

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

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The Honorable Paul M. Burch, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2015-000544

NOAH C. MUMFORD,.....Respondent-Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Petitioner-Respondent.

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (October 24-26, 2011)	1
ORDER DISMISSING APPEAL	382
REMITTITUR	383
APPLICATION FOR POST-CONVICTION RELIEF	384
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	391
RETURN.....	398
PCR HEARING TRANSCRIPT (July 31, 2014)	402
ORDER GRANTING POST-CONVICTION RELIEF.....	543
RESPONDENT’S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCF.....	580
APPLICANT’S MOTION TO ALTER OR AMEND JUDGMENT	584
ORDER DENYING RESPONDENT’S MOTION TO ALTER OR AMEND.....	586
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND.....	587

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PAGE

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2011-GS-13-00096

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
) NOAH MUMFORD
) DEFENDANT
)

October 24-26, 2011
 Chesterfield, South Carolina
VOLUME NO. 01 OF 03

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE; and a jury.

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

KERNARD E. REDMOND, DEPUTY SOLICITOR
 Attorney for the State

CHRIS JONES, ASSISTANT SOLICITOR
 Attorney for the State

LARRY W. KNOX, ESQUIRE
 Attorney for the Defendant

PAUL FUNDERBURK,

TODD HARRELL,

ANTONIO SELLERS,

DANA WALLACE, Chesterfield County Sheriff's Office

DANIEL SCOTT, Chesterfield County Sheriff's Office

STEVEN TEAL,

FRANK CRANFORD;

HATTIE O. GORDON
Circuit Court Reporter

MASTER INDEX

Volume 01: MONDAY, OCTOBER 24, 2011

Voir Dire of the Jury	8
Selection of the Jury	21
Colloquy	28
Certificate of Reporter	39

Volume 02: TUESDAY, OCTOBER 25, 2011

Colloquy	42
Opening Statement by Mr. Jones	53
Opening Statement by Mr. Knox	56
PAUL FUNDERBURK JR.	
Direct By Mr. Jones	59
Cross By Mr. Knox	71
Redirect By Mr. Jones	101
Colloquy	103
TODD HARRELL	
Direct By Mr. Jones	106
Cross By Mr. Knox	115
Redirect By Mr. Jones	134
Recross By Mr. Knox	136
ANTONIO SELLERS	
Direct By Mr. Redmond	138
Cross By Mr. Knox	146

MASTER INDEX

Volume 02: TUESDAY, OCTOBER 25, 2011

ANTONIO SELLERS

Redirect By Mr. Redmond 162

Recross By Mr. Knox 163

Further Redirect By Mr. Redmond 165

Colloquy 166

DANA WALLACE

Direct By Mr. Redmond 167

Cross By Mr. Knox 171

Redirect By Mr. Redmond 177

DANIEL SCOTT

Direct By Mr. Redmond 179

Cross By Mr. Knox 189

Redirect By Mr. Redmond 194

Recross By Mr. Knox 196

Colloquy 197

STEVEN TEAL

Direct By Mr. Knox 207

Cross By Mr. Redmond 222

Redirect By Mr. Knox 227

FRANK CRANFORD

Direct By Mr. Knox 229

Cross By Mr. Redmond 242

MASTER INDEX

Volume 02: TUESDAY, OCTOBER 25, 2011

FRANK CRANFORD

Redirect By Mr. Knox	246
Recross By Mr. Redmond	249
Colloquy	250
Certificate of Reporter	253

Volume 03: WEDNESDAY, OCTOBER 26, 2011

Colloquy	256

NOAH MUMFORD

Direct By Mr. Knox	256
Cross By Mr. Redmond	283
Redirect By Mr. Knox	293
Recross By Mr. Redmond	295
Colloquy	295

PAUL FUNDERBURK, JR.

Direct By Mr. Redmond	305
Cross By Mr. Knox	307
Redirect By Mr. Redmond	309
Recross By Mr. Knox	310
Colloquy	310
Closing Statement by Mr. Knox	315
Closing Statement by Mr. Redmond	328

MASTER INDEXVolume 03: WEDNESDAY, OCTOBER 26, 2011

Charge of the Court	345
Colloquy	360
Charge of the Court Continued	363
Colloquy	364
Verdict of the Jury	365
Colloquy	368
Sentence of the Court	370
Certificate of Reporter	381

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Beer Bottle	42	44
2	Fired Shell Casings (4)	42	44
3	.22 Cal. Browning Handgun	42	44
4	Magazine	42	44
5	Unfired Bullets (10)	42	44
6	Gunshot Residue Report	42	44
7	Miranda Warning - Mumford	42	44
8	DVD Statement - Mumford	42	44
9	Vol. Statement - Harrell	177	
10	Vol. Statement - Sellers	177	
11	Vol. Statement - Nivens	177	
12	Vol. Statement - Williams	177	

VOIR DIRE OF THE JURY

1 THE COURT: All right. Solicitor, you ready to call
2 the first case for trial, sir.

3 MR. JONES: Yes, sir, Your Honor.

4 THE COURT: Glad to hear from you.

5 MR. JONES: Thank you, Your Honor. May it please the
6 Court. Standing before you is Noah Mumford. Indictment
7 Number 2011-GS-13-0096, and he is charged with attempted
8 murder. And the State is ready to proceed to trial.

9 THE COURT: All right. Thank you, sir. Ladies and
10 gentlemen, you heard the Solicitor call the case for
11 trial. Case Number 2011-GS-13 -- excuse me -GS-13-96, and
12 that is the State of South Carolina v. Noah Mumford. On
13 this indictment Mr. Mumford is charged with attempted
14 murder under the South Carolina Code of Laws.

15 Let me, before I get into any of the allegations
16 contained in the indictment, ladies and gentlemen, and let
17 me inform you that to this indictment, or let me back up.

18 An indictment, ladies and gentlemen, is simply a
19 piece of paper that brings the case into Court. It is a
20 document that contains the allegations against
21 Mr. Mumford. To these allegations he's pled not guilty,
22 and that plea of not guilty places the burden of proof on
23 the State to prove each and every allegation contained in
24 the indictment beyond a reasonable doubt. Mr. Mumford is
25

1 presumed innocent of those charges, and that presumption
2 of innocence remains with him throughout the course of the
3 trial unless the State proves his guilt beyond a
4 reasonable doubt.

5 The indictment is in no way evidence of any of the
6 allegations that are contained in it. It is simply the
7 piece of paper which brings the case into Court. I'm
8 going to read to you what the allegations are in this
9 indictment. The indictment claims that Noah Mumford did
10 in Chesterfield County on or about December the 23rd of
11 2011 did with specific intent to kill or attempt to kill
12 Paul Funderburk, Jr. with malice aforethought, express or
13 implied, and in violation of Section 16-3-29 of the South
14 Carolina Code of Laws, 1976 as amended. That's the
15 allegations contained in this indictment against
16 Mr. Mumford to which he has pled not guilty.

17 Are there any members of the jury that know anything
18 about this case based on that information that I've just
19 given to you? If so please stand. All right. Let me get
20 y'all to come forward, please. All right, sir -- ma'am.
21 I'm sorry. Your name, please.

22 POTENTIAL JUROR: Joselyn Smith, Juror 116.

23 THE COURT: Ms. Smith, come on up here. What I'm
24 going to do is I'm going to ask you what about this you
25 know, but I'm asking you to whisper to me so we don't let

1 anyone else hear.

2 POTENTIAL JUROR: I know Paul Funderburk. He's my
3 second cousin. My mom's first cousin. We were raised
4 together. I know the family.

5 THE COURT: You know all about this case?

6 POTENTIAL JUROR: Yeah.

7 THE COURT: Would that affect your ability to be fair
8 and impartial?

9 POTENTIAL JUROR: Yes, that's my cousin.

10 THE COURT: Sure. I understand. What I'm going to
11 do, Ms. Smith -- what I'm going to do, Ms. Smith, I'm
12 going to excuse you from any involvement in this case. We
13 may have another case that we need your help on, but we
14 won't need you on this one. You're excused from this
15 case. What I'm going to ask you to do is to go back and
16 have a seat in the jury panel. Don't discuss this with
17 anyone at all, okay. Thank you, ma'am.

18 THE BAILIFF: Sandra Wilkins, Juror Number, 145.

19 THE COURT: Come on up, ma'am. Miss Wilkins, is that
20 correct?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: What do you know about this case?

23 POTENTIAL JUROR: Actually, I know both of them
24 fellows.

25 THE COURT: So you're aware of what's going on?

1 POTENTIAL JUROR: Right.

2 THE COURT: And that would affect your ability to be
3 fair and impartial?

4 POTENTIAL JUROR: Yep.

5 THE COURT: Yeah, okay, Ms. Wilkins. I'm going to
6 excuse you in this case. It may be that we have other
7 cases that we may need your help on. I don't know at this
8 point, but what I'm going to do is I'm going to pull your
9 name from this case so you won't have to serve on this
10 case. When you go back into the jury panel don't talk to
11 anyone about this case. Just keep that to yourself, okay?

12 POTENTIAL JUROR: Um hum.

13 THE COURT: Thank you, ma'am. Just go back and have
14 a seat. Juror Number 145 is excused from this case. All
15 right, ladies and gentlemen. I'm going to first have the
16 attorneys that are involved in this case, both the
17 prosecution and for defense, and I'm going to have them
18 stand up and introduce themselves to you. Please listen
19 carefully if you would. Gentlemen.

20 MR. REDMOND: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. REDMOND: Ladies and gentlemen, my name is
23 Kernard Redmond. I'm Deputy Solicitor here in
24 Chesterfield County. William Rogers is my boss, the
25 elected Solicitor for the Fourth Circuit which includes

1 Chesterfield, Dillon, Darlington and Marlboro Counties.

2 I'll let my colleague introduce himself.

3 MR. JONES: My name is Chris Jones. Assistant
4 Solicitor here in Chesterfield County.

5 THE COURT: All right. Let me again begin with the
6 Solicitor. Is there any member of the jury panel who is
7 related by blood, connected by marriage or who has any
8 close business or personal relationship with either of
9 these attorneys or who has either been represented or
10 prosecuted by either of these attorneys or any member of
11 the Solicitor's Office? If so please stand. Thank you
12 there are none.

13 Mr. Knox, if you would introduce yourself and then
14 introduce your client.

15 MR. KNOX: Your Honor, may it please the Court. My
16 name is Attorney Larry Knox. I practice here in
17 Chesterfield County. I've practiced in this County for
18 about 17 years, and I represent the Defendant, Noah
19 Mumford.

20 THE COURT: All right. Thank you, gentlemen. Ladies
21 and gentlemen, any member of the jury panel who is related
22 by blood or connected by marriage or who has any close
23 business or fraternal relationship with or who has been
24 represented by Mr. Larry Knox or any member of his firm.
25 If so please stand. Thank you. There are none.

1 You met Mr. Mumford. Is there any member of the jury
2 panel who is related by blood or connected by marriage who
3 has any close business or personal relationship with
4 Mr. Mumford, Mr. Noah Mumford? If so, please stand.
5 Thank you. There are none.

6 Now, ladies and gentlemen, that question that I just
7 asked you as it deals with Mr. Mumford; that is whether
8 you're related by blood or connected by marriage or have
9 any close business or personal relationship. That's the
10 question that I'm going to ask you as it relates to this
11 next group of names that I'm going to call out. I'm going
12 to call out these names -- hold on. Is that one of the
13 jurors? Sir, where have you been?

14 POTENTIAL JUROR: I was here earlier, but I'm a
15 little late returning.

16 THE COURT: What?

17 POTENTIAL JUROR: Your Honor, I was here earlier, I
18 I'm a little late returning.

19 THE COURT: You're a lot late returning. Come have a
20 seat over here. That late returning, unless you've got an
21 incredible good excuse, liable to end you up with a night
22 in jail. Have a seat. I'll talk to you when we're done.
23 What's your name, sir?

24 POTENTIAL JUROR: Jerry Truett.

25 THE COURT: Say that again.

1 POTENTIAL JUROR: Jerry Truett.

2 THE COURT: Jerry Truett.

3 CLERK OF COURT: Number 139.

4 THE COURT: Juror 139. Ladies and gentlemen, getting
5 back to the question that I asked you regarding Mr.
6 Mumford; related by blood, connected by marriage or have
7 any close business or personal relationship. That's the
8 question that I'm going to be asking you. I'm going to
9 wall the witness' names. Please listen carefully to this
10 list of names. These folks that -- names that I'm going
11 the call are potential witnesses in this case.

12 They may or may not testify. I don't know at this
13 point who is going to testify, but these are listed as
14 potential witnesses. If you will listen carefully as I go
15 through this list of names. If that question applies to
16 any of those folks to you I would ask that you stand when
17 you hear a name that that question applies. These,
18 though, if you do stand please continue to listen and
19 listen carefully cause it may be that you know more than
20 one of these folks.

21 The following are a list of possible witnesses that
22 may testify during the course of this trial: Frank
23 Cranford, Steen Teal, Paul Funderburk, Jr, Todd Harrell,
24 Corey Ellison Williams, Antonio Sellers, Amos Nivens the
25 Second, Joe Campbell, Dana Wallace, Daniel Scott, John

1 James. Is it Ila Simmons?

2 MR. REDMOND: Ila Simmons.

3 THE COURT: Ila Simmons. All right. Let me -- I'll
4 start over here on the far end. Ma'am, can I have your
5 name, please.

6 POTENTIAL JUROR: Wanda Little.

7 THE COURT: I'm sorry, guys. I can't hear very well
8 anyway, and the acoustics aren't great in here. Numbers
9 would be better, probably.

10 CLERK OF COURT: Number 66, Ms. Wanda Little.

11 THE COURT: All right, Ms. Little. Who on that list
12 does that apply to you?

13 POTENTIAL JUROR: I know Amos Nivens.

14 THE COURT: All right. Now, are you related to
15 Mr. Nivens or you know who he is?

16 POTENTIAL JUROR: I'm his neighbor.

17 THE COURT: Okay. Well, let me ask you this, ma'am.
18 If Mr. Nivens were to appear as a witness in this trial
19 would that in any way affect your ability to be fair and
20 impartial and give the State and the Defense a fair trial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you, ma'am. You may have a seat.
23 Ma'am, your name, please.

24 POTENTIAL JUROR: Patricia McDonald, Juror Number 76.

25 THE COURT: All right. Ms. McDonald, who on that

1 list does that apply?

2 POTENTIAL JUROR: Joe Campbell. We're blood related.

3 THE COURT: All right. The fact that you know Mr.
4 Campbell, would that in any way affect your ability to be
5 fair and impartial, ma'am?

6 POTENTIAL JUROR: No, sir.

7 THE COURT: Thank you very much. You may have a
8 seat. Yes, ma'am.

9 POTENTIAL JUROR: Auleshia Tillman, Number 136.

10 THE COURT: All right. You said 138, ma'am?

11 POTENTIAL JUROR: 136.

12 THE COURT: 136, Miss Tillman. Who, Ms. Tillman, who
13 on that list?

14 POTENTIAL JUROR: Paul Funderburk.

15 THE COURT: All right. Ma'am, the fact that -- is
16 Mr. Funderburk related to you or you just know him?

17 POTENTIAL JUROR: I just know him.

18 THE COURT: You just know him would that in any way
19 affect your ability to be fair and impartial, ma'am?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you, ma'am. You may have a seat.
22 That's Juror 136. Yes, ma'am, your name, please.

23 POTENTIAL JUROR: Crystal Johnson, Number 56.

24 CLERK OF COURT: Fifty-six.

25 THE COURT: All right. Miss Johnson, who on that

1 list?

2 POTENTIAL JUROR: It may be a different one. The
3 officer, Officer Wallace.

4 THE COURT: Yeah, that's correct.

5 POTENTIAL JUROR: I know him. I know his wife.

6 THE COURT: All right. Ma'am, the fact that you know
7 Officer Wallace would that in any way affect your ability
8 to be fair and impartial?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you, ma'am. You may have a seat.
11 Anyone else? Ladies and gentlemen, is there any member of
12 the jury panel who either currently or in the past has
13 been a member of the National Rifle Association, commonly
14 referred to as the N.R.A? If so please stand. Thank you.
15 There are none.

16 Is there any member of the jury panel or member of
17 your immediate family or close friends ever either been a
18 victim of or been charged with a crime of violence that
19 involved a gun? If so please stand. All right. And your
20 name, please.

21 POTENTIAL JUROR: Andrew Harper.

22 THE COURT: Juror 46, Mr. Harper. Mr. Harper, was it
23 yourself or some member of your family or close friend?

24 POTENTIAL JUROR: Relative.

25 THE COURT: All right. The fact that you've had that

1 experience in your life would that in any way affect your
2 ability to be fair and impartial?

3 POTENTIAL JUROR: No, sir.

4 THE COURT: Thank you very much. You may have a
5 seat. Sir, your name, please.

6 POTENTIAL JUROR: Harry Robinson, Juror Number 401 --
7 I mean 104.

8 THE COURT: Okay. Mr. Robinson, yourself or a member
9 of your family?

10 POTENTIAL JUROR: A member of my family.

11 THE COURT: Okay. Sir, the fact that you've had that
12 experience in your family would that in any way affect
13 your ability to be fair and impartial?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you, Mr. Robinson. You may have a
16 seat. Is there any member of the jury panel who owns or
17 is in possession of or owns a handgun. If so, please
18 stand. All right. Now, I'm going to try to do this in a
19 somewhat orderly fashion. I'm starting on the far end and
20 what I'm going to ask you if you would give me your name
21 and your juror number if you know the number, okay. Yes,
22 sir.

23 POTENTIAL JUROR: Tony Funderburk, Number 36.

24 THE COURT: All right, and, gentlemen, if y'all want
25 to list these as we go through them. So, Mr. Funderburk,

1 Juror 36. And, sir, again, your name.

2 POTENTIAL JUROR: Yes, sir. I'm Jessie Holder,
3 Number 49.

4 THE COURT: All right.

5 POTENTIAL JUROR: Rodney Privette, Number 97.

6 THE COURT: All right.

7 POTENTIAL JUROR: Sean Carroll, Number 19.

8 THE COURT: And right here. Ma'am, you.

9 POTENTIAL JUROR: Jessica Martin, Number 70.

10 THE COURT: All right.

11 POTENTIAL JUROR: Jameka Gould, Number 40.

12 THE COURT: All right. If y'all would remain
13 standing just for now.

14 POTENTIAL JUROR: Robert McLaurin, Number 77.

15 THE COURT: All right.

16 POTENTIAL JUROR: Billy Vanderpoel, Number 143.

17 THE COURT: All right, sir.

18 POTENTIAL JUROR: Lisa Short, 111.

19 POTENTIAL JUROR: I think it's 85.

20 THE COURT: All right, sir. Is that everybody now.
21 Okay. Now, those of you who are standing who responded to
22 that question the fact that you are a handgun owner would
23 that in any way have any affect on your ability to be fair
24 and impartial, giving both the State a fair trial and the
25 Defense a fair trial? If it would not affect your

1 ability, if you would be able to set that aside and be
2 fair and impartial I'm going to ask you to have a seat.
3 All right. Thank you very much.

4 Ladies and gentlemen, as you can tell from any
5 questions what was the goal of asking those questions,
6 what we're trying to do is anyone who's selected as a
7 juror needs to be able to set aside any personal
8 experiences or anything that had occurred or they know
9 that has occurred outside of the courtroom and to base
10 your decision on this case solely on the evidence that is
11 presented during the course of this trial setting aside
12 anything they may be outside this court house or this
13 courtroom.

14 And so that's the reason for asking these questions.
15 To see if there is anyone whose ability to be fair and
16 impartial would be affected. I could be here all
17 afternoon asking questions to try to determine that, but
18 obviously, our purpose in this case and in any case that
19 we try here, whether it's a criminal case or a civil case
20 our goal is to seek a panel that can be fair and impartial
21 to each side and base their decision solely on the
22 evidence that's presented during the course of the trial.

23 Is there any member of the jury panel who knows of
24 any reason why if you were selected as a member of this
25 jury panel that you would not be able to be fair and

1 impartial? Any reason that, whether I've raised the
2 question or not, is there any member of the jury panel
3 that knows of any reason why you would not be able to be
4 fair and impartial? If so, please stand. Thank you.
5 There are none. Are there any additional questions or
6 voir dire from the State?

7 MR. REDMOND: None from the State, Your Honor.

8 MR. KNOX: Nothing from the Defense, Your Honor.

9 SELECTION OF THE JURY

10 THE COURT: Thank you, gentleman, very much. Ladies
11 and gentlemen -- y'all you going to use your computer
12 thing there?

13 CLERK OF COURT: Yes, sir.

14 THE COURT: Ladies and gentlemen, what's happening
15 now is Madam Clerk has a program on her computer, and what
16 this program does it takes the roster of jurors and takes
17 all your names and it completely, randomly reorders your
18 names. It puts them -- it just takes them, jumbles them
19 and throws them back on a sheet in random order. So for
20 example if I was on the jury and I was Tommy Russo, Juror
21 134, I may end up on this new list. I maybe, Tommy Russo,
22 Juror 14. So that's what it does. It just completely
23 reorders your names.

24 And then what happens is she takes that new list,
25 that completely reordered list, and she will start at the

1 very top of that list and -- Mr. Knox, strikes on this are
2 four and ten or five and ten?

3 MR. KNOX: I think so.

4 MR. REDMOND: Actually, I didn't bring my desk book,
5 but I believe that's correct.

6 THE COURT: Ladies and gentlemen, each side gets what
7 we call peremptory strikes. What that simply means is
8 that they can use those strikes to excuse whatever jurors
9 they wish to excuse for whatever reason they may choose to
10 do so. Now, what will happen is, once Madam Clerk has
11 printed out her list and she has that list, she will start
12 at the top of that list and call the first name. If your
13 name is called you will come forward and come around, come
14 through the way there and come stand right here in the
15 front of the bench right where this microphone is and just
16 stand and face the back of the courtroom. Just like I'm
17 standing.

18 And you will stand there, and she will first inquire
19 of the State something along these lines, some words
20 similar to this, "what say the State." The State will
21 have an opportunity to either excuse you or present you.
22 If they excuse you you can have a seat back where you
23 were. If they present you then you just remain standing.
24 At that point she will ask of the Defense, "What say you
25 for the Defense." The defense can either excuse you or

1 they can seat you. If they excuse you, of course, you
2 will go back and have a seat back at the jury panel. If
3 they seat you you will come around and have a seat in the
4 jury box. And we'll go through that process, ladies and
5 gentlemen, until we have selected our jury.

6 Now, if your name is called please bring with you any
7 items that you brought to Court here today. Whether it be
8 a pocketbook, a jacket, umbrella, whatever you have.
9 Whatever you may have brought, bring that with you because
10 it may be if you're selected -- well, it will be. If
11 you're selected you won't be returning to your seat. You
12 will be having a seat over here. Please bring with you
13 any belonging that you may have brought to the court house
14 if your name is called. All right. Is the State ready to
15 proceed?

16 MR. REDMOND: Your Honor, actually, looking at the
17 statute I think it's five and five.

18 THE COURT: All right. Well, let me -- I thought it
19 was five and ten. What's your statute?

20 MR. REDMOND: 14-7-1110. I'm looking at
21 StateHouse.gov. It didn't indicate if that was amended.

22 THE COURT: All right. I think that's correct. Five
23 and five. All right. Ready to proceed? State ready to
24 proceed?

25 MR. REDMOND: State is ready, Your Honor.

1 THE COURT: Defense?

2 MR. KNOX: Defense is ready, Your Honor.

3 THE COURT: All right. Here we go.

4 CLERK OF COURT: Number 136, Auleshia L. Tillman.

5 What says the State.

6 MR. REDMOND: Please present Ms. Tillman.

7 MR. KNOX: Excuse the juror.

8 CLERK OF COURT: You may return to your seat. Number
9 66, Wanda F. Little. What says the State.

10 MR. REDMOND: Please present Miss Little.

11 CLERK OF COURT: Defense.

12 MR. KNOX: Please excuse the juror.

13 CLERK OF COURT: You may return to your seat. Number
14 60, James C. Jordan. What says the State.

15 MR. REDMOND: Please present Mr. Jordan.

16 CLERK OF COURT: Defense.

17 MR. KNOX: Seat the juror, please.

18 CLERK OF COURT: Have a seat in the jury box, please.
19 Number 89, Dorothy L. Nice. What says the State.

20 MR. REDMOND: Please present Miss Nice.

21 CLERK OF COURT: Defense.

22 MR. KNOX: Seat the juror.

23 CLERK OF COURT: Have a seat in the jury box, please.
24 Number 117, Mary Beth Smith. What says the State.

25 MR. REDMOND: Please present Miss Smith.

1 CLERK OF COURT: Defense.

2 MR. KNOX: Please excuse the juror.

3 CLERK OF COURT: You may return to your seat. Number
4 62, Deborah Keller. What says the State.

5 MR. REDMOND: Please present Ms. Keller.

6 CLERK OF COURT: Defense.

7 MR. KNOX: Seat the juror.

8 CLERK OF COURT: Have a seat in the jury box. Number
9 67, Frances L. Louallen. What says the State.

10 MR. REDMOND: Beg the Court's indulgence. Please
11 excuse Ms. Louallen from this case.

12 CLERK OF COURT: You may return to your seat. Number
13 19, Sean Carroll. What says the State.

14 MR. REDMOND: Beg the Court's indulgence. Please
15 present Mr. Carroll.

16 CLERK OF COURT: Defense.

17 MR. KNOX: Seat the juror.

18 CLERK OF COURT: Have a seat in the jury box, please.
19 Number 22 Christie H. Chavis. What says the State.

20 MR. REDMOND: Please present Miss Chavis.

21 CLERK OF COURT: Defense.

22 MR. KNOX: Seat the juror.

23 CLERK OF COURT: Have a seat in the jury box. Number
24 50, Dustin R. Horton. What says the State.

25 MR. REDMOND: Please present Mr. Horton.

1 CLERK OF COURT: Defense.

2 MR. KNOX: Seat the juror.

3 CLERK OF COURT: Have a seat in the jury box, please.

4 Number 137, Janet H. Tillman. What says the State.

5 MR. REDMOND: Please present Miss Tillman.

6 CLERK OF COURT: Defense.

7 MR. KNOX: Seat the juror.

8 CLERK OF COURT: Have a seat in the jury box, please.

9 Number 97, Rodney K. Privette. What says the State.

10 MR. REDMOND: Please present Mr. Privette.

11 CLERK OF COURT: Defense.

12 MR. KNOX: Seat Mr. Privette.

13 CLERK OF COURT: Have a seat in the jury box. Number

14 13, Letha M. Ingram. What says the State.

15 THE BAILIFF: What number was that, Madam Clerk?

16 CLERK OF COURT: Fifty-three. What says the State.

17 MR. REDMOND: Please present Ms. Ingram.

18 CLERK OF COURT: Defense.

19 MR. KNOX: Please excuse the juror.

20 CLERK OF COURT: You may return to your seat. Number

21 129, Ramona J. Teal. What says the State.

22 MR. REDMOND: Beg the Court's indulgence. Please
23 excuse Ms -- I'm sorry. Please excuse Miss Teal. Excuse
24 me. I apologize, Ms. Teal.

25 CLERK OF COURT: You may return to your seat. Number

1 29, Brandie M. Dixon. What says the State.

2 MR. REDMOND: Please present Ms. Dixon.

3 CLERK OF COURT: Defense.

4 MR. KNOX: Seat the juror.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 Number 91, Gloria S. O'Dell: What says the State.

7 MR. REDMOND: Please present Miss O'Dell.

8 CLERK OF COURT: Defense.

9 MR. KNOX: Seat the juror.

10 CLERK OF COURT: Have a seat in the jury box, please.

11 Number 11, Starla C. Brooks. What says the State.

12 MR. REDMOND: Please present Ms. Brooks.

13 CLERK OF COURT: Defense.

14 MR. KNOX: Please seat Miss Brooks.

15 CLERK OF COURT: Have a seat in the jury box, please.

16 Number 27, Yvonne Covington. What says the State.

17 MR. REDMOND: Please present Ms. Covington.

18 CLERK OF COURT: Defense.

19 MR. KNOX: Please seat the juror.

20 CLERK OF COURT: That's it.

21 THE COURT: One alternate.

22 CLERK OF COURT: Okay. Number 65, Megan K. Little.

23 What says the State.

24 MR. REDMOND: Is this for the alternate, Your Honor?

25 THE COURT: Yes, sir.

1 CLERK OF COURT: What says the State.

2 MR. REDMOND: Beg the Court's indulgence. Please
3 present Ms. Little.

4 CLERK OF COURT: Defense.

5 MR. KNOX: Please seat Ms. Little.

6 CLERK OF COURT: Have a seat in the jury box, please.

7 THE COURT: All right. Are there any motions regard
8 jury selection from the State?

9 MR. REDMOND: None from the State, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. KNOX: Nothing from the Defense, Your Honor.

12 COLLOQUY

13 THE COURT: Thank you, gentlemen. Okay, ladies and
14 gentlemen, those of you that remain in the jury pool I'm
15 going to excuse you for the balance of the day, and I'm
16 going to ask if you would when you were given your card
17 when you came in, your juror card, there is a phone number
18 on there. If you would please call that number this
19 evening after six o'clock and follow whatever instructions
20 you get on that recording.

21 It is, if you're like me, if -- there are several of
22 you out there and obviously all of you are calling. So if
23 you call and get a busy signal please just hang up and try
24 back again later on. If you're like me and you have a
25 habit of staying up and falling asleep in the chair

1 watching Monday Night Football. And you wake up at 2:00
2 in the morning and say, "Oh, my God. I forgot to call."
3 Don't worry. Pick up the telephone and call. It's a
4 recording. Somebody will be there. The recordings will
5 be there, but just call that number after six o'clock and
6 follow those instructions, whatever they may be.

7 It maybe to ask you to call back at six the next day.
8 It maybe to ask you to come back the next morning. At
9 this point I don't know what that instruction will be. So
10 please if you would make sure everyone -- and if you need
11 to do a reminder for yourself put one up on the
12 refrigerator or on the front door somewhere, but remember
13 to call that number after six o'clock this evening.

14 If everyone else would remain seated. Members of the
15 jury panel, you are excused for the balance of the day.
16 Sir, I'm going to get you to hang with me for a little
17 bit.

18 (WHEREUPON, the jury pool was excused from the
19 courtroom at 12:37 p.m.)

20 THE COURT: All right. Ladies and gentlemen, I'm
21 going to also excuse you in just a moment for the balance
22 of the day. We're going to actually begin the case first
23 thing in the morning, okay. But when I excuse you I need
24 to send you away with instructions, and the instructions
25 are simply this: As I told you when you were in the jury

1 pool our purpose in seating the jury is to make sure that
2 we can have a jury full of folks who are fair and
3 impartial, and are not influenced by anything outside the
4 courtroom.

5 When you leave here today, obviously, you will have
6 encounters with friends, family, loved ones, other folks
7 and they will be curious whether or not you've been
8 selected to be on a jury. And you can tell them that you
9 were selected and you have to come back in the morning.

10 Now, the next things that they want to ask you
11 probably is what kind of case is it. Who does it involve.
12 What's is it about. What you need to tell them at that
13 point is that you're not allowed to discuss the case at
14 all; that something as innocent as something as simple as
15 saying, "it's a case that involves an attempted murder" or
16 "it's a case that involves a fellow by the name of
17 Mumford" or "it involves a person by the name of."
18 Something as simple as that could possibly elicit a
19 response that would affect your ability to be fair and
20 impartial.

21 So what I need for you to do is have no conversation
22 with anybody about this case at all. You can let your
23 friends, family, loved ones, you can let them know that
24 you have to be back here in the morning. And that you are
25 going to be on a case, but at that point they need to not

1 ask any more questions. And you need to let them know
2 this. When the case is over you can tell them everything
3 they want to know. There is no secrets in here, but until
4 that time you're not allowed to have any conversation and
5 ask them to respect that.

6 If anybody does attempt to talk with you about the
7 case or try to speak with you about the case let them know
8 that you're a juror and you're not allowed to. If they
9 persist let me know, and I'll make sure that they don't
10 continue that conduct. Okay. Try to get a good night's
11 rest this evening. You will see when you come back
12 tomorrow and sit as jurors and you listen to the evidence
13 that jury service is not physically taxing from a muscular
14 standpoint but it can be from a mental standpoint.

15 So, please, if you can get here tomorrow well rested,
16 and we'll get started when everyone has reconvened
17 tomorrow morning. And in just a moment I'm going to
18 excuse you. I'm going to get you to go with the bailiff.
19 She is going to show you where your jury room is, and when
20 you come back tomorrow you will report to your jury room,
21 okay.

22 Last thing is this and all cases I tell juries
23 whether it's a criminal case or it's a civil case. It
24 doesn't matter what kind of case it is. We live in a day
25 and age now where everybody has Smart phones. Everybody

1 has computers and internet and all this stuff. I'm asking
2 you when you leave here today that forget about this case.
3 Go about your business. Enjoy the balance of your day.
4 Don't think about this case again until you come in the
5 morning.

6 In other words don't try to go on the internet and do
7 some of your own investigation or your own research. That
8 would be improper. As I told you when you come back and
9 you take an oath you're going to be taking an oath to try
10 the case and to judge and decide the case based solely on
11 the evidence that was presented during the course of this
12 trial and not on anything that occurs outside this
13 courtroom. So don't try to do any of you own personal
14 investigation. Just enjoy the balance of your day.

15 I always tell jurors that probably the simplest way
16 to say anything to you is to tell you this: When you come
17 back here in the morning and your seated there tomorrow
18 you should not know one thing about this case more than
19 you know right now. You shouldn't know another thing
20 about it, okay. I don't know. I don't see any reporters
21 here. I don't see any television folks here. I don't
22 know that this case would have that type of attention, but
23 if you turn on the t.v. and see some report about Court in
24 Chesterfield County, turn it off.

25 If you pick up a newspaper, if you see anything don't

1 rad any articles. Just put it aside. Again, protect your
2 ability to be fair and impartial, okay. So if you will,
3 everyone else remain seated. Ladies and gentlemen, if you
4 will go with the bailiff. When you come back here in the
5 morning, though, you just let the bailiff know you're a
6 juror and they will let you back to the jury room.

7 Everyone else remain seated while members of the
8 jury -- 9:30, thank you. We'll see you back here at 9:30,
9 okay. Keep your badge and make sure you have it when you
10 come in the courtroom tomorrow morning. Thank you.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 12:44 p.m.)

13 THE COURT: Tell me what happened during the break
14 here.

15 JUROR NO. 139: Sir, I live with my sister. During
16 the 20 minutes I thought I could make a quick trip to get
17 something to eat. And then she wanted to get her kids
18 from the elementary school.

19 THE COURT: Okay. Here's the thing and here is why I
20 got you to sit aside. I had already started going through
21 with the jury panel about this case. So I had gotten too
22 far where I couldn't bring you up to speed, and that is
23 why I had to set you aside. Mr. Truett, the thing is this
24 about your jury service for the balance of this week. You
25 know you've got to be on time. And you've got to be on

1 time because this very thing occurs. Now, I'll be the
2 first to admit there's a lot of times when a judge will
3 say, "Okay, we'll start back in 20 minutes," and 25
4 minutes later he or she is still not back on the bench.
5 Okay, but it's still important that -- I can tell you from
6 my standpoint that if I don't start when I say I'm going
7 to start there is a reason. I'm usually tied up or
8 something else, but I need you to be prompt and be here
9 when you're supposed to be here.

10 JUROR NO. 139: Yes, sir.

11 THE COURT: All right, sir.

12 JUROR NO. 139: Okay.

13 THE COURT: So in the future, and I don't know if you
14 will be called back -- the jury panel will be called back
15 or not. We'll just have to wait and see how things go.
16 You've got the number on that card, right? Call that
17 number after six o'clock and whatever instructions are on
18 the recording just follow those instructions. When you
19 come back, if you come back this week, in the future don't
20 leave the area cause, and I understand things happen, but
21 they wouldn't happen if you didn't leave.

22 So stay here, and I don't know if they've got a drink
23 machine or cracker machines or something, but the bottom
24 line is to stay close by. You need to stay close by when
25 Court starts, okay?

1 JUROR NO. 139: Yes, sir. Thank you.

2 THE COURT: Okay. I don't know when I'll see you
3 again, but just follow the instructions on that message
4 tonight.

5 JUROR NO. 139: Yes, sir.

6 THE COURT: Thank you. All right. Anything we need
7 to take up?

8 MR. REDMOND: Yes, sir, a little housekeeping matter
9 that, actually, Mr. Knox brought to my attention, and that
10 is that in looking at it, and I read over this indictment
11 three times today, but looking at the substance say he did
12 in Chesterfield as opposed to Chesterfield County. We
13 submit that that's a Scribner's error and does not
14 materially affect the indictment itself. But just for the
15 record, and since that's something that Mr. Knox brought
16 to my attention, that should say Chesterfield County.

17 And, again, Your Honor, I reiterate I just missed it,
18 in all candor, and making that motion does not materially
19 affect any of the allegations or the elements.

20 THE COURT: All right. Anything for the record?

21 MR. KNOX: I have no objection to the statement
22 amending.

23 THE COURT: All right. We'll just amend that to
24 reflect that it should have been Chesterfield County. Are
25 there any things that we need to take up this afternoon?

1 Well, let me just say this. Before lunch -- there maybe
2 something this afternoon. I don't know.

3 MR. REDMOND: I don't think so, Your Honor. As a
4 matter of fact we had talked and the defendant is -- I
5 guess his statement is basically a large part of his
6 defense. What he told law enforcement at the time. So I
7 think and I'm assuming that's the reason Mr. Knox informed
8 me not to pursue the Jackson v. Denno Hearing.

9 THE COURT: Is there anything -- I mean like -- well,
10 we can do this in the morning if y'all can look over any
11 possible exhibits and just look at them. And if you want
12 to get those marked ahead of time we can do that. Have
13 you already done that?

14 MR. REDMOND: We have not, but I was going to ask
15 Madam Court Reporter if she could be here about 9:00. I
16 usually like to get them. I know she's glaring at me
17 right now. I feel the knife going through me. That way
18 we can go ahead. We're not going to have that many
19 exhibits. Some shell casings and the gun and then the
20 videotape statement.

21 THE COURT: Just -- okay, that's fine. Y'all go over
22 that. We're going to at least premark them for
23 identification purposes, obviously. And if there is
24 anything that can be stipulated to you can let Hattie
25 know. Let's get that done sometime tomorrow before 9:30.

1 MR. REDMOND: Yes, sir.

2 THE COURT: All right. If there is nothing else then
3 we'll adjourn this case until 9:30 in the morning.

4 MR. REDMOND: There is one matter, Your Honor. The
5 defendant is actually out on bond. I did not make the
6 Court aware of this. He showed up this morning. He
7 actually beat his attorney here this morning. We do not
8 object to him staying out on bond, but if Your Honor would
9 instruct him of the ramifications should he choose not to
10 show up tomorrow morning.

11 THE COURT: Sure. Mr. Mumford, let me just share
12 with you. I've got no reason to believe that you won't
13 come back. I don't worry about that, but just as an
14 abundance of caution, as I do in every case where the
15 defendant is out on bond, you know you heard me tell the
16 jury that we're going to start at 9:30 in the morning.
17 What I usually will tell folks is listen to Mr. Knox.
18 That's your lawyer. He may need you here at 8:00 tomorrow
19 morning. I don't know.

20 But bottom line is you understand that starting at
21 9:30 in the morning we're going forwards with this case,
22 and it's important that you understand you have every
23 right to be present during every phase of your trial. But
24 that's not an unfettered right. In other words if you
25 don't show up the case is going to go forward with or

1 without you. So you can certainly be tried in your
2 absence if you don't come, you understand that?

3 MR. MUMFORD: Yes, sir, Your Honor.

4 THE COURT: So I would tell you that you don't need
5 to be here any later than 9:30, but more importantly, be
6 here when Mr. Knox asks you to be here.

7 MR. MUMFORD: Yes, sir, Your Honor.

8 MR. REDMOND: Thank you, Your Honor.

9 MR. KNOX: Beg the Court's indulgence. There is
10 nothing else from the Defense, Your Honor.

11 THE COURT: Okay. Well, Mr. Redmond, we'll be in
12 recess until 2:30. Court will be in recess until 2:30.

13 END OF TRANSCRIPT OF RECORD
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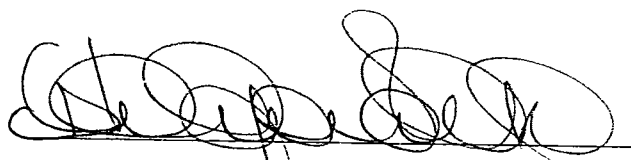
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 24th day of
October, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 25, 2012



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
NOAH MUMFORD)
DEFENDANT)

October 24-26, 2011
Chesterfield, South Carolina
VOLUME NO. 02 OF 03

THE HONORABLE THOMAS A. RUSSO, JUDGE; and a jury.

KERNARD E. REDMOND, DEPUTY SOLICITOR
Attorney for the State

CHRIS JONES, ASSISTANT SOLICITOR
Attorney for the State

LARRY W. KNOX, ESQUIRE
Attorney for the Defendant

PAUL FUNDERBURK,

TODD HARRELL,

ANTONIO SELLERS,

DANA WALLACE, Chesterfield County Sheriff's Office

DANIEL SCOTT, Chesterfield County Sheriff's Office

STEVEN TEAL,

FRANK CRANFORD,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

(WHEREUPON, State's Exhibit Nos. 01 THROUGH 08 were marked for identification only.)

THE COURT: All right. Anything before we begin?

MR. REDMOND: Yes, Your Honor. I think the Defense has motions regarding witnesses, but before that so I don't forget the exhibit the State has eight exhibits they've already been marked. And we have agreed to stipulate they be entered into evidence. I can go through that list for the Court and the record at this time.

THE COURT: All right, sir.

MR. REDMOND: Your Honor, first would be State's Exhibit Number One which is the beer bottle which is right there next to the court reporter. State's Exhibit Number Two, the shell casings, four fired shell casings that were recovered. State's Exhibit Number Three, the .22 caliber Browning handgun. It is in the box. I do not anticipate a need to -- it's actually locked in ---

THE COURT: It's got a gun lock on it?

MR. REDMOND: I don't know if the gun lock has been put on it, but I have no intention of taking it out during the trial. It's in the box where you can open and show it to the jury. But Madam Court Reporter has a gun lock.

THE COURT: Do you have a gun lock?

MR. REDMOND: I think Madam Court Reporter has a gun

1 lock.

2 COURT REPORTER: I don't go anywhere without them.

3 THE COURT: Let's go ahead and put that on there. I
4 don't like to have a weapon that is not in law
5 enforcement's hands accessible to anybody. Go ahead. I'm
6 sorry.

7 MR. REDMOND: And, Judge, State's Exhibit Number Four
8 is the magazine that is also in the box as well. State's
9 Exhibit Number Five are ten unfired bullets that came out
10 of the magazine of the gun. State's Exhibit Number Six
11 the gunshot residue report. State's Exhibit Number Seven
12 is the Miranda Waiver Form that Noah Mumford signed. And
13 State's Exhibit Number Eight is the actual video statement
14 of Noah Mumford. Well, it's a video of Noah Mumford's
15 statement.

16 THE COURT: All right. And those are -- let's see.
17 You said how many those were?

18 MR. REDMOND: There are eight exhibits, and we would
19 respectfully move to enter them.

20 THE COURT: And no objection, Mr. Knox?

21 MR. KNOX: No objection, Your Honor.

22 THE COURT: All right. So those are in evidence,
23 State's One through Eight, without objection.

24 MR. REDMOND: Thank you, Your Honor.
25

1 (WHEREUPON, State's Exhibit Nos. 01 through 08 were
2 admitted into evidence.)

3 THE COURT: All right. Thank you very much. Yes,
4 sir.

5 MR. KNOX: Your Honor, the Defense would like to make
6 a motion to have the witnesses sequestered.

7 THE COURT: All right. Solicitor, do you wish to
8 respond to that?

9 MR. REDMOND: Only thing we would ask, my
10 understanding is that there are Defense witnesses, and we
11 just ask that that order be reciprocated.

12 THE COURT: Okay. We will do that. Now, you're
13 allowed to have a lead investigator.

14 MR. REDMOND: Yes, the lead investigator, and he is
15 actually going to be my first witness any way.

16 THE COURT: Okay. Well, that's fine then. But
17 everyone else we'll need to have sequestered outside the
18 courtroom, and they don't need to go at this very moment.
19 But I do want to make sure that they're all out of the
20 courtroom prior to opening remarks.

21 MR. REDMOND: Yes, sir.

22 MR. KNOX: Well, mine are already back in the holding
23 multipurpose room.

24 THE COURT: Okay. So go ahead and make sure we take
25 care of that.

1 MR. REDMOND: Yes, sir.

2 THE COURT: All right. We have the witnesses
3 sequestered?

4 MR. KNOX: Defense witnesses are sequestered, Your
5 Honor.

6 MR. REDMOND: Witnesses are all sequestered.

7 THE COURT: State ready to proceed?

8 MR. REDMOND: State is ready.

9 THE COURT: Defense?

10 MR. KNOX: Defenses is ready, Your Honor.

11 THE COURT: Bring them out.

12 (WHEREUPON, other Court-related business was
13 conducted on the record but not related to the trial
14 of this case and not included in this transcript of
15 record.)

16 THE COURT: All right. Go ahead and bring the jury
17 out.

18 (WHEREUPON, the jury panel enters the courtroom at
19 9:56 a.m.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. Hope everyone had a good night's rest and ready to
22 go forward. Before I -- before we begin I'm get you to
23 give Madam Clerk your attention and she's going to place
24 you under your oath for your role as jurors in this case.
25

1 (WHEREUPON, the jury panel was sworn in at 9:58 a.m.)
2 THE COURT: Ladies and gentlemen, we're about to
3 begin the trial of the case of the State of South Carolina
4 v. Noah Mumford. Before we begin the trial I want to tell
5 you that more than likely this trial is probably going to
6 be very different from whether you might expect. I don't
7 know your experience, but most people's experience with
8 regards to jury trials has been limited to what they've
9 seen on television or they've read in books or what
10 they're seen in movies.

11 Most people don't have the opportunity to be sit in
12 on an actual jury trial such as you're doing this week.
13 Of course, those trials are always full of high drama,
14 intense action and riveting circumstances because that's
15 Hollywood. And while any number of those things may occur
16 during the course of this trial what's important for you
17 to understand is that this trial is not for your
18 entertainment.

19 This trial is a fundamental part of our democracy.
20 It is a search for the truth in an effort to make sure
21 that justice is done between the parties that are before
22 the Court. Searching for the truth and making sure that
23 justice is done often times is slow, very deliberate,
24 sometimes it's repetitive. In other words it's very
25 different than what you've seen on television or read in

1 books.

2 This courtroom is a place of honor that is dedicated
3 to the protection and to the preservation of its citizen's
4 rights through what may have called the greatest justice
5 system ever created. The attorneys that appear before you
6 are advocates for the parties that they represent. But
7 first and foremost they are officers of the Court, sworn
8 to uphold the integrity and the fairness of our judicial
9 system. You should expect them to be professional,
10 competent and ethical in the representation of their
11 client's interest.

12 Remember that you have just taken an oath to try this
13 case and reach a fair and a just verdict. And so you are
14 also expected to be professional, reasonable and ethical
15 in the performance of your duties which I have absolutely
16 no doubt that you will do. And I want to thank you again
17 for your contribution to our system of justice here in
18 Chesterfield County and South Carolina.

19 Now, what I'm going to share with you at this time,
20 ladies and gentlemen, is an introduction to the trial of
21 this case. These are not charge on the law. These are
22 simply kind of a guideline to give you an idea of an
23 outline of how the trial goes and what occurs during the
24 course of the trial so that you will be better able to
25 follow the law. I will charge you on the law that is

1 applicable to this case at the end of the trial.

2 Now, in this case the defendant, Mr. Mumford, is
3 charged by indictment which was filed with this Court in
4 the and he is charged with the offense of attempted
5 murder. The elements of that offense I will explain to
6 you later when I charge you on the law. The indictment,
7 as I told you yesterday, is simply the charge by which
8 this case is brought into Court and it is not in any sense
9 evidence of any of the allegations that it contains. The
10 defendant has pled not guilty to this indictment, and the
11 State, therefore, has the burden of proving each of the
12 elements of the indictment beyond a reasonable doubt.

13 It will be your duty, ladies and gentlemen, to decide
14 whether or not the State has met that burden. Your
15 purpose as jurors is to find and to determine the facts in
16 this case. You are the sole judges of the facts. If at
17 any time I make any comment regarding the facts of the
18 case you must disregard those comments because only you
19 the jury can decide what the facts are in this case.

20 You are to determine the facts from the testimony
21 that you hear and then any other evidence that might be
22 introduced during the course of this trial. It's up to
23 you to determine the inference which you feel may be
24 properly drawn from that evidence. It is especially
25 important that you perform your duty of determining the

1 facts diligently and conscientiously because ordinarily
2 there is no way for us to correct an erroneous
3 determination of the facts by a jury.

4 Now, on the other hand, but with equal emphasis the
5 same law that makes you the judge of the facts makes me
6 the judge of the law. The law that is given by the Court
7 is the only law that you may consider. You must accept
8 and follow it even though you may disagree with it.

9 I'm not allowed to tell you, ladies and gentlemen,
10 anything about the facts or what I think about the facts.
11 And you are not allowed to disagree with me about what the
12 law is or what you think the law should be. Your job is
13 to take the law as I give it to you, apply it to the facts
14 as you find the facts from the evidence of the -- that's
15 been introduced during the course of the trial, and in
16 doing that render a verdict in this case that speaks the
17 truth.

18 Now, until I advise you to begin your deliberations
19 you must not discuss this case with anyone and that
20 includes amongst yourselves, amongst your fellow jurors.
21 Sometimes when I say that juries will look at my kind of
22 funny because their thought is, 'well, I thought that was
23 our job. I thought we were supposed to do that'. Well,
24 you are supposed to do that, but you're not allowed to
25 begin your deliberations until you have heard all of the

1 evidence in the case.

2 And it's important that there be no discussion of the
3 case until all of the evidence has been collected. And
4 then once that has happened, and I do -- the lawyers have
5 had an opportunity to present their closing remarks and
6 I've given you the law. Once all of that has happened you
7 will then be in a position to deliberate, and than at that
8 point deliberations must only occur in the jury room
9 amongst the jury and nowhere else.

10 Ladies and gentlemen, it is important that you keep
11 an open mind and that you do not decide any issue in this
12 case until all of the evidence has been presented, parties
13 have made their closing arguments, and I have instructed
14 you on the law. It is your solum responsibility to
15 determine the guilt or innocence of the defendant, and you
16 verdict must be based solely on the evidence as it is
17 presented during the course of this trial and on the law
18 that I instruct you during the close of the trial.

19 Now, in just a moment the Solicitor will have an
20 opportunity to make what's called an opening statement.
21 In that statement he will explain to you what the issues
22 are in this case or at least what he believes the issues
23 are in this case. Once he has concluded his opening
24 remarks then Mr. Knox will have an opportunity on behalf
25 of the defendant to make an opening statement, although

1 he's not required to do that. What is important for you
2 to understand, ladies and gentlemen, is this. What the
3 lawyers tell you in their opening statements is not
4 evidence. It is merely their belief or their contention
5 as to what they think the evidence is going to show.

6 The evidence in this case, the evidence that you will
7 base your decision on will be presented to you by the
8 testimony of witnesses who are sworn and placed under oath
9 and testify from the witness stand. And then any other
10 exhibits that may come in during the course of the trial.

11 Now, from time to time during the trial you may hear
12 one of the lawyers say something like this, "Judge, we
13 have a matter of law we need to take up with the Court" or
14 "Your Honor, may we approach the bench." During those
15 times if I can handle a matter at the bench I will do
16 that. But I may have to ask you to step into your jury
17 room. If I ask you to do that let me explain now what I
18 would do that.

19 Sometimes when I'm dealing with a matter of law in
20 dealing with a ruling I have to make sometimes it is
21 necessary for me to make comments about the facts that
22 have been presented. As I told you earlier I'm not
23 supposed to have any influence on you about the facts in
24 the case. So in an effort to protect or shield you from
25 these comments I may have you step into the jury room so

1 that I can deal with a matter of law and freely make
2 whatever comments I need to make with regards to that
3 ruling. And then once that ruling has been made bring you
4 back into the courtroom, inform you as to what the ruling
5 is, and then proceed with the trial.

6 In determining the facts and what the true facts are
7 in this case you must decide whether the testimony of any
8 witness is believable. It's going to be my responsibility
9 to rule as a matter of law whether certain testimony is
10 allowed into this trial at all or not. But once testimony
11 is admitted into this case whether or not you believe it
12 is solely up to you to decide.

13 In determining and deciding whether or not to believe
14 a witness you have a right to consider the interest of any
15 witness, the bias of any witness, the opportunity for the
16 witness to have seen the matters and the things about
17 which that witness testified, the way the witness acts on
18 the witness stand. You have the right, ladies and
19 gentlemen, to consider anything that's in this record that
20 will help you in evaluating the testimony of the
21 witnesses. That means it is your duty to pay close
22 attention to the witnesses, observe them, listen carefully
23 to the witnesses, and pay close attention to the lawyers
24 and to the Court.

25 Try not to let your thoughts wander, ladies and

1 gentlemen, but pay strict attention on all of the
2 testimony and the evidence in this case so that at the end
3 of the case, after you heard from the attorneys with their
4 closing remarks and I've given you the law, you will then
5 be in a position to go into your jury room, take that
6 evidence, discuss it, talk about it, apply the law to it,
7 and reach a verdict in this case.

8 Now, before I turn it over to the attorneys let me
9 first inquire, first of the State, are there any
10 objections or exceptions to the court's opening remarks?

11 MR. JONES: No, Your Honor.

12 THE COURT: Defense?

13 MR. KNOX: None, Your Honor.

14 THE COURT: Ladies and gentlemen, if you would please
15 give the attorneys your undivided attention as they
16 address you with their opening remarks. Mr. Jones.

17 OPENING STATEMENT BY MR. JONES

18 MR. JONES: Noah Mumford brought a gun to a fist
19 fight. The facts of this case are very simple. They are
20 not in dispute. The victim, Paul Funderburk, sitting
21 right there, was with three friends in the yard talking
22 about racing motorcycles. They were going to bet on who
23 was going to win, and the defendant, Mr. Noah Mumford,
24 drove up, got out of his car, and also talked about racing
25 motorcycles. And we know whenever there is competition

1 and men there is going to be some trash talk. That's what
2 was going on here. A lot of trash talking. However, the
3 defendant and the victim began get personal. Things got
4 heated. The victim, Paul Funderburk, took a bottle and
5 threw it at the defendant and it landed on the ground.

6 They then wrestled. They wrestled to the ground.
7 The victim got up and began to walk away. When the
8 defendant got up he pulled a gun and he pointed it at the
9 victim and he shot him four times as an unarmed man walked
10 away. And after he shot him four times he walked over to
11 him as Paul Funderburk was lying there screaming and
12 crying in pain and continued to insult him.

13 Then the defendant got back in his car and drove away
14 and the victim went to the hospital. And that's it.
15 Those are the facts. And you're going to see that through
16 our witnesses and through the Defense witnesses. That is
17 what they're going to say over and over again. Like I
18 said this is a simple set of facts.

19 Now, throughout this trial the Defense is going to
20 try and put up a self-defense argument, and there are a
21 few things that I want you to know about that. Like the
22 Judge said he's going to tell you what the law is and
23 certainly listen to whatever he has to say. He has the
24 final say so on the law. But I want you to know a few
25 things to keep in the back of your mind as we're

1 presenting our case. In South Carolina there are four
2 elements for self-defense. First, the defendant is
3 without fault in causing the difficulty. Is without fault
4 in causing the fight. And here, as we're going to show,
5 he was the only one with a gun. And he was the only one
6 who used deadly force. Nobody else had a gun.

7 And, second, the defendant was an in actual imminent
8 danger of losing his life or serious bodily injury.

9 And the third element is a reasonable person would
10 have also believed that.

11 The fourth and final element, and this is important.
12 Y'all listen to this. The defendant had no other means of
13 avoiding the danger. He had no other means of escape. It
14 essentially says that you were backed into a corner and
15 you had nothing else to do but pull your weapon and defend
16 yourself. And as you will see that was not the case here.
17 They were in the yard he was the only one with a weapon,
18 and he was the only one who used deadly force.

19 So as we present our evidence and the Defense
20 presents their evidence I want you to ask yourself was
21 there anything else he could have done. Was there any
22 other means of escape. And the answer to that is yes. He
23 could have just walked away. Thank you.

24 THE COURT: Thank you, sir. Mr. Knox.

25 MR. KNOX: Your Honor, please the Court.

1 THE COURT: Yes, sir.

2 OPENING STATEMENT BY MR. KNOX

3 MR. KNOX: Madam Clerk, Mr. Solicitor, members of the
4 jury, you just heard what the Solicitor said. That's one
5 side of the story. Just remember there are two sides to
6 every story. Two days before Christmas last year that was
7 a fight. The Solicitor said that there was only one
8 weapon, but the evidence will show that there were two
9 weapons. One weapon was a gun from which Mr. Mumford had
10 on his possession which he was legally within his right to
11 carry that gun. He was a gun owner.

12 The other weapon was a 24-ounce Heineken beer bottle.
13 That's not your regular beer bottle. It's thick glass,
14 and the evidence will show that the victim consumed those
15 24-ounces of beer before he turned that beer bottle into
16 his personal weapon. So what we have is we have a weapon
17 against a weapon.

18 Now, and our country and I guess everywhere around
19 the world you have God given rights, and that God given
20 right is the right to self-defense. No matter what your
21 weapon is you have the right to defend yourself. If
22 you're packing you have a right to use that weapon to
23 defend yourself. If someone has just struck you with a 24
24 ounce beer bottle you have the right to use whatever force
25 necessary to repel that attack. And that is exactly what

1 Mr. Mumford did two days before Christmas a year ago.

2 Now, I live in this community, and I know both of
3 those gentleman. I've seen these gentlemen grow up. The
4 victim, Paul Funderburk, Jr, his father and his uncle
5 built my house. He was brought up in a very good home.
6 His parents, Mr. Funderburk and Mrs. Funderburk, they
7 taught him well. Whereas my client, Mr. Mumford, had the
8 same type of upbringing. He had good parents and loss his
9 father a few years ago. And his mother and his stepfather
10 has carried on that job of raising him.

11 They have good moral values, but as the Solicitor
12 stated in his opening statement, 'guys will be guys'. You
13 throw in some alcohol. You throw in racing two days
14 before Christmas and things happen. Things happen. You
15 have to look at judgment. You have to look at judgment.
16 My client is an Iraqi war veteran. He went out to defend
17 our laws. He serve honorably, and he also was an expert
18 shot while in the military.

19 The evidence will show that he fired at the ground.
20 He did not fire to kill anyone. He was trying to repel an
21 attack. And expert shot could have easily killed a person
22 if he wanted to. You can hit center mass and kill a
23 person. You can hit them in the head and kill a person,
24 but my shot at the ground. He had no ill intent in
25 harming the victim. All he wanted to do was stop the

1 attack as any of you would have done under those same set
2 of circumstances. And that's what the evidence will show.

3 Now, if you remember the bible under the four gospels
4 all those guys would be Jesus, but as you read the gospel
5 they told the story differently. A that's what these
6 witnesses are going to do. They're going to tell their
7 version of the story. So you're going to different
8 things. As the Judge told you you are the judge of the
9 facts. You can get a little bit from here, a little bit
10 from there, believe some, believe none.

11 But you will hear both sides of the story. Then you
12 will have to judge whether or not it was self-defense.
13 The Solicitor ran off the elements of self-defense. Did
14 he have a right to be there. He was what we call an
15 invitee. He was invited there. Did he have a weapon?
16 Sure he did. Was it a deadly weapon? Sure it was. Did
17 he have a right to use that weapon? He did. Did he have
18 to retreat? No, he did not have to retreat because he
19 thought that his life was in danger and he had a right to
20 defend himself, and that's what the evidences will show.

21 Now, I thank you for your time and your service.
22 This is going to be hard. If it was easy we wouldn't be
23 here, but it is very important both to the State and to
24 Mr. Mumford that you give your undivided attention, listen
25 to the facts, make a good judgment of the facts, and once

1 all the evidence is in and the Judge explains the law to
2 you you return a verdict of not guilty. Thank you.

3 THE COURT: Thank you, Mr. Knox. State may call your
4 first witness.

5 MR. JONES: State calls Paul Funderburk, Jr.

6 THE COURT: Mr. Funderburk, if you would please come
7 around and be sworn, please.

8 PAUL FUNDERBURK JR., after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JONES:

12 Q. And, Mr. Funderburk, how are you doing?

13 A. Good, sir.

14 Q. Plead tell us where you live?

15 A. Cheraw, South Carolina.

16 Q. And you speak up a little bit so we can hear you over
17 here?

18 A. Cheraw, South Carolina.

19 Q. Okay. Very good. And where do you work, Mr.
20 Funderburk?

21 A. Honda Enterprise.

22 Q. Say that again?

23 A. Honda Enterprise.

24 Q. Okay, and December 23rd of 2010 tell us what you were
25 doing that day?

1 A. Got off work. We are working in Florence, and we
2 stopped to meet at Todd's house after work to discuss a
3 motorcycle race.

4 Q. And, Todd, what is Todd's last name?

5 A. Todd Harrell.

6 Q. And about what time did you meet at Todd's house?

7 A. I would say around maybe 7:00 or so. 7:30.

8 Q. In the evening?

9 A. Yes, sir.

10 Q. And what were y'all discussing at Todd's house?

11 A. Motorcycle race.

12 Q. Motorcycle race?

13 A. Yes, sir.

14 Q. Who was going to race?

15 A. Mr. Mumford and Todd Harrell.

16 Q. Okay. Is this something y'all do periodically or is
17 this a new ...

18 A. From time to time, yes.

19 Q. From time to time. And do you own a motorcycle?

20 A. No, sir, I don't.

21 Q. But you just like to watch when your friends race?

22 A. Yes, sir.

23 Q. So tell us who was in the yard when you were talking
24 about racing motorcycles?

25 A. When I arrived there it was Todd Harrell, Amos

1 Nivens, Corie Williams, Antonio Sellers.

2 Q. Is that four total?

3 A. Yes, sir.

4 Q. Okay. And are y'all -- or y'all are pretty good
5 friends?

6 A. Yes, sir.

7 Q. Okay. And tell us what happened next. How did Mr.
8 Mumford come into the picture?

9 A. We were waiting on Mr. Mumford to get there to
10 actually talk about the race, and we probabability waited on
11 him maybe 30 minutes or so, maybe an hour.

12 Q. So are you saying that it was already established
13 before you were outside that Noah and Todd were going to
14 race?

15 A. Yes, sir.

16 Q. All right. And about what time did Mr. Mumford
17 arrive?

18 A. I'm not sure.

19 Q. You said y'all had been there 30 minutes?

20 A. Maybe eight.

21 Q. Okay. And describe for us what happened after
22 Mr. Mumford got out of his car and approached y'all?

23 A. He came up and they immediately started talking about
24 racing. Couple words was said as far as moneywise, as far
25 as making a bet to make the race.

1 Q. What do you mean when you say, 'words were said'?

2 A. He made some comments, some provocative comments.

3 Q. Some provoking comments?

4 A. Yes, sir. Towards me.

5 Q. Towards you?

6 A. Yes, sir.

7 Q. And why do you think they were directed towards you?

8 A. Not sure.

9 Q. You're not sure?

10 A. No, sir.

11 Q. Okay. But he knew you were going to bet on the race?

12 A. He knew I would be there, probably.

13 Q. Okay. And while he was there did you ever say how
14 much you were going to bet or anything?

15 A. No, sir.

16 Q. No?

17 A. No, sir.

18 Q. And how did you respond to Mr. Mumford when he made
19 those provoking comments?

20 A. I made some comments myself, but I also asked him why
21 was he directing so much negativity towards me.

22 Q. And what was your relationship with Mr. Mumford prior
23 to this incident?

24 A. I wouldn't call it a relationship. I've seen him. I
25 met with him.

1 Q. More of an acquaintance?

2 A. Right.

3 Q. So tell us more about what happened when Noah came up
4 and y'all were -- he made provoking comments and what you
5 said back to him?

6 A. Right. The guys immediately tried to change the
7 subject and get back on to racing, and he would make more
8 comments degrading myself and my family.

9 Q. He was degrading your family?

10 A. Yes, sir.

11 Q. Okay?

12 A. Just a lot of things that shouldn't have been said to
13 me cause I'm not racing. I wasn't there for that. He
14 just devoted a lot of his time towards me. A lot of
15 arguments towards me.

16 Q. About how long would you said that this trash talking
17 went on for?

18 A. Maybe another 20 minutes or so.

19 Q. Twenty minutes?

20 A. Yes, sir.

21 Q. Were they supposed to race motorcycles that evening?

22 A. No, sir.

23 Q. When were they going to race?

24 A. We never got to that point.

25 Q. So tell us -- bring us up to the shooting. What

1 happened right before the shooting?

2 A. Noah made a comment.

3 Q. What was the comment?

4 A. I can't really recall it, but it was a provoking
5 comment. Antonio Sellers -- Antonio Sellers, he stepped
6 up and ---

7 MR. KNOX: Objection, Your Honor. I think that would
8 be hearsay.

9 MR. JONES: He wasn't going to say what he said. He
10 just said, "Antonio stepped up."

11 THE COURT: All right. Sustained, and anything
12 anybody else told you.

13 MR. JONES: Yes, Your Honor.

14 BY MR. JONES:

15 Q. You can't say what anybody else said, but you can say
16 what they did?

17 A. Okay.

18 Q. They physically did.

19 A. Okay. Antonio stepped up, and Noah then repeated
20 himself and said he was talking to me.

21 Q. When you say Antonio stepped up what do you mean?

22 A. He stepped in between Noah and me.

23 Q. Okay?

24 A. Right.

25 Q. Okay. Go ahead?

1 A. And then I swung the bottle which didn't hit him.
2 Kind of threw it at him cause Tony was in between you.

3 Q. Okay. So Tony was between you. Is Tony -- you're a
4 pretty tall guy. How tall are you?

5 A. 6'2".

6 Q. Okay, and Tony. How tall is Tony?

7 A. Tony is about 6'3", 6'4".

8 Q. Okay. And he was standing in between you?

9 A. Yes, sir.

10 Q. And you swung the bottle or you threw the bottle?
11 Did you release the bottle from your hand?

12 A. Right. Yes, sir.

13 Q. Okay. And where did it land?

14 A. It went to the ground.

15 Q. In front of Noah or where?

16 A. I'm not sure.

17 Q. But in his general direction?

18 A. Right.

19 Q. Okay. And immediately after that what happened?

20 A. We got into a tussle.

21 Q. So did you push Tony out of the way or what?

22 A. Yes, sir.

23 Q. How -- did you grab each other?

24 A. Yes, sir.

25 Q. Tell us?

1 A. We grabbed each other. We wrestled for a couple of
2 seconds.

3 Q. Did you go to the ground?

4 A. No, sir, I didn't.

5 Q. Okay.

6 A. I pushed Mr. Mumford away from me.

7 Q. Okay. So?

8 A. I stepped a couple steps back and when I turned to
9 walk off that's when Mr. Mumford came and started
10 shooting.

11 Q. Repeat that for us if you can. After you -- he fell
12 to the ground what happened?

13 A. I pushed Mr. Mumford away from me, took a couple
14 steps back, and as I turned to walk off that's when
15 Mr. Mumford came from behind me and started shooting.

16 Q. Came from behind you and started shooting?

17 A. Yes, sir.

18 Q. Did you see him pull the weapon out of his pants?

19 A. No, sir, I didn't.

20 Q. Did you know he had a weapon?

21 A. No, sir, I didn't.

22 Q. So you?

23 A. I knew that he was brave?

24 Q. What?

25 A. Brave.

- 1 Q. What do you mean by that?
- 2 A. A weapon tends to make someone braver.
- 3 Q. Oh, I understand that. So after he shot you -- how
- 4 many times did he shoot you?
- 5 A. Four times.
- 6 Q. Okay. And can you describe those wounds for us?
- 7 A. Yes, sir. Entry wound under my right butt cheek.
- 8 Come out the front of the thigh. Entry wound in my left
- 9 kneecap. Goes out the back and comes out the side of my
- 10 kneecap. And two in my lower right ankle. One was I had
- 11 to have surgically removed.
- 12 Q. Two on your lower what?
- 13 A. Right ankle.
- 14 Q. Right ankle?
- 15 A. Yes, sir.
- 16 Q. Okay. After he shot you what happened after that?
- 17 A. By this time I'm at the edge of Todd Harrell's house
- 18 and Noah was approaching making still provoking comments.
- 19 By that time Antonio and Todd had walked down there.
- 20 Asked Mr. Mumford to leave.
- 21 Q. Okay. So you're saying that Mr. Mumford walked over
- 22 to you after he shot you?
- 23 A. Yes, sir.
- 24 Q. And you remember what he said?
- 25 A. He should have killed me. He should have killed me.

1 What now. What now. What am I going to do now.

2 Q. Okay. And then you say Todd and another one of your
3 friends told him to leave?

4 A. Antonio, yes, sir.

5 Q. And which one of your friends took you to the
6 hospital?

7 A. Antonio.

8 Q. Antonio?

9 A. Yes, sir.

10 Q. Okay?

11 MR. JONES: Court's indulgence, please.

12 BY MR. JONES:

13 Q. Mr. Funderburk, can you please point out the
14 defendant for the record?

15 A. Mr. Mumford, pink shirt.

16 Q. Okay.

17 MR. JONES: Let the record reflect that he pointed
18 out Mr. Mumford.

19 THE COURT: All right, sir.

20 BY MR. JONES:

21 Q. And let's go back to the initial altercation. You
22 said there was a lot of trash talking comments made?

23 A. Right.

24 Q. Provoking comments?

25 A. Right.

1 Q. I want you to tell us in detail as best you can
2 remember, even if it's vulgar, you need to tell us what
3 was said if you remember.

4 A. I was a lot of the bitches, motherfuckers. I wasn't
5 shit.

6 Q. You remember what the specific comment was that you
7 said, 'that's enough' and threw the bottle at him?

8 A. Yes, sir.

9 Q. What was that?

10 A. He said I would be his bitch until he stopped calling
11 me his bitch.

12 Q. Okay. And let's go back to your injuries. Can you
13 be more specific as to what those injuries are. I think
14 you described the wound. Can you go through that again
15 and be more specific?

16 A. Yes, sir. Entry wound coming in under my right butt
17 cheek coming out the front part of my thigh. It grazed my
18 right testicle.

19 Q. Okay.

20 A. I have an entry wound in my left knee, in the back of
21 my left knee coming out the back of my right calf and I
22 have two in my lower right ankle. One in the calf and one
23 in the ankle which was large and I had to have surgically
24 removed.

25 Q. Thank you very much.

1 MR. JONES: Your Honor, permission to approach the
2 witness?

3 THE COURT: Yes, sir.

4 BY MR. JONES:

5 Q. Mr. Funderburk, do you recognize that weapon?

6 A. No, sir, I don't.

7 Q. You don't.

8 MR. JONES: Excuse me, Your Honor. Let me approach
9 the witness again?

10 THE COURT: Go ahead.

11 BY MR. JONES:

12 Q. Mr. Funderburk, do you recognize this bottle?

13 A. Yes, I do.

14 Q. Okay. And how do you recognize the bottle?

15 A. It's the bottle that I had that night.

16 Q. That's the bottle you had that day?

17 A. Yes, sir.

18 Q. Okay.

19 MR. JONES: Your Honor, at this time I would like to
20 move State's Exhibit -- oh, it's already in evidence.
21 Never mind. Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. JONES:

24 Q. Mr. Funderburk, you said you didn't recognize the
25 gun?

1 A. I didn't.

2 Q. Is that because you were getting shot from behind?

3 A. Yes, sir.

4 Q. Okay.

5 MR. JONES: No further questions, Your Honor.

6 THE COURT: All right. Mr. Knox.

7 CROSS-EXAMINATION

8 BY MR. KNOX:

9 Q. Good morning, Mr. Funderburk?

10 A. Morning.

11 Q. Mr. Funderburk, on December 23rd 2010 where were you
12 at again?

13 A. At Todd Harrell's house.

14 Q. And that was about 7:30 in the evening?

15 A. Yes, sir.

16 Q. Was it dark out?

17 A. Yes, sir. We stayed out until it got dark.

18 Q. Excuse me?

19 A. Yes, sir.

20 Q. And who all was there?

21 A. Antonio Sellers, Corey Williams, myself and Amos
22 Nivens.

23 Q. And when Mr. Mumford arrived he arrive with anyone or
24 was he by himself?

25 A. He had people with him.

1 Q. How many people did he have with him?

2 A. I'm assuming two.

3 Q. Two?

4 A. Yes, sir.

5 Q. Now ---

6 MR. KNOX: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY MR. KNOX:

9 Q. Mr. Mumford [sic], you identified this bottle as the
10 bottle you had on December 23rd 2010? You identified this
11 as the bottle that you had?

12 A. Yes. You said Mr. Mumford.

13 Q. I'm sorry. Mr. Funderburk.

14 A. Right.

15 Q. Now, Mr. Funderburk, was the bottle empty?

16 A. Yes, sir.

17 Q. Was there beer in the bottle at one time?

18 A. Yes, it was.

19 Q. And what happened to the beer that was in the bottle?

20 A. I drank it.

21 Q. And this is what; 24 ounces of beer?

22 A. Yes, sir.

23 Q. Did you bring the beer that night?

24 A. Yes, sir, I did.

25 Q. Okay. Was that the only beer that you had?

1 A. Yes, sir, it was.

2 Q. You didn't have anything else?

3 A. No, sir.

4 Q. How soon before the shooting did you consume the beer
5 in the bottle?

6 A. How soon?

7 Q. Yes.

8 A. Couple minutes prior.

9 Q. Were you drinking the beer while you were arguing
10 with Mr. Mumford?

11 A. Yes, I was.

12 Q. Was Mr. Mumford drinking?

13 A. No, sir.

14 Q. Now, you indicated in your testimony that words were
15 passed. Did you say anything to Mr. Mumford?

16 A. I replied.

17 Q. Beg pardon?

18 A. I replied.

19 Q. And how did you reply?

20 A. The same way he did.

21 Q. So you used the same vulgar language that Mr. Mumford
22 used? You used the same vulgar language?

23 A. No, sir, not to that extent.

24 Q. But you did use some vulgar language?

25 A. Yes, sir, I did.

1 Q. And what did you say to him?

2 A. Rephrase the question, please.

3 Q. What did you say to him? Did you call him a
4 motherfucker?

5 A. No, sir, I didn't.

6 Q. You didn't call him a bitch?

7 A. No, sir, I didn't

8 Q. You didn't use any derogatory phrases at him?

9 A. I'm not sure?

10 Q. You're not sure?

11 A. I don't remember.

12 Q. But you remember exactly what he said to you?

13 A. In the round about way. Yes, sir.

14 Q. What do you mean by in a round about way?

15 A. In the statements that I said that I may remember
16 those.

17 Q. You do remember as your testimony indicates that he
18 called you a motherfucker?

19 A. Yes, sir.

20 Q. And that he called you a bitch?

21 A. Yes, sir.

22 Q. And but you don't remember what you replied or said
23 in kind to him?

24 A. I know I asked him why he was coming at me the way he
25 was.

1 Q. When he arrived did y'all immediately start arguing
2 or did that evolve?

3 A. No, it was a couple minutes after.

4 Q. Now, you said that you know Mr. Mumford and that you
5 had met each other before in the past.

6 A. Right.

7 Q. In your past meetings have you argued?

8 A. We did.

9 Q. Do y'all argue ever time you meet?

10 A. No, sir.

11 Q. When you argue do derogatory phrases pass between the
12 two of you?

13 A. No, sir. Not to that extent.

14 Q. You keep saying no, but then you preface it by saying
15 not to that extent?

16 A. Cause people ---

17 Q. Either he did or he didn't. So again I ask my
18 question. In your past confrontations were derogatory
19 phrases passed between you and Mr. Mumford?

