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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2015-UP-275(S.C. Ct App. filed 6/3/15)
2013-002259

THE STATE,

RESPONDENT,

V.

DAVID EUGENE ROSIER JR.,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

David Eugene Rosier, Jr., Appellant.

Appellate Case No. 2013-002259

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-275
Submitted May 1, 2015 – Filed June 3, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor James Strom Thurmond,
Jr., of Aiken, for Respondent.

PER CURIAM: David Eugene Rosier, Jr. appeals his convictions for voluntary manslaughter and possession of a weapon during the commission of a violent crime. On appeal, he argues the trial court erred in denying his motion to suppress

jail phone calls or in the alternative denying his motion for a continuance so he could make a motion to suppress the calls to this court pursuant to the South Carolina Homeland Security Act (the Act).¹ He also argues the solicitor made improper comments during closing arguments that deprived him of the right to a fair trial. We affirm.

1. We find the trial court did not have jurisdiction to determine whether the calls should be suppressed under the Act. *See* § 17-30-110(A)(1) ("Prior to any trial, hearing, or proceeding in or before any court . . . any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the . . . communication was unlawfully intercepted . . ."); § 17-30-110(A) (requiring any such motion be made to the "reviewing authority" before trial "unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals"); *State v. Whitner*, 399 S.C. 547, 551, 732 S.E.2d 861, 863 (2012) (finding a trial court lacked subject matter jurisdiction to suppress evidence under the Act because such motions must be made before a panel of judges of the court of appeals). Therefore, the trial court's ruling denying the motion to suppress is void. *See DeWitt v. S.C. Dep't of Highways & Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980) ("The acts of a court without jurisdiction are without effect."). However, because Rosier never made a motion to this court prior to trial as the statute requires and he does not assert he did not have an opportunity to make the motion at the appropriate time, we find he waived his opportunity to seek a determination as to whether the jail phone calls should be suppressed. *See* § 17-30-110(A) (requiring motions to suppress be made to this court before trial "unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion"). We note the trial court's denial of Rosier's motion for a continuance did not prevent Rosier from making his motion to suppress to this court. Had Rosier moved this court to suppress the recordings, the trial would have been stayed pending this court's ruling, making the continuance for the purpose of making his motion to this court unnecessary. *See id.* ("All proceedings requiring the use of the contents of any intercepted communication that are the subject of the motion to suppress pursuant to this section are automatically stayed pending the determination of the motion to suppress."). Furthermore, after the

¹ S.C. Code Ann. §§ 17-30-10 to -145 (2014).

trial court initially denied Rosier's motion for a continuance, he informed the trial court that its ruling did not address the issue of making a motion to suppress under the Act. He stated the court of appeals was the statutory reviewing authority for such motions and admitted he had not made a motion to the court of appeals; nevertheless, he proceeded to argue the merits of the issue. Given that Rosier acknowledged the court of appeals was the reviewing authority for such a motion yet sought a ruling from the trial court anyway, he cannot complain on appeal of an error his own conduct induced. *See State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct has induced.").

2. We find the trial court did not commit reversible error in overruling Rosier's objections to statements made by the solicitor during his closing arguments. *See State v. Harris*, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009) ("A trial court is vested with broad discretion in dealing with the range and propriety of a closing argument."); *id.* ("An appellate court will not disturb a trial court's ruling regarding a closing argument unless the trial court commits an abuse of discretion."); *State v. Tubbs*, 333 S.C. 316, 322-21, 509 S.E.2d 815, 818 (1999) ("A new trial will not be granted unless the [solicitor's] comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). Regarding the solicitor's use of Rosier's nickname, "Dollar," we find the six references to his nickname during closing arguments did not "so infect[] the trial with unfairness as to make the resulting conviction a denial of due process." *Compare Tubbs*, 333 S.C. at 321-22, 509 S.E.2d at 818 (finding the use of defendant's nickname seven times was "an occasional use" that did not deny the defendant due process), *with State v. Day*, 341 S.C. 410, 423-24, 535 S.E.2d 431, 438 (2000) (finding twenty-three references to defendant's nickname, "Outlaw," was repetitious and excessive and denied the defendant due process), *and State v. Hawkins*, 292 S.C. 418, 420-21, 357 S.E.2d 10, 12 (1987) (finding the use of defendant's nickname over forty times was "excessive and repetitious" and denied the defendant the right to a fair trial), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Additionally, unlike in *Day* in which the supreme court found the use of the nickname Outlaw was prejudicial because it painted the defendant as a person accustomed to and proud of his abilities in deluding law enforcement, Rosier's nickname, Dollar, does not have a particularly negative connotation and the solicitor did not attempt to make the nickname relevant to the crimes alleged in this case. *See Day*, 341 S.C. at 423, 535 S.E.2d at 438. Furthermore, Rosier's assertion the solicitor made an improper "Golden Rule" argument is not preserved because his objection, "[i]mproper argument," was not specific enough to alert the trial court the objection was one

based on an improper Golden Rule argument. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 694 ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.").

AFFIRMED.²

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

² We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DAVID EUGENE ROSIER JR.,

APPELLANT

APPELLATE CASE NO. 2013-002259

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2015-UP-275

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence on June 3, 2015. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

Appellant David Rosier was convicted of voluntary manslaughter and possession of a weapon during the commission of a crime of violence. He received the maximum sentence of thirty years. Rosier argued on appeal that the trial court erred in denying his motion to either suppress the jail calls involving Rosier or grant Rosier a continuance in order to make a motion to the "reviewing

authority,” which is a three judge panel of the Court of Appeals, for a hearing to determine if the jail calls violated the Homeland Security Act found at S.C. Code Section 17-30-10 through 145.

The Court of Appeals ruled that the trial court did not have the jurisdiction to determine whether the calls should be suppressed under the Act, Section 17-30-110 (A)(1), as the “reviewing authority” was the Court of Appeals pursuant to the Act. This Court also ruled that Rosier waived his opportunity to seek a determination from the Court of Appeals as to whether the jail phone calls should be suppressed because he never made a motion to this Court prior to trial as required by the statute, and he failed to assert that he did not have the opportunity to seek a determination as to whether the jail calls should be suppressed. This Court held that the trial court’s denial of Rosier’s motion for a continuance did not prevent Rosier from filing the motion to suppress to the Court of Appeals as the trial would have been stayed pending a ruling from the Court of Appeals.

The Court of Appeals ruled that the trial court’s ruling denying the motion to suppress was void. The Court relied on State v. Whitner, 399 S.C. 547, 732 S.E.2d 861, 863 (2012) which held that a trial court lacked subject matter jurisdiction to suppress evidence under the Act because such motions must be made before a panel of judges of the Court of Appeals.

The Court of Appeals misapprehended the issue.

South Carolina Code Section 17-30-10 provides that the interception of wire, electronic, or oral communications is authorized only in the manner permitted by this chapter. A wire communication is defined in 17-30-15(1) as any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of this connection in a switching station furnished or operated by any person engaged in providing or operating the facilities for the transmission of intrastate, interstate or foreign communications.

Section 17-30-15(3) defines intercept as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Section 17-30-110 provides that prior to any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived there from, on the grounds that the:

- (1) communication was unlawfully intercepted;
- (2) the order of authorization or approval under which it was intercepted is insufficient on its face; or
- (3) interception was not made in conformity with the order of authorization or approval.

The statute states that the motion must be before the reviewing authority and must be decided on an expedited basis. The reviewing authority pursuant to Section 17-30-15(9) means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals.

In a pretrial motion, defense counsel moved before the trial court for a continuance to review more discovery. Another independent reason for the continuance was to determine whether the wiretapping of the jail phone calls between Rosier and his sons was legal under the Homeland Security Act. Counsel cited S.C. Code Section 17-30-110 which provided: "Prior to any trial in any court, the aggrieved party may make a motion to suppress the use of an intercepted communication on the grounds that the communication was unlawfully intercepted."

Counsel went on to explain that the statute stated that the motion would be heard before the "reviewing authority" which was defined in Section 17-30-5 as a panel of three judges of the South

Carolina Court of Appeals, designated by the Chief Judge of the Court of Appeals. Counsel stated that she had not made any motion before the Court of Appeals who had jurisdiction to make the determination if the interception of the jail calls was in accordance with the Homeland Security Act. She told the judge that she set this out in her memorandum which was presented to the trial court and made Court's Exhibit One. Counsel argued this was another reason for a continuance. R. 6, ll. 1- R. 7, ll. 16; R. 5.

The judge asked defense counsel if she wanted to argue her motion concerning the Homeland Security Act then or the next day. Counsel chose to argue it then. R. 13, ll. 9 - 19. Counsel argued that one of the reasons she made a motion for a continuance was to have the Court of Appeals decide if the jail calls of Rosier were intercepted properly pursuant to Section 17-30-10 etc. Counsel objected to the calls being admitted because they were in violation of the Homeland Security Act found at Section 17-30-10 et seq. R. 15, ll. 1 - 17.

Counsel stated that the Act provides that any interception of a wire communication, which includes any oral transfer which was a telephone call, must be made in accordance with that Act. Counsel argued that was nothing in the Act that differentiated a jail call from that of any other person. There was nothing in South Carolina that excluded jail calls from coming under the Act. R. 15, ll. 13 -25.

Counsel argued that the only time law enforcement was allowed to tape phone calls under the Act was when they had a court order issued by a judge. There was nothing in the law addressing the use of these jail calls by the detention center staff. R. 19, ll. 8 - R. 20, ll. 24.

Counsel expected the state to argue that Rosier had no right to privacy as an inmate, but counsel pointed out that he still had the presumption of innocence at that point. He had to communicate with family members about his case. R. 16, ll. 23 - 17, ll. 12. Counsel said it was her

understanding that the calls could now be routed directly to the solicitor's telephone, and the solicitor could choose which inmate they wanted to eavesdrop upon. This was a violation of the law and went beyond the probable purpose of the interceptions being to protect the safety of the jail. R. 17, ll. 13 – R. 32, ll. 9.

In State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976), the Supreme Court reversed and remanded because the copying of the pretrial detainee's outgoing letters without legitimate jail purpose or probable cause violated detainee's constitutional rights under the First and Fourth Amendments. The Court held that the appellant was merely in pretrial confinement to insure his presence at trial. The Court wrote: "If jail security justified surveillance of his mail, then the jail officials could open the letters in order to achieve that legitimate government purpose. However, the shibboleth of jail security is not a passport to wholesale abuse of the appellant's constitutional rights." The Court went on to hold that a pretrial detainee was not disrobed of his constitutional rights and laid bare for the zealous investigation of his case. He was still cloaked with the presumption of innocence, and retained all the rights of an ordinary citizen except those taken from him by law. The Court stated: "Nevertheless, our respect for constitutional rights of citizens requires that the state not seek advantage by the use of evidence gained by trampling upon those rights."

Defense counsel argued before the judge either that the calls be suppressed or the trial court grant her a continuance so she could make a motion to the Court of Appeals. Counsel also argued that the circuit court did not have jurisdiction or authority to decide if the calls were a violation of Section 17-30-10 and 110. Trial counsel argued:

And as I said, the reviewing authority means a panel of the judges of the South Carolina Court of Appeals designated by the chief Judge of the South Carolina Court of Appeals.

So, I don't know that this court has jurisdiction to even make a determination about whether the calls are validly under the Act.

R. 15, ll. 1 – 18.

The judge denied the motion to suppress the jail calls as he found that the calls were not covered by the Homeland Security Act. R. 33, ll. 1 – 7. The judge had previously denied the motion for a continuance. R. 10, ll. 21 – 22.

From the statute, it is clear that the telephone calls between Rosier and his two sons fit the definition of wire communication. The calls met the definition of intercept. The state presented no evidence that the interceptions of the jail calls were lawfully made. There was no evidence presented that a judge had ordered the interceptions. The detention staff were not SLED agents which is allowed under the Act.

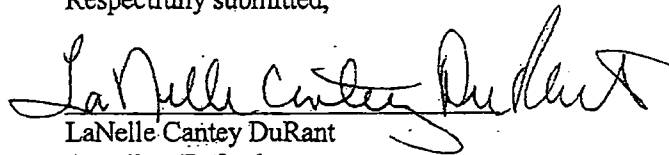
The trial court was in error in ruling that the jail calls did not come under the Homeland Security Act as that decision was clearly in the sole domain of the Court of Appeals by law. Trial counsel was put in the position of arguing the motion then in order to have it on the record or have no objection to the admission to the jail calls.

Trial counsel argued in her Motion for a Continuance (Court's Exhibit 1 at R. 222), that the trial court assume control of the scheduling of this trial pursuant to State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). This would have allowed the trial court to continue the trial in order for the motion to suppress the jail calls be made to the Court of Appeals for disposition.

In State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012), the Supreme Court held that absent an ambiguity, the court will look to the plain meaning of the words used in the statute to determine their effect. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.

WHEREFORE, Appellant respectfully requests this Court to grant his petition for rehearing and reconsider its affirmance of Appellant's conviction and sentence and remand the case for a new trial or a hearing before the Court of Appeals for a determination on the jail calls.

Respectfully submitted,


LaNelle Carney DuRant
Appellate Defender

This 11th day of June, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

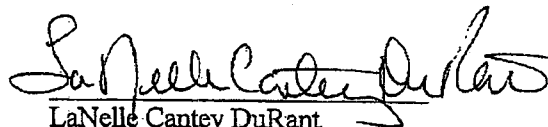
V.

DAVID EUGENE ROSIER JR.,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and t Mr. David Eugene Rosier, # 141435, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 11th day of June, 2015.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 11th day
of June, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

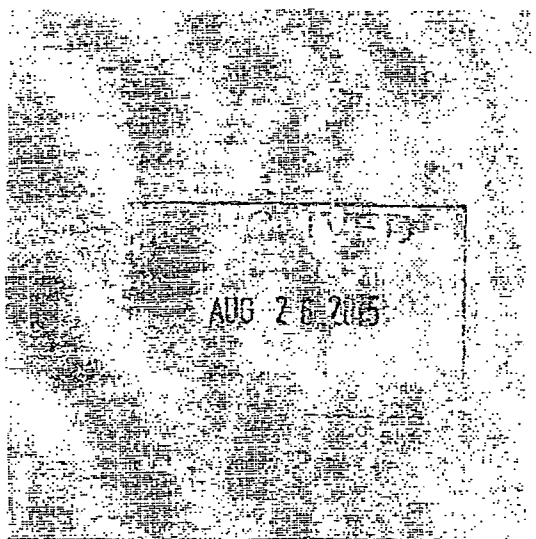
The State, Respondent,

v.

David Eugene Rosier Jr., Appellant.

Appellate Case No. 2013-002259

ORDER



After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul W. Thomas

J.

U. Ke

J.

John D. Roberts

J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
~~Leanne Canteo DuRant, Esquire~~
 Deborah R.J. Shupe, Esquire
 James Strom Thurmond, Jr., Esquire

FILED

August 26, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID EUGENE ROSIER JR.,

APPELLANT

APPELLATE CASE NO. 2013-002259

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS
COURT:**

**STATE'S EXHIBITS # 19, 20 AND 21 (CD'S OF PHONE
CALLS AND 911 CALL)
DEFENSE EXHIBITS # 1 AND 2 (CD'S OF PHONE
CALLS)**

1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

CIRCUIT COURT
2013-GS-02-00766 & 00767

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 DAVID EUGENE ROSIER, JR.,
6 Defendant.

7
8 HEARD ON MONDAY, OCTOBER 7, TUESDAY, OCTOBER 8,
9 WEDNESDAY, OCTOBER 9 & THURSDAY, OCTOBER 10, 2013
10

11
12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14 AND A JURY

15 APPEARANCES:
16

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18 David W. Miller, Esq.

19 Counsel on behalf of the Defendant:

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20 C. David Hayes, Esq. (100913 & 101013)
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23 Cheri L. Young, RPR
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P O Box 5232
25 Aiken, SC 29804-5232

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PRETRIAL MOTIONS

1 not been provided to the solicitor by law enforcement.

2 So, Judge, this is -- I mean, I'm not asking for this
3 lightly. I'm taking this very seriously, what I need to
4 do for Mr. Rosier in order to defend his case. And that's
5 why I'm asking for, not months, but just another week or a
6 little bit more time to make sure that I have a solid
7 defense prepared for Mr. Rosier for this case.

8 Also there's one other issue that somewhat goes along
9 with the jail-call issue. And in looking at the statutes
10 on the jail-call issue and looking at the recent case that
11 came out, it appears that in order to determine whether
12 the calls are properly under the Homeland Security Act
13 statute, it's required that the -- it's required that a
14 determination of that be made by a specific body.

15 And that body would be a panel of Court of Appeals
16 judges. I'm taking that specifically from the statute.
17 And that would be Section 17-30-110 which specifically
18 says: Prior to any trial in any court, it specifically
19 says: The aggrieved party may make motion to suppress the
20 use of an intercepted communication on the grounds that
21 the communication was unlawfully intercepted.

22 There are additional grounds which talk about court
23 orders or that the interception was in violation of the
24 court order. But it says the motion would be made prior
25 to trial before the reviewing authority which is defined

PRETRIAL MOTIONS

1 in 17-30-5 as a panel of three judges of the South
2 Carolina Court of Appeals designated by the Chief Judge of
3 the South Carolina Court of Appeals.

4 Now I have not made any motion before that Court but
5 in reviewing that statute, there's only three cases in
6 South Carolina that I found that even talk about or
7 reference the Homeland Security Act. And in looking at
8 one of them, it specifically talked about State versus
9 Whitner, I believe. It talked about the jurisdiction
10 properly being before the Court of Appeals to determine
11 whether the interception was made in accordance with the
12 Act.

13 THE COURT: You've got that set out in your
14 memorandum?

15 MS. ALVES: Yes, sir. That would be an additional
16 reason.

17 THE COURT: Mr. Whittle, do you see Ms. Maurice out
18 there or Mr. Beck? Ms. Lauren Maurice or Mr. Beck.

19 (Pause.)

20 MS. ALVES: Judge, one other thing. I would note that
21 I did -- there is, the other co-defendant is Ms. Autumn
22 Sitton. I did talk to her attorney on Friday and we
23 talked in great detail about information that she had
24 given the police. So I'm not looking to talk to
25 Ms. Sitton but I did talk to her attorney about that.

PRETRIAL MOTIONS

1 THE COURT: I understand.

2 MS. ALVES: So I did get on it as soon as I could.

3 THE COURT: What's the problem with next week,
4 Mr. Molony?

5 MR. MOLONY: Your Honor, the investigator that was
6 present during all of these interviews with the State's
7 witnesses, the co-defendants in this case is scheduled to
8 be gone next week. I would need him present. Obviously
9 if any one of them changed their story to call him and say
10 what they had said previously.

11 If it was something that I felt was, why not, let's
12 just do it next week, but I really do need this witness
13 next week for backup.

14 THE COURT: For this week?

15 MR. MOLONY: This week; yes, sir.

16 THE COURT: And when was the Defendant put on notice
17 that the case would be tried this week?

18 MR. MOLONY: Your Honor, during the September 19th
19 bond motion in front of Judge Barber is when I stated on
20 the record that the State would be proceeding with this to
21 trial this term.

22 MS. ALVES: Judge, we were told specifically about
23 this week, I think it was last Wednesday. After I had
24 started looking at all the information, I don't know if I
25 called or texted the solicitor and I said, are we going to

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1 do this the first or second week. I asked if they could
2 do it the second week. He said they were ready to go this
3 week.

4 So I think for this specific week, it was actually
5 Wednesday. It was sometime last week. I don't remember
6 the exact date, but I think it was Wednesday.

7 THE COURT: All right. I'm going to take it under
8 advisement. I will issue a ruling at 12 o'clock noon. In
9 the event I do not continue it, obviously that would give
10 you additional time.

11 Let's take about a 10-minute break right now. I'll
12 make a ruling at noon.

13 Let me see Ms. Alves and Mr. Molony, et cetera, in
14 chambers.

15 (Break taken at 11:05 a.m. At 11:13 a.m., another
16 matter was heard by the Court. The trial resumed at
17 12:10 p.m. as follows:)

18 THE COURT: Now back to Rosier.

19 Ms. Alves, do you want to argue that motion on the
20 admission of the jail calls or do you want to wait until I
21 rule on the other?

22 MS. ALVES: Judge, I'll wait until you rule on the
23 other but in regard to the motion for continuance, I just
24 wanted to put on the record one thing. That I had
25 provided the solicitor and Your Honor with a copy of a

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1 memorandum entitled motion to continue and for the Court
2 to supervise the disposition of this case.

3 In this motion I've, I primarily cited the Supreme
4 Court's decision in State versus Langford. And I know
5 that the motion or the memorandum goes primarily into the
6 history of Langford, but I think under Langford the
7 Court -- based on the finding in that case, the Court is
8 obligated to take control of the scheduling of this case.
9 And I would just ask for the Court to supervise the
10 disposition and schedule the case pursuant to the finding
11 in State versus Langford.

12 I didn't argue previously what would be the motion
13 because I had already provided it to Your Honor, but I
14 would incorporate my memorandum as part of the argument
15 that I've made regarding my motion for a continuance.

16 THE COURT: Thank you. Any response to that?

17 MR. MOLONY: No, sir, Your Honor.

18 THE COURT: Well, we all understand what Langford held
19 and where it is with the Supreme Court. So, I'll take
20 into consideration your Langford argument.

21 All right. I am going to deny the motion for
22 continuance.

23 Obviously it's within the discretion of the Court. It
24 appears that -- a couple observations -- that, like in so
25 many cases that we have, witnesses' statements are very

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1 fluid. They continue to change up until, actually until
2 they testify and oftentimes their testimony is even
3 different than what they said in their statements. It's
4 not unusual to have witnesses who will modify or change or
5 not give statements consistent with earlier statements.

6 I also note that the witnesses that have changed their
7 statements, if they've been changed or given different
8 statements, are the same witnesses that we've had from day
9 one in this case.

10 The alleged incident took place on November 10, 2012.
11 The names of the witnesses and the witnesses themselves
12 have not changed. Everybody's had the opportunity to do
13 whatever investigation they wanted to as well as interview
14 them. They weren't given criminal charges until later on
15 when they at that time, I assume, got lawyers. But up
16 until that time everybody had free access to all the
17 witnesses and had conducted whatever investigation they
18 deemed necessary.

19 I further find that the new statements are very short
20 in length. One's 39 minutes, one's 29 minutes. And
21 certainly it's not like a lengthy, lengthy statement.
22 These are very short. They can be analyzed, prepared for
23 cross-examination on a 13-minute statement or a 29-minute
24 statement, I think, within the time that has been allowed
25 here in this case.

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1 There were other people that Ms. Alves wanted to talk
2 to i.e., Calvin Rosier and Brittany Cook, during the
3 break. We took a break about 11:30-ish. I contacted
4 Calvin Rosier's lawyer, Ms. Maurice, who came over to the
5 courthouse. I don't know what transpired between
6 Ms. Maurice and Ms. Alves, but they did have an
7 opportunity to talk as well as Kevin Beck who also came
8 over to the courthouse. And they've had an opportunity to
9 talk. I don't know what those discussions were.

10 Also I might add that notwithstanding the
11 transcription problem, the solicitor's office has
12 repeatedly given the defense anything that's changed and
13 any new evidence that's come up in the case. The 45-page
14 supplemental report as everybody has admitted, it's
15 basically the same thing that was given earlier, just one
16 was a handwritten document, one was a typewritten document
17 but they say the same thing with the exception of a very
18 short one and one paragraph page that can be reviewed
19 rather quickly.

20 So based on all these reasons, I respectfully deny the
21 defense motion for a continuance.

22 The jury will be in tomorrow morning, Tuesday, at 10
23 o'clock for qualification. We will strike the jury
24 immediately following qualification. I will do my opening
25 remarks, followed by opening statements by the State and

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1 the Defendant.

2 And, Ms. Alves, at that time and place tomorrow,
3 Tuesday, after that is done, if you still feel like you
4 need some additional time, I will consider -- I'm not
5 saying I will do so -- but I will consider postponing the
6 start of the case until early Wednesday morning.

7 So we'll, the jury will be qualified at 10 tomorrow,
8 selected and we'll move from there.

9 All right. On the memorandum in connection with the
10 admission of jail call, do you want to do that now or do
11 you want to do that tomorrow?

12 MS. ALVES: I'm prepared to that now, Your Honor.

13 THE COURT: All right. I'll be glad to hear from you.

14 I might also add in ruling on my motion -- on the
15 motion for continuance, this case was known it was being
16 called for trial or it was at least discussed at the bond
17 hearing on September 18 before Judge Barber. All right.

18 On the motion to oppose the admission of jail call.

19 MS. ALVES: Yes, sir. One moment.

20 Your Honor, one other matter regarding the start of
21 the trial. I just -- I have -- I did send my investigator
22 out to try to find the homeowner. And he was informed
23 that he is in North Carolina. Russell Blackmon. He was
24 informed that that person may be now in North Carolina. I
25 know the State has advised me that they have subpoenaed

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1 him and I would just ask that they provide that
2 information for his current location as well as any
3 information they have regarding Cody Muns as they said
4 they had previously.

5 THE COURT: Mr. Molony, please at the conclusion of
6 this motion on the jail calls, give Ms. Alves all the
7 information that you have on the whereabouts of Blackmon
8 and -- Muns, M-U-N-S?

9 MS. ALVES: Yes.

10 MR. MOLONY: Yes, sir.

11 THE COURT: Thank you.

12 MS. ALVES: And, Your Honor, one thing that you didn't
13 state during your ruling. I would just note that after we
14 got notice of the trial -- after we got notice that this
15 case would come up this term of court, we were out for the
16 public defenders conference, which we were out of town for
17 Monday, Tuesday, and Wednesday. I was off for Thursday
18 and Friday with a family member. So I was not even here
19 at all that week.

20 I think that was mentioned earlier. I just wanted to
21 make sure it was clear for the record.

22 THE COURT: It is.

23 MS. ALVES: And the solicitor's office was out as well
24 and the trial notice came on the Monday during the public
25 defenders conference when none of us were even here.

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1 THE COURT: Thank you. Let's move along to the
2 admission of the jail calls.

3 MS. ALVES: Yes, sir.

4 Your Honor, one other matter that I'd asked you for in
5 the motion for continuance which you didn't address was
6 the findings under Section 17-30-110 which specifically
7 says that the motion must be made prior to trial before
8 the reviewing authority who will make the decision on an
9 expedited basis. And as I said, the reviewing authority
10 means a panel of the judges of the South Carolina Court of
11 Appeals designated by the Chief Judge of the South
12 Carolina Court of Appeals.

13 So I don't know that this Court has jurisdiction to
14 even make a determination about whether the calls are
15 validly under the Act. But I would object to the calls as
16 being a violation of the South Carolina Homeland Security
17 Act. Judge, the Act is in the South Carolina Code from
18 Section 17-30-10 on. And pursuant to that -- pursuant to
19 that Act any interception of wire communications which is
20 any oral transfer, which in plain English is a telephone
21 call, must be made in conjunction with that Act.

22 There's nothing in that Act which differentiates a
23 jail call from that of any other person. And there's
24 nothing in South Carolina that excludes jail calls from
25 anything that -- anything under the Act. The only, the

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1 one thing that I would note is that in the case In Re:
2 Anonymous Member of the Bar, it says that no attorney may
3 be a party to recording a conversation or any part of that
4 conversation where any person is recorded by tape or other
5 electronic means without prior knowledge and consent of
6 all parties to the conversation.

7 Mr. Rosier has been incarcerated in Aiken County
8 Detention Center since November 12th of 2012. And during
9 that time law enforcement has obtained numerous copies of
10 telephone calls made by Mr. Rosier to his family members.

11 Your Honor, I would note that Mr. Rosier has no other
12 options but to use the phones in the jail. There are no
13 other phones that he can use. There's no other means for
14 him to communicate with his family members regarding any
15 matters other than to use those phones.

16 And so I would say that his use of the phones does not
17 imply voluntary consent to allow the State to tape his
18 calls. And, in fact, the telephones at the jail when
19 listening to the phone calls, it just says that the call
20 is subject to monitoring or recording. It doesn't
21 specifically say that each call will be monitored or
22 recorded.

23 Your Honor, I've had to anticipate the State's
24 argument based on previous times that we've, that we've
25 had this issue. And I suspect that the State would argue

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1 that the inmate has no right to privacy. I disagree. I
2 think that Mr. Rosier is still in possession of his
3 presumption of innocence. He has not been convicted of a
4 crime. He's only incarcerated because bond has been
5 denied and he has no other means to communicate with
6 family members other than to use those phones.

7 Also, Your Honor, he didn't have a choice. His
8 choices are to sit in the jail alone by himself, have no
9 communication with the outside world or to use the
10 phones. So he didn't have a choice. It wasn't a
11 voluntary choice. So he had no choice but to use those
12 phones.

13 Also, Your Honor, I think that -- I know that the
14 State would probably argue that the purpose of the jail
15 calls is not to provide information for trial, but it's to
16 protect the safety of the jail. And while I acknowledge
17 that the safety of the jail is important, I think that the
18 purpose of the calls has expanded far beyond the safety of
19 the jail.

20 Judge, with our jail calls now, it's my understanding
21 that the calls can be routed directly to the solicitor's
22 telephones. They can pick and choose which inmate they
23 want to listen to. When the inmates are making telephone
24 calls, it's my understanding of how it works is they can
25 actually have the calls routed directly to their private

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1 telephones and listen to these phone calls.

2 I think that that tells us clearly that the purpose of
3 recording the calls made by the inmates at the detention
4 center has gone far beyond attempts to protect the safety
5 of the jail and is being blatantly used by law enforcement
6 in their investigations, and it's being used by the
7 solicitors who are attorneys in their prosecution of these
8 offenses.

9 I think that it's a violation of the law for the
10 solicitors to be allowed to listen to the phone calls. I
11 think that -- I think it's clear that based on the use of
12 the phone calls the purpose is not the protection of the
13 jail but I think it's for purposes of obtaining
14 information and evidence to be used against the defendants
15 at trial.

16 The solicitor has given me a tape in the past hour
17 with what he tells me are snippets of eight jail calls.
18 And he's previously provided me with copies of jail calls
19 that were made by my client while he was incarcerated at
20 the detention center to his family members.

21 In addition, there's one call that was made by his
22 son, Joshua Rosier, to his other son, Calvin Rosier, while
23 Joshua Rosier was an inmate shortly prior to the incident
24 regarded in the indictment.

25 Judge, Mr. David Rosier came onto the phone -- he was

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1 passed the phone by Calvin Rosier. There's no evidence
2 that Mr. David Rosier knew that the conversation was being
3 taped. I don't know what Mr. Joshua Rosier knew about
4 whether or not the call was being taped, but I would still
5 maintain that Mr. David Rosier had no opportunity for
6 communication with his sons other than using the phones
7 that were provided.

8 Judge, I would just note that under the Act the only
9 time that law enforcement is allowed to tape phone
10 calls -- and I believe this is under 17-13-20, is that
11 there are times they're allowed to tape. Specifically,
12 they are allowed to tape when they have a court order
13 issued by a circuit court judge.

14 They also have reference to law enforcement using the
15 system but it's specified that the law enforcement in
16 question is SLED. It's not just the Aiken County
17 Sheriff's Department. It's not the Aiken County Detention
18 Center. And there's nothing in that statute that allows
19 just random taping of jail calls.

20 There are three cases in South Carolina that talk
21 about this Homeland Security Act and the taping of calls.
22 One of them -- two of them -- one of them is actually a
23 family court case, and the other two are criminal court
24 cases; however one of them involves the taping of a child
25 in a CSC case. The mother consented to tape the child. I

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1 believe that's State versus Whitner. And then the other
2 case was where SLED had gotten an order from the court to
3 tape cell phone calls of somebody in a drug case.

4 THE COURT: Do you have any where jail conversations
5 are taped?

6 MS. ALVES: There are no cases in South Carolina for
7 taping jail calls. Those are only three cases I could
8 find when I did a Shepardizing that even referenced any
9 part of this Act are these three cases. And the only two
10 criminal cases that I just told you was a drug case and a
11 CSC where a minor child was taped and they said that the
12 mother had permission to tape on behalf of the minor
13 child.

14 So there is nothing addressing the use of these calls
15 by detention center staff. I know other states may have
16 it, but I would just point out that in this state we have
17 the Homeland Security Act which specifically discusses
18 when calls can be taped and under what circumstances the
19 calls can be used. And under our Homeland Security Act
20 which fully details the interception of wire, electronic
21 or oral communications, this is not allowed.

22 So regardless of what other states have, I don't know
23 what other states have allowed, we have the Act which
24 specifically does not allow the taping --

25 THE COURT: But this is a public telephone at the

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1 jail, is it not? I mean, we've had these cases before.
2 Isn't it a telephone on the wall that all the inmates
3 use?

4 MS. ALVES: Yes, sir.

5 THE COURT: The sign says your telephones are being
6 taped or being listened to or being recorded?

7 MS. ALVES: I don't know what kind of sign they had at
8 the jail during the time that Mr. Rosier was there.

9 I know on the tapes it does, it does -- there is a
10 voice that comes on to the tape saying the calls are
11 subject to monitoring or recording. But there's nothing
12 that says all calls are taped or recorded on that voice on
13 the telephone. And I don't know what the inmates can
14 hear. I know that it's heard on the tapes that I've been
15 given.

16 However, Judge, regardless of that, I think the State
17 still has to comply with the Homeland Security Act with
18 the taping and the use of the calls. And if it's found
19 that the taping of the calls was not in conformity with
20 the Act, the Act states that the calls cannot be used as
21 evidence in any trial.

22 THE COURT: Thank you. Mr. Molony? Mr. Miller?

23 MR. MILLER: Your Honor, initially the State would
24 point out, the reason that there aren't any cases on jail
25 calls as it relates to the Homeland Security Act was

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1 because the South Carolina Homeland Security Act doesn't
2 apply to jail tapes. While a unique --

3 THE COURT: Where does it say that?

4 MR. MILLER: There aren't any cases on it.

5 THE COURT: I mean, where does the Act says it doesn't
6 apply to jail tapes?

7 MR. MILLER: Well, Your Honor, first of all, if you
8 look to the definition section Ms. Alves is quoting from,
9 it's 17-30-15 as used in this chapter, it talks about the
10 4(a), electronic, mechanical or other device means any
11 device or apparatus which can be used to intercept a wire,
12 electronic or oral communication, which is what we're
13 talking about. We're talking about the jail's ability to
14 record calls that go to and from the jail.

15 And then it says: Other than any telephone or
16 telegraph instrument, equipment or facility or any
17 component thereof, subsection two, being used by a
18 provider of wire or electronic communication service in
19 the ordinary course of its business, or by an
20 investigative or law enforcement officer in the ordinary
21 course of his duties.

22 Your Honor, about -- I can't put a percentage on it,
23 but a huge amount of time is spent listening on these
24 calls to people complaining about the fact that there's a
25 company that is called Securis. And Securis is only set

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1 up to record these calls in the jail and to make sure that
2 every one of those calls is paid for.

3 And they have to go to this service. They have to put
4 minutes on their phone or they have to buy credit so that
5 these things can work, because they can't just call out to
6 anybody's phone from the jail. They have to set up and be
7 set up to receive telephone calls from the jail. That is
8 the entire purpose of that company. It's for secure calls
9 from law enforcement facilities. It's so that they can
10 monitor them. It's an aspect of it that is sold to the
11 law enforcement agencies.

12 So, clearly, the statute doesn't apply because of the
13 fact that Securis falls under this exemption of, this
14 isn't electronic recording or electronic communications
15 like we're talking about in the rest of this.

16 Second of all, Your Honor, there is the issue of
17 consent. There are other means and other avenues for
18 Mr. Rosier to communicate with his family in this or in
19 any other case. He can write to them. He can see them
20 after he adds them to his visitation list on Sundays.

21 He can call them. When he calls them he is consenting
22 to communicate with them by phone by the means that is
23 offered by the jail. And that does include a warning, not
24 once, whenever they get there, although they do get a
25 warning when they get there. They are advised during

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1 orientation, your calls are recorded and monitored.

2 Every single time a call is placed from the jail it
3 says that your calls are subject to being recorded and
4 monitored. And, yes, these inmates can hear it and the
5 person receiving the call can hear it, because whenever
6 there's only one minute left in that 15-minute call,
7 that's the maximum amount of time they can talk, when
8 there's only one minute left it says, you have one minute
9 remaining. And very often both sides of the conversation
10 will start talking about, we've only got a minute left, we
11 got to go ahead and wrap up the call.

12 And Ms. Alves is aware of this. And she even
13 acknowledges it in the bottom of page two of her motion
14 when she says that they do in fact get messages that the
15 calls are subject to being monitored and recorded. But
16 she just says it's not this specific call that they get a
17 notice about.

18 Well, they get it on all the calls, Judge. If in fact
19 all the calls aren't listened to, then so much the better
20 for them.

21 Your Honor, this statute is very clearly about the
22 ability of anyone, including law enforcement, to record
23 somebody without them knowing it. They talk about
24 investigatory purposes. They make it a crime for a
25 company that provides these services to let the person

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1 who's the target know, hey, by the way, somebody told us
2 we needed to record your phone calls. That's a crime
3 under the Homeland Security Act.

4 It is completely inapplicable to recorded
5 conversations from the jail. Our courts have ruled in
6 multiple cases that defendants have almost no -- and if
7 there's any expectation of privacy whenever they are in
8 jail, it is greatly diminished. There is not any
9 expectation of privacy in these records or in these phone
10 calls.

11 And in fact, Judge, we do need to kind of break it up
12 because there's two sets of calls here. There are a set
13 of calls from Joshua Rosier to his father and/or to his
14 brother. His father is on that set of calls.

15 It's four phone calls. It's four phone calls. He's
16 not in jail. It's his son that's in jail. It's him and
17 his son talking about the fact that they are going to go
18 and they are going to go after these people. And it's
19 them talking back and forth about all the things that
20 David Rosier and Josh Rosier are going to do to the victim
21 whenever Josh gets out of jail. He's not even in jail
22 when those calls are made, the Defendant is not.

23 The second set of calls are all calls after he's
24 killed the victim in this case whenever he's taking to his
25 son about the reasons why he ended up having to kill the

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1 victim in this case, mostly denigrating his son, Josh, who
2 was with him whenever it happened.

