No objections as to 136 to 145.

13 THE COURT: They are admitted.

14 (Photographs marked State's Exhibits Nos. 136 through
15 145.)

16 MR. BARNETTE: Permission to publish to the jury, Your
17 Honor.

18 THE COURT: You may.

19 Q This may work out better if I show it this way.

20 Inside the residence -- State's Exhibit 144 -- the
21 cloth that was found on this coffee table, what did it
22 appear to have on it, ma'am?

23 A Blood.

24 Q Can you read the name on that deposit slip?

25 A Crystal Lovett.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q Okay. Going back to State's Exhibit 136. What is
2 this a picture of, ma'am?

3 A That is a photograph of the front yard with the
4 mailbox denoting [REDACTED].

5 Q State's Exhibit 137. What is that, ma'am?

6 A That is a photograph of the front yard and front of
7 the residence.

8 Q State's Exhibit 138. What does this show, ma'am?

9 A It was a piece of cloth and a -- a towel that was
10 located in the driveway at [REDACTED].

11 Q Showing you State's Exhibit 139. What is this, ma'am?

12 A That is another photograph of the towel from the
13 driveway and steps leading up to the front of the
14 residence.

15 Q State's Exhibit 140.

16 A That's a closeup of that towel.

17 Q And obviously y'all went into the residence.

18 A Yes.

19 Q And 141. Part of these items are in.

20 A It was a sheet and another piece of sheet in the
21 living room floor.

22 Q And State's Exhibit 142. Is that a closeup of one of
23 those pieces of sheet?

24 A Yes.

25 Q And what did it appear to have on it, ma'am?

Melissa Skipper wallace
Direct examination by Mr. Barnette

1 A Blood.

2 Q And State's Exhibit 143. Is that just another picture
3 of the two items?

4 A Yes.

5 Q And what did they appear to have on them, ma'am?

6 A Blood.

7 Q And State's Exhibit 145. Was this picture also taken
8 at the residence?

9 A It was.

10 Q And what do these items here appear to be?

11 A They were 410 shot shells.

12 Q Are these like shotgun, obviously bird pellet or
13 anything inside of them?

14 A I don't remember the gate -- the size of the pellets,
15 but they were four -- 410.

16 Q Okay. And did you collect that towel and those
17 sheets?

18 A Yes.

19 Q Let me show you what's been marked as State's Exhibit
20 No. 24. Is that the towel that you collected at the scene
21 at [REDACTED]

22 A It is.

23 Q Okay. And you have that marked and so forth.

24 A Yes.

25 Q Okay.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like to enter this into
2 evidence at this time.

3 MR. ALLEN: No objection.

4 THE COURT: What's the number?

5 MR. BARNETTE: Twenty-four, Your Honor.

6 (White towel marked State's Exhibit No. 24.)

7 Q And this towel was sent for processing by SLED for
8 D.N.A.

9 A That's correct.

10 Q Is that the towel you collected, ma'am?

11 A It appears to be. I didn't mark the towel. I only
12 marked the packaging.

13 Q All right. But y'all collected the towel, is that
14 right?

15 A That's correct.

16 Q And State's Exhibit 25. Are those the sheets and the
17 cloths that you collected from inside the house?

18 A Yes.

19 Q And was those submitted to SLED also?

20 A Yes.

21 MR. BARNETTE: Your Honor, I'd like to move State's
22 Exhibit 25 into evidence at this time.

23 MR. ALLEN: No objection.

24 THE COURT: It's admitted.

25 (Fitted sheet marked State's Exhibit No. 25.)

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q Does that appear to be one of the cloths that you
2 collected from inside the house?

3 A Yes. It might be actually on the particular bag.

4 Q Sure.

5 A Yes. That's it.

6 Q Okay. And this would be the sheets and everything
7 similar to what we saw in the pictures.

8 A That's correct.

9 MR. BARNETTE: One moment, Your Honor, please.

10 (Pause.)

11 Q Just two other questions, ma'am.

12 Going back to the blue car that you first processed and
13 everything, did you take a swab from the steering wheel on
14 the Grand Prix?

15 A We did.

16 Q Is that State's Exhibit No. 20?

17 A Yes.

18 MR. BARNETTE: Your Honor, I'd move State's Exhibit 20
19 be entered into evidence at this time.

20 MR. ALLEN: Again, we object based on our pretrial
21 motion made as to the Pontiac Grand Prix.

22 THE COURT: It's admitted over objection.

23 (Swabs marked State's Exhibit No. 20.)

24 MR. BARNETTE: Thank you, Your Honor. Publishing that
25 to the jury.

Melissa Skipper Wallace
Direct examination by Mr. Barnette

1 Q One other thing too. Did you also receive the gun
2 from Deputy Doe

3 A I did receive his weapon. I received it from Agent
4 Betsill.

5 Q Was that submitted to SLED for testing also?

6 A It was.

7 Q Please answer any questions Mr. Allen may have for
8 you.

9 THE COURT: We're going take a short break before we
10 do that.

11 Let me ask you to turn the lights on, please.

12 I'll ask the jury to please go to your jury room.
13 Don't talk about the case. I'll bring you back after that
14 break.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: You may step down from the witness stand,
18 but don't discuss your testimony during the break.

19 We will be in recess for 15 minutes.

20 (Whereupon, a recess was taken.)

21 THE COURT: Are you ready?

22 MR. ALLEN: Yes, Your Honor. While the jury's coming
23 in may I get some of the exhibits that they talked about?

24 (The following takes place in the presence of the
25 jury.)

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 THE COURT: All right. We will continue with the
2 cross-examination of the witness by the defense.

3 Mr. Allen.

4 MR. ALLEN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ALLEN

7 Q Agent Wallace, I draw your attention to State's
8 Exhibit 3. You've got a -- I don't know if the focus is
9 right, but you've got a straight line just above the letter
10 "K". Is that the fence?

11 A Yes. It's to denote the fence.

12 Q Okay. And that's an approximation of the place within
13 the fence? In other words, you didn't measure the fence
14 from the other reference points that you measured from.

15 A I don't remember measuring a fence, no.

16 Q Okay. You -- of course you've indicated that your
17 drawing or your diagram is not to scale, correct?

18 A Yes.

19 Q But you did put the placement of the houses that we've
20 been talking about as best you could, right? I mean as
21 close to scale as you could without measuring.

22 A They're in relative proximity.

23 Q Okay. And in relative positions of each other,
24 correct?

25 A That's correct.

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 Q Now, where you've got the markings of "A" -- I'm
2 sorry -- but it's kind of fuzzy. But where you have got
3 "A" and "B" listed on the drawings, that was found in or
4 near the driveway of [REDACTED], is that correct?

5 A In the driveway, correct.

6 Q [REDACTED]

7 A Yes.

8 Q And that was officer's gear. And did you see any kind
9 of -- I don't know -- medical supplies or something of that
10 nature as if, say, E.M.S. had been there?

11 A Yes.

12 Q Okay. You didn't find anything like that, medical
13 supplies or anything like that, in the driveway of [REDACTED]
14 Kimberly Drive, did you?

15 A No.

16 Q You did walk or see the driveway all the way of [REDACTED],
17 all the way to the road, correct?

18 A The driveway of [REDACTED] all the way to the road?

19 Q Yes.

20 A Yes.

21 Q And the road being Kimberly Drive.

22 A Yes.

23 Q Okay. And there was nothing like that there.

24 A No.

25 Q All right. Now, you've also placed -- these squares

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 represent the homes located at these various addresses,
2 correct?

3 A Homes and structures, yes.

4 Q Homes and structures. And there's another structure
5 between [REDACTED] and [REDACTED], is that correct?

6 A Yes.

7 Q And that would be at the address of 105 Kimberly
8 Drive, correct?

9 A Yes.

10 Q And you didn't do that because you were not directed
11 to that residence to collect any evidence or anything like
12 that, correct?

13 A The blood trail went down the street from the driveway
14 at 101 in front of it, but there was nothing else that we
15 did with 105.

16 Q Okay. But just so that everybody's clear, there is
17 another structure between [REDACTED] and [REDACTED].

18 A Yes.

19 Q Okay. And it appears that the back yard of [REDACTED]
[REDACTED] backs up to the back yard of 101, correct?

21 A Yes.

22 Q Now, while you've got -- I'm going to call the
23 information about your markers -- while you've got that
24 right next to [REDACTED], you did not show the side, boundary, of
25 [REDACTED] in your exhibit, correct?

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 A Correct.

2 Q But it does not go all the way over to [REDACTED], does it?

3 A No.

4 Q In fact, it doesn't go all the way over [REDACTED], does it?

5 A No.

6 Q Okay. When you -- I want to talk about the
7 fingerprints now if I may.

8 The solicitor made several demonstrations with his
9 finger on the rail, the jury rail, about the finger moves
10 along the jury rail or just because it touches the jury rail
11 doesn't mean you're going to find fingerprints. Do you
12 remember that line of questioning?

13 A Yes.

14 Q But you're not saying that you can't find fingerprints
15 where he had touched, are you?

16 A Just saying they're not always left.

17 Q Not always left.

18 A Yes.

19 Q But they could be left.

20 A Yes.

21 Q Even if the finger moves along the rail like that,
22 there could be a fingerprint, correct?

23 A Yes.

24 Q And the only way you find out is that you have -- that
25 someone has to either dust or provide some sort of

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 substance in an attempt to locate the fingerprint.

2 A Yes.

3 Q And you're not saying it's not possible to get
4 fingerprints from wood or paper. It's just that it's more
5 difficult.

6 A That's correct.

7 Q And, in fact, you may have to use a different
8 chemical, especially on paper, correct?

9 A Or other processing technique, yes.

10 Q Or other processing technique.

11 Now, you indicated that -- I believe -- let me get the
12 numbers right. Three -- okay. You said two prints you
13 identified to Mr. Brown, correct?

14 A Correct.

15 Q Three prints were -- could not -- were not of quality
16 to be identified, is that correct? I think it -- or I mean
17 or something like that.

18 A Three, yes.

19 Q Okay. And that means that when you do the comparison
20 and you're looking for points and that type of thing that
21 you just can't -- that there wasn't enough ridge detail or
22 enough of a print to determine what it is or whose it is,
23 correct?

24 A Enough of a print or sufficient quality of the print.

25 Q Okay. Quality meaning the smudges and being able to

Melissa Skipper Wallace
Cross-examination by Mr. Allen

1 see the ridges clearly, right?

2 A That's correct.

3 Q Okay. Now, there were two other prints that were of
4 sufficient quality to be identified, correct?

5 A Yes.

6 Q And-but you said that Mr. Brown was eliminated, which
7 means that he did not leave those prints, correct?

8 A Correct.

9 Q They're not his prints. They're someone else's.

10 A That's correct.

11 Q [REDACTED] -- at [REDACTED] you retrieved a bullet,
12 is that correct, that you've previously identified?

13 A A fired bullet, yes.

14 Q Okay. And that was I believe No. 11. Well, I noticed
15 when looking at it that it appeared to be spread apart.

16 A Yes.

17 Q Okay. Is that the condition you found it?

18 A Yes.

19 Q And this was found next to a door of [REDACTED].

20 A It was in the siding next to the door, the back door,
21 at [REDACTED].

22 Q This structure, was it a house, a doublewide? Do you
23 remember? A single wide?

24 A It was a house.

25 Q Okay. And the siding was made of vinyl?

Melissa Skipper wallace
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q The door was located where in relation to your diagram
3 on [REDACTED]
- 4 A Actually next to where I have RP-3 marked.
- 5 Q RP-3.
- 6 A It would have been to the right of where it says RP-3.
- 7 Q So it's on the very back side of the structure.
- 8 A Yes, the side of the structure facing Carolina.
- 9 Q Side of the structure. So it'd be on this back line
10 here, correct?
- 11 A Yes, yes, sir.
- 12 Q Okay. Is the door centered in that back side or off
13 to one side, or do you remember?
- 14 A It was fairly centered. I don't think it was exactly
15 centered. I think it was off -- I think it was one side.
- 16 Q Off to one side?
- 17 A A little bit, yeah.
- 18 Q And the bullet was found more -- where was the bullet
19 found in relation to that door?
- 20 A It was the opposite side from 101, so it would have
21 been the further side of the door from 101.
- 22 Q Further side of the door from 101.
- 23 A That's correct.
- 24 Q No other questions.
- 25 MR. ALLEN: Thank you, Your Honor.

Melissa Skipper wallace
Redirect examination by Mr. Barnette

1 MR. BARNETTE: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q If you would since the diagram is up there, show where
5 the blood tail was in relationship to the building too.
6 And you can just -- right there.

7 A Okay. One blood trail was from this area up to where
8 marker "A" is marked. There was another trail that went
9 from this area down the street and around to the shop,
10 which is marked as one.

11 Q Thank you, ma'am.

12 MR. BARNETTE: No further questions of this witness,
13 Your Honor.

14 THE COURT: You may step down.

15 MR. BARNETTE: Your Honor, we'd ask for this witness
16 to be excused.

17 THE COURT: She may be.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Whereupon, the witness was excused.)

21 MR. BARNETTE: Your Honor, we'd like to call Jan
22 Bryson out of order.

23

24

25

Janice Bryson
Direct examination by Mr. Barnette

1 JANICE BRYSON, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, ma'am, please state your full name for
5 the record.

6 A My name is Janice Bryson.

7 Q And, Ms. Bryson, where did you work back in November
8 of 2011?

9 A I was employed by the South Carolina Law Enforcement
10 Division.

11 Q And what was your position there, ma'am?

12 A While at SLED I was a forensic technician in the
13 evidence processing department.

14 Q And how long was you there, ma'am?

15 A I was employed by SLED for 23 years.

16 Q Are you now retired?

17 A Yes.

18 Q Appreciate you coming back.

19 Did you get several items to do examination on in this
20 case for evidence processing?

21 A Yes, sir, I did.

22 Q Let me start with State's Exhibits 23 and 24. This is
23 actually going to be State's Exhibit No. 24.

24 would you like some gloves?

25 A Please.

Janice Bryson

Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I believe these are already
2 entered into evidence.

3 THE COURT: What number is it?

4 MR. BARNETTE: Twenty-four.

5 THE COURT: It is.

6 Q I'll let you look at it there, ma'am, if you'd like
7 to. Did you examine that towel, ma'am?

8 A Yes, sir, I did.

9 Q And did you make a cutting from that towel?

10 A Yes, sir, I did.

11 Q Why do you make cuttings from cloth or from clothing?

12 A When the item was submitted to SLED the request was
13 made from the submitting law enforcement agency to look for
14 blood, so I processed this item for blood.

15 Q Let me show you what's been marked as State's Exhibit
16 24.1. Is that the cutting you made from that towel?

17 A Yes, sir, it is. When I make a cutting I place the
18 individual cuttings into this coin envelope, and then I'm
19 going to send this to the D.N.A. department for further
20 examination.

21 MR. BARNETTE: Your Honor, I'd like to enter State's
22 Exhibit 24.1 into evidence at this time.

23 MR. ALLEN: No objection.

24 THE COURT: It's admitted.

25 (Cutting from white towel marked State's Exhibit No.

Janice Bryson
Direct examination by Mr. Barnette

1 24.1)

2 MR. BARNETTE: May I publish it to the jury, Your
3 Honor?

4 THE COURT: You may.

5 Q Showing the jury. This came from the towel that's in
6 front of you, is that right?

7 A Yes, sir, that's correct.

8 Q And that's a cutting that was submitted for D.N.A.
9 testing.

10 A That's correct.

11 Q And of course you initialed it and so forth. And this
12 was received from Ms. -- the lady we just -- Melissa
13 wallace that just testified, is that right, ma'am?

14 A That's correct.

15 Q And you took it out. And you was the one that made
16 the cuttings from it.

17 A Right.

18 Q And was that submitted to Ms. Boehm we'll hear from
19 later to be tested for D.N.A.?

20 A Right. I sent the cuttings to the D.N.A. department
21 for further examination.

22 Q Thank you, ma'am.

23 Let me show you what's been -- I said 23, but it should
24 have been No. 25. I show you State's Exhibit 25. And I
25 believe there's two items inside of that. I'll let you pull

Janice Bryson
Direct examination by Mr. Barnette

1 those out, ma'am.

2 A Inside the sack?

3 Q Yes, ma'am.

4 A This is a piece of yellow sheet that I processed for
5 the presence of blood. These are my initials, the SLED lab
6 number and the day that I processed the evidence.

7 Q And on these items did you -- did they indicate blood
8 was on these items from your test?

9 A Yes.

10 Q Go ahead, ma'am.

11 A This is Item 25, which was submitted as a yellow
12 sheet. And I was to look for the presence of blood on the
13 sheet.

14 Q Are those your initials on this sheet, on that outside
15 of that packaging?

16 A Yes, sir.

17 Q Ma'am, go ahead and pick that up.

18 A This is the larger sheet that I processed for the
19 presence of blood, and I took a cutting that was positive
20 for the presumptive test of blood.

21 Q If you can hold it up there, is that where you marked
22 it as positive for blood?

23 A Yes, sir. I took a representative sample. So in
24 order to say that I took a representative sample I noted
25 that there was another area on the sheet that was positive

Janice Bryson
Direct examination by Mr. Barnette

1 for the presumptive test of blood.

2 Q And the cutting you took from this sheet is it -- let
3 me let you see it, what's been marked State's Exhibit 25.1.

4 A Yes.

5 Q I'll let you take a look at that, ma'am.

6 A This is the cutting that I took from the yellow sheet.

7 MR. BARNETTE: Your Honor, I'd like to move State's
8 Exhibit 25.1 into evidence at this time.

9 MR. ALLEN: No objection.

10 THE COURT: It's admitted.

11 (Cutting from fitted sheet marked State's Exhibit No.
12 25.1)

13 MR. BARNETTE: May I publish it to the jury, Your
14 Honor?

15 THE COURT: You may.

16 Q Like I asked before, this came -- this blood -- I
17 mean, this cutting was taken from a fitted sheet.

18 A That's correct.

19 Q And that was submitted for D.N.A. testing also.

20 A Yes, sir.

21 Q Let me show you what's been marked as State's
22 Exhibit 38. This is just for I.D. purposes at this time,
23 not into evidence.

24 Did you receive these items and did you process them,
25 ma'am? If you need to open that up, you can.

Janice Bryson

Direct examination by Mr. Barnette

1 A I can. It should have my initials on the bag.

2 Q I apologize. You have to open it.

3 A Okay. Yes, sir. I recognize. These are my initials,
4 the SLED lab number, the item numbers and the day that I
5 processed the evidence.

6 Q Okay. And these are the items that you received?

7 A Yes, sir.

8 Q And did you process those, ma'am?

9 A Yes, sir.

10 Q Okay. And did you do diagrams on those in this case?

11 A Yes, sir. I do.

12 Q Okay. Let me show you what's been marked as State's
13 Exhibit 37 also, ma'am, and let you look at that. Is that
14 a white t-shirt you also processed?

15 A Yes, sir, it is.

16 Q And did you take cuttings from all of these items,
17 ma'am?

18 A Yes, sir, I did.

19 Q And did they test positive for blood?

20 A The presumptive test was positive for blood.

21 Q Okay. And were those cuttings sent to SLED also for
22 testing?

23 A Those cuttings were submitted to the D.N.A. lab. Mary
24 Ann Boehm was the D.N.A. analyst for further examination.

25 Q And did she do all of the D.N.A. testing on all of the

Janice Bryson
Direct examination by Mr. Barnette

1 items involved in this case?

2 A Yes, sir.

3 Q Let me show you -- instead of pulling all of this out
4 it might be easier to show here. State's Exhibit 186. Is
5 that a copy of your work sheet that you did on these items?

6 A Yes, sir, it is, yes, sir.

7 MR. BARNETTE: Your Honor, I'd like to submit State's
8 Exhibit 186 into evidence at this time. We're going to
9 withhold the other ones until the person that collected it
10 testifies about those.

11 MR. ALLEN: Your Honor, if it please the Court. I
12 have some objections as to some of the pages of Item 186.

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

15 THE COURT: Exhibit 186 is admitted over objection.

16 (SLED report and worksheet marked State's Exhibit No.
17 186.)

18 Q Showing you the first page of 186. This is the white
19 t-shirt which is State's Exhibit 37, a diagram. Is that
20 where you collected the cutting from at, ma'am?

21 A Yes, sir, it is.

22 Q And just for I.D. purposes, because the person that
23 collected this has not testified -- collected the t-shirt.
24 You collected this cutting, 37.1, from that t-shirt?

25 A Yes, sir.

Janice Bryson

Direct examination by Mr. Barnette

1 Q Okay. And is these a pair of sweatpants, black
2 sweatpants? And did you do a cutting from them also,
3 ma'am?

4 A Yes, sir.

5 Q And was it also tested for blood also?

6 A Yes, sir, it was.

7 Q And 38.1.1 is the cutting you took from the
8 sweatpants?

9 A Yes, sir.

10 Q And is that that item there?

11 A Yes, sir.

12 Q Was this a black tank top t-shirt that you was given?
13 And did you process that, ma'am?

14 A Yes, sir, I did.

15 Q Is that 38.2.1, is the cutting that you also got from
16 that t-shirt?

17 A Yes, sir.

18 Q Okay. Did you also process a pair of socks?

19 A Yes, sir, I did.

20 Q And did you collect the cutting from one of the
21 pair -- one of the socks?

22 A Yes, sir.

23 Q And was that 38.3.1 -- I mean 38.3.1 that you
24 collected, ma'am?

25 A Yes, sir.

Janice Bryson
Direct examination by Mr. Barnette

1 Q And was there also -- this one is not as clear as the
2 rest of them. Is there part of a sleeve that you received?

3 A Yes, sir.

4 Q And did you also -- I guess it's supposed to be the
5 sleeve here.

6 A Yes, sir.

7 Q Did you collect a sample from it?

8 A Yes, sir, I did.

9 Q Was this the cutting that you collected from that
10 portion of the sleeve?

11 A Yes, sir.

12 Q Okay.

13 MR. BARNETTE: Your Honor, once the person testifies
14 that collected the items we'd ask to move them into
15 evidence at that time.

16 Q Not to pull these things out, but obviously the socks,
17 the sweatpants, the t-shirt and everything -- the black
18 tank-top t-shirt and a part of the sleeve are on this, this
19 part of State's Exhibit 38, is that correct?

20 A Yes, sir.

21 Q And the white t-shirt we're talking about was in
22 State's Exhibit 37, is that correct?

23 A Yes, sir.

24 Q And those are the items that you processed and you
25 took those cuttings from.

Janice Bryson
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q And, like you said, all of that was forwarded to the
3 D.N.A. lab.

4 A That's correct.

5 MR. BARNETTE: One moment, Your Honor, please.

6 (Pause.)

7 Q Please answer any questions Mr. Allen may have for
8 you, ma'am.

9 CROSS-EXAMINATION

10 BY MR. ALLEN

11 Q I noticed several times you mentioned the presumptive
12 test for blood.

13 A Yes, sir.

14 Q And that is a test to determine if something may be
15 blood, correct?

16 A That's correct. It is a presumptive test for blood.

17 Q Presumptive meaning it's not a final test to determine
18 if it is, in fact, blood?

19 A Yes, sir. I send it to D.N.A. for further
20 examination.

21 Q Okay. So, I mean, it has to be essentially -- there
22 has to be some other tests conducted to confirm whether it
23 may or may not be blood, correct?

24 A That's correct. I do the screening and the D.N.A.
25 does the confirmatory test.

Timothy Elmer Shirey
Direct examination by Ms. Poulos

1 (Proceedings June 19, 2013)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MR. BARNETTE: The state is ready, Your Honor.

6 MR. ALLEN: Yes, sir, Your Honor.

7 THE COURT: Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday the state was
12 still in the midst of their presentation of evidence. So
13 we will continue with that presentation this morning.

14 Ms. Poulos.

15 MS. POULOS: Thank you, Your Honor. The state calls
16 Mr. Tim Shirey.

17 TIMOTHY ELMER SHIREY, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. POULOS

20 Q If you would, sir, please state your name for the
21 jury.

22 A Timothy Elmer Shirey.

23 Q And where do you live, sir?

24 A [REDACTED]

25 Q Where is your home in relation to [REDACTED]

Timothy Elmer Shirey
Direct examination by Ms. Poulos

1 A Coming from Airport down Kimberly Drive, I would be
2 across the road to the right.

3 Q Okay. Not on the same side as [REDACTED].

4 A No. Across.

5 Q You're across the street.

6 A Yes, ma'am.

7 Q Okay. Did you have -- do you have video surveillance
8 at your home?

9 A Yes, I do.

10 Q And did you have video surveillance back on November
11 the 6th of 2011?

12 A Yes, ma'am. I do.

13 Q And did you have a camera that pointed in the
14 direction of [REDACTED]

15 A Yes, ma'am.

16 Q Okay. And did you consent back on November 6th of
17 2011 to let Investigator Mike Dominesey with the sheriff's
18 office view the video?

19 A Yes, ma'am.

20 Q And did you also allow him to make a copy of that?

21 A Yes, ma'am.

22 Q Okay. Please answer any questions Mr. Allen may have.

23 MR. ALLEN: No questions.

24 THE COURT: You may step down.

25 MS. POULOS: May the witness be excused, Your Honor?

Mike Dominesey
Direct examination by Ms. Poulos

1 THE COURT: He may be excused.

2 (Whereupon, the witness was excused.)

3 MS. POULOS: Your Honor, the state would next call
4 Investigator Mike Dominesey.

5 MIKE DOMINESEY, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. POULOS

8 Q If you would, sir, please state your name for the jury
9 and where you are employed.

10 A My name is Mike Dominesey. I'm a senior investigator
11 with the Spartanburg County Sheriff's Office.

12 Q And how long have you been with the sheriff's office?

13 A Thirteen and a half years.

14 Q And what are your primary duties?

15 A Primary duties are to -- intelligence gather for
16 property crimes division, monitor our pawn shop database
17 and to help other investigators to establish suspects. And
18 one of my many hats that I wear is all video surrounds and
19 the recovery of video surveillance from many different
20 types of -- I call them D.V.R.s, which are digital video
21 recorders.

22 Q And how many videos would you say you analyze in the
23 course of your career?

24 A I'd say over a hundred.

25 Q Back on November the 6th of 2011 did you go out to 108

Mike Dominesey
Direct examination by Ms. Poulos

1 Kimberly Drive to where Mr. Shirey lives?

2 A I did.

3 Q And did you -- did he allow you to look at his video
4 surveillance from November 6th?

5 A Yes, he did.

6 Q And did he allow you to make a copy of that video?

7 A He did.

8 Q Okay. I'm going to show you what's been marked for
9 identification purposes as State's Exhibit 36 and ask if
10 you recognize that.

11 A Yes. This is a copy of Mr. Shirey's home video
12 surveillance.

13 Q Okay. Did you actually download that video?

14 A I did.

15 Q Okay. And have you had a chance to review that?

16 A I have.

17 Q And does that video fairly represent the video that
18 you downloaded from his surveillance system at [REDACTED]
19 [REDACTED]?

20 A Yes. It's a copy.

21 MS. POULOS: Your Honor, at this time we'd ask that
22 State's Exhibit 36 be admitted into evidence.

23 MR. ALLEN: Your Honor, we have no objection to the
24 relevant portion. I can explain -- of it being admitted
25 into evidence -- but the complete video from what I

Mike Dominesey
Direct examination by Ms. Poulos

1 understand is hours long covering --

2 THE COURT: Are y'all just offering some portion of
3 it?

4 MS. POULOS: Yes, sir.

5 THE COURT: Okay. You know what portion they're
6 offering?

7 MR. ALLEN: I presume it's going to be during the time
8 of what we've been talking about for the last two days,
9 but, I mean, I'm just -- you know, around the time of the
10 incident.

11 THE COURT: Well, I mean, have y'all talked about it?

12 MR. ALLEN: No.

13 THE COURT: Do you want to?

14 MR. ALLEN: I've been provided a copy of the whole
15 video.

16 MS. POULOS: I think he's aware of the portion that
17 we're going to play, Your Honor.

18 MR. ALLEN: Right.

19 MS. POULOS: It's pretty obvious.

20 THE COURT: Okay. You know what portion they want to
21 play and you have no objection to that.

22 MR. ALLEN: Not that.

23 THE COURT: Okay.

24 (Video marked State's Exhibit No. 36.)

25 MS. POULOS: Thank you, Your Honor. May we have

Mike Dominesey
Direct examination by Ms. Poulos

1 permission to publish the video?

2 THE COURT: Okay.

3 (Whereupon, State's Exhibit No. 36 was played for the
4 jury.)

5 Q Investigator Dominesey, did you -- how did you label
6 the videos when you downloaded them?

7 A I downloaded them per the channels. Each camera's got
8 a channel -- channel one, two, three, four. Channel --
9 make a copy of each channel, each camera view on the
10 separate D.V.D. disc.

11 Q Okay. And during this incident how did you have the
12 D.V.D. labeled? What channel did you label this one as?

13 A I labeled it as D.V.D. label channel one, file 22, 23,
14 to 2253, channel one.

15 Q Okay. And you made two D.V.D.s, is that correct, a
16 channel one and a channel two? Is this channel one?

17 A Yes.

18 Q And is that the -- is that the correct video?

19 A Correct. That's the view that shows the best
20 description of what happened.

21 MR. BARNETTE: Your Honor, we'd like to substitute,
22 just switch out, one and two, because actually No. 2 was
23 entered, and we're asking to enter one now. It's just a
24 different view.

25 THE COURT: Well, there are two different videos?

Mike Dominesey
Direct examination by Ms. Poulos

1 MS. POULOS: It's one video, Your Honor, but they were
2 split up into two different channels, a channel one and a
3 channel two. And we accidentally had switched them out.
4 But channel one is the proper one.

5 THE COURT: Okay.

6 MR. ALLEN: No objection to the relevant portion of
7 that one.

8 Q Investigator Dominesey, what house is that across the
9 street that we can see in the video?

10 A [REDACTED].

11 Q And, again, the surveillance was at 108, correct?

12 A Correct.

13 THE COURT: Be careful of that microphone, please.

14 THE WITNESS: Yes, sir.

15 A [REDACTED].

16 Q What can you see in the upper part of the screen?

17 A Subject running. And in the brief period of time here
18 within the next 30 seconds you'll see another subject
19 running. The subject obviously was wearing a white t-shirt
20 or a white shirt.

21 Q All right. What's going on now?

22 A Subject is running between vehicles and going to the
23 left-hand side of the house at [REDACTED] And in a
24 second we'll see a vehicle bark -- back out of the
25 driveway. I can't remember if it pulls directly on the

Mike Dominesey
Direct examination by Ms. Poulos

1 back, so.

2 Q Is that the vehicle leaving?

3 A Yes.

4 Q And what direction was the vehicle going?

5 A Back towards where the original incident occurred.

6 Q And in the upper left-hand portion of the screen is
7 there a timestamp?

8 A Usually when a timestamp is correct I call it a
9 timestamp, but if it's not correct I call it a time marker.
10 It just marks the time.

11 Just like everybody's watch has a different time on
12 it, everybody's D.V.R. home surveillance system typically
13 is off the time. So that is what I call a time marker. It
14 is -- within reason it's -- it's off. And I can explain a
15 little bit further how I was able to tell the real time of
16 that time.

17 while at Mr. Shirey's house -- Shirey's -- I took -- I
18 went to the live view of the camera -- the live view will
19 show that the timestamp -- that's currently showing D.V.R.

20 And what I'll do is either I'll qualify it by looking
21 at my phone or looking at the T.V. Just so happened that
22 the news was on, Fox was on.

23 And I took a picture of the monitor explaining live
24 view. And I immediately went to the T.V., and in the
25 bottom left-hand corner of the Fox Carolina that day, the

Mike Dominesey
Direct examination by Ms. Poulos

1 timestamp, within seconds. Take a picture of the screen.

2 Then move over and take a picture of the T.V. just to

3 qualify the timestamp to see how far it was off.

4 Q And how far was it off in this video?

5 A Approximately 40 minutes. It was 40 minutes fast.

6 Q All right. I'm going to show you what's been marked

7 for identification purposes as State's Exhibit 19 and 20

8 and ask are those the photos that you took that you just

9 referred to.

10 A Yes, they are.

11 Q And do those photos fairly represent the time marker

12 and time difference that you were trying to differentiate

13 between?

14 A Correct. And even I took it a step farther.

15 Mr. Shirey had a Windows P.C. running, and I took a picture

16 of his timestamp as well. Not only did I take a picture of

17 his P.C. I also took a picture of the live T.V. feed.

18 And, obviously, I took a picture of the live screen on the

19 D.V.R., his digital video recorder.

20 MS. POULOS: Your Honor, at this time we ask that

21 State's Exhibits 19 and 20 [sic] be admitted into evidence.

22 THE COURT: 119 and 120?

23 MS. POULOS: Yes, sir, 119 and 120.

24 MR. ALLEN: Your Honor, I object to these, both of

25 these, exhibits. I'm not sure if it's been established

Mike Dominesey
Direct examination by Ms. Poulos

1 that the top photo of 119 was showing the live feed or how
2 this witness knew it was showing the live feed.

3 THE COURT: Well, let me see the photo.

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

6 Q All right. Mr. Dominesey, I'm going to pass the
7 pictures back to you. And if you would, explain how you --
8 how you went about getting the live view again to the jury.

9 A Just like you would operate a V.C.R., you know, to
10 record a show. You would push rewind or --

11 THE COURT: Excuse me. But let me just ask you to use
12 that. You've got to your back to the court reporter and to
13 me. And I know you're speaking for the benefit of the
14 jury --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- but we have to be able to hear you too,
17 and I can't, and neither can the court reporter.

18 THE WITNESS: Okay.

19 A His D.V.R. had a live view. I split it to the live
20 view, and I knew it was a live view because it wasn't on
21 either record or rewind. It was on live view, and I knew
22 it was live view. So that -- I don't know how to tell you
23 other than it was on a live view.

24 THE COURT: All right. Any other objection? Excuse
25 me. Is there any other objection?

Mike Dominesey
Cross-examination by Mr. Allen

1 MR. ALLEN: May I voir dire the witness on this issue
2 just one or two questions?

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MR. ALLEN

6 Q Were you looking out the window at the same time that
7 this scene or this top picture was being taken to determine
8 if it was a live feed?

9 A Yes, sir. I spent several hours in his house. And I
10 could tell when there was still crime scene investigators
11 and police officers both walking up and down the streets.
12 And when I was switching between recorded and live view you
13 could tell that it was a live view. But taking my word for
14 it, it was on live view.

15 Q Okay. That's my voir dire. No other.

16 THE COURT: Sir?

17 MR. ALLEN: No objection.

18 THE COURT: All right. They're admitted.

19 MS. POULOS: Thank you, Your Honor.

20 (Photographs marked State's Exhibits Nos. 119 and
21 120.)

22 MS. POULOS: Now, Your Honor may we publish the
23 pictures to the jury?

24 THE COURT: You may.

25 MS. POULOS: Your Honor, we're going to show a second

Mike Dominey

Redirect examination by Ms. Poulos

1 video. So we'll publish the photographs all at the end.

2 REDIRECT EXAMINATION

3 BY MS. POULOS

4 Q Were you also asked to go to [REDACTED] on
5 November the 7th of 2011?

6 A I was.

7 Q And were you asked to retrieve video surveillance from
8 that location as well?

9 A I was.

10 Q And was that pursuant to a search warrant?

11 A Yes.

12 Q Did you go out to the scene?

13 A I did.

14 Q Did you go to the outbuilding?

15 A Correct. I did.

16 Q And what did you see out there?

17 A I saw a digital video recorder that the person who
18 occupied the outbuilding had installed.

19 Q Did you take possession of the video recording system
20 and the monitor and everything that went along with it?

21 A I did.

22 Q And did you take those items back to the sheriff's
23 office?

24 A I did.

25 Q When you got back to the sheriff's office what did you

Mike Dominesey
Redirect examination by Ms. Poulos

1 then do?

2 A I then looked at the D.V.R. I did make contact with
3 Agent Betsill, and we did have consent from the owner of
4 the D.V.R. And I then reviewed the video on the D.V.R.

5 Q Did you also download a copy of that video?

6 A Yes.

7 Q I show you State's Exhibit 27 and ask you is that the
8 video that you downloaded from [REDACTED]

9 A Yes.

10 Q And have you had the opportunity to view the video?

11 A I have.

12 Q And does that fairly represent the video that you, in
13 fact, downloaded?

14 A Correct.

15 Q And has it been altered or changed in any way?

16 A No.

17 MS. POULOS: Your Honor, we would ask that State's
18 Exhibit 27 be admitted into evidence.

19 MR. ALLEN: No objection.

20 THE COURT: It's admitted.

21 MS. POULOS: May we publish it?

22 THE COURT: You may.

23 (Video marked State's Exhibit No. 27.)

24 (Whereupon, the video was played for the jury.)

25 Q where -- where is this?

Mike Dominey
Redirect examination by Ms. Poulos

1 A [REDACTED]

2 Q And in the upper left-hand part of the screen, is that
3 the outbuilding that you went to?

4 A Yes.

5 Q So the surveillance is attached to that building.

6 A Correct.

7 Q If you would, explain what we're seeing in the upper
8 left-hand part of the screen.

9 A It's a black male in a white t-shirt running up to the
10 door. It appears to be his pants in his hand, or clothing.

11 Q Does that male come back out of that outbuilding?

12 A He does.

13 MR. ALLEN: Your Honor, I would object to their
14 characterizing as that male coming out. The jury can see
15 for themselves and make their own determination.

16 THE COURT: Overruled.

17 A See him running right there, the dreadlocks. Just ran
18 along to the van. Now he should be going around the front
19 of the house.

20 THE COURT: We can't understand what you're saying,
21 sir.

22 A He just exited the house. He was running towards the
23 van and ran to the front of the house. And if you look in
24 the bottom right you'll see headlights turned on for a
25 second.

Mike Dominey
Redirect examination by Ms. Poulos

1 Q All right. Investigator Dominey, did you also
2 notice anything unusual about the timestamp or marker in
3 this video as well?

4 A Yes. Just like I mentioned earlier that --
5 everybody's D.V.R. is different. This one is case in
6 point. Obviously, this one was -- you don't know that.
7 Obvious to me it was off. This one was 58 minutes fast.
8 By qualifying that one there was a forensic officers on the
9 scene, Deputy Porter. And I had taken a picture of her
10 watch and then took a picture of the live view screen,
11 determined that it was 58 minutes fast. The D.V.R. was 58
12 minutes fast.

13 Q And you used the process similar to what you referred
14 to earlier in the other video?

15 A Correct.

16 Q And you also took photos of your documentation?

17 A Yes.

18 MR. ALLEN: No objections.

19 Q I'm going to pass to you State's Exhibits 117 and 118
20 marked for identification purposes and ask you are those
21 the photographs that you took.

22 A Those are the photographs I took.

23 Q And do they fairly represent the pictures that you
24 took to depict the time difference?

25 A Yes.

Mike Dominesey
Redirect examination by Ms. Poulos

1 MS. POULOS: Your Honor, we'd ask that State's
2 Exhibits 117 and 118 be admitted into evidence.

3 THE COURT: They're admitted without objection.

4 (Photographs marked State's Exhibits Nos. 117 and
5 118.)

6 MS. POULOS: May I publish them, Your Honor?

7 THE COURT: You may.

8 Q Going back to the video from [REDACTED] first
9 one that was on. If you would, please explain those two
10 times.

11 A The top time is the live view feed from Mr. Shirey's
12 D.V.R. timestamp depicting 5:56:58. It's military time.
13 That's why the zero's in front of it. And the bottom is
14 the live for his computer screen. I took a picture of his
15 computer screen immediately after I took the above
16 photograph. And that bottom time is 5:16 a.m.

17 Q All right. If you would, explain this photo.

18 A Again, earlier I took it a step further. I then
19 photographed the live view on the T.V. And it's 5:16 a.m.

20 Q And on the video from [REDACTED] how many
21 minutes did you determine that it was off?

22 A 108 was 40 minutes fast.

23 Q And you can refer back to your report. What is the
24 time marker that you first see somebody running in that
25 video?

Mike Dominey
Redirect examination by Ms. Poulos

1 A The time marker where someone is seen running is
2 223102, which is real time. I do simple arithmetic.
3 Approximately 9:51.

4 Q And that's -- you're including the 40 minutes where
5 it's off.

6 A Correct.

7 Q So the first time that you see someone running in this
8 video is approximately 9:51 p.m., is that correct?

9 A Correct.

10 Q And going to the second video of [REDACTED]
11 is this the equipment as you found it?

12 A Yes. The screen to the left if you can make it out
13 says it's an Apple monitor. And then the one to the right
14 is his D.V.R. You see the split screen, four screen,
15 digital video recorder.

16 Q And this is State's Exhibit 117. State's Exhibit 118.
17 If you could, explain what the top photo is.

18 A Top photograph is the live -- I took a picture of the
19 live view before I unplugged the D.V.R. I took a picture
20 of the live view screen which depicts 062242 a.m.

21 Q And then the second photograph?

22 A And that is, again, Deputy Corder's watch, and it's
23 5:24 a.m.

24 Q So on the video from [REDACTED] how much of a
25 time difference did you determine?

Mike Dominesey
Recross-examination by Mr. Allen

1 A Fifty-eight minutes fast approximately.

2 Q And on that video the first time that you see someone
3 running, what is the time marker that you noted?

4 A 10:53:07.

5 Q And doing the math you stated earlier that it was 58
6 minutes fast. What was the actual time?

7 A Real time on that, approximately 9:51 p.m.

8 Q Thank you. Please answer any questions that Mr. Allen
9 may have for you.

10 RECROSS-EXAMINATION

11 BY MR. ALLEN

12 Q As you mentioned, the vehicle that we saw in the video
13 that was leaving [REDACTED] after we saw the person
14 running around 107, again, running back out -- okay? Have
15 I lost you?