20 A. Some.

21 Q. Some. Okay. But not to the extent that it happened
22 on that night?

23 A. Right.

24 Q. Okay. And was anybody else talking?

25 A. Yes, sir.

1 Q. Okay. Was anybody else trash talking?

2 A. Yes, sir.

3 Q. Everybody was trash talking?

4 A. Right.

5 Q. So why did you single Mr. Mumford out for his trash
6 talking?

7 A. Because Mr. Mumford has singled me out with his trash
8 talking.

9 Q. Who started the trash talking first?

10 A. Mr. Mumford did.

11 Q. Mr. Mumford. And this is while you were drinking?

12 A. Yes, sir.

13 Q. Are you sure of that?

14 A. Yes, sir.

15 Q. And while we were consuming this 24 ounces of
16 Heineken you can still remember who started it?

17 A. Yes, sir.

18 Q. But a little while ago you said you couldn't remember
19 what you said?

20 A. I said I couldn't remember what I replied. Yes, sir.

21 Q. Did the beer have any affect on your memory that you
22 couldn't remember what you said?

23 A. No, sir.

24 Q. Okay. Also you gave a statement to law enforcement;
25 is that correct?

1 A. Yes, sir.

2 Q. Do you remember that statement?

3 A. Yes, sir.

4 MR. KNOX: May I approach the witness, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. KNOX:

7 Q. Do you recognize that?

8 A. Yes, I do.

9 Q. Is that the statement that you gave?

10 A. Yes, sir, it is.

11 Q. Can you read that statement, please?

12 A. When I arrived ---

13 MR. JONES: Objection. There is no proper foundation
14 laid for that.

15 THE COURT: All right. You want to ask him questions
16 to lay a foundation for this particular statement?

17 MR. KNOX: Yes, sir.

18 BY MR. KNOX:

19 Q. You recognize this statement?

20 A. Yes, sir, I do.

21 Q. Is that the statement you gave to law enforcement on
22 December 23rd?

23 A. Yes, sir.

24 Q. 2010?

25 A. Yes, sir, it is.

1 Q. Is that the statement about the incident that
2 happened?

3 A. Yes, sir.

4 Q. And is that your signature at the bottom?

5 A. Yes, sir, it is.

6 MR. JONES: He still needs to introduce it in
7 evidence, Your Honor, if he's going to publish it to the
8 jury.

9 THE COURT: You can ask him questions about his
10 statement and then impeach him if it's ...

11 BY MR. KNOX:

12 Q. Mr. Funderburk, you gave the statement you just said
13 you recognized and signed?

14 A. Yes, sir.

15 Q. In that statement you said that you swung a beer
16 bottle at Mr. Mumford; is that correct?

17 A. Yes, sir.

18 Q. How many times did you swing the beer bottle at Mr.
19 Mumford, the weapon?

20 A. Just once.

21 Q. And in your statement you put down here that you
22 swung once and then you swung again. So that would make
23 it twice?

24 A. No.

25 Q. That's not what you said in your statement?

1 A. Could you show it to me?

2 MR. JONES: Your Honor, we don't object to him
3 introducing the statement in evidence.

4 THE COURT: I'm going to let him do it however he
5 wants to do it.

6 MR. JONES: Yes, sir.

7 THE WITNESS: Where did you see this?

8 BY MR. KNOX:

9 Q. Read it?

10 THE COURT: Just read it to yourself.

11 BY MR. KNOX:

12 Q. Has your memory been refreshed?

13 A. Yes, sir.

14 Q. How many times did you swing the bottle?

15 A. Swung the bottle once.

16 Q. Swung the bottle once?

17 A. Yes, sir. The other statement says that I swung at
18 him putting us in the tussle.

19 Q. Okay. You're saying that this was a continuation of
20 the swing?

21 A. Sir?

22 Q. This is a continuation of the swing?

23 A. No, sir. I'm saying that I swung at him with the
24 bottle. The bottle released from my hand. I swung at him
25 and we tussled.

- 1 Q. You swung at him with your hand?
- 2 A. Yes, sir.
- 3 Q. Okay. So let's get the facts right?
- 4 A. Okay.
- 5 Q. You were drinking a beer?
- 6 A. Right.
- 7 Q. Was there any beer in the bottle?
- 8 A. I'm not sure.
- 9 Q. You're not sure?
- 10 A. Right.
- 11 Q. But you swung it at Mr. Mumford?
- 12 A. Right.
- 13 Q. Prior to you swinging at Mr. Mumford did he hit you
- 14 or touch you or anything?
- 15 A. No, he did not.
- 16 Q. He did not. He was just talk trash -- trash talking?
- 17 A. Yes, sir.
- 18 Q. So you were the aggressor by swinging that 24 ounce
- 19 Heineken beer bottle at Mr. Mumford?
- 20 A. If you say so.
- 21 Q. You were the aggressor. So you started all of this?
- 22 A. No, sir.
- 23 Q. Okay. But you do admit and it is your testimony that
- 24 you first swung at Mr. Mumford with this beer bottle?
- 25 A. Yes, sir.

1 Q. This was your weapon of choice?

2 A. That was the beer that I was drinking.

3 Q. Do you consider this a weapon?

4 A. It could be used as a weapon.

5 Q. Did you use it as a weapon that night?

6 A. No, sir, I didn't.

7 Q. What were you using it for?

8 A. I used it for a weapon, but does not -- used it as a
9 weapon.

10 Q. You used it for a weapon?

11 A. Yes, sir.

12 Q. Okay. You just testified that you're about 6'3"?

13 A. I'm sorry.

14 Q. You just testify that you were about 6'3"?

15 A. No, sir, 6'2".

16 Q. 6'2". Okay. Bigger than him. You're much bigger
17 than Mr. Mumford?

18 A. Right.

19 Q. Now, armed with this beer bottle, this 24 ounce beer
20 bottle, that you decided that or that you choose to use as
21 a weapon, did you have it in your hands?

22 A. Yes, sir, it was.

23 Q. How did you have it in your hands? Could you show
24 the jury how you had it in your hand?

25 A. I can't remember.

1 Q. You can't remember. I'm going to write this down
2 because it's about the fifth time you said that you can't
3 remember.

4 MR. REDMOND: Your Honor, objection.

5 THE COURT: Sustained.

6 BY MR. KNOX:

7 Q. You can't remember how you swung the bottle?

8 A. No, sir.

9 Q. But you did swing it?

10 A. Yes, sir. I can't remember how it was positioned in
11 my hand.

12 Q. Did you have it by the neck or the bottle?

13 A. I can't remember.

14 Q. You don't know whether or not it had beer in it?

15 A. Right.

16 Q. Now, it was dark outside, wasn't it?

17 A. Yes, sir.

18 Q. And how close were you and Mr. Mumford to each other?

19 A. Maybe 3 feet.

20 Q. How far?

21 A. Three or 4 feet.

22 Q. At some point you said that someone got in between
23 the two of you?

24 A. Yes, sir.

25 Q. Who was that person?

1 A. Antonio Sellers.

2 Q. And did he separate you all?

3 A. He got between us.

4 Q. Was this after you had swung at Mr. Mumford or before
5 you swung at Mr. Mumford?

6 A. Before.

7 Q. Before. So someone tried to break you all up?

8 A. Yes, sir.

9 Q. Someone had the foresight to see that this was
10 escalating and they tried to de-escalate it?

11 A. Right.

12 Q. And after that person intervened did it stop?

13 A. No, it didn't

14 Q. Okay. How did it re-escalate? By you swinging the
15 beer bottle?

16 A. By Mr. Mumford's comments.

17 Q. By his comments. So his words Re-escalated things?

18 A. Yes.

19 Q. So at that point he had no weapon? He did not use
20 any force against you?

21 A. Right.

22 Q. And you took it up a notch by swinging this beer
23 bottle at Mr. Mumford?

24 A. Right.

25 Q. So, again, you rekindled the flame of this fire?

1 A. No, sir, not to my knowledge. No, sir, I didn't.

2 Q. I'll buy that. Now, was this person still in between
3 you when you swung at Mr. Mumford?

4 A. Yes, sir.

5 Q. Okay. And this person, I think from your testimony,
6 is taller than you?

7 A. Yes, sir.

8 Q. So did that person get hit with the beer bottle?

9 A. No, sir, they didn't.

10 Q. Did you toss it over that person?

11 A. No, sir.

12 Q. How did you throw at Mr. Mumford?

13 A. I went around that person.

14 Q. Oh, you went around that person who was there. So
15 this person who is blocking the two of you from hurting
16 each other, you stepped around that person and then tossed
17 that bottle at Mr. Mumford?

18 A. Right.

19 Q. And it's your testimony that you didn't hit Mr.
20 Mumford?

21 A. Right.

22 Q. And it was dark outside?

23 A. Right.

24 Q. And it was at least seven other people there?

25 A. Okay.

1 Q. And how do you know that you didn't hit Mr. Mumford?

2 A. Cause I seen the bottle didn't hit him.

3 Q. Say it over. Beg your pardon?

4 A. Cause I seen the bottle didn't hit him.

5 Q. You saw the bottle? You watched the flight of the
6 bottle?

7 A. When it released from my hand.

8 Q. When it released from your hand you watched the
9 flight of the bottle?

10 A. Yes, sir.

11 Q. And it was dark outside?

12 A. With lights.

13 Q. And this bottle is green?

14 A. Right.

15 Q. And that night you watched the flight of this bottle
16 leaving your hand and hitting the ground?

17 A. Under the street lights. Yes, sir.

18 Q. What type of surface was out there?

19 A. Grass.

20 Q. Grass. And this was in the winter time? The day
21 after?

22 A. It was cool.

23 Q. So grass wasn't growing?

24 A. It was grass out.

25 Q. There was grass outside. What was the weather like?

1 A. It was cool.

2 Q. Was the moon shining?

3 A. I can't remember.

4 Q. Okay. Were there any lights out there?

5 A. Yes, it was.

6 Q. Were the lights out where y'all were?

7 A. Yes, sir, it was.

8 Q. And you saw that the bottle didn't hit Mr. Mumford?

9 A. Yes, sir.

10 Q. And what did you do after you threw the bottle at
11 Mr. Mumford?

12 A. Me and Mr. Mumford got into a tussle.

13 Q. Explain how this tussle started?

14 A. Come on swinging with the bottle.

15 Q. Beg your pardon?

16 A. From the swinging of the bottle.

17 Q. From the swinging of the bottle. Did you approach
18 him or did he approach you?

19 A. We approached each other.

20 Q. You approached each other. So you toss this 24 ounce
21 beer bottle at Mr. Mumford. You went around this person
22 who was trying to prevent this from happening in the first
23 place and game was on. You all started?

24 A. Right.

25 Q. Wrestling and fighting?

1 A. Right.

2 Q. Would you categorize that as a fight?

3 A. No, sir.

4 Q. What were you doing?

5 A. Tussling.

6 Q. Tussling. Did anybody fall to the ground?

7 A. No, sir.

8 Q. No one fell to the ground. And how did it end or did
9 it end?

10 A. How did it end?

11 Q. Um hum.

12 A. With Mr. Mumford shooting me.

13 Q. Okay. I think in your direct testimony you stated
14 that after that you walked away?

15 A. Yes, sir. I pushed him away first.

16 Q. You pushed him away?

17 A. Yes, sir.

18 Q. And were any words said to each other?

19 A. Sir?

20 Q. Were any words said to each other?

21 A. Not at this time.

22 Q. Not at that moment. You walked away, and excuse me.
23 Where did you go after you walked away?

24 A. I was walking away from the situation.

25 Q. Okay. The situation that you had started?

1 A. If you say so.

2 Q. And how did you think that Mr. Mumford was going to
3 respond when you threw this 24 ounce beer bottle at him?

4 A. Wasn't sure.

5 Q. You wasn't sure. Did you know he had a gun on him?

6 A. No, sir, I didn't.

7 Q. You didn't know he was armed?

8 A. No, sir, I didn't.

9 Q. Did you expect him to defend himself?

10 MR. JONES: Objection. Speculation.

11 MR. KNOX: I don't think that is speculation.

12 THE COURT: He's asking what he expected. You can
13 testify -- if he decides to answer that.

14 BY MR. KNOX:

15 Q. Did you expect him to defend himself?

16 A. I'm sure. Yes, sir.

17 Q. He depended himself?

18 A. Right.

19 Q. If he had thrown this beer bottle at you would you
20 have defended yourself?

21 A. Yes, sir.

22 Q. So you got the exact result that you were looking
23 for?

24 A. No, sir.

25 Q. Except for one thing. Mr. Mumford defended himself?

- 1 A. Okay.
- 2 Q. And he fired some shots at you?
- 3 A. He shot me.
- 4 Q. Yeah. He fired some shots at you?
- 5 A. Right.
- 6 Q. And you got hit?
- 7 A. A bunch of times.
- 8 Q. You got hit?
- 9 A. Four times.
- 10 Q. Four times. In the leg?
- 11 A. Yes, sir.
- 12 Q. Were any of the hits above your waist?
- 13 A. No, sir.
- 14 Q. Were you surprised?
- 15 A. Very much so.
- 16 Q. That you threw a bottle at somebody, and you were
- 17 surprised that they fought back?
- 18 A. That they shot me four times, yes, sir. I was
- 19 surprised.
- 20 Q. Now, did Mr. Mumford leave to get that weapon?
- 21 A. No, sir.
- 22 Q. Did you see him pull that weapon?
- 23 A. No, sir, I didn't.
- 24 Q. You didn't. You couldn't even identify that weapon,
- 25 could you?

- 1 A. No, sir.
- 2 Q. And how do you know you were shot four times?
- 3 A. How would you know if you were shot four times?
- 4 Q. Sir, I'm not the person being asked the questions.
- 5 A. Okay.
- 6 Q. Just answer the questions that I ask you, sir?
- 7 A. Like I said ---
- 8 Q. How do you know that you got shot four times?
- 9 A. I felt the wounds.
- 10 Q. Okay, how much shots were fired?
- 11 A. I'm not sure.
- 12 Q. You're not sure. Were there more than four?
- 13 A. Yes, sir cause they said that he had five shell
- 14 casings.
- 15 Q. Now, how do you know that Mr. Mumford fired those
- 16 shots?
- 17 A. Because Mr. Mumford was behind me.
- 18 Q. Okay. Were other people behind you?
- 19 A. Not to the extent as Mr. Mumford.
- 20 Q. Okay. There were seven other people out there?
- 21 A. Yes, sir.
- 22 Q. And you singled Mr. Mumford out as the one who fired
- 23 the shots?
- 24 A. Yes, sir.
- 25 Q. But you didn't see the gun?

1 A. No, sir.

2 Q. You never saw the gun?

3 A. No, sir.

4 Q. Then how do you know he shot you?

5 A. Because he said he shot me. He said he should have
6 killed me.

7 Q. He said he should have killed you? When did he tell
8 you that?

9 A. After he shot me.

10 Q. After he shot you?

11 A. Yes, sir.

12 Q. What did you say to him?

13 A. I told him to, "Go ahead. You already shot me."

14 Q. And then after that some friends took you to the
15 hospital?

16 A. Yes, sir.

17 Q. Okay. I'm going to give you the statement again. I
18 want you to read the last couple of lines. Don't read it
19 out loud.

20 A. Okay.

21 Q. Now, you gave the statement to law enforcement where?
22 At the hospital?

23 A. No, sir.

24 Q. Where did you give this statement to law enforcement
25 at?

1 A. At my parent's house.

2 Q. It was the same evening?

3 A. I'm sorry.

4 Q. Was it the same evening? The same night? The next
5 day?

6 A. A couple of days after the day is on top.

7 Q. Beg your pardon?

8 A. The next on top.

9 Q. Was the 29th. So this was six days later?

10 A. Yeah.

11 Q. Now, in that statement you didn't mention the fact
12 that Mr. Mumford came over to you and said that, "I shot
13 you and I should have killed you," did you?

14 A. That was a brief statement of what went on that
15 night.

16 Q. No. But the question is in this statement that you
17 gave six days later, had enough time to think about it,
18 you didn't mention the fact that Mr. Mumford said that he
19 should have killed you?

20 A. No, I didn't.

21 Q. Okay. Did you think that was important?

22 A. At that time I was making a statement of what
23 happened. A brief statement of what happened.

24 Q. Well, I'm pretty certain this is probably the first
25 that law enforcement heard about you saying that

1 Mr. Mumford stated that he should have killed you?

2 A. Okay.

3 Q. Is this the first that Mr. Mumford -- that law
4 enforcement knew about Mr. Mumford saying this he should
5 have killed you?

6 A. I'm not sure.

7 Q. But you did not write it in this statement?

8 A. Not in that statement. No, sir, I didn't.

9 Q. Know, this is six days later?

10 A. Right.

11 Q. And you put everything else in this statement. Why
12 didn't you put that in there?

13 A. I'm not sure cause it was a brief statement of what
14 went on.

15 Q. Did you give any other statements to law enforcement?

16 A. No, I didn't.

17 Q. Mr. Funderburk, had you been drinking earlier that
18 day?

19 A. No, I hadn't.

20 Q. That beer was the first beer that you had?

21 A. Yes.

22 Q. Where did you buy that beer at?

23 A. Money Saver.

24 Q. Beg your pardon?

25 A. Money Saver Gas Station.

1 Q. Only brought one beer?

2 A. Yes.

3 Q. And how did you open that beer?

4 A. With a bottle opener.

5 Q. A bottle opener. You carry a bottle opener with you?

6 A. A souvenir on my key chain.

7 Q. On your key chain. Now, let's sum up. You were
8 arguing with Mr. Mumford?

9 A. Mr. Mumford was arguing with me.

10 Q. Mr. Mumford made some comments about you?

11 A. Right.

12 Q. And you don't remember what you said about him?

13 A. No, sir, I don't. But I know I made some comments
14 back to him.

15 Q. Right, but a six foot, four guy was standing there
16 between the two of you while you were arguing?

17 A. At one point in time.

18 Q. You went around that person around swung at
19 Mr. Mumford with this beer bottle?

20 A. Yes, sir.

21 Q. And it's your testimony that the beer bottle hit the
22 ground?

23 A. Yes, sir.

24 Q. Then y'all engaged each other?

25 A. Right.

1 Q. Then you were shot four times?

2 A. Right.

3 Q. And you walked away?

4 A. I was drove to the hospital.

5 Q. How did you get to the hospital?

6 A. Antonio Sellers.

7 Q. Did someone pick you -- excuse me. Did someone pick
8 you up?

9 A. He helped me to my truck.

10 Q. Beg your pardon?

11 A. He helped me to my truck.

12 Q. Some people helped you to your truck?

13 A. Yes, Antonio Sellers.

14 Q. Were you able to walk to your truck?

15 A. Barely.

16 Q. Barely, but you did make it to your truck?

17 A. No, I did not.

18 Q. Did you drive your truck?

19 A. Yes, sir.

20 Q. When did Mr. Mumford come over to you and say he
21 should have killed you?

22 A. Immediately after he shot me.

23 Q. Were you on the ground?

24 A. No, I was leaning against the house.

25 Q. You were where?

1 A. Leaning against Todd's house.

2 Q. You were leaning against Todd's house. So when you
3 were shot you did not fall to the ground?

4 A. No, sir, I didn't.

5 Q. After being shot four times you were able to stand
6 up?

7 A. Barely.

8 Q. And you were coherent enough to understand what
9 Mr. Mumford came over to you and said?

10 A. Yes, sir.

11 Q. Did he have a gun in his hand at that time?

12 A. Yes, sir.

13 Q. But you didn't see the gun?

14 A. No, sir.

15 Q. How do you know he had the gun?

16 A. I can see the resemblance of a gun.

17 Q. You could see the resemblance of a gun?

18 A. I could not see the exact gun.

19 Q. But you don't know whether or not this was the gun?

20 A. No, sir.

21 Q. You done know that?

22 A. No, sir.

23 Q. Now, if this was the gun -- this gun is black. And
24 it was dark. How could you see the gun that is black and
25 it was dark? How did you see it.

1 A. Because of the street light.

2 Q. Because of the street light, but you could not
3 identify the gun?

4 A. No, sir, I couldn't.

5 Q. And when he was talking to you was the gun pointed at
6 you?

7 A. I couldn't tell.

8 Q. And nobody else tried to subdue Mr. Mumford?

9 A. Mr. Mumford had a gun.

10 Q. Nobody said anything to him?

11 A. They asked him to leave.

12 Q. That asked him to leave, and he left?

13 A. Yes, sir.

14 Q. He left peacefully? Did he shoot anybody else?

15 A. No, sir.

16 Q. Didn't fire the weapon anymore?

17 A. Not to my knowledge.

18 Q. Did you both leave at the same time?

19 A. No, sir.

20 Q. Who left first?

21 A. Mr. Mumford.

22 Q. So he came over to you said, "I shot you -- I should
23 have killed you." Then he left?

24 A. After he was asked to leave.

25 Q. Some friends took you to your truck?

1 A. Yes, sir.

2 Q. And you went to the hospital?

3 A. Yes, sir.

4 Q. And all the while you couldn't see that gun; is that
5 correct?

6 A. I couldn't see that particular gun. No, sir.

7 Q. And you could see that particular gun. And you
8 couldn't see where the beer bottle landed?

9 A. No, sir.

10 Q. Although it was your testimony that it was a street
11 light out there?

12 A. Yes, sir.

13 Q. But you do remember him coming over saying to you, "I
14 should have killed you?"

15 A. Yes.

16 Q. But your did not remember that on December 29th 2010
17 when you gave this statement to the police?

18 A. Right.

19 MR. KNOX: Beg the Court's indulgence?

20 THE COURT: Yes, sir.

21 BY MR. KNOX:

22 Q. During this altercation with Mr. Mumford did he at
23 any time threaten you?

24 A. No, sir, I can't recall.

25 Q. But he never threatened you?

1 A. I can't recall.

2 Q. Okay, you can't recall. But words were passed?

3 A. Yes.

4 Q. But you did threaten him?

5 A. I'm sorry.

6 Q. You did threaten him with the beer bottle?

7 A. Yes.

8 Q. And you assaulted him with the beer bottle?

9 A. No, sir.

10 Q. But you threw it in his direction?

11 A. Yes.

12 Q. Did you intend to hit him with the beer bottle?

13 A. Yes, sir.

14 Q. You did. So it was your intent -- this man was
15 arguing with you, he has made no threats against you, you
16 had this 24 ounce Heineken beer bottle, it was your intent
17 to hit him?

18 A. No assault threats.

19 Q. Pardon me?

20 A. I say no assault threats.

21 Q. But you had intended to hit him with that beer
22 bottle?

23 A. Yes, sir.

24 Q. You weren't just throwing that bottle to hit the
25 ground?

1 A. No, sir.

2 Q. You were throwing it at Mr. Mumford?

3 A. Yes, sir.

4 Q. With the intent do hit him?

5 A. Yes, sir.

6 Q. To shut him up?

7 A. Yes, sir.

8 Q. Now, you said that you all were there making plans
9 about a race?

10 A. Yes, sir.

11 Q. What type of race?

12 A. Motorcycle race.

13 Q. You don't own a motorcycle?

14 A. No, sir.

15 Q. And were you all planning on betting on the race?

16 A. Yes, sir.

17 Q. Were you there to bet on the race?

18 A. If need be, yes, sir.

19 Q. Had you placed any bets on the race?

20 A. No, sir.

21 Q. Had anyone place bets on the race?

22 A. We didn't get into it that far.

23 Q. Now, you said that Mr. Mumford -- you stated that
24 Mr. Mumford came in later on?

25 A. Yes.

1 Q. About a half an hour after you had already been
2 there?

3 A. Probably. Yes, sir.

4 Q. Did anyone ask Mr. Mumford to leave once he arrived?

5 A. No, not to my knowledge.

6 Q. Now, once y'all confronted each other y'all jumped
7 into an argument with each other?

8 A. Right.

9 Q. Out of the clear blue skies?

10 A. Just what happened.

11 Q. So there was bad blood between y'all any way?

12 A. Not from my end. No, sir.

13 Q. There was not bad blood on your end, but you intended
14 to hit him with the beer bottle?

15 A. Yes.

16 Q. Have you ever hit anyone with a beer bottle?

17 A. No, sir.

18 Q. Do you have a gun?

19 A. No, sir.

20 Q. Thank you, Mr. Funderburk?

21 THE COURT: Any redirect?

22 MR. JONES: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. JONES:

25 Q. Paul, where does Todd Harrell live?

1 A. Ten Hickey Circle.

2 Q. Where is that located?

3 A. Off of Tec Road.

4 Q. In Chesterfield County?

5 A. Yes, sir.

6 Q. Okay. And we've gone over this before. You're about
7 6'2"?

8 A. Yes, sir.

9 Q. How much do you weigh?

10 A. About 240.

11 Q. 240?

12 A. Yes, sir.

13 Q. And in your experience does one bottle of beer affect
14 you at all?

15 A. No, sir.

16 Q. No, sir. Okay. What did you have in your hand when
17 Noah Mumford shot you?

18 A. Nothing.

19 Q. You didn't have a glass bottle?

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

21 Q. You didn't have a knife?

22 A. No, sir.

23 Q. Did you have a gun?

24 A. No, sir.

25 Q. On cross you said that you would have defended

1 yourself if somebody threw a bottle at you, but would you
2 have shot somebody four times?

3 A. No, sir.

4 Q. Did the tussle happen after you threw the bottle at
5 him?

6 A. Yes, sir. Immediately.

7 Q. Did the bottle break to your knowledge?

8 A. No, sir.

9 Q. No, sir. And just clarify were you walking away from
10 the defendant after the tussle?

11 A. Yes, sir, I was.

12 MR. JONES: Beg the Court's indulgence. No further
13 questions, Your Honor.

14 THE COURT: Thank you very much, sir. You may step
15 down.

16 COLLOQUY

17 MR. REDMOND: Your Honor, may we approach for a
18 moment, please?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 THE COURT: All right, ladies and gentlemen, we're
24 going to take a short break at this point to set up some
25 video equipment. I'm going to ask you if you would to

1 step back to your jury room. If you need anything let us
2 know. Please, don't have conversations about the case.
3 Talk about anything else you want. Just don't talk about
4 the case. We'll get started the about ten minutes, okay.
5 All right.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 11:05 a.m.)

8 THE COURT: All right, we'll be at ease until y'all
9 have that set up.

10 (WHEREUPON, Court is in recess at 11:05 a.m. and
11 reconvenes at 11:28 a.m.)

12 THE COURT: Thank you, ladies and gentlemen. Have a
13 seat, please. All right.

14 MR. REDMOND: Your Honor, just as a housekeeping
15 matter we just, because of the nature of the video and the
16 fact that we've got it turned up as loud as we can but
17 it's not blaring loud, if we can just ask that the noise
18 in the courtroom stay at a minimum to the jurors can hear
19 it. I think -- we tried it. I think they should be able
20 to hear it as long as it's quiet in here.

21 THE COURT: Y'all don't have an amplifier?

22 MR. REDMOND: Probably, it's just that we don't have
23 that.

24 THE COURT: We don't have a Mic that will reach over
25 there? Maybe the cord doesn't reach.

1 MR. REDMOND: That's why you're the Judge, Your
2 Honor. I never thought of that.

3 THE COURT: All right. Bring the jury out.

4 (WHEREUPON, the jury panel enters the courtroom at
5 11:31 a.m.)

6 MR. KNOX: Your Honor, may we approach?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I just want to,
12 before you proceed, let me just -- I just want to make
13 sure cause if there is any juror that have a note pad or
14 anything taking any notes, not allowed to do that, okay.
15 So just pay attention closely to all the testimony and
16 listen, but not allowed to take notes. All right.
17 Solicitor.

18 MR. REDMOND: Thank you, Your Honor. May it please
19 the Court. At this time the State will play what has been
20 admitted as State's Exhibit Number Eight; that being the
21 videotaped statement of the defendant. So State is ready
22 to publish that for the Jury at this time.

23 THE COURT: All right. And, ladies and gentlemen,
24 that statement is in evidence and so we're going to play
25 it at this time. And you will have that in the jury room

1 if you need it.

2 MR. REDMOND: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit Number One was played for
4 the jury.)

5 MR. REDMOND: Your Honor, if the jury needs to hear
6 it make sure the quality -- I don't know why it's
7 skipping. The audio equipment, it played fine in my
8 computer at the office, so I think I may be something to
9 do with the computer.

10 THE COURT: Okay.

11 MR. REDMOND: With that, Your Honor, I would yield to
12 Mr. Jones if the Court is prepared.

13 THE COURT: All right. You may call your next
14 witness.

15 MR. JONES: State calls Todd Harrell.

16 THE COURT: Sir, if you would please come around to
17 the stand.

18 TODD HARRELL, after being duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. JONES:

22 Q. Mr. Harrell, how are you doing?

23 A. All right.

24 Q. Where do you live, Mr. Harrell?

25 A. Cheraw. 178 Tim circle.

1 Q. And what do you do for a living?

2 A. Construction work, carpenter.

3 Q. Tell us how you know Mr. Paul Funderburk?

4 A. Paul is my coworker. We work together.

5 Q. How long have you worked together?

6 A. Maybe three, four years. Somewhere in there.

7 Q. Tell us a little bit about the day we're here about,
8 December 23rd 2010?

9 A. Well, on that day we was working in Kingstree, South
10 Carolina. And I believe that was our last day off for the
11 holidays. So all is decided to get together, you know,
12 and we been talking with Mr. Mumford about racing, racing
13 motorcycles on and off that day. So later on we got off
14 we decided to meet up at my house.

15 Q. Was it your intention that evening to race
16 motorcycles?

17 A. Well, it was late on that night, but it really wasn't
18 intention to race that night because it was dark. So,
19 mainly, just to talk about racing.

20 Q. And did you call Mr. Mumford to come over?

21 A. Well, we talked earlier that day and, yeah, I did
22 call him. Yeah.

23 Q. So it was prearranged that y'all were going to meet
24 that night about talk about racing motorcycles?

25 A. Right. Right.

1 Q. But it wasn't a surprise when Noah showed up that
2 night?

3 A. No. No, sir.

4 Q. Describe for us, after Noah got there, and he got out
5 of his car take it from there. Describe what happened?

6 A. Well, before he came we were talking, you know, the
7 guy were already there talking about racing and he drove
8 up. he got out of the car, and we continued to talk, all
9 of us. And somehow the attention turned between him and
10 Paul, the discussion, and escalated between those two.
11 And ...

12 Q. Can you tell us at all how you think the conversation
13 turned between them two?

14 A. Well, it was a heated conversation. It was back and
15 forth name calling, and we tried to intervene getting in
16 between them to change the conversation.

17 Q. Who where the two that were going to race?

18 A. Well, it was Amos, Amos Nivens and Noah.

19 Q. Did everybody now that?

20 A. Yeah. Yeah.

21 Q. So take us back to there. Was trash talking, and
22 then describe a little more when you say it was elevated.
23 What do you mean?

24 A. Well, they turned to each other, and I don't know how
25 but it went from motorcycle racing to name calling, and

1 personal things being said like name calling and calling
2 Mr. Funderburk names and ...

3 Q. I Understand.

4 A. Back and forth.

5 Q. So let's go to the altercation. Where were you
6 positioned prior to the altercation right before with they
7 started fighting?

8 A. We were gathered in a circle, and Mr. Funderburk was
9 to my right, and I believe Noah was in between me and Amos
10 to my left.

11 Q. Okay. And who else got out of the car with Noah?

12 A. Frank Cranford and it was another guy. I don't know
13 his name.

14 Q. Were they standing there in a group?

15 A. Well, I don't know that it wasn't a group. It was
16 like around us, behind us. Right.

17 Q. And was anything suspicious when they got out? Were
18 you expecting any type of violence?

19 A. No, sir. No, sir.

20 Q. Okay. So go forward with where you were standing,
21 and then what happened that led up to the altercation?

22 A. Okay. Well, after the name calling, you know, we
23 tried, like I said, to intervene, change conversation.
24 But for some reason they were still back and forth towards
25 each other. And Mr. Mumford called him a motherfucker

1 which I thought was offending, but still Mr. Funderburk,
2 you know, he didn't like it. And it still went back and
3 forth, you know, name calling, name call. But
4 Mr. Funderburk told him, you know, "I'm not going to be
5 too many more motherfuckers."

6 And you know it was, "Well, you're going to be a
7 motherfucker as long as I say you're going to be one."
8 That's from Mr. Mumford.

9 Q. Then what happened?

10 A. Mr. Funderburk told him, "Okay. I'll be finish this
11 in a couple more swallows I'll be finished this." You
12 know and after that Mr. Funderburk swung the bottle.

13 Q. When you say, 'swung' did he release the bottle?

14 A. It didn't hit Mr. Mumford.

15 Q. Okay.

16 A. It fell before it hit him.

17 Q. Did you see the bottle travel in the air?

18 A. It was like a swing, but before it got to Mr. Mumford
19 it maybe slipped out of his hand or like I said it didn't
20 reach Mr. Mumford.

21 Q. And where did it fall in relation to Mr. Mumford?

22 A. It was right in between the two of them on the
23 ground.

24 Q. So describe how closely they were to each other?

25 A. Maybe about 4 feet. I would say about four feet.

- 1 Q. Okay. Did you notice the bottle shatter or anything?
- 2 A. No, sir. No, sir.
- 3 Q. But you saw the bottle hit the ground?
- 4 A. Yes, sir.
- 5 Q. And what happened after that?
- 6 A. Well, after the bottle it the ground they tussled
- 7 maybe two or three seconds and they broke loose.
- 8 Q. When you say, 'tussle' who was the aggressor or did
- 9 they both look like they were coming at each other?
- 10 A. It was pretty even you know cause it really didn't --
- 11 one way or another it didn't you know -- it didn't last a
- 12 couple seconds so.
- 13 Q. Okay. And what happened as a result of the tussle?
- 14 Were they both on the ground? One on the ground?
- 15 A. They both were standing up. They were still
- 16 standing.
- 17 Q. Did it appear anybody had a weapon at that point?
- 18 A. No, sir. No, sir.
- 19 Q. To your knowledge did Mr. Funderburk have a knife?
- 20 A. No, sir.
- 21 Q. Did Mr. Funderburk have a gun?
- 22 A. No, sir.
- 23 Q. Did he ever mention he was going to get a weapon?
- 24 A. No, sir.
- 25 Q. All right. After the two or three second tussle what

1 happened after that?

2 A. Well, they beck loose, and they stepped back from
3 each other, and we all thought it was over with, you know
4 done. And just out of nowhere pulled the gun out and
5 started shooting.

6 Q. And what was Mr. Funderburk doing after the tussle?

7 A. Well, he was at the -- after they stepped back from
8 each other?

9 Q. Um hum.

10 A. He was at the tail end of the truck.

11 Q. Did he appear to be just standing there waiting to
12 fight more or was he backing up? Describe what he did?

13 A. Well, he was mainly backing up. After the tussle
14 they kind of pushed away from each other, and he was still
15 in the motion of going back. Both of them was.

16 Q. Were you in a good position to see Noah Mumford pull
17 out the gun?

18 A. Yes, sir. Yes, sir.

19 Q. Describe that?

20 A. Well, it was shocking when he pulled it out. You
21 know like I said we didn't know nothing like that was
22 going to happen.

23 Q. Describe where he pulled the gun from?

24 A. Well, it was from his belt. His front right side
25 from where I was standing.

1 Q. Okay. So the gun was concealed up until that point?

2 A. Right. Yes.

3 Q. Would he have a shirt covering it or what was it?

4 A. This was a shirt.

5 Q. Did you say anything when he pulled the gun?

6 A. No. No, didn't have time to.

7 Q. What about when the shots were fired, what did you
8 do?

9 A. Well, afterwards -- well, when the shots was fired I
10 stepped back a little you know. Everybody did.

11 Q. Were you afraid?

12 A. Yeah. Yeah.

13 Q. And why were you afraid?

14 A. Unexpected. Unexpected.

15 Q. After -- how many shots were fired?

16 A. I believe it was five.

17 Q. Okay. And did you see, when the shots were being
18 fired, did you see what Mr. Funderburk was doing?

19 A. Yeah, he was at the back. Like I said at the back of
20 the truck, and I think he was in the kind of motion of
21 turning away you know, but I guess he expected that
22 everything was over with, too.

23 Q. And after he shot was do you remember what he did?

24 A. Well.

25 Q. Do you know what Mr. Funderburk did after he was

1 shot?

2 A. Yeah, he said he was hit. He told us that he was
3 hit.

4 Q. Okay. And what did Noah Mumford do as he was
5 shooting? Was he standing? Was he walking?

6 A. Yeah, well, after the first shot he started
7 approaching Mr. Funderburk with the gun.

8 Q. So you're telling me that he was walking towards Mr.
9 Funderburk as he was shooting?

10 A. Yes, sir.

11 Q. Okay. And after the shots were fired tell us what
12 Noah Mumford did?

13 A. Well, after the shots were fired he approached
14 Mr. Funderburk, and myself told him, "Hey, Noah, you don't
15 have to do that, man. You don't have to do that," and he
16 ---

17 Q. After the shots were fired he approached
18 Mr. Funderburk?

19 A. Yes, sir.

20 Q. And then after you said, "You don't have to do that,"
21 what did he do?

22 A. Well, he told Mr. Funderburk, "I should have killed
23 you."

24 Q. Okay. And then what happened?

25 A. Well, then he got in his car and then he left.

1 Q. Okay. Were you one of the witnesses who took Mr.
2 Funderburk to the hospital?

3 A. We didn't ride in the same vehicle, but we all
4 followed each other to the hospital.

5 Q. Okay.

6 MR. JONES: Beg the Court's indulgence. No further
7 questions, Your Honor.

8 THE COURT: Mr. Knox.

9 CROSS-EXAMINATION

10 BY MR. KNOX:

11 Q. Mr. Harrell, you said that you and Mr. Funderburk
12 were coworkers?

13 A. Yes, sir.

14 Q. What type of work do you do?

15 A. Construction work, carpentry.

16 Q. What company do you work with?

17 A. Pine Enterprises.

18 Q. Is that his father's company?

19 A. No, sir.

20 Q. And what type of construction work do you do?

21 A. I'm a carpenter also.

22 Q. You're a carpenter. Okay. And y'all had been
23 working, I think your testimony is, that y'all had been
24 working in Kingstree?

25 A. Yes, sir.

1 Q. What time y'all end work that day?

2 A. What time did we leave?

3 Q. Yeah.

4 A. I would say about 4:00, 4:30. Somewhere in there.

5 Q. And that's the time you left Kingstree?

6 A. Yes, sir.

7 Q. Where did you go after you left Kingstree?

8 A. We went to Cheraw.

9 Q. Went to Cheraw, and what time did you come to Cheraw?

10 A. Well, excuse me. Let me back up. We went to

11 Chesterfield. That's where our vehicles be parked cause

12 all of us ride in the same truck.

13 Q. You went to Chesterfield?

14 A. Right.

15 Q. And what did you do in Chesterfield?

16 A. Well, we loaded our own tools up in our own vehicles.

17 Q. And were the two of you still together at that time?

18 A. No, sir.

19 Q. Okay. Where were you?

20 A. I was in the company truck.

21 Q. Okay. And where was Mr. Funderburk?

22 A. He was in his own vehicle.

23 Q. And this took place -- this event took place at your
24 house?

25 A. Yes, sir.

- 1 Q. What time did you arrive home?
- 2 A. Maybe 8:00. Eight o'clock, somewhere in there.
- 3 Q. And when you arrived home was anybody there?
- 4 A. No, sir.
- 5 Q. Who invited the people over?
- 6 A. Well, they were all invited to come.
- 7 Q. Who invited them?
- 8 A. I did.
- 9 Q. Okay, you did. And who all did you invite? Do you
- 10 remember.
- 11 A. Well, Noah, I invited him over, and my coworkers.
- 12 Q. And who were they? Do you know their names?
- 13 A. Mr. Funderburk and Amos Nivens.
- 14 Q. And what was it to celebrate the holidays?
- 15 A. Well, I know it was just to discuss the racing,
- 16 motorcycle racing.
- 17 Q. And were you one of the participants in the race?
- 18 A. Yes, sir.
- 19 Q. You own a motorcycle?
- 20 A. Yes, sir.
- 21 Q. And you all were there -- explain to the jury what
- 22 you mean by discussing the race?
- 23 A. Well, to discuss what -- we had a bet, discuss money,
- 24 where we would race at.
- 25 Q. Now, you said you had a bet?

1 A. Right.

2 Q. Who was betting? Whom and against whom?

3 A. Well, it was side bets and between me and
4 Mr. Mumford.

5 Q. Okay. And you and Mr. Mumford had a bet?

6 A. Yes, sir.

7 Q. What was the amount of that bet?

8 A. We didn't discuss the amount at that time. We didn't
9 get to that.

10 Q. Was it a bet to see who won the race?

11 A. Yes, sir.

12 Q. Had y'all done this in the past?

13 A. Yes, sir.

14 Q. Was this the first time that you all met at your
15 place to arrange the bet and the race?

16 A. Yes, sir.

17 Q. And you said it was about eight o'clock at night?

18 A. Yes, sir.

19 Q. And what type of house do you live in, sir?

20 A. I stay in a mobile home.

21 Q. Okay. Anyone else live there with you?

22 A. Not at the time. No, sir.

23 Q. You live there by yourself?

24 A. Yes, sir.

25 Q. And in relationship to the mobile home where did this

1 planning for the race and these activities, where did they
2 take place?

3 A. The race track.

4 Q. No. Where did the argument take place?

5 A. At my home.

6 Q. What part of your home?

7 A. It was beside my mobile home in the driveway.

8 Q. Beside?

9 A. Right.

10 Q. Closer to the rear or closer to the front?

11 A. The rear. Closer of the rear.

12 Q. Closer to the rear. And at that time how many
13 individuals were there?

14 A. Six.

15 Q. And you indicated in your direct that you all were in
16 a circle like?

17 A. Right.

18 Q. And was anyone drinking?

19 A. Yes, sir.

20 Q. Who was drinking?

21 A. I think Mr. Funderburk had a beer.

22 Q. How long beers did he have?

23 A. I only seen one.

24 Q. You only seen one. Was he drinking that beer?

25 A. Yes, sir.

1 Q. Do you know what type of beer it was?

2 A. No, sir.

3 Q. Did you see the beer?

4 A. Yes, sir.

5 Q. What type of container?

6 A. I'm not sure. I know it was a bottle, but I don't
7 know what kind of beer it was.

8 Q. Was anyone else drinking?

9 A. No, sir.

10 Q. And what time did Mr. Mumford arrive?

11 A. I don't know the exact time, but we were there maybe
12 30, 45 minutes before he arrived.

13 Q. And you said you got home about 8:00?

14 A. Yes, sir.

15 Q. So closer to nine o'clock Mr. Mumford arrived?

16 A. Yes, sir.

17 Q. Did he arrive by himself?

18 A. No, sir.

19 Q. Did he have someone with him?

20 A. Yes, sir.

21 Q. Who did he have with him?

22 A. Mr. Frank Cranford and he had another guy with him.

23 Q. So it was three of them. And when he came what did
24 he do?

25 A. Well, when he got out the car you know we were all

1 talking.

2 Q. Who was he talking to?

3 A. Mainly me and Amos, Amos Nivens.

4 Q. And did he and Mr. Funderburk enter into a
5 conversation?

6 A. Yes, sir.

7 Q. How long after Mr. Mumford arrived did they enter
8 into that conversation?

9 A. Maybe five minutes after he got there.

10 Q. And what was the conversation about?

11 A. Really, it wasn't conversation. It was name calling
12 and about money, you know.

13 Q. And what do you mean about money?

14 A. Well, it was -- I think it was something like
15 Mr. Mumford said, you know, he was tired of everybody
16 getting into the bets who don't have a motorcycle and
17 don't have money.

18 Q. And who was he directing that towards?

19 A. Really, I don't know, but he -- that's what he said.
20 I don't know who was directing it to.

21 Q. And did Mr. Funderburk respond to that?

22 A. A couple guys did, yes, sir.

23 Q. Do you remember what he said?

24 A. Well, we asked him who was he -- asked who he was
25 responding to.

1 Q. And did Mr. Mumford answer?

2 A. Yes, sir.

3 Q. What was his answer?

4 A. You.

5 Q. And I think in your direct testimony you said that
6 Mr. Funderburk threw a bottle at him?

7 A. Yes, sir.

8 Q. Was that the bottle that he was drinking from?

9 A. Yes, sir.

10 Q. This is -- did this happen while y'all were still
11 inside the circle?

12 A. We were all in the circle.

13 Q. And did Mr. Funderburk face up to Mr. Mumford when he
14 threw this bottle at him

15 A. Yes, sir.

16 Q. And did you say they were about 4 feet apart?

17 A. Yes.

18 Q. Would you say they were about as far as you to the
19 court reporter?

20 A. A little bit further.

21 Q. As far as you to the Clerk of Court?

22 A. Yes, sir.

23 Q. And you said that Mr. Funderburk threw the bottle at
24 Mr. Mumford?

25 A. Yes, sir.

1 Q. Did you see how he threw it? Did he throw it
2 underhand? Overhand?

3 A. Well, I wouldn't say throw. It was more of a swing.

4 Q. And what happened after he swung the bottle at
5 Mr. Funderburk?

6 A. Well, like I said the bottle didn't hit Mr. Mumford.
7 It fell before it hit Mr. Mumford.

8 Q. Did it fall in front of him?

9 A. In between them. Yes, sir.

10 Q. In between them. About how -- okay, they were 4 feet
11 apart. In relationship to the two of them in feet where
12 did the bottle fall?

13 A. Like I say it was in between, but him as far as feet.

14 Q. So the bottle fell short of 4 feet?

15 A. Yes, sir.

16 Q. Mr. Funderburk swung the bottle 4 feet apart and it
17 didn't hit him?

18 A. No, sir.

19 Q. It fell to the ground?

20 A. Yes, sir.

21 Q. And you saw this?

22 A. Yes, sir.

23 Q. Was it dark outside?

24 A. Yes, sir.

25 Q. And was there any light out there?

1 A. Yes, sir.

2 Q. Where was the light?

3 A. In my backyard.

4 Q. From your backyard?

5 A. Yes, sir.

6 Q. From your vantage point you could see the bottle?

7 A. Yes, sir.

8 Q. What color was the bottle?

9 A. It was green, I think. The bottle was green.

10 Q. And you said it was in your driveway. Do you have a
11 paved driveway or unpaved driveway?

12 A. Dirt driveway.

13 Q. Unpaved?

14 A. Yes, sir.

15 Q. And you said it hit the ground?

16 A. Yes, sir.

17 Q. Did the bottle shatter?

18 A. No, sir.

19 Q. Did the bottle have any liquid in it?

20 A. I'm not sure.

21 Q. What did Mr. Mumford do when the bottle was swung at
22 him.

23 A. Well, he went in I would say defensive mode, and
24 that's when they locked up.

25 Q. Who do you mean by defensive? Did his stance change?

1 Did he do like that?

2 A. Yeah, yeah, he kind of reacted to it.

3 Q. Did he try to avoid being hit with the bottle?

4 A. Yes.

5 Q. What was Mr. Funderburk doing when he swung the
6 bottle?

7 A. Well, he was -- after he swung the bottle that's when
8 they both locked up.

9 Q. Did he approach Mr. Mumford?

10 A. Yes, sir.

11 Q. And Mr. Mumford maintained his position except he got
12 in defense mode and Mr. Funderburk approached him?

13 A. Yes, sir.

14 Q. After he threw the bottle at him?

15 A. Yes, sir.

16 Q. And when you say they locked up did you see who
17 touched whom first?

18 A. Well, no.

19 Q. But you did see that Mr. Funderburk left his space,
20 came to the space that Mr. Mumford was occupying, and
21 approached him?

22 A. Yes, sir.

23 Q. After swinging the bottle at him?

24 A. During.

25 Q. During. So he did that simultaneously?

- 1 A. Yes, sir.
- 2 Q. He tossed and approached?
- 3 A. He didn't throw it. He swung.
- 4 Q. He swung and approached?
- 5 A. Right.
- 6 Q. And Mr. Mumford was maintaining his position?
- 7 A. Um hum.
- 8 Q. Then he got -- when he saw the attack he got in
- 9 defense mode?
- 10 A. Yes, sir.
- 11 Q. And how long did that altercation last?
- 12 A. Maybe three, four seconds.
- 13 Q. Three or four seconds. And did that remain standing?
- 14 Did anyone fall?
- 15 A. No. No, sir, they remained standing.
- 16 Q. They remained standing. Did they, for lack of a
- 17 better phrase, did they lock horns?
- 18 A. Yes, sir.
- 19 Q. They did. Were they tightly embraced?
- 20 A. Yes.
- 21 Q. And neither one of them fell?
- 22 A. No, sir.
- 23 Q. And how did they break? Did anyone break them up?
- 24 A. No, they separated on their own.
- 25 Q. Were they talking to each other at the time?

- 1 A. No, sir.
- 2 Q. No words were being said?
- 3 A. No, sir.
- 4 Q. And they as just as quick as it started they
- 5 disengaged, right?
- 6 A. Yes, sir.
- 7 Q. What happened after that?
- 8 A. Well, when they stepped off Mr. Mumford reached for
- 9 the gun and started shooting.
- 10 Q. Now, how did you know that Mr. Mumford had a gun?
- 11 A. I was 4 feet away from him.
- 12 Q. Did you see the gun?
- 13 A. Yes, sir.
- 14 Q. When did you first see the gun?
- 15 A. Immediately after he brought it from under his shirt.
- 16 Q. Did you see the gun before that?
- 17 A. No, sir.
- 18 Q. Did you see the gun when he got out of his car?
- 19 A. No, sir.
- 20 Q. And you said, I think it was your direct testimony,
- 21 that you said that the gun was first concealed?
- 22 A. Yes, sir.
- 23 Q. And then -- where was it concealed at?
- 24 A. Under his shirt.
- 25 Q. And you saw him -- what did he do? How did he get

1 the gun?

2 A. He reach for the gun. He actually pulled his shirt
3 up, pulled the gun out and started shotting.

4 Q. And did you set off an alarm that this man had just
5 pulled a weapon out?

6 A. Did I set off an alarm?

7 Q. Did you warn anybody? Did you warn Mr. Funderburk,
8 "Hey, Noah has that gun?"

9 A. No, we didn't have time for that.

10 Q. Okay.

11 A. It wasn't time.

12 Q. And in your relationship to Mr. Mumford and Mr.
13 Funderburk where were you when you said that he pulled the
14 gun out?

15 A. When I said he pulled the gun out?

16 Q. Yes. Where were you standing?

17 A. Well, I was still right there, maybe 4 feet from the
18 both of them.

19 Q. And were they still close together when he pulled the
20 gun out?

21 A. No, sir.

22 Q. How far apart were they?

23 A. They had to be maybe 8 feet at the time.

24 Q. So they went from 4 feet to 8 feet after the
25 altercation?

- 1 A. Right.
- 2 Q. And when he pulled the gun out what did he do?
- 3 A. He started shooting.
- 4 Q. Where was he shooting at?
- 5 A. Mr. Funderburk.
- 6 Q. Okay. Was he shooting in the air? At the ground?
- 7 Mid- mass? What was his shooting at?
- 8 A. The first shot I did know the gun was pointed at the
- 9 ground. The first shot.
- 10 Q. The first shot ---
- 11 A. Right.
- 12 Q. --- was pointed at that ground?
- 13 A. Right.
- 14 Q. Okay, and how many shots did you hear?
- 15 A. It was five.
- 16 Q. And the other four shots, were you still looking?
- 17 A. No. No.
- 18 Q. You got out of Dodge, more or less?
- 19 A. Well. Yeah.
- 20 Q. So you didn't see the other four shots?
- 21 A. No, sir.
- 22 Q. But the first shots you saw clearly hit the ground,
- 23 right.
- 24 A. No.
- 25 Q. The first shot did not hit Mr. Funderburk?

1 A. I'm not sure.

2 Q. Okay. What was Mr. Funderburk doing when that first
3 shot was fired that you heard?

4 A. Well, he was like turned away at the back of the
5 truck.

6 Q. How far was the truck away from where you all were
7 gathered?

8 A. We were in front of the truck. The front of the
9 truck.

10 Q. The truck was right there?

11 A. Right.

12 Q. You all were right there at the truck?

13 A. Yes, sir.

14 Q. Now, I think in your direct testimony, I think I
15 wrote it down, you said that after Mr. Mumford shot
16 Mr. Funderburk he came up and said something to him?

17 A. Yes, sir.

18 Q. What did he say to him?

19 A. Well, he told Mr. Funderburk, you know, "You can't go
20 around throwing bottles at people, trying to hit people
21 with bottles. You know I should kill you."

22 Q. He said -- say that last part again. That he should
23 kill him?

24 A. I should kill you.

25 Q. I should kill you?

1 A. Yeah.

2 Q. Did he say, "I'm going to kill you?"

3 A. No.

4 Q. He said, "I should kill you." And did Mr. Funderburk
5 respond to that?

6 A. Well, he said he was hit, "I'm hit."

7 Q. But also you said that he told Mr. Funderburk that
8 you shouldn't be throwing bottles like that?

9 A. Yes, sir.

10 Q. Now, you gave a statement to law enforcement; is that
11 correct?

12 A. Yes, sir.

13 Q. On December 23rd 2010 at about the 2000,
14 eight o'clock. At eight o'clock you gave the statement to
15 law enforcement?

16 A. Um hum.

17 Q. Now, did you give this statement the same time that
18 you got home or after the incident?

19 A. No, sir.

20 Q. You indicated that you got home at eight o'clock?

21 A. Yes, sir.

22 Q. You gave the statement to law enforcement at
23 eight o'clock?

24 A. Yes, sir.

25 MR. KNOX: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. KNOX:

3 Q. Is that the statement you gave?

4 A. Yes, sir.

5 Q. You gave that statement at eight o'clock?

6 A. Excuse me?

7 Q. You gave that statement at 8:00 p.m. on December
8 23rd?

9 A. If that is what it say on there, yes sir.

10 Q. Did you sign it?

11 A. Yes, sir.

12 Q. Okay, now, on this statement you did not put down the
13 conversation between Mr. Funderburk and Mr. Mumford after
14 the shooting, did you?

15 A. No, sir.

16 Q. Did you forget it?

17 A. No, sir.

18 Q. When did you remember it?

19 A. When did I remember it?

20 Q. Yeah, when did you remember that statement?

21 A. I never did forget it.

22 Q. You never forgot it, but at eight o'clock on
23 December 23rd you did not give that statement to law
24 enforcement; is that correct?

25 A. I guess if it's not on there.

- 1 Q. Didn't give it to them?
- 2 A. Right.
- 3 Q. But today you remember it?
- 4 A. Yes, sir.
- 5 Q. Ten months later. Could that statement never have
- 6 occurred?
- 7 A. No, it occurred. It occurred.
- 8 Q. But you didn't put it down?
- 9 A. Right.
- 10 Q. Now, in your statement you said that after the shots
- 11 were fired Noah got in his truck and got in his car and
- 12 left. That's what your statement says?
- 13 A. Yes, sir.
- 14 Q. On December 23rd 2010 at eight o'clock?
- 15 A. Um hum.
- 16 Q. Now, today you're saying that it didn't happen that
- 17 way; that he went over and explained to Mr. Mumford [sic]
- 18 that he should have killed him?
- 19 A. Yes, sir.
- 20 Q. Now, did that happen on December 23rd?
- 21 A. Yes, sir.
- 22 Q. And that statement happened on December 23rd?
- 23 A. Um hum.
- 24 Q. Right?
- 25 A. Yes, sir.

1 Q. But that contradicts each other, wouldn't you say?
2 Would you say they contradicts each other?

3 A. If its not on there.

4 Q. Which statement is a true statement? This statement
5 that you gave to law enforcement at eight o'clock on
6 December 23rd 2010 or your testimony today?

7 MR. KNOX: No further questions.

8 THE COURT: Anything on redirect?

9 REDIRECT EXAMINATION

10 BY MR. JONES:

11 Q. Could you have been mistaken about the time you wrote
12 the statement down and got back and all?

13 A. Yes, sir. Yes, sir.

14 Q. Why didn't you say anything in this written statement
15 that -- when the police officers got you to write your
16 statement?

17 A. Why didn't I say it?

18 Q. No. Why didn't you put some things in now that
19 you're talking about?

20 A. I, well, it was spur of the moment, really. I was
21 frustrated. Really.

22 Q. And in a little bit of shock to have your friend
23 shot?

24 A. Stock.

25 Q. Have you ever had a friend shot before?

1 A. No, sir.

2 Q. Have you ever had to give a statement to the police
3 before?

4 A. No, sir.

5 Q. Were you not asked that specific question?

6 A. Not that specific question, no, sir.

7 Q. All right. And after the tussle, in your mind, did
8 you think it was over with?

9 A. Yes, sir. Yes, sir.

10 Q. After the tussle you thought it was -- the
11 altercation was over with?

12 A. Yes, sir.

13 Q. When he pulled out the gun did he appear to be the
14 aggressor?

15 A. Yes, sir.

16 Q. And, finally, where in relationship to the house did
17 this take place?

18 A. Well, pulling up in the driveway the house would be
19 on the left.

20 Q. Okay.

21 A. So we were right on the side of the trailer.

22 Q. About how far in feet? Just estimate.

23 A. About 15. About 15 feet.

24 Q. Okay.

25 MR. JONES: Court's indulgence.

1 BY MR. JONES:

2 Q. Mr. Harrell, when you take into account the statement
3 you wrote and everything you said up here today is all of
4 that true?

5 A. Yes, sir.

6 MR. JONES: No further questions, Your Honor.

7 THE COURT: Anything on recross?

8 RECROSS-EXAMINATION

9 BY MR. KNOX:

10 Q. Okay. The Solicitor just asked you a moment ago that
11 you could have been mistaken when you wrote this
12 statement?

13 A. Yes, sir.

14 Q. Could you have been mistaken about everything that
15 night?

16 A. No, sir. No, sir.

17 Q. Could you have been mistaken about the bottle
18 actually hitting Mr. Mumford?

19 A. No, sir.

20 Q. Could you have been mistaken about Mr. Mumford going
21 over and making a statement?

22 A. No, sir.

23 Q. Could you have been mistaken about after the shooting
24 that you put in your statement that Mr. Mumford went to
25 his vehicle and left?

1 A. No, sir.

2 Q. But when the Solicitor asked you that you were
3 mistaken. You said, yes, that you were nervous and that
4 you could have made a mistake?

5 A. Yes, sir.

6 Q. What mistake did you make?

7 A. That could have been a mistake with the time.

8 Q. The only mistake that you made was a mistake about
9 the time?

10 A. Yes, sir.

11 Q. Not about your two contradictory statements?

12 A. No, sir.

13 Q. Now, you have experience with law enforcement, don't
14 you?

15 A. Experience.

16 Q. Yes.

17 A. Yeah.

18 Q. You've given statements before, haven't you?

19 A. Not that I can recall.

20 Q. Not -- but you've been interviewed by law
21 enforcement?

22 A. Yes, sir. Yes.

23 Q. You understand the whole process?

24 A. Yes, sir.

25 Q. Were you arrested? Every arrested?

1 A. Yes, sir.

2 MR. REDMOND: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (WHEREUPON, a bench conference was held off the
5 record in the presence of the jury, but out of the
6 hearing of the jury.)

7 MR. KNOX: No further questions. Thank you.

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

9 Thank you very much.

10 MR. REDMOND: Your Honor, may it please the Court.

11 THE COURT: Yes, sir.

12 MR. REDMOND: Your Honor, the next witness would be
13 Antonio Sellers.

14 ANTONIO SELLERS, after being duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. REDMOND:

18 Q. And state your full name for the record?

19 A. Antonio Sellers.

20 Q. And does everybody call your Tony?

21 A. Yes, sir.

22 Q. And do you mind if I call you Tony?

23 A. No, sir.

24 Q. All right. Tony, let me ask you this. Are you a
25 resident of Chesterfield County?

- 1 A. Yes, sir.
- 2 Q. And were -- what part of Chesterfield County do you
3 stay?
- 4 A. I live in Cheraw, South Carolina.
- 5 Q. In Cheraw, okay. And are you employed at this time?
- 6 A. Yes, sir.
- 7 Q. Where are you employed?
- 8 A. I work for myself. I'm a owner/operator truck
9 driver.
- 10 Q. Okay. Now, do you know Paul Funderburk?
- 11 A. Yes, sir.
- 12 Q. Do you know the defendant?
- 13 A. Yes, sir.
- 14 Q. Did you see both of them on the 23rd of December of
15 last year?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, before we get into details were you at
18 Todd Harrell's house on that day?
- 19 A. Yes, sir.
- 20 Q. And why were y'all there?
- 21 A. We were there discussing about a drag race that we
22 were trying.
- 23 Q. Okay. And Mr. Harrell and the defendant were those
24 the two that were going to be involved in this race?
- 25 A. Yes, sir.

1 Q. All right. Now, did Mr. Funderburk get there before
2 the defendant, Noah Mumford?

3 A. Yes, sir.

4 Q. And when Noah Mumford came did he come by himself?
5 Were there any people with him?

6 A. No, sir, I think he had two other guys with him.

7 Q. And I'm skipping way ahead, but at the time he left
8 did those two guys leave with him as well?

9 A. Yes, sir.

10 Q. And we'll fill in all the parts in between in just a
11 second. So when Mr. Mumford got to Mr. Harrell's
12 residence could you tell this jury what took place at that
13 time? Once he got out tell us what happened?

14 A. Well, Mr. Mumford got out the car, and we were
15 talking about the drag race that we were trying to make
16 happen. And, basically, he was saying that all of us
17 didn't have any money we wanted to figure out what was
18 going on, what we were going to bet. And, basically,
19 Mr. Funderburk asked him how much money did he want to bet
20 on the race, and he told Mr. Funderburk, you know, "You a
21 broke motherfucker. I'm not talking to you. I'm tired of
22 people coming in this conversation that don't a
23 motorcycle; that don't have any money."

24 At first I thought you know he was talking to me
25 cause me and him, we always talk trash back and forth.

1 And I asked him you know, "Are you referring to me?" He
2 said, "No." And then Mr. Funderburk said, "Well, who you
3 talking to," and he said, "I'm talking to you." He said
4 basically, you know, you ain't shit. If it wasn't for ---
5 Q. And, again, I know the language -- are you using the
6 language that the defendant used that day?

7 A. Yes, sir.

8 Q. Just to be clear?

9 A. Saying that, you know, if it wasn't for his mother
10 and father you know he wouldn't be nothing. And,
11 basically, fuck him. And Paul told him, "Now, ain't going
12 to be too many more motherfuckers," like that. And Noah
13 told him, "You're going to be a motherfucker until I stop
14 calling you one." And Paul took another step with his
15 beer. I got in between them trying to defuse what was
16 going on.

17 I said, "Let's concentrate about the race. All this
18 other stuff is just non-sense." And, basically, Noah kept
19 talking trash, and Paul was drinking his beer said, "When
20 I finish this beer we're going to see," like that and next
21 thing I knew Paul swung at him.

22 Q. Did he have the beer bottle in his hand?

23 A. Yes, sir, he had the beer bottle in his hand when he
24 swung at him. And I kind of turned around and the beer
25 bottle was on the ground and they kind of grabbed each

1 other and tussle for maybe two, three seconds. And they
2 backed off, looked at each other. I mean just glazed at
3 each other for a second, and when Noah pulled the gun out
4 Paul went to turn, and Noah started firing. Shot about
5 four or five times, and Paul was -- made it over to the
6 side of Todd's house.

7 And he was leaning against the house and said, "Man,
8 I'm shot." And I ran over there -- well, not ran, but you
9 know kind of went over there to him to check on him. And
10 Mr. Mumford was coming around kind of like a car coming
11 around towards Paul. And I was -- as I was walking over
12 there I said, "Noah, man, you need to go on with that."

13 Q. Let me stop you right there. So after he fired the
14 shots, and do you recall how much shots you heard?

15 A. It was maybe about four or five shots, maybe.

16 Q. And after he fires the shots tell us again what you
17 just said happened after he fired the shots. After the
18 defendant shot Mr. Funderburk what did you say happened
19 again?

20 A. He was walking around the car coming towards Paul.
21 again.

22 Q. He was walking around the car coming towards the
23 victim after he had shot him?

24 A. Yes, sir.

25 Q. Okay. You can continue?

1 A. And I told Noah, "Man, that wasn't called for. You
2 need to go home."

3 Q. Let me ask you this. Based on the language that the
4 defendant was using, based on everything that was
5 happening, talking about his state of mind, which you are
6 entitled to discuss, did this defendant seem to be afraid
7 of Mr. Funderburk?

8 A. As far as just language, no, he didn't seem like he
9 was scared of him to me, you know. To me it seemed, in my
10 personal opinion, it seemed like it was something
11 personal, you know. It didn't seem like, you know, just
12 something that was just random. It seemed like it was
13 something personal because that day, like I said, me and
14 Noah talked trash to each other all the time when it comes
15 to racing, and we were talking trash to each other that
16 night. You know that's just what we do when it comes to
17 drag racing.

18 Q. Do you think it was in the context of y'all
19 discussion?

20 A. No, it wasn't. No.

21 Q. So -- and I interrupted you. So let me pick back up.
22 So you after -- he's coming towards Mr. Funderburk again
23 tell us what happened? You did what?

24 A. As I was walking over to Paul I seen Noah come around
25 with the gun and I told Noah, I was like, "Man, that

1 wasn't called for you. You need to go on about your
2 business. You need to get the hell on," like that. And
3 his last statement before he left he said, "Motherfucker,
4 I should have killed for you for swinging that bottle on
5 me." And after that I got Paul, loaded him up in his
6 truck and rushed him to the hospital.

7 Q. Okay. Now, when you got to the hospital did you give
8 a statement to law enforcement?

9 A. Yes, sir.

10 Q. Okay. Did you gave a written statement to law
11 enforcement?

12 A. Yes, sir.

13 Q. Okay. And were you asked specific questions? In
14 other words is everything that you told us today in that
15 statement?

16 A. Not everything. It's just in that statement it's
17 just an overall review of what happened. It wasn't detail
18 by detail by detail. It was just overall what happened.

19 Q. Okay. Who did it?

20 A. Yeah.

21 Q. And what happened and who did it?

22 A. Yes, sir.

23 Q. Is that pretty much what we were asked to describe?

24 A. Yes, sir.

25 Q. You weren't asked all the questions that I've asked.

1 or any that the Defense -- the defendant's attorney is
2 going to ask you in a little while?

3 A. No, sir.

4 Q. Did you actually see the gun that the defendant had?

5 A. Well, it was kind of dark and you know.

6 Q. And if you can't identify it, that's find, but I was
7 going to ask you to look at State's Exhibit Number Three
8 and if it does look familiar let us know. If you can't
9 tell us that's fine, too?

10 A. It resembles the gun he had. Like I said it was dark
11 you know.

12 Q. But is there any question in your mind that the
13 defendant had a weapon?

14 A. No.

15 Q. Had a gun?

16 A. No, there is no question.

17 Q. Is there any question in your mind that the defendant
18 is the one who was firing that weapon?

19 A. No, there is no question.

20 Q. And is there any question to your mind that he
21 actually shot Mr. Funderburk?

22 A. No, sir, no question.

23 Q. And is there any question in your mind that after he
24 finished shooting, rather than leaving, he continued to go
25 towards Mr. Funderburk?

1 A. No question.

2 Q. And in fact it -- didn't you have to intervene during
3 do course of him going back for Mr. Funderburk?

4 A. Yes, sir.

5 Q. Now, is there any question in your mind that the
6 defendant turned his attention to Mr. Funderburk and
7 actually started the verbal altercation with
8 Mr. Funderburk that led to this incident?

9 A. Yes, sir.

10 MR. REDMOND: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 BY MR. REDMOND:

13 Q. So there is no question in your mind that he was the
14 initiator of this incident?

15 A. He was the initiator.

16 MR. REDMOND: I have nothing further at this time,
17 Your Honor.

18 BY MR. REDMOND:

19 Q. Please answer any questions that Mr. Knox may have.

20 CROSS-EXAMINATION

21 BY MR. KNOX:

22 Q. Mr. Sellers, do you work with Mr. Funderburk?

23 A. Do I work with him.

24 Q. Yes, sir.

25 A. No, sir.

1 Q. Where were you at earlier that day, December 23rd
2 2010?

3 A. Excuse me, sir.

4 Q. Where were you at earlier that day.

5 A. Earlier that day I believe I was home with my wife, I
6 believe.

7 Q. So where do you live, sir?

8 A. I live on 35 David Street. Cheraw, South Carolina.

9 Q. And how far away is that from where this incident
10 took place?

11 A. Maybe, I'm guessing, maybe three or four miles,
12 maybe.

13 Q. And do you know what time you arrived at the scene or
14 at the place where this didn't took place?

15 A. We arrived there, it was a little I believe after
16 6:30, seven o'clock. Somewhere in that area.

17 Q. When you arrived who was there?

18 A. Mr. Harrell was there. Amos Nivens and
19 Mr. Funderburk was there.

20 Q. And were you invited there or you just happen to show
21 up?

22 A. They called us to come over there.

23 Q. Who called you?

24 A. I can't believe -- I'm thinking it was Mr. Nivens
25 that called me and said they were trying to do a race with

1 Noah.

2 Q. And did you know that Noah was going to be there?

3 A. Yes, sir.

4 Q. What time did Mr. Noah Mumford get there?

5 A. After I got there. It's probably about, maybe about
6 35, 45 minutes, and then Mr. Mumford showed up.

7 Q. You got there about 6:30?

8 A. Yes, sir, somewhere in there.

9 Q. This would have been about 7:30?

10 A. I'm guess, give or take. Yes, sir.

11 Q. And you said that Mr. Harrell was already there about
12 6:30?

13 A. Yeah, when I got there he was already there.

14 Q. Was it dark when you got there.

15 A. It was late in the evening.

16 Q. Now, when -- on your direct testimony you said Mr.
17 Funderburk was drinking a beer?

18 A. Yes, sir.

19 Q. Do you remember what type of beer he was drinking?

20 A. Heineken.

21 Q. Would it have been in a bottle like this?

22 A. Yes, sir.

23 Q. Do you remember how many beers he drank or was that
24 the only one?

25 A. That was the only one I seen. Yes, sir.

1 Q. And was he still drinking that beer when Mr. Mumford
2 arrived?

3 A. Yes, sir.

4 Q. And the point that Mr. Mumford arrived how much beer
5 was consumed? Was it half a bottle? Was it nearly full?

6 A. It was maybe half a bottle left, I believe. Maybe.

7 Q. And Mr. Mumford get out of his car, and did he
8 exchange pleasantries with anyone or did he say anything
9 to anybody? Did my say anything to you?

10 A. Well, basically, when he got out the car his first
11 words were you know about who was going to ride Todd's
12 bike, and you know about the money.

13 Q. About the money?

14 A. Yeah.

15 Q. Tell me about the money because everybody is talking
16 about the money. Tell me about the money?

17 A. Basically, about how much we wanted to bet on the
18 race. Basically, and you know, he said that you know he
19 had about \$4,000 or \$5,000 on him and wanted to know could
20 we cover that, basically.

21 Q. Now, when he said he had \$4,000 or \$5,000 on him who
22 was he talking to?

23 A. He didn't direct it to -- directly to anybody. He
24 was just saying what we could get together. I guess he
25 was talking to all of us.

1 Q. So everybody heard him say that he had \$4,000 or
2 \$5,000 on him?

3 A. Yes, sir.

4 Q. Did you believe that he had that amount of money on
5 him?

6 A. Knowing Mr. Mumford, maybe. Maybe not. I'm not
7 sure.

8 Q. Okay. And did you place a bet?

9 A. We never did get into the conversation any more about
10 the bet cause you know that's when it started when Paul
11 asked him how much money we wanted to bet, and that's wen
12 everything started.

13 Q. So Mr. Funderburk asked Mr. Mumford how much money
14 did he want to bet?

15 A. Yes, sir.

16 Q. After he had already knew that Mr. Mumford had \$4,000
17 or \$5,000 on him?

18 A. I guess so. Yes, sir.

19 Q. And Mr. Funderburk is drinking this beer?

20 A. Um hum.

21 Q. And everybody was trash talking; is that correct?

22 A. No, it was me and Noah trash talking at first.

23 Q. Okay. Did Mr. Mumford and Mr. Funderburk, were they
24 trash talking?

25 A. No.

1 Q. Did they ever trash talk?

2 A. Before all this stuff happened?

3 Q. Yes, sir.

4 A. No.

5 Q. Okay. So it was a pleasant conversation before this
6 happened?

7 A. Not between them two. It was -- it wasn't a pleasant
8 conversation. It was trash talk between me and him.

9 Q. Between you and him?

10 A. Yes, sir.

11 Q. As between Mr. Mumford and Mr. Funderburk what type
12 of conversation was it?

13 A. It was like how much money you want to bet and on the
14 other side it was like broke motherfucker got no business
15 talking to me, basically.

16 Q. And things escalated after that?

17 A. Yes, escalated after that.

18 Q. And Mr. Funderburk was still drinking his beer?

19 A. Yes, sir.

20 Q. Did he say anything to Mr. Mumford while he was
21 drinking his beer?

22 A. He told him he wasn't going to be too many more
23 motherfuckers.

24 Q. I think you said in your testimony that he was going
25 to deal with this after he finished his beer?

1 A. He said, "I'll see how many motherfuckers I'll be
2 after I finish drinking my beer."

3 Q. And what did you take that to mean?

4 A. As something is going to happen that's why I stepped
5 in between them.

6 Q. You stepped in between them?

7 A. Yes, sir.

8 Q. And what happened when you stepped in between them?

9 A. I told them let's keep this as rational and leave it
10 at that. And I backed Paul up a little bit. I can't
11 remember if somebody got in front of Noah or not. My back
12 was kind of turned to him at the time, and I could still
13 hear Noah still talking a little bit. That's when the
14 stuff came up about Mr. Funderburk's parent and all that
15 stuff. And you know like I said when Mr. Funderburk got
16 through with his beer he swung at him.

17 Q. You said he had consumed the beer, but that means
18 there was not beer in the bottle?

19 A. No.

20 Q. Were you still in between the two of them?

21 A. Yes, sir.

22 Q. How did he swing that? Did he have to go around you?

23 A. No, he swung over the top.

24 Q. Over the top. He's taller than you?

25 A. Say that again.

1 Q. Is he taller than you?

2 A. Me and him, about the same height.

3 Q. You kind of a thick person, so Mr. Mumford was in
4 back of you?

5 A. Yes, sir.

6 Q. So he had to go over the top of you to swing at
7 Mr. Mumford?

8 A. Kind of over my shoulder.

9 Q. And Mr. Mumford is a shorter person, so
10 Mr. Funderburk was swinging down with the bottle.

11 A. Um hum.

12 Q. Or did the bottle touch Mr. Mumford?

13 A. No, sir, the bottle, when Paul swung and I turned
14 around, the bottle hit the ground. It didn't touch him?

15 Q. Now, when did you turn around? When the bottle hit
16 the ground?

17 A. No. Soon as I seen Paul going over me like this I
18 turned around. And the bottle fell right in front of
19 Mr. Mumford.