3 So only four of those calls are calls that were made
4 while he was in jail. They're his calls. But in each of
5 those, for each of those situations we're going to have
6 his son, whether it was Josh who was in jail when the
7 original calls were made, or CJ who he was calling to
8 after he had shot the victim. We're going to have them as
9 a party to the conversation available to testify to
10 authenticate, that is David Rosier. That is my dad that
11 I'm talking to on the phone that is talking about the fact
12 that we're going to get together and we're going to, as
13 soon as I get out of jail, we're going to go over and
14 attack these people in this house. And that is my dad.
15 And he's explaining to me why the circumstances were such
16 that my brother, Josh, was so ineffective at beating this
17 person that he had to take a gun from somebody and shoot
18 him in the chest.

19 Because that's what the content of the calls are.
20 It's eight calls. It's less than eight minutes. We're
21 not playing 45-minute long phone conversations here. We
22 got eight calls, eight minutes. Four of them before he
23 was even in jail, four of them after.

24 And the idea that he has some, just lack of knowledge
25 about the system and lack of knowledge about the fact that

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1 the jail calls are going on, he says at various points in
2 times, I don't care if they're recording this. They can
3 listen to whatever they want to listen to. He's mad
4 because some of those hearings whenever he would come in,
5 reference would be made to some of these jail calls. And
6 he'd go back to the jail and start screaming on the jail
7 call that night about what we could do with the jail
8 calls. He didn't care.

9 He's very well aware that the calls are being
10 recorded. He's aware that his specific calls are being
11 monitored.

12 Be that as it may, none of this Homeland Security
13 applies because there's, A, consent, B, by its definition
14 the provider, Securis, is providing the equipment for the
15 purpose of those calls being placed through its system.
16 There's not another system for them to use unless they
17 have a cell phone in the jail. There's not another system
18 for them to use where those phone calls aren't recorded.
19 And that's the whole point of the Securis system.

20 And finally, Your Honor, there was some discussion
21 about Quattlebaum and In Re: Anonymous Member of the Bar
22 and those types of scenarios. All of them are easily
23 distinguishable. I'm sure the Court's aware in In Re:
24 Warner which was one of the attorney taping issues, the
25 attorney advised the client to go in and tape a family

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1 court judge without the judge's knowledge. Obviously we
2 can't do that.

3 But we don't direct the jail to record anybody's phone
4 calls. The State does not direct the jail to record
5 anybody's phone calls. All of those calls are recorded.

6 Now we do have a system whereby we can go in and we
7 can look up the phone calls for an individual person and
8 we can then listen to those phone calls, but it's not done
9 at the direction of the State's Attorneys. It's done for
10 everybody. Everybody that goes in that jail knows when
11 you make a phone call it's recorded. Whether or not
12 there's somebody actually listening to it on the other end
13 of the line, be it having their cell phone ring and
14 they're listening to it in real-time or alternatively six
15 months later a young prosecutor gets motivated and starts
16 listening to them, they're there. They are recorded.
17 Everybody's are recorded. And they stay there for a
18 period of time.

19 And, in fact, Your Honor, it was one of the things
20 that was important in this case was that even Josh, after
21 Josh was out of jail, even after the murder had been
22 committed, the ability to go back and listen to Josh's
23 telephone calls before he was released from jail put
24 everything into context in this case. And the phone calls
25 should all be admitted.

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1 THE COURT: Thank you. Anything, Ms. Alves?

2 MS. ALVES: Yes, sir, Your Honor. One moment.

3 (Pause.)

4 MR. MILLER: Your Honor, I think what the discussion
5 is about because we have obviously heavily redacted the
6 calls because of some concerns that Ms. Alves has raised.
7 And as I stated, it's eight calls. Each of those calls is
8 less than one minute long. We do have the calls available
9 for the Court to hear in camera. If you would like to
10 hear those calls, and factor that into this motion to
11 suppress.

12 And my understanding is that Ms. Alves has heard them
13 but if you haven't, we can give them to her first and let
14 her listen to them. They are excerpts of calls that she
15 has the entire calls on.

16 THE COURT: Ms. Alves?

17 MS. ALVES: I just want to be clear that I have the
18 entire call from when Joshua Rosier was in jail. That's
19 one call. I don't know of four calls that were made. So
20 if there is an additional --

21 MR. MILLER: No, it's four segments from that one
22 call.

23 THE COURT: Very well.

24 MS. ALVES: I just wanted to clarify. That was
25 information that I did not have. Judge, I obviously

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1 disagree with the State's arguments that these calls do
2 not come under the Homeland Security Act. These were not
3 made by law enforcement in the ordinary course of their
4 business.

5 I think the calls, if you look at the definitions, do
6 fall under the Homeland Security Act. And I think, I
7 think that the taping of these calls is in violation of
8 all of the sections under the Act. Specifically, Judge,
9 as to the consent, it's not voluntary consent. Mr. Rosier
10 has no choice but to use those phones when he's in the
11 jail. In fact, on one of the calls --

12 THE COURT: Well, he can certainly not make the phone
13 call. He doesn't have to make a phone call.

14 MS. ALVES: That's true. But he can't communicate with
15 his family by writing unless he has paper, stamps and
16 envelopes. And he doesn't have that unless he can
17 communicate with them and ask for them to put money in his
18 account, or if he gets some type of indigent package from
19 the jail. So he is limited in that regards.

20 I mean, he could just not communicate with the family
21 and not have the support and comfort of talking to his
22 loved ones at all, but I think that would be depriving
23 Mr. Rosier of at least the comfort of having a connection
24 with his loved ones on the outside of the detention
25 center. And he has to make that choice. Is he all alone

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1 by himself or does he use the phone to make, to have
2 conversations with his family which I would say there is
3 no voluntary consent. No one consents to being in the
4 detention center. No one consents to being taped on the
5 phone. He had no choice.

6 And I think that's what this case stems on, his
7 consent, because he has no choice. If the jail gave the
8 inmates the option to use the untapped phone, I'm sure
9 there would be a long line for that one and no one would
10 ever use the other, but they don't have a choice.

11 THE COURT: Thank you. I'll take it under advisement,
12 make a ruling before we start the trial tomorrow.

13 MS. ALVES: Yes, sir.

14 THE COURT: All right. Let's take a --

15 MS. ALVES: Your Honor, I do have some other matters
16 to put on the record regarding pretrial. Do you want to
17 address those at a later date?

18 THE COURT: Well, what do you have? I haven't got
19 anything other than --

20 MS. ALVES: No, sir. It's other matters that I talked
21 to the solicitor about which the solicitor, he has
22 responded to them but I did want to put those on the
23 record.

24 THE COURT: Well, we'll do that tomorrow. We're going
25 to have some down time tomorrow.

PRETRIAL MOTIONS

1 MS. ALVES: Yes, sir.

2 THE COURT: All right. Let's take a lunch break until
3 2:15.

4 MS. ALVES: Your Honor, also.. Can I be excused from
5 court for the rest of the day?

6 THE COURT: You may.

7 (Documents in support of argument were received as
8 Court's Exhibit No. 1.)

9 END OF DAY'S PROCEEDINGS: 12:45 P.M.

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PRETRIAL MOTIONS

1 ON TUESDAY, OCTOBER 8, 2013 AT 9:44 A.M.:

2 THE COURT: We're back on the record with State versus
3 Rosier.

4 I am going to deny the Defendant's motion to suppress
5 the jail calls. I find that they are not under the
6 Homeland Security Act, and respectfully deny your motion
7 to suppress.

8 I understand from the pretrial -- strike that, from an
9 in-chambers conference, a very quick conference, that
10 there is additional information or additional requests for
11 continuance concerning some jail tapes, Ms. Alves; is that
12 correct?

13 MS. ALVES: Yes, sir.

14 THE COURT: Be glad to hear from you.

15 MS. ALVES: Yes, sir. Your Honor, may it please the
16 Court.

17 THE COURT: Yes, ma'am.

18 MS. ALVES: Your Honor, the State had advised me that
19 they intended to use some jail calls that were made from
20 Mr. Rosier to his children during the case in chief. In
21 June of this year I was provided with a copy of several
22 phone calls from Mr. Rosier to his daughter, Whitney, and
23 to his son, Calvin. Calvin who is now a co-Defendant in
24 this case.

25 On Friday when I went to the solicitor's office to

OPENING STATEMENTS ON BEHALF OF THE STATE

1 MR. MOLONY: No, sir, Your Honor.

2 THE COURT: Ms. Alves, any objections?

3 MS. ALVES: I don't have any objections, Judge. Thank
4 you.

5 THE COURT: Mr. Molony?

6 MR. MOLONY: Thank you, Your Honor. May it please the
7 Court. Ms. Alves. Ladies and gentlemen. Good morning.

8 November 10th of 2012, the Defendant, David Eugene
9 Rosier, Jr., entered the residence at Street in
10 Bath, South Carolina, and he murdered a 20-year-old
11 unarmed kid in cold blood and for no reason.

12 That's why we are all here today. All of us. We're
13 here because on that day the Defendant entered that
14 residence and shot and killed Donnie James Davis -- his
15 friends and family called him DJ -- using a revolver
16 around 10:30 p.m. that night.

17 Now the evidence will show that the Defendant and his
18 son, Joshua Rosier, entered the residence together. Now,
19 my dad and I, my dad's like my best buddy. We go to all
20 the Carolina football games we can, even when they're
21 playing as bad as they are on defense right now. But we
22 go play golf together. We do what most people would
23 consider normal father-son types of activity. I'm going
24 to go ahead and tell you, this Rosier clan is anything
25 but the normal father-son relationship that you're about

OPENING STATEMENTS ON BEHALF OF THE STATE

1 to hear.

2 Because you're going to hear from Josh Rosier, the
3 Defendant's son, who entered the residence with him that
4 night. And you'll recognize him because Josh Rosier will
5 be coming out that door, no weapons beyond this door,
6 wearing orange, shackled, now charged with his role in the
7 death of DJ.

8 He'll sit up here and tell you exactly what happened.
9 It's important to listen to the things that transpired the
10 week or so prior to November 10th, 2012, what made them go
11 into that house, what made them so mad.

12 He'll tell you exactly what happened in the house.
13 And I'm going to warn you, some of it's gruesome. A lot
14 of it at the hands of Josh, ultimately at the hands of the
15 Defendant.

16 He'll tell you the steps that both he and his father,
17 the Defendant, took along with others to get away from the
18 residence that night, to tell a different story to law
19 enforcement, and in an attempt to stay away from where
20 he'll be walking out of right now, Aiken County Detention
21 Center.

22 Now Josh Rosier is charged and he'll tell you exactly
23 what his status is. You'll hear from other factual
24 witnesses. And like in any case, there will be some
25 discrepancies, I'm sure, as to things that they say

OPENING STATEMENTS ON BEHALF OF THE STATE

1 happened and what they saw, and what she saw, and what he
2 did. And those are going to happen.

3 You'll hear from members of law enforcement; the Aiken
4 County Sheriff's Office, members from SLED, the forensic
5 scientist. You'll hear today from the pathologist and a
6 member of coroner's office tell you exactly the cause of
7 death in this case. You'll see pictures.

8 You'll hear important jail calls. Jail calls made
9 both before the murder took place on November 10th and
10 after. Pay attention to those.

11 In the end the Judge told you, he'll go through and
12 tell you the law at the end of this. Murder, we've all
13 seen it on TV. This is not TV. That's the other thing.
14 This is real life. These witnesses. And, this is real
15 life in your backyard of Aiken County.

16 But in the end, murder is the intentional killing of
17 another with malice, malice aforethought. Malice
18 aforethought just sounds silly to me but ultimately what
19 malice aforethought means is that you do it with hate or
20 with hostility or with ill will. You do an unlawful thing
21 to another with the intent to cause harm to that person
22 and that's malice in general.

23 There will be multiple reasons at the end of this
24 thing that you 12 collectively will go back there and
25 decide as one, deciding the Defendant's guilt or innocence

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 in this case. That's your only job, is to find him guilty
2 or innocent.

3 Mr. Miller and I will be prosecuting this case. We
4 are open, wide open to the fact that the State bears the
5 burden to prove each element of these charges beyond a
6 reasonable doubt which simply means you're firmly
7 convinced. It's not beyond all doubt. It's not 100
8 percent. It's not 58. It's you're firmly convinced.

9 And we're confident that when this thing's said and
10 done, you'll come back with the only verdict that the
11 evidence is going to show, the only verdict that the
12 testimony you hear is going to prove, and the only verdict
13 that DJ Davis and justice require. And that's a verdict
14 of guilty as to murder and possession of that gun during
15 the murder.

16 Thank you.

17 THE COURT: Ms. Alves?

18 MS. ALVES: May it please the Court. Mr. Miller.
19 Mr. Molony.

20 MR. MOLONY: Yes, ma'am.

21 MS. ALVES: I like to garden. I know you're probably
22 thinking, why is this girl getting up here talking about
23 that. But I'll tell you why. Because last spring I was
24 out doing my gardening because I'm not really that good at
25 it but I try. And I was out in the flower beds messing

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 around with my bare hands because I don't like wearing
2 gloves. And all of a sudden as I was sticking my hand
3 down in the dirt, what did I see? It was a spider. And
4 it wasn't a regular old spider. It was black and it had a
5 big hump on the back, and it had a little red hourglass
6 kind of on the back.

7 And I was like, oh my goodness. I've never seen one
8 before close up. Oh my goodness. That's a black widow
9 spider.

10 And instead of, like, running away, moving to the
11 other side of the garden and doing anything with common
12 sense, I decided to go get a closer look. I was like
13 looking all close. I went around the bushes to see what I
14 could see. You know what I did? Stepped in a fire ant
15 nest.

16 Then of course y'all know what happened. I had little
17 bumps all over my feet all the way up to my ankles. You
18 know what happened. This is South Carolina. It was
19 spring and I was too busy paying attention to the spider
20 instead of what I was doing.

21 Now I know y'all are wondering, why is this girl
22 telling us something that happened last spring. Well,
23 that's because we're going to hear about a spider in this
24 case. The evidence is going to show you, and from the
25 testimony you're going to see a black widow here.

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 Now I am by no means comparing what happened to me to
2 the fate of Mr. Donnie Davis. By no means am I comparing
3 that at all. But in this case you are going to hear
4 testimony that everything that happened on Church Street
5 on the night of November 10th, 2012, was set up by the
6 girlfriend of Joshua Rosier, the man who the solicitor
7 told you is going to be walking through that door.

8 You are going to hear testimony that she is the person
9 who was dating Mr. Davis. You're going to hear testimony
10 how she was the one who told Mr. Joshua Davis (verbatim)
11 about a problem that she had with a person who lived at
12 the house.

13 You're going to hear testimony how she upset -- how
14 she intentionally planned to upset Joshua Davis to the
15 point where -- excuse me. Joshua Rosier -- to the point
16 where Mr. Rosier decided to go to that house. And you may
17 hear testimony about what Mr. Rosier did.

18 Now, I would love to get up here and tell you what I
19 anticipate the State's evidence will show. I want to.
20 That's what I do in trials. That's what I get up here and
21 plan to do. I can't do that. And you know why I can't do
22 that in this case? Because you are going to hear evidence
23 that every one of the State's witnesses who aren't law
24 enforcement or professional has told lies. Every single
25 one of them.

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 Every single one of them have changed their stories.
2 You're going to hear evidence that not only has Joshua
3 Rosier told one story, he's told not two, but three.

4 So I don't know what the State's evidence is going to
5 show except that there's going to be a lot of lying going
6 on up there if they, if they act true to form.

7 The only thing that we do know is that Ms. Brittany
8 Cook, the black widow, sent them over to that house. Now,
9 you're going to hear the testimony about what happened in
10 there. You're going to hear everybody's story and it's
11 going to be your job to decide what's the truth because
12 that's what we want in here, a verdict that speaks the
13 truth about everything that happened that night. And it's
14 going to be your job to weed through all the stories to
15 find out what really happened.

16 Now, ladies and gentlemen, I want to tell you this.
17 It is a sad thing that a 20 year old lost his life in such
18 a senseless manner last November. It really is.

19 But, not every killing is murder. Sometimes the mere
20 fact that someone has shot and killed someone does not
21 mean they are guilty of murder. And I think that the
22 evidence here will show you that murder is not what
23 happened last November.

24 Now the State has the burden of proof. Like I say, I
25 can't really say too much because I could be wrong. I

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 don't know what these people are going to say. They might
2 go back to their first story, their second story, their
3 third. We'll just have to wait and see.

4 But, the State has the burden of proof. They have to
5 prove to you beyond a reasonable doubt that Mr. Rosier is
6 guilty of all of the elements of murder, that he's guilty
7 of killing Donnie Davis with malice aforethought. They
8 have to prove to you beyond a reasonable doubt that he's
9 guilty of possession of a weapon during the commission of
10 a violent crime.

11 And at the end of this case, the Judge is going to
12 tell you what -- he's going to define for you what, you
13 know, he's going to tell you'll about the burden of
14 proof. And he's going to talk to you a little bit more
15 about beyond a reasonable doubt which is that you must be
16 firmly convinced in the guilt of Mr. David Rosier.

17 And he's going to tell you what the law is in this
18 case. And he's going to tell you what you need to
19 consider as jurors in making your decision.

20 And the one other thing the Judge is going to tell you
21 that's super important: That Mr. David Rosier is presumed
22 innocent. He is not sitting over there a guilty man just
23 because he was charged.

24 That's not good enough just to be charged. He is
25 presumed innocent. He is going to be presumed innocent

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 today. At the end of the day when we're done, he's going
2 to be presumed innocent. Tomorrow. He is going to be
3 presumed innocent all the way through this trial.

4 After the first State's witness it doesn't say, oh
5 well, gee maybe he's guilty. Oh no. That's not the
6 burden. That's not sufficient and that's not your role as
7 jurors. After the second witness, oh, maybe he's guilty.
8 No. He's not guilty then, either.

9 He is presumed innocent all the way through this trial
10 and throughout your deliberations unless at the end of the
11 deliberations you come to a decision that, you know, the
12 evidence finds him guilty. And if that's what you
13 conclude then that's what you conclude.

14 But, I am confident that if you listen to all of the
15 evidence, all of the stories these people have told,
16 everything that's presented to you -- pay attention. This
17 is not going to be a long trial. But it is an important
18 trial -- and I think that once you have the evidence in
19 your hand and you're making your decision back there,
20 you'll find that murder is not what happened to Mr. Donnie
21 Davis on November 10th of last year. And, as I said all,
22 all I'm asking for is a verdict that speaks the truth
23 about what occurred.

24 Thank you.

25 THE COURT: How short is it? Do you want to do a

JANICE EDWARDS ROSS - DIRECT

1 A. Let's see. Picked it back up on September the 4th,
2 2013.

3 Q. Thank you.

4 Your Honor, no further questions.

5 THE COURT: Cross?

6 MS. ALVES: No questions.

7 THE COURT: You may step down. Next witness.

8 MR. MILLER: Your Honor, may this witness be released
9 from his subpoena?

10 THE COURT: He may.

11 MR. MILLER: Thank you, Your Honor.

12 THE COURT: Your Honor, the State calls Dr. Janice
13 Ross.

14 JANICE EDWARDS ROSS, having been duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the Court, spelling your last.

18 THE COURT: Good afternoon, ma'am.

19 THE WITNESS: Janice Edwards Ross, R-O-S-S.

20 DIRECT EXAMINATION

21 BY MR. MILLER:

22 Q. Dr. Ross, can you explain to the jury who you work
23 for?

24 A. I work for Newberry Pathology Associates in Newberry,
25 South Carolina.

JANICE EDWARDS ROSS - DIRECT

1 Q. Are you a duly licensed physician?

2 A. Yes.

3 Q. In what states?

4 A. South Carolina, New York and Georgia.

5 Q. How long have you been a licensed physician?

6 A. Since 1976.

7 Q. And what is your exact job title?

8 A. I'm a forensic pathologist and a pathologist for the
9 hospital at Newberry County Memorial Hospital.

10 Q. Can you describe what the field of forensic pathology
11 entails?

12 A. Yes. First of all, as a pathologist I've gone
13 through, I've got a degree from the University of South
14 Carolina and then went through four years of medical
15 school. I received my MD in Syracuse, New York, at
16 Upstate Medical Center. And then you do training
17 specifically in pathology.

18 Pathology is the study of disease. We learn how to
19 identify diseases by looking at tissue under the
20 microscope and by use of the laboratory.

21 Forensic pathology, pathologist, the word forensic
22 means legal. So we use our pathology knowledge on
23 forensic matters, legal matters, such as homicides,
24 accidents, suicides, rape cases, by doing autopsies and
25 looking at tissue under the microscope.

JANICE EDWARDS ROSS - DIRECT

1 Q. So does the field of forensic pathology involve you
2 actually performing autopsies as part of that work?

3 A. Yes.

4 Q. How many autopsies do you estimate that you have
5 performed?

6 A. Over 6,000.

7 Q. And you've already gone over most of your educational
8 background. Did you ever receive any specific focus
9 training for forensic pathology?

10 A. Yes, through the medical examiner's office in
11 Syracuse, New York. And I'm board certified in that area.

12 Q. Have you been qualified as an expert before in the
13 field of forensic pathology?

14 A. Yes.

15 Q. And can you estimate how many times?

16 A. Seventy to 80 times in South Carolina.

17 MR. MILLER: Your Honor, at this time the State would
18 move to qualify Dr. Ross as an expert in the field of
19 forensic pathology.

20 MS. ALVES: No objection.

21 THE COURT: Thank you.

22 Ladies and gentlemen of the jury. What -- normally
23 our rules of evidence do not allow someone to give opinion
24 testimony. There is an exception to someone who is
25 qualified in a scientific area such as pathology will be

JANICE EDWARDS ROSS - DIRECT

1 allowed to give opinion testimony. And I'll instruct you
2 at the close of the case as to how you handle an expert's
3 testimony.

4 Mr. Miller.

5 MR. MILLER: Thank you, Your Honor.

6 Q. Dr. Ross, did you have an occasion to perform an
7 autopsy on Donnie James Davis?

8 A. Yes.

9 Q. And when did that autopsy take place?

10 A. November 12th, 2012. It started at 8:30 a.m.

11 Q. And where did that autopsy take place?

12 A. In the morgue at Newberry County Memorial Hospital.

13 Q. Are you -- how are you normally contacted to become
14 involved in a case?

15 A. The coroner involved with the case will call me to
16 give me information and then schedule a time for the
17 autopsy.

18 Q. Do you generally go out to the counties where the
19 coroner calls you from or are the bodies brought to you?

20 A. They are brought to me.

21 Q. Can you explain generally for the jury the autopsy
22 procedure that you performed on the body of Donnie Davis?

23 A. Yes. We received the body in a body bag and it is
24 locked. We open up the body bag, take photographs of the,
25 an inventory of the clothing. Then we take the clothing

JANICE EDWARDS ROSS - DIRECT

1 off and take photographs of the body and write down any
2 evidence of injury or any pattern of injury.

3 In this case, it was an evident gunshot wound so we
4 did X-rays to identify whether or not a bullet was still
5 in the person.

6 Q. And was there a bullet in this body?

7 A. Yes.

8 Q. And did you remove that bullet as part of the autopsy
9 procedure?

10 A. Yes.

11 Q. And what did you do with the bullet once it was
12 removed?

13 A. It was taken, it was signed for and taken to SLED and
14 it was taken by Investigator O'Grady-Watts (verbatim).

15 Q. That would be investigator Mary Frances O'Grady-Watts?

16 A. Yes.

17 Q. As part of the autopsy procedure, would you routinely
18 draw blood for toxicology and other uses?

19 A. Yes.

20 Q. And did you draw blood in this case?

21 A. Yes.

22 Q. And who did you give that to?

23 A. That went to Jeff Smith, the deputy coroner.

24 Q. Could you go through from your autopsy in this case
25 the injuries that you observed?

JANICE EDWARDS ROSS - DIRECT

1 A. Yes. He had a gunshot wound in the chest. It went
2 into the chest just to the right of midline. And it went
3 pretty much straight back, a little bit downward and a
4 little bit towards the middle of the body. It went
5 through the heart and the main artery coming off the heart
6 which is called the aorta. That caused a lot of
7 hemorrhage inside the body. And the bullet itself was
8 found in some soft tissue in the back right -- well, right
9 in front of the backbone.

10 Q. Okay. In addition to the gunshot wound, what other
11 wounds did you note?

12 A. There was some incise wounds on the right side of the
13 face, right in front of the ear including part of the ear.
14 There were, an incised wound is made -- is a split in the
15 skin, made by a sharp instrument as opposed to a
16 laceration which is a split of the skin caused by a blunt
17 injury like being hit by a baseball bat or something. But
18 he had these incise wounds on the right side of the face.

19 Q. I'd like to show you what's been previously marked for
20 identification as State's Exhibit Number Two. Do you
21 recognize that photograph?

22 A. Yes.

23 Q. Can you explain to the jury what that photograph is?

24 A. That's a photograph of the right side of Donnie
25 J. Davis with much blood around it but it shows the incise

JANICE EDWARDS ROSS - DIRECT

1 wounds that I was describing.

2 Q. And I'd ask you not to hold that up yet. Does it
3 fairly and accurately represent the injuries to the side
4 of his head whenever he was brought in for autopsy by your
5 office?

6 A. Yes.

7 MR. MILLER: Your Honor, at this time the State would
8 move to introduce State's Exhibit Two into evidence. We
9 would ask that it not be published to the jury at this
10 time.

11 THE COURT: Any objection?

12 MS. ALVES: That's the --

13 MR. MILLER: That's the one I showed you earlier.

14 MS. ALVES: No, no objection.

15 THE COURT: Without objection.

16 (State's Exhibit No. 2, photograph, was received into
17 evidence.)

18 BY MR. MILLER:

19 Q. We've talked about the gunshot wound and the incise
20 wounds on the head. Did you note any other injuries to
21 Mr. Davis?

22 A. Yes, sir. There were two incise wounds, kind of the
23 back of the right hand.

24 Q. And how would you classify those wounds? What type of
25 wounds were those?

JANICE EDWARDS ROSS - DIRECT

1 A. We refer to those as being defense wounds. In other
2 words, they're wounds made when somebody is trying to
3 defend himself or herself by putting arms up against
4 whatever weapon's coming at them.

5 Q. Would any of the incise wounds, these defense wounds
6 on the right hand or the incise wounds on the side of the
7 face, would either of those wounds have been fatal if they
8 had been the only injuries?

9 A. No.

10 Q. Were you able to reach any conclusions regarding the
11 amount of time that would have passed between -- well, let
12 me go back.

13 Did you determine that the gunshot wound was a fatal
14 wound?

15 A. Yes.

16 Q. Were you able to make any conclusions regarding the
17 amount of time that would have passed between the gunshot
18 wound and the death in this case?

19 A. He probably could have moved around for several
20 seconds and up to a minute.

21 Q. Okay.

22 A. And permanent death within a few minutes.

23 Q. Based on the autopsy you performed on Donnie Davis,
24 within the bounds of reasonable medical certainty, have
25 you formed an opinion concerning the cause of his death?

JANICE EDWARDS ROSS - DIRECT

1 A. Yes.

2 Q. And what is that opinion?

3 A. That is exsanguination which means to bleed out due to
4 the laceration of the heart and the aorta due to the
5 gunshot wound of the chest.

6 Q. I want to show you one more photograph that's been
7 previously marked for identification as State's Exhibit
8 Number Three. Can you explain to the jury what this
9 photograph is?

10 A. This is a photograph of an X-ray we did at the time of
11 autopsy just showing that, the presence of the bullet.

12 Q. So that shows the bullet inside the, inside the chest
13 cavity?

14 A. Yes.

15 Q. Does that fairly and accurately represent the X-ray
16 that was taken whenever you did the X-ray during autopsy?

17 A. Yes.

18 MR. MILLER: Your Honor, at this time we'd move to
19 introduce State's Exhibit Two -- or, excuse me, Three into
20 evidence and request that it not be published to the jury
21 at this time.

22 THE COURT: Any objection?

23 MS. ALVES: No, sir.

24 THE COURT: Without objection.

25 (State's Exhibit No. 3, photograph, received into

JOSHUA ROSIER - DIRECT

1 THE CLERK: Please have a seat on the witness box.

2 State your full name for the Court and spell your last.

3 THE COURT: Come right up here. Be careful. Couple
4 steps. How are you doing?

5 THE WITNESS: Good.

6 THE COURT: If you'd do me a favor. Please speak up
7 loud so they can hear you all the way over there.

8 Mr. Molony?

9 MR. MOLONY: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. MOLONY:

12 Q. Josh, will you spell your last name for the record,
13 please?

14 A. R-O-S-I-E-R.

15 Q. How old are you?

16 A. Twenty-two.

17 Q. Where are you currently living?

18 A. ACDC, Aiken County.

19 Q. Make sure you speak up, Josh, so everybody can hear
20 you in here. Josh, do you currently have charges pending?

21 A. Yes.

22 Q. And have you been promised anything for your testimony
23 here today?

24 A. No.

25 Q. Explain to the jury how you're related to the

JOSHUA ROSIER - DIRECT

1 Defendant.

2 A. That's my dad.

3 Q. Were you present on November 10th, 2012, when the
4 victim in this case, DJ Davis, was shot and killed?

5 A. Yes.

6 Q. And who shot him?

7 A. My dad.

8 Q. Referring to the Defendant?

9 A. Yeah.

10 Q. Now, Josh, I'm going to take you back a couple weeks
11 prior to that day. From October 25th of 2012, till
12 November 10th of 2012, where were you living at that
13 time?

14 A. Aiken County.

15 Q. You had charges pending at that time?

16 A. Yes.

17 Q. And did you have a bond set on those charges?

18 A. Yes.

19 Q. Did you have a girlfriend at that time?

20 A. Yes.

21 Q. What was her name?

22 A. Brittany Cook.

23 THE COURT: I'm sorry. Who?

24 THE WITNESS: Brittany Cook.

25 THE COURT: Brittany Cook?

JOSHUA ROSIER - DIRECT

1 THE WITNESS: Yes, sir.

2 BY MR. MOLONY:

3 Q. Were you speaking with Brittany Cook on the phone
4 during those weeks before the murder?

5 A. Yes, sir.

6 Q. And was she trying to help you get out of jail at that
7 time, bond you out?

8 A. Yes.

9 Q. Did she have any help? Was anyone else trying to help
10 her raise money to get you out of jail?

11 A. My dad and my brother, Calvin.

12 Q. Who's your brother?

13 A. Calvin Rosier.

14 Q. Were you aware while you were in jail if they were
15 communicating with one another trying to raise the money
16 to get out?

17 A. Yeah.

18 Q. And pay your bond?

19 A. Yes.

20 Q. And were you made aware at any time as to any
21 confrontation your dad, the Defendant, and Calvin, your
22 brother, had with your girlfriend, Brittany Cook?

23 MS. ALVES: Objection. Hearsay.

24 THE COURT: Overruled.

25 THE WITNESS: Yeah. That they was talking with each

JOSHUA ROSIER - DIRECT

1 other trying to get me out.

2 BY MR. MOLONY:

3 Q. Now were you made -- was Brittany Cook seeing anyone
4 else during that time, any other men?

5 A. Yeah. DJ. Donnie Davis.

6 Q. And did the Defendant and your brother, Calvin, did
7 they know that Brittany Cook was seeing DJ Davis?

8 A. Yes. Whenever they called her --

9 THE COURT: Don't talk about what people said. You
10 can't talk about that.

11 THE WITNESS: Whenever they was trying to communicate
12 on bonding me out, that DJ was --

13 MS. ALVES: Objection, Your Honor.

14 THE COURT: Sustained.

15 MS. ALVES: Objection.

16 THE COURT: As a result of what they told you, what
17 did you do? That's the way to ask the question if you
18 want to ask it.

19 BY MR. MOLONY:

20 Q. Did you have conversations during that time, phone
21 calls with your dad and your brother?

22 A. Yes.

23 Q. And what time frame are we looking at as far as from
24 November 10th, the day of the shooting, how long before
25 that were these conversations you were having with your

JOSHUA ROSIER - DIRECT

1 dad and brother?

2 A. November the 5th through the 10th.

3 Q. About five days?

4 A. Yes.

5 MR. MOLONY: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. MOLONY:

8 Q. Josh, I'm going to show you what's been previously
9 marked as State's Exhibits 19 and 20 and ask you if you
10 recognize those?

11 A. Yes.

12 Q. And what are they?

13 A. Phone calls from the jail.

14 Q. Have you -- okay. Have you listened to these phone
15 calls?

16 A. Yes.

17 Q. And are these phone calls true and accurate phone
18 calls of the phone calls you made with your father and
19 brother five days or so before November 10th of 2012?

20 A. Yes.

21 MR. MOLONY: Your Honor, at this time the State would
22 move to introduce Exhibits 19 and 20 into evidence and ask
23 that they may be published to the jury.

24 THE COURT: Subject to all the original pretrial
25 motions and objections already stated.

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1 MS. ALVES: I would make -- yes, sir. I would make
2 those original objections.

3 I also would object because it's hearsay, it contains
4 conversations between him and Calvin Rosier as well as
5 David Rosier. I think anything pertaining to the
6 conversation with Calvin --

7 THE COURT: I'll allow the ones with the Defendant.

8 MS. ALVES: They're mixed, Judge. There's no way to
9 separate them.

10 THE COURT: Yes, sir?

11 MR. MOLONY: Your Honor, may we approach?

12 (Off-the-record discussion.)

13 THE COURT: Let the record reflect we had a sidebar.
14 I'll allow the tapes to come in, 19 and 20. And,
15 Ms. Alves, you can put your full objection on the record
16 when we take a break.

17 MS. ALVES: Yes, sir.

18 THE COURT: Thank you.

19 (State's Exhibit Nos. 19 and 20, CD containing phone
20 calls, received into evidence.)

21 THE COURT: What number are you going to play first?

22 MR. MOLONY: Nineteen, Your Honor.

23 THE COURT: Nineteen.

24 (State's Exhibit No. 19, played for the jury.)

25 THE COURT: All right. Stop it. Stop it.

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1 (Audio playback stopped.)

2 THE COURT: Thank you. Turn the volume up, please.

3 (Audio playback started.)

4 THE COURT: Everybody hear it? Ma'am, are you having
5 trouble? Hold on one second.

6 (Audio playback stopped.)

7 THE COURT: Do you want to move down to the front?
8 Let me move somebody back to the back. I'm talking to
9 her, ma'am. Can you hear it? I need you to be able to
10 hear it.

11 THE JUROR: I guess it's the voice I'm having trouble
12 understanding.

13 THE COURT: I can't make them speak more distinctly.
14 I can make it play louder. Ready? Anybody having
15 trouble, please raise their hand.

16 (Audio playback started.)

17 THE COURT: Put it on hold a minute for me.

18 (Audio playback stopped.)

19 THE COURT: Yes, ma'am?

20 THE JUROR: I can't make out what they're saying.

21 THE COURT: I can't make it any plainer, ma'am. Thank
22 you.

23 THE JUROR: (Nods head).

24 THE COURT: It's not the volume, it's --

25 THE JUROR: The clarity.

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1 THE COURT: It's not the clarity. It's just the guy's
2 talking mumbled. I guess, that's what y'all say. So
3 what's wrong with it now?

4 MR. MILLER: We were trying to get some better
5 speakers on it.

6 THE COURT: I don't think that's the problem. The
7 problem is the diction I guess is what you want to say. I
8 don't think you can correct that.

9 (Audio played for the jury from 10:09 a.m., until
10 10:27 a.m.)

11 BY MR. MOLONY:

12 Q. All right. Josh, help us understand these two phone
13 calls a little bit. When the Defendant says DSAB what
14 does that stand for?

15 A. Down South Aiken Boy.

16 THE COURT: Stands for what?

17 THE WITNESS: Down South Aiken Boy.

18 BY MR. MOLONY:

19 Q. What about CWB?

20 A. Crazy White Boy.

21 Q. Through the conversation when Calvin and your father
22 are telling us they've declared war, who did you think
23 they were talking about?

24 MS. ALVES: Objection, Your Honor. Calls for
25 speculation.

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1 THE COURT: What did you understand it to mean?

2 THE WITNESS: Me?

3 THE COURT: Yeah.

4 THE WITNESS: That they declare war with CJ, DJ, Colby
5 and Russell.

6 BY MR. MOLONY:

7 Q. Okay. Who's CJ?

8 A. That's my cousin, Carlton Shaw.

9 Q. And who's Colby?

10 A. Colby Reed.

11 Q. And who's Russell?

12 A. Russell Blackmon.

13 Q. Were all four of those friends at the time, close
14 friends?

15 A. Yes.

16 Q. At that time after those phone calls, what did you
17 expect the plan was? What was the plan when you got out
18 of jail?

19 A. We was going to go beat their ass.

20 Q. All of them?

21 A. Yes.

22 Q. When you say we, who are you referring to?

23 A. Me and my daddy and my brother, Calvin.

24 Q. You say your daddy. You're referring to the
25 Defendant?

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1 A. Yes.

2 Q. So, Josh, did you eventually bond out of jail?

3 A. Yeah.

4 Q. What day was that?

5 A. November 10th.

6 Q. Who bonded you out?

7 A. My dad, David, and my brother, Calvin.

8 Q. What time was that? Do you remember what time you got
9 out?

10 A. Eleven o'clock.

11 Q. In the morning?

12 A. Yes.

13 Q. Who came and picked you up?

14 A. My dad, David, and my brother, Calvin, and Cody Muns.

15 Q. Who's Cody?

16 A. A friend of my brother's.

17 Q. How old's your brother, Calvin?

18 A. Twenty-four, I believe.

19 Q. At that time when you get out of jail, were you and
20 Brittany still boyfriend-girlfriend?

21 A. We was still talking.

22 Q. Did you see her immediately after you got out of jail?

23 A. Yes.

24 Q. What time did you see her?

25 A. Probably around eight o'clock that night, nine

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1 o'clock.