16 A Yes.

17 Q Okay. While we were watching the video we saw a
18 vehicle leave 107.

19 A Which? Which video, the first one or the second one?

20 Q The video from 108.

21 A Okay.

22 Q We were watching and saw a vehicle leave 107.

23 A Correct.

24 Q Okay. That vehicle's lights appeared to be on,
25 correct?

Mike Dominesey
Recross-examination by Mr. Allen

1 A You say on or off?

2 Q On.

3 A Appeared to be.

4 Q Okay. Now, when you went to [REDACTED] --

5 A Yes, sir.

6 Q -- did you go there that night or did you go there the
7 following morning? And by night I'm talking even a little
8 bit after midnight.

9 A No. That would be that morning. Immediately
10 following the incident I responded to 107 or 108.

11 Q Do you know what time, approximately what time, you
12 got there? Was it daylight, in other words, or getting
13 light?

14 A No, not -- no. It was -- when I got to Mr. Shirey's
15 house it was the -- I'm going to say before midnight.

16 Q Okay. When you got -- so you got to 107 shortly after
17 midnight.

18 A Correct.

19 Q Okay. When you got to 107 I think you --

20 A Well, it wasn't shortly. It was like 5:00 a.m. I
21 believe I got there.

22 Q You got there at 5:00 a.m.

23 A Yes, sir.

24 Q When you got to 107 --

25 A Yes.

Mike Dominesey
Recross-examination by Mr. Allen

1 Q -- you went inside that building that you saw the
2 individual run to, correct?

3 A Yes, sir.

4 Q You saw the computer equipment and the D.V.D. or the
5 video surveillance equipment, correct?

6 A Yes, sir.

7 Q Was it -- was it -- was the D.V.D. or the video
8 surveillance equipment, was that recording at that time?

9 A I believe it was.

10 Q Okay. And there was a live feed going into that
11 computer monitor or that monitor that we saw in one of the
12 state's exhibits from 107. I'm looking at State's
13 Exhibit 117.

14 A Yes, sir.

15 Q Okay. So this has capability of doing a live feed
16 too.

17 A Yes.

18 Q And it was on when you got there.

19 A Yeah. I imagine nobody touched it. I can't say what
20 other people were when they're there, but I -- I unplugged
21 it out of the wall.

22 Q Okay. And standard practice when officers are coming
23 to a scene that's important and something you're
24 investigating is not to touch items until someone is there
25 to record where they were and either write it by writing or

Mike Dominesey
Redirect examination by Ms. Poulos

1 photograph, correct?

2 A Absolutely.

3 Q And that includes not turning on or off any equipment
4 that's operating.

5 A Correct.

6 Q No other questions. Thank you.

7 REDIRECT EXAMINATION

8 BY MS. POULOS

9 Q Investigator Dominesey, in the video from [REDACTED]
10 [REDACTED] when you see the car leaving out, were the headlights
11 on that car?

12 A I don't think the headlights were on. I think he hit
13 the brakes and the brakes -- the brake lights came on. I
14 don't think the headlights were on.

15 Q Do you recall anything about the taillights?

16 A On the vehicle we --

17 Q You can refer to your report if you need to refresh
18 your recollection.

19 A "Seconds later a vehicle is then seen backing into a
20 street and leaving the house."

21 THE COURT: Don't -- don't read it to us. Just read
22 it to yourself if you need it to refresh your recollection.

23 A According to my report the vehicle leaving has
24 headlights but no taillights.

25 Q Thank you.

Mike Dominesey
Recross-examination by Mr. Allen

1 RECROSS-EXAMINATION

2 BY MR. ALLEN

3 Q Has headlights on. Is that what you said?

4 A Headlights off? Let me see here. Has headlights but
5 not taillights. I imagine when the vehicle backed out it
6 was the brake lights that we saw when the vehicle sped off.

7 Q When you testified about the video from 107 you made a
8 point of pointing out headlights on the other side of the
9 house, didn't you, headlights coming on?

10 A Appeared to be.

11 Q Okay. That would have been about the time that the
12 vehicle was pulling out as we saw on the video from 108.

13 A Correct.

14 Q Thank you.

15 THE COURT: You may step down.

16 MS. POULOS: May the witness be excused, Your Honor?

17 THE COURT: He may be.

18 (Whereupon, the witness was excused.)

19 MR. BARNETTE: Your Honor the state would like to call
20 Mr. Miller to the stand, please.

21 RAQUENTIN KENDRICKS

22 GRAY-MILLER, having been first duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q If you would, sir, give your full name for the record.

Raquentin Kendricks Gray-Miller
Direct examination by Mr. Barnette

- 1 A Raquentin Miller.
- 2 Q I'm going to need you to talk louder so she can hear
3 you and I can hear you back here.
- 4 A Raquentin Miller.
- 5 Q Thank you, sir.
- 6 Mr. Miller, what town do you live in right now?
- 7 A Spartanburg, South Carolina.
- 8 Q Okay. You're going to need to talk louder.
- 9 A Spartanburg, South Carolina.
- 10 Q Okay. Back on November 6th of 2011 who lived at [REDACTED]
[REDACTED]?
- 12 A My mom.
- 13 Q Okay. And what building was that behind y'all's
14 house?
- 15 A It's a studio.
- 16 Q And did you stay in the studio a lot back there?
- 17 A Yes, sir.
- 18 Q And approximately 9:50 p.m. or that evening on
19 November 6th of 2011, where was you at that evening?
- 20 A I was back in the studio watching the game.
- 21 Q And actually you seen the video that was just played a
22 bit ago. You seen it before we came to court here today,
23 is that right?
- 24 A Yes, sir.
- 25 Q If you would, tell the jury. Did y'all hear noises

Raquentin Kendricks Gray-Miller
Direct examination by Mr. Barnette

1 outside? Is that what drew your attention coming out --
2 out of the doorway of the building?

3 A Yeah. I had -- my D.J. was outside, and he told us he
4 seen some lights, so we come out and --

5 MR. ALLEN: Objection as to what D.J. said.

6 THE COURT: Overruled.

7 BY MR. BARNETTE

8 A And we seen some lights pass by on the other street,
9 but we couldn't really see nothing but lights.

10 Q And as y'all or in -- do y'all hear something after
11 that?

12 A Yeah. We heard some loud shots.

13 Q Okay. And after hearing the shots did somebody come
14 to y'all's -- did somebody come to y'all's outbuilding or
15 come to the sound studio?

16 A Yes, sir.

17 Q And do you see that individual here in court today,
18 sir?

19 A Yes, sir.

20 Q Could you identify? Can you point out who the person
21 you saw coming out there that day? Can you describe what
22 he's wearing?

23 A The blue-collared shirt on.

24 MR. BARNETTE: Your Honor, I'd like the record to
25 reflect he's identified the defendant.

Raquentin Kendricks Gray-Miller
Direct examination by Mr. Barnette

- 1 THE COURT: It shall.
- 2 BY MR. BARNETTE
- 3 Q And how did -- what name did you know him as?
- 4 A Dee Black.
- 5 Q Okay. So tell the jury what happened. Did he come
- 6 and knock on the door?
- 7 A Yeah, yeah. He came to the door and knocked on the
- 8 door.
- 9 Q Okay. And did he come inside the building?
- 10 A Yes, sir.
- 11 Q Had he been shot?
- 12 A Yes, sir.
- 13 Q Where -- where did you see the blood at?
- 14 A It was somewhere up in the upper area, can't really
- 15 give you no direct spot, but it was in the upper area.
- 16 Q Did he have his pants on?
- 17 A No, sir. I don't think so.
- 18 Q And did he have anything else with him?
- 19 A Yes, sir.
- 20 Q What did he have with him, sir?
- 21 A I believe it was like a revolver or something.
- 22 Q So he had a gun with him?
- 23 A Yes, sir.
- 24 Q And did he go out of the building and come back into
- 25 the building to you?

Raquentin Kendricks Gray-Miller
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And when he came up to you, what did he ask you for?

3 A He said he needed help, he was about to die and he
4 needed some keys and he had --

5 Q And did you give him some keys?

6 A Yes, sir.

7 Q And what did you give him the keys to?

8 A My mom's burgundy Cadillac.

9 Q And that's a red Cadillac, a burgundy Cadillac.

10 What I am going to do, I'm going to play the video
11 again. And if you would, tell the jury what's happening
12 during the video.

13 A All right.

14 Q And then I'll find the picture in the meantime.

15 THE COURT: You are going to need -- you've got your
16 back to the court reporter, as I've said before. So she's
17 going to have to hear what you say. So you're going to
18 have to speak up loudly and distinctly so that all can
19 hear.

20 (Whereupon, the video was played for the jury. The
21 following takes place during the playing of the video.)

22 Q Okay. Where are you at right now, sir?

23 A I think I'm still in the studio at this time.

24 Q Wait a minute. It needs to go back.

25 (Pause.)

Raquentin Kendricks Gray-Miller
Direct examination by Mr. Barnette

1 Q Yeah. If you would, where are you at right now, sir?

2 A I'm still in the studio at the time. That's my D.J. I
3 was saying right there. That's when -- that's when he seen
4 the lights or whatever. That's me right there on the
5 phone.

6 Q You mean right there?

7 A Yeah.

8 (Pause.)

9 A That's when I heard the shots right there.

10 Q And the dog ran?

11 A Yeah.

12 (Pause.)

13 Q Is this when he comes up to the door?

14 A Yes, sir.

15 (Pause.)

16 Q And he has something in his hands?

17 A Yes, sir.

18 Q And after this, did you give him the keys when he came
19 back out?

20 A Yeah. I believe I was still in the building at the
21 time.

22 Q At the time the defendant -- did he have dreads on, or
23 longer hair?

24 A Yes, sir.

25 Q And after this did you call 9-1-1?

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q Did you report that the car was taken?

3 A Yes, sir.

4 (End of video.)

5 Q And this has already been entered as State's

6 Exhibit 125.

7 MR. BARNETTE: I'd like to publish that to the jury,

8 Your Honor.

9 Q Let me show this to you first. Is that your mother's
10 Cadillac?

11 A Yes, sir.

12 Q Shows 125. And that was your mother's Cadillac.

13 A Yes, sir.

14 MR. BARNETTE: One moment, Your Honor, please.

15 (Pause.)

16 Q Please answer any questions Mr. Allen may have for
17 you, sir.

18 CROSS-EXAMINATION

19 BY MR. ALLEN

20 Q Your mother's Cadillac is a 2003 Cadillac?

21 A Yes, sir.

22 Q Headlights come on when you turn the ignition on, when
23 you turn the motor on?

24 A Yes, sir.

25 Q Automatically?

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q The -- when -- when you -- well, first of all, you
3 didn't live at 107 at that time.

4 A No, sir.

5 Q That's just where your mom was.

6 A Yeah, uh-huh.

7 Q And of course you go there to hang out in your studio,
8 I guess.

9 A Yes, sir.

10 Q In your studio there was this video surveillance,
11 right?

12 A Yes, sir.

13 Q And you've got it recording and showing on a monitor
14 of what's going on around the studio, correct?

15 A Yes, sir, I had. I had.

16 Q I mean, it shows on the monitor at the same time.

17 A Yes, sir.

18 Q So if someone -- if someone knocks on the door or
19 comes up you can see it as it's happening, correct?

20 A If you were in a certain part of the room. It's three
21 sections in the studio. Yeah. If you were in a certain
22 room you could see it.

23 Q This is not a whole separate house, is it?

24 A It's just one building, separate off in three
25 sections.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 Q It's a relatively -- I mean, it's a small building,
2 correct?

3 A Yeah, it's small.

4 Q Sir?

5 A I say yes, sir. It's small.

6 Q Now, you say that he came in there. He knocked on the
7 door first, right?

8 A Yes, sir.

9 Q And someone let him in.

10 A Yes, sir.

11 Q Who let him in?

12 A It was a lot of guys in the studio. I don't recall
13 that now. I was sitting on the couch.

14 Q Okay. So somebody let him in.

15 A Yeah.

16 Q He didn't push the door open.

17 A Somebody let him in.

18 Q He didn't force his way in there.

19 A Uh-uh, no, sir.

20 Q Okay. When I ask a question, I noticed just a minute
21 ago you were -- I think you were agreeing or disagreeing
22 with me by nodding your head or something. You've got to
23 say it out loud so the court reporter can take it down.
24 okay?

25 A Okay.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 Q So, and he asked -- and he said that he needed help,
2 correct?

3 A Yes, sir.

4 Q And he asked for the car keys. Is that what you're
5 saying?

6 A He said I need -- I need some car keys, I'm about to
7 die, yeah.

8 Q Okay. He didn't force you to give him the car keys.

9 A Didn't force, but he had a gun in his hand and blood,
10 so.

11 Q Wasn't pointing the gun at anybody.

12 A No, he wasn't pointing it. He had it in his hand
13 though.

14 Q What hand did he have it in?

15 A I don't recall, sir. I just was looking at the gun.
16 I don't recall what hand it was in.

17 Q Okay. And how was he carrying that gun that you say
18 he had?

19 A I believe it was like to his side or something.

20 Q To which side, you don't remember?

21 A I don't -- I don't recall.

22 Q Okay. It wasn't covered up. It was not covered up.

23 A No, sir. I seen it.

24 Q Okay. You saw it when he first came in there.

25 A Yeah, like when he came in.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 Q But he wasn't pointing this gun at everybody. Was not
2 doing that.

3 A No, sir. My eyes were just on the gun and blood
4 dropping, so.

5 Q But he wasn't pointing the gun at everybody, was he?

6 A No, he wasn't. He wasn't -- he wasn't pointing it at
7 nobody.

8 Q Now, you talked -- first of all, you have not been
9 charged in connection with this case with any crime like
10 accessory, have you?

11 A No, sir.

12 Q You -- when you -- you discussed this case before
13 today with the prosecutors, correct?

14 A Yes, sir.

15 Q Has there been any discussion about charging you for a
16 crime of accessory for giving Mr. Brown car keys?

17 A No, sir.

18 Q Not been any discussion at all.

19 A No, sir.

20 Q Okay. You -- you gave a statement to the officers
21 that night, correct?

22 A Yes, sir.

23 Q They asked you for your cooperation, correct?

24 A Yes, sir.

25 Q And you told them you were going to tell the truth,

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 correct?

2 A Yes, sir.

3 Q You gave a written statement.

4 A Yes, sir.

5 Q Correct? It was done at about 12:30 or so on that
6 morning -- 12:30. Just after midnight in other words,
7 correct?

8 A Yes. I don't know the exact time, but yeah.

9 Q Okay. But basically that same night before the
10 morning broke, right?

11 A Uh-huh, yes, sir.

12 Q Okay. And you told that that was the truth, correct?

13 A Yes, sir.

14 Q And you swore that that was the truth, correct?

15 A Yes, sir, yes, sir.

16 Q And in your statement you said that Mr. Brown was
17 pointing this gun at everybody, didn't you?

18 A I don't recall.

19 Q Okay. Well, let's see if I can refresh your memory.
20 Is this a copy of your statement?

21 A Yes, sir.

22 Q Your voluntary statement.

23 A Yes, sir.

24 Q Your truthful statement to the police officers.

25 A Yes, sir.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 Q And it's got your signature on it, correct?

2 A Yes, sir.

3 Q It shows a time of 12:36 a.m.

4 A Yes, sir.

5 Q On November 7th of 2011, correct?

6 A Yes, sir.

7 Q And on the first page doesn't it say, "He" --
8 referring back to Mr. Brown -- "was pointing this big black
9 revolver at everybody"?

10 A Yeah. That's what it says.

11 Q That's what you said.

12 A Yeah.

13 Q But that's not the truth, is it?

14 A No. I was just in shock at the time. I seen the gun
15 and blood, and that's all I was looking at, sir. I
16 didn't feel --

17 Q Did you tell the officers that were in shock at the
18 time?

19 A Yeah.

20 Q You did. Which officer did you tell that you were in
21 shock?

22 A I don't remember it's been so long ago, but I told one
23 of them.

24 Q Did you tell the officer that was giving you the --
25 was taking the statement from you -- Officer Gist maybe?

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q So you're saying that Captain Gist took a statement
3 from you knowing that you were in shock and couldn't
4 remember things very well. Is that what you're saying?

5 A I ain't -- I ain't put it like that, but I was just
6 saying, yeah, I was in shock at the time when he came in
7 with the gun and blood everywhere.

8 Q You also told the officers that Mr. Brown told
9 everybody to get down, correct?

10 A Yes, sir.

11 Q And that didn't happen either.

12 A I -- I can't recall.

13 Q You can't recall?

14 A You know, it's been a long time ago.

15 Q Been a year and a half, and you can't recall whether
16 or not --

17 A I was in shock at the time, sir. Like I say, I ain't
18 never had nothing happen like that. So I was in shock at
19 the time.

20 Q So you can't recall some things because you're in
21 shock at the time.

22 A Yes, sir.

23 Q In your statement you only mention that there were
24 three or two other -- excuse me -- three other people there
25 with you in the studio, correct?

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 A Nah, nah. I -- I knew it wasn't -- I knew it was more
2 than three people there.

3 Q Okay. Well, I'm looking at your statement here.

4 A It was three people that did a report. It was three
5 people did that.

6 Q Three people did a report.

7 A Yeah.

8 Q All right. Isn't it true you say in your statement,
9 "I was watching the football game with Givo --

10 A Yeah.

11 Q -- and my cousin Ronnie, D.J. Fatboy was there, and we
12 were watching the game"?

13 A Yes, sir.

14 Q Correct?

15 A Yes, sir.

16 Q Now, show me in this statement -- it's got two pages.
17 You show me where you mention anybody else other than --

18 A I didn't know everybody's name. I didn't --

19 Q Okay. Show me where you say in your statement there
20 was some other guys there but I don't know their name.

21 A But I told the officer it was guys there. Everybody.
22 I ain't -- I didn't lie about guys being there.

23 Q How many -- how many guys did you tell the officers --

24 THE COURT: Mr. Allen, please don't stand between him
25 and the court reporter.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 MR. ALLEN: I'm sorry, Your Honor.

2 BY MR. ALLEN

3 Q How many guys did you tell the officer were --

4 A I can't recall. I know I told them it was -- I didn't
5 tell them it was no exact three guys in there. It's common
6 sense there was many more than three guys in there.

7 Q So you want the jury to believe that you're hanging
8 out with guys in this small studio.

9 A Yes, sir.

10 Q Guys you don't even know.

11 A I know them my nickname. I don't know everybody's
12 full name.

13 Q Nicknames like Givo.

14 A Yeah, yes, sir.

15 Q And D.J. Fatboy.

16 A Yes, sir.

17 Q So you know the other guys' nicknames.

18 A I know a couple of their nicknames.

19 Q But you didn't put it in your statement.

20 A I was shocked at the time. I wasn't --

21 Q Shocked at the time.

22 Isn't it true, sir, that in 2006 you were adjudicated
23 delinquent in family court for robbery?

24 A Yeah, juvenile charge, yeah, yes.

25 Q Right.

Raquentin Kendricks Gray-Miller
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q Means you were convicted in family court for that
3 charge.

4 A Yes, sir.

5 Q You say Mr. Brown had a gun when he came in there.

6 A Yes, sir.

7 Q Did you -- what happened with that gun?

8 A I don't know what happened. I didn't know what he did
9 with it when he left. I don't know.

10 Q Took it with him?

11 A I don't know.

12 Q Carrying it in his hand when he left?

13 A I don't know. He turned his back to me. I don't know
14 what -- what happened to the gun.

15 Q Isn't it true you didn't see a gun?

16 A I -- I seen a gun.

17 Q You were in shock. You can't remember some things,
18 but you're saying you remember that.

19 A Yeah. I remember -- I remember a gun.

20 MR. ALLEN: No other questions.

21 MR. BARNETTE: No further questions of this witness,
22 Your Honor.

23 THE COURT: You may step down.

24 MR. BARNETTE: Your Honor, the state would call
25 Crystal Lovett to the stand next.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 We'd ask this witness be excused, Your Honor.

2 THE COURT: He may be.

3 (Whereupon, the witness was excused.)

4 CRYSTAL DOMINIQUE LOVETT,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q Ms. Lovett, if you would, state your full name for the
8 record, please.

9 A Crystal Dominique Lovett.

10 Q Ms. Lovett, what city do you live in, ma'am?

11 A Spartanburg, South Carolina.

12 Q And where do you work at, ma'am?

13 A B.M.W.

14 Q And back on November 6th of 2011, where did you live
15 at, ma'am?

16 A [REDACTED]

17 Q That's here in Spartanburg?

18 A Spartanburg, South Carolina.

19 Q And where did you work at back then?

20 A Charles Lea Center.

21 Q And what did you do at the Charles Lea Center, ma'am?

22 A Lending support specialist.

23 Q And how long had you -- or what did that consist of?
24 what did you do, ma'am?

25 A Giving meds, assisting concerning everyday living.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q And helping other people there?
- 2 A Yeah.
- 3 Q And how long had you worked there at that time?
- 4 A Five and a half years.
- 5 Q Who lived with you at [REDACTED] ma'am?
- 6 A Robert and my little girl.
- 7 Q When you say Robert, do you see Robert in court here
- 8 today?
- 9 A Yes, sir.
- 10 Q Can you point where he's at, ma'am, and describe what
- 11 he's wearing?
- 12 A A blue shirt.
- 13 Q Okay.
- 14 MR. BARNETTE: Your Honor, I'd like the record to
- 15 reflect that she has identified the defendant.
- 16 THE COURT: It shall.
- 17 BY MR. BARNETTE
- 18 Q So he lived with you and your little girl at 410
- 19 Delmar at that time?
- 20 A Yes, sir.
- 21 Q And what car -- what car did you usually -- or what
- 22 car did you own at that time?
- 23 A A Pontiac Grand Prix, blue.
- 24 Q Okay. And who drove that car that evening?
- 25 A Robert.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 Q And did you meet him earlier that evening?

2 A Yes, sir.

3 Q And where did you meet him at that evening?

4 A By the Li'L Cricket, south side.

5 MR. BARNETTE: Excuse me one second, Your Honor.

6 May I approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MR. BARNETTE

9 Q I apologize again. If you would, answer that question
10 again, ma'am.

11 A South side of Spartanburg. There's a Li'L Cricket
12 over there.

13 Q Is that near Biggerstaff's, in that area?

14 A Yes, sir.

15 Q And about what time did you meet him?

16 A Maybe 8:00.

17 Q And what was you driving that evening?

18 A A black truck.

19 Q And --

20 A F-150.

21 Q And whose truck was that?

22 A Robert.

23 Q So you were driving the truck and he was driving your
24 car.

25 A Yes, sir.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 Q And when he met you there, what did he get? Did he
2 get something from you?

3 A Yes, sir.

4 Q What did he get from you there?

5 A Some alcohol.

6 Q Okay. Later on that evening -- let me publish State's
7 Exhibit 46 for you. Show you State's Exhibit 46. Whose
8 car is that, ma'am?

9 A Mine.

10 Q Okay.

11 A Mine.

12 Q And that was the car he was driving that evening?

13 A Yes, sir.

14 Q After y'all met, where did you go after that when you
15 met him at the Li'L Cricket?

16 A I went to pick my little girl up.

17 Q And where was she at?

18 A Valley Falls Road.

19 Q And I know this is tough.

20 A Valley Falls Road.

21 Q Okay. Keep your voice up so the jury can hear you.

22 And when you got up there, did you receive a phone call
23 later that evening?

24 A Yes, sir.

25 Q And who did you receive the phone call from?

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 A Joanne.
- 2 Q And who is Joanne?
- 3 A His sister.
- 4 Q And you're talking about --
- 5 A Robert.
- 6 Q -- Robert Brown's sister, Joanne. Is that Joanne
- 7 Huston?
- 8 A Yes, sir.
- 9 Q And after you received your phone -- after you got a
- 10 phone call from her, where did you go, ma'am?
- 11 A To Queensburg -- to Queensbury, her house.
- 12 Q Queensbury Lane. Did you go to her house there? Is
- 13 that [REDACTED]?
- 14 A Yes, sir.
- 15 Q And when you got there, tell the jury when you walked
- 16 in the house, what did you see?
- 17 A Robert was on the floor bleeding and vomiting.
- 18 Q And did he tell you how he had got to that house?
- 19 A No, but, no.
- 20 Q Okay. When you walked in did you ask him what
- 21 happened?
- 22 A Yeah.
- 23 Q What did he tell you?
- 24 A I just heard something about a robbery or something to
- 25 that degree, but we were worried about his injuries.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q And where -- where was he bleeding from?
- 2 A The chest, hands.
- 3 Q And was they trying to put cloths on it or trying to
- 4 keep the bleeding down?
- 5 A Yeah. He was wrapping up in blankets.
- 6 Q And who was helping him to do that?
- 7 A I don't recall who was -- who was -- all of us was in
- 8 there. Well, maybe Joanne went back in the room and got
- 9 some blankets or something, but I don't remember.
- 10 Q So Joanne was getting blankets. Did she help put
- 11 blankets on him or cover him up?
- 12 A I don't recall anybody, just I can't say who helped
- 13 him.
- 14 Q Who was in the room with you?
- 15 A Joanne, me, Shiquan.
- 16 Q Is that Shiquan Freeman?
- 17 A Yes, sir.
- 18 Q As he was there -- and of course they was getting
- 19 sheets and stuff to keep him from bleeding. What did he
- 20 want? What -- what happened next?
- 21 A Joanne needed us -- she wanted us to get -- get him
- 22 out so we could take him to the hospital, drop him off at
- 23 the hospital.
- 24 Q And whose car did y'all get into?
- 25 A Shiquan's.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q And what kind of car is that, ma'am?
- 2 A A red Impala.
- 3 Q So you got in Shiquan -- and who got in the car -- who
- 4 was the three people that got in the car?
- 5 A Me, Shiquan and Robert.
- 6 Q Okay. And who started driving first?
- 7 A Me.
- 8 Q And where did Robert go in?
- 9 A Huh?
- 10 Q Where did Robert go? I mean, was Robert in the car?
- 11 Shiquan was in the car with you?
- 12 A Yes, sir.
- 13 Q And where did y'all go first?
- 14 A [REDACTED]
- 15 Q And what happened at [REDACTED]
- 16 A We went in. Robert changed clothes.
- 17 Q And did y'all have towels and sheets with you to help
- 18 try to take care of the bleeding too at that time?
- 19 A When -- he was covered with sheets.
- 20 Q Let me publish this to you first, State's Exhibit 137.
- 21 Is that the house that y'all was staying at -- [REDACTED]
- 22 A Yes, sir.
- 23 Q Showing you State's Exhibit 138. Was that outside of
- 24 y'all's residence, ma'am?
- 25 A Yes, sir.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 Q And was that towel something that he had with him or
2 y'all were using to help control the bleeding?

3 A Yeah.

4 Q Okay. Let me show you State's Exhibit 144. Is that
5 on the coffee table inside your residence, ma'am?

6 A Yes, sir.

7 Q Showing in closer. What is that item beside the cloth
8 with the blood on it?

9 A Check stub.

10 Q And whose check stub is that, ma'am?

11 A Mine.

12 THE COURT: Ma'am, you're going to need to speak up,
13 please.

14 A Mine.

15 Q So that is your check stub there beside the bloody
16 cloth there.

17 A Yes, sir.

18 Q State's Exhibit 143, is that inside y'all's home also
19 at Delmar?

20 A Yes, sir.

21 Q Okay. Showing you State's Exhibit 145. Is this also
22 inside y'all's home?

23 A Yes, sir, yes, sir.

24 Q And these shotgun shells in this picture, whose
25 shotgun shells were they?

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 A Robert -- Robert.
- 2 Q After he changed his clothes at [REDACTED] what did
3 he change into, do you remember?
- 4 A Some jogging pants and a shirt.
- 5 Q And did y'all get back into Joquel's [sic] car, into
6 the red Impala car?
- 7 A Yes, sir.
- 8 Q Where did y'all go then?
- 9 A Towards -- we were going towards Mary Black, but the
10 back way to Cowpens.
- 11 Q So when y'all got to Mary Black, what happened, ma'am?
- 12 A We didn't make it to Mary Black. We -- he wanted to
13 go on up the highway.
- 14 Q So y'all went up the highway. What road did y'all go
15 up to? What -- did you hit the interstate?
- 16 A Yeah.
- 17 Q And was that I-85 interstate?
- 18 A Yes, sir.
- 19 Q And which direction did you go in, ma'am?
- 20 A Towards Charlotte.
- 21 Q On the route to Charlotte did you receive a phone call
22 from your mother?
- 23 A Yes, sir.
- 24 Q And after you received your phone call from your
25 mother did you ask Robert what happened?

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 A Yeah.

2 Q What did Robert tell you?

3 A He said that he had got stopped by a police and he got
4 out -- and he stopped and he got out and ran and the police
5 got behind him and he got into a tussle with the police --
6 sorry -- and hit him in the head with a flashlight and then
7 he -- then he shot him. And then he got loose and ran and
8 he shot him, the police shot him.

9 Q After that did you continue taking him on to
10 Charlotte?

11 A Yes, sir.

12 Q In the meanwhile you had your cell phone, is that
13 right?

14 A Yes, sir.

15 Q And was your cell phone [REDACTED]? Was that your
16 cell number at that time?

17 A Yes, sir.

18 Q And did you receive a call from a SLED agent at that
19 time?

20 A Yes, sir.

21 Q And, as a matter of fact, he called you more than one
22 time, is that right?

23 A Yes, sir.

24 Q At first did you tell him the truth where you were?

25 A No.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q where did you tell him you were to start with?
- 2 A Columbia.
- 3 Q And did he ask you who was with you or ask you about a
- 4 man?
- 5 A Yeah.
- 6 Q And did you give him a truthful name?
- 7 A No, sir.
- 8 Q why did you do that?
- 9 A Because Robert was in the back seat and I was scared.
- 10 I didn't know -- I was just saying something to -- I
- 11 didn't -- I didn't know exactly what to say, just saying
- 12 something because I knew he was in the back seat.
- 13 Q And Shiquan -- he heard Robert tell you what happened
- 14 that night.
- 15 A He was in the car.
- 16 Q Yeah. So he was there. He could hear the same thing
- 17 you could hear when he was telling you what happened, that
- 18 Robert was telling you what happened.
- 19 A Yes, yeah.
- 20 Q After that before -- did you try to go to the hospital
- 21 in Charlotte?
- 22 A Yes, sir.
- 23 Q Before y'all got to the hospital, did y'all stop
- 24 somewhere before that?
- 25 A Stopped by the store.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q And why did you stop at the store?
- 2 A Get some scissors.
- 3 Q Okay. And who went in and got the scissors?
- 4 A Me.
- 5 Q And did you bring the scissors back to the car?
- 6 A Yes, sir.
- 7 Q And who did you give the scissors to, or who took the
- 8 scissors first?
- 9 A I don't recall. I just remember when we got to the
- 10 hospital.
- 11 Q When you got to the hospital, what happened?
- 12 A Shiquan started cutting -- cutting his hair.
- 13 Q Started cutting Robert's hair? I need you to answer
- 14 yes or no.
- 15 A Yes, sir.
- 16 Q And he cut his hair in the car there?
- 17 A Yes, sir.
- 18 Q And did you help finish cutting his hair afterwards?
- 19 A Yes, sir.
- 20 Q And did y'all leave the hair inside the car?
- 21 A Yes, sir.
- 22 Q When you got to the hospital -- well, you was in the
- 23 parking lot. Did he go to the hospital in Charlotte?
- 24 A No, sir.
- 25 Q Why didn't he go to the hospital in Charlotte?

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 A He was scared because of polices was pulling up.

2 Q So what did he tell y'all to do?

3 A To keep driving.

4 Q And did you drive for a while?

5 A Yeah, to the next hospital.

6 Q And when y'all got to the next hospital, what
7 happened?

8 A We were just in the parking lot. He was just asking
9 me, you know, what we were going to do, you know. He
10 had --

11 THE COURT: Ma'am, excuse me. You will have to repeat
12 that answer.

13 THE WITNESS: Okay.

14 BY MR. BARNETTE

15 Q Hold up. Go ahead and repeat it again if you would.

16 A We were asking him what are we doing, we can't, you
17 know, run, we have to go back.

18 Q And what did he tell you?

19 A He kind of got mad, and he just got mad, and then we
20 had -- we couldn't leave or hide out. He was going --

21 Q Was you pregnant at the time?

22 A Carry me back?

23 Q Speak up. She's having a hard time understanding
24 that.

25 A Okay. I'm sorry.

Crystal Dominique Lovett
Direct examination by Mr. Barnette

- 1 Q Was you pregnant at the time, ma'am?
- 2 A Yes, sir.
- 3 Q How far along was you pregnant?
- 4 A Four months.
- 5 Q Okay. And who was the father of your baby, ma'am?
- 6 A Robert.
- 7 Q When -- and was this a high-risk pregnancy you was
- 8 going through?
- 9 A Yes, sir.
- 10 Q Did you get tired after y'all left that hospital?
- 11 A Yes, sir.
- 12 Q Who took over driving the red Impala?
- 13 A Shiquan.
- 14 Q And what did you do, ma'am?
- 15 A Got in the back seat and went to sleep.
- 16 Q Okay. And Shiquan drove the vehicle at that point?
- 17 A Yes, sir.
- 18 Q And where was Robert at?
- 19 A In the back seat.
- 20 Q When you woke up where was y'all at?
- 21 A Virginia.
- 22 Q And how did you know you was in Virginia?
- 23 A Shiquan told me.
- 24 Q And where did y'all go then?
- 25 A Some apartments. And Shiquan was tired, so he -- he

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 fell asleep.

2 Q so y'all got to the apartments. Did y'all fall asleep
3 in the car at that point?

4 A Yes, sir.

5 Q Was it still dark, or was it daylight yet?

6 A Still dark a little.

7 Q When y'all woke up, what did y'all do then?

8 A I got in the driver's side, and we went up the street
9 to a store.

10 Q And when y'all got to the store, what happened then?

11 A I went in and got some peroxide and bandaids.

12 Q You got peroxide and bandaids?

13 A Yes, sir.

14 Q And what was y'all going to do with that peroxide and
15 bandaids?

16 A I guess put some on. He wanted us to get it.

17 Q To help clean his wounds and everything?

18 A Yes.

19 Q What happened once you got back in the car and left
20 the store?

21 A We got back on the road, and not too long after the
22 police got behind us.

23 Q And then what happened next?

24 A We pulled over not too long after that.

25 Q When you pulled over, was that like on an incline?

Crystal Dominique Lovett
Direct examination by Mr. Barnette

1 A Yeah, like a hill.

2 Q And what happened next after you pulled over?

3 A I got out and walked backwards, and Shiquan got out
4 and walked backwards. And Dee got in the front seat and
5 took off -- Robert.

6 Q So Robert jumped in. Do you know him as -- what's
7 another word you know him by -- Dee?

8 A Yeah.

9 Q And he was in the back seat. And what did he do?

10 A Got in the front seat and drove off.

11 Q So he drove off in the car. And did the Virginia
12 state police follow him?

13 A Yes, sir.

14 Q And while you and Shiquan was standing there, what
15 happened? What happened later?

16 A Well, he crashed into the embankment in front of us,
17 came back around and crashed into the embankment. And the
18 polices were shooting at the car, and then they stopped and
19 threw something in the window.

20 Q And did you see it? Did they take Robert out of that
21 car?

22 A Yes, sir.

23 Q There was nobody else in that car.

24 A No.

25 MR. BARNETTE: One moment, Your Honor, please.

Crystal Dominique Lovett
Cross-examination by Mr. Allen

1 (Pause.)

2 Q If you will, ma'am, please answer any questions
3 Mr. Allen may have for you. Thank you.

4 THE COURT: We are going to take a short break before
5 we do that.

6 I'll ask the jury to please go to your jury room.
7 Don't talk about the case. I'll bring you back in a few
8 minutes.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Ms. Lovett, you can step down from the
12 stand, but you cannot discuss your testimony during the
13 break because you're still on the witness stand.

14 Court is in recess for 15 minutes.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Bring the jury in, please,
17 sir.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: Mr. Allen, you may continue with the
21 examination of the witness.

22 MR. ALLEN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. ALLEN

25 Q During the time that you were speaking on the phone in

Crystal Dominique Lovett
Cross-examination by Mr. Allen

1 the car ride -- do you remember your testimony about that?

2 A Yes, sir.

3 Q You were speaking with someone who said he was an
4 agent with SLED, correct?

5 A Yes, sir, yes, sir.

6 Q And you knew you were talking with a law enforcement
7 officer, correct?

8 A Yes, sir.

9 Q I believe you said that you didn't tell the truth,
10 right?

11 A Yes, sir, yes, sir.

12 Q He had mentioned that your -- he had told you that
13 your Pontiac was involved somehow in a shooting where an
14 officer was shot, right?

15 A Yes, sir.

16 Q And you told him you were in Columbia, correct?

17 A Yes, sir.

18 Q Meaning that you were in Columbia at the time that you
19 were talking to him, right?

20 A Yes, sir.

21 Q Columbia, South Carolina.

22 A Yes, sir.

23 Q You told him that you had left the keys to that
24 Pontiac somewhere, correct?

25 A Yes, sir.

Crystal Dominique Lovett
Cross-examination by Mr. Allen

- 1 Q And you told him that somebody named Ricky Jones knew
2 where the keys were, correct?
- 3 A Yes, sir.
- 4 Q You told him that Ricky Jones lived in Northfield --
5 Northside Apartments or something?
- 6 A Yes, sir.
- 7 Q And you were telling him all of this knowing that you
8 were lying, correct --
- 9 A Yes, sir.
- 10 Q -- to an officer or an agent, correct?
- 11 A Uh-huh, yes, sir.
- 12 Q Yes. You did not want to be in trouble, correct?
- 13 A Yes, sir, yes, sir.
- 14 Q You were trying to hide the fact that you were with
15 Mr. Brown, correct?
- 16 A Yes, sir.
- 17 Q You don't want to be in trouble now, correct?
- 18 A No, sir.
- 19 Q But you have been charged with accessory after the
20 fact to a felony in connection with this case, right?
- 21 A Yes, sir.
- 22 Q And you're represented by a lawyer.
- 23 A Yes, sir.
- 24 Q I can't hear you.
- 25 A Yes, sir.

Crystal Dominique Lovett
Cross-examination by Mr. Allen

1 Q You know you're looking at going to prison for 15
2 years for that, correct?

3 A Yes, sir.

4 Q You've pled guilty --

5 A Yes, sir.

6 Q -- to that charge. But the case is not over with for
7 you, is it?

8 A No, sir.

9 Q Because you've got to go back to be sentenced by a
10 judge, correct?

11 A Yes, sir.

12 Q Because you pled guilty, you can't back out of your
13 plea, right?

14 A No, sir.

15 Q And you've got some understanding with the solicitor's
16 office that when you go up to be sentenced on this plea you
17 can't back out of it, that they'll tell the Court, the
18 judge at that time, about your cooperation in this case,
19 correct?

20 A Yes, sir.

21 Q And you're hoping that's going to help get you out of
22 some of this trouble, correct?

23 A Yes, sir.

24 Q You're hoping that you're not going to -- or you're
25 expecting not to have to go to prison for 15 years,

Crystal Dominique Lovett
Cross-examination by Mr. Allen

1 correct?

2 A Yes, sir.

3 Q Or to go to prison at all.

4 A Yes, sir.

5 Q Correct?

6 A Yes, sir.

7 Q You're also hoping that you can make a better deal
8 with the solicitor's office after your -- after your
9 testimony today, correct?

10 A Yes, sir.

11 Q A deal for a more lenient sentence is what you're
12 hoping for.

13 A Yes, sir.

14 Q Correct?

15 A Yes, sir.

16 Q But you understand -- but you understood when you got
17 arrested in Virginia what Mr. Brown was being charged with,
18 correct?

19 A Yes, sir.

20 Q You understood what he was being charged with because
21 you had a cell phone with you, correct?

22 A Yes, sir.

23 Q And you made a lot of cell phone calls, correct?

24 A Yes, sir.

25 Q And you were talking to people who were telling you

Crystal Dominique Lovett
Cross-examination by Mr. Allen

1 about what they were seeing on the news about this,
2 correct?

3 A Yes, sir.

4 Q So you got an understanding of what this is all about,
5 correct?

6 A Yes, sir.

7 Q Now, you -- now, you -- you talked to the officers
8 after you got arrested, correct?

9 A Yes, sir.

10 Q And you told them some of the things that you say in
11 court today, correct?

12 A Yes, sir.

13 Q They mentioned to you that you might be able to help
14 yourself if you cooperated with them, correct?

15 A Yes, sir.

16 Q When you saw Mr. Brown over at Ms. Huston's, his
17 sister's house or sister's place, right --

18 A Yes, sir.

19 Q -- did she live in a house or an apartment or what?

20 A A house.

21 Q A house?

22 A Yes.

23 Q You saw he was bleeding, correct --

24 A Yes, sir.

25 Q -- from his arm?

Crystal Dominique Lovett
Cross-examination by Mr. Allen

- 1 A Arms and hands.
- 2 Q And his hand. Do you recall what hand was bleeding?
- 3 A No, I don't recall.
- 4 Q Bleeding a good bit, wasn't it?
- 5 A Yes, sir.
- 6 Q And what about the arm? Where was he bleeding from
- 7 the arm?
- 8 A The shoulders, and if I'm not mistaken there was
- 9 another wound on his arm lower.
- 10 Q When you say shoulder do you mean --
- 11 A Up in here.
- 12 Q Up in here, meaning up towards the top of the
- 13 shoulder?
- 14 A Yes, sir.
- 15 Q Now, you're making a motion to your left shoulder. Is
- 16 that the shoulder that was --
- 17 A No. I just know it was on the shoulder. I don't
- 18 remember exactly what.
- 19 Q Which shoulder it was?
- 20 A No.
- 21 Q When you saw him at Ms. Huston's house, you didn't see
- 22 a gun, did you?
- 23 A No, sir.
- 24 Q When you went to -- with him to, you said, 410
- 25 Delmar --

Crystal Dominique Lovett
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q -- you didn't see him with a gun then either.