20 Q. So your eyes were on the flight of the bottle the
21 entire time?

22 A. Not on the bottle. Not the flight of the bottle,
23 sir. When I seen any cousin swing, when I saw him start
24 swinging I turned around. And then when I turned around
25 that's when the bottle was coming other me and the bottle

1 fell right in front of Mr. Funderburk.

2 Q. So Mr. Funderburk your cousin?

3 A. He's my wife's cousin. I just call him my cousin.

4 Q. When your cousin is throwing the bottle that's when
5 you turn around?

6 A. Yes, sir.

7 Q. So you didn't see the bottle when it left his hand?

8 A. Basically, no, sir.

9 Q. Okay. So you don't know whether or not that bottle
10 struck Mr. Mumford?

11 A. Yes, I do know that, sir.

12 Q. But you just testified that you didn't see to bottle
13 leave his hand.

14 A. Yeah, I didn't see it leave his hand. Didn't see it
15 leave his hand, but I saw when it hit the ground.

16 Q. So you saw it left his hand, and you saw it hit the
17 ground. You didn't see what happened in between?

18 A. No.

19 Q. Okay. So it could have hit Mr. Mumford you just
20 didn't see it?

21 A. I didn't tee it.

22 Q. Now, let's talk about this statement you gave law
23 enforcement. Did law enforcement tell you to write the
24 statement as to what happened or did they ask you
25 questions?

1 A. Did it itself. They didn't ask me any questions.

2 Q. So they gave you a pencil and a piece of paper and
3 told you to write what happened?

4 A. Yeah, write what happened.

5 Q. That statement you gave up was a summation of what
6 you saw happen on that night?

7 A. Yes, sir.

8 Q. And nobody asked you any questions?

9 A. No, sir.

10 Q. Nobody asked you what Paul said?

11 A. No, sir.

12 Q. Nobody asked you what Mr. Mumford said?

13 A. No, sir.

14 Q. You just wrote this statement?

15 A. I just wrote the statement.

16 Q. And this was shortly after everything happened?

17 A. Yes, sir.

18 Q. So it was still fresh in your mind?

19 A. Yes, sir.

20 Q. And in that statement did you put in there that
21 Mr. Mumford came around with the pistol still in his hand
22 to Mr. Funderburk and said, "I should have killed you?"

23 A. No, I didn't put that in there, sir.

24 Q. But you heard that that night?

25 A. Yes, sir.

1 Q. And law enforcement give you a pencil and a piece of
2 paper and told you to write down everything that happened,
3 and you did not put that in that statement?

4 A. No, sir.

5 Q. Did you think it was important?

6 A. I wasn't thinking about that at all.

7 Q. But today it's important to you? You remember it
8 today?

9 A. Yeah.

10 Q. And the other witnesses remember it today?

11 A. Um hum.

12 Q. But nobody put it in their statement that night; is
13 that correct?

14 A. I guess so, sir.

15 Q. It is possible that that event never occurred?

16 A. It did occur.

17 Q. It occurred. But you did not give that statement to
18 law enforcement?

19 A. No, sir.

20 Q. And was an assault. Your cousin just has been shot?

21 A. Um hum.

22 Q. And you didn't think that was important to say this
23 man was trying to kill him?

24 A. Shot five times or four times. You know to me at
25 that time when I was writing the statement my main concern

1 was all about was he okay. And when I wrote the statement
2 I put in what I saw.

3 Q. And your last statement was, "He got in his car and
4 he left." And 'AS', is that your initials?

5 A. Yes, sir.

6 Q. You signed the thing and handed it back to law
7 enforcement?

8 A. Yes, sir.

9 Q. Today after ten months to think about it and prepare
10 about it you remember that before he left he came around
11 there and made a statement to the victim that I should
12 have killed you?

13 A. Um hum.

14 Q. Okay. Now, you've got to say yes or no. She can't
15 write that down.

16 A. Oh, yes, sir.

17 Q. Now, if that did occur when he went around you he
18 still had the pistol in his hand?

19 A. Yes, sir.

20 Q. Did he shoot Mr. Mum -- I mean Mr. Funderburk?

21 A. When?

22 Q. When he walked around with the pistol in his hand?

23 A. At what time?

24 Q. At the end?

25 A. No, he didn't shoot him.

1 Q. But he had a pistol in his hand?

2 A. Yes, sir, he did.

3 Q. And he told somebody he could have killed him?

4 A. Not saying he could have killed him. He said he
5 should have killed him.

6 Q. He had the pistol in his hand and he didn't do
7 anything else to him?

8 A. No.

9 Q. And then he walked away?

10 A. Yes.

11 Q. Now, did anybody call law enforcement?

12 A. Sir?

13 Q. Did you call law enforcement?

14 A. No, after this happened ---

15 Q. Did anybody call law enforcement?

16 A. Somebody called. I didn't. I got him in his truck
17 and I rushed him to the hospital.

18 Q. But nobody called law enforcement?

19 A. Somebody had called, but I didn't call.

20 Q. But the shooting just had taken place. Your cousin
21 was shot, and you didn't call law enforcement?

22 A. Again, I put him in his truck and I rushed him to the
23 hospital.

24 Q. Did you call for emergency? Did you call a medics?
25 Ambulance?

1 A. Again, I put him in his truck and rushed him to the
2 emergency room.

3 Q. Did you think his life was in danger?

4 A. Yes.

5 Q. Did you think he had life threatening injuries?

6 A. Life threatening, at the time, no, because he was
7 saying that he was bleeding in his legs.

8 Q. He was clearly hit in the leg?

9 A. Legs, yes, sir.

10 Q. So in your opinion those injuries were not life
11 threatening?

12 MR. REDMOND: Your Honor, I would object. Number
13 One, he is not qualified to testify in that regard.

14 THE COURT: Sustained.

15 MR. REDMOND: Thank you.

16 BY MR. KNOX:

17 Q. But you did not call emergency medical care, did you?

18 A. No.

19 Q. You put him in your car and took him to the hospital?

20 A. I put him in his vehicle and I rushed him to the
21 hospital.

22 Q. Was anyone else in your vehicle when you did that?

23 A. We were in his vehicle. Just me and him.

24 Q. You didn't call law enforcement?

25 A. No.

1 Q. When Mr. Mumford allegedly walked around with the
2 pistol in his hand did anyone try to disarm him?

3 A. No, sir.

4 Q. Would you say that you and Mr. Funderburk are close
5 cousins?

6 A. Yeah, we're close.

7 Q. You wouldn't lie for him, would you?

8 A. No.

9 Q. How often do you see him?

10 A. Maybe once every -- about two weeks, maybe.

11 Q. Um hum. Now, I'm getting back to the money. You
12 knew that Mr. Funderburk -- I'm sorry. Mr. Mumford had a
13 lot of money on him?

14 A. I didn't know that for a hundred percent sure. I was
15 going by what he said, sir.

16 Q. But it was your testimony that you knew that
17 Mr. Mumford carry that kind of money; that he could back
18 up that kind of money?

19 A. He probably could.

20 Q. And he said this in a way where Mr. Funderburk could
21 hear this; that I have this kind of money on me?

22 A. Yes, sir.

23 Q. And Mr. Funderburk started all this by swinging that
24 bottle at him?

25 A. No, sir.

1 Q. Prior to that they were just trash talking?

2 A. Yes, sir. Trash talking, and I believe when it comes
3 to trash talking that when, in my experience with racing,
4 I know regular people, parents, wives, children, that's
5 trash talking is between us.

6 Q. So in other words somebody crossed the line?

7 A. As far as trash talking, yes. I believe so.

8 Q. And what does one supposed to do when somebody
9 crosses that line?

10 A. In my opinion?

11 Q. Um hum.

12 A. Either -- if it was, you know, that happened to me,
13 "Look, man, you're going too far. Either let's keep this
14 about racing or you and me can't talk at all."

15 Q. Would you have hit somebody with a beer bottle?

16 A. If I was mad enough.

17 Q. If you were made enough?

18 A. Yeah, probably so.

19 Q. What if you had drank 24 ounces of beer?

20 A. It doesn't matter if I drank 24 ounces or not.

21 Q. So you're saying that the words that he spoke was
22 enough for him to be justified by being hit with a bottle
23 of beer?

24 A. He wasn't hit with a bottle of beer.

25 Q. Attempted to be hit with a bottle of beer?

1 A. I don't think, you know, swinging the bottle at him
2 was right. I don't think shooting Mr. Funderburk was
3 right.

4 Q. So two wrongs don't make a right?

5 A. In my opinion.

6 Q. So they both were wrong?

7 A. In a way, yes, sir.

8 Q. No further questions. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. I step to you, "Your momma ain't shit." If I said
12 that to you and in the context of what was going on what
13 would you probably do to me based on some of the questions
14 that Mr. Knox asked you? If I came at you like that tell
15 us what would your instinctive reaction be especially if I
16 did it continuously?

17 A. Me and you are just going to have to fight.

18 Q. Thank you?

19 MR. KNOX: Redirect?

20 MR. REDMOND: I'm not done. I'm not done.

21 BY MR. REDMOND:

22 Q. We talked about what kind of ground was out there
23 that night? Was it concrete? Was it a regular grassy or
24 was it ---

25 A. Grassy.

1 Q. Grassy, okay. And what time of year was this?
2 December, right?

3 A. Yes, sir, December.

4 Q. So grass was dead.

5 A. Yes, sir.

6 Q. So basically it's ground. This looks like the
7 bottle. Mr. Knox said this looks like the bottle that Mr.
8 Funderburk had. Let me show you State's One. Does that
9 bottle like intact to you?

10 A. Yes, sir.

11 Q. Is it broken?

12 A. No, sir.

13 Q. So in other words Mr. Funderburk threw the bottle so
14 hard and so threateningly at this defendant that the
15 bottle isn't even broken.

16 MR. REDMOND: Nothing further.

17 THE COURT: Recross.

18 RECROSS-EXAMINATION

19 BY MR. KNOX:

20 Q. Mr. Sellers, the Solicitor just asked you that if
21 someone gets in your face and say that, "Your momma ain't
22 shit," that would cause a reaction from you; is that
23 correct?

24 A. Yes, sir.

25 Q. Did Mr. Mumford say that to Mr. Funderburk that

1 night?

2 A. He told Mr. Funderburk, basically, "Fuck the
3 Funderburks. If it wasn't for your momma and your daddy
4 you wouldn't have shit."

5 Q. But he did not say, "Your momma ain't shit?"

6 A. No, sir, I didn't hear that.

7 Q. You didn't hear that?

8 A. No, sir.

9 Q. So that was just a demonstration by the Solicitor?

10 A. I guess so.

11 Q. Those were not your words or anybody's words that
12 night?

13 A. Yes, sir.

14 Q. Okay. Now, speaking of this bottle. You just said
15 on cross that if someone had attacked you with this bottle
16 you would probably respond to it; is that correct?

17 A. No one asked me about somebody attacking me with a
18 bottle, sir.

19 Q. Okay. The Solicitor stated to you that he threw the
20 bottle in the such a way that it didn't even break?

21 A. Yes, sir.

22 Q. But he did throw it at him?

23 A. Yes, sir.

24 Q. And if someone had thrown this bottle at you how
25 would you have reacted?

1 A. If he had thrown the bottle at me and we tussles or
2 fought and we backed off each other. That's the end of it
3 in my opinion.

4 Q. Now, if the bottle had hit you?

5 A. That was a different story.

6 Q. Different story. If the bottle had hit you it would
7 be a different story?

8 A. Yes, sir.

9 Q. What would you have done if the bottle had hit you?

10 A. If the bottle had hit me we would probably still be
11 fighting.

12 MR. KNOX: No further questions.

13 MR. REDMOND: If I may, briefly, Your Honor.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. REDMOND:

16 Q. Would you have shot him?

17 A. No, sir. I don't believe in that.

18 Q. Would that -- he's asked the question. He opened the
19 door to this. Would that have raised the threat in your
20 mind that justified shooting someone because you got hit
21 with a bottle that didn't even break?

22 A. No, sir. I don't believe in shooting people.

23 Q. Thank you.

24 MR. REDMOND: Nothing further.

25 MR. KNOX: No further questions, Your Honor.

1 THE COURT: Thank you very much, sir. You may step
2 down.

3 COLLOQUY

4 MR. REDMOND: Your Honor, yes, if he wants to stay in
5 the courtroom I think I had told them that once they
6 testified they could remain in the courtroom.

7 THE COURT: Correct.

8 MR. REDMOND: Or they could be excused in they wanted
9 to leave.

10 THE COURT: Whatever you want to do, Mr. Sellers.
11 We're going to break at this point for lunch. Ladies and
12 gentlemen, it's important, very important now that you're
13 in the case and you've heard some of the evidence. You
14 haven't heard all the evidence, so it's important that you
15 do not have any conversation with anyone. Do not allow
16 anyone to talk with you. Just enjoy your time, your lunch
17 break. Kind of put this out of your mind for a while.

18 When you return continue to have no conversation
19 about the case, please. And we'll start back when
20 everybody reconvenes. Be back in your jury room at 2:30.
21 Everyone else remain in the courtroom while the ladies and
22 gentlemen of the jury are excused.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at one o'clock p.m.)

25 THE COURT: Court will be in recess until 2:30.

1 (WHEREUPON, Court was in recess at 1:02 p.m. and
2 reconvened at 2:39 p.m.)

3 THE COURT: All right. Is the State ready to
4 proceed?

5 MR. REDMOND: Yes, Your Honor.

6 THE COURT: The Defense?

7 MR. KNOX: Yes, Your Honor.

8 THE COURT: All right. Bring the jury out, please.

9 (WHEREUPON, the jury enters the courtroom at
10 2:40 p.m.)

11 THE COURT: All right. Ladies and gentlemen, welcome
12 back. Hope everyone enjoyed their lunch break and ready
13 to get started back. Ended the morning session with the
14 State putting up its case, and we're still on that. So we
15 recognize Mr. Redmond for his next witness.

16 MR. REDMOND: Thank you, Your Honor. May it please
17 the Court. The State next calls Deputy Dana Wallace.

18 DANA WALLACE, after being duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. REDMOND:

22 Q. Okay. Deputy Wallace or Corporal Wallace, excuse me.
23 How long have you been employed with the Sheriff's
24 Department?

25 A. Approximately nine years.

1 Q. Okay. How long you been in law enforcement?

2 A. Twenty-three years.

3 Q. And in what capacity do you serve people of
4 Chesterfield County at this time with the Sheriff's
5 Department?

6 A. I'm Corporal Deputy Sheriff.

7 Q. In Patrol?

8 A. Right, patrol.

9 Q. Now, were you on duty on the 23rd of December last
10 year shortly before Christmas?

11 A. I was.

12 Q. And at that time were you dispatched to Chesterfield
13 General Hospital?

14 A. Yes.

15 Q. And could you tell us about your involvement with
16 this particular case.

17 A. Myself along with Deputy Joe Campbell was dispatched
18 to the hospital in reference to a subject being shot.
19 When we arrived the victim was already in the back. There
20 were several witnesses. We talked to the witnesses and
21 immediately started taking statements. At that time we
22 called investigators -- an investigator, and we turned it,
23 you know, statement to the investigator.

24 Q. Now, did you go back to the scene at this incident?

25 A. I did.

1 Q. And tell us about that.

2 A. I, along with Deputy Campbell, went back to the scene
3 where the shooting was and recovered some .22 shell
4 casings along with a beer bottle.

5 Q. And was that Deputy Joe Campbell with you that night?

6 A. Yes.

7 Q. And when you went -- let's go back to the hospital
8 because we think it's important. At the hospital, before
9 you went back out to the scene, did you take statements
10 from and two we heard today already, Todd Harrell and
11 Antonio Sellers?

12 A. I'm not a hundred percent on the name. Do know we
13 did take statements.

14 Q. And did you -- I think you actually took a couple
15 more statements. There were four people at the hospital
16 you took statements from?

17 A. Yeah, I believe it was four statements.

18 Q. And were those the people to your recollection that
19 were actually with the victim and brought the victim to
20 the hospital?

21 A. That's what they told us.

22 Q. And based on the information talking with those
23 witnesses was that why you then went back to the scene to
24 search for evidence?

25 A. Yes.

1 Q. All right. And let me show you what's been marked as
2 State's Exhibits One and State's Exhibit Number Two. They
3 are already in evidence?

4 MR. REDMOND: And I apologize. With permission to
5 approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. REDMOND:

8 Q. Are these the items, that Heineken bottle and shell
9 casings, are those the items that were recovered that
10 night by yourself?

11 A. It is.

12 Q. All right. And after you recovered these items did
13 you go back to the hospital?

14 A. We did. We went back and we turned all this evidence
15 over to I think Investigator John James.

16 Q. Okay. And just to clarify something because time has
17 been brought up as an issue. In the incident report I
18 noticed that it says, "2135" which military time in
19 regular time is 9:35? Does that mean as it relates to the
20 incident time does that mean that's when the incident
21 occurred or does it mean something else when you see that
22 time listed?

23 A. Usually when you see that time that is typed in on a
24 report that's the time that the report is started being
25 typed and put in the computer. That is not the incident

1 time. That is when the report was being typed in.

2 Q. Okay. And according to the statements that you took,
3 the statements range between 9:00 -- I mean 8:54 p.m. that
4 night on until about 9:10, 9:15, about. Is that about the
5 range that you took those statements at the hospital?

6 A. That would be correct.

7 Q. So in other words no misreading 9:35 as being the
8 time this incident is supposed to have occurred?

9 A. Right.

10 MR. REDMOND: Beg the Court's indulgence.

11 BY MR. REDMOND:

12 Q. Oh, and I think I asked you, but just to be clear.
13 Did you turn those items that you collected over to
14 investigators?

15 A. I did.

16 Q. Okay. Thank you. Please answer any questions that
17 Mr. Knox may have.

18 CROSS-EXAMINATION

19 BY MR. KNOX:

20 Q. Corporal Wallace, do you recall how many witnesses
21 you interviewed?

22 A. I believe it was four.

23 Q. Four. And all four witnesses say they were at the
24 scene?

25 A. Yes.

1 Q. Okay. And did you happen by chance to interview Mr.
2 Mumford who is sitting right here?

3 A. No, I did not.

4 Q. Did you happen to interview Frank Cranford?

5 A. I'm not sure. I'm not a hundred percent on the
6 names.

7 Q. Did you interview Mr. Nivens?

8 A. I cannot recollect.

9 Q. You only interviewed the witnesses that were at the
10 hospital?

11 A. Yes, sir.

12 Q. At any time did you ask those witnesses were there
13 anyone else that was present on the scene?

14 A. No. What we did we took statements, and when we got
15 through taking the statements from the witnesses at the
16 hospital we turned those over to the investigators at the
17 time they arrived. And that's when we went back to the
18 scene.

19 Q. Did you ask the witnesses any questions or did you
20 just give them a form to fill out the statement?

21 A. I'm sorry. I didn't understand.

22 Q. I said did you ask the witnesses any questions or you
23 just give them a form to fill out?

24 A. We asked them to fill out a statement form.

25 Q. So there was no conversation between you and the

1 witnesses?

2 A. Yes, sir. When they told us they were at the scene
3 we immediately got statement forms and told them, "Y'all
4 write us a statement of what you seen."

5 Q. And they each wrote it in their own hand?

6 A. Yes, sir.

7 Q. And they each signed it?

8 A. Yes, sir.

9 Q. And you along with Deputy Campbell signed it at the
10 bottom?

11 A. As witnesses, yes.

12 Q. And did you at any time read these statements?

13 A. Yes, sir. We would have read over all of them.

14 Q. And on these statement when it's crossed out and that
15 initial does that signify the end of that statement?

16 A. Yes, sir, it does.

17 Q. And the person writing that statement does that
18 himself or herself?

19 A. Right.

20 Q. And are they instructed by you to do that or?

21 A. Yes.

22 Q. And you ask them if there is anything else they have
23 to put in the statement?

24 A. That 'x' on that form is when they get through
25 writing the statement. We make them make an 'x' in there

1 and initial it so that nothing can be added to that
2 statement.

3 Q. So this would be the complete statement as you
4 received it on that night?

5 A. Yes.

6 Q. And this was shortly after the incident that
7 happened?

8 A. It was shortly after we arrived at the hospital. You
9 know, when we were dispatched, shortly after when we got
10 to the hospital, you know, the victim was already in the
11 back. And we talked to the witnesses and got them to
12 write statements.

13 Q. And when you went to the scene to investigate the
14 scene what was the scene like? What was the appearance of
15 the scene? You said you retrieved the shell casings and
16 the beer bottle; is that correct?

17 A. I mean there was a few vehicles in the yard from what
18 I remember, and we got to looking around kind of on the
19 side of the house, if I'm not mistaken. You know, it was
20 dark at that time so we had to use flashlights, and we did
21 see the shell casings and beer bottle.

22 Q. About what time did you arrive on the scene?

23 A. At the hospital or?

24 Q. At -- where the shooting took place?

25 A. I'm not real sure what time it was.

1 Q. Was it after or before you took the statements?

2 A. After.

3 Q. After you took the statements?

4 A. It was after the investigators arrived, and they
5 asked us to go back.

6 Q. And you said it was dark?

7 A. Yes.

8 Q. Was there any street lighting there?

9 A. I'm not sure.

10 Q. But you had to use your flashlight?

11 A. Right.

12 Q. So without your flashlights you could not see the
13 beer bottle or the shell casings?

14 A. We wouldn't have been able to find the shell casings
15 without flashlights.

16 Q. Would you have been able to find the beer bottle?

17 A. Probably.

18 Q. Probably. Were there any other beer bottles or was
19 that the only one?

20 A. I think that was the only one we found.

21 Q. And in relationship to where you found the shell
22 casings where was the beer bottle?

23 A. It was several feet away from the shell casings.

24 Q. About how many?

25 A. I'm not sure. I didn't measure.

1 Q. Now, did you mark where you retrieved the shell
2 casing? Did you put a mark there or something?

3 A. It seems like I did. I'm not a hundred percent sure.

4 Q. Did you take any photos of where the shells casings
5 was?

6 A. There were photos. I think Deputy Campbell may have
7 took photos.

8 Q. And ---

9 A. I'm in sure what we did, honestly.

10 Q. If photos had been taken where would they be at now?

11 A. They should be in evidence.

12 Q. Okay. I don't see any photos though.

13 A. I'm not a hundred percent sure if he did take them.

14 Q. And did you consider that to be a crime scene?

15 A. Yes.

16 Q. Was it taped off?

17 A. No.

18 Q. Was anything there to preserve the integrity of the
19 crime scene? Was anything done by you or the Department?

20 A. No.

21 Q. Did you see any blood at the crime scene?

22 A. Not that I remember.

23 Q. In these four statements are the only statements you
24 got from anybody?

25 A. It's the only statements we took as the responding

1 officers. That's the only statements we took.

2 Q. And you did not interview the victim that night?

3 A. No.

4 Q. And any time after that did you interview the victim?

5 A. No.

6 Q. Thank you.

7 MR. REDMOND: Briefly on redirect. I want to mark
8 these for identification only, State's Exhibits Nine
9 through 12.

10 (WHEREUPON, State's Exhibit Nos. 9 THROUGH 12 were
11 marked for identification only.)

12 THE COURT: Thank you, Madam, Court Reporter.

13 MR. KNOX: May I see them?

14 MR. REDMOND: Yes.

15 REDIRECT EXAMINATION

16 BY MR. REDMOND:

17 Q. Just to clarify who took the statement from the --

18 MR. REDMOND: May I approach the witness?

19 THE COURT: Yes, sir.

20 BY MR. REDMOND:

21 Q. You do not want you -- you cannot read what was said.

22 I'm just going to ask you who gave each of those

23 statements in State's Nine through 12 that I just handed

24 to you? Without getting into what is said because we

25 can't do that. But who gave those statements? If you can

1 read the names on the statements?

2 A. Todd Harrell, Antonio Sellers, Amos Nivens and Corey
3 Williams.

4 Q. Okay. The other names that were given to you by
5 Mr. Knox were not even there at the hospital? I think the
6 language -- I forget the other names, but those two other
7 names were not at the hospital to give those statements?

8 A. The only statements that we took would be the people
9 that were there.

10 Q. Okay?

11 A. That's who we got statements from.

12 Q. Fair enough. And Mr. Knox asked you a question
13 concerning being able to see that possibly without a
14 flashlight, the bottle, but again let me show you State's
15 Exhibit Number Two. Are those the items that you
16 recovered that particular night using the flashlight?

17 A. Yes, sir, they are.

18 Q. And would it be fair to say that those are all small
19 shell casings?

20 A. Yes.

21 Q. Okay.

22 MR. REDMOND: With the Court's permission I'd like to
23 publish to the jury?

24 THE COURT: Yes, sir.

25 MR. REDMOND: That would be all the questions I have

1 at this time. Thank you so much.

2 THE COURT: Anything further?

3 MR. KNOX: No, Your Honor.

4 THE COURT: Thank you very much.

5 MR. REDMOND: And I'd ask that Corporal Wallace be
6 excused from his subpoena, Your Honor.

7 THE COURT: Thank you very much, sir. You're free to
8 go.

9 MR. REDMOND: And also at this time Deputy Joe
10 Campbell is back there sequestered. We ask that he be
11 released from his subpoena.

12 THE COURT: Any objection?

13 MR. KNOX: No objection.

14 THE COURT: All right. They are released from their
15 subpoenas.

16 MR. REDMOND: Next witness, Your Honor, would be
17 Daniel Scott.

18 DANIEL SCOTT, after being duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. REDMOND:

22 Q. Corporal Scott, by whom are you employed?

23 A. Chesterfield County Sheriff's Office.

24 Q. How long have you been so employed?

25 A. Seven years.

1 Q. And how long has your law enforcement career spanned?

2 A. Total of 7 years. It would be 21 -- 28 years
3 counting military time.

4 Q. Okay. Were you military police?

5 A. Yes, I was.

6 Q. What rank?

7 A. Army.

8 Q. Army. I was Navy. I won't hold that against you.

9 Now, let me ask you this. In your experience in law
10 enforcement, obviously, you -- I didn't ask you this what
11 capacity do you work with the Sheriff's Office at this
12 time?

13 A. As a criminal investigator.

14 Q. And were you in the same capacity on the 23rd of
15 December 2010?

16 A. I was.

17 Q. And at that particular time were you dispatched
18 regarding the incident which we're on trial today?

19 A. I was.

20 Q. And could you tell us how you first became involved
21 in this investigation?

22 A. One of the deputies called me at home as well as
23 2400, which is our 911 service and made me aware that
24 there was a shooting. I needed to respond to Chesterfield
25 General Hospital, and I immediately responded to the

1 hospital.

2 Q. Okay. And when you responded to the hospital tell
3 the ladies and gentlemen of the jury what you proceeded to
4 do at that point?

5 A. Well, when I got to the hospital Investigator John
6 James let me know. As well we both were there, went
7 through the sliding doors at the E.R. They directed me to
8 the side where Corporal Wallace was and Deputy Campbell.
9 Walked in asked them what was going on. They told me what
10 they had. I begin asking who was the victim. They told
11 me the victim was Mr. Funderburk. And I asked them who
12 was the defendant, and they told me it was Noah Mumford.

13 And I stopped because I know both of the guys. And
14 said, "Are you all for real," and they said, "Yes." And
15 Deputy Campbell and Corporal Wallace was taking statements
16 from the four individuals that were there. And I asked
17 them where was Mr. Mumford. And I asked if anybody knew
18 his number. One of the guys gave me Noah's number.

19 I called Noah because Noah and I served in the
20 military together been knowing Noah all of my life, and
21 been knowing Mr. Funderburk all of my life. So I figured
22 if I called him Noah would meet me. And I picked up the
23 phone and I told him -- whenever they finished taking
24 statements I called Noah and asked him if he would meet me
25 at the investigator's office. He said, "Yeah, I will meet

1 you." Noah met me at the investigator's office, and we
2 went over everything that happened. I took a video of the
3 statement.

4 Q. Is that the video that we saw?

5 A. Yes.

6 Q. Tried to hear earlier this morning?

7 A. Yeah.

8 Q. But so at the time -- well, let me ask you this. At
9 the hospital at any point did you ever encounter or see
10 Mr. Funderburk?

11 A. No.

12 Q. Okay. Was he still in treatment?

13 A. He was still in treatment in.

14 Q. Okay, with professionals. Now, let's talk about the
15 statements that you took from the defendant. Was he read
16 his Miranda rights?

17 A. Yes, he was.

18 Q. Let me approach with State's Exhibit Number Seven.
19 Could you tell me what that document is?

20 A. This is a document of Miranda rights. Any time
21 before you question any individual you must make them
22 aware of their rights according to the State of South
23 Carolina. I made him aware of the rights. I also made
24 him aware of being video and audio recorded.

25 Q. Okay. And, of course, did he sign?

1 A. He did.

2 Q. And was I think Investigator John James was also with
3 you?

4 A. He also did as a witness.

5 Q. We saw him a little bit in the video. So, take that
6 statement. Did he willingly give a statement?

7 A. Yes.

8 Q. Let me ask you this. Did he seem to understand what
9 you were asking?

10 A. He did.

11 Q. And did he seem to understand his rights?

12 A. Yes.

13 Q. And did he freely and voluntarily tell you what
14 happened? His version of what happened?

15 A. He did.

16 Q. And what did he tell you? Did he talk about -- did
17 he ever -- before I get to that. At any point, State's
18 Exhibit Number Three, the gun, where did you get that gun?

19 A. Mr. Mumford.

20 Q. Mr. Mumford. Tell me about how you ended up getting
21 the gun from Mr. Mumford?

22 A. When I called Mr. Mumford and asked him to meet me in
23 the investigator's office I also asked him to bring the
24 gun. He agreed to bring it.

25 Q. And State's Exhibit Number Three, is that the gun

1 that you retrieved from the defendant?

2 A. Yes.

3 Q. Now, let's get back to the interview. What did
4 Mr. Mumford, the defendant, tell you happened based I
5 think -- did you take notes and incorporate some of what
6 he said?

7 A. Just briefly. The who, what, when, where because
8 normally when we just do a video statement the video would
9 speak for itself. He made me aware that he was called by
10 one individual to come over and talk about racing. He
11 went over. He went to say that you know there was trash
12 talking, talking nice to one another. And Paul told him
13 that, "As soon as I finish drinking this beer that I'm
14 going to hit you." I think that's what he said. Yeah, he
15 was going to hit him with the bottle.

16 And after he finished drinking the beer he swung at
17 him. And Noah said, "You know, Daniel, I'm small in
18 stature. I was defending myself."

19 Q. Now, at any time did he ever mention the fact that
20 after the bottle had been thrown and was actually on the
21 ground, did he ever mention that a tussle that they got
22 into before he even started shooting?

23 A. Yes.

24 Q. Okay. And the bottle is on the ground, tussle
25 ensues, and he starts -- he indicated you say that he was

1 shooting to defend himself. Now, did he admit to
2 shooting, I guess, where he was shooting? How he was
3 trying to shoot Mr. Funderburk?

4 A. Well, he actually stated that he blanked and he was
5 trying to shoot at the ground. If I can just read a
6 portion of the statement, if you don't mind. He was going
7 to hit me. Noah went on to say that Paul swung at him and
8 he was defending himself and that everything went blank.
9 Noah did admit shooting Paul, and said that he was trying
10 to shoot him in the foot. Noah did give me the gun that
11 was used in this incident.

12 Q. Did at any time during the tape -- in the taping did
13 the defendant mention anything about having snapped; that
14 after he went blank he said that he just flapped?

15 A. Yeah, he -- when he said he snapped he basically just
16 went blank and that was it.

17 Q. Now, according to what he told you he was acting in
18 self-defense, but are you aware of any calls to law
19 enforcement that this defendant made indicating that he
20 had to shoot someone in defense of his own life?

21 A. Not to my knowledge.

22 Q. Did the defendant call you or did you have to call
23 him?

24 A. I called him.

25 Q. So let me make sure I'm clear on this. The defendant

1 had to, according to him, defend his life, but yet he
2 didn't call anybody and in fact you were the one that had
3 to call him at that time; is that correct?

4 A. That is correct.

5 Q. Okay. Did you take a G.S.R, gunshot residue?

6 A. I sure did.

7 Q. Is the report -- is actually in State's Exhibit
8 Number Six, which the jury will have to consider. What's
9 the purpose of that gunshot residue test?

10 A. Anytime that a person has been involved in a shooting
11 we do a G.S.R. kit. What happens is when an individual
12 fires a gun there is a blow back that comes back on the
13 individual's hands. And you take that and correspond it
14 with the gun to identify the individual who did fire the
15 gun. We only sent G.S.R. kits. We didn't send the gun
16 because he basically brought the gun in and gave it to us.

17 Q. And in fact did he admit to having shot Mr.
18 Funderburk?

19 A. He did.

20 Q. Here is the interesting thing to me, among many. Did
21 he ever mention anything, other than this unbroken bottle,
22 did he ever mention anything about Mr. Funderburk or
23 anyone having a gun, knife, baseball bat, or any kind of
24 deadly weapon that justified his actions?

25 A. Nothing at all. He was just -- him being small in

1 stature he said, "Man, you know how big Paul is." That
2 was it. As far as another weapon being involved, no.

3 Q. But if he was so concerned about Mr. Funderburk's
4 stature did me admit to you that he was also engaged in
5 trash talking?

6 A. Oh, yeah.

7 Q. Okay. Now, after you talked with the defendant,
8 after you got the GSR, gunshot residue, did you just let
9 him walk out at that point? What did you do?

10 A. I obtained a warrant and charged him with attempted
11 murder and transported him down to the County Detention
12 Center.

13 Q. And what was the basis for that? What did you charge
14 him with?

15 A. Attempted murder. At the time we did not know the
16 condition of Mr. Funderburk. All we knew was that he was
17 shot four times. I didn't know if he was shot in the main
18 artery in the leg that you can actually bleed out of and
19 die. We were still waiting.

20 Q. Okay. And you mentioned -- let's talk about that,
21 too. You had something come to mind and I apologize.
22 Sometimes thoughts pop into my head as I was talking. I
23 was also in the military in the Navy. I was a corpsman.
24 Let me ask you this. Y'all served together? Are y'all
25 trained to know as it relates to handling weapons that if

1 you shoot somebody in the leg or any part of the body that
2 you can hit an artery and kill somebody?

3 A. We are taught to eliminate the threat by any means
4 necessary.

5 Q. And what I'm asking is if I shoot you -- you
6 mentioned the femoral artery in the leg. As you were
7 taught in your military training, especially combat
8 training, are you taught that I can shoot you in the leg,
9 but if I bleed -- if I hit the artery it can kill you?

10 A. You can bleed out.

11 Q. In fact if you're on the battle field, if somebody is
12 shot in the leg do they put a tourniquet on just to avoid
13 the chance that you could bleed out?

14 A. Yes.

15 Q. So based on the fact that you and the defendant
16 served together, was he aware since y'all served together,
17 based on that was he also aware and had the same training
18 that you had in that regard?

19 A. All military personnel have the same identical
20 training.

21 MR. REDMOND: Oh, beg the Court's indulgence just a
22 moment. I'm sorry. That will be all the questions I
23 have. Please answer any questions Mr. Knox may have.

24 THE COURT: Cross, Mr. Knox.

25 CROSS-EXAMINATION

1 BY MR. KNOX:

2 Q. Deputy, when was the last time that you saw the video
3 before today?

4 A. Today was the first time I've seen it.

5 Q. Today was the first time you've seen it. I don't
6 know if you can see it on my laptop and something that's
7 terribly wrong with the audio, but did Mr. Mumford mention
8 that he had \$3,000 on him?

9 A. He told me he had \$5,000.

10 Q. \$5,000?

11 A. He said he had \$5,000 cause he was getting ready to
12 buy a piece of property, and he had \$5,000 on him.

13 Q. Now, in your interview with him he told you that that
14 night he had \$5,000 on him?

15 A. Yeah.

16 Q. And that was on that video?

17 A. Um hum.

18 Q. And the conversation about the \$5,000 was just -- he
19 was going to buy some property and that was it?

20 A. Um hum.

21 Q. Did you ask him whether or not anybody else knew that
22 he had \$5,000 on him?

23 A. I think we did, and I don't think anyone else knew he
24 had \$5,000 on him.

25 Q. Did he mention that? Did anyone mention that when he

1 arrived there somebody said that he had \$4,00 or \$5,000 on
2 him?

3 A. Not to my knowledge.

4 Q. Now, in viewing that video was Mr. Mumford
5 remorseful, regretful that all this happened?

6 A. Yeah, he felt bad.

7 Q. Did he state it to you that he did not intend to
8 shoot anyone?

9 A. Yeah. He said that he was trying to shoot at the
10 ground?

11 Q. He was trying to shoot at the ground, but he did
12 mention to you that he was struck with the bottle on the
13 shoulder?

14 A. He said he swung. I don't remember him saying he hit
15 him on the shoulder and swung. He wasn't going to allow
16 him to hit him because he had a metal plate in his head,
17 and he wasn't going to allow him to be hit in the head.

18 Q. He told you that he had a prior injury?

19 A. Yeah.

20 Q. And that he had a metal plate in his head?

21 A. Um hum.

22 Q. And that when he swung at -- Mr. Funderburk swung at
23 him with this 24-ounce Heineken bottle that he wasn't
24 going to let that happen?

25 A. Um hum.

1 Q. And the weapon that he had on him -- he had that
2 weapon lawfully, didn't he?

3 A. Um hum.

4 Q. It wasn't stolen?

5 A. Uh um.

6 Q. It was his?

7 A. Um hum. No, sir, it wasn't stolen.

8 Q. It was his weapon?

9 A. It was his weapon.

10 Q. And he had the right to carry it?

11 A. Yes, sir.

12 Q. And carrying \$5,000. Being invited to a place to
13 discuss a race where other young guys are there. Would
14 you say he had a right to be armed?

15 A. I can't say that.

16 Q. Would it be out of the ordinary if he had a weapon
17 carrying that type of money?

18 MR. REDMOND: Your Honor, I'm going to object.

19 THE COURT: Hold on. Hold on.

20 THE WITNESS: I can't answer that because ---

21 THE COURT: Sir, hold it.

22 MR. REDMOND: I'm going to object bases on
23 speculation. I think he may have got one or two questions
24 in, but I think that this whole line of questions calls
25 for speculation.

1 THE COURT: You're sustained. You're asking for
2 opinions and speculations and not appropriate for this
3 witness.

4 MR. KNOX: Okay.

5 BY MR. KNOX:

6 Q. Also in that interview he said that he blanked?

7 A. Um hum.

8 Q. Did he say he passed out or just blanked out?

9 A. He said he just blanked. I guess just lost focus and
10 vision of anything. We talked later on that. This, it's
11 not in his statement. It's not in the video. Most
12 everybody knows that I'm a pastor as well. And we talked
13 about some other different things on the way going to the
14 County. But when he looked for just blanking, he just
15 lost it and reality is what he was saying.

16 Q. Now, you said that he was of small stature?

17 A. Yes.

18 Q. Had a plate in his head?

19 A. Um hum.

20 Q. Had \$5,000 on him?

21 A. That's what he said that he had \$5,0000.

22 Q. And that he wasn't going to let anybody hit him with
23 a bottle?

24 A. That's what he told me.

25 Q. He was remorseful?

1 A. Um hum.

2 Q. He was shooting at the ground?

3 A. That's what he said.

4 Q. And judging by the way the victim was struck he was
5 shot downwards?

6 A. I can't say that because I wasn't there to actually
7 see. I can only go on what he told me versus what the
8 E.R. doctor put in their report.

9 Q. Okay. Now, you also served together?

10 A. Yes, we did.

11 Q. And I thank you for your service. I really do, and I
12 served in the military also. Now, did you also serve in
13 the same unit?

14 A. Yes, for a little while.

15 Q. And did you all experience combat?

16 A. We went to the dessert. Stayed in the Mohave Dessert
17 for about a month and a half.

18 Q. But you are both combat soldier?

19 A. Yes.

20 Q. You both are?

21 A. Yes.

22 Q. Extensive training in combat?

23 A. Yes.

24 Q. Weapons training?

25 A. Yes.

1 Q. I don't know how else to put this, but as a defender
2 of this country you are trained to kill?

3 A. If we are being overrun or engaged we are taught to
4 return fire. In other words to eliminate the threat.

5 Q. Right. And, eliminating the threat, would that mean
6 shooting at the ground?

7 A. By any means necessary to eliminate the threat.
8 That's our job.

9 Q. And do you think that Mr. Mumford received that type
10 of training in the military?

11 A. Mr. Mumford received the same training as I did. All
12 soldiers go through the same identical training.

13 Q. And that if he wanted to kill someone he was trained
14 on how to do it?

15 A. Yes.

16 MR. KNOX: No further questions.

17 MR. REDMOND: Beg the Court's indulgence.

18 REDIRECT EXAMINATION

19 BY MR. REDMOND:

20 Q. Investigator Scott, let me just ask you briefly
21 because you were asked about what he, he being the
22 defendant has said. But on the tape approximately 8:26
23 and 30 to 45 seconds do you recall on there a portion
24 where the defendant said that he said to Mr. Funderburk,
25 "I meant to get you. He should not have hit me with the

1 bottle." Do you recall that being on the tape where he
2 indicates that he meant to get him?

3 A. There is a statement. I don't know if it's in the
4 exact words, but there is a statement on there to that
5 effect. The only reason you couldn't actually hear it is
6 due to the audio, but it's a statement on there.

7 Q. And is there a statement -- let me ask you like this.
8 Is there that statement indicative of the defendant
9 saying, "I meant to get you?" In other words, I meant to
10 shoot you?

11 A. That's the way I took it.

12 Q. And the reason I'm asking you Mr. Knox had asked you
13 about him shooting at the ground. Based on your
14 investigation was the victim shot four times?

15 A. Yes, sir, he was.

16 Q. All right. And you said if there is a threat --
17 something interesting you said. You were taught to
18 eliminate a threat. So if can feel, being the training
19 soldier, that I am threatening your life are you more
20 likely to shoot me in the leg or shoot me center mass if
21 you think you are in danger of losing your life or
22 suffering serious danger?

23 A. Center mass.

24 Q. You're taught center mass?

25 A. Center mass.

1 Q. Thank you.

2 MR. REDMOND: Nothing further.

3 RECROSS-EXAMINATION

4 BY MR. KNOX:

5 Q. Deputy Scott, if Mr. Mumford was trying to kill
6 Mr. Funderburk he would have shot center mass?

7 MR. REDMOND: Your Honor, I would object to that.

8 MR. KNOX: Your Honor, he just asked the same
9 question.

10 MR. REDMOND: The form of the question is
11 speculation.

12 THE COURT: All right. His question was a
13 hypothetical posed to this witness. What would he do.
14 You're asking this witness to testify as to what the
15 defendant intended to do, and that is not.

16 MR. KNOX: I'll rephrase the question.

17 THE COURT: I'll sustain it.

18 BY MR. KNOX:

19 Q. Mr. Mumford in his interview with you said that he
20 shot at the ground?

21 A. He did.

22 Q. In that he was trying to repel the attack?

23 A. Um hum.

24 Q. And that he was -- it was not his intent to do that?

25 A. That's what he stated.

1 Q. He was being threatened and he wanted to put an end
2 to the threats?

3 A. That's what he told me.

4 Q. Thank you.

5 THE COURT: Thank you very much, sir. You may step
6 down.

7 COLLOQUY

8 MR. REDMOND: Your Honor, a housekeeping matter. If
9 I can have just a moment. If the Court would indulge me
10 to make sure that I have all my exhibits in evidence. Beg
11 the Court's indulgence one more time. Your Honor, with
12 that at this time the State respectfully rests.

13 THE COURT: All right, ladies and gentlemen, the
14 State rests their case, and as is the case with every
15 criminal trial, when the State rest's their case I have to
16 take up certain matters of law with the attorneys. So I'm
17 going to excuse you to go back into the jury room, and I'm
18 going to get you to do me a favor while you're back there.
19 We need a foreperson of the jury. Let me tell you a
20 little bit about what that position entails.

21 The foreperson of the jury, ladies and gentlemen, is
22 basically the contact person between the jury panel and
23 the Court. Any time you have a group of folks and
24 questions may arise or whatever, it's easier just to deal
25 with one person on behalf of the group rather than to deal

1 with everybody individually. So the foreperson is
2 basically the spokesperson for the jury. If any of you
3 have any questions about anything let the foreperson know.
4 He or she will write that question out on a sheet of
5 became, pass it out to me, and I'll review the question.
6 And depending on what the question is I may have the
7 foreperson come out and respond to it or I may have you
8 come out and as a group and respond to it.

9 But that is really one of the main roles of the
10 foreperson is to be the communicator between the panel and
11 the Court. The other thing that the foreperson does is
12 when you do have the case for your consideration, begin
13 your deliberations, the foreperson would start and stop
14 the deliberations. I will tell you that when you do
15 deliberate everyone must be present for the deliberations.
16 So that if any one of you needs to excuse yourself to use
17 the restroom the foreperson would stop the conversation
18 until that person returns. And upon that person returning
19 you would then start back the deliberations. So that's
20 basically the role of the foreperson.

21 I will also tell you that your verdict in this case
22 must be unanimous. You must all agree on the verdict, so
23 the foreperson's vote or the foreperson's opinion carries
24 no more weight than anyone else's opinion. You are all
25 equal members in the jury room, and so the foreperson;

1 that person's opinion or thoughts, carry no more weight or
2 any less weight than anyone else. As jurors you are all
3 to be open minded and listen to each other during the
4 deliberations.

5 So, any way, I used to just appoint the foreperson,
6 and I had a situation in Florence where I asked the young
7 lady if she would be the foreperson, and she respectfully
8 declined. And that happens sometimes, so I had to back
9 up. So I asked this gentleman to do it, and he
10 respectfully declined. I didn't have a back up to my back
11 up, so I just randomly picked somebody. I said, "How
12 about you? Would you be willing to do it?" She
13 declined, and I said, "Okay, here's the deal. We're going
14 to have a foreperson. Go back there and pick one." So I
15 have found it's easier to let the jury panel select one.

16 So I don't -- you know I say that to let you know why
17 I send you back there to case a vote on it cause some
18 judges do appoint people. I guess my thought process is
19 that I'd rather have someone who doesn't mind doing it, to
20 do it, than someone who is forced to do it. Don't let
21 that scare you off. I mean it's not a big job. Actually
22 carries no more weight than anyone else on the jury. It's
23 just that the foreperson, if the jury has a question, will
24 need to write it out and send it to me and let me respond
25 to it.

1 Anyway, while I take up these matters of law with
2 these attorneys I'm going to ask you during this break
3 that if you need anything let us know. During this break
4 if you would please elect a foreperson to serve as that
5 position on the jury. And then when you return y'all can
6 sit wherever you'd like to, but I'm going to ask the
7 foreperson to sit in this first chair right here, okay.
8 If y'all will take care of that I'll take care of this.

9 (WHEREUPON, the jury panel was excused from the at
10 3:23 p.m.)

11 THE COURT: All right. At this point I'll take up
12 any motions at the close of the State's case.

13 MR. KNOX: Your Honor, the Defense would like to move
14 for an order of dismissal in that I don't think that the
15 State has met it's burden to prove all the elements of the
16 crime that my client is charged with. And we ask that
17 directed verdict be made.

18 THE COURT: All right. I appreciate your motion, Mr.
19 Knox. I'm going to respectfully deny that. I think I
20 don't know whether they've met their burden on it. I
21 think it is a question of fact for the jury to decide, and
22 so I'm going to respectfully deny that motion. All right.
23 Anything further?

24 MR. KNOX: Your Honor, also I would like you to
25 question my client as to his right to testify.

1 THE COURT: Sure. I will be happy to do that.
2 Before I do that, anything from the State before I discuss
3 things with Mr. Mumford?

4 MR. REDMOND: Nothing from the State, Your Honor. We
5 do have the criminal history of the defendant so we're
6 ready to proceed.

7 MR. KNOX: Mr. Mumford, I've just got some things to
8 discuss with you that you probably already know, but let
9 me review those with you. Every person who is charged
10 with a criminal offense has a constitutional right,
11 obviously, and one of those rights that you have is even
12 though you have requested and are having a jury trial, you
13 maintain your right to remain silent. You also have the
14 right to testify, and I tell folks all the time that if
15 you would like to testify, if you intent to testify,
16 that's absolutely perfect. That's fine. Just that you're
17 aware that if you do take the witness stand, obviously,
18 you would answer questions from Mr. Knox, but you would
19 also be required to answer any questions from the State's
20 side.

21 And I don't -- we haven't gone over it at this point.
22 I don't know if you have any criminal history that they
23 could ask you about or not, and we'll go over that in a
24 minute. But if you did you understand that they would
25 have the right to ask you about that criminal history.

1 Now, they would not be able to go into any detail. They
2 simply would be able to ask if you have been -- in fact
3 been convicted of certain charges. If you have you can
4 respond and then they move on. They can't go into any
5 more detail; what sentences were imposed or anything of
6 that nature.

7 But you understand that's if you do testify you would
8 be required to answer the State's questions as well?

9 MR. MUMFORD: Yes, Your Honor.

10 THE COURT: Okay. Now, you also have the right to
11 remain silent. And if you chose to exercise that
12 constitutional right I will then instruct the jury that
13 the fact that you have chosen to exercise that right to
14 remain silent can't in any way be used against you. I
15 would instruct the jury that the State has the burden of
16 proof, and that as a person accused of a crime you do not
17 have to prove anything.

18 Your decision to remain silent is your constitutional
19 right, and it cannot in any way to be viewed as a
20 confession of guilt or guilt in any way. As a matter of
21 fact I would instruct the jury that if you chose to remain
22 silent that they could not even discuss it in the jury
23 room. It could not be brought up in their deliberations
24 at all because the State has the burden of proof and you
25 do not have to prove anything. You understand that?

1 MR. MUMFORD: Yes, sir, Your Honor.

2 THE COURT: Now, have you talked with Mr. Knox about
3 whether or not you intend to testify? Have y'all had that
4 opportunity to discuss that?

5 MR. MUMFORD: I'll testify.

6 THE COURT: You do intend to?

7 MR. MUMFORD: Yes, sir, Your Honor.

8 THE COURT: Okay. All right. Now, you understand
9 that Mr. Knox, as your lawyer -- you know, often times
10 another word for lawyer is counsel, and an attorney gives
11 counsel to their clients. But it is just that. It's
12 counsel. A lot of times during criminal trials I tell
13 defendants often times trial strategy and how to try the
14 case or how to best attack a case or handle a case, trial
15 strategy is really in the hands of your lawyer to make
16 those decisions.

17 But on this decision, whether or not you intend to
18 testify, that involves your constitutional right. And so
19 even though your lawyer can give you his or her thought,
20 they can give you their counsel, they cannot make the
21 decision for you. The decision on whether or not you wish
22 to waive a constitutional right must come -- excuse me.
23 Must come from you, and so has this been your decision to
24 testify?

25 MR. MUMFORD: Yes, sir.

1 THE COURT: Okay. And you've discussed it with your
2 lawyer, and he's given you his thoughts. But the final
3 decision has been yours; is that correct?

4 MR. MUMFORD: Yes, Your Honor.

5 THE COURT: And has anybody forced or coerced you
6 into making that decision?

7 MR. JONES: No, Your Honor.

8 THE COURT: All right, sir. Do you have any
9 questions for the Court regarding that decision to
10 testify?

11 MR. MUMFORD: No, Your Honor.

12 THE COURT: Okay. And, of course, and I don't know
13 that the Defense's position is. If you have other
14 witnesses certainly you may call those as well, but I'm
15 really just dealing with your decision. So, okay, thank
16 you, sir. I appreciate that. So we'll proceed
17 accordingly. While I've got them back there, cause it's
18 about 3:30, well, are there any other motions that I need
19 to deal with at this point?

20 MR. REDMOND: No, Your Honor.

21 MR. KNOX: No, Your Honor.

22 THE COURT: Do we need to go over these criminal
23 histories or is there any question about any of them?

24 MR. REDMOND: The only one, Mr. Cranford does have a
25 criminal history. Looks like Mr. Teal, his exceeds the

1 ten year limit.

2 THE COURT: All right.

3 MR. REDMOND: We have nothing that we intend to
4 impeach on with Mr. Teal, but Mr. Cranford, we do have
5 several items.

6 THE COURT: All right. You understand -- are there
7 any questions about those items or are y'all in agreement
8 on those?

9 MR. REDMOND: I can show them to Mr. Knox.

10 THE COURT: All right. Of course, Solicitor, you are
11 well aware, that as I in speaking with Mr. Mumford, you
12 can ask them, that witness, about whether or not they have
13 been convicted of that offense and that pretty much ends
14 it.

15 MR. REDMOND: Yes, sir. That pretty much is it. And
16 I don't know if I put on the record or not. The defendant
17 does not have anything in the last ten years that would be
18 able to be utilized as well for the purpose of
19 impeachment.

20 THE COURT: So there would be no question of Mr.
21 Mumford as to criminal history?

22 MR. REDMOND: Correct.

23 MR. KNOX: I have no objection.

24 THE COURT: All right. So we'll allow you to proceed
25 as appropriate. Since I've got the jury out we are going

1 to get started with the Defense's case, but we've got them
2 out. Why don't we take a short break now and we'll get
3 started back in just 15 minutes.

4 (WHEREUPON, Court was in recess at 3:32 p.m. and
5 reconvened at 3:48 p.m.)

6 THE COURT: Is the State ready to proceed?

7 MR. REDMOND: State is ready, Your Honor.

8 THE COURT: Defense?

9 MR. KNOX: Yes, Your Honor.

10 THE COURT: Dorothy Nice is the forelady.

11 (WHEREUPON, the jury panel enters the courtroom at
12 3:50 p.m.)

13 THE COURT: All right. Mrs. Nice, thank you very
14 much for your willingness to serve. You can take it as a
15 congratulations or my condolences, but thank you for your
16 willingness to serve as the forelady of the jury. Ladies
17 and gentlemen of the jury, if you recall we took a break.
18 The State rested their case. I've taken up matter of law
19 that were required at the close of the State's case.
20 We're now ready to proceed. I recognize Mr. Knox.

21 MR. KNOX: Thank you, Your Honor. Your Honor, if it
22 please the Court, Defense calls Steven Teal.

23 STEVEN TEAL, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. KNOX:

2 Q. Good evening, Mr. Teal. I want you to speak up and
3 answer every question. The court reporter is taking down
4 everything that you say. So motions and things like that,
5 she can't record. So when you give an answer give yes or
6 no. Don't say um hum. Yes or no. Now, would you state
7 your name for the record?

8 A. Steven Teal.

9 Q. Would you spell your last name, please?

10 A. T-E-A-L.

11 Q. Mr. Teal, where do you reside?

12 A. 181 Quail Run, Cheraw.

13 Q. And how long have you been living there?

14 A. Since '05.

15 Q. Beg your pardon?

16 A. '05.

17 Q. '05. Are you a lifelong resident of Chesterfield
18 County?

19 A. Yes, I am.

20 Q. And what is your marital status? What is your
21 martial -- are you married?

22 A. No, sir.

23 Q. Are you divorced?

24 A. Separated.

25 Q. You're separated. You have any children?

1 A. Yes, sir.

2 Q. How many children do you have?

3 A. Two.

4 Q. How old are your children?

5 A. Thirty-two and 31.

6 Q. And do they all live here or do they live elsewhere?

7 A. Own place.

8 Q. And you have grandchildren?

9 A. Yes, sir.

10 Q. Now, are you employed?

11 A. No, sir. Self-employed.

12 Q. And what type of work do you do?

13 A. I do body repairs?

14 MR. REDMOND: I didn't understand that, Your Honor.

15 I'm sorry.

16 THE COURT: Mr. Teal, let me get you to pull that
17 microphone down a little bit where you can speak into it.
18 That will help. Thank you.

19 BY MR. KNOX:

20 Q. Would you repeat again what type of work you do?

21 A. Auto body repair.

22 Q. Auto body repair. And how long have you been doing
23 that?

24 A. Since I was a kid. Seven or eight-year-olds.

25 Q. Now, you know Mr. Noah Mumford?

1 A. Yes, sir.

2 Q. And are you all coworkers? How do you all know each
3 other?

4 A. We work together, and I've known him for a while.

5 Q. Now, Mr. Teal, do you recall here on behalf of
6 Mr. Mumford to testify about certain incidents that
7 happened on December 23rd 2010. Are you familiar with
8 that incident?

9 A. Yes, sir, I am.

10 Q. And before we get into the questions there are some
11 questions that I'm going to ask you about your background.
12 You have a criminal record, don't you?

13 A. Yes, sir, I do.

14 Q. Tell the jury about your criminal record?

15 A. Well, I have a homicide and D.U.I.

16 Q. And when was that?

17 A. When I was 18 years-old.

18 Q. Eight years old. How old are you now?

19 A. I'm 53.

20 Q. Fifty-three. And did you have to serve any time for
21 that?

22 A. Yes, sir, I did?

23 Q. And how much time did you serve for that?

24 A. I made a four year sentence.

25 Q. How many?

- 1 A. I got a four year sentence. I maxed out.
- 2 Q. You maxed out. Did that happen here in South
3 Carolina?
- 4 A. Yes, sir, it did.
- 5 Q. So you paid your debt to the State of South Carolina?
- 6 A. Yes, sir, I have.
- 7 Q. And that happened a long time ago?
- 8 A. Yes, sir.
- 9 Q. And did you have any other criminal record?
- 10 A. No, sir.
- 11 Q. Okay. Do you drink?
- 12 A. Yes.
- 13 Q. What do you drink?
- 14 A. Bud Light.
- 15 Q. Beg your pardon?
- 16 A. Bud Light.
- 17 Q. White Lightening?
- 18 A. Bud Light.
- 19 Q. Bud Light. I thought you said White Lightening. Bud
20 Light. Do you drink every day?
- 21 A. No, sir.
- 22 Q. How often do you drink?
- 23 A. Mostly on the weekends.
- 24 Q. Mostly on the weekends. Do you use illegal drugs?
- 25 A. Yes.

1 Q. Have you ever used illegal drugs?

2 A. Yes.

3 Q. How long ago did you last use illegal drugs?

4 A. I been clean for five years.

5 Q. Twenty-five years?

6 A. Five.

7 Q. Five years. Now, on the night of November 23rd had
8 you been drinking?

9 A. No, sir.

10 Q. Had you been using illegal drugs?

11 A. No.

12 Q. Were you with Mr. Mumford on that night?

13 A. Yes, sir.

14 Q. And where were the two of you at?

15 A. We were at his shop working.

16 Q. You were in the shop working?

17 A. Yes, sir.

18 Q. Okay. And where is the shop located?

19 A. It's in the Teals Mill Area. It belongs to him.

20 Q. Who does the shop belong to?

21 A. Noah.

22 Q. Noah. And who all was working there? Just you and
23 he?

24 A. He and I and Frank.

25 Q. And Frank was there also?

1 A. Um hum.

2 Q. Did at any time did you all leave the shop?

3 A. Yes, sir, we did.

4 Q. When did you leave the shop?

5 A. It was about 6:30. Went to the store to cash a
6 check. My -- his mom and stepfather gave me \$100 for a
7 Christmas present, and we went to cash it.

8 Q. It was nice of them. You cashed the check. Did you
9 go anywhere after you cashed the check?

10 A. Went back to the shop to give a customer his Trans Am
11 that we did that day.

12 Q. And at that time, after you did all of that, did you
13 and he leave together anywhere?

14 A. Yes, sir.

15 Q. Where did y'all go?

16 A. Went to Cheraw.

17 Q. Where about in Cheraw?

18 A. Out there on Teals Mill Road. I don't know the name
19 of the community.

20 Q. And did you all go to someone's residence?

21 A. Yes, sir.

22 Q. Do you remember whose residence you went to?

23 A. I don't even know the guy's name. Paul something.

24 Q. And this was located in the Teals Mill Area of
25 Cheraw?

1 A. Between Teals Mill and Cheraw. Yes, sir.

2 Q. And who all went with you?

3 A. Me and Frank and Noah.

4 Q. Whose vehicle were you ridings in?

5 A. Noah's.

6 Q. Okay. Did y'all have a conversation on the way
7 there?

8 A. Yes, sir.

9 Q. Why were y'all going there? Did you know?

10 A. They started calling at 8:30 that morning wanted to
11 race the motorcycle, and Noah told them that he would race
12 down the road. Race at the track.

13 Q. You said, 'they'. Who are they?

14 A. The guys that were there at the house. I don't know
15 the guy's name. I don't know them.

16 MR. REDMOND: Your Honor, I'm going to object to the
17 hearsay other than obviously anything the defendant said.
18 But I wasn't sure that he got into any, but just in case
19 to be clear.

20 THE COURT: All right. Sustained. Hearsay.

21 BY MR. KNOX:

22 Q. All right. You all were asked to come somewhere to
23 discuss a race, and what happened when you all got there?

24 A. Started talking about the race, and one guy from the
25 back starting -- you know, he didn't have nothing to do

1 with it. He didn't have no money or nothing to do with
2 it. He wanted to race on the Brick Yard Road in Wallace.
3 Noah told him no. They could hook up for the track next
4 weekend.

5 Q. And do you know who that guy was?

6 A. I know him when I see him.

7 Q. Is he in the courtroom?

8 A. Yes, sir, he is.

9 Q. Can you point him out?

10 A. Yes, sir, I can. He's that guy sitting behind.

11 Q. Can you describe what he has on?

12 A. Sir.

13 Q. Can you describe what he has on?

14 MR. REDMOND: Let the record reflect that he pointed
15 out Mr. Paul Funderburk.

16 BY MR. KNOX:

17 Q. Is that Mr. Funderburk that you pointed out?

18 A. That guy with the orange shirt on.

19 Q. Okay. All right. Now, you said that he was talking.
20 Who was he talking to?

21 A. To Noah.

22 Q. And what was the conversation about?

23 A. About racing the motorcycles.

24 Q. And what was the language? Was it normal language or
25 was it offensive language? What type of language was it?

1 A. Well, he kind of got bent out of shape a little bit
2 cause he didn't have no money to run with. Other people
3 had the money.

4 Q. So the conversation was about money?

5 A. And racing.

6 Q. And racing. And who said what to whom?

7 A. Well, we -- when we got there Noah told them we come
8 set up the run at the track. And they didn't want to run
9 at the track. They wanted to run on the road. Noah don't
10 run the bike on the road. And then it started into an
11 argument because they wanted to run the night.

12 Q. Okay. When you say it turned to an argument who was
13 arguing?

14 A. The guy, Paul, Mr. Funderburk.

15 Q. Who was he arguing with?

16 A. Noah.

17 Q. And was he doing anything else?

18 A. Well, I seen him turn a beer up, and I knew what time
19 it was when his turned it up. I seen him hit Noah with
20 the bottle. I walked around about 20 feet from him, and
21 he went off and went on Noah.

22 Q. He turned the bottle of beer up? Do you remember
23 what color bottle it was?

24 A. It was a big, green bottle.

25 Q. Was it a bottle like this?

1 A. Yes, sir.

2 Q. And was he drinking from that bottle?

3 A. He done drank it. He one drank it high enough that I
4 knew wasn't nothing else in it. I been down that road
5 before.

6 Q. And where were you at when you observed him drinking
7 from this bottle of water -- I mean drinking from this
8 bottle?

9 A. About 3-foot from Noah.

10 Q. About how many feet from Noah?

11 A. About three feet from Noah.

12 Q. And how far were you from Mr. Paul Funderburk?

13 A. When he was hitting Noah with the bottle I walked
14 behind him.

15 Q. Now, did he hit Noah with the bottle?

16 A. Yes, sir.

17 Q. When did he hit Noah with the bottle?

18 A. He come down across the top of Noah's head and on his
19 shoulder, and Noah went down. And when Noah went down he
20 was on top of Noah.

21 Q. Now, when did this happen? When did this happen?

22 A. When?

23 Q. Um hum. Did it happen as soon as you got there? A
24 little while after you got there?

25 A. Probably we'd been over there 15 or 20 minutes, give

1 or take.

2 Q. And out of the clear blue sky Mr. Funderburk attacked
3 Noah with a bottle?

4 THE COURT: You need to answer out loud.

5 THE WITNESS: Sir.

6 THE COURT: Your responses need to be out loud.

7 THE WITNESS: Yes, sir.

8 BY MR. KNOX:

9 Q. And was there anybody else there that witnessed that?

10 A. Yes, sir.

11 Q. About how many other people were there?

12 A. Me and Frank and Noah, and I think there was four on
13 their side.

14 Q. So it was three on your side?

15 A. And four over there.

16 Q. And so it was seven people there. And you were about
17 three feet from Noah?

18 A. Yes, sir.

19 Q. Was it dark outside?

20 A. I wasn't dark, dark. But you know you could see what
21 was going on.

22 Q. Was there light outside? Was there any light? Any
23 artificial light?

24 A. I can't tell you that for sure cause I can't remember
25 that.

1 Q. Was it cold that night?

2 A. It was cool.

3 Q. And you were 3 feet from Noah?

4 A. Yes, sir.

5 Q. About as far as you are from the court reporter?

6 A. Yes, sir.

7 Q. And you personally witnessed Noah get hit with a
8 bottle like this?

9 A. Yes.

10 Q. Can you show the jury how that hit took place.

11 A. Yes, sir.

12 Q. Can you show it to them?

13 A. Two big guys standing like this here, and he was kind
14 of in between them but behind them. And he came out
15 between them and come down across the floor here and here
16 is when Noah was hit. He was going down and when Noah was
17 going down, boy, he went off and he started whooping up on
18 Noah.

19 Q. What did Noah -- did Noah say anything?

20 A. Nothing.

21 Q. Did the guy that was on top of Noah that hit Noah
22 with the bottle, did he say anything?

23 A. No, sir.

24 Q. Now, did you hear any gunshots being fired?

25 A. Yes, sir, I did.

1 Q. When did you first hear the gunshots?

2 A. After the guy got Noah down on the ground. Noah was
3 down on his knee or about to the ground.

4 Q. Did you see who fired the shots?

5 A. No, but seen the fire and smelled it.

6 Q. And you saw the fire and smoke?

7 A. Yes, sir.

8 Q. And from whose direction was it coming? Was it
9 coming from Mr. Funderburk or Noah Mumford?

10 A. It was coming from right in the middle of them.

11 Q. From the middle of them?

12 A. I didn't know what was going on.

13 Q. And this was happen simultaneously while they were
14 fighting?

15 A. And then Mr. Funderburk, he jumped up and run off.
16 And he run off as far as from here to the computer right
17 there and turn around and came back.

18 Q. He came back?

19 A. Yes, sir.

20 Q. To where Mr. Mumford was?

21 A. Yes, sir.

22 Q. Was any words passed between the two of them?

23 A. Not then. He went back off on Noah, and Noah stopped
24 him before he got hurt. Noah wanted to go home, too.

25 Q. Now, you're friends? You're good friends with Noah?

1 A. Yes, I am.

2 Q. You work with Noah?

3 A. Yes, sir.

4 Q. And you were once convicted for vehicle homicide?

5 A. Correct.

6 Q. Now, taking all that into consideration you were
7 asked to be a witness for Noah?

8 A. Yes, sir.

9 Q. And I interviewed you in my office?

10 A. Yes, sir.

11 Q. Now, did law enforcement interview you?

12 A. No, sir, they did not.

13 Q. Did anyone from the Solicitor's Office interview you?

14 A. No, sir, they did not.

15 Q. But you were an eye witness to what happened that
16 night?

17 A. Yes, sir.

18 Q. Nobody called you about it?

19 A. No, sir.

20 Q. Nobody subpoenaed you?

21 A. No, sir.

22 Q. Only Noah and I and yourself knew that you were
23 there?

24 A. Yes, sir.

25 Q. I know you don't the names of the witnesses, but is

1 there anyone else in the courtroom that you can identify
2 that was also there?

3 A. Yes, sir.

4 Q. Can you point them out?

5 A. The real big guy right yonder with the yellow shirt
6 on, and the one with the green shirt on.

7 Q. They were there?

8 A. Yes.

9 Q. You know that as a fact that they were there?

10 A. Yes, sir.

11 Q. But yet law enforcement nor Solicitor contacted you
12 to get your version of what happened?

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

14 Q. Okay. Is your testimony truthful?

15 A. Yes, sir, it is.

16 Q. You're not trying to protect Noah?

17 A. No, sir. No, sir, I'm not.

18 Q. Your allegiance to Noah would not prevent you from
19 telling the truth?

20 A. No, sir.

21 Q. And you are telling the truth?

22 A. Yes, sir, I am.

23 Q. And as best you know that's what happened?

24 A. Yes, sir.

25 Q. Mr. Funderburk came at Mr. Mumford with this bottle?

1 A. Yes, sir.

2 Q. And he hit him on the head and on the shoulder? Fell
3 down to the ground?

4 A. Mr. Funderburk.

5 Q. And engaged. Shots were fired?

6 A. Yes, sir.

7 Q. Mr. Funderburk ran away and he came back?

8 A. Yes, sir.

9 Q. Thank you. Answer any questions the Solicitor would
10 have.

11 MR. REDMOND: Beg the Court's indulgence.

12 CROSS-EXAMINATION

13 BY MR. REDMOND:

14 Q. You were asked a very curious set of questions by Mr.
15 Knox. I'm kind of glad he went there cause I'm about to
16 go there myself. Talk about law enforcement. He says
17 nobody -- you don't know why I'm here? You hadn't seen me
18 until today, have you?

19 A. Yes, I have.

20 Q. Okay. Well, as far as this case. You probably know
21 me cause I work with the Solicitor's Office?

22 A. Correct.

23 Q. But have you and I ever met formally and discussed
24 this case?

25 A. No, sir.

1 Q. Okay. Now, he asked you about whether or not you had
2 ever talked with anybody in law enforcement about this
3 case. I think he asked you about whether or not they had
4 ever contacted you. So after this shooting, and he may
5 have asked you this but I would like to make sure we're
6 clear. After the shooting didn't you, Mr. Cranford and
7 the defendant leave the premises?

8 A. Yes, sir.

9 Q. After the shooting. Once y'all -- did y'all got back
10 to this shop?

11 A. Yes, sir.

12 Q. Did y'all go back to work?

13 A. No, sir.

14 Q. Okay. What did y'all do?

15 A. Noah got a guy to take me home, and Noah turned
16 himself in.

17 Q. Okay, so he turned himself in. Okay, that makes it
18 even more interesting. So you knew that he was going to
19 turn himself in, and you were there. But isn't it true
20 that you never actually went down to the Sheriff
21 Department to tell them what you saw, now, did you? You
22 didn't give a statement, did you?

23 A. No, sir, I wasn't asked.

24 Q. No. But you were there. You knew he was going, as
25 you said, to turn himself in. Why in the world, if you

1 saw what happened and it was so bad against Noah, why
2 would you not go with your friend, the person whose family
3 gave you a \$100 for Christmas bonus or gift why would you
4 not go there with him? You can't answer that, can you?

5 A. I offered to go on Noah's bond.

6 Q. That's ain't what I'm asking you, sir. I'm not
7 asking you about the bond. That was later. You can't
8 answer the pertinent question that I just gave you about
9 why, if everything you're saying now -- oh, nobody every
10 asked me. You had the opportunity cause you knew he was
11 going to turn himself in. You didn't go?

12 A. Yes, sir. I can answer that question.

13 Q. Well, go for it?

14 A. If I was educated like I was supposed to be I would
15 know to do it.

16 Q. Okay.

17 A. But I didn't have enough education to know to do it.

18 Q. Okay. You didn't have enough education to know to go
19 with him and turn himself in, and to tell what you had
20 seen. Is that what you're trying to convince this jury
21 of?

22 A. Yes, sir, it is.

23 Q. But you had enough education. You run an auto body
24 shop?

25 A. That is correct.

1 Q. You're self-employed, you said, right?

2 A. Correct.

3 Q. So, basically, you run a business yourself, right?

4 A. That is correct.

5 Q. But yet you are trying to insult mine and this jury's
6 intelligence now because it suits you by saying, "Oh, I
7 don't haven't enough intelligence to know I could go with
8 my friend to let law enforcement know what really happened
9 when he had to shoot somebody?"

10 A. If he needed me to talk I would have talked.

11 Q. Okay, if. And that's why you're here today because
12 he needs you today?

13 A. That's correct.

14 Q. The same way he gave -- the same person whose family
15 gave you that Christmas bonus; he needs you today and
16 that's why you're here, isn't it?

17 A. Yeah, you need me today, too.

18 Q. Well, I don't recall asking you to come up here, but
19 you know I'm glad you think so. Let me ask you this since
20 you're so philosophical and know what I need. Let's talk
21 about the fact that, again, you didn't give any written
22 statement or anything to law enforcement. But here is
23 something else that you said when you said that Mr.
24 Funderburk started talking about a race that he had
25 nothing to do with, right. And then you say Noah got bent

1 out of shape? Was that because Mr. Funderburk ---

2 A. They both got bent out of shape.

3 Q. Both of them?

4 A. Both of them got bent out of shape.

5 Q. Both of them bot bent out of shape. And I'm almost
6 done. I'm not going to be long with you, Mr. Teal, but
7 you demonstrated for the jury that Mr. Funderburk -- stand
8 up for me, Paul. Mr. Funderburk hit Noah with the bottle
9 across his head, and it went on the shoulder and hit him
10 hard enough that he went down like that, correct?

11 A. Correct.

12 Q. State's One, does that like look a broken bottle to
13 you? That's the bottle that was recovered by law
14 enforcement at the scene that night. Does that look like
15 a broken bottle to you?

16 A. Well, I've seen bottles not break.

17 Q. That ain't what I asked you. Does that look like a
18 broken bottle to you?

19 A. No, sir.

20 Q. But yet he hit him so hard -- you want me to hit you
21 with it since you can feel it? You want me to it you with
22 it? I don't think so because if I did it would probably
23 break, now, wouldn't it?

24 A. I don't know.

25 Q. And I ain't as big as him.

1 MR. REDMOND: Nothing further.

2 THE WITNESS: There would definitely be a problem if
3 you hit me with it.

4 MR. REDMOND: I didn't hear you.

5 THE COURT: Move on.

6 MR. REDMOND: Nothing further.

7 THE COURT: Anything on re-direct?

8 REDIRECT EXAMINATION

9 BY MR. KNOX:

10 Q. Mr. Teal?

11 A. Yes, sir.

12 Q. In spite of the fact that his family gave you the
13 \$100 bonus for Christmas for doing some work; the fact
14 that you are a good friend of his; the fact that you work
15 together, it is your testimony that Mr. Funderburk did hit
16 Mr. Mumford over the head with a bottle like this?

17 A. Yes, sir, he did.

18 Q. And it wasn't your testimony that the bottle broke,
19 was it?

20 A. No, sir, it wasn't?

21 Q. It was your testimony that he hit him with this
22 bottle?

23 A. Yes, sir.

24 Q. Now, this is a very thick bottle. Want to feel it?

25 A. Yes, sir.

1 Q. This bottle hit the ground, based on testimony
2 earlier today and it didn't break. And I don't understand
3 the physics of why it didn't break or if it should have
4 broken. I don't know how much force or G force you have
5 to have in order to make this bottle break. But it is
6 your testimony that Mr. Funderburk hit him with a bottle?