2 Q. Right prior to seeing Brittany, who were you with?

3 A. My, my dad and my brother.

4 Q. Where were y'all?

5 A. We were, we went to Terry's house and then we went to
6 the bait shop.

7 Q. What's the bait shop?

8 A. Rainbow Falls Bait Shop.

9 Q. What is the bait shop?

10 A. Like, a store.

11 Q. What did y'all do there?

12 A. Watched the game and was drinking.

13 Q. Were all of you drinking?

14 A. Yes.

15 Q. Including the Defendant?

16 A. Yes.

17 Q. Okay. So you stated that around nine or so you spoke
18 with Brittany Cook that night?

19 A. Yes.

20 Q. Where did you speak with her at?

21 A. We went by her dad's house, Barry.

22 Q. Where is that at?

23 A. Right there in Graniteville by Gurley's.

24 Q. Who went there with you?

25 A. Me and my dad and my brother, Calvin, and Cody.

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1 Q. Was anyone with Brittany Cook that night?

2 A. Yeah.

3 Q. Who?

4 A. Autumn.

5 THE COURT: Who?

6 THE WITNESS: Autumn.

7 BY MR. MOLONY:

8 Q. Do you know Autumn's last name?

9 A. Starts with an S. I don't know.

10 Q. Is it a male or female?

11 A. It's a female.

12 Q. Did y'all leave Brittany Cook's house that night?

13 A. Yes.

14 Q. Who all left?

15 A. Me and my dad and my brother, Calvin, Cody, Brittany
16 and Autumn.

17 Q. Who was driving at that point?

18 A. Autumn.

19 Q. Where was the Defendant sitting in the vehicle?

20 A. Passenger seat.

21 Q. Where were you sitting?

22 A. In the back.

23 Q. What about Brittany?

24 A. In the back.

25 Q. Calvin?

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- 1 A. Back.
- 2 Q. And Cody?
- 3 A. In the back.
- 4 Q. Whose vehicle were y'all in?
- 5 A. Terry Phillips, Cody's dad.
- 6 Q. So you leave Brittany Cook. And now y'all have the
- 7 girls. Where do y'all go next?
- 8 A. We stop by Katie Parker's house for a second.
- 9 Q. Who's Katie Parker?
- 10 A. A friend of my dad's.
- 11 Q. Approximately how long were y'all there?
- 12 A. Three minutes.
- 13 Q. Where did y'all go next?
- 14 A. Russell's house.
- 15 Q. Why did y'all go to Russell's house?
- 16 A. Because when we picked Autumn and Brittany up --
- 17 Q. Don't tell me what they said, but what was, what was
- 18 the main purpose for going to the residence that night?
- 19 A. We went down there to get the dope that they had and
- 20 jump on DJ and Russell and Colby.
- 21 Q. When you say jump on them, what do you mean?
- 22 A. Whoop their ass.
- 23 Q. When you say Russell Blackmon's house, is that house
- 24 at Street?
- 25 A. Yes.

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1 Q. Was the Defendant upset with that group of guys still?

2 A. Yes.

3 Q. And you were still upset with the group of guys?

4 A. Yes.

5 Q. Were y'all still sitting in the same areas of the
6 vehicle?

7 A. Yes.

8 Q. All right. When you get to Street, did
9 anyone get out of the vehicle?

10 A. We circled around one time, come back through and me
11 and my dad got out.

12 Q. Where did y'all get out of the vehicle at? Where was
13 the car? Was it right in front of the house?

14 A. No. It was parked down the road a little bit, like
15 when you go around the curve.

16 MR. MOLONY: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MR. MOLONY:

19 Q. I'm going to show you what's been marked as State's
20 Exhibits Four and Five, Josh, and ask if you recognize
21 them, starting with Four.

22 A. Yeah, yeah.

23 Q. And Five?

24 A. Yes.

25 Q. Okay. What is State's Exhibit Four?

JOSHUA ROSIER - DIRECT

1 A. That's Church Street. There's the house. And that's
2 the little curve we stopped at, got out.

3 Q. Okay. And what's State's Exhibit Five?

4 A. That's the house we walked to.

5 Q. Are both of these fair and accurate representations as
6 to State's Four of the overview of Street and
7 State's Exhibit Five, the house you entered that night at
8 Street?

9 A. Yes.

10 MR. MOLONY: Your Honor, at this time the State would
11 move to introduce State's Exhibit Four and Five.

12 THE COURT: Any objection?

13 MS. ALVES: I just need -- turn it around.

14 MR. MOLONY: (Complying.)

15 MS. ALVES: No objection.

16 THE COURT: Without objection.

17 (State's Exhibit Nos. 4 and 5, photographs, received
18 into evidence.)

19 BY MR. MOLONY:

20 Q. Okay. Josh, is the red -- I mean, excuse me. The
21 yellow pen there, is that where the house is at
22 Street?

23 A. Yes.

24 Q. Okay. You said that y'all stopped at the curve. Can
25 you --

JOSHUA ROSIER - DIRECT

1 A. Yes.

2 Q. -- point and show where y'all stopped at?

3 A. Right, right there.

4 Q. Okay. So you parked right here and your dad and
5 yourself get out of the vehicle at that time?

6 A. Yes.

7 Q. Did your dad have a gun on him at that time?

8 A. No.

9 Q. Did you have a gun?

10 A. No.

11 Q. So y'all start walking up to the house?

12 A. Yes.

13 Q. What if anything did you become armed with at that
14 time.

15 A. A knife.

16 Q. What did that knife look like?

17 A. It was blue.

18 Q. Who gave you that knife?

19 A. My dad.

20 Q. Explain that knife a little bit. What did it look
21 like? Was it your normal knife? What did it look like?

22 A. No, it was a blue box cutter knife.

23 Q. Like a razor blade on it?

24 A. Yeah.

25 Q. When did he give that to you?

JOSHUA ROSIER - DIRECT

- 1 A. When we was walking to the house.
- 2 Q. Why did he give it to you?
- 3 A. In case I needed it.
- 4 Q. Where did you put the knife whenever you got it?
- 5 A. In my pocket.
- 6 Q. So did you approach the front door of the residence at
- 7 that time?
- 8 A. Yes.
- 9 Q. Who knocked on the door? Did you knock on the door?
- 10 A. My dad knocked on the door.
- 11 Q. What did your dad say?
- 12 A. CJ asked who was it and my dad said Dollah. Dollar
- 13 Bill. That's what everybody calls him.
- 14 Q. Dollah?
- 15 A. Yeah.
- 16 Q. Is that what he refers -- the Defendant refers to
- 17 himself as Dollah?
- 18 A. Yes.
- 19 Q. Do you have a nickname that he refers to you as?
- 20 A. Little Man.
- 21 Q. All right. So, you said CJ. Is that the same CJ you
- 22 referred to earlier in the jail calls as your cousin?
- 23 A. Yes.
- 24 Q. Again, what's his name for the record?
- 25 A. Carlton Shaw.

JOSHUA ROSIER - DIRECT

1 Q. So does Carlton -- did he open the door at that time?

2 A. Yeah.

3 MR. MOLONY: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. MOLONY:

6 Q. Josh, I'm going to show you what's been marked as
7 State's Exhibit Six and ask you if you recognize that.

8 A. Yeah. That's inside the house, the couch.

9 Q. Is this picture a fair and accurate representation of
10 the house you went in that night at that time?

11 A. Yes.

12 MR. MOLONY: Your Honor, at this time the State would
13 introduce Exhibit Six.

14 MS. ALVES: No objection.

15 THE COURT: Without objection.

16 (State's Exhibit No. 6, photograph, received into
17 evidence.)

18 BY MR. MOLONY:

19 Q. Is this view of State's Exhibit Six kind of what you
20 would view as soon as you went in the front door?

21 A. Yes.

22 Q. Okay. So, when you open that door, who's in this
23 room?

24 A. CJ, Carlton, my cousin, and DJ.

25 Q. Okay. CJ is Carlton; is that right?

JOSHUA ROSIER - DIRECT

- 1 A. My cousin.
- 2 Q. All right. And DJ?
- 3 A. Yes.
- 4 Q. Where is DJ sitting?
- 5 A. On the couch.
- 6 Q. What side of the couch?
- 7 A. The -- yeah, that side.
- 8 Q. Okay. So you walk in and DJ's sitting on this side of
- 9 the couch. What did you do next?
- 10 A. Me and him got in a fight. We started fighting.
- 11 Q. Well, when you -- did you hit him first?
- 12 A. Yes.
- 13 Q. While he was still sitting down?
- 14 A. Yes.
- 15 Q. And at that point did he stand up?
- 16 A. Yes.
- 17 Q. Where was the knife at this time?
- 18 A. In my pocket.
- 19 Q. Did he fight back?
- 20 A. He, he hit me a couple times.
- 21 Q. Okay. So as y'all are standing there fighting, was CJ
- 22 still in the room?
- 23 A. Yes.
- 24 Q. Who if anyone entered the room at that time?
- 25 A. Russell Blackmon.

JOSHUA ROSIER - DIRECT

1 Q. Is that the same Russell Blackmon you referred to
2 earlier as being part of that little group of friends?

3 A. Yes.

4 Q. And what if anything did you see Russell Blackmon
5 holding at that time?

6 A A .357 pistol.

7 Q. What type of pistol is that?

8 A. It's a revolver.

9 Q. What if anything did you see the Defendant do when
10 Russell Blackmon entered the room?

11 A. He hit him.

12 Q. What happened -- what, if anything, happened to the
13 gun at that time?

14 A. It fell on the floor.

15 Q. Did it fall -- where did it fall in this room, State's
16 Exhibit Six?

17 A. Like, right there in front of the table.

18 Q. Okay. Where are you and DJ at this time?

19 A. In front of the couch.

20 Q. Okay. So what did, what did you do at that time?

21 A. I cut DJ.

22 Q. Well, how did you cut him?

23 A. With the knife.

24 Q. Which knife?

25 A. The knife I got from my dad.

JOSHUA ROSIER - DIRECT

1 Q. Okay. While that gun's on the ground who, who if
2 anyone did you see grab the gun?

3 A. My dad.

4 Q. What did Russell Blackmon do at that time?

5 A. He took off out of the room.

6 Q. Did you ever see him again that night?

7 A. No.

8 Q. Did you ever see anyone else enter the room again that
9 night?

10 A. No.

11 Q. All right. At that point you said you're cutting DJ?

12 A. Yes.

13 Q. Was he still standing up?

14 A. No.

15 Q. Where was he?

16 A. On the couch.

17 Q. All right. Again, I'm going to show you State's
18 Exhibit Six. Was he on the same side of the couch at that
19 point as he was when you were sitting -- or walked in?

20 A. No.

21 Q. He was on the opposite side?

22 A. Yes.

23 Q. Okay. What hand did you have the knife in?

24 A. My left hand.

25 Q. Are you left handed?

JOSHUA ROSIER - DIRECT

1 A. Yes..

2 Q. So, as you're cutting on DJ -- and he's on this side
3 of the couch, is that right?

4 A. Yes.

5 Q. Where is your dad standing, the Defendant?

6 A. In front, in front of the table, like, by the door.

7 Q. Okay. Almost like when you walk in the residence?

8 A. Yeah.

9 Q. Where was your right hand as you're cutting DJ?

10 A. Like, on his chest.

11 Q. What made you stop at that time?

12 A. He got shot. Heard a gunshot.

13 Q. You heard a boom?

14 A. Yeah.

15 Q. When you looked to that corner of the room, who did
16 you see standing there?

17 A. My dad.

18 Q. Was he still holding that same revolver?

19 A. Yes.

20 Q. What if anything did you see your dad do with the
21 pistol at that time?

22 A. We left out the house.

23 Q. Where was CJ before y'all left? Where was CJ at? Was
24 he in the room?

25 A. Yeah, yeah, before we went out the house, CJ started

JOSHUA ROSIER - DIRECT

1 crying and he, like, pointed the gun at CJ, Carlton.

2 Q. He pointed the gun. Who pointed the gun?

3 A. My dad.

4 Q. Is CJ related to your dad?

5 A. Yes.

6 Q. What if anything did you say to your dad at that time
7 when the gun's pointed at CJ?

8 A. No, that's our cousin. That's my cousin.

9 Q. Did the Defendant put the gun down at that time?

10 A. Yes.

11 Q. What did y'all do?

12 A. Went out the house and met them, got back into the
13 truck.

14 Q. Where was the truck parked at that time?

15 A. It was right there basically where we got dropped off
16 but up a little bit more, like, closer to the house.

17 Q. Okay. State's Four, you stated you were dropped off
18 right at the curve?

19 A. Yeah.

20 Q. It was -- were you closer to the residence at that
21 time?

22 A. Yes.

23 Q. Okay. So, when you go and you get into the vehicle,
24 who opens the door to the vehicle?

25 A. My dad.

JOSHUA ROSIER - DIRECT

1 Q. And what did you do at that time?

2 A. Grabbed the passenger seat, pushed it open, got into
3 the back.

4 MR. MOLONY: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. MOLONY:

7 Q. Josh, I'm going to show you what's been marked for
8 identification as State's Exhibit Seven, Eight and Nine.
9 And tell me if you recognize them; yes or no.

10 A. Yes.

11 Q. And, as to each, what are these pictures of?

12 A. That's the truck that we was in and that's where I
13 lifted the seat up.

14 Q. That's Eight you're talking about?

15 A. Yeah.

16 Q. Okay. And Seven again? I'm sorry, for the record.

17 A. That's the truck we was in.

18 Q. And Nine?

19 A. That's my hand print from where I lifted the seat up.

20 Q. Okay. Are these fair and accurate representations of
21 the vehicle that you got in that night and the seat that
22 lifted up?

23 A. Yes.

24 MR. MOLONY: Your Honor, at this time the State would
25 move to introduce Seven, Eight and Nine.

JOSHUA ROSIER - DIRECT

1 MS. ALVES: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit Nos. 7, 8 and 9, photographs,
4 received into evidence.)

5 BY MR. MOLONY:

6 Q. Josh, after you lift this seat up, where do you sit?

7 A. In the back.

8 Q. Who's in the back seat at that time?

9 A. Brittany Cook, my brother, Calvin, and Cody.

10 Q. What about your dad, the Defendant? Where did he sit?

11 A. Got back in the passenger seat.

12 Q. The front passenger seat?

13 A. Yes.

14 Q. What did you have in your hand at that time if
15 anything?

16 A. The knife.

17 Q. What if anything did the Defendant have in his hand
18 when he got back in that vehicle?

19 A. The gun.

20 Q. Is that the same gun that --

21 A. Yes.

22 Q. -- he picked up?

23 A. Yes.

24 Q. At that time, what if anything did you notice with
25 regards to your right hand?

JOSHUA ROSIER - DIRECT

- 1 A. I was shot.
- 2 Q. Where were you shot?
- 3 A. In my finger.
- 4 Q. Show the jury.
- 5 A. (Complying.)
- 6 Q. Where?
- 7 A. Right here.
- 8 Q. Did you know before that point that you had been shot?
- 9 A. No.
- 10 Q. What did you -- what did you, if anything, tell your
- 11 father at that time?
- 12 A. That I was shot.
- 13 Q. What, if anything, did your dad say?
- 14 A. Next time I move out of the fucking way.
- 15 Q. All right. So, Autumn's still driving that vehicle?
- 16 A. Yes.
- 17 Q. Where did y'all go?
- 18 A. We went to drop my brother, Calvin, and Cody off.
- 19 Q. Where did y'all drop them off at?
- 20 A. The Waffle House, off Exit One.
- 21 Q. Why did you drop them off?
- 22 A. We wanted to get out.
- 23 Q. Were they -- did they appear emotional at all to you?
- 24 A. Yes.
- 25 Q. Were they --

JOSHUA ROSIER - DIRECT

1 A. Crying.

2 Q. Okay. So once you drop them off, where did y'all go
3 next?

4 A. Across the street.

5 Q. What was across the street?

6 A. Gas station. I don't know, I don't know the name of
7 it. It's right across the street from the Waffle House.

8 MR. MOLONY: Your Honor, may I approach?

9 THE COURT: You may.

10 MS. ALVES: No objection to 10. What number is that?

11 MR. MOLONY: Ten.

12 MS. ALVES: Ten?

13 MR. MOLONY: Ten.

14 MS. ALVES: Thank you.

15 BY MR. MOLONY:

16 Q. Josh, I'm showing you what's been marked as State's
17 Exhibit 10 and ask if you recognize it.

18 A. Yes.

19 Q. What is this?

20 A. That's the Waffle House. That's the gas station we
21 went to.

22 Q. Is this picture a fair and accurate representation of
23 the area y'all were at after the murder that night?

24 A. Yes.

25 MR. MOLONY: Your Honor, at this time the State would

JOSHUA ROSIER - DIRECT

1 move to introduce State's Exhibit 10.

2 MS. ALVES: No objection.

3 THE COURT: Without objection.

4 (State's Exhibit No. 10, photograph, received into
5 evidence.)

6 BY MR. MOLONY:

7 Q. When you drop them off at the Waffle House and you go
8 across to the gas station, what if anything do you
9 remember happening with regard to the knife at the
10 station?

11 A. Gave to it Brittany and told her to do something with
12 it. She gave it to Autumn. Autumn rinsed it off in that
13 little black trash can right there at the gas pump and
14 wrapped it up in some paper towels and threw it away. And
15 my dad went in and paid for the gas.

16 Q. So the blue knife that your dad had given you walking
17 into that residence, that's where it was thrown away at?

18 A. Yes.

19 Q. Where did y'all go next?

20 A. Went to a motel and -- over there in Augusta by the
21 jail.

22 Q. All right. How long were y'all there?

23 A. Not long.

24 Q. What's not long?

25 A. Maybe five to 10 minutes.

JOSHUA ROSIER - DIRECT

1 Q. What happened there? Anything?

2 A. We just was sitting there figuring out where we was
3 going to go, and my dad tried to sell the gun to somebody
4 over there.

5 Q. What -- where did y'all go from there?

6 A. We met up with one of Autumn's friends, Dana, and went
7 to Augusta.

8 Q. All right. Autumn. Again Autumn is the --

9 A. Driver.

10 Q. -- female driver of the vehicle?

11 A. Yes.

12 Q. You said it was her friend. So that was her contact
13 person?

14 A. Yes.

15 Q. Did you know this Dana?

16 A. No.

17 Q. Was it a male or female?

18 A. Male.

19 Q. How did y'all get there?

20 A. Autumn drove us over there.

21 Q. Did you know where you were going?

22 A. Yeah. I mean, I ain't never been there before
23 but we knew we was going over there.

24 Q. What was the purpose of going over to that residence?

25 A. To get away from the cops.

JOSHUA ROSIER - DIRECT

1 Q. Did your dad, the Defendant, still have that pistol in
2 his possession at that point?

3 A. Yes.

4 Q. Explain to the jury what happened to the pistol while
5 you were at that residence in Augusta.

6 A. He sold it. Sold it.

7 Q. Who sold it?

8 A. My dad sold it.

9 Q. Who did he sell it to?

10 A. A young black male driving a gray Mustang.

11 Q. Did you know the young black male that bought the
12 pistol?

13 A. No.

14 Q. Did your dad know, to your knowledge?

15 A. No.

16 Q. Who was the -- who set that up?

17 A. Autumn, Autumn's friend Dana, the white dude.

18 Q. At that point, did you still -- what were you wearing
19 at that point?

20 A. A red shirt and some blue jean pants.

21 Q. Did you have DJ's blood on you at that point?

22 A. Yes.

23 Q. What did you do? What if anything did you do with
24 those clothes at that time?

25 A. I took a shower and took them out there and put them

JOSHUA ROSIER - DIRECT

1 in a burn barrel behind the house.

2 MR. MOLONY: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. MOLONY:

5 Q. Josh, I'm going to show you what's been marked as
6 State's Exhibits 11 and 12 and ask you if you recognize
7 these.

8 A. Yes.

9 Q. All right. As to State's 11, what is this?

10 A. That's the truck we was in and the house we was at.

11 Q. Okay. And where was this house?

12 A. In Augusta.

13 Q. All right. And State's Exhibit 12?

14 A. That's the burn barrel I put my clothes in.

15 Q. Where was that burn barrel?

16 A. Behind that house.

17 Q. Okay. Are both of these fair and accurate
18 representations, as to State's 11, the house you were at
19 that night and the vehicle y'all were in, and as to
20 State's 12, the burn barrel you threw your shirt away in?

21 A. Yes.

22 MR. MOLONY: Your Honor, at this time the State would
23 move to introduce State's Exhibits 11 and 12.

24 MS. ALVES: No objection.

25 (State's Exhibit Nos. 11 and 12, photographs, were

JOSHUA ROSIER - DIRECT

1 received into evidence.)

2 BY MR. MOLONY:

3 Q. How long were y'all at this house?

4 A. We got there that night, maybe around 12 o'clock, that
5 whole next day and a little bit the day after.

6 Q. What day of the week was that, November 10th; do you
7 remember?

8 A. No.

9 Q. Okay. So, you were -- you stayed there one whole
10 night; is that right?

11 A. Yes.

12 Q. And the next day you left?

13 A. Yes.

14 Q. When did the Defendant leave?

15 A. He left before, before we did.

16 Q. How much longer before?

17 A. Maybe two to three hours before.

18 Q. What mode of transportation did the Defendant use to
19 leave the residence that night?

20 A. He walked.

21 Q. And what about y'all? When the Defendant leaves, did
22 you and Autumn and Brittany discuss at that point in time
23 what y'all's story needed to be to the law enforcement
24 officials?

25 A. Yes. We was going to put everything on my dad.

JOSHUA ROSIER - DIRECT

1 Q. Who picked y'all up?

2 A. Brittany's daddy, Barry.

3 Q. Okay. And were you arrested the day after that?

4 A. After we left Augusta?

5 Q. Yeah.

6 A. Yes.

7 Q. What were you originally charged with?

8 A. I was really charged with murder.

9 Q. Okay. And, at that time did you give law enforcement
10 a statement?

11 A. Yes.

12 Q. Was that statement truthful?

13 A. No.

14 Q. Was that statement the same little story that you
15 three got together in the house in Augusta, you and Autumn
16 and Brittany?

17 A. Yes.

18 Q. Did you take law enforcement officials to that
19 residence in Augusta?

20 A. Yes, yes.

21 Q. Was the vehicle still there?

22 A. Yes.

23 Q. After you gave that story to law enforcement, what,
24 what charges were you brought with at that time?

25 A. Accessory after the fact of murder and assault and

CATHERINE LEISY - DIRECT

1 Sheriff's Office evidence locker?

2 A. Correct.

3 MR. MILLER: No further questions, Your Honor.

4 THE COURT: Cross?

5 MS. ALVES: No cross.

6 THE COURT: Ma'am?

7 MS. ALVES: I don't have any cross.

8 THE COURT: Thank you. You may step down. Next
9 witness, please.

10 MR. MILLER: Your Honor, the State calls Catherine
11 Leisy.

12 THE COURT: Come around, Ms. Leisy.

13 CATHERINE LEISY, having been duly sworn, was examined
14 and testified as follows:

15 THE CLERK: Please have a seat in the witness box.
16 State your full name for the Court and spell your last.

17 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

18 DIRECT EXAMINATION

19 BY MR. MILLER:

20 Q. Ms. Leisy, who do you work for?

21 A. I work for the South Carolina Law Enforcement Division
22 more commonly known as SLED.

23 Q. And how long have you been employed by SLED?

24 A. For seven years.

25 Q. And what are your job responsibilities with SLED?

CATHERINE LEISY - DIRECT

1 A. I am a forensic scientist assigned to the DNA and
2 serology unit. My responsibilities include processing
3 forensic cases, generating reports based upon the results
4 and conclusions that I draw, testifying to those reports
5 as necessary. I'm also responsible for maintaining
6 control measures in the lab, instrument maintenance, and
7 training of newly-hired analysts.

8 Q. Can you please explain to the jury your educational
9 background and any specialized training you've received to
10 do your job at SLED?

11 A. I have a bachelor of science degree in genetic
12 engineering from Cedar Crest College in Allentown,
13 Pennsylvania. I have received in-house training at SLED
14 by other court-qualified analysts in all the different
15 types of tests and analysis I'm required to perform.

16 I'm also required to attend continuing education.
17 Basically just seminars and training meetings reflecting
18 different and new techniques available to DNA analysis
19 testing.

20 Q. Have you ever been qualified as an expert witness in
21 the State of South Carolina?

22 A. Yes, I have.

23 Q. Do you know approximately how many times?

24 A. Approximately 35.

25 Q. Your Honor, at this time I would move to have

CATHERINE LEISY - DIRECT

1 Ms. Leisy qualified as an expert witness in the field of
2 DNA analysis subject to any voir dire of qualifications to
3 be so qualified by the defense.

4 MS. ALVES: I don't have any objection to Ms. Leisy
5 being qualified as an expert in DNA analysis.

6 THE COURT: Thank you, ma'am. She'll be allowed to
7 give opinion testimony and qualified as an expert.

8 MR. MILLER: Thank you, Your Honor.

9 Q. Ms. Leisy, how do you get swabs to test them for DNA?

10 A. Swabs can either be submitted by the agency working
11 the case. They may be collected by the evidence
12 processing or crime scene individuals who work for that
13 agency. The agencies may also bring the entire piece of
14 evidence to us and we have evidence processing and
15 serology technicians who can take swabs from those items
16 if necessary.

17 Q. Did you test multiple swabs in this case?

18 A. Yes, I did.

19 Q. By referring to your notes if you need to, can you
20 explain to the jury what types of items you were testing?

21 A. I received multiple swabs taken from a 1999 Ford
22 Explorer; I received cuttings taken from a pair of khaki
23 shorts; received a swab taken from a front porch; as well
24 as a swab taken from a folding knife.

25 THE COURT: What was the last one?

CATHERINE LEISY - DIRECT

1 THE WITNESS: A folding knife.

2 BY MR. MILLER:

3 Q. Did you also obtain a profile from a swab that was
4 developed from the victim's blood that was taken at
5 autopsy?

6 A. Yes, I did.

7 Q. Can you explain in general terms how that's done?

8 A. Oftentimes a tube of blood will be brought to the lab
9 to be used as what is known as a DNA standard for a known
10 individual.

11 When the tube of blood is brought in, a small portion
12 of the blood is poured onto a sterile piece of paper. It
13 allows us to store the blood for a longer period of time
14 and keep it stable so that we can go back and test at a
15 later time if necessary.

16 Q. I'm going to show you what's been previously marked as
17 State's Exhibit One. And can you explain to me what that
18 item is? Or, explain to the jury what that item is.

19 A. This is the heat-sealed pouch that items are placed
20 into when they're brought to SLED for analysis. This
21 particular pouch contains the DNA blood standard that was
22 identified as SLED Item Number 1.1, the standard of Donnie
23 Davis.

24 It also contains a coin envelope, a small brown
25 envelope inside. That contained the piece of paper that

CATHERINE LEISY - DIRECT

1 had the portion of blood poured onto it for storage.

2 Q. And were you able to develop a DNA profile from your
3 SLED Item 1.1?

4 A. Yes, I was.

5 MR. MILLER: Your Honor, at this time the State would
6 request that State's Exhibit One be admitted into
7 evidence. I'm not sure if it was previously or not.

8 THE COURT: Any objection?

9 MS. ALVES: No, Your Honor.

10 THE COURT: Without objection.

11 (State's Exhibit No. 1, blood evidence, received into
12 evidence.)

13 BY MR. MILLER:

14 Q. Ms. Leisy, I'm going to show you what's been
15 previously marked for identification as State's Exhibit
16 23. Can you explain to the jury what is in State's
17 Exhibit 23?

18 A. This heat-sealed pouch contains the swab that was
19 identified as being taken from the back side of the front
20 passenger seat of the 1999 Ford Explorer. I recognize
21 both the SLED case number as well as item number and my
22 initials on the bottom of the envelope identifying it.

23 Q. Were you able to develop a DNA profile from the swab
24 taken by Investigator Watts, your SLED Item Number 13?

25 A. Yes, I was.

1 MR. MILLER: Your Honor, at this time the State would
2 move to introduce exhibit, State's Exhibit 23 into
3 evidence.

4 THE COURT: Any objection?

5 MS. ALVES: No, Your Honor.

6 (State's Exhibit No. 23, swab for forensics, was
7 received into evidence.)

8 BY MR. MILLER:

9 Q. Ms. Leisy, were you able to compare the DNA profiles
10 developed from Item 1.1 to the DNA profile developed from
11 Item 13?

12 A. Yes, I was.

13 Q. And what were your findings regarding that
14 comparison?

15 A. I determined that the DNA profile developed from swab
16 from the back side of the front passenger seat is a
17 mixture of at least two individuals; that the DNA profile
18 developed from the major contributor to that mixture
19 matches the DNA profile of Donnie Davis; and that the
20 probability of randomly selecting an unrelated individual
21 having a DNA profile matching the major contributor is
22 approximately one in 95,000,000,000,000 (trillion).

23 MR. MILLER: Thank you. No further questions.

24 THE COURT: Cross, if any?

25 MS. ALVES: No cross.

CALVIN ROSIER - DIRECT

1 HE COURT: You may step down. Thank you. Next
2 witness.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: May she be excused from her subpoena?

5 MR. MILLER: The State would request that, Your Honor.

6 THE COURT: Ms. Alves?

7 MS. ALVES: I don't have any objection.

8 THE COURT: Thank you, ma'am. You may go. Next
9 witness.

10 MR. MOLONY: Your Honor, the State calls Calvin
11 Rosier.

12 CALVIN ROSIER, having been duly sworn, was examined
13 and testified as follows:

14 THE CLERK: Please have a seat in the witness box.
15 State your full name for the Court and spell your last.

16 THE WITNESS: Calvin Rosier.

17 DIRECT EXAMINATION

18 BY MR. MOLONY:

19 Q. Calvin, how old are you?

20 A. Twenty-four.

21 Q. Explain to the jury how you're related to the
22 Defendant, David Rosier.

23 A. That's my father.

24 Q. How about Josh Rosier?

25 A. That's my brother.

CALVIN ROSIER - DIRECT

1 Q. Your little brother?

2 A. Yes, sir.

3 Q. Now, Calvin, do you currently have charges pending in
4 relation to this case that we're all here for today?

5 A. Yes, sir.

6 Q. Have you been promised anything at all in exchange for
7 your testimony here today?

8 A. No, sir.

9 Q. Were you with the Defendant on the night of November
10 10th of 2012?

11 A. Yes, sir.

12 Q. Were you with the Defendant and your brother when they
13 got out of the vehicle at Street that night?

14 A. Was I -- are you asking me was I in the car with
15 them?

16 Q. Were you in the car?

17 A. Yes.

18 Q. Did you see them get out of the vehicle that night?

19 A. Yes.

20 Q. Did you see them get back in the vehicle?

21 A. Yes.

22 Q. At that time what, if anything, did you see your dad
23 have in his hand?

24 A. I didn't see it in his hand. It was kind of like at
25 his lap. It was, it was a gun.

CALVIN ROSIER - DIRECT

1 Q. Had you seen that gun before?

2 A. Yeah. It looked similar to the one that my cousin
3 showed me, CJ.

4 Q. When did CJ show you this gun?

5 A. It was, it happened in November so it was like the end
6 of the summer then, though, before that happened.

7 Q. What type of gun was it?

8 A. It was like, like an old western-looking
9 gun.

10 Q. Was it an automatic pistol? Was it a revolver?

11 A. Yeah. Just a regular one that you -- yeah, the
12 revolving.

13 Q. Okay. When y'all drove away from the residence that
14 night, explain to the jury what your emotions were like at
15 that time.

16 A. I mean, at first I was trying to, like, wondering, you
17 know, what was going on, you know, what had happened and
18 stuff. And then we was just riding and I seen my brother,
19 he was leaning down like this (indicating), you know. And
20 I was wondering what was wrong with him. He just kept
21 saying I'm all right, I'm all right.

22 My dad, he was, like, kind of quiet and stuff. I was
23 kind of wondering, you know, what happened, what's going
24 on and stuff, you know.

25 And, finally Brittany had pulled it up on the Facebook

CALVIN ROSIER - DIRECT

1 after we got to the gas station in Georgia, said that --

2 MS. ALVES: Objection, hearsay.

3 THE COURT: Can't say what she said.

4 BY MR. MOLONY:

5 Q. What were your emotions? Once you -- when did you
6 find out that DJ Davis had been killed?

7 A. Whenever they looked on the Facebook and said that he
8 had --

9 MS. ALVES: Objection, hearsay.

10 BY MR. MOLONY:

11 Q. Don't tell me what they said. But, where were you
12 when that happened?

13 A. In the car at the gas station.

14 Q. When you left the gas station, where did you go?

15 A. I took, I asked my dad would he take me home and he
16 took me to the Waffle House in North Augusta and dropped
17 me and Cody off.

18 Q. And who's Cody?

19 A. My boss's son who I stay with, who I was staying with.

20 Q. Is he a friend of yours?

21 A. Yes.

22 Q. Did you ever go into that residence at
23 Street?

24 A. No, sir.

25 Q. Now you were aware before that night that David

CALVIN ROSIER - CROSS

CROSS-EXAMINATION

1
2 BY MS. ALVES:

3 Q. Now, Calvin, when you were talking to -- do you
4 remember when Josh was in jail?

5 A. Yes.

6 Q. And you and your dad were trying to get up bond money
7 to get him out?

8 A. Yes, ma'am.

9 Q. And tell me what you did to get bond money.

10 A. Me and my dad went out there and we tore the copper
11 out the walls and stuff at the house that we grew up in
12 and stuff just to bond him out.

13 Q. You have -- that was the house -- I want to be clear.
14 The house that you grew up in?

15 A. Yeah.

16 Q. Where is that house?

17 A. In Trenton.

18 Q. In Trenton. Does anybody live in that house now?

19 A. No, ma'am.

20 Q. Do you have stuff in that house?

21 A. There was some stuff in there.

22 Q. Okay. Does that house have sentimental meaning to
23 your family?

24 A. Yes, ma'am.

25 Q. It means a lot?

CALVIN ROSIER - CROSS

1 A. I grew up there, like, my whole life. That's all the
2 memories I have left of my mom and stuff.

3 Q. What was your mom's name?

4 A. Hazel.

5 Q. And she's deceased?

6 A. Yes.

7 Q. All right. So, y'all went to the house to do what?

8 A. Get the copper out of the wall and stuff so we can get
9 my brother out of jail.

10 Q. So you went to tear the copper out of the walls?

11 A. Yes, ma'am.

12 Q. Who took the copper out of the walls?

13 A. Me and my dad.

14 Q. Who punched the holes in the walls?

15 A. I was.

16 Q. Why?

17 A. So we can get the copper out of the wall.

18 Q. Okay. And so, there was a phone -- there were -- do
19 you remember talking to Joshua on the telephone while you
20 were in jail?

21 A. Yes, ma'am.

22 Q. While he was in jail, rather.

23 A. Yes, ma'am.

24 Q. And do you remember talking to him during the time
25 when you were getting this copper out of the walls?

CALVIN ROSIER - CROSS

1 A. Yes, ma'am. I heard it.

2 Q. Excuse me?

3 A. I heard it the other day. I mean, I really couldn't
4 remember it now, but now, you know, it brings back --
5 yeah, that's me on there talking.

6 Q. So, okay. So you heard those phone calls the other
7 day. And, in fact, I was with you and your attorney when
8 you heard one; right?

9 A. Yes, ma'am.

10 Q. And so those refreshed your memory?

11 A. Yes, ma'am.

12 Q. So you remember the conversations that went on between
13 you and Josh and your dad during that time?

14 A. I mean, I really couldn't remember them but, I mean, I
15 know that's my voice.

16 Q. Okay. Well, on those phone calls, there was
17 discussion about, between you and Josh and your dad about
18 a dispute that you had with some other people?

19 A. Yeah.

20 Q. Who are the other people?

21 A. It was my cousin, CJ, and his cousin, Colby.

22 Q. CJ, what's his full name?

23 A. Carlton James Shaw.

24 Q. And Colby is CJ's cousin?

25 A. Yeah.

CALVIN ROSIER - CROSS

1 Q. But he's not related to you?

2 A. No, ma'am.

3 Q. And was DJ, Donnie Davis, involved in this dispute?

4 A. No, ma'am. Not that I know of.

5 Q. Okay. What about Russell?

6 A. His name was mentioned whenever we got with them girls
7 and stuff that night.

8 Q. Okay. But I'm just talking about -- we haven't got to
9 that night yet. Okay?

10 A. No. He, his name wasn't really mentioned.

11 Q. All right. Can you tell me what was the dispute
12 about?

13 A. The dispute about whenever I talked to my cousin and
14 them?

15 Q. You're talking about your cousin CJ?

16 A. Yeah.

17 Q. Yeah.

18 A. I had called Brittany's phone to see if she had the
19 rest of the bond money because she was supposed to pay
20 half and we was going to pay half, but somebody answered
21 the phone, you know, we had a couple words. And then me
22 and my cousin CJ was on the phone and we had a lot of
23 words with each other. Just words about, you know,
24 fighting each other and stuff.

25 Q. Okay. So, how did you feel about that? You were mad?

CALVIN ROSIER - CROSS

1 A. I mean, the fact that we was arguing, I mean, I've
2 been pretty close to CJ my whole life too. So, I mean,
3 the fact that me and him was arguing, I mean, I mean, we
4 was just arguing, you know. That's what family does
5 sometimes, I guess.

6 Q. Well, on those phone calls you actually talked about
7 y'all declaring war. You said you were declaring war?

8 A. Yeah, I mean, we was a little drunk too. We probably
9 just letting our mouth overload anything.

10 Q. And you talked about you could go out on the street
11 and get a pistol. I think you called it steel?

12 A. I mean, I mean, it's a lot what drunk people say, you
13 know. People say anything whenever you're like that.

14 Q. All right. Well, when you were doing all of this
15 talking on the phone and you and your dad and Joshua doing
16 all of this talking, what was your actual intent to do
17 about fighting CJ and Colby?

18 A. I just wanted to fight him because the words that we
19 had.

20 Q. Okay. You weren't going to try to kill him?

21 A. No. That's my cousin.

22 Q. And, were you planning to kill DJ?

23 A. I didn't even know him.

24 Q. Okay. But you knew Brittany was dating somebody?

25 A. I thought she was dating my brother. I know she was

CALVIN ROSIER - CROSS

1 A. Have I said some harsh --

2 Q. Has your dad said harsh things about Brittany; do you
3 recall?

4 A. Yeah.

5 Q. Okay. And what was your plans? Did y'all have plans
6 for that night?

7 A. My dad had plans to go spend time with his girlfriend,
8 Katie.

9 Q. I mean, did you all have a chance to go down, start a
10 war with --

11 A. No, no.

12 Q. -- CJ?

13 A. We didn't even know CJ was even down there.

14 Q. So there wasn't any plans to go fight?

15 A. No, it wasn't no plans to go fight.

16 Q. And what about all those plans you all talked about on
17 those jail calls? Were there plans to go have it out like
18 y'all talked about on the jail calls?