3 A No, sir.

4 Q Right?

5 A No, sir.

6 Q When you got in to go to the hospital, he didn't have
7 a gun then either, did he?

8 A No, sir.

9 Q Or the whole time you were in Virginia or North
10 carolina, right?

11 A No, sir.

12 Q No, sir, meaning?

13 A He didn't have no gun.

14 Q Meaning he did not have a gun.

15 MR. ALLEN: One second, please, Your Honor.

16 (Pause.)

17 MR. ALLEN: No other questions of this witness.

18 MR. BARNETTE: Just one or two on followup, Your
19 Honor.

20 REDIRECT EXAMINATION

21 BY MR. BARNETTE

22 Q Ma'am, you pled to accessory after the fact to
23 attempted murder, is that right?

24 A Yes, sir.

25 Q And you when you pled -- it was a straight-up plea,

Crystal Dominique Lovett
Redirect examination by Mr. Barnette

1 zero to 15 years.

2 A Yes, sir.

3 Q And your understanding is that the judge will be the
4 sentencing person.

5 A Yes, sir.

6 MR. ALLEN: Object to him leading the witness, Your
7 Honor.

8 MR. BARNETTE: I'll rephrase the question, Your Honor.

9 BY MR. BARNETTE

10 Q What is your understanding the state is going to tell
11 the judge at sentencing?

12 A That I corroborated [sic].

13 Q And there hasn't been any other promises other than
14 that.

15 A No, sir.

16 Q And there has not been any offers about any changes --

17 MR. ALLEN: Objection to the leading.

18 THE COURT: Don't lead her.

19 BY MR. BARNETTE

20 Q Has there been any other offers or anything else
21 mentioned about anything else other than that?

22 A No, sir.

23 Q Thank you, ma'am. Please answer any questions
24 Mr. Allen will have.

25

Crystal Dominique Lovett
Recross-examination by Mr. Allen

1 RECROSS-EXAMINATION

2 BY MR. ALLEN

3 Q But you're hoping your lawyers can work something
4 better for you out after today, right --

5 A I'm hoping, yes, sir.

6 Q -- before you go the judge to get your sentence,
7 correct?

8 A Yeah. I'm hoping.

9 Q And by cooperation you knew they meant -- you want
10 them to tell you what you put on that statement when you
11 were told you were in trouble, correct?

12 A Yes, sir.

13 Q And that you could possibly help yourself by putting
14 stuff on a statement, right?

15 A Yes, sir.

16 Q Thank you.

17 MR. ALLEN: No other questions.

18 MR. BARNETTE: No further questions of this witness
19 Your Honor.

20 We would ask for her to be excused.

21 THE COURT: You may step down. You may also be
22 excused.

23 (Whereupon, the witness was excused.)

24 MR. BARNETTE: Your Honor I would like to call officer
25 burns to the stand, please.

Brad Burnette
Direct examination by Mr. Barnette

1 BRAD BURNETTE, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, please state your full name for the
5 record.

6 A My name is Brad Burnette.

7 Q And where do you work at, sir?

8 A I work with the Virginia State Police.

9 Q And what's your position there, sir?

10 A I am a special agent in the general investigation
11 division.

12 Q Back on November 7th of 2011 was you notified about a
13 chase that had occurred in y'all's jurisdiction?

14 A Yes, I was.

15 Q If you would, tell the jury about that chase and how
16 you became involved. I mean, what was your involvement
17 after that?

18 A I was -- I was notified of a chase by some of our
19 troopers.

20 I had received a phone call from my supervisor that
21 there -- they were after a suspect that had been involved
22 in a police shooting in South Carolina and they were in
23 a -- like a hostage situation or like a standoff. And
24 there was also a police-officer-involved shooting in
25 Virginia. And we have a police investigation,

Brad Burnette
Direct examination by Mr. Barnette

1 police-shooting-investigation, team in Virginia.

2 Q Did you arrive at the scene at a later time after all
3 of this occurred?

4 A Yes, I did.

5 Q Afterwards did you speak to the defendant in this
6 case?

7 A I had contact with him at the local hospital.

8 MR. ALLEN: Your Honor, if it please the Court. Take
9 a matter up.

10 THE COURT: Okay.

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

13 Q And which hospital did you meet the defendant at, sir?

14 A It was at the Twin County Regional Hospital in Galax,
15 Virginia.

16 Q And did you -- he'd already been arrested at that
17 point, correct?

18 A Yes, yes, he had been.

19 Q Put in custody. And did you gather the clothes from
20 him?

21 A Yes, I did.

22 Q Okay. If I can show you what's been marked, I think
23 it's State's Exhibit 38. I'll let you look at that bag.
24 These items that's inside that bag, did you collect those
25 items from the defendant in this case?

Brad Burnette
Direct examination by Mr. Barnette

1 A Yes, I did.

2 Q And after you secured them who did you give those to?

3 A They were released to Investigator Lorin Williams with
4 the Spartanburg sheriff's office.

5 MR. BARNETTE: Your Honor, I'd like to move these
6 items into evidence at this time.

7 MR. ALLEN: No objection.

8 THE COURT: What was the number?

9 MR. BARNETTE: No. 38, Your Honor.

10 THE COURT: They're admitted.

11 (Sweatpants marked State's Exhibit No. 38.)

12 MR. BARNETTE: And, Your Honor, I'm going to move
13 forward.

14 Q The items that were the clippings that Jan Bryson
15 testified to yesterday -- I'm trying to find those.

16 MR. BARNETTE: I'll be moving those into evidence at
17 this time too since he was the one that collected those
18 items. And those are going to be State's Exhibit 38.1.1.
19 and 38.4.1 and 38.2.1. I'd like to move those into
20 evidence at this time -- and 38.3.1.

21 MR. ALLEN: No objection.

22 THE COURT: They're admitted.

23 (Cutting from sweatpants marked State's Exhibit No.
24 38.1.1; cutting from tank t-shirt marked State's Exhibit
25 No. 38.2.1; cutting from pair of socks marked State's

Brad Burnette
Direct examination by Mr. Barnette

1 Exhibit No. 38.3.1; cutting from cut portion marked State's
2 Exhibit No. 38.4.1.)

3 Q Just one other question, sir. When you asked the
4 defendant his name, what name did he give you?

5 A Timothy Brown.

6 Q And later on from Spartanburg County authorities,
7 later on did you find out it was not his right name?

8 MR. ALLEN: Objection. That's going into hearsay.

9 THE COURT: Sustained.

10 Q If you would, I'll withdraw the question. Please
11 answer any questions that -- and let me ask you this
12 question.

13 Do you see the person in court today that you talked to
14 at the hospital?

15 A Yes, I do.

16 Q And if you would, identify that person, please.

17 A He is sitting beside the defense attorney in the blue
18 shirt -- blue-collar shirt.

19 MR. BARNETTE: And, Your Honor, have the record
20 reflect he has identified the defendant.

21 THE COURT: It shall.

22 Q If you would, answer any questions Mr. Allen may have
23 for you, sir.

24 A Yes, sir.

25 MR. ALLEN: No questions.

Heather Brown
Direct examination by Mr. Barnette

1 THE COURT: You may step down.

2 MR. BARNETTE: Your Honor, I'd like to call Heather
3 Brown to the stand at this time.

4 HEATHER BROWN, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q If you would, ma'am, please state your full name for
8 the record.

9 A Heather Brown.

10 Q Where do you work at, ma'am?

11 A I am a special agent for the Virginia State Police.

12 Q And how long have you been with the state police?

13 A Nine years.

14 Q Back on November 7th of 2011 was you called to a scene
15 involving a chase?

16 A I was.

17 Q And where was location at, ma'am?

18 A It was on Route 52 in Carroll County between Poplar
19 Camp and Coulson Church Exit.

20 Q Is that --

21 A On Route 77.

22 Q Okay. Take I-77.

23 A Right.

24 Q And y'all both -- I know it's a huge amount on I-77
25 there.

Heather Brown
Direct examination by Mr. Barnette

1 A Yes.

2 Q And y'all go to Exit 19 on that route.

3 A Yes.

4 Q And it's close to that area.

5 A It's pretty close to the interstate.

6 Q Okay. And that's on Route 52?

7 A Route 52.

8 Q When you arrived there, tell the jury what you saw
9 when you arrived there on the scene.

10 A When I arrived on scene there were several police
11 vehicles from various agencies including ours. There was a
12 red Impala up against a bank, and Trooper Horton's car was
13 in contact with that vehicle up against the bank.

14 There were several citizens standing around, so
15 immediately I started interviewing the citizens as to what
16 they had seen. And then following that interview I did an
17 interview with Investigator Williams from Spartanburg
18 County to ascertain how he ended up in Virginia and the
19 circumstances behind that.

20 Q And did you take pictures of the scene, ma'am?

21 A I did not take any pictures, no, sir.

22 Q But let me show you two pictures that you saw. Does
23 154 and 155 accurately reflect what you saw at the scene up
24 there?

25 A They do.

Heather Brown
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like to move 154 and
2 155 into evidence at this time.

3 MR. ALLEN: No objection.

4 THE COURT: They're admitted.

5 (Photographs marked State's Exhibits Nos. 154 and
6 155.)

7 MR. BARNETTE: Your Honor, may I publish these to the
8 jury at this time?

9 THE COURT: You may.

10 Q Showing you State's Exhibit 154. Is that the red
11 Impala that you was talking about, ma'am?

12 A Yes, sir.

13 Q And Trooper Horton's car is behind that?

14 A That's correct.

15 Q And he's a state trooper also in Virginia, is that
16 right?

17 A He is.

18 Q I show you 155. Is that just another angle of the
19 scene that you saw when you arrived there?

20 A Yes. That's correct.

21 Q And the red Impala, was that taken into custody to be
22 processed?

23 A It was.

24 Q And was you part of that -- I believe there was two of
25 you that processed the car.

Heather Brown

Direct examination by Mr. Barnette

1 A Yes. My initial role was to obtain the search
2 warrant. And after the search warrant was obtained I
3 assisted Agent Campbell in identifying evidence and just
4 keeping things organized as he was collecting them. But he
5 did all of the evidence collection.

6 Q Let me show you what's been marked 156 through 168.
7 And let me look at that. While y'all was processing -- do
8 those pictures fairly represent what you saw when y'all
9 processed the vehicle?

10 A They do.

11 MR. BARNETTE: Your Honor, I'd like to move these into
12 evidence at this time.

13 THE COURT: What are those numbers?

14 MR. BARNETTE: I want to say it's 156 through 168,
15 Your Honor.

16 MR. ALLEN: No objections, Your Honor, as to 156 to
17 158.

18 Objections on 159 to -- to 168 on the basis of my
19 pretrial motion made in connection with the Impala vehicle.

20 THE COURT: All right. Those, each of those, items
21 are admitted over objection.

22 MR. ALLEN: Thank you, Your Honor.

23 (Photographs marked State's Exhibits Nos. 156 to 168.)

24 MR. BARNETTE: Thank you, Your Honor. May I publish
25 these to the jury, Your Honor?

Heather Brown
Direct examination by Mr. Barnette

1 THE COURT: You may.

2 Q Starting with State's Exhibit 156. Is this the front
3 of the red Impala, ma'am?

4 A It is.

5 Q And is that the back? Is this State's Exhibit 157, is
6 this the back of the Impala?

7 A It is.

8 Q And what kind of plate does it have on it, ma'am?

9 A A South Carolina tag.

10 Q Showing you State's Exhibit 158. If you would, tell
11 the jury what this is, ma'am.

12 A It is a photo inside the driver's door of the
13 compartment of the vehicle.

14 Q And what can we see here, ma'am?

15 A What appears to be blood.

16 Q State's Exhibit 159. Can you describe this for us,
17 ma'am?

18 A There I'm not sure. It appears to be the front
19 driver's area of the car, again, by the emergency brake,
20 but there is hair and droppings of what appears to be
21 blood.

22 Q Let me show you State's Exhibit 160. If you would,
23 tell us what this is, ma'am.

24 A Some kind of cloth with blood on it.

25 Q And was this collected later? I believe that's a

Heather Brown

Direct examination by Mr. Barnette

1 t-shirt from that standpoint. It was collected and sent to
2 Spartanburg?

3 A It was.

4 Q Show you State's Exhibit 161. What is this, ma'am?

5 A Appears to be dreadlocks, hair.

6 Q Let me show you State's Exhibit 162. What does that
7 appear to be, ma'am?

8 A Some more hair.

9 Q And 163. What do we see in this picture, ma'am?

10 A Boots, scissors and broken glass.

11 Q In this closeup picture here, 164, what can we see
12 there, ma'am?

13 A Scissors.

14 Q And what is that there too?

15 A Some bandaids, medical supplies.

16 Q Let me show you 165. What do we see in that, ma'am?

17 A A bottle of peroxide.

18 Q And all of these items was collected and later given
19 to Spartanburg County, is that right, ma'am?

20 A Yes.

21 Q State's Exhibit 166. What does this show, ma'am?

22 A Dreadlocks on a seat.

23 Q And that was found in the car also.

24 A It was.

25 Q 167. What does this appear to be, ma'am?

Heather Brown
Cross-examination by Mr. Allen

1 A Photo of some bandages.

2 Q And that was also found in the car?

3 A It was.

4 Q And then State's Exhibit 168. Was that -- what is
5 that, ma'am?

6 A An I.D. card for Shiquan Freeman.

7 Q And those items was -- those items was all collected
8 and given to Spartanburg county, is that right, ma'am?

9 A They were.

10 Q Collected by somebody else with whom you --

11 A That's correct.

12 MR. BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 Q If you would, ma'am, please, answer any questions
15 Mr. Allen may have for you.

16 CROSS-EXAMINATION

17 BY MR. ALLEN

18 Q Were you aware that Shiquan Freeman was arrested in
19 Virginia on that day in connection with this case?

20 A Through no personal knowledge, no.

21 Q Through no personal knowledge.

22 A No.

23 Q And were you aware that the Impala vehicle was either
24 his or one he normally drove?

25 A The information I had came from the registration of

Heather Brown
Redirect examination by Mr. Barnette

1 the vehicle --

2 Q Okay.

3 A -- which was not in his name.

4 Q Okay. Was in a --

5 A Joanne Brown Huston.

6 Q Huston.

7 A Yes.

8 Q And okay. Were you aware of the relationship between
9 Mr. Freeman and Ms. Huston?

10 A No, sir.

11 Q Okay.

12 MR. ALLEN: No other questions.

13 MR. BARNETTE: Just one just to repeat.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q You said the other car was Joanne Huston.

17 A Yes. That's who was on the registration.

18 Q Thank you, ma'am. That's all the only question I have
19 for you.

20 THE COURT: You may step down.

21 MR. BARNETTE: We'd ask this witness be excused, Your
22 Honor.

23 THE COURT: She may be.

24 (Whereupon, the witness was excused.)

25 MR. BARNETTE: Your Honor, I'd like to call Joe

Joseph Campbell
Direct examination by Mr. Barnette

1 Campbell to the stand.

2 JOSEPH CAMPBELL, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BARNETTE

5 Q If you would, state your full name for the record,
6 please, sir.

7 A Joseph Campbell.

8 Q And where do you work at, sir?

9 A The Virginia State Police.

10 Q And what is your position there, sir?

11 A I'm a special agent in the general investigation
12 division.

13 Q And how long have you been there, sir?

14 A I've been with the state police for 17 years.

15 Q Back on November the 7th of 2011 was you called in as
16 part of the team to process the vehicle that was involved
17 in this case?

18 A Yes, sir. I was contacted by my supervisor and
19 actually responded to Route 52 and processed that scene.
20 And then when the vehicle was moved I followed the vehicle
21 from that scene to the garage to be processed.

22 Q So it was secured from the scene, and you was with it
23 until it went in the garage.

24 A Yes, sir. I was.

25 Q And you and Agent Brown, y'all went ahead and

Joseph Campbell
Direct examination by Mr. Barnette

1 processed it at that time?

2 A Yes, sir, we did.

3 Q And the pictures you've seen, you'd agree that those
4 are the same pictures that y'all saw when y'all processed
5 the car.

6 A Yes, sir, I would.

7 Q And you actually collected the items, is that right?

8 A Yes, sir, I did.

9 Q Let me let you look at -- I'll let you look at these
10 different items. It'll be State's Exhibit 170, State's
11 Exhibit 172, State's Exhibit 174, State's Exhibit 176,
12 State's Exhibit 178, State's Exhibit 181, State's
13 Exhibit 171, State's Exhibit 169, State's Exhibit 173,
14 State's Exhibit 180, what's been marked as 177, 179, 182.
15 I apologize. I'm surrounding you. No. 37. These items,
16 were they all collected by you?

17 A Yes, sir, they were.

18 Q And was they secured by you?

19 A Yes, sir, as demonstrated on the tape.

20 Q Okay. And did you turn this over to Lorin Williams at
21 the Spartanburg County Sheriff's Department later?

22 A Yes, sir, I did.

23 MR. BARNETTE: Your Honor, I would move all of these
24 items into evidence at this time.

25 If Mr. Allen wants to look at them, he's welcome to.

Joseph Campbell
Direct examination by Mr. Barnette

1 THE COURT: You have to go through the numbers again
2 slowly.

3 MR. BARNETTE: Okay. Or would you want me to just do
4 them one at a time? Because some of the items I'm going to
5 have him pull out anyway. So would you rather me do it
6 that way?

7 THE COURT: That's fine.

8 MR. BARNETTE: Okay.

9 Q Let's start with the white t-shirt, which is going to
10 be State's Exhibit 37.

11 MR. ALLEN: I object to that one on the basis of my
12 pretrial motion made in connection with the Impala vehicle
13 as fruit of the poisonous tree.

14 THE COURT: Overrule the objection. It's admitted.

15 (White t-shirt marked State's Exhibit No. 37.)

16 Q I'm going to show you State's Exhibit -- it's already
17 entered into evidence at this time. State's Exhibit 160.
18 Was this the white t-shirt that's seen in that picture,
19 sir, that was collected for evidence?

20 A Yes, sir, it is.

21 MR. BARNETTE: And, Your Honor, I believe there's a --
22 Jan Bryson testified to 37.1 as a cutting from that object.
23 I would move that into evidence at this time.

24 THE COURT: All right. That's admitted over
25 objection.

Joseph Campbell
Direct examination by Mr. Barnette

1 (Cutting from white t-shirt marked State's Exhibit No.
2 37.1)

3 Q Let me show you what's been marked as State's
4 Exhibit 180. What was that item, sir?

5 A A peroxide bottle from the rear-passenger floorboard.

6 MR. BARNETTE: Your Honor, I'd like to move State's
7 Exhibit 180 into evidence at this time.

8 THE COURT: It's admitted over objection.

9 (Peroxide bottle marked State's Exhibit No. 180.)

10 Q And this is the peroxide bottle that is shown in
11 State's Exhibit 165, is that right, sir?

12 A Yes, sir, it is.

13 Q Was there two cell phones found in this car also, sir?

14 A Yes, sir, there were.

15 Q Let me show you State's Exhibit 173. I'll move on to
16 these others first, and maybe we can find them.

17 The two cell phones are State's Exhibits 172 [sic] and
18 173. Were they also found in the car, sir?

19 A Yes, sir, they were.

20 Q And where were they found at?

21 A The Samsung was found in the center console in the
22 driver's compartment. And the driver's-front floorboard,
23 there was a Motorola cell phone found.

24 MR. BARNETTE: Your Honor, I'd like to move these two
25 items. This will be 170 and 173.

Joseph Campbell
Direct examination by Mr. Barnette

1 MR. ALLEN: Objection on the basis of my pretrial
2 motion.

3 THE COURT: They are admitted over objection.

4 MR. BARNETTE: Thank you, Your Honor.

5 (Motorola cell phone marked State's Exhibit No. 170;
6 Samsung cell phone marked State's Exhibit No. 173.)

7 Q Let me show you what's been marked as 174. What was
8 that item, sir, that y'all found?

9 A It was an I.D. card with the name of Shiquan Freeman
10 on the front in the center console.

11 MR. BARNETTE: Your Honor, I'd move 174 into evidence
12 at this time.

13 MR. ALLEN: Objection on the basis of my pretrial
14 motion.

15 THE COURT: Admitted over objection.

16 (I.D. from Shiquan Freeman marked State's Exhibit No.
17 174.)

18 Q I think the jury has already seen this, but 168,
19 that's actually the I.D. that's in this envelope, is that
20 right, sir?

21 A Yes, sir, it is.

22 Q Okay. 176. What is that, sir?

23 A Hair which appeared to be dreadlocks from the front
24 passenger seat in the floorboard area.

25 MR. BARNETTE: Your Honor, I'd move this into evidence

Joseph Campbell

Direct examination by Mr. Barnette

1 at this time.

2 MR. ALLEN: Objection as to -- on the basis of my
3 pretrial motion.

4 THE COURT: It's admitted over objection.

5 (Hair dreadlocks marked State's Exhibit No. 176.)

6 Q And this hair -- showing 166. Is that the dreadlocks
7 that was in this bag here, sir?

8 A Yes, sir, it is.

9 Q Let me show you State's Exhibit 178, sir. What is
10 that?

11 A Scissors found in the rear passenger floorboard of the
12 vehicle.

13 MR. BARNETTE: Your Honor, I'd like to move this into
14 evidence at this time.

15 MR. ALLEN: Objection on the basis of my pretrial
16 motion as to the Impala vehicle.

17 THE COURT: It's admitted.

18 (Scissors marked State's Exhibit No. 178.)

19 Q Showing you State's Exhibit 164. Is that the scissors
20 that's been collected and put in this bag, sir?

21 A Yes, sir, it is.

22 Q Showing you State's Exhibit 181. What is that, sir?

23 A A box of bandaids from the rear passenger floorboard.

24 MR. BARNETTE: Your Honor, I'd like to move this into
25 evidence at this time.

Joseph Campbell
Direct examination by Mr. Barnette

1 MR. ALLEN: Objection on the basis of my pretrial
2 motion.

3 THE COURT: It's admitted.

4 (Bandaid box marked State's Exhibit No. 181.)

5 Q And I believe -- is that the box with the bandages
6 that we're talking about in this bag?

7 A Yes, sir, it is.

8 Q And that's State's Exhibit 164 I just referred to.
9 Then 167. Is that the front of the bandage bag?

10 A Yes, sir.

11 Q Thank you.

12 Let me show you State's Exhibit 169. What is that
13 item, sir?

14 A That is more hair, which appeared to be dreadlocks,
15 from the front driver floorboard.

16 MR. BARNETTE: Your Honor, I'd like to move this into
17 evidence at this time.

18 MR. ALLEN: Objection on the basis of my pretrial
19 motions.

20 THE COURT: It's admitted.

21 (Hair dreadlocks marked State's Exhibit No. 169.)

22 Q 169. The picture that would show these items -- or
23 162 -- well, 161 and 162, sir.

24 A It'd be 161, yes, sir.

25 Q 161. Okay. And that's the dreadlocks that would be

Joseph Campbell

Direct examination by Mr. Barnette

1 located in this bag.

2 A Yes, sir.

3 Q And let me just do these three together. State's
4 Exhibit 172 and 179. Are they hairpieces that was found in
5 the car?

6 A Yes, sir, they are.

7 MR. BARNETTE: Your Honor, I'd like to move those into
8 evidence at this time.

9 MR. ALLEN: Object on the basis of my pretrial motion.

10 THE COURT: They're admitted.

11 (Hairpiece marked State's Exhibit No. 172; hairpiece
12 marked State's Exhibit No. 179.)

13 Q And I believe they're -- I can keep going back to the
14 pictures, but they're in these pictures, is that right, the
15 hairpieces?

16 A Yes, sir, they are.

17 Q State's Exhibit 171. What was that, sir?

18 A A pair of white gloves found in the driver's front
19 floorboard.

20 MR. BARNETTE: I'd like to move these into evidence at
21 this time, Your Honor.

22 MR. ALLEN: Objection on the basis of my pretrial
23 motion.

24 THE COURT: Admitted.

25 (Pair of white gloves marked State's Exhibit No. 171.)

Joseph Campbell
Direct examination by Mr. Barnette

1 Q And these pictures were also found in the car, also, I
2 mean these gloves, is that right?

3 A Yes, sir. That's correct.

4 Q Let me show you State's Exhibit 128. Was this an item
5 that y'all collected also, sir?

6 A Yes, sir.

7 Q And what was that, sir?

8 A It's a purse that contained some money from the
9 driver. It was setting in the driver's seat.

10 Q Okay. And how much money was in the purse?

11 A I would have to refer back to my notes.

12 Q Please do.

13 MR. BARNETTE: I'll move this into evidence at this
14 time.

15 MR. ALLEN: Object on the basis of my pretrial motion.

16 THE COURT: What's that number?

17 MR. BARNETTE: 182, Your Honor.

18 MR. ALLEN: I'm objecting as to State's Exhibit 182.

19 THE COURT: It's admitted.

20 (Black purse marked State's Exhibit No. 182.)

21 Q Yes, sir.

22 A Contained \$500.

23 Q And what was those \$500, in what bills?

24 A I don't have it listed here on this, but it was
25 twenties.

Joseph Campbell

Direct examination by Mr. Barnette

1 Q All \$20 bills --

2 A Yes, sir.

3 Q -- in the amount of five hundred.

4 A Yes, sir.

5 Q And did y'all write down whose purse this was or any
6 I.D. inside the purse?

7 A No, sir. Not on these notes I have here.

8 Q Let me let you go ahead and open that up, sir.

9 A Okay.

10 Q Okay. Sir, and just for clarification, the money is
11 not in the purse. It's been kept by the sheriff's
12 department. So it's not in there.

13 A Okay.

14 Q What is that, sir?

15 A It's a wallet inside with an insurance card with
16 Crystal Lovett's name, also her social security number and
17 a South Carolina driver's license in the name of Crystal
18 Lovett.

19 Q Okay. Thank you, sir.

20 A Yes, sir.

21 MR. BARNETTE: One moment, Your Honor, please.

22 (Pause.)

23 MR. BARNETTE: Let me check one thing, Your Honor, and
24 make sure on the evidence.

25 (Pause.)

Lorin Williams
Direct examination by Mr. Barnette

1 Q If you would, sir, please, answer any questions
2 Mr. Allen has for you.

3 A Yes, sir.

4 MR. ALLEN: I have got no questions.

5 THE COURT: You may step down.

6 MR. BARNETTE: We'd ask for this witness to be
7 excused, Your Honor.

8 THE COURT: He may be.

9 (Whereupon, the witness was excused.)

10 MR. BARNETTE: I would like to call Lorin Williams to
11 the stand, please.

12 LORIN WILLIAMS, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BARNETTE

15 Q If you would, sir, please, state your full name for
16 the record.

17 A Lorin Williams.

18 Q And where do you work at, sir?

19 A Spartanburg County Sheriff's Office.

20 Q What's your position there, sir?

21 A I am a violent crime investigator with the sheriff's
22 office.

23 Q Back on November 6th of 2011 was you notified about an
24 officer being shot?

25 A Yes, sir, I was.

Lorin Williams

Direct examination by Mr. Barnette

1 Q And was that officer Deputy John Doe

2 A It was.

3 Q Once you received the call, where did you first go,
4 sir?

5 A The first place that I went was to the hospital to
6 check on Deputy Doe

7 Q And, obviously, he was taken to surgery and
8 everything. So after you checked on him, what happened?

9 A Once I -- once I arrived at the hospital I was able to
10 see him in the trauma bay briefly. I left there and went
11 to the scene.

12 Q When you arrived at the scene, what did you do, sir?

13 A Once I got on scene I spoke with Sergeant Bryant and
14 other deputies that were there trying just to get an
15 overview of what had taken place.

16 Q After you got that information, what did you do next,
17 sir?

18 A Once -- once we had gotten the information -- there
19 had been some information received at that point as far as
20 the -- from the suspect vehicle. And we started trying to
21 locate different -- different locations.

22 Q Let me ask you this. The registration was in the
23 vehicle and that gave y'all the name Crystal Lovett?

24 A That's correct.

25 Q And once you received that information did you find

Lorin Williams
Direct examination by Mr. Barnette

1 out where she lived at?

2 A Yes, sir, we did. we were able to obtain an address.

3 Q And what address did you go to once you received that
4 information?

5 A The address on Delmar. If I may refer to my notes --

6 Q Yes, sir.

7 A -- I believe it is 410.

8 Q And all of these locations we're talking about are in
9 Spartanburg County, is that right?

10 A Yes, sir, they are.

11 Q when you arrived at [REDACTED] what did you see, sir?

12 A when -- when we arrived at the residence there weren't
13 any vehicles parked immediately visible. we noticed on the
14 drive next to the driveway on the sidewalk coming out of
15 the residence what appeared to be a towel that had a
16 substantial amount of blood on it.

17 Q And I believe we saw that picture earlier. Showing
18 you State's Exhibit 138. If you would, is that the towel
19 that y'all saw when you arrived there?

20 A Yes, sir, it is.

21 Q And once you saw the towel and everything, what did
22 y'all do then, sir?

23 A The determination was made that the residence needed
24 to be secured and needed to be -- we needed to determine if
25 we had any other victims or anybody that was hurt in the

Lorin Williams

Direct examination by Mr. Barnette

1 residence due to the nature of the whole incident.

2 The residence was -- was secured. There was nobody
3 else found in the residence, and we secured it waiting on
4 SLED to come and process the scene.

5 Q And did SLED obtain a search warrant and process the
6 scene?

7 A That's correct. They did.

8 Q After that did you receive information about Crystal
9 Lovett, after that time, about Robert Brown afterwards,
10 about the location where they possibly were going to?

11 A Yes. I had spoken with Agent Betsill with the state
12 law enforcement division.

13 MR. ALLEN: Object to his going into details about
14 what Agent Betsill told him as being hearsay.

15 MR. BARNETTE: I think we just asked who -- he's just
16 saying who he spoke to at this point, Your Honor.

17 THE COURT: Okay.

18 A I spoke with Agent Betsill and with Sergeant Bryant
19 with the sheriff's office and had gotten information at
20 that point that --

21 Q Based off that information, what did you do after
22 that?

23 A We started heading towards -- the decision was made to
24 start heading towards the cell phone.

25 Q Okay. And the cell phone was Crystal Lovett's cell

Lorin Williams
Direct examination by Mr. Barnette

1 phone.

2 A That's correct.

3 Q At that point who was with you?

4 A I had another investigator with the sheriff's office.
5 Investigator Jenkins was in the car with me.

6 Q And what direction did you start going?

7 A North, I-85 North, towards -- I believe the first
8 location that we had was around Gastonia.

9 Q Once you went to Gastonia, where did you go after
10 that?

11 A We received more information as to the location of the
12 phone at that point and proceeded north on 85.

13 Q And where did you go after that?

14 A Just it was a continuous thing throughout the night,
15 approximately 20 miles behind the phone all the way into
16 Virginia.

17 Q When you arrived in Virginia, what happened then?

18 A We had -- during the night because of the
19 communication that we had at that time cell service was not
20 real great going through the mountains, and the weather
21 wasn't great.

22 We had actually stopped communicating with Darrell
23 Betsill and Sergeant Bryant. We were communicating
24 directly with the agent with SLED that was giving us the
25 coordinates and location of the phone.

Lorin Williams

Direct examination by Mr. Barnette

1 Once we got into Virginia it was determined that the
2 phone was stationary. He was able to give us a location,
3 actually give us an apartment complex, where the phone was
4 stationary in the rear parking lot of that apartment
5 complex.

6 We decided at that point that since we knew that the
7 proximity of the phone -- still not knowing the vehicle --
8 we didn't know at that point what we were looking for
9 vehicle-wise -- to go ahead and notify local authorities
10 that we were there, why we were there, what the
11 circumstances were and what we hoped to -- what information
12 we hoped to obtain while we were there.

13 Q As you was waiting there did you see a vehicle later
14 after that?

15 A We did. Shortly after making the first phone call to
16 the authorities in Virginia we had taken up a position just
17 a short distance down the road on the opposite side of the
18 road from the apartment complex where we could see every
19 vehicle coming and going out.

20 Our attention was drawn to a red Chevy Impala coming
21 out of the apartments. As it passed us we noticed that it
22 had a South Carolina tag on it. You know, we gambled that
23 that was going to be what we were there for, and we got
24 behind the car.

25 Q Okay. Later on as you was following the car did the

Lorin Williams

Direct examination by Mr. Barnette

1 Virginia State Police start getting along with y'all and
2 following the car?

3 A They did.

4 Q And as they got behind the car -- let me ask you this
5 question. Did they stop at a convenience store in the
6 meantime before the Virginia State Police got there?

7 A Yes. Once they came out of the apartment complex it
8 was -- it was right at daylight. It was -- you know,
9 hadn't -- hadn't been light long.

10 The vehicle went a short distance from the apartments
11 and made a right-hand turn and pulled into a little
12 mom-and-pop type convenience store.

13 We were able to pull across the road and maintain a
14 visual on the car still speaking with the Virginia
15 authorities trying to get them to us.

16 The car left the convenience store and went back in
17 the direction that it come from by the apartments and kept
18 going -- at that point still on the phone with Virginia --
19 and they were able to finally catch up with us.

20 Q What happened after they caught up with y'all?

21 A They conducted a -- what we refer to as a felony car
22 stop.

23 The -- the roads there are very curvy. They're not --
24 it's a lot more hilly than what we're accustomed to here.
25 It's not as easy to pull off on the side of the road there

Lorin Williams
Direct examination by Mr. Barnette

1 as it is here.

2 They actually had to pull onto a small single-lane
3 road that was -- had quite an incline on it. But the car
4 did stop there at that point. And they conducted a felony
5 car stop.

6 Q And did you stop along with the other cars when they
7 conducted the stop?

8 A We did. We were -- actually, I think we were about
9 the third car in line at that point.

10 Q And tell the jury what happened after that.

11 A State patrol had, like I said had, conducted a car
12 stop. They were addressing the vehicle, giving commands to
13 the vehicle as to the occupants of the vehicle as far as
14 stepping out.

15 Ms. Lovett was the first to get out of the car, out of
16 the driver's seat. She was given the verbal commands to,
17 you know, to turn and face away from the deputies or the
18 troopers, to come backwards down the hill towards them.

19 Ms. Lovett was asked as she was getting to the back of
20 the car, you know, who else was in the car. It was
21 determined there were other people in the car. They
22 started calling the car the -- and at that point
23 Mr. Freeman got out of the car. He was coming back to the
24 troopers.

25 At one point I noticed the brake lights on the car,

Lorin Williams

Direct examination by Mr. Barnette

1 just a real quick touch of the brake lights. And I knew
2 then that there wasn't -- that everybody wasn't out of the
3 car.

4 A short period of time later the brake lights came
5 back on. It went through the reverse lights. And the
6 driver's door the whole time was still open.

7 At that time the car went into gear and took off
8 forward away from us.

9 Q And did the Virginia State Patrol take up a chase with
10 that car?

11 A They did. We were -- we got in the back of it just to
12 maintain visual and be there for assistance if needed once
13 the car was stopped.

14 Q And obviously there were blue lights on and
15 everything.

16 A Blue lights and siren, yes, sir.

17 Q What happened after they chased the vehicle?

18 A The vehicle ran for a few minutes. At one point we
19 got onto a gravel road.

20 The car lost control into a ditch, came back out on
21 the road that caused some damage to the -- I believe it was
22 the left front tire started going flat on the car.

23 At the time I had no way of knowing, but when we came
24 back out on the main road and we turned left we were going
25 directly back in the direction of where we had stopped the

Lorin Williams

Direct examination by Mr. Barnette

1 car to start with.

2 It went on around. We passed a school bus, I believe,
3 or there were some buses in the area we had seen. The
4 traffic was starting to pick up.

5 They conducted what is referred to as a pit maneuver
6 on the car. The first attempt failed. The second attempt
7 put the -- the Impala into an embankment very close to the
8 intersection of where the car was actually stopped the
9 first time.

10 Q As a matter of fact, showing you this exhibit right
11 here. I think it's State's Exhibit 154. Was that where
12 the car wound up after the maneuver was finished?

13 A Yes, sir. That was the final resting point.

14 Q Okay. And that was the red Impala that you had saw
15 earlier.

16 A That's correct.

17 Q Afterwards was the defendant placed under arrest?

18 A Yes, he was.

19 Q In talking to him did he give a name to y'all at the
20 scene or at the -- after he was arrested?

21 A If I may refer to my notes, he had given -- yes, sir,
22 he did give. He gave another name, the same last name but
23 a different first name, and I don't have it.

24 Q Okay. And later on you found out what his real name
25 was.

Lorin Williams

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And all of the items that was collected from this car,
3 were they turned over to you by the Virginia State Police?

4 A Yes, sir, they were.

5 Q And did you bring them back to South Carolina?

6 A I did.

7 Q And some of those items were sent for testing at a
8 later date...

9 A Yes, sir. They were.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions Mr. Allen may have for
13 you, sir.

14 MR. ALLEN: No questions.

15 THE COURT: You may step down.

16 MR. BARNETTE: We would ask the witness be excused,
17 Your Honor.

18 THE COURT: He may be.

19 (Whereupon, the witness was excused.)

20 THE COURT: We will break for lunch.

21 I'll ask the jury to remember the caution I've given
22 you. No discussions, no research, no media exposure.

23 Have a good lunch. Please report to your jury room at
24 2:30 this afternoon, 2:30 this afternoon.

25 (The following takes place outside the presence of the

David Hogsed
Direct examination by Mr. Barnette

1 jury.)

2 THE COURT: Court is in recess until 2:30.

3 (Whereupon, a recess was taken.)

4 THE COURT: Are we ready for the jury?

5 MR. BARNETTE: The state's ready, Your Honor.

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Good afternoon. We will
11 continue with the state's presentation.

12 MR. BARNETTE: May it please the Court, Your Honor.
13 I'd like to call David Hogsed to the stand, please.

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

16 DIRECT EXAMINATION BY MR. BARNETTE

17 Q If you would, sir, please, state your full name for
18 the record.

19 A David Hogsed.

20 Q Where do you work at, sir?

21 A Spartanburg County Sheriff's Office.

22 Q And what's your position there, sir?

23 A I am sergeant with the crime scene unit.

24 Q And how long have you been in law enforcement, sir?

25 A It'll be 24 years this October.

David Hogsed
Direct examination by Mr. Barnette

1 Q And how long have you been in crime scene?

2 A Since latter part of '98, early part of '99.

3 Q Back on November 6th of 2011 was you called to a scene
4 where an officer was shot with the sheriff's department?

5 A I just responded. Once we heard the call go out it
6 was an automatic response.

7 Q And which location did you go to first?

8 A First location I went to was Kimberly Drive.

9 Q Okay. And when you arrived there what did you find,
10 sir?

11 A I actually parked at the corner of Airport Road and
12 Kimberly Drive and ran down to where [REDACTED]
13 was.

14 When I ran up [REDACTED] Doe or Deputy [REDACTED] Doe was on his hands
15 and knees. His left side was to me. I ran up to him and
16 got on my knees, turned him, told him to sit down. And
17 when I rolled him over I saw that he had been shot in the
18 face. And at first I thought his eye was gone, and that he
19 had a large gash down the side of his head.

20 Q And obviously other units responded.

21 A Numerous units.

22 Q And was SLED also called to work the crime scene since
23 this was an officer-involved shooting?

24 A Yes, they were.

25 Q Later on -- let me show you this. Did you later on

David Hogsed
Direct examination by Mr. Barnette

1 take the clothes of Deputy Doe

2 A I did.

3 Q And did you take pictures of those items, sir?

4 A Yes. I actually went to Deputy Doe house and
5 picked those clothes up and took them back to the sheriff's
6 office, what we refer to as the lab, and laid them out on
7 butcher paper and photographed them, yes, sir.

8 MR. BARNETTE: Your Honor, may we approach the bench
9 for a second?

10 THE COURT: Uh-huh.

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

13 MR. BARNETTE: Your Honor, I'm going to mark 46 for
14 I.D. purposes only. I understand the Court. Thank you,
15 Your Honor.

16 May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q Let me show you what's been marked as State's
19 Exhibits 147 through 151. Do those fairly represent the
20 items that you saw and photographed, sir?

21 A Yes. These are two photographs of -- two photographs
22 of Deputy Doe uniform shirt, two of his pants and one of
23 his underwear.

24 MR. BARNETTE: Your Honor, at this time I'd like to
25 present 147 through 151, state's exhibits, into evidence at

David Hogsed
Direct examination by Mr. Barnette

1 this time.

2 MR. ALLEN: Your Honor, if it please the court. Let
3 me be heard on some of these documents, Your Honor.

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

6 THE COURT: They are admitted.

7 MR. BARNETTE: Thank you, Your Honor.

8 (Photographs marked State's Exhibits Nos. 147 through
9 151.)

10 MR. BARNETTE: May I publish them to the jury?

11 THE COURT: You may.

12 MR. BARNETTE: And before I do that, Your Honor, I
13 understand that the objection is withdrawn based off our
14 conversation at the bench, or is that abstained?

15 THE COURT: Well, as I understand it, there's no
16 objection to the photographs. There is only objection to
17 what someone might testify about items seen in the
18 photograph without there being any foundation. If
19 foundation is established, then they can be testified to.

20 MR. BARNETTE: Yes, sir. I understand.

21 THE COURT: Is that a fair statement, Mr. Allen?

22 MR. ALLEN: Your Honor, I was actually objecting to
23 the photograph because if he can't establish a foundation
24 for the other matter there is no purpose for the
25 photographs, at least as to 147, 148 and I believe 149.

David Hogsed
Direct examination by Mr. Barnette

1 THE COURT: Let me see you.

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

4 THE COURT: All right. 147 and 148 have been
5 withdrawn. 149, 150 and 151 are admitted.

6 (State's Exhibits 147 and 148 withdrawn.)

7 MR. BARNETTE: May I publish 149 and 150, pictures
8 that's been entered in, at this time, Your Honor?

9 THE COURT: You may.

10 Q Show you State's Exhibit No. 49. What is this a
11 picture of, sir?

12 A The back-pocket area of the uniform pants of Deputy

13 Doe

14 Q Okay. And approximately where was he shot at, sir?

15 A It's in the left buttock area.

16 May I step down?

17 Q Yes, sir.

18 (Whereupon, the witness left the stand.)