7 A. Yes, sir.

8 Q. And before he hit him with that bottle Mr. Mumford
9 didn't do anything whatsoever physically to Mr.
10 Funderburk?

11 A. No, sir.

12 Q. And he had to reach over someone who was in between
13 the two of them to hit him with it?

14 A. Yes, sir.

15 Q. And you witnessed Mr. Mumford being hit with it?

16 A. Yes, sir.

17 Q. And that is the truth?

18 A. Yes, sir.

19 Q. Thank you.

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

22 MR. KNOX: Defense calls Mr. Frank Cranford.

23 THE COURT: Any objection to Mr. Teal being released?
24 Thank you, Mr. Teal. You're excused, sir.

25 FRANK CRANFORD, after being duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KNOX:

4 Q. Mr. Cranford, I want you to speak up into the
5 microphone so the jury and court reporter can hear you.

6 Would you state your name for the record?

7 A. Franklin Cranford.

8 Q. Would you spell your last name?

9 A. C-R-A-F-O-R-D.

10 Q. And, Mr. Cranford, where do you reside?

11 A. Chesterfield.

12 Q. And what's your address?

13 A. 3858 Teals Mill Road.

14 Q. And are you married?

15 A. No.

16 Q. Single?

17 A. Yeah.

18 Q. You have any children?

19 A. No, sir.

20 Q. And are you employed?

21 A. No.

22 Q. Have you ever been employed?

23 A. Yeah.

24 Q. What was your last employment?

25 A. I was working on Buy Lo's in Greenville -- Greenwood,

1 South Carolina.

2 Q. Were you employed on December 23rd 2010?

3 A. No.

4 Q. So you've been unemployed for a while?

5 A. Yes.

6 Q. And are you related to Mr. Noah Mumford?

7 A. Distance.

8 Q. Distance. And when you say distance how far?

9 A. Fifth or sixth cousin.

10 Q. Way down the line?

11 A. Yes.

12 Q. If you were a female you could marry him?

13 A. No.

14 Q. How long have you lived in Chesterfield County?

15 A. Almost all my life.

16 Q. Did you go to school here in Chesterfield County?

17 A. Yeah.

18 Q. Did you graduate from school in Chesterfield County?

19 A. Yes, sir.

20 Q. What school did you graduate from?

21 A. Chesterfield County.

22 Q. What year?

23 A. '83.

24 Q. And on December 23rd 2010 were you with Mr. Mumford?

25 A. Yes, sir.

1 Q. Okay. Where were you all?

2 A. We was down in -- he left his work and we went to the
3 car. Left, came up down and went down to Mr. Todd
4 Harrell's house.

5 Q. You went to Todd Harrell's house?

6 A. Yes, sir.

7 Q. Where is that house located?

8 A. It's located in Cheraw.

9 Q. You said we. Who are we?

10 A. Me, Noah, and Steve.

11 Q. Steve. And it was just the three of you?

12 A. Yes, sir.

13 Q. And whose car were you driving -- did you ride in?

14 A. Noah's.

15 Q. Who was driving?

16 A. Noah.

17 Q. And you arrived at Mr. Harrell's house. Did he get
18 out of the car?

19 A. Yes, sir.

20 Q. Who else got out of the car?

21 A. All three got out.

22 Q. And was there anybody there when y'all arrived?

23 A. Yes, sir.

24 Q. And who was that?

25 A. Todd was there. Amos Nivens, big Tony and Mr.

1 Funderburk.

2 Q. And all of these gentlemen are here in the courtroom?

3 A. Yes, sir.

4 Q. Do you know them?

5 A. Yes, sir.

6 Q. Did you just meet them that night or known them
7 previously?

8 A. I've known them previously.

9 Q. Why were you all at Mr. Harrell's house?

10 A. They called and wanted to talk about racing.

11 Q. You said, 'they'. Who are they?

12 A. Todd and Amos.

13 Q. So someone -- they invited you all there?

14 A. Yes, sir.

15 Q. And had you been drinking they night?

16 A. No, sir.

17 Q. Was anyone in your vehicle that you were riding in
18 drinking?

19 A. No, sir.

20 Q. When did you observe when you arrived at
21 Mr. Harrell's house?

22 A. We walked -- when we got out the car we walked to
23 Todd and -- Todd and Big Antonio. And Amos was standing
24 there at the front of Amos' truck just about the front of
25 the truck. We walk up and started talking to them.

1 Q. Was there any conversation?

2 A. Yes, sir.

3 Q. What was the conversation about?

4 A. About racing the motorcycle.

5 Q. And tell the jury about that conversation?

6 A. We was talking about getting the money to be getting
7 together to race ---

8 MR. REDMOND: Your Honor, I'm actually having trouble
9 understanding him.

10 MR. KNOX: Speak into that microphone.

11 THE COURT: Speak into that microphone if you would,
12 sir.

13 THE WITNESS: Talked about racing a motorcycle, and
14 so we were talking and betting. And we started to talk
15 junk to each other.

16 Q. Now ---

17 A. Like we always do.

18 Q. When you were talking about betting was anything
19 about money said?

20 A. Yes, sir.

21 Q. What was said about money?

22 A. They had told us going to bet. See how much we were
23 going to bet, see.

24 Q. And was that amount published to anybody?

25 A. At the time they said me and Noah started counting

1 out money.

2 Q. Did you count out the money in the front of
3 everybody?

4 A. Yes, sir.

5 Q. And what was the total that was counted?

6 A. I don't know the exact total at that time.

7 Q. Beg your pardon?

8 A. At that time right now I don't remember the exact
9 total.

10 Q. Was it a lot of money?

11 A. Yes, sir.

12 Q. Was it cash?

13 A. Yes, sir.

14 Q. Who all witnessed you counting that money?

15 A. Amos and Todd and Big Tony and Mr. Funderburk had
16 walked up.

17 Q. He walked up while y'all were counting the money?

18 A. Yes, sir.

19 Q. Who was counting the money?

20 A. Noah was counting, and he was placing it in my hand.

21 Q. He was placing it in your hand. Y'all were going to
22 place a bet?

23 A. Yes, sir.

24 Q. Had a bet actually been placed?

25 A. Not yet.

1 Q. Not yet. What happened after y'all went and counted
2 the money?

3 A. Mr. Funderburk walked up. He started talking junk to
4 Noah, and Noah told him, "Well, hold up. You don't even
5 have a motorcycle to race." And so they had a few words
6 and then after that Noah started back counting the money.
7 And then he handed Noah the money, went to hand it back to
8 him. In the meantime, before all that, Mr. Funderburk
9 walked up to him. And when he walked up to him he told
10 Noah, he said -- Noah told him about he didn't have a
11 motorcycle or anything.

12 He told Noah, "Well, we'll see about all that," and
13 he start cursing Noah. And then they start fussing back
14 and forth. And then after the cussing went on Mr.
15 Funderburk told him said, "We'll see about all that. When
16 I finish drinking this beer."

17 Q. He was drinking a beer?

18 A. Yes, sir.

19 Q. Do you remember what kind he was drinking?

20 A. It was a green Heineken bottle?

21 Q. Was it similar to this?

22 A. To this? Yes, sir.

23 Q. Did you actually, physically see him drink the beer?

24 A. Yes, sir, cause he stood in front of me and drunk the
25 beer.

1 Q. How far away from Noah was he when he was drinking
2 the beer?

3 A. Like me and the lady in front of me.

4 Q. Sort of in your face?

5 A. Yes, sir.

6 Q. Did he say anything to Noah while he was drinking the
7 beer?

8 A. "When I finish drinking this beer we'll see who is
9 doing what."

10 Q. And what happened after that?

11 A. Well, we started back talking then to Amos and Todd
12 and, he finished drinking the beer he swung the beer
13 bottle.

14 Q. I didn't understand what you said?

15 A. When we -- we went back to talking, talking junk to
16 each other. He was standing there drinking the beer, and
17 after he finished drinking the beer he swung the beer
18 bottle at Noah.

19 Q. Did the beer bottle hit Noah?

20 A. Yes.

21 Q. Where did it hit him?

22 A. Right on the shoulder.

23 Q. You saw that?

24 A. Yeah, cause I moved to the side cause I was
25 standing -- me and Noah standing side by side.

1 Q. And when Noah was hit with the beer bottle, what
2 happened after that?

3 A. Noah spent around and when Noah spent back aroundl he
4 come in between us.

5 Q. When you say, 'he' who is he?

6 A. Funderburk came in between us.

7 Q. Was he charging towards Mr. Mumford?

8 A. Yeah.

9 Q. Did they actual engage?

10 A. No, not at that time.

11 Q. Not at that time. At any time that night did they
12 engage?

13 A. Yes, sir.

14 Q. When did they engage?

15 A. When he swung the bottle back under up him he went
16 back after Noah again. After that that's when Tony
17 grabbed me and then they had to pull me back towards the
18 truck. And then at that time when I got pulled Noah had
19 been -- they done separated, and that's when Noah spent.
20 He, Noah, spent and when Noah spent around that's when I
21 see the gunshot.

22 Q. You said he, Antonio, grabbed you?

23 A. Um hum.

24 Q. Did he grab you from the front or behind?

25 A. From behind.

- 1 Q. Why did Big Tony grab you?
- 2 A. I don't remember.
- 3 Q. Did he try to take you away from the action?
- 4 A. Yes.
- 5 Q. Was he successful in taking you away?
- 6 A. He pulled me away but not much.
- 7 Q. Did he say anything to you?
- 8 A. Um hum.
- 9 Q. Were you involved in the fight?
- 10 A. No.
- 11 Q. But shortly before that you and Noah were counting
- 12 money?
- 13 A. Um hum.
- 14 Q. Was any threats made towards you?
- 15 A. No, sir.
- 16 Q. And if Big Antonio had pulled you away was this after
- 17 you observed Mr. Mumford being hit?
- 18 A. Yes, sir.
- 19 Q. Okay. And did you actually see Noah shoot anybody?
- 20 A. No, sir.
- 21 Q. You heard the gunshots?
- 22 A. Yes, sir.
- 23 Q. How far away?
- 24 A. I was standing right there.
- 25 Q. You were standing right there?

- 1 A. The bullet come down the dirt. Hit me on my shoes.
- 2 Q. The bullet hit you?
- 3 A. No, dirt.
- 4 Q. The dirt hit you. So the bullet was fired towards
- 5 the ground?
- 6 A. Yes, sir.
- 7 Q. And the dirt ricochettted and it hit your feet?
- 8 A. Yes, sir..
- 9 Q. What type of shoes were you wearing?
- 10 A. Tennis shoes.
- 11 Q. Tennis shoes. What happened after that?
- 12 A. Well, after that then I hear the fire and looked.
- 13 Noah had the gun towards the ground. He shot twice at the
- 14 ground, and then Paul come back at him again and that's
- 15 when he fired again.
- 16 Q. So Paul came back at him?
- 17 A. Um hum.
- 18 Q. And Mr. Mumford fired again?
- 19 A. Fired again.
- 20 Q. Was anything said between Mr. Mumford and Mr.
- 21 Funderburk while the shooting was taking place?
- 22 A. No, sir.
- 23 Q. Did anyone try to take the gun away from Noah?
- 24 A. No.
- 25 Q. And were you there to the end?

1 A. Yes, sir.

2 Q. And what happened at the end?

3 A. We got in the car and Mr. Paul, he came and he had
4 walked to his -- walked towards his truck. He was sitting
5 in the truck when we left.

6 Q. When you say, 'he' who?

7 A. Paul.

8 Q. Paul got in his truck, and y'all left. Now, where
9 did y'all all go after that?

10 A. Went to Noah's house.

11 Q. Went to where?

12 A. Noah's house.

13 Q. Noah's house. What happened there?

14 A. Well, that's when they called Noah to come up to the
15 police department.

16 Q. They talked to Noah?

17 A. I guess. He came back and told me that he had to go
18 up there.

19 Q. They talked to you?

20 A. Um hum.

21 Q. Did law enforcement talk to you?

22 A. No. Noah told me he had to go to the police
23 department.

24 Q. So Noah turned himself in?

25 A. Yes, sir.

- 1 Q. Did he take the gun with him?
- 2 A. Yes, sir.
- 3 Q. And have you told this story to anyone else other
- 4 than my interviewing you at my office?
- 5 A. No.
- 6 Q. Why didn't you tell law enforcement about this?
- 7 A. Why didn't I?
- 8 Q. Um hum?
- 9 A. Cause they didn't come talk to me.
- 10 Q. They didn't inquire of you?
- 11 A. No, sir?
- 12 Q. But you were there?
- 13 A. Yes, sir.
- 14 Q. You came there with Noah?
- 15 A. Yes, sir.
- 16 Q. You witnessed the fight?
- 17 A. Yes, sir.
- 18 Q. You saw Mr. Funderburk attack Mr. Noah?
- 19 A. Yes, sir.
- 20 Q. And you saw him hit ---
- 21 A. Yes, sir.
- 22 Q. --- Noah. And you heard the shots?
- 23 A. Yes, sir.
- 24 Q. And y'all left?
- 25 A. Yes, sir.

1 Q. And that is your testimony?

2 A. That's my testimony.

3 Q. Answer any questions the Solicitor may have.

4 CROSS-EXAMINATION

5 BY MR. REDMOND:

6 Q. I think he asked if your testimony today was the
7 truth?

8 A. Yes, sir.

9 MR. REDMOND: Beg the Court's indulgence just one
10 moment.

11 BY MR. REDMOND:

12 Q. In 2003 did you have a probationary sentence for a --
13 I'm sorry, 2003. Did you violate a probationary sentence
14 in Federal Court on -- looks like a drug charge?

15 A. 2003?

16 Q. In 2003, a violation involving probation from 2003
17 regarding a drug charge you had received in Federal Court?

18 A. I'm not sure what it was in 2003.

19 Q. But you did have one?

20 A. Yeah.

21 Q. Okay, again, you maintain you're telling the truth.
22 So I've got to ask these questions. In 2009, I might skip
23 around a little bit, but did you also have a conviction
24 where you received a sentence of 18 months on a
25 distribution charge, distribution of cocaine or crack, in

1 2009 in Chesterfield County? Well, let me ask you like
2 this. Did you have a distribution of crack or cocaine
3 conviction that you got 18 months on within the last ten
4 years?

5 A. Yeah.

6 Q. Okay, and in 2003 did you -- I'm sorry. Excuse me.
7 2002, did you also have a conviction for financial
8 transaction card fraud?

9 A. No.

10 Q. 2002, or was that in 2003?

11 A. No.

12 Q. Okay. So you maintain that was not you. How about
13 2005, did you receive a three years and probationary
14 sentence for strong armed robbery, common law robbery?

15 A. 2005.

16 Q. Um hum. Within the last ten years have did you
17 receive that conviction?

18 A. I'm not sure when it was.

19 Q. Well, but have you been convicted of strong armed
20 robbery?

21 A. Yes, sir.

22 Q. That would show up on your criminal history. Again,
23 you say you were -- you're telling the truth, and I just
24 need to clarify that for the purpose of your credibility,
25 but it also serves another purpose. Based on that and you

1 said towards the end of your questioning that the
2 defendant told you that he was going to turn himself in;
3 is that right?

4 A. Yes, sir.

5 Q. Now, you saw all of this stuff as you said that the
6 victim did to the defendant. You knew he was going to
7 turn himself in, to use your term?

8 A. Yes, sir.

9 Q. You did not go down there with him to explain what
10 you saw at that time, now did you?

11 A. No, I didn't.

12 Q. No, your didn't. And in fact and I think Mr. Knox
13 has established this. You sit here and you watch your
14 friend being charged with this serious crime, and yet you
15 told no one until I guess -- you didn't tell law
16 enforcement. You didn't tell me, the Solicitor's Office.
17 You know, the Solicitor's Office is right down the street,
18 block and a half. You didn't tell anybody?

19 A. That's not my job.

20 Q. We've got another job. We don't know what you saw.
21 Do I have E.S.P. Does Daniel Scott have E.S.P? You've
22 got you know something we need to know?

23 A. Well, I was ---

24 Q. You didn't do our job. How did we know if you didn't
25 tell anybody if you're ---

1 A. If I'm a victim.

2 Q. How would we know?

3 A. If I'm a victim I'll tell who was there.

4 Q. Okay, but again, you didn't. How long have you been
5 knowing Mr. Funderburk? You didn't know him that long?

6 A. Yeah, I knew him.

7 Q. Again, you claim you knew him, but where did you come
8 to tell anybody what you saw? Where? When? When? When?
9 When? The only time you came is when you were asked by
10 your friend; isn't that true?

11 A. When the lawyer sent for me.

12 Q. When the lawyer sent for you. That's when you came
13 forward with this information. You have never done one
14 written statement of any type to -- told anybody about
15 what you testified to today, now have you? I bet you and
16 Steven Teal talked about it?

17 A. No.

18 Q. Y'all haven't. I think we actually might not have
19 talked about it. I'll deal with that at another time.
20 When you say that, and the reason I'm asking you this is
21 based on your experience with law enforcement. Because
22 let's be honest, you've got a little experience with law
23 enforcement. Despite all that you yourself have been
24 through in the past, you know, as you claim today that
25 based on history, your friend is the defendant himself,

1 but I'm just having a hard time understanding why you
2 wouldn't break your neck, "I'll go with you. I'll tell
3 them all there that it wasn't you." I can't quite
4 understand why you waited until today when he's sitting in
5 front of this juror door to tell anybody other than him or
6 his lawyer this very important piece of information that
7 you got. You don't really have a good answer for that, do
8 you?

9 A. Yes, sir.

10 Q. You don't?

11 A. Yes, sir.

12 Q. Your opinion.

13 A. Maybe I didn't mean that.

14 Q. You haven't answered my question. I'm waiting for an
15 answer?

16 A. It's your job to do what you had to do in coming here
17 today and tell the story for yourself.

18 Q. You did what you had to do?

19 A. Right.

20 MR. REDMOND: Nothing further.

21 REDIRECT EXAMINATION

22 BY MR. KNOX:

23 Q. Mr. Cranford?

24 A. Yes, sir.

25 Q. You're not claiming to be denying the arrest?

- 1 A. No, sir.
- 2 Q. You have a sorted past?
- 3 A. No, sir.
- 4 Q. You're not proud of?
- 5 A. Yes, sir.
- 6 Q. You did certain things and you had your day in Court?
- 7 A. Yes, sir.
- 8 Q. And know you're here testifying?
- 9 A. Yes, sir.
- 10 Q. Now, with regards to your criminal background,
- 11 regardless of whether or not you told anybody about this
- 12 prior to telling me in my office a couple of months ago
- 13 and testifying about it today, what you're testified to
- 14 did happen?
- 15 A. Yes, sir.
- 16 Q. You did not make this up?
- 17 A. No, sir.
- 18 Q. This is not a figment of you're imagination?
- 19 A. No, sir.
- 20 Q. Mr. Funderburk did hit ---
- 21 A. Yes, sir.
- 22 Q. --- Mr. Mumford with this bottle?
- 23 A. Yes, sir.
- 24 Q. He came after him after shots were fired?
- 25 A. Yes, sir.

1 Q. And even though the Solicitor wants the jury to
2 believe that because you didn't tell law enforcement that
3 this didn't happen?

4 A. Right.

5 Q. Had law enforcement asked you would you have told
6 them?

7 A. Yes, sir.

8 Q. You told me when I asked you?

9 A. Yes, sir.

10 Q. And you're telling me here today in Court?

11 A. Yes, sir.

12 Q. You have nothing to hide?

13 A. Nothing at all.

14 Q. You're not trying to protect Mr. Mumford?

15 A. No, but if they were doing they job I would have told
16 them if they come to me.

17 Q. This happened about ten months ago?

18 A. Yes, sir.

19 Q. Since December 23rd 2010, before other witnesses, the
20 three other witnesses who testified today, knew that you
21 were there?

22 A. Yes, sir.

23 Q. And they did not put that in their report that you
24 were there?

25 A. Right.

1 MR. REDMOND: Your Honor, I would object. I think
2 that he doesn't actually know what they put in their
3 report. It is an improper question or in their statement.

4 BY MR. KNOX:

5 Q. But the three other people there that were there knew
6 you were there?

7 A. Yes, they did.

8 Q. So in fact everybody who was there on that night knew
9 that you were there?

10 A. Yes, sir.

11 Q. And that everybody had a story to tell?

12 A. Yes, sir.

13 Q. And, unfortunately, you were not asked by law
14 enforcement?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. KNOX: No further questions.

18 RECROSS-EXAMINATION

19 BY MR. REDMOND:

20 Q. You were asked in redirect about -- I forgot to ask
21 you about the hit on the shoulder. Just to be clear when
22 you saw him get hit you saw the bottle hit the defendant
23 in the shoulder, right?

24 A. Yes, sir.

25 Q. Okay. His shoulder, just want to be clear, you saw

1 it hit his shoulder? That's all you saw?

2 A. Yes, sir.

3 MR. REDMOND: Nothing further.

4 MR. KNOX: No further questions.

5 COLLOQUY

6 THE COURT: Thank you very much, sir. You may step
7 down. Let me, please -- step over here for a moment
8 before we proceed. All right, ladies and gentlemen. I
9 have just conferred with counsel about the next witness.
10 It's 20 minutes to 5:00. The next witness will probably
11 take us beyond the five o'clock hour, and so we're going
12 to -- and when we start back in the morning we start back
13 with Mr. Knox's case.

14 Please, as you've been instructed throughout the
15 case, have no conversation with anybody about this trial.
16 We're getting close to the end, but we're not there yet.
17 Use have to have a judge in Florence who used to use the
18 analogy of baking a cake, and he would talk to the jury
19 about, you know, if you bake a cake, if you stick it in
20 the oven and begin to cook it before you've added all the
21 ingredients it doesn't turn out right. You get a bad
22 cake.

23 And, jurors, your role as jurors in this case is kind
24 of that way. You don't all have all the ingredients yet.
25 You haven't heard all the evidence. So to start baking

1 this cake or to start talking about it or deliberating
2 would end up in an improper result. So please continue to
3 adamantly guard and protect your ability to be fair and
4 impartial. Don't let anyone talk to you about the case.
5 Let your friends, family or loved ones know that you will
6 need to be back tomorrow.

7 I anticipate you will get the case for your
8 deliberation tomorrow at some point. I don't know when
9 that will be, but you know, based on what I know about the
10 case I think you will probably get the case for your
11 consideration tomorrow. So you can let folks know that if
12 their curious to remain patient, and that when the case is
13 over you will tell them everything they want to know. And
14 you will be able to answer all of their questions. They
15 just need to be patient and give you that respect.

16 If you please be back in your jury room at 9:30. We
17 will start back once everyone has reconvened and we will
18 get started first thing in the morning. So everyone
19 please remain seated, other than the members of the jury,
20 and we'll see you back here at 9:30 in the morning.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 4:39 p.m.)

23 THE COURT: All right. Anything we need to take up
24 before we adjourn for the evening?

25 MR. REDMOND: Nothing from the State, Your Honor.

1 MR. KNOX: Nothing from the Defense, Your Honor.

2 THE COURT: Okay. Y'all mentioned that you might
3 have some -- Mr. Knox, I've got your charge on
4 self-defense. If y'all have anything you want me to
5 consider either e-mail it to us or get it to me if you
6 would first thing in the morning.

7 MR. REDMOND: That will be fine.

8 THE COURT: All right. We'll then be in recess until
9 9:30.

10 MR. REDMOND: Thank you, Your Honor.

11 MR. KNOX: Thank you, Your Honor.

12 END OF TRANSCRIPT OF RECORD

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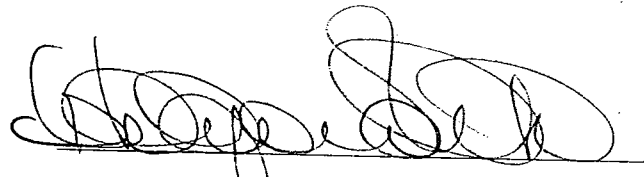
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 25th day of
October, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 10, 2012



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2011-GS-13-00096

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
NOAH MUMFORD)
DEFENDANT)

October 24-26, 2011
Chesterfield, South Carolina
VOLUME NO. 03 OF 03

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE; and a jury.

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STEVEN TEAL,

FRANK CRANFORD,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 THE COURT: Anything we need to take up before we
3 proceed, from the State?

4 MR. REDMOND: Nothing from the State, Your Honor.

5 THE COURT: Defense?

6 MR. KNOX: Nothing from the Defense.

7 THE COURT: All right. Please bring the jury out.

8 (WHEREUPON, the jury panel enters the courtroom at
9 9:50 a.m.)

10 THE COURT: All right. Welcome back, ladies and
11 gentlemen. As you will recall we were on Mr. Knox's
12 defense case yesterday when we broke for the afternoon,
13 and so we will resume at this time. Mr. Knox, I recognize
14 you for your next witness.

15 MR. KNOX: Thank you, Your Honor. May it please the
16 Court. The Defense calls Noah Mumford.

17 THE COURT: All right, Mr. Mumford. Come around and
18 be sworn.

19 NOAH MUMFORD, after being duly sworn, testified
20 as follows:

DIRECT EXAMINATION

21
22 BY MR. KNOX:

23 Q. Mr. Mumford, could you state your name for the
24 record, please?

25 A. Noah Calenzo Mumford.

1 Q. Where do you live, Mr. Mumford?

2 A. 320 Drucilla Church Road. Chesterfield, South
3 Carolina.

4 Q. Were you living there on December 23rd 2010?

5 A. Yes, I was.

6 Q. And how long have you been a resident of Chesterfield
7 County?

8 A. All my life.

9 Q. All your life. And who lives with you at that
10 address?

11 A. My daughter.

12 Q. And are you married?

13 A. No, I'm not.

14 Q. And how old is your daughter?

15 A. Twelve.

16 Q. And are you employed?

17 A. No, I'm not.

18 Q. Were you employed on December 26th?

19 A. Yes, sir.

20 Q. Sorry. December 23rd 2010?

21 A. Yes, I was.

22 Q. What type of employment did you have at that time?

23 A. E.O.C. Weatherization.

24 Q. You worked for E.O.C.?

25 A. Yes, sir.

1 Q. And is that some type of construction work?

2 A. Well, weatherize homes and make them energy
3 efficient.

4 Q. And how far did you go in school, Mr. Mumford?

5 A. I finished the 12th grade.

6 Q. Did you go to school here in Chesterfield County?

7 A. Yes, I did.

8 Q. What school did you graduate, Mr. Mumford?

9 A. Chesterfield High.

10 Q. And what year was that?

11 A. '98.

12 Q. And since that time have you had any other
13 employment?

14 A. Yes. I drove trucks, and I worked with the
15 Chesterfield County Board of Disables. I worked with them
16 until I went to Iraq. When I came home from Iraq I got in
17 the truck to make more money. I couldn't work both jobs
18 because they wanted me to work third shift of the
19 Chesterfield County Board of Disability. So I stopped.

20 Once I stopped there I drove trucks for four years
21 and then I started working with the Chesterfield
22 County/Marlboro County E.O.C.

23 Q. And what years were you in the military or are you
24 still in the military?

25 A. No. I served for seven years.

1 Q. And what years were they?

2 A. They were from '98 til '05 when I came back.

3 Q. And what was your rank upon discharge?

4 A. Spec Four.

5 Q. And what is a Spec Four?

6 A. Specialist.

7 Q. And Fourth Class?

8 A. Yes.

9 Q. What was your job in the military?

10 A. I was a mechanic.

11 Q. And what type of mechanic was that? Diesel mechanic?

12 A. Heavy duty mechanic. It was -- I had to serve on all
13 the vehicles; Humvie, five tons, hemies, tanks.

14 Q. And you served in Iraq?

15 A. Yes.

16 Q. And how many tours did you have in Iraq?

17 A. I had one tour.

18 Q. And were they? When was that tour?

19 A. That was '04 to '05.

20 Q. And were you honorably discharged from the military?

21 A. Yes, sir, I was.

22 Q. When were you discharged from the military?

23 A. When I came back my time was up a month after I left.

24 So when I came back I had to turn my stuff in. I was

25 done.

1 Q. That was in '05?

2 A. Yes.

3 Q. And since that time you've done mechanic work?

4 A. Yeah.

5 Q. And, now, on December 23rd 2010 were you at work that
6 day?

7 A. I was in my shop working that day, yes.

8 Q. What type of shop do you have?

9 A. I do minor brake jobs, minor tune ups, body work,
10 paint work.

11 Q. Where is that shop located?

12 A. At 320 Drucilla Church Road.

13 Q. Is that at your home?

14 A. Yes.

15 Q. And do you own that shop?

16 A. Yes, sir.

17 Q. Do you have any other employees that work there?

18 A. Steve helps me out a lot, him and Franklin. They're
19 not employees. If I got a job that I can't handle by
20 myself I call them in for help.

21 Q. Do you charge people for doing work on vehicles?

22 A. Yes, I do.

23 Q. Sp that's your income?

24 A. Yes, I do.

25 Q. And at the time you had the E.O.C. job?

1 A. Yes.

2 Q. Now, I'm drawing your attention to December 23rd of
3 2010. Tell me from the time you woke up until you arrived
4 at the place where this incident occurred?

5 A. Yes. That morning I received a phone call from Amos
6 and Todd asking if I wanted to race that day. I told them
7 didn't make me no different. I said, but I'm not going to
8 race in the highway late at night because it was just a
9 big gamble if your going to race on the highway late at
10 night. And I told them that I didn't want to take that
11 gamble.

12 So I told them don't worry about the race. We'll
13 look into it. We'll go to the track and run. So it went
14 on and on. They called me probably five or six times
15 during the day. I was working on a regulator. I was
16 working on a few other things, a Silverado truck, getting
17 it painted and stuff. I had like four or five more gigs
18 going on that day. An oil change came in that day, if I'm
19 not mistaken. Little stuff came in and out all day.

20 Q. And what time did you end your work for that day?

21 A. Well, I knocked off about 6:00, 6:30. I went to the
22 store to cash a check that Steve had got.

23 Q. Was anyone else with you while you work working that
24 day?

25 A. Yes, Steve and Frank. Steve Tillman and Frank

1 Cranford were with me.

2 Q. Those with the two gentlemen that testified
3 yesterday?

4 A. Yes.

5 Q. You said you left to go to the store. Who went to
6 the store with you?

7 A. Steve and Frank.

8 Q. What store did you go to, do you recall?

9 A. Yes, Grits and Grocery.

10 Q. What did you do while you were there?

11 A. Steve cashed his check and we left. I went in the
12 store. He cashed his check. We came back out, and he got
13 another phone call that said come down there. Come down
14 there.

15 Q. Who was that phone call from?

16 A. If I'm not mistaken it was Todd. I don't know if it
17 was Todd or Amos calling. It was either one of them
18 calling saying, "Come on down. We will get something
19 going, okay?" That's what we usually do.

20 Q. Now, you said you went to the store, and someone
21 cashed a check. Who did you say cashed a check?

22 A. Grits and Grocery.

23 Q. No, I said ---

24 A. Steve cashed a check.

25 Q. Steve cashed a check. Do you know what that check

- 1 was for?
- 2 A. Yes. It was from my mother and my stepfather.
- 3 Q. And they gave it to Steve?
- 4 A. Yes.
- 5 Q. And there is before you all went down to the ---
- 6 A. Yes, sir.
- 7 Q. --- place before the shooting?
- 8 A. Yes.
- 9 Q. Go ahead. Continue.
- 10 A. Hum?
- 11 Q. Go ahead and continue. Tell me about phone call.
- 12 A. Oh, okay. Well, they called and said, "Well, come on
- 13 down here, man. Come on down here." I said, "Man, you
- 14 ain't gone do nothing." I said, "Come on down here and
- 15 we'll do something, okay." So I went on down there.
- 16 Q. Okay. Who did you go with?
- 17 A. Steve and Frank rode with me down there.
- 18 Q. And did you carry anything with you?
- 19 A. Yeah, I had my money, my gun, my car, and myself.
- 20 Q. How much money did you have?
- 21 A. I had about \$5,000 in my pocket.
- 22 Q. How much?
- 23 A. About \$5,000.
- 24 Q. Why were you carrying \$5,000 around?
- 25 A. Cause I had borrowed the money to buy some land.

1 Q. And why didn't you leave it at home?

2 A. Because we want to place a bet, and when I wanted to
3 place a bet take that money and double it. I could buy
4 twice as much land.

5 Q. Now, place a bet, is this behavior that y'all had
6 done in the past?

7 A. Yes.

8 Q. How often would you say you've done that in the past?

9 A. Me and Todd, probably two, three times.

10 Q. And ---

11 A. But it is still other people that we have done that
12 with though.

13 Q. Now, are the amounts usually that high?

14 A. No. Usually it's a hundred dollars.

15 Q. Why did you think it was going to be \$5,000 that day?

16 A. Because they told me to make sure that you bring the
17 house payment and all when you come that way you can cover
18 what we got.

19 Q. I didn't quite understand that. Can you repeat that?

20 A. They said to bring your house notes and all that so
21 we can cover what we're going to have tonight.

22 Q. In other words they told you to bring big money?

23 A. Yeah.

24 Q. Did you inquire were they going to have big money?

25 A. Well, I figured all of them work. I figured they

1 could done up with what I could come up with.

2 Q. Now, you said you all did this in the past. Who have
3 you done this with in the past?

4 A. Todd and Amos, big Tony would usually be there, you
5 know.

6 Q. Have you ever entered into an arrangement, a betting
7 arrangement, like that with Mr. Funderburk?

8 A. No.

9 Q. Never in the past?

10 A. No.

11 Q. Now, did they tell you who all was going to be there?

12 A. No, they didn't.

13 Q. Who did you think was going to be there?

14 A. Todd and Amos.

15 Q. Okay. And so ---

16 A. And I figured that Big Tony would be there, but I
17 knew Todd and Amos was going to be there cause Amos
18 usually rides Todd's bike. I knew the two of them were
19 going to be there.

20 Q. Did you anticipate or expect that Mr. Funderburk was
21 going to be there?

22 A. No, I didn't.

23 Q. So you, Steve and Frank left together?

24 A. Yes, we did.

25 Q. And about what time did y'all arrive there?

1 A. Probably around about -- somewhere around 7:00, 7:30.
2 I don't know exactly.

3 Q. And what happened once you got there?

4 A. We got in the car and I started talking to the guys
5 about going to the race. And I told them, I say, "Well,
6 why all of a sudden y'all want to get this much money."
7 They said, "We just want to bet. I say, "Well, okay,
8 we'll do that. Bet what y'all want to bet. It's a
9 gamble. If y'all want to gamble let's gamble."

10 Q. And at any time show you show your hand, show your
11 money or anything like that?

12 A. Yeah, when they told me that I said, "I got this
13 right here to bet."

14 Q. And did anyone else show any money?

15 A. No, they did not.

16 Q. You were the only one that showed any money.

17 A. I was the only one that showed any money.

18 Q. And when you arrived there was Mr. Funderburk there?

19 A. Yeah, he was sitting in his truck.

20 Q. He was sitting in his truck?

21 A. Yeah.

22 Q. And could you see him from where you were?

23 A. Yeah.

24 Q. And at any time did he get out of his truck?

25 A. Yes, he did.

1 Q. And how long after you arrived did he get out of his
2 truck?

3 A. Probably five minutes. Maybe not five minutes.

4 Q. And did y'all exchange pleasantries or anything?

5 A. Well, he got out. He, when he get out, he talk junk
6 to me. I talk junk back to him. Nobody take offense.

7 Q. And how was the conversation? Would you say it was
8 cordial?

9 A. He got out that night and he said, "How much money
10 you got." And I said, "Well, I got \$5,000." I said, "I
11 brought it here to gamble with it." I said, "I can't do
12 nothing but spend it. I'll gamble with it." He said,
13 "Well, you ain't got \$5,000." I said, "You bet your
14 money." And that's when proceeded with the name calling
15 started coming.

16 Q. Now, yesterday the language was quite vulgar, and I
17 don't want you to sanitize anything because I think it's
18 important for the jury to hear your version of it?

19 A. Yeah.

20 Q. What was the language like?

21 A. Well, it was very vulgar. You know, I mean it was a
22 lot of stuff said that I didn't like; that he didn't like.

23 Q. Okay. And this was mainly said between you and him?

24 A. Meanly between him and he. Me and Todd, we said a
25 few things to each but that's part of the racing. That's

1 part of that environment. You've got to be able to talk a
2 little junk to take a little junk.

3 Q. At that time did you have your pistol with you?

4 A. Yeah.

5 Q. Where was your pistol?

6 A. Packed in my side.

7 Q. In your side?

8 A. Yes, sir.

9 Q. Was it exposed or was it concealed?

10 A. It was concealed.

11 Q. And that pistol, was this the same pistol as the
12 State evidence is?

13 A. Yes, sir.

14 Q. And you had this in your side?

15 A. Yes, sir.

16 Q. And do you own that pistol?

17 A. Yes, sir, I do.

18 Q. How long have you owned it?

19 A. Probably -- let's see. Probably four years.

20 Q. How many years?

21 A. Probably about four years. Three or four years.
22 Something like that.

23 Q. And did you legally purchase that pistol?

24 A. Yes.

25 Q. You have papers for that pistol?

1 A. Yes, I do.

2 Q. And have you ever had any training in the use of that
3 pistol?

4 A. Yes.

5 Q. Where did you take that training at?

6 A. Me and Mr. Lear, the Chief here.

7 Q. That used to be the Chief here in Chesterfield?

8 A. Yeah, yeah. Me and him, we played a lot with the
9 pistol and stuff just to ---

10 Q. Mr. Lear, does he give concealed weapons classes; is
11 that correct?

12 A. Yes, sir.

13 Q. Did you take a class with Mr. Lear?

14 A. I did, but I didn't send my money to S.L.E.D. to get
15 my license. I ran out of money. I didn't have the money
16 to do it.

17 Q. But he did give you that course?

18 A. Yes, sir.

19 Q. Did you successfully complete that course.

20 A. Yes. Yes.

21 Q. Now, finish telling me about the conversation between
22 you and Mr. Funderburk?

23 A. He said a lot of things to me that I didn't like.

24 And I said a lot of things to him that I knew he didn't
25 like. But if you're talking junk it ain't the purpose of

1 a man to say something to you and you don't say something
2 back. Okay. We went on and on. He said, "Well, I tell
3 you what. When I get through drinking this beer I'm going
4 to hit you in your head." I looked at Todd and I said,
5 "I'm getting ready to go. This guy is acting crazy."

6 Q. Say that part again?

7 A. He told me that when he get through drinking the last
8 few sips out of that bottle he was going to hit me upside
9 my head.

10 Q. Okay. Now, was it a bottle like this?

11 A. Yeah.

12 Q. And he was drinking it?

13 A. Yeah.

14 Q. While he was talking to you?

15 A. Yeah.

16 Q. While he was sitting in the truck was he drinking
17 that beer?

18 A. Yes.

19 Q. And when he approached you and the conversation
20 started he was still drinking that beer?

21 A. Yes.

22 Q. And is it your testimony that he told you that when
23 he was done with that beer he was going to hit you in your
24 head?

25 A. He was going to hit me with that bottle.

1 Q. And what did you take that to mean?

2 A. I took that as a threat. I was getting ready to
3 leave, but Todd said, "I got a guy on the phone. He
4 wasn't going to let Amos drive. He said, "I got a ride on
5 the phone." He said, "Hold on a minute. Hold on a
6 minute." And when I turned to look at Todd he said, "Hold
7 on. Hold on." About that time Mr. Funderburk come out
8 with that bottle and hit me with that bottle.

9 Q. He hit you with that bottle?

10 A. Yes.

11 Q. About how far away from you was Mr. Funderburk when
12 he hit you with that bottle?

13 A. He was right on me when he hit me with that bottle.

14 Q. Was there anyone between you?

15 A. Well, it happened so quick. Big Tony was right
16 there. Like he wasn't in front of me, but he was at an
17 angle where Mr. Funderburk could come around him with the
18 bottle.

19 Q. So without any reason that you can think of he just
20 hit you with the bottle?

21 A. Yes, sir.

22 Q. And can you stand up and show the jury how he hit you
23 with the bottle.

24 A. He said ...

25 Q. Did he throw the bottle or swing the bottle?

1 A. No, he swung the bottle.

2 Q. And where did the bottle land on your body?

3 A. It was kind of toward my head, and I did like this
4 and when I went down that's when I came out with the
5 pistol.

6 Q. You did that. Like you said you brought your pistol
7 out?

8 A. Yes.

9 Q. At the same time that you were struck with that
10 bottle?

11 A. Yes.

12 Q. What did you do with the pistol?

13 A. What did I do with the pistol?

14 Q. Um hum.

15 A. It fired it at that ground:

16 Q. And do you remember how many shots you fired at the
17 ground?

18 A. I fired two shots in the ground, first. He turned,
19 ran back, then he turned around and came back to me. So
20 I'm like, what's wrong with this guy. He's not going to
21 stop.

22 Q. So continue?

23 A. I didn't intend on nobody getting hurt. I didn't
24 intent on me getting hurt, especially. But I got a
25 previous head injury. I can't let myself be laying up in

1 a coma or something and got kids around here to be raised.

2 Q. Now, at any time did y'all embrace?

3 A. Well, when he came on me, whenever he did this and I
4 went down, he tried to like punch me and hit me with the
5 bottle. But I had my arm in front of my face. At that
6 time I was coming out. It happened so quick. I mean it
7 was like three seconds or less than three seconds all this
8 happened.

9 Q. So after you fired did you -- did that repel his
10 attack?

11 A. No, like I said he turned and ran about from here to
12 the podium right there. And he turned around and came
13 back at me again.

14 Q. And what happened when he came back at you again?

15 A. Well, I said, "I've got to stop him." So I shot down
16 again and I guess the bullet ricocheted and hit him. I
17 didn't intend on shooting him.

18 Q. You just wanted him to stop?

19 A. I just wanted him to stop and not hurt me. It was
20 Christmas time. He got kids, and I got kids. We don't
21 need no trouble.

22 Q. Now, how much people were there that night?

23 A. It was me, Big Tony, Amos, Todd, Steve, Frank and Big
24 Corey. I think seven.

25 Q. About seven people were there?

1 A. Yes.

2 Q. And what happened after the shooting?

3 A. I got in my car and left because I saw -- I felt like
4 he was going to his truck to get his gun. So I left.

5 Q. And where did you go when you left?

6 A. I came back to my house.

7 Q. While this was going on did anybody try to stop you
8 guys?

9 A. No. No one tried to stop him from hitting me. No
10 one tried to stop me from shooting him.

11 Q. So the five other people who were there?

12 A. Yes.

13 Q. And most of them, some of the ones testified
14 yesterday, big guy?

15 A. Yes.

16 Q. Bigger than you.

17 A. Yes.

18 Q. And no one tried to stop anybody?

19 A. No.

20 Q. Were the police called?

21 A. No. Not as I know of. Not from the scene.

22 Q. You don't know whether or not the police came to the
23 scene?

24 A. No, I don't.

25 Q. When you went home what did you do?

- 1 A. I went home and put my -- I had my race car out the
2 shop and I had the motorcycle out the shop. I put them
3 all back in the shop and got the shop closed up.
- 4 Q. And did anyone go back home with you?
- 5 A. Yes, Steve and Frank went home with me.
- 6 Q. And what happened after you closed your shop down?
- 7 A. About that time Officer Scott called me, and said,
8 "Well, look, I need to meet you." He said, "What happened
9 with you and Paul." He said, "Well, never mind, just come
10 up to the Investigator's Office and meet me and bring the
11 gun." I said, "Okay. I ain't got no problem with that."
- 12 Q. He did not tell you what you had to bring the gun
13 for?
- 14 A. Well, he asked me what went on, and I said, "I shot
15 Little Paul," so I knew that's what I had to bring the gun
16 for.
- 17 Q. And that was the same gun you had earlier that
18 evening?
- 19 A. Yes.
- 20 Q. And law enforcement called you?
- 21 A. Yes.
- 22 Q. At your house?
- 23 A. Yes.
- 24 Q. On your cell phone or your house phone?
- 25 A. On my cell phone.

1 Q. Your cell phone. And you cooperated fully with law
2 enforcement?

3 A. Yes, I did.

4 Q. Where did you meet Daniel Scott at?

5 A. At the Sheriff's Office.

6 Q. Sheriff's Office. And that's where you were
7 interviewed?

8 A. Yes, sir.

9 Q. And you had the pistol with you?

10 A. Yes, sir.

11 Q. And you had the -- all this with you. Was that in
12 the gun?

13 A. Yes, it was.

14 Q. This magazine; and was the bullets still in the
15 magazine?

16 A. Yes.

17 Q. And he advised you of your rights and all of that
18 that we saw in the videotape yesterday? And you begin to
19 tell what happened?

20 A. Yes, I did.

21 Q. Also on that tape you said that you did not intend to
22 shoot Paul?

23 A. No, I didn't.

24 Q. What did you say?

25 A. I just wanted to stop him.

1 Q. And I think on that videotape you said you would
2 apologize or had you already apologized?

3 A. I apologized to Todd Harrell.

4 Q. You apologize to Todd Harrell?

5 A. Because I was in his place when all that happened.

6 Q. You apologized to Todd?

7 A. Yes.

8 Q. Now, other than Deputy Scott calling you, no other
9 law enforcement knew about this as far as you know?

10 A. As far as I knew. No.

11 Q. Now, in that interview nothing was mentioned about
12 the guys who were with you.

13 A. Uh hum.

14 Q. At any time since ten months ago had anybody ever
15 asked you your side of it?

16 A. No.

17 Q. No one from Solicitor's Office?

18 A. No.

19 Q. No one from the Sheriff's Office?

20 A. No.

21 MR. REDMOND: Your Honor, I would object, actually,
22 on the grounds that he asked the Solicitor's Office, I
23 think Mr. Knox, unless there is some foundation he intends
24 upon laying, but there is certain legal issues that would
25 prohibit the Solicitor's Office from contacting his

1 client.

2 THE COURT: Sustained.

3 BY MR. KNOX:

4 Q. No one from law enforcement contacted you?

5 A. Sir?

6 Q. No one from law enforcement ---

7 MR. REDMOND: Your Honor, the same objections applies
8 to law enforcement.

9 THE COURT: Sustained. Once a person is charged with
10 a crime they have to go through counsel. They can't
11 approach the defendant himself. So, sustained.

12 BY MR. KNOX:

13 Q. Okay. Now, in that interview you said that you
14 blanked out?

15 A. Yes.

16 Q. Can your explain what you mean by that?

17 A. I mean when you get hit it's likely that you're going
18 to lose vision.

19 Q. And about how long did you blank out?

20 A. I didn't stay -- you know I didn't -- when I say,
21 'blanked' I was like dazed.

22 Q. You were dazed more or less?

23 A. Yes.

24 Q. And at any time did you lose consciousness?

25 A. No.

1 Q. And as far as you know did anyone else make any
2 threats towards you that night?

3 A. Oh, well, they told me they couldn't let me out
4 because there were a lot of threats being made.

5 Q. Beg your pardon?

6 A. Whenever they came ---

7 MR. REDMOND: Your Honor, I object to they has.
8 That's hearsay unless he has some ...

9 MR. KNOX: I'm going to clean it up.

10 MR. REDMOND: Okay.

11 THE COURT: Sustained as to hearsay.

12 BY MR. KNOX:

13 Q. Were there any threats, other threats, made to you
14 that night?

15 A. No.

16 Q. So, okay. The only threats that were made was by Mr.
17 Funderburk?

18 A. Yes.

19 Q. Now, yesterday everyone made a big deal about this
20 bottle not breaking? Were you in fact hit over the head
21 with this bottle?

22 A. No, I didn't get hit in the head cause I know that I
23 can't take a lick to my head.

24 Q. But you were hit with this bottle.

25 A. Yes. I had a jacket on so that might be why it

1 didn't break. But I can't say why it didn't break. I
2 don't know how fast he swung the bottle.

3 Q. The fact remains you were hit with this bottle?

4 A. Yes, I was hit with that bottle.

5 Q. And you remember being hit by Mr. Paul Funderburk?

6 A. Yes, I was.

7 Q. And you're not trying to hide the fact that you shot

8 ---

9 A. No, I'm not.

10 Q. --- Mr. Funderburk?

11 A. I'm not?

12 Q. Why did you shoot him?

13 A. To protect myself. I was in fear for my life.

14 Q. Could you have repelled that attack in any other way?

15 A. I could have killed him.

16 Q. No. I said could you have repelled his attack?

17 A. No, I couldn't. I had no way to repel him. He is
18 200 something pounds and I'm 170.

19 Q. Have you ever been to Mr. Harrell's house before?

20 A. Yes.

21 Q. Had anything like that ever happened before at Mr.
22 Harrell's house before?

23 A. No, it hasn't.

24 Q. How far away was your car when you were attacked by
25 Mr. Funderburk?

- 1 A. Probably from here to the people out in the audience.
- 2 Q. And did anybody come to your aid?
- 3 A. No.
- 4 Q. Did you fall to the ground?
- 5 A. Well, whenever he hit me, yeah, I went down. I
- 6 didn't completely fall, but I went down.
- 7 Q. Now, after the shooting did you have any conversation
- 8 with Mr. Funderburk? Nothing was said to Mr. Funderburk?
- 9 A. No.
- 10 Q. Did you go to where he was?
- 11 A. I walked to my car. I walked right by him.
- 12 Q. Okay. You had to walk past him to get to your
- 13 vehicle?
- 14 A. Yes, sir.
- 15 Q. While you walked past him did you say anything to
- 16 him?
- 17 A. I said, "I ain't want to hurt you, but I could have
- 18 killed you."
- 19 Q. Okay. You said that you didn't want to hurt him but
- 20 you could have killed him?
- 21 A. Yes, sir.
- 22 Q. And did he make any response to that?
- 23 A. He said, "Man, I'm hit. I'm hit." That's when I
- 24 told him that I didn't want to hurt him, but I could have
- 25 killed him.

1 Q. After that you left?

2 A. Yes.

3 Q. And while at the Sheriff's Department they did a
4 residue test on you?

5 A. Yes.

6 Q. And these are the bullets that came out of your
7 pistol?

8 A. Yes. Looks like it.

9 Q. And these are the shell casings that where found?

10 A. Looks like it.

11 Q. Now, you came to Mr. Harrell's house with a pistol on
12 you?

13 A. Yes.

14 Q. \$5,000 on you?

15 A. Yes.

16 Q. And two other people?

17 A. Yes.

18 Q. Did you have any ill intent when you came there?

19 A. No, I didn't.

20 Q. You just wanted to place a bet?

21 A. I wanted to place a bet and go home.

22 Q. And that's all?

23 A. Because I was supposed to be going Christmas shopping
24 and to pick up a few things at Wal-Mart with my girlfriend
25 at the time.

1 Q. That's all you wanted?

2 A. That's all I wanted to do.

3 Q. Thank you. Answer any questions the Solicitor has.

4 MR. REDMOND: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. REDMOND:

7 Q. Where did you get that \$5,000 from?

8 A. The bank.

9 Q. The bank. Now, you took \$5,000 there, but from what
10 you said in your direct examination you were the only one
11 to bring out any money, right? You were the only one to
12 mention any money, right?

13 A. No, I wasn't the only one mention it.

14 Q. But you're the only one to mention \$5,000 or any
15 amount of money?

16 A. When he asked me how much money I had I told him.

17 Q. But they didn't say, "Bring \$5,000." You took it
18 upon yourself to bring the \$5,000 out there, right?

19 A. Yeah.

20 Q. And, of course, once you got there you were the only
21 one to show any money, too, right?

22 A. Yeah.

23 Q. All right. And but, yet, at that time you bought the
24 gun. Do you normally carry that gun around with you?

25 A. Yes, I did.

1 Q. But here is the curious thing to me. Among many
2 curious things. but you said you took the class with Chief
3 Lear but yet you never sent the money in to get your
4 certification?

5 A. Yes.

6 Q. So, basically, you were not licensed to carry
7 concealed weapon. You could have owned it and carried it
8 in your car. But because you had not paid that money you
9 were not supposed to have that weapon on you?

10 MR. KNOX: Objection, Your Honor.

11 MR. REDMOND: On what grounds?

12 MR. KNOX: On the grounds that you're saying that he
13 was not licensed to carry.

14 MR. REDMOND: He testified to that. He said he
15 didn't?

16 THE COURT: Hold on. Talk one at the time, and talk
17 to the Court. Don't talk to each other.

18 MR. REDMOND: I'm sorry, Your Honor. Your Honor, he
19 testified in direct that he didn't say that he
20 volunteered. He did not send that money into Columbia in
21 order to get his license. That -- I hadn't even thought
22 about that until my mentioned it in direct.

23 MR. KNOX: Correct, but that doesn't prohibit him
24 from carrying a weapon.

25 MR. REDMOND: Your Honor ---

1 MR. KNOX: He wasn't charged with not carrying a
2 weapon.

3 MR. REDMOND: We're stipulating that he wasn't
4 charged.

5 THE COURT: All right. Y'all are two good lawyers
6 than to be chatting with each other. Direct your comments
7 to the Court.

8 MR. REDMOND: Yes, sir. Your Honor, if I may, and
9 again, this is something they volunteered and he was the
10 one that volunteered that he had never sent his license
11 in.

12 THE COURT: You can ask him.

13 MR. REDMOND: For his license.

14 THE COURT: You can ask him if he knows.

15 MR. REDMOND: I will. I can rephrase the question in
16 such a way.

17 BY MR. REDMOND:

18 Q. Why would you need to send your money? You mentioned
19 a license. Why would you need to send your money in to
20 process it with S.L.E.D?

21 A. Why would I need to send the money?

22 Q. Um hum. What would you need to send the money in
23 for?

24 A. To process it with S.L.E.D.

25 Q. To process -- you took the concealed weapon class,

1 right?

2 A. Yes.

3 Q. After you take the class do you have to send the fees
4 in in order to be able to get your permit to carry a
5 concealed weapon, right?

6 A. Yes.

7 Q. You did not have the permit to carry a concealed
8 weapon?

9 A. No, I did not.

10 Q. Yes, you were carrying a concealed weapon anyway,
11 right?

12 A. Yes.

13 Q. Okay. Fair enough. And now let me ask you this.
14 You also talked about the fact that, and this is curious
15 as well, talked about the fact that you, I think you
16 demonstrated that your had to block the bottle with your
17 arm, right? And that he was supposedly coming at you
18 again with the bottle and you reached down and shot him.
19 I think that was your testimony, right?

20 Obviously, you hadn't looked at your own taped
21 statement because in the statement do you not recall
22 pointing at the shoulder and telling Daniel Scott that you
23 were hit in the shoulder?

24 A. I was hit in the shoulder, but ---

25 Q. But that's not what you said on direct. You

1 demonstrated very clearly for this jury what you said
2 happened, but you didn't say that on the tape less than an
3 hour after this happened, did you? You didn't say that,
4 did you?

5 A. I don't know what I said.

6 Q. Cause you hadn't even looked at what you said an hour
7 after the incident. Thankfully the ladies and gentlemen
8 will have a copy of that tape for their own consideration.
9 Let's talk about that tape a little bit more, Mr. Mumford.
10 You also mentioned here that -- I think you said that you
11 blanked out, and when Mr. Knox was asking you about
12 blanking out you said, well, you were dazed and what not.

13 But also on the tape you obviously didn't review
14 before testifying that you gave to Corporal Scott, didn't
15 you talk about on that tape the fact that you had been
16 blanking out, and you even went so far as to say that,
17 "Well, I need to get help because I blank out. I blanked
18 out after it happened." Did you not tell him that on the
19 tape? Your lawyer can't help you. I'm asking you the
20 questions?

21 A. If I said it on the tape, I said it.

22 Q. So you said that, right?

23 A. If I said that, I said it.

24 Q. All right. So I guess you've been going around
25 getting hit a lot lately before that?

1 A. I'm not going to get hit.

2 Q. No. Actually, that's why you've got that gun.

3 You're going to make sure you don't get hit because you
4 carry that gun around with you even though you're not
5 licensed to carry it, right? I mean, let's be honest,
6 right?

7 A. I carry the gun when I have that much money on me.
8 Yes, I do.

9 Q. When you voluntarily bring in much money, right? I
10 mean you voluntarily went there. You voluntarily ---

11 A. They said bring everything you could bring -- this
12 bet was.

13 Q. But nobody said bring \$5,000. But enough of that,
14 and you said that you needed to get help, on the video,
15 because you supposedly blacked out?

16 A. I'm receiving help.

17 Q. I'm sorry?

18 A. I am receiving help.

19 Q. Okay, but that ain't what you told your lawyer. You
20 said because you were dazed and what not. You said here
21 today in front of this jury, but that is not what you said
22 on the tape that you obviously did not review before
23 testifying, but let's move on.

24 Speaking of the tape, and you testified today that
25 you didn't mean to hit him, it was not your intent to hit

1 him but on the tape there are a couple of things that are
2 interesting. You said that you were so mad that you
3 didn't know where you hit him. At that time, after you
4 got hit in the shoulder supposedly with the bottle, you
5 were so mad that you didn't know where you hit him?
6 That's what you said on the tape. You recall that?

7 A. Yeah.

8 Q. But you didn't testify to that here today. You
9 testified a little different today now didn't you? Yeah.
10 Let's just be honest. You did. Fair enough. Now, some
11 more curiosities that I have. You said that afterwards
12 you -- I think you said that you ment to get him. As a
13 matter of fact you do say this about 8:26 on the tape.
14 You said that you meant to get him because of him swinging
15 at you with that bottle. You recall saying that on the
16 tape?

17 A. No, I don't.

18 Q. Well, it's on the tape. So if you don't recall
19 obviously you hadn't reviewed the tape, but trust me.
20 It's there. The bottom line is you were angry. You said
21 it continuously. You were angry about what was going on
22 there. You also talked about the fact that trash talking
23 is normal in that environment. There is trash talking.
24 There is foul language, and all of that stuff. That's
25 normal in the environment I gues when y'all are talking

1 about racing, right?

2 A. But it's not normal to hit somebody.

3 Q. Well, you think it's normal to shoot anybody either
4 four times? Oh, then you were shooting at the ground.

5 Let's talk about that for real quick. You were shooting
6 at the ground. You, as your lawyer said in opening
7 statement, and expert marksman.

8 A. Yes.

9 Q. You served in the military, and I think you've been
10 in battle zones before?

11 A. Yes.

12 Q. And we appreciate your service. Don't get me wrong.
13 That doesn't mean it's okay to come back here and shoot
14 somebody. Let me get to where I'm going. You've been in
15 war zones with land mines, under fire, all of that,
16 haven't you?

17 A. Yes.

18 Q. But yet this bottle, this unbroken bottle that you on
19 the tape said hit you in the shoulder, was enough to put
20 you in such fear that you had to shoot a man four times?

21 A. If the man didn't stop, yes.

22 Q. Well, according to you you were mad. This is what
23 you said on the tape; anger. You talk about the fact that
24 you were mad. Didn't you say that several times on the
25 tape, and in fact you said that you again meant to get

1 him. You told him after you were shooting him you meant
2 to get him. I'm using your words. You meant to get him
3 because of what he did with the bottle; is that correct?
4 That's really what happened, isn't it? In other words you
5 were mad? You were angry?

6 A. If I meant to get him I could have got him in the
7 chest.

8 Q. Yeah, but you got him in the leg four times. I mean
9 you're an expert marksman. I'm not believing that. I
10 don't think this jury is believing that story that the
11 bullet happened the ricochet off the ground like you just
12 told your lawyer. Yet you an expert marksman. You know
13 better than that. I know better than that, don't we?

14 A. I don't know better than that.

15 Q. I thought so. In other words, you just don't know
16 better than because it's what we call self-serving.
17 And you can't afford at this point to know better than
18 that in front of this jury?

19 MR. KNOX: Your Honor, I'm going to object about it's
20 starting to get argumentative. He's testifying for my
21 client. He can't testify. I can't take it no more.

22 MR. REDMOND: I understand, Your Honor. I'll move
23 on.

24 THE COURT: Sustained.

25 BY MR. REDMOND:

1 Q. Bottom line is this. Also on that tape do you not
2 also recall saying to Investigator Scott that your actions
3 were not completely right? You make that comment on the
4 statement that you -- on the tape that you understand that
5 your actions were not completely right? Do you recall
6 telling him that on the tape that you obviously did not
7 review?

8 A. I recall saying to him that it was not right for him
9 to hit me with the bottle.

10 Q. But you didn't recall saying that you actually
11 acknowledge the fact that you didn't act completely right
12 either? You don't remember saying that?

13 A. That's just what I said.

14 Q. Okay, go ahead. Could you repeat what you said
15 again?

16 A. I said it wasn't right for him to hit me with that
17 bottle, and it wasn't right for me to shoot him to make
18 him stop. We were supposed to be friends.

19 Q. Are you stating that it wasn't right for you to shoot
20 him?

21 A. It wasn't right to get hit with the bottle. The
22 bottle is the reason why all this occurred.

23 Q. What did you just say, cause I'm having trouble
24 understanding you, did you just say after that it wasn't
25 right for you to shoot him?

1 A. I said it wasn't right for him to hit me with the
2 bottle. So it wasn't right for me to shoot him. We were
3 friends. We had talked junk many times before, but all of
4 a sudden you want to hit me with something.

5 Q. Okay, and again, and I'm still confused about what
6 you're saying, but would it be fair to say that both of
7 your acted improperly?

8 A. I would agree with that.

9 Q. So both of you -- so we can agree that both of you
10 acted improperly that night?

11 A. I can agree with that. I can accept that.

12 MR. REDMOND: Beg the Court's indulgence. That would
13 be all the questions I have at this time. Your Honor.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. KNOX:

17 Q. Mr. Mumford, whether or not you had a permit to carry
18 that weapon you've had this weapon for how long?

19 A. About three years.

20 Q. Three years. Do you always carry that weapon?

21 A. Yes, sir.

22 Q. You did take a course?

23 A. Yes, sir.

24 Q. You completed that course?

25 A. Yes, I did.

1 Q. And did you send your money -- did you send your
2 paperwork to S.L.E.D.?

3 A. I haven't, but at that time I got the paperwork mixed
4 up.

5 Q. So they didn't process it because of the payment ---

6 A. Yeah.

7 Q. --- didn't come with it?

8 A. Yes.

9 Q. Now, the fact remains that Mr. Funderburk did hit
10 you?

11 A. Yes.

12 Q. With this bottle?

13 A. Yes.

14 Q. You did not shoot him before he hit you with that
15 bottle?

16 A. No, I didn't.

17 Q. After that you did?

18 A. After I got hit.

19 Q. Everything you did after you were hit?

20 A. Yeah.

21 Q. And as you just told the Solicitor and had he not hit
22 you ---

23 A. Never would have happened.

24 Q. --- there would never have been a shooting?

25 A. Yes.

1 Q. Thus, we probably wouldn't be here?

2 A. Yes.

3 Q. Thank you?

4 MR. KNOX: No further questions.

5 MR. REDMOND: Briefly.

6 RECROSS-EXAMINATION

7 BY MR. REDMOND:

8 Q. You were trash talking, too, right? You said things
9 to him as well?

10 A. Yes.

11 Q. Okay. So can we go a little further back and say had
12 it not been for the trash talking the bottle wouldn't have
13 been thrown? That would be a fair statement?

14 A. That would be a fair statement.

15 MR. REDMOND: Nothing further, Your Honor.

16 THE COURT: All right. Thank you, sir. You may step
17 down. All right.

18 COLLOQUY

19 MR. KNOX: Your Honor, Defense rests, Your Honor.

20 THE COURT: All right, ladies and gentlemen, the
21 Defense has rested their case, and so we're going to take
22 a short break while I take up matters of law at the close
23 of all the evidence. That's the close of the evidence,
24 but you're still not quite there yet. We need to discuss
25 the case so, please, do not have any discussion about the

1 case. Get you to step back in the jury room while I take
2 up these matters of law, and I'll bring you back out and
3 we can get started back, okay.

4 (WHEREUPON, the jury panel was excused from the
5 courtroom at 10:31 a.m.)

6 MR. REDMOND: Your Honor, we actually may have reply
7 if I can have just three minutes?

8 THE COURT: All right.

9 MR. REDMOND: I need to discuss something. I need to
10 discuss something with Mr. Funderburk and with Mr. Knox
11 real quick.

12 THE COURT: That's fine. Go ahead, and I'll be
13 taking care of this. I'm going to get a copy of the
14 charge printed out and give it to y'all so y'all can look
15 at it, okay.

16 MR. KNOX: Your Honor, may I make my Stag Motion.

17 THE COURT: Let's wait and see what he's got before
18 we go there.

19 MR. REDMOND: Your Honor, yesterday I had --
20 Mr. Funderburk actually called me on the way home. I
21 thought about it, and there were never any pictures
22 actually taken as it relates to things, and based on the
23 Defense testimony about it being a frontal shot, and I'll
24 tell the Court in the candor I was not able to get the
25 doctor. But we did have pictures taken of the wounds, and

1 I do think that's relate. That's why I wanted to take a
2 second to show Mr. Knox. I can tell the Court that those
3 pictures were just taken at the end of Court yesterday.

4 Was not sure even then if I was going to use them.
5 Depends on what the defendant testified to. Well, we
6 heard the defendant testimony. And at this point I think
7 it is relevant, and for that particular reason and
8 Mr. Knox has indicated that he would have objection to the
9 photos coming in, but I'll let him address that. I can
10 tell the Court that we think it is relevant based on the
11 assertions of the Defense witnesses.

12 THE COURT: Well, what are those photographs show?

13 MR. REDMOND: They show -- they basically show the
14 wounds. They show the entrance and exit wounds on some.
15 Only entrance wounds on some, and that's to contradict or
16 to reply to the testimony of the Defense witness that
17 keeps -- that have claimed as he was coming forward that
18 he was shot. Where on the way were shot from the frontal
19 position as opposed to from behind.

20 And we do think with recalling Mr. Funderburk, he was
21 the one that was shot. He was obviously authenticate what
22 these pictures show. We would respectfully request that
23 these pictures, and I can present them to the Court. I
24 have not marked them. I just got them a little while ago.
25 I can show the Court and then I can mark them at the

1 appropriate time, but I would like to put that up in
2 reply, briefly.

3 SPEAKER 1: And while Your Honor is looking I can
4 tell the Court that I think it's proper procedure for
5 reply with the State's witnesses we had statements -- we
6 didn't have statements from the Defense witnesses or the
7 defendant. I can tell the Court the defendant's
8 testimony, based on reviewing the tape, did not indicate
9 the things he testified to today.

10 Also the fact that the Defense witnesses only
11 testified yesterday. We didn't have their statements. So
12 we just became aware of what they were going to testify
13 to. And with that, Your Honor, we think it is proper for
14 reply based strictly on what the Defense put forth in
15 their case.

16 THE COURT: All right.

17 MR. REDMOND: Thank you, Your Honor.

18 THE COURT: Mr. Knox.

19 MR. KNOX: Thank you, Your Honor. On March 10th
20 2011, I presented a motion for discovery to the
21 Solicitor's Office.

22 THE COURT: Now, he's already said that these
23 pictures were taken yesterday.

24 MR. REDMOND: These were taken yesterday.

25 MR. KNOX: And my certain is that I've just been

1 given a copy of those photographers. I could not
2 determine what type of wounds they are. Exit wounds,
3 entry wounds because I haven't had my expert to look at
4 them, and I think the Defense deserve ---

5 THE COURT: Well, here's the thing, and I don't know
6 what you intend to do with these photos other than to show
7 the jury, but I don't know how you're going to present
8 them as this is the entrance wound versus this is an exit
9 wound.

10 MR. REDMOND: Well, Your Honor, quite frankly, if I'm
11 the person getting shot, and again, there are certain
12 issues. We're talking about admissibility. I understand
13 what he's able to argue, but for the purposes or
14 admissibility I think it's admissible. If I'm the one
15 getting shot to testify, yes, there is where I got hit.
16 This is how -- this is where it came out. So I think with
17 it being -- I think it would be different if I was calling
18 one of the investigators or somebody else. That is why
19 I'm specifically calling Mr. Funderburk considering he was
20 the one who got shot.

21 Again, we're talking about admissibility. Obviously,
22 Mr. Knox has ample opportunity to argue as he will on that
23 particular point. Strictly for the purpose of
24 admissibility we think that it is proper to be able to do
25 that, Your Honor.

1 MR. KNOX: Your Honor, as I recall Mr. Funderburk's
2 testimony he was asked by the Solicitor, "Where were you
3 shot?" He told him, all of my wounds an even -- he even
4 said exit and entry wounds. He explained that to the
5 jury. If they wanted the jury to see that they could have
6 told him to raise his pants leg and he could have pointed
7 it out to the jury.

8 Now, I think that would be better than some photos
9 that were just taken yesterday by a member of his staff.
10 I think if you want the jury to see it just have him raise
11 his pants up and see the wounds. Just don't get into
12 whether they are entrance or exit wounds. Turn his leg
13 around. You can show the back of his leg, and then he can
14 show the front of his leg.

15 MR. REDMOND: I might not be opposed to that,
16 actually. The only thing. There is one that's in a
17 pretty sensitive area. That's the only -- and even in the
18 pictures we didn't show -- I probably should have shown
19 it, but the pictures do not show the entrance in the
20 buttock, but it does show the exit. But the underwear is
21 concealing it so it's not too graphic.

22 THE COURT: Here's the problem that you're going to
23 have. Is, and again, I don't disagree with you that
24 Mr. Funderburk is capable of testifying where he got shot,
25 but to have him either use these photographs or using

1 himself to say, "This is an entrance wound. This is an
2 exit wound," I don't know tat he's got the -- I don't know
3 that he's qualified.

4 MR. REDMOND: And, again, I would agree if it were
5 anybody other than the victim himself, the person that is
6 getting shot. If it was anybody else I totally, obviously
7 agree with the Court on that, and I think therein lies the
8 distinction. The fact that it is the victim himself that
9 is being shot. Obviously, the victim can testify as to
10 the nature of his injuries cause they were the ones that
11 suffered.

12 THE COURT: Sure. I agree with that.

13 MR. REDMOND: And I think that ---

14 THE COURT: But he had that opportunity when you had
15 him up here.

16 MR. REDMOND: He did, I think while he was on the
17 stand, and he did talk about where the wounds were and
18 where he was shot.

19 MR. KNOX: Can we bring the transcript out?

20 MR. REDMOND: Oh, no, we don't disagree.

21 THE COURT: Y'all mind if I run this trial?

22 MR. REDMOND: I'm sorry, Judge.

23 THE COURT: Okay.

24 MR. KNOX: Yes, Your Honor.

25 MR. REDMOND: Force of habit.

1 THE COURT: Well, it shouldn't be force of habit
2 because I don't know any Judge in the State that will put
3 up with this stuff. He testified, I think it would be
4 proper reply based on the testimony and the evidence that
5 was put up by Mr. Mumford that those shots were from the
6 front as he turned to return to the conflict.

7 So I think it is proper reply, and I think he can
8 testify as to his wounds. I'm just trying to decide
9 whether it would be more appropriate to have him raise his
10 pant leg and show the jury or use these photographs. I
11 know said there is a wound either on or near his buttocks
12 that he might not be able to do.

13 MR. REDMOND: Now, we do have the picture of the
14 wound, and he testified that it came out and grazed his
15 testicle. We've got that photo coming out, but we don't
16 have the entrance because it's on the buttock. That would
17 be the only one.

18 THE COURT: Here's the thing. He can testify to
19 that. He doesn't necessarily have to show it. He can
20 testify to it.

21 MR. REDMOND: That's fine. That is fine.

22 THE COURT: All right. I think it is proper reply.
23 I'm going to allow it. Obviously, you're going to give
24 Mr. Knox whatever leeway he needs on cross-examination to
25 cross-examine regarding his testimony. So I'm going to

1 allow it.

2 MR. REDMOND: And, Your Honor, if I can have just a
3 moment to -- are you going to allow him to just raise up
4 his leg or the pictures? The State has no objection
5 either way.

6 THE COURT: Well, you know I think -- you have
7 preference, Mr. Knox?

8 MR. KNOX: I prefer you just show them because I'll
9 probably make an objection to the photos.

10 THE COURT: He can show the wounds, and again, the
11 one that's in a more sensitive area, he can testify to
12 that.

13 MR. REDMOND: That's fine.

14 THE COURT: I'm -- all right. So we'll -- is that
15 all you intend to have on reply?

16 MR. REDMOND: I do, and just to be clear. I don't
17 want to get into any more trouble. To be clear, if once I
18 have him demonstrate, I guess I'm asking for the Court's
19 ruling on whether or not he can actually indicate to the
20 Court that there is where he was shot. In other words the
21 issue of -- the State's position is ---

22 THE COURT: He can tell the jury, as an example, this
23 is where I was shot. It went in right here and came out
24 here.

25 MR. REDMOND: That's fine, Judge.

1 THE COURT: Mr. Knox can cross-examine him on it.

2 MR. REDMOND: That's fine, Judge.

3 THE COURT: He can testify as to his injuries.

4 MR. REDMOND: That's fine. That's all I intend to
5 do.

6 THE COURT: It boils down to credibility and
7 believability. All right.

8 MR. REDMOND: That's all. We don't intend on getting
9 into any, Your Honor.

10 THE COURT: All right. I'm going to allow the reply
11 testimony. I'm going to certainly note your objection,
12 Mr. Knox, to that and you're exception to that ruling.

13 MR. KNOX: Thank you, Your Honor.

14 THE COURT: And we'll go ahead and bring the jury out
15 and proceed with the rebuttal testimony. All right.

16 MR. REDMOND: Thank you, Your Honor.

17 (WHEREUPON, the jury enters the courtroom at
18 10:47 a.m.)

19 THE COURT: All right, ladies and gentlemen. Thank
20 you for your patience. I -- in preparing to take up those
21 matters of law that I indicated to you earlier Mr. Redmond
22 had indicated that on behalf of the State that they had a
23 reply testimony that they wished to put up. And I have
24 been briefed on what the content of that testimony is and
25 have ruled that it is appropriate -- with appropriate

1 reply testimony. So I'm going to allow the State to do
2 that. At this time I recognize Mr. Redmond for his reply
3 witness.

4 MR. REDMOND: Thank you, Your Honor. May it please
5 the Court. I call Paul Funderburk, Jr.

6 THE COURT: All right, Mr. Funderburk, if you would
7 come around and please just take the witness stand and
8 remember, sir, that you are still under oath, okay sir.

9 PAUL FUNDERBURK JR, after previously being duly
10 sworn, testified as follows:

11 THE COURT: Thank you. Now, Mr. Redmond, before you
12 sit down I know what you intend to do. Do you want him
13 just to stand here?

14 MR. REDMOND: I was going to ask if he could do that.

15 THE COURT: Let's just do that, ladies and gentlemen.

16 MR. REDMOND: And, actually, if you could come down,
17 and I'd remind the witness that he is still under oath.

18 THE COURT: And would ask everyone, since you're not
19 by the microphone, please speak loudly for the court
20 reporter.

21 DIRECT EXAMINATION

22 BY MR. REDMOND:

23 Q. Now, Mr. Funderburk, there was testimony that you
24 heard regarding you being shot from the front and that's
25 why you've been recalled. Were your shot from the front

1 or behind?

2 A. From behind.

3 Q. Okay. The wounds, you were not asked when you
4 testified earlier, but I'm going to ask you now. First,
5 let me talk about the wounds. We're not going to see.
6 Again, tell us where were your wounds?