19 A. Was there plans to go have it out with CJ and them?

20 Q. CJ, Colby.

21 A. I mean, we was mad at the time. I mean, it was let go
22 but if I would have seen him or something, we probably
23 would have fought each other, you know, but I think a
24 couple days later I had talked to CJ and I was like, man,
25 let's just let it ride.

CALVIN ROSIER - CROSS

1 stuff and then it got louder and louder. And they was
2 talking about how Russell had tried to tie them up or
3 something in a hotel room or something a couple days
4 before that or something or a week before that.

5 Q. Russell had tried to tie up who?

6 A. Tie up Brittany and Autumn.

7 Q. Had you ever heard that before?

8 A. That was just that night I heard it.

9 Q. Okay. Now, where were you when this story came out?

10 Like, where was the vehicle?

11 A. We was riding down the road after we left the store.

12 Q. All right.

13 A. But --

14 Q. I'm sorry. Go ahead.

15 A. After we left the store, we was headed to the grocery
16 store and stuff because Terry asked us to go by the
17 grocery store and get some stuff for dinner. My dad, he
18 was going to get some stuff for dinner and stuff.

19 Q. Did you make it to the grocery store?

20 A. No, ma'am, because on the way there my brother and
21 Brittany and them, they started up about all of that stuff
22 about Russell and all of that.

23 So my brother's like, I'm going to go there, I'm going
24 to go down there and stuff. My dad he was saying, you
25 need to leave that stuff alone, man, leave it alone. You

CALVIN ROSIER - CROSS

1 A. Yeah, I mean, they kind of taking up a lot of room and
2 stuff.

3 Q. Okay. But she was sitting partially on his lap like
4 partly on his leg?

5 A. Yeah.

6 Q. Okay. And did you hear the whole conversation about
7 what they were saying that Russell had done to them in the
8 motel room?

9 A. No. I mean, I was listening to bits and pieces, you
10 know. I mean, I kind of really wasn't -- I mean, I wasn't
11 focused on it real hard, I'd say.

12 Q. And how did your brother react when they were talking
13 about this?

14 A. He got real fired up about that.

15 Q. How did your dad react?

16 A. He was trying, he just kept telling my brother that he
17 shouldn't go down there and stuff. I mean, actually he
18 was the one trying to be calm about it, you know.

19 Q. Well, who was doing all of this talking? Who was
20 doing all the talking about the incident with Russell?

21 A. Well, Brittany was mostly talking about it and then I
22 think Autumn was just like agreeing with her.

23 Q. Do you remember who brought it up?

24 A. It had to be Brittany talking to my brother at first
25 because, you know, he got real loud and stuff.

CALVIN ROSIER - CROSS

1 the guy was there?

2 A. I thought maybe it was Russell that she was messing
3 with.

4 Q. Okay. Now, what plan did you hear your brother and
5 your father have to go in the house and kill somebody?

6 A. They didn't never say they was going to go kill
7 nobody.

8 Q. All right. What plan do you know of to go in and cut
9 somebody?

10 A. They didn't say nothing about cutting nobody.

11 Q. What plan --

12 A. They always said they was going to do -- my brother
13 said he was going to go in there and fight. And my dad,
14 you know, he ain't going to let him go in there by his
15 self.

16 Q. Okay. Now, who had a gun?

17 A. Nobody had a gun.

18 Q. So -- but, and you weren't in the house?

19 A. No, ma'am.

20 Q. You can't say what actually happened in the house?

21 A. No, ma'am.

22 Q. All right. Well, when they came back out and got in
23 the car, did you ask them about what happened?

24 A. I was trying to get to ask them what had happened
25 but my brother, he's laying like this (indicating) and my

CALVIN ROSIER - CROSS

1 Q. Was that -- if you said that, would that be the truth
2 or a lie?

3 A. That would be a lie because my brother was going over
4 there to fight Russell.

5 Q. Okay. Fight DJ or Russell?

6 A. He was going to fight Russell. Nobody ever mentioned
7 DJ.

8 MS. ALVES: Beg the Court's indulgence one moment.

9 (Pause.)

10 Q. Okay. Calvin, are you in a gang?

11 A. No, ma'am.

12 Q. If your brother was in a gang, would you know?

13 A. I should.

14 Q. Is he in a gang?

15 A. No, ma'am.

16 Q. Is your dad in a gang?

17 A. No, ma'am.

18 MS. ALVES: Judge, can we talk to you on a sidebar for
19 one moment?

20 (Off-the-record discussion.)

21 THE COURT: Jurors okay?

22 BY MS. ALVES:

23 Q. Calvin, when you were in the jail you talked to your
24 father -- I'm sorry. When your dad was in jail, first
25 arrested, you talked to him on the telephone?

CALVIN ROSIER - CROSS

1 A. Yes, ma'am.

2 Q. And you've actually heard the call, some of the calls
3 that you made with your dad?

4 A. Yes, ma'am.

5 Q. And you'd recognize your voice and your dad's voice?

6 A. Yes, ma'am.

7 Q. And you talked to him a good bit; didn't you?

8 A. Yes, ma'am.

9 MS. ALVES: Beg the Court's indulgence one moment.

10 (Pause.)

11 Your Honor, at this time I'd like to move into
12 evidence Defense Number One, phone call between Calvin
13 Rosier and David Rosier.

14 THE COURT: What number?

15 MS. ALVES: Defense One.

16 THE COURT: Defendant's One. Any objection?

17 MR. MOLONY: No objection.

18 (Defendant's Exhibit No. 1, CD containing phone call,
19 was received into evidence.)

20 THE COURT: Let's move along. Are we going play it or
21 not?

22 (Defendant's Exhibit No. 1, phone call, was played for
23 the jury.)

24 MS. ALVES: Thank you, Your Honor. I'd also have as
25 evidence Defense Exhibit Number Two.

CALVIN ROSIER - CROSS

1 THE COURT: Is this another jail call?

2 MS. ALVES: Yes, sir.

3 (Defendant's Exhibit No. 2, phone call on CD, was
4 received into evidence and played for the jury.)

5 THE COURT: Any other questions of this witness,
6 Ms. Alves?

7 MS. ALVES: Yes, sir. Just a few more.

8 Q. Now, Calvin, you have charges pending now --

9 A. Yes, ma'am.

10 Q. -- for this incident?

11 A. (Nods head.)

12 Q. And you're charged with accessory before the fact and
13 accessory after the fact?

14 A. I'm charged with it. I mean, it's accessory after the
15 fact of murder and accessory before the fact of assault
16 and battery second degree or something like that.

17 Q. Okay. And what plan did you have to kill somebody?

18 A. I didn't have no plan. That's what I don't understand
19 why I'm locked up.

20 Q. All right. And what plan did you have to go in and
21 beat up DJ?

22 A. Like I say, I didn't know DJ until after all of this
23 stuff -- until after he had got killed and stuff.

24 Q. And when you talked to the police back in November,
25 you lied and told them that your father had threatened

CARLTON JAMES SHAW - DIRECT

1 State your full name and spell your last.

2 THE WITNESS: Carlton Shaw, S-H-A-W.

3 THE COURT: Speak up, Mr. Shaw, so they can understand
4 you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 DIRECT EXAMINATION

8 BY MR. MILLER:

9 Q. Mr. Shaw, were you at Street in Bath on the
10 night of November 10th, 2012?

11 A. Yes, sir.

12 Q. Were you in the living room when David Rosier and Josh
13 Rosier entered the living room?

14 A. Yes, sir.

15 Q. Did you see Josh Rosier and the victim, DJ Davis, in a
16 physical altercation?

17 A. Yes, sir. But it wasn't the way Josh said it was.

18 Q. Okay. Did you see anyone with a gun in that room?

19 A. No, sir. David had it at the end.

20 Q. And you said David. Is that the Defendant, David
21 Rosier?

22 A. Yes, sir.

23 Q. Whose gun was it that David Rosier had?

24 A. Mine.

25 Q. Did you see anyone shoot the gun in the living room

CARLTON JAMES SHAW - DIRECT

1 that night?

2 A. David.

3 Q. After he shot the gun -- who did he shoot with the gun
4 that night?

5 A. DJ.

6 THE COURT: Speak up.

7 THE WITNESS: DJ.

8 BY MR. MILLER:

9 Q. Is that DJ Davis, the victim?

10 A. Yes, sir.

11 Q. After he shot DJ Davis, did he point the gun at you?

12 A. Yes, sir.

13 Q. After David and Josh left that night, left the house
14 that night, did you call 9-1-1?

15 A. Yes, sir.

16 Q. I'm going to show you what's been previously marked
17 for identification as State's Exhibit 22. Is this the
18 disk that you listened to last night?

19 A. Yes, sir.

20 Q. Is this the -- what's on this disk?

21 A. Me calling 9-1-1.

22 Q. Is it a fair and accurate representation of the phone
23 call? Is it a true and correct recording?

24 A. Yes, sir.

25 MR. MILLER: Your Honor, at this time the State would

CARLTON JAMES SHAW - CROSS

1 move to introduce State's Exhibit 22.

2 THE COURT: Objections?

3 MS. ALVES: No, Your Honor.

4 MR. MILLER: Your Honor, the State would request it be
5 published to the jury.

6 THE COURT: Very well.

7 (State's Exhibit No. 22, CD containing 9-1-1 call, was
8 received into evidence and played for the jury.)

9 BY MR. MILLER:

10 Q. When you were making that call and there was a bang on
11 the door, who was banging on the door?

12 A. Russell Blackmon.

13 THE COURT: I can't hear you.

14 THE WITNESS: Russell Blackmon.

15 MR. MILLER: No further questions, Your Honor.

16 THE COURT: Ms. Alves?

17 CROSS-EXAMINATION

18 BY MS. ALVES:

19 Q. Mr. Shaw, you said today you told us that the gun was
20 yours?

21 A. Yes, ma'am. It was on the coffee table by DJ.

22 Q. The gun was on the coffee table by DJ?

23 A. Yes, ma'am.

24 Q. And it was your gun?

25 A. Yes, ma'am.

CARLTON JAMES SHAW - CROSS

1 Q. And you're saying that Russell Blackmon didn't have
2 the gun?

3 A. No, ma'am.

4 Q. All right. You didn't -- that's not what you told the
5 police before; was it?

6 A. No, ma'am.

7 Q. So you lied at some point during, during this whole
8 investigation?

9 A. The only thing I lied about was the gun. Told them it
10 wasn't mine.

11 Q. Excuse me?

12 A. The only thing I lied about was the gun was not mine.

13 Q. You said -- okay. So, you talked to the police back
14 in November of last year right after this happened?

15 A. I believe so.

16 Q. And, you told the police that, that you did not know
17 if -- that you didn't know of any guns in the house?

18 A. Yes, ma'am.

19 Q. Is that what you told them?

20 A. (Nods head.)

21 THE COURT: Speak up.

22 BY MS. ALVES:

23 Q. Is that what you told them?

24 A. Yes, ma'am.

25 Q. And you said that you didn't have a gun; is that

CARLTON JAMES SHAW - CROSS

1 right?

2 A. Yes, ma'am.

3 Q. And you told them you didn't -- the only person you
4 knew had a gun was Mr. Rosier. Is that what you told
5 them?

6 A. Yes, ma'am.

7 Q. Now you're telling us today that that was a lie?

8 A. Yes, ma'am.

9 Q. And you told this story -- and you were asked about
10 this -- you've been asked about this since November of
11 2012; haven't you?

12 A. Yes, ma'am.

13 Q. And, in fact, you were asked about this as late as
14 last Friday morning; weren't you?

15 A. Yes, ma'am.

16 Q. And you still said it wasn't your gun?

17 A. Yes, ma'am.

18 Q. But now -- and then Friday, Friday after that, after
19 that first phone call you changed your mind and said, oh
20 yeah, it is your gun?

21 A. Yes, ma'am.

22 Q. Well, what prompted you to come and change your
23 story? What prompted you to call and change your story?

24 A. I didn't want to get in trouble but then I said, the
25 hell with it.

CARLTON JAMES SHAW - CROSS

1 Q. I'm sorry. I can't understand you.

2 A. I didn't want to get in trouble but then I said, the
3 hell with it. This is the only way DJ can get justice for
4 me to admit to have the gun.

5 Q. So you wanted to come to say something for DJ to say
6 that it was your gun?

7 A. Yes, ma'am.

8 Q. So you admit that you gave false statements to law
9 enforcement throughout the course of this investigation?

10 A. Just that one.

11 Q. Okay. Well, was that a false statement?

12 A. What?

13 Q. That the gun -- are you admitting that you gave a
14 false statement? Are you saying that's what you did?

15 A. I told them the gun wasn't mine, yeah. That's the
16 only false statement I've made.

17 Q. Have you been charged with giving a false statement to
18 law enforcement?

19 A. No, ma'am.

20 Q. Now, when you were at the house who was in the house
21 with you?

22 A. Before or after David and Josh came?

23 Q. Before.

24 A. It was me and Russell, DJ, and there was two other
25 fellows there.

CARLTON JAMES SHAW - CROSS

1 Q. Two other guys. What were their names?

2 A. I don't know, some black dude's name but the other one
3 I believe his name was Joseph.

4 Q. So there was a guy named Joseph at the house and a
5 black male?

6 A. I believe Russell's roommate; yes, ma'am.

7 Q. Russell's roommate. This is Russell's house?

8 A. No, it was the boy's house but Russell stayed there
9 too.

10 Q. Okay. So there were actually five of you in the house
11 before David and Josh came?

12 A. Yes, ma'am.

13 Q. And the other two guys, they were still at the house
14 while David and Josh were there?

15 A. Unfortunately so.

16 Q. Is that a yes?

17 A. Yes, ma'am.

18 Q. Okay. So, where were these two guys during this
19 fight?

20 A. On the back porch smoking a blunt.

21 Q. I didn't hear you.

22 A. On the back porch smoking a blunt.

23 Q. They was on the back porch smoking a blunt?

24 A. Yes, ma'am.

25 Q. By a blunt you mean marijuana?

CARLTON JAMES SHAW - CROSS

- 1 A. Yes, ma'am.
- 2 Q. Okay. Carlton, are you a drug dealer?
- 3 A. No, ma'am.
- 4 Q. No?
- 5 A. No.
- 6 Q. Okay. You hang out at this house a lot?
- 7 A. No, ma'am.
- 8 Q. No?
- 9 A. Not no more.
- 10 Q. Well, back then did you hang out at this house a lot?
- 11 A. Time to time.
- 12 Q. And you're good friends with Russell Blackmon?
- 13 A. Yes. Well, see, my cousin lives straight across the
- 14 street.
- 15 Q. Your cousin Colby; is that it?
- 16 A. Yes, ma'am.
- 17 Q. Is Russell a drug dealer?
- 18 A. No, ma'am.
- 19 Q. Is Colby a drug dealer?
- 20 A. No, ma'am.
- 21 Q. Was DJ a drug dealer?
- 22 A. No, ma'am.
- 23 Q. None of you dealt drugs out of that house?
- 24 A. No, ma'am.
- 25 Q. And were the four of you good, close friends?

CARLTON JAMES SHAW - CROSS

1 A. Yes, ma'am.

2 Q. You, Russell, Colby and DJ?

3 A. Yes, ma'am. We close friends with the whole
4 neighborhood.

5 Q. I'm sorry. I didn't understand you.

6 A. The whole neighborhood's close.

7 Q. Okay. And the four of you, are you in the same gang?

8 A. No, ma'am. I'm not in a gang.

9 Q. You're not in a gang?

10 A. No, ma'am.

11 Q. You're not in a gang called the Gangs of Disciples?

12 A. No, ma'am.

13 Q. You don't have a tattoo of a pitchfork with a 74?

14 A. No.

15 Q. You don't have that?

16 A. No, ma'am.

17 Q. Okay. I'm just asking. And when David and Joshua
18 came to the house they knocked on the door?

19 A. Yes, ma'am.

20 Q. And you opened the door and let them in?

21 A. No, ma'am. I asked who it was. They said, Dollar. I
22 said, who. They said, Dollar. I went to the shower when
23 Russell was getting out of it. I knocked on the door and
24 said, somebody's here. He said, who is it. I said,
25 Dollar. He said, who. I said, Dollar. He said, man,

CARLTON JAMES SHAW - CROSS

1 tell him to just come in and sit on the couch. I never
2 heard him being called Dollar.

3 Q. Excuse me?

4 A. I never heard him, my uncle, be referred to as Dollar.

5 Q. You never heard that?

6 A. No, ma'am. I didn't hang out with them.

7 Q. And when they came to the door and they walked in,
8 where was DJ?

9 A. Sitting on the couch.

10 Q. Right in front of the door? Right when you walk in
11 the door you can see the couch?

12 A. Yes, ma'am.

13 Q. And did they -- and they asked for Russell?

14 A. Yes, ma'am. Well, first they asked for my cousin
15 Colby.

16 Q. They asked for Colby?

17 A. Yes, ma'am.

18 Q. And then they asked for Russell?

19 A. Yes, ma'am.

20 Q. And so you went back to get Russell?

21 A. I wanted to go tell him it was David and Joshua in the
22 house --

23 THE COURT: Sir, you got to speak more distinctly.

24 What did you say?

25 THE WITNESS: I went to tell Russell that David and

CARLTON JAMES SHAW - CROSS

1 Josh was here and they wanted him.

2 BY MS. ALVES:

3 Q. And so, when the fight broke out, where were you?

4 A. I was telling Russell that David and Josh was in the
5 house. He told me to grab a shirt off a hanger. I
6 grabbed it to him and I heard something. I looked. And
7 Josh was standing over DJ while he was on the couch and he
8 hit him.

9 At that point I was yelling, telling him to stop.
10 Russell had came in right behind me. I was speaking to
11 Josh.

12 And the next thing I know Russell trips, like his head
13 trips over me a little bit. And at that point I turned
14 and looked to see what was going on. David has a gun in
15 his hand. He goes all the way from pointing it at
16 Russell, all the way to DJ, shoots DJ. DJ jumps up going
17 to run.

18 At that point I didn't know he was shot. I went to
19 run out the front door. David grabbed me, threw me
20 against the front door and Josh stopped him from shooting
21 me.

22 Q. All right. Now, I want to go back to what happened.
23 Now, you said you came in and you saw Josh standing over
24 DJ and he was hitting him?

25 A. Yes, ma'am. He looked, he looked as if he was hitting

CARLTON JAMES SHAW - CROSS

1 him with his left hand.

2 Q. It looked like he was hitting him?

3 A. Yes, ma'am, with his left hand. I seen him go like
4 this (indicating), and that's when he hit him.

5 Q. Did you see a knife?

6 A. No, ma'am.

7 Q. So you didn't see a knife?

8 A. No, ma'am.

9 Q. And you didn't see DJ get cut?

10 A. No, ma'am.

11 Q. And that was at the couch?

12 A. Yes, ma'am.

13 Q. And where was David?

14 A. Standing on the edge of the coffee table over there.

15 Q. He was at the edge of the coffee table?

16 A. Yes, ma'am. Closest to the door.

17 Q. Closest to the door?

18 A. Yes, ma'am.

19 Q. I thought you said you were looking at -- you said you
20 were looking at Josh and DJ. And Josh had stopped
21 fighting DJ when you were standing there?

22 A. Yes, ma'am.

23 Q. So there was a break in the fight?

24 A. Yes, ma'am. He never -- Josh never hit DJ after that.

25 Q. You didn't see Josh hit DJ?

CARLTON JAMES SHAW - CROSS

1 A. He never hit him. He never hit DJ after that.

2 Q. Okay. This was before the shooting though?

3 A. Yes, ma'am.

4 Q. And you didn't see DJ bleeding from his face?

5 A. No, ma'am. Josh was standing in front of me.

6 Q. Okay. So you never saw any blood at all?

7 A. No, ma'am.

8 Q. Then you're saying that the gun was shot after that?

9 A. Yes, ma'am.

10 Q. And now you're saying it was your gun that you left
11 lying on the table?

12 A. Yes, ma'am.

13 Q. So it was lying next to Josh and DJ while they were
14 fighting?

15 A. Yes, ma'am.

16 Q. And the first time you've ever told this story was
17 last Friday?

18 A. Yes, ma'am.

19 Q. After you told a different story to the investigator
20 when he called you?

21 A. Yes, ma'am.

22 Q. And you told the investigator you didn't know of any
23 other guns in your house that night?

24 A. Yes, ma'am.

25 Q. Isn't it true that there are guns -- that there were

CARLTON JAMES SHAW - CROSS

1 guns in the house that night?

2 A. I guess -- mine?

3 Q. Excuse me. Besides yours?

4 A. Not that I know of.

5 Q. Not as you know of?

6 A. No, ma'am.

7 Q. You don't know whether anybody else in the house had a
8 gun?

9 A. No, ma'am, because I thought the other two fellows had
10 left.

11 Q. But they hadn't left. They were still there?

12 A. Yes, ma'am.

13 Q. And did you hear any words or anything about how the
14 fight started?

15 A. No, ma'am. I went in the house trying to speak to
16 Josh about what was going on. And Russell had came in
17 behind me. And I guess he was trying to figure out what
18 was going on. At that point I heard some, something
19 sounded like a slap. David had hit Mr. Blackmon.

20 Q. Mr. Blackmon, is that how you refer to him?

21 A. No, ma'am.

22 Q. And were you aware that Josh had told the police that
23 the gun came from Russell?

24 A. No, ma'am.

25 Q. You didn't know that. Did you know anything about

CARLTON JAMES SHAW - REDIRECT

1 what anybody had said about where the gun came from?

2 A. No, ma'am.

3 Q. So, you didn't know whether anybody else was in
4 trouble for the gun or not; did you?

5 A. No, ma'am.

6 Q. And you continued to say that you didn't know anything
7 about it or you didn't know where it came from since last
8 November?

9 A. Yes, ma'am.

10 Q. But you want us to believe you today?

11 A. Yes, ma'am.

12 MS. ALVES: No further questions.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. MILLER:

16 Q. You testified that the fight had stopped momentarily.
17 The Defendant had the gun. Josh is standing close to the
18 victim?

19 A. Yes.

20 Q. And he shoots him?

21 A. Yes, sir.

22 Q. Is there any reason for him to shoot him?

23 A. No, sir. None at all.

24 Q. Who was threatening him?

25 A. Nobody.

1 Q. Did anybody else have a gun?

2 A. No, sir.

3 MR. MILLER: No further questions.

4 THE COURT: All right. You may step down. Next
5 witness.

6 MR. MOLONY: Your Honor, at this time the State rests.

7 THE COURT: Mr. Foreman, ladies and gentlemen, that
8 concludes the evidence by the State. Give me 10 minutes
9 with the lawyers and then we'll come back and see where we
10 stand. Okay.

11 Don't discuss the case and don't deliberate.

12 (Jury exits courtroom at 4:18 p.m.)

13 THE COURT: Anything from the State?

14 MR. MOLONY: No, sir.

15 THE COURT: Any motions by the Defendant?

16 MS. ALVES: Yes, Your Honor.

17 THE COURT: Be glad to hear from you.

18 MS. ALVES: Your Honor, taking the evidence in the
19 light most favorable to the State, I would move for a
20 directed verdict on the charges of murder and possession
21 of a weapon during the commission of a violent crime.

22 I think that the State's witnesses themselves, even
23 the only two people in the house have been inconsistent
24 about exactly how and when the shooting -- I mean, and
25 when during the fight the shooting occurred.

DAVID EUGENE ROSIER, JR - DIRECT

1 THE JURY (COLLECTIVELY): Good morning.

2 THE COURT: I hope y'all had a pleasant evening.
3 We're going to get back right into the testimony, see
4 where we go with it today. Ms. Alves?

5 MS. ALVES: I call David Rosier.

6 THE COURT: Mr. Rosier, come around, please.

7 DAVID EUGENE ROSIER, JR., having been duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Have a seat in the witness box. State
10 your full name for the Court, spelling your last.

11 THE COURT: Mr. Rosier, please speak loud enough so my
12 jurors can hear you and distinctly, please.

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Thank you. Ms. Alves?

15 DIRECT EXAMINATION

16 BY MS. ALVES:

17 Q. State your name.

18 A. David E. Rosier.

19 Q. Mr. Rosier, where do you live?

20 A. Road.

21 THE COURT: Speak up for me, please.

22 THE DEFENDANT: Road, Trenton, South
23 Carolina.

24 BY MS. ALVES:

25 Q. Speak as loud as you can, okay, so we can all hear

DAVID EUGENE ROSIER, JR - DIRECT

1 you.

2 A. Road, Trenton, South Carolina.

3 Q. Are you married?

4 A. Yes -- widowed. My wife was killed in a horse
5 accident.

6 Q. And you have children?

7 A. Yes. Four children.

8 Q. And we met two of your children in here yesterday,
9 Joshua and Calvin?

10 A. Yes, ma'am.

11 Q. And who are your other two children?

12 A. Whitney and my son Calvin -- I mean, David. Excuse
13 me.

14 Q. Your children are David, Whitney, Calvin and Joshua?

15 A. Yes, sir.

16 Q. You have grandchildren?

17 A. Yes, 10 grandchildren.

18 Q. Ten grandchildren?

19 A. Uh-huh.

20 Q. Now your son dates a girl name Brittany Cook?

21 A. Unfortunately, yes.

22 Q. Now, you need to speak loud. Okay?

23 A. Unfortunately, yes.

24 Q. Okay. Why unfortunately?

25 A. It's just in the recent past, and knowing that she

DAVID EUGENE ROSIER, JR - DIRECT

1 wasn't the type girl that I felt was appropriate for my
2 son at the time.

3 Q. You didn't like her?

4 A. Not at all.

5 Q. Do you work?

6 A. Yes, ma'am.

7 Q. What type of work do you do?

8 A. I'm an electrician by trade for 24 years.

9 Q. Now, Mr. Rosier, you've got -- you've been in trouble
10 before; haven't you?

11 A. Yes, I have.

12 Q. In 2003 you had a felony conviction?

13 A. Yes.

14 Q. And in 2011 you had a conviction for false information
15 to police?

16 A. Yes, I did.

17 Q. Now you were present in the courtroom yesterday when
18 we talked about -- when you -- did you hear the audiotape
19 yesterday of the calls you made from the jail?

20 A. Yes, ma'am.

21 Q. And the calls that your son made from the jail?

22 A. I'm aware of both of them.

23 Q. You heard them yesterday in the courtroom?

24 A. Yes.

25 Q. Now do you remember when Josh was in jail?

DAVID EUGENE ROSIER, JR - DIRECT

1 A. Yes, ma'am.

2 Q. And while he was in jail, were you trying to get his
3 bond set? I mean, trying to get money to post his bond?

4 A. Me and my son, Calvin, was actually trying to get bond
5 money to get my son out of jail. We actually proceeded to
6 take a house apart they had grew up in to get the copper
7 out, just to get the bond money to get my son out of jail.
8 It was the first house I ever bought with my children.

9 Q. Is that the house you were living in at that time?

10 A. Not at that time. We had two houses.

11 Q. But that house was empty?

12 A. Right.

13 Q. And in those telephone conversations, there was some
14 comments about a dispute that you were or your son were
15 having with some other people. Do you recall hearing
16 that?

17 A. Yes, ma'am. The phone conversation --

18 Q. Let me ask you this. Who was the dispute between?

19 A. It was never a dispute. It was basically my son,
20 Calvin, calling to speak with Brittany concerning her
21 helping out getting the rest of the bond money, minutes on
22 the phone.

23 While she's talking, my son's speaking with her, CJ,
24 which is his cousin, was over at the Blackmon's residence
25 along with four or five other individuals. And they

DAVID EUGENE ROSIER, JR - DIRECT

1 decided on being verbal about quite a few different things
2 about Brittany's whereabouts. And they felt like they
3 needed to discuss the situation that, you know, he didn't
4 need to mind what she was doing. And he didn't need -- he
5 needed to quit calling her basically.

6 Q. So that upset you?

7 A. It frustrated me a little bit, but I expected that out
8 of her because of past recent behavior before.

9 Q. So, on those conversations you were talking about
10 going -- you, Calvin and Joshua were talking about going
11 to war and going down and getting them, and getting
12 pistols. Do you recall saying all of that, those things
13 on the conversations?

14 A. I remember hearing that yesterday. My son was talking
15 to his cousin and they got heated with the conversations
16 basically because he was frustrated because Brittany
17 didn't do her part on actually trying to help us get the
18 bond money up to get Josh out.

19 There was some things said. It was a heat-of-
20 the-moment type thing. It was never intended to declare a
21 war or fight with anyone. We never went out to get any
22 guns, period.

23 Q. And in fact one of the people involved was a
24 relative?

25 A. Yes, ma'am.

DAVID EUGENE ROSIER, JR - DIRECT

1 Q. That would be CJ?

2 A. That's Calvin's first cousin and my nephew.

3 Q. Now, on those phone calls, I've got to comment, you
4 had quite the potty mouth; didn't you?

5 A. I was really frustrated at the time. And when I talk
6 to the boys, I used to be a football coach and I talked to
7 them like men. I never disrespect any woman or any child,
8 especially my grandchildren, with that type language.

9 It was a boy, a man-talk and nothing trying to be
10 disrespectful over the phone, period. It's just I was
11 frustrated. I was locked up. I was trying to explain to
12 them how I felt and having to be locked up for something I
13 was accused of was wrong.

14 Q. You even had that type of language when you were
15 talking with your son when he was locked up; didn't you?

16 A. Yes, I did.

17 Q. Is that typically how you talk when you're talking
18 with your sons?

19 A. They're not -- they're not the type of people that,
20 you know, I just prefer to talk to them like, you know,
21 they're not kin to me, you know. When I'm frustrated or
22 mad with them, I speak the way I feel. That's not a
23 normal routine with me cussing like that. I don't
24 normally cuss like that, period.

25 Q. Now do you remember when Joshua got out on November

DAVID EUGENE ROSIER, JR - DIRECT

1 the 10th?

2 A. Yes, I do.

3 Q. And, you and Calvin were able to raise the bond
4 money?

5 A. Yes, ma'am.

6 Q. And what did, what did you do when Joshua got out?

7 A. We went, we actually picked Josh up, took him back to
8 the bondsman to fill out the necessary paperwork and
9 proceeded to take him home.

10 But during, after the bondsman, filling out all the
11 paperwork he immediately wanted to use my son Calvin's
12 phone and started calling Brittany say, listen, it's over
13 with. I want my, I want all of my clothes. Where are you
14 at where I can come get it.

15 I believe we just took him on home then. We let him
16 go home and get a shower, get something to eat, get a
17 haircut. And basically throughout the day he was pretty
18 much on the phone on and off with Brittany and, I guess,
19 her mother.

20 I was playing with my grandchildren. I was playing
21 with grandchildren and dealing with maybe going out later
22 on with Katie Parker which was a friend of mine at the
23 time.

24 Q. Now where were you when you were playing with the
25 grandchildren, he was taking a shower?

DAVID EUGENE ROSIER, JR - DIRECT

1 A. Terry Phillips' home which is a good friend of my son
2 and also a friend of mine also.

3 Q. And so had you -- did you and your sons make any plans
4 for the evening?

5 A. We didn't have any plans for the evening. I initially
6 was going to go out with Katie Parker, but Joshua came to
7 me later that evening around six or so and said, listen,
8 dad, I need to go get my clothes. I'm through with this
9 girl. And basically I just need you to ride over there to
10 pick up my clothes and stuff where I can go ahead and be
11 through with her.

12 Me and my son Calvin talked to Terry and asked him if
13 we could use his vehicle to be able to go get the clothes
14 and the remainder of his property. During that time we
15 all decided on Cody could drive the car which is the one
16 that they supposed to have a subpoena to come in here
17 today. And he drove us to where his current address was
18 with Brittany which was over on the north side.

19 Q. All right. Let me ask you this. Was it -- this is
20 Cody. Now Cody is Mr. Phillips' son?

21 A. Yes, ma'am.

22 Q. So he was driving his father's vehicle?

23 A. Right.

24 Q. And he drove you to where?

25 A. He drove us to where the current address was where

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1 Joshua and Brittany were staying.

2 Q. And so you were able to retrieve Joshua's property?

3 A. We went inside and got his clothes and came back out
4 and got in the vehicle.

5 Q. Where did you go after that?

6 A. We went to the Rainbow Bait and Tackle Store. They
7 have football games on. It was a Georgia-Alabama game.
8 We sat there and watched that for a little while.

9 I don't know if Brittany had called Josh or Josh had
10 called Brittany and he had stated that he needed to go to
11 Brittany's dad's house. We got up, basically took him to
12 Brittany's dad's house. He got out. Me, Cody and Calvin
13 stayed outside because we didn't want to have any dealings
14 with Brittany whatsoever. And he promised us, he swore on
15 his mother and his children that he would not even deal
16 with this girl anymore, period.

17 So we were frustrated about the thought of him
18 actually wanting to go over there after he already got his
19 property.

20 Q. How long were you at Brittany's father's house?

21 A. Approximately 30 minutes.

22 Q. And during those 30 minutes, where was Joshua?

23 A. Inside the house with Brittany.

24 Q. And you were outside?

25 A. Me, Calvin and Cody was outside.

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1 Q. All right. What happened when they came out of the
2 house?

3 A. They came out. Josh came out, Brittany came out and
4 some girl that I've never seen before, came out with
5 them. I soon found out that her name was Autumn. That's
6 the first time I had ever seen her.

7 Q. All right. So, did you make any plans at that point?

8 A. I was making plans to get away from him, period,
9 because he knew that I didn't like Brittany. And I didn't
10 even know this other girl.

11 So I knew that, you know, listen, my son, both of
12 them, both were sitting in the truck stating, listen, if
13 he starts to go out with her or tries to do anything with
14 her, we're going to go ahead and go our separate ways.
15 Calvin wanted to go back to the house anyway. I was going
16 to go out with Katie but I put everything on reserve just
17 to be able to help him get his property.

18 Q. All right. Where did you go after you left Brittany's
19 house?

20 A. I went to Katie's house.

21 Q. How long did you stay there?

22 A. Maybe three to five minutes. I went inside and asked
23 her son was she there. And she, I had just missed her and
24 a friend. So I, my date was cancelled for the night. I
25 came back and got inside the vehicle. And told them,

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1 look, we needed to go to the store and pick up some
2 groceries. That was our potential plan actually, to get
3 groceries, pick up Joshua's clothing and go home.

4 Q. Thank you. What plans did y'all have at this point in
5 the evening to go over to Russell's house?

6 A. Never had any plans to go to Russell's house.
7 Autumn -- I mean, yeah. Autumn and Brittany obviously was
8 speaking to my son about Russell Blackmon and Colby and
9 another, CJ, and all of them, had held them in a motel
10 room --

11 Q. Well, let me ask you this.

12 THE COURT: Hold on a second. Everybody okay?

13 THE JUROR: I need to use the restroom.

14 THE COURT: All right. Just take one second. I mean,
15 not a second. As long as you need. Just everybody sit
16 tight.

17 (Juror exits courtroom at 9:55 a.m., returns to
18 courtroom at 9:58 a.m., and the trial resumes:)

19 BY MS. ALVES:

20 Q. At this point in the evening, what plans were you
21 making to go and fight with somebody?

22 A. Never was any plans to fight anybody, Ms. Alves.

23 Q. And what weapons did you have?

24 A. I had no weapons. The only thing I had was a
25 pocketknife. I'm an electrician by trade of 24 years, and

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1 I have a knife that I use to skin out wires. That's all I
2 had in my pocket.

3 Q. Do you normally carry that?

4 A. All the time.

5 Q. What guns did you have?

6 A. I don't have any guns, ma'am.

7 Q. Now, did you hear what Brittany was telling your son?

8 A. No, ma'am. She was basically setting in his lap
9 during this time. And she was whispering on and off. I
10 couldn't make out what she was saying. Really, I wasn't
11 trying to listen to what she had to say because I could
12 care less what she was talking about, to be honest with
13 you.

14 Q. At some point did you ever hear what -- did you hear
15 what, your son's reaction to what she was saying?

16 A. Well, after Autumn and her started getting louder with
17 it, yes, we're going on, like I said previously, about
18 being in the motel and --

19 Q. I'm not asking what they said. I'm just asking --

20 A. Okay.

21 Q. -- you if you heard --

22 A. I just wanted to give you a complete story.

23 Q. I understand. Thank you. But you heard what they
24 were saying?

25 A. Yes, ma'am.

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1 Q. And what was your son's reaction to what they were
2 telling you?

3 A. He become very frustrated and furious about the
4 conversation that was said.

5 Q. Well, what were your feelings about what was being
6 said?

7 A. I said, listen, leave this alone. This is not the
8 time and the place for this. Let's go get some groceries
9 and go home. Forget about this. Let's just leave it
10 alone, period. Not one time, but I said it on several
11 times, just leave it alone and not deal with it. This is
12 not the time for it.

13 Q. Who were you talking to?

14 A. Everybody in the truck. Everybody can witness it in
15 the truck as to what I said that day.

16 Q. Well, what did you think about Brittany's story?

17 A. I thought it was a typical drama that's always with
18 her. She's always on that type stuff.

19 Q. So after -- where were you when this conversation was
20 all going on? I know you were in a vehicle. Where was
21 the vehicle?

22 A. Where was the vehicle?

23 Q. Or where were you going to?

24 A. We were going to the store I spoke earlier of. We
25 needed to go get groceries.

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1 Q. Did you make it to the store?

2 A. No, never made it to the store.

3 Q. Why not?

4 A. The conversation had got my son so frustrated and so
5 wound up about it that that plan got cancelled out. And
6 the more I talked, it seemed like the madder he got about
7 it. You know, I said, listen, leave it alone, son. You
8 just got home. I don't want you to get in any more
9 trouble. Let's go home and get groceries.