19 Q I show you State's Exhibit 150. It might show a
20 little bit closer than that.

21 A It's the left-pocket area of our uniform pants, was
22 basically the area.

23 Q And did you also collect his underwear?

24 A I did.

25 Q And that's State's Exhibit 151.

David Hogsed
Direct examination by Mr. Barnette

1 A Correct.

2 Q And was that the underwear as you saw them?

3 A Underwear as I collected them and photographed them.

4 Q If you would, sir, please have a seat.

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

6 Q I think you was describing Deputy Doe injuries when
7 you got to him.

8 A Yes, sir.

9 Q what were they again once you appeared?

10 A sir?

11 Q what did it appear his injuries to be, or the most
12 serious injury to you?

13 A It would be his eye and his -- the impact that he took
14 to his face.

15 Q Afterwards -- I realize you worked that crime scene,
16 is that correct, or helped work that crime scene?

17 A I walked that crime scene. We actually had several
18 areas that night that the crime scene needed to go to. So
19 I coordinated calling in off-duty personnel to work with
20 SLED, as well as the other areas that we needed to go to.

21 And I basically once -- once Deputy Doe was
22 transported to the hospital by E.M.S. and I got everybody
23 in that needed to be in and in position to where they
24 needed to be, I bounced between those areas making sure
25 everybody was -- had what they needed and things were going

David Hogsed
Direct examination by Mr. Barnette

1 the way they needed to go.

2 Q Let me show you State's Exhibit No. 40. Did you
3 collect a buccal swab for D.N.A. purposes from Deputy

4 Doe

5 A I did. I went to Doe home on November the 9th of
6 2011 after he was released from the hospital and collected
7 a D.N.A. standard or buccal swab from him.

8 Q And that was used to compare what blood was found at
9 this scene?

10 A What blood was found at the scene.

11 MR. BARNETTE: Your Honor, I'd like to enter State's
12 Exhibit No. 40 into evidence at this time.

13 MR. ALLEN: No objection.

14 THE COURT: It's admitted.

15 (Buccal swabs marked State's Exhibit No. 40.)

16 Q Later on that night was you notified about a red
17 Cadillac?

18 A I was. We call SLED in on an officer-involved
19 shooting.

20 I walked him through Carolina Drive, Kimberly Drive,
21 got them with Investigator Talanges with our crime scene
22 unit.

23 I got a call that we needed somebody at and
24 then got a call that a Cadillac that was reported missing
25 from had actually been found on

David Hogsed
Direct examination by Mr. Barnette

1 Queensbury Way, which is down off Lucerne Drive off Union
2 Street. I actually responded there and handled that --
3 that area myself.

4 Q And did you take pictures of that vehicle when you got
5 there, sir?

6 A I did.

7 Q And let me show you State's Exhibits 121, 122, 123 and
8 124. Do these pictures fairly represent what you saw once
9 you got there, sir?

10 A Yes, sir.

11 MR. BARNETTE: Your Honor, I would like to move these
12 into evidence at this time.

13 MR. ALLEN: No objection to these.

14 THE COURT: The numbers are what?

15 MR. BARNETTE: 121, Your Honor, through 124.

16 (Photographs marked State's Exhibits Nos. 121 through
17 124.)

18 Q And where was this location again, sir?

19 A It's on -- I think it's called Queensbury Way.

20 Q Or is that Queensbury Lane?

21 A Lane. It's down off Lucerne Drive off Union Street.

22 Q And showing State's Exhibit 121. Is this how you
23 found the vehicle there on that road?

24 A Yes. This is actually -- the vehicle in this photo
25 was actually facing -- as you go down the road there's a

David Hogsed
Direct examination by Mr. Barnette

1 cul-de-sac. It's pulled off to the side, and in the
2 cul-de-sac, so it's actually closer to the end of the
3 cul-de-sac.

4 Q And this was not too far from [REDACTED]

5 A No. It's just a few houses up.

6 Q And I believe this picture will show it better -- 122.

7 A Yes. This -- that was how the vehicle was seen
8 approaching it from driving down the road.

9 Q And showing you 123.

10 A Closer up of the -- of the back of the car revealing
11 the South Carolina tag that was on it.

12 Q And then did you look -- you didn't go inside the car,
13 but did you look through the window of the car?

14 A We did. We -- the car was actually never touched, but
15 I did look through the windows and on the exterior of the
16 car.

17 Q And showing you State's Exhibit 124. Is that a
18 picture that you took from outside?

19 A Yes. That's actually a picture taken through the
20 driver's window with what appears to be blood on the
21 steering wheel.

22 Q And later on SLED processed this car.

23 A Yes, sir.

24 Q And, sir, did you go collect a bullet from Richland
25 Medical Park Drive from Dr. Koon?

David Hogsed
Direct examination by Mr. Barnette

1 A I did. That was December the 21st of last year.

2 Q Okay. If you would, was there a court order
3 ordering -- or did you receive a bullet from Dr. Koon that
4 was taken from the defendant's shoulder?

5 A I did.

6 Q And was you present in the E.R. or O.R. when that was
7 done?

8 A I was.

9 Q And did you see Dr. Koon remove that from the
10 defendant in this case?

11 A I did. As soon as Dr. Koon removed the projectile
12 from his shoulder -- I had provided a container for him to
13 put it in. He put it in it. We closed it, and he signed
14 the top of the container.

15 Q Let me show you State's Exhibit 44. Is that the item
16 that you obtained from Dr. Koon? You can open it if you'd
17 like.

18 A It is.

19 MR. BARNETTE: Your Honor, at this time I'd like to
20 move State's Exhibit 44 into evidence.

21 MR. ALLEN: No objection.

22 THE COURT: It's admitted.

23 (Lead core fragment marked State's Exhibit No. 44.)

24 MR. BARNETTE: May I publish it to the jury, Your
25 Honor?

David Hogsed
Cross-examination by Mr. Allen

1 THE COURT: You may.

2 Q And does that indicate which shoulder it was taken
3 from from Mr. Brown?

4 A Yes. That's actually my handwriting, 12/21/12 --
5 07:41 a.m., left shoulder area of Robert O. Brown. And
6 then in the blue is Dr. Koon's signature. And in the red
7 would be -- that's a -- looks like a SLED lab number where
8 it would have been done by SLED.

9 Q And it was sent to SLED to be analyzed.

10 A Yes. I actually took it to SLED myself.

11 Q And Dr. Koon actually signed it showing that he
12 removed the bullet.

13 A Yes, he did.

14 MR. BARNETTE: One moment, Your Honor, please.

15 (Pause.)

16 Q If you would, please answer any questions that
17 Mr. Allen may have for you, sir.

18 CROSS-EXAMINATION

19 BY MR. ALLEN

20 Q So as I understand it as part of your duties of
21 processing the scene you went to pretty much all of the
22 areas we've been talking about -- [REDACTED] -- one in --
23 in the vicinity of [REDACTED] all the way down to
24 [REDACTED] is that correct?

25 A Yes.

David Hogsed
Cross-examination by Mr. Allen

1 Q Plus?

2 A I mean, I actually physically went to each location,
3 but I did not process those areas with the exception of
4 taking photographs of the car.

5 Q Okay. People processing the area are underneath you
6 as far as those who work for the sheriff's department?

7 A I am sorry, sir?

8 Q Was there anybody from the sheriff's office processing
9 the scene?

10 A What happens is when we have an officer-involved
11 shooting -- SLED processed where the [REDACTED],
12 [REDACTED]; and Kimberly Drive; and [REDACTED]

13 What happens with us is when we have an
14 officer-involved shooting the sheriff's office crime scene
15 unit basically shadows SLED. They do all the collection of
16 the physical evidence and all of that.

17 Q Okay.

18 A Then we basically shadow them taking our own
19 photographs and so forth.

20 Q But you go to all of these areas. And you and SLED
21 are looking for anything that might be of evidential value,
22 right?

23 A Yes, sir.

24 Q And looking for -- looking at everything as closely as
25 you can, right?

Robert Charles Talanges
Direct examination by Mr. Barnette

1 A Yes, correct.

2 Q Okay.

3 MR. ALLEN: No other questions.

4 MR. BARNETTE: No further questions of this witness,
5 Your Honor.

6 THE COURT: You may step down.

7 MR. BARNETTE: We'd ask for him to be excused, Your
8 Honor.

9 THE COURT: He may be.

10 (Whereupon, the witness was excused.)

11 MR. BARNETTE: Your Honor, we'd call Investigator
12 Talanges up to the stand, please.

13 ROBERT CHARLES TALANGES,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q If you would, sir, please state your full name.

17 A Robert Charles Talanges.

18 Q And where do you work at, sir?

19 A Spartanburg County Sheriff's Office in the forensics
20 I.D. division.

21 Q And how long have you been in law enforcement, sir?

22 A A little over 23 years.

23 Q And how long have you been in crime scene?

24 A Since late 1997, so.

25 Q Back on November 6th and November 7th was you involved

Robert Charles Talanges
Direct examination by Mr. Barnette

1 in the -- basically called to the scene concerning Deputy
2 John Doe being shot?

3 A Yes, I was.

4 Q And later on was there a buccal swab that was taken
5 from the defendant, Robert Odell Brown, for D.N.A. testing?

6 A I received court order in reference to collection of a
7 D.N.A. swab from Mr. Brown. On 7/9/2012 I and several
8 investigators responded to the location to collect it from
9 him.

10 Q Okay. Let me show you what's been marked as State's
11 Exhibit No. 43. Is that the buccal swab collected from the
12 defendant in this case?

13 A This is the package that I packaged, put it in, that's
14 correct.

15 Q Do you need to look inside of it or anything?

16 A That's correct.

17 Q And you collected those from the defendant, Robert
18 Brown.

19 A I did it by court order.

20 Q And those were secured and they were sent to SLED for
21 testing?

22 A Yes, they were.

23 MR. BARNETTE: Your Honor, I'd like to move State's
24 Exhibit 43 into evidence at this time.

25 MR. ALLEN: We object to 43 based upon our pretrial

Robert Charles Talanges
Cross-examination by Mr. Allen

1 motion previously heard by the Court.

2 THE COURT: All right. It's admitted over objection.

3 (Buccal swab marked State's Exhibit No. 43.)

4 MR. BARNETTE: May I publish it to the jury, Your
5 Honor?

6 THE COURT: You may.

7 Q And this is the D.N.A. that was collected from Robert
8 Brown, the defendant in this case.

9 A That's correct. It's the envelope.

10 Q Okay. And these are the actual buccal swabs that was
11 actually put inside that envelope, is that right?

12 A Yes, they are. Box should be marked -- date, time,
13 location, who it's from and who collected it.

14 Q And you collected it. Is that your signature on that,
15 sir?

16 A That's correct.

17 Q Thank you, sir. Please answer any questions that
18 Mr. Allen may have for you, sir.

19 CROSS-EXAMINATION

20 BY MR. ALLEN

21 Q Other parts of your job include looking for and
22 collecting evidence in other locations, correct?

23 A This -- at this incident location we were shadowing
24 SLED -- photographing, making documentation. And they
25 collected all of the evidence.

Suzanne Cromer
Direct examination by Mr. Barnette

1 (Whereupon, the witness was excused.)

2 MR. BARNETTE: Your Honor, I'd like to call Suzanne
3 Cromer to the stand.

4 SUZANNE CROMER, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q If you would, ma'am, please, state your full name for
8 the record.

9 A My name is Suzanne Cromer.

10 Q And where do you work at, ma'am?

11 A I'm employed by the South Carolina Law Enforcement
12 Division, commonly referred to as SLED, in the forensic
13 services laboratory in the firearms department.

14 Q And what is your position there, ma'am?

15 A I am a firearms and toolmark examiner.

16 Q And how long have you worked for SLED, ma'am?

17 A Fourteen and a half years.

18 Q And could you tell the jury a little bit about your
19 education and so forth?

20 A Yes, sir. I received a bachelor's degree from Clemson
21 University.

22 I did some graduate work at the University of South
23 Carolina in criminal justice. During that time I did an
24 internship at SLED in the firearms department, was hired on
25 at SLED. I started their in-house training program for

Suzanne Cromer
Direct examination by Mr. Barnette

1 firearm and toolmark examiners, which is an intense study
2 three-to-five-year program. It's more of an
3 apprenticeship. We take written tests, oral tests,
4 practical exercises. And upon completion of this program
5 we're give a comprehensive final exam.

6 I have taken classes through the Association of
7 Firearm and Toolmark Examiners, which is an international
8 organization for our profession. They meet once a year for
9 a week-long seminar to discuss, you know, the current
10 issues in our field. They also offer extra workshops. I
11 have attended several of those seminars. I've taken ethics
12 classes, barrel making, gunshot residue through AFTI
13 Highpoint familiarization.

14 I have also taken seminars with the South Carolina
15 chapter of the International Association of Identification,
16 most pertinent being shooting scene reconstruction.

17 I've also taken classes through the Bureau of Alcohol,
18 Tobacco, Firearms and Explosives, commonly referred to as
19 the A.T.F., on serial number -- I'm sorry -- serial number
20 restoration and the integrated ballistics identification
21 system or IBIS, which is a digital database for bullets and
22 cartridge cases. I'm also on the A.T.F. Niven Users
23 Congress for that program.

24 Q And how many times have you been qualified as an
25 expert in firearms in state court?

Suzanne Cromer
Direct examination by Mr. Barnette

1 A Approximately 62 times.

2 MR. BARNETTE: Your Honor, I would move her as an
3 expert in firearm examination.

4 MR. ALLEN: No objection.

5 THE COURT: She is so qualified.

6 Q Did you receive items involved in this case from the
7 state law enforcement division, ma'am?

8 A Yes, sir, I did.

9 Q And was it Melissa Skipper Wallace that submitted
10 these items to SLED?

11 A Yes, sir. I actually received them hand to hand from
12 her.

13 Q So she actually gave them to you from the crime scene.

14 A Yes, sir.

15 Q And did you prepare a report concerning these items,
16 ma'am?

17 A Yes, I did.

18 Q Let me show you what's been marked as State's Exhibit
19 No. 189. Is that a copy of your report, ma'am?

20 A Yes, sir, it is.

21 MR. BARNETTE: Your Honor, I'd like to mark State's --
22 move State's Exhibit 189 into evidence at this time.

23 MR. ALLEN: No objection.

24 THE COURT: It's admitted.

25 (SLED report marked State's Exhibit No. 189.)

Suzanne Cromer
Direct examination by Mr. Barnette

1 MR. BARNETTE: May I publish it to the jury, Your
2 Honor?

3 THE COURT: You may.

4 Q The first item you received, and actually I think we
5 have a picture. Did you receive a weapon in this case,
6 ma'am?

7 A Yes, sir, I did.

8 Q And what weapon did you receive?

9 A I received a Glock Model 22 semiautomatic pistol 40 S
10 & W caliber, serial No. KTZ946.

11 Q And was that from Deputy Doe from all indication
12 that you have?

13 A Yes, sir. It was.

14 Q And did you examine those -- I guess there was nine
15 fired cartridge cases that was submitted to you.

16 A Yes, sir. I received nine fired 40 S & W caliber
17 cartridge cases.

18 Q Okay. And I believe those are State's Exhibits 2
19 through 10. And I'll just let you briefly look at those.
20 Is those the casings that you received from Melissa Skipper
21 that she gathered from the crime scene?

22 A As you can see, they're all still in sealed containers
23 with my initial and sealed date.

24 MR. BARNETTE: Your Honor, may I publish State's
25 Exhibit No. 2 to the jury so they can see what she is

Suzanne Cromer
Direct examination by Mr. Barnette

1 talking about?

2 THE COURT: You may.

3 Q This being State's Exhibit No. 2 here. Is this what
4 you're talking about up at the top where you sealed it?

5 A Yes, sir. Those are my initials and the date that I
6 sealed it. It's under -- it's over a heat seal.

7 Q I understand. And on this is information that was put
8 on the box like this came from marker "H" at the crime
9 scene.

10 A Yes. I believe that would have been from our crime
11 scene unit that puts that on there, and my initials. I
12 just added my initials since it's the same lab number and
13 item number. I just added my initials in blue right next
14 to it.

15 Q And actually -- that is actually the shell casing that
16 was submitted in that box, is that right?

17 A That's correct.

18 Q And all of these items are in the same.

19 A Yes, sir.

20 Q And look at those cartridge cases, the second page.
21 I'll go to this page here. Were these items fired by which
22 -- was it fired by item No. 1?

23 A Yes, sir. They were.

24 Q Was the markings consistent on the shell casings that
25 they were fired by the -- the weapon of Deputy Doe

Suzanne Cromer
Direct examination by Mr. Barnette

1 A Yes, sir. They were.

2 Q Later on did you receive another item called State's
3 Exhibit No. 11 or 44, I guess?

4 A Yes, sir, I did.

5 Q It's going to actually be State's Exhibit No. 44. Was
6 this the item that you received?

7 A Yes, sir, it is. Again, it's still in a sealed
8 container with my initials and seal date.

9 MR. BARNETTE: May I publish that to the jury, Your
10 Honor?

11 THE COURT: You may.

12 Q State's Exhibit 44. I think that's the item we just
13 looked at earlier. In receiving this item did you do an
14 analysis comparing this bullet to the gun of Deputy Doe

15 A Yes, sir, I did.

16 Q And you actually did a report on that too, is that
17 correct?

18 A That's correct.

19 Q If you would, tell the jury what your finding was.

20 A Item -- my item 44, State's Exhibit 44, is consistent
21 with being a bullet core. A bullet core is part of a
22 bullet. It's usually part of a jacketed bullet, meaning
23 that there is something over top of that inside portion, of
24 the core portion.

25 So this particular bullet core fragment did not have

Suzanne Cromer
Direct examination by Mr. Barnette

1 any rifling marks, which is what we need to make our
2 identification, meaning it never came in contact with the
3 inside of the gun barrel. So all I can do is come up with
4 a possible caliber.

5 Due to the damage of this particular specimen, I could
6 only say that it was consistent with being .38 caliber or
7 larger.

8 .38 caliber is consistent with .38 Special, .357
9 Magnum, 9mm Lugar or larger. So 10mm, .40 caliber could
10 have all been possible.

11 Q So this bullet -- this -- well, like I say, this is
12 really not a bullet. This is a lead core. What you're
13 talking about to make sure I understand it right, inside
14 each bullet there's a lead core.

15 A There could be. When you're talking about bullets
16 there's different types of bullets.

17 You can have a solid lead bullet, which in that case
18 if that was fired a solid lead bullet should have rifling
19 markings on it. Rifling is what's put in the gun barrel by
20 the manufacturer to put rotary motion on the bullet to make
21 it spin very similar to a quarterback who throws a
22 football. He puts it in a tight spiral. That's what the
23 rifling is doing to that bullet. It's putting it in a
24 tight spiral so it'll go more accurately towards its
25 target.

Suzanne Cromer
Direct examination by Mr. Barnette

1 So the lead bullet would come in contact with the
2 rifling. This had no rifling on it.

3 A jacketed bullet is you can either have a full metal
4 jacket or a total metal jacket or a jacketed hollow point.
5 In each of those instances there is another material over
6 top like copper or brass that's over a core usually made of
7 lead.

8 Q And this is the lead core of the bullet. It could
9 have been fired by Deputy Doe There's no way you can
10 tell if it was fired from that gun or not. It could have
11 been fired from it.

12 A That's correct.

13 Q Because it's -- the caliber bullet that he uses is
14 what caliber bullet?

15 A .40 caliber.

16 Q So obviously .38 or larger would have been fired.

17 A That's correct.

18 Q So in this case actually you've got the lead core
19 here. There was no way to get any markings from that lead
20 core.

21 A No, sir. There was not.

22 Q One other thing too. Is there -- is there revolvers
23 that can actually shoot shotgun shells?

24 A Yes, there are. The most common one that we see
25 nowadays is the Taurus Judge. It is actually chambered for

Suzanne Cromer
Cross-examination by Mr. Allen

1 410 shotgun shells or .45 Colt.

2 Q So it'd require the .45 Colt or the 410 shotgun
3 shells.

4 A That's correct.

5 MR. BARNETTE: One moment, Your Honor, please.

6 (Pause.)

7 Q Thank you, ma'am. Please answer any questions
8 Mr. Allen may have for you.

9 CROSS-EXAMINATION

10 BY MR. ALLEN

11 Q You weren't given a revolver to examine in this case,
12 right?

13 A That's correct.

14 Q Neither a Taurus Judge or any other revolver.

15 A No, sir.

16 Q Okay. Shotgun shells including 410. 410 shotgun
17 shells also have something called wadding in it, correct?

18 A That is correct.

19 Q And wadding is some material such as cotton or plastic
20 or something that keeps the pellets in there close.

21 A Depending on the brand of ammunition, that shotgun
22 shell can have either a plastic overpowered wad. It's
23 something that comes between the gunpowder and the actual
24 shot to keep it separate. It can be plastic; it can be
25 cardboard.

Suzanne Cromer
Cross-examination by Mr. Allen

1 Q Right. And when a shotgun shell, whether done by
2 revolver or shotgun, the wadding is also expelled out of
3 the barrel of the weapon, correct?

4 A Yes, sir, usually.

5 Q And it doesn't go as far as the pellets, correct?

6 A It just depends on the velocity, as much gunpowder as
7 you have in the shell. It depends on the particular shell
8 itself.

9 Q And the wadding will basically fall on the ground or
10 go somewhere, correct?

11 A It depends on distance to target.

12 Q Right. It doesn't normally go as far as pellets could
13 go, correct?

14 A That's correct. Just depending on if your target was
15 closer, it could actually go into your target.

16 Q It could go into the target if the target is closer.

17 A Right.

18 Q Were you -- and you were not given any shotgun shells
19 in this case to examine, correct?

20 A No, sir. I was not.

21 Q By the way, 410, there are gun -- there are rifles
22 that or shotguns that use 410 ammunition too?

23 A That is correct, yes.

24 Q So it's not just used by this pistol you talked about.

25 A There are -- right. There are revolvers that can

Suzanne Cromer
Cross-examination by Mr. Allen

1 shoot 410; there are small handguns; there are Derringers.
2 There are rifles that can shoot or shotguns that can shoot
3 410.

4 Q And you weren't given any pellets to examine in this
5 case?

6 A No, sir. I was not.

7 Q Now, I take it that you don't necessarily go out
8 looking for things to examine, correct?

9 A No, sir. I don't. It's not like T.V. It's not like
10 C.S.I. They usually bring it to me.

11 Q Okay. And a law enforcement agency or somebody says,
12 hey, let's get this examined. And they bring it to you,
13 correct?

14 A That's correct.

15 Q Okay. Now, you indicated that you looked at a bullet
16 that was marked coming from [REDACTED]

17 THE COURT: There's one on the machine. Is that what
18 you're looking at?

19 MR. ALLEN: This is one.

20 Q Did you examine any other bullet other than this one?

21 A Yes, sir, I did.

22 Q Okay. And this was what's referred to in your report
23 as Item 11, fired bullet from [REDACTED] correct?

24 A That's correct.

25 Q And this was a bullet that was splayed out, correct?

Suzanne Cromer
Cross-examination by Mr. Allen

1 It's not an intact bullet.

2 A I'll have to check my notes.

3 Q Okay.

4 A The bullet was. It was much -- what we called
5 mushroomed out. It's very common among jacketed hollow
6 points for it to kind of open like a flower. But I did
7 have the whole bullet there.

8 Q And that bullet was according to your notes and the
9 markings on what you examined -- was originally retrieved
10 by the SLED agent, Ms. Wallace.

11 A I received it from Ms. Wallace.

12 Q Ms. Wallace. Okay. Did you receive any other bullet
13 marked or the packaging marked that came from [REDACTED] in
14 connection with this case -- [REDACTED]

15 A No. This was the only thing I received from [REDACTED].

16 Q Okay. And you're not saying the bullet that was shown
17 on the machine here actually was fired by any particular
18 weapon, are you?

19 A No, I'm not.

20 Q You're not able to do that --

21 A That's correct.

22 Q -- based on the condition of the bullet.

23 A That's correct.

24 Q Nothing further. Thank you.

25 MR. BARNETTE: Just one question for clarification,

Suzanne Cromer
Redirect examination by Mr. Barnette

1 Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q On page two, that's your examination. You talked
5 about the bullet he just asked you about, is that right?

6 A That's correct.

7 Q And that was part of your report too. And it was
8 inconclusive from there because of the shape the bullet was
9 in?

10 A Right. It was a jacketed hollow-point bullet
11 consistent with being a .40 Smith & Wesson or 10mm auto.
12 Bullets in that caliber can be loaded into either 40 S & W
13 or 10mm auto. And when I say caliber I mean the diameter,
14 the size of the diameter of the bullet.

15 It displayed rifling markings that were consistent
16 with being fired from a polygonally rifled firearm.
17 There's two types of rifling. There's polygonal rifling
18 and conventional rifling.

19 Conventional rifling has the nice right-angled rifling
20 that cuts into the bullet.

21 Polygonal rifling is more of a rounded groove, and
22 it's very hard to identify polygonal-rifling bullets back
23 to a firearm.

24 Q I just want -- but you did do an analysis on that
25 bullet.

Mary Ann Boehm
Direct examination by Mr. Barnette

1 A Yes, sir, I did.

2 Q Thank you, ma'am.

3 THE COURT: You may step down.

4 MR. BARNETTE: We would ask for the witness to be
5 excused, Your Honor.

6 THE COURT: She may be.

7 (Whereupon, the witness was excused.)

8 MR. BARNETTE: Your Honor, the state would like to
9 call Mary Ann Boehm to the stand at this time.

10 MARY ANN BOEHM, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q If you would, ma'am, please state your full name for
14 the record.

15 A Mary Ann Elizabeth Boehm.

16 Q Where do you work at, ma'am?

17 A The South Carolina Law Enforcement, commonly known as
18 SLED.

19 Q And what's your position there, ma'am?

20 A I am a D.N.A. analyst in the D.N.A. casework section.

21 Q And how long have you been there, ma'am?

22 A Approximately seven and a half years.

23 Q And could tell the jury a little bit about your
24 education?

25 A Yes. I received a bachelor of science in integrated

Mary Ann Boehm
Direct examination by Mr. Barnette

1 science and technology with a concentration in
2 biotechnology from [Doe] Madison University in
3 Harrisonburg, Virginia.

4 Q And did you go to SLED and receive additional training
5 concerning your D.N.A.?

6 A I did. Upon employment at SLED I was trained for
7 approximately a year by a court qualified analyst on the
8 proper techniques and methods used in our laboratory.

9 Q And did you do numerous testings in that lab?

10 A Yes.

11 Q And how many times have you been qualified as a D.N.A.
12 expert in state court?

13 A Approximately 33 times.

14 MR. BARNETTE: Your Honor, I would move her as an
15 expert D.N.A. testing at this time.

16 MR. ALLEN: No objection.

17 THE COURT: She is so qualified.

18 Q Ma'am, did you receive several items concerning this
19 case involving Deputy [John Doe] here in Spartanburg
20 County?

21 A Yes, sir.

22 Q And several of these items did you receive actually
23 from Melissa Skipper, through Melissa Skipper, some of the
24 items? And some of the items did you receive from Jan
25 Bryson?

Mary Ann Boehm
Direct examination by Mr. Barnette

1 A That is correct, sir.

2 Q Okay. Did you prepare a report concerning your
3 analysis on this?

4 A Yes, sir.

5 MR. BARNETTE: May I approach the witness, Your Honor,
6 and show her State's Exhibit 187?

7 A This is a copy of my report.

8 MR. BARNETTE: Your Honor, I'd like to enter State's
9 Exhibit 187 into evidence at this time.

10 MR. ALLEN: Your Honor, we object to the report and to
11 the testimony of the D.N.A. based on the earlier pretrial
12 motion that was made in connection with --

13 THE COURT: Note your exception. It's admitted.

14 MR. ALLEN: Thank you.

15 MR. BARNETTE: Thank you, Your Honor.

16 (SLED report marked State's Exhibit No. 187.)

17 MR. BARNETTE: May I publish this to the jury?

18 THE COURT: You may.

19 Q In your report, ma'am -- and this is -- these are the
20 state's exhibits we've already entered in here. State's
21 Exhibit 40, which is actually SLED No. 40, same number, the
22 buccal swab, did you receive one from John Doe the
23 victim in this case?

24 A Yes, sir, I did.

25 Q And did you also -- State's Exhibit No. 43, which I

Mary Ann Boehm
Direct examination by Mr. Barnette

1 think Officer Talanges just testified to -- did you receive
2 a buccal swab from Robert Odell Brown?

3 A Yes, sir.

4 Q And did you receive several items from the crime
5 scenes themselves?

6 A Yes, I did.

7 Q And the first one is 12.1, which is a swab from marker
8 "B", is that correct?

9 A That's correct.

10 Q And then they all -- I believe those items was shown
11 in the pictures and so forth. The actual markers, they
12 were found from the crime scene. That's what you put in
13 your report.

14 A Yes, sir.

15 Q And also No. 18 was a swab from just inside the shop
16 at [REDACTED]

17 A Yes, sir.

18 Q No. 19 was a swab from the steering wheel of the
19 Cadillac.

20 A Yes, sir.

21 Q And 21 was a swab from the straw in the McDonald's
22 cup, center console of the Pontiac Grand Prix.

23 A Yes, sir.

24 Q And then you received cuttings I believe from
25 Ms. Bryson from the -- it's 24.1 and 24.5, cuttings from

Mary Ann Boehm
Direct examination by Mr. Barnette

1 the towel and the sheet.

2 A Yes. Items 24.1 and 25.1.

3 Q Excuse me. I apologize. Thanks for correcting me.

4 And did you receive cuttings from -- I believe it's 37,
5 38, the stuff that we received from Virginia, the white
6 t-shirt, the sweatpants, tank tee -- t-shirt, a pair of
7 socks, and a cutting from the suite -- I guess actually the
8 cuttings was done by Ms. Bryson at SLED.

9 A That's correct.

10 Q And did you perform serology on that to check to see
11 if blood was present on those items?

12 A I performed serology on some of the items. The swabs
13 from the markers from the crime scene, and swabs from the
14 doorway of shop at [REDACTED] and swabs from the
15 steering wheel of the Cadillac.

16 The other items -- the cuttings I got from Jan Bryson.
17 She did the serology testing on it, so there was no need
18 for me to.

19 Q And it did test positive for blood.

20 A Yes. Blood was indicated.

21 Q Now, the first items -- the markers 12, 13, 14, 15 and
22 16 and 17 -- did that -- who did that match?

23 A The D.N.A. profile evolved from those items matches
24 the D.N.A. profile of [REDACTED] John Doe

25 Q And that was in the amount of one to 70 quadrillion?

Mary Ann Boehm
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q Okay. And that's how many times the population of the
3 world? I think the world is how many people?

4 A The world is approximately 7 billion people, and
5 that's approximately 1 million times the world's
6 population.

7 Q Okay. Now, the -- and of course those is the -- going
8 back to that, that was the markers found "B" through "G" at
9 the crime scene.

10 A Yes, sir.

11 Q Now, the items from the shop -- the Cadillac, the
12 Grand Prix, Delmar, which is 18, 19, 20, 21, 24.1, 25.1 and
13 38.1 and 38.2 and 38.3.1 and 38.4.1, did those match
14 somebody?

15 A Those match the D.N.A. profile of Robert Odell Brown.

16 Q And what was the odds that that matched him?

17 A One in 2 quintillion.

18 Q Okay. And what is that compared to the population of
19 the world?

20 A Approximately a billion times the world's population.

21 Q If you would, ma'am, write that number for me on that
22 so I can present it to the jury.

23 A Which number?

24 Q The second number of Mr. Brown's.

25 (Pause.)

Mary Ann Boehm
Direct examination by Mr. Barnette

1 Q Is that that number that you have written down on
2 this, ma'am?

3 A That's 2 quintillion.

4 MR. BARNETTE: Your Honor, I'd like to present that to
5 the jury at this time.

6 THE COURT: Okay.

7 Q So it's one out of that number that this is Mr. Brown.

8 A Yes, sir.

9 Q And would you say that was a match to Mr. Brown, the
10 items that you tested?

11 A Yes, sir.

12 Q And also Item 21, which is the straw from McDonald's
13 cup, and Item 37.1, which is from the white t-shirt from
14 Virginia, those also match the profile of Robert Odell
15 Brown?

16 A Yes, sir.

17 Q And then Item 20, which is swabs from the steering
18 wheel of the black Grand Prix, was that a mixture of that?

19 A Yes. That is a mixture of at least three individuals.

20 Q And obviously he could be a contributor to, but
21 obviously odds aren't as great with the mixture being
22 there.

23 A That is correct.

24 Q And then John Doe was eliminated, excluded from that
25 item.

Mary Ann Boehm
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And obviously the other items match Mr. Brown.

3 A Yes, sir.

4 Q Just to show the jury this example, I'm going to show
5 State's Exhibit No. 19. And this is also State's No. 19.
6 And that is also Item 19 from your SLED report, is that
7 correct?

8 A That is correct.

9 Q And that was -- came from the steering wheel of the
10 red vehicle, which was the Cadillac. And that would be the
11 same item -- let me let you look at it -- that you tested.

12 A Yes, sir. My initial and the date are on the seal.

13 MR. BARNETTE: Showing State's Exhibit 19 again to the
14 jury.

15 Q This here is your initial and seal concerning that,
16 ma'am?

17 A Yes, sir.

18 Q So that Item 19 that came from the red Cadillac,
19 No. 19, matches up with Robert Odell Brown.

20 A That's correct.

21 Q And of course we could go through each item. I'm not
22 going to do that, but like 18 would match up that they
23 collected the swab from inside the doorway shop of Kimberly
24 Drive, 107. That would be 18 of this also.

25 A That's correct.

Mary Ann Boehm
Cross-examination by Mr. Allen

1 Q And that -- those numbers follow where those items was
2 collected.

3 A Yes, sir.

4 Q So if the jury looked at these items that would match
5 up with these items on the report.

6 A Yes, sir. They would.

7 MR. BARNETTE: One moment, Your Honor, please.

8 (Pause.)

9 Q Please answer any questions Mr. Allen may have for
10 you, ma'am.

11 CROSS-EXAMINATION

12 BY MR. ALLEN

13 Q The -- there was one item that you tested called swabs
14 from the steering wheel of the Pontiac Grand Prix, is that
15 right?

16 A That is one of the items that tested.

17 Q You said that was a mixture of at least three people.

18 A Yes, sir.

19 Q Now, you said of course Mr. Doe was excluded --

20 A Yes, sir.

21 Q -- which means it was not -- you did not detect his
22 D.N.A. in that, correct?

23 A That is correct.

24 Q And you said that Mr. Brown could not be excluded.

25 A That's correct.

Mary Ann Boehm
Cross-examination by Mr. Allen

1 Q But you're not necessarily saying that he is included
2 either, are you?

3 A That's the wording we use when we can't exclude
4 someone. Because it is a mixture, we can't just match it
5 to a single person. He can't be excluded from the mixture.

6 Q What you do when you do D.N.A. testing, as I
7 understand it, you test certain portions in a D.N.A.
8 strand, correct?

9 A That is correct.

10 Q And there are how many alleles or how many -- are they
11 called alleles, or what are you testing?

12 A We test 15 different locations.

13 Q All right. Fifteen locations. And they're listed
14 here on pages three and four of your report, correct?

15 A That is correct.

16 Q And you give them numbers, correct?

17 A Well, I don't give them the numbers. That's the
18 results, are those numbers.

19 Q Results are the numbers.

20 A Yes, sir.

21 Q But-and once you get a mixture, of course you can't
22 tell who provided what, what number, is that correct?

23 A Right. Sometimes you can if there's a major
24 contributor where -- meaning where someone contributed more
25 D.N.A. than the other people. But in this circumstance,

Mary Ann Boehm
Cross-examination by Mr. Allen

1 no, there was no way of telling.

2 Q And once you determine the number you can't
3 distinguish between the same number but from different
4 people. For example, looking at the samples from Mr. Doe
5 and Mr. Brown, you've got a 29 in that second column for
6 both individuals, right?

7 A Yes.

8 Q And-but once -- I mean, you can't distinguish one 29
9 from the other, correct, when you're looking at that
10 column?

11 A When I'm looking at the known standards or the
12 mixture?

13 Q When you're looking at any mixture you can't tell if
14 -- when you're looking at a mixture, for example, you can't
15 tell one number from the other as far as who contributed.

16 A Right, or multiple people could have contributed that
17 same -- to that same number too.

18 Q Right. And you're looking at 15 locations in the
19 D.N.A. strand?

20 A Yes, sir.

21 Q And how many locations are there in a D.N.A. molecule?

22 A Thousands.

23 Q Thousands?

24 A Yes, sir.

25 Q And you're looking at 15.

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 A Yes.

2 Q Thank you.

3 MR. ALLEN: One second, please, Your Honor.

4 (Pause.)

5 Q Thank you.

6 MR. BARNETTE: No further questions of this witness,

7 Your Honor.

8 THE COURT: You may step down.

9 MR. BARNETTE: We would ask for her to be excused,

10 Your Honor.

11 THE COURT: She may be.

12 (Whereupon, the witness was excused.)

13 MR. BARNETTE: Your Honor, the state would call

14 Trooper Dean Horton.

15 RONNIE DEAN HORTON, having

16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BARNETTE

18 Q If you would, sir, please state your full name for the
19 record.

20 A Ronnie Dean Horton.

21 Q And where do you to work at, sir?

22 A The Virginia state police.

23 Q And what's your position there, sir?

24 A I'm a senior trooper.

25 Q And how long have you been with the Virginia state

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 police?

2 A Going on 16 years.

3 Q Back on November 7th, that morning, of 2011 was you
4 called or notified about a situation involving a possible
5 suspect in y'all's jurisdiction?

6 A Yes.

7 Q And was that suspect a suspect in shooting a sheriff's
8 deputy here in Spartanburg County?

9 A Yes. That's what we was notified of.

10 Q If you would, tell the jury. Once you received the
11 call, what did you do?

12 A I was at the area office which is located in Carroll
13 County, Virginia, which is my jurisdiction. We got a
14 regular broadcast of that. I responded to the location.

15 At that time they were at Route 52, which is in the
16 town of Hillsville, Virginia. That's approximately around
17 12 miles from where I was at, and I started responding to
18 the -- to the location.

19 Q And when you arrived there, would you tell the jury
20 what happened?

21 A I arrived -- actually the -- we got other radio
22 broadcast from -- from my dispatcher to state that the
23 suspect vehicle was going northbound on Route 52 out of
24 Hillsville.

25 I cut up 77 northbound, which is there in the county

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 on exit 14, and responded and got off at exit 19. I
2 responded a few miles to Route 52 and Route 620
3 intersection. There's a store there, a mom-and-pop store.
4 I waited in the parking lot.

5 At that time I had radio transmission from my other
6 unit. Trooper Blackburn that was working with me at the
7 time, he was behind the suspect vehicle giving me a play by
8 play coming towards me at that time.

9 Q And if you would, tell the jury what happened next.

10 A Approximately a few minutes after setting there
11 waiting they proceeded past my location. I observed the
12 description of the suspect vehicle which was given out to
13 me on the radio as a red -- a Chevrolet Impala, dark tinted
14 windows, at which time I did observe it pass by my
15 location. A couple of our trooper units were behind it and
16 ended up being one -- the couple of South Carolina
17 detectives that was in their unmarked Impala also.

18 Went down just a few hundred yards. There's a
19 intersection called Ridge Road which is right off the Route
20 52 main road.

21 Trooper Blackburn was the first unit there. I
22 observed him initiate his blue lights, at which time I did.
23 Other units that were behind him initiated their blue
24 lights on their vehicles. And the vehicle made a right
25 turn onto Ridge Road, which is kind of an elevated section

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 of that road, and stopped.

2 Trooper Blackburn got over on the left side, which
3 would be more to the driver's side of the vehicle. I
4 positioned my car almost directly, kind of angled towards
5 the driver's side and the rear of the vehicle.

6 The other two units that were there at the time were
7 on the right side more, the passenger side of the vehicle.

8 Q And do you have a video camera in your car, sir?

9 A Yes, I do.

10 Q And let me show you what's been marked State's
11 Exhibit 185. Is this a fair representation of what
12 happened that day and what happened afterwards also?

13 A Yes, it is.

14 Q Okay.

15 MR. BARNETTE: Your Honor, I'd like to enter this into
16 evidence at this time.

17 MR. ALLEN: Object based on my pretrial motion, Your
18 Honor.

19 THE COURT: It's admitted over objection.

20 (Video marked State's Exhibit No. 185.)

21 MR. BARNETTE: Your Honor, I'd like to go and publish
22 it to the jury. And that way it'll speak for itself and
23 any other question I may ask after it's played.

24 (Pause.)

25 Q while that's loading up, when y'all made the stop and

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 everything, what happened right before the chase began?

2 A We done what we call a high-risk stop, the known facts
3 that we had at the time of this being a suspect vehicle
4 that was involved in an officer shooting in South Carolina.
5 We conducted it as a high-risk stop, which means we have
6 other units behind the vehicle. We try to pick a good
7 location, which we did.

8 After the vehicle stopped we immediately -- Trooper
9 Blackburn was the first initiating trooper. He started
10 giving commands to -- to inside the occupants of the
11 vehicle, to come out. Identified ourself and asked them to
12 step out one by one starting with the driver, to exit the
13 vehicle and come back to the vehicle.

14 Q We'll go ahead and start there, and we'll come back to
15 that.

16 (Whereupon, the video was started to be played for the
17 jury.)

18 Q Is this related to the case, sir?

19 A Yes. This is when I testified earlier that I was
20 waiting on the vehicle. At that time it was approaching
21 Route 52 North to my location. I was waiting on the
22 vehicle to come towards my location with the other units
23 behind it. So it's a few minutes before they approached.

24 Q What are you doing now, sir?

25 A I'm trying to catch to the other officers. At this

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 time he's initiating the traffic stop, the trooper that was
2 directly behind the suspect vehicle. And this is the
3 location at Ridge Road right off of Route 52.