7 A. One under the buttock come to the front and exit the
8 side of my testicle.

9 Q. Okay. And then the other wound?

10 A. Back of the knee, come out the side in the back of
11 the knee.

12 Q. Okay. And speak up. You're soft spoken. I'm going
13 to ask you to speak a little louder.

14 A. In the back of the knee.

15 Q. Okay.

16 A. Come out the side of the left kneecap.

17 Q. Okay, now, if you can pull up one pant leg so we can
18 show.

19 A. This is the exit wound.

20 Q. Entry wound in the back. Okay, and where else were
21 you hit?

22 A. Two in my right ankle.

23 THE COURT: And, ladies and gentlemen, if y'all need
24 to get up and look.

25 THE WITNESS: Exit wound. Entry wounds.

1 BY MR. REDMOND:

2 Q. Okay. Do that one more time so the ladies and
3 gentlemen can see.

4 A. Yes, entry wounds.

5 Q. Wait.. Let me do this. Let me turn you sideways.
6 I'm going to turn your leg like this so everybody can see.
7 All right. There you go.

8 A. Entry wounds. Exit wounds.

9 Q. Can everybody see? So, again, the entry wounds were
10 where?

11 A. In the back of the leg and exit out the front.

12 Q. And I think you testified you actually had surgery
13 regarding this?

14 A. Yes.

15 Q. That will be all I have. Please answer any questions
16 Mr. Knox may have.

17 THE COURT: Come up hear and have a seat and answer
18 any questions Mr. Knox may have.

19 CROSS-EXAMINATION

20 BY MR. KNOX:

21 Q. Mr. Funderburk?

22 A. Yes.

23 Q. The wounds that you just showed the jury ---

24 A. Yes, sir.

25 Q. --- those are the wounds that you received on the

1 night of December 23rd 2010?

2 A. Yes, it is.

3 Q. And are those the wounds that as a result of
4 Mr. Mumford shooting you?

5 A. Yes, it is.

6 Q. And did you get those wounds after you threw the
7 bottle at Mr. Funderburk -- I mean at Mr. Mumford?

8 A. I'm sorry.

9 Q. Did you get those wounds after you threw that bottle
10 at Mr. Mumford?

11 A. Yes, I did.

12 Q. Before the incident with the bottle you had no
13 wounds?

14 A. Right.

15 Q. So that was a direct result of something that you
16 did?

17 A. Something that we did.

18 Q. The question was, sir -- don't change my question.
19 You don't know say you don't know?

20 A. That was my reply.

21 Q. The question is was that a result of something you
22 did?

23 A. That we did.

24 MR. KNOX: No further questions, your Honor. He's
25 just not going to answer.

1 THE COURT: You can answer the question. For example
2 you can either say, "yes" or you can say, "no" and you can
3 explain your answer.

4 THE WITNESS: Right.

5 THE COURT: Okay. So you can answer the question yes
6 or no and then explain your answer.

7 MR. REDMOND: And, Your Honor, I was going to give
8 him that opportunity.

9 REDIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. Why do you say it was we? As a result of what we
12 did? Why do you say that?

13 A. Because I took place in the action.

14 Q. Okay. And what did you -- and what, since he asked
15 you this, what did Mr -- the defendant do that caused you
16 to throw the bottle at him?

17 A. The provoking comments.

18 Q. And comments about whom?

19 A. Myself, my family.

20 Q. Yourself and your family?

21 A. Yes.

22 Q. Okay, and so had he not said those things about
23 yourself and your family would you have thrown the bottle?

24 A. No, sir.

25 Q. And it stands to reason that you would not have been

1 shot?

2 A. Right.

3 MR. REDMOND: That will be all the questions I have.

4 THE COURT: All right. Anything further.

5 MR. KNOX: Yes.

6 RECROSS-EXAMINATION

7 BY MR. KNOX:

8 Q. Had you not drank the 24 ounces of Heineken would
9 that have happened?

10 A. The result have went the same way.

11 Q. Thank you.

12 MR. KNOX: No further questions.

13 THE COURT: All right. Thank you very much, Mr.
14 Funderburk. You may step down.

15 COLLOQUY

16 MR. REDMOND: That would be the State's case, Your
17 Honor.

18 THE COURT: All right. I know y'all are going to
19 start feeling like a yo-yo, but I'm going to get y'all to
20 step back in your jury room. Allow me to go over these
21 matters of law and we will come back out in just a moment:

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at 10:54 a.m.)

24 MR. REDMOND: For the record, Your Honor, I was going
25 to say I apologize for the exchanges Mr. Knox and I have.

1 When we say, 'force of habit' I really meant to say heat
2 of battle. Sometimes the emotions get the best of you,
3 and so I apologize to the Court.

4 THE COURT: I understand, and I'm not offended
5 personally. I just think for the court reporter and the
6 record it's got to be more orderly. It's got to be -- she
7 outstanding. She just can't do two people talking at one
8 time. It just doesn't work.

9 So, all right. At this time I'll take up motions at
10 the close of the evidence, Mr. Knox.

11 MR. KNOX: Thank you, Your Honor. After the close of
12 the evidence that was presented, Your Honor, and my client
13 is charged with attempted murder I don't think the State
14 met it's burden of proving every element of the crime of
15 attempted murder. So, therefore, I would ask the Court to
16 dismiss the charge against my client.

17 THE COURT: All right. I'm going to respectfully
18 deny that motion. I don't know how the jury will view the
19 evidence. It's not for the Court to give weight to the
20 evidence. Simply to recognize whether there is an
21 existence of evidence whereby a jury could possibly find.
22 I think depending -- I know there was the testimony
23 regarding the femoral artery and bleeding out and those
24 types of things. I don't know how the jury will weigh
25 that. I'm going to allow the jury to determine the facts

1 and assess that.

2 MR. KNOX: Thank you, Your Honor.

3 THE COURT: So I respectfully deny that. All right.
4 Anything further from the State?

5 MR. REDMOND: Nothing further from the State.

6 THE COURT: From the Defense?

7 MR. KNOX: Nothing from the Defense, Your Honor.

8 THE COURT: All right. Guys, Patrick has gone over
9 to the Clerk's Office and is getting a copy of the charge
10 that I propose. When you get it how about look through
11 it. It is just a proposed charge, okay. It's so if there
12 are any changes you want to make just -- we'll get
13 together and you can let me know that. If it's okay then
14 that's fine, too. Whatever you want to do, but I want to
15 give you a few minutes to look over that and then we'll
16 talk about it. We'll just be a ease.

17 (WHEREUPON, a short break was taken.)

18 MR. REDMOND: Your Honor, the State has reviewed the
19 proposed charge, and has no objection.

20 THE COURT: Okay. All right.

21 MR. KNOX: Likewise, the Defense has reviewed it and
22 we have not objection, Your Honor.

23 THE COURT: All right. Thank you, gentlemen. All
24 right. If there is no problem we're going to be ready to
25 go so I'm going to get with Faye about bringing lunch in

1 for the jury. So if y'all need to break or something
2 before we get started please go ahead and take it. We're
3 in recess right now. Once we get started with closing
4 arguments and charge we're going all be in here.

5 And, ladies and gentlemen, during the closing
6 argument and the Court's charge to the jury the courtroom
7 is going to be locked down. No one can come in nor can
8 anyone leave. So right now is an opportunity if would
9 need to go get a drink of water, or use the restroom or
10 something like that, now is the time to do that. Once we
11 get started you're either in or you're out.

12 All right, the State ready to proceed with closing
13 arguments?

14 MR. REDMOND: Yes, Your Honor.

15 THE COURT: Is Defense ready?

16 MR. KNOX: Yes, we are, Your Honor.

17 THE COURT: All right, sir I'm assuming, Mr. Redmond,
18 that you wish to have final argument?

19 MR. REDMOND: That is correct, Your Honor.

20 THE COURT: All right, we'll bring the jury out and
21 then proceed. What I'm going to do is we'll go through
22 the closing argument. I'll then charge the jury and then
23 once they have the case for their consideration if I can
24 make sure y'all give me some number I can reach you in
25 case you want to grab something to eat while they're

1 deliberate. We'll do it that way. All right. Please
2 bring the jury in.

3 (WHEREUPON, the jury enters the courtroom at 11:22
4 a.m.)

5 THE COURT: All right, ladies and gentlemen, you have
6 heard all of the evidence in the case. Any exhibits which
7 have been entered into evidence will be back with you
8 there in the jury room. And except the handgun itself. I
9 don't send weapons back into the jury room, but you will
10 have everything else. The video statement that you saw
11 yesterday will be on a disk. If you wish to review that
12 or see that again we'll make that available to you as
13 well. But you will have all the evidence back in the jury
14 room when you retire to deliberate.

15 But we have reached the portion of this trial where
16 the attorneys will have an opportunity to address you with
17 their final summation or what we typically call closing
18 arguments. What I told you when we started this case
19 about the attorneys opening statements applies to their
20 closing arguments as well, and that is this. What they tell
21 you in their closing arguments is not evidence. It is
22 their belief as to what the evidence in this case has
23 shown. It is their opportunity to convince you what they
24 believe the evidence shows.

25 You will take the evidence as you find it in arriving

1 at your verdict. So the evidence closed when the final
2 witnesses have testified and all the exhibits are in.
3 That's the evidence in this case that you will base your
4 decision on. But it is important as it was with the
5 opening statements that you give them your undivided
6 attention as they address you with their final remarks.

7 Once they have concluded their final arguments I will
8 then give you the law that is applicable to this case and
9 then you will be in a position to go in your jury room and
10 begin your deliberations. So at this time I would
11 recognize Mr. Knox on behalf of the Defense.

12 CLOSING STATEMENT BY MR. KNOX

13 MR. KNOX: Thank you, Your Honor. Pleases the Court,
14 Mr. Solicitor, ladies and gentlemen, first of all I would
15 like to thank you guys for being here and putting up with
16 us for the past two days. You saw I and the Solicitor
17 engage in what we do for a living, and that is the State
18 make arguments on behalf of the State of South Carolina.
19 I make arguments on behalf of my client, who in this case
20 is the Defendant, Noah Mumford.

21 I'm going to start by quoting my father. My father
22 once told me when I was a young child, he said that if you
23 make a hard bed you have to lie in it. In the -- of
24 course, I was young. I didn't quite understand what that
25 meant, but I'm a couple months short of 60 years old, and

1 over the course of that time I definitely know what that
2 means. And when I found out to me -- to me is that the
3 consequences -- your actions have consequences. And if
4 you make bad choices they will catch up with you. If you
5 make good choices they will catch up with you. Now, what
6 I'm going to go is go over every witness that testified
7 because part of your job is judging the facts. The facts
8 as you heard them from the witness stand.

9 Now, the last thing that you all saw today was
10 Mr. Funderburk stand up and pull his pants and showed you
11 some wounds. The last thing you heard from me was they
12 wouldn't have got there had you not thrown that beer
13 bottle. And he was evasive. That's what he was supposed
14 to be. He didn't really want to answer that question, but
15 that's a fact. When on December 23rd 2010 that beer
16 bottle had not been thrown it would not have been a
17 shooting.

18 Now, the Solicitor made the big deal about trash
19 talk. I see some gentlemen up here and I see some ladies
20 up here. Now, I don't know what the ladies do when they
21 get together, but I can tell you what the guys do. I'm in
22 a poker circle with members of my church whom I go to
23 church with every Sunday. And during the week we play
24 poker at different houses. Yeah, we go to church and we
25 do. We play poker. And if you were to come in the room

1 and hear this conversation and trash talk you would say
2 these guys, they don't go to church. But it's what guys
3 do. It's what guys do. They talk trash.

4 Now, also in that circle we have what we call an alfa
5 male. That's always a head honcho. When a pack of dogs
6 get together there is always an alpha male; that is a
7 person that takes control and runs things. And in a
8 pastor you would have the king of the pastor. The pastor
9 boss when you have horses out there. They take control of
10 things, you know. They rule things.

11 Now, on December 23rd 2010 at Mr. Harrell's house you
12 had a group of males there. They were there because they
13 were arranging a race and they wanted to bet on the race.
14 Certain individuals were already there. Other individuals
15 were invited. One of the individuals that was invited was
16 Mr. Noah Mumford. In fact you heard his testimony. He
17 said all day long while he was working in his shop they
18 called him and they wanted him to come. That asked him
19 did he have money. He sad he had big money and he came.

20 That wasn't out of the ordinary because they had done
21 this before. So it was normal behavior. Now, at Mr.
22 Harrell's house was several individuals. Some of them you
23 heard from yesterday. But one of the individuals that was
24 there was Mr. Paul Funderburk, Jr. Now, for lack of a
25 better term I'm call him the alpha male. The head honcho.

1 The boss. He was there. By his own testimony he was
2 drinking a 24-ounce bottle of Heineken beer.

3 Now, once you introduce alcohol or drugs into a
4 situation it's bound to be a problem. Everybody testified
5 Mr. Funderburk was the only person that was drinking. The
6 only one. Said, yeah, I took a beer. How did you open
7 it? Have an opener on my key chain. Was drinking beer.
8 No one else was drinking. There was trash talking.
9 Everybody was trash talking. Mr. Mumford came. Trash
10 talking started between Mr. Mumford and Mr. Funderburk.
11 They were trash talking. That's what guys do.

12 Somewhere, some point in that conversation testimony
13 shows that Mr. Funderburk said, "When I finish this beer
14 I'm going to hit you with this bottle." And he was
15 directing that conversation to Mr. Noah Mumford. That was
16 his testimony, and I was shocked that he would get on the
17 stand and admit that. That, yes, I started this. Before
18 then there was no problem. Guys trash talk. Getting
19 ready to make a bet. Probably make a bet. We wouldn't be
20 here.

21 But, no, the alpha male, Mr. Funderburk, I'll show
22 him. I'll show him. But you know what? He didn't have
23 the courage too show him with his hands. He had this
24 24-ounce bottle of Heineken here that he was drinking. He
25 testified that, "No, 24-ounces of beer doesn't affect my

1 behavior." Let me tell your something. If you drink 24
2 ounces of beer and get in your car see whether or not it
3 affects your behavior when you're driving that vehicle.
4 24 ounces of beer is equivalent to three, 8-ounce cans of
5 beer or two 12-ounce cans of beer which was drinking --
6 which was drunk within a half hour. That does not affect
7 your behavior?

8 Well, let's suppose that it doesn't affect your
9 behavior. So he wasn't drunk. He wasn't under the
10 influence of that 24-ounces of beer. He was acting
11 normal. That was his normal behavior, I'm going to finish
12 this beer and hit somebody with it. That is violent
13 behavior. That's a significant part of somebody's
14 demeanor. I have the propensity to do harm to you. No,
15 it wasn't a beer. I did this on my own. Again, that is
16 the alpha male. Have to show all the other males there,
17 and from the looks of those guys all of them are big and
18 fat. One of them was nicknamed, Mr. Antonio Sellers,
19 A.K.A. Big Tony. These are big guys, but somebody had to
20 be bigger than the rest, and that was Mr. Funderburk.

21 He's going to show Mr. Mumford. It ain't going to be
22 no talking trash. You not going to talk about me. So
23 what. So what. He had no right to, as he said, throw
24 that bottle at Mr. Mumford. No right whatsoever.
25 Everybody else was trash talking. Talking trash. No one

1 else threw a bottle at anyone. But he got so disturbed
2 that what Mr. Mumford -- I'm sorry -- what Mr -- yeah,
3 what Mr. Mumford had said was so bad just not going to
4 take it anymore and I have to do something about this.

5 Big Tony was standing in between them. He had to
6 come around Big Tony.

7 JUROR: I have to go get a cough drop.

8 MR. KNOX: Big Tony was in between them. Big Tony
9 big fellow. That's why they call him Big Tony. He had to
10 step around Big Tony. That's his version that he came
11 around, and he swung the bottle. It was his testimony
12 that the bottle did not hit anyone; that the bottle hit
13 the ground. And as you can see the bottle didn't break.
14 That's his version of it. They engage for a few seconds,
15 they stop, he walks away and he was shot while leaving.
16 Now, that's his version of it.

17 And the other witnesses that the State had, Mr. Todd
18 Harrell, said just about same thing as Antonio Sellers,
19 A.K.A. Big Tony said the same thing. But if you can
20 recall when I confronted him with the statement that's
21 they gave law enforcement none of them had that he had
22 walked away and Mr. Mumford came over and said something
23 to him after the shooting.

24 In fact I even showed them where it was Xed out and
25 they had their initials on it. This was shortly after the

1 incident that night. Now, on October 25, 2011 their
2 stories changed. All of a sudden -- all of a sudden they
3 could remember, oh, I forget that. This is what actually
4 happened. Well, they had ten months to think about it,
5 but when it happened they couldn't recall. And you
6 remember I asked did anyone call law enforcement? No.
7 Law enforcement wasn't called. Did anyone call E.M.S. No
8 one called E.M.S. They put him in a car and took him to
9 the hospital. There at the emergency room they were
10 confronted with law enforcement and that's when they told
11 this story.

12 Now, just think about it. If a shooting occurs at
13 your residence would you call 911? Just think about that.
14 You know why 911 wasn't called? Because they didn't want
15 anyone to know about this. Had that deputy not been at
16 the hospital no one would have knew about this because it
17 was probably just a friendly fight. Let by gones be by
18 gones. That is how guys do things, but Mr. Funderburk had
19 to receive medical attention. He had to explain how he
20 got those wounds. So he says, "Yeah, I was shot."

21 The other three people that were there they gave a
22 statement, and you recall yesterday I said that there are
23 two sides to a story. For ten months the Solicitor only
24 heard one side of the story. Yesterday they heard
25 Mr. Mumford's side of the story which was quite different

1 from the story that the Solicitor had heard for the past
2 ten months. Why? I don't know why in the world didn't
3 they say, "Well, what's your side of the story?" They're
4 going to allege that you have a lawyer and we can't talk
5 to you. Yeah, that may be true, but investigators want to
6 find the truth.

7 And the only way that you can find the truth is do an
8 investigation. You could have asked those other guys that
9 you interviewed that you got statements from, who else was
10 there. And they would have said, "Frank, Steve, and
11 Mr. Mumford." And they would have went at least to Steve
12 and to Frank and got a statement. I submit to you they
13 probably did get a statement from Mr. Mumford because he
14 was under legal representation, but they could have got a
15 statement from the other two guys and had they got a
16 statement from the other two guys they would have heard
17 what you heard yesterday; that Paul Funderburk, Jr. hit
18 Mr. Mumford with a beer bottle.

19 Unprovoked. And see that's important. Unprovoked is
20 important because if I walk up to you and slap you in the
21 face and you did nothing that means that that's
22 unprovoked. You didn't do anything to bring the slapping
23 on. You can say, "Hey, Mr. Knox, I don't like your suit.
24 I don't like you fat momma." That's not provocation, and
25 in this courtroom a lot of things are said that I don't

1 like. I don't throw a pitcher of water at the Judge or
2 opposing counsel or the witness. That's not what you do.
3 That's not normal behavior.

4 Now, if you reduce it to I'm going to do what I want
5 to do, and you the alpha male, and you think it's all
6 right to throw a bottle at someone. Now, they made a big
7 deal about the bottle didn't break, and it must have been
8 thrown in such a manner that it wasn't harmed. I don't
9 care what manner a bottle was thrown at me. I take it add
10 as a threat, and I think, ladies and gentlemen, you would
11 have done the same thing. You would take it as a threat.

12 Now, they made a big deal about a concealed weapon.
13 Mr. Mumford came here with a weapon on him which he
14 testified that he always carried. He had a class given by
15 the ex-police chief of Chesterfield. He sent his
16 paperwork in to S.L.E.D. He just didn't pay for it. They
17 make a big deal, "Well, you know, he didn't have a permit
18 to carry a concealed weapon so you're wrong." But that's
19 what they're supposed to do. You're supposed to find
20 wrong in somebody.

21 When the facts are not on your side, when the law is
22 not on your side you have to come up with something. Mr.
23 Funderburk started this by consuming 24-ounces of beer, by
24 striking Mr. Mumford with that beer bottle and much to his
25 surprise Mr. Mumford came out firing. Okay. Now, you

1 heard me yesterday ask were there a gun on the jury panel
2 and quite a few people stood up. You have a right to own
3 a gun, and why do most people own a gun? Either to
4 protect themselves or protect someone they love or protect
5 their property. Mr. Mumford was protecting someone that
6 he loved, himself. You heard him testify that he had
7 children. It was almost Christmas. Two days before
8 Christmas. He had someone to protect, himself. He was
9 carrying a weapon. That weapon wasn't used for anything
10 but what it was designed to be used for, for protection.

11 And he shot. It was he testimony that he went blank
12 momentarily from the blow to his body. Now, they're going
13 to make a big deal, man got shot in his leg. Doesn't
14 matter where you got shot at. If you throw a bottle and
15 somebody shoots you it doesn't matter where the bullets
16 hit you. You got what you deserved. Whether you were
17 running away, walking away, crawling away, it doesn't
18 matter. He shot until he thought that he was safe.

19 He said he aimed at the ground, and we have witnesses
20 to confirm that; that he aimed at the ground. Now,
21 Mr. Funderburk, I think he said he was 62, 63. Tall
22 fellow. There is a lot of body to shoot at, but all of
23 his wounds were below his belt. On his ankle. On his
24 ankle. On his buttock. He wasn't trying to kill anybody.
25 In fact he testified to that. He came there to make a bet

1 on a race and go home. He didn't even know that Mr.
2 Funderburk was going to be there. He did not wake up --
3 you heard him testify what he did that day. He did not
4 wake up in the morning and say, "I got my mind set on
5 shooting Mr. Funderburk tonight." No, that was not his
6 intent. He only shot Mr. Funderburk to rebel that attack.

7 Now, everybody testified that they engaged four or
8 five seconds. Now, that's pretty fast, and a lot of
9 things can happen. Mr. Mumford had been trained by this
10 country for combat. He pulled that weapon out. He pulled
11 it out pretty past, and he shot off four or five rounds
12 and he did it pretty fast. Probably before Mr. Funderburk
13 knew what hit him.

14 Now, it was his testimony and the testimony of two of
15 his witnesses that Mr. Funderburk came back. Either he
16 didn't feel the bullets in him or he was too full of
17 alcohol to feel the bullets in his leg. But he came back,
18 and in other words he wasn't through yet. But that's
19 typical behavior of an alpha male. You have to kill them.
20 You have to put them down. You get a dog out there, pit
21 bulls. One of them the alpha male, you have to kill them.
22 The other dog as to kill him or he will keep coming. And
23 that's what Mr. Funderburk did. He came back. He came
24 back.

25 Finally, that pain hit him. He walked away.

1 Mr. Mumford put his gun back and he walked away. He had
2 to go past Mr. Funderburk to get to his vehicle. And he
3 said, "I don't know why you did that, but I could have
4 killed you." And that's the truth. He could have killed
5 him. He was trained in the military. He knew how to
6 kill, but he didn't. Thank God he didn't. He didn't kill
7 him, but think of this this way. Had this 24-ounce bottle
8 of beer not been thrown at Mr. Mumford would Mr. Mumford
9 have shot Mr. Funderburk? No.

10 No one else was shot that night. No one else threw a
11 beer bottle that night, and afterwards Mr. Funderburk
12 threw this bottle. Once the bottle leaves your hand you
13 have no control over it. You know, he proudly said,
14 "Yeah, I threw it cause he insulted me and he insulted my
15 family. So nobody does that and gets away with it. So
16 I'm going to hit you with this beer bottle." And he did
17 exactly what he said he was going to do.

18 He didn't know that Mr. Mumford was packing, toting,
19 and he got shot. It's the same way if somebody goes into
20 a pizza store and decides to rob the pizza store and the
21 owner of the pizza store pulls out a pistol and shoots
22 him, okay. The robber got surprised, okay. Robber came
23 in with ill intent. The pizza owner was trying to protect
24 his property and his life, and he shot him. That pizza
25 owner probably wouldn't be charged with anything. He was

1 well within his right.

2 Now, he was charged with attempted murder. Now, you
3 saw Mr. Funderburk walking around. He's a very handsome
4 young man. Nicely dressed. The State didn't present any
5 medical records. At the last minute in a moment of
6 desperation they wanted to show you the wounds. You saw
7 the wounds, but remember when he was so defiant with me on
8 the witness stand when I said, "Would you have gotten
9 those wounds had you not thrown that bottle." Then he
10 wants to say, 'we'. What do you mean we? You threw that
11 bottle. We did not throw that bottle. Seven people out
12 there. The seven people did not throw that bottle. He
13 threw that bottle. He hit Mr. Mumford with that bottle.
14 And he got exactly what he deserved.

15 Now, the State is going to get up and tell you that
16 at some point it was over and he shouldn't have been shot.
17 But who is to determine when it's over? Was there a
18 referee there to say, "Time out. You go to your corner.
19 You go to your corner. It's over." Was there a bell.
20 Was there an official bell with a whistle? Was there
21 someone to throw a flag and say, "It's over?" No. Who
22 determines when it's over? I don't know. But I guess you
23 can say Mr. Mumford did when Mr. Funderburk felt that pain
24 enough to stop. That's when it was over.

25 You know what? It could have been over, as

1 Mr. Mumford stated that I just started to leave. But he
2 didn't. He could have been over when Paul finished the
3 beer and say, "Hey, man, I'll going to call it a night,"
4 but he didn't. And it's quite unfortunate that you heard
5 Deputy Scott say they he knew -- he knows both of these
6 people. And I know both of these people. And you heard
7 Mr. Mumford's testimony. It was real remorseful. When
8 you see that videotape back there he was real remorseful.
9 He didn't intend to do any of that. He had a head wound.
10 He had a plate in his head, and he wasn't going to let
11 anybody hit him in his head. And I don't blame him.

12 Well, you could say that he probably should he have
13 been there? Probably not. If he was my son I would have
14 told him, "No, you don't be in situations like that," but
15 it is what it is. He was there. Mr. Funderburk was
16 there. He is drinking a beer. He hits him with the beer
17 bottle. Mr. Funderburk got shot. So it happened. Was it
18 attempted murder? No. Was it an assault? No. It was
19 none of those things? It was what each one of us have
20 right here today. It was self-defense. So I ask you to
21 return a verdict of not guilty. Thank you.

22 THE COURT: Thank you, Mr. Knox.

23 CLOSING STATEMENT BY MR. REDMOND

24 MR. REDMOND: Your Honor, Mr. Knox, ladies and
25 gentlemen, let me read you something: "Self-defense is

1 not available to one who uses language so contemptuous
2 that a reasonable person would it expect to bring on a
3 physical encounter and which did actually contribute to
4 bringing it on." It's not my words. This is what Your
5 Honor is going to present to you when you go back to
6 deliberate as it relates to this part of the law on
7 self-defense. I'm not going to go through everything with
8 you, but I want to highlight that particular passage.

9 We heard everything Mr. Knox had to say and, quite
10 frankly, I think this one photograph undermines pretty
11 much everything Mr. Knox has had to say. I'm not going to
12 bore you for too long, but I need to address certain
13 matters. I have not had the chance to formally introduce
14 myself to you as a jury on this -- as a juror on this
15 case, but again, my name is Kernard Redmond. Obviously, I
16 did not speak to you in opening statements. That honor
17 went to my colleague, Mr. Chris Jones. But I'm deputy
18 Solicitor here in Chesterfield County. Live in Pageland,
19 so I have been in Chesterfield for a couple years. And am
20 glad to be here and serve the people of Chesterfield
21 County.

22 Now, with that said, I also have a job to do because
23 in circumstances like we see here -- you know I've watched
24 a lot of westerns, and we don't live in the Wild West,
25 thank goodness. You don't get mad, you can't use words

1 and then get mad because somebody throws a bottle at you
2 in order to shoot somebody. Can I get upset about being
3 hit or having a bottle thrown at me? Gentlemen. But does
4 that mean that I have the right and then turn and shoot
5 someone? No. Because we live in a civilized society.
6 Mr. Knox said something about, "Well, when you do
7 something like this you get what you deserve." No, that
8 ain't the America that I'm familiar with. The America
9 that I'm familiar with says we operate as a civilized
10 society.

11 Things happen. People disagree. Just because of
12 something like this, a bottle that is not broken, is so
13 threatening and it was used so forcefully that it sits
14 here unbroken. We do not have the right as a civilized
15 society, the America that I know, to go around and then
16 arbitrarily decide, I'm going to shoot someone. Because
17 then God help us all. Because then we have just -- we
18 have caused a line to be blurred that can endanger the
19 entire society, and that is ultimately what we come down
20 to. What constitutes a civilized society? What actions
21 are allowable in a civilized society.

22 I would submit to you that the actions of this
23 defendant are definitely not allowable in civilized
24 society. Was Mr. Funderburk wrong in throwing that
25 bottle? Absolutely. People do wrong to me all the time.

1 Does that mean I go out and shoot them because they did me
2 wrong, because I was mad, he was not threatened. He was
3 angry. You've got the tape. You will have the
4 opportunity to see it again if you so choose. It's not
5 about fear. It was about anger.

6 And then Mr. Knox talks about alpha male, wow. I
7 think that is a very appropriate term, but I think it's
8 more applicable to his client because -- and let's just
9 recount some of what the defendant through his on
10 admission did in addition to what the witnesses said.
11 Mr. Mumford said, yeah, he came flashing \$5,000. He was
12 told to bring his house money, whatever, rent money.
13 Well, I mean unless he's got a house where the rent or the
14 mortgage is \$5,000 nobody told him to bring \$5,000. He
15 undertook to bring it.

16 That was his flash money. He went to that decision
17 about the case with his \$5,000. Flashing his money. I
18 think that also falls into the definition of an alpha
19 male, but then this is more. He can be that alpha mail
20 because I think Paul said it best, "He was braver cause he
21 had a gun with him." That gun, that gun by the way that
22 he was not supposed to have on his person. He could keep
23 it in his car, but he isn't supposed to have it on his
24 person cause he himself admitted that he had not completed
25 the requirements in order to carry a conceal weapon. But,

1 yet, he so chose to do that.

2 So, now, when you talk about an alpha male, again,
3 flashing money, got the gun, do you for one second believe
4 that this defendant was not talking junk? I mean he's
5 flash, and just use your common sense, ladies and
6 gentlemen because that goes there with you. I'm going to
7 step to the scene with \$5,000. I've got my gun. I'm
8 flashing the money, do you not -- and no one else
9 mentioned anything about how much money to bring. And he
10 was the only one showing any money. So, no, he came there
11 with attitude. When he got there he had attitude. So,
12 no, when we talk about who the3 alpha male is in this
13 situation, ladies and gentlemen, I submit to you that he
14 sits right next to Mr. Knox at the Defense table.

15 But I digressed. Let me talk about reasonable doubt
16 and then talk about the actual charges that you're going
17 to hear about in the instructions as the Judge is going to
18 give you. First thing is, I do carry the burden of proof
19 as a representative of the State of South Carolina. We've
20 got the burden of proving to you beyond a reasonable doubt
21 that he's guilty of attempted murder or, and this is
22 important. Attempted murder carries the lessor included
23 offense of assault and battery of a high and aggravated
24 nature. Now, I'm going to explain both of those in detail
25 in just a minute. Of course Your Honor, His Honor, will

1 actually have those instructions for you at the conclusion
2 of my comments.

3 Reasonable doubt, if you are firmly convinced of the
4 defendant's guilt -- we don't have to prove beyond all
5 doubt because we were not there. The State is not
6 required to eliminate every doubt. Beyond a reasonable
7 doubt. In other words we have presented evidence that
8 leaves you firmly convinced that the actions of the
9 defendant did not constitute self-defense, and therefore,
10 he is either guilty of attempted murder or assault and
11 battery of a high and aggravated nature. That's the
12 burden we carry. We submit we met that burden.

13 Let me talk to you a little bit about attempted
14 murder. Attempted murder, and His Honor will define it to
15 you, is with malice aforethought intending to kill
16 someone. Now, you can infer malice. There are certain
17 things His Honor will instruct to you regarding malice.
18 Part of that instruction deals with the fact that if I use
19 a deadly weapon, and if I am -- well, you can infer by the
20 use of a deadly weapon that the defendant had malice.
21 Also the fact that -- and the reason I say that is because
22 inflicting bodily injury. Inflicting great bodily injury;
23 that's something you can consider in looking at malice.

24 Obviously, I would add to that instruction the
25 argument that if you use a deadly weapon, i.e. a gun,

1 then, yes, there is an intention to inflict bodily injury.
2 So I think we've got that clear. There is no question
3 that the defendant admitted that this is his gun. He
4 admitted he fired that. So we've got that. The issue to
5 me seems to come down to the self-defense issue and
6 whether or not it's attempted murder or assault and
7 battery of a high and aggravated nature. If self-defense
8 is out of the picture, and I already read to you the first
9 part. And I want you to pay close attention to that as to
10 why I would submit to you that self-defense is not
11 applicable here. I'll get into other details shortly as
12 to why I do not believe it's applicable.

13 But if you think attempted murder sounds pretty
14 ominous, well, that's where you can consider the offense
15 of assault and battery. That is without malice
16 aforethought if you believe that he acted recklessly using
17 a deadly weapon with the intent to inflict serious bodily
18 injury he can then be convicted of assault and battery of
19 a high and aggravated nature. I would submit to you,
20 ladies and gentlemen, that the State has actually met its
21 burden on both charges.

22 The attempted murder, because of the facts, and this
23 is why I say listen to the tape, he talks about the fact
24 that he snapped. He talks about the fact he was so mad,
25 and then there is a portion in it when he gets up here and

1 says, "Oh, well, I didn't intend to kill him. I shot at
2 the ground." When the tape, he tells the officer, "I was
3 so mad I didn't know where I hit him at." He was just
4 shooting at the defendant -- at the victim. That's
5 important because that totally contradicts anything that
6 he said up here today. That's on the tape. That's not my
7 words. Those are his words. That goes to his intention.
8 At that time he was so mad he had his gun; that alpha male
9 juice kicked in, and he decides he was going to take out
10 Paul Funderburk. But for the grace of God he didn't. At
11 least Mr. Funderburk is still here for his children.

12 Now, let me just say this. In addition to that I
13 asked Daniel Scott, who served with the defendant, "Aren't
14 you trained regarding shooting anybody" especially
15 shooting in the leg because having been a corpsman in the
16 military, in the Navy, a medic. Some say a glorified
17 nurse. Whatever you want to call me, but having that, and
18 that's why I was able to ask him some of those questions,
19 because with his training they are trained, one, if
20 somebody gets hit in the leg -- if one of my fellow
21 soldiers gets hit in the leg I'm going to apply a tunicate
22 because there is also the risk that you hit a femoral
23 artery. The main artery in the leg. It can kill you.
24 You will bleed to death. Internally or externally, either
25 way, if it's severed you would bleed to death.

1 It's actually, if I'm not mistaken, if memory serves
2 me correct, the biggest artery in the body because it's in
3 the thigh. So any time you shoot in the leg -- and he
4 knows this. The reason that's important, when you're
5 talking about what his intentions are, he knew that
6 anywhere he shot that gun, and especially shooting it and
7 hitting him four times, could kill him. Any time you use
8 a gun and shoot someone there is also the chance that you
9 can kill them. I would submit to you that most of us owns
10 guns, but there is a responsible gun ownership. The
11 people that own guns we have a duty to ourselves, our
12 family and our community to be responsible when we use our
13 guns.

14 The defendant, not only was he carrying it unlawfully
15 because he was not permitted to carry it on his person,
16 but he used it because of a bottle. This man has been in
17 war zones in Iraq, and let me congratulate and thank you
18 for your service. Know a lot of people who have served,
19 but again, that does not excuse what he did. Again, this
20 is a civilized society, and we have got to hold people
21 accountable regardless of what they did. We appreciate
22 your service, but that was years ago. We don't appreciate
23 what he did to Mr. Funderburk. It doesn't excuse it.
24 Shouldn't be allowed, and we would ask for justice.

25 Let me get back to what I was saying. Been in war

1 zones, subject to land mines, enemy fire, all of that.
2 And this scares him so bad that he has to just pull out
3 and shoot a man as he's walking away, shoot him four
4 times. And then by his own admission comes up with --
5 when you hear the tape, comes up afterwards and says, "I
6 meant to get you. You shouldn't have thrown that bottle
7 at me." Where is the self-defense in that? Somebody
8 please tell me where the self-defense is in that. I would
9 submit to you that you can't because it's not there.

10 And to say that -- Mr. Knox talks about the fact
11 that, "Oh, well, but for him slinging the bottle he
12 wouldn't have gotten shot," well, it goes beyond that.
13 But for the defendant engaging in language so
14 contemptuous, and he himself acknowledged it. He says,
15 "Yeah, it got pretty salty. And we've heard what he said
16 to Mr. Funderburk. The things that he said, the people he
17 was talking about, Mr. Funderburk's family.

18 Let me just back up a moment, and I'm going to take
19 off my lawyer hat and put on my regular person hat. I'm
20 just be honest with you. Ain't too many people going to
21 call me MFs, B's and talk about my family too much without
22 me getting upset. If I don't have something in my hand
23 that gets flung, you know what? I might try to go, as Big
24 Tony said, "Fight you." I'm not saying it's right, but
25 it's human nature. Ain't but so much a person can take

1 when you're on them and on them and on them. And when you
2 think about it who to believe, what you think really
3 happened, keep in mind that this man stepped to the scene
4 with \$5,000 and his gun talking junk. That's what all
5 this started from. He came there with attitude. Because
6 as I was saying, and I do apologize for the language that
7 I used, but it was to make a point when I approached Big
8 Tony. Big Tony looked like he was about to jump out at me
9 which was what I wanted to see because when I just stepped
10 to him out of nowhere talking about his mother he just
11 kind of looked at me confused and trying to figure out,
12 wait a minute. What's he trying to pull here.

13 My point to that was, and again I apologize for using
14 that language, but this is an important case to all
15 parties concerned and to make a point and I hope you got
16 it; that, yes, words -- if you say certain things, yes,
17 there maybe a time where I launch a bottle, but does that
18 rise to the level of me fearing for my life or fearing for
19 my health and safety especially when, as I read earlier,
20 if it's not available to one who uses language so
21 contemptuous that a reasonable person would expect it to
22 draw a physical response. I say things about your family.
23 I say things about you. I call you MF so many times.
24 Those are words designed to elicit a response. You were
25 trying to draw action from someone, and that's what he did

1 and that's what he got. He got the beer bottle.

2 And Mr. Funderburk, again, not excusing what he did,
3 but he was up front from the very beginning. Even his
4 witnesses. Mr. Knox talks about the fact that, "Oh, well,
5 you know they added all this stuff in," but the testimony
6 is clear. And I'll just draw your attention to the
7 differences between being at the hospital, which all of
8 his witnesses were, and being told write down what you saw
9 versus what you see happen on the tape with the defendant.
10 And that's where the distinction is important regarding
11 that.

12 The defendant was being interrogated. You will
13 see -- you've seen and will see if you choose to see it
14 again, Investigator Scott asking him questions, following
15 up on what happened. Well, they didn't do that with our
16 witnesses. They were at the hospital. They just -- look,
17 tell us what happened, and then you know they went back
18 out to the scene to collect evidence. But they wrote out
19 at that time, "Well, this is basically what happened," But
20 Mr. Knox couldn't point out anything specifically that
21 they said that was different. It was all about, "Oh,
22 well, they added more in." Well, they were being asked
23 questions at that time.

24 There is a difference between that, sir, and as you
25 will see on the same and remember what he testified to

1 changing your story. Changing one's story. And just to
2 remind you of how the story changed he talked about the
3 fact that, in the tape, that he was so mad he didn't know
4 where he shot. Yet, today he's saying, oh, he shot at the
5 ground. It must have ricocheted. But this is what is on
6 the tape. This is what he said to Investigator Scott, he
7 was so mad that he didn't know where he was shooting. But
8 then this just blew my mind. He talks about, well, you
9 know I blanked out because I was dazed and this, that, and
10 the other thing. But on the tape he said, "Well, you
11 know, after he swung at me then I kind of blanked out. I
12 need to get help for that because I been blanking out a
13 lot lately." I don't know if you remember hearing it, but
14 it will be there if you want to hear it. Totally changed
15 what he's trying to say. It's called being self-serving.
16 It's called being self-serving. Basically, ladies
17 and gentlemen, he is trying to do what he can to save his
18 hide. That's what it amounts to. I mean he's on trial,
19 but these are not things I'm saying. Again, it's on the
20 tape. These discrepancies that I'm describing to you. He
21 also talks about the fact that he just snapped. I think
22 he said that several times on the tape; that he snapped.
23 He just snapped. But here is the interesting thing at the
24 very end of this. Near the end of the tape, as I said
25 earlier, after he shot Mr. Funderburk, "I meant to get

1 you." Where was the remorse in that? You know, Mr. Knox
2 can say, "Oh, yeah, he was remorseful." "I meant to get
3 you." I just shot you four times. I meant to get you.
4 You shouldn't have thrown that bottle at me. Where is the
5 remorse in that. Where is the fear in that? Alpha male,
6 does that not sound like an alpha male, ladies and
7 gentlemen, his actions. You take and look at that all
8 together. Look at what you've seen and listen to what
9 you've heard. I would submit to you again the Defense
10 falls apart.

11 And let me just say as I get near to wrapping up.
12 I've got to talk about Mr. Teal and Mr. Lane. I'm sorry.
13 I cannot let that go by. I'm sorry. I just must. I'm
14 going to start with Mr. Teal because not only were their
15 stories totally different. Remember Mr. Teal went into
16 great detail. He even demonstrated the bottle hit him in
17 the hear. You remember that, and I'm kind of blown away
18 by all of this. But yet the bottle didn't break. The
19 bottle hit him in his head. It hit him in the head so he
20 bent down and all. I mean he went into great detail
21 because he was only three or four feet away.

22 Yet, Mr. Langford [sic] testified to something
23 different. Now, of course, Mr. Teal talks about the fact
24 that, "Oh, well, I didn't know that going with him to
25 explain to law enforcement what happened because I'm not

1 educated enough." I mean, again, you've got your common
2 sense, ladies and gentlemen. And you don't leave that in
3 these chairs when you go back to deliberate. Then we
4 heard from Mr. Langford, a multiple convicted drug dealer
5 and robber and His Honor is going to instruct you on
6 creditability of witnesses. I'm just going to say this.
7 I'm not going to trash the man too much. I'm going to say
8 this. When you're thinking about who you want to believe,
9 and you're talk about somebody that really within the last
10 two years has been convicted of crimes, and I went through
11 several offense: Drug offenses, robbery, not to mention
12 the fact that what he testified to was totally different
13 than what either one of them testified to.

14 Because, remember, you've got three different
15 versions. You've got Mr. Teal saying, "He got hit in the
16 hid. Went down." You've got Mr. Langford saying, "Oh, he
17 got hit in the shoulder." And then you've got the
18 defendant saying, "Oh, no, I did this." I mean they all
19 demonstrated three different things, but they were -- all
20 were within 4 feet of each other. Mr. Knox didn't talk
21 about that, and in all honesty I wouldn't have talked
22 about it either. That is just me, but any way, ladies and
23 gentlemen, let me close by saying this. I think the most
24 important thing that happened in this trial, other than,
25 you know, everything. Everything you heard is important

1 in this trial, but when -- before I sat down, when I was
2 cross-examining the defendant, and talk about being
3 evasive, but he finally did admit. He admitted that he
4 had acted wrong. I asked him try several ways. I
5 finally, can we agree that both of you were wrong with
6 what you did. And he admitted that, yes. Again, I'm not
7 saying that it was right for Paul to throw the bottle, but
8 it did not rise to a level of getting shot four times.

9 But, let me just say this, as Chris Rock has said
10 before, "It isn't something I condone from the bottle
11 standpoint, but I understand." I understand somebody is
12 talking about me and my family so much, yeah, I might
13 sling a bottle at them. Not saying it's right, but I
14 understand it. It still does not rise to the level of him
15 being shot four times in the way that he was. And you
16 heard the nature of his injuries, and I'm not going to
17 belabor that point. But again, he did not deserve what
18 happened to him.

19 If they engaged in a fist fight after that, so be it.
20 But they brought, I think Chris said, "Brought a gun to
21 really what amounted to be a fist fight." Brought a gun
22 to a fist fight. Ladies and gentlemen, there is a whole
23 lot more I can get into, but I'm not. You've heard the
24 case. It was not a long case. It was not long and drawn
25 out, but it was very important to all parties concerned.

1 And the only thing that I would say in closing is this:
2 There is a difference between fear and anger. If you
3 legitimately fear for your life, that's one thing. We do
4 not have that here. We've got anger. If you look at the
5 tape, even listening from the testimony, he was mad. But
6 the thing is he was not faultless in bringing this about.
7 He came there. He engaged in the trash talking. It rose
8 to the next level. The thing is he brought a gun to this
9 particular episode.

10 The alpha male barked. That's basically what
11 happened. The alpha male barked, and he barked, not using
12 his fist like we used to do back in the day. He barked
13 using a gun. And that's why we're here today, ladies and
14 gentlemen.

15 At the end of the day that's why we're here today,
16 and Mr. Knox said I think in his -- as he opened talked
17 about his father. And that you know you make your bed you
18 have to lie in it. Paul talked -- he talked about the
19 fact that Paul was lying in his bed cause he was shot.
20 Well, you know what? The defendant made a bed, too. And
21 he hasn't had to lie in it yet. And that's why we're here
22 today because it's time that this defendant lie in the bed
23 that he made. And that bed is called justice.

24 And like I said at the end of the day in order to be
25 a civilized society we cannot tolerate this random use of

1 guns. In my mind that's what it comes down to. We cannot
2 tolerate. We should not tolerate, and I ask through your
3 verdict today that you speak loudly and clearly to this
4 defendant that it's not going to be tolerated. And, yes,
5 it is time for you to lay in the bed that you made. I
6 thank you and God speed in your deliberations.

7 CHARGE OF THE COURT

8 THE COURT: Ladies and gentlemen, during the course
9 of the trial while the attorneys have been presenting you
10 the evidence it's been appropriate for me to be up on the
11 bench and out of way because as I told you when we started
12 this case you are the judges of the facts in this case.
13 And so it's been appropriate for me to get out of their
14 way and let them present the evidence to you. But we are
15 now at that portion of the trial where you and I are in
16 this together. You as the judges of the facts, me as the
17 judge of the law. So I think it's appropriate that I come
18 down and give you the charge here, face to face.

19 Madam Forelady and members of the jury, you have
20 heard all of the evidence and heard the arguments of both
21 parties. I will now explain to you the law which applies
22 to this action.

23 The indictment charges the Defendant, Noah Mumford,
24 with the charge of attempted murder. I remind you that
25 the act -- that the fact that the defendant was arrested,

1 charged and indicted in this case is not evidence in this
2 case and it cannot be considered by you as evidence of
3 guilt in this case. Nor does it create any presumption or
4 inference of guilt. The indictment is simply the formal,
5 written instrument which contains the charge made against
6 the defendant. It is the formal document by which this
7 case the brought into Court.

8 Now, I will give you a copy of those instructions in
9 written form to have with you in the jury room. During
10 your deliberations you may refer to those instructions to
11 guide you in your decision making. You must consider the
12 instructions as a whole and not follow some and ignore
13 others.

14 Now, the defendant has pled not guilty to this
15 indictment and to this charge, and that plea puts the
16 burden on the State to prove the defendant guilty. Before
17 a person charged with committing a criminal offense in
18 South Carolina is never required to prove him or herself
19 innocent. I charge you that it is an important rule of
20 law that the defendant in a criminal trial, no matter what
21 the seriousness of the charge maybe, will always be
22 presumed to be innocent of the crime for which the
23 indictment was issued unless guilt had been proven by
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt.

1 This presumption of innocence does not end when you
2 begin your deliberations. But it begins -- excuse me.
3 But it accompanies the defendant throughout the trial
4 until you reach a verdict of guilt based on evidence
5 satisfying you of that guilt beyond a reasonable doubt.
6 The presumption of innocence is not a mere legal theory.
7 It is not just a legal phrase, but it is a substantial
8 right to which every defendant is entitled to unless you
9 the jury are satisfied from the evidence of the
10 defendant's guilt beyond a reasonable doubt.

11 Now, the State has the burden of proving the
12 defendant guilty beyond a reasonable doubt. Some of you
13 may have served as jurors in civil case where you were
14 told that it is only necessary to prove a fact is more
15 likely true than not true such as by the greater weight or
16 the preponderance of the evidence. In criminal cases the
17 State's proof must be more powerful than that. It must be
18 beyond a reasonable doubt. Proof beyond a reasonable
19 doubt is proof that leaves you firmly convinced of the
20 defendant's guilt.

21 There are very few things in this world that we know
22 with absolute certainty, and in criminal cases the law
23 does not require proof that overcomes every possible
24 doubt. If, based on your consideration of the evidence,
25 you are firmly convinced that the defendant is guilty of

1 the crime charged you must find the defendant guilty. If
2 on the other hand you think there is a real possibility
3 that the defendant is not guilty then you must give the
4 defendant the benefit of that doubt and find him not
5 guilty.

6 I remind you that during this trial you have I have
7 certain duties to perform. As the trial judge it is my
8 responsibility to preside over the trial of this case and
9 I also have the duty to rule on the admissibility of evidence
10 offered during for trial. You are to consider only the
11 competent evidence that is before you. You are to
12 consider only the testimony which has been presented from
13 the witness stand, and any exhibits which may have been
14 made a part of the record in this case as well as any
15 stipulations or agreements of counsel.

16 I have the additional duty to charge you the law that
17 is applicable to this case. As the presiding judge I am
18 the sole judge of the law in this case, and it is your
19 duty as jurors to accept and apply the law as I now state
20 it to you. If you already have an idea as to what the law
21 is or what the law ought to be and it does not agree what
22 I now tell you the law is you must abandon your idea
23 because you are sworn to accept the law and apply the law
24 exactly as I state it to you.

25 In every case tried in this Court before a jury the

1 jury becomes the sole and exclusive judges of the facts in
2 a case. A trial judge cannot intimate, state, comment
3 upon or make any statement to a trial jury about the facts
4 of the case. Since you the jury are the sole judges of
5 the facts in this case you are not to infer from anything
6 that I have said during the progress of this trial in
7 ruling on the admissibility of evidence or otherwise or
8 anything that I say now during the course of these
9 instructions to you that I have any opinion about this
10 case. The law does not allow me to have an opinion about
11 the facts in this case. That's a matter that is solely
12 for you the jury to determine.

13 As jurors it is your duty to determine the effect,
14 the value, weight, and truth of the evidence presented
15 during this trial. Now, there are two types of evidence
16 that are generally presented during a trial. There is
17 direct evidence and there is circumstantial evidence.
18 Direct evidence is the testimony of a person who claims to
19 have actual knowledge of a fact such as an eyewitness. It
20 is evidence which immediately establishes the main fact to
21 be proven.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating the existence of a fact. It
24 is evidence which immediately establishes collateral facts
25 from which the main fact may be inferred. Circumstantial

1 evidence is based on inference and not on personal
2 knowledge or observation.

3 Now, the law makes absolutely no distinction between
4 the weight or the value to be given to either direct or
5 circumstantial evidence. Nor is there a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence. You should weigh all the evidence in
8 this case. After weighing all of the evidence if you are
9 not convinced of the guilt of the defendant beyond a
10 reasonable doubt you must find the defendant not guilty.
11 However, if after weighing all of the evidence you are
12 convinced of the defendant's guilt beyond a reasonable
13 doubt then you would find the defendant guilty.

14 So, necessarily, you have to determine the
15 credibility of the witnesses who testified in this case,
16 and ladies and gentlemen, creditability simply means
17 believability. It becomes your duty as jurors to analyze
18 and to evaluate the evidence and to determine which
19 evidence convinces you of its truth. In evaluating
20 eyewitness testimony you should remember that the State
21 must prove the identity of the defendant as the person who
22 committed the crime beyond a reasonable doubt.

23 In determining the believability of witnesses who
24 have testified in this case you may believe one witness
25 over several or several witnesses over one. You may

1 believe a part of a witness' testimony and reject the
2 remaining part of the same witness' testimony. You may
3 believe the testimony of a witness in its entirety or
4 reject it in its entirety. You may consider whether any
5 witness has exhibited to you any interest, bias, prejudice
6 or other motive in this case. You may also consider the
7 appearance and the manner of a witness while on the
8 witness stand.

9 Now, a person who has a past criminal record is
10 competent to testify during a trial. The past record does
11 not affect the ability of that witness to testify. The
12 past record may only be considered by you if at all in
13 determining the witness' believability. Remember you are
14 the sole judges of the facts in this case and the
15 believability of any and all the witnesses who testify.
16 All right.

17 Now, Mr. Mumford is charged with the crime of
18 attempted murder. A person who with the intent to kill
19 attempts to kill another person with malice aforethought
20 either express or implied commits the offense of attempted
21 murder. Malice is hatred, ill will or hostility towards
22 another person. It is the intentional doing of a wrongful
23 act without just cause or excuse and with the intent to
24 inflict an injury or under circumstances that the law will
25 infer an evil intent.

1 Malice aforethought does not require that malice
2 exist for any particular time before the act is committed.
3 But malice must exist in the mind of the defendant just
4 before and at the time that the act is committed.
5 Therefore, there must be a combination of a previous evil
6 intent and the act itself. Malice aforethought maybe
7 express or implied. These terms; 'express and implied' do
8 not mean different types of manslaughter, but merely the
9 manner in which manslaughter maybe shown to exist; that is
10 either by direct of by inference from the facts and
11 circumstances which are proved.

12 Express malice is shown when a person speaks word
13 which express hatred or ill will for another. Or when the
14 person prepared beforehand to do the act which was later
15 accomplished. For example, lying in wait for a person or
16 any other acts of preparation going to show that the deed
17 was within the defendant's mind would be express malice.

18 Implied malice maybe found to exist when
19 circumstances demonstrate a wanton or a reckless disregard
20 for human life. Or when a reasonably prudent person would
21 have known that according to common experience there was a
22 plain and strong likelihood that death would follow the
23 contemplated act.

24 Now, an attempt is an effort to accomplish a crime
25 which does not succeed. An attempt includes a specific

1 intent to do a particular criminal act along with an act
2 falling short of the act intended. The State must show
3 more than mere preparation and intent. There must be some
4 overt act committed in the effort to commit the crime.
5 Intent means intending the result which actually occurs.
6 In other words not accidentally or involuntarily. Intent
7 maybe shown by acts and conducts of the defendant and
8 other circumstances from which you may naturally and
9 reasonably infer intent.

10 Now, if you find that the State has not proven that
11 the defendant is guilt of attempted murder you must then
12 determine whether the State has proved that the defendant
13 is guilty of assault and battery of a high and aggravated
14 nature. Assault and battery of a high and aggravated
15 nature includes all of the elements of attempted murder
16 except the malice aforethought. In addition the State
17 must prove beyond a reasonable doubt an aggravating
18 circumstance.

19 Circumstances of aggravation include the use of a
20 deadly weapon, the intent to commit a felony, the
21 infliction of serious bodily injury, a great disparity
22 between the ages or the physical conditions of the
23 parties, the purposeful infliction of shame and disgrace,
24 and the resistance of lawful authorities. Ladies and
25 gentlemen, these are only examples of circumstances of

1 aggravation that you may consider.

2 Now, self-defense is a complete defense, and if it is
3 established you must find the defendant not guilty. There
4 are four elements that are required by law to establish
5 self-defense.

6 The first element is that the defendant must be
7 without fault in bringing on the difficulty.

8 The second element is that the defendant must have
9 been in actual imminent danger of losing his life or
10 sustaining serious bodily injury. Or he must have
11 actually believed he was in imminent danger of losing his
12 life or serious bodily injury.

13 Third, if the defense is based upon his behalf of
14 imminent danger a reasonably prudent person of ordinary
15 firmness and courage would have entertained the same
16 belief. If the defendant actually was in imminent danger
17 then the circumstances were such as would warrant a person
18 of ordinary prudence, firmness and courage to shoot the
19 gunshot in order to save himself from serious bodily
20 injury or losing his own life.

21 And, fourth, the defendant had no other probable
22 means of avoiding the danger of losing his own life or
23 sustaining serious bodily injury other than to act as he
24 did in this particular instance. These are the four
25 elements of self-defense.

1 Now, a defendant in a self-defense case has the right
2 to act on appearances. A defendant must have believe he
3 was in imminent danger, not that he was actually in such
4 danger, because he had the right to act on appearances.
5 And under the circumstances as they appeared to him he
6 believed that he was in such danger that a reasonable,
7 prudent man of ordinary firmness and courage would have
8 entertained the same belief.

9 Now, words accompanied by hostile acts may, depending
10 on the circumstances, establish a plea of self-defense.
11 Self-defense is not available to, one, who uses language
12 so contemptuous that a reasonable person would expect it
13 to bring on a physical encounter and which actually -- and
14 which did actually contribute to bringing it on. If the
15 defendant is justified in firing the first shot the
16 defendant is justified in continuing to shoot until it is
17 apparent that the danger to his life and body has ceased.

18 Ordinarily, a defendant is not justified in shooting
19 or employing a deadly weapon after the adversary has been
20 disarmed or disabled. A defendant has no duty to retreat
21 if by doing so he increases his danger of being killed or
22 suffering serious bodily injury.

23 Now, there has been evidence of bad blood or ill
24 feelings between the parties. If there is bad blood or
25 ill feelings between the victim and the defendant, and

1 there have been antecedent threats between them that would
2 not give either of them in itself the right to injure or
3 physically harm the other. If there are ill feelings or
4 bad blood between the victim and the defendant, and they
5 have that information they have the right to judge the
6 other person's conduct more harshly than otherwise.

7 If there have been ill feeling and bad blood, if
8 there have been any antecedent threats, the other person
9 is justified in interpreting those acts more harshly than
10 in the case of friends. If there are threats of harm or
11 ill feelings or bad blood the conduct is to be judged in
12 that light, and the other person may judge more harshly in
13 determining whether there is any necessity to act for that
14 person;s safety.

15 There is no burden upon the defendant to prove
16 self-defense. The defendant is not required to prove any
17 element of self-defense. The burden is on the State to
18 disprove self-defense beyond a reasonable doubt. If you
19 have a reasonable doubt of the defendant's guilt, after
20 considering all of the evidence including the evidence of
21 self-defense, then you must find the defendant not guilty.

22 On the other hand if you have no reasonable doubt of
23 the defendant's guilt, after considering all of the
24 evidence including the evidence of self-defense, then you
25 would find the defendant guilty.

1 Now, Madam Forelady and ladies and gentlemen of the
2 jury, as you retire to begin your deliberations I want to
3 express to you the hope that each of you will be mindful
4 of your responsibility. You're not called upon to serve
5 as jurors very often, and the proper performance of the
6 duty requires each of you to reach the height of freeing
7 your mind of all improper influences. You and I are
8 acting for the community, and that is why we must see to
9 it that this trial is fair and the victim is just.

10 You have observed that the presiding officer of the
11 Court is always addressed as Your Honor. The reason is
12 not because of the person wearing this robe, but that this
13 Court is entrusted with the honor of this community, the
14 honest of this State, and the honor of this country in
15 seeking that every case tried here receives fair and
16 impartial justice.

17 Now, do not get any idea that I am trying to intimate
18 to you how I might think you should decide this case. As
19 I have already told you under the laws of the State of
20 South Carolina you the jury are the sole judge of all
21 questions of fact. It would be highly improper for me to
22 influence you in the performance of that duty. But as the
23 presiding officer of this Court I am vitally concerned
24 that whatever verdict you find will be the result of your
25 going into that jury room and confining your consideration

1 to the evidence and to the law which you've heard in this
2 courtroom, weighing it fairly and impartially, as I have
3 every confidence that you will do.

4 Your verdict in this case cannot be based on
5 sympathy, compassion, prejudice, or emotion or some other
6 consideration that is not found in the evidence. The
7 Court is of the confirmed opinion that whatever verdict
8 you reach will represent truth and justice for all parties
9 that were involved in this case. Remember, ladies and
10 gentlemen, that your verdict whatever it is must be
11 unanimous.

12 Now, Ma'am Forelady, when you go back into the jury
13 room you will have this notebook with you and in the front
14 cover is a verdict form. It's a simple form, and I'm
15 going to go over it briefly with you here. The top of the
16 form has the caption: State of South Carolina v. Noah
17 Mumford. The charge is attempted murder, and there are
18 three possible forms of verdict. You can either find that
19 Mr. Mumford is guilty of attempted murder or guilty of
20 assault and battery of a high and aggravated nature or not
21 guilty.

22 Those are the three forms of verdict that you will
23 have on this form and, Madam Forelady, once the jury has
24 reached a unanimous verdict mark the appropriate spot on
25 the verdict form that represents the jury's verdict and

1 then sign as forelady. Once you reach a verdict in this
2 case if you will knock on the door and let the bailiff
3 know that you have reached a verdict we will then bring
4 you out and receive your verdict.

5 Now, here is what we're going to do. I'm gong to
6 excuse you now to go back into the jury room, but don't
7 begin deliberations yet. I'm going to confer with the
8 lawyers briefly to make sure that everything that I've
9 given you on the law is there and is appropriate. If
10 there is anything left out that I need to bring you back
11 out and give you more information I'll do that. If the
12 charge is complete and everything is okay we'll gather up
13 these exhibits and send them back into the jury room with
14 you.

15 When you receive the exhibits and this notebook
16 that's your queue to go ahead and begin deliberations. A
17 couple of things. If you wish to view that videotape just
18 let us know. We will make arrangements for you to do
19 that, Number One.

20 Number Two, is I'm to go ahead and Madam Clerk is
21 going to order lunch for you. We're going to bring lunch
22 in, and go ahead and feed you today while you're doing
23 your deliberations, okay. As I told you when I was
24 talking about the foreperson if any member of the jury
25 panel has to leave the room to use the restroom or

1 whatever make sure you stop deliberations until that
2 person returns so that everybody has the benefit of the
3 deliberations, okay.

4 So when you get these items that will be your queue
5 to begin your deliberations. Do not begin until you get
6 these items, okay. If you will please retire to your jury
7 room.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 12:41 p.m.)

10 COLLOQUY

11 THE COURT: All right. Are there any exceptions or
12 objections to the Court's charge; from the State?

13 MR. REDMOND: Your Honor, Mr. Jones brought to my
14 attention, and I should have caught it, but he indicated
15 that this is the first attempted murder under the new
16 statute that I've ever tried. But when it says, "All of
17 the elements except for malice aforethought," I guess the
18 State's concern is that with assault and battery of a high
19 and aggravated nature that, basically, the statute, the
20 elements, does not include intent to kill.

21 And he indicated and I agree that could be somewhat
22 confusing when reading attempted murder thinking that
23 attempt to kill applies to assault and battery of a high
24 and aggravated nature. And attempted murder -- I'm on
25 Page 11 with the A.B.H.A.N. and it refers back to Page 9

1 with the attempted murder. And so the only thing that we
2 would ask is that you clarify intent to kill, and that's
3 something I should have caught.

4 THE COURT: Okay. I agree with that. What I'll do
5 is I'll hand write the change on this form. It will be
6 there. I will also bring them out and instruct them.

7 MR. REDMOND: Thank you, Your Honor.

8 THE COURT: Anything else from the Defense?

9 MR. KNOX: Your Honor, the ---

10 THE COURT: On Page 11. That last sentence on Page
11 11 says, "Assault and battery of a high and aggravated
12 nature includes all of the elements of attempted murder
13 except malice aforethought." Well, it also doesn't
14 include intent to kill, so I'll correct that.

15 MR. REDMOND: Thank you.

16 THE COURT: Anything from the Defense?

17 MR. KNOX: No, sir.

18 THE COURT: All right. Guys, let me ask y'all
19 something. I don't know, the video thing.

20 MR. REDMOND: On the computer we can send -- I
21 understand I think it's this computer. I did work on that
22 computer. I think this was the computer that we were
23 using. We can send it back, however, you want to do it.

24 THE COURT: Here is the only concern I've got. Is
25 there anything else on the computer -- in other words I

1 don't want them to have a computer that they can go
2 searching around and looking at either State or Defense
3 paraphernalia and information.

4 MR. REDMOND: I do not know.

5 THE COURT: Of course, you know any instruction I
6 give them would be to we would set it up and show them the
7 disc.

8 MR. KNOX: Can the t.v. roll back there?

9 MR. REDMOND: It's not going to fit with the way that
10 is, and honestly, they're here. It's better just the
11 computer. The way the room is situated and the table is
12 so big it would be hard to get it in there, I think. It
13 might fit in, but we would have to do some fancy footwork.

14 CLERK OF COURT: It's not going to fit in there.

15 THE COURT: In other words, it is set up where they
16 hit play and then it plays? All right. Y'all ready for
17 me to bring the jury back out?

18 MR. REDMOND: Yes, sir.

19 THE COURT: But everything is together to go back?

20 MR. REDMOND: We've got the exhibits so we're ready
21 to send them back.

22 THE COURT: All right. Ask the jury to come and join
23 us back.

24 (WHEREUPON, the jury enters the courtroom at
25 12:48 p.m.)

CHARGE OF THE COURT CONTINUED

1
2 THE COURT: Ladies and gentlemen of the jury, I've
3 made a change to the charge and I've made it on the
4 written charge that you're going to have in the back, but
5 I just want to inform you of that. When I gave you the
6 charge on the lessor included offense of assault and
7 battery with intent to kill -- excuse me, with assault and
8 battery of a high and aggravated nature I charged you
9 initially that assault and battery of a high and
10 aggravated nature include all of the elements of attempted
11 murder except malice aforethought. That's not completely
12 correct.

13 The correct charge would be this: That assault and
14 battery of a high and aggravated nature would include all
15 of the elements of attempted murder except malice
16 aforethought and the intent to kill. It doesn't -- it
17 does not include those two elements, but it does include
18 all of the other elements. And I made a change here on
19 the charge so it's there for you if you need it, okay.
20 Now, I've already conferred with the attorneys, and all
21 the exhibits are gather together.

22 What I'm going to do at this point is I'm going to
23 ask you to retire to your jury room and the bailiff is
24 going to bring the items in to you and then you may begin
25 your deliberations. Is Ms. Little -- which one? Ms.

1 Little, I'm going to get you to stay with us cause you're
2 the alternate. I think everyone is healthy enough to
3 proceed with deliberations. So I'm going to ask the 12 of
4 you to go ahead and begin your deliberations. And, Ms.
5 Little, I'm going to just speak to you briefly and I'm
6 going to excuse you, okay. So go ahead and you begin your
7 deliberations once you receive this information.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom to begin deliberations at 12:50 p.m.)

10 COLLOQUY

11 THE COURT: Ms. Little, as the alternate, obviously,
12 it would be important if any of the other 12 members of
13 the jury either became ill or for some reason could not
14 continue. It's important that you've been here for
15 everything that they've been here for. If you had to sit
16 on the main panel you would have to have all the same
17 information. But I think everybody is in good health and
18 is ready to proceed. So there is no need for you to sit
19 here. So I'm going to excuse you and thank you for your
20 service.

21 I think she's not in here right now, but I think
22 Madam Clerk has your checks ready, so as you get your
23 personal items if you would go by the Clerk's Office I
24 think they will have a check for your. And your service
25 for this week is concluded, okay. Thank you, ma'am.

1 All right. Court will be in recess now while the
2 jury is deliberating.

3 (WHEREUPON, Court was in recess at 12:55 and
4 reconvened at 3:52 p.m.)

5 VERDICT OF THE JURY

6 THE COURT: All right. It's my understanding that
7 the members of jury have reached a verdict. I always say
8 this: Whenever, whether it's a criminal case or a civil
9 case, I tell everyone in the courtroom that I don't even
10 ask anybody to agree with the jury's verdict, but I do ask
11 that their verdict be received in a respectful and
12 professional manner. So it's okay to disagree with the
13 jury, but it is what it is. Whatever it is and sitting
14 here looking at you I have no idea what their verdict is.

15 All I know is that whatever it is it needs to be
16 received in a respectful and professional manner. I don't
17 tolerate any outbursts or any comments, and so if you
18 don't think you can refrain from reacting in a negative
19 way or positive way, either way, I don't want a reaction
20 objecting to their verdict or agreeing with their verdict.
21 In other words there needs to be no reaction. Just let
22 the verdict be received like I said in a respectful manner
23 because they deserve that whether you agree what their
24 verdict or not.

25 So if you don't know that you can control your

1 emotions and let me give you this opportunity to step
2 outside because if there are any outbursts or any comments
3 or whatever I can assure you that I will lock you up.
4 It's that simple. I'm not going to sugar coat it. I'm
5 not going to tolerate a jury not being treated
6 respectfully. So having said that is the State ready to
7 receive the jury's verdict?

8 MR. REDMOND: State is ready, Your Honor.

9 THE COURT: Defense ready to receive the verdict?

10 MR. KNOX: Defense is ready, Your Honor.

11 THE COURT: All right. If you would please tell the
12 members of the jury to join us.

13 (WHEREUPON, the jury enters the courtroom at
14 3:56 p.m.)

15 THE COURT: All right. Madam Forelady, has the jury
16 reached a unanimous verdict?

17 JURY FOREPERSON: Yes, sir, we have.

18 THE COURT: If you would please pass that to the
19 bailiff. Thank you, ma'am. All right. Madam Clerk,
20 would you please publish the jury's verdict for me.

21 CLERK OF COURT: October 26, 2011, case of the State
22 v. Noah Mumford. 2011-GS-13-196. We the jury find the
23 Defendant, Noah Mumford, guilty of assault and battery of
24 a high and aggravated nature. Foreperson, Dorothy L.
25 Nice. Presiding Judge, Thomas Russo. Madam Forelady, is

1 this your verdict?

2 JURY FOREPERSON: Yes, ma'am.

3 CLERK OF COURT: Okay. If this is the verdict of all
4 12 please raise your right hand. Thank you.

5 THE COURT: All right. Ladies and gentlemen, I want
6 to thank you for your service this week. As you can see
7 from your jury service it can be physically taxing from a
8 mental standpoint, but I do appreciate everyone. I've
9 watched you throughout the trial and everyone seemed to be
10 alert and paying attention to what went on. And so I want
11 to thank you. You have earned an exemption now so that if
12 you get called for jury service in the next -- balance of
13 this year and the next two years you can be excused from
14 that service based on your service this week.

15 I do encourage folks and let you know that's just an
16 exemption. It doesn't mean that you're not qualified to
17 serve. So you certainly can serve if you get another
18 notice. So I would encourage you to do that, but that
19 concludes your service for this week. We did have some
20 other cases that we have to deal with from the Solicitor's
21 Office, but those are cases that involve non-jury matters.
22 And so we'll fill out the balance of this week doing those
23 non-jury matters. So, and I think Madam Clerk will have
24 you check.

25 CLERK OF COURT: I, too, would like to thank you for

1 being here today and I left the checks in the office. So
2 if you would please stop by my office and ask Becky to get
3 your checks. They're in my office.

4 THE COURT: Okay. And do me a favor. When you look
5 at those checks please don't get offended. We can't pay
6 you for what your time is really worth because your time
7 is so valuable. Jury service is just that. It's a
8 service that you give to your community. This is just a
9 small amount. It's just what the State provides that you
10 can be paid for service. It certainly does not reflect
11 how valuable your time is. We understand how valuable
12 that is. But, again, I want to thank you. Anything
13 remaining for the jury?

14 MR. REDMOND: Nothing from the State.

15 THE COURT: From the Defense?

16 MR. KNOX: Nothing from the Defense, Your Honor.

17 COLLOQUY

18 THE COURT: Well, ladies and gentlemen, thank you
19 again. Now, let me -- I'll share this with you. I tell
20 this to all jurors. You've worked hard on the case.
21 You've been the ones that have been here all week
22 listening to the case. And in just a little bit we're
23 going to move to the sentencing portion. If you would
24 like to remain and stay for that you're certainly welcomed
25 to do that. You can go and get your check and if you want

1 to come back in the courtroom for that you're welcomed to.

2 This is a public forum or you're free to go. You can
3 do either one. Sometimes jurors want the stay. Sometimes
4 they don't want to stay. They want to leave. It doesn't
5 matter to me. Just feel free to go and come as you
6 please, okay. So thank you, ladies and gentlemen.
7 Everyone else remain seated. Ladies and gentlemen, you're
8 free to go.

9 (WHEREUPON, the jury panel was excused from the
10 courtroom at 4:01 p.m.)

11 THE COURT: If there are any motions at the
12 conclusion of the reading of the verdict I'll be glad to
13 take those up.

14 MR. REDMOND: None from the State, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. KNOX: Again, Your Honor, I respect the verdict
17 of the jury, however, I would ask the Court to reconsider
18 that verdict based on the evidence that was presented.

19 THE COURT: All right. Thank you very much,
20 Mr. Knox. I'm going to respectfully deny that motion. I
21 think as I said earlier I really do believe this was a
22 question of fact, and the jury being the fact finders I
23 didn't find anything in the evidence that would be
24 inconsistent with the jury's verdict. And so I'm going to
25 respectfully deny that motion.

SENTENCE OF THE COURT

1
2 All right. Let me hand you this. Let you hold onto
3 that. All right. Ready to proceed to sentencing?

4 MR. REDMOND: State is ready.

5 THE COURT: All right. Solicitor, obviously, I heard
6 this case. Is there anything further from the State as it
7 relates to sentencing?

8 MR. REDMOND: I don't know if Mr. Funderburk wants to
9 address the Court as it relates to sentencing, but
10 briefly, I would just say that, of course, with the
11 conviction and it falls under the 20 year statute, I have
12 not consulted the victim regarding this. The fact that
13 the defendant doesn't have a prior record, I'm not one
14 that automatically asks the maximum because there is a
15 conviction in a jury trial cause I don't think that is
16 justice.

17 I think that -- but I do ask for a substantial
18 sentence because I think part of it is the message it
19 sends to this defendant but also to the community as I
20 indicated in my closing. So that even though I'm not
21 asking by myself -- I hadn't talked with the victim,
22 obviously. He may feel totally different, and is entitled
23 to, but I do think it should be substantial. When I say
24 substantial well in excess of ten years, Your Honor, if
25 you were to ask me what my opinion was.

1 I'm not asking for a 20 year sentence, but I am
2 definitely asking for more than ten years because I think
3 with justice we also have to balance the affect on the
4 community, and I think with that in mind I would ask the
5 Court to consider, again, a substantial sentence. And the
6 only reason I'm not asking for the maximum sentence is
7 because of his lack of a criminal history.

8 I think that this is a situation where we, Your Honor
9 as well, all seen way too often where in the back when I
10 was growing up I got in several fights, but they ended. I
11 mean we fought. Somebody won. Somebody lost. You went
12 about your way. Several of them I ended up being friends
13 with, and now a days we live in a culture where everybody
14 is so quick to jump to a gun or a knife and kill with no
15 regard for anybody's life.

16 And I think the general public in general is tired of
17 it, and I think the jury with it's verdict today has also
18 echoed that sentiment. So we ask that you keep all of
19 that in mind. I'll yield to Mr. Funderburk if he has
20 anything that he would like to address to the Court.

21 THE COURT: Mr. Funderburk, if you have anything to
22 share with the Court I'll be happy to hear from you.
23 You're not required to, but I'll be more than happy to
24 hear from you. Anything you would like to tell me?

25 MR. FUNDERBURK: No, sir.

1 THE COURT: Well, I want to thank you, Number One,
2 for being here. Number Two, I'm sorry that you endured
3 this situation and having been shot, but I do thank you
4 for being present and prosecuting the case. Anything
5 further from the State?

6 MR. REDMOND: Nothing further from the State?

7 THE COURT: All right. Mr. Knox, I'll be more than
8 happy to hear from you on behalf of Mr. Mumford, and then
9 anyone else that would like to address the Court I'll be
10 happy to hear from you.

11 MR. KNOX: Your honor, I've represented Mr. Mumford
12 for the last two months, but it goes more than that. I
13 know Mr. Mumford. Watched him grow up. I know about his
14 service in Iraq, and I think he's a good person. He
15 always worked as far as I know. He owns his own business.
16 He was working when this happened. You heard the
17 testimony. It was circumstances where two young men got
18 in an altercation, and when that happens things can go
19 terribly wrong which they did.