10 They continued to talk about the conversation.

11 Q. What did you do?

12 A. I just finally just said, you know what, I've tried
13 everything I can do. I'm tired of talking about it.

14 Q. And what happened next?

15 A. Autumn proceeds to drive down to the Street
16 address which I've never been there. I didn't even know
17 where these people lived.

18 Q. Okay. And what happened when you got there?

19 A. Well first, I about had them talked out of not doing
20 anything. Circled around. And I said, listen, it's
21 nighttime. You don't go to somebody's house like this. I
22 said, just leave it alone. And I about had them convinced
23 of not going.

24 But the more they talked about it the madder my son
25 got. And, of course, I don't want my son in any more

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1 trouble. I just bonded him out of jail. So at that time
2 he wanted to get out. And I got out with him. I knocked
3 on the door at Street and asked for Russell
4 Blackmon. CJ, which is the cousin of Josh, came to the
5 door.

6 Q. All right. Let me ask you this. Why did you go to
7 the house?

8 A. It wasn't a reason why I went to the house. It was my
9 son had a reason to go there. I just wanted to make sure
10 that he wasn't going to get in any more trouble and trying
11 to talk this thing out with Russell Blackmon where it
12 wouldn't be a issue about any more trouble.

13 I just had to work tearing my house apart that I lived
14 in for the remainder of my life (verbatim) and my children
15 growing up and now we got a situation about him wanting to
16 confront Russell Blackmon about what had happened in the
17 motel.

18 Q. Was there a plan to go in there and rob Russell
19 Blackmon?

20 A. Never to rob Russell Blackmon.

21 Q. What was the plan to go in there to fight?

22 A. My son was going to confront Russell Blackmon about
23 what was said during, when we were in the truck, the
24 conversation that was said during the truck.

25 Q. So what plan did you have to fight?

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1 A. I didn't have any plans to fight. She's not my
2 girlfriend. I could care less about her. I wish she
3 would have never came back into his life.

4 Q. And what knife -- what weapons did you have?

5 A. I carry the pocketknife that I used doing electrical
6 work, that I have for the last 24 years.

7 Q. What about the knife that there was testimony that you
8 gave to Joshua?

9 A. That's the one that I --

10 Q. That you gave a knife to Josh?

11 A. I never gave my son any knife, period. My son was --
12 my pocketknife was in my pocket when I was arrested. They
13 have it in evidence.

14 Q. What did you know about any knives that Josh had?

15 A. I never knew of my son having a knife. If I knew he
16 had a knife, I would have took it from him.

17 Q. Well, you just testified that you knocked on the door,
18 you asked for -- CJ answered and you asked for Russell?

19 A. Yes.

20 Q. At this point, where were you?

21 A. Approximately one to two feet away from that door. I
22 never even went into the house. I stood right beside the
23 door the whole time.

24 Q. When CJ was talking to you you were --

25 A. We're outside. He never opened the door. He's like,

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1 who is this. I was like, it's David and Josh. And he
2 stayed gone for maybe a minute or so. I guess he went to
3 the back and told Russell --

4 Q. Just speak about what you know, okay, not what you're
5 speculating.

6 A. I'm speaking about what I know. He went to the back
7 and told Russell Blackmon that I was there. I guess
8 Russell said it was fine for me to come inside. He opens
9 the door. I walk in a few feet away from the door. My
10 son comes in. He's speaking with his cousin during this
11 time.

12 Q. That would be CJ?

13 A. Exactly.

14 Q. Okay. Then what happened?

15 A. The next thing I know CJ walks back to the back and my
16 son Josh gets into a verbal altercation with the young man
17 sitting on the couch.

18 And then after, they were arguing. They got into a
19 physical altercation. And CJ comes running back from the
20 back of the house and starts screaming, hollering going
21 on. During that time I'm still by the front door. I'm
22 not anywhere near either of the two of them.

23 After CJ comes running inside, Russell Blackmon comes
24 running inside the living room. He pulls out a pistol
25 from the side of his pants and points it at my son and

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1 then, and actually has it held at my head the whole time
2 that he's talking. He's going to shoot.

3 He looked back to where CJ -- I mean, to where Joshua
4 and the young man sitting on the couch was. I felt like
5 my life was in fear (verbatim). I was forced to use
6 reasonable force to defend myself and I struck. When I
7 struck him, we were wrassling over the gun, trying to take
8 the gun from him. The gun goes off. I hear my son
9 scream. The gun hits the floor.

10 Russell Blackmon goes out of the back. I pick the gun
11 up off the floor and go out the front door to the vehicle
12 that's waiting outside.

13 Q. What were you doing when the gun went off?

14 A. What was I doing when the gun went off?

15 Q. Yes.

16 A. I was in the process of trying to take it away from
17 Russell Blackmon.

18 Q. And when you got outside, what happened?

19 A. I don't know how in the world this happened, but the
20 vehicle had pulled up the same time that, when I came
21 out. I opened the door. My son pushed the seat back. He
22 got in the back. I got in the front. And Autumn was
23 driving and we, we left.

24 Q. At that point, what did you know about any injuries to
25 Mr. Donnie Davis?

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1 A. Like I said, I didn't even know the young man on the
2 couch. I've never met him. I've never talked with him
3 before. I didn't know anything about he had got shot. I
4 just know when my son hollered the gun drops and, you
5 know, we're in the vehicle leaving.

6 Q. Did you know that he had been cut with a knife at that
7 point?

8 A. I spoke earlier, I never even knew he had a knife.

9 Q. You never knew who had a knife?

10 A. My son, Josh.

11 Q. Did you see him cutting Donnie?

12 A. I never seen him cut him.

13 Q. And did you realize that your son had been shot?

14 A. Yes. Once we were in the vehicle for maybe two to
15 three minutes, and what really made me notice it because I
16 was just sitting there. I was like, sort of like in a
17 mode where I didn't know what to do. I was really sort
18 of, like, how in the world did this just happen.

19 And then my son Calvin in the back seat stating that,
20 you know, what's wrong with your hand, like that. That's
21 when I knew something was wrong with Joshua's hand because
22 his brother was in the back seat. And he asked him what
23 was wrong with his hand. And he said that he had been
24 shot in his hand.

25 Q. All right. Did you and he discuss his having been

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1 shot in the hand?

2 A. I asked him was he okay. He said yes.

3 Q. Well --

4 A. I was worried about it because it was bleeding. And I
5 said, are you okay. Do you need to, you know, get
6 something to bandage it up. Are you all right. And he
7 says, I'm fine.

8 Q. Well, when did you tell him that he should have got
9 out of the F-ing way?

10 A. I never said that to my son. How could I tell him to
11 get out of the you-know-what way when I'm over there
12 trying to take the gun away from Russell Blackmon? I
13 never had the opportunity to say anything to him.

14 Q. So where did you all go in the vehicle?

15 A. Where did we go?

16 Q. Yes.

17 A. We proceeded to go down the Aiken-Augusta Highway.

18 Q. And do what?

19 A. Autumn wanted to go over to this young man's house by
20 the name of, I'm not, don't even recall his name but he
21 was a young man that she had called and they had wanted to
22 go over to his house. I never seen him. I've never been
23 there before either.

24 Q. What did you do at his house?

25 A. I sat there and just had nothing to say, period. I

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1 was still in sort of a state of just how in the world did
2 this just happen. How in the world did I just get a
3 pistol put in my face like that.

4 Q. All right. Now, there was testimony yesterday that
5 y'all stopped at a gas station. Do you remember stopping
6 at a gas station?

7 A. Yes, yes, I do.

8 Q. And there was also testimony about Cody and Calvin
9 getting out of the vehicle?

10 A. That was, the vehicle was stopped over at the Waffle
11 House in North Augusta. My son was really hysterical
12 about his other brother being shot in his hand. And he
13 wanted to go home along with Cody.

14 So I took them into North Augusta. I think it was a
15 Waffle House, if I'm not mistaken. And I told him I loved
16 him and I let them out of the vehicle.

17 Q. Now at this point, is that when you went to Georgia to
18 Autumn's friend's home?

19 A. Yes, ma'am.

20 Q. And in fact you sold the gun while you were at that
21 house?

22 A. Yes, I did. I didn't want the gun around me anymore.
23 I did sell the gun. I sold it for \$30 dollars.

24 Q. At that point, who did you think was shot?

25 A. I didn't have any idea that the young man was shot

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1 until they had found something on Facebook stating about
2 it. And that's when I really, really said, listen, I
3 can't, I can't deal with this, I said. I actually left
4 them and came to Clearwater and rented me a motel room and
5 stayed there. I didn't have any more dealings with them
6 after that.

7 Q. Now when did you come to Clearwater, was it the same
8 day?

9 A. Yes. Well, it was going into Saturday night, early
10 morning, Sunday morning.

11 Q. And then you were arrested that day?

12 A. I was arrested Monday morning. Yes, ma'am.

13 Q. Now, at the time when you had the gun in your
14 possession did you know whose gun it was?

15 A. I have seen this gun before with my nephew CJ. It was
16 his personal gun. CJ always had this gun that Russell
17 Blackmon presented to me.

18 Q. You got the gun from who?

19 A. I took the gun. Actually it fell off onto the floor
20 with me then from Russell Blackmon.

21 Q. Okay. Now, when you were at the house you saw CJ. Of
22 course you know CJ?

23 A. Yes, ma'am.

24 Q. When did you point the gun at CJ?

25 A. I never pointed the gun at CJ. I never had a chance

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1 Russell Blackmon.

2 It never was supposed to have been about the young man
3 sitting on the couch. It never was. I never knew
4 anything about him, period.

5 Q. And what plans did you have to kill somebody when you
6 went in the house?

7 A. I never had any plans to kill anyone, period. I
8 didn't go in there with anything.

9 Q. I'm sorry?

10 A. I never went inside the home with anything to hurt
11 anybody or kill anybody, period.

12 Q. What plans did you have to rob somebody?

13 A. I didn't have intentions or planning on robbing
14 anyone.

15 Q. And, when the shot rang out, what intention did you
16 have of shooting DJ Davis?

17 A. I had no intention of shooting DJ.

18 MS. ALVES: Thank you, Mr. Rosier. I don't have any
19 further questions. Please answer any the solicitor might
20 have.

21 THE DEFENDANT: Thank you, ma'am.

22 CROSS-EXAMINATION

23 BY MR. MOLONY:

24 Q. You're also known as Dollar; is that correct?

25 A. Yes, sir.

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1 Q. Would you prefer me to call you Dollar or Mr. Rosier
2 here today?

3 A. Whatever your preference would be.

4 Q. All right. Well, Dollar --

5 MS. ALVES: Objection, Your Honor.

6 THE COURT: All right. Call him Mr. Rosier.

7 BY MR. MOLONY:

8 Q. Mr. Rosier, your testimony to this jury under oath is
9 that Russell Blackmon came running in the room that night
10 right when you entered the doorway; is that right?

11 A. That's exactly right.

12 THE COURT: Mr. Molony.

13 BY MR. MOLONY:

14 Q. And as he's pointing the gun at your son, he then
15 turns and points the gun at you; is that right?

16 A. That's correct.

17 Q. How far is he from you at that time?

18 A. Blackmon? Within, probably two feet.

19 Q. Okay. And where are y'all standing?

20 A. I'm standing by the door where I initially stood from
21 the time I came into the home.

22 Q. And you stood there and he had the gun now up to your
23 head; is that your testimony?

24 A. He had it pointed at my face and he had it just like
25 this (indicating).

1 trial resumed:)

2 THE COURT: State ready to argue?

3 MR. MOLONY: Yes, sir.

4 THE COURT: Ms. Alves?

5 MS. ALVES: Yes, sir.

6 THE COURT: Mr. Molony, are you going to waive opening
7 on the law?

8 MR. MOLONY: Yes, sir, Judge.

9 (Jury enters courtroom at 10:54 a.m.)

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury. All of the evidence has now been
12 completed. We've concluded all testimony. We're now at
13 the stage where the lawyers will present their final
14 arguments.

15 Please bear in mind, like the opening statement, final
16 argument is not evidence in the case. You have already
17 heard all the evidence that will be presented. Obviously
18 the lawyers will take an adversarial position representing
19 their clients. And they'll argue the evidence in the
20 light most favorable to their client. That is simply
21 argument.

22 You've heard the evidence. That's what you'll make up
23 your mind on. But please give close attention to the
24 final arguments by Ms. Alves first followed by the State.
25 Once they have done that, then I will instruct you on the

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 law. My instructions are not too terribly long. And then
2 we'll be in a position for you to start your deliberations
3 and render a verdict in the case.

4 Ms. Alves?

5 MS. ALVES: If it please the Court.

6 THE COURT: Yes, ma'am.

7 MS. ALVES: Mr. Molony.

8 At the beginning of this case I told you we were going
9 to hear a story about a black widow leading somebody
10 astray. And it wasn't all right getting these people to
11 step into the proverbial red ant nest. Because all of
12 this came about because one woman decided to tell her
13 boyfriend who had just gotten out of a jail a story.

14 Now we don't know whether the story she told was true
15 or not. And that's not what's on trial here. But all we
16 know is that that's what upset her boyfriend to the point
17 where he decided he was going to go and confront a man in
18 his own home, taking along his brother, his father, and
19 another boy who was in the car along for the ride.

20 Now, when this trial first started we had one charge,
21 murder. And I recall the solicitor coming up here and
22 telling you in opening how this was a cold-blooded act.
23 But as we can see, there's two sides to every story and
24 actually three or four or five depending on what Josh is
25 telling on any given day.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 And now we have more than one charge to consider.
2 Because as I told you at the beginning of this trial, not
3 every killing is a murder.

4 Now it is a sad thing that this young man has died.
5 And apparently he wasn't doing anything but hanging out on
6 a couch at his friend's house. But not every killing is
7 murder. And the Judge is going to tell you that. Because
8 in this case you get to consider whether or not the State
9 has proven beyond a reasonable doubt that the Defendant
10 has committed murder.

11 You also get to consider whether or not Mr. Rosier's
12 actions on November 10th, 2012, constitute voluntary
13 manslaughter.

14 You also get to consider whether or not Mr. Rosier's
15 actions on November 10th of 2012, constitute the crime of
16 involuntary manslaughter.

17 And one last thing you will have to consider whether
18 or not Mr. Rosier acted in self-defense.

19 Now, in order to consider this, I know you're going to
20 have to weed through a lot of testimonies and everybody
21 had a different, differences to what they said happened
22 that night.

23 And it's important to know what the elements of each
24 crime are. Now murder, of course, is the intentional
25 killing of another person with malice aforethought. And

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 that is the case that was brought before you that the
2 State believed that they could prove beyond a reasonable
3 doubt. But I think the testimony has shown that this was
4 not an intentional killing with malice aforethought. No
5 one went over to that house with an intent to kill.

6 Mr. Rosier's testimony was he didn't even know who the
7 boy was on the couch. What did he go over there for? To
8 protect his son. What did he say? I want to use his
9 exact words, what he said. He said he went over there to
10 make sure that his son didn't get into trouble, to look
11 out for his boy. He wanted to make sure that his son was
12 going to be okay, to see if he could diffuse this
13 situation. You know why. His son had just gotten out of
14 jail. What did they have to do to get that bond money?
15 They had to tear apart the house that they used to live
16 in. And the work for all of that to get that copper out
17 of those pipes so that they could go take it to sell it in
18 Augusta.

19 And then you heard the calls from the jail, the second
20 call to Josh. Remember they had a hard time even getting
21 to Augusta and getting the copper, to do everything they
22 had to do just to get, I think it was either one- or \$200
23 that they needed to post that bond? They didn't have
24 another house to tear up. The other house they actually
25 lived in. So what is he doing trying to make sure his son

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 didn't get in trouble.

2 Now you're going to have to consider voluntary
3 manslaughter. And what is voluntary manslaughter?
4 Voluntary manslaughter is the unlawful killing of another
5 without malice, express or implied, in sudden heat -- in
6 the sudden heat of passion upon sufficient legal
7 provocation.

8 Now the Judge is going to explain to you what all of
9 these terms mean. But plain and simple, in order to prove
10 voluntary manslaughter they, the State, must prove that
11 Mr. David Rosier killed DJ Davis without malice in the
12 sudden heat of passion and that he had some legal
13 provocation to do so.

14 Now, you could consider the legal provocation that he
15 saw his son maybe in danger. But in this situation we
16 don't really know what was going on. Now he saw his son
17 in a fight with DJ. He didn't know what was going on and
18 he didn't jump in. Those are two grown men fighting with
19 each other. The exact same -- I mean, we don't have DJ
20 here but we can see his size from the pictures. They look
21 about evenly sized from what Joshua was. They're about
22 the same age, 20. I think Joshua was 22.

23 So, that's just two guys in a fight. Why are you
24 going to jump in? Unfortunately that was them. And that
25 wasn't even what they went in there for. He says the next

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 thing he knows there's a fight going on, but that's not
2 legal provocation. The question would be was his son in
3 danger at that time where he would have -- or something
4 happened. What happened that would have legally given him
5 the right to shoot. And that's what you have to consider
6 for voluntary manslaughter.

7 Now you're also going to be having to consider
8 involuntary manslaughter. And for involuntary
9 manslaughter the State has to prove that there was an
10 unintentional killing of another without malice while
11 engaged in an unlawful activity that is not a felony and
12 does not naturally tend to cause death or great bodily
13 injury, or, that the unintentional killing of another
14 without malice while engaged in a lawful activity with
15 reckless disregard for the safety of others. And what
16 does that mean?

17 Well, that means that the Defendant did not intend to
18 kill anybody but unfortunately a death resulted. So the
19 question is going to be: Was the Defendant acting
20 lawfully or unlawfully, and was he acting -- if he was
21 acting unlawfully then he has to be acting not in an
22 activity that would tend to cause death or great bodily
23 injury, or if he was acting lawfully, he has to be acting
24 recklessly which is carelessly.

25 And you also get to consider self-defense.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Now I want to go back to -- excuse me. I want to go
2 back to involuntary manslaughter. What that means is if
3 Mr. Rosier was in the house for a lawful purpose, so he
4 was there, you know, invited or doing what he's supposed
5 to do or a lawful purpose and he was careless with a gun
6 and shot the gun, then he would be guilty of involuntary
7 manslaughter. Just acting careless.

8 But if he was there for an unlawful purpose, if you
9 think that he was there actually to fight Mr. Davis, then
10 you have to consider what was his intention.

11 And here's what the evidence showed that he, yes, he
12 did go over there with his son and his son wanted to
13 confront Russell Blackmon. And he had no plans to fight.
14 He said he didn't know of any plans to fight. He was just
15 going to make sure his son was okay.

16 But if there's only -- if he was only intending -- if
17 he only -- even if he just believed that his son was going
18 to have a fight one-on-one and he said he didn't even know
19 his son had a weapon, a knife, then how did he know that
20 there was going to be anything significant? How did he
21 know that there was going to be any significant or serious
22 bodily injury?

23 Because nobody had a gun when they went in there.
24 Neither he nor his son had a gun. No matter what story
25 everybody told, everybody's story seems to agree on one

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 point; David Rosier did not have any weapon when he went
2 to the house. All he had was a little pocketknife.

3 And Josh Rosier did not have a gun when he went into
4 the house. So if you believe they were there just to have
5 a man-on-man fight, that he believed that a fight might
6 ensue, you have to then decide: Were those actions that
7 would cause or that he could reasonably believe would
8 cause great bodily injury? And the answer to that is no.
9 How is that going to cause great bodily injury? Two
10 people, evenly-matched boys, fighting.

11 He was struggling over the gun is what the testimony
12 was. And that is how the gun went off and Mr. Davis got
13 shot. That's involuntary manslaughter if you believe
14 that's what happened.

15 Now you're also going to get to consider self-defense.
16 And self-defense means that Mr. Rosier did not have fault
17 in bringing on the difficulty that was caused. That
18 Mr. Rosier's actions were reasonable in light of what
19 happened, and that Mr. Rosier had an actual and reasonable
20 belief that he was in danger.

21 Now you heard the testimony from David Rosier. He
22 went into the house to make sure that his son wasn't going
23 to get in any more trouble.

24 He stood by the door. Remember they knocked on the
25 door and took a moment to come down the hall or rather CJ

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 answered and then went back and came back, opened the
2 door. He stayed by the door. They were waiting for the
3 person that they went to see, Russell.

4 And what happens? Josh sees DJ and he starts
5 fighting. That wasn't what they were there for. That
6 just happened.

7 So, what exactly did David Rosier do to cause the
8 difficulty? Nothing. He stayed by the door was his
9 testimony. Then what happened? CJ and Russell come
10 running down because they hear the commotion because these
11 other two were fighting. Then what happened? Russell
12 pulled out a gun. I understand that. You know, commotion
13 going on in my house I don't know what's going to happen.
14 If I have a gun, I guess, and I felt in danger, I guess
15 I'd pull it out.

16 But then what happens? He points it at Josh. He
17 points it at David. He turns to Josh. David says, he
18 thought -- he was in fear. He thought he was going to get
19 shot. He didn't know what was going to happen. He took
20 his shot and he acted. He acted on the appearances that
21 there was a gun being pointed at him, that there was a gun
22 in the room that was being pointed at him and his son and
23 he wrestled with Russell over the gun. And that's when
24 the gun went off.

25 If you believe that David's conduct was not at fault

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 in bringing on the action -- on the difficulty, that he
2 believed that he was in danger, having a gun pointed at
3 him which turned out to be a loaded gun, was reasonable
4 and he believed that his actions in response to that were
5 reasonable, then David Rosier is not guilty because the
6 State has not proven their elements because the Defendant
7 has shown that he acted in self-defense.

8 Now, the Judge is going to tell you about the burden
9 of proof. And the defense never has to prove anything.
10 We don't even have to prove self-defense. Mr. Rosier got
11 on that stand and he told you what happened.

12 But the State has to prove beyond a reasonable doubt
13 that Mr. Rosier's actions were not in self-defense. We
14 don't have to say -- you don't get to say, oh well, the
15 Defendant didn't prove that, because you can't even
16 consider what the Defendant proved. As the Defendant he
17 is presumed innocent. The State has to prove to you
18 beyond a reasonable doubt each and every element of the
19 crime charged.

20 And they have clearly not shown the elements of
21 murder. I don't believe they've shown the elements of
22 voluntary manslaughter.

23 I have some question about whether they've proven the
24 elements of involuntary, but I think that if you were to
25 find Mr. Rosier guilty of anything it would be involuntary

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 manslaughter because he did not go over there intending to
2 have a knife-flashing fight. He did not go over to that
3 home intending to fight with this DJ Davis. They were
4 going over there because of some foolishness told to his
5 son about Russell Blackmon by Brittany Cook.

6 Now, I want to talk to you about what we've heard in
7 the courtroom. Now, I would be the first person to say
8 that my client and his family are never going to win
9 family of the year. I mean, let's be real. I have never
10 heard language like that talked anywhere that I've ever
11 been, not that I've been places where people talked like
12 that. But that was pretty bad. I can't say it's okay and
13 excusable. It's pretty bad.

14 But he told you that's how he talks when he gets
15 frustrated, when he gets upset. And in those situations
16 those are stressful situations. They're tearing apart
17 their family home to try to get bond money. They're upset
18 about a situation that had happened previously. So
19 they're up there using four letter words and a lot of
20 them.

21 In the other three phone calls he's in jail. And he
22 tells you what's going on with him in jail, how frustrated
23 and mad he is and how upset he is because he is upset
24 about this situation. And he tells you over and over
25 again. You heard -- you don't have to have anybody

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 sitting there saying, oh what did he say earlier about the
2 situation. We know what he said. These calls start
3 Thanksgiving.

4 The first call in chronological order that David made
5 is Thanksgiving. November 22nd of 2012.

6 And that would be on Defense Exhibit Number One. And
7 you remember what he talked about on that call? Remember
8 he started out with he's having a bad day. He talked
9 about how he had a peanut butter and jelly sandwich for
10 Thanksgiving. And he talked to Calvin. And it was
11 apparently the second call he had with Calvin that day
12 because he also talked on the jail call about how CJ had
13 tried to talk to him earlier. Remember? He said it. He
14 tried to get on the phone, I wouldn't talk to him. And he
15 testified about that.

16 Now, I know we're having to sift through more than one
17 story and that everybody told more than one story. Or
18 rather CJ and Calvin and Joshua did, but one of the things
19 that Joshua and CJ said was about how David pointed a gun
20 at them.

21 Now if David supposedly pointed -- or, excuse me, at
22 CJ. If David supposedly pointed a gun at CJ, why is CJ
23 trying to talk to him on Thanksgiving. Because if you
24 point a gun at me, you need not talk to me on
25 Thanksgiving, Christmas Eve or any other day ever again.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 So why was CJ trying to talk to him and why is David
2 mad? He tells you. I mean, this is Thanksgiving Day and
3 he's outraged and he's mad. I know you got to listen to a
4 lot of cursing, but listen to what was said between all of
5 those F bombs. He said he's mad because he's trying to
6 make him out to be something he's not. He's trying to lie
7 about the situation.

8 What lies did he tell? Well first he told us that, CJ
9 told us that he didn't know where the gun came from.
10 Remember, that's what he told the police. He admitted
11 that he didn't know where the gun came from. Nobody in
12 the house had any gun. He didn't know nothing about the
13 gun. Only person he saw with a gun was David.

14 Then he comes in here and tells us a story that -- and
15 then, remember, he even told that story up until last
16 Friday. And then he said, well, after he told it the
17 first time on Friday he changed his mind and decided to
18 change his mind and tell a different story last Friday.
19 And says, okay, really the gun was mine.

20 Why would he change his story and say that? Why
21 didn't -- what was going on? Why? I don't know.

22 Maybe he didn't want Russell to get in trouble for a
23 gun. I don't know. Maybe he thought that's what the
24 State wanted to hear because they were asking him about
25 it. I don't know. Maybe he thought that's what he could

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 say in order to get a conviction here so he could get what
2 he called justice for DJ, for his friend. I don't know.
3 I don't know why he didn't -- I don't know why he changed
4 his story all of a sudden last Friday afternoon after
5 saying the same thing all along.

6 But I do know that on November 21st, or excuse me,
7 22nd, David was mad and outraged about the lies being told
8 by CJ about this whole situation. Because what did David
9 say happened? He was only there to protect his son. He
10 didn't want to have nothing to do with this. And then all
11 of a sudden Russell comes down the hall and he has to
12 fight over a gun.

13 Now more about the jail calls. Now, the first two
14 jail calls were the two while Joshua was in jail. And
15 while Joshua was in jail we heard about how they were
16 going to start a war and go down there with steel, street
17 steel and how they were going to get shotguns, and how
18 they were going to do all of this.

19 That's called big talk. And we all know people who
20 talk big and can't back it up. And at what point did any
21 of these Rosiers, even though they were talking all big on
22 the phone, at what point did any of them go back it up?

23 Josh gets out of jail. Are they riding down there?
24 No. What did they do? They went home, got a haircut, got
25 a shower. What did they do after that? They helped a

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 lady move.

2 And then what did they do? They did normal Saturday
3 afternoon things. What did they do? They went to the
4 Rainbow Falls Bait and Tackle, a place where you can get
5 some beers and watch football. And they watched a Georgia
6 game.

7 What big plan was there to go and ride down somewhere
8 and take somebody out or assault somebody? None. And at
9 this point, don't forgot, Brittany hadn't even told the
10 story about Russell supposedly holding her hostage in a
11 motel and raping her. She hadn't told that story yet.
12 She didn't tell that story until later on that evening.

13 And the calls. I guess, I don't know, maybe they're
14 going to try to say Josh was upset because Brittany was
15 dating this boy. She'd been dating him for six years off
16 and on. So, at what point was -- and Josh was he upset
17 when he got out of jail? No. Did he say, ride me on down
18 there. Ride me on down to where DJ is.

19 They didn't go to where DJ was supposed to be. DJ
20 wasn't even supposed to be there. How were they supposed
21 to know except that, oh yeah, Josh said Brittany told
22 them. But he hadn't been talking to Brittany until
23 after. He talked to Brittany supposedly in the car after
24 he got out of the jail, but where was the
25 ride-me-on-down-to-DJ-now? He goes to get a haircut. Who

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 goes to get a haircut before you're going to war?

2 So all of that was just a bunch of big talk. A bunch
3 of foolish talk. People who are mad and outraged over a
4 situation. And it wasn't backed up by any actions. Did
5 they go out getting guns? No. Did they go out getting
6 weapons? No. Did they go get other people? No.

7 What were they doing? Drinking. Who's going to be
8 drinking and drunk before they go start a war?

9 They didn't have any specific plans except David had
10 plans to go out with a lady. But then he fooled around
11 too long with his sons, hanging out drinking beer, sitting
12 over there at Brittany's house. And then his friend was
13 gone. So he didn't get to go out. He didn't get to do
14 his plans.

15 So then what did his plans change to? Going to the
16 grocery store and going home to get something to eat. He
17 didn't just say that here today in the courtroom. He said
18 it on these phone calls. We had to hear five long phone
19 calls of jail calls. And you know what's on those jail
20 calls. On three of them, were the ones where David was in
21 jail calling his son Calvin where he's talking about what
22 happened. And he talks about all he wanted to do was go
23 get something to eat. That was the plan. It was never a
24 plan to go over to Russell's house. It was never a plan
25 to harm DJ.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 So when did all of this change? When? In the car,
2 obviously, when Brittany's telling the story. And then
3 all of a sudden now they're going over to fight. They're
4 going over to rob. And does that even make sense? Now,
5 all of a sudden Russell's a drug dealer, all of a sudden
6 now, according to Joshua on the stand yesterday.

7 Now all of a sudden Russell's a drug dealer and
8 they're going over to a drug dealer's house to rob him.
9 And, all Joshua thinks he had was the two fists. Now I
10 don't care how good you think you can fight. If you
11 really thought that somebody was a drug dealer, you're not
12 going over to their house with just two fists to fight
13 them and think you're going to take their drugs. That's
14 just not going to happen. That doesn't even make sense.

15 So then of course now, oh yeah, well -- I can't keep
16 them straight. I don't even remember what number story
17 that was. But now all of a sudden he has, oh, his dad
18 gave him a knife. Really?

19 Calvin never saw his dad with a knife. There's been
20 no mention -- there was no mention of a knife in his first
21 story. All of a sudden when he's here he's telling us,
22 oh, my dad gave me a knife going in the house and that's
23 what I had. But David told you he didn't know his son had
24 a knife. He didn't even see a knife. He didn't even see
25 him cutting DJ.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 So you have to consider, do we believe Joshua's
2 story? And I don't even know what part of Joshua's story
3 to believe. Do we believe some? None? All? Pick and
4 choose? I guess we have to pick and choose.

5 But I can tell you what's been consistent all along:
6 David's story. Because if you listen to those jail calls
7 and I know you got to ignore a lot of cursing, but listen
8 to what he says. He didn't even like Brittany. Everybody
9 in here agreed to that. Both of his sons and he agreed he
10 didn't like Brittany. And, my God, some of the stuff I
11 heard him say on that tape about her. He didn't like that
12 girl. That wasn't his girlfriend. He had no interest in
13 her.

14 He had no business over at Russell's house. He had no
15 business with DJ. This war that they were supposed to
16 start, Calvin told you that was some mess between him and
17 his cousin and Colby, his cousin's other cousin, and over
18 something that's said on the phone.

19 So either you're going to be mad, you're going to be
20 fussing about it at that point. But he told you. Is he
21 really going out there to start a war and carry on and
22 take out people where his cousin is? He told you. That's
23 my cousin.

24 And where were they Thanksgiving? We know where they
25 were. They were at the same house on Thanksgiving night .

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 where Calvin tried to pass the phone to David -- I mean,
2 pass the phone to CJ to talk to David. So we know where
3 they were. They weren't even mad at each other
4 Thanksgiving. You don't stay mad at family that long.
5 You know how family is. You get hot and then you move on,
6 because you know you're going to see each other for
7 Thanksgiving, Christmas, and any other time.

8 Now what else do the phone calls show us? They show
9 us that David had love for his son. I know on these phone
10 calls there were a lot of words that he was mad at his
11 son, said his son betrayed him, called his son all kind of
12 names, talked about him giving stories to the police.

13 But you know what. Don't forgot when David was saying
14 all of that back in November and back at the time of the
15 Super Bowl which is on Defendant's Number Two. And
16 remember the Super Bowl. I don't know who played but he's
17 talking about whoever's playing and watching the Super
18 Bowl. What was going on at that point? What story was
19 Josh telling them then? A lie. Remember he was saying
20 that David was the one cutting him and he was telling lies
21 about what happened. And why was David so upset? Because
22 his own son who he went in the house with to help him out,
23 he is telling lies on him.

24 Now, I want to be clear. We're not here because Josh
25 told lies. That's up to him to deal with. And we're not

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 here because Brittany, about Brittany's story because
2 those aren't the two things on trial. You're here to
3 decide whether or not David is guilty of murder,
4 manslaughter, involuntary manslaughter or not guilty
5 because he acted in self-defense.

6 And that's what we're really here for. So you have to
7 consider what everybody else said.

8 Why would he shoot his own son? Now, that's the part
9 that doesn't make sense to me. He's -- according to CJ's
10 story, he gets the gun. CJ says the gun is on a table
11 over by where they're fighting. On this coffee table.
12 This is State's Number Six.

13 CJ says, oh, now wait a minute, last Friday, second
14 story last Friday rather, he says, oh wait, it really was
15 my gun. And it's on the coffee table here. Right here.
16 Right in front of where they're fighting. Really? You're
17 fighting. Two people are fighting using a knife and
18 there's a gun sitting on the table right there. That
19 doesn't make sense. And why would he lie about it?

20 CJ clearly was very close with DJ. I can't deny
21 that. I'm not going to deny that. You heard the 9-1-1
22 and how distraught he was. His friend has been shot. You
23 see the pictures, how sad the situation is. His friend is
24 laying there bleeding.

25 Why is he -- why wouldn't he tell the police, my gun

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 was right there on the table. They grabbed up my gun.
2 They shot my friend. You know, why wouldn't you tell
3 that? You're sitting there, you're crying, you're
4 distraught and you then don't tell the truth.

5 That's why, because this isn't the truth. His gun was
6 not sitting on the table. Now I'm sure it was CJ's gun.
7 David didn't deny it. He said he had seen that gun
8 before, CJ had it. But just because it's CJ's gun does
9 not mean Russell did not have the gun in his hand that
10 night.

11 CJ was hanging out in the house with Russell. I think
12 the testimony came out pretty clear that they're all four,
13 CJ, DJ, Russell and the boy Colby, are all four close
14 friends. They're always around each other. So is it hard
15 to believe that Russell in hearing the commotion might
16 have picked up CJ's gun to come out there and see what's
17 going on? Possible. Very likely. Most likely.

18 Because if this had been the truth about that gun
19 being there, that distraught boy on that 9-1-1 tape would
20 have told it that night. No reason not to tell it. And
21 the reason he didn't tell it is because that's not what
22 happened.

23 Now, maybe he didn't see Russell with a gun. There's
24 a fight going on. He says he didn't see Josh cutting DJ.
25 But there's a fight going on and this happened fast. This

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 doesn't appear from what anybody said to be a long,
2 drawn-out situation. They were only at the house three to
3 five minutes total, depending on whose story you believe.
4 And that's probably about right. When they're knocking on
5 the door and the waiting for the hallway and the fight
6 breaking out. But when all of this happened, do you
7 really think it was a long standoff? No. This was a
8 fight-fight, running down the hall, gun being pointed,
9 grab Russell, the gun's shot, run out. That's how this
10 happened.

11 Not enough time to come up with a story. So CJ had to
12 stick with the truth. Maybe he didn't see Russell. Maybe
13 he was looking at the fight between Josh and DJ.

14 And now Josh's story that, oh, he stopped in the
15 middle of the fight to go looking at the gun. Really?
16 You are cutting somebody pretty viciously, and you're
17 going to stop in the middle of the fight when the boy is
18 trying to defend himself against you to look back and look
19 and see what's going on, take a couple of seconds. No.
20 That's not what happened. Josh is trying to add to his
21 story, trying to make it sound better. But it just sounds
22 worse.

23 So you have to decide who do you believe. And I
24 welcome you, once again, listen to the tapes, because they
25 tell you what the Defendant, Mr. David Rosier, said was

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 going on. Don't just take those tapes with him saying all
2 those curse words and all of that as indicative, oh, he
3 must have killed him, because that's not true.

4 We have to go with the evidence of what happened.
5 We're not here because of cursing. Cursing is not against
6 the law. We're here to decide what happened in that room
7 on that night in that three-to-five minute period.

8 Ladies and gentlemen, once again, I want to tell you
9 that the Judge is going to tell you what the law is in
10 this case. He's going to tell you that while he is the
11 judge of the law you are the judges of the facts. It is
12 you alone who will decide what happened on November 10th,
13 2012.

14 You're going to have to decide that from the evidence
15 that was presented. And the evidence was everything. It
16 was the testimony of Mr. David Rosier. It's everything he
17 said on the tapes which I think supports his argument that
18 he acted in self-defense. It's all the testimony from
19 Josh. And like I said, pick and choose. CJ, pick and
20 choose. And the professional witnesses who really didn't
21 add much to the facts.

22 But as I told you at the beginning of this case that
23 all of the State's witnesses except for the law
24 enforcement and the professional witnesses had changed
25 their story at some part. And I don't know what they're

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 going to say. Well, now we know what they're telling and
2 it doesn't change anything.

3 Now as jurors you have the duty to assess all of the
4 evidence and then to make a decision. And I ask you to
5 consider whether the State has met their burden. Have
6 they proven to you beyond a reasonable doubt that
7 Mr. Rosier is guilty of any crime at all? And if they
8 have, what?

9 Now, the Judge is going to tell you the State has to
10 prove each and every element beyond a reasonable doubt and
11 each -- reasonable doubt does not mean that they have to
12 prove it beyond any doubt whatsoever. They have to firmly
13 convince you that Mr. Rosier is guilty of either murder,
14 voluntary manslaughter or involuntary manslaughter.

15 So you must be firmly convinced.

16 Now, what that means is it's not any doubt whatsoever
17 but if you're not sure your duty as jurors is that you
18 must give the benefit of the doubt to the Defendant,
19 Mr. David Rosier. You just can't say, well, I'm not sure
20 so maybe the State did prove it. No. That's not what
21 happens. If you're not sure whether they've met their
22 burden, then Mr. Rosier's not guilty.