4 Q Is that the red Impala that is stopped?

5 A Yes.

6 Q What's going on now, sir?

7 A The trooper that you can see, his left front vehicle
8 there on that side is giving voice commands to the driver
9 to exit the vehicle and come back walking backwards towards
10 us facing the car.

11 Q And this is the female that was driving?

12 A Yes.

13 Q Did you see her in court here earlier today?

14 A Yes, I did.

15 Q Is that Crystal Lovett that testified?

16 A Yes.

17 Q That was her.

18 A At this point I took over, and I'm giving her voice
19 commands to come back to my driver's side of the vehicle to
20 secure her. The other trooper is giving voice commands to
21 the other occupants inside.

22 Q What's going on now, sir?

23 A The second occupant that we saw is coming out of the
24 vehicle, is the black male that was coming out.

25 The other trooper and other local officers are on the

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 right side out of the picture frame, but they're giving him
2 voice commands.

3 The other trooper on the left side now is giving voice
4 commands to a possible suspect, which you see the brake
5 lights come on which indicated to me right off that there's
6 somebody else inside the vehicle.

7 And as you see, it's taking off now. I tell everybody
8 I've got the vehicle. So I jump in my vehicle. I'm the
9 first one to get in the vehicle. And now I'm giving chase.
10 There is one of the school buses that we pass. It's around
11 that time of the morning when children are being picked up.
12 I had my blue lights and a siren at this time initiated.

13 Q How fast were you approximately going, sir?

14 A I don't recollect, but it is a small 2-lane, unmarked
15 road as you can see. Very curvy. But it's definitely too
16 fast for that road.

17 At this point I was giving the tag number to my
18 dispatcher over the radio, and other units were trying to
19 coordinate where we were heading to, and I was trying to
20 coordinate where I thought we may be ending up going.

21 Q And where is he at on the road now?

22 A This is Ridge Road. He should be getting close to the
23 other road, Round Knob, that turns left. It's a gravel
24 road it turns into.

25 Q So basically what you wind up doing is just completing

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 a big circle.

2 A Yes. This is basically a big circle, is what we're
3 making right now. We're going away from the location that
4 we made the stop. But here when he turns left on the
5 gravel road, is it's heading back to our location.

6 Q There is sound on this. It's just not playing for
7 whatever reason for right now. Isn't there?

8 A This is the road, Round Knob Road, he turns on.

9 Q And this is a gravel road?

10 A Yes. It's actually now heading back to Route 52.

11 Q And where is he at right -- did he go in the ditch
12 several times?

13 A Yeah. He went into the ditch on the left side. At
14 this point I thought maybe it would disable, but it kept
15 going.

16 There's other units behind me also, and I'm telling
17 them to use caution.

18 At this point I see -- observed his left front tire is
19 flat from the accident where he hit the bank.

20 Right in here is where I'm notifying my supervisor
21 that's on the scene of the starting location that we were
22 at. At this point I'm notifying him that we possibly may
23 be coming back towards him.

24 And he's at the scene now with a couple of other units
25 and got the road secure.

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 That's a stop-sign intersection. Comes back. He's
2 made a left on Route 52. That's actually southbound. And
3 now we're going back towards the location of the original
4 traffic stop. As you can see, debris and stuff is coming
5 from out from under his vehicle from where he's got a blown
6 tire.

7 At this point I do remember we was going around
8 40 miles an hour, at this point.

9 Q That's probably because of the tire situation?

10 A Yes. He was having a hard time controlling it.

11 Q In the meantime are you getting notified about
12 anything of --

13 A Yes. I'm notifying my sergeant that's on -- with
14 communication on the radio, and I'm telling them the
15 situation that we're coming back towards them. And he's
16 telling there's a lot of traffic at that intersection where
17 they're at.

18 Here in this curve is where I get notified that there
19 is a bus that's up there, and it's for the safety. The
20 sergeant gives me a command on the radio to try to -- for
21 public safety to try to get him off the road.

22 This curve here is where he gives me the command,
23 there, due to public safety. And you'll see my vehicle
24 here in just a minute try to go around the left side.
25 There's a trooper behind me for push bumper. We was going

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 to try to contain the vehicle and slow it down before it
2 gets around the next curve. But he makes contact with me
3 trying to push me over to the left as you see my car going
4 over almost an embankment.

5 The other trooper on the right comes over with his
6 push bumper, does a maneuver there, makes him lose control.
7 We collide.

8 At this point he's still putting it in reverse.
9 You'll see the vehicle going backwards spinning. You see
10 the smoke. There is shots fired from another law
11 enforcement unit that's behind me.

12 I go ahead and make a decision to ram him again,
13 contain them into -- between my car and that embankment.
14 There is what I did on that maneuver to keep him from going
15 anywhere else.

16 Q And also you had troopers in the intersection --

17 A Yes. That's --

18 Q -- at that time.

19 A Yes. That's my sergeant's car there. And there's
20 other -- a couple of other units that you can't see in the
21 picture.

22 Q During this time. Okay.

23 (Whereupon, the video was completed.)

24 Q Afterwards did the defendant voluntarily come out of
25 the car?

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 A No.

2 Q What steps had to be taken to get him out of the car?

3 A It was approximately around 18 minutes that we stood
4 there and -- behind our vehicles using as cover making
5 verbal commands -- state police, you know, let's see your
6 hands, come out of the vehicle. I made a couple of verbal
7 commands myself.

8 I was in the proximity between my car and his car,
9 between the "V" shape that it made telling him to come out,
10 don't make it any worse.

11 Never seen any response. No, no verbal from the
12 vehicle or anything.

13 My sergeant made a maneuver, which his car, as you
14 see, was that one. He went up that embankment and went
15 around where he could see down inside the vehicle from the
16 top. He could see a man laying in the front seat and then
17 get back into the back seat. This went on for about 18
18 minutes. We tried to have other units respond, and the
19 supervisors had them coming.

20 Finally, an object was thrown, and we went back to the
21 windshield to give us a clear view to see if we could see
22 anything in the vehicle because the vehicle did have dark
23 tinted windows all the way around. We couldn't see inside
24 the vehicle due to the tinted windows.

25 And at that point a couple of the local sheriff's

Ronnie Dean Horton
Direct examination by Mr. Barnette

1 office deputies came to the scene with a shotgun. It was
2 loaded with Ferret rounds, which is C.S. gas, and fired a
3 couple of rounds into the rear -- the rear of the window.

4 Q Is that like teargas?

5 A Yes, teargas.

6 And immediately the driver's door came open upon the
7 fumes, the gas, coming. You could actually -- it got into
8 our lungs also and started making us cough a little.

9 And at that point the driver's door came open and he
10 crawled out head first. And we all went around and secured
11 him.

12 Q Do you see the individual that y'all took in custody
13 that day?

14 A Yes.

15 Q Could you identify him here in court, please?

16 A Yes. He's sitting there in the blue-collared shirt
17 with the tie.

18 MR. BARNETTE: Your Honor, I would like the record
19 reflect he has identified the defendant.

20 THE COURT: It shall.

21 Q Showing you picture 154. It's already entered into
22 evidence. Sir, is that the car that you chased that day?

23 A Yes, sir, it is.

24 Q And is that your vehicle behind it?

25 A Yes, it is.

Ronnie Dean Horton
Cross-examination by Mr. Allen

1 MR. BARNETTE: Your Honor, just permission. I'm just
2 going to show it to them instead of switching.

3 One moment, Your Honor, please.

4 (Pause.)

5 Q Please answer any questions Mr. Allen may have for
6 you, sir.

7 CROSS-EXAMINATION

8 BY MR. ALLEN

9 Q When arresting Mr. Brown of course you or officers
10 frisked him and checked for weapons, correct?

11 A I was not in on that at the time.

12 Q Did you see it?

13 A Not when securing it, no.

14 Q Okay. What about the -- you're not aware. I mean,
15 there's no weapons found on him, correct --

16 A Correct.

17 Q -- or in the car?

18 A Correct.

19 Q At one point when you were -- when the officers were
20 getting out Ms. -- Mr. Freeman had them walk back.

21 A Yes.

22 Q Correct?

23 A Yes.

24 Q Officers asked one or both of them if there were
25 weapons in the car, correct?

Ronnie Dean Horton
Cross-examination by Mr. Allen

1 A Yes.

2 Q And they -- and the person responded no.

3 A That was actually me that -- Ms. Lovett that was the
4 driver. When she came back I was the first one to put
5 hands on her to secure her.

6 Q Right.

7 A And I did ask her that if there's any -- any weapons
8 on her or any in the vehicle. She said no.

9 Q And you said sure. And she apparently indicated she
10 was sure, right?

11 A Right.

12 MR. ALLEN: Nothing further, Your Honor.

13 MR. BARNETTE: Your Honor, we would ask for the
14 witness to be excused.

15 THE COURT: He may be.

16 (Whereupon, the witness was excused.)

17 THE COURT: We'll take a break. I'll ask the jury to
18 please go to your jury room. Do not discuss the case. I
19 will bring you back shortly.

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

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

23 (Whereupon, a recess was taken.)

24 THE COURT: All right. Mr. Barnette does the state
25 intend to offer any additional evidence?

1 MR. BARNETTE: No, sir. The state's going to rest.

2 THE COURT: All right. Mr. Allen, does the defense
3 intend to present any evidence?

4 MR. ALLEN: No, Your Honor, we do not.

5 Do you want to hear our -- before we formally rest do
6 you want to hear my motions for a directed verdict at the
7 conclusion of the state's case?

8 THE COURT: I will. I will, sure.

9 MR. ALLEN: Your Honor, if it please the Court.

10 We move for a directed verdict as to all charges based
11 on the pretrial motions and the objections which I've made
12 and stated the grounds for throughout the course of this
13 trial.

14 Furthermore, also concerning the motion for a mistrial
15 that was made during the first witness on Monday -- excuse
16 me. That was on Tuesday. And also in addition to that in
17 connection with the indictment for the resisting arrest I
18 move for a directed verdict on the grounds that -- pursuant
19 to State vs. Ricky Brannon, a case out of Cherokee County.

20 Solicitor advises me he has a copy, and I've handed up
21 to the Court. In that -- in that particular case where a
22 defendant was fleeing and an officer did not advise the
23 individual he was under arrest that -- nor that the
24 individual was submitting to an arrest, that that did not
25 amount to a resisting arrest as I read the case.

1 We hear clearly on the video showing the -- basically
2 a chase, and also listening to the audio, Mr. Doe never,
3 or Deputy Doe never, advised him that he was under
4 arrest, never told him to stop, that he was under arrest.
5 Told him to stop or get down, words to that effect, but
6 never told him that he was under arrest, nor was there any
7 evidence indicated that the defendant was submitting to an
8 arrest.

9 Therefore, I believe under State vs. Ricky Brannon,
10 which is at 697 S.C. 2d. 593, that this case -- that the
11 state has failed to show the necessary element to make out
12 his case of resisting arrest and will ask that in -- that
13 the other grounds stated, as well as this ground for the
14 resisting arrest, that the indictments be -- that the Court
15 direct a verdict of not guilty at this time.

16 THE COURT: All right. Mr. Barnette.

17 MR. BARNETTE: Your Honor, I am familiar with State
18 vs. Brannon. Obviously, it came out of our circuit.

19 I think this is a completely different situation, what
20 we're dealing with in our case here against Mr. Brown.

21 If you look at Brannon, Your Honor, basically this
22 happened in Cherokee County. They received a call, law
23 enforcement did, about breaking into a motor vehicle. They
24 arrived there. An individual ran. They yelled at him and
25 told him to stop, the police basically to tell him to stop.

1 They did catch him. They arrested him on the spot.

2 This is completely different. Our fact situation is
3 completely different. Here's a situation you have a
4 failure to blue-light. Individual runs out of the car when
5 already the officer has seen it. He's already failed to
6 stop for a blue light.

7 He jumps over two fences. The officer gets to him.
8 And I think you can hear the tape also. Basically, tried
9 to put hands on him, tried to tell him, you know. And
10 basically he says I'm going to hit you with the flashlight
11 if you don't get down right now or whatever.

12 He's got hands on him. The guy's, yeah, I'm going
13 down, I'm going down. He's complying. He's placing him
14 under arrest.

15 I think I asked the question specifically of Deputy
16 [Doe] was you placing him under arrest for failure to stop.
17 "Yes, I was."

18 And from his actions -- and he was cowering down at
19 the time. He pulled the weapon and shot Deputy [Doe] in
20 the face. If that's not resisting arrest in that
21 situation, there's no question the individual knows he's
22 under arrest. No question. I know they keep saying about
23 you got to say he's under arrest. That's all the case law
24 says.

25 In Brannon both times in the Court of Appeals -- it

1 was a two-in-one case. In the Supreme Court it was a
2 three-to-two case. But basically there probable cause --
3 basically -- let me find that.

4 It's a situation. It's not just from words or
5 actions. It's the circumstances on each case. And there's
6 no question the circumstances of this case, that the
7 individual had to know that he was being placed under
8 arrest.

9 The officer went after him and actually grabbed him
10 and even saw. The offense occurred in front of him. And
11 when he touches him, like I said, he was pushing. The
12 defendant was pushing him off. And he was telling him you
13 need to get down, I'll hit you with wish my flashlight.
14 And the guy basically says, yes, sir, I'm getting down, I'm
15 getting down. And that's basically when he pulls. And
16 then you hear the blast.

17 At that point he has to know he's being placed under
18 arrest. The officer has placed hands on him telling him to
19 comply with his orders. He is being confined at that
20 point.

21 To me the factual situation is different than from
22 Brannon, and plus if you look at -- I believe this would
23 fall in the area where they're arguing that he would be
24 being placed under arrest.

25 If you read in State vs. Brannon, especially in the

1 Court of Appeals' case, "no arrest procedure occurred."
2 And this is actually on page -- I don't know which. It's
3 on page seven, lines or footnote 28. "No arrest procedure
4 occurred at the time of the defendant's resistance to
5 arrest by fleeing the officers. When the defendant saw the
6 officers approaching he turned and fled. He chose to
7 ignore the officer's command to stop and continued the
8 flight. He had not been needly [sic] physically touched
9 for the purpose of restraining nor submitted to show the
10 authority at the time of his flight."

11 Our case is totally different from that. Our case is
12 where he actually does lay hands on him. It's telling him
13 to get down, I'm going to hit you with the flashlight and
14 so forth.

15 To me that I think the resisting-arrest law with the
16 deadly weapon applies. Obviously, a deadly weapon was used
17 during this resisting to show. Obviously, a shotgun blast
18 from revolver, a similar type gun was used, and resisting
19 arrest of Deputy John Doe in this situation.

20 THE COURT: All right. Well, there is sufficient
21 evidence to establish an arrest, or at least an attempt to
22 take a person in custody, and his resistance and use of a
23 deadly weapon. So your motion for a directed verdict is
24 denied.

25 Others?

1 MR. ALLEN: No additional motions for a directed
2 verdict other than, as I stated before, as I previously
3 stated them.

4 Was the Court addressing only that one indictment
5 or --

6 THE COURT: Well, yes. I was just referring to a
7 resisting. You --

8 MR. ALLEN: Well, I have a motion for a directed
9 verdict as to all of the indictments based specifically on
10 my pretrial motions that were ruled against the defendant
11 and the pretrial motions concerning the search warrants of
12 both the vehicles and the blood swab and the admission and
13 motion in limine as to the admission of the video from
14 Virginia, as well as my motion for a directed -- excuse
15 me -- my motion for a mistrial that I made during the first
16 witness. And that's -- that motion and the basis for that
17 goes to all three indictments.

18 THE COURT: All right. That motion for a directed
19 verdict is also denied.

20 MR. ALLEN: Yes, sir.

21 THE COURT: Have you talked to Mr. Brannon about his
22 right to testify?

23 MR. ALLEN: I have, Your Honor.

24 THE COURT: Has he indicated to you a preference?

25 MR. ALLEN: He has.

1 (Bench conference held off the record.)

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

4 I'll see the lawyers in chambers to discuss jury
5 instruction requests.

6 END OF PROCEEDINGS JUNE 19, 2013

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1 (Proceedings June 20, 2013)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters we need to address
5 before we bring the jury in?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. ALLEN: Your Honor, I believe --

8 THE COURT: Mr. Allen.

9 MR. ALLEN: Thank you, Your Honor.

10 Your Honor, I believe yesterday at our charging
11 conference I asked the Court to specifically -- or to
12 charge specific intent to kill as required in the statute
13 of 16-3-29. Or at least 16-3-29 states that attempted
14 murder is with the intent to kill. One second, please.

15 (Pause.)

16 MR. ALLEN: I don't want to misquote the statute.

17 The offense of attempted murder is defined as assault
18 with -- with the intent to kill -- attempts to kill another
19 person with malice aforethought.

20 It's my view that even though this is a new statute
21 that this is not the same thing as what we formerly called
22 assault and battery with intent to kill, that it's -- and
23 the statute therefore requires a specific intent, that
24 being the specific intent to kill. It also requires malice
25 aforethought.

1 I know in the old cases concerning assault and battery
2 with intent to kill it sort of equated the intent to kill
3 with malice aforethought. But the old statute for assault
4 and battery with intent to kill did not include the
5 requirement of malice aforethought.

6 Consequently, under statutory construction where we
7 must give the words plain and ordinary meaning in the
8 course of the statute, and basically to read each section
9 of the statute to give it some meaning, I believe that the
10 statute of attempted murder requires a specific intent to
11 kill, and I ask the Court to so charge.

12 THE COURT: All right. Mr. Barnette, do you wish to
13 be heard?

14 MR. BARNETTE: Your Honor, I'll do whatever the Court
15 decides to do on that matter from that standpoint.

16 THE COURT: All right. Well, the crime of assault and
17 battery with intent to kill seems to require a specific
18 intent to kill, the old crime, the common law crime of
19 assault and battery with intent to kill.

20 And that's what initially the Supreme Court found,
21 that it required a specific intent to kill. But as case
22 law developed that was changed. And both the Court of
23 Appeals and the Supreme Court have determined or did
24 determine that assault and battery with intent to kill did
25 not require a specific intent to kill but simply required

1 malice aforethought. And that's what's been required for
2 years.

3 This is a new statute. It does appear to require a
4 specific intent to kill. However, it's a conflation of
5 the crime of assault and battery with the old crime of
6 assault and battery with intent to kill. That appears to
7 be what the legislature was accomplishing when they passed
8 this new statute.

9 And so while it does say a person who with intent to
10 kill attempts to kill another person with malice
11 aforethought, that generally was what initially was
12 required to prove the crime of assault and battery with
13 intent to kill. And the courts later said that a specific
14 intent to kill was not, in fact, required.

15 And it doesn't -- since this is a crime of attempted
16 murder it doesn't make sense to me, and I think the law
17 intends to make sense. It doesn't make any sense that if
18 the defendant committed the crime of murder a specific
19 intent would not be required to be shown but if he commits
20 the crime of attempted murder a specific intent would be
21 required. And that's just not logical.

22 So I think the courts would find the same mens rae
23 requirement for assault -- attempted murder as it requires
24 for murder, and that is simply a general criminal intent
25 accompanied by malice aforethought.

1 So based upon my understanding of what the law is
2 based upon our appellate court review I find that the crime
3 of attempted murder does not require a specific intent to
4 kill, and so I decline your request.

5 Any others?

6 MR. ALLEN: Your Honor, I believe we discussed your
7 charge of a lesser included offense of assault and battery
8 of a high and aggravated nature under section 16-3-600(b),
9 and we request that charge as well.

10 THE COURT: You request a charge on the lesser
11 included offense of aggravated assault and battery?

12 MR. ALLEN: Yes, Your Honor.

13 THE COURT: All right. What's the state's position,
14 Mr. Barnette?

15 MR. BARNETTE: Your Honor, at a pretrial conference we
16 talked about that. I think the way the statute is written
17 now, and the past case law, I think that the Court has to
18 do it in this situation. I don't like it, but I think to
19 protect the record, I think it will be appropriate.

20 THE COURT: You think it's appropriate?

21 MR. BARNETTE: Yes, sir.

22 THE COURT: All right. I'll instruct the jury on the
23 lesser included offense of aggravated assault and battery.

24 MR. BARNETTE: And that's one reason we added the --
25 obviously, the injuries to Deputy Doe Jones and the great

1 bodily injury that was done to him, to cover, make sure
2 that was covered later on in the charges.

3 THE COURT: Okay.

4 MR. ALLEN: Furthermore, Your Honor, there is a charge
5 that has been used with the old assault and battery with
6 intent to kill and the old assault and battery of a high
7 and aggravated nature indicating that while malice
8 aforethought is a -- is an element of the offense of one
9 and not the -- not an element of the other, but malice
10 aforethought may be present in assault and battery of a
11 high and aggravated nature. In other words, malice
12 aforethought is not the distinguishing factor between the
13 two. And we ask the Court to so charge the jury using that
14 charge as well.

15 THE COURT: And I would instruct them as to what, now?
16 I'm not sure I understand you.

17 MR. ALLEN: That there may be malice even though --
18 that there may be malice -- one may be guilty of assault
19 and battery of a high and aggravated nature even though
20 malice is present and that malice is not the distinguishing
21 factor between attempted murder and malice and assault and
22 battery of a high and aggravated nature.

23 THE COURT: Well, okay. I'll address that if the jury
24 has a question about that, but I intend to simply instruct
25 them on the law as it relates to the crime of attempted

1 murder and the law as it relates to the crime of assault
2 and battery of a high and aggravated nature and the
3 elements that constitute that crime.

4 If there is some confusion on that or question about
5 whether or not malice is a requirement or the lack of
6 malice needs to be shown, then I'll address that issue with
7 them.

8 But I think what you're asking me to do is going to
9 create confusion in the mind of the jury, and so I'm going
10 to decline the request at the present time. But if they
11 have a question about that or should they inquire about it,
12 then I'll be happy to entertain any suggestions that you
13 have as to how to make it more clear to them should that
14 become a question. Okay.

15 MR. ALLEN: Yes, Your Honor.

16 And we also ask the Court to charge the jury that if
17 they have no reason -- in considering the charges of
18 assault -- excuse me -- of attempted murder and assault and
19 battery of a high and aggravated nature, we ask the jury
20 [sic] to instruct that if they have no reasonable doubt
21 that the elements have been met as to the lesser charge but
22 a reasonable doubt as to whether all of the elements have
23 been met as to the greater charge they must resolve that
24 doubt in favor of the defendant and find him guilty only on
25 the lesser charge.

1 THE COURT: Mr. Barnette.

2 MR. BARNETTE: Your Honor, I would object to it
3 because King charge is not required by case law now, and I
4 think the jury can determine based off the evidence they
5 see and the facts they see, determine which one is
6 appropriate. And I think you will instruct them they have
7 to find guilt beyond a reasonable doubt for either offense.

8 THE COURT: Well, I'll instruct them on the fact that
9 they must resolve any reasonable doubt in favor of the
10 defendant, and that includes where they have no reasonable
11 doubt as to whether or not evidence in the case has proven
12 the greater or the lesser.

13 MR. ALLEN: Thank you, Your Honor.
14 No further requests to charge.

15 THE COURT: Okay. Any further requests by the state?

16 MR. BARNETTE: No, sir.

17 THE COURT: All right. Bring the jury in, please.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: Good morning, ladies and gentlemen.

21 As you know, when we recessed yesterday all of the
22 evidence had been received, and therefore what remains to
23 be done are the lawyers' final summations, after which I'll
24 provide you with the legal instruction, and then you'll
25 begin with your deliberations in the case.

Closing arguments

1 So I would ask that you please give the lawyers your
2 attention now as they give their final summations.

3 Mr. Barnette.

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

5 Ladies and gentlemen of the jury, you heard Ms. Poulos
6 tell you in opening when we first started this trial about
7 what we were going to show. And we have shown that to you.

8 Back on November the 6th of 2011 this man right here
9 started events, but he could easily just pulled over and
10 stopped. But he made the choice. He made the choice to
11 run from Deputy John Doe that night.

12 You saw the video. You saw when it first came on. He
13 was going at a high rate of speed. You could see his speed
14 in the corner of the video. Up -- he had to go up to
15 80 miles an hour to catch up with this defendant. And you
16 have -- it's a 25-mile-an-hour zone. No question he's
17 speeding on that road.

18 When you first see it you see him crossing the
19 double -- basically straddle -- the double yellow lines.
20 You see him keep on going, and you see the car keep on
21 going through the front yard of [REDACTED] as he
22 jumps out. And John Doe stops his car and gets out, and
23 everything starts piecing together.

24 The car he was in that night, you heard Crystal Lovett
25 say that's her car, that she had met him earlier in the

closing arguments

1 Li'L Cricket at 8:00 o'clock to give alcohol to him, or to
2 him. That she said that he was driving that car that
3 night.

4 His fingerprints, two sets of them, was found in the
5 driver's-side door of the car. Inside the car there's a
6 McDonald's cup where D.N.A. was taken off the straw of the
7 cup. And if you look closely -- and I'm going to show you
8 that -- there's drink still in that cup.

9 You heard Ms. Boehm talk about his D.N.A. that matched
10 to that defendant, the D.N.A. from that straw.

11 And you also see in the back what he had in the back
12 of the car. Remember what Ms. Lovett said, what he had
13 picked up from her.

14 And how with do we know it's Ms. Lovett's car? The
15 registration out of that car showed that was her car taken
16 by SLED that night.

17 You heard Deputy Doe chasing him. You heard him
18 order him to get down or he was going to hit him with the
19 flashlight. You heard this defendant saying, "No, man.
20 I'll get down. I'll get down." And then suddenly you hear
21 the blast. Point blank range shot him in the face.

22 God -- the only thing, God was on his side, because if
23 it'd been in-chambered more, this man wouldn't be here
24 today. We'd be trying a different type of case. Thank
25 God. God was with him that night.

Closing arguments

1 Attempt to murder. You've got to show malice. And I
2 can't imagine more malice than that, shooting somebody at
3 pointblank range. And imagine. He didn't stop there.
4 This man turns around to get away from him. And there's no
5 question he shoots him in the back side as he's trying to
6 get away from him.

7 He hasn't pulled his weapon at that time, Deputy Doe
8 hadn't. It's not until he gets knocked down on the ground
9 by the second blast. And he shot him three times. Not
10 once, not twice. Three times. To me if that's not trying
11 to kill somebody, I don't know what is. But he falls down.
12 And through his training he pulls his revolver and starts
13 spraying fire at the defendant. He does hit the defendant.
14 And then that begins the bloody trail that we had to
15 follow.

16 One thing I want to point out to you. The
17 flashlight -- and you'll have the diagram. It was done by
18 Ms. Skipper. The flashlight is found right beside the
19 fence where John Doe says he jumped over facing the
20 defendant. So everything pieces together from there.

21 You know the location in the driveway [REDACTED]
22 Drive because that's where Deputy Doe gear is left there
23 after they take him to the hospital.

24 But then the trail left by this defendant starts from
25 the driveway of 101 going all the way down to 107. And how

closing arguments

1 do we know that? You've got pictures where they marked the
2 bloody path that he's got.

3 You remember Ms. Skipper in this picture testified
4 about what the flags stand for, the bloody trail that they
5 followed.

6 Then you see the blood on the cars in front of [REDACTED]
7 [REDACTED]. Remember the blue one had blood on it.
8 And you'll have these pictures back there with you. You
9 have two cars arriving in front of [REDACTED] And
10 you remember blood on the front of the Cadillac that was
11 left there.

12 The reason I'm putting these pictures like this I
13 think you can actually see the blood better when you see
14 the actual pictures when you get them.

15 And you remember the video across the street at [REDACTED]
16 [REDACTED]? You remember seeing the individual coming
17 down that same path that we've been describing with blood.
18 And the description that Deputy Doe gave that night, man
19 wearing dreads, a white t-shirt and jeans. What did you
20 see? A man with dreads, a white t-shirt.

21 At that time he's carrying his pants. Remember he got
22 stuck on the fence with his pants. He must have took them
23 off. Maybe they were loose. He basically looks like he's
24 in boxers in the video. And I want you to see the video
25 here in a couple of minutes. But remember the walking

Closing arguments

1 path. continued following the blood which is going to be
2 followed all the way to Virginia. That's where the
3 defendant finally got stopped.

4 You remember the little building behind [REDACTED], sound
5 studio that's been talked about. And there's a gate right
6 there. And on that gate is more blood left by that
7 defendant.

8 And you'll see. And, like I say, we're going to see
9 the video again. I'm going to show you that video and show
10 you some things about it. You see on the video. You see
11 this defendant go up to that door and knock on it. And you
12 see the blood that was left on that door. You see the
13 blood that's left on the little wooden walkway up to the
14 door.

15 And in that doorframe D.N.A. sample was taken. The
16 D.N.A. is two quadrillion, I mean, quadrillion, one billion
17 times the number of people in this world. It is a match to
18 this defendant right there.

19 You see him go to the studio twice. And I can show
20 you numerous pictures. But obviously he went inside the
21 studio twice. You can see on the video he is bleeding
22 inside there, and that blood matches up to him. It's his
23 blood.

24 From there -- you remember what Mr. Miller said. He
25 came in. They keep talking about -- there's no question

Closing arguments

1 when you watch the video. And I'll go ahead and play that
2 now for you.

3 while she's putting that in I want you to look at a
4 couple of things I'm going to describe to you. Remember
5 Mr. Miller described when they heard the lights as D.J. saw
6 them. They go out looking for lights.

7 Then they hear a blast. They hear the gunshot blast
8 and everything. They run back into the house. You can see
9 the dog running away when he hears the blast. You can see
10 that in the video.

11 About shortly after that, seconds later, you see the
12 defendant come in. He's in his dreads. He's in his white
13 t-shirt. He's carrying his pants. And when he's carrying
14 his pants there's a black object. That's what I want you
15 to look at. There's a black object that's not part of the
16 pants that's in between the pants and his side.

17 The one thing Mr. Miller said, he said he carried it
18 on his side when he was testifying. I asked him about
19 pointing and everything, and he said on his side. When you
20 see the video, it's not part of the pants. Of course you
21 do see the blood. He was definitely shot in the shoulder
22 because you can see it on the video. And when he comes
23 back around you can start seeing. It's obviously dropping
24 off him.

25 we're going to try and show that to you right now.

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1 And keep those things in mind when you look at the video.
2 I want you -- and, like I said, this happens in seconds.
3 And you've seen the video I know before, but I just want
4 you to look at those things while you're watching the
5 video.

6 (Whereupon, the video was played for the jury.)

7 MR. BARNETTE: I tell you what. I'm going to go ahead
8 and go on. I apologize. I'll see if I can get the video
9 playing in a little bit.

10 You can go ahead and turn the lights back on.

11 And obviously you'll have these videos with you, so
12 you can look at them in the back room. But if you would
13 look for that black object right there, and you'll see the
14 blood on his shoulder from there, from that.

15 Remember he took a red Cadillac from that location.
16 And Mr. Miller said he gave him the keys for that Cadillac.
17 Well, the Cadillac was later found on Queensbury Lane --
18 Queensbury Lane. And you got the picture showing where it
19 was located by the sheriff's department.

20 And in that car more blood was found. And that
21 blood -- you know, the D.N.A. report matches up to this
22 defendant again.

23 And remember Crystal Lovett talked about how he was
24 throwing up when she got there. Well, there's also
25 throw-up in the car.

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1 In this car -- Joanne Huston lives there at [REDACTED]
2 [REDACTED]. And that is his sister, and that's where
3 Crystal Lovett went over and met with him. That's where
4 her and Shiquan Freeman got together and went into the car.
5 They got in the red Impala at that time. And the red
6 Impala -- if you remember, the Virginia officers testified
7 was registered to Ms. Huston.

8 And actually Crystal Lovett tells you the other part
9 of this story. As they leave there they try to go to Mary
10 Black. This defendant is scared to death to go there.
11 They keep on going because he wants to keep on going.

12 She talked about the phone conversation. Her mother
13 calls her first. She finds out about what actually had
14 happened. And she asked the defendant what happened. And
15 he admitted to her that he didn't stop, that he had shot a
16 sheriff's deputy that night.

17 And they just keep on running. They get to Charlotte.
18 They stop and get a pair of scissors. They use those
19 scissors to start cutting his hair to try to keep him from
20 being detected.

21 The thing you've got to remember, ladies and
22 gentlemen, he shot an officer. He don't know what kind of
23 condition that officer is. He shot him at pointblank
24 range. He shot him three times. For all he knows is that
25 officer's dead on top of everything else. So he is running

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1 as hard as he can.

2 so they go. well, actually before they go to the
3 hospital they went to [REDACTED] and there was a towel
4 found in the driveway. And guess whose D.N.A. is on that
5 towel? That man right there with blood on it.

6 They get a search warrant and go inside the residence.
7 They find more sheets that was tested for D.N.A., which is
8 his blood on those. And then the interesting thing is they
9 also find shotgun shells inside that residence. And I
10 asked Ms. Lovett. I said whose shotgun shells are they.
11 That man right there.

12 You remember I asked the SLED firearms lady, said what
13 kind of gun. She said, yeah, there is guns such as
14 revolvers called the Judge. It can fire a .45 caliber
15 bullet or it can fire a 410 shotgun shell. There's no
16 question he had the 410 shotgun shells according to Ms.
17 Boehm.

18 You remember the SLED agent called and talked to
19 Ms. Lovett, and they start following Ms. Lovett's cell
20 phone. Lorin Williams, Chris Jenkins with the sheriff's
21 department starts following him. They keep following until
22 they get to Virginia to an apartment complex.

23 You remember Ms. Lovett describing what happened on
24 the ride and finally they got so tired they stopped. But
25 this defendant is still wanting to keep on going.

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1 So after they woke up that morning at the apartment
2 complex they decided that he was going to get some bandaid
3 and peroxide to help clean his wounds. They stop at a
4 store.

5 And how do we know that's true? You'll have those
6 pictures back there with you. We have the hair that was
7 cut off by the scissors, his dreads that he had. We have
8 the scissors and the bandage that they bought.

9 There's another picture of him. The bottle of
10 peroxide that they had bought. Even more dreads that was
11 cut. It all comes from this defendant right here. There's
12 even a bloody white t-shirt that was left in the car. The
13 D.N.A. was tested on that and came back to the defendant.

14 Everything you've been told has been corroborated by
15 other evidence, just not eye witness testimony but the
16 other evidence. As you can see and tell -- you'll actually
17 have the objects back there with you if you want to look at
18 them just like the pictures.

19 Mr. Freeman was the man with him. They even had his
20 I.D. in the center console of the car, which I'm assuming
21 he usually drives.

22 And the thing to show how desperate individual this
23 defendant was, you saw the Virginia car chase yesterday.
24 Ms. Freeman pulls over. She complies with an order. She's
25 walking backwards like this. Mr. Freeman gets out of the

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1 car, and he walks backwards.

2 But this defendant right here is still leaving his
3 trail. He's still not going to give up. He jumps in the
4 front seat of the car, drives by a school bus, people
5 driving on the road. You saw the driving. He wasn't going
6 to stop.

7 He came back. They even sat up a roadblock. You can
8 see at the end of the video that there's a roadblock set
9 up. And they stop him.

10 They had to take him out because obviously this is
11 early in the morning. There's other school buses on that
12 road. They even tried to attempt to take him out. He
13 tries to put the trooper in the ditch. You can see where
14 he takes and pushes on him his tire being blown out where
15 he almost lost control on the gravel road. He's still
16 going.

17 And even after they start to take him out he puts the
18 car in reverse and is still trying to get away from them.
19 And that's when shots are fired. He still won't come out
20 of the car even when the Virginia troopers are telling him
21 to get out of the car. They have to use teargas to finally
22 get him out.

23 And one thing Mr. Allen asked through his questions
24 was, well, was there anybody else in the car the first time
25 around. Well, ladies and gentlemen, if you watched these

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1 videos there is nobody getting out of any car except that
2 man right there, the one on 437 Carolina Drive, the one at
3 Route 52 in Virginia.

4 He is responsible for all of this. If he would have
5 simply complied and pulled over when he was blue-lighted
6 none of this would ever happened.

7 He might have been guilty of speeding that night or
8 driving recklessly. But, no. He decided. He made the
9 choice to do everything that he did that night. He made
10 the decision not to stop. He made the decision to jump out
11 of that car. He made the decision to run that night from
12 Deputy John Doe He made the decision to carry a weapon
13 with him and shoot a deputy at point plank range in the
14 face.

15 You saw the scar. It's a miracle that he only got a
16 scar. But he has something else nobody else really can
17 see. He can never see out of that right eye again. He has
18 pellets behind his eye that they was afraid to take out,
19 thought it would create more damage. And you heard the
20 doctor say a life-threatening situation for that man.

21 And, like I said, he even turned away before he pulled
22 his weapon. And this man shot him again. And you've got
23 the pictures of his clothes showing where he was shot in
24 the back side. And even after he's shot he's leaving a
25 trail of blood. The trail was -- I mean, basically he just

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1 creates more problems for more people.

2 Going back to that sound system, sound studio, getting
3 Crystal Lovett, his girlfriend, involved, a lady that
4 worked at the Charles Lea Center trying to help people.
5 You could see what she was going through when she was up on
6 the stand. This is something she never dreamed she had any
7 part of. He drug her right into it. And you saw the
8 danger he put people in in Hillsville, Virginia.

9 Ladies and gentlemen, the one thing I want you to
10 remember if this is not malice, I don't know what is. And
11 malice, the judge will charge you, is evil doing, somebody
12 of a depraved heart. And, like I said, these actions done
13 from him, if that's not evil, I don't know what is.

14 And malice can happen that quick. It don't have to be
15 planned out. It don't have to be -- it's just something
16 that you decide to do within a split second. You make that
17 decision. And he made his decisions, ladies and gentlemen.

18 And, like I said, I'm just glad Deputy Doe is here
19 today to see you and glad he's back in uniform.

20 But the one thing I want you to remember when y'all go
21 back in that jury room and look through the evidence and
22 what you consider in testimony today is -- is hold this man
23 right here responsible for what he's done in that period
24 November 6th through November 7th, because this man will
25 never forget what happened to him that night.

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1 What I ask you to do is please keep that in mind
2 because there is -- this man here is guilty, guilty of all
3 charges. And that's what we would ask you to return in
4 this case.

5 Thank you for your time. Thank y'all for being here.

6 THE COURT: Mr. Allen.

7 MR. ALLEN: Fear makes you run. On November 6th in
8 the evening about ten minutes to 10:00 Deputy Doe
9 attention was drawn to a blue Pontiac, and he chased it.
10 He turned in at [REDACTED] Person got out and
11 ran.

12 Without checking the car to see what else, who else,
13 if anybody else was in there, Deputy Doe gave immediate
14 chase and said don't go, I'll shoot, or words to that
15 effect. Get on the ground, get your rear-end on the ground
16 now. You hear. He said all right.

17 But then the shooting, a lot of shots pretty much all
18 together as you heard. And then the man ran off. He goes
19 to [REDACTED] He asks Ms. Quentin-Miller for keys to a
20 car so he can leave.

21 He goes to his sister's house. Crystal Lovett and
22 Shiquan Freeman try to help him to get medical attention,
23 and they leave and end up in Virginia.

24 Mr. Brown is not guilty of shooting Deputy Doe The
25 fear makes you run. The state has not proven its case, its

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1 charges, charges of that shooting, against Mr. Brown. They
2 haven't proven the case beyond all reasonable doubt.

3 why do we know this? Now, they've produced a lot of
4 evidence, over a hundred exhibits. And most of them deal
5 with following this trail of blood, D.N.A. match to
6 Mr. Brown, and following his movements afterwards,
7 afterwards. And, yes, he did run. But they haven't proven
8 how the shooting occurred beyond a reasonable doubt.

9 Take for example Exhibit, State's Exhibit, 23. When
10 Deputy ^{Doe} testified, he testified that they went over
11 this -- when he got over on the other side of the fence
12 Mr. Brown, he says, who had been hung up on this fence or
13 was hung up on this fence turned to face him. Mr. Brown's
14 back was to the Airport Road area which is over this way
15 away from ■■■, ■■■, 105, ■■■ houses.

16 That's where Mr. -- that's where Mr. Brown was when
17 the shooting started. And if he was over there and
18 Mr. ^{Doe} was looking at him, therefore facing Airport
19 Road, where -- where are the bullets? Because they were
20 looking, and they found bullets over at ■■■.

21 And they can't even match that to Deputy ^{Doe} gun.
22 They can't match that bullet to any gun. There were two
23 bullets found, and only one submitted to SLED by the way.
24 We don't know anything about that other one other than they
25 collected it. But be that as it may, that was the

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1 direction that Deputy Doe was firing.

2 How else do we know they haven't proven the case
3 beyond a reasonable doubt and that Mr. Brown did not do
4 this?

5 I asked questions about the wadding in a shotgun
6 shell. And they say Mr. Doe was shot with some sort of
7 shotgun type device.

8 But firearms examiner says, yes, there's wadding.
9 It's a packing that goes into every shotgun shell. It may
10 be plastic; it may be some form of cotton or something like
11 that. But there's something in there. And when that shell
12 goes off, along with everything else, the powder goes --
13 the wadding goes out of the end of the barrel or whatever
14 is shooting.

15 If the target is close enough the wadding can even go
16 into the wound. But we didn't hear any testimony about any
17 wadding found, not in the wound and not in the area that
18 we're talking about, which means that Mr. Brown did not
19 shoot Deputy Doe

20 They searched this area meticulously. They looked for
21 each and every shell casing. When you look at the pictures
22 see how the shell casings even were in there falling in the
23 grass. There were leaves on the ground. You've got
24 pictures of small items of blood drops all as they fall.

25 If there had been wadding in this area where the two

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1 were standing they would have found it on the ground, if it
2 had been in the ground. Obviously, if they'd found it in
3 his wound they would have found that as well, and they
4 would have presented that evidence as well to help show
5 that it was a shot that was made at close range.

6 There is not that evidence, and therefore it shows
7 that there's reasonable doubt Mr. Brown did not shoot and
8 is not guilty of that charge.