20 But the State is arguing that this man be put away
21 for more than ten years. I look at it as if making a
22 mistake. Me made a mistake. A very serious mistake. He
23 shot Mr. Funderburk. He thought he was justified in doing
24 it. The jury said, 'no'. But to send this young man
25 away, he's 32 years old, has young children, he's not a

1 burden to our society. He pays his taxes. He's been a
2 member of this community since he was born. He went away.
3 He fought for this country. He was honorably discharged,
4 and he came back home and he made one mistake.

5 As the Solicitor said he has no criminal record. I
6 think that under the circumstances a probationary sentence
7 would be appropriate. He had learned from this. He has
8 truly learned from this from day one, and upon my
9 representation of him the first thing that I said to him,
10 "Could you have handled this in a different way?" And he
11 said, "Yes."

12 I don't know what happened back on December 23rd. I
13 wasn't there. Crowd of young men trash talking, arguing,
14 , betting, racing, alcohol. Something went wrong. Sure, I
15 agree with the Solicitor that these things have to stop.
16 But do you send a person away for ten years when they make
17 one terrible mistake. And I'm not trying to belittle the
18 fact that Mr. Funderburk got shot. By no means am I
19 trying to do that. He wasn't killed, you know. He was
20 shot.

21 But was he completely innocent in this? I think not.
22 He threw something at him. Did he deserve to get what he
23 got? The jury said, 'no,' but you have two actors here
24 who both admit that they did wrong. One would be going
25 home to have a beer. And one maybe going to prison for a

1 very long time away from his young children, his mother
2 and father. His family is back there, and I would just
3 ask the Court to give us the sentence that fits the
4 circumstances. Thank you.

5 MR. REDMOND: And, Your Honor, if I may just to be
6 clear. With the assault and battery, and I didn't realize
7 this until I looked in the red book, of course, it is up
8 to 20 years. I hadn't marked on the sentencing sheet yet,
9 but I wanted to make sure it is violent, it is serious,
10 and it is not parole. So I think in fairness to all
11 parties concerned I think according to what I got in the
12 red book I want to make the Court aware of those
13 particular sentencing issues.

14 And at the appropriate time I did not affix these
15 stipulations onto the sentencing sheet. So prior to us
16 passing it up to you I just marked the appropriate space
17 on the sentencing sheet.

18 THE COURT: All right, sir. Anything else from the
19 Defense, Mr. Mumford or anyone?

20 MR. KNOX: Mr. Mumford wants to speak.

21 THE COURT: All right. Be happy to hear from you,
22 sir.

23 MR. MUMFORD: Your Honor, I made a mistake, but I
24 feared for my life when I made that mistake. That bottle
25 scared me. I didn't intend on hurting no one. I didn't

1 intend on no one being away from their family. I love my
2 family. I feel like everyone else loves their family,
3 too, but for me to have to serve ten years, I just --
4 that's a long time to be away from small kids and miss a
5 lot of their life.

6 THE COURT: You're facing 20.

7 MR. MUMFORD: Yeah.

8 THE COURT: I don't know who planted ten years in
9 your head, and I don't know what I'm going to do. You
10 need to be aware that this carries up to 20 years.

11 MR. MUMFORD: Twenty years is longer than ten, Your
12 Honor.

13 THE COURT: Here's the thing. If this wasn't so
14 serious and sad it's almost comical. When you say, "I did
15 not intend to hurt anybody." No one fires a gun at
16 another human being and not intend to hurt them. What
17 makes this even more egregious to me is you're a trained
18 individual. Through your military experience you know how
19 to handle a gun. You know what a gun can do.

20 Your story that you shot into the ground, those
21 bullets, ricocheted up and hit him, completely
22 unbelievable. Completely. But the thing is, and I've
23 heard so much focus on Mr. Funderburk, and this wouldn't
24 have happened if he wouldn't have hit you with a bottle or
25 thrown a bottle or whatever happened with the bottle. But

1 you would be with your family right now if you didn't pack
2 a gun.

3 MR. MUMFORD: Yes, sir, Your Honor.

4 THE COURT: And I don't, you know, Mr. Redmond
5 touched on it. I don't understand that. I know we live
6 in a different world. We live in a different society
7 where young people are all carrying guns. I don't know
8 what causes it. You know some people want to blame the
9 violence that we see on movies. Some people want to blame
10 the violence that we see in video games and that. All of
11 that is so realistic that when you play those things or
12 watch those movies no one actually dies.

13 They just -- it happens and then you move on and go
14 to the next game, whatever. So that some experts can say
15 we've become desensitized to violence or to the damage
16 that guns can do. Maybe that's true. I don't know. I'm
17 surprised that you would have responded this way because
18 as a veteran, as an ex-military person, look here, he's a
19 lot bigger than I am. If he would have hit me with a
20 bottle I would have either kicked his tail or he would
21 have kicked mine, but I would have went at him like a
22 hurricane.

23 You didn't need a gun. You can handle yourself. I'm
24 confident that you can handle yourself. I don't know
25 where this came from. I don't know if you and Mr.

1 Funderburk had a history. I don't know. Or I don't know
2 if you're the kind of guy that goes around with a gun and
3 isn't afraid to use it. And that -- and again, I don't
4 know the answers to these questions. All I know is what
5 I'm watching every day are young people like yourself, and
6 I'm just going to call it the way I see it, okay. It's
7 cowardly. You're a coward when you open fire on an
8 unarmed man.

9 You say, "Well, he wasn't unarmed, Judge. He had a
10 bottle." I don't think any of the witnesses disagree with
11 the fact that he might have hit you with the bottle
12 initially, but he didn't have the bottle -- and y'all had
13 even scrapped. Y'all got together and had a little bit of
14 a scuffle before you departed. And you pulled a gun.

15 So nobody is man enough to use their fists anymore.
16 Everybody's got to be armed; knife, gun. Everyone's got
17 to have something because we're raising a society -- well,
18 I don't know how to. I don't even know how to say it.
19 We're not raising a society of men. I look out and I see
20 some older gentlemen who are my age and older. And I can
21 tell you -- I'll guarantee you. Every one of those people
22 out here when they were your age were not walking around
23 with guns in their waistbands. I'll guarantee that.

24 It's a whole different breed of man that we're
25 raising today. We don't raise people to be responsible,

1 to take care of themselves. We don't teach people to be
2 responsible to their obligations. We have a divorce rate
3 that's well over 50 percent. I see folks who come before
4 me, and you know what? There are some people that will
5 tell you that there is a racial thing to it, but I'm going
6 to be tell you that I don't believe that cause I see young
7 Black men, young White men, Hispanic men, Asian men and
8 woman of all races come before me constantly in criminal
9 court.

10 The vast majority of the time they have children out
11 of wedlock, they either different finish school or just
12 got a G.E.D. I'm talking about the majority. Not
13 everybody. There is one thing that I see which is a
14 common thread throughout all of criminal court: Folks
15 that don't follow through with their education have a
16 greater percentage of ending up here.

17 I've been on the bench for over six years, and I bet
18 I can count on both hands the number of defendants, the
19 number of folks that have been before me for criminal
20 charges that have some level of college education. You
21 don't see those people in criminal court. Somewhere along
22 the way people learn responsibility, but we're not
23 teaching that, and we've got to start teaching that.

24 I don't know what to do here. I'll be honest with
25 you, Mr. Mumford. It's such, and that's the thing. No

1 disrespect to you, and of course, absolutely none to you,
2 Mr. Knox. If this came before me on a plea I wouldn't
3 remotely consider probation. It's too serious. Walking
4 around shooting people is too damned serious. So I'm not
5 even considering a probationary sentence. I don't think
6 it's appropriate, and the folks that appointed me to this
7 position, I think that would be doing a disservice to even
8 consider a probationary sentence under this set of the
9 facts.

10 And I don't mean to leave anybody hanging. I don't
11 mean to keep folks in suspense, and it's not going to be
12 very long, but I'm going to take just about a two or three
13 minute recess so that I can look at some things. And,
14 quite frankly, do a little praying about what I think and
15 what is appropriate in this case. And so I will be back
16 on the bench in about two or three minutes. So just --
17 Court will remain at ease.

18 (WHEREUPON, Court in recess at 4:20 p.m. and
19 reconvened at 4:25 p.m.)

20 THE COURT: On 2011-GS-13-96, the charge of assault
21 and battery of a high a aggravated nature, the sentence of
22 the Court is that you are committed to the State
23 Department of Corrections for a period of ten years. You
24 will be given credit for the time that you have served.
25 Good luck to you, sir.

1 MR. REDMOND: Thank you, Your Honor.

2 MR. KNOX: Thank you, Your Honor. Your Honor, put on
3 the record that he has a right to appeal this decision
4 within ten days by filing a Notice of Appeal.

5 THE COURT: Absolutely, he's got ten days from
6 today's date to file that Notice of Intent to Appeal,
7 certainly.

8 MR. KNOX: Thank you, sir.

9 END OF TRANSCRIPT OF RECORD

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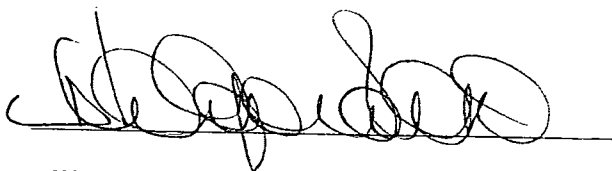
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 26th day of
October, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 18, 2012

A handwritten signature in dark ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

The South Carolina Court of Appeals

RECEIVED

file

The State, Respondent

JUL 24 2012

v.

ATTORNEY GENERALS
OFFICE

Noah Mumford, Appellant.

Appellate Case No. 2011-202528

ORDER

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above-captioned appeal be and hereby is dismissed.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Salley W. Elliott

Jack B. Swerling

FILED

JK 7/24/12



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

September 12, 2012

The Honorable Faye L. Sellers
200 West Main Street
Chesterfield, SC 29709

REMITTITUR

Re: The State v. Mumford, Noah
Lower Court Case No. 2010GS1300096
Appellate Case No. 2011-202528

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Salley W. Elliott
Jack B. Swerling

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

NOAH C. MUMFORD, #348375)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

**APPLICATION FOR
POST-CONVICTION RELIEF**

2012 CP12 000007

2013 FEB 28 PM 1
CLERK OF COURT
CHESTERFIELD COUNTY, SC

A True Copy
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

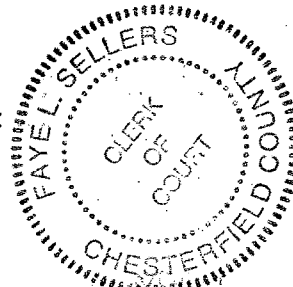
INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, **the original** shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention: **WATEREE CORRECTIONAL INSTITUTION**
2. Name and location of Court which imposed sentence: **CHESTERFIELD COUNTY GENERAL SESSIONS COURT.**
3. Name(s) of co-defendant(s) (if any): **NONE**
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) **2011-GS-13-96**
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) **OCTOBER 26, 2011 - 10 years**
6. Check whether a finding of guilty was made



- (b) after a plea of guilty (X)
- (c) after a plea of not guilty
- (d) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence? **YES**

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. **SOUTH CAROLINA COURT OF APPEALS**

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. The appeal was withdrawn on defendant's motion and a Court of Appeals issues an order of dismissal

ii. N/A

iii. N/A

(c) the date of each such result:

i. **JULY 25, 2012**

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

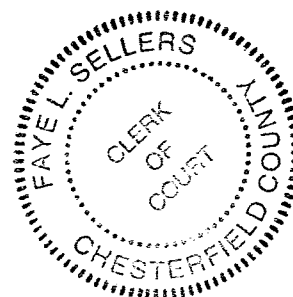
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CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

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(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The defendant alleges that he received ineffective assistance of trial counsel

(b)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) 1. The defendant alleges that trial counsel failed to adequately investigate the case.
2. The defendant alleges that trial counsel failed to interview the state's witnesses.
3. The defendant alleges that trial counsel failed to call to trial several witnesses for the defense.
4. The defendant alleges that trial counsel failed to adequately investigate the injuries of the alleged victim in the case.
5. The defendant alleges that trial counsel failed to effectively cross-examine several of the witnesses called by the state during the trial of this case.
6. The defendant alleges that trial counsel failed to adequately investigate the scene of the alleged offense.
7. The defendant alleges that trial counsel failed to have a preliminary hearing.
8. The defendant alleges that trial counsel failed to submit jury instructions relating to the facts of the case.
9. The defendant alleges that the South Carolina Legislature passed what is known as the "Protection of Persons and Property Act" effective June 9, 2006. The Act provides immunity from prosecution pursuant to section 16-11-450 of the S.C. Code of Laws (1976 amended).
10. The defendant alleges that the South Carolina Supreme Court handed down the opinion in *State v. Duncan*, 709 S.E.2d 662 (May 9, 2011) which held that the defendant was entitled to immunity under the Act.
 - (i) The defendant alleges that trial counsel failed to request a pretrial determination of immunity pursuant to the above-referenced statute and case law.
 - (ii) The defendant alleges that trial counsel failed to request jury instructions that would have been applicable under the Act and case aforementioned.

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 FAYE SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

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 Jone S. Sellers
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

WYATT L. SELLERS
 CLERK
 COURT
 CHESTERFIELD COUNTY

12. Prior to this application, have you filed with respect to this conviction:
- (a) any petitions in a State Court under South Carolina law? **NO**
 - (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? **NO**
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **NO**
 - (d) any other petitions, motions or applications in this or any other Court? **NO**
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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Faye L. Sellers

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A



(d) the date of each such disposition:

- i. N/A
- ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of Federal, in any petition, motion or application which you have filed? **NO**

15. If you answered "yes" to (14), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the defendant's first application for post-conviction relief

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

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FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



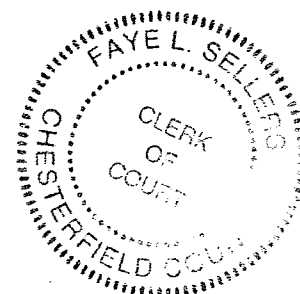
- (b) your trial, if any? **YES**
- (c) your sentencing? **YES**
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **YES**
- (e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? **YES**
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. **LARRY W. KNOX, P. O. Box 419, 164 Main Street, Chesterfield, SC 29709**
- ii. **JACK B. SWERLING, 1720 Main Street, Suite 301, Columbia, SC 29201**
- (b) the proceedings at which each such attorney represented you:
- i. **TRIAL AND SENTENCING**
- ii. **APPEAL AND POST-CONVICTION RELIEF**
- iii. **N/A**
19. State clearly the relief you seek in filing this application. **A NEW TRIAL.**
20. Are you now under sentence from any other court that you have not challenged? **NO**

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 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

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Faye L. Sellers

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

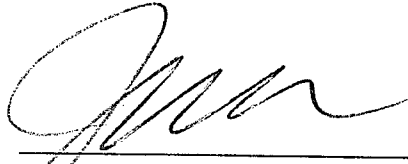


STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

VERIFICATION

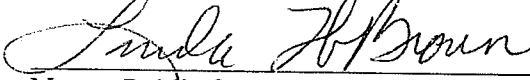
I, Jack B. Swerling, *retained* counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein have been represented to me by the defendant to be true. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.



JACK B. SWERLING, Esquire

SWORN to and subscribed before me this

21st day of February 2013.



Notary Public for South Carolina

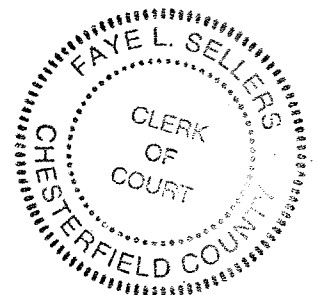
My Commission Expires: 06/14/22

2013 FEB 28 PM 1 21
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

A True Copy. Attest



CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

NOAH C. MUMFORD, #348375

Applicant,

v.

THE STATE OF SOUTH CAROLINA

Respondent.

A true Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

2013 MAY 13 9 39
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

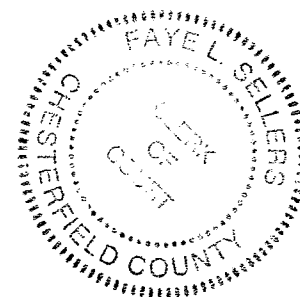
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- (a) after a plea of guilty
- (b) after a plea of not guilty (X)
- (c) after a plea of nolo contendere
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ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. The appeal was withdrawn on defendant's motion and a Court of Appeals issues an order of dismissal

ii. N/A

iii. N/A

(c) the date of each such result:

i. **JULY 25, 2012**

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

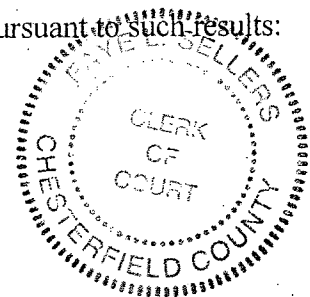
9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

A True Copy Attest
Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

2013 MAY 13 AM 9 33
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.



(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The defendant alleges that he received ineffective assistance of trial counsel

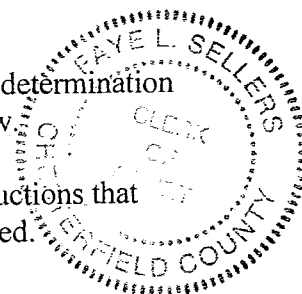
(b)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a)
1. The defendant alleges that trial counsel failed to adequately investigate the case.
 2. The defendant alleges that trial counsel failed to interview the state's witnesses.
 3. The defendant alleges that trial counsel failed to call to trial several witnesses for the defense.
 4. The defendant alleges that trial counsel failed to adequately investigate the injuries of the alleged victim in the case.
 5. The defendant alleges that trial counsel failed to effectively cross-examine several of the witnesses called by the state during the trial of this case.
 6. The defendant alleges that trial counsel failed to adequately investigate the scene of the alleged offense.
 7. The defendant alleges that trial counsel failed to have a preliminary hearing.
 8. The defendant alleges that trial counsel failed to submit jury instructions relating to the facts of the case.
 9. The defendant alleges that the South Carolina Legislature passed what is known as the "Protection of Persons and Property Act" effective June 9, 2006. The Act provides immunity from prosecution pursuant to section 16-11-450 of the S.C. Code of Laws (1976 amended).
 10. The defendant alleges that the South Carolina Supreme Court handed down the opinion in *State v. Duncan*, 709 S.E.2d 662 (May 9, 2011) which held that the defendant was entitled to immunity under the Act.
 - (i) The defendant alleges that trial counsel failed to request a pretrial determination of immunity pursuant to the above-referenced statute and case law.
 - (ii) The defendant alleges that trial counsel failed to request jury instructions that would have been applicable under the Act and case aforementioned.

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12. Prior to this application, have you filed with respect to this conviction:

- (a) any petitions in a State Court under South Carolina law? **NO**
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? **NO**
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **NO**
- (d) any other petitions, motions or applications in this or any other Court? **NO**

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

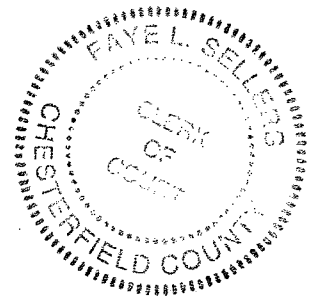
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A

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iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of Federal, in any petition, motion or application which you have filed? **NO**

15. If you answered "yes" to (14), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the defendant's first application for post-conviction relief

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

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 CHESTERFIELD COUNTY, SC

(b) your trial, if any? **YES**

(c) your sentencing? **YES**

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **YES**

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? **YES**

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. **LARRY W. KNOX, P. O. Box 419, 164 Main Street, Chesterfield, SC 29709**

ii. **JACK B. SWERLING, 1720 Main Street, Suite 301, Columbia, SC 29201**

(b) the proceedings at which each such attorney represented you:

i. **TRIAL AND SENTENCING**

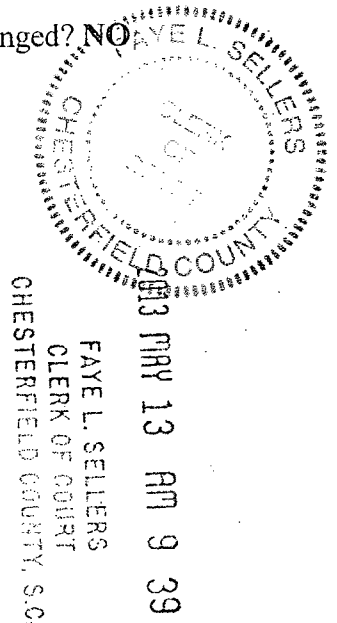
ii. **APPEAL AND POST-CONVICTION RELIEF**

iii. **N/A**

19. State clearly the relief you seek in filing this application. **A NEW TRIAL.**

20. Are you now under sentence from any other court that you have not challenged? **NO**

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CHESTERFIELD COUNTY, SC

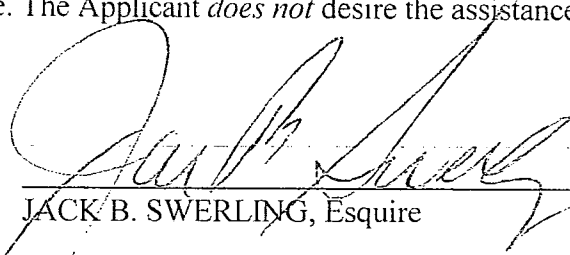


STATE OF SOUTH CAROLINA

VERIFICATION

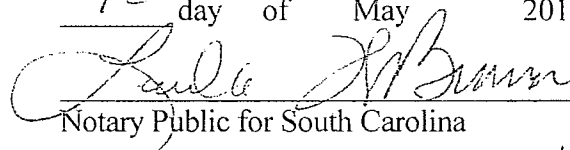
COUNTY OF RICHLAND

I, Jack B. Swerling, *retained* counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein have been represented to me by the defendant to be true. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.

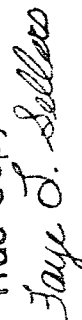
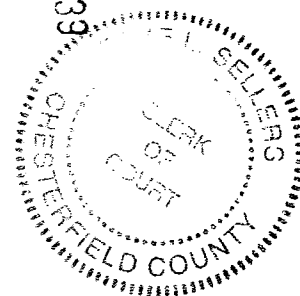

 JACK B. SWERLING, Esquire

SWORN to and subscribed before me this

7th day of May 2013.


 Notary Public for South Carolina
My Commission Expires: 06/14/22

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 Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
 2013 MAY 13 AM 9 39
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.


STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

2013-CP-13-0097

Noah C. Mumford, 348375)

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

Respondent, making its Return to the Application for post-conviction relief (PCR) filed May 2, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted by the Chesterfield County Grand Jury for attempted murder (2011- GS-13-0096). Larry W. Knox, Esquire, represented Applicant.

Applicant was tried and found guilty of the lesser included offense of assault and battery of a high and aggravated nature. Applicant was sentenced to 10 years by The Honorable Thomas A. Russo. Applicant originally appealed; however, the appeal was dropped in order for applicant to file an application for Post-Conviction Relief.

Attached herewith and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's SCDC records, and if available, the

transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By:
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 16, 2013.

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
2 COUNTY OF DILLON) No. 2013 CP 13 097

3

4 NOAH C. MUMFORD

5 Petitioner

6 versus

TRANSCRIPT OF RECORD

7

STATE OF SOUTH CAROLINA

9

10 Dillon, South Carolina

11

July 31, 2014

12

B E F O R E :

13

HONORABLE PAUL BURCH, Judge

14

15

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

16

For the Petitioner: JACK SWERLING, Esq.

17

For the State: J. THOMAS, Esq.
Assistant Attorney
General

18

19

Reporter Present: HATTIE GORDON

20

21

22

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S. C. 29485

23

24

25

1		I N D E X	
2		Direct-Redirect	Cross-Recross
3	LARRY KNOX		
	By Mr. Swerling	5-72	
4	By Mr. Thomas		64
5	NOAH MUMFORD		
	By Mr. Swerling	73-105	
6	By Mr. Thomas		100
7	ERVIN SMITH		
	By Mr. Swerling	108-111	
8	By Mr. Thomas		110
9	MIKE JENKINS		
	By Mr. Swerling	112	
10	By Mr. Thomas		113
11	STEVEN TEAL		
	By Mr. Swerling	115-119	
12	By Mr. Thomas		118
13	CORY WILLIAMS		
	By Mr. Swerling	119	
14	By Mr. Thomas		121
15	SHERI MUMFORD		
	By Mr. Swerling	123	
16	By Mr. Thomas		125
17	JOYCE QUICK		
	By Mr. Swerling	126	
18	By Mr. Thomas		128
19	FRANK CRANFORD		
	By Mr. Swerling	129	
20	By Mr. Thomas		130
21	LARRY KNOX		
	By Mr. Thomas	130	
22	By Mr. Swerling		135
23			
24			
25			

EXHIBITS

1			
2			
3	Petitioner-Applicant's 1	Jury Charges	p. 57
4		2 Sellers Statement	106
5		3 Harold Statement	106
6			
7			
8			
9			
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11			
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1 (The within matter came before the Court for hear-
2 ing on July 31, 2014)

3 MR. J. THOMAS: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. J. THOMAS: The first case up this morning is
6 Noah Mumford versus the State of South Carolina. Case
7 Number 2013 CP 13-97.

8 Mr. Mumford was indicted in February of 2011 for
9 attempted murder. He was represented on that charge
10 by Larry Knox, and he did go to trial on October 24th
11 through 26th of 2011.

12 A jury convicted him of a lesser included offense
13 of assault and battery of a high and aggravated nature.
14 The Honorable Thomas Russo sentenced him to ten years
15 on that conviction, and he did file an appeal but he
16 voluntarily withdrew it in July of 2012.

17 He filed for PCR in May of 2013, alleging ineffec-
18 tive assistance of counsel. He is present in Court and
19 represented by Jack Swerling.

20 The State is ready to proceed.

21 MR. SWERLING: Your Honor, may I have Mr. Mumford
22 over here at counsel table?

23 THE COURT: Yes, sir.

24 MR. SWERLING: Your Honor, we have set out a list
25 of grounds for what we believe to be ineffective assistance

1 of counsel, and given a copy to the State.

2 Also, this is supplemental to what was served on
3 the Attorney General, and, of course, as I understand
4 it, the Trial Transcript is a part of the record in the
5 case.

6 MR. THOMAS: That's correct.

7 THE COURT: All right, sir. Are you ready to pro-
8 ceed?

9 MR. SWERLING: Yes, sir.

10 THE COURT: Okay.

11 MR. SWERLING: We would like to call Larry Knox to
12 the stand.

13 THE COURT: Come forward, please.

14 LARRY KNOX, being duly
15 sworn, testified as follows:

16 CLERK: If you will be seated on the witness box
17 and state your full name for the Court Reporter, please,
18 sir?

19 WITNESS: My name is Larry Knox.

20 DIRECT EXAMINATION

21 BY MR. SWERLING:

22 Q. Mr. Knox, you are a member of the South Carolina
23 Bar?

24 A. Yes, I am.

25 Q. And you were admitted to practice in South Carolina

MR. KNOX ON DIRECT

1 in what year?

2 A. In 1994.

3 Q. And do you maintain your office in Chesterfield,
4 South Carolina?

5 A. I do.

6 Q. And do you have any other offices?

7 A. No, I do not.

8 Q. And did you represent Noah Mumford on the charges
9 that are of interest here today?

10 A. I did.

11 Q. And were you retained or appointed?

12 A. I was retained by Mr. Mumford,

13 Q. Do you remember when you were retained?

14 A. If I could check my notes?

15 THE COURT: Sure.

16 A. I was retained on January third of 2013, I believe
17 it was.

18 BY MR. SWERLING:

19 Q. Now, the trial was in October of 2011, I believe.

20 Q. January . .

21 Q. What date were you retained?

22 A. January third of 2013. I'm sorry. That was in
23 2012.

24 THE COURT: I wondered if you were retained after
25 the trial.

MR. KNOX ON DIRECT

1 BY MR. SWERLING:

2 Q. Okay. Now, obviously you knew what the charges
3 were, and that they were very serious charges. Is
4 that correct?

5 A. Yes, sir.

6 Q. And that Mr. Mumford's defense was self-defense in
7 the case?

8 A. Yes.

9 Q. He alleged that Mr. Funderburk -- that he and Mr.
10 Funderburk had got into a verbal exchange with each
11 other.

12 That Mr. Funderburk hit him with a bottle, at which
13 time he had pulled out a gun and shot at the ground,
14 and at that time is when he hit Mr. Funderburk.

15 Is that essentially what his allegations were?

16 A. Essentially, yes.

17 Q. Now, let me just -- I want to go over one area,
18 and then I'll come back.

19 There were two witnesses who testified for the De-
20 fense other than Mr. Mumford?

21 A. I believe so.

22 Q. And one of them was an individual named Steven
23 Teal. Do you recall that?

24 A. I recall that.

25 Q. All right, and Steven Teal actually was one of the

MR. KNOX ON DIRECT

1 better witnesses in the case because he actually had Mr.
2 Funderburk continuing to be the aggressor in this situa-
3 tion. Is that correct?

4 A. Yes.

5 Q. Okay. During the course of your examination of Mr.
6 Teal, you asked him -- and I will show you this if you
7 want -- but you asked him a series of questions about
8 his criminal background.

9 Do you recall those?

10 A. Yes.

11 Q. And this is on Direct Examination.

12 A. Yes.

13 Q. You asked him if he had a criminal record, did you
14 not?

15 A. Yes.

16 Q. And he testified that he had a homicide and a DUI
17 conviction?

18 A. By vehicle. Vehicular.

19 Q. First he said homicide and then vehicular homicide?

20 A. Yes.

21 Q. And he served time on that?

22 A. Yes.

23 Q. Now, Mr. Teal was at the time of trial fifty-three
24 years old?

25 A. I don't remember how old he was.

MR. KNOX ON DIRECT

1 Q. Well, this is what he testified to. Okay. Let
2 me show you this.

3 A. Okay.

4 Q. Fifty-three?

5 A. Yes.

6 Q. All right, and the conviction was when he was
7 eighteen years of age?

8 A. Okay.

9 Q. So that is -- fifty-three, eighteen -- it is thirty-
10 five years before. Correct?

11 A. Yes.

12 Q. Why would you ask Mr. Teal if he had a conviction
13 thirty-five years ago if he's your witness, and a key
14 witness in a self-defense case?

15 A. When I interviewed Mr. Teal, that subject was
16 brought up about the vehicular homicide, and I asked
17 him if it was more than ten years ago, and he said no,
18 it was not more than ten years.

19 I did not find out it was more than ten years ago
20 until the day of the trial.

21 Q. Well, you didn't explore that?

22 A. No, I did not.

23 Q. Okay, and you understand, I mean, that if was more
24 than ten years ago that it was not admissible at all?

25 Did you understand that?

MR. KNOX ON DIRECT

1 A. That was my understanding.

2 Q. And in this particular case, it was brought out by
3 you from your own witness that he had a conviction from
4 thirty-five years ago?

5 A. Yes, I did.

6 Q. When did you first interview Mr. Teal? The day of
7 the trial?

8 A. I can't recall.

9 Q. Well, was it the day of the trial?

10 A. I think so.

11 Q. Okay. So you've got a man facing an attempted murder
12 charge, and this is a key witness in the case, and you in-
13 terviewed him the day of trial when you had been on the
14 case yourself a number of months?

15 A. . .

16 Q. Correct?

17 A. Yes.

18 Q. Okay. Don't you think you owed it to your client to
19 interview Mr. Teal well before the trial date?

20 A. Yes. What happened, Mr. Swerling, is I asked my
21 client to provide me with a list of witnesses that he
22 wanted me to interview, the particular witnesses that he
23 would want, and he gave me a list of witnesses.

24 One of them was Mr. Steven Teal. I asked him what
25 was an address where I could locate him. That was never

MR. KNOX ON DIRECT

1 provided to me. I was unable to interview him prior to
2 trial. I did not have the opportunity to do it.

3 When I got notice of the trial date it was some two
4 weeks prior to the trial; again Mr. Mumford and I talked
5 about it and we tried to find those witnesses. We were
6 never able to contact him.

7 Q. Did you hire an investigator to try to find Mr. Teal
8 for you?

9 A. I had no funds from my client to retain an investiga-
10 tor. Had I been given the funds to retain an investigator
11 I would have.

12 Q. Did you ask for those funds?

13 A. Yes, I did.

14 Q. You asked him specifically for funds for an investiga-
15 tor?

16 A. He said his funds were exhausted but he said his par-
17 ents would help him. His parents began to pay me and then
18 they stopped paying me.

19 To this day, I have not been paid for my representa-
20 tion of him.

21 Q. Do you understand that is not an excuse -- that that
22 is not an excuse for not doing a hundred percent once you
23 accept a case as a lawyer?

24 A. That's right.

25 Q. You had a hundred percent obligation to do whatever

MR. KNOX ON DIRECT

1 you could do for him as a lawyer once you accepted it?

2 A. I did represent Mr. Mumford and did everything that I
3 could do for him. I did my job for him.

4 Q. Did you apply to the Court for funds?

5 A. No, I did not. He was not indigent.

6 Q. Did you ever try to apply to the Court for funds, and
7 say that he had become indigent and you needed money for
8 an investigator?

9 A. No, I did not. He was still working at the time, and
10 he had other assets through his parents.

11 Q. So you are telling me that the individual, Steven Teal,
12 told you that his conviction was less than ten years old?

13 A. Yes, sir.

14 Q. What happened was -- I mean, what happened was some
15 thirty-five years before.

16 A. Maybe he was mistaken. I don't know.

17 Q. I am asking what happened. I mean, when you first
18 asked him the question he said when I was eighteen years old
19 -- how old are you now? I'm fifty-three.

20 Did you have to serve any time for that? Yes, sir, I
21 did.

22 How much? I served a four year sentence.

23 (Reading from trial transcript)

24 You were mistaken when you first asked him the ques-
25 tion. He said when he was eighteen years old, and you said

MR. KNOX ON DIRECT

1 eight years old -- how old are you now -- I'm fifty-
2 three.

3 A. All right.

4 Q. Did you have to serve any time for that? Yes, sir.
5 I served a four year sentence.

6 Uh, and you asked him I think if he maxed out what
7 he was sentenced to by South Carolina.

8 What I'm trying to understand is, you brought out
9 a lot more than any other lawyer that I've ever seen
10 would have wanted his own witnesses to say.

11 Not only that the record was thirty-five years old,
12 but that he had served time; that he had served a four
13 year sentence.

14 Why would you do that?

15 A. As I was trying to explain, in that series of
16 questions I was trying to show the jury that this man
17 had nothing to hide. That he had nothing in his past
18 to hide.

19 And the fact that he was convicted thirty-five
20 years ago and that there were no other convictions men-
21 tioned in his testimony.

22 I wanted to bring that out to show the jury that
23 he had nothing to hide.

24 Q. But it's a question of credibility though of the
25 witnesses.

MR. KNOX ON DIRECT

1 A. Yes, sir.

2 Q. And when somebody has a conviction, that goes di-
3 rectly to their credibility?

4 A. Yes.

5 Q. And no lawyer that I know of or know anything about
6 would bring out any conviction that was more than ten
7 years old.

8 No lawyer that does criminal work would do that
9 and have a witness testify on the stand to that, and
10 that hurt your client?

11 A. No.

12 Q. It didn't hurt your client?

13 A. I don't think it hurt my client.

14 Q. You don't?

15 A. No, sir.

16 Q. You don't think the fact that the jury found out
17 that he was a convicted felon . . .

18 A. No.

19 Q. . . in a vehicular homicide some thirty-five years
20 ago and that he had served time for that in any way af-
21 fected his credibility in this case?

22 That's your opinion?

23 A. That's my opinion. He was not on trial himself,
24 Mr. Swerling.

25 Q. But he was a witness for your client?

MR. KNOX ON DIRECT

1 A. He was there and gave testimony about what happened
2 as that is shown in the record, about what happened on
3 the night this occurred.

4 Q. So you think by him being honest about the fact
5 he had a criminal record or a conviction -- you think
6 that that did Mr. Mumford a good service?

7 A. Yes, I think that he did Mr. Mumford a very good
8 service.

9 Q. And you don't think that that in any way would af-
10 fect the credibility of Mr. Teal. Is that correct?

11 A. No, I do not.

12 Q. Well, let me ask you this now. In addition to ask-
13 ing about his criminal record, you also asked him if he
14 ever used illegal drugs.

15 Now, why would you ask him that?

16 A. . .

17 Q. Why would you ask your own witness if he was a drug
18 user?

19 A. Because I was trying to clear the air about my
20 witness.

21 Q. What do you mean, clear the air?

22 A. . .

23 Q. I mean, why -- I'm not getting what you are
24 saying. In a situation where you are rep-
25 resenting someone, and this is your witness, one you want

MR. KNOX ON DIRECT

1 the jury to believe, you are bringing out these things
2 that nobody else would bring out?

3 A. I asked the question because I know they would
4 judge the veracity of my witness, and I wanted to clear
5 the air of everything about his past and his past drug
6 use.

7 I think I was showing the jury that the witness had
8 nothing to hide and show them his veracity. That he was
9 . . .

10 Q. So your opinion is that no matter what the person
11 does or what the person's history is, you are going to
12 bring that out because it shows his veracity?

13 A. No, I'm not saying that. It depends on the circum-
14 stances.

15 The problem that I had on that day with the de-
16 fense that I had, everything is going to go down to
17 the fact of whether the jury believes what the witness
18 says.

19 So that is . . .

20 Q. Your strategy is that you thought by clearing the
21 air and telling the jury about the issues that they
22 would never hear about anyway . . .

23 A. No, that was not my strategy.

24 Q. Okay.

25 A. My strategy was I had a client that had given

MR. KNOX ON DIRECT

1 the investigators a statement -- a video statement to
2 law enforcement that he shot someone in self-defense.

3 So my strategy was to back up that statement.

4 Q. But what does that have to do with bringing out
5 Mr. Teal's record or drug use?

6 A. . .

7 Q. A record that was not admissible and had nothing
8 to do with -- you understand that it was not admissi-
9 ble?

10 A. I understand that.

11 Q. But you decided to bring it out anyway?

12 A. Yes.

13 Q. Okay.

14 A. Yes, I wanted to -- if the prosecution had brought
15 it out, I would have strongly objected to it, but I had
16 a reason for doing that.

17 I wanted to show the jury that this man was a
18 truthful person; that he had a high degree of credibil-
19 ity.

20 Q. By being a convicted felon and having killed some-
21 body with a car?

22 A. Thirty-five years ago, yes.

23 Q. And these questions you asked about abusing illegal
24 drugs, you just asked him -- obviously this was a
25 question you had never gone over with him?

MR. KNOX ON DIRECT

1 A. . .

2 Q. You asked if he had ever used illegal drugs, and
3 he said yes.

4 Then you said, how long ago did you last use il-
5 legal drugs, and he said I have been clean for twenty-
6 five years -- five years.

7 I've been clean for five years. Now, under what
8 possible circumstances would a lawyer want to bring out
9 the fact that his witness was using drugs five years
10 ago?

11 A. Because I wanted to show the jury that he was not
12 under the influence of drugs at the time.

13 Q. Was there any evidence that he was?

14 A. That wasn't what I asked.

15 Q. There was no evidence that he was?

16 A. Right.

17 Q. So the Solicitor could not have asked him that
18 question. Do you agree with that?

19 A. . .

20 Q. Do you agree that the Solicitor could not have
21 asked the question that you asked that undermined your
22 witness?

23 A. I don't think it undermined my witness.

24 Q. Well, let me ask you this question, Mr. Knox.

25 If you are examining a witness on cross examination,

MR. KNOX ON DIRECT

1 isn't it your goal to bring out the person's prior con-
2 victions?

3 A. Yes.

4 Q. And the reason you cross examination someone about
5 their prior convictions is to impeach their credibility.
6 Isn't that true?

7 A. Yes.

8 Q. Okay, so what you did was in this case you did that
9 to your own witness. Correct?

10 A. No, I did not impeach my own witness.

11 Q. What is it that you did? You brought in evidence
12 of his prior convictions which were not admissible?

13 A. . . .

14 Q. And that is impleachment?

15 A. Yes.

16 Q. And, again, why would you ask someone who is not
17 using drugs and has not used drugs for five years --
18 why would you even bring that up?

19 A. I brought it out because I think that it was feas-
20 ible.

21 Q. You thought it feasible to bring that out?

22 A. Yes.

23 Q. You would want to bring that out with any witness
24 you ever examined?

25 A. Depending on the circumstances.

MR. KNOX ON DIRECT

- 1 Q. But that is for cross examination?
- 2 A. Depending on the circumstances.
- 3 Q. So you submit that you still think you did the right
- 4 thing by doing that, is that right?
- 5 A. I think I did. It was the strategy that I used.
- 6 Q. Well, I'm not asking about this instance specifically.
- 7 Bringing in convictions and drug use that were not admissi-
- 8 ble in the case by the Solicitor was the right thing?
- 9 You believe that was the right thing to do with a wit-
- 10 ness that you want the jury to believe your client acted in
- 11 self-defense. Is that right?
- 12 A. That's correct.
- 13 Q. That's your testimony?
- 14 A. That's right.
- 15 Q. Let me jump back to a couple of other things. I would
- 16 like to explore with you what investigation you did do in
- 17 this case.
- 18 Okay, first of all, you say you were retained when?
- 19 A. I think it was around the third of January of twenty
- 20 twelve.
- 21 Q. Well, he was arrested in October -- in September
- 22 of 2011. Is that correct?
- 23 A. . .
- 24 WITNESS: Just one second, Your Honor.
- 25 THE COURT: Yes, sir.

MR. KNOX ON DIRECT

1 BY MR. SWERLING:

2 Q. His sentence started in 2011. You are here on the
3 witness stand, and you are supposed to be prepared for
4 this hearing.

5 So I want to know when did you start representing
6 him.

7 A. It was January third of 2011.

8 He was arrested on December 23rd of 2010 then.

9 Q. You did not use the services of an investigator at
10 all?

11 A. No, I did not.

12 Q. But you did start your services as his lawyer, and
13 what did you get paid?

14 A. . .

15 MR. J. THOMAS: Objection, Your Honor. Relevance.

16 THE COURT: What do you think is the relevance of
17 that?

18 MR. SWERLING: Well, Your Honor, I think it is rele-
19 vant because here is an individual who accepted represen-
20 tation of an individual but yet says he did not have the
21 money to go ahead and get an investigator for a few hun-
22 dred dollars.

23 THE COURT: I'll allow the testimony.

24 A. I think I was retained for about Seven Thousand Dol-
25 lars, of which I received about Four Thousand Dollars.

MR. KNOX ON DIRECT

- 1 Q. Four Thousand Dollars. Okay, and you would not have
2 had funds to hire an investigator?
- 3 A. No.
- 4 Q. Now, let's see what you did yourself. Did you at-
5 tempt to -- one of the witnesses was a fellow named Todd
6 Harold? One of the individuals that was there when this
7 took place? When the fight took place?
- 8 A. Yes.
- 9 Q. Did you interview Todd Harold?
- 10 A. No, I did not.
- 11 Q. Okay, and he was one of the witnesses. Correct?
- 12 A. Yes.
- 13 Q. Did you interview yourself Antonio Sellers, who was
14 one of the witnesses who was at the scene?
- 15 A. No, I did not.
- 16 Q. Did you interview Dana Wallace, who was the respond-
17 ing deputy?
- 18 A. No, I did not.
- 19 Q. Did you interview Daniel Scott, who was the respond-
20 ing investigator?
- 21 A. No, I did not.
- 22 Q. Did you interview prior to the day of the trial --
23 you said you did not interview Steven Teal until the day of
24 the trial. I assume the same goes for Sam (inaudible)
25 as well.

MR. KNOX ON DIRECT

- 1 A. I did interview Mr. Grant.
- 2 Q. When was that? What date?
- 3 A. September 9th, 2011.
- 4 Q. What date was the trial?
- 5 A. September 24th, I believe.
- 6 Q. Where did you interview Mr. Grant?
- 7 A. At home.
- 8 Q. And did you call him as a witness in the case?
- 9 A. Yes.
- 10 Q. There were two other witnesses at the scene. One was
- 11 Cory Williams. Did you interview Mr. Williams?
- 12 A. No, I did not.
- 13 Q. There was another witness at the scene named -- Cory
- 14 Williams and Ennis Dennis. Did you interview Ennis Dennis?
- 15 A. No, I did not.
- 16 Q. There were several other officers that were involved
- 17 in the case. Deputy Joe Campbell was dispatched to the
- 18 hospital. Did you interview him?
- 19 A. No, I did not.
- 20 Q. The main investigator in the case was an individual
- 21 named John James. Did you interview him?
- 22 A. No, I did not.
- 23 Q. Don't you in your normal practice in criminal cases
- 24 -- don't you try to interview witnesses who were on the
- 25 scene and also police officers and investigators to try to

MR. KNOX ON DIRECT

1 determine what happened on the day that your client shot
2 somebody?

3 A. I was provided with some names of some witnesses. I
4 tried to contact those witnesses. Some of them . .

5 Q. Let me see what you've got.

6 (Brief pause in proceeding)

7 BY MR. SWERLING:

8 Q. This is only one name?

9 A. Yes.

10 Q. So you didn't get any other names?

11 A. I -- Mr. Mumford forgot some of the names.

12 Q. Do you have those names in your file?

13 A. No, I do not.

14 Q. So if he provided them, you just don't have them?

15 A. Correct.

16 Q. Well, if you don't have them, it's obvious you're
17 not going to be able to interview them.

18 A. I tried to get in contact with the people.

19 Q. How could you get in contact with people when you
20 didn't have their names?

21 A. He forgot the witnesses' names.

22 Q. Well, where are they?

23 A. I don't have them in my file.

24 Q. So you can't show that you had those names?

25 A. No, sir, I cannot show that.

MR. KNOX ON DIRECT

- 1 Q. And I assume you have no documentation about your
2 efforts to contact these people?
- 3 A. No.
- 4 Q. No phone records, no mail, no subpoenas to any of
5 these people?
- 6 A. No, sir.
- 7 Q. So of all the people I've named so far, you never
8 issued a subpoena to one of those individuals, never
9 sent a letter to one of them. Yet you were retained and
10 were relied upon to represent him in an attempted mur-
11 der case?
- 12 A. Yes.
- 13 Q. We never did get an answer on why you did not at-
14 tempt to interview the police officers in the case.
15 What happened that -- what made you not do that?
- 16 A. I was provided with what happened by my client. I
17 was provided with a video of a statement that he gave
18 to law enforcement . . .
- 19 Q. Right.
- 20 A. . . of what happened. He told me that he was hit
21 and with a bottle, that he fired some shots, and I took
22 that as a strategy of self-defense. That the strategy
23 would be self-defense and it would come down to what a
24 jury believed.
- 25 Q. Well, I sort of understand what you say about the

MR. KNOX ON DIRECT

1 strategy but that does not excuse not interviewing the
2 people.

3 A. I didn't feel it was necessary to interview them all.
4 I had interviewed the most important person to tell me
5 what happened, and that was my client.

6 Q. So you interviewed your client and didn't feel the
7 need to interview anyone else. Is that your testimony?

8 A. I -- my testimony is that my client said he shot
9 in self defense. He and the victim -- there's no doubt
10 that the victim was shot.

11 He told me a bottle was thrown at him, and I then
12 found a witness that I did interview; that a bottle was
13 thrown at him.

14 I read the police reports and their notes of what
15 happened out there, and they show a bottle was thrown
16 at him.

17 The statement was given to us under Rule Five.

18 Q. Did you ever give him a copy of the Rule Five mate-
19 rial?

20 A. He was in my office and we went over everything
21 in Rule Five.

22 Q. That was not my question. My question was, did you
23 give him a copy of it?

24 A. No.

25 Q. Why didn't you give him a copy of the Rule Five

26

MR. KNOX ON DIRECT

1 material?

2 A. I didn't feel it was necessary.

3 Q. This was his material?

4 A. Yes

5 Q. And you didn't feel it necessary to give him his
6 material?

7 A. It would have been right there in my office.

8 Q. So you don't tell your clients you have the Rule
9 Five and give it to them?

10 A. On very few occasions do I get it.

11 Q. We still haven't heard why you did not interview
12 one of the police officers who investigated this case.

13 A. I didn't think it was necessary.

14 Q. Well, you didn't think it necessary to interview
15 anyone in the case besides Mr. Mumford and Mr. Teal. Is
16 that correct?

17 A. I did what I thought was necessary.

18 Q. The police had information, correct, so you would
19 have wanted to interview those witnesses?

20 A. Yes.

21 Q. But you didn't?

22 A. I didn't.

23 Q. You didn't interview any of them?

24 A. No, I did not. I interviewed Mr. Grant.

25 Q. But you didn't interview Todd Harold, you didn't

27

MR. KNOX ON DIRECT

1 interview Antonio Sellers, you didn't interview Steven
2 Teal until the day of the trial, you did not interview
3 Ervin Smith or Mike Jenkins or Mr. Stevens?

4 You didn't interview anybody else until the -- the
5 only person you interviewed is Mr. Grant and you inter-
6 viewed Mr. Teal the day of the trial.

7 So you did not have information in your possession
8 as to what the possible evidence was, what the incon-
9 sistencies were, between these individuals or the vic-
10 tim versus the defense?

11 A. No.

12 Q. Okay.

13 A. I think the jury had enough information to come
14 back with the verdict they did. It was not attempted
15 murder or assault and battery of a high and aggravated
16 nature.

17 Q. I'm not talking about what the jury did. I am talk-
18 ing about what you did in this case.

19 A. You asked me whether or not the jury had informa-
20 tion, and I'm telling you that they had enough informa-
21 tion not to convict him of attempted murder.

22 Q. What I'm asking you is, don't you have an obliga-
23 tion as an attorney representing someone who is facing
24 twenty years to go ahead and interview the witnesses to
25 the event?

MR. KNOX ON DIRECT

1 A. I had an obligation to give the best defense that
2 I could possibly give.

3 Q. Would you answer my question?

4 A. I'm answering your question.

5 Q. You didn't answer my question. Don't you have an
6 obligation to interview those witnesses?

7 A. I have an obligation that I think is reasonable
8 and within the rules, within the law.

9 Q. I'm asking if you think it is reasonable to inter-
10 view witnesses of an alleged event?

11 A. Yes.

12 Q. It's also reasonable to interview officers who were
13 there after this thing happened?

14 A. They were there after the fact.

15 Q. They found the shell casings, they found the bot-
16 tle. They found whatever else was supposed to be out
17 there -- whatever evidence was out there on the scene.
18 Correct?

19 A. Yes.

20 Q. Were there any photographs of shell casings?

21 A. None that I saw, no.

22 Q. Were there any photographs of the bottle?

23 A. Not that I saw.

24 Q. Were there any measurements taken?

25 A. No measurements.

MR. KNOX ON DIRECT

1 Q. Were any diagrams made?

2 A. No.

3 Q. So you were just shooting in the dark when you were
4 representing Mr. Mumford at trial when you had not talked
5 with any of those officers about any of that information?

6 A. I had the officers' documents, and they reflected
7 what Mr. Mumford had told me.

8 Q. What did they confirm?

9 A. That there was a shooting.

10 Q. Well, we know that.

11 A. That there was a beer bottle.

12 Q. We know that.

13 A. And there were shots fired.

14 Q. But there is also an issue in this case about the
15 location of where people were and the distance those
16 things were from each other, because the issue was whe-
17 ther or not Mr. Mumford was being pursued by Mr.
18 Funderburk.

19 You would have to know what the area of the crime
20 scene was, and if there is no evidence by photographs
21 or sketches or measurements, the least you could have
22 done was talk with one of the officers who responded to
23 the scene.

24 Isn't that true?

25 A. Yes.

MR. KNOX ON DIRECT

1 Q. And you didn't do that?

2 A. I didn't do it.

3 Q. You owed your client that obligation to go ahead
4 and ferret out as much information as you can about the
5 crime scene?

6 A. I worked for my client and did the best job I could
7 do under the circumstances.

8 Q. Well, I mean, . . .

9 A. I have an obligation to do the best job I can under
10 the circumstances.

11 Q. I know that but I'm suggesting that you didn't.

12 A. And I'm telling you that I did.

13 Q. Okay. So you agree that -- I named the officers
14 and you never talked to any one of them.

15 Did you visit the crime scene?

16 A. No, I didn't.

17 Q. Did you go with Mr. Mumford to -- you said you did
18 not visit it so you didn't go with Mr. Mumford to the
19 crime scene?

20 A. No, I didn't go to the crime scene.

21 Q. How could you represent someone in a shooting . .

22 A. I knew what my client said.

23 Q. How could you represent someone in a shooting when
24 you had not visited the crime scene?

25 A. It was described to me.

MR. KNOX ON DIRECT

1 Q. How was it described to you?

2 A. Well, he told me that he shot. He never denied
3 that he shot. The video he gave to law enforcement con-
4 firmed that, that Mr. Funderburk was shot. I did not
5 think it was necessary to go there.

6 Q. Well, we all know from the facts of the case that
7 he got shot, that Mr. Funderburk got shot, and that
8 Mr. Mumford is the one who shot him.

9 A. Yes.

10 Q. And the issue was self-defense?

11 A. Yes.

12 Q. The issue was where was Mr. Funderburk, where was
13 Mr. Mumford.

14 Mr. Funderburk testified he had turned away, is
15 that correct, and started leaving the scene?

16 A. Yes.

17 Q. And your -- what you needed to show or Mr. Mumford
18 needed to show was that Mr. Funderburk was still pur-
19 suing. Correct?

20 A. Yes.

21 Q. That was necessary to establish a self-defense
22 claim?

23 A. Yes.

24 Q. So it seems you would want to walk through the
25 crime scene so that you could make an assessment of what

MR. KNOX ON DIRECT

1 actually happened?

2 A. He told me what happened,

3 Q. Well, I've been involved in cases with a thousand
4 crime scenes, and if someone just describes that to you,
5 do you think that is enough for you to go ahead and
6 represent someone who is looking at twenty years?

7 A. Yes.

8 Q. You do?

9 A. Uh hm.

10 Q. I guess there are different standards. I don't
11 know if I asked you about Ervin Smith. Did you ever
12 talk with him or Mike Jenkins?

13 A. Not that I remember.

14 Q. You don't have anything in your file? Those names?

15 A. No.

16 Q. Well, Mr. Mumford told you there were some individ-
17 uals, other individuals, who had had some problems with
18 Mr. Funderburk; that he had an explosive temper when he
19 was drinking, and he got in fights?

20 A. Yes.

21 Q. That is a -- in a self-defense case, that is evi-
22 dence that is admissible to show someone is an aggres-
23 sor in an event?

24 A. Yes.

25 Q. Did you try to locate any of those individuals?

MR. KNOX ON DIRECT

1 A. I don't think I was provided with information to
2 locate those individuals

3 Q. Did you ask him if he knew anybody who had had al-
4 tercations with Mr. Funderburk?

5 A. He told me.

6 Q. Do you have any notes that reflect that conversa-
7 tion?

8 A. No, I do not.

9 Q. So this is something you just draw from your mem-
10 ory then?

11 A. No, he told me that Mr. Funderburk had a reputation
12 of bullying people and being aggressive and all that.
13 He told me that.

14 Q. So why didn't you go for those people -- why did
15 you not personally leave your office since you had ac-
16 cepted a retainer to represent Mr. Mumford -- why didn't
17 you personally get out and go look for those people?

18 A. How would I locate them? I didn't think I could
19 locate them from what he described to me of the witnes-
20 ses or those people.

21 Q. How would you make that judgment if you never did
22 try to do that or contact those people?

23 A. I didn't think the people he described would be
24 good witnesses.

25 Q. Once again, how would you make that judgment if you

MR. KNOX ON DIRECT

- 1 never tried to?
- 2 A. Like I said, it all goes back to strategy.
- 3 Q. I'm still trying to understand your strategy.
- 4 A. My strategy was self-defense; that he shot after
- 5 being hit with a bottle.
- 6 Q. Mr. Knox, if that's your strategy then the fact
- 7 that that person under normal circumstances has been an
- 8 aggressor in other circumstances, that would fit right
- 9 into that strategy, would it not?
- 10 A. Yes.
- 11 Q. And if in fact there were other witnesses there who
- 12 could establish that, unlike Mr. Teal who you castrated
- 13 as a witness . . .
- 14 A. No.
- 15 Q. If there were other people there who could estab-
- 16 lish that Mr. Mumford acted in self-defense, my question
- 17 is this. As a lawyer why didn't you get up off your
- 18 chair and why didn't you go out -- how many months did
- 19 you have to defend this individual?
- 20 A. Seven or eight.
- 21 Q. Why didn't you get up off your chair and get out
- 22 and try to find those people yourself?
- 23 A. I didn't know where they were.
- 24 Q. We found them.
- 25 A. That's you.

MR. KNOX ON DIRECT

1 Q. Not just that it's me, but that's what you do?

2 A. . . .

3 MR. THOMAS: Objection, Your Honor, to that ques-
4 tion.

5 THE COURT: Sustained.

6 BY MR. SWERLING:

7 Q. Were you ever told by anybody that some of the wit-
8 nesses observed Mr. Funderburk or members of his family
9 talk to some members of this jury?

10 A. Yes. I think I was told that.

11 Q. Okay, and would you tell the Judge what you did
12 about that?

13 A. If I recall correctly -- it's been a few years ago
14 -- I brought that to the attention of the deputy.

15 Q. There is nothing on the record of that?

16 A. No, it was not on the record. It was off the re-
17 cord.

18 Q. Well, don't you think you should have insisted that
19 those jurors that were identified be examined to see
20 whether or not that was in fact true, or that Mr.
21 Funderburk should have been examined to see if that was
22 true?

23 A. Well, I think it was not him and the individual was
24 just a friend, and it was brought to the attention of
25 the Court.

MR. KNOX ON DIRECT

1 Mr. Swerling, I don't recall exactly what happened.

2 I was told that somebody had talked to a juror, and I

3 brought it to the attention of the Court.

4 Q. Then why wasn't it put on the record?

5 A. I don't know that.

6 Q. Well, aren't you the person to ask that it be put

7 on the record?

8 A. I didn't.

9 Q. Aren't you the person who should have done that?

10 Asked that a record be made?

11 A. . . .

12 Q. Have you ever done that before?

13 A. Yes, I have.

14 Q. But you didn't do it in this case?

15 A. No, I did not.

16 Q. So you don't know what probable influence might

17 have been exerted on the jury because it was not pursued,

18 and you did not suggest it be pursued?

19 A. No.

20 Q. Let me ask you this. This does not cost a lot of

21 money, but did you take any photographs of the scene?

22 A. No, I didn't. I did not go to the scene. How could

23 I take pictures?

24 Q. Well, you're right. That's a good question. How

25 could you take pictures of the scene if you didn't go to

MR. KNOX ON DIRECT

1 the scene, and in a case like this don't you think it
2 was important to have pictures of the scene so you can
3 show the jury -- bring that into the situation so they
4 could see and understand from your client's viewpoint
5 what was going on?

6 A. At the time I did not take pictures.

7 Q. Isn't that the least you could have done?

8 A. The least I could have done was nothing.

9 Q. Stop where you are. Look at the transcript. No
10 photos . . .

11 A. I've answered that.

12 Q. No diagrams?

13 A. I've answered that question.

14 Q. Now, again, when you interview a witness , and
15 particularly in a self-defense case, aren't you trying
16 to show the jury where the individuals were and what they
17 were doing at the time the shots were fired?

18 A. The best witness I have in a self-defense case is
19 the Defendant.

20 Q. He was put on the witness stand?

21 A. Yes, sir.

22 Q. Don't you think it would be better to have that
23 comradery to the jury and assist your client in explain-
24 ing to the jury what he was describing?

25 A. His testimony was corroborated by Mr. Grant.

MR. KNOX ON DIRECT

- 1 Q. You could have had a diagram or photographs show-
2 ing where people were, where the -- show the jury where
3 shell casings were, where the bottle was, all of which
4 was very important in this case?
- 5 A. I could have done a lot of things.
- 6 Q. But you didn't do that?
- 7 A. I did not do that.
- 8 Q. And that would not have taken any cost for you to
9 do that?
- 10 A. No, it would not. That is not the way I wanted to
11 defend this case.
- 12 Q. You didn't -- what I'm hearing you say so far is
13 that your extensive investigation in this case, to rep-
14 resent a man looking at twenty years, was to interview
15 one person on September 11th and then one person the day
16 of the trial?
- 17 A. And interview the client.
- 18 Q. That is the extent of your involvement in this
19 case?
- 20 A. No, that wasn't the extent of it.
- 21 Q. Well, tell me what else you've done?
- 22 A. I interviewed Mr. Mumford, my client. Obviously I
23 did that, and I viewed the police video. I was sort
24 of boxed in by the video. He had said he shot somebody
25 in self-defense.

MR. KNOX ON DIRECT

- 1 That was my defense, and what it boiled down to
2 was whether the jury believed my client or the victim.
- 3 Q. I understand that, but isn't it your obligation as
4 a lawyer, as a criminal defense lawyer -- how many cases
5 have you taken to trial?
- 6 A. Several.
- 7 Q. How many is several?
- 8 A. I don't know. I've been practicing for twenty
9 years. I don't know how many.
- 10 Q. Don't know how many?
- 11 A. I don't know.
- 12 Q. How many criminal defense cases where you were rep-
13 resenting a man who was facing twenty years?
- 14 A. I don't know.
- 15 Q. From what I hear, you looked at a video, you talked
16 to your client, you talked to one witness or two, and
17 you looked at reports in the case. That's all you did
18 in this case?
- 19 A. No, that's not all I did.
- 20 Q. I'm asking you, giving you the opportunity to tell
21 us what you did to assist your client and corroborate his
22 story that he acted in self defense?
- 23 A. I interviewed my client, interviewed the witnesses . .
- 24 Q. We've gone through that. One witness, you say,
25 Mr. Grant, and that's it?

MR. KNOX ON DIRECT

- 1 A. Yes.
- 2 Q. How many times did you meet with Mr. Mumford?
- 3 A. Probably three or four times a month.
- 4 Q. Three or four times a month?
- 5 A. Yes.
- 6 Q. Do you have that documented?
- 7 A. Some things are, yes.
- 8 Q. What is documented in your file?
- 9 A. That I interviewed the witnesses.
- 10 Q. You say you interviewed witnesses . .
- 11 (Brief pause in proceeding)
- 12 BY MR. SWERLING:
- 13 Q. Did you ever examine the hospital records in this
- 14 case?
- 15 A. I think I got the hospital records.
- 16 Q. Before the trial? The afternoon or day of the
- 17 trial?
- 18 A. Yes.
- 19 Q. That means you didn't have anybody -- you didn't
- 20 have an opportunity to show those to a medical doctor?
- 21 A. No. I asked for it in my discovery but it was not
- 22 given to me. It was given to me during the trial.
- 23 Q. Why didn't you move then to compell those records
- 24 to be given to you?
- 25 A. I asked for the records. They provided me with

MR. KNOX ON DIRECT

1 everything they had up until the time of the trial. I
2 think the Solicitor on the day of trial gave them to me.

3 Q. Well, you went to trial with a couple of weeks no-
4 tice but you didn't have the medical records?

5 A. Not before the trial.

6 Q. Did you issue a subpoena for those records?

7 A. No, I did not.

8 Q. You didn't talk to . . .

9 A. Well, it wasn't a matter of whether or not Mr.
10 Funderburk was shot. He was shot.

11 Q. I understand.

12 A. The medical records -- you know, why would I get
13 medical records to show he was shot? He was shot.

14 Q. Well, you might need medical records to show he was
15 intoxicated or medical records to show where the injur-
16 ies were; whether they was posterior or interior; whe-
17 ther they were frontal or whether they were rear wounds.
18 You might want to talk with the doctor to see how serious
19 they were, all of which are issues in the case.

20 A. I did not do that. I did not get those until the
21 day of trial. The afternoon of trial.

22 Q. You didn't do anything other than ask for them from
23 the Solicitor, and when you didn't get them you waited
24 until the afternoon of the trial? You didn't subpoena
25 them?

MR. KNOX ON DIRECT

- 1 A. They were given to me on the afternoon before the
2 beginning of the trial.
- 3 Q. But you didn't subpoena them?
- 4 A. No, I did not.
- 5 Q. And you could have subpoenaed them?
- 6 A. I could have done a lot of things
- 7 Q. You could have?
- 8 A. But I didn't.
- 9 Q. Because that was your strategy. Is that right?
- 10 A. No, but I didn't subpoena them.
- 11 Q. You were aware of the fact that Mr. Mumford had some
12 serious head injury?
- 13 A. No, I didn't. He never told me he had.
- 14 Q. Actually someone mentioned it during the trial?
- 15 A. Yes.
- 16 Q. But you didn't mention it?
- 17 A. No, I did not.
- 18 Q. All right, and Mr. Mumford also -- he had some se-
19 vere injury when he was -- you understand he was in the
20 military?
- 21 A. Yes.
- 22 Q. And he served his country?
- 23 A. I know he did.
- 24 Q. And you are aware of the fact that he was diagnosed
25 with post-traumatic stress disorder?

MR. KNOX ON DIRECT

- 1 A. No, I wasn't aware of that.
- 2 Q. You were not?
- 3 A. No.
- 4 Q. You were not aware of the fact that he also had --
- 5 I may not pronounce this right -- tendonitis.
- 6 A. No, I was not aware of that.
- 7 Q. This was a service-connected injury, and he was
- 8 on disability?
- 9 A. . .
- 10 Q. Did you know he was getting disability from the
- 11 military?
- 12 A. I knew he was getting disability. I didn't know
- 13 the source of it.
- 14 Q. Why didn't you ask him?
- 15 A. I didn't think it was significant.
- 16 Q. You knew he had some service connected injuries.
- 17 You knew that? Some combat-related injuries?
- 18 A. Yes.
- 19 Q. You knew he had a head injury?
- 20 A. Yes.
- 21 Q. Why didn't you pursue those types of things in a
- 22 self-defense case, and particularly where there is testi-
- 23 mony that he said to one of the officers -- I believe
- 24 Officer Scott -- that during the video he said he had
- 25 blacked out a couple of times during this event?

MR. KNOX ON DIRECT

1 I'm trying to understand why you wouldn't ask your
2 client about these medical problems, physical problems,
3 when you were representing an individual in a self-defense
4 case?

5 A. I didn't think it had any bearing as far as self-
6 defense, nor did the fact that he was on any type of a
7 disability.

8 He told me that he was very much aware of what hap-
9 pened. He recalled the events very clearly, so I don't
10 think that had any bearing.

11 Q. You don't think that had any bearing?

12 A. No.

13 Q. You don't think the fact that he had post-traumatic
14 stress disorder, plus the fact he had tendonitis in his
15 left shoulder and had had a severe left shoulder injury
16 in any way could have affected his fear or his apprehens-
17 ion in a self-defense situation?

18 You don't feel that way?

19 A. No, I don't.

20 Q. Did you know about that?

21 A. I knew that he had some health issues.

22 Q. Yet you didn't pursue those?

23 A. No, I didn't.

24 Q. Let me move on. There were no ballistics tests?

25 A. No, there weren't.

MR. KNOX ON DIRECT

1 Q. There was nothing except the GSR? That was it?

2 A. Yes.

3 Q. The discovery in this case was pretty limited?

4 A. Yes.

5 Q. Just a few pages of discovery, and . .

6 A. Yes.

7 Q. . . and the statement. Correct?

8 A. Yes. The video.

9 Q. So when you have that kind of limited information,
10 don't you think as a lawyer you have an obligation to
11 get more information?

12 A. Not at this particular time. Not when you have
13 given a video statement as he did. I think I did a
14 pretty good job in this case.

15 Q. Mr. Knox, why didn't you hold a preliminary hearing
16 in this case when you had limited discovery?

17 A. At that particular time I discussed it with my
18 client, and I didn't think a preliminary hearing would
19 change anything. It was going to go up for indictment
20 anyway.

21 At that particular time I didn't think it would
22 gain us anything.

23 Q. But it would give you information. It was the
24 chance to examine a police officer -- a chance to exam-
25 ine the police officers about what the scene looked like,

MR. KNOX ON DIRECT

1 about what he was told, wasn't it?

2 A. Yes, but I didn't think that it was necessary at
3 that particular time.

4 Q. Why not?

5 A. He had given the statement saying he shot in self-
6 defense.

7 Q. Did you talk about it with your client?

8 A. Yes. He did not want a preliminary hearing.

9 Q. He did not want a preliminary hearing based on
10 your advice?

11 A. My advice was that he was entitled to a prelimin-
12 ary hearing.

13 Q. But did you tell him he should have one or not be-
14 cause you did not believe it was important?

15 A. At that particular time and under those circum-
16 stances I didn't think it was necessary.

17 Q. Necessary or important?

18 A. Necessary.

19 Q. But you have had preliminary hearings in many other
20 cases?

21 A. Yes, I have.

22 Q. But not this case?

23 A. And in hindsight I probably would not have had a
24 preliminary hearing.

25 Q. You still wouldn't?

MR. KNOX ON DIRECT

- 1 A. No.
- 2 Q. Despite the fact that you went into a trial with
- 3 very, very limited information?
- 4 A. At that time I had no discovery although I asked
- 5 for discovery. I just thought that a preliminary hear-
- 6 ing would not be necessary.
- 7 Q. All right. When did you get discovery?
- 8 A. Um, it was -- I don't know. I had it prior to
- 9 the trial.
- 10 Q. Mr. Knox, let me ask the question first. Did you
- 11 ever leave your office one time to go and investigate
- 12 this case?
- 13 A. Yes, sir. Quite a few times.
- 14 Q. Now, Mr. Funderburk alleged that he was walking
- 15 away from the scene when he got shot. Correct?
- 16 A. I think that was his testimony.
- 17 Q. But it was in his testimony which you did not pur-
- 18 sue, nor did you argue in your closing argument that
- 19 he had testified he got a frontal injury on his left
- 20 knee cap?
- 21 A. . .
- 22 Q. Do you recall that?
- 23 A. If it's in the record, yes.
- 24 Q. But do you know?
- 25 A. Not from memory.

MR. KNOX ON DIRECT

1 Q. I'll show it to you if you have any questions.

2 Let me ask you something. The question is whether
3 or not Mr. Funderburk was walking away from it, which
4 means he's abandoned the fight, or whether he's walking
5 toward Mr. Mumford.

6 He's got an entrance wound in the left knee. Should
7 you not have pursued that to establish that he was act-
8 ing in self-defense?

9 A. Yes.

10 Q. But you didn't?

11 A. I didn't.

12 Q. And you didn't even argue that to the jury when
13 you were arguing self-defense?

14 A. No, I didn't.

15 Q. Mr. Mumford deserved for you to do that, didn't he?

16 A. I can't answer that.

17 Q. I'm asking you, doesn't your client deserve for
18 you to bring out information that is for his defense?

19 A. Yes.

20 Q. And you didn't?

21 A. I did.

22 Q. Not in that situation?

23 A. Looking back at it, you're talking his . .

24 Q. I'm talking about a frontal shot to his knee.

25 A. Looking at the circumstances, all the circumstances,

MR. KNOX ON DIRECT

1 I did the best job that I could do for Mr. Mumford. I
2 think I did the best job I could do for Mr. Mumford.

3 Q. That's not what I'm asking. I'm asking you, don't
4 you think it was important to bring out the fact that
5 there was a frontal shot to the left knee?

6 A. Yes.

7 Q. And you did not bring it out?

8 A. No. There was also testimony about other shots
9 and that one lodged up in his testicles and other things
10 than what you have said, what you just testified.

11 Q. I didn't say it. Mr. Funderburk said it. It was
12 a frontal shot to the kneecap, the left kneecap.

13 A. All right.

14 Q. And that should have been pursued by you?

15 A. But it wasn't, and I did not pursue it.

16 Q. And you should have argued that to the jury?

17 A. You're telling me what I should have done. You
18 were not there. You were in Columbia. I was there,
19 and I worked with this case for about nine months.

20 You do not know everything that I did.

21 Q. But you had a lot of time to get all this stuff
22 together?

23 A. When I was representing him and he gave me all of
24 the information you were not there. He didn't give me
25 information about a frontal shot to the knee.

MR. KNOX ON DIRECT

1 Q. Mr. Funderburk . . .

2 A. The information in its totality -- the totality of
3 information . . .

4 (Counsel and witness speaking at the same time)

5 BY MR. SWERLING:

6 Q. You can sit there -- I just want to make sure what
7 you are saying. You can sit there and say the frontal
8 shot to the knee was not important to your client's de-
9 fense?

10 A. . .

11 MR. THOMAS: Objection, Your Honor. The questions
12 are getting argumentative, and what he's asking goes to
13 the outcome of the case, which is for Your Honor to de-
14 termine.

15 THE COURT: Okay. Ask him questions but do not
16 argue with him.

17 MR. SWERLING: Yes, sir.

18 BY MR. SWERLING:

19 Q. When you were cross-examining Corporal Scott, Dena
20 Wallace, you never asked them any questions about what
21 they did do to investigate this case, did you?

22 A. No.

23 Q. Isn't that an important strategy in the case, what
24 the police did not do?

25 A. If it helps your client.

MR. KNOX ON DIRECT

- 1 Q. But in this case it would have?
- 2 A. What are you asking?
- 3 Q. In your opinion, would it be helpful to your client?
- 4 A. Not in my opinion.
- 5 Q. But you would agree that it would have been helpful
- 6 to your defense?
- 7 A. No, I do not.
- 8 Q. Wouldn't a diagram have been helpful?
- 9 A. That's your opinion.
- 10 Q. Well, is it your opinion it would not have been
- 11 helpful?
- 12 A. No, it would not.
- 13 Q. And when Corporal Scott testified that Mr. Mumford
- 14 would have had the same training he had in the military
- 15 and would know about being shot in the leg and it could
- 16 cause a fatal wound if it hit an artery, you didn't ob-
- 17 ject to that?
- 18 A. No, I didn't.
- 19 Q. In examining Mr. Funderburk, Mr. Sellers and Mr.
- 20 Harold, you didn't do any cross examination about whether
- 21 or not at the time Mr. Funderburk was pursuing, or whe-
- 22 ther or not he had stopped pursuing -- whether he was
- 23 or was not pursuing Mr. Mumford?
- 24 You just took their stories and kind of went along
- 25 -- was that your strategy?

MR. KNOX ON DIRECT

- 1 A. Yes.
- 2 Q. You had a self defense case. Correct?
- 3 A. Yes.
- 4 Q. Your client was in possession -- unlawful possession
- 5 of a weapon. Correct?
- 6 A. Well, I think there is some question as to whether
- 7 or not he was in possession of an unlawful weapon.
- 8 Q. That's not what I asked.
- 9 A. Well, I'm going to explain.
- 10 Q. Let me explain what I asked in case you misunder-
- 11 stood. He did not have permission to have that weapon
- 12 out there so he was possessing it unlawfully?
- 13 A. No.
- 14 Q. Tell me how he was not possessing it unlawfully?
- 15 A. Because he told me he had a permit to carry it.
- 16 Q. Well, you know he didn't have a permit?
- 17 A. No, I did not know that until after the trial had
- 18 started but my client knew. He at one time had told me
- 19 he had a permit to carry it. That's what I knew until
- 20 the trial started and he told me that he had applied for
- 21 a permit.
- 22 Q. Back to my question, at some point in the trial you
- 23 knew he was in possession of an unlawful weapon?
- 24 A. Yes.
- 25 Q. All right, and did you research any jury instructions?