23 If you're not sure whether they've met their burden on
24 murder, if I'm not sure, I don't think murder, you can't
25 say, okay, we'll give it to the State. Nope. That means

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 I'm down and we consider this is voluntary manslaughter.
2 Well, I'm not sure if the State has met their burden on
3 voluntary manslaughter. That means you're not sure, they
4 haven't met their burden. If you're not sure that they've
5 met their burden on involuntary manslaughter, still then,
6 you have to give the benefit to Mr. Rosier.

7 He's presumed innocent at each and every phase.
8 Remember I told you that the first day. He was presumed
9 innocent the first day that we were here, Tuesday. He was
10 presumed innocent Wednesday. He's presumed innocent
11 today. He's presumed innocent right now. And he is
12 presumed innocent unless you, the jurors, decide
13 unanimously that he's guilty of something.

14 Now I'm not sitting here saying, oh, my client didn't
15 do anything at all. I didn't say that Tuesday and I'm not
16 saying that today. He did do something. He acted in
17 self-defense in that home. He wasn't doing anything when
18 the fight broke out. He was standing there when the gun
19 broke out. And then he did what he had to do so that he
20 didn't get harmed. He didn't go in there for any purpose
21 of his, and he wasn't trying to get killed.

22 If the State has not proven to you beyond a reasonable
23 doubt that Mr. Rosier did not act in self-defense, then
24 you must find Mr. Rosier not guilty.

25 The only thing I'm asking you to do is go back and

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 assess what all the evidence shows and get a verdict that
2 speaks the truth, because I am confident that you will
3 find that this is not murder, what happened on November
4 10th of last year.

5 Thank you.

6 (Juror exits courtroom 11:30 a.m., returns at
7 11:33 a.m., and the trial continued:)

8 MR. MOLONY: Thank you, Your Honor. May it please the
9 Court. Ms. Alves.

10 Ladies and gentlemen, you have one of two options at
11 this point. One of two options. You either believe the
12 story you heard right here under oath from the Defendant,
13 Dollar, the Down South Aiken Crazy White Boy as he calls
14 himself. You believe his story that the gun went off
15 pointed at his head with his back to the door and it hit
16 DJ center chest, after a dozen angles and hits him right
17 here, dead center chest. Or you believe what the evidence
18 has shown. You believe what he's told you when you
19 weren't sitting right here looking at him. You believe
20 what he's told you before the murder, and you believe what
21 he's told you after the murder.

22 It's either you believe him or he's guilty of murder.
23 That's it. That's it.

24 Murder. What is murder? You know, right off the bat,
25 DJ Davis is dead. The killing of another. Dr. Ross told

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 you he was murdered because it was the manner of death was
2 homicide, a single gunshot wound, center chest, center
3 chest. She also told you that he had defensive wounds all
4 over his hands.

5 Next. That's a chip. Someone was killed. Who killed
6 him? Listen to the jail calls. The Defendant himself
7 tells you. State's Exhibit 21. I'm not going to hit
8 play. I think we all heard enough of those calls
9 yesterday. If it wouldn't have been for Dollar, Little
10 Man would have been played. They would have smashed his
11 ass, dog.

12 That is completely against what he told you right
13 here. The only reason Dollar did what Dollar did if you
14 believe this --

15 MS. ALVES: Objection, Your Honor, goes into improper
16 character to keep referring to Dollar.

17 THE COURT: Well, the evidence --

18 MR. MOLONY: It's in.

19 THE COURT: I'll allow him to call him Dollar during
20 argument.

21 MR. MOLONY: The only reason that Mr. Rosier told you
22 right here that he went for the gun and made his move for
23 the gun that's pointing the complete opposite direction of
24 DJ Davis is because the gun was at his forehead. He acted
25 in reasonable self-defense, he told you, at that time. He

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 didn't tell you, he didn't tell his son that a couple days
2 after the murder.

3 And the defense's exhibit, if it wouldn't have been
4 for Dollar, Little Man would have been F-ing smashed.
5 Trust that. If it wouldn't have been for Dollar, Little
6 Man would have been smashed.

7 That's not what he told you right here because it's
8 not what happened.

9 We know the Defendant's admitting the shooting. We
10 know DJ died from a gunshot wound. How do we know that he
11 acted in malice? Ms. Alves is trying to do what criminal
12 defense attorneys do; get you to think and look everywhere
13 other than where the evidence shows. Confusion.

14 The law in South Carolina on malice does not mean that
15 they had to have a plan days prior. It does not mean that
16 they had to have a plan the 30 minutes they were at
17 Brittany Cook's house prior to that that night. It
18 doesn't mean they had to have a plan when he tried to have
19 his date with Katie that didn't work out. It didn't mean
20 they had to have a plan even on the way. Didn't have to
21 have a plan when they knocked on the door.

22 Premeditated doesn't exist in this state. Either you
23 murder him or you don't. Malice has to exist just before
24 the act. Just before the act of pulling the trigger.
25 That's it. That's the law the Judge is going to give

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 you. That's the law that matters.

2 There is no -- and she -- what she's attempting to do
3 is, they didn't go there because Mr. Rosier wanted to go
4 there. They didn't go -- he didn't open that door because
5 Mr. Rosier wanted to actually kill DJ. That's not the
6 law. The law is at the time, just before (snaps fingers)
7 he pulled that trigger, did he do it with ill will, or did
8 he do it with hostility, or did he do it with an evil type
9 of intent.

10 Now there's two ways, the Judge will tell you, to find
11 if there was malice. It can either be expressed or
12 inferred. They're not different types. It's just two
13 different ways to show it. You have both in this case
14 which is rare. It's rare you actually have expressed
15 malice which is when you state it. Right. It's when you
16 tell somebody of that evilness or that hostility at the
17 time of that act.

18 You've heard it, ladies and gentlemen. Again, I'm not
19 going to make you go through them but I will read them for
20 you. State's Exhibit 19. Before I get into it, Ms. Alves
21 is wanting -- those words didn't mean anything. Those
22 words beforehand ain't nothing. They're just talk. He
23 just talks like that, he told you, because he was a
24 football coach. I played football my whole life. I
25 played in college. I know I don't look like it. Never

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 heard somebody talk like that, never none of my coaches.

2 We declare war. That's him saying that.

3 Tell them the plan, meaning tell Josh the plan,
4 Calvin. We've declared war. He didn't mean anything by
5 that.

6 Tell that N word I'm ready. Tell him DSAB, CWB. He
7 tells Josh, we got you. This is before Josh's out of
8 jail. This is his birthday.

9 We had to smash on a couple F-ing words yesterday
10 about what that bitch was doing.

11 I apologize for the language but I think it's
12 important to hear.

13 I know you ain't worried about it, but that's what I
14 told that N word last night. I told CJ, I told all them
15 boys last night.

16 All them boys referring to all the boys that were at
17 that house.

18 He thought maybe that. I said y'all some -- and if
19 want to listen to that language again -- I'll F-ing smash
20 on you right now. I said, I'll go get a 12-gauge shotgun
21 and blow y'all's MF-ing house apart tonight. I done got
22 to the point where I don't give an F. I'm about to do
23 what I got to do.

24 That's before it, ladies and gentlemen. That's before
25 he even steps foot in that door. That gives you somewhat

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 of an understanding of what's going on in that head.

2 Is it just a nice, Mr. Rogers type of character that
3 walks in and I'm just going to make sure that nothing
4 happens? Or is it the person that you got five, almost
5 15-minute jail calls hearing what's going on?

6 Even after the murder, he tells you what was going on
7 before the murder. Meaning, the jail calls that come
8 after the murder, he talks about what happened prior to
9 it. He tells CJ in State's Exhibit 21, they're about to
10 have a surprise. F all of them. I told them the previous
11 day back when me and you was at the spot, F you N word and
12 everything you stand for. Bitch got smashed on. That's
13 about as weak as you can get.

14 That's him talking about what happened.

15 Let's do the defense's exhibit to see the express. I
16 don't deal with fake, honey, I deal with real. Just like
17 DSAB and CWB. That's real 100, dog. Keeping it real and
18 100. That day when we was in the house and them F-ers got
19 on that phone with that rah rah rah shit, guess what.

20 Those are his words. That's what. That's what.

21 Now I'm not telling you Josh Rosier didn't have a hand
22 in this. Josh Rosier's a thug. Josh Rosier will have his
23 day in here. But Josh Rosier got on the stand and
24 admitted to his involvement in charges that carry 40
25 years.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 I'm not telling you Calvin. Calvin, isn't it similar
2 how Calvin and his daddy's testimony went when he got in
3 here. I thought that was interesting how you hear David
4 on the phone call, David Rosier on the phone call talking
5 to his son saying, I know you got me, homie. I know
6 you'll come to court and testify for me.

7 In the end, Calvin couldn't even keep his story
8 together when he was up here. I think I may have heard
9 Josh say something about going in there to do it. You
10 couldn't really understand anything he was saying on the
11 jail calls much. But it's not as important because it's
12 not about him. That's what Ms. Alves said. It's about
13 the Defendant.

14 Now, she talked about big talk. All these calls and
15 everything that they said were big talk. That's all it
16 was. That was big talk, ladies and gentlemen. And I
17 think it's important that you see the bullet in the
18 center, right past center, in the middle of DJ's chest.
19 The bullet that turned a hard left out the front door, put
20 it's blinker on, came back around and struck him dead in
21 the center of the chest.

22 It defies physics to believe his story.

23 He tells you on the jail calls he did it to help
24 Little Man. Little Man. If it wouldn't have been for me
25 I bet they'd have smashed on Little Man. Josh. They'd

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 have smashed him, I'm telling you. I had to do what I had
2 to do. Did Little Man need any help? Little Man had it
3 pretty well under control, if you ask me.

4 That Rosier clan is a little different than most, I
5 told you at the beginning. The Defendant couldn't take
6 it. Smashed on him. You get your steel took from you,
7 you're a blank. Those are his words.

8 Your job is to weigh the credibility of the witnesses,
9 who to believe, what to believe, who has something to
10 lose, who doesn't. That's your job, collectively.

11 You get -- this is the best thing. You don't have to
12 put on your CSI hat or all of those shows on TV. You
13 don't have to do that. You bring the common sense that
14 each and every one of you has. You bring it back there
15 and that's all the law requires of you. You use your
16 common sense.

17 You had to check your wallet and your phone in and
18 your belt in through the metal detector. Your common
19 sense stays with you. It does every day. That's why you
20 12 are the best to make a decision here. That's why you
21 12 are the best to realize that that story on that stand
22 doesn't match up with this (indicating) that you'll have
23 back there with you at all. It doesn't match up with
24 exhibits. It doesn't match up with what he said before
25 the murder. It doesn't match up with what he said after

JUDGE'S CHARGE TO THE JURY

1 the murder. Because it isn't true.

2 Your decision that you're going to make in this case
3 is important. It's an important one for the family and
4 friends of DJ Davis. It's an important one for this
5 community.

6 MS. ALVES: Objection, Your Honor. Improper argument.

7 THE COURT: All right. Go ahead.

8 MR. MOLONY: It's important for the Defendant. It
9 isn't that difficult. You either believe him, that story,
10 or you believe what he said when he didn't know you were
11 watching. You believe what the evidence shows. That's
12 your choice.

13 I'm confident that when you use your common sense and
14 you go through this evidence, it's laid out there for you,
15 you'll come back with the only verdict in this case, I
16 told you at the beginning that the evidence is going to
17 prove and that justice in this case requires, and that is
18 that he is guilty of murder. Nothing else. Nothing
19 less. Murder.

20 THE COURT: Mr. Foreman, ladies and gentlemen. My
21 instructions are about 15, 20 minutes, maybe not that
22 long. Everybody okay bathroom-wise?

23 JUDGE'S CHARGE TO THE JURY

24 When I try cases around the state, criminal cases, the
25 first part of the instructions generally, deal generally

JUDGE'S CHARGE TO THE JURY

1 with all types of crimes. They're just general
2 propositions of law. So let's talk about those first.

3 And then I will turn our attention to the offenses for
4 which the Defendant is charged in this case and then we'll
5 talk about the legal principles of what we call lesser-
6 included offenses.

7 But let me remind you once again, ladies and
8 gentlemen, that the fact that the Defendant was arrested
9 and charged and indicted in this case is not evidence in
10 the case and cannot be considered by you as evidence in
11 the case; nor does it create any presumption or inference
12 of guilt.

13 The indictments are simply the formal written
14 instruments which contain the charges against the
15 Defendant. It's the way these cases are brought into the
16 courtroom. So don't infer anything from the fact that he
17 was indicted.

18 In this case we have two indictments. We have the
19 indictment for murder and it will include the lesser-
20 included offenses of voluntary manslaughter or involuntary
21 manslaughter. And also the separate indictment for
22 possession of a weapon during the commission of a violent
23 crime. And we'll talk about that when we get over to that
24 area.

25 To these indictments, both indictments, the Defendant

JUDGE'S CHARGE TO THE JURY

1 has pled not guilty. And a plea of not guilty obviously
2 puts the burden on the State of South Carolina to prove
3 the Defendant guilty beyond a reasonable doubt.

4 A person charged with committing a criminal offense in
5 South Carolina is never required to prove himself
6 innocent.

7 I instruct you that it is an important rule of the law
8 that a Defendant in a criminal trial no matter how serious
9 the charges may be will always be presumed to be innocent
10 of the crime for which the indictments were issued unless
11 guilt has been proven by evidence satisfying you of that
12 guilt beyond a reasonable doubt.

13 The presumption of innocence does not end when you
14 start your deliberations but it stays with the Defendant
15 throughout the trial until you reach a verdict of guilt
16 based on evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It's not just a legal phrase. It is a
20 substantial constitutional right to which every Defendant
21 is entitled unless you the jury are satisfied from the
22 evidence that his guilt has been proven to you beyond a
23 reasonable doubt.

24 Now our Supreme Court, both the US and the State of
25 South Carolina Supreme Court have defined reasonable doubt

JUDGE'S CHARGE TO THE JURY

1 many, many times in the past. It is simply the kind of
2 doubt that would cause a reasonable person to hesitate to
3 act. It's the kind of doubt that would cause a reasonable
4 person to hesitate to act.

5 Now, it is also said that reasonable doubt is proof
6 that leaves you firmly convinced of the Defendant's guilt.
7 That's another way of defining it. Leaves you firmly
8 convinced.

9 There are very few things in the world that we know
10 with absolute certainty. And in criminal cases the law
11 does not require proof that overcomes every possible
12 doubt. If, based on your consideration of the evidence,
13 you are firmly convinced of the Defendant's guilt, then
14 you must find him guilty. However, on the other hand, if
15 you think there's a real possibility that he is not
16 guilty, you must give him the benefit of the doubt and
17 find him not guilty.

18 So it's the kind of doubt that would cause a
19 reasonable person to hesitate, and it's the kind of doubt
20 that would leave you firmly convinced of his guilt.

21 Let me remind you, ladies and gentlemen, I told you
22 when we started that you and I have two separate duties to
23 perform in the trial of this case. Obviously my job is to
24 instruct and charge you and tell you what the law is and
25 rule on the admissibility of the evidence.

JUDGE'S CHARGE TO THE JURY

1 Your job is to find what the true facts are in the
2 case. Because we have separate and distinct jobs, please
3 do not infer anything from what I've said or done during
4 the trial of the case. If I rolled my eyes, smiled,
5 frowned, whatever, if you think I have some opinion about
6 these facts, I can't. The law does not allow me to have
7 any opinion whatsoever about the facts in the case. That
8 is your job and your job only. So please, please don't --
9 if I did anything during the trial of the case that makes
10 you think I believe one witness over another or believe
11 something or didn't believe anything, disregard it. I
12 can't do that.

13 So, sometimes I do have to laugh. Sometimes I have to
14 frown, but don't infer anything from what I've done up
15 here.

16 You are the judges of the facts. And as I told you
17 when we started the trial of this case, if this case was
18 like the rest of them that I try, you'll hear two versions
19 of the facts. You've heard that in this case. So what
20 you now have to do as your job as the judges of the facts
21 is you must determine the credibility of the witnesses who
22 have testified in the case.

23 Credibility simply means believability. Who do you
24 believe. It becomes your duty as jurors to analyze and to
25 evaluate the evidence and determine which evidence

JUDGE'S CHARGE TO THE JURY

1 convinces you of its truth.

2 Now, in doing that you have the right to believe one
3 witness over several, several over one, you can disregard
4 everything a witness says, you can believe everything a
5 witness says. You can believe a part, disbelieve the
6 other part. In other words, use your ordinary common
7 sense. You deal with wives, husbands, children, friends,
8 employees, employers. You know how to judge when
9 someone's telling the truth. Use that good common sense
10 in making your decision in this case as to what the true
11 facts are in the case.

12 You also have the right to consider whether any
13 witness has exhibited to you any interest, bias, prejudice
14 or other motive in the case, and also the way the witness
15 appears on the witness stand.

16 So, it is up to you to determine what the true facts
17 are and apply those facts to the law as I give it to you
18 in just a few minutes on murder, involuntary manslaughter,
19 and involuntary manslaughter.

20 In the trial of this case we had a couple witnesses
21 that I qualified as experts. Normally our rules of
22 evidence do not permit a witness to testify to opinions or
23 conclusions. An exception is what we call the expert
24 witness rule. A witness who by education and experience
25 has become an expert in some art or science or profession

JUDGE'S CHARGE TO THE JURY

1 may state an opinion as to relevant and material matters
2 in the case in which the witness claims to be an expert.

3 You should consider any expert opinion received in
4 this case and, like any other evidence, give it the
5 weight, if any, you think it deserves. If you decide the
6 opinion of an expert witness is not based on sufficient
7 education and experience, or that the reasons given in
8 support of the opinion are not sound, or that the opinion
9 is outweighed by the other evidence you may disregard the
10 opinion entirely.

11 An expert witness's testimony is to be given no
12 greater weight than that of any other witness simply
13 because the witness was an expert. And further, you're
14 not required to accept an expert's opinion even though it
15 is not contradicted.

16 And the last general rule we have, Mr. Foreman, ladies
17 and gentlemen. You heard evidence in this case that the
18 Defendant was convicted of crimes in the past other than
19 the one for which he is now on trial. This evidence may
20 be considered by you, if you conclude it to be true, only
21 in deciding whether the Defendant's testimony is credible
22 or believable and for no other purpose.

23 You must not consider the Defendant's prior record as
24 any evidence of the Defendant's guilt of the charges we're
25 trying here today. You can only use it in judging his

JUDGE'S CHARGE TO THE JURY

1 believability or credibility and can't use it as evidence
2 for the crime of murder or possession of a weapon during
3 the commission of a violent crime. That's the sole
4 purpose you can use the prior conviction.

5 Now, those are the general propositions of law that we
6 deal with in every case. Let's turn to the case at hand.
7 And let's talk about the charge of murder and possession
8 of a weapon during the commission of a violent crime.

9 Let's talk about the main indictment first. The
10 Defendant is indicted and charged with murder. And in
11 order to prove murder, the State must prove beyond a
12 reasonable doubt that the Defendant killed another person
13 with malice aforethought. Killed another person with
14 malice aforethought.

15 Our courts have defined the word malice, gives it its
16 sort of ordinary meaning; hatred, ill will, or hostility
17 towards another person. It is the intentional doing of a
18 wrongful act without just cause or excuse and with intent
19 to inflict an injury or under circumstances that the law
20 will infer evil intent.

21 So malice is simply hatred, ill will or hostility
22 towards another person. It is the intentional doing of a
23 wrongful act without just cause or excuse and with intent
24 to inflict an injury on another person.

25 Malice aforethought does not require that malice exist

JUDGE'S CHARGE TO THE JURY

1 for any particular time before the act is committed, but
2 malice must exist in the mind of the Defendant just before
3 and at the time the act is committed. Therefore, there
4 must be a combination of the previous evil intent and the
5 act itself.

6 So malice is the ill will. Aforethought is it has to
7 be there beforehand but it does not require any specific
8 length of time. It has to be there just before the act is
9 performed.

10 Malice aforethought may be what we call express or
11 inferred. That does not mean they're different kinds of
12 malice but merely the manner in which the malice may be
13 shown to exist. That is, either by direct evidence or by
14 inference from the acts and circumstances which are
15 proved. Express malice is shown when a person speaks
16 words which express hatred or ill will for another or when
17 the person prepared beforehand to do the act which was
18 later accomplished.

19 Malice may be inferred from conduct showing a total
20 disregard for human life. So that's what you have to
21 first consider, whether or not the State has proved to you
22 beyond a reasonable doubt that the Defendant killed the
23 victim in this case with malice aforethought.

24 Now, we have a legal concept where, particularly in a
25 homicide, that's where people are killed, there are

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1 various degrees. Some states they call it murder in the
2 first degree, second degree, third degree.

3 South Carolina we have murder and then below murder we
4 have what we call voluntary manslaughter. So if you find
5 that the State has failed to prove beyond a reasonable
6 doubt that the Defendant committed murder, then you must
7 consider whether or not the State has proven beyond a
8 reasonable doubt that the Defendant committed voluntary
9 manslaughter.

10 To prove voluntary manslaughter the State must prove
11 beyond a reasonable doubt that the Defendant took the life
12 of another in the sudden heat of passion based on
13 sufficient legal provocation. Both heat of passion and
14 sufficient legal provocation must be present at the time
15 of the killing to constitute voluntary manslaughter.

16 Sudden heat of passion may for a time affect a
17 person's self-control and temporarily disturb a person's
18 reason. The sudden heat of passion must be the type that
19 would make an ordinary person unable to coolly reflect on
20 his actions and would produce an uncontrollable impulse to
21 do violence. Sufficient legal provocation must be the
22 type that would make a person of ordinary reason and
23 caution become enraged and to lose control temporarily.

24 The provocation needed for voluntary manslaughter must
25 come from some act of or related to the victim. Words

JUDGE'S CHARGE TO THE JURY

1 alone, however, are not enough to be mere legal
2 provocation.

3 Where death is caused by the use of a deadly weapon,
4 the words must be accompanied by some overt threatening
5 act which could have produced the heat of passion. If the
6 heat of passion had cooled or if there was enough time
7 between the provocation, if any, and the killing, or the
8 passion of a reasonable person to cool, the case would not
9 be voluntary manslaughter.

10 In deciding whether a reasonable person would have had
11 enough time to cool off, you should consider all of the
12 circumstances surrounding the killing. You may consider
13 the nature of the provocation, if any, and the Defendant's
14 mental and physical state and the circumstances and
15 relationship between the parties.

16 Now, if you find the State has failed to prove murder,
17 if you find the State has failed to prove voluntary
18 manslaughter by beyond a reasonable doubt, then you would
19 look at the third lesser-included offense. Murder, lesser
20 included is voluntary and the second lesser included is
21 involuntary manslaughter.

22 So if you find that the State has failed to prove
23 beyond a reasonable doubt the Defendant committed murder
24 or voluntary manslaughter, then you must consider whether
25 the State has proved beyond a reasonable doubt that the

JUDGE'S CHARGE TO THE JURY

1 Defendant committed involuntary manslaughter.

2 To prove involuntary manslaughter the State must prove
3 beyond a reasonable doubt that the Defendant
4 unintentionally killed the victim without malice but while
5 engaged in an unlawful activity not naturally tending to
6 cause death or great bodily harm; or, that the Defendant
7 unintentionally killed the victim without malice while
8 engaged in a lawful activity with reckless disregard of
9 the safety of others. Obviously the word unintentional
10 means that the Defendant did not intend for anyone to be
11 killed or seriously injured.

12 Reckless disregard for the safety of others is more
13 than mere negligence or carelessness. Mere negligence is
14 the failure to use care that a person of ordinary reason
15 would use under the same circumstances. Recklessness is a
16 conscious failure to use ordinary care. Reckless
17 disregard for the safety of others means that you are not
18 interested in the consequences of your acts or the rights
19 and safety of others.

20 If a person who knows or should know that ordinary
21 care requires certain precautions be taken for the safety
22 of others when using a dangerous instrumentality such as a
23 gun, but that person fails to use those precautions
24 without concern, the person's actions are considered
25 reckless.

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1 The State must also prove beyond a reasonable doubt
2 that the Defendant's act was the proximate cause of the
3 victim's death.

4 Proximate cause is simply the direct cause. It is the
5 immediate cause. It is the efficient cause. It is that
6 cause without which the death of the victim would not have
7 resulted. There must be a chain of causation from the
8 time of the injury inflicted by the Defendant until the
9 time of the victim's death.

10 Now also there is a -- in this case the defense has
11 raised the offense of self-defense.

12 In order to prove self-defense it must be shown that
13 the Defendant was without fault in bringing on the
14 difficulty; second, the Defendant must have actually
15 believed he was in imminent danger of losing his life or
16 sustaining serious bodily injury. He must have believed
17 that or he was actually in such imminent danger.

18 If the defense is based on the Defendant's actual
19 belief of imminent danger, a reasonable prudent man of
20 ordinary firmness and courage would have entertained the
21 same belief. If the Defendant actually was in imminent
22 danger, the circumstances were such as would warrant a man
23 of ordinary prudence, firmness and courage to strike the
24 fatal blow in order to save himself from serious bodily
25 harm or losing his own life.

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1 And, four, the Defendant had no other probable means
2 of avoiding the danger of losing his own life or
3 sustaining serious bodily injury other than to act as he
4 did in this particular circumstance.

5 When self-defense is an issue, the Defendant is
6 entitled to that defense and the State has the burden of
7 disproving self-defense by proof beyond a reasonable
8 doubt.

9 Now, ladies and gentlemen, the other indictment deals
10 with possession of a weapon during the commission of a
11 violent crime. The State must prove beyond a reasonable
12 doubt that the Defendant was in possession of a firearm or
13 visibly displayed what appeared to be a firearm during the
14 commission of a violent crime.

15 Firearm simply means a gun, revolver, pistol. In
16 order to find the Defendant guilty of possession of a
17 weapon during the commission of a violent crime, you must
18 first find the Defendant guilty of either, committing a
19 violent crime. And in this case obviously murder is
20 considered to be a violent crime as well as voluntary
21 manslaughter.

22 So, Mr. Foreman, ladies and gentlemen of the jury,
23 when you go back and start your deliberations, obviously
24 you have an exercise you have to go through. Start off
25 with the murder. And if you find the Defendant not guilty

1 of murder, then you would consider whether or not he was
2 guilty of a lesser-included offense of voluntary
3 manslaughter. And if you find that he's not guilty of
4 voluntary manslaughter, then you would determine whether
5 or not he was guilty of involuntary manslaughter.

6 However, on the other hand, if you find initially that
7 he's guilty of murder, then you would stop. Or if you
8 find him not guilty of murder and you found him guilty of
9 voluntary manslaughter, you would stop.

10 You would only go to the third if you found him not
11 guilty of murder and not guilty of voluntary
12 manslaughter. You would determine whether or not he was
13 guilty or not guilty of involuntary manslaughter. Am I
14 making sense?

15 THE JUROR: Yes.

16 THE COURT: So you start off with the big picture,
17 murder. Drop down. If find him not guilty, find him not
18 guilty of the next, you drop down to the third. If you
19 find him guilty, you start off with the murder, that's it,
20 or voluntary manslaughter, that's it.

21 And then obviously if you find him guilty of murder or
22 voluntary manslaughter, then you have to decide whether or
23 not he was in possession of a weapon during the commission
24 of that violent crime, i.e., murder or voluntary
25 manslaughter.

1 If you find him guilty of involuntary manslaughter,
2 that is not a violent crime so that would not apply. Make
3 sense?

4 FOREPERSON OF THE JURY: Yes, sir.

5 THE COURT: Now while you deliberate you will have all
6 the exhibits back in the jury room with you. There are
7 the jail tapes, if you want to hear any of them --

8 MR. MILLER: We have a computer for them, to go back.

9 THE COURT: So if you want to hear any jail tapes, you
10 let me know and I'll send back the computer and all you
11 got to do is punch the button.

12 If you have any questions while you're deliberating,
13 write those out on a piece of paper, you'll have some
14 notebook pads back there, and send it out to me.
15 Sometimes I can answer it, sometimes I can't depending on
16 what your question is. But I'll send you back some
17 explanation.

18 And then once you reach a verdict you would write out
19 whatever you did as we just talked about a while ago; not
20 guilty or guilty, not guilty or guilty, not guilty or
21 guilty.

22 It has to be unanimous. All 12 of you have to agree.
23 You would sign it, and then consider the other possession
24 of a weapon, knock on the door and tell them you're
25 through.

1 Obviously your role is to consider the evidence and
2 determine what the true facts are and apply it to the law
3 as I've given it to you. You're not here to reward any
4 friends or punish any enemies. You're here to make a cool
5 deliberation of the evidence and apply it to the law and
6 render a verdict, a true and just verdict. That's what
7 the word verdict means, to speak the truth.

8 So I'll let you go back to your jury room. Your food
9 should be here at 12:30. You can eat and deliberate, you
10 can take a break. You can handle it however you want to.
11 If anyone leaves the jury room, for instance to go to the
12 bathroom, you have to stop deliberating until they return
13 back.

14 But y'all can go straight through. And if you need
15 anything, just let me know.

16 My alternates will be separated. I'll let you stay
17 with me until lunch comes. Obviously enjoy your lunch and
18 then I'll come back and talk to you.

19 All right. I'm going to let you go back. Do not
20 start deliberating yet, sir, until I've asked the lawyers
21 if I left anything out or if I need to add anything or
22 take out anything. Then we have to gather the evidence
23 and make sure we have it all. Then it will be sent back
24 to the jury room to you along with the verdict forms and
25 then you can start your deliberations.

1 FOREPERSON OF THE JURY: Thank you.

2 THE COURT: Thank you.

3 Two alternates, if you'd just stand to the side and
4 don't go back. Thank you.

5 (Jury exits courtroom at 12:12 p.m.)

6 THE COURT: Are there any objections to the charge,
7 requests for additions, deletions or alterations by the
8 State?

9 MR. MILLER: Nothing from the State, Your Honor.

10 THE COURT: Ms. Alves?

11 MS. ALVES: No, Your Honor.

12 MR. MILLER: Your Honor, for the record, Investigator
13 Coleman, we have a computer that the PD's Office and our
14 office has looked at. We got a profile on it that is set
15 up so that they can't get to the Internet or anything
16 else. It's completely clean. All they'll be able to use
17 it for is to play the exhibits that are entered in the
18 case. So we'll have Investigator Coleman make that ready
19 for it to go back.

20 THE COURT: Let's be on standby in the event we need
21 it. If we do we're ready to go with it. If not, we're
22 okay.

23 Would you gentlemen, ladies, Ms. Alves, Mr. Molony,
24 please come up and verify that we have all the exhibits
25 and the verdict form, please.

1 (Attorneys comply.)

2 THE COURT: Ms. Alves?

3 MS. ALVES: Yes, sir.

4 Your Honor, also I need to put my -- I never made my
5 motion for directed verdict at the end of the defense's
6 case. Actually I don't even remember resting in front of
7 the jury, but it was obvious that the evidence was
8 concluded.

9 But at this point I would make motions for directed
10 verdict on behalf of Mr. Rosier. Taking the evidence in
11 the light most favorable to the State, I don't believe the
12 State has -- I would just ask for directed verdict.

13 THE COURT: All right. For the same reasons expressed
14 at the conclusion of the State's case on the motion for
15 directed verdict at that time, it's obviously a factual,
16 in my opinion, factual issue for the jury to determine as
17 to who was telling the truth.

18 And depends on their findings. It's strictly a jury
19 question. I can't dismiss it as a matter of law.

20 MS. ALVES: Yes, sir.

21 THE COURT: Respectfully denied.

22 MS. ALVES: Yes, sir. Also one other matter regarding
23 State's Number --

24 MR. MOLONY: State's Exhibit One. The coroner has in
25 the refrigerator --

1 THE COURT: Lesser-included offenses.

2 MS. ALVES: I'm aware. I don't have any objection to
3 it.

4 THE COURT: Neither side have any objection?

5 MS. ALVES: No, sir.

6 THE COURT: According to the clock on the wall it is
7 12:18. The case will be handed over to the jury.

8 Both of those go.

9 All right. The Defendant's in custody. We will
10 remain at ease. Are you ready to do some pleas?

11 (Thereafter, other matters were heard by the Court.)

12 (At 12:30 p.m., a note was sent out by the jury
13 requesting a computer to listen to audio exhibits, marked
14 and received as Court's Exhibit No. 2. Thereafter, other
15 matters were heard by the Court.)

16 (At 3:08 p.m., the trial resumed:)

17 THE COURT: Hand it to Ms. Alves, please.

18 MR. MOLONY: (Complies.)

19 MS. ALVES: Judge, could we have a sidebar?

20 (Off-the-record discussion.)

21 THE COURT: All right. We have a note from the jury.
22 They want to be recharged on the definition of murder,
23 voluntary manslaughter, and involuntary manslaughter.

24 So I'm going to bring them out and recharge them on
25 that.

JUDGE'S CHARGE TO THE JURY

1 MS. ALVES: Your Honor, I would also ask that you
2 charge them on the law of self-defense and that they can
3 find him not guilty by self-defense to each of the
4 charges.

5 THE COURT: I've already charged them on self-defense.
6 Thank you. Bring them out.

7 (Jury enters courtroom at 3:12 p.m.)

8 THE COURT: I got a note from you. You wanted me to
9 re-read or recharge the definition of murder, voluntary
10 manslaughter, and involuntary manslaughter; is that
11 correct?

12 FOREPERSON OF THE JURY: Yes, sir.

13 THE COURT: All right.

14 The Defendant is charged with murder. The State must
15 prove to you beyond a reasonable doubt that the Defendant
16 killed another person with malice aforethought.

17 Malice is hatred, ill will, or hostility towards
18 another person. It is the intentional doing of a wrongful
19 act without just cause or excuse and with intent to
20 inflict an injury or death under circumstances that the
21 law will infer an evil intent.

22 Malice aforethought does not require that malice exist
23 for any particular time before the act is committed, but
24 the malice must exist in the mind of the Defendant just
25 before and at the time of the act or when the act is

JUDGE'S CHARGE TO THE JURY

1 committed. Therefore, there must be a combination of the
2 previous evil intent and the act.

3 Malice aforethought may be express or inferred. The
4 terms express and inferred do not mean different types of
5 malice but merely the manner in which the malice may be
6 shown to exist. That is, either by direct evidence or by
7 inference from the facts and circumstances which are
8 proved.

9 Express malice is shown when a person speaks words
10 which express hatred or ill will for another person or
11 when the person prepared beforehand to do the act which
12 was later accomplished. Malice may be inferred from
13 conduct showing a total disregard for human life.

14 That's basically what the murder definition is.

15 Do you want me to read it again or are you okay?

16 THE JUROR: Okay.

17 THE COURT: Okay.

18 Now, a lesser-included offense of murder is voluntary
19 manslaughter.

20 To prove voluntary manslaughter, the State must prove
21 beyond a reasonable doubt that the Defendant took the life
22 of another person in the sudden heat of passion based on
23 sufficient legal provocation. Both heat of passion and
24 sufficient legal provocation must be present at the time
25 of the killing to constitute voluntary manslaughter.

JUDGE'S CHARGE TO THE JURY

1 Sudden heat of passion may, for a time may affect a
2 person's self-control and temporarily disturb a person's
3 reason. A sudden heat of passion must be the type that
4 would make an ordinary person unable to coolly reflect on
5 his actions and would produce an uncontrollable impulse to
6 sufficiently -- which would produce an uncontrollable
7 impulse to do violence. The sufficient legal provocation
8 must be the type that would make a reasonable person
9 become enraged and to lose control temporarily. The
10 provocation needed for voluntary manslaughter must come
11 from some act of or related to the victim. Words alone
12 however are not enough to be legal provocation. Where
13 death is caused by the use of a deadly weapon, the words
14 must be accompanied by some overt threatening act which
15 could have produced the heat of passion.

16 If the heat of passion had cooled or if there was
17 enough time between the provocation and the killing for
18 the passion of a reasonable person to cool, the killing
19 would not be voluntary manslaughter.

20 In deciding whether a reasonable person would have
21 enough time to cool off, you should consider all the
22 circumstances surrounding the killing. You may consider
23 the nature of the provocation, if any, the Defendant's
24 mental and physical state, and the circumstances and the
25 relationships between the parties.

JUDGE'S CHARGE TO THE JURY

1 So that's what voluntary manslaughter is.

2 The third is involuntary manslaughter. To prove
3 involuntary manslaughter, the State must prove beyond a
4 reasonable doubt that the Defendant unintentionally killed
5 the victim without malice but while engaged in an unlawful
6 activity not naturally tending to cause death or great
7 bodily harm, or that the Defendant unintentionally killed
8 the victim without malice but while engaged in a lawful
9 activity with reckless disregard for the safety of others.

10 Unintentional means that the Defendant did not intend
11 for anyone to be killed or seriously injured. Reckless
12 disregard for the safety of others is more than mere
13 negligence or carelessness. Mere negligence or
14 carelessness is the failure to use the care that a person
15 of ordinary reason would use under the same or similar
16 circumstances. Recklessness is a conscious failure to use
17 ordinary care. Reckless disregard for the safety of
18 others means that you are not interested in the
19 consequences of your acts or the rights and safety of
20 others.

21 And then the State must also prove beyond a reasonable
22 doubt that the Defendant's act was the proximate cause of
23 the death, or caused the death.

24 Now to each of those offenses you have the defense of
25 self-defense which is, the elements of self-defense are

1 that the Defendant was without fault in bringing on the
2 difficulty, and the Defendant must have actually believed
3 he was in imminent danger of losing his life or sustaining
4 serious bodily injury, or he actually was in imminent
5 danger. You have to believe he was, or he was.

6 The defense is based on the Defendant's actual belief
7 of imminent danger. A reasonable prudent man of ordinary
8 firmness and courage would have entertained the same
9 belief. If the Defendant actually was in imminent danger,
10 the circumstances were such as would an ordinary -- a man
11 of ordinary prudence and firmness and courage would have
12 had to strike the fatal blow in order to save himself, and
13 the Defendant had no other probable means of avoiding the
14 danger believing his own life or sustaining injury than as
15 to act as he did in this particular case.