9 As the deputy described it, he claims that Mr. Brown
10 was the first to shoot or that he was shot first. Can't
11 really tell by the video or the sound on the video because
12 all the shots sounded pretty much at the same time. But
13 who was the first to shoot? Who is the first to mention
14 anything about shooting? One of the first things the
15 deputy says is don't go or I'll shoot you, or words to that
16 effect.

17 Isn't it reasonable that if he's going to say don't
18 go, I'm going to shoot you, he's got his gun out, not in
19 the holster as he says? Is he trying to show you something
20 a little more? It's better for the state or better for
21 their position? Does he have an interest in this case?
22 Yes, he does. Someone would not mention shooting unless
23 they had the means to do it and were prepared to do it.

24 He's not telling it accurately. Remember our
25 discussion about how this chase began? Now, in

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1 November 30th of 2011 he indicated in his report as I
2 pointed out in my cross-examination, he indicated in his
3 report that he was sitting stationary at the corner of
4 South Church and Irwin and he noticed a car. And then when
5 he noticed the door making the turn, right turn off
6 Carolina, and then he pulled out and began the chase. And
7 it took him a while to catch up.

8 what he's saying, what he said to you when he
9 testified, was, no, he had gone to the end of South Church
10 and Irwin -- excuse me -- the end of South Irwin at South
11 Church, turned around, finally acknowledging, well, I just
12 it's stationary for a little bit. But then he turned
13 around and was proceeding back down South Irwin like
14 he's -- as if he was going back towards Crescent when he
15 saw this car make the turn. Big difference, big difference
16 as to how it occurred.

17 He says Mr. Brown tried to -- that he tried to grab
18 Mr. Brown while he was hung up on the fence. When you
19 listen to the video you hear what he said, "Get down. Get
20 down on the ground now."

21 Mr. Brown's hung up on the fence. He can't
22 immediately get down. He's hung up on the fence with
23 his -- and his pants are whatever, thus can't get down.
24 The deputy had already indicated he was going to shoot or
25 would shoot, overreact, overreact.

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1 And something else. He says, and he told you the
2 other day, that he saw a Cadillac drive past him with the
3 lights off, I believe it was, indicating that Mr. Brown is
4 in that Cadillac.

5 But, you know, he never, never put that in his report.
6 The report that he wrote back in November of 2011, the
7 report that he signed over to SLED just a couple of weeks
8 later in December, never put it in the report.

9 Having been trained as a deputy to write reports and
10 make them complete, make them accurate, never puts this in
11 the report. And for a year and a half when he had the
12 opportunity to make supplemental reports to include that
13 fact or that tidbit, he never did another report. Does he
14 really remember? No. He does not.

15 The other thing about this case is that there is no
16 evidence presented where the defendant, where Mr. Brown,
17 had a gun. Now, I know Deputy ^{Doe} testified about that,
18 but, again, he was shooting. He for whatever reason
19 believed he was justified in shooting. He has an interest
20 in this case.

21 Ms. Lovett never said anything about a gun with
22 Mr. Brown that night, not when she saw him and they traded
23 vehicles earlier or/and certainly not when she saw him when
24 she went to Queensbury Way to try to help him with his
25 injuries.

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1 There was no gun found in this meticulous search of
2 every place and everywhere Mr. Brown went afterwards, not
3 in or around [REDACTED], not around this trail that led from the
4 back yard of [REDACTED] all the way to [REDACTED], not in any of the
5 cars, not at Queensbury Way, not at [REDACTED] and not even
6 in the Impala when it was stopped in Virginia.

7 The only other piece of evidence about a gun really
8 comes from Raquentin Miller who claims he said -- who
9 claims that Mr. Brown was holding the gun.

10 At one point in this case he was even claiming that
11 Mr. Miller was pointing at him, threatening him with it,
12 trying to make it sound like that he had to give him the
13 keys or that Mr. Miller would even be injured. Mr. Miller
14 is covering up for what he was afraid the police would do
15 because he hadn't been charged and he certainly doesn't
16 want to be charged.

17 But you couldn't -- but we couldn't get any details
18 from Mr. Miller, what hand was it in, and all of that.
19 Well, I was in shock. Every time he couldn't think quickly
20 enough and what to say that would sound reasonable. He was
21 in shock -- he was in shock.

22 And why is he interested? Because he doesn't want to
23 be prosecuted for getting the keys, possibly as an
24 accessory. He has an interest in this case.

25 Look at the video. You won't see a gun. You won't

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1 see a gun, an object that looks like a gun, with Mr. Brown
2 at all. You won't see a gun in his hand when the door
3 opens and he goes in that studio. It's because there
4 wasn't a gun. He didn't have a gun. And that's how we
5 know he is not guilty of shooting Deputy Doe

6 State's theory. State's theory is that Mr. Brown had
7 a gun. State's theory, the state's suspicions, that he had
8 a shotgun type thing or a pistol that would shoot shotgun
9 shells. He calls it the two shells, I believe it was, or
10 few shells found at

11 Ladies and gentlemen, theories and suspicions are not
12 proof beyond a reasonable doubt. They're not proof beyond
13 a reasonable doubt for which a fellow citizen should be
14 found guilty of these crimes.

15 Fear makes you run. It's entirely reasonable.
16 Mr. Brown ran because he was near a police officer and the
17 officer was shot. First person to be suspected. Fear
18 makes you run.

19 Entirely reasonable that he ran not wanting the
20 attention close by and didn't want the blame for it. And
21 indeed he was, because as we heard from Ms. Lovett she was
22 on a cell phone a good bit of the time that morning and was
23 getting information about -- from the news or something of
24 what was going on back here. But there is no credible
25 evidence, no proof beyond a reasonable doubt, that

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1 Mr. Brown shot Deputy Doe

2 The only other evidence that he shot him is some
3 statement that Ms. Lovett claims he made.

4 Consider this, folks. She was herself in trouble.
5 She had been arrested based on these suspicions that they
6 had and also based on suspicions that she was assisting him
7 in some way and therefore she's charged as an accessory
8 having been told by the investigators and keep giving her
9 statement, needs to help herself out.

10 Now, she already knows what they want to know. why?
11 Because she was on the cell phones and knew that he was
12 suspected and she was going to go along with it, go along
13 with it to help herself out.

14 We know she's not going to -- that she is wise to
15 authorities because she was talking with the SLED agent
16 earlier that night lying about where she was and what she
17 knew about the blue Pontiac and where it was, lying to help
18 herself out.

19 It's entirely reasonable that she was also lying to
20 help herself out in this case because she's looking at
21 going to prison for 15 years.

22 she's already pled guilty. She's locked in, and she
23 knows she's got to cooperate with the state. She's hoping
24 not to go to prison. She's hoping for a better deal,
25 although, as she testified, just plead guilty and the

Closing arguments

1 solicitor will advise that she cooperates, that she
2 cooperated. But she's hoping to get something better.
3 That's a powerful incentive to lie about what someone else
4 said. And she wants to keep herself out of prison. And
5 she continues to tell that same story, that same story she
6 was going to help herself out with, as she talked to the
7 investigators after she was arrested.

8 The judge will advise you and tell you that you make
9 three separate -- or excuse me -- four separate verdicts on
10 the four charges.

11 Let me say that again. You'll make a verdict on each
12 of the four separate charges. They may be different
13 depending on how you view the evidence.

14 But the evidence about the shooting does not add up.
15 There's no credible evidence that you can see all of this
16 stuff that you've been presented and all of the stuff that
17 you've heard, no credible evidence that Mr. Brown had a
18 gun. There's no credible evidence that he shot Deputy

19 Doe

20 It is just not proof beyond a reasonable doubt. It's
21 not the kind of proof that your fellow citizen should be
22 found guilty. Therefore I ask you on behalf of Mr. Brown,
23 this innocent fellow citizen, to find him not guilty of the
24 attempted murder and to find him not guilty of resisting
25 arrest of the deputy. Thank you.

Jury charge

1 THE COURT: Madam forelady and ladies and gentlemen of
2 the jury, you of course have heard and seen all of the
3 evidence.

4 You've now heard the final summations of the lawyers;
5 and therefore of course it becomes my duty to instruct you
6 on the law that's applicable in the case. And then you'll
7 be asked to go back and begin with your deliberations. And
8 through that process you'll examine all of the evidence.
9 You'll decide the facts. You'll apply the law, and you'll
10 arrive at a fair and just decision, whatever that decision
11 may be.

12 It is your exclusive duty as jurors selected for this
13 purpose to determine what the facts are. You do that
14 through your own common sense examination and evaluation of
15 all of the testimony and other evidence received during the
16 course of this trial.

17 You 12 jurors alone will decide what weight, value and
18 effect to give to any particular witness' testimony or
19 other evidence in the case.

20 Your sole objective is to simply render a fair and
21 impartial decision based solely upon the evidence presented
22 during the trial, your determination of fact from that
23 evidence and then your application of the law as I will
24 have provided it to you.

25 Now, as you know, in this case the state through the

Jury charge

1 prosecutor has accused the defendant, Robert Odell Brown,
2 with having committed four separate and distinct offenses,
3 although they all are alleged to have arisen out of one
4 particular event or course of events which the state
5 alleges occurred back on November the 6th of 2011. But
6 there are four separate and distinct criminal offenses for
7 which you are to render four separate and distinct
8 decisions.

9 There are three separate indictments. One of the
10 indictments has two criminal offenses alleged in it. The
11 other two indictments each have one criminal offense
12 alleged in it.

13 You will be indicating, Madam Forelady, as I told you.
14 You'll be indicating the jury's unanimous decision. On the
15 back of each indictment in the lower left-hand corner
16 you'll see the word verdict. And it's beneath that word
17 that you'll indicate the jury's unanimous decision as it
18 relates to the charge contained in that indictment.

19 But in this case, as you know, the state accuses the
20 defendant of having committed the crimes of attempted
21 murder, of possession of a firearm during the commission of
22 a violent crime, that violent crime alleged to be the crime
23 of attempted murder.

24 In a separate indictment he is alleged to have
25 committed the crime of failing to stop when signaled by a

Jury charge

1 law enforcement officer.

2 The remaining indictment alleges that he has committed
3 the crime of resisting arrest with the use of a deadly
4 weapon.

5 Now, as to each of those indictments and the charges
6 contained therein the defendant has entered a plea of not
7 guilty. As I've told you, that plea of not guilty has
8 placed upon the state the burden of proving the allegations
9 that they have set forth in each of those indictments, the
10 burden of proving each of the essential elements that make
11 up the crimes that have been alleged against the defendant;
12 and therefore the burden is upon the state to establish the
13 defendant's guilt to the satisfaction of you 12 jurors
14 beyond a reasonable doubt before a verdict of guilty could
15 be returned as it relates to a particular charge.

16 Every person accused of a crime is presumed to be
17 innocent, and that presumption of innocence remains with
18 any defendant, as it does with this defendant, from the
19 time that he is placed under arrest and throughout the
20 course of the criminal process and even throughout the
21 course of the actual trial.

22 And as I told you, that presumption of innocence will
23 be with Mr. Brown even as you go back into your jury room
24 to begin with your deliberations in this case.

25 That presumption of innocence will be with him in that

Jury charge

1 jury room, and it'll be with him forever unless you 12
2 jurors determine that he's no longer entitled to the
3 presumption of innocence as it relates to a particular
4 charge.

5 In other words, after you've carefully considered all
6 the evidence in the case, and from that evidence you have
7 determined what you believe to be the facts of the matter,
8 and after deciding those facts you apply the law that I
9 will have provided you, if you 12 jurors unanimously
10 determine that his guilt as to that charge has been proven
11 beyond a reasonable doubt, then he would no longer be
12 entitled to the presumption of innocence as it relates to
13 that particular charge. But it is only if, unless and
14 until you are satisfied of his guilt beyond a reasonable
15 doubt that the presumption of innocence would no longer be
16 applicable.

17 Now, while the state does have the burden of proving a
18 defendant's guilt beyond a reasonable doubt, that does not
19 mean that the state has to prove his guilt beyond all doubt
20 or beyond any possible doubt, but it does require the state
21 to prove his guilt to your satisfaction beyond a reasonable
22 doubt.

23 The term reasonable doubt should be given its plain
24 and ordinary meaning. A reasonable doubt is the kind of
25 doubt that would cause a reasonable person to hesitate to

Jury charge

1 act upon the information provided.

2 A defendant in a criminal trial is entitled to any
3 reasonable doubt that arises from the evidence or lack of
4 evidence in a case. And if upon any factual issue
5 essential to a finding of a verdict of guilty you have some
6 reasonable doubt as to how that issue should be resolved it
7 would be your duty to resolve that reasonable doubt in
8 favor of the defendant.

9 And therefore if upon your consideration of the whole
10 case you have a reasonable doubt as to the defendant's
11 guilt as it relates to a particular charge, you must
12 resolve that reasonable doubt in favor of the defendant and
13 to return a verdict of not guilty.

14 And at the same time after you've considered all the
15 evidence in the case and decided the facts and applied the
16 law if you have no reasonable doubt as to the defendant's
17 guilt as it relates to a particular charge, it would be
18 your corresponding duty to find him guilty of that charge
19 where you are convinced beyond a reasonable doubt that he
20 has committed that crime.

21 Now, the same law that provides that you are the
22 judges of the facts also provides that I am the judge of
23 the law. And that simply means that nobody is going to
24 tell you how to arrive at your determination of fact in
25 this case. You do that, as I've already stated, through

Jury charge

1 the exercise of good judgment and common sense
2 conscientiously applied to the testimony and the evidence
3 received during the course of the trial.

4 You must however under your oath as a juror accept the
5 law as I provide it to you as being the law that you are to
6 apply in the case. In other words, you're never to concern
7 yourself with what you thought the law was before you came
8 to serve as a juror this week or what you think the law
9 ought to be.

10 You must under your oath as a juror accept the law as
11 I provide it to you as being the law that you are to apply
12 in the case. And then you simply take that law and you
13 apply it to the facts as you 12 jurors determine those
14 facts to be based upon your own common sense examination
15 and evaluation of all of the testimony and evidence
16 received.

17 Now, because you are the sole judges of the facts in
18 this case you are therefore necessarily the sole judges of
19 the credibility, that is the believability, of each witness
20 that has testified during the course of the trial.

21 And you 12 jurors alone will decide what weight, value
22 and effect to give to any particular witness' testimony or
23 even portions of that testimony. But there are a number of
24 factors which you should take into consideration in arriving
25 at your assessment as to a particular witness' credibility,

Jury charge

1 and I'm going to list those factors for you.

2 You should consider the demeanor of the witness, that
3 is how the witness appeared to you when the witness was
4 testifying from that witness stand. In other words, was the
5 witness straightforward in responding to questions, or was
6 the witness hesitant or evasive in responding to questions
7 that were asked of that particular witness.

8 Simply put, did the witness appear to you to be telling
9 the truth and to have knowledge of the facts to which that
10 witness has testified.

11 You should also consider whether or not the testimony
12 of a witness is consistent, or is it inconsistent with
13 testimony provided in court or in comparison to testimony or
14 statements made outside of court. And you should consider
15 whether or not the testimony of a witness is consistent, or
16 is it inconsistent with other witnesses' testimony or other
17 evidence received during the course of the trial.

18 You should also consider how the witness came to know
19 the facts to which a particular witness has testified. In
20 other words, what was that particular witness' opportunity
21 and ability to perceive the existence of those facts to
22 which that witness has testified by having previously used
23 his or her senses, and then what is that witness' ability to
24 be able to come into court and to accurately recollect to
25 you as to what they have previously perceived.

Jury charge

1 You should also consider any bias or prejudice or
2 interest that a witness might have with regard to a case.
3 In other words, do you find some reason that a particular
4 witness would come into court and would testify one way or
5 another to help or to hurt one side or the other. And you
6 may consider any interest that a witness might have in the
7 outcome of the case if you determine that a witness does
8 have such an interest and you find that that interest would
9 bear upon that particular witness' credibility.

10 And you should also consider whether or not the
11 testimony of a witness is strengthened, or is it weakened by
12 other testimony or other evidence received during the course
13 of the trial.

14 Now, you as the judges of the facts and you as the
15 judges of the credibility of each witness are permitted to
16 believe as much or as little of what a witness has testified
17 to as you deem is appropriate. And therefore you may
18 believe everything that a witness testified to. You may
19 choose to believe none of it. You may believe one portion
20 of a witness' testimony and reject some other portion of
21 that same witness' testimony.

22 In a given case you could believe one witness as
23 opposed to several, or several as opposed to one. But
24 whatever your good judgment and common sense tells you is
25 the most believable and credible testimony is the testimony

Jury charge

1 you should accept, and you should reject any testimony or
2 other evidence that you find not to be credible or
3 believable.

4 Again, your sole objective is to return a fair and
5 impartial verdict based solely upon the evidence and the
6 facts as you determine them to be from that evidence and
7 then your application of the law that I will have provided
8 you.

9 Now, while there are various forms of evidence such as
10 testimony, documents, photographs, charts and other types of
11 physical exhibits, there are really only two types of
12 evidence. And either or both of those types of evidence may
13 be used to prove any fact that's in issue. But the two
14 types of evidence are direct evidence and circumstantial
15 evidence.

16 Now, direct evidence is the testimony of a person who
17 testifies from actual knowledge of that fact. It is
18 testimony of a person who has perceived the existence of
19 some fact by means of their senses, and then they come into
20 court and they testify as to what they have previously
21 perceived.

22 Circumstantial evidence, on the other hand, is the
23 proof of some other fact or set of facts which taken either
24 singly or collectively may prove the existence of a fact in
25 question as a necessary consequence. That is through an

Jury charge

1 inference.

2 And an inference is simply a deduction of fact that may
3 logically and reasonably be drawn from the proof of some
4 other fact or set of facts.

5 In other words, it's not a fact proven by the direct
6 testimony of a person based upon their personal perception,
7 but it is a conclusion which might reasonably be drawn from
8 the proof of other facts.

9 In other words, you may infer that a particular event
10 occurred or that a particular fact exists based upon the
11 proof of sufficient factual circumstances which would
12 reasonably warrant your arriving at a particular conclusion.

13 The law however makes absolutely no distinction between
14 the weight or value of direct evidence as opposed to
15 circumstantial evidence, nor is a greater degree of
16 certainty required of circumstantial evidence as opposed to
17 direct evidence.

18 Whatever the type of evidence used to prove any fact in
19 issue, you should consider all of the evidence presented
20 during the trial of the case, and after carefully
21 considering that evidence and weighing it in your minds if
22 you are not convinced of the guilt of the defendant as it
23 relates to a particular charge beyond a reasonable doubt,
24 then you must resolve that doubt in his favor and return a
25 verdict of not guilty.

Jury charge

1 Now, in this case, as you know, the defendant is
2 charged with four separate and distinct offenses. They are
3 attempted murder, possession of a firearm during the
4 commission of a violent crime, failing to stop when signaled
5 by a law enforcement officer and resisting arrest with the
6 use of a deadly weapon.

7 So I'll be instructing you on the law as it relates
8 each of those four separate offenses. And as I do that I
9 will also be instructing you on the law of a lesser included
10 offense as it relates to the charge in the indictment
11 accusing the defendant of having committed the crime of
12 attempted murder.

13 So I'll charge you on the crime of attempted murder, of
14 assault and battery of a high and aggravated nature, of
15 possession of a firearm during the commission of a violent
16 crime, of failing to stop when signaled by a law enforcement
17 officer, and resisting arrest by the use of a deadly weapon.
18 And I'll instruct you on the law in that particular order.

19 Section 16-3-29 of the Code of Laws of South Carolina
20 defines the crime of attempted murder, and that section
21 provides that a person who with intent to kill attempts to
22 kill another person with malice aforethought, either
23 expressed or implied, is guilty of the offense of attempted
24 murder.

25 Now, with regard to that particular section and the

Jury charge

1 phrase intent to kill, you are instructed that proof of an
2 intent to kill in the context of an attempted murder
3 allegation does not require proof of a specific intent to
4 kill on the part of the defendant, but it does require proof
5 of a state of mind of conscious wrongdoing accompanying the
6 intentional commission of an act or acts, the natural
7 tendency of which is to destroy human life.

8 And the term intent refers to the state of a person's
9 mind which directs his actions towards a specific object or
10 goal. And intent would include those consequences which
11 represent the very purpose for which an act is done, as well
12 as those consequences which are known to be substantially
13 certain to result, whether actually intended or not.

14 And within the meaning of the statute the term attempts
15 to kill refers to the intentional commission of an act -- an
16 overt act or acts, the natural tendency of which is to cause
17 death.

18 That intent to kill as the statute requires must also
19 be accompanied by malice aforethought either expressed or
20 implied.

21 Malice is a state of mind. Malice is a technical term
22 importing wickedness and excluding just cause or legal
23 excuse. It is something which springs from depravity, from
24 a heart devoid of social duty and fatally bent on mischief.
25 It is a state of mind indicating an extreme disregard for or

Jury charge

1 an extreme indifference to human life.

2 Malice refers to a state of mind connoting an ill will
3 towards another person and having the intent to cause harm.
4 It may be likewise defined as a state of mind signifying a
5 formed purpose and design to do a wrongful act intentionally
6 without just cause or legal excuse.

7 The existence of malice may be either expressed or
8 implied, and the words expressed or implied as it relates to
9 the existence of malice do not mean different kinds of
10 malice but merely the manner in which malice may be shown to
11 have existed, that is to say either proof by direct evidence
12 or proof by circumstantial evidence from which the existence
13 of malice may be reasonably inferred.

14 Malice may be expressed as where there is an expressed
15 threat to kill or a lying in wait or where the evidence
16 otherwise directly shows that the defendant intended to kill
17 or intended to commit some act or acts, the natural tendency
18 of which is to destroy human life.

19 Malice may be inferred, though no expressed intent to
20 kill is proven by direct evidence, where the facts and the
21 circumstances which have been established by the evidence in
22 the case satisfy you beyond a reasonable doubt that malice
23 was present in the mind of the defendant at the time any act
24 was committed that naturally tends to result in a loss of
25 human life.

Jury charge

1 The existence of malice may be inferred from
2 circumstances shown to have existed at the time of the
3 event, and the existence of malice may be inferred from the
4 acts or declarations or conduct of the defendant, as well as
5 any other circumstances established by the evidence in the
6 case from which you might reasonably infer such a fact as
7 often the state of a person's mind can only be proven by
8 circumstantial evidence.

9 Malice as an essential element of the crime of
10 attempted murder does not necessarily require proof of an
11 ill will or hatred of the particular person against whom a
12 wrongful act is committed, nor does it require proof of an
13 actual or a specific intent to take human life, although
14 such an intent may be established by the evidence in the
15 case. But rather it means a state of mind accompanying
16 conduct signifying a general malignant recklessness and an
17 extreme disregard for or an extreme indifference to human
18 life.

19 The state is required to prove malice just as it must
20 prove any other essential element of the crime charged, and
21 it is for you 12 jurors to determine whether or not malice
22 has been proven beyond a reasonable doubt based upon your
23 consideration of all of the evidence in the case and any
24 reasonable inferences that might be derived from that
25 evidence.

Jury charge

1 It is also essential that there exist not only malice
2 but it be malice aforethought. The law does not require
3 that malice must exist for any appreciable length of time
4 before the commission of a wrongful act. Indeed, malice may
5 be conceived at the very moment that the act or acts are
6 committed.

7 It is sufficient in the law so long as the state has
8 proven beyond a reasonable doubt both the existence of
9 malice in the mind of the defendant and the commission of an
10 act or acts by the defendant which have a natural tendency
11 to result in the destruction of human life.

12 An indictment for attempted murder may also include any
13 lesser included offense, whether or not that lesser included
14 offense is actually set forth in the indictment itself. And
15 therefore a jury may find the defendant guilty of a lesser
16 included offense where the evidence in the case warrants
17 such a finding.

18 In other words, a defendant who has been charged with
19 the offense of attempted murder may be found guilty of only
20 the lesser included offense of assault and battery of a high
21 and aggravated nature if the jury determines that the
22 evidence in the case warrants such a finding, whether or not
23 that lesser offense is actually set forth in the indictment
24 itself.

25 So as I told you, you are going to be able to consider

Jury charge

1 the lesser included offense of assault and battery of a high
2 and aggravated nature as you consider the indictment
3 alleging the crime of attempted murder.

4 Section 16-3-600(b)(1) of the Code of Laws of South
5 Carolina provides that a person is guilty of assault and
6 battery of a high and aggravated nature if the person
7 unlawfully injures another person and great bodily injury to
8 another person results, or the act is accomplished by means
9 likely to produce death or great bodily injury. And great
10 bodily injury is defined as bodily injury which causes a
11 substantial risk of death or which causes serious permanent
12 disfigurement or a protracted loss or impairment of the
13 function of a bodily member or organ.

14 In order to be found guilty of the offense of assault
15 and battery of a high and aggravated nature it would be
16 necessary that the evidence in this case has established
17 beyond a reasonable doubt that the defendant did with a
18 criminal intent, which is a mental state of conscious
19 wrongdoing, injured another person resulting in great
20 bodily injury to that person or the act resulting in an
21 injury to another person was accomplished by means likely
22 to produce death or result in great bodily injury to
23 someone.

24 If the state has failed to prove an element of the
25 crime of attempted murder or you have a reasonable doubt as

Jury charge

1 to whether or not the defendant has been proven guilty of
2 the crime of attempted murder or only the lesser included
3 offense of assault and battery of a high and aggravated
4 nature, then you are to resolve any reasonable doubt in
5 favor of the defendant and therefore find him guilty of
6 only the lesser included offense of assault and battery of
7 a high and aggravated nature.

8 However you may only find him guilty of any lesser
9 included offense where that offense has been proven to your
10 satisfaction beyond a reasonable doubt.

11 Count two of that indictment also charges the
12 defendant with possession of a weapon during the commission
13 of a violent crime.

14 That is a criminal offense set forth in section
15 16-23-490, and that particular section of law provides that
16 it shall be unlawful to possess a firearm during the
17 commission of a violent crime.

18 Section 16-1-60 of the code of laws defines what
19 crimes are classified as violent crimes, and the criminal
20 offenses of attempted murder and assault and battery of a
21 high and aggravated nature are classified as violent crimes
22 pursuant to that statute.

23 And therefore in order for the defendant to be found
24 guilty of a violation of this particular section of law it
25 would be necessary that the evidence in this case has

Jury charge

1 established to your satisfaction beyond a reasonable doubt
2 that the defendant did commit the crime of attempted murder
3 or the crime of assault and battery of a high and
4 aggravated nature and that at the time he committed that
5 crime he did possess a firearm.

6 The second indictment containing the charge of failure
7 to stop is what I will instruct you as to next.

8 Failing to stop is also a statutory offense contained
9 in the South Carolina Code of Laws in code section
10 56-5-750, and that particular code section provides in its
11 pertinent part in the absence of mitigating circumstances
12 it is unlawful for a motor vehicle driver while driving on
13 a road, street or highway of this state and this county to
14 fail to stop when signaled by a law enforcement vehicle by
15 means of a siren or flashing light.

16 The statute further provides that an intent -- an
17 attempt to increase the speed of a vehicle or in any other
18 manner avoid the pursuing law enforcement vehicle when
19 signaled by a siren or flashing light is prima facie
20 evidence of a violation of this section, simply meaning
21 that you may infer a violation of the section where those
22 facts have been proven. But you are in no way required to
23 do so.

24 The statute further provides that failure to see the
25 flashing light or hear the siren does not excuse a failure

Jury charge

1 to stop when the distance between the vehicles and other
2 road conditions are such that it would be reasonable for a
3 driver to hear or see the signals from the law enforcement
4 vehicle.

5 In order to establish a violation of this particular
6 code section it is necessary that the state prove to your
7 satisfaction beyond a reasonable doubt; No. 1, that the
8 defendant was the driver of a motor vehicle on a road,
9 street or highway in Spartanburg County in the State of
10 South Carolina.

11 Secondly, it must be proven that the defendant was
12 signaled to stop by a law enforcement vehicle by means of a
13 flashing light or a siren, either one or both.

14 Thirdly, that the defendant did not stop in the
15 absence of mitigating circumstances.

16 Now, mitigating circumstances are those circumstances
17 which in fairness and mercy may be considered as
18 extenuating or reducing the degree of moral culpability of
19 an individual and give rise to a reasonable justification
20 for not stopping the vehicle.

21 It is however no defense to a failing to stop that the
22 driver did not see the flashing light or hear the siren
23 where it is shown that the distance between the vehicles
24 and other road conditions are such that it would be
25 reasonable for a driver to have seen and/or heard those

Jury charge

1 signals being given.

2 The remaining indictment charges the crime of
3 resisting arrest with use of a deadly weapon. And that
4 criminal offense is set forth in section 16-3-625 of the
5 code of laws which provides that a person who resists the
6 lawful efforts of a law enforcement officer to arrest him
7 with the use or the threat of use of a deadly weapon
8 against the officer, and the person is in possession or
9 claims to be in possession of a deadly weapon is guilty of
10 the crime known as resisting arrest with a deadly weapon.

11 Now, within the meaning of the statute the term resist
12 in the context of an arrest means to impede, to hinder, to
13 obstruct or to interfere with, whether by violent or
14 nonviolent means or methods, a lawful arrest being made by
15 a law enforcement officer during and in the course of
16 carrying out his official duties.

17 And with regard to what constitutes a lawful arrest,
18 you are instructed that an arrest may be made by a law
19 enforcement officer based upon an arrest warrant issued by
20 a court or without a warrant where the officer has probable
21 cause to believe that the defendant has committed a felony
22 crime or where a person commits a criminal offense of any
23 grade within the view and within the presence of the
24 officer.

25 where a person is subject to a lawful arrest he has a

Jury charge

1 duty to submit peaceably to that arrest. where a person is
2 subject to a lawful arrest and refuses to submit to the
3 arrest the officer making that arrest may use such force as
4 is reasonably necessary to take that person into custody.

5 within the meaning of that statute the phrase with use
6 or threat of use of a deadly weapon against the officer
7 means that the defendant actually employed a deadly weapon
8 in resistance of a lawful arrest or he declared an
9 intention to use a deadly weapon while resisting a lawful
10 arrest.

11 The term deadly weapon is defined as any device or
12 instrument which in the manner it is used or is intended to
13 be used is known to be capable of producing death or
14 serious bodily injury.

15 Therefore in order for the defendant to be found
16 guilty of the crime of resisting arrest with a deadly
17 weapon it would be necessary that the evidence in this case
18 has proven three essential elements: No. 1, that the
19 defendant resisted the efforts of a law enforcement officer
20 to place him under arrest; secondly, that the arrest being
21 made was a lawful arrest; and, thirdly, that the defendant
22 used or threatened the use of a deadly weapon against the
23 law enforcement officer in resistance of that arrest.

24 You are further instructed, and I emphasize to you,
25 that the fact that a defendant does not testify during the

Jury charge

1 course of a criminal trial is not a circumstantial fact
2 that may be considered by the jury in any way during your
3 deliberations or in your determination as to whether or not
4 his guilt has been proven beyond a reasonable doubt.

5 You must not permit such a fact to weigh in the
6 slightest degree against a defendant. As I've said, the
7 burden is always upon the state because they made the
8 charge against the defendant to prove his guilt beyond a
9 reasonable doubt.

10 The burden is never upon a defendant or a person
11 accused of a crime to prove that they are not guilty or to
12 prove that they are innocent because in some cases that
13 might not be possible.

14 And therefore you are not to draw any inference nor
15 reach any conclusion from the fact that a defendant does
16 not testify during the course of the trial, nor may you
17 allow that to enter into your deliberations, nor may it
18 even be discussed during your deliberations. And it may
19 not be considered in your final determination as to whether
20 or not his guilt has been proven beyond a reasonable doubt.

21 Now, Madam Forelady and ladies and gentlemen of the
22 jury, I am not in any way concerned with what your
23 decisions are, but you are instructed that the verdicts
24 must be unanimous. All 12 of you must be in agreement
25 before any decision may be returned to the Court.

Jury charge

1 So, Madam Forelady, as you know, you're going to be
2 presiding over the jury deliberations in the jury room
3 simply to ensure that those deliberations are carried out
4 in some orderly fashion. But all jurors are expected to
5 participate in the deliberations, because, as I've stated,
6 the verdicts have to be unanimous. All of you must be in
7 agreement.

8 During your deliberations there may come a time where
9 you have a question about the facts of the matter or the
10 evidence in the case.

11 I am not never permitted to answer or address issues
12 that you have regarding the evidence or questions of fact.
13 You must simply make your determination of fact based upon
14 your review of all of the evidence in the case.

15 If however you should have a question about the
16 testimony of a witness, while I do not have transcripts to
17 provide you, if you need to hear the testimony of a witness
18 because you think that might answer a question that you
19 have, we can bring you back into the courtroom to have that
20 witness' testimony replayed in its entirety or only in some
21 part if that's all you need.

22 No additional evidence can be received now that you're
23 going back to begin with your deliberations. So don't
24 inquire about something else, because even if it did exist
25 you could not have it because the case is now closed and

Jury charge

1 you're going back to -- shortly to begin with your
2 deliberations. But, as I say, if you have a question about
3 testimony we can bring you back into the courtroom to have
4 that testimony reheard.

5 If at any time you have a question about the law that
6 is applicable I am permitted to answer those questions. So
7 should you need a reinstruction or you need an explanation
8 or you need a clarification of the law that I've provided,
9 I'll be happy to provide you with that additional
10 instruction, explanation or clarification.

11 Madam Forelady, if at any time you need to address
12 some matter to me if you'll write it on a piece of paper,
13 provide it to the bailiff, he'll be outside your door.
14 He'll provide that to me, and I'll respond to any issue
15 that you have or answer any question that you may have.

16 Once you have reached your decisions, as I've asked
17 you or told you, you will be placing those decisions on the
18 back of the indictments. They will serve as the verdict
19 forms.

20 The indictments serve no other purpose other than
21 serving as the verdict forms. But once you have indicated
22 the jury's unanimous decision, Madam Forelady, you'll sign
23 your name as the foreperson.

24 You're the only juror that needs to sign the verdict
25 form. And once you have rendered your decisions or reached

Jury charge

1 your decisions if you'll knock on the jury-room door, let
2 the bailiff know that you've reached your decision, then
3 we'll bring you back to receive your verdicts.

4 When you notify the bailiff that you've reached a
5 decision, you just tell him that you've reached a decision.
6 You don't tell him what it is, and you do not give him the
7 verdict forms. You'll maintain possession of the verdict
8 forms.

9 You may give him the evidence that's in the jury room
10 with you, and he can bring that back to the Court.

11 But, Madam Forelady, you will maintain possession of
12 the verdict forms, and I will receive those from you after
13 you and your fellow jurors are seated in the courtroom.

14 I don't know if we have any smokers on the jury, but
15 if we do you are permitted to smoke, but you cannot smoke
16 in the jury room. You have to go outside to accomplish
17 that purpose. So if at any time a juror needs to smoke,
18 let the bailiff know. They'll take those jurors outside.

19 You are instructed however that deliberations have to
20 stop if any juror is absent based upon some authorized
21 purpose. The deliberations have to stop, and they may only
22 resume when all 12 jurors are present so that all may
23 participate.

24 As far as lunch goes, if you get to a point in your
25 deliberations where you think it's appropriate to order

Jury charge

1 lunch, we will order the lunch for you, have it prepared
2 and brought to the jury room for your benefit.

3 Ordinarily, it takes about an hour, maybe a little bit
4 less, maybe a little bit longer, to have the lunch ordered,
5 prepared and brought to the jury room for your benefit.

6 So keep in mind that it might take a little bit more
7 than an hour to have that accomplished. So as you go back
8 to begin deliberations just keep in mind that it'll take
9 that length of time. And so you decide when and if you
10 need to order lunch. And if you do order lunch, you'll
11 decide whether you'll stop deliberations while you eat or
12 whether you'll continue deliberations while you eat. That
13 simply is going to be left to the jury's discretion.

14 I think that covers everything, but if it does not I'm
15 sure one of these lawyers will remind me that I have
16 neglected to tell you something. And if I have I'll bring
17 you back to provide you with additional information.

18 If I do not need to bring you back for any reason I'll
19 simply send word by way of the bailiff that you may begin
20 with your deliberations. And in that event he'll bring to
21 the jury room all of the exhibits which have been
22 introduced.

23 And to you, Madam Forelady, he'll also bring the
24 indictments which will serve as the verdict forms.

25 So the 12 original jurors can be excused and go to

Jury charge

1 your jury room. But await my instruction as to when to
2 begin.

3 Mr. Moore and Ms. Waldrop, I'll ask you to stay with
4 me because the 12 original jurors are apparently able to
5 perform their deliberation duties.

6 So the 12 primary jurors, go with the bailiff. Await
7 my instruction as to when to begin.

8 (whereupon, the jury retired at 11:20 a.m.)

9 (whereupon, the alternate jurors were excused.)

10 THE COURT: Are there any exceptions taken to the
11 instruction or requests for additions to the instruction by
12 the state?

13 MR. BARNETTE: None from the state, Your Honor.

14 THE COURT: By the defendant?

15 MR. ALLEN: Yes, Your Honor. We take exception to the
16 instruction concerning the specific intent.

17 Specific intent was not required in the attempted
18 murder charge, and we renew our request as to supplemental
19 instruction to charge specific intent to kill on the
20 attempted -- on the attempted murder charge, as well as my
21 request concerning that malice is not the distinguishing
22 factor between attempted murder and assault and battery of
23 a high and aggravated nature.

24 THE COURT: All right. Note your exceptions.

25 I'll ask that y'all please verify the exhibits before

Jury charge

1 they go back.

2 Excuse me, y'all. I have got to bring them back. I
3 have got to tell them one thing about how to complete the
4 verdict form of the lesser included.

5 Bring them in.

6 MR. BARNETTE: Okay. Your Honor, we do have that one
7 computer too if you want to send that back with them at the
8 appropriate time.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Ladies and gentlemen, I did forget one
12 thing, and it'll only be a brief additional instruction.

13 But so far as the completion of the verdict forms,
14 with regard to the indictment charging resisting arrest
15 with a deadly weapon there are two potential verdict forms.
16 Those two forms are guilty and not guilty. So whatever
17 that decision is, indicate it in the space provided. Sign
18 your name as the foreperson, Madam Forelady.

19 As to the indictment for failing to stop, also there
20 are two potential verdict forms. Those verdict forms are
21 guilty and not guilty. Whatever the decision is, indicate
22 it.

23 The indictment charging attempted murder and
24 possession of a firearm, I have written on the back in
25 the -- where the verdict appears -- the word verdict

Jury charge

1 appears, I've written count one and count two. Count two
2 is possession of a firearm. And, again, that -- those
3 verdict forms are guilty and not guilty.

4 with regard to the attempted murder count of the
5 indictment, you have three potential verdict forms. Those
6 three potential verdict forms are guilty, the one word,
7 which means guilty of the charge in the indictment,
8 attempted murder.

9 The second potential verdict form would be guilty of
10 assault and battery of a high and aggravated nature.
11 That's the lesser included offense.

12 If the jury were to find the defendant only to be
13 guilty of the lesser included offense you'd have to write
14 that out. Guilty of assault and battery of a high and
15 aggravated nature.

16 And the third potential verdict form for that count is
17 not guilty.

18 So whatever your decisions are, Madam Forelady,
19 indicate it in the space provided and let the bailiff know
20 you've reached those decisions. We'll bring you back to
21 receive the verdicts.

22 Okay. You may retire to your jury room and begin with
23 your deliberations as soon as you receive the evidence in
24 the case.

25 (Whereupon, the jury retired to deliberate at

1 when they've concluded.

2 And we'll be at ease while they're deliberating.

3 (Whereupon, a recess was taken.)

4 THE COURT: The jury has requested to rehear some
5 testimony, so we're going to bring them back to rehear that
6 testimony.

7 They are going to hear -- we will be replaying the
8 testimony of Crystal Lovett and of Officer Doe Doe
9 Doe testimony.

10 All right. Bring them in, please.

11 (Whereupon, the jury returned to the courtroom at
12 2:13 p.m.)

13 THE COURT: Madam Forelady, I understand you and all
14 of the jurors had requested to hear the testimony of Doe
15 Doe and of Crystal Lovett again. And it will be played
16 just in the order that it was received, and that is Doe
17 Doe testimony will be first, and followed by Crystal
18 Lovett's testimony.

19 If -- you should be able to hear it fine, but if for
20 some reason you can't just raise your hand and let me know.
21 We can try to make some other arrangements. And we will
22 play it beginning at the start and we will play in its
23 entirety unless you tell me to stop at any time. If you
24 don't need to hear the entire testimony of one of the
25 witnesses just tell me when to stop and we will stop it and

1 pick up with the other. If you want to hear it all, we
2 will play it all the way through. Okay.

3 (Whereupon, the testimony was replayed for the jury.)

4 THE FOREPERSON: That's all we need, Your Honor.

5 THE COURT: Okay. You may retire and continue with
6 your deliberations.

7 (Whereupon, the jury retired to deliberate at
8 2:38 p.m.)

9 THE COURT: We will continue to be at ease while the
10 jury is deliberating.

11 MR. ALLEN: Your Honor, one point, please.

12 THE COURT: Excuse me just a minute.

13 Yes, sir.

14 MR. ALLEN: I noticed during the replay of the
15 testimony at least two of the jurors were taking notes, the
16 forelady and another person. I don't think the Court's
17 previously given an instruction on the limitation of the
18 use of their notes.

19 THE COURT: Okay. I will.

20 (Whereupon, the jury returned to the courtroom at 2:40
21 p.m.)

22 THE COURT: Let me make one comment about the use of
23 notes.

24 One or more jurors may have been taking notes during
25 the trial and/or during the replay of testimony. Nothing

Jury charge

1 wrong with that. But note-taking is for the benefit of the
2 note-taker.

3 Notes taken by one juror are not to be relied upon by
4 any other juror as your recollection of what some witness
5 testified to or some other piece of evidence.