MR. KNOX ON DIRECT

1 A. He was not charged . .

2 Q. Did you research any jury instructions?

3 A. Ones I thought necessary.

4 Q. What jury instructions did you submit?

5 A. I did not submit any jury instructions except for
6 self-defense.

7 Q. That's it?

8 A. That's it.

9 Q. Well, there is a charge that I'm sure you are aware
10 of that -- there is a charge under South Carolina Law
11 that a person can still be acting lawfully when he is in
12 unlawful possession of a weapon if he's entitled to arm
13 himself in self-defense.

14 A. He was not charged with carrying an . .

15 Q. He was charged with attempted murder but his defense
16 is self-defense, so don't you think it would have been
17 important for you to point out to the jury, because they
18 made an issue about he was in unlawful possession of a
19 weapon . .

20 A. Who made it an issue?

21 Q. It was an issue during the testimony that he did
22 not have a permit, so it was incumbent on you to explain
23 to the jury or have the Judge explain to the jury that
24 he can be unlawfully in possession of a weapon but can
25 still lawfully use it to exercise his right to self-defense.

MR. KNOX ON DIRECT

- 1 Correct?
- 2 A. Yes.
- 3 Q. You didn't submit that charge to the Judge?
- 4 A. No.
- 5 Q. How big was Mr. Funderburk?
- 6 A. Maybe two thirty.
- 7 Q. Two hundred thirty pounds?
- 8 A. Maybe.
- 9 Q. How big was Mr. Mumford?
- 10 A. A small guy.
- 11 Q. And injured forever?
- 12 A. And what?
- 13 Q. Injured -- he served his country honorably and got
- 14 discharged?
- 15 A. Yes.
- 16 Q. Had military training but he's small? Correct?
- 17 A. Correct.
- 18 Q. Is a charge on self-defense that a person has a
- 19 right to use force in self-defense when relative size,
- 20 age and weight of the alleged aggressor or aggressors
- 21 may be relevant to the need for force in self-defense
- 22 and to the amount of force needed?
- 23 A. Yes.
- 24 Q. You didn't submit that to the Judge?
- 25 A. No.

MR. KNOX ON DIRECT

1 Q. Or the fact that there was a big disparity in the
2 size -- that's important in the case. Right?

3 A. Yes.

4 Q. Mr. Funderburk was drinking, wasn't he?

5 A. Yes.

6 Q. And he threw the bottle at Mr. Mumford which started
7 the altercation?

8 A. Yes.

9 Q. You did not submit a charge that -- a charge on
10 self-defense that a Defendant has a right to judge the
11 conduct of the deceased more harshly than otherwise be-
12 cause of drug or alcohol consumption?

13 A. No.

14 Q. Would that have been important in this case?

15 A. Yes.

16 MR. SWERLING: Your Honor, I would like to offer
17 these as an Exhibit. These are some of the charges that
18 are used everyday.

19 THE COURT: What's your position?

20 MR. THOMAS: Your Honor, I'm not sure if that is
21 proper evidence for the Court to consider.

22 THE COURT: I'll allow it. There is no jury here.

23 MR. SWERLING: Your Honor, those are just to show
24 some charges he could have submitted, and he admits he
25 could have submitted more than he did.

MR. KNOX ON DIRECT

1 (Jury charges admitted over objection as Appli-
2 cant's Exhibit 1, three pages)

3 BY MR. SWERLING:

4 Q. Mr. Knox, you ever hear of the Castle Doctrine?

5 A. Yes.

6 Q. The Castle Doctrine was in effect at the time of
7 this offense, wasn't it?

8 A. Yes.

9 Q. And were you aware of the fact that a person --
10 under State v Duncan which came out on May 9, 2011, a
11 person has a right to an evidentiary hearing pre-trial
12 as to whether he is entitled to immunity under the stat-
13 ute?

14 A. Yes.

15 Q. And Section C of the statute says a person who is
16 not engaged in unlawful activity and who is in fact in
17 a place where he has a right to be, including but not
18 limited to his place of business or the duty to retreat,
19 has a right to stand his ground and meet force with
20 force, including deadly force, if he believes it is neces-
21 sary to prevent death or great bodily injury to himself
22 or another person.

23 A. Yes, I'm familiar with that.

24 Q. And that could apply here?

25 A. No.

MR. KNOX ON DIRECT

1 Q. But you could have done one of those in this case,
2 could you not?

3 A. Could have.

4 Q. Did you ever discuss that with Mr. Mumford?

5 A. No, I did not.

6 Q. And the Castle Doctrine -- you didn't have a prelim-
7 inary hearing and you had limited discovery. You didn't
8 interview many of the witnesses, get photos or diagrams
9 or measurements or anything like that.

10 Wouldn't it have been important to have a Castle
11 Doctrine pre-hearing so you could get educated more as
12 to the case? To help your client?

13 A. No. My interpretation of the Castle Doctrine is
14 a person has a right not to retreat if he is in his
15 dwelling place. It has to be lawful activity he is
16 engaged in.

17 Notwithstanding the facts and what I was told by
18 my client, I didn't think that applied.

19 Q. He had a right to be where he was?

20 A. Yes.

21 Q. So that would qualify under this statute?

22 A. That part of it.

23 Q. And so my point is that you gave away another oppor-
24 tunity to learn something more about the case that had
25 no interviews, no discovery, no measurements or photos

MR. KNOX ON DIRECT

1 or diagrams.

2 At the very least you could have had a hearing under
3 the Castle Doctrine to learn more about the case. Isn't
4 that true?

5 A. No, that is not the case.

6 Q. You are telling me . .

7 A. I didn't think we had the opportunity to go under
8 the Castle Doctrine, and I don't think I gave away any-
9 thing. I think I gave my client a good defense.

10 As I said earlier, he had already said he shot and
11 it was self-defense. I would suggest he could have had
12 an outcome that was . .

13 Q. That wasn't my question. My question was wouldn't
14 an evidentiary hearing under the Castle Doctrine have
15 given you the opportunity to get more information for
16 your case and for your client so you could properly de-
17 fend your client?

18 A. I had all the information that was needed.

19 Q. Okay. I just have one or two more questions.

20 Did you answer my question about whether you ever
21 discussed this with your client?

22 A. No, I did not.

23 Q. So he never even had the opportunity to say whether
24 he would want it? Right?

25 A. Yes, sir.

MR. KNOX ON DIRECT

1 (Brief pause in the proceeding)

2 BY MR. SWERLING:

3 Q. The Defendant, Mr. Mumford, was charged with at-
4 tempted murder. Correct?

5 A. Yes.

6 Q. And the Judge decided to go ahead and charge the
7 jury on assault and battery of a high and aggravated
8 nature?

9 A. Yes.

10 Q. Attempted murder, aggravated assault -- assault
11 and battery of a high and aggravated nature, a lesser
12 included offense?

13 A. Yes, sir.

14 Q. Did you object to that?

15 A. No.

16 Q. Did Mr. Mumford tell you he wanted you to object
17 to that?

18 A. I don't recall.

19 Q. If he had told you he didn't think they had proof
20 of malice and he didn't want that charge . .

21 A. I don't recall having that conversation with him.

22 Q. You don't recall it, but you could have?

23 A. . .

24 Q. Is that what you're saying?

25 A. I'm saying I don't recall.

MR. KNOX ON DIRECT

1 Q. Let me ask you this. You didn't object, and my
2 question is this. Why didn't you ask for the lesser
3 charge of assault and battery in the first degree?

4 Are you familiar with the fact that that is a les-
5 ser charge?

6 A. Yes.

7 Q. Are they under the same statute?

8 A. Yes.

9 Q. And what is the difference between assault and
10 battery first degree and assault and battery of a high
11 and aggravated nature?

12 A. One you could get, if I recall, twenty years, and
13 the other you could get ten years.

14 Q. For the assault and battery of a high and aggra-
15 vated nature, Mr. Mumford got ten years. Correct?

16 A. Yes, sir.

17 Q. With no parole?

18 A. Yes.

19 Q. So that means he has to serve eight and a half
20 years?

21 A. . .

22 Q. For assault and battery in the first degree, it's
23 ten years but it's parole eligible?

24 A. Yes.

25 Q. My question is this. Why didn't you ask for that

MR. KNOX ON DIRECT

1 charge as a lesser included offense?

2 A. I didn't do that.

3 Q. That was a mistake, wasn't it?

4 A. I'm not saying it was a mistake. I just didn't ask
5 for it.

6 Q. You don't think asking for a lesser included offense
7 for your client to get a parole eligible sentence, ver-
8 sus a non-parole eligible offense? You don't think that
9 is important?

10 A. I didn't do it. I was shocked when they returned
11 a verdict of guilty of assault and battery of a high
12 and aggravated nature.

13 Q. Mr. Knox, wouldn't it have been a prudent and a
14 proper thing to do to discuss that with Mr. Mumford?

15 A. Yes, sir.

16 Q. And ask for that as a lesser charge?

17 A. Yes, sir.

18 Q. And if the Judge was giving a lesser charge on
19 assault and battery, wouldn't it have been smart if you
20 knew about it, to go ahead and ask for a lesser charge
21 so he could get a parole-eligible sentence?

22 A. . .

23 Q. Looking back, wasn't that the smart thing to do?

24 A. Yes.

25 Q. So you gambled his life?

MR. KNOX ON DIRECT

- 1 A. I didn't . .
- 2 Q. Because you thought it would be not guilty?
- 3 A. I thought it would be not guilty based on the evi-
- 4 dence and testimony. I thought it would be not guilty.
- 5 Q. Wouldn't the prudent thing to do be to go ahead
- 6 and ask for a lesser charge?
- 7 A. The verdict could have been guilty of attempted
- 8 murder. I mean, there were a lot of things that could
- 9 have been different.
- 10 Q. Did you know there was a lesser included offense?
- 11 A. Yes, I did.
- 12 Q. Did you know what the penalty was for the lesser
- 13 included offense?
- 14 A. Assault and battery in the first degree was a les-
- 15 ser included offense, yes.
- 16 Q. But you intentionally did not ask for that charge?
- 17 A. Yes.
- 18 Q. You intentionally did not ask for that charge?
- 19 A. I did not ask for that charge.
- 20 Q. And you didn't discuss that with Mr. Mumford?
- 21 A. No, I didn't.
- 22 Q. You would agree that he is entitled to have some
- 23 say-so, don't you?
- 24 A. Yes.
- 25 MR. SWERLING: Judge, that's all I have.

MR. KNOX ON CROSS

1 (Conference at the bench between counsel and the
2 Court off the record)

3 CROSS EXAMINATION

4 BY MR. THOMAS:

5 Q. Good morning, Mr. Knox. It's still morning.

6 A. Good morning.

7 Q. About how many meetings do you think you had with
8 Mr. Mumford?

9 A. About four times a month.

10 Q. So several meetings?

11 A. Several meetings, yes.

12 Q. And you did file the Rule Five, Brady Motions?

13 A. Yes. That was the first thing I did.

14 Q. And the State sort of provided you information as
15 it became available to them?

16 A. Yes, I thought they were doing the best they could
17 to provide that.

18 Q. And basically the worst of the State's evidence
19 was -- and there was never any debate about this -- that
20 Mr. Mumford shot Mr. Funderburk?

21 A. Right.

22 Q. So really the only question in your mind, and in
23 really this case, was whether the shooting happened
24 while Mr. Funderburk was facing him or whether he was
25 turned away from him?

MR. KNOX ON CROSS

- 1 A. Right.
- 2 Q. So it really came down to a question of whether
- 3 Mr. Funderburk was more believable or whether Mr. Mumford
- 4 was more believable?
- 5 A. Yes.
- 6 Q. Did you share all the discovery you got with Mr.
- 7 Mumford?
- 8 A. Yes, except for the medical reports which I was
- 9 handed the afternoon of -- I believe it was the second
- 10 day of the trial. They weren't really significant.
- 11 Q. Those medical reports never came into evidence,
- 12 did they?
- 13 A. No, sir.
- 14 Q. From your recollection and your review of the med-
- 15 ical reports at that time, would they do anything to
- 16 change the case or change the issues of the case?
- 17 A. No.
- 18 Q. You said you didn't supply a copy of the discovery
- 19 to Mr. Mumford. Did he ever ask you for a copy of any
- 20 of that?
- 21 A. No.
- 22 Q. But you reviewed the medical reports?
- 23 A. Yes, briefly I read what the doctors said. I did
- 24 not have a chance to go over them with an expert to help
- 25 me.

MR. KNOX ON CROSS

1 Q. So you had several discussions with Mr. Mumford
2 about his version of what happened?

3 A. Yes, sir.

4 Q. And you made every effort possible to locate the
5 witnesses at the places he told you they could be lo-
6 cated?

7 A. Yes.

8 Q. And about the State's witnesses, they all gave
9 statements, didn't they?

10 A. Yes.

11 Q. And you had an opportunity to review those state-
12 ments before the trial?

13 A. Yes.

14 Q. Was there any large discrepancy between the state-
15 ments they gave and what they testified to at trial?

16 A. No.

17 Q. So they did not testify to information you did not
18 already have?

19 A. Right, in their statements.

20 Q. And they did say something at trial -- they testi-
21 fied that Mr. Mumford said something to Mr. Funderburk
22 as he was leaving, but that wasn't different from what
23 their statement was?

24 A. Right.

25 Q. But you certainly cross-examined all of them?

MR. KNOX ON CROSS

1 A. Yes.

2 Q. Did you have an opportunity to review the police
3 reports in this case?

4 A. Yes.

5 Q. Okay, and was there anything in those police re-
6 ports that contradicted that there was a shooting and
7 that Mr. Mumford shot Mr. Funderburk?

8 A. No.

9 Q. You knew beforehand that the State was going to
10 call the case for trial?

11 A. Yes.

12 Q. And did you know who their witnesses were going
13 to be?

14 A. Yes.

15 Q. Did you essentially know that all their stories
16 were going to be that Mr. Funderburk walked away when
17 he was shot?

18 A. Yes.

19 MR. THOMAS: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 BY MR. THOMAS:

23 Q. I have handed you a copy of the transcript turned
24 to page 305, and if you would just briefly review Mr.
25 Funderburk's reply testimony.

MR. KNOX ON CROSS

1 A. Page 305?

2 Q. Page 305 and 306. Just briefly review that to
3 refresh your recollection.

4 You objected to Mr. Funderburk getting up in reply
5 and testifying about his wounds?

6 A. I did.

7 Q. And so the testimony about the shot in the knee, he
8 testified that it went in the back of the knee?

9 A. Yes.

10 Q. So there was no testimony from Mr. Funderburk that
11 the wound was in the front of the knee?

12 A. Not from reading this. It does not say it was in
13 the front.

14 Q. There is no question that Mr. Funderburk was assault-
15 ing Mr. Mumford by throwing the beer bottle?

16 A. No, sir.

17 Q. And he even admitted that in his statement?

18 A. Yes, sir.

19 Q. And I think you got him to admit that he was the
20 aggressor in that?

21 A. Yes.

22 Q. And you argued to the jury that Mr. Mumford had a
23 head injury and his fear of getting hit in the head again
24 was his reason for acting in self-defense?

25 A. Yes.

MR. KNOX ON CROSS

1 Q. As far as the person who was on the jury that some-
2 one in Mr. Funderburk's family had spoken to, do you
3 remember if that person actually sat on the jury in this
4 case, or was it just someone who was kind of out in the
5 . . .

6 A. Basically someone who was just out in the area.

7 Q. So nobody who sat on the jury actually, as far as
8 you're aware, had any contact with anybody in his fam-
9 ily?

10 A. No. Nobody that had an active role, and I think
11 if it was the Court would have acted on it.

12 Q. You said Mr. Mumford was never charged with unlaw-
13 ful carrying of a pistol?

14 A. He was not.

15 Q. And I know that came out in the testimony, but do
16 you recall that the Solicitor actually made a point to
17 tell the jury at the end of the day that he was walking
18 around with a loaded pistol?

19 A. If that is in the transcript. I don't know.

20 Q. Okay. But as far as the law of self-defense, it
21 doesn't say anything about acting unlawfully? It just
22 says you can't be at fault in bringing on the difficulty?

23 A. Right.

24 MR. SWERLING: Judge, I would disagree that is the
25 law as far as self defense.

MR. KNOX ON CROSS

1 If you are acting unlawfully you cannot assert self-
2 defense, and that is why that charge is so important. It
3 also states in the Castle case that someone can be un-
4 lawfully possessing a weapon and use it in self-defense.

5 MR. THOMAS: The charge to the jury said -- didn't
6 mention anything about acting lawfully. The jury charge
7 just said he had to be not at fault in bringing on his
8 difficulty.

9 THE COURT: Yes. Continue, please.

10 BY MR. THOMAS:

11 Q. So basically what this case came down to is whether
12 the jury believed Mr. Funderburk was facing Mr. Mumford
13 when he was shot or had turned away. Is that a fair
14 assessment?

15 A. What it boiled down was whether they believed Mr.
16 Funderburk or Mr. Mumford.

17 Q. Having a pre-trial hearing on this, would it have
18 changed anything?

19 A. No.

20 Q. Would it have told you anything you didn't already
21 know?

22 A. . .

23 MR. SWERLING: Object to leading.

24 MR. THOMAS: It's cross examination.

25 THE COURT: Overruled.

MR. KNOX ON CROSS

1 BY MR. THOMAS:

2 Q. Would it have changed anything?

3 A. No.

4 Q. And so this is basically a quintessential jury
5 question about whether it was self-defense or not?

6 A. Yes, sir.

7 Q. And there was a gun involved in this, so it was
8 obviously a factor to turn assault and battery to an
9 assault and battery of a high and aggravated nature?

10 A. Yes, the use of a weapon.

11 Q. So were there any factors in the case, say, to show
12 anything below the ABHAN? From your recollection of
13 the record, anything to say, well, maybe he could have
14 gotten assault and battery, first degree?

15 A. No.

16 Q. Basically, your thought on this was it was either
17 ABHAN, self-defense, or he was guilty of something.
18 Correct?

19 A. My thought was he was acting in self-defense.

20 Q. So you were looking at an all or nothing sort of
21 thing -- whether he was acquitted or was convicted?

22 A. I thought he should be acquitted.

23 Q. You didn't try to present evidence to say, well,
24 maybe it is something lesser, like an assault?

25 A. I basically wanted the jury to believe he was not

MR. KNOX ON CROSS

1 guilty.

2 Q. Thank you. Nothing further.

3 THE COURT: Mr. Swerling.

4 REDIRECT EXAMINATION

5 BY MR. SWERLING:

6 Q. I just want to go back to basically one thing, and
7 that is that you allowed Mr. Funderburk to testify in
8 reply so that he could lift his leg up and show his in-
9 juries. Right?

10 A. Yes.

11 Q. And that is where he testified different to what
12 he had testified to before when he was on Direct Examin-
13 ation in the case about the entrance wound to the knee.
14 Is that correct?

15 A. I don't believe so.

16 Q. On page 67 of the transcript, he says entry wound
17 to my left knee cap, does he not?

18 A. Yes.

19 Q. So he gave inconsistent versions of the same facts.
20 Correct?

21 A. He gave a bunch of inconsistencies.

22 Q. Okay, that's all I have. Thank you.

23 THE COURT: Anything else?

24 MR. THOMAS: No further questions.

25 THE COURT: You can step down.

1 Can he be excused?

2 MR. SWERLING: As far as I'm concerned.

3 MR. THOMAS: I would ask that he stay through the
4 State's case in chief. I would prefer that.

5 THE COURT: What says the Defense?

6 MR. SWERLING: No objection.

7 (Witness excused from stand)

8 THE COURT: Call your next witness.

9 MR. SWERLING: We'd call Noah Mumford to the
10 stand.

11 NOAH MUMFORD, being duly
12 sworn, testified as follows:

13 CLERK: Please be seated and state your full name
14 for the Court.

15 WITNESS: Noah Mumford.

16 DIRECT EXAMINATION

17 BY MR. SWERLING:

18 Q. Mr. Mumford, where are you currently housed?

19 A. Wateree Correction Institute.

20 Q. And you are serving a sentence for assault and bat-
21 tery of a high and aggravated nature?

22 A. Yes, sir, I am.

23 Q. What was your sentence?

24 A. Ten years.

25 Q. When did you begin your sentence?

MR. MUMFORD ON DIRECT

1 A. I went to prison on October 28th of 2011.

2 Q. Did you -- when you got arrested, did you hire Mr.

3 Knox to represent you?

4 A. I did.

5 Q. Did you know of him?

6 A. Yes, I did.

7 Q. How many times did you meet, do you think, with Mr.

8 Knox during the course of your representation?

9 A. Maybe six to eight times.

10 Q. And did you know anything about the process of a crim-

11 inal trial?

12 A. No, sir, I didn't.

13 Q. What is your background?

14 A. My background?

15 Q. Did you serve in the military?

16 A. Yes, sir, I did.

17 Q. Tell the Judge a little bit about your experience in

18 the military service.

19 A. I was a Spec Four in the military. I was dispatched

20 to -- I was pretty much a basic mechanic at the time, and

21 then I had to serve overseas working on vehicles and differ-

22 things in Iraq, tanks and vehicles and different things.

23 I came back home on special disability because of an

24 injury and then I had tendonitis and trouble with my shoulder.

25 Q. Did you get discharged then from the service?

MR. MUMFORD ON DIRECT

- 1 A. Yes, sir.
- 2 Q. Did you get a medical discharge?
- 3 A. Yes.
- 4 Q. And were you diagnosed with certain conditions that
- 5 we will talk about, and one of them is post-traumatic stress
- 6 disorder?
- 7 A. Yes, sir.
- 8 Q. And one was tendonitis?
- 9 A. Yes, sir, tendonitis.
- 10 Q. You had trouble with your left shoulder?
- 11 A. Yes.
- 12 Q. Were you declared by the Military Board to have a
- 13 service-related injury?
- 14 A. Yes.
- 15 Q. And what was the rating that they gave you?
- 16 A. Fifty percent.
- 17 Q. And is that all service-related?
- 18 A. Yes.
- 19 Q. And that happened in Iraq?
- 20 A. In Iraq.
- 21 Q. And since you've been home, you have worked where?
- 22 A. Since I've been home, I've worked with Marlboro Feed and
- 23 Seed. That's the last job, but the job before that was
- 24 driving a truck and that's where I was when this begun, and
- 25 I was (inaudible).

MR. MUMFORD ON DIRECT

- 1 Q. Had you ever been told that before?
- 2 A. No, sir.
- 3 Q. This was the first time you ever got in trouble, is
- 4 that right?
- 5 A. Right.
- 6 Q. Did you depend on Mr. Knox to advise you of what should
- 7 be done and did you give him all the information that he had
- 8 asked for?
- 9 A. I did.
- 10 Q. Let me ask you this. Did you discuss your service-
- 11 related injuries with him?
- 12 A. Yes.
- 13 Q. Did you tell him how they affected you?
- 14 A. Yes.
- 15 Q. Did your injuries in any way make you more susceptible
- 16 to being hurt?
- 17 A. Yes.
- 18 Q. Did you advise him that you have a plate in your head?
- 19 A. Yes, sir, because I had an accident before.
- 20 Q. How long ago was that?
- 21 A. Five years maybe or six. Five years.
- 22 Q. Did you give him that information?
- 23 A. Right.
- 24 Q. And did you in any way explore with him how that may
- 25 affect the case?

MR. MUMFORD ON DIRECT

- 1 A. No, sir.
- 2 Q. But you did discuss it?
- 3 A. Yes, sir.
- 4 Q. Did you discuss with him interviewing -- that you wanted
- 5 him to interview some people who were involved in the investi-
- 6 gation of the case?
- 7 A. Yes.
- 8 Q. Why did you think that was important?
- 9 A. Because it would show the kind of condition Mr. Funderbur
- 10 was in when he was drinking. It would have documented that.
- 11 Q. What about the responding officers in the case? Did
- 12 they provide or take any photographs?
- 13 A. No.
- 14 Q. Did you think it was important for him to talk to the
- 15 officers as to where everything was when they got there?
- 16 A. Yes.
- 17 Q. All right. Tell the Judge some of what you noticed,
- 18 as far as the location of the bottle and what it would have
- 19 shown?
- 20 A. It would have proved the fact that I was attacked, that
- 21 I was not the aggressor. It was just -- like I said, it was
- 22 a accident. He knew it was a accident, and I was in no way
- 23 striking him or nothing. He was the aggressive one, and it
- 24 was what was done to me.
- 25 Q. Did he ask you questions at trial about whether he

MR. MUMFORD ON DIRECT

1 -- about the fact that he struck first, and that in the ac-
2 tual flow of things he was the aggressor?

3 A. No.

4 Q. There were no diagrams, no photographs, no sketches
5 done of the scene?

6 A. No.

7 Q. So as far as the scene, nobody got to see the scene?

8 A. No, they didn't. He knew that he jumped on me and I
9 in no way was striking him or nothing. I never did nothing
10 to cause it.

11 Q. So he was the person who struck first?

12 A. Yes.

13 Q. You have described for me as to where -- as to the
14 relationship between the shell casings and the bottle, and
15 should that have been brought out to the jury?

16 A. Yes, sir. If he had had a diagram, he could have showed
17 the shell casings were all in one area. There was no spray
18 of shell casings. It was never stressed at all during the
19 trial.

20 Q. It was never stressed during the trial?

21 A. No.

22 Q. And you thought that was critical to your claim of
23 self-defense?

24 A. Yes.

25 Q. No photographs, no diagrams?

MR. MUMFORD ON DIRECT

- 1 A. No.
- 2 Q. Did you ask him to get them?
- 3 A. Yes, I did.
- 4 Q. Did he ever get them?
- 5 A. No, sir.
- 6 Q. So you had no visual aid or demonstrative aid that you
- 7 could show?
- 8 A. I had nothing for the jury to see.
- 9 Q. Were you ever asked to come down off the stand and de-
- 10 scribe any of that?
- 11 A. No, sir, I was not.
- 12 Q. Would a diagram or photos have assisted you?
- 13 A. Yes, it would have shown the bottle and the shell cas-
- 14 ings -- everything that was there.
- 15 Q. Did you talk to Mr. Knox about going out to the scene
- 16 with you so you could show him what happened?
- 17 A. I told him we needed to go there.
- 18 Q. Did you think it would have been important for you to
- 19 do that, to go with him to the scene and show him what had
- 20 happened there?
- 21 A. Yes, I begged him to.
- 22 Q. There was some question that came up about the Rule
- 23 Five or discovery material. Mr. Knox said he showed you the
- 24 Rule Five material.
- 25 Did you go over to his office and look at the Rule

MR. MUMFORD ON DIRECT

1 Five . . .

2 A. No, sir, I didn't.

3 Q. Did he ever offer to show you the Rule Five material?

4 A. No, sir.

5 Q. Did he ever offer to give it to you?

6 A. No, sir.

7 Q. Did he tell you that you had a right to have it?

8 A. No, sir.

9 Q. Did you ever see the Rule Five material prior to the
10 trial?

11 A. No, sir. I didn't see anything until I was on the
12 witness stand.

13 Q. How about the hospital records? Did you ever see the
14 hospital records?

15 A. No.

16 Q. The records the Solicitor got from the hospital?

17 A. No, sir.

18 Q. Did you know that he had gotten it?

19 A. No.

20 Q. Was that important to you?

21 A. Yes, sir.

22 Q. Did you discuss with him about getting the hospital
23 records?

24 A. Did I discuss with him about getting them?

25 Q. Yes.

MR. MUMFORD ON DIRECT

1 A. No, sir.

2 Q. Or maybe having somebody take a look at them?

3 A. No, sir.

4 Q. Did you have an opportunity to examine the hospital
5 records before the trial?

6 A. No, sir.

7 Q. Before you testified?

8 A. No, sir. I did not.

9 Q. There was some testimony from Mr. Funderburk about
10 where the injuries were. Did you discuss with Mr. Knox about
11 possibly having someone, an expert, look at the injuries?

12 A. Mr. Knox never advised me that we could do that. I re-
13 lied on what he did, what he told me. That's why I had him.
14 Why I hired him -- to advise me of these things and my con-
15 stitutional rights.

16 Q. You heard us talking about where Mr. Funderburk testi-
17 fied about the entry wound to his left knee. Is that
18 right?

19 A. Yes, I heard it.

20 Q. Was that pursued by Mr. Knox at the trial?

21 A. No, sir.

22 (Brief pause in the proceeding)

23 THE COURT: Okay, repeat the last question.

24 MR. SWERLING: What was the last question?

25 REPORTER: Page 67 Mr. Funderburk testified about the

MR. MUMFORD ON DIRECT

- 1 entry wound to his left knee . .
- 2 BY MR. SWERLING:
- 3 Q. Did Mr. Knox pursue that?
- 4 A. He never mentioned it.
- 5 Q. In your opinion, was that an important issue?
- 6 A. Yes, sir. It was most important. He had an obligation
- 7 to me to . .
- 8 Q. What I'm asking, is the fact that Mr. Funderburk was
- 9 shot in the knee--what does that indicate about the direc-
- 10 tion he was describing?
- 11 A. In the front.
- 12 Q. Now, did you have a preliminary hearing?
- 13 A. No, sir.
- 14 Q. Did you discuss with Mr. Knox having a preliminary hear-
- 15 ing?
- 16 A. Yes, sir.
- 17 Q. Did you get any answer from him as to why . .
- 18 A. He said we didn't need one.
- 19 Q. Did you know whether or not you needed a preliminary
- 20 hearing?
- 21 A. I did not.
- 22 Q. Did you take his advice . .
- 23 A. Yes, sir.
- 24 Q. . . on whether or not you needed a preliminary hearing?
- 25 A. Yes, sir.

MR. MUMFORD ON DIRECT

- 1 Q. Did you know that a preliminary hearing would give you
2 a preview of some of the evidence in the case?
- 3 A. No.
- 4 Q. Do you understand it now?
- 5 A. Yes, now I do.
- 6 Q. That it would have given you a preview of some of the
7 evidence?
- 8 A. Yes, sir.
- 9 Q. Now, there was very little material gathered in discov-
10 ery by the State, so would you have wanted the opportunity to
11 find out as much as you could about the State's case?
- 12 A. Yes.
- 13 Q. Did -- as far as you know, did you ask him to interview
14 the police officers?
- 15 A. I would think he would have.
- 16 Q. Listen to my question. The police officers in the case
17 . . .
- 18 A. No, sir.
- 19 Q. . . were Deputy Joe Campbell, Investigator John James,
20 Daniel Scott, Dana Wallace, and do you think he should have
21 interviewed these officers?
- 22 A. Yes. I know for a fact he should have talked with those
23 officers because they had facts that could be used in the
24 evidence.
- 25 Q. As what?

MR. MUMFORD ON DIRECT

- 1 A. Facts that could have been used in evidence.
- 2 Q. And they were the ones who actually responded to the
- 3 scene and would have seen where the bottle and the shell cas-
- 4 ings were?
- 5 A. Yes.
- 6 Q. And an indication of where you were and where Mr. Funderb
- 7 was. Is that correct?
- 8 A. Yes.
- 9 Q. As far as you know, no efforts was made by him to inter-
- 10 view those police officers?
- 11 A. No, sir.
- 12 Q. And Daniel Scott was the one who took your statement,
- 13 is that correct?
- 14 A. Yes.
- 15 Q. And it was a video statement?
- 16 A. Yes.
- 17 Q. Did you think Mr. Knox would talk to him about the state-
- 18 ment that you made?
- 19 A. Yes.
- 20 Q. And did he do that?
- 21 A. No, sir.
- 22 Q. Were you able to ever get any information about anything
- 23 at the crime scene?
- 24 A. No, sir.
- 25 Q. From where this thing supposedly happened?

MR. MUMFORD ON DIRECT

- 1 A. No.
- 2 Q. There was never any information?
- 3 A. No.
- 4 Q. Nor were you given copies of any material?
- 5 A. No.
- 6 Q. You said you didn't even see them?
- 7 A. No, sir.
- 8 Q. And you gave -- there were several witnesses who testi-
- 9 fied in your behalf?
- 10 A. Yes.
- 11 Q. Steven Teal, who is a friend? Frank Grant?
- 12 A. Yes, sir.
- 13 Q. And some of the others? Did you give him those names?
- 14 A. Yes, sir.
- 15 Q. You've heard the names?
- 16 A. Yes, sir.
- 17 Q. Did you know how to find those people?
- 18 A. Yes, sir.
- 19 Q. He said you didn't try to help him find them?
- 20 A. I told them I would take them to his office.
- 21 Q. So you were willing to take any of these people to him?
- 22 A. Yes, but he didn't want me to.
- 23 Q. Steven Teal was one of the witnesses in the case, and
- 24 were you shocked and surprised when you saw Mr. Knox bring
- 25 out the fact that Mr. Teal had a vehicular homicide conviction?

MR. MUMFORD ON DIRECT

- 1 A. I was very much shocked.
- 2 Q. And also when he brought out he was a drug user and
- 3 had been clean for five years?
- 4 A. Yes. I couldn't believe that was asked. The conviction
- 5 was more than ten years old.
- 6 Q. And you learned that at the trial?
- 7 A. Yes, sir, from the Judge and the Solicitor.
- 8 Q. Did you think those questions disturbed Teal's credi-
- 9 bility with the jury?
- 10 A. I did, very much.
- 11 Q. You understood what the Judge was saying, that the
- 12 prosecutor could not go beyond ten years?
- 13 A. Yes, I did.
- 14 Q. Now, there were some other witnesses in the case who
- 15 were at the scene?
- 16 A. Yes.
- 17 Q. One of them was named Cory Williams?
- 18 A. Yes.
- 19 Q. Did you give Mr. Knox the information about those indi-
- 20 viduals?
- 21 A. I asked him why they didn't take the stand. I had
- 22 gave him information . .
- 23 Q. What?
- 24 A. I had gave him information about them and why did they
- 25 not testify.

MR. MUMFORD ON DIRECT

- 1 Q. What do you mean, why they would not testify?
- 2 A. It seemed strange. I asked him why they did not.
- 3 Q. Were they there?
- 4 A. They were there.
- 5 Q. Do you think he should have interviewed other witnesses
- 6 at the scene? I guess that's the question, whether you
- 7 think he should have interviewed other witnesses at the
- 8 scene?
- 9 A. Yes, I do.
- 10 Q. And find out what they were going to say?
- 11 A. Yes.
- 12 Q. And the only people who testified about the scene were
- 13 Todd Harold and Mr. Sellers?
- 14 A. Yes.
- 15 Q. And Frank Grant . .
- 16 A. Yes.
- 17 Q. Mr. Knox ever try as far as you know to interview those
- 18 people?
- 19 A. He did not.
- 20 Q. So you don't know what they would have said?
- 21 A. No, sir.
- 22 Q. Now, Mr. Funderburk --- to your knowledge, did Mr.
- 23 Funderburk have a reputation about getting in fights?
- 24 A. Yes.
- 25 Q. Was he a drinker?

MR. MUMFORD ON DIRECT

- 1 A. Yes.
- 2 Q. Was he drinking that night?
- 3 A. Yes.
- 4 Q. And when you were out there, what county was that?
- 5 A. Cheraw, Dillon.
- 6 Q. Most of the people out there that night were people
- 7 from Dillon?
- 8 A. Yes.
- 9 Q. And most of the people whose names I've mentioned in
- 10 this case knew each other. Correct?
- 11 A. Yes.
- 12 Q. And did you think it was important for Mr. Knox to
- 13 speak to some individuals who may have had knowledge of or
- 14 may have had altercations with Mr. Funderburk?
- 15 A. Yes, I did. I give him that.
- 16 Q. Which names did you give him?
- 17 A. Ervin Smith, Mike Jenkins.
- 18 Q. What did he do about that? Did he seem interested in
- 19 talking to them?
- 20 A. No, sir.
- 21 Q. If he had wanted to talk with them, would you have
- 22 brought them to his office?
- 23 A. I would have or taken him to them.
- 24 Q. So all of these people were accessible to you but he
- 25 just had to tell you he wanted to speak to them?

MR. MUMFORD ON DIRECT

1 A. That's all he needed to say.

2 Q. And you gave him all of these names?

3 A. Yes.

4 Q. And with respect to those two, Smith and Jenkins, they
5 were not there that night, were they?

6 A. No, sir.

7 Q. So as far as you knew, they had had prior altercations
8 with Mr. Funderburk?

9 A. Yes. Those were names I had given him on that.

10 Q. And did you think that was important and that the
11 jury ought to know those things that could possibly affect
12 his reputation?

13 A. Oh, yes.

14 Q. And the fact that he had been in fights with those
15 people?

16 A. Yes.

17 Q. Did Mr. Knox ever seem interested in that?

18 A. No.

19 Q. There were several reports by several people that some
20 people had been talking -- some people that were in the
21 Funderburk family had been talking with members of the jury.
22 Is that correct?

23 A. Yes, sir.

24 Q. And did you tell Mr. Knox about that?

25 A. Yes, sir, I did.

MR. MUMFORD ON DIRECT

1 Q. And to your knowledge, what was done about that?

2 A. Nothing.

3 Q. Do you think that that -- did you witness that your-
4 self?

5 A. Yes.

6 Q. Did you think it was important that he bring that to
7 the attention of the Judge?

8 A. I did and that's why I told him about it.

9 Q. Was anything done by the Court about that, as far as
10 you know?

11 A. No, sir.

12 Q. If Mr. Knox had interviewed Mr. Harold or Mr. Sellers,
13 who were witnesses for the State, do you think that he
14 could have developed a better cross examination about who
15 the aggressor was in this situation?

16 A. Yes.

17 Q. But from the testimony that was offered by them, when
18 he conducted cross examination . .

19 A. He didn't question them about nothing to do with him
20 hitting me with a bottle or nothing to help me.

21 Q. So it would have been -- in your opinion, would his
22 examination have been better if he had interviewed these
23 people?

24 A. Yes.

25 Q. And many other people -- I think we just talked about

MR. MUMFORD ON DIRECT

1 the fact that he did not interview these people, but did
2 you ask him to call at trial Mike Jenkins and Ervin Smith
3 we just talked about?

4 A. I asked him to.

5 Q. And about the fact we just discussed that they had had
6 some difficulty with Mr. Funderburk?

7 A. Yes.

8 Q. And they could tell what type character he was and the
9 fact that he got in fights with other people?

10 A. Yes.

11 Q. Did -- there was some testimony at one point in the
12 trial by Mr. Funderburk as to his injuries?

13 A. Yes.

14 Q. When he was called back in reply he testified about
15 those injuries and was allowed to show them to the jury.

16 What was your view of that? How did you feel about
17 that?

18 A. I felt like it shouldn't have gone on.

19 Q. Do you think Mr. Knox should have objected?

20 A. Yes.

21 Q. Did you think he had done an accurate job in explain-
22 ing where those injuries were and how those injuries were
23 inflicted?

24 A. You are saying he . .

25 Q. Mr. Knox.

MR. MUMFORD ON DIRECT

1 A. No.

2 Q. There is no question you were firing at the ground, as
3 there was testimony you were firing to the ground?

4 A. Yes, sir.

5 Q. Mr. Funderburk got hit in the ankle?

6 A. Yes.

7 Q. But there was no effort to explain how he would have
8 gotten those injuries. Correct?

9 A. Yes.

10 Q. Did this investigation -- you and I have discussed
11 this, that the investigation in this case -- not just talk-
12 ing about Mr. Knox, but the investigation in this case by
13 Corporal Scott, Dena Wallace, Mr. James and Mr. Campbell
14 -- not much work was done in this case to investigate the
15 case?

16 A. Correct. Mr. Scott questioned me and that was the
17 only investigation done.

18 Q. There was no photos, no diagrams, no measurements?

19 A. No.

20 Q. Did you think it was important for Mr. Knox to bring
21 out the failure of the officers or investigators to do
22 certain things in the case?

23 A. Yes.

24 Q. That that might have been favorable to you?

25 A. Yes.

MR. MUMFORD ON DIRECT

1 Q. If they had done some investigation in the case and
2 if he had asked some questions about it, would he have
3 been able to bring out the facts, as well as the fact they
4 could have taken photos, done diagrams and measurements?

5 A. Yes.

6 Q. Would that have been of help to you in explaining
7 your self-defense case?

8 A. Yes.

9 Q. I think I may have asked this, but do you recall any
10 cross examination of Mr. Sellers and Mr. Harold about Mr.
11 Funderburk approaching you in your plea of self-defense?

12 A. I never heard that in cross examination.

13 Q. How could you raise a self-defense case and not ques-
14 tion the State's witnesses about who approached who, who
15 was the aggressor?

16 A. Couldn't.

17 Q. You think that was deficient on his part?

18 A. . .

19 MR. THOMAS: Objection, Your Honor. That calls for
20 a legal conclusion.

21 MR. SWERLING: Asking for his personal opinion. I
22 withdraw it.

23 BY MR. SWERLING:

24 Q. And I believe we discussed that you never went to the
25 crime scene with him.

MR. MUMFORD ON DIRECT

- 1 A. We did.
- 2 Q. I'm sorry. I won't ask it again.
- 3 Did you -- did Mr. Knox ever explain to you some legal
- 4 issues involving assault and battery, that he was doing
- 5 some research in that area?
- 6 A. He never explained nothing except that he was going
- 7 for self-defense.
- 8 Q. So when you went in -- when he got you prepped for
- 9 trial, did he ever discuss with you the legal issues in
- 10 the case?
- 11 A. No.
- 12 Q. Did he ever discuss the burden of proof in self-defense
- 13 cases?
- 14 A. No.
- 15 Q. Did he ever explain to you your right to testify or
- 16 not to testify?
- 17 A. No, sir.
- 18 Q. Did you understand, other than what the Judge told
- 19 you about your right to testify or not testify?
- 20 A. He told me he thought it was in my best interest to
- 21 testify.
- 22 Q. Who? Mr. Knox?
- 23 A. Yes.
- 24 Q. And that was at the time of trial?
- 25 A. Yes.

MR. MUMFORD ON DIRECT

1 Q. Did you ever discuss some of the legal issues he was
2 going to ask the Judge to consider?

3 A. No.

4 Q. Did he ever discuss those with you?

5 A. No, sir.

6 Q. Now, you saw during the examination of Mr. Knox that
7 there were certain jury instructions that I suggested he
8 could have asked. Were those ever discussed with you?

9 A. No, sir.

10 Q. Were you aware of the fact that he could have submit-
11 ted jury instructions in the case?

12 A. No, I was not.

13 Q. Did you understand anything about the process of jury
14 instructions, or did he discuss it with you?

15 A. No, sir. This was my first time ever being in a
16 Courtroom for a criminal case.

17 Q. When was the first time you learned about what is now
18 referred to as the Castle Doctrine?

19 A. When you told me about it.

20 Q. And that was when I started representing you?

21 A. Yes.

22 Q. And did Mr. Knox ever discuss with you the principles
23 involved in the Castle Doctrine?

24 A. No, sir.

25 Q. Did he ever explain to you that there was a right you

MR. MUMFORD ON DIRECT

1 could have requested, the right they call now stand your
2 ground?

3 A. No, he didn't.

4 Q. So you didn't know about that?

5 A. No, sir.

6 Q. Had he explained that to you, would you have wanted
7 that hearing you would have been entitled to?

8 A. I didn't know anything about it.

9 Q. But had you known you were entitled to a hearing,
10 would you have asked for that?

11 A. Yes.

12 Q. If he had told you about your right to that hearing?

13 A. Yes.

14 Q. Would it have given you and Mr. Knox more information
15 about the facts of the case?

16 A. Yes, it would have.

17 Q. Even though you didn't know about that until I started
18 representing you. Is that correct?

19 A. Yes, sir.

20 Q. When the Judge had a charge conference in this case --
21 remember they talked about what the charges he would in-
22 struct the jury were?

23 A. Yes.

24 Q. Were you present for that?

25 A. If I was, I wasn't aware of what they were doing.

MR. MUMFORD ON DIRECT

1 Q. You were charged with attempted murder?

2 A. I was.

3 Q. And the Judge told everybody he was going to instruct
4 the jury on assault and battery of a high and aggravated
5 nature.

6 Did Mr. Knox ever discuss with you the ramifications
7 of a lesser included charge?

8 A. No, sir.

9 Q. Did he tell you that you could object to a lesser in-
10 cluded charge, and whether you won or not that that objec-
11 tion could be made?

12 A. No, sir.

13 Q. Did you want a lesser included charge?

14 A. Did I want . .

15 Q. Did you want the Judge to instruct the jury about the
16 lesser included chage?

17 A. No.

18 Q. Did you say that you thought the State had not met its
19 burden on the attempted murder charge?

20 A. Yes. They didn't prove any malice.

21 Q. So my question is, if you had had a chance to just have
22 the jury consider attempted murder or not guilty, would
23 that have been your preference?

24 A. I would want them to consider the attempted murder and
25 not guilty if he had told me that.

MR. MUMFORD ON DIRECT

1 Q. That's what I'm trying to get at. Let me ask you this.
2 The Judge did go ahead and charge assault and battery of a
3 high and aggravated nature. You and I have discussed that?

4 A. Yes.

5 Q. Did you know at the time that Mr. Knox could have asked
6 for a lesser included charge on assault and battery in the
7 first degree?

8 A. No, sir.

9 Q. Instead of being assault and battery where you could
10 not get paroled, which is your situation now, in the assault
11 and battery in the first degree you could have gotten parole.
12 Did he ever explain that to you?

13 A. No, sir.

14 Q. Did he ask for that charge?

15 A. No, sir.

16 Q. Knowing that the Judge was going to charge assault and
17 battery of a high and aggravated nature, would you have
18 wanted that charge?

19 A. Yes.

20 Q. It doesn't make sense. Right?

21 A. No.

22 Q. But you never had that opportunity because that was
23 not explained to you?

24 A. It was not.

25 MR. SWERLING: Court's indulgence for a moment.

MR. MUMFORD ON DIRECT

1 (Brief pause in the proceeding)

2 BY MR. SWERLING:

3 Q. Do you think that Mr. Knox spent enough time in order
4 to effectively represent you on this charge?

5 A. No.

6 Q. I ask you if you think he effectively represented you
7 in this case?

8 A. . .

9 MR. THOMAS: Objection, Your Honor. That is not a
10 conclusion for him to make.

11 THE COURT: Yes, sir.

12 BY MR. SWERLING:

13 Q. Now, Noah, this is your day in Court. This is your
14 post-conviction hearing.

15 What other things do you want to tell the Judge that
16 you think were deficiencies in your representation in this
17 case?

18 A. No investigation for one, no pre-trial hearing. He
19 never did any investigation or nothing. He didn't do no-
20 thing. He didn't have a clue about me or what my witnesses
21 would say or nothing.

22 He never even took the time to talk to me about the
23 trial. He never assisted me.

24 Q. And that began even before jury selection?

25 A. Yes.

MR. MUMFORD ON CROSS

1 Q. Did he ask you for funds to hire an investigator to
2 go and investigate the case?

3 A. No.

4 Q. Do you know of any day he asked you to go with him and
5 help him investigate the case?

6 A. Not a day.

7 Q. What other things would you like the Judge to consider
8 in this case?

9 A. I'd like the Judge to consider that I was not repre-
10 sented properly. Mr. Knox didn't do nothing for me. He
11 didn't check on anything. If he had said he needed some-
12 thing else he would have had it.

13 Q. Did you -- are there any other specific allegations you
14 would like the Judge to consider?

15 A. Just what we've already said. I think we have talked
16 about all of it.

17 Q. Now, the Attorney General has a right to ask you some
18 questions.

19 MR. THOMAS: May it please the Court?

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. THOMAS:

23 Q. Mr. Mumford, you testified that you never reviewed the
24 discovery with Mr. Knox?

25 A. Yes, sir.

MR. MUMFORD ON CROSS

1 Q. I'm sorry.

2 A. I did not.

3 Q. Okay, and you never discussed with him the possibility
4 of maybe going to get an expert to look at the medical re-
5 ports?

6 A. No, sir.

7 Q. And you never talked about what witnesses he was going
8 to go for or who he was going to call?

9 A. No, sir. Absolutely, even though I told him some names
10 or suggested some.

11 Q. So he never talked with you about the self-defense
12 theory before the trial?

13 A. No, sir.

14 Q. Never talked about the statements that witnesses gave?

15 A. No, sir. I never saw any statements.

16 Q. Well, what did you talk about at these meetings?

17 A. What did we talk about at the meetings?

18 Q. Yes.

19 A. In our conversations I told him about people I wanted
20 him to notify. I never got no counsel.

21 Q. Is it your testimony that you told him he needed to go
22 out and take photos, take pictures of the scene, get a dia-
23 gram and all that?

24 A. I told him he needed to do that definitely, he needed
25 to investigate.

MR. MUMFORD ON CROSS

- 1 Q. So when you say he needed to investigate . .
- 2 A. He needed to go and take pictures and talk to people.
- 3 Q. So you are saying you told him to go take pictures?
- 4 A. Yes.
- 5 Q. You testified at trial about your prior history?
- 6 A. Yes.
- 7 Q. And you basically told the jury your version of what
- 8 happened that night?
- 9 A. Yes.
- 10 Q. And I think at some point even -- basically everybody
- 11 testified that Mr. Funderburk was slinging a beer bottle
- 12 at you? Is that correct?
- 13 A. Yes.
- 14 Q. And your version of the events -- correct me if I'm
- 15 wrong, but it's my understanding that basically everybody
- 16 said you got into a tussle and then separated, and then at
- 17 some time after that shots were fired?
- 18 A. That's wrong. He came after me.
- 19 Q. And so . .
- 20 A. Basically this happened all at once. There was never
- 21 no stop and wait and then stuff happened. No.
- 22 Q. Okay, so it was all -- a bottle was flung and then it
- 23 all happened?
- 24 A. Yes, sir. There was never one moment in between.
- 25 Q. And that is essentially what everybody's testimony at

MR. MUMFORD ON CROSS

1 the trial was?

2 A. No.

3 Q. Who at the trial testified different than that?

4 A. Everybody at the trial testified different than that.

5 Bottle hit me first and that's what they testified to.

6 Q. Okay. You retained him -- you retained Mr. Knox in

7 January?

8 A. That's correct.

9 Q. And were you surprised at the trial by anything any-

10 body said on the stand?

11 A. . . .

12 Q. Did any of it come as a surprise to you?

13 A. Yes.

14 Q. What came as a surprise to you?

15 A. What came as a surprise to me?

16 Q. Yeah, that's what I'm saying -- what anyone said you

17 didn't expect them to say.

18 A. Some of the questions asked.

19 Q. You are not denying today that you actually shot Mr.

20 Funderburk?

21 A. No.

22 Q. You said it was important to you that the jury find

23 you not guilty?

24 A. Obviously I said that.

25 Q. I'll rephrase that. Your hope was that the jury find

MR. MUMFORD ON CROSS

1 you acted in self-defense?

2 A. Yes.

3 Q. And so you presented testimony or Mr. Knox presented
4 testimony at trial that you weren't acting with any malice
5 when you shot Mr. Funderburk?

6 A. He told me that.

7 Q. And that was your theory at trial to defeat the attempted
8 murder charge?

9 A. . . .

10 Q. Was that you weren't acting with malice; that you were
11 acting in self-defense?

12 A. Yes.

13 MR. THOMAS: Beg the Court's indulgence.

14 (Brief pause in proceeding)

15 BY MR. THOMAS:

16 Q. Did Mr. Knox talk to you at trial about the fact that
17 maybe somebody in the jury pool had been talking with the
18 victim's family?

19 A. Did he talk to me about it?

20 Q. Yes.

21 A. I told him about it.

22 Q. You say you told him about that?

23 A. Yes.

24 Q. Did he -- he came back later and told you that he had
25 talked to the Judge about taking care of it?

MR. MUMFORD ON CROSS

1 A. I don't believe he did.

2 MR. THOMAS: Beg the Court's indulgence.

3 (Brief pause)

4 BY MR. THOMAS:

5 Q. Thank you, Mr. Mumford. That's all the questions I
6 would have.

7 THE COURT: Mr. Swerling, any follow-up?

8 MR. SWERLING: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. SWERLING:

11 Q. Mr. Mumford, I want to show you these two statements.
12 One is the statement of Antonio Sellers, and one is the
13 statement of Mr. Harold, that were referred to on Cross-
14 Examination.

15 My question is this. Before trial, had you ever actu-
16 ally seen these statements?

17 A. No, sir.

18 Q. And these are the extent of -- since trial you have
19 seen these and these are the extent of the statements that
20 Mr. Harold and Mr. Sellers gave that would have been avail-
21 able to Mr. Knox. Is that correct?

22 A. Yes, sir.

23 MR. SWERLING: If Your Honor please, I would like to
24 put these in the record.

25 MR. THOMAS: I would object to that, Your Honor. He

MR. MUMFORD ON REDIRECT

1 just testified he had never seen them before. I don't know
2 how he can authenticate them.

3 MR. SWERLING: Well, Judge, the Cross Examination was
4 that --- and Mr. Knox testified that he had statements of
5 witnesses in the case.

6 What I'm introducing these for is to show the Court
7 these are not extensive statements at all, but are brief
8 statements. These are the statements of witnesses, the only
9 statements in the case.

10 THE COURT: I'll allow them to go in.

11 (Statements of Mr. Sellers and Mr. Harold admitted in
12 evidence as Applicant's Exhibits 2 and 3 over objection)

13 BY MR. SWERLING:

14 Q. Mr. Mumford, I'll again come back to you. Is there
15 anything else you would like to say in your post-conviction
16 hearing?

17 A. . .

18 MR. THOMAS: Objection, Your Honor. That's outside
19 the scope of Cross Examination.

20 MR. SWERLING: I would ask the Court to give us a lit-
21 tle latitude.

22 THE COURT: You can answer.

23 A. I would just like to say that he didn't represent me.
24 That goes without saying.

25 Q. Thank you. You can come down.

MR. MUMFORD ON REDIRECT

1 THE COURT: You may step down from the stand.

2 (Witness excused from the state)

3 THE COURT: Mr. Swerling, you may call your next wit-
4 ness.

5 MR. SWERLING: Thank you, your Honor.

6 We would call Ervin Smith at this time.

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1 ERVIN SMITH, being duly
2 sworn, testified as follows:

3 CLERK: Please have a seat and state your full
4 name for the record.

5 WITNESS: Ervin Smith.

6 DIRECT EXAMINATION

7 BY MR. SWERLING:

8 Q. Mr. Smith, where do you live?

9 A. (Inaudible)

10 Q. Do you know Noah Mumford?

11 A. Yes, I do.

12 Q. Do you know Mr. Funderburk?

13 A. Yes, I do.

14 Q. And most of the other names that I've mentioned
15 here in Court today?

16 A. Yes, sir, I do.

17 Q. You were not present the night of the shooting.
18 Correct?

19 A. No, I wasn't.

20 Q. Did Noah talk to you -- did you have a conversa-
21 tion with Noah about testifying about your relation-
22 ship with Mr. Funderburk?

23 A. Yes.

24 Q. Did you tell him you would be willing to testify?

25 A. Yes.

E. SMITH ON DIRECT

1 Q. Have you actually had problems with Mr. Funderburk
2 in the past?

3 A. . .

4 MR. THOMAS: Objection.

5 BY MR. SWERLING:

6 Q. Have you ever worked together?

7 A. Yes.

8 Q. Was that before or after this incident happened?

9 A. Before that.

10 Q. And did he have an altercation with some others?

11 A. Yes.

12 Q. What would bring on those kinds of altercations
13 with Mr. Funderburk?

14 A. I don't know.

15 Q. Was he someone who had a short fuse and would get
16 into a fight?

17 A. Yes.

18 Q. Did that happen with you and him?

19 A. Yes.

20 Q. And you were prepared to come to Court and tell
21 that to a jury?

22 A. Yes.

23 Q. And about your interactions with him?

24 A. Yes.

25 Q. Did you ever get to talk with Mr. Knox?

E. SMITH ON DIRECT

1 A. Once.

2 Q. When was that?

3 A. I don't recall the date.

4 Q. Was it related to this trial?

5 A. No.

6 Q. So he never interviewed you about the testimony
7 you could offer at trial?

8 A. No.

9 Q. Is that right?

10 A. Right.

11 Q. Would you have been available to come in if he
12 wanted to see you?

13 A. Yes.

14 Q. Answer any questions by the Attorney General.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. THOMAS:

18 Q. Did you ever go to Mr. Knox's office and discuss
19 this case?

20 A. No.

21 Q. Did you ever call Mr. Knox?

22 A. No.

23 Q. Did Mr. Mumford ever tell you to call Mr. Knox?

24 A. Not at that time.

25 Q. To talk about Mr. Funderburk's history of violent

E. SMITH ON CROSS

1 behavior?

2 A. . .

3 Q. You're aware of any violent behavior in Mr. Mumford's
4 past?

5 A. No. He just liked to sit around and shoot the breeze.

6 Q. He's never gotten into a fight with anybody to your
7 knowledge?

8 A. Not to my knowledge.

9 Q. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. SWERLING:

12 Q. And did Mr. Knox ever contact you?

13 A. No, sir.

14 THE COURT: You can step down.

15 (Witness excused from stand)

16 MR. SWERLING: Call Mike Jenkins.

17 MIKE JENKINS, being duly
18 sworn, testified as follows:

19 CLERK: Have a seat and state your full name for the
20 record, please.

21 WITNESS: Mike Jenkins.

22 DIRECT EXAMINATION

23 BY MR. SWERLING:

24 Q. Mr. Jenkins, where do you live?

25 A. Chesterfield.

MR. JENKINS ON DIRECT

- 1 Q. And I'll ask you the same questions that I asked Mr.
2 Smith.
- 3 Do you know most of the people that I've mentioned in
4 the Court today?
- 5 A. Yes.
- 6 Q. You know Noah, you know Mr. Funderburk?
- 7 A. Yes.
- 8 Q. Did you work with Mr. Funderburk?
- 9 A. Yes.
- 10 Q. Where did you all work together?
- 11 A. Different places.
- 12 Q. So you've known him for a long time?
- 13 A. I know him a lot of years.
- 14 Q. Did you ever have any altercations with him?
- 15 A. I have.
- 16 Q. Was it at work?
- 17 A. Yes.
- 18 Q. Who was the aggressor in that situation?
- 19 A. It was him.
- 20 Q. Did you have a fight with him?
- 21 A. It wasn't a fight. He pushed me down.
- 22 Q. Okay. Did you do anything to bring that on?
- 23 A. Not that I knew about. I got out of the truck and it
24 happened.
- 25 Q. Was there anything in particular that would prompt him

M. JENKINS ON DIRECT

1 to get into an argument with somebody?

2 A. I couldn't say really.

3 Q. Well, were you aware of the fact that he got into
4 other altercations?

5 A. I can't speak to any others. I just heard about it.

6 Q. So were aware by hearing about other altercations he
7 would get into?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. Did you and Noah discuss possibly testifying in his
12 behalf?

13 A. I think he called me one time and told me he'd like
14 me to.

15 Q. Did you ever hear from Mr. Knox, his attorney, to be
16 a witness in the case?

17 A. No.

18 Q. Ever get a subpoena?

19 A. No.

20 Q. Ever get a phone call?

21 A. No.

22 Q. That's all I have. Please answer any questions the
23 Attorney General may have for you.

24 THE COURT: Yes, sir.

25 CROSS EXAMINATION

MR. JENKINS ON CROSS

- 1 BY MR. THOMAS:
- 2 Q. I'll ask the same questions again. You never went to
- 3 Mr. Knox's office?
- 4 A. No, sir.
- 5 Q. Never called Mr. Knox?
- 6 A. No.
- 7 Q. The only conversation you had -- you said you think
- 8 Mr. Mumford may have asked you . .
- 9 A. He called and asked me if I would testify, and he may
- 10 have asked me to call him.
- 11 Q. You weren't such good friends with Mr. Funderburk at
- 12 work?
- 13 A. No.
- 14 Q. You said you had an altercation once with Mr.
- 15 Funderburk. Did you do anything to provoke him to do that?
- 16 A. I was getting out of the truck, and when I got out of
- 17 the truck he said something and he came and pushed me down.
- 18 Q. Have you ever known -- well, let me ask you this. How
- 19 do you know Mr. Mumford again?
- 20 Are you social friends with him or do you work with
- 21 him?
- 22 A. I see him around.
- 23 Q. Have you ever known Mr. Mumford to get into any alter-
- 24 cation with anybody?
- 25 A. Not that I know of. I don't know of anybody else.

MR. JENKINS ON CROSS

1 Q. So you just don't know him well enough to know that?

2 A. No, I know him, but I don't know of anything like that
3 about him.

4 Q. Thank you, Mr. Jenkins.

5 MR. THOMAS: That's all I have, Your Honor.

6 MR. SWERLING: Nothing further.

7 THE COURT: All right, step down.

8 (Witness excused from stand)

9 MR. SWERLING: Call Steven Teals.

10 STEVEN TEALS, being duly
11 sworn, testified as follows:

12 CLERK: Have a seat on the witness stand and state your
13 name for the Court Reporter.

14 WITNESS: Steven Teals.

15 DIRECT EXAMINATION

16 BY MR. SWERLING:

17 Q. Mr. Teals, you are from where?

18 A. Chesterfield.

19 Q. Do you know the people I've been talking about here
20 today?

21 A. Most of them.

22 Q. Okay. Do you know Noah Mumford?

23 A. Yes.

24 Q. And do you know Paul Funderburk?

25 A. Yes, sir.

MR. TEAL ON DIRECT

1 Q. And you were there the night this happened, and you
2 testified at trial?

3 A. Yes, sir.

4 Q. Just a few questions before we get to that experience.
5 Number one, you met with Mr. Knox, correct?

6 A. Yes, sir.

7 Q. And did you ever tell him that your vehicular homicide
8 conviction was less than ten years ago?

9 A. No, sir, I didn't.

10 Q. When did you tell him you were convicted of vehicular
11 homicide?

12 A. Some thirty-five or something years ago.

13 Q. How old were you when that happened?

14 A. When I was eighteen.

15 Q. And at the time of the trial, how old were you?

16 A. Fifty-three.

17 Q. Okay. He also asked you some questions about drug
18 use?

19 A. Yes.

20 Q. And you testified the last time you had had drugs was
21 five years ago, correct?

22 A. Yes.

23 Q. Why do you think he brought that out?

24 A. I don't know.

25 Q. Did you tell him to bring it up?

MR. TEAL ON DIRECT

- 1 A. No, sir.
- 2 Q. Were you surprised that he brought that up?
- 3 A. Yes, sir.
- 4 Q. Let me ask you one other question. During the course
5 of the trial, the jury was not sequestered? They were not
6 locked up?
- 7 A. No.
- 8 Q. And everybody kind of was free to come and go during
9 the breaks?
- 10 A. Yes.
- 11 Q. Noah was out on bond at that time?
- 12 A. Yes.
- 13 Q. Did you make any observations about anybody on the
14 jury speaking to someone with Mr. Funderburk or a member
15 of his family?
- 16 A. Yes, I did.
- 17 Q. Do you remember what that person looked like?
- 18 A. Yes.
- 19 Q. What did the person look like?
- 20 A. Short and stocky, red-headed man.
- 21 Q. And what was your reaction to that?
- 22 A. What, that it was happening?
- 23 Q. Did you bring it to Noah's attention?
- 24 A. Yes, I did.
- 25 Q. And do you know whatever happened with that?

MR. TEAL ON DIRECT

- 1 A. He told Mr. Knox.
- 2 Q. Were you there when Mr. Knox was told about it?
- 3 A. Yes, sir.
- 4 Q. Okay. Do you know what he did about it?
- 5 A. No, sir. They were still in the trial.
- 6 Q. And how many people were speaking to that juror?
- 7 A. It was more than one there at the time.
- 8 Q. Who was that? I'm sorry. Who was the one doing the
- 9 talking?
- 10 A. . .
- 11 Q. Mr. Funderburk's family member?
- 12 A. I think it's his father.
- 13 Q. Answer any questions the Attorney General may have.
- 14 CROSS EXAMINATION
- 15 BY MR. THOMAS:
- 16 Q. So you met with Mr. Knox before the trial?
- 17 A. I did.
- 18 Q. And he told you that he was going to ask you on the
- 19 stand about your past convictions?
- 20 A. What was that?
- 21 Q. When you met with the man, he told you he was going to
- 22 ask you some questions on the stand?
- 23 A. Yes.
- 24 Q. And he told you one of those questions was going to
- 25 be about your past convictions?

MR. TEAL ON CROSS

1 A. That's correct.

2 Q. He also told you one of those questions was going to
3 be about your drug use?

4 A. That's correct.

5 Q. Thank you, Mr. Teal.

6 REDIRECT EXAMINATION

7 BY MR. SWERLING:

8 Q. Let me ask you this. Did you know that he shouldn't
9 have . .

10 MR. THOMAS: Objection. Calls for speculation.

11 THE COURT: You can answer.

12 A. To be honest with you, whatever he asked about it I
13 wasn't going to deny it. I didn't know what it had to do
14 with the situation anyway.

15 I didn't understand.

16 Q. He told you that they would ask those questions any-
17 way?

18 A. That's right.

19 Q. That's all I have.

20 THE COURT: You may step down.

21 (Witness excused from stand)

22 MR. SWERLING: Call Cory Williams.

23 CORY WILLIAMS, being duly
24 sworn, testified as follows:

25 CLERK: Have a seat in the witness box and state

MR. WILLIAMS ON DIRECT

1 your name for the Court Reporter, please, sir.

2 WITNESS: Cory Williams.

3 DIRECT EXAMINATION

4 BY MR. SWERLING:

5 Q. Mr. Williams, were you present at the time the shooting
6 took place?

7 A. Yes, sir.

8 Q. Between Mr. Mumford and Mr. Funderburk?

9 A. Yes, sir.

10 Q. Okay. Now, were you ever interviewed by Mr. Knox?

11 A. No, sir.

12 Q. Did he ever come and talk to you?

13 A. No, sir.

14 Q. Would you have testified for Noah had Mr. Knox come
15 and talked to you?

16 A. Of course, yes, sir.

17 Q. And let me ask you this. At the time that Noah shot
18 or did the shooting, where was he shooting at?

19 A. The ground.

20 Q. And a little before he started doing the shooting, do
21 you recall Mr. Funderburk -- first of all, do you remember
22 they had words?

23 A. Yes, they did.

24 Q. And did Mr. Funderburk hit him with a bottle?

25 A. Yes, he did.

MR. WILLIAMS ON DIRECT

1 Q. Okay.

2 A. He began tussling with Noah.

3 Q. And when he began to tussle with him, did Mr. Mumford
4 pull out his gun?

5 A. He pulled out his gun and began to shoot toward the
6 floor.

7 Q. Then was Mr. Funderburk in a position where he was try-
8 ing to fight with Noah?

9 A. Yes, he was trying to fight with him. Mr. Funderburk
10 tried to kick at him and fight.

11 Q. And you were prepared to testify to that at the trial?

12 A. Yes, sir.

13 Q. That Mr. Funderburk was facing Mr. Mumford at the time?

14 A. Yes.

15 Q. And Mr. Funderburk was the aggressor at the time?

16 A. Yes.

17 Q. Did you ever have the opportunity to testify?

18 A. No, sir. Mr. Knox never got in touch with me.

19 Q. Did he send you a subpoena?

20 A. No, sir.

21 Q. Answer any questions the Attorney General may have.

22 A. Yes, sir.

23 CROSS EXAMINATION

24 BY MR. THOMAS:

25 Q. Mr. Williams, you never gave a statement to the police

MR. WILLIAMS ON CROSS

1 in this matter?

2 A. No, sir.

3 Q. And you said they started tussling, so Mr. Mumford and
4 Mr. Funderburk were -- for lack of better words, they were
5 talking some trash to each other?

6 A. I guess.

7 Q. And Mr. Funderburk at that time had a beer bottle in
8 his hands?

9 A. Correct.

10 Q. Okay, so he -- they're talking and he has a beer bottle
11 in his hands, and then he swings the beer bottle at Mr.
12 Mumford?

13 A. They was talking trash back and forth before but he
14 swung the bottle at Noah and hit him with the bottle, and
15 then they started tussling.

16 Q. And while they were tussling, the bottle was not in
17 Mr. Funderburk's hands?

18 A. He had already hit him with the bottle first. Then
19 they began tussling.

20 Q. So you said they were tussling and Mr. Mumford then
21 . . .

22 A. They they got separated a little bit
23 and Mr. Mumford pulled out his gun.

24 Q. So he pulled his gun out after he was separated from
25 Mr. Funderburk?

MR. WILLIAMS ON CROSS

- 1 A. As soon as they separated, yes.
- 2 Q. And the bottle at this point was not in Mr. Funderburk's
- 3 hand at all?
- 4 A. It had already been thrown.
- 5 Q. That's all I have. Thank you.
- 6 MR. SWERLING: Nothing further.
- 7 THE COURT: You can step down.
- 8 (Witness excused from stand)
- 9 THE COURT: Call your next witness.
- 10 MR. SWERLING: Call Sheri Mumford.
- 11 SHERI MUMFORD, being duly
- 12 sworn, testified as follows:
- 13 CLERK: Have a seat in the witness box and state your
- 14 name for the record, please.
- 15 WITNESS: Sheri Mumford.
- 16 DIRECT EXAMINATION
- 17 BY MR. SWERLING:
- 18 Q. You are related to Mr. Mumford, is that correct?
- 19 A. Yes, I am.
- 20 Q. What's your relationship?
- 21 A. That's my brother.
- 22 Q. And you are living where?
- 23 A. In Chesterfield.
- 24 Q. And were you present with Noah and his family during
- 25 the course of the trial?

MS. MUMFORD ON DIRECT

- 1 A. Yes, sir.
- 2 Q. And I've asked this before of Mr. Teal, but everybody
- 3 was allowed to pretty much come and go during the breaks in
- 4 Court?
- 5 A. Yes.
- 6 Q. And Noah was out on bond? Correct?
- 7 A. Correct.
- 8 Q. At some point, did you observe Mr. Funderburk or his
- 9 dad or some of his family members talking to a member of
- 10 the jury?
- 11 A. Yes. I observed . .
- 12 Q. Pardon?
- 13 A. Yes, I did. I observed him talking to two people. Mr.
- 14 Paul Funderburk, Senior, was talking to someone and there
- 15 was a juror who went over and was talking to a black female.
- 16 Then they were outside talking to someone else.
- 17 Q. And this was on two separate occasions?
- 18 A. Yes, sir.
- 19 Q. And did you talk to Noah about that?
- 20 A. Yes, sir.
- 21 Q. And did you talk to Mr. Knox about it?
- 22 A. Yes, sir, I went to Mr. Knox.
- 23 Q. And tell me about the conversation you had with Mr.
- 24 Knox?
- 25 A. I just told him what I had seen, the juror talking

MS. MUMFORD ON DIRECT

1 with them -- I just let him know that they was talking to
2 them during the break, and I wanted to know if it was not
3 right, and what he did I don't know.

4 Q. You don't know?

5 A. No. He said he would take care of it.

6 Q. Did anything ever get said in open Court?

7 A. Not that I heard.

8 Q. But you did report it to him?

9 A. Yes.

10 Q. And he said he would take care of it?

11 A. Yes.

12 Q. Answer any questions the Attorney General has. Okay?

13 A. Yes, sir.

14 CROSS EXAMINATION

15 BY MR. THOMAS:

16 Q. These people you saw Mr. Funderburk's people speaking
17 to, were they actually people who were sitting on the jury
18 panel?

19 A. Yes, they were.

20 Q. But you don't know whatever happened with that?

21 A. No, I don't.

22 Q. You ever known Mr. Mumford to have any -- does he
23 have any violent tendencies? Has he ever done anything in
24 his past that was similar to what he did with Mr. Funderburk?

25 A. No.

MS. MUMFORD ON CROSS

1 Q. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. SWERLING:

4 Q. And you weren't out there that night, were you?

5 A. No.

6 Q. And your brother acted in self-defense. Right?

7 A. . .

8 MR. THOMAS: Objection. Outside the scope of Cross.

9 MR. SWERLING: That's all I have.

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

11 (Witness excused from stand)

12 THE COURT: Call your next witness.

13 MR. SWERLING: Joyce Quick. .

14 JOYCE QUICK, being duly sworn,
15 testified as follows:

16 CLERK: Have a seat in the witness box and state your
17 name for the Court.

18 WITNESS: Joyce Quick.

19 DIRECT EXAMINATION

20 BY MR. SWERLING:

21 Q. Ms. Quick, where do you live?

22 A. . .

23 Q. You are Noah's mother?

24 A. Yes, sir.

25 Q. You live in Chesterfield?

MS. QUICK ON DIRECT

- 1 A. Yes, sir.
- 2 Q. Were you there at the trial?
- 3 A. Yes, sir.
- 4 Q. And you reported to me or have told me that you saw
5 someone, either Mr. Funderburk or his father, speaking to
6 someone on the jury?
- 7 A. Yes, sir.
- 8 Q. Okay. Could you tell the Judge about that?
- 9 A. I saw two people talking to someone on the jury.
- 10 Q. And who was talking?
- 11 A. (Answer not audible)
- 12 Q. Was it the person who got shot in the case?
- 13 A. No.
- 14 Q. His father?
- 15 A. Yes.
- 16 Q. His father was the one talking to a juror?
- 17 A. Yes.
- 18 Q. And you don't know what was said?
- 19 A. No.
- 20 Q. And did you tell Noah and Mr. Knox about that?
- 21 A. No, I didn't do that at the time but someone else that
22 was standing there did tell them, and Mr. Knox said he'd do
23 what was best about it.
- 24 Q. He said he would do what was best. Is that correct?
- 25 A. Yes.

MS. QUICK ON DIRECT

1 Q. And you don't know what was done?

2 A. No.

3 Q. But you did observe him being told about it?

4 A. Yes.

5 Q. Answer any questions the Attorney General has for
6 you.

7 CROSS EXAMINATION

8 BY MR. THOMAS:

9 Q. You said he was speaking to a white-haired gentleman?

10 A. Yes.

11 Q. And do you know of Mr. Mumford ever acting out with vio-
12 lence?

13 A. . .

14 MR. SWERLING: Your Honor, I'm going to object to that.
15 I mean, asking his mother if he ever acted in violence -- I
16 don't think that is an appropriate question.

17 MR. THOMAS: It's an issue that has been put in by the
18 Applicant in this case, his peaceful nature, and I'm just
19 following it up to . .

20 THE COURT: I'll allow it.

21 Q. Was that a no?

22 A. What was the question?

23 Q. I'm sorry. I asked if you know -- if you have ever
24 known him to commit any acts of violence or any acts of
25 malice against another.

MS. QUICK ON CROSS

- 1 A. No.
- 2 Q. Thank you.
- 3 MR. SWERLING: Nothing further.
- 4 THE COURT: You can come down.
- 5 (Witness excused from stand)
- 6 (Conference at the bench between counsel and the Court
- 7 off the record)
- 8 THE COURT: Call your next witness.
- 9 MR. SWERLING: Frank Cranford.
- 10 FRANK CRANFORD, being duly
- 11 sworn, testified as follows:
- 12 THE COURT: Please state your name.
- 13 WITNESS: Frank Cranford.
- 14 DIRECT EXAMINATION
- 15 BY MR. SWERLING:
- 16 Q. Frank, would you tell us your full name?
- 17 A. Franklin Cranford.
- 18 Q. And where do you live?
- 19 A. Chesterfield.
- 20 Q. Okay, and the first thing I would ask you is did you
- 21 observe anybody in the Funderburk family talking to any
- 22 member of the jury during a break in the trial of this
- 23 case?
- 24 A. I did.
- 25 Q. And what did you observe?