16 So that's the three definitions; murder, voluntary and
17 involuntary manslaughter, and self-defense as to all.

18 Anything else?

19 FOREPERSON OF THE JURY: Good.

20 THE COURT: Do them again?

21 FOREPERSON OF THE JURY: No, sir.

22 THE COURT: I'm right in my chambers or we've been out
23 here doing other work. If you have any questions
24 whatsoever.

25 You got the computer back there; don't you?

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1 FOREPERSON OF THE JURY: Yes, sir.

2 THE COURT: Everything's working fine?

3 FOREPERSON OF THE JURY: Yes, sir.

4 THE COURT: Do you need anything else?

5 FOREPERSON OF THE JURY: No, sir.

6 THE COURT: Thank you very much.

7 (Jury exits courtroom at 3:21 p.m.)

8 THE COURT: Any objection to the recharge by the
9 State?

10 MR. MOLONY: No, sir, Your Honor.

11 THE COURT: Ms. Alves?

12 MS. ALVES: No, sir.

13 THE COURT: If you -- we'll stand at ease if we have
14 another question. Got any additional work? We got one
15 more probation violation?

16 PROBATION OFFICER: Yes, Your Honor.

17 (Court's Exhibit No. 3, note from jury, was received
18 into evidence. Thereafter, other matters were heard by
19 the Court.)

20 (At 5:30 p.m., the trial continued:)

21 THE COURT: State ready to receive the verdict?

22 MR. MOLONY: Yes, sir.

23 THE COURT: Defense ready to receive the verdict?

24 MS. ALVES: Yes, sir.

25 THE COURT: All right. Ladies and gentlemen, let me

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1 commend all of you for your being well behaved this week
2 during this very difficult trial.

3 I have no idea what the verdict is. Obviously it's
4 either going to be not guilty or guilty.

5 So I'm -- fair warning. I'm asking you that if you
6 cannot control your emotions, please leave now. I will
7 not tolerate any untoward behavior, any outbursts of
8 emotions, screaming or anything else. So if you cannot do
9 that, please leave now so I won't have to deal with that
10 later on. It would not be good since y'all have done so
11 well all week.

12 (Jury enters courtroom at 5:33 p.m.)

13 THE COURT: Mr. Foreman, have y'all reached a verdict?

14 FOREPERSON OF THE JURY: Yes, sir, we have.

15 THE COURT: If you would pass it to Ms. Barbara,
16 please.

17 FOREPERSON OF THE JURY: (Complies.)

18 THE COURT: Thank you. All right. I'm going to
19 publish the verdict.

20 THE CLERK: Your Honor, we have Case Number 2013-GS-
21 02-00766, the State of South Carolina versus David Eugene
22 Rosier, Jr. As to the offense of murder, we the jury find
23 the Defendant not guilty.

24 As to the offense of voluntary manslaughter, we the
25 jury find the Defendant guilty.

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1 2013-GS-02-00767, State of South Carolina versus David
2 Eugene Rosier, Jr. As to the possession of a weapon
3 during the commission of a violent crime, we the jury find
4 the Defendant guilty.

5 Mr. Foreman, ladies and gentlemen of the jury, if this
6 is your verdict and you still agree, raise your right
7 hands.

8 THE COURT: The record reflects all jurors raised
9 their right hand. Thank you.

10 Anything additional for the jury by the State?

11 MR. MOLONY: No, sir, Your Honor.

12 THE COURT: By Ms. Alves?

13 MS. ALVES: No, Your Honor.

14 THE COURT: Thank you.

15 Mr. Foreman, ladies and gentlemen, this has obviously
16 been a very serious and difficult case to deliberate.

17 Y'all have given it just absolutely unbelievable
18 attention and deliberation. Y'all have been out for
19 almost six hours, five hours. And I cannot thank you
20 enough on behalf the citizens of Aiken. We cannot run our
21 court system without you being ready, willing and able to
22 serve. Sometimes the task is a little easier than
23 others. Oftentimes you get a very difficult case such as
24 this where someone's life has been taken. But I thank you
25 on behalf of everyone.

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1 You are free to go now. If anyone needs a work excuse
2 we can get you one of those. Ladies, have those
3 available. Your pay will be mailed to you in the mail
4 very quickly.

5 We have about 15 minutes before I will impose
6 sentence. You're welcome to stay for that and then that
7 will conclude our services. You're welcome to stay or
8 you're welcome to leave, whichever you want to do.

9 We've got some paperwork we got to sign and then we'll
10 go from there. So if you want to stay, fine. If not,
11 leave right now. Okay. Thank you.

12 (Jury exits courtroom at 5:37 p.m.)

13 THE COURT: Those that need a work excuse, go back
14 right in the jury room and we'll come back in there with
15 them. In fact, y'all step in there just a second.
16 Mr. Whittle, ask them all to step in there for just
17 second.

18 (Pause.)

19 THE COURT: You got a sentence sheet?

20 BOTTOM RIGHT: We're working on it, Judge.

21 THE COURT: I'm going to step back into my chambers.
22 As soon as the sentence sheets are prepared, please come
23 and get me and we'll impose sentence.

24 MR. MOLONY: Yes, sir.

25 (Court stood in recess from 5:37 p.m., until

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1 5:55 p.m., and the trial resumed:)

2 THE COURT: Mr. Molony, anything from the State before
3 we impose sentence?

4 MR. MOLONY: Your Honor, if I could just read the
5 Defendant's record.

6 THE COURT: Please.

7 MR. MOLONY: He has two counts of malicious injury to
8 personal property in 1986. A grand theft auto, 1986.

9 Assault and battery, 1988.

10 In 1990, two counts of resisting arrest.

11 2001, false information to law enforcement.

12 2003, strong arm robbery.

13 2006, shoplifting, resisting arrest, interference with
14 the operation of a school bus, simple assault and battery,
15 and three counts of fraudulent check.

16 2007, receiving stolen goods.

17 2011, false information to law enforcement.

18 And, Your Honor --

19 THE COURT: Is he on probation for that strong arm
20 robbery?

21 MS. ALVES: No, sir. He violated that in 2008 and
22 finished.

23 THE COURT: He maxed out?

24 MS. ALVES: Yes, sir.

25 MR. MOLONY: Your Honor, at the appropriate time

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1 Mr. Mark Davis, the victim's father, would like to address
2 the Court as well the victim's sister, Ms. Torie Allen.

3 THE COURT: Tori Allen?

4 MR. MOLONY: Yes, sir.

5 THE COURT: T-O-R-I?

6 MS. ALLEN: T-O-R-I-E.

7 THE COURT: Ms. Alves, anything you like to tell me?

8 MS. ALVES: Yes, sir, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, ma'am.

11 MS. ALVES: Judge, Mr. Rosier is 46 years old. You
12 heard a lot about him, but he is -- he was married for 24
13 years. He was with his wife longer than that. She died
14 in April of 2012 from being kicked by a horse. And that's
15 affected him a good bit.

16 They lived in Trenton. As you heard about, they had
17 the one house that they lived in, the one he tore apart
18 for his son. And then they have another house that they
19 got because it was larger to accommodate his family.

20 He has four children. His oldest son David is in the
21 military and he has four children which includes a set of
22 twins that I think were referenced in one of the jail --

23 THE COURT: David has the twins?

24 MS. ALVES: David has twins. Those were the twins he
25 was talking about wanting to hopefully see when he was

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1 trying to schedule his visits. He has his sons Calvin and
2 Josh who you heard from in the courtroom and his daughter
3 Whitney who is present today on his behalf.

4 He has a total of 10 grandchildren and he talks about
5 how much he loves his grandchildren. And he talks about
6 them. He was playing with them at the house, two of them
7 at the house that day when this happened.

8 Judge, it's clear, it's pretty clear from everything
9 that regardless of what happened, Mr. Rosier is somebody
10 who loves his children. I mean, I know he didn't act
11 appropriately on this night. He probably should have told
12 Josh, you know, if you're going to do something stupid go
13 do it by yourself.

14 But, he loves his kids. From what he told me he
15 always considered his children more his friends than his
16 children. And I think that was apparent with the language
17 he used with them because he considers them like his
18 friends especially now that they're older.

19 He is -- he is -- he tells me, he's adamant he is not
20 in a gang. Those comments that he was making was just
21 something that he just came up with in calls with his
22 children and just, it's just something they say.

23 He, I know he regrets what happened. And I know he
24 wanted to apologize to the family. I told him that that
25 would not be appropriate, to address any comments to the

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1 Court for them.

2 There's really not much I can say. You heard from him
3 how this happened. I know he bitterly regrets it, going
4 to the house, being involved.

5 And I know that if unfortunately the sad part is if
6 they had been -- if they had taken half an hour less at
7 some point over, during the evening, Mr. Rosier would have
8 been with the woman who was his girlfriend at that point
9 and he wouldn't even have been in the car with them when
10 they started talking about going over because his plan
11 that evening was to go and visit with his girlfriend,
12 Katie, the one that everybody testified they stopped at
13 her house. But she was already gone when they got there
14 for the evening.

15 And I know he regrets having spent that long hanging
16 out with them because it would have been a very different
17 situation today.

18 The only thing I can ask you is to take into
19 consideration the facts of what happened, when he says he
20 didn't go over there, even from what his son said if you
21 believe his testimony, they didn't go over to end the life
22 of DJ Davis but unfortunately that's what happened due to
23 them -- and if he hadn't been there, this wouldn't have
24 happened and he knows he was wrong for even going there.

25 I would just ask you to take that into consideration

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1 in your sentencing of Mr. Rosier. And he has been in jail
2 as stated since November 12th of last year.

3 THE COURT: He'll be given credit.

4 MS. ALVES: Thank you.

5 THE COURT: Let me hear from Ms. Torie Allen, please.

6 Ms. Allen, please, address your comments to me now.

7 Okay?

8 MS. ALLEN: Okay. Your Honor, we've all sat here
9 today and learned how DJ's life was ended. What we have
10 not heard is about who my brother was. He was a good old
11 curly blonde-headed boy that watched TV in his bed and ate
12 cookies with his Nana K and Poppa Ross. He was his
13 daddy's little buddy. He ran to his mama's lap when he
14 was hurt or sick. The baby brother that aggravated his
15 two older sisters. He was the young boy that went hunting
16 with his father and could not even shoot the deer his self
17 because he had too much compassion. His daddy had to
18 shoot it and tell everybody that DJ done it.

19 He never met a stranger. He had a personality that
20 attracted people to him. If he considered you a friend or
21 a loved one, he loved you with everything he had. He
22 would give you anything. He touched a lot of peoples'
23 lives.

24 I've never seen as many people as I did on the day of
25 his memorial. They had to turn people away because there

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1 was no room left to even stand. And that is a testament
2 to the kind of person and friend he was.

3 On the night of November 10th, 2012, one decision
4 changed so many lives. It doesn't matter that he went
5 with any intention or no intention to kill anybody. The
6 fact is that my brother is gone.

7 A mother lost her only son. Two sisters lost their
8 only brother. A father lost his only child. And Nana K
9 her only grandchild. He gets to see his children or talk
10 to them whenever he pleases. We will never get to see our
11 brother again. We'll never get to celebrate his 21st
12 birthday. We'll never get to see him have children or get
13 married. We'll miss all of that.

14 He might not get to see it, but he'll get to hear
15 about it if his family does those things.

16 His -- since that night his father has been on -- has
17 not been able to sleep without prescription medication.
18 There are days when it's even difficult for him to do
19 anything due to severe depression. His thoughts are ruled
20 by what his son went through; did he suffer, was he
21 scared.

22 And we'll never know the answers to those. We do not
23 know what the truth is. We will never know the truth
24 because there's so many different stories. There's never
25 going to be complete closure.

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1 It's all the questions that any parent would ask. The
2 same goes for Nana K except she has to also worry about
3 her son as well as grieving over her grandson.

4 His mom also has been in the hospital. She just got
5 out of hospital that morning of the murder for heart
6 problems only to find out that night that my brother was
7 killed.

8 She's been in the hospital several times since then.
9 Not only do me and my sister have to go through worrying
10 about what happens here today but we also have to worry
11 about our mother and our stepfather and our grandma's
12 health because they're all so depressed.

13 Was my brother a perfect person? No. Did we agree
14 with everything he did? No.

15 But what he does, what he did did not -- was no cause
16 for this. He was there minding his own business hanging
17 out with friends. They all plainly stated that they did
18 not even go there for that.

19 He was taking steps to change his life. When they did
20 the toxicology report it come back clean. The only thing
21 he had done was a little bit of pot and that was very
22 minimal. So he was trying to straighten up. He had just
23 got out of rehab. He was trying to do well. He was
24 trying to get out of that life. He had done told
25 everybody.

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1 He was 20 years old when a decision was made that his
2 life did not matter. But it matters to us is a testament
3 to all these people here, friends, family, everybody. He
4 was something to us. And we will never get him back. It
5 was senseless and a waste of a precious life. Nothing
6 will bring him back. All we have is memories.

7 David Rosier has no regard for life. And we ask that
8 he be given the maximum sentence and not be allowed to
9 return to society because all I can think is of a little
10 boy that we used to carry around till his feet was
11 dragging and now all we have to carry is his ashes.

12 So we ask you to take that into consideration when you
13 are sentencing him, that he get the maximum.

14 THE COURT: Thank you. Mr. Davis?

15 MR. DAVIS: Your Honor.

16 THE COURT: Yes, sir.

17 MR. DAVIS: Thank you for giving me this time.

18 There's one thing about DJ. Only his friends and family
19 called him DJ. I wish I could have said that earlier in
20 the beginning of this trial because it sickened me to hear
21 DJ come out of some people's mouth.

22 DJ was my pride and joy, sir. He's the only child I
23 ever had, other than his two sisters. We all grew up
24 together. I have two step kids now. Two step-grand kids
25 now. Never will have my own grand kids. Never will have

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1 my child back. A 20 year old. It takes a 40-something
2 year old man to murder my son, 20 year old, over a girl.
3 Makes pretty good sense to me; huh?

4 My neither, sir, to be honest with you.
5 Coward.

6 Your Honor, I know that there was a little upset, more
7 than one reason I done that. I have yet seen any kind of
8 sorriness on this murder's face. Not yet. And
9 apologize? I wouldn't even accept one. It would be a
10 waste of breath because he don't mean it.

11 If he meant it, wouldn't have been there that night.
12 If he was so loving a father he wouldn't have let his
13 child go there that night. He'd a took him to the
14 hospital after he'd been shot but he didn't.

15 And, I'm sorry, I may not be saying the right things
16 right here but I can't talk to him. I'd love to go back
17 in the back and lay hands on him for about five minutes
18 but I can't do that neither. But God's going to take care
19 of him.

20 Thank you for your time. Thank you for this week.
21 And if there is any way possible, please don't be lenient.
22 I'd like to see him get every day that he can get. I
23 don't know what it is exactly, but I hope that he gets the
24 max.

25 My mother has lost her only grandchild. It's not just

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1 hurt one person or two people, it's hurt a lot of people.

2 Sir, there was three, over 350 people at his service.

3 They were turning people away because there were no room
4 at Hatcher Funeral Home. This boy was loved by a lot of
5 people.

6 And especially by me. I was proud of him. I'll never
7 have him back.

8 Okay. He's got kids. So what. I don't have mine and
9 it don't give him no right the way I feel to be lenient on
10 him. And I hope you're not. I hope the Court's not or
11 whatever I'm supposed to say about whichever.

12 THE COURT: You say what's in your heart.

13 MR. DAVIS: And that's all I beg of you. Thank you so
14 much.

15 THE COURT: Yes.

16 Mr. Rosier, anything want to tell me?

17 THE DEFENDANT: Like I said previous to my attorney,
18 Your Honor, I am greatly sorry what happened that night.
19 It wasn't out of any intent. I was there to basically
20 talk to Russell, not trying to get this altercation
21 started. It turned out the way I had struggled with him
22 over a gun and it end up losing a young man's life. And I
23 greatly apologize and hopefully one day they will forgive
24 me. I'm sorry, Your Honor.

25 THE COURT: Mr. Rosier, I've been doing this a long

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1 time. And it's always the most difficult cases when we, a
2 dad and his sister and his grandmother, they lose a child
3 at the age of 20, particularly in this manner.

4 It's just absolutely senseless. And not only have
5 they lost their child, you're going to lose your freedom.
6 It's beyond me as to why you and your son had to go into
7 that house that night. There was so many other ways to
8 handle this matter.

9 In considering the facts in the case, I'm considering
10 your lengthy record going all the way back to 1986.

11 AS TO THE OFFENSE OF MANSLAUGHTER, THE SENTENCE OF
12 THIS COURT IS THAT YOU BE COMMITTED TO THE STATE
13 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS.

14 AS TO THE OFFENSE OF POSSESSION OF A WEAPON DURING THE
15 COMMISSION OF A VIOLENT CRIME, THE SENTENCE OF THE COURT:
16 YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
17 FOR FIVE YEARS.

18 YOU'LL BE GIVEN CREDIT FOR YOUR TIME SERVED. THEY'LL
19 RUN CONCURRENT.

20 Good luck to you.

21 MS. ALVES: Thank you, Your Honor. Your Honor, at
22 this time I'd make a motion for a new trial. Taking the
23 evidence in the light most favorable to the State, I'd
24 move for a new trial in this matter.

25 I base this motion on all of the previous motions made

1 throughout the trial.

2 THE COURT: Thank you. Well obviously as I've told
3 you, the denial of your directed verdict both times, it
4 was a question for the jury to determine. And obviously
5 they had an option between the murder charge, the
6 voluntary manslaughter charge and the involuntary
7 manslaughter charge.

8 They determined what the true facts were when they
9 applied it to the law as I gave it to them, and I respect
10 their verdict. And it was a question of fact.

11 Therefore, I respectfully deny your motion.

12 MS. ALVES: Yes, sir.

13 THE COURT: Thank you. Everybody remain seated,
14 please.

15 Mr. Davis, 30 years was the most I could give him.
16 All right. Thank you.

17 We'll stand at ease until Monday morning.

18 END OF CASE: 6:15 P.M.

19 ***

20 CERTIFICATE OF REPORTER.

21 STATE OF SOUTH CAROLINA)

22 COUNTY OF AIKEN)

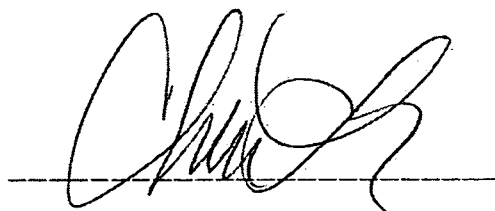
23

24 I, Cheri L. Young, Registered Professional Reporter
25 and Official Court Reporter for the State of South

1 Carolina, Second Circuit-At Large, do hereby certify that
2 the foregoing proceedings were written stenographically by
3 me using computer-aided translation; further, that the
4 foregoing is a true, accurate and complete record, to the
5 best of my skill and ability, of all the proceedings had
6 and evidence introduced in the hearing of the captioned
7 case, relative to appeal, in the Court of General Sessions
8 for Aiken County, on the 7th, 8th, 9th & 10th days of
9 October, 2013.

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

12 I have hereunder set my hand this 26th day of
13 December, 2013.

A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

16 Cheri L. Young, RPR
17 Official Court Reporter
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN) FOR THE SECOND JUDICIAL CIRCUIT
THE STATE) 2013-GS-02-766 & 767
v.) Motion to Continue and for Court to Submit
DAVID ROSIER,) the Disposition of this Case
Defendant)

CLERK OF COURT
COUNTY OF AIKEN
Liz G. Goff, Clerk of Court of Common Pleas and General Sessions, Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
OCT 07 2013

Deputy Clerk
Liz G. Goff
C.C.C.P. & G.A., Aiken County, S.C.
Liz G. Goff

The Defendant, above named, moves the Court for an order continuing this case beyond the October 7, 2013 term of General Sessions Court. The Defendant further moves the Court to issue a scheduling order and supervise the disposition of this case, including setting the trial date. This motion is based on Article I, Section 8 of the South Carolina Constitution and *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

I. Introduction.

Langford abolished solicitor docket control. Almost a year after the decision, *Langford* has not been implemented, and Solicitors retain control of General Sessions Court dockets in violation of the South Carolina Constitution. As our Supreme Court recognized, solicitor docket control "leaves room for abuses which can deny a defendant due process." *Id.*, 400 S.C. at 439, 735 S.E.2d at 480. In the case at bar, the Solicitor's Office has obtained a strategic advantage by calling this case to trial during the week of October 7, 2013 after providing substantial evidence for which the defense will need time to prepare,¹ including *Brady*² material, during the week before trial. A new supplemental police report was provided as well as statements from two co-

¹ See *Roviaro v. U.S.*, 353 U.S. 53 (1957).

² *Brady v. Maryland*, 373 U.S. 83, (1963). See also *Kyles v. Whitley*, 514 U.S. 419, (1995); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

defendants on CDs that could not be viewed. Responding to the new evidence requires the defendant to interview an additional witness previously deemed not relevant. In addition, the new statements require the defense to now re-interview a co-defendant who was previously interviewed by the defense prior to his arrest and do new investigation and work to prepare for impeachment of the new state witnesses. The State has refused the defense request to continue this case past the week of October 7, 2013.

Langford intended to protect litigants from the prejudice and unfairness inherent with solicitor docket control. This Court's intervention is necessary to prevent a due process violation.

II. Factual and Procedural History.

On November 10, 2012, the Defendant and his son, Joshua Rosier, went to a residence in Aiken County where the son engaged in a physical altercation with the now deceased victim. During the altercation, the Defendant obtained a loaded pistol and shot both his son and the victim. All of the facts surrounding the reasons for going to the residence and the actions taken inside the residence are in question. Joshua Rosier was charged with Assault and Battery in the 3rd degree and the Defendant was arrested on November 12, 2012 and charged with Murder and Possession of a Weapon during the Commission of a Violent Crime. Bond was denied by the Aiken County Magistrate and a motion to set bond in Circuit Court was denied in February 2013.

During Summer 2013, the solicitor advised the defense attorney that because of some jail calls, he had new information regarding the case and in August 2013, Joshua Rosier was arrested and charged with Assault and Battery by a Mob, 2nd degree and Accessory after the Fact to Murder. In addition, in August and September 2013, three other people –Calvin Rosier, Brittany

Cook and Autumn Sitton- who remained outside of the incident location and were previously interviewed by the police have been arrested and charged with both Accessory before and after the Fact to Murder. At all times, the defense attorney and the solicitor were in communication about the case and the defense attorney repeatedly requested copies of any statements made by the new co-defendants, copies of any supplemental reports done by the police investigator regarding the new investigation and copies of information previously requested by the defense unrelated to the new statements. The solicitor agreed to provide this information.

In August 2013, the Defendant filed a second motion to have bond set. On September 3, 2013, the solicitor advised the defense attorney that he was going to oppose the motion and he would attempt to have the case ready to try during the October 7, 2013 term of General Sessions Court. On September 19, 2013, the solicitor opposed the motion for bond and advised the Court that he had the case prepared was going to try this case during the term of General Sessions Court starting on October 7, 2013. Bond was again denied.

In early September 2013, during a term of General Session Court, the solicitor provided the defense with 2 CDs containing copies of interviews with Joshua Rosier and Brittany Cook. On September 19, 2013, the defense attorney informed the solicitor that Brittany Cook's tape was damaged and could not be viewed or listened to. The solicitor advised that he too had experienced problems with the CD and agreed to provide a new copy. In addition, he advised the defense that he would provide a copy of Autumn Sitton's taped interview, the supplemental police report which had not yet been provided to him by law enforcement and the additional information which was requested by the defense. The solicitor further stated that he had not yet obtained any statement from Calvin Rosier.

On Tuesday, October 1, 2013 at 5:00pm, the solicitor hand delivered the supplemental police report—which includes a mix of typed and hand written documents because the officer never finished the typed report—and videotaped statements of Autumn Sitton and Brittany Cook. The new report which is approximately 45 pages, combines the original police report and the supplemental report. According to the solicitor's discussion of the case and the new report, the co-defendants admit they originally lied to authorities and substantially changed their stories to the police. In addition, on October 1, 2013, the solicitor advised the defense attorney that Ms. Cook was now admitting to lying on her new statement and he had some information given by Calvin Rosier which he would get to the defense the following day. On Thursday, October 3, 2013, the Solicitor's Office informed defense counsel that Joshua Rosier and Calvin Rosier changed some of their statements during trial preparation interviews and that Joshua Rosier had made additional statements. The solicitor was advised this same day by email that the two CDs of Ms. Cook's and Ms. Sitton's statements were not playable. On Friday, October 6, 2013, the defense attorney took her laptop to the solicitor's office where their investigator assisted her in obtaining computer programs from the internet to assist in playing the CDs. That same day, the defense attorney was advised that a witness to the case had made new inconsistent statements to the solicitor's investigator that morning about the circumstances through which the Defendant obtained the pistol used to shoot the victim.

Based on the new report and the statements from the CDs, a witness whose testimony was previously deemed unnecessary may now be needed for impeachment purposes. Another potential witness will need to be re-interviewed. Defense Counsel has subpoenaed but not had opportunity to speak with the witness. In addition, the defense will need to review some items that were taken into evidence to determine if there would be impeachment available against one

of the new co-defendant statements. The Defense may also need to call additional witnesses after review of these items. Third, after speaking with the solicitor on October 3, 2013 and viewing the CDs on October 4, 2013, the defense attorney contacted the attorneys for Calvin Roiser and Brittany Cook and left voice mail messages requesting permission to speak with their clients. The attorneys have not yet responded.

This Court convened a conference call with the Solicitor's Office and defense counsel on Thursday, October 3, 2013. The defendant moved to continue this trial for one week. This Court instructed the Solicitor's Office to see if it could reschedule its witnesses. The solicitor said he would try, however, informed the defense counsel it cannot reschedule the witnesses because the Solicitor's Office investigator is going on vacation.

The Court scheduled a hearing on this issue for Monday, October 7, 2013.

III. *State v. Langford*.

In order to place this case into historical context of solicitor docket control, it is necessary to review our Supreme Court's efforts prior to *Langford* to encourage solicitors to improve docket management, the specifics of the *Langford* decision, and post-*Langford* efforts to implement court supervision of General Sessions Court dockets. As will be seen, our Supreme Court has not been successful in its efforts, both before and after *Langford*, to manage General Sessions Dockets.

A. Pre-*Langford*.

Prior to *Langford*, our Supreme Court attempted to expedite General Sessions Court dockets through administrative orders and by amending court rules. Neither attempt was successful. Independent and internal studies identified solicitor docket control as an impediment to efficient criminal court docket management.

In 2002, Chief Justice Jean H. Toal began a differentiated case management pilot program in Richland County. Each case was assigned to one of three tracks—120 days, 180 days or 270 days—based on the complexity of the case. Circuit Court Judge Henry Floyd managed the tracks with the goal of processing the cases within the deadline. Management of the tracks included an “initial appearance,” where the state provides discovery and other administrative concerns are addressed, and second appearance, often called the “docket appearance,” if the case was not resolved within the time allowed by the track. During calendar year 2002, the criminal case backlog in Richland County was reduced by nearly one third. Based on the success of the program, the system was adapted for use in Greenville, Horry, and Orangeburg Counties. *See* Efficient South Carolina Court Management Produces Result, Press Release for 1/22/2003. The program was supposed to spread statewide. On March 1, 2007, “[T]he sixteen Judicial Circuit Solicitors agree[d] to develop with the Chief Justice and implement [differentiated] criminal case management systems in each county throughout the State of South Carolina.” S.C.S.Ct. Order 2007-03-01-01.

In the February 25, 2009 State of the Judiciary address, Chief Justice Toal discussed the backlog of General Sessions Court cases. She told the General Assembly that while the solicitors control the docket, there should be deadlines for disposition of cases. The Chief Justice acknowledged a practice of some solicitors allowing defendants to linger in jail until the solicitor determines the person has served enough time before offering a time served plea.

On October 25, 2009, the National Center for State Courts submitted to the Chief Justice a *Technical Assistance Report on Docket Management* (hereinafter “NCSC Report”). This report found “a lack of predictability” and “uniformity from one circuit to another in both civil and criminal cases, and it appears to be more pronounced in criminal cases.” NCSC Report, p. 2.

Members of the bar identified one of the “greatest problems” with docketing as, “Control of the docket resides with the Solicitor’s Office, rather than with the Administrative or Presiding Judge.” *Id.* at A-5, A-9. The bar pointed out, “Having the Solicitors office in charge of the docket creates the appearance of unfairness with the judicial system and creates a very strong opportunity for abuse.” *Id.* at A-15. When asked how to make docketing better, the bar recommended, “Take the control of the General Sessions from the Solicitors!” (emphasis original). The bar added:

The docketing system needs to be in the control of the Court of Chief Administrative Judge. It is horribly prejudicial to have one side with full authority and discretion over the trial docket. If the Court or Chief Admin[istrative Judge] had control, both sides would be on a level playing field.

Id. at A-17, A-23-24. According to the NCSC Report, judges believe solicitors “use docket control for judge shopping.” The judges recommended “build[ing] and infrastructure for court control the criminal dockets.” *Id.* at B-5.

Also in 2009, Chief Justice Toal formed a task force to draft the proposed South Carolina Criminal Rules (hereinafter “SCCR”). Retired Circuit Court Judge Howard King chaired the task force that included prosecutors, public defenders, and private criminal defense lawyers. The proposed rules were published on December 2, 2009. The proposed rules provide for all cases to “be governed by a docket management system pursuant to Supreme Court docket management orders that now exist or may be implemented or amended by the Supreme Court.” Proposed Rule 101, SCCR. Continuing the differentiated case management system, a defendant would receive discovery and a plea offer at the initial appearance. Proposed Rule 119, SCCR. By the second appearance, a defendant would have to accept the offer or be placed on a trial docket. Proposed Rule 120, SCCR. The proposed rules provide for judicial oversight, allowing the Chief

Administrative Judge to hold status conferences to monitor the progress of the case or if a pretrial detainee's case is not resolved during the track. *See* Proposed Rules 121, 122 and 124 SCCR.

The proposed rules, however, would minimally enforce a defendant's right to a speedy trial. Rule 121(b), SCCR would provide:

Cases should be disposed of within the track to which they are assigned. *Failure to dispose of a case within the track is not grounds for dismissal* but may be considered by the chief administrative judge in determining remedies or sanctions.

(emphasis added). There is no further specification of "remedies or sanctions." Reconsideration of bond is the only remedy listed anywhere in the proposed rules, but "unreasonable delay" is only one factor the court "may" consider. Proposed Rule 106(g), SCCR. The proposed rules, however, expressly exclude dismissal as a remedy.

The rules, likewise, would not provide for a meaningful trial order. Although the solicitor would be required to prepare a trial roster fourteen (14) days before a term of court, the solicitor is not required to specify the order the cases would be called for trial. Defendants would be required to be in court within two hours of oral notification, and failure to appear would result in a bond revocation. Proposed Rule 123, SCCR. The solicitor also would retain the authority to select the trial judge.

The Supreme Court received written comments on the proposed criminal rules. The Court convened a public hearing on the proposed rules on January 5, 2010. Although the solicitors did not provide written comments concerning the proposed rules, the President of the Solicitors' Association appeared and opposed the Supreme Court being able to issue docket management orders pursuant to Rule 101, SCCR without the solicitors' consent. During her January 22, 2010 presentation to the South Carolina Bar, Chief Justice Toal announced a "comprehensive review"

of the proposed rules with “[f]ull vetting of the proposed new rules [to] be conducted in 2010 with submission to the General Assembly planned for the 2011 session.” See S.C. Const. Art. 5, §4A. Our Supreme Court never submitted the proposed rules to the General Assembly.

In February 2011, the Supreme Court announced the formation of a Docket Management Task Force chaired by the Honorable Kaye Hearn with a General Sessions Court Committee chaired by the Honorable Costa Pleicones and Circuit Court Judge Roger Couch. The Preliminary Draft³ Report of the General Sessions Subcommittee of the Chief Justice’s Docket Management Task Force (hereinafter “GS Subcommittee Report”), outlined a “Perfect World” Scenario:

[I]n a perfect world, an administratively driven management system would control the flow of cases in General Sessions court. The system would function under the supervision of the Judiciary, free of control by either adversarial component of the system. Judicial oversight would be necessary to resolve questions or problems relating to the movement of the case through the system.

This report then pointed out that the NCSC Report “finds prosecutor controlled dockets to be a major impediment to the efficient processing of criminal cases in South Carolina.” GS Subcommittee Report, pp. 3-4. In apparent deference to Solicitors, the report concluded, “The current system of solicitor control over the docket is a time honored tradition in South Carolina. No inference should be drawn that any recommendation or observations contained herein advocate any lessening of prosecutorial discretion.” *Id.* at 20-21.

It was in the context of the NCSC Report, the never implemented SCCR, and the GS Subcommittee Report, that *Langford* reached our Supreme Court.

³ In an email dated September 27, 2013, responding to a Freedom of Information Act request from Charles Grose, Daniel Shearouse, Clerk of the Supreme Court, stated, “As requested, I am sending you the NCSC Report and Subcommittee Reports of the Docket Management Task Force. I am informed that these are the most current versions.”

B. The *Langford* Decision.

The issue in *Langford* was whether the Solicitor's Office used docket control to deny Langford a speedy trial, manipulate the scheduling process, and call the case when the state had a strategic and tactical advantage. The Public Defender Association appeared *amicus curie* to place *Langford* in the historical context of Solicitor Docket Control. The Supreme Court expedited the briefing process, scheduled oral arguments, and invited the Public Defender Association and the Solicitors' Association to participate in oral arguments.

In its *amicus curie* brief, the Public Defender Association pointed out that solicitor docket control violates the separation of powers and due process.. Brief of *Amicus Curie* South Carolina Public Defender Association (hereinafter "PDA Brief"), p. 23-26. The Public Defender Association, argued, "Unchecked authority to control the flow of criminal cases through the General Sessions court hand solicitors a license to exploit this control to disadvantage defendants" including:

- Solicitors use their control of the docket to call cases to trial when the defense is ill-prepared or unable to present the most complete defense possible. PDA Brief, pp. 18-19.
- Solicitors use their control to leverage guilty pleas from those who would otherwise exercise their right to a jury trial. PDA Brief, p. 20.
- Solicitors can repeatedly and unnecessarily request the appearance of defendants who have made bond. PDA Brief, p. 21.
- Solicitor docket control essentially cuts off judicial involvement with the trial cases until the morning of trial. PDA Brief, p. 21.
- Docket control allows the solicitors to "judge shop." PDA Brief, p. 22-23.

The Solicitor's Association countered by arguing that there are no "*founded* examples" of "misuse of authority bestowed by Section 1-7-330." Brief of *Amicus Curie* South Carolina

Solicitor's Association, p. 11 (emphasis original). During the oral argument, however, Justices Beatty and Kittridge shared some of their observations of solicitor docket control from their experiences as Circuit Court Judges.

Recognizing control of the docket to be a "matter of significant public interest," our Supreme Court "agree[d] with the Public Defender Association" that solicitor docket control "violates the separation of powers [contained in S.C. Const. Art. I, §8] and therefore is unconstitutional." *Langford*, 400 S.C. at 429-32, 735 S.E.2d at 475-77.

Contemporaneously with *Langford*, the Supreme Court issued two administrative orders: *Dispositions of Cases in General Sessions* and the *Uniform Differentiated Case Management Order*. Both orders are extremely deferential to Solicitors.

Under the *Dispositions of Cases in General Sessions* order, which is attached to *Langford*, 400 S.C. at 449, 735 S.E.2d at 486, "[a]bsent the grant of a speedy trial motion, the Solicitor shall have the initial responsibility for designating when a case is ready for trial." Hence, the Solicitor retains control of the case for the first eighteen months before it is transferred to the "judicial docket." After another year, the court must conduct a hearing where the Solicitor gets an opportunity to show "good cause" for continued delay. Other than notice and opportunity to be heard, the order is silent about the defendant's rights at this hearing. Concerning "old case disposition," cases "pending four (4) or more years from the date of indictment by the Grand Jury⁴ shall be dismissed by the [Chief Administrative Judge for Administrative Purposes], unless the Solicitor shall show good cause why it should not be dismissed." Dismissal is "without prejudice," and the Solicitor can seek a new indictment. As *Langford*'s case demonstrates, Solicitors are allowed to delay years before seeking an

⁴ A Grand Jury indictment is required for prosecution in General Sessions Court. S.C. Const. Art. I, §11.

indictment, presumably meaning the Solicitor can delay triggering the “old case disposition” simply by not presenting the case to the Grand Jury.

Under the *Uniform Differentiated Case Management Order*, S.C.S.Ct. Order 2012-11-21-03, all cases are assigned to a 180-day track. “If plea negotiations are unsuccessful at the Second Appearance, the case will be scheduled for trial before one of the presiding General Sessions Judges.” This order tracks the *Disposition of Cases in General Sessions* order regarding the procedures for dismissal after eighteen months from arrest or four years following indictment.

Despite acknowledging the possibility the trial court might grant a speedy trial motion, both administrative orders are silent about the procedures and remedy should a trial court grant such a motion.

C. Post-Langford.

Both the Attorney General and the Solicitors’ Association of South Carolina petitioned our Supreme Court to rehear *Langford*. Although the Supreme Court denied these petitions, the Court “held the implementation of the administrative orders entitled *Disposition of Cases in General Sessions and Uniform Differentiated Case Management* in abeyance, and has provided for the establishment of a committee to develop a plan to implement the changes necessary in light of the decision in *Langford*.”

When addressing General Sessions Court backlogs during the 2013 State of the Judiciary, Chief Justice Toal declared, “This isn’t a judge run situation; no judge can run these dockets.” She called for “a joint cooperative partnership between Clerks of Court, Solicitors, Public Defenders, defense attorneys, and all others involved in the [criminal justice] system.” The week following the State of the Judiciary, the Chief Justice planned to “announce the appointment of a Stakeholders Committee to develop collaborative management of the criminal docket.” She

announced that state Representative Tommy Pope and state Senator Greg Hembree, both former elected solicitors, would be members of the committee. To date, the Court has not announced the other committee members.