6 If you happen to agree with the note-taker, that's
7 fine. But don't rely upon somebody's else note-taking as
8 your recollection of what was presented during the trial.

9 If you need to hear, rehear, testimony, as I've told
10 you, we can always have testimony replayed. So do not rely
11 upon anyone else's notes.

12 Okay. All right. You may retire and continue with
13 the deliberations.

14 (Whereupon, the jury retired to deliberate at
15 2:42 p.m.)

16 THE COURT: Okay. We're at ease while the jury is
17 deliberating.

18 (Whereupon, a recess was taken.)

19 (Question from the jury marked Court's Exhibit No. 1.)

20 THE COURT: All right. Bring the jury in, please.

21 (Whereupon, the jury returned to the courtroom at
22 3:40 p.m.)

23 THE COURT: Madam Forelady, I understand that you and
24 your fellow jurors would like to be reinstructed on the
25 criminal offense known as attempted murder, as well as the

Jury charge

1 lesser included offense of assault and battery of a high
2 and aggravated nature.

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: Okay. Section 16-3-29 defines the crime
5 of attempted murder.

6 An attempted murder -- or that statute provides that a
7 person who with intent to kill attempts to kill another
8 person with malice aforethought, either expressed or
9 implied, is guilty of the offense of attempted murder.

10 With regard to that definition, proof of an intent to
11 kill in the context of attempted murder does not require
12 proof of a specific intent to kill on the part of the
13 defendant, but it does require proof of a state of mind of
14 conscious wrongdoing accompanying the intentional
15 commission of an act or acts, the natural tendency of which
16 is to destroy human life.

17 And the term intent refers to the state of a person's
18 mind which directs his actions towards a specific object or
19 goal. And intent would include those consequences which
20 represent the very purpose for which an act is done, as
21 well as those consequences which are known to be
22 substantially certain to result whether actually intended
23 or not.

24 The term attempts to kill within the -- to kill --
25 attempted murder statute refers to the intentional

Jury charge

1 commission of an overt act or acts, the natural tendency of
2 which is to cause death.

3 The intent to kill must also be accompanied by a
4 mental state of malice aforethought. Malice is a state of
5 mind. Malice is a technical term importing wickedness and
6 excluding just cause or legal excuse. It is something
7 which springs from depravity, from a heart devoid of social
8 duty and fatally bent on mischief. It is a state of mind
9 indicating an extreme disregard for or an extreme
10 indifference to human life.

11 Malice refers to a state of mind connoting an ill will
12 towards another person and having the intent to cause harm.
13 It may also likewise be defined as a state of mind
14 signifying a formed purpose and design to do a wrongful act
15 intentionally without just cause or legal excuse.

16 Malice as an essential element of the crime of
17 attempted murder does not necessarily require proof of an
18 ill will or a hatred of the particular person against whom
19 a wrongful act is committed, nor does it require proof of
20 an actual or a specific intent to take human life, although
21 such an intent may be established by the evidence in the
22 case. But rather it means a state of mind accompanying
23 conduct signifying a general malignant recklessness and an
24 extreme disregard for or an extreme indifference to human
25 life.

Jury charge

1 And the malice must also be malice aforethought,
2 although the law does not require that malice must exist
3 for any appreciable length of time before the commission of
4 any wrongful act. Indeed, malice may be conceived at the
5 very moment that the act or the acts are committed.

6 It is sufficient in the law so long as the state has
7 proven beyond a reasonable doubt both the existence of
8 malice in the mind of the defendant and the commission of
9 an act or acts by the defendant which have a natural
10 tendency to result in the destruction of human life.

11 That's the definition of the crime of attempted
12 murder.

13 Assault and battery of a high and aggravated nature is
14 set forth in a separate code section, and that code section
15 provides that a person is guilty of assault and battery of
16 a high and aggravated nature if the person unlawfully
17 injures another person, and great bodily injury to another
18 person results, or the act is accomplished by means likely
19 to produce death or great bodily injury.

20 Great bodily injury is defined as a bodily injury
21 which causes a substantial risk of death or which causes
22 serious permanent disfigurement or a protracted loss or
23 impairment of the function of a bodily member or organ.

24 That's the definition of assault and battery of a high
25 and aggravated nature.

Jury charge

1 So if you'll please retire to your jury room, in the
2 event that didn't help you, let me know. I'll try to give
3 you additional explanation or clarification.

4 (Whereupon, the jury retired to deliberate at
5 4:48 p.m.)

6 (Question from the jury marked Court's Exhibit No. 2.)

7 THE COURT: Let me see y'all just a minute.

8 (Bench conference held off the record.)

9 THE COURT: All right. Are there any exceptions taken
10 to that additional instruction to the jury?

11 MR. ALLEN: Yes, Your Honor. I'll do my same
12 exceptions.

13 (Pause for noise in the hall.)

14 THE COURT: All right. Mr. Allen.

15 MR. ALLEN: Yes, Your Honor. I renew my same
16 exceptions that I made earlier to the Court's charge on
17 those two offenses.

18 THE COURT: Okay. Note your exception.

19 MR. ALLEN: Thank you.

20 (Whereupon, a recess was taken.)

21 (Note from the jury and response sent to the jury
22 marked Court's Exhibit No. 3.)

23 THE COURT: All right. I understand that the jury has
24 reached a decision in the Brown case.

25 Are we ready to receive the verdict?

Verdict

1 MR. BARNETTE: The state is ready, Your Honor.

2 MR. ALLEN: Yes, Your Honor.

3 THE COURT: Okay. Bring them in, please.

4 (Whereupon, the jury returned to the courtroom at
5 5:42 p.m. to report its verdict.)

6 THE COURT: Madam forelady, have you and your fellow
7 jurors reached a unanimous decision as it relates to each
8 of the separate charges contained in those separate
9 indictments?

10 THE FOREPERSON: Yes, we have, Your Honor.

11 THE COURT: Have you reflected those decisions on the
12 back of the indictments as requested?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: Did you sign your name as the foreperson
15 and date it?

16 THE FOREPERSON: Yes, Your Honor.

17 THE COURT: If you will, please hand those verdict
18 forms up by way of the bailiff.

19 You may publish the verdicts.

20 THE CLERK: In the general sessions court, case
21 No. 2012-GS-42-0358, the State vs. Robert Odell Brown,
22 indictment for attempted murder, which is count one, the
23 verdict is guilty.

24 Count two is possession of a weapon during the
25 commission of a violent crime. The verdict is guilty.

Verdict

1 Case No. 2012-GS-42-359, the State vs. Robert Odell
2 Brown, indictment for failure to stop for motor vehicle
3 when signaled by an officer, the verdict is guilty.

4 Case No. 2012-GS-42-360, the State vs. Robert Odell
5 Brown, indictment for resisting arrest with deadly weapon,
6 the verdict is guilty.

7 All of these are signed and dated by the foreperson.

8 Ladies and gentlemen of the jury, if these are your
9 verdicts and still your verdicts, please raise your right
10 hand.

11 (Whereupon, all responded in the affirmative.)

12 THE CLERK: So say you all.

13 THE COURT: Does the defendant wish to have the jury
14 polled?

15 MR. ALLEN: Yes, sir, Your Honor, please.

16 THE COURT: All right. Poll the jury please, ma'am.

17 THE CLERK: Ladies and gentlemen of the jury, I will
18 pose a question to you, after which I will call your name
19 individually and ask you to stand and answer my question,
20 the question being is this your verdict and still your
21 verdict.

22 No. 99, Neely.

23 THE JUROR: Yes.

24 THE CLERK: No. 52, Gossett.

25 THE JUROR: Yes.

Verdict

1 THE CLERK: No. 48, Gidaro.
2 THE JUROR: Yes.
3 THE CLERK: No. 115, Rupp.
4 THE JUROR: Yes, ma'am.
5 THE CLERK: No. 78, Kiehl.
6 THE JUROR: Yes, ma'am.
7 THE CLERK: No. 77, Kazakis.
8 THE JUROR: Yes.
9 THE CLERK: No. 15, Bryant.
10 THE JUROR: Yes.
11 THE CLERK: No. 11, Brannon.
12 THE JUROR: Yes.
13 THE CLERK: No. 34, Davis.
14 THE JUROR: Yes, ma'am.
15 THE CLERK: No. 50, Gingerella.
16 THE JUROR: Yes, ma'am.
17 THE CLERK: No. 107, Phillips.
18 THE JUROR: Yes.
19 THE CLERK: No. 41, Fagan.
20 THE JUROR: Yes, ma'am.
21 THE CLERK: Your Honor, the jury has been polled.
22 THE COURT: Are there any other matters to be
23 addressed with the jury present?
24 MR. ALLEN: No, Your Honor.
25 MR. BARNETTE: No, Your Honor.

1 (Whereupon, the trial jury was excused.)

2 MR. BARNETTE: May I approach, Your Honor --

3 THE COURT: Yes, sir.

4 MR. BARNETTE: -- or would you like for me to give
5 these to the clerk first, Your Honor?

6 THE COURT: Yes.

7 MR. ALLEN: Does the Court care to hear my posttrial
8 motion at this time?

9 THE COURT: Yes, sir. Give me just a minute.

10 MR. ALLEN: Yes, sir.

11 (Pause.)

12 THE COURT: All right. Mr. Allen.

13 MR. ALLEN: Your Honor, at this time I move for a new
14 trial on the following bases: First of all, the grounds as
15 previously stated in my motions for directed verdicts
16 including, but not limited to, the rulings on my pretrial
17 motions, specifically the motion to compel disclosure that
18 has been previously argued, the motions to suppress the
19 searches of the Pontiac and the Impala vehicles, also my
20 motion during the course of the trial for a mistrial that
21 was made during the testimony of the first witness;
22 furthermore, my objections made throughout the course of
23 the trial. Specifically and more particularly are the
24 objections made during the course of the presentation of
25 the evidence as it related to the searches of the two

1 vehicles as I have mentioned and that were subject to my
2 pretrial motions.

3 Also, I move for a new trial on the basis of my
4 request to charge as to the attempted murder, wherein we
5 requested the charge of the specific intent to kill on the
6 attempted murder charge, and furthermore on my request to
7 charge concerning malice.

8 Although a required element of attempted murder,
9 malice could be present in an assault and battery of a high
10 and aggravated nature, and hence malice was not the
11 distinguishing factor between those two offenses. And of
12 course all of my others motions and objections made during
13 the course of this trial that were ruled adversely to the
14 defense. Thank you, Your Honor.

15 THE COURT: All right. That motion is denied.

16 Anything further on behalf of the state?

17 MR. BARNETTE: Yes, sir.

18 I have a rap sheet of the defendant I'd like to enter
19 as Court's Exhibit No. 1, Your Honor. Oh, No. 4. Excuse
20 me. Court's Exhibit No. 4. I apologize.

21 (Rap sheet of the defendant marked Court's Exhibit No.
22 4.)

23 MR. BARNETTE: And, Your Honor, he does have an
24 extensive record if you'd like me to put on the record,
25 Your Honor, for the rap sheet. I just ask for that.

Sentence

1 THE COURT: Let's get everybody inside that wants to
2 come in first.

3 (Pause.)

4 MR. BARNETTE: Would you like his record, Your Honor?

5 THE COURT: All right. Mr. Barnette.

6 MR. BARNETTE: Thank you, Your Honor.

7 His record is an extensive record. Starting in 2002
8 he was convicted of trespassing and then receiving stolen
9 goods more than a thousand, less than five thousand. He
10 was convicted on April the 2nd of 2004. He received a
11 sentence of five years suspended to three years --
12 suspended to five years probation, Your Honor.

13 In 2003, on October the 8th, 2003, he was convicted of
14 ABHAN, Your Honor. He was given a Y.O.A. not to exceed six
15 years.

16 On April 2nd of 2004 he was convicted of resisting
17 arrest, received a 1-year sentence for that.

18 October 3rd of 2003, Your Honor, he was convicted of
19 criminal domestic violence first offense. Received 30 days
20 or \$400 fine, Your Honor.

21 He was also convicted of entering premises after
22 warning on October 3rd of 2003, Your Honor.

23 On April 2nd of 2004 he was convicted of failure to
24 stop. He was given a 90-day suspended to time served.

25 2003, also, Your Honor, he was convicted of possession

Sentence

1 of marijuana and given a 20-day sentence.

2 Operating uninsured motor vehicle, given a 20-day
3 sentence, Your Honor.

4 On February the 21st of 2004, Your Honor, he was
5 convicted of two counts of breaking into motor vehicle.
6 Received 3-year sentences concurrent on that.

7 Also, two receiving stolen goods, 3-year sentences on
8 those on February 21st of 2004.

9 In 2006, Your Honor, he was convicted of resisting
10 arrest again. On November 16th of 2006 he received a
11 12-month sentence, Your Honor.

12 He was also convicted of assault with intent to kill,
13 Your Honor. He received an 8-year sentence on
14 November 16th of 2006, Your Honor.

15 He was also convicted of burglary second nonviolent,
16 Your Honor. He received an 8-year concurrent sentence on
17 November 6th of 2006, Your Honor.

18 2011 before this event occurred, Your Honor, he was
19 convicted again of receiving stolen goods less than \$2,000.
20 At that time it was a magistrate-court offense.

21 Giving false information on April 14th of 2011, and
22 damaging or tampering with vehicle April 14th of 2011, Your
23 Honor.

24 Your Honor, I believe Deputy Doe would like to
25 address the Court at the appropriate time, Your Honor.

Sentence

1 THE COURT: Okay. Now is that time.

2 THE VICTIM: Your Honor, I would ask that he get the
3 maximum time for each individual charge and for them to run
4 consecutive.

5 He has shown a complete disregard for anybody and
6 everybody's safety throughout his entire life.

7 THE COURT: Okay. Thank you, sir.

8 MR. BARNETTE: Your Honor, that would be the state's
9 presentation.

10 THE COURT: All right. Mr. Allen.

11 MR. ALLEN: Your Honor, if it please the Court.

12 Mr. Brown is 29 years old as indicated. Although he
13 is not married, Your Honor, he has a child who, as I think
14 you've heard during the course of this trial, the child is
15 now 14 months old.

16 He went up to the tenth grade. And he tells me that
17 he has been employed doing auto mechanic type work.

18 With him in court throughout the trial has been his
19 mother, Ms. Rebecca Brown, and also various days he's had
20 some of his sisters. Tony Brown, Jackie Brown have been
21 present as well to show their concern and support for their
22 son and brother.

23 I would ask the Court to be as lenient with Mr. Brown
24 under all the circumstances in this case, or rather under
25 all the circumstances. Thank you.

Sentence

1 THE COURT: All right. Mr. Brown, do you have
2 anything you'd like to add to what your lawyer has told me?

3 THE DEFENDANT: No, sir, Your Honor.

4 MR. ALLEN: One thing I didn't mention that I would
5 like to mention at this time, Your Honor.

6 THE COURT: Okay.

7 MR. ALLEN: As you heard, he was arrested on the 7th
8 of November of 2011. He of course was returned to South
9 Carolina on November 11th of that year as well. And he's
10 currently serving a sentence that began on February 13th of
11 2012. And we ask of course that he get credit for any time
12 served to which he's entitled.

13 THE COURT: Okay. All right. On Indictment
14 2012-42-358, count one of the indictment charging you with
15 attempted murder, wherein you have been found guilty by the
16 jury for that offense, Sentence of the Court is you, Robert
17 Odell Brown, be confined to the South Carolina Department
18 of Corrections for a period of 30 years.

19 As to Indictment 2012-358, count two, possession of a
20 firearm during the commission of a violent crime, wherein
21 you have been found guilty by the jury for that offense,
22 the Sentence of the Court is you be confined to the South
23 Carolina Department of Corrections for a period of five
24 years.

25 That sentence is consecutive to any other sentence.

Sentence

1 Indictment 2012-360, an indictment for resisting
2 arrest with use of a deadly weapon, wherein you have been
3 found guilty by the jury of that offense, Sentence of the
4 Court is you, Robert Odell Brown, be confined to the South
5 Carolina Department of Corrections for a period of ten
6 years.

7 That sentence is consecutive to any other sentence
8 imposed.

9 Indictment 2012-359, failing to stop, Sentence of the
10 Court is you be confined to the South Carolina Department
11 of Corrections for a period of three years.

12 The defendant is to be given credit for any time he's
13 entitled to pursuant to 24-13-40.

14 Mr. Brown, you have a right to appeal the verdicts of
15 the jury and the Sentence of the Court. You must file any
16 notice of your intention to appeal those decisions within
17 ten days of today's date. Your lawyer will provide you
18 advice on that.

19 END OF REQUESTED TRANSCRIPT OF RECORD

20

21

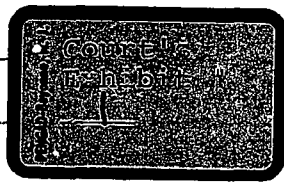
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25

The jury would like to hear Crystal
Lovett's testimony again in its
entirety.

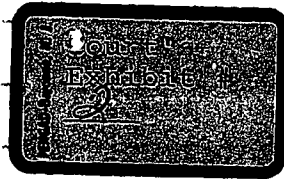


We need to hear Officer Doe
testimony again. (Chase and shooting)

Kathy Fagan

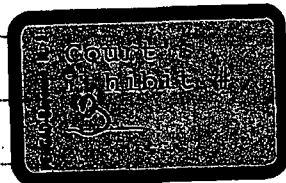
Please explain the law between
attempted murder and the lesser
charge.

Kathy Jagan



May we get a printed statement
of attempted murder and Assault
and battery of a high & Aggravated
nature?

Kathy Jagan



ATTEMPTED MURDER

SECTION 16-3-29 OF THE SOUTH CAROLINA CODE OF LAWS PROVIDES THAT:

"A PERSON WHO, WITH INTENT TO KILL, ATTEMPTS TO KILL ANOTHER PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED, IS GUILTY OF THE OFFENSE OF ATTEMPTED MURDER."

"INTENT TO KILL"

PROOF OF AN "INTENT TO KILL" IN THE CONTEXT OF "ATTEMPTED MURDER" DOES NOT REQUIRE PROOF OF A SPECIFIC INTENT TO KILL ON THE PART OF THE DEFENDANT BUT IT DOES REQUIRE PROOF OF A STATE OF MIND OF CONSCIOUS WRONGDOING ACCOMPANYING THE INTENTIONAL COMMISSION OF AN ACT OR ACTS THE NATURAL TENDENCY OF WHICH IS TO DESTROY HUMAN LIFE.

THE TERM "INTENT" REFERS TO THE STATE OF A PERSON'S MIND WHICH DIRECTS HIS ACTIONS TOWARDS A SPECIFIC OBJECT OR GOAL AND "INTENT" WOULD INCLUDE THOSE CONSEQUENCES WHICH REPRESENT THE

VERY PURPOSE FOR WHICH AN ACT IS DONE AS WELL AS THOSE CONSEQUENCES WHICH ARE KNOWN TO BE SUBSTANTIALLY CERTAIN TO RESULT, WHETHER ACTUALLY INTENDED OR NOT.

"ATTEMPTS TO KILL"

THE TERM "ATTEMPTS TO KILL" WITHIN THE MEANING OF THE "ATTEMPTED MURDER" STATUTE REFERS TO THE INTENTIONAL COMMISSION OF AN OVERT ACT OR ACTS, THE NATURAL TENDENCY OF WHICH IS TO CAUSE DEATH.

MALICE

THE "ATTEMPT TO KILL" MUST ALSO BE ACCOMPANIED BY MALICE AFORETHOUGHT.

"MALICE" IS A STATE OF MIND. "MALICE" IS A TECHNICAL TERM IMPORTING WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM DEPRAVITY, FROM A HEART DEVOID OF SOCIAL DUTY, AND FATALLY BENT ON MISCHIEF. IT IS A STATE OF MIND INDICATING

AN EXTREME DISREGARD FOR OR AN EXTREME
INDIFFERENCE TO HUMAN LIFE.

"MALICE" REFERS TO A STATE OF MIND
CONNOTING AN ILL-WILL TOWARDS ANOTHER PERSON
AND HAVING THE INTENT TO CAUSE HARM. IT MAY
LIKEWISE BE DEFINED AS A STATE OF MIND
SIGNIFYING A FORMED PURPOSE AND DESIGN TO DO A
WRONGFUL ACT INTENTIONALLY WITHOUT JUST CAUSE
OR LEGAL EXCUSE.

MALICE AS AN ESSENTIAL ELEMENT OF THE
CRIME OF ATTEMPTED MURDER DOES NOT NECESSARILY
REQUIRE PROOF OF AN ILL-WILL OR HATRED OF THE
PARTICULAR PERSON AGAINST WHOM A WRONGFUL ACT
IS COMMITTED, NOR DOES IT REQUIRE PROOF OF AN
ACTUAL OR SPECIFIC INTENT TO TAKE HUMAN LIFE,
ALTHOUGH SUCH AN INTENT MAY BE ESTABLISHED BY
THE EVIDENCE IN THE CASE, BUT RATHER IT MEANS A
STATE OF MIND ACCOMPANYING CONDUCT SIGNIFYING A
GENERAL MALIGNANT RECKLESSNESS AND AN EXTREME

DISREGARD FOR OR AN EXTREME INDIFFERENCE TO
HUMAN LIFE.

MALICE AFORETHOUGHT

IT IS ALSO ESSENTIAL THAT THERE EXIST NOT
ONLY "MALICE" BUT MALICE "AFORETHOUGHT".

THE LAW DOES NOT REQUIRE THAT MALICE MUST
EXIST FOR ANY APPRECIABLE LENGTH OF TIME BEFORE
THE COMMISSION OF A WRONGFUL ACT, IN DEED,
MALICE MAY BE CONCEIVED AT THE VERY MOMENT THAT
THE ACT IS OR ACTS ARE COMMITTED. IT IS
SUFFICIENT IN THE LAW, SO LONG AS THE STATE
PROVES BEYOND A REASONABLE DOUBT, BOTH THE
EXISTENCE OF MALICE IN THE MIND OF THE
DEFENDANT AND THE COMMISSION OF AN ACT OR ACTS
BY THE DEFENDANT, WHICH HAVE A NATURAL TENDENCY
TO RESULT IN THE DESTRUCTION OF HUMAN LIFE.

ASSAULT AND BATTERY HIGH AND AGGRAVATED

SECTION 16-3-600(B)(1) OF THE SOUTH
CAROLINA CODE OF LAWS PROVIDES THAT:

"A PERSON IS GUILTY OF ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE IF THE PERSON
UNLAWFULLY INJURES ANOTHER PERSON, AND

(A) GREAT BODILY INJURY TO ANOTHER PERSON
RESULTS; OR

(B) THE ACT IS ACCOMPLISHED BY MEANS
LIKELY TO PRODUCE DEATH OR GREAT BODILY
INJURY."

"GREAT BODILY INJURY" IS DEFINED AS BODILY
INJURY, WHICH CAUSES A SUBSTANTIAL RISK OF
DEATH OR WHICH CAUSES SERIOUS, PERMANENT
DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT
OF THE FUNCTION OF A BODILY MEMBER OR ORGAN.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
Indictment No. 2012-GS-42-0358, 2012-GS-42-0359,
2012-GS-42-0360

The State)

v.)

Robert Odell Brown,)

Defendant.)

**MOTION TO COMPEL
DISCLOSURE OF POTENTIAL
IMPEACHMENT EVIDENCE**

TO: BARRY J. BARNETTE, SOLICITOR, SEVENTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned Attorney for the Defendant will move before the Presiding Judge on May 9, 2013, at 9:00 a.m. or as soon thereafter as this matter may be heard, for an Order directing that the above-named Solicitor to reveal and disclose any information contained in the personnel files, internal affairs files, and any other evidence of prior conduct of [redacted], Jason Bryant, and Lorin Williams which may demonstrate their character of credibility and which may be favorable to the Defendant.

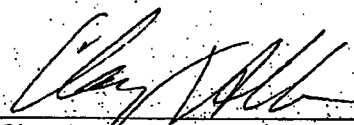
This motion is based on *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1985); and *Brady v. Maryland*, 373 U.S. 83 (1963).

This motion is based upon the following facts:

1. The Defendant, Robert Odell Brown, is charged with Attempted Murder, Assaulting a Police Officer while Resisting Arrest, and Failure to Stop for Police Office, which is alleged to have occurred on or about November 6, 2011. The State alleges that the Defendant shot Deputy John Doe after the Defendant failed to stop and while resisting Deputy Doe attempt to arrest him.
2. After the Defendant's arrest, he is alleged to have made certain statements to investigators Jason Bryant and Lorin Williams. None of the interviews with investigators Bryant and Williams were recorded by audio tape or video tape.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAY 10 2013

- #2
3. In investigating this case, the undersigned has asked the Solicitor to provide the undersigned the portions of the personnel records of John Doe that would contain information concerning Mr. Doe credibility. The Solicitor has refused to provide this information absent an order of the Court.
4. The undersigned believes that he needs access to the personnel records of the above-named officers in order to investigate their credibility. To a certain extent, the basis of the State's case against the Defendant on the above-listed charges will be based on the testimony of the above-listed officers. If the Defendant is denied the access to the personnel records, internal affairs records, training records, and other evidence in the possession and custody of the Sheriff's Office and/or Spartanburg Department of Public Safety, then the Defendant will be denied the access to favorable information and denied the ability to adequately investigate and/or present the Defendant's case.



Clay T. Allen
Circuit Public Defender
336 North Church Street, Suite 3000
Spartanburg, South Carolina 29303
(864) 596-2561

May 6, 2013
Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -6 PM 4:21
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
Indictment No. 2012-GS-42-0358
2012-GS-42-0359, 2012-GS-42-0360

The State of South Carolina,

vs.

Robert Odell Brown,

Defendant.

DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
DISCLOSURE OF POTENTIAL
IMPEACHMENT EVIDENCE

To supplement the Defendant's oral argument, which was made at the hearing on the Defendant's Motion to Compel Disclosure of Potential Impeachment Evidence on May 9, 2013, this memorandum is submitted for the Court's consideration. As the Court will recall, the Defendant has moved for an order directing the Solicitor to reveal and disclose any information contained in the personnel files, internal affairs files, and any other evidence of prior conduct of John Doe, Jason Bryant, and Lorin Williams which may demonstrate their character for credibility and which may be favorable to the Defendant.

The undersigned defense attorney has been informed that at least one of the above-named officer, John Doe has been disciplined in at least one of his employments with law enforcement agencies. The defense attorney is seeking information which may be contained in his personnel files and which may either reflect on his lack of credibility or may lead to other admissible evidence which may reflect on his lack of credibility. Because he was previously employed by the City of Spartanburg Department of Public Safety and because he is currently employed with the Spartanburg County Sheriff's Office, his personnel files are in the possession of agencies for the State of South Carolina. Deputy Doe is expected to be the only prosecution witness who will testify about the incident which led to the Defendant's charges of Attempted Murder and Resisting

M. HOPE BLANCHLEY
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Arrest. Furthermore, the undersigned defense attorney seeks information which reflects on the credibility of Spartanburg County Sheriff's investigators Jason Bryant and Lorin Williams because they interrogated the Defendant without recording the interrogation or interview by either audiotape or videotape. Any statement which they claim was made by the Defendant, therefore, is based solely upon their testimony; therefore, their credibility will become an issue for the jury to determine.

DA
#2

The United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963), required the prosecution to disclose to the defense information which is both favorable to the defendant and "material to either guilt or to punishment." In *Giglio v. United States*, 405 U.S. 150 (1972), the Supreme Court extended the rule to include impeachment evidence as well. The Court stated, "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within the general rule [of disclosure]." In *United States v. Bagley*, 473 U.S. 667 (1985), the Court stated that "a constitutional error occurs... only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial." It is interesting to note that in *Giglio*, the evidence withheld from the defense was a prosecutorial promise of leniency to a cooperating co-conspirator who testified for the Government. Also, in *Bagley*, the evidence withheld from the defense was payment to undercover agents for the Government. All of this evidence dealt with bias or interest of a prosecution witness, which directly related to their credibility.

In *Kyles v. Whitley*, 514 U.S. 419 (1995), the Court again ruled that the prosecutor's failure to disclose potentially impeachment evidence to the defense warranted a new trial. In reaching its conclusion, the Court stated that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."

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This statement places on the prosecution the duty to reasonably discover evidence favorable to the defense and to disclose it.

In the case at bar, the Defendant has specifically requested information which is contained in the personnel files and other department records of three law enforcement officers, who will testify in the State's case in chief. Although the Solicitor may not have the requested information in his possession, this information is in the possession of law enforcement agencies, which are agents of the State or prosecution. Furthermore, the Solicitor has declined the Defendant's request to seek out this information and to allow the Defendant's attorney to review the records for the information. The requirement of *Kyles* appears to require the State to learn of the favorable evidence, especially since the defense has made a specific request for that information.

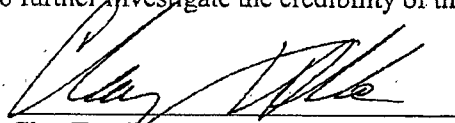
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H3 In his oral argument, the Solicitor appeared to be concerned with the burden placed on the State in this or future cases if similar requests become routine. This argument attempts to seek an exception to the *Brady*, *Giglio*, *Bagley*, and *Kyles* requirements on a theory of convenience to the State. This has never been a concern of the Supreme Court. The inquiry of these cases have been whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

During oral arguments, the Court asked for the undersigned attorney's reasons for believing that favorable evidence existed in the personnel files and what type of information the undersigned expected to receive. Although it is difficult to predict, especially where access has been denied, what is expected, the undersigned tried to explain that he had heard from some persons about the reputation of Officer Doe in making arrests and stopping others. Since that oral argument, the undersigned has been provided several documents involving the discipline and termination of the Officer Doe from the Spartanburg Public Safety Department. These documents were provided to

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another attorney, whose client had obtained the documents from yet another individual who had, apparently, received the documents from some source. The documents, copies of which are being provided to opposing counsel, indicate that Officer Doe was terminated from the Department of Public Safety in 2008, in part, for violating the departmental policies for honesty. It is therefore even more important that the undersigned attorney be allowed to review the personnel, departmental, and internal affairs files of the officer in order to determine the legitimacy of the document the undersigned has received and to further investigate the credibility of this witness.

#4



Clay T. Allen
Circuit Public Defender
Seventh Judicial Circuit Public Defender Office
366 North Church Street, Suite 3000
Spartanburg, South Carolina 29303
(864) 596-2561

June 7, 2013
Spartanburg, South Carolina

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SPARTANBURG COUNTY
2013 JUN -7 PM 4:00
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
The State,	)	
	)	RETURN TO DEFENDANT'S MOTION
v.	)	TO COMPEL/MEMORANDUM AND STATE'S
	)	MOTION IN LIMINE, AND FOR A
Robert O'Dell Brown,	)	PROTECTIVE OR MODIFYING ORDER
	)	REGARDING DISCOVERY
Defendant.	)	Indictment No.(s): 2012-GS-42-0355-60
	)	Warrant No.(s): M129351-55; M129481

To: Defendant Robert Odell Brown and his Attorney, Clay Allen, Spartanburg County Public Defender (Not filed prior to jury selection; submitted to the Court for review *In Camera* prior to trial)

The State hereby serves notice and moves for an order from this Court pursuant to *SCRCrP 5(d)(1)* (Protective and Modifying Orders), for a ruling that Defendant's motion be denied, restricted or deferred, or for such order that the Court may determine appropriate as to Defendant's Motion to Compel Disclosure of Potential Impeachment Evidence, argued before the Court on May 9, 2013. This Return and Motion by the State are made necessary due to allegations, argument and information filed or served on Friday, June 7, 2013, provided by Defendant's Counsel under letter dated the same.

The Issue(s) Before the Court

- I. The initial and most fundamental question before the Court is the process by which the Public Defender has gone about "creating" a *Brady* claim regarding the issue of personnel records of Deputy Doe in his dealings with both the Court and with the Solicitor. There are proper ways that he can pursue the records under the Court's rules.

At some point in the past, the Public Defender:

- (a) became aware of information which might be useful in cross-examining a key state's witness for trial, and of a location where specific documentation of that information could and *would* be located;

(b) has now sought to find a means for having that information pursued and rooted out by his adversary, the Solicitor, because for any number of possible reasons (discussed further below), he did previously not reveal the substance of what he had learned or how he had learned it;

(c) did not inform the Court nor the Solicitor (nor even the Court *ex parte*, which he could have under the same rule the Solicitor now uses) when given full opportunity to do so (beginning May 9, 2013, and continuing from sometime unspecified “[s]ince” that hearing), of specifics of *i) what he then actually knew*; or *ii) specifics of what he then actually had reason to know*, any part of which might be contained in confidential personnel files (or already had been taken from them); and then *iii) he did not seek to properly have that information put before the Court for its review*;

(d) instead has now chosen to make a filing which was both unnecessary and clearly has had the potential in its substance and timing, to cause prejudice to the State’s case. (See, *Defendant’s Memorandum, page 1, 2nd paragraph*, “The undersigned defense attorney has been informed that at least one of the above-named officer (sic), **John Doe** has been disciplined in at least one of his employments with law enforcement agencies. The defense attorney is seeking information which may be contained in his personnel files and which may either reflect on his lack of credibility...Deputy **Doe** is expected to be the only prosecution witness who will testify about the incident which led to the Defendant’s charges of Attempted Murder and Resisting Arrest.”)(emphasis added).

It is unclear why the Public Defender felt that all of this was necessary or appropriate to do in this fashion, rather than simply pursuing the matter through proper procedures under the rules of court (discussion below).

- II. The *second question* is when and from whom the Public Defender obtained the “new” information which consists of documents obviously taken from a personnel file, a file which is generally considered confidential by employers and employees. Furthermore, it is unknown why the Public Defender did not simply contact the Court and the Solicitor once he was made aware that the documents could be or had been

obtained, and at that point timely request an *in camera* review of the documents for a preliminary determination of their relevancy balanced against potential prejudice, as well as the conduct of others (and perhaps himself) in obtaining them. Instead the gist of the documents was made into a public filing available to the press during the week leading up to trial, which under cover of letter dated June 7, the Public Defender noted that he "did not attach the copies of the documents he received to the memorandum", and for the first time, provided same to the Solicitor.

- III. As a part of the inquiry that could have been timely made, and should be now made by the Court, *the next question* is whether any laws or rules of court have possibly been broken by anyone in the opaque chain of custody the Public Defender outlines in his memorandum. ("Since [the May 9] oral argument, the undersigned has been provided several documents involving the discipline and termination of the [sic] Officer Doe from the Spartanburg Public Safety Department. *These documents were provided to another attorney, whose client had obtained the documents from yet another individual who had, apparently, received the documents from some source.*" *Defendant's Memorandum, p. 3, 4, emphasis added*).
- IV. Finally, the last and perhaps ultimate question would be whether the documents are either: discoverable information under state rules, potentially admissible evidence in trial of the case, or constitute *Brady* evidence.

Discovery under SCRCrP 5

The purpose of holding a discovery hearing well in advance of trial (e.g. May 9, 2013) is, at the least, to urge the parties to comply with their continuing duties of disclosure under the rules, SCRCrP 5(e) (2), (3) and (4). It is also to allow informal resolution of discovery issues, to allow the court to address potential evidentiary or procedural issues by motions in limine, and to generally avoid surprise, error and prejudice at trial.

In this case, the Defendant could have easily sought relief *immediately* upon learning of the possible existence of confidential evidence to attack a witness. There was a lawful means, one which could be easily pursued to obtain the information to protect the record in the event of conviction. SCRCrP 5(d)(1) ("*Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in*

the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.").

Rather than only now filing a public memorandum, the Public Defender could have, and should have, pressed the issue through proper judicial channels, by way of claiming non-compliance by the State with discovery requirements under other subsections of the rule, *SCRCrP 5(a)(1)(A), (B), (C) or (D)*. Again, the matter was not addressed in this way and the burden should now rest on the Public Defender to explain, clarify and give specifics about the vagaries he provided to the Court in support of his motion on May 9, and of *who* gave him the documents, of when he received them, and of who else (specifically) is in a chain of custody stretching all the way back to "yet another individual who had, apparently, received the documents from some source." (*Defendant's Memorandum, page 4, emphasis added*).

As set forth in Defendant's own filing of June 7, "the Court [at hearing on May 9] asked for the undersigned attorney's reasons for believing that favorable evidence existed in the personnel files and what type of information the undersigned expected to receive. *Although it is difficult to predict, especially where access has been denied, what is expected, the undersigned tried to explain that he had heard from some persons about the reputation of Officer Doe in making arrests and stopping others.*" (*Defendant's Memorandum, p. 3, emphasis added*).

The Public Defender should be compelled to now provide the specifics about how the documents have been obtained.

The South Carolina Rule Regarding Impeachment of Witnesses and the Public Defender's Claim Under Brady

The Public Defender argues that he "is seeking information which may be contained in [a witness's] personnel files and *which may either reflect on his lack of credibility or may lead to other admissible evidence which may reflect on his lack of credibility.*" (*Defendant's Memorandum, p. 1, emphasis added*).

The Public Defender cites *Giglio* for application of *Brady* to impeachment matters, in addition to issues bearing on guilt or punishment, and cites *Kyles v. Whitley* for a prosecutor's duty to learn of "any favorable evidence known to others acting on the government's behalf in

the case, including the police." He then argues that the personnel files are "in the possession of law enforcement agencies, which are agents of the State or prosecution." From this he argues that "Kyles appears to require the State to learn of the favorable evidence, especially since the defense has made a specific request for that information." He argues that he "has specifically requested information which is contained" in personnel files of all three law enforcement officers.

Under South Carolina law, "credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation" testimony only, subject to the limitations that the evidence is limited to "character for truthfulness or untruthfulness", and that evidence of specific instances of the witness's conduct, other than conviction for a crime as provided in SCRE 609, may not be proved by extrinsic evidence. SCRE 608 (b). However, it remains within the trial judge's discretion whether to allow cross-examination as to specifics for truthfulness or untruthfulness. Bias, prejudice or any motive to misrepresent may be pursued, subject to the trial judge's discretion, to impeach the witness by cross-examination or by other evidence. SCRE 608(c); *but see State v. Bacote*, 331 S.C. 328, 503 SE2d 161 (SC 1998) (*issues determined at an administrative hearing are not binding, per se, on trial court*).

It should also be noted that the Public Defender had before May 9, and still has, one additional tool at his disposal to obtain the documents he seeks. It is a somewhat archaic tool in the lawyer's bag, but it is still effective. It is called a subpoena. To get documents brought into a courtroom for trial in a criminal case, it should be designated in Latin as "*duces tecum*", which roughly translated means "bring the stuff."

Finally, while the Public Defender has been parsing the language from United States Supreme Court cases under *Brady*, he has overlooked a still binding precedent of our own State Supreme Court, an opinion written by former Circuit Court Judge, Associate Justice and Chief Justice of our Supreme Court, the Honorable Bruce Littlejohn.

In *Anderson v. Leeke*, 271 S.C. 435, 248 S.E. 2nd 120 (SC 1978), the issue before the Court was the alleged failure of the prosecution to provide an autopsy report of test results. The petitioner had been convicted of drowning his wife and challenged his conviction for state relief under South Carolina's Post Conviction Relief Act. According to the petitioner, the test results "would have bolstered [his] explanation of when and how the bruises [on the wrists of his deceased wife] were caused. The State responded "that defense counsel was aware of the

existence of the autopsy report, that it was on file in the coroner's office, and that it was equally available to the defense." *Anderson v. Leeke*, 271 S.C. at 438.

The Court, per Justice Littlejohn, held that "where evidence is equally available to the accused, the obligation on the part of the State to furnish such evidence is relieved." *Id* at 439. In short, there is no duty under the "prudent prosecutor rule" of *Kyles v. Whitley* for the Solicitor to act as agent, investigator, or process server of subpoenas on behalf of the Public Defender.

*The Documents May Be Subject to Individual Claims of Privilege
Which do not bear on issues of Relevance, Prejudice or Admissibility*

The State may or may not be able to successfully challenge the use of information in a private personnel file at trial. However, the individual whose name appears on that file may well have standing at another time to challenge and seek relief for the manner in which others have obtained, used or aided and assisted in improperly obtaining, producing and circulating those documents, including claims for invasion of privacy, constitutional tort, and intentional tort, both individually, and for gross negligence in a governmental representative capacity, as well as complaints to those bodies and associations which govern and regulate proper conduct by professionals licensed by the State. See SC Code Ann. Sec. 30-4-40(a)(2), (7), (13) (*Matters exempt from disclosure under FOIA*) ("A public body may but is not required to exempt from disclosure the following information...[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."); ("[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships"); and cfr. *Burton v. York County Sheriff's Office*, 358 S.C. 339, 594 S.E. 2nd 888 (SC App. 2004) (matters properly vested with a public interest and not subject to the statute's privacy exemption are subject to case by case determination; procedures for judicial oversight from review of claims of exemption from disclosure, through challenge to those judicial findings via declaratory judgment action followed by full appellate review—the State submits that, in this case, such safeguards for both claimant and challengers of public interest are inconsistent with the actions in this case taken by the Public Defender); see also, *State v. Noah Robinson*, 305 S.C. 469, 476-77, 409 S.E. 2nd 404, 409-410 (SC 1991) ("[W]e conclude the South Carolina FOIA exempts discovery of material that is not otherwise discoverable under Rule 5(a)(2). The specific exemption under Section 30-4-

40(a)(3)(B) for 'the premature release of information to be used in a prospective law enforcement action' clearly exempts information regarding pending criminal prosecutions. No specific showing of harm is required by the State if the request involves such material."); see also SCRAP 407; Rule 1.6, (*Confidentiality of Information*); Rule 3.4, (*Fairness to Opposing Party and Counsel*); Rule 3.6, (*Trial Publicity*); Rule 4.1 (*Truthfulness in Statements to Others*); Rule 4.4, (*Respect for Rights of Third Persons*); S.C. Const. Art. I, Sec. 24, (A)(1) (Victims' Bill of Rights) ("...victims of crime have the right to...be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal... justice process"); S.C. Code Ann. Sec. 15-78-10, et seq. (South Carolina Tort Claims Act").