MR. CRANFORD ON DIRECT

1 A. I observed his dad talking to a juror.

2 Q. And did you know that person to be on the jury?

3 A. Yes.

4 Q. Who did you tell about that?

5 A. I told Noah.

6 Q. Thank you very much.

7 CROSS EXAMINATION

8 BY MR. THOMAS:

9 Q. Mr. Cranford, did you have a conversation with Mr. Knox
10 before the trial about your testimony?

11 A. I met with him before the trial.

12 Q. And he told you he was going to ask you some questions
13 about your prior record?

14 A. He mentioned it.

15 Q. That's all. Thank you.

16 MR. THOMAS: Nothing further.

17 THE COURT: You may step down.

18 (Witness excused from stand)

19 MR. SWERLING: We have no further witnesses.

20 THE COURT: Do you have any witnesses?

21 MR. THOMAS: If I could briefly call Mr. Knox to the
22 stand. I will be very brief.

23 THE COURT: All right, sir.

24 Mr. Knox, you are still under oath.

25 LARRY KNOX, having been

1 previously sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q. Mr. Knox, who in who has testified from this stand
5 today -- who had you been told beforehand by Mr. Mumford to
6 interview?

7 A. Would you repeat that?

8 Q. Have you ever spoken to Mr. Smith before?

9 A. No.

10 Q. Have you ever spoken to Mr. Jenkins before?

11 A. No.

12 Q. Did Mr. Mumford specifically give you those peoples'
13 names so you could talk to them?

14 A. No.

15 Q. All right, did he tell you -- okay, so he didn't tell
16 you that those were people who were going to testify or
17 who could testify to Mr. Funderburk's character?

18 A. He never did. Never told me that.

19 Q. All right. What did you discuss about the possibility
20 -- what were your conversations with Mr. Mumford about the
21 possibility of going and getting diagrams made of the scene,
22 taking pictures, that sort of thing?

23 What were your discussions about that?

24 A. That conversation never came up. It never came up.
25 After being interviewed and in my office after that I asked

MR. KNOX ON DIRECT

1 him about the video. I asked him about the statements he
2 had made to law enforcement that indicated what he had done,
3 and he said, well, Mr. Knox, I shot him, and I said, yeah, I
4 know that.

5 Q. So he told you that?

6 A. Yes.

7 Q. So you reviewed the statement?

8 A. We reviewed the statement that was given to law enforce-
9 ment. That was before we got the discovery, and when we got
10 discovery it was a very small package.

11 Q. Did you review it with him?

12 A. Yes. He testified -- his testimony here was that he did
13 not have any knowledge of this process, and he said he put
14 his faith in my hands. I told him when he said he put his
15 life in my hands that I couldn't make any promises to him
16 but I would try to the best of my ability, and he was very
17 comfortable with that.

18 Q. Okay.

19 A. After that, I did my best to represent him and I fol-
--20--lowed his instructions. I did everything that he asked me
21 to do.

22 Q. And as far as the witnesses, his mother and his sis-
23 ter, testifying about a witness or somebody talking to a
24 jury member, you have said you told the Judge what you had
25 been told?

MR. KNOX ON DIRECT

1 A. Yes.

2 Q. And what was done after that?

3 A. He said he would take care of it. It was discovered
4 that the person was an alternate on the jury and they would
5 not take part in deliberations anyway.

6 I was comfortable with what the Judge did about that.

7 Q. All right.

8 A. I can come into this Court and tell this Honorable
9 Court that I represented him the best I could, and I did
10 everything that he wanted me to even though he had given
11 the statement to law enforcement.

12 I talked with him, talked with his family, and they
13 have come to Court today and testified that I did not do a
14 good job, but he was not convicted of attempted murder, with
15 which he was charged. He got ten years.

16 I did everything I could have done under the circum-
17 stances that we had. I've been practicing for twenty years,
18 and this was nothing new to me.

19 (Portion not audible)

20 The jury deliberated over quite some time and the re-
21 cord shows what they did. If somebody could do a better
22 job for him . .

23 MR. SWERLING: Your Honor, he's not answering any
24 question. He's just giving a statement.

25 MR. THOMAS: I have no further questions.

1 THE COURT: Mr. Swerling.

2 MR. THOMAS: I had asked what was done, and I got the
3 answer.

4 THE COURT: Any questions?

5 MR. SWERLING: Just a few.

6 CROSS EXAMINATION

7 BY MR. SWERLING:

8 Q. Mr. Knox, you have said on several occasions today
9 something about money.

10 A. Yes, sir.

11 Q. That you weren't paid all your money?

12 A. I still have not been paid.

13 Q. You brought that up.

14 A. Yes.

15 Q. But you gave them your word that you would do the best
16 you could for their son?

17 A. I did do the best I could do. That's what I do. I
18 did the best I could.

19 (Counsel and witness speaking at the same time)

20 Q. I'm not going to go back through that whole list of
21 things you didn't do. Okay?

22 A. Okay.

23 Q. But would you agree there's a whole lot of things that
24 you didn't do in this case?

25 A. There was more that I did do. I did them.

MR. KNOX ON CROSS

1 Q. You don't know whether or not doing those things
2 would have changed the result of the case?

3 A. I don't know what else I could have done. No, sir.

4 Q. I have no further questions for you, Mr. Knox.

5 THE COURT: Anything on Redirect?

6 MR. THOMAS: No, sir. At this point the State rests.

7 THE COURT: All right.

8 (Witness excused from stand. Brief pause in the pro-
9 ceeding.)

10 MR. THOMAS: That's all for the State, Your Honor.

11 THE COURT: Anything further?

12 MR. SWERLING: No, sir.

13 THE COURT: Then we could close it down now.

14 MR. SWERLING: I would like to make on the record a
15 few remarks.

16 THE COURT: I've heard all the witnesses.

17 MR. SWERLING: I took this case because I thought the
18 representation is an abomination in this case, and I sat
19 down and talked with Mr. Mumford and his family. I am even
20 more convinced today that it was an abomination.

21 I'm not going to go back through all the evidence in
22 the case because the Court has heard what happened. The
23 fact of the matter is that I think Mr. Knox fell below a
24 standard required in State v. Washington.

25 I feel that his performance in this case and the lack

1 of things that he did undermines confidence in the verdict.

2 If you start with the lack of investigation, the lack
3 of going out to the scene, the lack of getting out of his
4 chair and trying to find witnesses, the fact that he never
5 even talked to anybody on the police force or make diagrams
6 or sketches, take photographs -- none of that -- and it
7 seems to be evident that he had a strategy in the trial of
8 the case and that was all that mattered as far as he was
9 concerned.

10 I have never seen, and I would submit that Your Honor
11 has probably never seen a key witness for the defense with
12 no prior warning be asked a question about whether or not he
13 had a homicide conviction, vehicular homicide conviction,
14 thirty-five years ago. That is absolutely ludicrous.

15 It is nonsense, even disingenuous for him to suggest
16 that was a part of his strategy, to bring out the fact that
17 Mr. Teal had a thirty-five year old vehicular homicide con-
18 viction.

19 I don't like to stand and criticize any lawyer, but
20 that is absolutely preposterous.

21 As well, I've been drug free for five years -- why
22 would he bring that out? It just doesn't make any sense,
23 and I think that type of thing casts doubt on all the wit-
24 nesses who testified here.

25 He never had a preliminary hearing, never talked to

1 any of the police officers; could have had a Castle Doctrine
2 hearing but didn't have a Castle Doctrine hearing.

3 He never explained to Mr. Mumford about the Castle Doc-
4 trine. There was no reason he couldn't get a hearing under
5 that theory; that that would give him information on the
6 facts of the case and what the witnesses were going to say.

7 The other thing that just appalls me is that there is
8 a charge the Judge can give of a lesser included offense,
9 -- there is attempted murder, assault and battery of a high
10 and aggravated nature, and that is a non-parolable offense.

11 So he let that go to the jury but never asked for a
12 lesser included offense that he would have been entitled to
13 of assault and battery in the first degree, a ten year
14 parole-eligible offense.

15 I've never really said this about another lawyer, and
16 I don't like saying it now, but I don't think this man got
17 a fair trial.

18 That's all I've got to say.

19 THE COURT: Thank you.

20 MR. SWERLING: I think the evidence speaks for itself.

21 MR. THOMAS: If I could be heard just briefly, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. THOMAS: As far as Mr. Knox's performance, this has
25 actually gone down to a swearing contest between the parties

1 or the witnesses.

2 He testified that the reason he didn't interview some
3 of the witnesses was because he knew what they were going to
4 say. He testified he wasn't surprised by anything that they
5 said.

6 He did his best to cross examine the witnesses, and as
7 far as whether he should have gone out and taken pictures,
8 done diagrams, that kind of stuff, I think he's testified
9 there was never any debate. The question was whether he was
10 acting in self-defense or not, and there is nothing that was
11 indicated here today that any pictures or diagrams would
12 have changed anything, so I think there is speculation as far
13 as that.

14 As far as the witness' criminal record, you know, he
15 testified that he did that to link credibility, and I would
16 suggest that is reasonable.

17 I mean, the witness' testimony was very clear about
18 what happened.

19 As far as the Castle Doctrine issue, it was a jury
20 question even if he had asked for a hearing, and he testi-
21 fied he didn't know of any information he could have gathered
22 from having a hearing.

23 It was a jury question on the evidence itself, so
24 there is no prejudice from not having it, and he testified
25 there was nothing to gain from one of those hearings as

1 he knew what was going to be presented at trial. He knew
2 what his defense was.

3 The lesser-includes -- you know, he testified they
4 were trying to get an acquittal; that they wanted the all or
5 nothing. The fact that ABHAN was in there, that inured to
6 the Defendant's benefit in this case.

7 It is one of those situations where, you know, what do
8 you do? If you don't ask for ABHAN he could be convicted
9 of attempted murder. If he asked for anything lesser, he
10 could have been convicted -- it's one where we're just spec-
11 ulating on that point.

12 I would also say that as far as the witnesses he alleg-
13 edly did not interview: One, he was told that he was never
14 told to interview so he had no knowledge of that one.

15 One of the witnesses he interviewed said the parties
16 separated after the beer bottle was thrown, and there is no
17 evidence the victim advanced. They were separated and then
18 he pulled out the gun and shot.

19 So that is not testimony of self-defense or that sup-
20 ports a self-defense theory. We would just submit that even
21 if he had done all those things wrong, none of that would
22 have changed the outcome. It was a jury question, and the
23 jury decided.

24 MR. SWERLING: I believe it was testified by Mr.
25 Williams that Mr. Funderburk was still coming towards him

1 when Mr. Mumford pulled out the gun and shot -- he was still
2 coming toward him, so that is self-defense.

3 He didn't have to just wait until he was hit again,
4 and I think he did what he did in self-defense, especially
5 after he emasculated Steven Teal on the stand.

6 Thank you.

7 THE COURT: All right. Gentlemen, I appreciate you
8 all working together to get this before the Court.

9 I would like to have proposed Orders from both sides.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, Harriet P. Bennett, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Hattie Gordon to the best of my ability, having been heard in the Court of Common Pleas for Dillon County on July 31, 2014.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

~~November 22, 2014~~

April 9, 2015

Harriet P. Bennett

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

NOAH C. MUMFORD, #348375)

Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)

Respondent)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2013-CP-13-00097

**ORDER GRANTING
POST-CONVICTION RELIEF**2014 NOV 21 PM 1 59
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter came before the Court by way of an Amended Application for Post-Conviction Relief filed May 13, 2013. The State made its Return on May 16, 2013. An Evidentiary Hearing was convened on July 31, 2014. The Applicant was present and was represented by Jack B. Swerling of the Richland County Bar. The State was represented by Joshua L. Thomas and Megan E. Harrigan of the Attorney General's office.

The following individuals testified at the evidentiary hearing: Applicant; trial counsel Larry W. Knox; Irvin Smith; Michael Jenkins; Steven Teal; Corey Williams; Sherry Mumford; Joyce Cranford; and Frank Cranford. The Court had before it a copy of the trial transcript, the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendments, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I.**PROCEDURAL HISTORY***pmb*

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's Order of Commitment. The Applicant was indicted by the Chesterfield County Grand Jury for Attempted Murder (2011-GS-13-0096). The Applicant was represented by Larry W. Knox, of the Chesterfield County Bar. The Applicant proceeded to trial on October 24, 2011, and on October 26, 2011, the Applicant was found guilty of the lesser included offense of Assault and Battery of a High and Aggravated Nature. He was sentenced to ten (10) years by the Honorable Thomas A. Russo. A Notice of Appeal was timely filed on the Applicant's behalf, but was subsequently abandoned in order for the Applicant to file an Application for Post-Conviction Relief.

II.

ALLEGATIONS RAISED

In his Amended Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. The defendant alleges that trial counsel failed to adequately investigate the case.
2. The defendant alleges that trial counsel failed to interview the state's witnesses.
3. The defendant alleges that trial counsel failed to call to trial several witnesses for the defense.
4. The defendant alleges that trial counsel failed to adequately investigate the injuries of the alleged victim in the case.
5. The defendant alleges that trial counsel failed to effectively cross-examine several of the witnesses called by the state during the trial of this case.
6. The defendant alleges that trial counsel failed to adequately investigate the scene of the alleged offense.
7. The defendant alleges that trial counsel failed to have a preliminary hearing.

8. The defendant alleges that trial counsel failed to submit jury instructions relating to the facts of the case.
9. The defendant alleges that the South Carolina Legislature passed what is known as the "Protection of Persons and Property Act" effective June 9, 2006. The Act provides immunity from prosecution pursuant to section 16-11-450 of the S.C. Code of Laws (1976 amended).

10. The defendant alleges that the South Carolina Supreme Court handed down the opinion in State v. Duncan, 709 S.E.2d 662 (May 9, 2011) which held that the defendant was entitled to immunity under the Act.
 - (I) The defendant alleges that trial counsel failed to request a pretrial determination of immunity pursuant to the above-referenced statute and case law.
 - (ii) The defendant alleges that trial counsel failed to request jury instructions that would have been applicable under the Act and case aforementioned.

On July 29, 2014, the Applicant, by letter to Joshua L. Thomas, added three additional grounds to the Application and the Court will consider these grounds as amendments to the original Application for Post-Conviction Relief:

11. The defendant alleges that several witnesses observed the victim talking to a juror and counsel failed to investigate the matter or inform the Court.
12. The defendant alleges that counsel asked several questions of defendant's witnesses which were improper and undermined their credibility.
13. The defendant alleges that counsel failed to investigate or present evidence as to the effect of the defendant's PTSD, and injury to his shoulder and left ear from service related injuries.

At the Post-Conviction hearing the Applicant added the following additional ground which the Court will consider as an amendment to the original Application for Post-Conviction Relief: Simpson v. Moore, 627 S.E.2d 701, 708 (2006), Rule 15(b) SCRPC.

14. The defendant alleges that trial counsel was ineffective for failing to object to portions of Corporal Daniel Scott's testimony.

III.

STANDARD OF REVIEW

This Application for Post-Conviction Relief raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that trial counsel: 1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters, and 2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, the Applicant must show that but for counsel's errors and omission, there is a reasonable probability that the result at trial would have been different. Id.; Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

Where trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). However, counsel may not explain away errors and omission which acted to prejudice his client's ability to receive a fair trial by simply labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the South Carolina Supreme Court found that:

Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

IV.

EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on July 31, 2014, the Applicant presented his own testimony as well as testimony from Shari Mumford, Joyce Quick, Steven Teal, Frank Cranford, Corey Williams, Ervin Smith and Mike Jenkins. The Respondent presented the testimony of trial counsel Larry W. Knox. In addition to the testimony presented, this Court has before it a transcript of the trial. What follows below are relevant facts from the trial and evidentiary hearing as well as findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10, *et seq.*(1995).

On the facts of this case, the Court finds that the combined errors and omissions of trial counsel were such that the Applicant was deprived of a fair trial. Specifically, this Court finds a reasonable probability that but for counsel's errors and omission, the outcome of the trial would have been different. In other words, this Court's confidence in the outcome of the trial is undermined because trial counsel failed to provide the Applicant reasonable, professional assistance of counsel.

V.

THE RELEVANT TRIAL TESTIMONY

Paul Funderburk, who was the injured party in the case, testified on behalf of the State. On December 23, 2010, he was at Todd Harrell's house along with the Applicant, Todd Harrell,

Amos Nivens, Corey Williams and Antonio Sellers. The Applicant and Todd Harrell were going to race motorcycles at some time, but not that night. Mr. Funderburk and the Applicant exchanged words and Mr. Funderburk swung a beer bottle at the Applicant which he testified did not hit Applicant. Tr., p. 65, l. 1. He swung at him again with his hand. Tr., p. 79, ll. 23-25.

They grabbed each other and wrestled for a couple of seconds and he pushed the Applicant away from him. Tr., p. 65, ll. 1-7. Mr. Funderburk then testified that he took a couple of steps back and turned to walk off when the Applicant started shooting. Tr., p. 66, ll. 8-10. He testified further that he was shot four times, one wound under the right butt cheek, one wound in the left kneecap, and two wounds in the lower right ankle. Tr., p. 67, ll. 5-10. Mr. Funderburk agreed that he was much bigger (he testified that he was 6' 2" and about 240 pounds), Tr., p. 102, ll. 6-10, than the Applicant. Tr., p. 81, ll. 16-17, and that he intended to hit the Applicant with the beer bottle, Tr., p. 100, l. 5.

Todd Harrell testified for the State. In addition to the people that Mr. Funderburk noted were present, Mr. Harrell stated that Frank Cranford and another individual he did not know were also present. Tr., p. 109, l. 12. He testified that Mr. Funderburk and the Applicant got into a heated discussion, Tr., p. 108, ll. 14-16, that involved name calling. Tr., p. 110, l. 3. Mr. Funderburk and the Applicant were about four feet apart, Tr., p. 110, l. 25, when Mr. Funderburk swung the beer bottle at the Applicant, the bottle did not hit the Applicant, but fell to the ground. The bottle did not shatter, Tr., p. 124, ll. 17-18, Tr., p. 110, ll. 14-16. As Mr. Funderburk swung the bottle, he approached the Applicant. Tr., p. 126, ll. 4-5, and 9-10. They began to tussle for a few seconds and Mr. Funderburk, then broke loose, Tr., p. 111, ll. 6-8. According to Mr. Harrell, both gentlemen were backing up, Tr., p. 112, ll. 13-15, when the Applicant pulled a gun out. Tr., p. 112, ll. 6-8. The Applicant approached Mr. Funderburk and began shooting, with

the first shot going off as the Applicant pointed to the ground. Tr., p. 120, ll. 8-13. Mr. Harrell stated that Mr. Funderburk was turning away. Tr., p. 130, ll. 4-5. In all, a total of five shots were fired. Tr., p. 113, l. 16.

Antonio Sellers testified for the State. He was present at the incident scene. He stated that the Applicant and Mr. Funderburk were talking "trash" to each other and the Applicant said several derogatory things about Mr. Funderburk's family, Tr., p. 141. Mr. Funderburk said that after he finished his beer he would deal with Applicant. Tr., p. 151, ll. 13-25, Tr., p. 141, ll. 17-20. Mr. Sellers took that to mean something was going to happen, Tr., p. 152, ll. 4-5.

Mr. Sellers said Mr. Funderburk took a step toward the Applicant and he stepped between them and the next thing he knew Mr. Funderburk swung the bottle toward the Applicant and it hit the ground. Tr., p. 141, l. 21, Tr., p. 152, l. 16. The bottle came over Mr. Sellers, Tr., p. 152, l. 17, and hit the ground and did not break. Tr., p. 162, l. 15. At one point during his testimony he said the bottle was thrown at the Applicant, Tr., p. 164, l. 13.

Mr. Sellers testified that Mr. Funderburk and the Applicant grabbed each other, backed off and looked at each other. Tr., p. 142, ll. 1-2. At that point, the Applicant pulled a gun and started firing as Mr. Funderburk went to turn. Tr., p. 142, ll. 2-6. The Applicant fired four or five shots, Tr., p. 142, l. 15, which hit Mr. Funderburk in the legs. According to Mr. Sellers, both the Applicant and Mr. Funderburk were wrong in their actions, Tr., p. 142, l. 7.

Dana Wallace testified for the State. Corporal Wallace has been employed by the Sheriff's Department for nine years. He was one of the officers who received the call on the night of the incident and he proceeded to the hospital. He and Deputy Joe Campbell took statements from Todd Harrell, Antonio Sellers, Amos Nivens, and Corey Williams. Tr., p. 178, ll. 2-3.

He and Deputy Campbell went to the scene. It was dark. Tr., p. 175, l. 7. At the scene, they recovered .22 shell casings along with a beer bottle. Tr., p. 169, ll. 204. They turned the evidence over to John James, who did not testify in the case. According to Corporal Wallace, they took no measurements at the scene, and he was not sure if they marked any of the evidence at the scene or took photos. Tr., p. 176, ll. 3-13. At the conclusion of his testimony, Deputy Joe Campbell was released and did not testify.

Corporal Daniel Scott testified for the State. He is employed by the Chesterfield County Sheriff's Department. On the day of the incident he received a call and proceeded to the hospital. Tr., p. 180, l. 24. Because he knew the Applicant, he called him and asked him to meet, Tr., p. 181, l. 25. The Applicant gave Corporal Scott the gun that was used.

Corporal Scott recorded a video of the Applicant's statement. According to Corporal Scott, the Applicant said that there had been some words between him and Mr. Funderburk and Mr. Funderburk said that as soon as I finish drinking this beer, I'm going to hit you with the bottle. Tr., p. 184, ll. 13-15. The Applicant then said Mr. Funderburk swung at him, Tr., p. 184, ll. 16-17 with the bottle. The Applicant stated that he had a metal plate in his head and wasn't going to allow Mr. Funderburk to hit him in the head. Tr., p. 190, ll. 14-15. The Applicant stated he reached for the gun and fired it in self-defense. Tr., p. 185, ll. 17-18, Tr., p. 184, ll. 16-17. According to the Applicant, he "blanked" out and was trying to shoot at the ground then he said foot. He also said that when he "blanked out," he lost focus and vision. Tr., p. 185, l. 4, Tr., p. 185, l. 15, Tr., p. 192, l. 9.

Corporal Scott also testified that the Applicant was small and Mr. Funderburk was big. Tr., p. 187, ll. 1-2, and that the Applicant was permitted to carry a pistol. Tr., p. 191, l. 11.

Corporal Scott then testified without objection, that he and the Applicant had the same military training and that they were taught that if one shoots someone in the femoral artery, the person can "bleed out," which could kill the person shot. Tr., p. 188, ll. 9-10, Tr. 188, ll. 17-20. On cross-examination Corporal Scott admitted that had the Applicant wanted to kill Mr. Funderburk, he had the training to do so. Tr., p. 194, ll. 13-15.

Steven Teal was called as a witness for the Applicant. He was a crucial witness because he was there at the time of the argument and the shooting. Trial counsel brought out the fact that his own witness had a thirty-five (35) year old conviction for vehicular homicide and DUI and served a four (4) year sentence back when he was eighteen (18) years old. Tr., p. 209, ll. 10-24. He is 53 years old now and was 18 at the time of the offense. Then trial counsel continued to impeach his own witness by asking if he used illegal drugs to which he answered yes. Tr., p. 210, ll. 24-25. Counsel then asked how long ago the witness last used illegal drugs and the witness answered five (5) years ago. Tr., p. 211, ll. 1-7. Mr. Teal was present at Mr. Harrell's home. Mr. Funderburk and the Applicant were arguing. He saw Mr. Funderburk hit the Applicant with a bottle of beer. Tr., p. 215, ll. 18-19. He was three (3) feet from the Applicant when that happened. According to Mr. Teal, Mr. Funderburk came down across the top of the Applicant's head and on his shoulder and the Applicant went down, Tr., p. 256, l. 18, and when the Applicant went down Mr. Funderburk was on top of him, Tr., p. 216, ll. 19-20. When the Applicant was going down, Mr. Funderburk went off and started "whooping up" on the Applicant. Tr., p. 218, ll. 14-18.

Mr. Teal then heard shots as Applicant was down on his knee or about to hit the ground. Tr., p. 219, ll. 2-3. He said the shots were coming from the middle of them. Tr., p. 219, ll. 10-11, and then Mr. Funderburk jumped up and ran off, Tr., p. 219, l. 15, and came back, Tr., p.

219, l. 17. Trial counsel again asked Mr. Teal if he had been convicted of vehicular homicide. Tr., p. 220, ll. 4-5.

The defense then called Frank Cranford who was also present at the scene of the incident at Todd Harrell's house. He, Mr. Teal and the Applicant rode over there together. According to Mr. Cranford, Mr. Funderburk started talking "junk" to the Applicant and they had a few words. Tr., p. 235, ll. 3-5. When they were fussing back and forth, Mr. Funderburk said "We'll see about all that when I finish drinking this beer." Tr., p. 235, ll. 15-16 and Tr., p. 236, ll. 8-9.

At some point Mr. Funderburk swung the beer bottle at the Applicant. Tr., p. 236, ll. 16-18. The beer bottle hit the Applicant on the right shoulder. Tr., p. 236, ll. 19-22. Mr. Funderburk then came in between them and charged the Applicant. Tr., p. 237, ll. 7-8. After he swung the bottle, he went back after the Applicant again. Tr., p. 237, ll. 15-16. Tony grabbed Mr. Cranford, and the Applicant "spent" around and he then saw the gunshot. Tr., p. 237, ll. 16-21. After Tony pulled him away was when he observed Mr. Funderburk hit the Applicant. Tr., p. 238, ll. 16-18. He did not see who did the shooting, but heard it. Tr., p. 238, ll. 19-25. He testified that the bullet hit the ground, Tr., p. 239, ll. 4-6. He then looked at and saw the Applicant shooting at the ground, and Mr. Funderburk came back at him and he shot again, Tr., p. 239, ll. 12-15.

Noah Mumford testified on his own behalf. He served seven (7) years in the military and went to Iraq. Tr., p. 258, ll. 16-17. He was honorably discharged. Tr., p. 259, ll. 20-21. On December 23, 2010, he went to Todd Harrell's house with his friends.

The Applicant said that when Mr. Funderburk got out of his truck, he started talking "junk," and the Applicant fired "junk" back. Tr., p. 267, ll. 5-6. The Applicant described the language as very vulgar. Tr., p. 267, ll. 21-22. The Applicant had his pistol with him and it was

legally purchased, Tr., p. 268, l. 23-24. While he took training with the pistol, he did not have the money to send in for a license. Tr., p. 269, ll. 14-16.

The words they exchanged with each other eventually led Mr. Funderburk to say "When I get through drinking this beer, I'm going to hit you in the head." Tr., p. 270, ll. 2-4. The Applicant said to his friend Todd that Mr. Funderburk was acting crazy and he was going to go. Tr., p. 270, ll. 4-6. Mr. Funderburk said he would hit him with the bottle in the head. Tr., p. 270, ll. 22-25.

The Applicant said he was prepared to leave and Mr. Funderburk came out with the bottle and hit him. Tr., p. 271, ll. 2-10. Mr. Funderburk came around Tony to hit him with the bottle, Tr., p. 271, ll. 15-18. The Applicant was struck with the bottle, went down and came up with the pistol, Tr., p. 272, ll. 3-13. The Applicant fired into the ground with the pistol, Tr., p. 272, l. 15. After firing two shots in the ground, Mr. Funderburk came back at him and he felt like he was not going to stop. Tr., p. 272, ll. 18-21.

The Applicant described that he had a previous head injury and he was afraid he would end up in a coma. Tr., p. 272-273, ll. 25-1. The Applicant stated he went down and Mr. Funderburk tried to hit him in the face. Tr., p. 273, ll. 3-8. The Applicant said he fired the gun, but Mr. Funderburk came back at him. Tr., p. 273 and he shot down again, tr., p. 273, ll. 15-17, but the bullet ricocheted and hit Mr. Funderburk. He stated he did not intend on shooting him. Tr., p. 273, ll. 15-17. He just wanted him to stop and not hurt him. Tr., p. 273, l. 19.

The Applicant testified that he cooperated fully with law enforcement. He went down to the sheriff's office, brought the gun and gave a video statement. Tr., p. 276, ll. 1-25.

Trial counsel also had the Applicant describe what he meant by "blinking out." He said he was dazed. Tr., p. 278, ll. 16-23. The Applicant testified he shot Mr. Funderburk to protect

himself, but if he had wanted to kill him he certainly could have. Tr., p. 280, ll. 13-15. He stated there was no other way to repel the attack – Mr. Funderburk was 200 pounds or something and he was 170 pounds. Tr., p. 290, ll. 17-18.

On cross-examination the Applicant testified that he did not have a permit to carry a concealed weapon. Tr., p. 286, ll. 7-9. He also testified that the bottle hit him in the shoulder, Tr., p. 286, l. 24. As for blacking out, he said he was receiving help. Tr., p. 288, l. 16.

The Court charged the jury. Trial counsel offered no objection to the charge nor did he submit any proposed instructions. The Court charged the jury on Attempted Murder, Tr., p. 351, l. 17. The Court also charged, without objection, the law of Assault and Battery of a High and Aggravated Nature. Tr., p. 353, l. 10. The Court also instructed the jury on the law of self-defense, Tr., p. 354, l. 2. The jury found the Applicant guilty of Assault and Battery of a High and Aggravated Nature. Tr., p. 366, l. 23.

VI.

RELEVANT TESTIMONY FROM THE EVIDENTIARY HEARING ON THE PCR APPLICATION

Mike Jenkins was called by the Applicant. He testified that he knew both Mr. Funderburk and the Applicant and he worked with Mr. Funderburk. He had an altercation with Mr. Funderburk at work because he closed the door of a truck and the radio went off. Mr. Funderburk got upset and pushed him down. He also testified that he had heard of other altercations Mr. Funderburk had been involved in. He was advised by the Applicant that he might be needed at trial, but he was never contacted by Mr. Knox or subpoenaed for trial. He did not know the Applicant to get into any trouble.

Ervin Smith was called to testify on behalf of the Applicant. He knew both Mr. Funderburk and the Applicant from Chesterfield County. Although he was not present at the incident, he was aware that Mr. Funderburk had gotten into altercations with other people. He described Mr. Funderburk as having a short fuse and the least little thing would set him off. He himself had an altercation with Mr. Funderburk. Mr. Smith was prepared to tell the jury about his interaction with Mr. Funderburk if he had been called as a witness during the trial. He testified that he was never contacted by Mr. Knox or subpoenaed for trial. Mr. Smith also testified that the Applicant was just an ordinary person and to his knowledge had not been in any fights.

Corey Williams testified for the Applicant. Mr. Williams is a resident of Cheraw and he was present at the altercation between the Applicant and Mr. Funderburk. He stated that he would have been willing to testify on behalf of the Applicant at his trial, but he was never interviewed by Mr. Knox or subpoenaed for the trial. He testified that both the Applicant and Mr. Funderburk were "talking trash" to each other and Mr. Funderburk hit the Applicant with a bottle. Mr. Funderburk then grabbed the Applicant and they tussled. The Applicant got loose and shot at the ground. According to Mr. Williams, if the Applicant had not shot, the fight would have continued. He also testified that Mr. Funderburk was facing the Applicant and still being aggressive at the time of the shooting.

Steven Teal testified at the PCR hearing and also at the Applicant's trial. Mr. Teal said that he never said to Mr. Knox, as claimed by Mr. Knox, that his prior crime was less than ten (10) years ago. Furthermore, he was surprised that Mr. Knox brought out anything about his prior drug use. Mr. Teal said that Mr. Knox told him he was going to bring out the information about his drug use and prior conviction because even if he did not, the state would question him

about it. Mr. Teal also testified that he saw Mr. Funderburk's father talking to one of the jurors that was seated in the trial. He described the juror as a white man, short and stocky with grey hair. Mr. Teal was not interviewed by Mr. Knox until the day of the trial, and he told him what he saw at the altercation. He told the Applicant what he saw regarding Mr. Funderburk's father and was present when the Applicant told Mr. Knox about it. He believed that the trial could have ended in a mistrial, but it did not, and he did not know what Mr. Knox did with the information.

Frank Cranford also testified at the hearing and at Applicant's trial. Mr. Cranford observed a white haired juror talking to Funderburk's father and he told the Applicant about it. He did not know what happened with the information.

Sherri Mumford, the Applicant's sister and Joyce Quick, the Applicant's mother, also testified at the PCR hearing. Ms. Mumford saw Mr. Funderburk's father talking to two jurors, a black man and a white man with grey hair. She testified she told Mr. Knox and the Applicant and Mr. Knox said he would take care of it. Ms. Quick said she saw Mr. Funderburk's father talking to a white hair, male juror and told Applicant about it.

Noah Mumford testified that he is currently at Wateree River Correctional Institution and was sentenced to 10 years. He went to prison on October 28, 2011.

Prior to the incident, Mr. Mumford was a Spec 4 in the military working as a mechanic in Iraq. He received a medical discharge from the army for PTSD, tinnitus, and a left shoulder injury. Mr. Mumford testified that he discussed his service related injuries with Mr. Knox including the fact that he was more susceptible to being injured because of the plate in his head. However, Mr. Knox never brought this fact out at trial.

Mr. Mumford knew of Mr. Knox prior to the incident. To prepare for the trial he met with Mr. Knox six to eight times. Mr. Mumford testified that he did not know the process of a criminal trial and fully depended on Mr. Knox.

Mr. Mumford stated that he never received any Rule 5 materials. He did not know that he had a right to it. Further, Mr. Mumford never saw the victim's hospital records until Mr. Swerling showed him the records. Mr. Mumford testified that he did not know that he could get expert testimony regarding the entry/exit wounds of the victim.

Mr. Mumford stated that he did not have a preliminary hearing because Mr. Knox said he did not need one and Mumford relied on his advice. Mr. Mumford stated that he know understands that a preliminary hearing would give him a preview of the state's evidence. Mr. Mumford further testified that he feels that all of the police officers should have been interviewed, but no effort was ever made to do so. Mr. Knox never talked to Daniel Scott about the video statement he made. Mr. Knox received no information regarding the crime scene and very little investigation was done by the police.

Regarding the witnesses, Mr. Mumford did not understand why Corey Williams and Amos Nivens were not testifying as they were both at the scene of the incident. The two men were not interviewed by Mr. Knox, so he did not know what they would say.

As for Steven Teal and Frank Cranford, Mr. Mumford testified that he provided Mr. Knox with their names, and even brought Mr. Cranford to Knox's office so that he could interview him prior to the trial. Mr. Mumford felt as though Mr. Teal's credibility was ruined after Knox asked him about his prior convictions and drug use. Mr. Mumford also stated that he felt Mr. Knox could have elicited better answers on cross examination of the state's witnesses if he had interviewed them prior to the trial.

Mr. Mumford was working for Marlboro EOC prior to the trial. This incident was his first offense. Mr. Mumford stated Paul Funderburk had a tendency for violence and provided Mr. Knox with a list of names of other people who had altercations with Mr. Funderburk. Mr. Mumford stated that Mr. Knox did not seem interested in interviewing these people.

Mr. Mumford said the location of the bottle and shell casings would show he was attacked. There was no question Mr. Funderburk struck Mr. Mumford first with the bottle. Mr. Mumford asked for photos but Mr. Knox never took any photos of the crime scene. Mr. Knox also never asked Mr. Mumford to come off the stand to show the jury what happened. In fact, Mr. Mumford stated that Mr. Knox did not effectively explain his injuries to the jury.

Mr. Mumford testified that he told Mr. Knox about Paul Funderburk, Sr. talking to the jury. He was unaware what Mr. Knox did about it, but said that nothing was done in open court about the issue.

Mr. Mumford also stated that Mr. Knox failed to discuss the legal issues with him, failed to explain the burden of proof, his right to testify or not testify, jury instructions, the castle doctrine, the charge instructions on Attempted Murder and ABHAN, and the lesser included charge of Assault and Battery in the First Degree. Mr. Knox did not explain that Assault and Battery in the First Degree carried a lower minimum sentence as well as being a parole eligible offense. Mr. Mumford testified that he was uncomfortable that Mr. Knox did not know what he was doing. He felt as though he was not represented properly and his due process was violated.

Larry W. Knox was called as witness for the Respondent. His testimony is summarized as follows:

Mr. Knox acknowledged that he was told about Mr. Funderburk's father talking to a juror. He testified that he believed he told the judge about it in chambers, but cannot recall



exactly what happened and doesn't now why the issue was not put on the record or why an inquiry was not made.

He also testified that he believed the juror in question was an alternate and since he was not taking part in the deliberations, it did not matter.

Mr. Knox testified that he did ask Mr. Teal about his conviction for vehicular homicide and claimed that Mr. Teal told him that the conviction was less than ten (10) years old, but he did not investigate the date of the offense. He also claimed that he brought out the conviction to show the jury that Mr. Teal had nothing to hide. Mr. Knox claimed that impeaching Mr. Teal's credibility did not hurt the Applicant's case because Mr. Teal was not the individual on trial.

Mr. Knox also admitted that he asked Mr. Teal about his prior drug use. He testified that he asked Mr. Teal about his drug use "to clear the air," and show that Mr. Teal had nothing to hide or lie about and to show that Mr. Teal had a "high veracity" and that Mr. Teal was not under the influence of drugs. In summary, he did not feel he impeached his own witness and that this all was his "trial strategy." It should be pointed out here that at the trial, Mr. Teal's record was discussed outside of the jury's presence and the Solicitor acknowledged that Mr. Teal's convictions were not admissible because they were beyond the ten (10) year limit. Tr., pp. 204-205, ll. 25-1.

Mr. Knox testified that he knew the Applicant was getting disability but did not know why and he did not pursue any of these medical or physical problems because he did not think it had any bearing on the case. The Applicant recalled events clearly and he did not believe it would affect his fear or apprehension. Mr. Knox recalled that someone at trial said the Applicant had a serious head injury and that he was not aware that the Applicant had PTSD or that the

Applicant had Tinnitus. He also testified he was not aware of the fact that the Applicant had a plate in his head and would blank out at times.

As for investigation, Mr. Knox admitted that he did not interview Mr. Teal until the day of trial even though he was retained months before. Mr. Knox did not interview Todd Harrell, Antonio Sellers, Dana Wallace, Daniel Scott, Cory Williams, Amos Nivens, Joe Campbell or John James. These were individuals who either had some role in the case as law enforcement officers or who were witnesses at the scene of the shooting. He also admitted that the Applicant had given him a list of witnesses but that the Applicant did not give him any contact information for them. When asked, Mr. Knox could not provide any documentation to show he made any effort to contact these or any witnesses. Mr. Knox claimed that he did not have a budget to hire an investigator from the fees obtained. He stated that he probably did not leave the office on one occasion to investigate the case on his own.

Mr. Knox testified that his investigation consisted of reading the police reports, the GSR report, interviewing Frank Cranford and the Applicant and watching his video. He did not receive a copy of the hospital records until after the trial started. It was also brought out that he never visited the crime scene with or without the Applicant, took no pictures of the crime scene, and took no measurements of the crime scene. Mr. Knox issued no subpoenas for the trial. Mr. Knox testified that he did not ask any law enforcement officer who testified at trial why they failed to take crime scene photos, measurements or diagrams because he did not believe it was important.

When questioned about whether he knew Mr. Funderburk had a reputation for getting into fights, Mr. Knox admitted he was told that by the Applicant. He stated he did not know the names Ervin Smith or Mike Jenkins who both testified at the PCR hearing. Mr. Knox testified

that he did not believe witnesses who would say Mr. Funderburk had a propensity for violence would be good because it did not fit his trial strategy. According to Mr. Knox, he felt Steven Teal was his best witness because he stated Mr. Funderburk was the aggressor in the situation.

Mr. Knox knew Corey Williams and Amos Nivens were also at the scene of the altercation and did not know why they were not testifying. Of course, he never interviewed them to determine what they would say. Corey Williams testified at the PCR hearing as outlined above.

Mr. Knox was also questioned about Mr. Funderburk's injuries and the hospital records. In response to a question as to why he did not seek to obtain Mr. Funderburk's medical records from the hospital, Mr. Knox stated – what would I need the records for? (This was a case where the Applicant raised the self-defense and the entrance and exit of the bullets was important in determining whether Mr. Funderburk was heading towards the Applicant or away from the Applicant). Mr. Knox received the hospital records from the state after the trial started. He never moved to compel their disclosure by the State or subpoenaed them from the hospital. Mr. Funderburk had testified that one of his wounds was in the left kneecap, Tr., p. 67, 11. 5-10, which would have indicated Mr. Funderburk was facing the Applicant when he was shot and not running away. Mr. Knox admitted that he failed to elaborate on this frontal shot issue and failed to argue that issue before the jury.

Mr. Knox was questioned about his failure to request a preliminary hearing. He testified he did not think it would aide his defense. Even though it would have been an opportunity to examine one or more police officers regarding the investigation, he did not think it was necessary.

Consistent with this line of questioning was Mr. Knox's testimony regarding S.C. Code § 16-11-450, *et. seq.*, otherwise known as the "Protection of Persons and Property Act," or the "Castle Doctrine." Mr. Knox testified that he did not believe the Castle Doctrine was applicable to this case and therefore he did not request one or discuss the Castle Doctrine with the Applicant. Mr. Knox testified that he did not feel he gave away anything by not having a Castle Doctrine hearing. Even though he conceded a Castle Doctrine hearing would give him more information about the case, he felt he had all the information he needed.

Mr. Knox was questioned regarding the submission of jury instructions. He did not submit any jury instructions. He did not submit any jury charge that a person can be acting lawfully even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting. He did not submit any jury instructions regarding the size disparity between the Applicant and Mr. Funderburk on the issue of self-defense. He did not submit any jury instructions regarding alcohol even though Mr. Funderburk was drinking at the time of the incident.

When the Court decided to submit the lesser included offense of Assault and Battery of a High and Aggravated Nature to the jury, Mr. Knox did not request that the Court instruct the jury on the additional lesser included offense of Assault and Battery First Degree. Mr. Knox testified that he did not feel it was a mistake to not request a lesser included charge of Assault and Battery First Degree because he felt the Applicant was going to be acquitted. In fact, he testified that he intentionally did not ask for the lesser included charge, even though it was parole eligible. He did not discuss the giving or asking for lesser included charges with the Applicant.

Mr. Knox testified that he never provided the Applicant with a copy of the discovery in the case although he let him review the discovery in his office. He stated that the Applicant never asked for a copy of the discovery.

Mr. Knox also testified that in hindsight he should have objected to the solicitor's questioning of Daniel Scott regarding the training the Applicant would have received in the military and that the Applicant would have known that shooting someone in the femoral artery would cause a person to "bleed out" and die.

VII

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Application for Post-Conviction Relief raises several allegations of ineffective assistance of trial counsel. This Court finds that the errors and omissions of trial counsel require reversal of the Applicant's conviction and sentence. The allegations will be addressed below:

A. THE DEFENDANT ALLEGES THAT COUNSEL ASKED SEVERAL QUESTIONS OF DEFENDANT'S WITNESSES WHICH WERE IMPROPER AND UNDERMINED THEIR CREDIBILITY. (#12)

The Applicant alleges that trial counsel was ineffective for asking several question of Applicant's witnesses which were improper and undermined their credibility. The Court disagrees with the Applicant and finds that the Applicant has not met his burden on this allegation.

Applicant has failed to demonstrate trial counsel was ineffective for asking Teal questions about his prior record and drug use. The Court finds credible trial counsel's testimony Teal indicated the vehicular homicide conviction was less than ten (10) years old. Correspondingly, the Court finds not credible Teal's testimony on this issue. Trial counsel could not have anticipated Teal would provide incorrect information about his prior record. Although

this conviction was likely not admissible under Rule 609(b), SCRE, trial counsel was entitled to act on the misleading information given by Teal. Cf. Rodriguez v. State, 74 S.W.3d 563, 568 (Tex. App. 2002) ("Moreover, we opt not to fault trial counsel for the intentional withholding of vital information by his client." (citations omitted)). Therefore, trial counsel wisely asked Teal about his prior conviction to preempt the State from effectively impeaching him with the conviction. The Court finds trial counsel articulated a valid strategy of putting Teal's record before the jury to add credibility to his testimony. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. The Court also finds trial counsel articulated a valid strategy regarding Teal's drug use. Id. The Court finds credible trial counsel's testimony he wanted to demonstrate Teal was not drinking or on drugs the night of the shooting, thereby showing his memory of events was more reliable than the witnesses who had been drinking.

Regardless, the Court further finds Applicant has not shown he was prejudiced by trial counsel eliciting this testimony from Teal. Teal's conviction was several years old and dissimilar to Applicant's charges. The State did not use Teal's conviction to challenge his credibility in cross-examination or closing argument. Thus, the Court finds the introduction of the prior conviction was not so harmful to Teal's credibility as to prejudice Applicant. Furthermore, the introduction of the drug use was not mentioned in the State's cross-examination or closing arguments. In light of the evidence several persons at the scene were consuming alcohol that day, Teal's admission he was sober may have actually bolstered his account of events leading up to the shooting. Accordingly, the testimony trial counsel elicited about Teal's prior conviction and drug use did not likely contribute to the verdict in this case.

B. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO SUBMIT JURY INSTRUCTIONS RELATING TO THE FACTS OF THE CASE. (#8)

The Court finds Applicant failed to demonstrate he was prejudiced by trial counsel's failure to submit jury instructions on self-defense and lesser included offenses.

Applicant has not shown he was prejudiced by the lack of jury charges on the disparity in size between Applicant and the victim or about the victim's alcohol intake. The trial judge gave a through charge on self-defense. His charge begins with a recitation of the model charges promulgated by the South Carolina Supreme Court in State v. Davis, 282 S.C. 45, 317 S.E.2d 452, 453 (1984). He also charged the jury on Applicant's right to act on appearances and that words, accompanied by hostile acts, could establish self-defense. State v. Fuller, 297 S.C. 440, 443, 377 S.E.2d 328, 331 (1989). In light of the trial judge's through charge, Applicant has not shown he was prejudiced by trial counsel's failure to request additional instructions on self-defense. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) ("In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." 'A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.' A jury charge which is substantially correct and covers the law does not require reversal." (citing State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003); State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996))).

The Court further finds trial counsel was not ineffective in failing to request a charge on the lesser included offense of first degree assault and battery. The Court finds credible trial counsel's testimony his strategy was to get the jury to acquit on the indicted charge, not convict on a lesser included. Because trial counsel argued Applicant's actions were completely justified, he had no reason to ask the jury to consider a lesser degree of culpability. Accordingly, the

Court finds trial counsel articulated a valid strategy for not requesting a first degree assault and battery charge. Abney v. State, 408 S.C. 41, 46, 757 S.E.2d 544, 547 (Ct. App. 2014), reh'g denied (Apr. 24, 2014) (failing to ask for a jury charge on a lesser included offense is a valid trial strategy); see also State v. Walker, 605 S.E.2d 647, 654 (N.C. Ct. App. 2004), overruled on other grounds, 695 S.E.2d 750 (N.C. 2006) (“The record indicates defendants' counsel were employing an ‘all or nothing’ strategy[.] ... The fact that it failed does not mean that defendants were deprived of effective assistance of counsel.”). Therefore, trial counsel was not deficient for not requesting a lesser included offense.

Regardless, Applicant was not prejudiced by the lack of a first degree assault and battery charge in this case. Although first degree assault and battery is a lesser included offense of ABHAN, S.C. Code Ann. § 16-3-600(C)(3), a judge can only charge the jury on offenses which are supported by the facts of the case. State v. Geiger, 370 S.C. 600, 606, 635 S.E.2d 669, 673 (Ct. App. 2006) (citations omitted). Here, the facts support a charge on ABHAN based on Applicant's use of a firearm. State v. Dennis, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (“Under the common law, ABHAN ‘requires an unlawful act of violent injury accompanied by circumstances of aggravation,’ which may include ‘the use of a deadly weapon, the infliction of serious bodily injury, [or] the intent to commit a felony.’” (citing State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000))). However, there is no evidence from which the jury could have convicted Applicant of the lesser included offense of first degree assault and battery. The evidence is clear Applicant inflicted great bodily harm on the victim by shooting him. S.C. Code Ann. § 16-3-600(A)(1) (defining great bodily injury). His plea of self-defense and the supporting evidence may reduce the attempted murder to ABHAN. Dennis, 402 S.C. at 638, 742 S.E.2d at 27 (“An ABHAN charge is appropriate when the evidence

demonstrates the defendant lacked the requisite intent to kill.” (citing Coleman, 342 S.C. 172, 536 S.E.2d 387)). However, there is no evidence to reduce it further to a first degree assault and battery because the victim was actually injured. See State v. Middleton, 407 S.C. 312, 316, 755 S.E.2d 432, 435 (2014), reh'g denied (Apr. 2, 2014) (distinguishing the two subsections of the first degree assault and battery statute where subsection (a) requires an injury to the victim and subsection (b) does not require an injury to the victim). Because Applicant actually inflicted great bodily harm on the victim, he was not entitled to a charge on first degree assault and battery. Accordingly, Applicant was not prejudiced by trial counsel’s failure to request a charge on the lesser included offense.

C. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO CALL TO TRIAL SEVERAL WITNESSES FOR THE DEFENSE. (#3)

The Court also finds Applicant has not demonstrated trial counsel was ineffective for failing to call Smith, Jenkins, and Williams as defense witnesses. The Court finds credible trial counsel’s testimony Applicant never told gave him the names of Smith or Jenkins as potential witnesses, and finds Applicant’s testimony on this issue to be not credible. Because Applicant did not provide these leads to trial counsel, the Court finds trial counsel was not deficient in failing to call them as witnesses. Rodriguez, 74 S.W.3d at 568.

Regardless, Smith and Jenkins testimony was likely not admissible at trial. Both individuals testified at the evidentiary hearing to prior incidents of violence by the victim. However, both also testified they were not social acquaintances with Applicant or the victim. Rule 404(a)(2) allows testimony about “pertinent trait of character of the victim[.]” but not testimony about specific instances of conduct. See Rule 405, SCORE (“In all cases in which

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evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion.”); see also United States v. Bautista, 145 F.3d 1140, 1152 (10th Cir. 1998) (“Here, Bautista sought to introduce Martinez's testimony that Carrillo made a pass at him and Whitt's testimony that Martinez told her about the incident. This testimony, however, shows specific conduct of the victim rather than reputation or opinion concerning the character of the victim.”). Because Smith and Jenkins provided testimony at the evidentiary hearing about specific conduct of the victim, and not about his reputation, Applicant has not shown their testimony would have been admitted at trial if trial counsel had called them as witnesses.

Furthermore, the Court finds the result of the trial would not have been different had Smith or Jenkins testified. The fact the victim was the initial aggressor in the incident was not disputed at trial. The victim even admitted in his testimony that he started the fight. Thus, evidence the victim had a short temper and was aggressive was cumulative to the information provided at trial. Edwards, 392 S.C. at 459, 710 S.E.2d at 66 (“[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward.” (citations omitted)).

The Court further finds Applicant was not prejudiced by trial counsel's failure to call Williams as a witness. Williams' testimony at the evidentiary hearing was largely cumulative to the testimony provided at trial. Id. Furthermore, the testimony at the evidentiary hearing indicates Williams' testimony actually would have been harmful to Applicant's case. Williams' description of the shooting involves Applicant engaging in a verbal altercation with the victim. The victim then threw a beer bottle at Applicant, and a fight ensued. However, Williams testified Applicant was able to disengage himself from the fight. It was once Applicant had

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escaped the victim's grasp that he pulled out his gun and began firing. This testimony established Applicant had an opportunity to retreat from the fight, but chose to draw a weapon and fire it. Therefore, Williams' testimony indicates Applicant was not acting in self-defense when he pulled the gun and fired. Specifically, Applicant could not have entertained a reasonable fear of danger where the victim was not armed with the beer bottle and was not engaged with him. Curry, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (valid claim of self-defense based upon a belief of imminent danger requires "a reasonably prudent man of ordinary firmness and courage would have entertained the same belief" (citing State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984))). Because Williams' testimony does not further Applicant's theory of self-defense, the Court finds Applicant has not shown he was prejudiced by trial counsel's failure to call Williams as a witness.

D. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO HAVE A PRELIMINARY HEARING. (#7)

THE DEFENDANT ALLEGES THAT THE SOUTH CAROLINA LEGISLATURE PASSED WHAT IS KNOWN AS THE "PROTECTION OF PERSONS AND PROPERTY ACT" EFFECTIVE JUNE 9, 2006. THE ACT PROVIDES IMMUNITY FROM PROSECUTION PURSUANT TO SECTION 16-11-450 OF THE S.C. CODE OF LAWS (1976 AMENDED). (#9)

THE DEFENDANT ALLEGES THAT THE SOUTH CAROLINA SUPREME COURT HANDED DOWN THE OPINION IN STATE V. DUNCAN, 709 S.E.2D 662 (MAY 9, 2011) WHICH HELD THAT THE DEFENDANT WAS ENTITLED TO IMMUNITY UNDER THE ACT. (#10)

(I) THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO REQUEST A PRETRIAL DETERMINATION OF IMMUNITY PURSUANT TO THE ABOVE-REFERENCED STATUTE AND CASE LAW.

(II) THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO REQUEST JURY INSTRUCTIONS THAT WOULD HAVE BEEN APPLICABLE UNDER THE ACT AND CASE AFOREMENTIONED.

Applicant alleges trial counsel was ineffective in failing to request a preliminary hearing and in failing to request a hearing pursuant to the Protection of Persons and Property Act.¹ The Court finds Applicant failed to meet his burden of proving trial counsel ineffective in failing to request either of these hearings.

Initially, the Court notes Applicant does not have a constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982) (citing State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982)). Additionally, Applicant's indictment by the grand jury established probable cause and mooted his entitlement to a preliminary hearing. McClure, 277 S.C. at 434, 289 S.E.2d at 160 (citing U.S. v. Werbrouck, 589 F.2d 273 (7th Cir. 1978)). Because Applicant was not entitled to a preliminary hearing, trial counsel was not ineffective in failing to request one. Furthermore, the Court finds credible trial counsel's testimony he did not feel a preliminary hearing was necessary to develop the facts of the case. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. There were few facts in dispute in this case, and trial counsel was familiar with the evidence in the case. Therefore, Applicant has not demonstrated what further evidence would have been discovered had a preliminary hearing been held.

The Court further finds Applicant has not demonstrated he was prejudiced by the lack of a hearing pursuant to the Protection of Persons and Property Act ("the Act"). Generally, the Act provides for a pre-trial determination of a defendant's immunity from prosecution. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Trial counsel candidly admitted

¹ S.C. Code Ann. § 16-11-450(A).

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Applicant was entitled to an immunity hearing under the Act. However, mere entitlement to such a hearing does not automatically render trial counsel's performance deficient in failing to request one. Trial counsel testified he did not request an immunity hearing because, in part, he did not believe it was necessary to develop the facts of the case. The Court finds this rationale can be a valid strategic decision under the facts of this case. Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

Regardless, Applicant has not shown he was prejudiced by trial counsel's failure to request an immunity hearing. At an immunity hearing, a defendant must prove he was acting in self-defense by preponderance of the evidence. Duncan, 392 S.C. at 411, 709 S.E.2d at 665. The Court finds the record before it does not show Applicant would have been successful in meeting such a burden. The evidence in this case consisted entirely of competing testimony from the various witnesses. Furthermore, the facts, even including the testimony presented at the evidentiary hearing, do not indicate Applicant was more likely than not acting in self-defense. Therefore, this case "presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). Accordingly, the Court finds Applicant has not shown he would have been granted immunity from prosecution had trial counsel requested a hearing under the Act.

E. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE CASE. (#1)

THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO INTERVIEW THE STATE'S WITNESSES. (#2)

THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO EFFECTIVELY CROSS-EXAMINE SEVERAL OF THE WITNESSES CALLED BY THE STATE DURING THE TRIAL OF THIS CASE. (#5)

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THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE SCENE OF THE ALLEGED OFFENSE. (#6)

Applicant alleges trial counsel was ineffective for failing to adequately investigate his case. The Court finds Applicant's failed to meet his burden of proving trial counsel was ineffective in these regards. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Although trial counsel candidly admitted he did not perform many of the tasks Applicant alleges should have been performed, the Court finds Applicant failed to demonstrate how he was prejudiced by trial counsel's failures in these regards. See Strickland, 466 U.S. at 697 ("[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies ... [i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice[.]").

Regarding Applicant's allegation trial counsel failed to interview the State's witnesses, the Court finds Applicant failed to demonstrate how interviewing the State's witnesses would have changed the result of his trial. Trial counsel received all the witness statements prior to trial and thoroughly reviewed them. He was not surprised by any of the testimony at trial. Such an investigation was reasonable under the circumstances. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)). To the extent the testimony at trial differed from the statements, trial counsel thoroughly cross-examined the witnesses on these inconsistencies. Applicant has not shown how a pre-trial interview of these witnesses would have helped him more thoroughly cross-examine them.

The Court finds Applicant has not demonstrated trial counsel ineffective for failing to more thoroughly cross-examine the State's witnesses. The record indicates trial counsel thoroughly cross-examined witnesses on their prior statements and their criminal records. Trial counsel impeached several eye-witnesses on the fact their trial testimony included a statement by Applicant after the shooting that was not previously disclosed to investigators. Trial counsel got the victim to admit he was the initial aggressor and Applicant was defending himself. Trial counsel further got the investigating officer to testify to Applicant's cooperation and contrition. In light of trial counsel's thorough cross-examination of the witnesses, the Court finds Applicant has not shown either a deficiency or prejudice from trial counsel's performance. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (court will not "speculate whether a 'better' cross examination would have helped" a defendant's case).

The Court further finds Applicant failed to demonstrate a further investigation of the crime scene would have assisted in his defense. Regarding this allegation, the Court finds trial counsel's testimony credible, and Applicant's not credible. There was no debate about the location of either of the parties when Applicant began shooting. Rather, the ultimate question was whether the victim was attacking or retreating when shot. The Court agrees with trial counsel's assessment that the best evidence of the events was the testimony of the witnesses. Thus, he articulated a valid strategy for foregoing a crime scene reconstruction. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Applicant has also not presented any evidence, other than his testimony, to show what further information would have been discovered had trial counsel procured photographs and diagrams of

the crime scene. Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial." (citations omitted)). Accordingly, the Court finds Applicant was not prejudiced by trial counsel's failure to further investigate the crime scene.

F. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE INJURIES OF THE ALLEGED VICTIM IN THE CASE. (#4)

The Court also finds Applicant failed to demonstrate trial counsel's failure to investigate the victim's injuries would have yielded any helpful evidence. The victim's testimony was consistent that he was shot from behind, and the extent of his injuries was clarified in his rebuttal testimony. The Court finds credible trial counsel's testimony he did not think the victim's medical records were relevant to the facts at issue in this case. Regardless, the Court cannot determine the value of these records because Applicant failed to produce them at the evidentiary hearing. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) ("Since the contents of these documents were never revealed at the PCR hearing, Defendant has failed to present any evidence of probative value demonstrating how the failure to obtain the unproduced statements or acquire the other documents in a more timely fashion prejudiced the defense." (citations omitted)).

G. THE DEFENDANT ALLEGES THAT SEVERAL WITNESSES OBSERVED THE VICTIM TALKING TO A JUROR AND COUNSEL FAILED TO INVESTIGATE THE MATTER OR INFORM THE COURT. (#11)

Applicant failed to meet his burden to show trial counsel ineffective in failing to bring to the court's attention an allegation the victim's father was interacting with a juror during trial. The Court notes the testimony regarding this allegation was wholly inconsistent among witnesses. Trial counsel testified the juror he recalled being alerted about was not actually on Applicant's jury. Teal testified the juror's name was Griggs, but the record indicates nobody by that name was seated on Applicant's jury. Applicant's sister testified the victim's father was speaking to a black female and a white male with red hair. The only consistent testimony came from Mr. and Mrs. Cranford, who indicated a white male with white hair was speaking to the jury. In light of the other inconsistencies in the testimony about this juror, the Court finds the testimony of Mr. and Mrs. Cranford not credible. Furthermore, neither the victim's father nor the alleged juror testified at the evidentiary hearing. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, without a witness's testimony, "any finding of prejudice is merely speculative"). The Court also finds credible trial counsel's testimony that he brought the issue to the attention of the trial judge, and no further action was necessary. Ultimately, the Court has no evidence any alleged exchange between the victim's father and a juror prejudiced Applicant's right to a fair and impartial jury.

H. THE DEFENDANT ALLEGES THAT COUNSEL FAILED TO INVESTIGATE OR PRESENT EVIDENCE AS TO THE EFFECT OF THE DEFENDANT'S PTSD, AND INJURY TO HIS SHOULDER AND LEFT EAR FROM SERVICE RELATED INJURIES. (#13)

The Court finds Applicant has not demonstrated trial counsel should have further investigated Applicant's service related injuries. Here, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel was fully aware of Applicant's service

related injuries. However, the Court cannot discern how these injuries are relevant to the facts of this case. There is no evidence these injuries inhibited Applicant's ability to understand the danger allegedly posed by the victim or his ability to avoid the danger. Trial counsel was also aware of Applicant's prior head injury. Trial counsel used the head injury to explain Applicant's reaction to having a bottle thrown at him and his belief the bottle could pose a risk of harm. To the extent they were helpful in the case, trial counsel utilized Applicant's service related injuries to his advantage.

On the other hand, Applicant never informed trial counsel of his PTSD diagnosis. Because trial counsel was not aware of this diagnosis, he was under no duty to further investigate its relevance to the crime. C.f. Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (trial counsel may rely on his own perceptions as well as communications with client and client's family in determining competency issues).

Regardless, the only value of the PTSD diagnosis would be to explain Applicant's mental state at the time of the shooting. It would not have provided a complete defense to Applicant's actions because it would not impede his ability to distinguish right from wrong. State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993) (under the M'Naughten test, a defendant is not criminally responsible "if, at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong" (citing S.C.Code Ann. § 17-24-10 (Supp.1989); Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990))). Here, Applicant's statement to investigators, his testimony at trial, and his testimony at the evidentiary hearing indicate he fully understood his actions the day of the shooting. Thus, information about his PTSD would not have exculpated him from responsibility for his actions. See, e.g., State v. Angel, 330 N.C. 85, 93, 408 S.E.2d 724, 728-29 (1991) ("Though defendant presented evidence that he may have suffered from

post-traumatic stress disorder and that he may have 'dissociated' at the time of the killing, this evidence was met by plenary, credible evidence by the State in rebuttal."). Instead, the information merely would have served as mitigation evidence. However, the jury clearly found Applicant had no intent to kill the victim when it convicted him of the lesser included offense of ABHAN. Therefore, the Court finds a further investigation into Applicant's prior injuries would not have affected the outcome of his trial.

I. THE DEFENDANT ALLEGES THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO PORTIONS OF CORPORAL DANIEL SCOTT'S TESTIMONY. (#14)

The Applicant alleges that trial counsel was ineffective in failing to object to Corporal Daniel Scott testifying that he and the Applicant had the same military training and that they were taught that if one shoots someone in the femoral artery, the person can bleed out which would kill the person who was shot. Tr., p. 188, ll. 9-10, ll. 17-20. This testimony was clearly not admissible. The witness was never qualified as an expert to render such an opinion, and the witness should not have been allowed to testify essentially to what the Applicant would have known from his military training. This testimony certainly was prejudicial and allowed the jury to speculate that the injury was more serious than it was and could have killed Mr. Funderburk. Further, this testimony could infer to a jury that, because of his military training, the Applicant's state of mind was to kill Mr. Funderburk by shooting him in his femoral artery, which was inappropriate and prejudicial testimony given against the Applicant by Corporal Scott's lay testimony here.

The Court is of the opinion that the Applicant has shown that there is a reasonable probability that but for counsel's errors or omissions that the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the case.

J.

The Court finds that there are multiple errors that may not individually amount to the Applicant receiving ineffective assistance of counsel, but when taken as a whole, they could amount to such, excluding Corporal Daniel Scott's testimony, which in the Court's opinion does, by itself, amount to ineffective assistance of counsel. These issues are individually noted and discussed above. The Court also finds that even if no one issue demonstrates actual prejudice, (which the Court has found issue that demonstrates actual prejudice), an Applicant may be relieved of showing actual prejudice, if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary. Frett v. State, 378 S.E.2d 249 (1988); Green v. State, 569 S.E.2d 318 (2002).

In the Green case, *supra.*, the Court noted that the question of whether cumulative errors, which by themselves are not prejudicial, would warrant the granting of post-conviction relief was an unsettled question in South Carolina, but the Court said:

"While it is unsettled law whether individual errors, which may not be independently prejudicial, may be prejudicial when taken as a whole, we recognize the threshold to asking the cumulative prejudicial question is to first find multiple errors. Multiple errors do not exist in this case to form any cumulative prejudicial effect." At p. 324.

Here the Court is of the opinion and so finds that, in addition to the issue of Corporal Scott's testimony, there are multiple errors and they could form a cumulative prejudicial effect to

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warrant the granting of post-conviction relief. See, also, State v. Peterson, 335 S.E.2d 800 (1985), and State v. Freeman, 459 S.E.2d 867 (Ct. App. 1995).

VIII

CONCLUSION

The Application for Post-Conviction Relief is hereby granted. The Applicant's conviction and sentence for Assault and Battery of a High and Aggravated Nature is vacated, and the Applicant's case is remanded to the Chesterfield County Court of General Sessions for a new trial.



PAUL M. BURCH, PRESIDING JUDGE
FOURTH JUDICIAL CIRCUIT

November 21, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
Noah C. Mumford, #348375,	)	Case No. 2013-CP-13-97
	)	
Applicant,	)	
	)	
v.	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT PURSUANT TO RULE
State of South Carolina,	)	59(e), SCRPC
	)	
Respondent.	)	
_____	)	

Respondent, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves the court to amend its Order Granting Post-Conviction Relief as outlined below. As a threshold matter, the Order Granting Post-Conviction Relief was filed on November 21, 2014, and received by Respondent on November 26, 2014. In support of the motion, Respondent would show as follows:

I.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed February 28, 2013. Respondent made a timely Return on or about May 16, 2013. The Court convened an evidentiary hearing into the matter on July 31, 2014, at the Dillon County Courthouse. Applicant was present at the hearing and represented by Jack B. Swerling, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

II.

Respondent respectfully asks this Court to amend its Order to find trial counsel was not ineffective for failing to object to portions of Corporal Scott's testimony. (Order p. 35).

Respondent submits Applicant failed to demonstrate he was prejudiced by the introduction of this testimony. Although the testimony allowed the jury to infer Applicant's state of mind was to kill the victim, the jury clearly determined Applicant had no intent to kill when it convicted him of the lesser included offense of ABHAN. State v. Dennis, 402 S.C. 621, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (ABHAN conviction proper where defendant lacked requisite intent to kill). Accordingly, Respondent moves the Court to amend its order to reflect a finding trial counsel was not ineffective in failing to object to Corporal Scott's testimony.

III.

Respondent also respectfully requests the Court amend its Order to remove the finding of cumulative error. (Order pp. 37-37). The question of whether South Carolina considers the concept of cumulative error applicable in post-conviction relief cases remains unsettled. See Lorenzen v. State, 376 S.C. 521, 535 n. 3, 657 S.E.2d 771, 779 n.3 (2008) (declining opportunity to decide whether to recognize cumulative error); Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006); Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). The United States Court of Appeals for the Fourth Circuit, though, has clearly rejected the doctrine in context of ineffective assistance of counsel claims, as is demonstrated most effectively in the following brief passage:

Next, Fisher argues that the cumulative effect of his trial counsel's individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel's actions could be considered constitutional error, see Lockhart v. Fretwell, 506 U.S. 364, 369 n. 2, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993) ("[U]nder Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), an error of constitutional magnitude occurs in the Sixth Amendment context only if the defendant demonstrates (1) deficient performance *and* (2) prejudice."(emphasis added)), it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of this Court individually to assess claims under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See, e.g., Hoots v. Allsbrook, 785 F.2d 1214, 1219 (4th Cir.1986)

(considering ineffective assistance claims individually rather than considering their cumulative impact). In fact, in Arnold v. Evatt, 113 F.3d 1352 (4th Cir.1997), cert. denied, 522 U.S. 1058, 118 S.Ct. 715, 139 L.Ed.2d 655 (1998), this Court recently rejected a similar request to review the alleged errors of a trial court cumulatively rather than individually. See id. at 1364 (“Based on the findings of this court concerning the individual claims of error, we reject this claim.”).

To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. In so holding, we are in agreement with the majority of our sister circuits that have considered the issue. For example, in Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir.), cert. denied, 519 U.S. 968, 117 S.Ct. 395, 136 L.Ed.2d 310 (1996), the Eighth Circuit expressly held that an attorney's acts or omissions “that are not unconstitutional individually cannot be added together to create a constitutional violation.” Id. at 1233; see also Jones v. Stotts, 59 F.3d 143, 147 (10th Cir.1995) (noting that cumulative-error analysis evaluates only effect of matters determined to be error, not cumulative effect of non-errors); United States v. Stewart, 20 F.3d 911, 917-18 (8th Cir.1994) (same); United States v. Gutierrez, 995 F.2d 169, 173 (9th Cir.1993) (same). But see Williams v. Washington, 59 F.3d 673, 682 (7th Cir.1995) (stating that “a petitioner may demonstrate that the cumulative effect of counsel's individual acts or omissions was [prejudicial]”); Rodriguez v. Hoke, 928 F.2d 534, 538 (2d Cir.1991) (noting that a “claim of ineffective assistance of counsel can turn on the cumulative effect of all of counsel's actions”). Accordingly, the district court did not err in refusing to grant habeas relief on this claim.

Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998) cert. denied, 526 U.S. 1035 (1999). It is of no little note that the Fourth Circuit noted it was “in agreement with the majority of our sister circuits that have considered the issue.” Id. Accordingly, this Court should not adopt a cumulative error analysis where the majority of courts, including our own appellate courts, have declined to adopt such a framework for determining ineffectiveness.

Furthermore, the Court's order finds only a single constitutional error in the form of trial counsel's failure to object to Corporal Scott's testimony. Even if the Court denies Respondent's motion in Part II, supra, to reconsider that finding, Respondent submits this is not a case where there are multiple errors giving rise to a cumulative error analysis. Simpson, 367 S.C. at 604, 627 S.E.2d at 710 (“Because the PCR court found that only one of Simpson's allegations had

merit, there was no need to conduct a cumulative-error analysis"); see also Fisher, 163 F.3d at 853 n.9 ("[L]egitimate cumulative-error analysis evaluates only the effect of matters actually determined to be constitutional error, not the cumulative effect of all of counsel's actions deemed deficient."). Because the Court's order only finds one constitutional error, there are not multiple constitutional errors to accumulate. Therefore, Respondent moves this Court to delete the final section of its order relating to cumulative error.

IV.

WHEREFORE, Respondent respectfully requests the Court to amend its Order Granting Post-Conviction Relief to reflect a finding that counsel was not ineffective in failing object to Corporal Scott's testimony. Respondent further respectfully requests the Court to amend its Order Granting Post-Conviction Relief to eliminate the finding of cumulative error.

Respectfully submitted,

ALAN WILSON
Attorney General

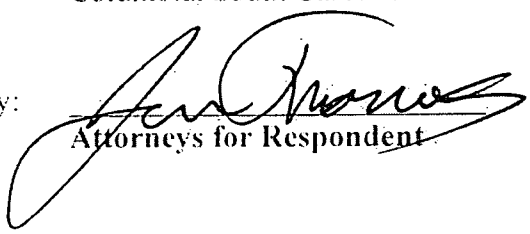
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Chief Deputy Attorney General

KAREN C. RATIGAN
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JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

By:


Attorneys for Respondent

Dec. 3, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF CHESTERFIELD)

NOAH C. MUMFORD, #348375)
)
 Applicant,)
)
 vs.) MOTION TO ALTER OR
) AMEND JUDGMENT
 THE STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

The Applicant, Noah Mumford, by and through undersigned counsel, hereby moves the Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Judgment filed November 21, 2014, granting the Applicant a new trial. The Applicant requests that the Court alter or amend the Judgment as follows:

I.

The Applicant requests that the Court reconsider the Proposed Order sent to the Court by counsel and attached hereto and incorporated herein. The Applicant believes that he was also denied effective assistance of counsel with respect to Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, based on the testimony presented before the Court and the issues and discussion in the attached Proposed Order submitted by the Applicant. The Applicant submits that trial counsel's errors outlined in those issues rise to the level of creating a

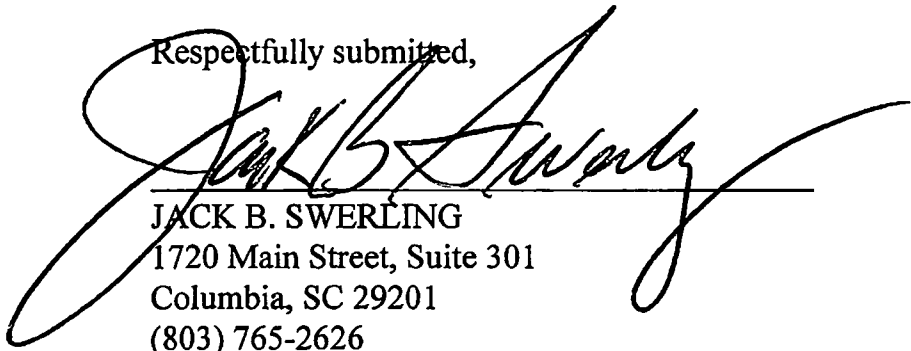
reasonable probability that but for trial counsel's errors or omissions, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.

In addition to the foregoing, and specifically with regard to Issue #12, the Applicant would ask the Court to consider that the solicitor, prior to the testimony of Mr. Teal, conceded that the conviction for vehicular homicide was not admissible which surely put trial counsel on notice despite what he testified Mr. Teal told him.

II.

The Applicant also requests that the Court alter or amend the November 21, 2014 Order as to Section J on page 37 of the Order. The Court found that there were multiple issues raised by the Applicant that demonstrate that the Applicant received ineffective assistance of counsel and they form a cumulative prejudicial effect warranting the granting of post-conviction relief. The Applicant requests that the Court set forth what issues the Court found that demonstrate the Applicant received ineffective assistance of counsel for appellate purposes, should the state appeal the Court's Order.

Respectfully submitted,



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(803) 765-2626

December 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Noah C. Mumford, #348375,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

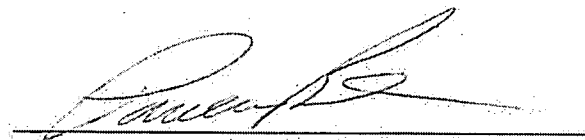
Case Number: 2013-CP-13-00097

ORDER2015 FEB 6 PM 4 15
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.True Copy, Attest
Judge J. Williams
CLERK OF COURT OF 4th
CHESTERFIELD COUNTY, SC

This matter is before the Court on Respondent's Motion to Alter or Amend. After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Respondent's Motion Pursuant to Rule 59(e), SCRCF, is hereby DENIED.

THEREFORE, Respondent's Motion to Alter or Amend is hereby DENIED.

AND IT IS SO ORDERED.


 The Honorable Paul M. Burch
 Judge, Fourth Judicial Circuit

Chesterfield, South Carolina
 February 6, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Noah C. Mumford, #348375,

Applicant,

V.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Case Number: 2013-CP-13-00097

2015 FEB 23 PM 1 06
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.
ORDER

This matter is before the Court on Applicant's Motion to Alter or Amend. After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion Pursuant to Rule 59(e), SCRCF, is hereby DENIED.

THEREFORE, Applicant's Motion to Alter or Amend is hereby DENIED.

AND IT IS SO ORDERED.


The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Chesterfield, South Carolina
February 6, 2015