According to a *Greenville News* article by Tim Smith entitled “Criminal Case Backlog in SC Focus of Reform Effort,” on July 3, 2013, also published in *The State*, Chief Justice Toal has “met with an ‘informal working group’ of several solicitors and two lawmakers who once worked as prosecutors, Rep. Tommy Pope of Union and Sen. Greg Hembree of North Myrtle Beach, to come up with a new plan” for managing General Sessions Court dockets. This article quoted the Chief Justice as saying a “new plan will be unveiled to clerks and the judiciary this summer and should result in new orders by the fall.”

The South Carolina Association of Criminal Defense Lawyers (hereinafter “SCACDL”) subsequently issued a press release asking our Supreme Court to “acknowledge the importance the defense plays” in the criminal justice system and to “include members of the public and private defense bar in [the *Langford* implementation] process.” The SCACDL Board of Directors have approved the formation of a Langford Task Force with objectives:

- To collect information, including first-hand accounts, pleadings and court orders, documenting abuses of solicitor docket control. Information collected by the Task Force may be provided to decision makers to assist with evidence-based policy decisions.
- To provide support and assistance to lawyers in specific cases of solicitors abusing docket control. Support and assistance may include assistance with pleadings and special court appearances to argue motions in a specific case.

On Thursday, August 22, 2013, Chief Justice Toal made her annual presentation to the 2013 Judicial Conference. In her presentation, the Chief Justice announced, “The [Supreme]

Court is examining a system for differentiated case management which will set all cases on tracks or scheduling orders.” According to the PowerPoint presentation, at slide number 15:

For cases less than 545 days old [or eighteen months], Judges, Solicitors, and defense attorneys in counties which have in place a differentiated case management order tailored to that county will collaborate to set deadlines to process cases from bond hearings, the scheduling of first appearances, and the scheduling of pleas and trials.

Cases over 545 days old [or eighteen months] will be exclusively managed by the Chief Judge for Administrative Purposes and will be either set for trial or dismissed.

The *Langford* implementation process continues without input from the criminal defense bar. As a result, the defense bar must litigate *Langford* on a case-by-case basis.

IV. Relief Requested

The “adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” *Langford*, 400 S.C. at 429, 735 S.E.2d at 475. This Court’s intervention is needed to protect the defendant’s right to an adequate opportunity to prepare for trial and prevent a due process violation. The defendant requests this Court continue this case beyond the October 7, 2013 term of General Sessions Court. The Defendant further requests the Court issue a scheduling order and supervise the disposition of this case, including setting the trial date.

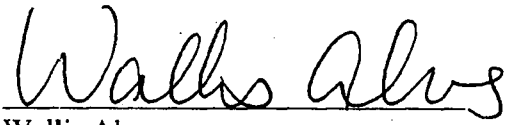
This relief is consistent not only with *Langford*, but also with the NCSC Report, the GS Subcommittee Report, and the Chief Justice’s report to the Judiciary that General Sessions dockets will be managed, in part, through scheduling orders.

By entering a scheduling order, this Court can set deadlines for any additional discovery or motions and can schedule the case consistent with the Court’s schedule.

V. Conclusion

This Court should exercise the inherent authority under Article I, Section 8 of the South Carolina Constitution to continue this case and supervise the disposition of this case, including setting the trial date, through a scheduling order.

IT IS SO MOVED.

A handwritten signature in cursive script, reading "Wallis Alves", written in black ink.

Wallis Alves
Attorney for Defendant

October 7, 2013
Aiken, South Carolina

237
WITNESSES

Aiken County Sheriff

Brad Wertz

Law Enforcement Case #: 12-066085

KNM

ARREST WARRANT NUMBER

FILED

2012A0210200604

C.C.P. & G.S.

Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS0200767

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

VS.

DAVID EUGENE ROSIER, JR.

CDR #: 0549

Indictment for

POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 POSSESSION OF A WEAPON DURING
 COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That DAVID EUGENE ROSIER, JR. did in Aiken County on or about November 10, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Girdard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 14, 2013

[Signature]
 Deputy Clerk

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Irish Wertz

Law Enforcement Case #: 12-066085

KNM

ARREST WARRANT NUMBER

2012A0210200597

May 9 2013

Liz Goodard
C.C.C.P. & G.S.

Charles E. Westall
Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS0200766

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

DAVID EUGENE ROSIER, JR.

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That **DAVID EUGENE ROSIER, JR.** did in Aiken County on or about November 10, 2012, feloniously, wilfully and with malice aforethought, then and there kill and murder Donnie Davis by means of shooting him in the chest and that the victim did die in Aiken County at Street, Bath, South Carolina as a proximate result thereof on November 10, 2012. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

May 13, 2013

CCCP & GA. Aiken County, SC
 Ann Sanders
 Deputy Clerk

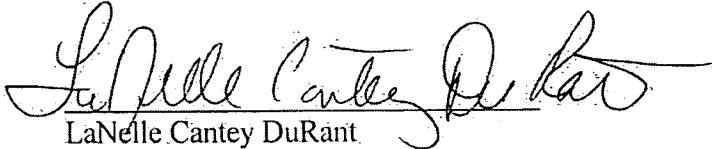
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. STROM THURMOND, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 29th, 2014



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID EUGENE ROSIER JR.,

APPELLANT

APPELLATE CASE NO. 2013-002259

SUPPLEMENTAL RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

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

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2 COUNTY OF AIKEN

CIRCUIT COURT
2013-GS-02-00766 & 00767

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 DAVID EUGENE ROSIER, JR.,
6 Defendant.

7
8 HEARD ON MONDAY, OCTOBER 7, TUESDAY, OCTOBER 8,
9 WEDNESDAY, OCTOBER 9 & THURSDAY, OCTOBER 10, 2013
10

11
12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14 AND A JURY

15 APPEARANCES:

16
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18 Kevin Molony, Esq.
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1 And the fact is that the trial court should consider
2 or list it as one, the impeachment value of the prior
3 crime, the point in time of the conviction, and the
4 witnesses' subsequent history, the similarity between the
5 past crime and the charged crime, and the importance of
6 the Defendant's testimony and centrality of the
7 credibility issue.

8 Well, obviously, in this case it's an undisputed fact
9 that the young man unfortunately died as a result of a
10 gunshot wound to the head (verbatim).

11 Credibility is not only the central issue but the,
12 basically the sole issue in this case. Who do you
13 believe. Which side of the story do you believe.

14 And I assume if your client takes the witness stand,
15 he -- and I'm not sure what he's going to say but I,
16 obviously his credibility will be, along with the
17 credibility of Josh and the credibility of CJ, I think
18 that's his name, that's the heart and soul of the case.
19 It's a credibility case.

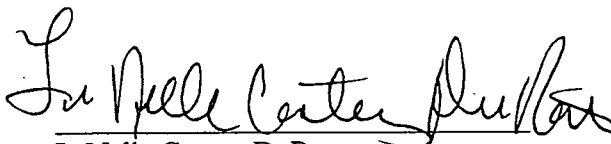
20 And I think the jury should have at their disposal all
21 the factors that the law allows in making a determination
22 as to credibility.

23 And one of those pieces of the puzzle they can use is
24 that if a defendant has a prior conviction as allowed
25 under Rule 609, which this strong arm robbery is, that

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 1st, 2014



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID EUGENE ROSIER JR.,

APPELLANT

APPELLATE CASE NO. 2013-002259

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in denying Appellant Rosier's motion to either suppress the jail calls involving Rosier or grant Rosier a continuance in order to make a motion to the "reviewing authority," which is a three judge panel of the Court of Appeals, for a hearing to determine if the jail calls violated the Homeland Security Act found at S.C. Code Section 17-30-10 through 145?
2. Did the trial court err in overruling defense counsel objections to two improper arguments made by the state during his closing argument when the solicitor referred to Appellant Rosier by his nickname of "Dollar" and told the jury that their decision was an important one for the community which improper comments violated Rosier's right to a fair trial because they tended to destroy the impartiality of the jurors?

STATEMENT OF THE CASE

On May 13, 2013, the Aiken County Grand Jury indicted David E. Rosier on the charges of murder and the possession of a weapon during the commission of a crime of violence. On October 7-10, 2013, Rosier proceeded to trial before the Honorable Doyet A. Early, III, and a jury. Rosier was represented by Walis A. Alves and C. David Hayes. The state was represented by Kevin Molony and David W. Miller. The jury found Rosier guilty of the lesser offense of voluntary manslaughter and the possession of a weapon during a crime of violence. R. 206, ll. 18 – R. 207, ll. 9. Judge Early sentenced Rosier to the maximum sentence of thirty years on the voluntary manslaughter and five years on the gun charge to run concurrently. R. 219, ll. 9 – 20. Rosier's trial counsel filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

On November 10, 2012, David Rosier and his son, Calvin, were able to pay for Rosier's other son, Josh, to bond out of the local detention center. In order to raise enough money for the bond, the father Rosier and Calvin had to remove copper from the old family home which was not being used at the time, to sell. R. 91, ll. 12 – 25; R. 95, ll. 1-25. After getting Josh out, Josh immediately started calling his girlfriend, Brittany, to tell her their relationship was over because she did not help with paying his bond which she had agreed to do. He just wanted to get his clothes. R. 123, ll. 7 – R. 129, ll. 14.

Then the three of them-David, Josh, and Calvin- went home to eat and let Josh shower and dress. David Rosier said they had no real plans for the evening except he was going to see his girlfriend, Katie. They borrowed the car of a friend of Rosier's, Terry Phillips, and took Josh to get his clothes from the place Josh and Brittany had been living. Then they went to the Rainbow Bait and Tackle Store and watched the Georgia-Alabama football game. R. 129, ll. 15 – R. 131, ll. 8.

Then Josh got a call from Brittany, and Josh said he needed to go see her. Then Rosier, Josh, Calvin, and Cody, the son of Terry Phillips and who was designated to drive Terry's car, went to Brittany's dad's house. Josh went in alone, and came out with Brittany and another girl named Autumn. Rosier just wanted to get away from them because he did not like Brittany. They took him to his girlfriend's, Katie's, house but she had left. R. 131, ll. 9 – R. 132, ll. 25; R. 124, ll. 20 – R. 125, ll. 4.

In the meantime, Brittany and Autumn started talking to Josh about three guys whom they all knew. The men were Russell Blackmon, C. J. Shaw who was the nephew of Rosier, and Colby who was a cousin of C.J. The three men and another man named D.J.

Davis, were close friends and hung out at the same house most of the time. R. 107, ll. 2 – 24; R. 114, ll. 10 – R. 115, ll. 6; R. 133, ll. 6 – 10.

Brittany, who was sitting on Josh's lap in the backseat, started telling Josh that Blackmon and Colby and C.J. held her and Autumn in a motel room. Josh started getting very frustrated and angry. At this point, they had no plans to do anything but get groceries. R. 133, ll. 20 – R. 136, ll. 10.

Rosier kept telling Josh to let it go because Josh just got home and did not need to get in any more trouble. Finally, Rosier decided they just needed to go to Blackmon's place and confront Blackmon about the incident in the motel room with Brittany. The only reason Rosier wanted to go was to keep Josh from getting in any more trouble. Rosier had just torn up his family home to get money to bond Josh out. Rosier denied there was any plan to fight Blackmon or to rob him. R. 136, ll. 12 – R. 137, ll. 25.

Rosier had no weapons except he carried a pocketknife that he used doing his work as an electrician. He said he never gave that knife to Josh. He went to the house with his son, Josh, and C.J. answered the door when Rosier knocked. Rosier asked to see Blackmon. Rosier's testimony was that he saw Josh then get into a physical altercation with the young man sitting on the sofa. Blackmon and C.J. then come running into the room. Blackmon had a pistol and pointed it at Josh and then at Rosier. Rosier began wrestling with Blackmon to get the gun. During this, the gun went off and Josh screamed. Rosier picked up the gun from the floor and ran to the car where Calvin and the others were waiting. Josh came running and they left. R. 138, ll. 1 – R. 140, ll. 23.

Rosier did not know that the young man on the sofa had been shot and killed until the others saw it on Facebook that night. He did not know that the young man had been cut

with a knife as well. Josh's hand had been shot also. Rosier sold the gun for \$30 at the Waffle House that night. He left the others and got a motel room that Saturday night. He was arrested Monday morning. R. 140, ll. 24 – R. 144, ll. 25.

Josh's testimony differed from his father's. According to Josh, he and his father and Calvin, had telephone conversations when Josh was still incarcerated before they bonded him out on November 10, 2012. These concerned declaring war on Russell Blackmon, C.J. Shaw, D.J. Davis and Colby. Josh learned that Brittany was seeing D.J. Davis. They were going the "beat their ass." R. 52, ll. 1 – R. 60, ll. 25.

Josh's testimony was similar to his father's, until the point they got to the house where the incident took place. Josh said his father gave him the knife as they walked up to Blackmon's house. The knife was like a box cutter with a razor blade type cutter. Neither Josh nor his father had guns. R. 64, ll. 1 – 68, ll. 25.

When they entered the house, D.J. Davis was sitting on the couch. C.J. was also in the room. Josh and D.J. started fighting. Blackmon entered the room holding a .357 revolver pistol. His dad hit Blackmon and the gun fell to the floor. Josh then started cutting D.J. with one hand when D.J. was sitting on the sofa, while holding D.J. down with his other hand. Josh then heard a gunshot. D.J. was shot. Josh turned around and saw his father standing there holding the same revolver. As they were leaving, his dad pointed the gun at C.J. who was crying. Josh told his dad not shoot C.J. because he was a relative. Josh and David Rosier then left. R. 69, ll. 6 - 74, ll. 25.

Calvin testified that he was in the car with his dad, Rosier, and his brother Josh on the night of the incident. Calvin never went in the house, but he was charged with accessory after the fact of murder. No one had guns, but he saw a gun in his dad's lap when they

returned to the car. R. 91, ll. 12 – 25; R. 92, l. 1 – 25; R. 106, ll. 8 – 23; 103, ll. 1 – 19.

Calvin confirmed that there was no plan to fight anyone, and that his father told Josh to leave it alone when Josh got upset about Blackmon trying to tie Brittany up in a motel room. His dad tried to get Josh to calm down. However, when Josh meant he was going in the house to fight, his dad, Rosier, was not going to let Josh go in by himself. R. 100, ll. 1 – 25; R. 101, ll. 1 – 25; R. 102, ll. 1 – 25; R. 103, ll. 1 – 17. He learned about the death of D.J. Davis when Brittany pulled it up on Facebook when they stopped at a gas station that night. Calvin did not know Davis. R. 93, ll. 13 – R. 94, ll. 24; R. 99, ll. 14 – 23.

Calvin talked with his dad via telephone after his dad was incarcerated. R. 104, ll. 23 – R. 106, ll. 9. Calvin had also talked with Josh during his incarceration before the incident happened. R. 96, ll. 7 – R. 99, ll. 25.

C.J. Shaw testified that he saw everything. The gun Rosier had was C.J.'s gun. C.J. called 911. R. 107, ll. 1 – R. 109, ll. 15.

The pathologist, Dr. Janice Ross, performed the autopsy on D.J. Davis. Davis died from bleeding of the heart due to a gunshot wound to the chest. Davis also had incised lacerations to his face caused by sharp instrument. R. 43, ll. 14 – R. 44, ll. 9; R. 46, ll. 6 – R. 47, ll. 14; R. 48, ll. 10 – 18; R. 50, ll. 13 – R. 51, ll. 5.

In a pretrial motion, defense counsel moved before the trial court for a continuance to review more discovery. Another independent reason for the continuance was to determine whether the wiretapping of the jail phone calls between Rosier and his sons was legal under the Homeland Security Act. Counsel cited S.C. Code Section 17-30-110 which provided: "Prior to any trial in any court, the aggrieved party may make a motion to suppress the use

of an intercepted communication on the grounds that the communication was unlawfully intercepted.”

Counsel went on to explain that the statute stated that the motion would be heard before the “reviewing authority” which was defined in Section 17-30-5 as a panel of three judges of the South Carolina Court of Appeals, designated by the Chief Judge of the Court of Appeals. Counsel stated that she had not made any motion before the Court of Appeals who had jurisdiction to make the determination if the interception of the jail calls was in accordance with the Homeland Security Act. She told the judge that she set this out in her memorandum which was presented to the trial court and made Court’s Exhibit One. Counsel argued this was another reason for a continuance. R. 6, ll. 1- R. 7, ll. 16; R. 5.

The judge allowed defense counsel to argue her motion concerning the Homeland Security Act more in depth at a later time because the judge needed to address that issue. Counsel argued that one of the reasons she made a motion for a continuance was to have the Court of Appeals decide if the jail calls of Rosier were intercepted properly pursuant to Section 17-30-10 etc. Counsel objected to the calls being admitted because they were in violation of the Homeland Security Act found at Section 17-30-10 et seq. R. 15, ll. 1 – 17.

Counsel stated that the Act provides that any interception of a wire communication, which includes any oral transfer which was a telephone call, must be made in accordance with that Act. Counsel argued that was nothing in the Act that differentiated a jail call from that of any other person. There was nothing in South Carolina that excluded jail calls from coming under the Act. R. 15, ll. 13 -25.

Counsel argued that the only time law enforcement was allowed to tape phone calls under the Act was when they had a court order issued by a judge. There was nothing in the

law addressing the use of these jail calls by the detention center staff. R. 19, ll. 8 – R. 20, ll. 24.

Counsel expected the state to argue that Rosier had no right to privacy as an inmate, but counsel pointed out that he still had the presumption of innocence at that point. He had to communicate with family members about his case. R. 16, ll. 23 – 17, ll. 12. Counsel said it was her understanding that the calls could now be routed directly to the solicitor's telephone, and the solicitor could choose which inmate they wanted to listen. This was a violation of the law and went beyond the probable purpose of the interceptions of being to protect the safety of the jail. R. 17, ll. 13 – R. 32, ll. 9.

The judge denied the motion to suppress the jail calls as he found that the calls were not covered by the Homeland Security Act. R. 33, ll. 1 – 7. The judge had previously denied the motion for a continuance. R. 10, ll. 21 – 22.

In his closing argument to the jury, the solicitor referred to Rosier by his nickname of "Dollar." Defense counsel objected on the basis that it went to show improper character to refer to Rosier as "Dollar." The judge ruled that he would allow it during argument. This had come out earlier during Josh's testimony when he said his father was known as "Dollar Bill" and Josh was known as "Little Man." R. 68, ll. 9 – 20; R. 173, ll. 5 – 20.

Later in his closing argument the solicitor said to the jurors:

Your decision that you're going to make in this case is important. It's an important one for the family and friends of D.J. Davis. It's an important one for this community.

R. 180, ll. 2 – 5.

Defense counsel objected as improper argument. The judge said: "All right. Go ahead." R. 180, ll. 6 – 7.

ARGUMENT

The trial court erred in denying Appellant Rosier's motion to either suppress the jail calls involving Rosier or grant Rosier a continuance in order to make a motion to the "reviewing authority," which is a three judge panel of the Court of Appeals, for a hearing to determine if the jail calls violated the Homeland Security Act found at 17-30-10 through 145.

South Carolina Code Section 17-30-10 provides that the interception of wire, electronic, or oral communications is authorized only in the manner permitted by this chapter. A wire communication is defined in 17-30-15(1) as any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of this connection in a switching station furnished or operated by any person engaged in providing or operating the facilities for the transmission of intrastate, interstate or foreign communications.

Section 17-30-15(3) defines intercept as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Section 17-30-110 provides that prior to any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived there from, on the grounds that the:

- (1) communication was unlawfully intercepted;
- (2) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(3) interception was not made in conformity with the order of authorization or approval. The statute states that the motion must be before the reviewing authority and must be decided on an expedited basis. The reviewing authority pursuant to Section 17-30-15(9) means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals.

From the statute, it is clear that the telephone calls between Rosier and his two sons fit the definition of wire communication. The calls met the definition of intercept. The state presented no evidence that the interceptions of the jail calls were lawfully made. There was no evidence presented that a judge had ordered the interceptions. The detention staff were not SLED agents which is allowed under the Act.

Defense counsel asked in her written memorandum (Court's Exhibit One) and in oral argument before the judge either that the calls be suppressed or the trial court grant her a continuance so she could make a motion to the Court of Appeals. Counsel also argued that the circuit court did not have jurisdiction or authority to decide if the calls were a violation of Section 17-30-10 and 110.

The trial court was in error in ruling that the jail calls did not come under the Homeland Security Act as that was clearly in the sole domain of the court of Appeals by law.

In State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012), the Supreme Court held that absent an ambiguity, the court will look to the plain meaning of the words used in the statute to determine their effect. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.

ARGUMENT

The trial court erred in overruling defense counsel objections to two improper arguments made by the state during closing argument when the solicitor referred to Appellant Rosier by his nickname of "Dollar" and told the jury that their decision was an important one for the community which improper comments violated Rosier's right to a fair trial because they tended to destroy the impartiality of the jurors?

In State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009), the Court of Appeals defined the "Golden Rule" Argument as one that suggests to jurors they put themselves in the shoes of one of the parties; in criminal arena, such an argument is generally improper because it asks the jurors to place themselves in the victim's place. The "Golden Rule" Argument tends to destroy all sense of impartiality of jurors, and its effect is to arouse passion and prejudice, thereby encouraging jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.

A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010) citing State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996).

In State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873 (2007), the Supreme Court held that while the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done. The solicitor's closing argument must of course, be based on this principle. The argument must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice.

In Rosier's case, the judge said:

Credibility is not only the central issue but the, basically the sole issue in this case. Who do you believe? Which side of the story do you believe?

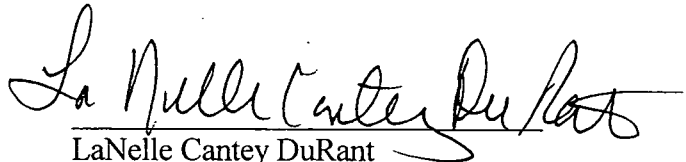
Supp. R. 2, ll. 11-13.

Because credibility was the sole issue, the solicitor's closing argument errors were more likely to have an effect on the verdict of the jurors. The solicitor was basically asking the jurors to put themselves in the place of the victim and his family when the solicitor said this was an important verdict for the family. By referring to the community, the solicitor was appealing to the personal bias of the jurors. This was prejudicial to Rosier and not harmless as there was a reasonable probability that these comments affected the outcome of the trial which rested solely on credibility.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial or in the alternative for a hearing before the Court of Appeals.

Respectfully submitted,


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Appellate Defender

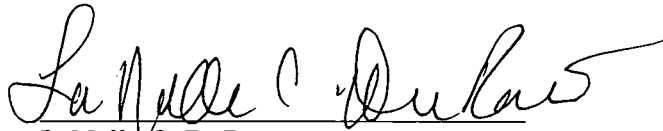
ATTORNEY FOR APPELLANT

This 1st day of October, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 1st, 2014

A handwritten signature in cursive script, reading "LaNelle C. DuRant", written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

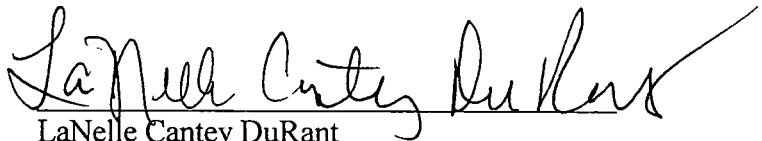
V.

DAVID EUGENE ROSIER JR.,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of October, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2014.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County
The Honorable Doyet A. Early, III
Appellate Case No. 2013-002259

Judge

THE STATE,

Respondent,

v.

DAVID EUGENE ROSIER, JR.,

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly denied Appellant's motion to suppress the recorded telephone calls made from the county jail.

II. The circuit court properly overruled Appellant's objection to portions of the solicitor's closing argument.

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STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On May 13, 2013 the Aiken County Grand Jury indicted Appellant David E. Rosier on one count of murder and one count of possession of a weapon during the commission of a crime of violence. The charges arose from an incident on November 10, 2012, during which Appellant shot and killed Donnie James ("D.J.") Davis (the "Victim"). The case was called for a jury trial on October 7, 2013, before the Honorable Doyet A. Early, III, Circuit Court Judge.

Prior to trial, Appellant moved to suppress recordings of telephone calls he made from the Aiken County Detention Center, asserting the recordings constituted an illegal wiretap under the South Carolina Homeland Security Act, and law enforcement was only allowed to intercept communications with a court order. The State argued Appellant consented to the recordings by using the jail telephones in light of signs at the telephones and an audio recording advising the parties the call will be recorded. The circuit court denied the motion to suppress, finding the jail calls were not subject to the Homeland Security Act. (Trial Transcript [TT], pp. 42-60); Record on Appeal [R.], pp. 15-33).

The pathologist who performed the Victim's autopsy testified the Victim had a gunshot wound in the chest, and the bullet went through the heart and the aorta. In addition, the Victim had "incise wounds" on the right side of his head. The pathologist determined the cause of death was exsanguination due to the laceration of the Victim's heart and aorta. (TT, pp. 133-140; R., pp. 44-51).

Appellant's son, Joshua Rosier ("Josh"), testified he was in jail for five days prior to the murder, and identified the recordings of phone calls he made to his brother and Appellant from the jail. Josh stated his brother and Appellant "declared war" on Carlton "C.J." Shaw (Appellant's nephew), Donnie "D.J." Davis (the Victim), Colby Reed and

Russell Blackmon, which meant "we was going to go beat their ass." (TT, pp. 146-154; R., pp. 52-60).

On the morning of November 10th, Josh bonded out of jail. His brother and Appellant picked him up, and they spent the early evening drinking and watching college football, then picked up Josh's girlfriend and her friend. Josh testified they eventually drove to Russell Blackmon's house "to get the dope that they had and jump on D.J. and Russell and Colby." When asked to clarify what he meant by "jump on" he stated "whoop their ass." (TT, pp. 155-158; R., pp. 61-64).

Josh and the Appellant walk to the house. Josh testified neither man had a gun, but Appellant handed him a blue box-cutter knife, "in case I needed it." (TT, pp. 159-162; R., pp. 65-68).

Appellant knocked on the door and identified himself as "Dollar," which was an abbreviated version of his nickname, "Dollar Bill." Appellant's nephew and the Victim were in the living area when they entered the house, and Josh got into a fist fight with the Victim. According to Josh, Blackmon entered the room holding a gun, and Appellant hit him and knocked the gun to the floor. Josh pulled out the box cutter Appellant gave him, and repeatedly cut the Victim with it until he heard a gunshot. Josh testified he turned and saw Appellant holding the gun. When Appellant pointed the gun at Josh's cousin, Josh begged him not to shoot because he was related to them. (TT, pp. 163-168; R., pp. 69-74).

Josh and Appellant then fled the house, and Appellant still had the gun used in the shooting. Josh testified he realized he had been shot in the hand, and when he told Appellant, Appellant replied, "next time move out of the f**king way." (TT, pp. 168-171; R., pp. 74-77).

They drove to a gas station, and Josh gave the box-cutter knife to his girlfriend to get rid of it. The girlfriend gave it to her friend, who rinsed the blood off, wrapped it in paper towels and dropped it in the trash. They ultimately drove to a house in Augusta, Georgia, "to get away from the cops." (TT, pp. 172-174; R., pp. 78-80).

Appellant sold the murder weapon to a man at the house in Augusta, and Josh took a shower and put his blood-stained clothes in a burn barrel. Appellant subsequently left the house on foot, and the girlfriend's father picked the others up the next day to take them home. Josh was arrested at his home the following day, and took police to the house in Augusta where the truck they drove was still parked. (TT, pp. 175-178; R., pp. 81-84).

A forensic scientist with SLED testified she analyzed several swabs SLED received from the Aiken County Sheriff's Department, including swabs from the truck, the porch of the home where the shooting occurred, a swatch of khaki shorts fabric, and a folding knife, as well as a sample of the Victim's blood for DNA comparison purposes. She further testified the blood found in the vehicle was the Victim's blood, and the probability of randomly selecting an unrelated individual with a matching DNA profile was one in ninety-five trillion. (TT, pp. 267-272; R., pp. 85-90).

Appellant's nephew, Carlton "C.J." Shaw ("Shaw"), testified he let Josh and Appellant into Blackmon's house, and went to the back of the house to tell Blackmon that "Dollar" was there. When the fight broke out, he and Blackmon came into the living area and saw Josh punching the Victim, and Appellant pointing a gun. Appellant shot the Victim when he got up to run away, and when Shaw tried to run out the front door, Appellant grabbed him and threw him against the front door, but Josh stopped Appellant from shooting him. Shaw testified the gun used in the murder belonged to him, it was

laying on a table in the living area when he went to get Blackmon, and he saw Appellant shoot it that night. (TT, pp. 312-326; R., pp. 107-121).

The jury convicted Appellant of voluntary manslaughter and possession of a weapon during a crime of violence, and the circuit court sentenced him to concurrent prison terms of thirty years and five years, respectively. (TT, pp. 444-445, 457; R., pp. 206-207, 219). This appeal followed.

ARGUMENT

I. The circuit court properly denied Appellant's motion to suppress the recorded telephone calls made from the county jail.

Appellant asserts the circuit court erred in denying his motion to suppress the recordings of calls he made from the Aiken County jail telephone. He contends the recording of the phone calls by jail staff constituted an illegal wiretap in violation of the South Carolina Homeland Security Act. In addition, Appellant argues the circuit court should have granted a continuance so he could move for a hearing before the South Carolina Court of Appeals, as the "reviewing authority" under the Homeland Security Act, to determine the legality of the calls.

In 2002, the South Carolina General Assembly enacted the Homeland Security Act, expressly finding legislative enhancements were required to ensure the safety of South Carolina's citizens, including enhancement of tools available to law enforcement, in light of "the tragic events of September 11, 2001, involving acts of terrorism against the people of the United States and . . . continued threats against the peace and safety of our nation." 2002 Act. No. 339, §2. Thus, the **express** purpose of the Act was to enhance, not restrict, law enforcement's ability to conduct investigations.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature, and all statutory construction rules are subservient to the rule that legislative intent must prevail if it is reasonably discoverable from the statutory language as construed in light of the statute's intended purpose. State v. Whitner, 399 S.C. 547, 732 S.E.2d 861, 863-864 (2012). "Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial

gloss interpreting that legislation.” *Id.* at 864 (quoting Orr v. Clyburn, 277 S.C. 536, 290 S.E.2d 804, 806 [1982]).

The wiretap provisions of the Homeland Security Act (hereinafter “the Wiretap Act”) are patterned after the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. §2510).¹ *Id.* at 863. The Wiretap Act is violated when a person intercepts oral communications not otherwise **exempt**, or subject to an **exception**, and evidence intercepted in violation of the Wiretap Act must be suppressed pursuant to S.C. Code §17-30-110 (2014). When a party to a communication gives consent for the communication to be intercepted, however, the recording does **not** violate the law. *Id.* at 864; *see also* S.C. Code Ann. §17-30-30 (2014) (exceptions).

Code §17-30-30 (B) provides: “It is **lawful** under this section for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication **or one of the parties has given prior consent to the interception.**” (emphasis added).² In addition to information regarding the telephone system provided to all new inmates, before an inmate’s telephone call from the jail is allowed to proceed, the jail’s telephone system plays a recorded message informing inmates and the people they call from the jail their conversations are subject to recording and monitoring. (State’s Exhibits 19, 20 and 21 [Telephone Call CDs]; Defendant’s

¹The federal law applies to jail telephone call recordings. *See United States v. Hammond*, 286 F.3d 189, 192 (4th Cir. 2002) (“Although the argument has been made that Title III was not intended by Congress to apply to prisons, it is well accepted that its protections do apply to that context.”)

²The statute essentially codifies the one party consent doctrine. *See State v. Andrews*, 324 S.C. 516, 479 S.E.2d 808 (Ct. App. 1996) (recording of conversation when one party to the conversation consents does not violate constitutional or statutory rights).

Exhibits 1 and 2 [Telephone Call CDs]).³ Continuing the call after that warning constitutes **both** parties' consent to the call being recorded by the jail for any purpose.

As argued by the State before the circuit court, even if the Wiretap Act applies to jail telephone call recordings, Appellant consented to the recordings, which is an express exception to the Wiretap Act's requirements. Therefore, the recordings were expressly lawful under §17-30-30(B), obviating the need for a court order and reviewing panel determination, and the circuit court properly admitted them as evidence.

³These Exhibits will be transported to the Court for consideration.

II. The circuit court properly overruled Appellant's objections to portions of the solicitor's closing argument.

Appellant contends the circuit court erred in overruling his objections to the solicitor referring to him as "Dollar" during closing argument, and telling the jury its decision was important for the community, arguing the statements violated his right to a fair trial because they tended to destroy the jurors' impartiality. As a threshold matter, the issue is not preserved for appellate review as to either statement. Even if preserved, however, Appellant's contentions are patently meritless.

It is well established in South Carolina that an issue must be raised to and ruled on by the trial court to be preserved for appellate review. Roberts v. State, 408 S.C. 123, 757 S.E.2d 744, 748 (Ct. App. 2014) (*citing* State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 [2011]). "Moreover, in order to preserve the issue for appeal, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731, 733 (1998). *See also* State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) (failure to state specific grounds for objection to solicitor's closing argument did not preserve any issue for appellate review); Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South Carolina, 2nd ed. 73-74 (2002) (same). A party may not argue one ground at trial and another on appeal. State v. Brockmeyer, 406 S.C. 324, 355, 751 S.E.2d 645, 661 (2013).

"On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record." Simmons v. State, 331 S.C. 333, 503 S.E.2d 164, 166 (1998). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v.

State, 351 S.C. 362, 570 S.E.2d 160, 166 (2002).

A. Use of Appellant's nickname "Dollar"

During trial, several witnesses, including Appellant, referenced Appellant's nickname "Dollar" or "Dollar Bill," and the solicitor used this nickname during closing argument. Appellant objected, asserting it was "improper character to keep referring to Dollar." The circuit court overruled the objection. (TT, pp. 409-410; R., pp. 172-173). Citing Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010), Appellant now asserts use of this nickname was unfairly prejudicial and tended to destroy the impartiality of the jury. Appellant did not raise this issue in the circuit court, and therefore, it is not properly before this Court for review. In any event, Appellant's assertion is meritless.

In Vasquez, a death penalty case, the solicitor: (1) referred to the defendant, a Muslim, as a "domestic terrorist," drawing a correlation between his indicted conduct and the events of September 11, 2001; and (2) urged jurors to imagine the fear and terror of one of the murder victims. 698 S.E.2d at 563. The South Carolina Supreme Court reversed the denial of post-conviction relief as to the penalty phase, finding trial counsel was ineffective in failing to object to the solicitor's comments, which were "inflammatory," and "used in conjunction with the solicitor's extensive reference to the events of September 11, 2011." *Id.* at 567, 570.

In this case, two witnesses testified, without objection, that Appellant identified himself as "Dollar" when he knocked on the door at Blackmon's house. (TT, pp. 162, 320-321; R., pp. 68, 115-116). Appellant also testified, without objection, that his nickname is "Dollar." (TT, pp. 373-374; R., pp. 145-146). Thus, the solicitor merely repeated Appellant's undisputed nickname, with no commentary or editorial added. There simply is no comparison between the reference to a Muslim defendant as a

“domestic terrorist” in Vasquez, and merely referencing a nickname Appellant himself provided in this case, which has no particular negative connotation.⁴ At best, Appellant’s contention the reference unfairly prejudiced the jury is conclusory and unsupported.

B. Comment regarding importance of jury’s decision

Relying on State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009), Appellant argues the solicitor’s comment in closing argument regarding the importance of the jury’s decision to the family and the community violated the “Golden Rule” doctrine, and denied him a fair trial.⁵ Appellant only objected to the comment as “improper argument,” and did not otherwise raise this issue in the circuit court.⁶ Therefore, it is not preserved for appellate review, but even if preserved, Appellant’s argument has no merit.

The “Golden Rule Argument” asks the jury to put themselves in the victim’s place, and is generally improper for criminal prosecutions because it tends to destroy the jury’s impartiality, and appeal instead to personal bias. 674 S.E.2d at 539. “Such an argument tends to destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice, thereby encouraging the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” *Id.*

In Harris, the solicitor told the jury if it believed the defendant’s version of the events, “don’t leave this jury room, don’t leave this jury box and he charges you and just let him go right now.” *Id.* The Court of Appeals found the statement was not a “Golden

⁴Unlike “domestic terrorist,” “Dollar” does not indicate a propensity for violence of any kind.

⁵Appellant conveniently ignores the solicitor’s subsequent comment that it was an important case for Appellant as well.

⁶Arguably, the circuit court did not even rule on Appellant’s general objection. All the court stated after the objection was: “All right. Go ahead.” (TT, p. 417; R., p. 180). If this is construed as a ruling, the objection was overruled.

Rule Argument,” because it did not ask the jurors to put themselves in the victims’ place.

Id. at 540.

Similarly, the solicitor in this case did not make a “Golden Rule Argument.” Merely stating the jury’s decision was important to the community did not suggest any specific verdict, or ask the jurors to put themselves in the Victim’s shoes. Rather, it simply reminded the jurors their service as jurors was important to the community. Therefore, the circuit court properly overruled Appellant’s general objection.

CONCLUSION

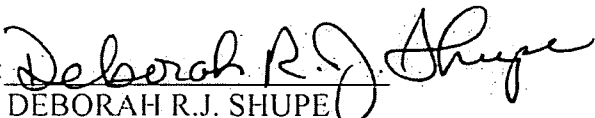
Based on the foregoing, Respondent submits Appellant's conviction should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

T Appeal From Aiken County
The Honorable Doyet A. Early, III ge
Appellate Case No. 2013-002259

THE STATE,

Respondent,

v.

DAVID EUGENE ROSIER, JR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and other Sensitive Information in Appellate Court Filings."

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October 3, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-213405

THE STATE,

Respondent,

v.

RAKEEM D. KING,

Appellant.

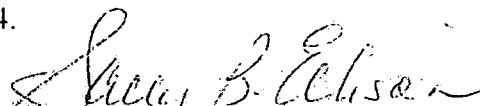
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent and Designation of Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant
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Division of Appellate Defense
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I further certify all parties required by Rule to be served have been served.

This 3rd day of October, 2014.


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STATE OF SOUTH CAROLINA
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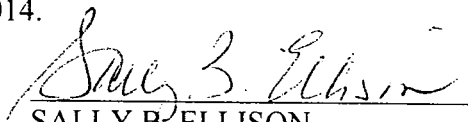
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