CONCLUSION

The Public Defender seeks to use *Brady*, and a prosecutor's duties thereunder, to compel the Solicitor to obtain documents that either side can pursue through a subpoena. In short, he asks this Court to compel the Solicitor under *Brady*, to provide additional documents the Public Defender has in his possession. The Public Defender has put himself in the position of possessing documents that he may have equivocated with the Court over on May 9, regarding what he specifically knew about these documents or information contained within them, and which he may have had longer than he should have, and which he may have obtained through a chain of custody that appears inherently suspect, even to the Public Defender.

The motion to compel should be denied, and the court should direct the Public Defender to issue his subpoenas as to the three (3) Investigators' records requested. The State or the individuals can then move to quash the subpoenas, and a hearing can then be held. The Court can examine the files *in camera* and the Public Defender can then explain his actions to the Solicitor and to the Court as to how and when he obtained the documents.

In light of the imminent pendency of trial in this case, the State will further consent to mutual *in camera* submissions by both parties to update discovery and *Brady* compliance.


 Barry J. Bannette, Circuit Solicitor
 for the Seventh Judicial Circuit

June 14, 2013
 Spartanburg, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS.: 12-GS-42-0355-60
 WARRANT NOS.: M129351-55; M129481

THE STATE ,

v.

Robert O'Dell Brown,

DEFENDANT.

NOTICE OF MOTION AND MOTION IN
 LIMINE TO EXCLUDE ANY
 QUESTIONS, EVIDENCE, OR REFERENCE
 CONCERNING ANY ADMINISTRATIVE
 ACTIONS IN THIS TRIAL

TO: THE DEFENDANT AND HIS ATTORNEY, CLAY ALLEN AND THE SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER'S OFFICE (Not filed prior to jury selection; submitted to the Court for review *In Camera* prior to trial)

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina will move in front of this Court on June 17, 2013 or when scheduled by this Court for an order to prevent the Defendant and his attorneys from making reference to any discipline or termination records from the Spartanburg Department of Public Safety. The State makes this motion under the following grounds and reasons:

1. The Defendant is moving to question Deputy John Doe on his prior employment with the Spartanburg Department of Public Safety concerning any discipline or termination actions taken by the Spartanburg Department of Public Safety. This opinion was based on administrative actions taken by the Spartanburg Department of Public Safety. The Defense should not be allowed to present any evidence or information or ask any questions concerning any other finding by an administrative group in this case. Such conduct would not be probative of Deputy John Doe truthfulness or untruthfulness in this case and any such instances may not be proven by extrinsic evidence, such as an administrative finding in an action.

Rule 608(b) of the South Carolina Rules of Evidence permits inquiry into specific instances of a witness' conduct during cross-examination if such conduct is probative of the witness' truthfulness or untruthfulness. The Rule specifically states that such instances of conduct may not be proved by extrinsic evidence. In Mizell v. Glover, 351 S.E.2d 392, 570 S.E.2d 176 (2002), the South Carolina Supreme Court held:

"that Rule 608(b) permits inquiry into specific instances of a witness' conduct during cross-examination, if such conduct is probative of the witness' truthfulness or untruthfulness. The Rule specifically states that such instances of conduct may not be proved by extrinsic evidence. All parties agree that documentary evidence, such as the record containing the jury interrogatory and response, would be inadmissible as extrinsic evidence. We note the Minnesota Life jury interrogatory was inadmissible on an additional ground as hearsay. We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Phillip Morris, Inc.*, 141 F. Supp. 2d 320 (E.D.N.Y. 2001). n8 In *Nipper*, the Fourth Circuit held that [HN4] judicial findings constitute hearsay and do not fall within any of the exceptions to the [*403] hearsay rule, including the exception for public records, *Rule 803(8)*, *F.R.E. Nipper*. The Fourth Circuit made clear that its holding [***16] was firmly rooted in the common law. *Id.* (Citing 5 John H. Wigmore, *Wigmore on Evidence* § 1671a (James H. Chadbourne rev. 1974) (citations omitted)).

Dr. Glover cites several federal cases in support of his argument that credibility assessments by judges are not extrinsic evidence and are admissible in subsequent trials. See *United States v. Amahia*, 825 F.2d 177 (8th Cir. 1987); *United States v. Terry*, 702 F.2d 299 (2d Cir. 1983). Dr. Glover did not discuss the precedent of the Fourth Circuit discussed in the text above. We find the Fourth Circuit employed the correct analysis, and that the jury's response to the interrogatory is a judicial finding constituting inadmissible hearsay. The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Phillip Morris*, 141 F. Supp. 2d 320 (denying admission of a judge's statement regarding [***17] credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Phillip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay

nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Teico* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations). As discussed, Dr. Glover's counsel told the jury in this case (incorrectly) that Dr. Marne was found "guilty of fraud" and that the jury should consider that in assessing the credibility of Dr. Marne."

The South Carolina Supreme Court found the jury interrogatory constituted improper extrinsic evidence, the admission of which constituted reversible error. In addition, the jury interrogatory constituted inadmissible hearsay. The Court reversed the Court of Appeals on this issue and remanded the case for a new trial.

2. The findings of administrative actions by the Spartanburg Department of Public Safety would be inadmissible hearsay and would not fall under any exception to the hearsay rule under Rules 801 thru 804 of the South Carolina Rules of Evidence. The Fourth Circuit and our South Carolina Supreme Court have ruled that these findings would be inadmissible hearsay and would have an obvious prejudicial effect on this jury or any future jury in another case. This Court would be correct in denying the admission of administrative findings regarding the credibility of Deputy Doe for impeachment during this trial or any subsequent trials.

3. Under Rules 402 and 403 of the South Carolina Rules of Evidence, any evidence or testimony on these issues involving the administrative actions by the Spartanburg Department of Public Safety would be irrelevant to the charges involved in this case. Even if the Court would find this evidence or testimony relevant, the evidence should be excluded because the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury. In *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991), the Court held that relevant evidence may be excluded where its

probative value is substantially outweighed by the danger of unfair prejudice.

The State would request an *in-camera* review by the Court before any such evidence may be deemed relevant or admissible in this case under the grounds stated in this Motion.

The State would ask the Court to grant this Motion In Limine in this case.



Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
June 17, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
The State,	)	
	)	RETURN TO DEFENDANT'S MOTION
v.	)	TO COMPEL/MEMORANDUM AND STATE'S
	)	MOTION IN LIMINE, AND FOR A
Robert O'Dell Brown,	)	PROTECTIVE OR MODIFYING ORDER
	)	REGARDING DISCOVERY
Defendant.	)	Indictment No.(s): 2012-GS-42-0355-60
	)	Warrant No.(s): M129351-55; M129481

To: Defendant Robert Odell Brown and his Attorney, Clay Allen, Spartanburg County Public Defender (Not filed prior to jury selection; submitted to the Court for review *In Camera* prior to trial)

The State hereby serves notice and moves for an order from this Court pursuant to *SCRCrP 5(d)(1)* (Protective and Modifying Orders), for a ruling that Defendant's motion be denied, restricted or deferred, or for such order that the Court may determine appropriate as to Defendant's Motion to Compel Disclosure of Potential Impeachment Evidence, argued before the Court on May 9, 2013. This Return and Motion by the State are made necessary due to allegations, argument and information filed or served on Friday, June 7, 2013, provided by Defendant's Counsel under letter dated the same.

The Issue(s) Before the Court

- I. The initial and most fundamental question before the Court is the process by which the Public Defender has gone about "creating" a *Brady* claim regarding the issue of personnel records of Deputy Doe in his dealings with both the Court and with the Solicitor. There are proper ways that he can pursue the records under the Court's rules.

At some point in the past, the Public Defender:

- (a) became aware of information which might be useful in cross-examining a key state's witness for trial, and of a location where specific documentation of that information could and *would* be located;

(b) has now sought to find a means for having that information pursued and rooted out by his adversary, the Solicitor, because for any number of possible reasons (discussed further below), he did previously not reveal the substance of what he had learned or how he had learned it;

(c) did not inform the Court nor the Solicitor (nor even the Court *ex parte*, which he could have under the same rule the Solicitor now uses) when given full opportunity to do so (beginning May 9, 2013, and continuing from sometime unspecified “[s]ince” that hearing), of specifics of *i) what he then actually knew*; or *ii) specifics of what he then actually had reason to know*, any part of which might be contained in confidential personnel files (or already had been taken from them); and then *iii) he did not seek to properly have that information put before the Court for its review*;

(d) instead has now chosen to make a filing which was both unnecessary and clearly has had the potential in its substance and timing, to cause prejudice to the State’s case. (See, *Defendant’s Memorandum, page 1, 2nd paragraph*, “The undersigned defense attorney has been informed that at least one of the above-named officer (sic), **John Doe** [REDACTED] *has been disciplined in at least one of his employments with law enforcement agencies*. The defense attorney is seeking information which may be contained in his personnel files and which may either reflect on his lack of credibility...Deputy **Doe** [REDACTED] *is expected to be the only prosecution witness who will testify about the incident which led to the Defendant’s charges of Attempted Murder and Resisting Arrest.*”)(emphasis added).

It is unclear why the Public Defender felt that all of this was necessary or appropriate to do in this fashion, rather than simply pursuing the matter through proper procedures under the rules of court (discussion below).

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- III. As a part of the inquiry that could have been timely made, and should be now made by the Court, *the next question* is whether any laws or rules of court have possibly been broken by anyone in the opaque chain of custody the Public Defender outlines in his memorandum. (“Since [the May 9] oral argument, the undersigned has been provided several documents involving the discipline and termination of the [sic] Officer Doe from the Spartanburg Public Safety Department. *These documents were provided to another attorney, whose client had obtained the documents from yet another individual who had, apparently, received the documents from some source.*” *Defendant’s Memorandum*, p. 3, 4, *emphasis added*).
- IV. Finally, the last and perhaps ultimate question would be whether the documents are either: discoverable information under state rules, potentially admissible evidence in trial of the case, or constitute *Brady* evidence.

Discovery under SCRCrP 5

The purpose of holding a discovery hearing well in advance of trial (e.g. May 9, 2013) is, at the least, to urge the parties to comply with their continuing duties of disclosure under the rules, SCRCrP 5(e) (2), (3) and (4). It is also to allow informal resolution of discovery issues, to allow the court to address potential evidentiary or procedural issues by motions in limine, and to generally avoid surprise, error and prejudice at trial.

In this case, the Defendant could have easily sought relief *immediately* upon learning of the possible existence of confidential evidence to attack a witness. There was a lawful means, one which could be easily pursued to obtain the information to protect the record in the event of conviction. SCRCrP 5(d)(1) (“*Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in*

the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.").

Rather than only now filing a public memorandum, the Public Defender could have, and should have, pressed the issue through proper judicial channels, by way of claiming non-compliance by the State with discovery requirements under other subsections of the rule, *SCRCrP 5(a)(1)(A),(B),(C) or (D)*. Again, the matter was not addressed in this way and the burden should now rest on the Public Defender to explain, clarify and give specifics about the vagaries he provided to the Court in support of his motion on May 9, and of *who* gave him the documents, of when he received them, and of who else (specifically) is in a chain of custody stretching all the way back to "yet another individual who had, apparently, received the documents from some source." (*Defendant's Memorandum, page 4, emphasis added*).

As set forth in Defendant's own filing of June 7, "the Court [at hearing on May 9] asked for the undersigned attorney's reasons for believing that favorable evidence existed in the personnel files and what type of information the undersigned expected to receive. *Although it is difficult to predict, especially where access has been denied, what is expected, the undersigned tried to explain that he had heard from some persons about the reputation of Officer Doe in making arrests and stopping others.*" (*Defendant's Memorandum, p. 3, emphasis added*).

The Public Defender should be compelled to now provide the specifics about how the documents have been obtained.

The South Carolina Rule Regarding Impeachment of Witnesses and the Public Defender's Claim Under Brady

The Public Defender argues that he "is seeking information which may be contained in [a witness's] personnel files and *which may either reflect on his lack of credibility or may lead to other admissible evidence which may reflect on his lack of credibility.*" (*Defendant's Memorandum, p. 1, emphasis added*).

The Public Defender cites *Giglio* for application of *Brady* to impeachment matters, in addition to issues bearing on guilt or punishment, and cites *Kyles v. Whitley* for a prosecutor's duty to learn of "any favorable evidence known to others acting on the government's behalf in

the case, including the police.” He then argues that the personnel files are “in the possession of law enforcement agencies, which are agents of the State or prosecution.” From this he argues that “*Kyles* appears to require the State to learn of the favorable evidence, especially since the defense has made a specific request for that information.” He argues that he “has specifically requested information which is contained” in personnel files of all three law enforcement officers.

Under South Carolina law, “credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation” testimony only, subject to the limitations that the evidence is limited to “character for truthfulness or untruthfulness”, and that evidence of specific instances of the witness’s conduct, other than conviction for a crime as provided in **SCRE 609**, may not be proved by extrinsic evidence. **SCRE 608 (b)**. However, it remains within the trial judge’s discretion whether to allow cross-examination as to specifics for truthfulness or untruthfulness. Bias, prejudice or any motive to misrepresent may be pursued, subject to the trial judge’s discretion, to impeach the witness by cross-examination or by other evidence. **SCRE 608(c)**; *but see State v. Bacote*, 331 S.C. 328, 503 SE2d 161 (SC 1998) (issues determined at an administrative hearing are not binding, *per se*, on trial court).

It should also be noted that the Public Defender had before May 9, and still has, one additional tool at his disposal to obtain the documents he seeks. It is a somewhat archaic tool in the lawyer’s bag, but it is still effective. It is called a subpoena. To get documents brought into a courtroom for trial in a criminal case, it should be designated in Latin as “*duces tecum*”, which roughly translated means “bring the stuff.”

Finally, while the Public Defender has been parsing the language from United States Supreme Court cases under *Brady*, he has overlooked a still binding precedent of our own State Supreme Court, an opinion written by former Circuit Court Judge, Associate Justice and Chief Justice of our Supreme Court, the Honorable Bruce Littlejohn.

In *Anderson v. Leeke*, 271 S.C. 435, 248 S.E. 2nd 120 (SC 1978); the issue before the Court was the alleged failure of the prosecution to provide an autopsy report of test results. The petitioner had been convicted of drowning his wife and challenged his conviction for state relief under South Carolina’s Post Conviction Relief Act. According to the petitioner, the test results “would have bolstered [his] explanation of when and how the bruises [on the wrists of his deceased wife] were caused. The State responded “that defense counsel was aware of the

existence of the autopsy report, that it was on file in the coroner's office, and that it was equally available to the defense." *Anderson v. Leeke*, 271 S.C. at 438.

The Court, per Justice Littlejohn, held that "where evidence is equally available to the accused, the obligation on the part of the State to furnish such evidence is relieved." *Id* at 439. In short, there is no duty under the "prudent prosecutor rule" of *Kyles v. Whitley* for the Solicitor to act as agent, investigator, or process server of subpoenas on behalf of the Public Defender.

***The Documents May Be Subject to Individual Claims of Privilege
Which do not bear on issues of Relevance, Prejudice or Admissibility***

The State may or may not be able to successfully challenge the use of information in a private personnel file at trial. However, the individual whose name appears on that file may well have standing at another time to challenge and seek relief for the manner in which others have obtained, used or aided and assisted in improperly obtaining, producing and circulating those documents, including claims for invasion of privacy, constitutional tort, and intentional tort, both individually, and for gross negligence in a governmental representative capacity, as well as complaints to those bodies and associations which govern and regulate proper conduct by professionals licensed by the State. See SC Code Ann. Sec. 30-4-40(a)(2), (7), (13) (*Matters exempt from disclosure under FOIA*) ("A public body may but is not required to exempt from disclosure the following information...[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."); ("[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships"); and cfr. *Burton v. York County Sheriff's Office*, 358 S.C. 339, 594 S.E. 2nd 888 (SC App. 2004) (matters properly vested with a public interest and not subject to the statute's privacy exemption are subject to case by case determination; procedures for judicial oversight from review of claims of exemption from disclosure, through challenge to those judicial findings via declaratory judgment action followed by full appellate review—the State submits that, in this case, such safeguards for both claimant and challengers of public interest are inconsistent with the actions in this case taken by the Public Defender); see also, *State v. Noah Robinson*, 305 S.C. 469, 476-77, 409 S.E. 2nd 404, 409-410 (SC 1991) ("[W]e conclude the South Carolina FOIA exempts discovery of material that is not otherwise discoverable under Rule 5(a)(2). The specific exemption under Section 30-4-

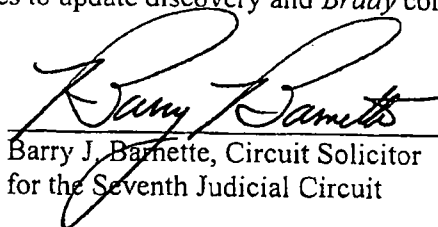
40(a)(3)(B) for 'the premature release of information to be used in a prospective law enforcement action' clearly exempts information regarding pending criminal prosecutions. No specific showing of harm is required by the State if the request involves such material."); see also SCRAP 407; Rule 1.6, (*Confidentiality of Information*); Rule 3.4, (*Fairness to Opposing Party and Counsel*); Rule 3.6, (*Trial Publicity*); Rule 4.1 (*Truthfulness in Statements to Others*); Rule 4.4, (*Respect for Rights of Third Persons*); S.C. Const. Art. I, Sec. 24, (A)(1) (Victims' Bill of Rights)("...victims of crime have the right to...be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal... justice process"); S.C. Code Ann. Sec. 15-78-10, et seq. (South Carolina Tort Claims Act").

CONCLUSION

The Public Defender seeks to use *Brady*, and a prosecutor's duties thereunder, to compel the Solicitor to obtain documents that either side can pursue through a subpoena. In short, he asks this Court to compel the Solicitor under *Brady*, to provide additional documents the Public Defender has in his possession. The Public Defender has put himself in the position of possessing documents that he may have equivocated with the Court over on May 9, regarding what he specifically knew about these documents or information contained within them, and which he may have had longer than he should have, and which he may have obtained through a chain of custody that appears inherently suspect, even to the Public Defender.

The motion to compel should be denied, and the court should direct the Public Defender to issue his subpoenas as to the three (3) Investigators' records requested. The State or the individuals can then move to quash the subpoenas, and a hearing can then be held. The Court can examine the files *in camera* and the Public Defender can then explain his actions to the Solicitor and to the Court as to how and when he obtained the documents.

In light of the imminent pendency of trial in this case, the State will further consent to mutual *in camera* submissions by both parties to update discovery and *Brady* compliance.


Barry J. Barnette, Circuit Solicitor
for the Seventh Judicial Circuit

June 14, 2013
Spartanburg, SC



FIRE
Phone (864) 596-2083
Fax (864) 596-2263

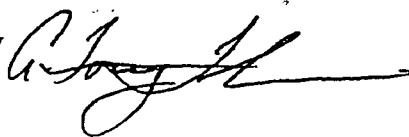
Spartanburg Public Safety Department

P.O. Box 1746 • Spartanburg, SC 29304



POLICE
Phone (864) 596-2035
Fax (864) 596-2152

MEMO

DATE: September 4, 2008
TO: SPO [Redacted] Patrol Division, K9
FROM: A. Tony Fisher, Director Public Safety 
RE: Letter of Resignation

I am in receipt of your letter of resignation dated and effective September 4, 2008 and hereby accept same.

We wish you much success with your future endeavors.

ATF/cg

cc: Col. J. C. Kindall
Capt. S. R. Lamb
Lt. T. R. Suber
Sgt. Billy Mabry
Human Resources





Spartanburg Public Safety Department

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MEMO

POLICE
Phone (864) 596-2035
Fax (864) 596-2152

COPY

DATE: July 12, 2007

TO: SPO John Doe Patrol Division, K9

FROM: A. Tony Fisher, Director, Public Safety *A. Fisher*

RE: Letter of Suspension

Received

JUL 12 2007

Human Resources

On June 4, 2007, a complaint was filed with the Office of Professional Standards and Inspections (OPSI) regarding an allegation of false information in reference to time worked in secondary employment at Crescent Hills on May 31, 2007.

In the statement provided by you to OPSI, you state that you did not realize you had signed up to work both at Crescent Hills and extra duty on Morgan Square. You stated that you actually worked two hours at Crescent Hills and then went to Morgan Square to work the assigned hours there. You further stated that you intended to make up the hours intended for Crescent Hills the next time you worked, but did not receive any more days on the schedule. You also admitted to billing for hours worked at Crescent Hills and extra duty for Morgan Square during the same period of time which constitutes fraud.

During the investigation, it was revealed that you left Morgan Square to assist with a homicide on Carlton Avenue, however, no supplemental report was filed for the K9 track. You stated that you did not realize you had to do a supplemental report. Also during the investigation several issues were identified with your bi-monthly time sheet which was reviewed with you.

The investigation concludes that you are in violation of the following departmental policies:

General Order 100.1A1, Subsection 01, Conduct Unbecoming, which includes but is not limited to, any criminal, dishonest or improper conduct.

General Order 100.1A1, Subsection 23, Honesty, Employees shall not lie, give misleading information or falsify written or verbal communications in official reports



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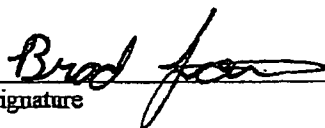
or in their actions with another person or department when it is reasonable to expect that such information may be relied upon because of the employee's position or affiliation with this department.

General Order 100.1A1, Subsection 51, Report Preparation, Officers and/or civilian personnel shall submit all necessary reports in accordance with procedures established by our General Orders, Report Writing Manual or as mandated by the State. Reports will be complete, accurate, legible and submitted before the end of each tour of duty.

It is the recommendation of the Office of Professional Standards and Inspections that you be suspended for a period of ten (10) days without pay and that you engage in no secondary employment until January 1, 2008. I hereby concur with the recommendation.

Therefore, effective Friday, July 13, 2007, you are hereby suspended for a period of ten (10) days without pay. You are no longer authorized to participate on the Tactical Neutralization Team and must return all department issued equipment to the Training Officer immediately. You are no longer authorized to participate in any secondary employment until January 1, 2008 to be inclusive of any and all extra duty opportunities through the City of Spartanburg. All current approved Secondary Employment is null and void. You will be required to submit new requests for any current or future secondary employment beginning January 1, 2008. You will report for duty on July 27, 2007 beginning at 0700 hours. During your time of suspension if you are scheduled for a court appearance, you are to be present at the appropriate date and time.

Please be advised that under the Civil Service law and regulations applicable to the City of Spartanburg, you are entitled to a hearing before the Civil Service Commission by filing an Appellant Claim Form within ten (10) days from the date of this letter. This letter is also documentation that you received an Appellant Claim Form should you wish to appeal this disciplinary action.

 7/12/07
Signature Date

cc: Capt. G. W. Norris, Jr.
Lt. A. D. Littlejohn
OPSI
Human Resources



Spartanburg Public Safety Department

P.O. Box 1746 • Spartanburg, SC 29304



FIRE
Phone (864) 596-2083
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POLICE
Phone (864) 596-2035
Fax (864) 596-2152

MEMO

COPY

DATE: September 4, 2008

TO: SPO John Doe [REDACTED] Patrol Division, K9

FROM: A. Tony Fisher, Director, Public Safety *A. Fisher*

RE: Letter of Termination

On July 24, 2008, at approximately 1138 hours you were involved in a vehicle accident with a white Dodge pickup. A review of your in-car video footage of a traffic stop prior to the accident revealed there was no audio on the recording. Also, the recording ended while you were following the vehicle across a grass field and through some trees approaching Franklin Street. Your vehicle slid into the suspect's vehicle resulting in damage to Unit 713.

Additional video from July 24, 2008, at approximately 1420 hours was also reviewed to see if it contained an audio recording. It did not. This recording showed you initiating a traffic stop on a black pickup at Magnolia and Vernon Street. The vehicle did not stop and you followed running blue lights and siren down Vernon, left on Aden Street to Fulton Avenue. You turned off your blue lights and continued to pursue the black truck down Fulton Avenue. The truck ran a stop sign, crossed Fremont Avenue, turned right onto South Cleveland Park Drive. As the truck approached the intersection of Asheville Highway, the driver crossed over onto the wrong side of the road, ran the stop sign, veered left and headed out of the city. Due to traffic, you stopped at the stop sign, then turned left and drove out past the city limits. You then turned off your camera.

You provided two written statements regarding the incidents that occurred on July 24, 2008. One statement covered the incident that occurred at 1138 hours with a white Dodge pickup that resulted in your involvement in a

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collision. The second statement addressed the incident at 1420 hours with a black pickup. You were also interviewed and taped regarding each incident. When asked about the incident with the white pickup and if you turned off the camera system, you stated, *"I did." That's what I've always been trained to do.*

They... from day one since I got here, they've said if a car takes off on you or runs from you, turn all your stuff off and go the other way, that's the reason I always turn my camera off." When asked if you pursued the truck, you said *"I did for probably 100-200 yards I felt like, but... once I felt... he... I probably shouldn't have took the left hand turn to follow him when he went across that little field right there. But, I caught myself and stopped at the side of the roadway. Like ok, no he's really running. To be honest with you, I thought he was going to get out there in the dirt field and jump out and run on foot. That's the only reason I stayed as close as I did, but once I seen that he had no intention of jumping out and running on foot, that's when I was like ok I'm gonna let this go."* When asked when you knew the subject wasn't going to stop, you said *"when the subject made the left at the end of the dead end street and went across the field."*

In reference to the black pickup truck you stated *"To be honest with ya, I did realize he wasn't gonna stop. I called and asked Spartanburg since they already had county units responding to the area, I called and asked them do ya'll have a county unit close to here. Their truck's on Fulton Avenue. They said hold on a second. I followed him across Fulton and when we got to about Reibling, Spartanburg had not said anything back to me about yeah we got one so I slowed up and let the truck, he took off. We went on down. He took a right on South Cleveland Park. I slowed down at Cleveland Park right here, stopped. He went on down Cleveland Park and I could see the Asheville Highway. He made a left hand turn, he blew the stop sign and kept going up Asheville Highway. I took the right and stopped at Cleveland Park and Asheville Highway and I could see him. I got on the radio and told Spartanburg just advise the County that he's going up Asheville Highway rather recklessly and he's running in the median. I think he passed Lt. Gilbert way up on Asheville Highway. Lt. Gilbert said he passed him running in and out of traffic. I turned on Asheville Highway and then turned around and come back the opposite way after I turned on Asheville Highway cause he was, wow."* When asked if you completed an incident report you stated that you could not remember. When asked if you pursued the black truck, you stated, *"that truck, yes I did."* When asked if you completed a pursuit report you responded, *"I did not."* When discussed about Sgt. Munoz calling to ask if you were chasing the truck, you stated, *"Sgt. Munoz did call and ask me was I chasing*

the truck. At that time I had let the truck... when he called and asked me that, is when the truck had taken the right on to Cleveland Park Drive, cause I guess he had heard me call and Spartanburg do you have a county officer close or whatever. At that time he called and asked me and I said no... I let him go now. At which time I was before hand, but I had let him go at that point. And so that's when I had turned around on Asheville Highway. Cause he had asked me if you are, you need to stop. I said o.k. and let the truck go on."

All videos on the Digital Evidence Series for Unit 713 were reviewed. At the time of the review, there were 592 recordings. None of the recordings had in-car audio and the investigation revealed that during the in-car camera installation microphones were never installed in your assigned vehicle. However, of the 592 recordings, 195 contained no audio recording at all which indicated that you failed to operate the body microphone according to departmental policy.

Investigation by the Office of Professional Standards and Inspections reveals that you are found to be in violation of the following departmental policies:

General Order 100.1A1, Rules of Conduct, Section 22, Discretion/Committing Unsafe Acts, Subsections A and B.

General Order 100.1A1, Rules of Conduct, Section 23, Honesty

General Order 100.1A1, Rules of Conduct, Section 46, Using Emergency Lights and Siren

General Order 100.1A1, Rules of Conduct, Section 51, Report Preparation

General Order 510.2A2, Vehicular Pursuits, Sections Policy, Definition(s) and Procedures, Subsection D

General Order 720.2A, Mobile Video/Audio Recording, Section B Operating Procedures, Subsection 3, Subsection 4, b and c.

This department has a policy of progressive discipline up to and including termination. It is the recommendation of the Office of Professional Standards and Inspections that you be terminated from the Spartanburg Public Safety Department.

Based on the recent incidents, along with incidents in the past two years, I accept and concur with their recommendation. Therefore, you are hereby terminated from the Spartanburg Public Safety department effective September 4, 2008.

You are instructed to turn in all department issued equipment immediately including your badge, ID and duty weapon to the Training Sergeant. You will relinquish your K9 partner to Major Horton.

All accrued leave available to you will be included in your final check which will be available for pick up in the Human Resources Department on Friday, September 12, 2008. Please see Ms. Ingrid Crawford in the Human Resources Department regarding your South Carolina retirement and any options you have pertaining to that.

Please be advised that under the Civil Service law and regulations applicable to the City of Spartanburg, you are entitled to a hearing before the Civil Service Commission by filing an Appellant Claim Form within ten (10) days from the date of this letter. This letter is also documentation that you received an Appellant Claim Form should you wish to appeal this disciplinary action.

ATF/cg

cc: Col. J. C. Kindall
Major D. W. Horton
Capt. S. R. Lamb
Lt. T. R. Suber
Sgt. Billy Mabry
OPSI
Human Resources

Signature

Date



Spartanburg Public Safety Department

P.O. Box 1746 • Spartanburg, SC 29304



FIRE
Phone (864) 596-2083
Fax (864) 596-2263

MEMO

POLICE
Phone (864) 596-2035
Fax (864) 596-2152

COPY

DATE: February 2, 2007

TO: SPO John Doe Patrol Division, K9

FROM: A. Tony Fisher, Director, Public Safety *A. Fisher*

RE: Letter of Suspension

On December 29, 2006, Capt. G. W. Norris, Jr. monitored a radio call for an arrest made by you in the Arkwright community. After contacting shift supervision, Sgt. Mark Norungolo responded that he was in route to your location.

On December 30, 2006, Sgt. Norungolo expressed concern about the operation of your in-car video camera. During the conversation with Sgt. Norungolo, you indicated that you did not like the camera and there were times you did not turn the system on. By your own admission, it can be concluded that you did not follow the policy and procedures of this agency in utilizing the in-car video camera system available in your police unit.

You are found to be in violation of Policy 100.1A, Rules of Conduct, Subsection 04, Neglect of Duty/Unsatisfactory Performance and Policy 720.2A, Mobile Video/Audio Recording.

It is the recommendation of supervision that you be suspended for one (1) day without pay. I hereby concur with this recommendation. Therefore, you are suspended for one (1) day without pay on Tuesday, February 5, 2007. You will return to duty on Wednesday, February 7, 2007, at your regular scheduled time. You will not be authorized to participate in K9 training on Tuesday, February 6, 2007.



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MEMO

POLICE
Phone (864) 596-2035
Fax (864) 596-2152

DATE: June 20, 2007

TO: SPO John Doe [REDACTED] Patrol Division, K9

FROM: A. Tony Fisher, Director, Public Safety *[Signature]*

RE: Letter of Warning

COPY

On June 14, 2007, an internal investigation was begun by the Office of Professional Standards and Inspections (OPSI) into the alleged practice of receiving free merchandise by signing a store log sheet.

Investigation reveals that the Texaco Convenience store located at the corner of South Church Street and Henry Street was purchased by Mr. Ganesh Basnet in January 2007. The investigation further revealed that Mr. Basnet continued a practice of the previous owner of giving drinks to police officers. The store requires officers to sign a "Police Merchandise Control" documenting the date, time, type of product, cost, badge number, name or initials when merchandise is received.

Based upon the fact that a "Police Merchandise Control" log is kept and that you are required to sign for merchandise taken, shows that it is clearly a police discount or gratuity. Therefore, you are found to be in violation of:

Policy 100.1A1, Section 31, Gratuities "An officer may make any discounted purchase except when an individual or storeowner states that, in fact, the discount is being given because the employee is a police officer. In such cases, the discount constitutes a gratuity and must be refused." and

Subsection B "If after entering a store or commercial establishment to make a purchase, an officer is told by the clerk/owner that the store gives police discounts, the situation comprises a gratuity and the officer must pay the full regular price for the item, no matter how high."

You are hereby mandated to reimburse the Texaco for seven (7) items purchased at a cost of \$1.37 each for a total of \$9.59. You have until July 31, 2007 to make this

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reimbursement. A paid receipt or a copy of a paid receipt must be given to OPSI by 4:00 p.m. on July 31st. Failure to do so will result in further disciplinary action.

As a member of the Spartanburg Public Safety Department, you are held to a higher level of accountability in your actions both on and off duty. Your actions, while seemingly innocent, can bring discredit upon yourself and/or this agency as a whole. Please be advised that additional incidents of this kind will be cause of more severe disciplinary action up to and including suspension and dismissal.

ATF/cg

John Doe

6/26/07
Date

cc: Capt. G. W. Norris, Jr.
Lt. A. D. Littlejohn
OPSI
Human Resources

who stated that he believes that [redacted] : P/O spoke with [redacted] Doe is a good officer at times but he believes that he has a problem with police officers while on duty. He said to me that he can't honestly recommend him for employment here at the Sheriff's Office. He doesn't feel comfortable doing so!

NEIGHBORHOOD CANVASS:

(1)

(2)

(3)

WITNESSES

Spartanburg County Sheriff's Office

[Signature]
[Signature]
[Signature]

ARREST WARRANT NUMBER

M-129353 (Amended)

Direct indictment

ACTION OF GRAND JURY

[Signature] **True Bill**
 Foreperson of Grand Jury
 Date: JUN 13 2013

VERDICT

COUNT I: *Guilty*COUNT II: *Guilty*

Foreperson of Petit Jury

Date: 6/20/13 *Kathy Jagan*

DOCKET NO. **12-GS-42-0358**
(AMENDED)

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE

v.

ROBERT ODELL BROWN

Indictment for
 ATTEMPTED MURDER AND
 POSSESSION
 OF WEAPON DURING COMMISSION
 OF A VIOLENT CRIME
 SC Code 16-03-0029; 16-23-490
 CDR Code 3410; 0549
 Class FEL-A; FEL-F

[Signature]
[Signature]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 13 2013, the
 Grand Jurors of Spartanburg County present upon their oath:

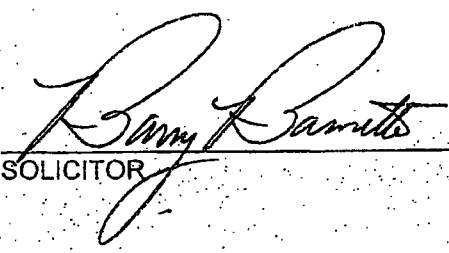
ATTEMPTED MURDER (Count I)

That the Defendant, Robert Odell Brown, did in Spartanburg County on or about November 6, 2011, with intent to kill, attempted to kill John Doe a Spartanburg County Law Enforcement Officer, with malice aforethought, expressed or implied, by shooting him with a firearm in the face, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF WEAPON DURING
 COMMISSION OF A VIOLENT CRIME (Count II)**

That the Defendant, Robert Odell Brown, did in Spartanburg County on or about November 6, 2011, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ATTEMPTED MURDER, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OF SPARTANBURG
VS.
Robert Odell Brown

INDICTMENT/CASE#: 2012GS4200358

A/W#: M129353

Date of Offense: 11/6/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

Race: BLACK Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: SPARTANBURG, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder- Count One (1)☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Barry Barnett 13039/10455 Defendant Clay Till 328
BARNETTE, BARRY SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, 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: 12-360 and Count II
☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP days/hours Public Service EmploymentTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS 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 FundOther:
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.
Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 390TOTAL \$ 13390Clerk of Court/ Deputy Clerk Court Reporter: Presiding Judge Judge Code: Sentence Date: June 20, 2013

SOUTH CAROLINA

OF SPARTANBURG

VS.

Robert Odell Brown

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4200358A

A/W#: 2012GS4200358A

Date of Offense: 11/6/2011

S.C. Code §: 16-23-0490

CDR Code #: 0549

Race: BLACK Sex: M Age: 29

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death- Count Two (2)

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation; ☐ Negotiated Sentence; ☐ Recommendation by the State.ATTEST: [Signature] 13039/70455 SC Bar# [REDACTED] Defendant [Signature] Attorney for Defendant 328 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk: [Signature]Court Reporter: [Signature] days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge: [Signature]Judge Code: 2053Sentence Date: June 30, 2013

WITNESSES

Spartanburg County Sheriff's Office

Spartanburg County Sheriff's Office

CHECKED MAR 20 2012

ARREST WARRANT NUMBER

M-129351

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Guilty
Kathy Jagan

Foreperson of Petit Jury

Date:

6/20/13 Kathy Jagan

DOCKET NO.

12-GS-42-0359
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 09 2012

TERM

THE STATE
v.

ROBERT ODELL BROWN

Indictment for

FAILURE TO STOP MOTOR VEHICLE
WHEN SIGNALLED BY OFFICER

SC Code: 56-5-750 (B)(1)

CDR Code: 0065

Class MIS/A

FILED COURT
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN 18 AM 10:55
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

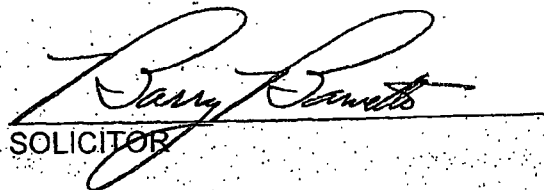
At a Court of General Sessions, convened on JAN 09 2012 the

Grand Jurors of Spartanburg County present upon their oath:

FAILURE TO STOP MOTOR VEHICLE WHEN
SIGNALLED BY A LAW ENFORCEMENT VEHICLE

That the Defendant, Robert Odell Brown, did in Spartanburg County on or about November 6, 2011, fail to stop the motor vehicle which he was driving on a road, street, or highway of the State of South Carolina when he was signaled by a law enforcement vehicle by means of a siren or flashing light, in violation of S.C. CODE ANN. §56-5-750 (B)(1) (Law. Co-op. 1976).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

SOUTH CAROLINA

OF SPARTANBURG

VS.

Robert Odell Brown

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4200359

A/W#: M129351

Date of Offense: 11/6/2011

S.C. Code § : 56-05-0750(B)

CDR Code #: 2396

SENTENCE SHEET

BLACK Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: SPARTANBURG, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 2nd or sub. off

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-0750(B) of the S.C. Code of Laws, bearing CDR Code # 2396

☒ 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's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Tina Bulor 13639/10455 SC Bar# 328
BARNETTE, BARRY Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —— days/hours Public Service EmploymentObtain 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 FundOther: —☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Recipient: —*Fine: \$ —§ 14-1-206 (Assessments 107.5%) \$ —§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ —§ 56-5-2995 (DUI Assessment) \$12 \$ —§ 56-1-286 (DUI Breath Test) \$25 \$ —Proviso 47.9 (Public Def/Prob) \$500 \$ —§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ —§ 50-21-114 (BUI Breath Test Fee) \$50 \$ —§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ —Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 39.00TOTAL \$ 133.90Clerk of Court/ Deputy Clerk —Court Reporter: —Presiding Judge —Judge Code: 2053Sentence Date: June 20, 2013

WITNESSES

Spartanburg County Sheriff's Office

DATE: 1/18/12

TIME: 1:00 PM

BY: [Signature]

WITNESS: [Signature]

Spartanburg County Sheriff's Office

CHECKED: 1/18/12

CHECKED: 1/18/12

APPROVED: [Signature]

ARREST WARRANT NUMBER

1129252

ACTION OF GRAND JURY

True Bill

1 3 2012

[Signature]

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 6/20/13 Kathy Jagan

DOCKET NO. **12-GS-42-0360**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 09 2012

TERM

THE STATE

v.

ROBERT ODELL BROWN

Indictment for

**RESISTING ARREST—
DEADLY WEAPON**

SC Code: 16-03-0625

CDR Code: 2352

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN 18 AM 10:55
M. HOPE BLACKLEY

SC 12-03-0625

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 09 2012 the
Grand Jurors of Spartanburg County present upon their oath:

RESISTING ARREST--DEADLY WEAPON

That the Defendant, Robert Odell Brown, did in Spartanburg County on or about November 6, 2011, willfully and knowingly resist the efforts of a law enforcement officer of this State, to make a lawful arrest with the use and threat of use of a deadly weapon, to-wit: a shotgun, against the officer, when the said defendant was in possession and/or claimed to be in possession of the said deadly weapon, in violation of §16-3-625, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OF SPARTANBURG
VS.
Robert Odell Brown

INDICTMENT/CASE#: 2012GS4200360

A/W#: M129352

Date of Offense: 11/6/2011

S.C. Code § 16-03-0625

CDR Code #: 2352

Race: BLACK Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: SPARTANBURG, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Resisting / Resisting arrest with a deadly weapon - 1st offense

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0625 of the S.C. Code of Laws, bearing CDR Code # 2352

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: *[Signature]* 13039/70455 *[Signature]* 328
BARNETTE, BARRY SQ Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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 FundOther:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: *[Signature]*Court Reporter: *[Signature]*

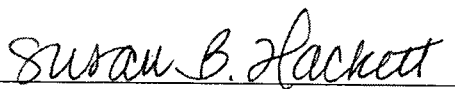
SCCA/217 (03/2011)

Presiding Judge: *[Signature]*Judge Code: 2053Sentence Date: June 20, 2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 29th, 2015


Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 29th, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
JUL 29 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RECEIVED

JUL 29 2015
RESPONDENT,
SC Court of Appeals

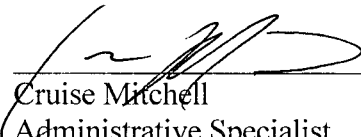
V.

ROBERT ODELL BROWN,

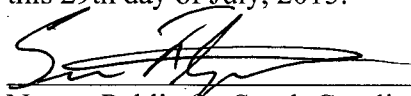
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of July, 2015.

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